COMPLETED ACQUISITION BY HUNTER DOUGLAS N.V. OF CONVERTIBLE LOAN NOTES AND CERTAIN RIGHTS IN 247 HOME FURNISHINGS LTD. IN 2013 AND THE COMPLETED ACQUISITION BY HUNTER DOUGLAS N.V. OF A CONTROLLING INTEREST IN 247 HOME FURNISHINGS LTD. IN 2019

Summary of provisional findings

Notified: 16 July 2020

Overview

1. The Competition and Markets Authority (CMA) has provisionally found that the completed acquisition by Hunter Douglas N.V. (Hunter Douglas) of a controlling interest in 247 Home Furnishings Ltd (247 and together with Hunter Douglas the Parties or the Merged Entity) in 2019 (the 2019 Transaction) has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in the online retail supply of made-to-measure (M2M) blinds in the UK.

2. The CMA has also provisionally found that the completed acquisition by Hunter Douglas of convertible loan notes and certain rights in 247 Home Furnishings in 2013 (the 2013 Transaction) has not resulted in the creation of a relevant merger situation within the meaning of the Enterprise Act 2002 (the Act).

3. This is not our final decision. We now invite submissions from any interested party on these provisional findings by **17:00 on 6 August 2020**. Parties should refer to the notice of provisional findings for details of how to do this.

4. Alongside these provisional findings, we have published a notice of possible remedies which sets out our initial views on the measures that might be required to remedy the SLC we have provisionally found. We also invite submissions on these initial views by **17:00 on 30 July** 2020.

5. We will take all submissions received by these dates into account in reaching our final decision, which will be issued by 15 September 2020.

Our inquiry

6. On 1 April 2020, the CMA referred the 2013 Transaction and the 2019 Transaction (together, the Transactions) for an in-depth phase 2 merger inquiry:

7. The CMA is required by its terms of reference to decide with respect to each of the Transactions:

   (a) whether the Transaction constitutes a relevant merger situation;

   (b) if so, whether the Transaction has resulted or may be expected to result in an SLC within any market or markets in the United Kingdom for goods or services; and

   (c) whether action should be taken for the purposes of remedying, mitigating or preventing any SLC or resulting adverse effect we have identified. This is the subject of the notice of possible remedies we have published alongside these provisional findings, in which we have discussed what measures could effectively remedy the SLC we have provisionally found.

8. In addressing the questions above, we have considered a range of different evidence that we received from the Parties, other retailers and suppliers. This includes evidence received through submissions, responses to information requests, telephone calls, and hearings. We have also considered a survey of their customers prepared and submitted by the Parties that we consider is in accordance with our best practice. Given that competition in the relevant market primarily occurs online (as discussed below), we also have analysed how online search is utilised by the Parties and their competitors in the retail supply of online M2M blinds.

Background

The Parties

9. The acquirer is Hunter Douglas, a global provider of window coverings, including blinds, shutters and curtains. In the UK, Hunter Douglas operates through different companies at manufacturing, wholesale and retail level, using several different brands. With respect to online M2M blinds, Hunter Douglas is active in the UK through its subsidiary Blinds2Go Limited (Blinds2Go). Blinds2Go is the UK's largest online M2M retailer for blinds. In 2019 Hunter Douglas had global revenues of approximately £3 billion.

10. The target, 247, is a UK-based online supplier of window coverings including blinds, shutters and curtains. In 2019, 247's global turnover was £22.2 million.

11. The Parties overlap in the supply of window coverings in the UK (including the online retail supply of blinds, shutters and curtains). However, the principal area of overlap between the Parties is between Hunter Douglas' subsidiary Blinds2Go and 247 in relation to the online retail supply of M2M blinds in the UK. Accordingly, this competitive overlap has been the focus of our inquiry.

