

**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**

Final report

14 September 2020

© Crown copyright 2020

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Website: www.gov.uk/cma

**Members of the Competition and Markets Authority
who conducted this inquiry**

Kirstin Baker (*Chair of the Group*)

Robin Foster

Anne Fletcher

Mark Thatcher

Chief Executive of the Competition and Markets Authority

Andrea Coscelli

The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [§]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

	<i>Page</i>
Summary	4
Background	5
The Parties	5
The Transactions	5
The industry	6
Jurisdiction	8
Counterfactual	8
Market Definition	9
Our approach to assessing the 2019 Transaction	9
Countervailing factors	12
Findings	15
1. The reference	15
2. The Parties	17
Main Parties	17
Hunter Douglas	17
247 Home Furnishings	19
3. The Transactions	21
Timeline of events	21
Events leading up to the Transactions and valuations	21
The Parties' rationale for the Transactions	26
4. Industry background	29
Window coverings overview	29
Distribution Channels	32
In-store and In-home	32
Online	33
Figure 8: 247 Customer Journeys – Devices used March 2013 to April 2020	34
Competitors and main parties	36
Trends within the Sector	37
Improvements in the customer offering	37
Technology	38
5. Relevant merger situation	39
Relevant Merger Situation – the jurisdictional test	39
Enterprises ceasing to be distinct	40
Enterprises	40
Ceasing to be Distinct	40
The 2013 Transaction	43
The 2019 Transaction	48
The Share of Supply Test – Nexus with UK	49
Time at which the relevant thresholds should be assessed	49
Share of Supply	52
Time period for investigating mergers	53
6. Counterfactual	55
Introduction	55
The CMA's counterfactual assessment framework	55
Parties' views on the appropriate counterfactual	56
Assessment	58
Introduction	58

Scenario 1: Continuation of majority ownership by the 247 Founding Shareholders	59
Scenario 2: Alternative purchaser of Founding Shareholders' stakes in 247	60
Scenario 3: Alternative purchaser for 100% of 247	62
Assessment of scenarios.....	63
Findings on the most likely counterfactual	65
7. Market definition.....	66
Product market definition	66
Curtains and shutters	68
Ready-made blinds.....	71
In-store and in-home	80
Geographic market definition	84
Conclusion on market definition	84
8. Competitive assessment.....	85
Market shares	85
Approach to market share calculations.....	86
Market share estimates	87
How competition works in the market	89
Parties' submissions on the customer journey and importance of online advertising	90
Traffic and marketing spend	91
Search behaviour and customer journey	95
Conclusion.....	100
Closeness of competition.....	101
The Parties' service proposition.....	102
Online presence	107
Survey evidence	120
Internal documents	123
Pricing analysis.....	125
Third party evidence	125
Competitive significance of 247	126
Conclusion on closeness of competition.....	128
Remaining constraints	128
Competition from other online M2M blind retailers	129
Competition from multi-channel retailers	138
Competition from eBay and Amazon	145
Out-of-market constraints	149
Conclusion on remaining constraints	152
Impact of the Merger	153
Parties submissions on the impact of the merger	155
Our assessment of the Parties' submissions	156
Conclusion on competitive assessment	158
9. Countervailing factors	161
Entry and Expansion.....	161
CMA framework for assessing entry and expansion.....	161
The Parties' views	162
Our assessment of barriers to entry and expansion	162
Possible sources of entry and expansion	171
Conclusions	184
10. The decision	186
11. Remedies.....	187

Introduction	187
CMA framework for assessing remedies	188
Overview of remedy options	188
Full divestiture of 247	190
Description of remedy	190
Remedy design issues	191
Assessment of the effectiveness of full divestiture	199
Partial divestiture of 247	199
Description of remedy	199
Remedy design issues	199
Assessment of the effectiveness of partial divestiture	211
Conclusion on remedy effectiveness	211
Relevant customer benefits (RCBs)	211
Framework for assessing RCBs	212
Parties' and third-party views on RCBs	213
Assessment of RCBs	213
The proportionality of effective remedies	213
Framework for assessment of proportionality of remedies	213
Conclusion on proportionality	217
Remedy implementation	217
Divestiture risks	218
Composition risk	218
Asset risk	218
Purchaser risk	219
Decision on remedies	220

Appendices

- A: Terms of reference and conduct of inquiry
- B: Provisional view on the ability of Hunter Douglas to block a sale by the 247 Founding Shareholders
- C: CMA analysis of Parties' survey methodology
- D: Price analyses
- E: Online presence and the role of Google
- F: Generating traffic as a potential barrier to entry and expansion

Glossary

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 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.

Findings

1. The reference

1.1 On 1 April 2020, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act) the Competition and Markets Authority (CMA) referred:

- (a) the completed acquisition by Hunter Douglas N.V. (Hunter Douglas) of convertible loan notes and certain rights in 247 Home Furnishings Ltd (247) in 2013 (the 2013 Transaction); and
- (b) the completed acquisition by Hunter Douglas of a controlling interest in 247 in 2019 (the 2019 Transaction) (together with the 2013 Transaction, 'the Transactions').

for further investigation and report by a group of independent panel members (the Inquiry Group).

1.2 The terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. The Inquiry Group is required to publish its final report by 15 September 2020.

1.3 Section 35 of the Act sets out the statutory questions that the CMA needs to decide in a Phase 2 inquiry pursuant to, as in this case, a reference under section 22 of the Act. In this investigation, the Inquiry Group must decide:

- (a) For each of the 2013 Transaction and the 2019 Transaction, whether a relevant merger situation (RMS) has been created (the First Statutory Question); and
- (b) If so, in each case, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services (the Second Statutory Question).

1.4 If the Inquiry Group answers both statutory questions in the affirmative in relation to any of the Transactions, then the Group must also decide what action the CMA should take 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.

- 1.5 This document, together with its appendices, constitutes the Inquiry Group's findings, published in line with the CMA's rules of procedure. Further information relevant to this Inquiry, including non-confidential versions of the submissions received from Hunter Douglas and 247, can be found on the CMA's website.
- 1.6 Throughout this document we refer to Hunter Douglas and 247 collectively as the Parties and as applicable, the Merged Entity.

2. The Parties

Main Parties

Hunter Douglas

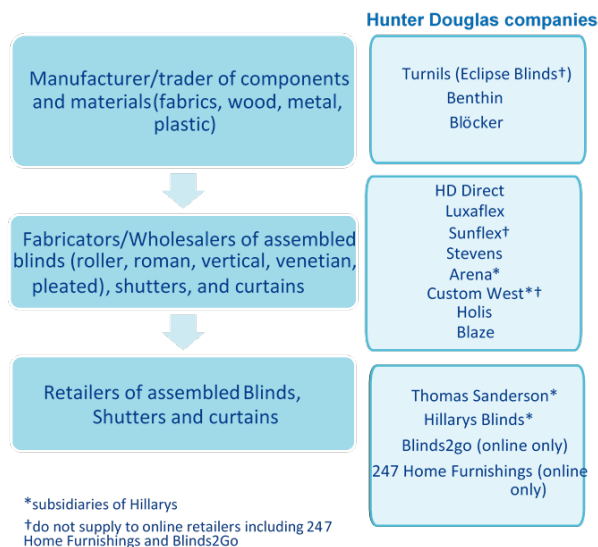
- 2.1 Hunter Douglas is a global provider of window coverings such as blinds, shutters and curtains, and is headquartered in The Netherlands. The company was founded by H. Sonnenberg in 1946, although the origins of the company go back to 1919. The Hunter Douglas Group went public in 1969; the majority of its shares are owned by the Sonnenberg family.¹ The Hunter Douglas Group is comprised of 134 companies with 47 manufacturing and 87 assembly operations and marketing organisations across more than 100 countries.²
- 2.2 In the UK, Hunter Douglas operates through different companies at the manufacture, wholesale and retail level, using several different brands.³ At the retail level, Hunter Douglas is active in the UK through Thomas Sanderson Limited, Hillarys Blinds Limited, Blinds2Go Limited (Blinds2Go), Tuiss LLP and 247 Home Furnishings Limited. This is illustrated in Figure 1 below.

¹ The Sonnenberg Family own 82.68% common shares and 99.4% preferred shares. [Hunter Douglas website](#), accessed 30 June 2020.

² See [Hunter Douglas Annual Report 2019](#), page 1

³ At wholesale level, Hunter Douglas is active in the UK through: Stevens (Scotland) Limited, Arena Blinds Limited, Custom West Trading Limited, Holis Industries Limited, Orgon Windows Fashion Limited and Orgon Limited Sunflex, Luxaflex, and HD Direct. Hunter Douglas used the following brands at wholesale level in the UK: Sunflex, Luxaflex, and HD Direct.

Figure 1: Blinds, shutters and curtains supply chain and the Parties' business units active at each level



Source: CMA's summary based on Parties' submissions

- 2.3 In 2019 Hunter Douglas had global revenues of just over £3.0 billion (\$3.7 billion⁴) and UK revenues of £[REDACTED] in 2019. In the UK, Hunter Douglas supplies blinds online through the 247 blinds, Blinds2Go and Web Blinds brands and websites.⁵

Blinds2Go

- 2.4 Established in 2000, Blinds2Go is the UK's largest online made-to-measure (M2M) retailer for blinds. Web Blinds was formerly part of the Hillarys Group, but was subsequently integrated into the Blinds2Go Group by Hunter Douglas after its acquisition of Hillarys in 2017.
- 2.5 Blinds2Go's total UK revenue for the financial year (FY) 2019 was £[REDACTED]. Based on the data in table 1 below, Blinds2Go's total revenue increased on average by 45% per year between FY 2013 to FY 2019. The average rate of growth between FY 2018 and FY 2019 has been considerably lower at 18% per year, compared to an average of 58% from FY 2013 to FY 2017. Blinds2Go's average gross profit has been 39% over the last 7 years.

⁴ See *Hunter Douglas Annual Report 2019*. See also [Hunter Douglas's response to CMA's request for information dated 21 February 2020](#).

⁵ Web Blinds is owned by Blinds2Go and Hunter Douglas has a 65% controlling interest in Blinds2Go.

Table 1: Blinds2Go Total Revenue and Profit margin FY 2013 to FY 2019

	<i>£ million</i>						
	2013	2014	2015	2016	2017	2018	2019
Total Revenue	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Gross Profit	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Gross Profit %	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- 2.6 Figure 2 below shows Blinds2Go's performance from FY 2008 to FY 2019. Consistent with Table 1 above, this shows a stable gross profit margin of between 35% and 40% over this period.

Figure 2: Blinds2Go UK sales of M2M blinds and gross and net profit margins FY 2008 – FY 2019)

[REDACTED]

Source: Blinds2Go Management accounts (2013-2019) and financial reports (FY 2008 – FY 2012)

247 Home Furnishings

- 2.7 247 is a UK-based and online supplier of window coverings to retail customers, including blinds, shutters and curtains. The company was founded in 1997 by Jason Peterkin and David Maher (247 Founding Shareholders). The company was a mail-order business for the first 8 years while the 247 Founding Shareholders built up the web design and e-commerce aspects before launching their in-house e-commerce project in 2005. This move also included the offer of M2M blinds online. Following the success of their first two years' sales of M2M blinds, with second-year sales exceeding £3 million, in 2007 the company moved to focus exclusively on selling M2M blinds online.
- 2.8 In 2019, 247's total turnover for all products for the year ended 19 February 2019 was £22.2 million, of which £[REDACTED] was in the UK.
- 2.9 The data in Table 2, and illustrated by Figure 3, set out 247's total revenue from selling M2M blinds in the UK. 247's total revenue increased on average by 10% from 2008 to 2019. 247's average gross profit margin has been around 34% over the same timeframe.

Table 2: 247 UK M2M Blind income and UK M2M blind gross profit margin 2008 to 2019

£ million

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total Revenue	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Gross Profit	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Gross Profit %	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: 247 management accounts 2008 to 2019

Figure 3 : 247 UK M2M Blind income and UK M2M blind gross profit margin 2008 to 2019

[X]

Source: 247 management accounts 2008 to 2019

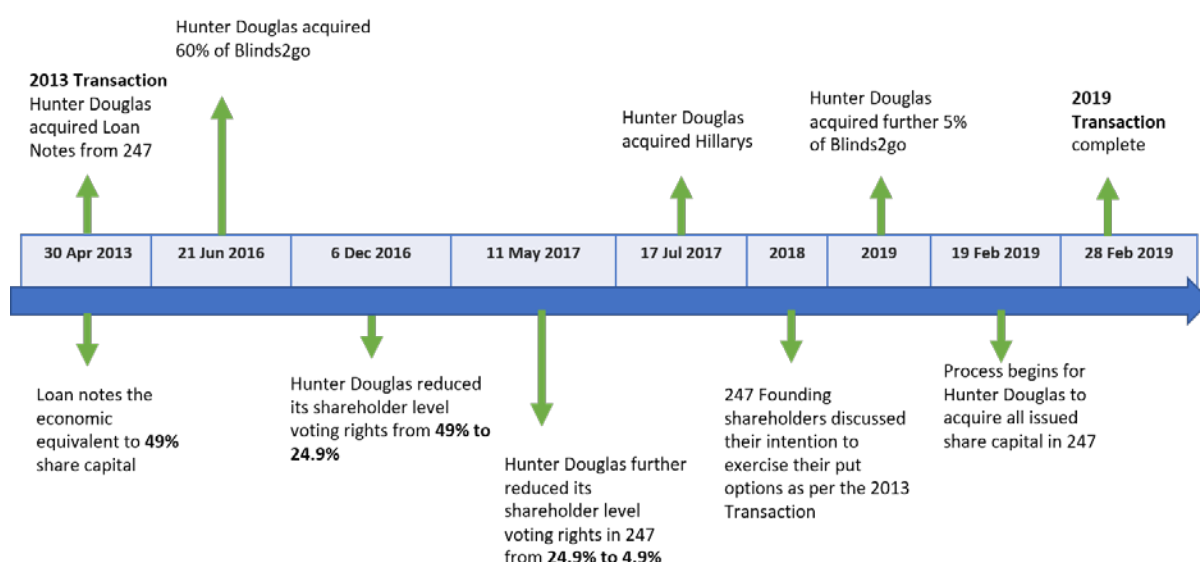
Note: 247's Financial year ends after February, therefore the FY year represents the figures for the year ended 28 or 29 February the year after (e.g. FY 2009 is the year ending 28 February 2010).

3. The Transactions

Timeline of events

- 3.1 Hunter Douglas acquired its interests in 247 through two separate transactions in 2013 and 2019, respectively. In the intervening period, Hunter Douglas made changes to its voting rights in 247, the details of which are outlined below. Also during this period, Hunter Douglas expanded its presence in the UK window coverings sector through separate acquisitions of a majority stake in Blinds2Go and of Hillarys. These are indicated in the timeline below, which shows developments in relation to 247 below the timeline, and other Hunter Douglas developments above the timeline:

Figure 4: A timeline of the Parties' transactions



Source: CMA analysis of Parties' submissions

Events leading up to the Transactions and valuations

2013 Transaction

- 3.2 The Parties submitted that the timeline of the events leading up to the decision to enter into the 2013 Transaction is as follows:⁶

- (a) In September 2012 David Sonnenberg (then and currently co-CEO of Hunter Douglas) initiated discussions with the 247 Founding Shareholders concerning a possible investment by Hunter Douglas. This was followed up by another meeting the following month

⁶ [REDACTED].

between David Maher and Michiel de Heer (of Hunter Douglas) to discuss further details of the investment.

(b) On 18 December 2012, there was a further meeting between David Sonnenberg, David Maher and Jason Peterkin in Rotterdam to discuss details of the investment.

(c) In early January 2013, negotiations took place leading to the agreement of Heads of Terms for the 2013 Transaction on 10 January 2013.

(d) On 30 April 2013, the 2013 Transaction was then implemented by way of a series of agreements; a [X].

3.3 Hunter Douglas completed the 2013 Transaction by [X].⁷ This translates to an Enterprise Value of £[X] for 247 at the time of the 2013 Transaction.

3.4 Attached to these loan notes were certain rights in 247, which Hunter Douglas also acquired as a result. These included:

(a) 49% of the voting rights at shareholder level and a 49% share in the profits in 247;

(b) A right to convert the loan notes at any time to ordinary shares;

(c) A right to nominate a non-executive Director to the 247 Board; and

(d) Veto rights, notably over the following matters:

(i) Appointment of additional directors (beyond the 247 Founding Shareholders);

(ii) Approval of the annual budget;

(iii) Acquisitions;

(iv) Entering into new lines of business other than (a) M2M window coverings, (b) curtain-in-a-box in the UK; standard Velux roof-window blinds, accessories associated with the above and any other items sold by 247 on its UK website at the date of the agreement, all of which are to be sold principally through the internet without specifically targeting the large scale B2B market (interior designers, property management companies and letting agents);

⁷ [X].

- (v) Geographic expansion;
- (vi) Any backward integration into assembly or production of any of the products sold by 247;
- (vii) Long term agreements (exceeding one year in duration);
- (viii) Financing arrangements with banks or other parties;
- (ix) Dividends in excess of 35% of profit after tax;
- (x) Offers on the website at less than 15% gross profit; and
- (xi) Termination of the existing supply agreement with Hunter Douglas.⁸

3.5 Notwithstanding the contractual provisions between the Parties, the Parties have submitted that 247 has been operated as an independent business since the time of the 2013 Transaction. The Parties stated in their main submission that Blinds2Go and 247 have continued to compete as independent rivals from 2016 to the present date.⁹ Hunter Douglas has said this is a matter of policy and principle; co-CEO David Sonnenberg stated at the hearing with the CMA ‘we have a very long history, over 60 years, of conducting ourselves in the industry in this way, leaving our companies alone, very much like the way Berkshire Hathaway manages its subsidiaries. In practice, the only way I am able to oversee 130 companies is by running companies independently.’

