

## Summary

### Overview of our findings

1. The Competition and Markets Authority (CMA) has concluded that the merger between JD Sports Fashion plc (JD Sports) and Footasylum plc (Footasylum – together, the Parties) (the Merger) would result in a substantial lessening of competition (SLC) in sports-inspired casual footwear and apparel products sold both in stores and online. As a result, shoppers would be worse off.
2. Although JD Sports has already bought Footasylum, the two businesses are currently held separate. Therefore, we have decided that the most effective way to address the competition issues we identified is for JD Sports to sell Footasylum in its entirety to a suitable buyer, who will maintain and invest in the business. We will allow JD Sports a reasonable timeframe to do so, particularly given the current Coronavirus (COVID-19) pandemic. Selling Footasylum means it will continue to operate as an independent business separate from JD Sports, ensuring that shoppers - many of whom are young consumers - continue to benefit from having the good deals and quality, range and other benefits that competition brings.

### Impact of Coronavirus (COVID-19)

3. At the time of publishing this final report, many retailers are currently facing uncertain and challenging trading conditions due to COVID-19, which arose during the final stage of our investigation. This is having a significant impact on many businesses and the economy. In particular, all retail stores selling non-essential goods have been closed by government requirement since 23 March 2020, including the Parties' and other retailers' physical stores. Other aspects are also likely to be affected including retailers' online businesses, their warehouse operations and their supply chain.
4. The evidence gathering for this investigation was mostly completed before the effects of COVID-19 arose, so it largely reflects the market prior to this. However, we have looked at the impact of COVID-19 on our assessment, as far as possible, to see if it changes our views on the Merger. The extent and duration of the impact of COVID-19 in the medium to long term is uncertain. All retailers are subject to the same change in market conditions, although it is difficult to predict the effect on different retailers and how each will respond to

the circumstances. While the sector is clearly being impacted by COVID-19, it is not clear that either of the Parties is being hit harder relative to other retailers, such that either would be in a much weaker competitive position in comparison to each other and other retailers, or that other competitors would become significantly stronger. While recognising the uncertainties from the impact of COVID-19, we do not consider that it will significantly increase the constraints on the Parties now or in the foreseeable future, such that there would no longer be competition concerns from the Merger. The Parties have not told us that either of them will go out of business (ie that it is a 'failing firm').

5. Although we are required to form a final view on the Merger in this final report, there is flexibility in our remedies implementation process which means we can respond to any relevant developments throughout the sale process. For example, we will ensure that the timeframe for the sale is sufficient and will assess the suitability and availability of potential buyers. Given we cannot predict how the situation will develop, we will remain responsive to any issues in the sale process as they arise.

## **Who are these businesses and what do they sell?**

6. JD Sports is an international retailer, operating a number of different store brands in the UK, its largest being JD Sports, which consistently performs very well financially and is growing substantially (operating 375 stores and online). Footasylum, although a smaller UK retailer, is a sizeable business having grown over the last decade to operate 70 stores in the UK and online. Both are multi-million-pound businesses with millions of customers shopping in their stores and online. Their UK revenues in 2018/19 were £2.1 billion for JD Sports and £227 million for Footasylum.
7. There are many similarities between these two businesses. Broadly speaking, both sell 'sports-inspired casual footwear and apparel' ie fashionable branded sportswear used primarily for leisure rather than for sport, sometimes known as 'athleisure'. Branded products by Nike and adidas make up the majority of their footwear sales and are also important in apparel, although they sell a wider range of apparel brands including own-brand apparel. Both businesses also target a similar demographic - 16-24 year olds, with a focus on males.
8. Many different types of trainers and apparel can be bought from a large number of retailers, both on the high street and online. But JD Sports and Footasylum are among only a small number of retailers selling specific types of fashionable branded sports-inspired casual trainers and apparel. Consumers want to shop at these retailers who have built their retail brand and reputation around these sought-after products, using for example the

latest social media influencers or sports personalities to market their products. The Parties therefore offer a distinctive retail experience for their trend-savvy shoppers, compared to fashion retailers like Next or more 'value end' sports retailers like Sports Direct.

9. Shoppers are also increasingly looking at and buying sports-inspired casual products online; for example, online footwear sales accounted for around 37% in 2018 versus 22% in 2015 and this is similar for apparel. The Parties both have sizeable online businesses in addition to their physical stores. Some retailers like ASOS sell only online. However, shopping in stores remains important for many consumers in these markets - 60% of sports-inspired footwear sales were made in stores in 2018 - and retailers have been opening and investing in their stores to attract shoppers. We recognise that many consumers in these markets shop both in-store and online interchangeably, which is why we have treated them as a single, combined market and looked at the national constraint from all retailers including online-only and those who also have stores.