The Transactions

12. Hunter Douglas acquired its interests in 247 through two separate transactions in 2013 and 2019, respectively. Notwithstanding these separate transactions, the Parties submit that they entered into the 2013 Transaction in the understanding that this was a single acquisition by Hunter Douglas of 247 that would ultimately complete in 2019. The Parties accordingly view the 2019 Transaction as a formality that gave effect to their previous agreement in 2013.

The 2013 Transaction

13. Pursuant to the 2013 Transaction, Hunter Douglas invested in 247 via the acquisition of convertible loan notes which had been issued by 247 to 247's founding shareholders (the 247 Founding Shareholders).

14. Attached to these loan notes were certain rights in 247 granted to Hunter Douglas, including: (i) 49% of the voting rights and a 49% share of the profits in 247; (ii) the right to convert the loan notes at any time to ordinary shares; (iii) the right to nominate a non-executive Director to the 247 Board; and (iv) certain veto rights in respect of the 247 business.

15. At the same time, reciprocal put and call options were granted to both Hunter Douglas and the 247 Founding Shareholders. Under the put and call options, the 247 Founding Shareholders could require the purchase of their shares by Hunter Douglas and Hunter Douglas could require the sale of the shares held by the 247 Founding Shareholders by written notice in the period 1 March to 1 June 2019.

16. The terms of the 2013 Transaction prevented either Party from publicising the transaction. The Parties submitted that the 2013 Transaction was kept confidential in order to avoid the potential for 'channel conflicts' between Hunter Douglas, as a wholesale supplier, and its customers as retail suppliers. We understand that Hunter Douglas did not have a retail presence in the supply of online M2M blinds in the UK prior to the 2013 Transaction.

The 2019 Transaction

17. Pursuant to the 2019 Transaction, Hunter Douglas acquired 100% of the shares in 247. This followed an indication from the 247 Founding Shareholders to Hunter Douglas that they intended to exercise their put options granted in 2013. The 2019 Transaction completed on 28 February 2019.

Other relevant transactions in the period between the 2013 and 2019 transactions

18. Hunter Douglas acquired two additional businesses active in the retail supply of online M2M blinds in the UK in the intervening period between the Transactions.

19. On 21 June 2016 Hunter Douglas acquired a 60% stake in Blinds2Go (the 2016 Transaction). Hunter Douglas subsequently acquired a further 5% interest in Blinds2Go in 2019.

20. On 21 July 2017 Hunter Douglas acquired Hillarys (the 2017 Transaction), which at the time had a presence in the supply of online M2M blinds through Web Blinds. Web Blinds has subsequently been incorporated into Blinds2Go. This acquisition was reviewed and cleared by the CMA at phase 1.

The industry

21. As noted above, the primary area of overlap between the Parties is the online retail supply of M2M blinds. These products are part of the broader window coverings sector, which also includes curtains and shutters.

22. Window coverings (including blinds) typically are supplied in either a ready-made or M2M format. Ready-made products are largely finished and sold in one of many available sizes, whereas M2M products are tailored to the specifications of the customer. The main channels through which window coverings are sold in the UK are the in-home, in-store and online retail channels.

23. In-store and in-home are traditional retail channels in which customers have some degree of interaction with the product or a salesperson prior to purchase. We also note that some of these retailers also have an online presence, although not all in-store or in-home retailers sell online. Those retailers who sell in-store/in-home and online are referred to as multi-channel retailers.

24. With respect to online M2M blinds, these products are purchased through websites that enable customers to customise blinds in accordance with their

desired measurements and design preferences. This differentiates M2M blinds from ready-made products. In contrast to the in-home and in-store channels, the leading retailers of online M2M blinds provide limited sales advice prior to purchase and typically require customers to fit the blind themselves once they have received their order. Competition between retailers primarily occurs online and so retailers' generation of website traffic through online search (primarily through Google), their position in search rankings and the use of online advertisements are of particular competitive importance in the supply of online M2M blinds. We have therefore considered this parameter of competition as part of our competitive assessment.