3.6 Reciprocal put and call options were granted to Hunter Douglas and the 247 Founding Shareholders (the Put and Call Options) under separate Put and Call Option Agreements between Hunter Douglas and the 247 Founding Shareholders. Under the Put and Call Options, the 247 Founding Shareholders could require the purchase of 100% of their shares by Hunter Douglas and/or Hunter Douglas could require the sale of the shares held by the 247 Founding Shareholders, under normal circumstances,¹⁰ by written notice, in the period 1 March to 1 June 2019.

3.7 A Stakeholders Agreement was entered into between Hunter Douglas (through Buismetaal), 247 and the 247 Founding Shareholders. Key provisions of the Stakeholders Agreement included granting the rights set out at paragraph 3.4 above to Hunter Douglas.

3.8 Additionally, two identical ‘Bonus Agreements’ were set up between Hunter Douglas and each of the 247 Founding Shareholders which paid a bonus of

⁸ [REDACTED].

⁹ [Main Submission](#), 20 May 2020, paragraph 3.23.

¹⁰ Under the bad leaver, death or disability provisions the option can be exercised outside this period.

[X]% to the 247 Founding Shareholders for annual purchases of finished blinds up to £[X] within the Hunter Douglas Group, and [X]% for any purchases exceeding £[X]. This agreement was valid for the financial year ending 28 February 2014 to the financial year ending 28 February 2017. An 'additional bonus payment' of [X]% was made on all finished blinds from within the Hunter Douglas Group. in the financial years ending 28 February 2014 and 28 February 2015.

Confidentiality provisions

- 3.9 The terms of the 2013 Transaction prevented either Party from publicising the Transaction. This allowed Hunter Douglas to keep its investment in 247 confidential.
- 3.10 The Parties told us 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. Hunter Douglas submits that it was concerned about the reaction of (and thus 'conflict' with) its retail level customers to news that Hunter Douglas was itself entering that market through its investment in 247. 247 submitted that it wished to keep the 2013 Transaction confidential in order to avoid disrupting its relationships with suppliers other than Hunter Douglas.

Other relevant Transactions in the intervening period

- 3.11 After the 2013 Transaction, but before the 2019 Transaction, Hunter Douglas acquired two other businesses who were active in the supply of window coverings.
- 3.12 On 21 June 2016 Hunter Douglas acquired a 60% equity stake in Blinds2Go for £[X] million (the 2016 Transaction). Hunter Douglas subsequently acquired a further 5% interest in Blinds2Go in 2019.¹¹ Hunter Douglas has future options to acquire the remainder of the shares in Blinds2Go; two put and call options have been built into the structure of the deal for Hunter Douglas to acquire a further 15% equity stake in 2021 and the remaining 20% in 2026.¹²
- 3.13 On 17 July 2017 Hunter Douglas acquired Hillarys (the 2017 Transaction). This acquisition was reviewed and unconditionally cleared by the CMA at phase 1. The Merger Notice submitted by Hunter Douglas in relation to the 2017 Transaction did not disclose the existence of the 2013 Transaction.

¹¹ [Main submission](#), footnote 26.

¹² [Main submission](#), paragraph 6.10.

The only reference in the Merger Notice to Hunter Douglas having any relationship with 247 was in a footnote, which stated that: [REDACTED]¹³ [REDACTED].'

Hunter Douglas reduction of voting rights in 247

- 3.14 On 6 December 2016, Hunter Douglas reduced its shareholder level voting rights in 247 from 49% to 24.9%. Hunter Douglas submits that this arose as a result of changes to UK corporate governance rules as part of the implementation of the EU Fourth Money Laundering Directive, specifically the requirement for UK companies to maintain a register of persons with significant control (PSC). The CMA understands that reducing its voting rights in 247 to under 25% allowed Hunter Douglas to maintain confidentiality over its interest in 247 by avoiding having to be identified on 247's register of PSCs. The CMA understands that this desire to continue maintaining the confidentiality of Hunter Douglas' interest in 247 was motivated by the perceived risk of 'channel conflicts' noted above. Hunter Douglas' other rights set out at paragraph 3.4 above remained unchanged.
- 3.15 Subsequently, on 11 May 2017, just prior to the 2017 Transaction, Hunter Douglas further reduced its shareholder level voting rights in 247 from 24.9% to 4.9%. Again, Hunter Douglas' other rights, as per paragraph 3.4 above in 247 remained unchanged.
- 3.16 Hunter Douglas submits that its reason for reducing its voting rights was to avoid having to disclose its interest to the CMA in any investigation of the 2017 Transaction. Hunter Douglas have stated that they were concerned that the CMA might disclose the 2013 Transaction in the course of any such investigation, leading to the transaction no longer being confidential:

The reason for this was that Hunter Douglas was aware that the CMA might investigate its proposed acquisition of Hillarys, a much larger business with overlaps upstream in components and assemblers, as well as retail operations including a small online web brand (Web Blinds) and its main in-home service. Hunter Douglas was concerned that any such review might lead to the disclosure in the decision of its interest in 247. This would have undermined the position so recently taken to reduce its voting rights from 49% to 24.9% to preserve confidentiality.

¹³ [REDACTED].

2019 Transaction

3.17 The Parties submit that the timeline of the events leading up to the decision to enter into the 2019 Transaction is as follows:

- (a) In December 2017 the 247 Founding Shareholders met with Hunter Douglas to discuss continuation plans if the put or call options were exercised.
- (b) In 2018 the 247 Founding Shareholders made it known to Hunter Douglas that they would be exercising their respective put options.
- (c) In 2018/2019 a number of calls concerning the optimum deal structure occurred between the 247 Founding Shareholders and Hunter Douglas.
- (d) On 19 February 2019 the 2019 Transaction was implemented. The 2019 Transaction took place slightly earlier than anticipated in 2019 (as stated above, it was originally planned to take place between March and June 2019) to ensure it came before the end of 247's financial year.
- (e) The 2019 Transaction completed on 28 February 2019, at the end of 247's 2018/19 financial year. The terms of the 2019 Transaction gave effect to the Put and Call Options, albeit these were not formally exercised.

3.18 The total consideration paid for all the issued share capital of 247 was £[REDACTED]. This is consistent with the purchase price that would have been paid had the Put or Call Option been exercised, the calculation of which was to be based upon 247's profits in the two years prior to the exercise of the Put or Call Option.

The Parties' rationale for the Transactions

3.19 The Parties submit that the 247 Founding Shareholders 'entered the 2013 Transaction in the belief that they were selling the business to Hunter Douglas in a staggered transaction that would finally complete in 2019 and which would ensure the most tax efficient outcome (through entrepreneur relief) for the individuals.'

3.20 As a result, the Parties were not of the view that the 2013 and 2019 transactions were independent. At the main party hearing with 247, Jason Peterkin stated of his and David Maher's understanding:

David never considered the 2013 and 2019 transactions to be distinct from each other. We looked at the 2013 as a single transaction which ended in 2019... David and myself to a lesser extent were both very keen to give ourselves an exit plan. The deal that Hunter Douglas offered us gave us exactly that. It also gave us access, certainly perceived access, to their resource.

- 3.21 247 has submitted that 'the structure provided a guaranteed exit route. David Maher, in particular, was looking to retire and the put option allowed both of the 247 Founding Shareholders to exit the business whilst maximising the value which could be achieved.'
- 3.22 Notwithstanding the stated exit plan for the 247 Founding Shareholders, the Parties' submitted the following further considerations motivating the Transactions.

2013 Transaction

- 3.23 Hunter Douglas submitted the following in relation to the 2013 Transaction:

In 2013, we were aware of the emerging importance of e-com to our business. Home Depot had bought Blinds.com and we were supplying them, so we could see the growth. We began to worry that over the long run we may need to transform into more of a retailer ourselves, as difficult as that might be given the efficiency of the direct-to-consumer businesses in e-com, in particular, versus traditional retail. UK e-com seemed to be emerging and a good place to learn.

- 3.24 Hunter Douglas [REDACTED], describing, in a Board report at the time of the Blinds2go acquisition, that '[REDACTED]'.
- 3.25 The Parties have submitted that another motivation for the 2013 Transaction was to support 247's expansion overseas,¹⁴ more specifically across mainland Europe.¹⁵ Hunter Douglas stated, in internal documents at the time of the transaction, that:

'[247] requires a reliable strategic supplier with wide geographic reach and product breadth as well as additional capital for geographic expansion on the European Continent.

¹⁴ 247 submitted that the 247 Founding shareholder were considering expansion plans at the time of the 2013 transaction; an extension into flooring products, or international expansion.

¹⁵ [REDACTED].

HD is willing to acquire a 49% stake in [247] to support this expansion.

The structure of the existing cooperation as well as the expansion to Continental Europe should be optimized to reflect the fiscal position of the parties, e.g. to allow for Entrepreneurial Relief for David and Jason, where possible earning income in a permanent establishment in a jurisdiction with lower tax rate than the U.K., licensing structures for existing and future IP rights, gearing, etc.¹⁶

- 3.26 The Strategic Business Plan prepared as part of the 2013 Transaction states that [REDACTED].¹⁷ As a result, a Bonus Agreement was entered into with 247's Founding Shareholders.

2019 Transaction

- 3.27 As described above, the 2019 Transaction was at the instigation of the 247 Founding Shareholders, and in particular the retirement of David Maher. The 247 Founding Shareholders discussed potential continuation plans after the call and put options with David Sonnenberg as early as 2017 before discussing their intention to exercise their put option in 2018 and exit from the business.

- 3.28 [REDACTED].¹⁸ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

4. Industry background

- 4.1 In this section we provide an overview of the industry in which the Parties are active. In particular, we will discuss the wider window coverings sector in the UK, with a focus on the retail market for online M2M blinds, being the principal area of overlap between the Parties.

Window coverings overview

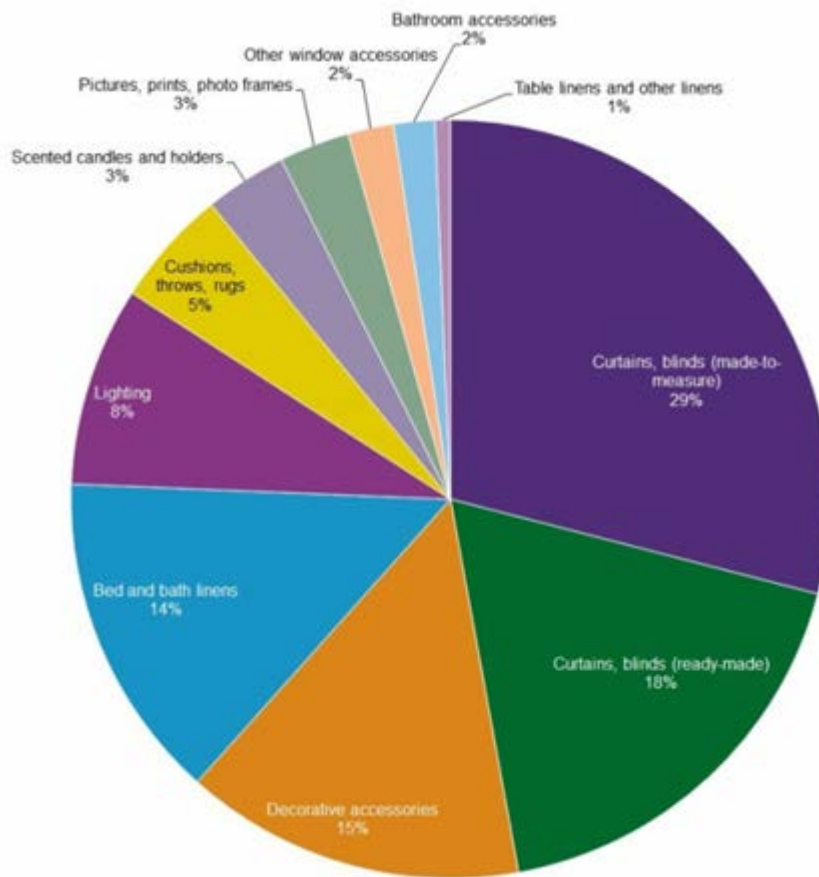
- 4.2 The window coverings sector includes blinds, curtains, shutters, and suspension systems. Customers typically purchase products in the sector in ready-made format (ie a product that is largely finished and available in one of many available sizes) or M2M (ie tailored to the exact specifications of the customer). As discussed below, customers in the UK primarily purchase window coverings through in-home, in-store, and online retail channels.
- 4.3 Market research reports received estimate that in 2018 the size of the UK window coverings sector was approximately £1.5 billion. AMA Research, Domestic window coverings market report UK 2020-2024 (the AMA report), estimated the sector to be approximately £1.5 billion in size and GlobalData, Window dressings November 2018 (the GlobalData Report), estimates the sector size at £1.6 billion.¹⁹ This includes sales for all channels; online, in-store and in-home. Global Data estimate the total growth of the sector as a whole between 2018 and 2023 is expected to be 9 to 11%, an annual average growth of approximately 2%.²⁰
- 4.4 Window coverings fall in the broader category of home accessories, and account for the largest proportion of consumer spending within the category. According to a Mintel report, 'Accessorising the home – March 2020', almost half of consumer spending on home accessories in the UK is on window coverings. Figure 1 below shows that M2M window coverings (curtains and blinds) is the single largest sub-category within home accessories, followed by ready-made window coverings (curtains and blinds).²¹

¹⁹ We note these reports are both now two years old and so their estimates of market size and growth should be treated with some caution. We note that we do not hold industry reports that contain market data for online M2M blinds specifically. The industry reports quoted in this paper draw their findings from consumer research, including consumer surveys, to inform their forecasts data for the wider sector.

²⁰ Global Data estimates the window coverings sector will grow 9.2% from 2018-2023, Global Data Report, Page 8 and AMA research estimate the market to grow 6% from 2020-2042, AMA report, page 10.

²¹ Mintel, *Accessorising the home – March 2020*, p24.

Figure 5: Consumer spending on accessorising the home, % of total 2019, UK

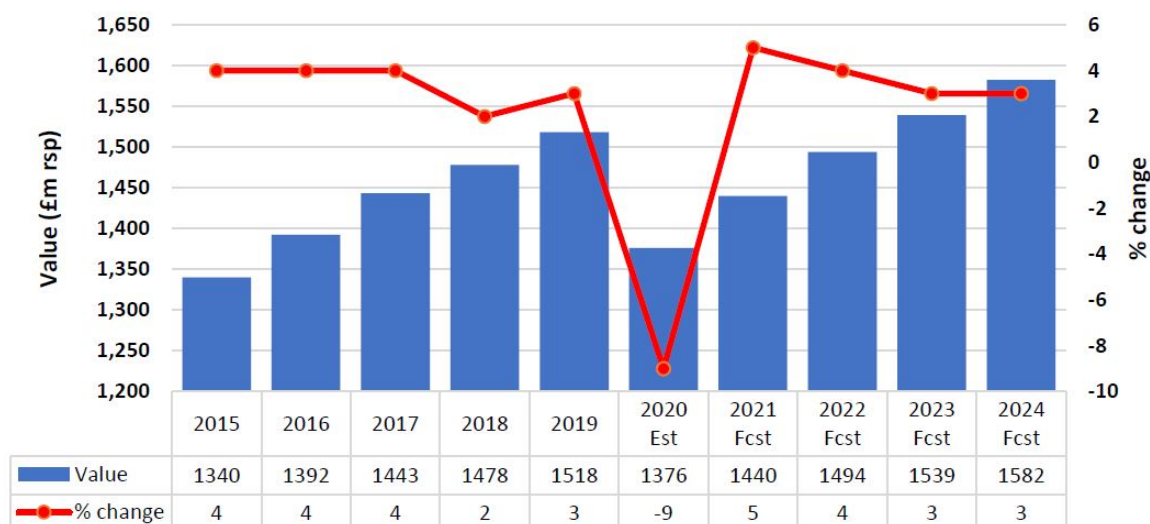


Source: Mintel Report²²

- 4.5 As a category of home accessories, the performance of the window coverings sector is driven to some extent by the performance of the housing market. AMA Report described growth of the sector as ‘relatively consistent’ in the period 2012 to 2017 with year on year growth. See Figure 2 below taken from the AMA Report.

²² Mintel, *Accessorising the home – March 2020*, p24.

Figure 6: UK Window Coverings Market and Forecasts 2015 to 2024 by value (£m RSP)



Source: AMA Research Ltd/Trade Estimates²³

4.6 Prior to the COVID-19 pandemic, the window coverings sector had seen year-on-year growth for the last several years. A previous AMA Report stated that ‘better performance in the housing market and wider economy has fuelled demand for both replacement and new window coverings.’²⁴ However, the GlobalData Report states that ‘2018 has seen the window dressings category grow by just 0.8%, with a slow housing market and cautiousness about spending large amounts on homes...with consumers nervously following Brexit negotiations.’ As a result, ‘the category has been reliant on sales to “improve not movers.”’

4.7 The current COVID-19 pandemic has affected retailers and suppliers in the sector. The AMA report says ‘whilst indications at the beginning of the year tended towards underlying but modest growth rates into the medium-term, the events of March and April have turned this forecast on its head. The revised forecast for 2020 shows decline of around 9% in 2020 followed by annual growth rates of 3-5%.’²⁵ However these trends are for the window coverings sector as a whole and not specific to the in-home, in-store, or online retail channels.

4.8 [REDACTED].²⁶ [REDACTED].²⁷

4.9 However, there has been some knock-on effect for customers. [REDACTED].²⁸

²³ AMA Research, *Domestic window coverings market report UK 2020-2024*, page 10.

²⁴ AMA Research, *Domestic window coverings market report UK 2018-2022*, page 8.

²⁵ AMA Research, *Domestic window coverings market report UK 2020-2024*, page 12.