## **Our assessment**

### ***How have we examined this Merger?***

10. Competition between retailers drives good outcomes for shoppers (in terms of better deals, quality, service, range and other continuous improvements). It is therefore necessary to understand how each of the merging businesses competes against the other and how they compete against other retailers. In some mergers the markets can be clearly delineated (for example, those with homogeneous products/services) so that measures like market shares are more important in understanding competition between businesses. However in other cases, like this, where the boundaries of markets are less clear-cut (with differentiated products/services ie there is a wide range of products and different service offerings), other evidence tells us much more about how closely the merging businesses compete and therefore what effect a merger will have on shoppers.
11. We looked at whether JD Sports competes closely with Footasylum and vice versa, and which other retailers are close competitors to them. Firms are close competitors if their customers view them as alternatives to each other ie customers would be willing to switch between the two firms, and, as a result, the two firms compete to win and retain customers by offering a better product and service. Two closely competing firms place a stronger immediate constraint on each other than do other retailers within the same market, and customers benefit from this competitive rivalry. If those closely competing

firms merge, each will be under less competitive pressure which means they will not work as hard to offer good deals for their customers or make improvements to their businesses than they otherwise would have done.

12. In assessing this Merger, we looked at a wide range of evidence which we considered in the round to reach our decision.
13. We examined the Parties' own internal documents which show how they run their businesses and how they view their rivals in the normal course of business. If firms regularly monitor each other and pay particular attention to each other in such documents, this indicates they are close competitors. We undertook a widescale review of each Party's internal documents and examined over 2,500 documents.
14. We carried out two large surveys of the Parties' customers, interviewing over 10,000 shoppers at JD Sports and Footasylum stores and their online businesses. We asked the customers' views on how they purchase the Parties' products, and what alternative retailers they would consider shopping at. For example, if a JD Sports customer tells us that they would shop at Footasylum if JD Sports were no longer available (or vice versa for a Footasylum customer), then this would be evidence that the two are close competitors.
15. We assessed how shoppers actually behave by looking at how different retailers impact each other's revenue. For example, if Footasylum opens a new store near a JD Sports store and the JD Sports store loses money, this is evidence they are close competitors. We assessed JD Sports' own data to look at the impact on its revenues of different retailers opening and closing stores.
16. We looked at how similar the Parties are in terms of what they sell, where their stores are and the type of customers they have, as well as how similar other retailers are to the Parties. We spoke to and gathered evidence from many other retailers and suppliers to see what they thought of the Merger and who they considered to be the Parties' key competitors.
17. We also calculated market shares. But, in markets like this where there is such a wide range of products and offerings, retailers work hard at differentiating themselves from each other, and it is difficult to define the boundaries of a 'market'; market shares do not fully show how closely these firms compete in practice.
18. As well as looking at how retailers currently compete, we recognise that markets change over time. Our assessment is forward-looking and evidence-led. We therefore assessed how these markets might develop in the

foreseeable future (ie within two years) to see if some retailers might become closer competitors than they are currently. We examined retailers' commercial plans and their internal documents, in particular those of Sports Direct which is elevating some of its stores and online business (ie further improving the quality of its stores and website), and the big brands like Nike and adidas, which are retailers in their own right (as well as supplying products to retailers) and are growing their own direct to consumer (DTC) sales.

19. We also looked at whether brands like Nike and adidas, through their role as suppliers, provide a constraint on the Parties which might prevent or disincentivise them from deteriorating their offer after the Merger. Getting access to branded products, particularly the most sought-after, is important for retailers as they are in such high demand from shoppers. But suppliers control, through their selective distribution arrangements, what types and volumes of products are given to different retailers to sell. This gives suppliers an important role and influence in shaping retail competition. We looked at a range of different evidence, including suppliers' terms and conditions, behaviour and internal documents, to assess the nature and extent of the constraint from suppliers.

***What did this evidence tell us about how closely the Parties compete?***

20. We found that the Parties regularly monitor each other as well as some other retailers. Footasylum's internal documents show that it monitors JD Sports more closely than any other retailer, and therefore that JD Sports is a particularly significant competitor to Footasylum. Footasylum is also one of the retailers most closely monitored in JD Sports' internal documents, along with Foot Locker, ASOS, Nike and adidas. Other retailers are monitored by the Parties but to a much lesser extent, showing they are more distant competitors. We have also seen a small number of examples which show that such monitoring is likely to have influenced their commercial decisions and was sometimes followed by responsive actions (for example relating to student discounts). It is unlikely that the Parties would undertake such extensive regular monitoring of each other, if it were not to inform their business decisions.
21. Our surveys show that the Parties' customers also consider them to be a strong alternative to each other. We found that JD Sports is by far the closest competitor to Footasylum. A very high proportion of Footasylum's customers said that they would shop at JD Sports if they could no longer shop at Footasylum – more than two-thirds of in-store customers (68%) and almost half of online customers for footwear (46%). This was similar for apparel where 69% of Footasylum's in-store customers and 61% of online customers

said they would go to JD Sports. These figures were substantially higher than for any other retailer.