25. In addition to retailers' websites, online marketplaces (namely Amazon and eBay) also allow retailers to sell blinds. We understand that the majority of sales through these channels are for ready-made blinds. This may be reflective of the fact that these platforms are not well-suited to the customisation options required for M2M products and are therefore not directly comparable to online M2M blinds suppliers.

26. The competitive landscape of the window coverings sector differs by product type and channel. With respect to the broader window coverings sector, multi-channel retailers are the leading suppliers with Dunelm, Hillarys, John Lewis, and Next being largest competitors.

27. We note however that the competitive landscape is different for the online retail supply of M2M blinds. In particular, the leading retail suppliers of online M2M blinds in the UK are focussed primarily on supplying M2M blinds online (although they may supply other window coverings to a lesser extent).

Provisional findings

Jurisdiction

28. We have assessed whether each of the 2013 Transaction and the 2019 Transaction created a relevant merger situation (RMS).

29. We provisionally conclude that the 2013 Transaction did not create an RMS. The rights attached to the convertible loan notes acquired by Hunter Douglas through the 2013 Transaction were sufficient to give it material influence over 247's policy. However, we were not satisfied that the share of supply test is met in relation to the 2013 Transaction, taking account of the particular and unusual circumstances of this case, in particular, the very lengthy period which had elapsed since the 2013 Transaction occurred and the lack of overlap between the Parties at the time of the 2013 Transaction .

30. In contrast, we have provisionally found that the 2019 Transaction created an RMS. We find that Hunter Douglas' acquisition of 100% of the shares in 247 clearly amounts to the acquisition of a controlling interest in 247. In particular, as a consequence of owning 100% of 247, Hunter Douglas acquired the right to unilaterally determine 247's strategic policy and increased its share of the company's profits. Moreover, we find that the share of supply test is met as a result of the Parties having a combined share in excess of 25% in the online retail supply of M2M blinds in the UK.

31. In light of our findings on jurisdiction, our substantive assessment considers whether the 2019 Transaction has resulted or may be expected to result in an SLC in the UK.

Counterfactual

32. The counterfactual is an analytical tool used to help answer the question of whether a merger may be expected to result in an SLC. It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the most likely future competitive situation in the market absent the merger.

33. We may examine several possible scenarios to determine the appropriate counterfactual. We have found no evidence to suggest that Blinds2Go would have done anything other than continue to compete in line with the conditions prevailing at the time of the 2019 Transaction. For 247, we have considered three scenarios:

    (a) Scenario 1: Continuation of majority ownership by 247 Founding Shareholders

    (b) Scenario 2: Alternative purchaser of Founding Shareholders' stake in 247

    (c) Scenario 3: Alternative purchaser for 100% of 247

34. We provisionally find that, absent the 2019 Transaction, the most likely scenario is that the 247 Founding Shareholders would have sought to sell their shares in 247 to a third-party buyer (as per Scenario 2). In our view, it was the continuing intention of the 247 Founding Shareholders to sell their shares in 247 and exit the business and that, at the point of the 247 Founding Shareholders selling their shares, Hunter Douglas would no longer be able to exercise the veto and other rights it previously held in 247. This would result in 247 having more independence than it had prior to the 2019 Transaction.

Market Definition

35. Our provisional finding is that the relevant market for the assessment of the 2019 Transaction is the online retail supply of M2M blinds in the UK. This position is supported by our assessment of the Parties' own survey, their monitoring activities, as well as the views received from third parties.

36. We have not included other window covering products, ready-made blinds or the in-store and in-home channels in the relevant market. However, we note that market definition does not determine the outcome of our competitive assessment and we take into the account the constraint of these alternative products where relevant. With respect to ready-made blinds in particular, we acknowledge that these products do act as a distant competitor to online M2M blinds.