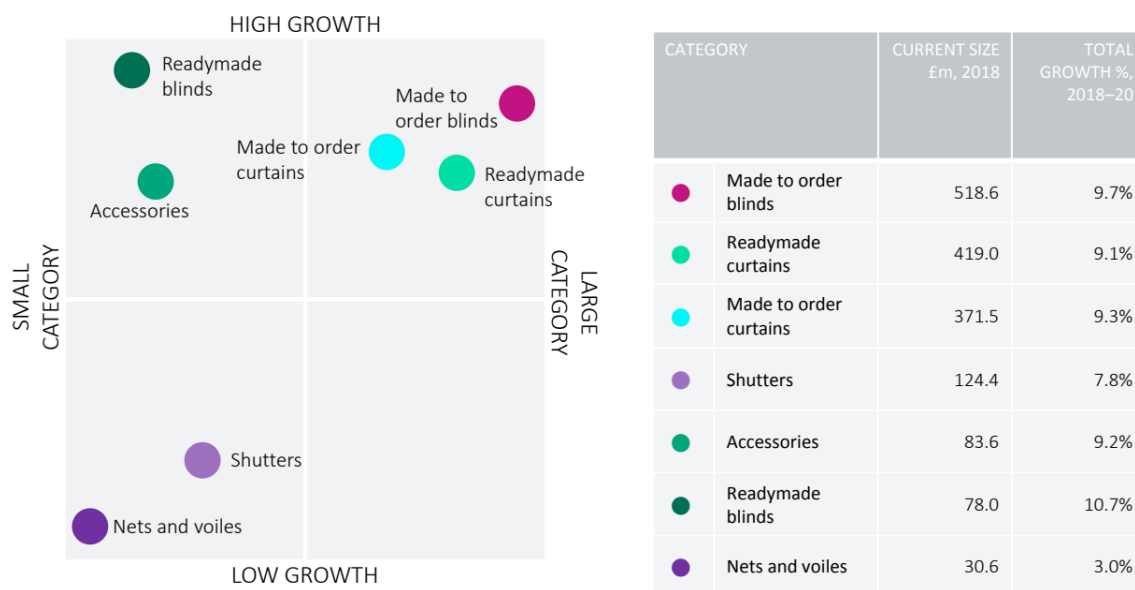
²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

4.10 In Figure 7 below, the GlobalData Report charts the forecast relative growth and size of each window covering type in the UK across distribution channels.²⁹ This indicates that blinds (ready-made and M2M) are estimated to be the highest growth products, with total forecast growth rates of 10.7% and 9.7% respectively over the period 2018 to 2020 in the UK. M2M blinds is the largest category at £518.6m, roughly one third of the total window coverings sector and almost 30% larger than the market for M2M curtains.³⁰

Figure 7: Forecast category growth and size: 2018-20, UK



Source: GlobalData, *Window Dressings November 2018*, p16

Distribution Channels

4.11 Distribution within the window coverings sector is highly diverse, with options available in-store, in-home and online for the relevant products. These are described as ‘channels’ within the industry. Each channel presents customers with a different range of potential purchasing options, as well as service and installation propositions. We discuss the main features of each below.

In-store and In-home

4.12 The in-store and in-home channels are traditional retail channels in which customers have a degree of interaction with a salesperson and/or the products before purchase. These interactions take place either inside the

²⁹ GlobalData, *Window dressings November 2018*, p16.

³⁰ GlobalData estimates the M2M curtains market to be £371.5m in 2018.

retailer's physical store (in-store) or inside the customer's home (in-home). Both ready-made and M2M blinds are sold through these channels.

- 4.13 As set out in paragraph 7.57, in-store and in-home retailers appear to position themselves as full-service providers, offering a more personal experience and the option of a measuring and installation service. The evidence we have seen also indicates that in-store and in-home retailers tend to be more expensive than online retailers.³¹
- 4.14 Retailers in the in-store channel are able to display a variety of window coverings as well as their range of fabric options, although they are limited by the available space. As a result, customers can review the colour, style and materials for their window coverings, whether ready-made or M2M, in person. Often, there will be a window covering specialist to assist a customer to design their desired window covering.
- 4.15 As part of a retailer's in-home offering, a consultant visits a customer's home with a limited range of samples in order to review colour, style and materials for their window coverings, and may offer style advice as part of the consultation. The consultant may also take measurements for the customer, and fit the final product once complete.
- 4.16 Some in-store and in-home retailers also have an online presence, although not all such retailers sell blinds online. Retailers who sell blinds online and in-store are referred to as 'multi-channel' retailers. We note that no supplier active in the in-store and in-home channel has a significant position within the online M2M blinds market, and, for some, their online presence is part of a general online store (ie covering products and services unrelated to blinds or window coverings).

Online

- 4.17 Customers are able to purchase both ready-made and M2M window coverings online. However, measuring and fitting typically are not provided by retailers with an exclusively online presence. Customers select colour, style and materials for their window covering online using retailer-supplied photographs. Many online retailers, including the Parties, offer a sample service where fabric swabs can be requested and posted out to the customer ahead of final product selection.
- 4.18 Online comparison of prices is a key feature of the online channel for window coverings, including blinds. The GlobalData report states that 64.2% of shoppers start their research online 'with customers consulting

³¹ See paragraph 7.57.

reviews, comparing prices and scrutinising pictures and videos of the product they are interested in'.³² The large online offering of products allows customers to easily compare product offers compared to in-store.³³ [✂].³⁴

4.19 The AMA Report states that 'window coverings are... widely available online and consumers are... much more confident in ordering these products themselves.'³⁵ Hunter Douglas submitted that a key recent market development is the growing expansion of online sales of blinds, in particular of M2M blinds.³⁶ We note, as discussed at 4.7, that the COVID-19 pandemic has indirectly resulted in a significant increase in online sales volume.

4.20 The growth of online spend has also seen a rise in mobile purchasing, with smartphones predicted to become even more central to the purchasing journey within the next two years.³⁷ This is in line with the evidence provided by the Parties, that increased sales through mobile sites has led to emphasis placed on developing the online mobile sites. [✂].

Figure 8: 247 Customer Journeys – Devices used March 2013 to April 2020

[✂]

4.21 The COVID-19 pandemic led to closure of physical retail stores and suspension of in-home sales for a period of time, therefore demand has increasingly been redirected online. Mintel reports, this 'should further catalyse the channel, and favour well-equipped multi-channel and online only retailers. With current government guidance to self-isolate within the home... this could actually boost the market over this period, as people spend more time inside.'³⁸

Online M2M blinds

4.22 As noted above, the main area of overlap between the Parties is the supply of online M2M blinds. Online M2M blinds are tailored blinds purchased by customers online through a retailer's website. Customers can browse the website for various styles of blind (eg roman, venetian) in a variety of materials and colours, and usually are able to order a free sample of a given blind. Having selected their desired blind, customers provide

³² GlobalData, *Window dressings November 2018*, p6.

³³ Hilary's brand report.

³⁴ [✂].

³⁵ AMA Research, *Domestic window coverings market report UK 2020-2024*, p13.

³⁶ [✂].

³⁷ Mintel Report, page 15.

³⁸ Mintel Report, *Accessorising the home – March 2020*, page 25.

dimensions, measured in width and drop.³⁹ Customers may also be able to make other customisations, for example by selecting the width of the slats on a venetian or wooden blind.

- 4.23 On receipt of an order, online M2M retailers source the blind to fulfil the order and arrange delivery. Some retailers, including both of the Parties, arrange for delivery directly from manufacturers to customers and do not hold their own inventory.⁴⁰
- 4.24 Once the customer has received the order, the customer fits the blinds themselves by either following instructions provided by the retailer, or by arranging for someone else to fit the blinds independently.
- 4.25 The largest online suppliers of M2M blinds sell exclusively online and do not have an in-store or in-home presence. As mentioned above, some multi-channel retailers do supply M2M blinds online, however, their product offering is to-date more limited and their share of the online market is modest.

Online platforms

- 4.26 In addition to retailers' websites, Amazon and eBay are online marketplace platforms that include ready-made window coverings from multiple sellers in their listings.⁴¹ However, third party retailers have not previously had an effective way of selling M2M blinds on these platforms.
- 4.27 Customers can either search listings on the online marketplace or browse by type of blind (eg venetian, or roman).⁴² There are various ways listings allow tailoring – either by requiring that the customer contacts the seller separately, or (on Amazon) by using the recently-added 'customise now' button. Even with these functions, they are not configured particularly effectively to enable the sale of M2M blinds.⁴³ Amazon submits that the 'customise now' button is a very new feature on Amazon's website. As a result, we are aware that currently use of this function is limited.
- 4.28 While some listings on online marketplaces do offer free sample swatches, we understand that [REDACTED].⁴⁴ As with standard online M2M blinds, once an

³⁹ Instructions on how to take these measurements are usually available on online M2M retailers' websites.

⁴⁰ [REDACTED].

⁴¹ We note that in addition to hosting third-party sellers, Amazon sells its own ready-made blinds directly on its platform, but not M2M blinds.

⁴² Although the filtering options on online marketplaces are much narrower than on most online M2M blinds websites.

⁴³ There is no way of filtering to only show listings which use the 'customise now' feature.

⁴⁴ [REDACTED].

order is made online M2M retailers source the blind to fulfil the order and arrange delivery.⁴⁵

- 4.29 Both the Parties⁴⁶ have highlighted Amazon and eBay as growing platforms, [REDACTED].⁴⁷ Swift Direct Blinds submits that 'a small (currently approx. [REDACTED]%) and growing portion of its sales are generated through eBay and Amazon'.⁴⁸

Competitors and main parties

- 4.30 In the window coverings sector more generally (including in-store and in-home supply of ready-made and M2M blinds, as well as other types of window coverings) multi-channel retailers are the leading suppliers, with Dunelm, Hillarys, John Lewis and Next being the largest retailers. Describing the retailers who supply window coverings, the 2018 GlobalData Report states that 'Dunelm remains the clear leader in the category, with its market share (17.4%) continuing to dwarf that of second largest player Hillarys (7.0%)'. These retailers offer both ready-made and M2M window coverings, although their presence varies by distribution channel.
- 4.31 However, the competitive landscape is different for the online M2M blinds market, being the principal area of overlap between the Parties.
- 4.32 The main competitors for the online retail supply of M2M blinds are online-only retailers with none of the in-store or in-home retailers occupying a significant position in the market. The Parties are two of the largest retail suppliers M2M blinds online. Hunter Douglas, through its majority owned subsidiary Blinds2Go, is the largest supplier in the market with 247 being the third largest. In addition to the Parties, there are a handful of retailers with revenues over £5 million: these are Interior Goods Direct (which now includes the Wilsons Online Retail business following a recent acquisition), Swift Direct Blinds and Bloc Blinds. In addition to these retailers, there is a long tail of smaller retailers, none of whom has revenues above £5 million. The Parties' share of supply in the market for online M2M blinds is further analysed in the Competitive Assessment section below.
- 4.33 Some multi-channel retailers do have a presence in the online M2M blinds market (whether click-to-order or otherwise), for example Next and John

⁴⁵ Once the customer has received the order, the customer fits the blinds themselves by either following instructions provided by the retailer, or by arranging for someone else to fit the blinds independently.

⁴⁶ [REDACTED].

⁴⁷ [Main submission](#), 24 May 2020, Paragraph 1.11.

⁴⁸ [REDACTED].

Lewis. At the same time, some multi-channel retailers do not have a full-function online M2M offering.

- 4.34 The multi-channel retailer Dunelm submitted that its website does not currently offer click-to order functionality for M2M blinds, however, it has introduced an online consultation service.⁴⁹ Whilst a response to the current restrictions on in-store shopping, it provides a new level of customer service to their current online offering and enables the firm to take orders online without the specialised website functionality. Dunelm describes the process as follows,

A customer makes an appointment with a Dunelm consultant, and this is carried out on Microsoft Teams. The consultant will then discuss the customer's needs and suggest a solution to them. The consultant will then assist the customer to place an order. The customer cannot place an order directly online as yet without the assistance of the consultant, this requires some Tech development.⁵⁰

- 4.35 Further, in-home retailers Hillarys' and Thomas Sanderson's websites only provide lead generation and enable customers to provide contact details and request order samples.⁵¹ The degree of competitive constraint exerted on the Parties by offline retailers is considered in the Competitive Assessment section below.

Trends within the Sector

Improvements in the customer offering

- 4.36 The Parties have commented that M2M blinds are increasingly competitively priced against ready-made blinds online as well as M2M blinds in-store.⁵² The Parties have said that effective supply-chain management has enabled these lower prices to be offered and this has been a key factor in the growth of the online M2M blinds market.⁵³
- 4.37 Additionally, online M2M blind specialist websites such as Blinds2Go and 247 blinds offer a large range of products, without the restrictions of physical space occupied in-store, at various price points with short delivery times. For example, 247 submitted that their blinds are delivered in 5-7

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ Hillarys and Thomas Sanderson websites, accessed on 23 June 2020.

⁵² Main submission, 20 May 2020, paragraph 6.72 and Figures 6.15 and 6.16.

⁵³ [REDACTED].

working days,⁵⁴ as compared to four weeks for Dunelm's M2M service.⁵⁵ It is noted that there are some instances where delivery times could be shortened by in-store retailers offering a click and collect service. Nonetheless, the wide product offering online, combined with shorter timescales attracts those customers who may previously have shopped in-store for high quality blinds, as well as customers who might have opted for cheaper ready-made blinds.

- 4.38 Furthermore, retailers of online M2M blinds are increasingly improving the visual appearance of their websites. While CGI is already common across many websites, Decora believe that visualisation software will become a key part of the online offering by retailers. Third parties have indicated that website quality and appearance matter to customers, we note that this could affect a retailer's position on Google search results. This is discussed further in the Competitive Assessment chapter.

Technology

- 4.39 Retailers are increasingly seeing the incorporation of smart technology within their retail offering. AMA Research observes that, 'The market has always been innovative, and suppliers have been quick to adapt to changing demand patterns for more advanced products. In addition, the ability to continue to add value – eg more automated ranges – is likely to underpin future demand levels'.⁵⁶ [REDACTED].⁵⁷ However, no third party who we spoke to identified motorisation as an important trend.

⁵⁴ [REDACTED].

⁵⁵ [Dunelm website](#).

⁵⁶ AMA report, page 16.

⁵⁷ [REDACTED].

5. Relevant merger situation

- 5.1 This section sets out our conclusion on the First Statutory Question (see paragraph 1.3 above), namely whether each of the 2013 Transaction and the 2019 Transaction constitutes the creation of an RMS. This is known as the jurisdictional test.

Relevant Merger Situation – the jurisdictional test

- 5.2 Under section 23 of the Act, an RMS arises when the following conditions are met:
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24⁵⁸ of the Act (enterprises have ceased to be distinct); and
 - (b) one (or both) of the following conditions is (or are) satisfied:
 - (i) as a result, a share of supply of 25 per cent or more is created or enhanced in respect of goods or services of any description which are supplied in the UK, or a substantial part of the UK (the share of supply test);
 - (ii) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test);
- 5.3 This second element establishes sufficient connection with the UK on a turnover or share of supply basis.
- 5.4 On the basis of the turnover figures set out at paragraphs 2.5 and 2.8 above, we conclude that the turnover test is not met in this case. In this section we first consider whether enterprises have ceased to be distinct and, second, whether the share of supply test is met.

⁵⁸ Section 24(1) of the Act notes that '*For the purposes of section 23 two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within this section if... (a) the two or more enterprises ceased to be distinct enterprises before the day on which the reference relating to them is to be made and did so not more than four months before that day; or... (b) notice of material facts about the arrangements or transactions under or in consequence of which the enterprises have ceased to be distinct enterprises has not been given...*'

Enterprises ceasing to be distinct

Enterprises

- 5.5 The first element of the jurisdictional test considers whether two or more enterprises have ceased to be distinct as a result of each of the Transactions.
- 5.6 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.⁵⁹
- 5.7 The Parties are both active in the online retail supply of different types of blinds, shutters and curtains. Hunter Douglas is also active at the manufacturing and wholesale levels of the supply chain for different types of window furnishings, including assembled blinds, raw materials and components for blinds.⁶⁰ 247 is only present at the retail level of the supply chain. As noted above, in 2019 Hunter Douglas had global revenues of just over £3 billion and UK revenues of £[X] and in 2019, 247’s total turnover for the period ended 19 February 2019 was £22.2 million, of which £[X] was in the UK.
- 5.8 We are therefore satisfied that Hunter Douglas and 247 are each a ‘business’ within the meaning of the Act and that, accordingly, the activities of Hunter Douglas and 247 are ‘enterprises’ for the purposes of the Act.

Ceasing to be Distinct

- 5.9 Section 26 of the Act explains the concept of ‘ceasing to be distinct’. Two enterprises cease to be distinct once they are brought under common ownership or common control. Control includes situations falling short of outright voting control, including the ability directly or indirectly to control or materially to influence the policy of an enterprise, pursuant to section 26(3) of the Act. Three levels of interest are therefore recognised as being sufficient to amount to an RMS: a controlling interest; the ability to control policy (de facto control); and the ability materially to influence policy

⁵⁹ Sections 129(1) and (3) of the Act.

⁶⁰ At a wholesale level, some wholesalers and retailers purchase or import fully-assembled blinds, while others purchase components and materials and fabricate the assembled blinds, using machinery or by hand. Most wholesalers of blinds are able to provide a range of different blind types, although there are some that focus on specific products.