22. The proportions of JD Sports' footwear customers who said they would go to Footasylum were lower (21% of in-store customers and 16% of online customers), although this in-store level is still higher than for any other retailer and online Footasylum is a close second to Nike at 18%. This was similar for apparel where 17% of JD Sports' in-store customers would go to Footasylum (with only Sports Direct being comparable) and 13% of its online customers (second to Nike at 14%).
23. These numbers are important as they tell us how strong the incentives would be on the Parties to worsen their offerings after the Merger or not improve them as much or as quickly as they would have otherwise done. Using these survey results, we calculated the strength of this incentive at the national level for both Parties using the 'gross upward pricing pressure index' (GUPPI), which is commonly used in the CMA's merger investigations. The GUPPI results are high for both of the Parties, and particularly for Footasylum (the in-store footwear and apparel GUPPIs were [19-27%] for Footasylum and [4-7%] for JD Sports).
24. Our analysis of the impact of store openings and closures also indicates that Footasylum is a competitive constraint on JD Sports. Entry by Footasylum is associated with a fall in nearby JD Sports store revenues for footwear and apparel. We did not have enough data to test the impact of JD Sports' store openings on Footasylum stores.
25. All of this evidence shows a consistent picture - JD Sports and Footasylum are close competitors, with JD Sports providing a particularly strong constraint on Footasylum, which would be removed by the Merger.
26. This is also supported by a range of other evidence – JD Sports and Footasylum stock a similar range of branded sports-inspired casual footwear and apparel, although the product overlap is less clear in apparel than in footwear; they both target young consumers with a focus on males; their stores are in similar areas (all Footasylum stores are near to at least one JD Sports store) and many other retailers told us that they consider JD Sports and Footasylum to be close competitors to each other.
27. However, the market share figures show that the share increment from the Merger is fairly low; JD Sports is clearly the largest retailer in the market with an estimated share in each of sports-inspired casual footwear and apparel of [20-40]% and Footasylum is smaller with a share of [0-10]%. But delineating a 'market' in this case is somewhat artificial, given there is such a wide range of

different products. This means that these market shares are not particularly informative and do not help us to understand fully how closely retailers compete in this case. That is why we looked at a range of other evidence that tells us more about competition in these markets and the effects of this Merger.

### ***What about competition from other retailers or suppliers?***

28. Having found that the Parties are close competitors, we looked at how much other competition there is from other retailers (ie the competitive constraint they have on the Parties – both now and in the foreseeable future) such that there would not be competition problems from the Merger. We looked at retailers like the Parties who sell multiple brands and operate both in-store and online, like Foot Locker, Sports Direct, Office and Schuh, and online-only retailers like ASOS and Amazon; as well as Nike and adidas, who operate both in-store and online but who sell only a single brand. We found that while there are numerous other retailers in these markets, only Foot Locker provides a strong constraint in footwear, with some constraint from Nike and Sports Direct in both footwear and apparel, though less than the constraint the Parties have on each other. Other retailers provide a more limited constraint in both footwear and apparel. This means there would still be a substantial loss of competition from this Merger.
29. **Foot Locker** is a strong competitor to JD Sports and Footasylum in footwear but less so in apparel, in which it currently has a relatively limited offering. The Parties both closely monitor Foot Locker and our surveys found that their footwear customers consider Foot Locker to be the next best alternative after the Parties themselves. It has a similar number of stores to Footasylum and has recently opened two much larger stores. This constraint could be strengthened further if it continues to open larger stores. However, the evidence does not show that Foot Locker, on its own, would provide sufficient constraint to prevent an SLC.
30. **Sports Direct** also currently exerts some competitive constraint, more so in apparel than in footwear. But despite it being a significant retailer with a large number of stores, it currently has some key differences from the Parties. Most of its stores do not sell the types of higher-end branded trainers or apparel that the Parties do, and instead it sells more ‘value end’ products. It is more focussed on sporting goods and most of its stores currently give shoppers a different retail experience from the Parties. This is supported by the views of customers, most of whom do not consider Sports Direct to be a close alternative, particularly Footasylum’s customers.