Our approach to assessing the 2019 Transaction

37. We have assessed the competitive effects of the 2019 Transaction by reference to a horizontal unilateral effects theory of harm, that is where one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals. In particular, we have assessed whether Hunter Douglas acquiring 100% control over 247 and increasing its share of the company's profits as a result of the 2019 Transaction would likely result in Hunter Douglas increasing prices and/or lowering the quality of its products or customer service, and/or reducing the range of its products/services across the brands it controls.

Competitive assessment

38. We have provisionally found that the 2019 Transaction may be expected to result in an SLC in relation to the supply of online M2M blinds in the UK.

39. In reaching this view, we found that Blinds2Go is the largest supplier of online M2M blinds in the UK and several times larger than the second largest supplier. Further, we also note that 247 is of meaningful scale in this market as the third largest supplier and is approximately three times larger than the fourth largest supplier. Outside of the top three suppliers, we have not identified any other retailers with a market share above 5%, and few retailers with a market share above 1%. In light of these findings, we find that the combined share of the Parties is very high, at 60-70%, and that the increment from 247 is significant in the context of an already concentrated market.

40. We find the Parties to be close competitors and pose a significant competitive constraint on each other. Overall, we provisionally find that the Parties' offerings in terms of price, quality and range are similar.

41. Our assessment of the Parties' online presence in both paid and organic search results also indicates that the Parties are close competitors. In particular, our analysis shows that both Parties consistently rank highly in Google paid search results, indicating that the Parties are both highly effective at competing for the top positions in paid search results. They also rank highly in organic search, though to a lesser extent than for paid search.

42. Evidence on the Parties' monitoring of competitors' prices is consistent with the Parties being close competitors, and consistent with there being few other retailers that the Parties view as a significant competitive constraint. Overall, our provisional assessment of diversion from the Parties' survey is indicative of the Parties being close competitors. We additionally note that the constraint from Blinds2Go on 247 appears to be stronger than the constraint from 247 on Blinds2Go. Whilst our pricing analysis does not provide strong evidence that the Parties' prices follow each other more closely than the prices of other competitors, there is no indication that either of the Parties' prices follow the prices of another competitor more closely.

43. We have also assessed the post-merger constraints on the Parties. With respect to other suppliers of online M2M blinds, we consider that Interior Goods Direct, which is only slightly larger than 247, is the only other significant constraint on the Parties. Whilst we have identified a number of smaller online M2M blinds retailers, we do not view them as an effective competitive constraint on the Parties, individually or in aggregate. This is reflected in their limited share of the market, the fact that they do not appear to be closely monitored by the Parties, the Parties' own survey evidence, and also the limited visibility of smaller suppliers in search results.

44. Further, we find that multi-channel retailers currently exert only a limited constraint on the Parties and are not an effective alternative for most of the Parties' customers. This is reflected in the limited share of multi-channel retailers in the supply of online M2M blinds, their potentially differentiated product range (with respect to price and quality), different business models, limited online range and lack of prominence in online search. We also note the lack of consistent monitoring of multi-channel retailers by the Parties and other online suppliers. We also find that the Parties' survey evidence relating to multi-channel retailers potentially overstates the strength of their constraint. In particular, we consider that their appearance in the survey is likely subject to an upward bias, due to customers being more familiar with these brands but potentially unaware of the true nature of their offerings. Notwithstanding

this finding, we have assessed whether the constraint they exert may increase going forward in our assessment of the potential entry and expansion of rivals.

45. We have found that online marketplaces are a weak constraint on online M2M blinds retailers. In particular, their platforms are not comparable to online retailers' websites in terms of functionality, and the majority of their sales are of ready-made rather than M2M blinds.

46. We find that out-of-market constraints from alternative window covering products and retail channels are a weak competitive constraint on the Parties on an individual or aggregated basis. For the same reasons considered in relation to market definition we note that out-of-market alternatives individually do not pose a significant competitive constraint on the Parties. When considering these constraints in aggregate, we also find that the Parties' survey evidence and monitoring activities indicate other retailers' online M2M blinds as being the main competitive constraint on the Parties.