(material influence). The ability to exercise material influence is the lowest level of control that may give rise to an RMS.⁶¹

- 5.10 This interpretation is confirmed by the explanatory Notes to section 26 of the Act, which state that (emphasis added):

Subsections (3) ...envisage three levels of control of an enterprise. These are: material influence over policy; control of policy (often called de facto control); and a controlling interest in the enterprise (often called de jure control). **What constitutes material influence or control will be considered on a case-by-case basis by the competition authorities** according to the particular circumstances of the case. Under the FTA⁶² the authorities have treated the acquisition of the ability to appoint a director or having a 15% shareholding as sufficient to give material influence for these purposes. De facto and de jure control will arise at higher levels of shareholding, with de jure normally requiring more than 50% of the voting rights

- 5.11 The CMA's view, informed by previous decisional practice, of the distinction between these levels of control is set out in CMA2 at paragraphs 4.12 to 4.30.
- 5.12 Section 26(4) of the Act allows for a new RMS to be created if the acquiring firm, which is already able to exert material influence over the policy of a target firm, acquires 'de facto' control or a controlling interest in the target firm. The same applies to a move from 'de facto' control to a controlling interest.
- 5.13 A key point of difference between the CMA and the Parties concerns the level of interest acquired by Hunter Douglas in 247 as a result of the 2013 Transaction. The Parties do not dispute that Hunter Douglas and 247 ceased to be distinct as a result of the 2013 Transaction. However, they claim that the 2013 Transaction should be considered as conferring a controlling interest in 247 to Hunter Douglas or, at least, 'de facto' control, which the Parties claim should be treated as a controlling interest.⁶³ On that basis, the Parties claim that there could have been no new RMS as a result of the 2019 Transaction under section 26(4)⁶⁴ of the Act as the level of interest did not change.

⁶¹ Mergers: Guidance on the CMA's jurisdiction and procedure (**CMA2**), January 2014, para. 4.14.

⁶² This refers to the Fair Trading Act 1973, the predecessor to the Act.

⁶³ Response to Issues Letter, paras 5.19-5.20 and Supplementary Submission, paras 2.5-2.12.

⁶⁴ This provision states that 'For the purposes of subsection (1), in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if...(a) being already able to control or materially to influence the policy of the person carrying

5.14 However, in the SLC Decision the CMA found that:

- (a) the CMA has no ability to treat one level of interest as another for the purposes of its jurisdictional assessment;⁶⁵
- (b) the 2013 Transaction could only have given Hunter Douglas the ability to materially influence the policy of 247⁶⁶; and
- (c) therefore, the 2019 Transaction, by increasing the level of interest Hunter Douglas held in 247 from material influence to a controlling interest, did amount to a new RMS.⁶⁷

5.15 The Parties' submissions and our conclusions on these points are set out below.

The CMA's ability to treat one level of interest as another

5.16 The Parties submit that the CMA may treat one level of interest as another for the purposes of the CMA's jurisdictional assessment. Specifically, they submit that:

- (a) the CMA may treat 'de facto' control as a controlling interest under section 26(3) of the Act; and
- (b) paragraph 4.29 of the CMA Guidance makes clear that the CMA's practice is to treat de facto control as a controlling interest whenever it considers that the test for reference is met.

5.17 The CMA disagrees with the Parties' interpretation of this section of the Act and the relevant CMA Guidance.

5.18 As a preliminary matter, we note that the purpose of section 26 of the Act more generally is to specify the circumstances in which enterprises may cease to be distinct. Sections 26(1) and 26(2) state that enterprises cease to be distinct 'if they are brought under common ownership or common control' as well as the circumstances in which they may be treated as being under common control.⁶⁸ In this context, the purpose of section 26(3) is to specify the circumstances in which the CMA may find that sufficient control had been acquired to conclude that enterprises have ceased to be distinct

on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate; or (b) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.'

⁶⁵ [SLC Decision](#), paragraph 45.

⁶⁶ Paras 46-47.

⁶⁷ [SLC Decision](#), paragraph 49-50.

⁶⁸ Sections 26(1) and 26(2) of the Act, respectively.

for the purposes of Sections 26(1) and 26(2).⁶⁹ This is very clearly set out in the text of that section which notes that (emphasis added):

A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, may, **for the purposes of subsections (1) and (2), be treated as having control** of it.

5.19 Thus section 26(3) of the Act makes clear that each of material influence, ‘de facto’ control or a controlling interest will be sufficient to find that enterprises have ceased to be distinct in the circumstances specified in the section. In light of this, we find that it does not, as suggested by the Parties, give the CMA the discretion to treat one level of interest or control as another for the purposes of its jurisdictional assessment.

5.20 Further, we note that paragraph 4.29 of the CMA Guidance discusses the circumstances in which *de facto* control may be treated as a controlling interest. Crucially, however, this paragraph of the guidance cites section 26(3) of the Act as its basis and must therefore be interpreted consistently with that provision. It states (emphasis added):

The CMA has the ability under section 26(3) of the Act to decide whether or not to treat ‘de facto’ control as **a controlling interest for the purposes of the Act**; but, as explained in the context of material influence..., its practice in the context of Phase 1 decisions is to do so whenever it considers that the test for reference would be met in the case in question.

5.21 To be consistent with section 26(3) of the Act, which is determinative as to the law on this point, the reference in this paragraph of the CMA Guidance to a ‘controlling interest’ must be read as a reference to the level of interest that is sufficient to find that enterprises have ceased to be distinct, not to any discretion on the part of the CMA that otherwise does not exist for this section of the Act.

The 2013 Transaction

5.22 As noted above, through the 2013 Transaction, Hunter Douglas acquired convertible loan notes in 247. Attached to these loan notes were certain

⁶⁹ Reference 26(3).

rights in 247, which Hunter Douglas also acquired as a result. A summary of the main rights is set out at paragraph 3.4 above.

- 5.23 As noted above, the Parties have submitted that Hunter Douglas acquired a controlling interest or, at least, 'de facto' control over 247 through the 2013 Transaction. By definition, if a party does not have 'de facto' control it will not have a controlling interest.
- 5.24 CMA2 states that 'arrangements may give rise to a position of 'de facto' control when an entity controls a company's policy, notwithstanding that it holds less than the majority of voting rights in the target company (that is, it does not have a controlling interest).'⁷⁰

Hunter Douglas did not acquire a controlling interest

- 5.25 We understand that Hunter Douglas did not acquire the majority of voting rights, either at shareholder or board level, in 247 through the 2013 Transaction. It only acquired 49% of voting rights at shareholder level and the right to appoint a single director, which we understand it never exercised. Even if it had, this would not have given Hunter Douglas a majority at board level as the 247 Founding Shareholders, who each held half the remaining 51% of voting rights, both had seats on the board. Therefore, we conclude that Hunter Douglas did not acquire a controlling interest over 247 through the 2013 Transaction.
- 5.26 In their submissions the Parties note that paragraph 4.30 of CMA2, which states that 'A 'controlling interest' generally means a shareholding conferring more than 50% of the voting rights in a company', means that 'there is no requirement to have more than 50% of the voting rights in a company for a controlling interest.' The caveat in this section of the guidance is intended to allow for exceptional circumstances where the legal rights acquired by an entity grant an equivalent level of control to having the majority of the voting rights in a company. This is why that paragraph of CMA2 also states that 'Only one shareholder can have a controlling interest.' This is not the case here. While Hunter Douglas did acquire various rights, including those set out at paragraph 3.4 above, in 247 through the 2013 Transaction, our conclusion is that none of these individually or collectively gave Hunter Douglas the same legal level of control it would have had from having the majority of the voting rights in 247 as they did not give Hunter Douglas the ability to exercise more than 50% of the voting rights at board or shareholder level.

⁷⁰ Para 4.28.

Hunter Douglas did not acquire 'de facto' control

5.27 Indeed, as per the finding in the SLC Decision,⁷¹ in our view the rights acquired by Hunter Douglas through the 2013 Transaction were not even sufficient to give it 'de facto' control over 247. CMA2 notes that the exercise of 'de facto' control requires the ability to control i.e. unilaterally determine (as opposed to just materially influence) the acquired company's policy.⁷² In this context, 'policy' means 'the management of ...[the acquired] business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives.'⁷³ As noted in the SLC Decision, examples where this might occur include where the shareholder has, in practice, control over more than half of the votes cast at a shareholder meeting or where an investor's industry expertise leads to its advice being followed to a greater extent than its shareholding would seem to warrant.⁷⁴ In submitting that Hunter Douglas acquired at least 'de facto' control through the 2013 Transaction, the Parties highlighted the following factors:

- (a) The rights set out at paragraph 3.4 above, including the veto rights and the fact that Hunter Douglas had the largest share of the voting rights⁷⁵;
- (b) the relative imbalance in size and influence between the position of Hunter Douglas and that of the 247 Founding Shareholders;
- (c) the disparity in experience and resources between Hunter Douglas and the 247 business;
- (d) the fact that the 247 Founding Shareholders sought guidance from senior executives at Hunter Douglas on occasion;
- (e) the existence of the Put and Call Options;
- (f) the bonus arrangements for the 247 Founding Shareholders set out in the Bonus Agreement; and
- (g) the fact that 247 was required, from 2013, to attend the same management review meetings as Hunter Douglas' wholly owned subsidiaries

⁷¹ SLC Decision, paragraph 46.

⁷² Para 4.28.

⁷³ CMA2, para 4.14.

⁷⁴ SLC Decision, paragraph 42 and CMA2, para 4.28.

⁷⁵ The founding shareholders of 247 Home Furnishings each held 25.5% voting rights after the 2013 Transaction.

5.28 However, in our view none of these factors, alone or together, led to Hunter Douglas having the ability to unilaterally determine 247's policy. Taking each factor in turn:

- (a) While Hunter Douglas did acquire extensive rights (including notably those set out at paragraph 3.4 above) in 247 through the 2013 Transaction, the 247 Founding Shareholders benefitted from the same veto rights set out at paragraph 3.4 as Hunter Douglas.⁷⁶ These equivalent veto rights mean that Hunter Douglas did not have the ability to unilaterally determine, and thus control, 247's policy on any issue as the 247 Founding Shareholders possessed at least as much ability to determine such policy. In fact, as noted above, it was the 247 Founding Shareholders, not Hunter Douglas, who held the majority of voting rights at both board and shareholder level;⁷⁷
- (b) The above position does not seem to have been affected by any imbalance in size and influence between the position of Hunter Douglas and the 247 Founding Shareholders, any disparity in experience and resources between Hunter Douglas and the 247 Founding Shareholders or by the fact that the 247 Founding Shareholders occasionally sought guidance from senior executives at Hunter Douglas. There does not appear to be any evidence that any of these factors would have enabled Hunter Douglas to direct the behaviour of the 247 Founding Shareholders and given, as noted above, that the 247 Founding Shareholders held the same veto rights set out at paragraph 3.4 as Hunter Douglas and greater voting rights at board and shareholder level, these factors would not have given Hunter Douglas the ability to determine the policy of 247 without the cooperation of the 247 Founding Shareholders.⁷⁸ At most, in our view, these factors could have assisted Hunter Douglas in influencing 247's policy;
- (c) In relation to the Put and Call Options, as far as we are aware, they could be exercised unilaterally by the 247 Founding Shareholders and Hunter Douglas alike and thus seem unlikely to have provided much leverage over the behaviour of the 247 Founding Shareholders. The anticipated acquisition of the remaining shares in 247 in 2019 seems likely to have

⁷⁶ See Stakeholders' Agreement, 30 April 2013, Section 5, para 2: '*All decisions in respect of the following matters [consisting of the matters set out in para 26 above] must be made by unanimous decision of the Shareholders (for clarification including HD, if HD is at the time a noteholder)*'.

⁷⁷ We have seen no evidence to the contrary. Indeed, we understand that Hunter Douglas never actually exercised its voting rights at shareholder level or appointed a director at board level (see Hunter Douglas's response to the s109 Notice dated 14 May 2020, para 3.1).

⁷⁸ We have seen no evidence to the contrary. Indeed, we have seen no evidence that Hunter Douglas ever sought to use its size, influence, experience, resources and/or guidance to actually try and control the policy of 247.

only incentivised the 247 Founding Shareholders to maximise the profits of 247, rather than necessarily following the direction of Hunter Douglas⁷⁹;

- (d) As noted by the Parties, the effect of the Bonus Agreements, described at paragraph 3.8 above, was that the 247 Founding Shareholders had [§]. While the Bonus Agreements may have been capable of influencing the behaviour of the 247 Founding Shareholders in relation to the purchase of finished blinds by 247, we do not consider that these arrangements would have resulted in the 247 Founding Shareholders necessarily following the direction of Hunter Douglas in relation to their policy.⁸⁰ In any event, as noted at paragraph 3.8 above, the Bonus Agreements were only valid between the financial years ending 28 February 2014 and 28 February 2017 and so any incentive effect ceased as of that latter date. As noted at paragraph 5.27(b) above, Hunter Douglas did not have the ability to determine the policy of 247 without the cooperation of the 247 Founding Shareholders; and
- (e) Finally, the fact that 247 was required to attend the same management review meetings as Hunter Douglas' 100% subsidiaries does not imply that Hunter Douglas must have had the same level of control over 247. While these meetings, again, may have influenced the policy of 247 we are not convinced that their attendance evidences that Hunter Douglas was, in fact, determining their policy.

Hunter Douglas did acquire material influence

5.29 We conclude that the rights set out at paragraph 3.4 and the other factors at paragraph 5.27, whilst falling short of giving Hunter Douglas the ability to unilaterally determine 247's policy, are sufficient to show that Hunter Douglas acquired the ability to exercise material influence over 247's policy as a result of the 2013 Transaction, for the reasons set out in the SLC Decision. This is not now disputed by the Parties. As noted in the SLC Decision, the 49% of the voting (and economic) rights in 247 acquired as a result of the 2013 Transaction is well above the 25% threshold for presuming the existence of material influence.⁸¹ In addition, as noted at paragraph 3.4 above, Hunter Douglas acquired the right to nominate a non-executive director and veto rights covering many aspects of 247's strategic decisions (including the appointment of additional senior management, annual budgets, any financing, expansions into new lines of business and pricing offers below 15% gross profit). Even though the 247 Founding

⁷⁹ We have seen no evidence to the contrary. Indeed, we have seen no evidence that Hunter Douglas ever sought to use the existence of these options to influence, let alone control, the policy of 247.

⁸⁰ And there does not appear to be any evidence to the contrary.

⁸¹ CMA2, para 4.20.

Shareholders benefitted from the same veto rights, these rights (alongside the other factors set out at paragraph 5.27 above) would likely have given Hunter Douglas the ability to restrict 247's autonomy to carry out its business activities, e.g. by being able to veto key decisions. This is sufficient to find that Hunter Douglas acquired the ability to materially influence 247's strategic direction and commercial objectives as a result of the 2013 Transaction.⁸² The fact that some of these rights were not exercised does not affect this finding as establishing that the 'material influence' threshold is met does not require the exercise of material influence, merely the ability to do so.⁸³

The 2019 Transaction

- 5.30 As a result of the 2019 Transaction, Hunter Douglas acquired 100% of the shareholding in 247 and, as such, increased its share in the profits of 247. We conclude that this clearly amounts to the acquisition of a controlling interest. As the sole shareholder, Hunter Douglas would have the ability to unilaterally pass any shareholder resolutions allowing it to unilaterally determine 247's policy, including all aspects of 247's competitive strategy (including the ability to set 247's prices) . In addition, Hunter Douglas was no longer subject to any voting or other rights previously held by the 247 Founding Shareholders, including their previous veto rights. This is not disputed by the Parties.
- 5.31 As noted above, pursuant to section 26(4) of the Act, an increase in the level of influence from material influence or 'de facto' control to a controlling interest is sufficient to constitute a new RMS. Therefore, even if the 2013 Transaction conferred 'de facto' control over 247, which we do not agree is the case for the reasons set out above, the acquisition of a controlling interest in 247 in 2019 is sufficient to find a new RMS. The CMA has exercised its discretion to assert jurisdiction over such changes in the level of interest in a number of other cases⁸⁴ and we see no basis to not exercise that discretion in this case. Indeed, on the contrary, in our view, the fact that there has been a substantive change in the rights held by Hunter Douglas as a result of the 2019 Transaction, e.g. moving from being subject to the veto and voting rights of the 247 Founding Shareholders after the 2013 Transaction, to having all the voting rights and no longer being

⁸² [SLC Decision](#), paragraph 47.

⁸³ [CMA2](#), para 4.14.

⁸⁴ See for example the Anticipated acquisition by Cavendish Square Partners (General Partner) Limited of a controlling interest in each of Lakeside 1 Limited (Keepmoat) and Apollo Group Holdings Limited (Apollo) (ME/5213/11 and ME/5291/11), OFT decision of 24 November 2011 and the Anticipated acquisition by Guardian Media Group of Trader Media Group, OFT Decision of 29 September 2003.

subject to any vetoes from the 247 Founding Shareholders after the 2019 Transaction, supports the exercise of our discretion in this case.

- 5.32 While Hunter Douglas' voting rights in 247 decreased following the 2016 Transaction (from 49% to 24.9%) on 6 December 2016⁸⁵ and just prior to the 2017 Transaction (from 24.9% to 4.9%) on 11 May 2017⁸⁶, in our view these changes did not remove Hunter Douglas' ability to exercise material influence over 247's policy. Indeed, at their hearing, the representative from Hunter Douglas noted that these reductions of Hunter Douglas' voting rights were a purely 'technical matter' designed to keep the 2013 Transaction 'confidential.'⁸⁷ All the other rights set out at paragraph 3.4 above remained unchanged. As noted at paragraph 5.29 above, notwithstanding the voting rights acquired by Hunter Douglas, the other rights acquired through the 2013 Transaction would likely have given Hunter Douglas the ability to continue restricting 247's autonomy to carry out its business activities and enabled Hunter Douglas to materially influence 247's strategic direction and commercial objectives. Even if these changing voting rights had reduced the level of influence Hunter Douglas had over 247's policy, this would not have affected the analysis of the 2019 Transaction. The move from a lower level of influence, to a controlling interest would still be sufficient to constitute a new RMS pursuant to section 26(4) of the Act.

The Share of Supply Test – Nexus with UK

- 5.33 The second element of the jurisdictional test seeks to establish a sufficient connection with the UK on a turnover and/or share of supply basis. As noted at paragraph 5.4 above, the turnover test is not met in this case. Our conclusions on whether the share of supply test is met in relation to the Transactions is set out below.

