Summary

Overview

1. The Competition and Markets Authority (CMA) has 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 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 (RMS) within the meaning of the Enterprise Act 2002 (the Act).

Our inquiry

3. 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.

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

   (a) whether the Transaction constitutes an RMS;

   (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.

5. 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. Lastly, we have considered the Parties' response to our Provisional Findings, which we published on 16 July 2020.

Background

The Parties

6. 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.

7. 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.

8. 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

9. 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 on 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

10. 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).

11. 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.

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

13. 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

14. 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 both 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

15. 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.

16. 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.

17. 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

18. 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.

19. 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.

20. 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.

21. 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 these parameters of competition as part of our competitive assessment.

22. 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 do not offer the same functionality and customer service options as online M2M blinds retailers and therefore are not directly comparable.

23. The competitive landscape of the window coverings sector differs by product type and channel. With respect to the broader window coverings sector as a

whole, multi-channel retailers are the leading suppliers with Dunelm, Hillarys, John Lewis, and Next being largest competitors.

24. 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).

Findings

Jurisdiction

25. We have assessed whether each of the 2013 Transaction and the 2019 Transactions created a RMS.

26. We conclude that the 2013 Transaction did not create a 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.

27. In contrast, we have found that the 2019 Transaction created a RMS. We find that Hunter Douglas' acquisition of 100% of the shares in 247 amounts to the acquisition of a controlling interest in 247. In particular, as a consequence of owning 100% of 247, Hunter Douglas acquired the ability 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.

28. 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

29. 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.

30. 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 the 247 Founding Shareholders' stake in 247

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

31. We 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 intention of the 247 Founding Shareholders to sell their shares in 247 and that, at the point of the 247 Founding Shareholders selling their shares, Hunter Douglas would no longer have been able to exercise the veto and other rights it previously held in 247. This would have resulted in 247 having more independence than it had prior to the 2019 Transaction.

Market Definition

32. Our 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 customer survey, their monitoring activities, as well as the views received from third parties.

33. 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

34. 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

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

36. In reaching this view, we found that the Parties are two of only three retailers with a market share above 5%. Blinds2Go is the largest supplier of online M2M blinds in the UK and several times larger than the second largest supplier, while 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 identified 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.

37. We find that the Parties' offerings in terms of price, quality and range are similar and we have identified only two other retailers that have a broadly similar offering to the Parties.

38. Our assessment of the Parties' online presence shows that the Parties are two of only three retailers that 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. Our assessment also shows that the Parties, together with two other retailers, feature frequently in the top three organic search positions.

39. Evidence on the Parties' monitoring of competitors' prices, as recorded in their own documents, shows that the Parties monitor each other and that the set of other retailers monitored is relatively small. Survey evidence on the reported diversion of Blinds2Go's and 247's customers is also consistent with the

Parties being close competitors, with the constraint from Blinds2Go on 247 appearing to be stronger than the constraint from 247 on Blinds2Go.

40. Overall, we find the Parties to be close competitors that pose a significant competitive constraint on each other.

41. 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.

42. 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), 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 find that the Parties' survey evidence relating to multi-channel retailers potentially overstates the strength of their constraint. In particular, we consider that the reported diversion to large multi-channel retailers 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 retailers.

43. We have found that online marketplaces are a weak constraint on online M2M blinds retailers. In particular, these 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. We also note that marketplaces do not constitute a standalone constraint given that their position is attributable to collections of individual retailers.

44. With respect to out-of-market constraints, we find that other window covering products and M2M blinds sold through the in-store and in-home channel do not pose a material competitive constraint on the Parties, while ready-made blinds pose a weak competitive constraint. Whilst we recognise that the out-

of-market constraints, in aggregate, impose some degree of constraint on the Parties' ability to raise prices due to the aggregate diversion to these alternatives, we find that this is likely to only exert a weak competitive constraint on the Parties, and further note that the Parties' survey evidence and monitoring activities indicate other retailers' online M2M blinds as being the main competitive constraint on the Parties.