47. As part of our competitive assessment we have found that the 2019 Transaction results in Hunter Douglas having the ability and the incentive to raise both 247 and Blinds2Go's prices. This provisional conclusion is informed by our findings that the Parties are close competitors, with evidence of diversion between them. Hunter Douglas has acquired the ability to increase 247's prices as a direct consequence of the 2019 Transaction. In particular, we find that Hunter Douglas will have a significant incentive to increase 247's prices, as Hunter Douglas will benefit from a significant share of sales that would likely be diverted to Blinds2Go in the case of an increase through its 65% shareholding in Blinds2Go. At the same time, we also find that Hunter Douglas has an increased incentive to increase Blinds2Go's prices as Hunter Douglas now benefits from 100% of the sales diverted to 247.

Countervailing factors

Entry and Expansion

48. We have considered factors that may mitigate or prevent the effect of the merger on competition and in particular whether entry or expansion by the Parties' rivals might prevent the provisional SLC identified. In reaching our provisional findings we have concluded that no such entry or expansion would be timely, likely, and sufficient whether as regards any individual current or potential competitor, or considered in aggregate. In reaching this view, we have considered both whether any barriers to entry/expansion in the relevant market exist, and whether there is evidence of actual or planned entry/expansion by rivals.

49. We have provisionally found that there is some evidence of barriers to entry and expansion in the retail supply of online M2M blinds. These barriers appear potentially high in relation to generating website traffic, and to a lesser extent in relation to website costs and brand awareness and customer loyalty. Whilst it may be the case that individual barriers may in some circumstances be overcome, we note that a new entrant to the market will likely find themselves faced with a series of barriers to entry which might have a significant cumulative effect on entry. With respect to existing rivals, we find that barriers to further expansion may not be as high as for new entrants.

50. In any event, we have further found there to be insufficient evidence of actual and/or planned entry or expansion from third parties in this market.

51. The leading online M2M blinds suppliers contacted in our inquiry have told us that they do not expect significant further expansion. Whilst one smaller online M2M supplier indicated that it has ambitious future expansion plans, we find that its current market position indicates that it is unlikely to expand to a comparable size to either of the Parties in the near future and we do not have sufficient evidence as to how this company may achieve its stated growth plans. We also observe limited growth from smaller existing retailers in recent years. Indeed, the fact that there has been little change in the identity of the leading suppliers in the market suggests that there is a degree of incumbency advantage in the market that may constrain further expansion.

52. The evidence received from multi-channel retailers suggests a variety of different plans regarding entry, however the evidence does not demonstrate that any expansion or re-entry into the market will be timely, likely, and sufficient as they deal with the consequences of the COVID-19 pandemic. Where there has been entry, or increased presence from multi-channel retailers, we note they have achieved only a limited market share and sales as compared to the Parties. Therefore, even if entry or expansion from these retailers was timely and likely (which we do not consider to be the case), the evidence currently available to us does not allow us to conclude that this would be sufficient (either individually or in aggregate) to constrain the Merged Entity.

53. We do not consider that entry or expansion from manufacturers will competitively constrain the Merged Entity.

54. In addition, whilst we have considered different potential sources of entry and expansion in the online M2M blinds market, the evidence available to us indicates that even if they were to be considered on an aggregated basis, they would not be timely, likely and sufficient.

Provisional conclusion on the substantial lessening of competition test

55. We provisionally find that the 2013 Transaction did not create an RMS and that the 2019 Transaction did create an RMS.

56. For the reasons discussed above, we have provisionally found that the 2019 Transaction has resulted in, or may be expected to result in, an SLC as a result of horizontal unilateral effects in the online retail supply of M2M blinds in the UK. In particular, we find that the 2019 Transaction removes a direct competitor from this market, resulting in an ability and incentive for the Merged Entity to increase retail prices, lower the quality of its products or customer service, and/or reduce the range of its products/services.