Time at which the relevant thresholds should be assessed

- 5.34 As noted above, in this case, we are considering the two Transactions, one of which completed on 19 February 2019 (the 2019 Transaction) just over a year before the CMA's decision on 1 April 2020 to refer the Transactions to a Phase 2 inquiry (the Reference Decision)⁸⁸ and one of which completed

⁸⁵ We understand that this was for the reasons set out at paragraph 3.14 above.

⁸⁶ The Parties have confirmed that this was for the reasons set out at paragraph 3.16 above.

⁸⁷ Despite this, the CMA notes that Hunter Douglas made no mention of either the 2013 Transaction or having material influence over 247 in their Merger Notice or in any submissions filed as part of the CMA's investigation into the 2017 Transaction (<https://www.gov.uk/cma-cases/hunter-douglas-bellotto-merger-inquiry>).

⁸⁸ The CMA's decision to refer case ME/6867/19 under section 22 of the Act (https://assets.publishing.service.gov.uk/media/5e8b2c2086650c18cf162793/Decision_to_refer.pdf)

almost seven years prior to the Reference Decision on 30 April 2013 (the 2013 Transaction).

- 5.35 In the SLC Decision, the CMA considered that, for the purposes of assessing whether the 2013 Transaction amounts to an RMS, it is necessary, pursuant to section 23(9) of the Act, to assess whether the share of supply test was met immediately before the CMA's reference decision (i.e. in this case, as at the time of the Reference Decision).
- 5.36 The Parties made a number of representations on this issue prior to the SLC Decision. These were contained in a standalone submission dated 12 February 2020 and the Parties' response to the CMA's Issues Letter dated 4 March 2020. These representations were addressed in the SLC Decision. Following the SLC Decision, the Parties submitted a white paper on 14 April 2020, and a response to our working paper on jurisdiction, on 16 June 2020, containing further representations on this issue as well as repeating some previous representations.⁸⁹
- 5.37 These representations submitted that, contrary to the CMA's interpretation, the share of supply threshold should be assessed at the time the 2013 Transaction completed.
- 5.38 We note that section 23(9) of the Act states that, for completed mergers, 'the question whether a relevant merger situation has been created shall be determined **as at**... immediately before the time when the reference [to a Phase 2 inquiry – see Section 22] has been, or is to be, made.' (emphasis added). In our view this language means that the question of whether an RMS has been created, which as per sections 23(1) and (2) of the Act includes the finding that the jurisdictional thresholds are met, is to be determined 'as at' the time immediately before the Reference Decision, not when the relevant Transaction has completed. This interpretation is consistent with the body of CMA decisional practice⁹⁰ and the CMA's

⁸⁹ The Parties made no further substantive representations on this issue or on our jurisdictional findings more broadly in their Response to the Provisional Findings.

⁹⁰ See for example, Completed acquisition by Tesco Stores Limited of Brian Ford Discount Store Limited, (ME/3827/08) OFT decision of 22 December 2008; Completed acquisition by Ryanair Holdings plc of a minority interest in Aer Lingus Group plc (ME/4694/10), OFT decision of 15 June 2012; A report on the completed acquisition by Intercontinental Exchange, Inc. of Trayport, Final Report of the Competition Commission dated 17 October 2016 (not appealed on this issue); A report on the completed acquisition by Sonoco Products Company of Weidenhammer Packaging Group GmbH, Final Report of the Competition Commission dated 3 July 2015; A report on the completed acquisition by Xchanging plc of certain companies comprising all of the European operations of Agencyport Software Group, Final Report of the Competition Commission dated 29 April 2015; A report on the completed acquisition by Alliance Medical Group Limited of the assets of IBA Molecular UK Limited used to manufacture 18F-Fluorodeoxyglucose, Final Report of the Competition Commission dated 15 August 2014; A report on the completed acquisition by Groupe Eurotunnel S.A. of certain assets of former SeaFrance S.A., Final Report by the Competition Commission dated 6 June 2013; Completed acquisition by MWUK Holding Company Limited of Dimensions Clothing Limited and Completed acquisition by MWUK Holding Company Limited of certain assets of Alexandra plc (in administration) ME/4664/10 (MWUK Holding), OFT Decision of 19 November 2010.

guidance, which notes at footnote 73⁹¹ that ‘in accordance with section 23(9) of the Act, the CMA assesses whether the share of supply test is met at the time of its decision on reference.’

- 5.39 The Parties have disputed the CMA’s reading of section 23(9) of the Act submitting that the provision is merely one ‘which imposes an obligation on the CMA to make a determination and is not a provision which determines the facts that are to be taken into account in making that determination.’ However, the Parties’ reading of section 23(9) is inconsistent with the natural interpretation of the words ‘as at’ in section 23(9) of the Act, which is ‘based on the situation at the time’. This supports our view that the share of supply test should be calculated based on the situation of the Parties at the time of the Reference Decision. In their WP Response, the Parties contested the CMA’s interpretation of these words, submitting that they ‘simply mean that the CMA must satisfy itself ‘as at’ the point of reference that any RMS which arose at the time enterprises ceased to be distinct persists at the time of the reference.’ However, we find this submission to be unconvincing as the CMA’s interpretation more closely tracks the natural interpretation of the words ‘as at’.
- 5.40 The Parties claimed that the CMA’s interpretation of the Act has not accounted for and is inconsistent with the effect of section 23(2A) of the Act. This provision states that: ‘The share of supply test is met if... **as a result of the enterprises ceasing to be distinct enterprises**, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent [which set out the share of supply thresholds]’ (emphasis added). Contrary to the Parties’ interpretation, our view is that this provision merely requires the CMA to ensure that the share of supply test is passed as a result of an increment to the shares of supply of the enterprises that have ceased to be distinct. The provision must also be read consistently with section 23(9) of the Act, which, for the reasons stated above, we find specifies the point in time at which the shares of supply and thus any increment should be assessed.
- 5.41 In their representations the Parties also claimed that the CMA’s interpretation is contrary to the intention of Parliament. In support, the representations quote Melanie Johnson MP, then-Minister for Competition and Consumers, who said, in relation to section 23 of the Act, during its passage through Parliament: ‘The purpose of the test is to take out of the scope of merger control a large number of transactions that are of no economic concern and to give business regulatory certainty that they will not fall within merger control.’ The Parties also noted that the CAT referred

⁹¹ CMA2.

to business certainty at paragraph 82 of its judgment in the *Lebedev*⁹² case: 'Altogether, the merger control regime in the Act is replete with time-limits for the various subsidiary stages, and very specific prescriptive provisions regarding the circumstances in which those limits can be extended and for how long. That approach clearly supports business certainty regarding potentially major transactions.' The CMA does not dispute the importance of business certainty. However, both the quote from Melanie Johnson MP and the paragraph of the *Lebedev* case cited by the Parties, set out above, are concerned with the existence and compliance with statutory time limits. In this case it is not disputed that the CMA has complied with the time limits in the Act for making a reference decision. Indeed, the Parties do not dispute that the CMA was not out of time in choosing to call in the 2013 Transaction once the CMA became aware of the material facts about the 2013 Transaction.

- 5.42 Nevertheless, as explained below, in the particular and unusual circumstances of this case, we consider that the very lengthy period of almost seven years which elapsed between the 2013 Transaction and the Reference Decision, combined with the fact that it was clear that any overlap between the Parties at the time of the 2013 Transaction could not have satisfied the share of supply test, are matters which we can and should take into account in interpreting the evidence as to whether the share of supply test was satisfied 'as at' the time of the Reference Decision.

Share of Supply

- 5.43 The share of supply test will be met if, at the time it is determined, the merging parties supply or acquire 25% or more of particular goods or services, in the UK.
- 5.44 At the time of the 2013 Transaction the Parties did not overlap in the online retail supply of M2M blinds in the UK and it was clear that any overlap between the Parties at that time could not have satisfied the share of supply test. As noted by the Parties, the only retail operation of Hunter Douglas in the United Kingdom prior to the 2013 Transaction was Thomas Sanderson, who, at that time, did not and continues not to offer its services online.
- 5.45 However, at the time of the Reference Decision, both Parties were active in the online retail supply of M2M blinds and had a combined share (by

⁹²*Lebedev Holdings Limited and Independent Digital News and Media Limited v DCMS* [2019] CAT 21.

revenue) of more than 25% in the online retail supply of M2M blinds in the UK in 2019.

- 5.46 For the reasons set out above, we consider that it is appropriate to assess whether the share of supply test is met based on the situation as at the time of the Reference Decision. Therefore, were we to focus solely on the Parties' shares of supply as at the date of the Reference Decision, we would conclude that the share of supply test is met in relation to both Transactions.
- 5.47 However, we also note that the facts of this case are unusual. In particular, there was an exceptionally lengthy period of almost seven years between the 2013 Transaction and the Reference Decision. In addition, in this case, it was clear that any overlap between the Parties at the time of the 2013 Transaction could not have satisfied the share of supply test. Thus, although we disagree with the Parties' interpretation of the Act, we recognise the need to take account of this combination of unusual features in interpreting the evidence in this particular case.
- 5.48 Considering the evidence in the round, we are not satisfied that the share of supply test is met in relation to the 2013 Transaction. In contrast, we conclude that the share of supply test is met in relation to the 2019 Transaction, on the basis of the Parties' combined shares of supply by revenue as at the date of the Reference Decision, as noted above.
- 5.49 While the Parties' combined share of supply did not increase as a result of the 2019 Transaction, where, as here, the RMS is the result of an increase in the level of interest held by a party, we consider section 26(4) of the Act allows for the acquirer to be 'treated' as bringing the target under its control (notwithstanding that it already had the ability to exercise material influence or 'de facto' control over the target's policy) such that there would therefore (under such 'treatment') be an increment in the share of supply.⁹³

Time period for investigating mergers

- 5.50 To meet the criteria for an RMS, the enterprises must have ceased to be distinct either not more than four months before the date on which the reference is made or where the Transaction took place without having been made public and without the CMA being informed of it, or four months from the earlier of the time that material facts are made public or the time the

⁹³ [CMA2](#), footnote 44.

CMA is told of material facts.⁹⁴ The four-month period may be extended under section 25 of the Act.

- 5.51 In this case, as noted above, the Stakeholders Agreement entered into as part of the 2013 Transaction contained confidentiality provisions requiring both Parties to keep Hunter Douglas' participation in 247 strictly confidential. The Parties do not dispute that the 2013 Transaction was, as a result, not subsequently made public and that material facts were not provided to the CMA at the time the 2013 Transaction completed. We do not consider that notice of material facts regarding the 2013 Transaction and the 2019 Transaction was given by Hunter Douglas to the CMA prior to 22 November 2019 and 28 October 2019, respectively. The Parties do not dispute this.
- 5.52 We therefore conclude that the applicable statutory time limits in relation to this reference have been complied with.

⁹⁴ Section 24 of the Act.

6. Counterfactual

Introduction

- 6.1 The counterfactual is an analytical tool used to help answer the question of whether a merger has resulted, or may be expected to result, in an SLC.⁹⁵ It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the likely future competitive situation in the market absent the merger.⁹⁶ The latter is called the counterfactual.⁹⁷
- 6.2 As we have found (at paragraph 5.48 above) that we have no jurisdiction over the 2013 Transaction, this section only considers the appropriate counterfactual for the 2019 Transaction.

The CMA's counterfactual assessment framework

- 6.3 As part of its counterfactual assessment, the CMA may examine several likely future scenarios, one of which may be the continuation of the pre-merger situation. The CMA will select the most likely of these, based on the facts of the case, as the counterfactual scenario.⁹⁸ It will incorporate into the counterfactual only those aspects of scenarios that appear likely, based on the facts available to it and the extent of its ability to foresee future developments.⁹⁹ The foreseeable period can sometimes be relatively short.¹⁰⁰ However, even if an event or its consequences are not sufficiently certain to include in the counterfactual they may be considered in the context of the competitive assessment.¹⁰¹
- 6.4 The application of the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger.¹⁰² Consequently, the counterfactual cannot include a relevant merger situation that has the same effect as the merger we are assessing (in this case, the 2019 Transaction), given that such alternative relevant merger situation would be subject to the provisions of Part 3 of the Act, and

⁹⁵ MAGs, paragraph 4.3.1.

⁹⁶ MAGs, paragraphs 4.3.1 and 4.3.6.

⁹⁷ MAGs, paragraph 4.3.1.

⁹⁸ MAGs, paragraph 4.3.6. In contrast, at Phase 1, the effect of the merger is compared with what is considered to be the 'most competitive' counterfactual (provided that this situation is considered to be a realistic prospect).

⁹⁹ MAGs, paragraph 4.3.6.

¹⁰⁰ MAGs, paragraph 4.3.6.

¹⁰¹ MAGs, paragraph 4.3.2.

¹⁰² MAGs, paragraph 4.3.1.

would not therefore carry sufficient certainty to mean it was the most likely future scenario.

- 6.5 The CMA seeks to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not included in the counterfactual.¹⁰³ However, where we consider that the choice between two or more counterfactual scenarios will make a material difference to the competitive assessment, the CMA will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual.¹⁰⁴
- 6.6 Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the competitive conditions prevailing at the time the merger occurred. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.¹⁰⁵
- 6.7 In reaching its view on the appropriate counterfactual, the CMA determines what future developments it foresees arising absent the merger based on the facts available. Insofar as future events or circumstances are not certain or foreseeable enough to include in the counterfactual, the analysis of such events can take place in the assessment of competitive effects. Owing to the inherent uncertainty of predicting future events, the CMA benefits from a ‘margin of appreciation’ or evaluative discretion, in relation to its conclusions and is likely to be deemed to have acted rationally provided it has taken account of all relevant information.¹⁰⁶

Parties’ views on the appropriate counterfactual

- 6.8 The Parties noted that the pre-merger conditions of competition were those in which Hunter Douglas had acquired a controlling interest in Blinds2Go¹⁰⁷ and, at least, material influence over 247 (through the 2013 Transaction)¹⁰⁸.

¹⁰³ MAGs, paragraphs 4.3.2 and 4.3.6.

¹⁰⁴ MAGs, paragraph 4.3.6.

¹⁰⁵ MAGs, paragraph 4.3.4.

¹⁰⁶ See *BAA Ltd v Competition Commission* [2012] CAT 3 at [20] (in the context of a market investigation); *Stagecoach Group Plc v Competition Commission* [2010] CAT 14, paragraph 45.

¹⁰⁷ On 21 June 2016 Hunter Douglas acquired 60% equity stake of Blinds2Go [38].

¹⁰⁸ As noted at paragraph 5.23 above, the Parties have submitted that Hunter Douglas acquired a controlling interest or, at least, ‘de facto’ control over 247 through the 2013 Transaction. However, for the reasons set out at paragraph 5.29 above, we find that Hunter acquired only material influence over 247’s policy through the 2013 Transaction.

- 6.9 The Parties therefore submitted that the correct counterfactual was one where 247 would have continued to exercise the same degree of competitive constraint that it would have done absent the 2019 Transaction.¹⁰⁹ Their submissions claimed that 247 exercised only a ‘limited constraint’ on Blinds2Go before the 2019 Transaction, and that the acquisition by Hunter Douglas of a controlling interest in 247 through the 2019 Transaction had no impact on the competitive structure of the market.¹¹⁰
- 6.10 Hunter Douglas also submitted that ‘[i]n respect of the 2019 Transaction, the only plausible counterfactual is the prevailing conditions of competition, a situation where Hunter Douglas holds, at the very least, the ability to exercise material influence over the activities of 247.’
- 6.11 Furthermore, Hunter Douglas submitted:
- (a) Hunter Douglas would have been able to prevent the sale of either or both of the 247 Founding Shareholders’ stakes;
 - (b) As a result, it would have been able to impose conditions on any purchaser, including the retention of the rights which it held under the Stakeholder Agreement;
 - (c) the CMA has not considered the likelihood that a third-party purchaser of a 51% stake in the business would proceed without entering into an agreement with Hunter Douglas similar in nature to the Stakeholder Agreement.
- 6.12 In addition, Hunter Douglas submitted that the CMA’s assessment, in its Provisional Findings, of Hunter Douglas’s ability to block a sale of shares by the Founding Shareholders was wrong as a matter of law.
- 6.13 Hunter Douglas also submitted that the assumption that the Founding Shareholders would have declined to exercise their put options does not withstand scrutiny, and that there was no reason to believe that both Founding Shareholders would have disposed of their shares in the event the options were not exercised.¹¹¹
- 6.14 Hunter Douglas proposed an alternative counterfactual scenario, where it would have bought the shares of one of the 247 Founding Shareholders,

¹⁰⁹ [Main submission](#), 24 May 2020, paragraph 3.36.

¹¹⁰ [Main submission](#), 24 May 2020, paragraph 3.32.

¹¹¹ Response to the Provisional Findings, paragraph 3.7

giving it a 74.5% stake in 247. It said that this scenario was 'more plausible (or at the very least, just as likely)'¹¹² as the CMA's preferred scenario.

Assessment

Introduction

- 6.15 As noted at paragraph 5.29, we have found that Hunter Douglas had the ability to exercise material influence over 247's policy¹¹³ prior to the 2019 Transaction.
- 6.16 We note the Parties' submission at paragraph 6.9 above that the correct counterfactual is one where 247 would have continued to exercise the same degree of competitive constraint that it would have done absent the 2019 Transaction. This submission, in effect, asserts that the most likely counterfactual for the 2019 Transaction is the continuation of the pre-merger situation. While this is often the CMA's starting point, our guidance is clear that, in a phase 2 inquiry, the CMA 'may examine several possible scenarios, one of which may be the continuation of the pre-merger situation' and of these 'only the most likely scenario will be selected as the counterfactual.'¹¹⁴
- 6.17 As regards Hunter Douglas' proposed alternative counterfactual scenario summarised at paragraph 6.14, the CMA notes this contradicts the principle noted at paragraph 6.4 above that the counterfactual cannot incorporate a scenario with the same effect as the merger. In this case the relevant merger situation we have found as a result of the 2019 Transaction is the increase in the level of interest Hunter Douglas held in 247 from material influence to a controlling interest. The scenario proposed by Hunter Douglas would have the same effect. Even though a shareholding of 74.5% is less than the 100% shareholding Hunter Douglas acquired through the 2019 Transaction, it would still amount to Hunter Douglas acquiring a controlling interest¹¹⁵ in 247. As a result, for the reasons set out in paragraph 6.4 above we do not consider this scenario to be the most likely counterfactual.