31. We also looked in detail at whether the competitive constraint from Sports Direct may increase over the next two years, given it has been elevating some of its stores and its online offer and is starting to sell some higher-end branded products. It has opened over 30 elevated stores (as at March 2020) and has plans to open more. Sports Direct has also been given access to some types of higher-end branded products similar to those given to the Parties, albeit in small volumes. On balance, while it is possible that Sports Direct through its elevated stores may become a more direct competitor to the Parties to some extent, we cannot say with sufficient certainty that it will become a significantly stronger constraint in the foreseeable future.
32. We also considered the competitive constraint from **Nike and adidas** as retailers through their DTC sales, and found that Nike exerts some constraint and adidas provides a weak constraint. While both have retail stores, most of these are factory or clearance outlets. They also sell only their own brands rather than offer the mix of brands that the Parties sell. There is evidence that the Parties, particularly JD Sports, monitor both Nike and adidas, and some evidence that Nike store openings have an impact on JD Sports store footwear and apparel revenues. But our surveys found that they impose less of a competitive constraint than the Parties do on each other. There is a trend of increasing sales direct to consumers, predominantly online, and future growth is forecasted. However, in our view, the evidence does not indicate that the ratio of DTC sales to wholesale will change significantly. So while Nike and adidas may continue to grow their DTC sales, we cannot say with sufficient certainty that this will increase materially their competitive constraint on the Parties over the next two years.
33. **ASOS** exerts some competitive constraint, particularly for apparel, but to a much lesser extent than either of the Parties. For example, our surveys found that in footwear less than 2% of the Parties' in-store customers would go to ASOS and only 6% of their online customers, which is significantly lower than those who would go to either of the Parties. In apparel in-store the results were similar but higher for online (10% for JD Sports and 8% for Footasylum). ASOS is one of the retailers most closely monitored by JD Sports, but is monitored to a lesser extent by Footasylum. The evidence shows overall that the competitive constraint from ASOS is relatively limited and this is not likely to change over the next two years.
34. While there are other large online-only retailers such as Zalando and Amazon, these are not close competitors. The Parties' customers clearly do not consider them to be significant alternatives. Amazon does not currently sell Nike or adidas products directly. Other retailers with in-store and online offerings such as Schuh and Office exert only a relatively limited constraint



(for example they are monitored to a lesser extent, and far fewer customers would go to their stores than to either of the Parties' stores).

35. In addition to the competitive constraint from retailers, we also looked at whether the Parties face **constraints from suppliers of branded products, in particular Nike and adidas**. While suppliers have an important role in these markets, more so in footwear than in apparel, we do not consider that they would prevent the competition problems arising from this Merger. We found that suppliers are influential and exert some constraint on retailers, particularly through controlling the products and volumes that retailers can access and setting criteria for in-store quality and product presentation. In general Nike and adidas are the most restrictive of the suppliers. But suppliers do not provide a constraint on all aspects of retail competition.
36. Retailers can and do compete on many different aspects of business such as discounts, promotions like Black Friday, delivery charges and the mix of brands they offer, as evidenced by the variation seen in their offerings. Suppliers do not monitor and engage in all of these aspects of retail competition, in some cases have little (if any) incentive to constrain any deterioration (eg reduction in student discounts or loyalty schemes) and are not likely to perceive some changes as deteriorations (such as the mix of brands offered). Shoppers value and benefit from these aspects of competition, which would be reduced if this Merger went ahead. The constraint from suppliers is also weaker in apparel, as a greater proportion of apparel sales comes from a range of suppliers other than Nike and adidas so there is less dependency on them and because suppliers are also less restrictive in apparel than in footwear. Retailers also stock their own-brand apparel which does not face the same constraints.
37. We found that while in aggregate other retailers impose some constraint on the Parties, this is only moderate at best. Suppliers like Nike and adidas provide some additional constraint on aspects of retailers' offerings, but this also has limitations and is less in apparel. When combined, on balance, these constraints would not be sufficient to prevent the substantial loss of competition resulting from the removal of a significant direct competitor. We consider this to be the case having fully explored and accounted for any market developments in the foreseeable future and the impact of COVID-19 on these.
38. We also looked at whether entry and expansion by other retailers over the next two years or any customer benefits arising from this Merger would offset the competition problems from this Merger but found no evidence that either would. In particular, no retailer has significant plans to enter these markets.

## Conclusion

39. This Merger would bring together two strong competitors which would be bad for shoppers. On the basis of a significant amount of evidence, we concluded that the Merger has resulted or may be expected to result in a substantial lessening of competition in the markets for sports-inspired casual footwear and apparel. That is why we consider it necessary for JD Sports to sell Footasylum, so that they can continue to compete against each other as independent businesses. We do not consider that there is any remedy other than a full sale which would be effective and, given the substantial loss of competition that would be brought about by the Merger, this is a proportionate step to take.
40. We recognise the challenges arising from COVID-19 and the significant impact this is having on all retailers. While much remains uncertain at this stage, we do not envisage that the impact of COVID-19 will remove the competition concerns resulting from this Merger. All retailers, including the Parties, are being impacted and it is not clear that the effects of COVID-19 would disproportionately impact the Parties more than any other retailers, such that JD Sports and Footasylum would no longer be close competitors or the constraints from other retailers would significantly increase.
41. We consider that the sale of Footasylum is an effective and proportionate remedy and that there is flexibility in the sales process to respond to any further developments.