45. 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 (or otherwise worsen the offering of 247 and Blinds2Go). This 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. Additionally, we find that Hunter Douglas will have an incentive to increase 247's prices, as Hunter Douglas will benefit from a significant share of sales that would likely be diverted to Blinds2Go. At the same time, we also find that Hunter Douglas has the ability and the incentive to increase Blinds2Go's prices, with Hunter Douglas now benefitting from a 100% interest in 247, rather than only 49% pre-merger.

Countervailing factors

Entry and Expansion

46. We have considered factors that may mitigate or prevent the effect of the merger on competition and in particular whether entry or expansion by third parties might prevent the SLC identified. We have concluded that no such entry or expansion would be timely, likely, and sufficient as regards any individual current or potential competitor, or when 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.

47. We have found that there is some evidence of barriers to entry and expansion in the retail supply of online M2M blinds. These barriers relate to generating website traffic, and to a lesser extent to website costs, brand awareness and customer loyalty. However, we also note that the impact of any such barriers may vary depending on the nature of the firm seeking to enter or expand.

48. 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, however the Parties’ existing strengths in the market for online M2M blinds (as discussed in the competitive assessment section) mean that it is likely to be difficult for rivals to achieve sufficient expansion to replace the loss of 247 as an independent competitor.

49. In any event, evidence obtained from third parties in relation to actual and/or planned entry or expansion in this market does not show that entry or expansion will be timely, likely and sufficient.

50. Of the leading online M2M blinds suppliers contacted in our inquiry, we understand that certain other competitors may have plans to grow, however, the evidence available to us does not reliably indicate how these growth plans would be achieved. In particular, we note that Decora, a manufacturer of M2M blinds, recently entered the market through its acquisition of Swift Direct Blinds. However, this acquisition reflects the expansion of an existing competitor, rather than entry by a new competitor. Moreover, the growth plans of smaller online M2M blinds retailers would have to considerably outperform an already fast-growing market in order to provide a sufficient constraint to mitigate the effects of the Merger between the first and third largest retailers. In this regard, we have found insufficient evidence to demonstrate how any stated growth plans would be achieved so as to result in these competitors providing a significantly increased individual or aggregate constraint on the Parties post-Merger. 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 over several years suggests that there is a degree of incumbency advantage in the market that may constrain further expansion.

51. The evidence received from multi-channel retailers suggests a variety of different plans regarding entry or expansion, however the evidence does not demonstrate that any expansion or re-entry into the market will be timely, likely, and sufficient. In addition, whilst they may have expressed a previous interest in developing a presence in this market, all of these retailers have indicated to us that their plans have been significantly impeded by the current COVID-19 pandemic. Moreover, current plans for future growth through the online channel for multi-channel retailers encompass their entire online product offering, of which M2M blinds comprise a small part. Therefore, even if entry or expansion from these retailers was timely and likely (which we do not consider to be the case), based on the evidence provided to us (including pursuant to our legal information gathering powers), we consider that any entry or expansion would not be sufficient (either individually or in aggregate) to constrain the Merged Entity.

52. 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.

Conclusion on the substantial lessening of competition test

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

54. For the reasons discussed above, we have 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.

Remedies

55. Having concluded that the 2019 Transaction has resulted in, or may be expected to result in, an SLC, we are required by the Act to decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.

56. In deciding on the appropriate remedy, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be effective, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.

57. We considered the following remedy options:

(a) Requiring the full divestiture of 100% of the ordinary share capital of 247; and

(b) Requiring a partial divestiture of 51% of the ordinary share capital of 247.

58. We have found that both of these options would, in principle, be an effective and proportionate remedy to address the SLC and its resulting adverse effects we have found, provided a suitable purchaser could be found.

59. We find that a partial divestiture of 51% of the ordinary shares of 247 to be the least onerous effective remedy. While full divestiture has a lower cost associated with it than the partial divestiture option as it would not require any ongoing monitoring by the CMA, this option is also significantly more intrusive as it would leave Hunter Douglas with no shareholding in 247. This compares to the conditions of competition in the counterfactual that we found, where it would still hold a 49% stake. In addition, we have identified a number of conditions in order to ensure that a suitable remedy is achieved and that the CMA has sufficient oversight over the remedies process. In particular, any suitable purchaser will be required to operate the business in a manner that ensures effective competition between Blinds2Go and 247.