¹¹² Response to the Provisional Findings, paragraph 3.36

¹¹³ The policy of the target in this context means the management of its business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives (See, paragraph 4.14),

¹¹⁴ MAGs, paragraph 4.3.6.

¹¹⁵ It would be more than de facto control as defined at paragraph 4.28 of [Mergers: Guidance on the CMA's jurisdiction and procedure, CMA2](#): 'Merger arrangements may give rise to a position of 'de facto' control when an entity controls a company's policy, notwithstanding that it holds less than the majority of voting rights in the target company (that is, it does not have a controlling interest).'

- 6.18 We consider Hunter Douglas' submissions set out in paragraph 6.12 above in Appendix B. For the reasons set out in that appendix, we are unconvinced by Hunter Douglas' arguments that it had the legal ability to block any sale by the Founding Shareholders.
- 6.19 Hunter Douglas' other submissions in their Response to our Provisional Findings, as set out in paragraphs 6.11 and 6.13 above, are considered in our assessment of Scenarios 1 and 2 below.
- 6.20 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, with Hunter Douglas potentially increasing its shareholding but maintaining a controlling interest. For 247, we have considered three scenarios relating to its ownership, which are set out below.

Scenario 1: Continuation of majority ownership by the 247 Founding Shareholders

- 6.21 The situation prior to the 2019 Transaction was that Hunter Douglas held certain rights in 247, which were attached to convertible loan notes it had acquired in 2013 and set out in a stakeholder agreement (the Stakeholder Agreement) between Hunter Douglas and the 247 Founding Shareholders. These convertible loan notes were subject to the terms of the LNI between the Parties. This instrument provided that 'Notes shall be repaid in full at par on 30 June 2020 or (if later) on the tenth business day following finalization of the audited Accounts of the Company for the fiscal year ending 28 February 2019.' The audited accounts of 247 have been filed for that fiscal year.
- 6.22 This means that after 30 June 2020, if no other action was taken, the loan notes would have matured and been redeemed. If this had occurred Hunter Douglas would no longer have had any interest in 247 and any rights it held in 247 prior to the 2019 Transaction, attached to the convertible loan notes it acquired through the 2013 Transaction, would have fallen away. In our view, 247 would have then competed with Blinds2Go, and any other Hunter Douglas group companies, as a fully independent rival.
- 6.23 However, the maturing and redemption of the loan notes would have led to Hunter Douglas losing substantially all of the value of their 2013 investment in 247. Hunter Douglas told us that '[g]iven that the value of 49% of the share capital of 247 would have run to many millions of pounds at whatever point the conversion right was exercised, it would have made no sense to have redeemed the loan notes in 2020.' As a result, in our view, Hunter

Douglas would have had a strong incentive to exercise its right under the LNI to convert its loan notes into 49% of the equity shares of 247.

6.24 Therefore, under this scenario:

- (a) Hunter Douglas would have initially continued to have the same level of influence over 247's policy that it had prior to the 2019 Transaction.
- (b) At some point before 30 June 2020, Hunter Douglas would have exercised its right to convert its loan notes into equity shares, providing it with a 49% stake in 247. Hunter Douglas would also have continued to enjoy the voting, veto and other rights that are set out in the Stakeholder Agreement, summarised at paragraph 3.4 above, which does not have a termination date and has effect regardless of whether Hunter Douglas' interest in 247 is held as shares or loan notes. Therefore, on conversion of the loan notes to equity, Hunter Douglas would have retained a similar ability to influence 247's policy¹¹⁶ that it did prior to the 2019 Transaction.

6.25 As a result, we find that, under this scenario, the conditions of competition throughout the counterfactual period may be similar to those that prevailed prior to the 2019 Transaction. Even after Hunter Douglas exercised its option to convert the loan notes to equity, which, in our view, would be likely to happen at some point before 30 June 2020, it would continue to benefit from the additional rights set out in the Stakeholder Agreement. This would mean that conditions similar to the prevailing conditions of competition that existed prior to the 2019 Transaction would continue for the foreseeable future.

Scenario 2: Alternative purchaser of Founding Shareholders' stakes in 247

- 6.26 We also considered whether, in the absence of the 2019 Transaction, the 247 Founding Shareholders' stakes would have been acquired by an alternative purchaser. Given the ability and incentive for Hunter Douglas to convert its loan notes into equity before 30 June 2020, we find that it would also do so under this scenario.
- 6.27 In considering this scenario, in our view, the following evidence clearly indicates that it was the continuing intention of the 247 Founding Shareholders to ultimately sell their shares in 247. Hunter Douglas told us that the 2013 Transaction was structured to provide for the eventual exit of 247's Founding Shareholders from the business. It said 'From the 247 perspective, the structure provided a guaranteed exit route. David Maher, in particular, was looking to retire and the put option allowed both of the

¹¹⁶ As noted at paragraph 5.29 above, we find this to be material influence.

247 founding shareholders to exit the business whilst maximising the value which could be achieved.’ Moreover, as discussed at paragraph 3.17(a), the 247 Founding Shareholders also discussed their intention to exercise the put option, which they acquired in 2013, with Hunter Douglas in 2017, indicating their continued intention to sell their shares in 247. This would have required Hunter Douglas to acquire 100% of the shares in 247 in 2019.

6.28 [REDACTED].¹¹⁷ [REDACTED],¹¹⁸ [REDACTED].

6.29 The evidence above shows that several potential purchasers were interested in acquiring 247 around the time of the 2019 Transaction. Given that, for the reasons set out in paragraph 6.27 above, it was the continuing intention of the 247 Founding Shareholders to sell their shares, we find that 247 Founding Shareholders are likely to have been supportive of any such sale to a third party. The competitive outcome under this scenario would be similar to Scenario 1 until the sale to an alternative purchaser. At this point, Hunter Douglas would own 49% of the equity in 247 with a third party now holding a majority 51% of the shares in 247.

6.30 One of the rights held by Hunter Douglas under the LNI was a veto over any transfer of the 247 Founding Shareholders’ shares. We find that while Hunter Douglas had the benefit of this right it would have both the ability and the incentive to use it as leverage to impose conditions or obligations, including imposing the additional rights it held under the Stakeholder Agreement (summarised at paragraph 3.4 above), against any third-party buyer.

6.31 However, as noted in paragraph 6.24(b) above, in our view it is likely that Hunter Douglas would have converted its loan notes into equity before they matured and redeemed on 30 June 2020. At this point, Hunter Douglas would no longer benefit from the veto right in the LNI over the transfer over the 247 Founding Shareholders shares for the reasons set out in of Appendix B.

6.32 We also considered whether there were any other terms in the Stakeholder Agreement, or each of the Call Option Agreements or Put Option Agreements that would have given Hunter Douglas the ability to prevent a sale of the 247 Founding Shareholders’ shares in 247, and thus provided Hunter Douglas with similar leverage to impose any conditions or obligations against any third-party buyer of the 247 Founding Shareholders’ shares. For the reasons set out in Appendix B once the loan notes either

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

matured, and were redeemed, or were converted to equity, in our view, Hunter Douglas no longer had such an ability and, thus, no such leverage.

- 6.33 In its response to the Provisional Findings, Hunter Douglas disputed that it would not have leverage in this scenario. It said that it had the ‘ability to bring considerable commercial pressure to bear’ on 247’s new owner as part of negotiations around joint venture arrangements. It also said that the 247 Founding Shareholders and any new owner would have ‘strong incentives’ to avoid disputes and maintain a working relationship with it, given its continuing 49% stake.¹¹⁹
- 6.34 Because any third-party buyer would not be a party to the Stakeholder Agreement, we find that, if the 247 Founding Shareholders were to have sold their shares to a third party after Hunter Douglas converted their loan notes to equity, Hunter Douglas would not have had a legal veto in respect of such a sale and would not have had the leverage from such a veto to impose additional rights against that third party beyond those it would have as a result of holding 49% of the shares in 247.
- 6.35 Notwithstanding the lack of a veto, it is possible that Hunter Douglas would be able to negotiate some limited rights with the new majority owner. However, in our view, this would, at most, be limited to having rights that protected the value in Hunter Douglas’ remaining equity stake in 247 and would not extend to being able to negotiate rights that would have a material impact on the ability of the purchaser to be able to pursue an independent competitive strategy with 247 from Hunter Douglas’ other business interests, including Blinds2Go. In our view it is unlikely that Hunter Douglas would have been able to negotiate operational veto rights similar to the ones it enjoyed before the 2019 Transaction from a new third-party purchaser. As a result, this would leave Hunter Douglas with less ability to influence the policy of 247, including its strategic direction and commercial objectives, than it had prior to such a sale.

Scenario 3: Alternative purchaser for 100% of 247

- 6.36 Under this scenario, an alternative purchaser would have acquired 100% of 247, as a result of the 247 Founding Shareholders and Hunter Douglas both selling their stakes in 247.
- 6.37 Given the incentive and stated objective of Hunter Douglas to remain invested in 247, and given the stated objective of the 247 Founding Shareholders to sell their shares and for David Maher to exit the business

¹¹⁹ Parties’ Response to Provisional Findings, paragraph 3.29

at some point, our initial view is that this scenario might occur under the following conditions:

- (c) No alternative purchaser could be found for just the 247 Founding Shareholders' 51% stake; and
- (d) The differing objectives between Hunter Douglas and the 247 Founding Shareholders were such that they led to a decline in the performance of 247 to the extent that Hunter Douglas concluded that the best way to realise the value of its investment would be through a sale.

6.38 Under this scenario, the conditions of competition would be similar to those prevailing at the time of the 2019 Transaction until 247 was sold, when it would compete under its new ownership as an independent rival to Hunter Douglas.

6.39 Hunter Douglas submitted that it had never considered the possibility of selling its stake in 247. At the main party hearing, the representatives of Hunter Douglas stated that Hunter Douglas had never sold a core window covering business and that it saw itself as a 'permanent home for entrepreneurs who want to sell their business'. They went on to state that 'it would cause real reputational damage if we were to be perceived as people who buy and sell companies.'

6.40 Hunter Douglas also pointed out that 247 had not suffered a decline in performance and that it was continuing to perform well at the time of the 2019 Transaction.

Assessment of scenarios

6.41 For 247, we have considered three counterfactual scenarios:

- (a) Scenario 1: Continuation of majority ownership by the 247 Founding Shareholders;
- (b) Scenario 2: Alternative purchaser of the 247 Founding Shareholders' stakes in 247;
- (c) Scenario 3: Alternative purchaser for 100% of 247.

6.42 We note the Parties' arguments with respect to Scenario 3. While the circumstances required for a 100% sale of 247 appear possible, in our view this scenario is not the most likely counterfactual.

6.43 We then considered whether Scenario 1 or Scenario 2 was a more likely counterfactual. Under both scenarios Hunter Douglas would continue to

own 49% of 247. However, only under scenario 1 would Hunter Douglas have substantial additional rights in 247, namely those it held prior to the 2019 Transaction under the Stakeholder Agreement.

- 6.44 We considered Hunter Douglas' submission, set out in paragraph 6.13 above, that our assumption that the 247 Founding Shareholders would have 'declined' to take up their put options 'does not withstand scrutiny'. We would note that, as explained at paragraph 6.17 above, we cannot consider the exercise of one of the call or put options as the most likely counterfactual as this would result in Hunter Douglas acquiring a controlling interest in 247, and thus have the same effect as the relevant merger situation we found in relation to the 2019 Transaction.
- 6.45 We also note Hunter Douglas' submission that there was no reason to believe that both 247 Founding Shareholders would wish to sell their stakes.¹²⁰ As evidence that this was not the case, Hunter Douglas submitted an email exchange from June 2018 between Mr Peterkin, one of the 247 Founding Shareholders, and Mr Sonnenberg. Hunter Douglas submitted that this email exchange demonstrated Mr Peterkin's desire to remain with the 247 business. In the email exchange, [REDACTED].
- 6.46 We recognise that the 247 Founding Shareholders had individual agreements with Hunter Douglas. It is therefore legally possible that only one of the 247 Founding Shareholders could have sold their interest to a third party who would then be a minority shareholder holding 25.5% alongside the remaining 247 Founding Shareholder. This would lead to an ownership structure where Hunter Douglas held 49% of 247, with the other 247 Founding Shareholder and the third party each holding 25.5%. We also recognise that, following the 2019 Transaction, while one shareholder retired, the fact that the other, namely Mr Peterkin, continued to be employed by Hunter Douglas to manage 247 indicates that Mr Peterkin had an interest in remaining involved in the 247 business. In our view, [REDACTED].
- 6.47 We consider that the scenario outlined above is less likely than a sale of both 247 Founding Shareholders' stakes together to a single third-party purchaser for the following reasons:
- (a) Given the previous joint ownership and management of 247 by the 247 Founding Shareholders, we consider they would be unlikely to make such a significant decision independently of each other. We do not find that the email exchange Hunter Douglas submitted to us, summarised at paragraph 6.45 above, is contrary to this view;

¹²⁰ Parties' response to Provisional Findings, paragraph 3.33

- (b) In addition, in our view, a minority stake in 247 would be less to be attractive to a potential purchaser than a controlling stake. The sale of both of the 247 Founding Shareholders' stakes together would attract a control premium from any buyer and so be worth more to each of them than selling their stakes individually to separate buyers; and
- (c) Mr Peterkin selling his stake would not prevent him remaining involved with 247. Under the 2019 Transaction itself, Mr Peterkin sold his stake in 247 but was able and willing to remain involved in managing 247. A similar arrangement could be put in place by a single third-party purchaser of both 247 Founding Shareholders' stakes.

6.48 We note that 247 is a profitable business with a track record of growth. The 247 Founding Shareholders had already received one formal offer to purchase the business (from [X]). We also note the expressed desire of the 247 Founding Shareholders to sell their shares and for David Maher to exit the business (see paragraph 6.27 above). We consider that these factors combined provide reasonable evidence that the 247 Founding Shareholders would, in the absence of the 2019 Transaction, have been most likely to have sold their shares to a third party. We accept, for the reasons set out at paragraph 6.35, that this third party might agree to grant some rights to Hunter Douglas but that these would be limited to protecting the value of Hunter Douglas' investment asset out in paragraphs 22 and 23 of Appendix B and at paragraph 6.35 above.

Findings on the most likely counterfactual

6.49 We find it most likely that, in the absence of the 2019 Transaction, the shares held by the 247 Founding Shareholders would at some point have been bought by a third party after Hunter Douglas had converted their loan notes to equity. For the reasons set out at paragraph 6.27 above, in our view, it was the continuing intention of the 247 Founding Shareholders to sell their shares in 247. We therefore find that, absent the 2019 Transaction, the most likely scenario is that both the 247 Founding Shareholders would have sought to sell their shares in 247 to a single third-party buyer, as per scenario 2. At this point, for the reasons set out at paragraphs 6.32 to 6.35 above, Hunter Douglas would no longer be able to exercise the veto and other rights it held under the Stakeholder Agreement, leading to 247 having more independence than it had prior to the 2019 Transaction.

7. Market definition

- 7.1 In this section we present our assessment of the relevant product and geographic market. Market definition provides the appropriate framework for assessing the competitive effects of the Merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the 2019 Transaction, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.¹²¹

Product market definition

- 7.2 The relevant product market is a set of products that customers consider to be close substitutes, for example in terms of utility, brand or quality.¹²² In identifying the relevant product market the CMA will pay particular regard to demand side factors (the behaviour of customers and its effects). However, the CMA may also consider supply-side factors (the capabilities and reactions of suppliers in the short term) and other market characteristics.¹²³
- 7.3 The Parties overlap in:
- (a) the online retail supply of M2M blinds;
 - (b) the online retail supply of M2M curtains;
 - (a) the online retail supply of ready-made curtains; and
 - (b) the online retail supply of shutters.
- 7.4 We have restricted our inquiry to consider the overlap between the Parties in the online retail supply of M2M blinds, this being the principal area of overlap between the Parties.
- 7.5 As discussed in the Industry Background section, online M2M blinds are tailored blinds purchased by customers online through a retailer's website. Customers can browse the website for various styles of blinds (eg roman, venetian) in a variety of materials and colours, and usually are able to order a free sample of a given blind.¹²⁴ Having selected their desired blind,

¹²¹ MAGs, paragraph 5.2.2.

¹²² MAGs, paragraph 5.2.5(a).

¹²³ MAGs, paragraph 5.2.6.

¹²⁴ Although some retailers charge a fee for samples.

customers provide dimensions, measured in width and drop.¹²⁵ Customers may also be able to make other customisations, for example by dictating the width of the slats on a venetian or wooden blind.

- 7.6 On receipt of an order, online M2M retailers source the blind to fulfil the order and arrange delivery. Some retailers, including both of the Parties, arrange for delivery directly from manufacturers to customers and do not hold their own inventory.
- 7.7 Once the customer has received their order, they fit the blinds themselves by either following instructions provided by the retailer, or by arranging for someone else to fit the blinds independently.
- 7.8 The Parties submitted that the relevant market to assess the Merger should be wider than M2M blinds, and also wider than blinds more generally. The Parties specifically noted the constraint from different window coverings including curtains and shutters and from ready-made blinds. Additionally, the Parties noted the constraint from in-store and in-home channels on M2M blinds supplied through the online channel.¹²⁶ The Parties submitted that even if these are not considered as part of the relevant market, it is highly relevant to consider how such out-of-market factors exercise a constraint on their activities.¹²⁷
- 7.9 The Parties further submitted a customer survey (the 'BDRC Survey'), which was commissioned to understand the purchase journey and choices of the Parties' customers.¹²⁸ We take into account the survey evidence as part of our market definition and also assess the general robustness of the survey results in Appendix C.
- 7.10 In this section, using the online retail supply of M2M blinds as our starting point, we consider whether the market should be widened to include:
- (a) curtains and shutters;
 - (b) ready-made blinds; and
 - (c) other sales channels, eg in-store and in-home.
- 7.11 In addition to our assessment of the relevant market, we will take into account the strength of the competitive constraint of alternative products

¹²⁵ Instructions on how to take these measurements are usually available on online M2M retailers' websites.

¹²⁶ [Main submission](#), 20 May 2020, paragraph 6.76 and 6.77.

¹²⁷ [Main submission](#), 20 May 2020, paragraph 6.65.

¹²⁸ [Main submission](#), 20 May 2020, paragraph 1.8; BVA-BDRC Blinds Survey Final Report_20 May 2020; [Main submission](#), 20 May 2020, Annex 0093.

and retail channels (as noted in paragraph 7.9 above) as part of the Competitive Assessment (see paragraphs 8.241 to 8.252).

Curtains and shutters

The Parties' views

- 7.12 The Parties submitted that any competitive analysis must consider the extent to which retailers of other window covering products exercise a competitive constraint on the activities of the Parties.¹²⁹
- 7.13 The Parties' argued that there has been a shift in demand from alternative window coverings to online M2M blinds, and that customers of online M2M blinds consider other window coverings before purchasing online M2M blinds:
- (a) The Parties submitted that a report by AMA Research (the 'AMA report') highlights shifts in demand between blinds, curtains and shutters, with blinds and shutter purchases increasing at the expense of curtains.¹³⁰ Additionally, the Parties submitted that Blinds2Go's growth has not been based on winning share from other online M2M blinds retailers, but persuading customers to choose online M2M blinds instead of alternative window coverings (or instead of ready-made blinds and in-store M2M blinds).¹³¹
 - (b) The Parties submitted that customers start their purchase journey by considering a range of window covering alternatives they find appealing across blinds, curtains and shutters.¹³² In support of this, the Parties noted that the BDRC Survey shows that 8-11% of their customers consider curtains and 16-17% consider shutters before purchasing M2M blinds online.¹³³

Our assessment

- 7.14 In Hunter Douglas/Hillarys the CMA concluded that there was a product frame of reference for the retail supply of blinds, separate from curtains and shutters.¹³⁴

¹²⁹ [Main submission](#), 20 May 2020, paragraph 6.77 and 6.78.

¹³⁰ [Main submission](#), 20 May 2020, paragraph 6.78.

¹³¹ [Main submission](#), 20 May 2020, paragraph 1.8.

¹³² [Main submission](#), 20 May 2020, paragraph 6.20.

¹³³ [Main submission](#), 20 May 2020, paragraph 6.78.

¹³⁴ [Hunter Douglas/Hillarys](#), paragraphs 53 to 59. With respect to curtains, the vast majority of retailers responding to the CMA's market testing in that case indicated that curtains are not a demand-side substitute for blinds. The CMA found a similar lack of demand-side substitution between blinds and shutters and also found

- 7.15 For the reasons set out below, our view is that, consistent with the finding in Hunter Douglas/Hillarys the curtains and shutters should not form part of the same product market as M2M blinds.
- 7.16 With respect to demand-side substitution, the BDRC Survey suggests that the constraint from curtains and shutters on the Parties' online M2M blinds offering is weak. When asked what they would do in a hypothetical situation where the respective Party had stopped selling blinds, only 5% of respondents for Blinds2Go and only 3% of respondents for 247 said that they would divert to other window coverings.
- 7.17 While we recognise that, as the Parties have highlighted, the BDRC Survey shows that a higher (albeit still relatively low) proportion of respondents considered purchasing curtains or shutters before ultimately purchasing M2M blinds, the fact that customers 'considered' other products does not allow for strong conclusions regarding their willingness to switch to such products. In particular, 'consider' does not reveal whether a customer would switch to the product considered in case of a price rise or in case its preferred option was not available. We therefore find that the extent to which customers considered other window coverings is not particularly informative as to the competitive constraint these products exert on M2M blinds.
- 7.18 Responses from third parties were in line with the customer evidence from the BDRC Survey: of the thirteen third party suppliers of M2M blinds and/or other window coverings which commented on whether customers would switch from blinds to curtains or shutters if the price of all blinds increased by 5%, ten responded that customers would not switch (with the remaining three suggesting that customers would potentially switch). Additionally, John Lewis told us that customers typically choose a specific type of interior window covering early on based on aesthetic and functional considerations and would postpone the purchase or shop around within a product category in case of a price rise.
- 7.19 We also assessed the extent to which blinds and other window coverings are taken into account jointly or presented jointly by the Parties as part of their competitive offering. We find that blinds are typically positioned separately from other window coverings, which is consistent with blinds and other window coverings forming separate relevant markets:

limited evidence of supply-side substitution between blinds and shutters (contrary to Hunter Douglas' submissions at the time).

- (a) The Parties do not tend to monitor alternative window coverings vis-à-vis their M2M blinds.¹³⁵ This lack of monitoring by the Parties supports our view that the Parties' do not consider alternative window coverings as a material competitive constraint.
- (b) The contemporaneous record of the board-level consideration of Hunter Douglas' proposed acquisition of Blinds2Go in 2015 discusses the rationale for that transaction by reference to blinds only (with there being no mention of curtains or shutters). Whilst acknowledging that this document was prepared in the context of that acquisition at the time, we have not been presented with any further internal documents that indicate that, since 2015, curtains or shutters pose a material constraint on blinds.

7.20 In response to the Parties' argument on growth in blinds being driven by migration from other window coverings, we do not consider that this indicates that other window coverings pose a competitive constraint on blinds:

- (a) First, even if customers would move from other window coverings to blinds in response to a small but significant non-transitory increase in price ('SSNIP'), this would only indicate that blinds exercise a competitive constraint on other window coverings, but not necessarily that other window coverings constrain blinds.
- (b) Second, a migration to blinds (to the extent it is actually occurring) could reflect a shift in customer preferences, rather than a result of substitution, and therefore does not necessarily support the position that customers would switch from other window coverings to blinds in response to a SSNIP.
- (c) Third, it is unclear to what extent such migration actually took place, given the Parties submitted that the growth of online M2M blinds has come primarily at the expense of sales of ready-made blinds as well as M2M blinds through other distribution channels.¹³⁶

7.21 Finally, we have considered the possibility of supply-side substitution between different window coverings. In particular, we have considered the extent to which suppliers of other types of window coverings may be readily able to supply online M2M blinds in response to a change of prices. We note the following in this regard:

¹³⁵ [REDACTED].

¹³⁶ [Main submission](#), 20 May 2020, paragraph 4.16.

- (a) At the manufacturing/wholesale level, neither the Parties nor third parties have provided us with evidence that manufacturers of different window coverings have the ability or incentive to shift production between different window coverings, or that they actually do so currently. Further, we also note that window covering retailers purchase the different types of window coverings from different manufacturers and that not all of these suppliers supply blinds, shutters and curtains. This therefore indicates that it may not be straightforward to use an existing supply chain to be able to supply different types of product.¹³⁷
- (b) At the retail level, whilst we acknowledge that certain retailers may supply more than one type of window coverings, we also note that suppliers' market positions (as evidenced by shares of supply) in blinds, curtains and shutters appear to be materially different.¹³⁸ This material difference between product category shares indicates that the conditions of competition for different product categories are different, which is consistent with separate markets for different products.

7.22 Overall, we find that curtains and shutters do not form part of the same product market as M2M blinds. We take into account any out-of-market constraint exerted by curtains and shutters in the Competitive Assessment section, paragraphs 8.241 to 8.252.

Ready-made blinds

The Parties' view

7.23 The Parties also submitted that M2M blinds compete directly with ready-made blinds.¹³⁹

7.24 In this regard, the Parties submitted that the BDRC Survey shows that 26% of Blinds2Go's customers and 30% of 247's customers consider ready-made blinds before purchasing M2M blinds online.¹⁴⁰ The Parties also submitted that, in addition to multi-channel retailers that sell both M2M and

¹³⁷ For example, we understand (i) that Rectella and J Rosenthal & Sons, two key suppliers of ready-made curtains, do not supply blinds; (ii) that fabric suppliers play an important role for made-to-measure curtains but not for M2M blinds and (iii) that TCMM Shutter Group and Plantation Shutters, two key suppliers of shutters, do not supply blinds.

¹³⁸ For example, the main retailers of shutters are diyshutters.co.uk, Californiashutters.co.uk, shutterlyfabulous.com, shuttercraft.co.uk and Plantation Shutters, neither of which has any significant position in M2M blinds. Diyshutters.co.uk, Californiashutters.co.uk, shutterlyfabulous.com, shuttercraft.co.uk and Plantation Shutters.

¹³⁹ [Main submission](#), 20 May 2020, paragraphs 6.76 and 6.77.

¹⁴⁰ [Main submission](#), 20 May 2020, paragraph 6.66.

ready-made blinds, the BDRC Survey identifies B&Q, Ikea, Homebase and Argos as retailers that the Parties' customers are considering during their purchase journey and would divert to in the event the Parties were unavailable. Additionally, the Parties noted that Google Trends data for searches related to 'blinds' also identifies Ikea and Argos.

- 7.25 The Parties also submitted that M2M blinds purchases are increasing primarily at the expense of ready-made blinds (as well as M2M blinds through other distribution channels) and that Blinds2Go's growth has been based on persuading customers to choose online M2M blinds instead of ready-made blinds.¹⁴¹ The Parties submitted that a high proportion of the Parties' products have a ready-made equivalent and noted that the leading ready-made blinds retailers offer, in total, 352 different size combinations, with an additional 93 combinations available from eBay.¹⁴² The Parties also noted that if customers were only interested in blind dimensions, 48% of Blinds2Go's and up to 54% of 247's products would be available in a ready-made equivalent, while almost 40% of Blinds2Go's and 45% of 247's would have a ready-made equivalent if customers wanted a particular type of blind (e.g. roller or roman).¹⁴³ The Parties noted that these percentages are likely to significantly understate the competitive constraint imposed by ready-made blind retailers due to the analysis only including approximately 70% of the market, the ability for customers to modify ready-made blinds to suit their needs, and the ability for blinds to be fitted outside the recess, where tolerances for width and drop dimensions are much wider.¹⁴⁴ Further, the Parties submitted that, with respect to range, even if customers viewed colour and/or pattern as an important feature, the majority of M2M blind sales are in 'neutral colours' that are readily available in ready-made alternatives.
- 7.26 Finally, the Parties submitted that ready-made blind alternatives are priced very competitively compared with M2M and provided a comparison of Blinds2Go's average retail prices with ready-made average retail prices, both by type of blind and by type of blind and retailer.¹⁴⁵ The Parties noted that while there are differences in quality between M2M blinds and some ready-made products, even for products with comparable quality, ready-made blinds are still priced to undercut Blinds2Go's M2M products.¹⁴⁶

¹⁴¹ [Main submission](#), 20 May 2020, paragraphs 1.8 and 4.16.

¹⁴² [Main submission](#), 20 May 2020, paragraph 6.68.

¹⁴³ [Main submission](#), 20 May 2020, paragraph 6.70.

¹⁴⁴ [Main submission](#), 20 May 2020, paragraph 6.71.

¹⁴⁵ [Main submission](#), 20 May 2020, paragraph 6.72 and Figures 6.15 and 6.16.

¹⁴⁶ [Main submission](#), 20 May 2020, paragraph 6.74.

Our assessment

- 7.27 In Hunter Douglas/Hillarys, the CMA adopted a product frame of reference for the retail supply of M2M blinds, separate from ready-made blinds, on the basis that the majority of third parties did not consider ready-made blinds to be a substitute for M2M blinds and evidence indicating that the conditions of competition for M2M and ready-made blinds are different.¹⁴⁷
- 7.28 For the reasons set out below, our view is that, consistent with the finding in Hunter Douglas/Hillarys ready-made blinds should not form part of the same product market as M2M blinds.
- 7.29 With respect to demand-side substitution, the BDRC Survey submitted by the Parties shows that only 13% of respondents for Blinds2Go and 12% of respondents for 247 would divert to ready-made blinds when asked what they would do in a hypothetical situation where the respective Party had stopped selling blinds.¹⁴⁸ These percentages are higher than the proportion of respondents indicating they would divert to other window coverings, suggesting that ready-made blinds are a more important constraint on the Parties than other window coverings. The Parties submitted that these percentages are very similar to the diversion (as implied by the BDRC Survey) from Blinds2Go to 247, which the CMA called ‘significant’.¹⁴⁹ In making this comparison, the Parties are comparing diversion to a single competitor (ie 247) with the aggregate diversion to ready-made blinds sold by a number of different retailers. However, in contrast, comparing the proportion of respondents indicating they would divert to ready-made blinds with the proportion of respondents indicating they would divert to other retailers of online M2M blinds, namely 66% for Blinds2Go and 75% for 247, we find that diversion to ready-made blinds is comparatively small. This suggests that ready-made blinds are a significantly weaker constraint on the Parties than online M2M blinds offered by other retailers.
- 7.30 Additionally, we note that the proportion of respondents that said that they would divert to ready-made blinds is small when compared to the relative size of sales of ready-made blinds. In particular, our market share estimates show that sales of online M2M blinds by Blinds2Go’s competitors amounted to £84 million in 2019 (see paragraph 8.10), while the Parties estimated that sales of ready-made blinds amounted to £125 million in 2019. Despite ready-made sales being significantly larger, Blinds2Go’s customers were substantially more likely to switch to other retailers selling

¹⁴⁷ [Hunter Douglas/Hillarys](#), paragraphs 64 to 65.

¹⁴⁸ [Main submission](#), 20 May 2020, paragraph 6.59.

¹⁴⁹ [Parties' response to Provisional Findings](#), 7 August 2020, paragraphs 4.24 and 4.94.

online M2M blinds than to ready-made blinds. This suggests that ready-made blinds would at best be a distant competitive constraint.¹⁵⁰

- 7.31 The Parties submitted that this assessment fails to account for the significance of a customer's journey, noting that the BDRC Survey is a survey only of those customers who ultimately ended up choosing an online M2M blinds retailer and that these customers are more likely to consider another M2M blinds retailer.¹⁵¹ However, responses from customers that ultimately decide to purchase online M2M blinds are highly relevant, as it is the behaviour of those customers (namely their willingness to switch to ready-made blinds) that determines the extent to which ready-made blinds constrain M2M blinds. We therefore find that it is appropriate to focus on the responses of those customers.
- 7.32 While we recognise that, as the Parties have highlighted, the BDRC Survey shows that a material proportion of respondents considered purchasing ready-made blinds instead of M2M blinds, the fact that customers 'considered' ready-made blinds does not allow for strong conclusions regarding their willingness to switch and hence the competitive constraint ready-made blinds exert on M2M blinds.¹⁵² This is consistent with the view that customers may consider the option of ready-made blinds but ultimately decide at an early stage that they are not suitable for their requirements.
- 7.33 With respect to the Parties' submission that Google Trends data for searches related to 'blinds' also identifies Ikea and Argos, we have not received any evidence that this data is driven by customers considering both ready-made and M2M blinds as part of their purchase journey. In fact, we note that the BDRC Survey shows that only 1% or less of respondents visited the website of Ikea or Argos prior to their purchase of online M2M blinds and that only a very small proportion of respondents would switch to Ikea and Argos. We therefore consider that Ikea and Argos appearing in the Google Trends data is likely to be driven, at least to an extent, by customers looking exclusively for ready-made blinds. Additionally, Ikea and Argos are not formally monitored by any online M2M blind retailer.
- 7.34 Third party views on the propensity of customers to switch to ready-made blinds tended to suggest that ready-made blinds should not form part of the same relevant product market as M2M blinds. In particular, of the retailers

¹⁵⁰ In particular, if ready-made blinds were as close a competitor as online M2M blinds, we would expect diversion rates to be in line with the magnitude of sales, ie we would expect higher diversion to ready-made blinds than to online M2M blinds.

¹⁵¹ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.22.

¹⁵² We do not dispute that the evidence on what customers 'considered' is objective. However, we find that the word 'consider' does not reveal whether a customer would switch to the product considered in case of a price rise or in case its preferred option was not available.

that expressed a view and sell both categories of blinds, [redacted].¹⁵³ [redacted]¹⁵⁴ Notably, 247 also mentioned that customers that ended up buying M2M blinds from 247 may well need M2M, which suggests that these customers would not switch in response to a SSNIP.

- 7.35 We further assessed the propensity of customers to switch by considering to what extent ready-made blinds offer the same dimensions as M2M blinds. In this regard, we note that evidence from customers and third parties suggests that the need for specific dimensions is a key reason for customers to choose a M2M blind. For example, the BDRC Survey shows that 37% of Blinds2Go' respondents and 36% of 247's respondents selected 'specific dimensions needed made-to-measure' as a reason for purchasing M2M blinds rather than alternative window coverings.¹⁵⁵ Similarly, two M2M blind retailers – both of which sell both M2M and ready-made blinds – [redacted]. No third party provided a view to contradict this.
- 7.36 When counting those ready-made blinds that have exactly the same dimensions, we find that only around 2% of the Parties' sales of M2M blind have a ready-made equivalent. If we allow for a tolerance of +/-1cm for each of width and length, around 5% of the Parties' sales of M2M blinds have a ready-made equivalent.¹⁵⁶ In contrast, the Parties submitted that 40% of Blinds2Go's and 45% of 247's sales of M2M blinds have a ready-made equivalent. The analysis on which the Parties base these results applies different tolerances in terms of which sizes would still constitute an 'equivalent', with tolerances depending on the type of blind and whether the blind is fit inside or outside the recess. The Parties submitted that these tolerances are very conservative.¹⁵⁷ However, at least for some blinds, the applied tolerances appear to be very generous and we have not received

¹⁵³ [redacted].

¹⁵⁴ Interior Goods Direct, [redacted], Swift Direct Blinds and MakeMyBlinds all submitted that customers would not Switch. However, Concept Systems noted that customers would possibly switch, while Wilsons Blinds submitted that customers would switch.

¹⁵⁵ Similarly, market research submitted by Swift Direct Blinds shows that 'made to measure' was selected as the single most important factor in the respondent's decision making by the highest proportion of respondents (namely 25.4%) and further scored highest in terms of importance to the respondents' buying decision.

¹⁵⁶ Our analysis is based on the sales data submitted by the Parties in response to the CMA Questionnaire of the 14 May 2020, Annex 0114 and Annex 0130 and on the measures of ready-made blinds available submitted by the Parties as Annex 0102 to the main submission. We note that the Parties submitted that the measures of ready-made blinds available only consider the 11 top ready-made blinds retailers (representing the 80% of the ready-made market in 2018). With respect to the Parties' argument that only the 10 top ready-made blind retailers (representing approximately 70% of the market in 2018) were included in the analysis, we do not think that this is likely to substantially bias the results, as we would reasonably expect the 10 top ready-made blind retailers to most of the available sizes.

¹⁵⁷ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.100.

any evidence that customers would be willing to accept such tolerances.¹⁵⁸

159

- 7.37 We also note that the claimed availability of ready-made equivalents calls into question why customers purchase M2M blinds when ready-made blinds are considerably cheaper even for comparable quality (see paragraph 7.44). The Parties submitted that a narrow focus on price ignores the other factors that some customers value (including easy to use website, product quality, and product range). However, and as described in paragraph 7.44, the price difference persists even for products with reportedly comparable quality. We also note that the Parties themselves argued that product range is of limited importance,¹⁶⁰ and that the Parties have not provided any evidence to show that the listed factors are indeed causing the observed price differences. Overall, we find that the Parties have not convincingly explained what warrants the significant price differences we observe.
- 7.38 We note the Parties' argument that M2M blinds are just cut-down ready-made blinds and that customers are able to modify ready-made blinds to suit their needs. However, it is irrelevant for a customer if the retailer from which the customer purchases the product obtains the product by modifying an existing ready-made product or by sourcing an entirely new M2M product. With respect to the prospect of the customer modifying the ready-made product themselves, the Parties submitted that many tutorials with step-by-step guidance are readily available online, and that these videos/tutorials would not be so popular (and retailers would not go to the effort of producing them) if customers were not willing to modify the ready-made blinds themselves.¹⁶¹ The Parties further submitted that the latest AMA report highlights how many customers are willing to alter ready-made blinds.¹⁶²
- 7.39 We acknowledge that cutting ready-made blinds to size may be an option for some customers – and this is consistent with the BDRC Survey showing that 13% of respondents for Blinds2Go and 12% of respondents for 247 would divert to ready-made blinds. However, the Parties' submission on tutorial availability and number of views does not show how widespread the willingness to cut ready-made blinds is. Moreover, the Parties have not

¹⁵⁸ Depending on the type of blind, the positive width or drop tolerance amounted to up to 50cm.

¹⁵⁹ Additionally, we note that, as explained by the Parties, the analysis for 247 relies on applying the uplift factor from Blinds2Go between inside recess vs outside recess. Without this modification, only 26% of 247's sales of M2M blinds have a ready-made equivalent (if otherwise following the Parties' methodology).

¹⁶⁰ The Parties submitted that sales are concentrated among a relatively small number of popular blinds and that range as a competitive constraint should not be overstated; Parties' response to Provisional Findings, 7 August 2020, paragraphs 4.62 and 4.85.

¹⁶¹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.102.

¹⁶² Parties' response to Provisional Findings, 7 August 2020, paragraph 4.102.

provided any evidence that any such willingness poses a competitive constraint on their online M2M blind businesses. The only third-party retailer of M2M blinds to provide a view on customers altering ready-made blinds told us that, although some ready-made blinds can be cut to size, there is a question about whether a customer is likely to do this effectively. Additionally, we note that a widespread willingness to cut ready-made blinds to size would call into question why customers purchase M2M blinds when ready-made blinds are considerably cheaper even for comparable quality.

- 7.40 In addition to the evidence on relative dimensions and the survey evidence, the [REDACTED]¹⁶³ - although the Parties submitted that the majority of customers purchase 'commodity products' (by which the Parties appear to mean standard products).¹⁶⁴
- 7.41 A comparison of the number of stock keeping units (SKUs) for each of M2M blinds and ready-made blinds that are offered by different online retailers suggests that [REDACTED].¹⁶⁵ ¹⁶⁶ We consider that this may further limit the competitive constraint from ready-made blinds on M2M blinds.
- 7.42 The Parties submitted in this regard that [REDACTED]% of M2M blinds sold in March 2020 (by value) were blinds in neutral colours which are readily available as ready-made blinds. However, we consider that the Parties' assessment of 'neutral colours' does not take into account nuances in colour, patterns, fabrics and other options (such as DuoShade™ or DuoLuxe) available for M2M blinds. These variables allow for a degree of customisation in the product that otherwise would not be available in ready-made options. As such, we are not convinced that this submission demonstrates that there is not significantly less choice with respect to ready-made blinds.
- 7.43 We also considered how the prices of M2M blinds and ready-made blinds compare. The Parties submitted a comparison of Blinds2Go's prices for M2M blinds with other retailers' prices for ready-made blinds for a number of different types of blinds (including the key types, ie venetian, roller, vertical and roman blinds). This comparison indicates that M2M blinds are

¹⁶³ The BDRC Survey highlighted that a more suitable design was the key purchase reason for the majority of both Parties' customers. Moreover, 'had what specifically wanted' and 'good/wide product range' was selected by a significant proportion of respondents as a reason influencing the choice of retailer. BVA-BDRC Blinds Survey Final Report 20 May 2020, [Main submission](#), 20 May 2020, Annex 0093. Market research submitted by Swift Direct Blinds further shows that 'good selection of colours' was the product unique selling proposition that obtained the second highest score with respect to the impact it would have on buying decisions, Swift Direct Blinds Brand Bible V3, page 7. [REDACTED].

¹⁶⁴ [Main submission](#), 20 May 2020, paragraph 6.17.

¹⁶⁵ We note that while e.g. different colours and fabrics constitute different SKUs, different sizes do not constitute different SKUs. Our comparison takes into account the Parties for M2M blinds and Dunelm, John Lewis, Next and Argos for ready-made blinds (i.e. the key retailers that offer online ready-made blinds excl. Amazon).

¹⁶⁶ [REDACTED].

significantly more expensive than ready-made blinds. We note that there are a number of examples where Blinds2Go's average price for a specific type of blind is more than twice as high as the average ready-made price of a specific retailer for the same type of blind.¹⁶⁷ Additionally, even for products with reportedly comparable quality (the Parties indicate that this would be products sold by John Lewis and Dunelm),¹⁶⁸ Blinds2Go's M2M blinds are still significantly more expensive than the equivalent ready-made blinds: the lowest price difference amounts to £9 (or 19%) for John Lewis' venetian blinds, with price differences amounting to more than £50 (or more than 100%) for John Lewis's and Dunelm's roman blinds. While price differences in and of themselves do not necessarily imply that products are not part of the same relevant market, we consider that such large-scale price differences, especially for products of similar quality, do indicate that ready-made blinds do not compete directly with M2M blinds.

7.44 We also considered the extent to which the Parties and other retailers of M2M blinds monitor the prices of ready-made blinds. Such monitoring appears to be limited, suggesting that M2M blinds retailers do not consider ready-made blinds to be an important competitive constraint to M2M blinds.

(a) While the Parties [REDACTED].¹⁶⁹

(b) [REDACTED].¹⁷⁰

(c) All other online M2M blind retailers that provided evidence on the subject told us that they do not monitor the prices of ready-made blinds and that they do not consider pure ready-made blind retailers as competitors.

7.45 With respect to supply-side substitution, we note that suppliers of online M2M blinds appear to be distinct from suppliers of ready-made blinds:

(a) None of the four largest online retailers of M2M blinds (ie Blinds2Go, 247, Interior Goods Direct and Swift Direct Blinds) sell ready-made blinds, and more generally, none of the online M2M retailers we contacted sell ready-made blinds. We also note that there are differences further up the supply chain, with Decora, a key manufacturer of M2M blinds, not manufacturing any ready-made blinds.

¹⁶⁷ We note that the price comparisons submitted by the Parties in phase 1 show a similar picture of M2M blinds tending to be substantially more expensive than ready-made blinds, although the Parties argued 'this price differential has materially fallen'. Parties' substantive submission, paragraph 4.18, 20 December 2019.

¹⁶⁸ [Main submission](#), 20 May 2020, paragraph 6.74.

¹⁶⁹ [REDACTED].

¹⁷⁰ [REDACTED].

- (b) While Hunter Douglas told us that there is a very large business in the US of providing cut-down services in the stores, the fact that the largest ready-made retailers have a relatively weak position with respect to online M2M blinds suggests that this is not a common phenomenon in the UK, nor has Hunter Douglas provided any evidence that it will be in the near-future. Indeed, Hunter Douglas told us that Dunelm is not currently doing this in the UK.

7.46 Finally, in response to the Parties' argument that M2M blinds purchases are increasing primarily at the expense of ready-made blinds and that Blinds2Go's growth has been based on persuading customers to choose online M2M blinds instead of ready-made blinds,¹⁷¹ in our view this does not imply that ready-made blinds pose a competitive constraint on M2M blinds such that they should be included in the same relevant market:

- (a) First, even if customers would move from ready-made blinds to M2M blinds in response to a SSNIP, this would only indicate that M2M blinds exercise a competitive constraint on ready-made blinds, but not vice versa. By the same token, we do not consider that the Parties' submission that [X] shows that ready-made blinds constrain M2M blinds.^{172 173}
- (b) Second, a migration to M2M blinds does not support the position that customers would switch to M2M blinds in response to a SSNIP.

7.47 Overall, we find that ready-made blinds should not form part of the same product market as online M2M blinds. Notwithstanding this view, we acknowledge that ready-made blinds do act as a distant competitor to online M2M blinds and we have taken any out-of-market constraint exerted by ready-made blinds into account in the competitive assessment section, see paragraphs 8.241 to 8.252.

¹⁷¹ We note, however, that we have received mixed evidence on this. See for example paragraph 4.10, which indicates higher rates of growth ready-made products as compared to M2M.

¹⁷² [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.97.

¹⁷³ [X], at most shows that M2M blinds constrain ready-made blinds, but it does not show conclusively whether customers of M2M blinds would switch to ready-made blinds and whether ready-made blinds exercise a competitive constraint on M2M blinds.

In-store and in-home

The Parties' view

7.48 The Parties submitted that they currently compete directly with offline retailers of M2M blinds, both in-store and in-home.¹⁷⁴ In this regard, the Parties made the following points:

- (a) First, the Parties submitted that there has been some substitution away from the offline channel to the online channel, arguing that this implies that customers are increasingly seeing these channels as readily interchangeable.¹⁷⁵
- (b) Second, the Parties submitted that Blinds2Go offers a range of products that compete with in-store and in-home products both in terms of price and quality.¹⁷⁶

7.49 Additionally, the Parties submitted that customers consider and interact with different channels as part of their purchase journey.¹⁷⁷ They submitted that the BDRC Survey shows that the Parties' customers also considered purchasing in-store and that 19% of Blinds2Go's customers and 24% of 247's customers visited physical stores before placing their online orders.¹⁷⁸ At least with respect to in-store, the Parties argue that this suggests that online retailers are constrained by the window covering offers available through the offline channel.¹⁷⁹

Our assessment

7.50 In *Hunter Douglas/Hillarys* the CMA adopted, on a cautious basis, separate product frames of reference for the retail supply of M2M blinds by sales channel (ie separate frames of reference for online, in-store and in-home). The CMA's conclusion in that case was based on evidence from the merging parties' internal documents as well as third parties, which indicated that there was a distinction between online, in-store and in-home sales. In particular, third-party evidence in that case indicated that constraints for online retailers come from other online retailers rather than from physical stores (ie in-store) and in-home.¹⁸⁰

¹⁷⁴ [Main submission](#), 20 May 2020, paragraph 6.76.

¹⁷⁵ [Main submission](#), 20 May 2020, paragraph 6.76.

¹⁷⁶ [Main submission](#), 20 May 2020, paragraph 5.12.

¹⁷⁷ [Main submission](#), 20 May 2020, paragraphs 4.7 and 6.44.

¹⁷⁸ [Main submission](#), 20 May 2020, paragraphs 1.8 and 6.43.

¹⁷⁹ [Main submission](#), 20 May 2020, paragraph 6.44.

¹⁸⁰ [Hunter Douglas/Hillarys](#), paragraphs 72 to 79 and 80 to 84.

- 7.51 For the reasons set out below, our view is that, consistent with the finding in Hunter Douglas/Hillarys , M2M blind sales through in-store and in-home channels should not form part of the same product market as M2M blinds sold through the online channel.
- 7.52 In relation to demand-side substitutability, the BDRC Survey submitted by the Parties indicates that the constraint from the in-store and in-home channels on the Parties' online M2M blinds offering is weak. When asked what they would do in a hypothetical situation where the respective Party had stopped selling blinds, only 7% of respondents for Blinds2Go and only 4% of respondents for 247 would divert to the in-store M2M channel. The equivalent figures for the in-home channel are 6% for Blinds2Go and 3% for 247.
- 7.53 The Parties submitted that store closures in the context of COVID-19 may have affected these answers and that the survey responses are therefore likely to understate in-store diversion (ie understate the number of customers that would switch to in-store if their current option was no longer available).¹⁸¹ The Parties further submitted that the CMA fails to give due weight to this.¹⁸² We acknowledge that store closures at the time at which the survey was conducted may have affected survey results. However, the survey was carefully drafted to explore consumers' recent purchase journeys pre-COVID-19 (as the Parties point out),¹⁸³ and therefore designed to minimize any bias resulting from store-closures.
- 7.54 We recognise that, as the Parties have highlighted, the BDRC Survey indicates that a material proportion of online customers visited physical stores before placing their online orders (looking for a similar product or comparing the price of a similar product).¹⁸⁴ However, we consider that customers visiting stores does not necessarily imply that customers would switch to the in-store channel in response to a price increase and that the in-store channel constrains online retailers. Indeed, and as discussed in paragraph 7.52 above, the survey shows that the Parties' customers are unlikely to switch to the in-store channel.
- 7.55 Evidence collected from online M2M blind retailers during the course of our investigation shows relatively low levels of engagement with retailers in other channels, which indicates that in-store and in-home retailers are

¹⁸¹ [Main submission](#), 20 May 2020, paragraph 6.62.

¹⁸² [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.80.

¹⁸³ [Main submission](#), 20 May 2020, paragraph 6.62.

¹⁸⁴ With respect to the Parties' submission that the Parties' customers consider purchasing in-store, we note that the BDRC Survey does not appear to explore whether customers considered other channels. In any case, even if customers did 'consider' purchasing in-store, this would not allow for strong conclusions regarding their willingness to switch to purchasing in-store and hence the competitive constraint their store-channel exerts on M2M blinds.

unlikely to pose a significant competitive constraint on online M2M blind retailers. [REDACTED]. While the Parties submitted that Blinds2Go also frequently visits physical stores that sell M2M blinds, [REDACTED].¹⁸⁵ Second, the Parties submitted that they are not able to estimate market shares for the in-store M2M segment because they are not active in this channel.

7.56 [REDACTED].¹⁸⁶

7.57 As part of our investigation, we also compared the retailers active in the different (ie, online, in-home, in-store) channels. This comparison revealed significant differences in the business model and service proposition of online retailers compared to in-store and in-home retailers. Both in-store and in-home retailers appear to position themselves as full-service providers, offering a more personal experience (including in-person advice) and the option of an at-home measuring and installation service. In contrast, online retailers appear to be more focused on price, with the evidence we have seen showing that online retailers tend to be substantially cheaper than in-store retailers:

- (a) Blinds2Go states on its website that it compared its prices with the five main M2M blind retailers on the high street and that 'in almost 25% of cases we were cheaper by 60% or more'. It further advertises on its website that 'you can also save up to 60% off High St. prices'.¹⁸⁷
- (b) John Lewis noted that in relation to price, its products tend to fall within the mid-range to higher end of the market, due to its use of higher quality materials relative to some of its competitors and its higher overheads compared to online competitors.

7.58 However, Next told us that it charges the same prices for its M2M blinds online and in-store, with the price comparison submitted by the Parties in phase 1 suggesting that Next prices are towards the higher end compared to other online M2M retailers.

7.59 We do not consider that differences in business model and service proposition necessarily imply a lack of competitive constraint, given that customers may, in principle, be willing to substitute between paying more for more service and less for less service. A similar point is made by the Parties themselves, as they argue that customers are likely to be making a quality-price trade-off. However, we note that the Parties also submitted

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

¹⁸⁷ [Blinds2Go website](#), accessed 23 June 2020.

that ‘in-home and in-store products are considered over-priced when faced with a comparable product at significantly lower price which can be measured and fitted with little effort.’¹⁸⁸

7.60 With respect to supply-side substitution, we note that suppliers’ market positions in the different channels appear to be materially different. In particular, whilst some in-store retailers have established an online presence in the sale of blinds (both ready-made and, to a lesser extent, M2M), we observe that none of the in-store or in-home retailers have a significant position within the online M2M blinds market. In particular, we note that in-store retailers selling M2M blinds online typically have a much smaller product range than exclusively online retailers. Moreover, we also note that some in-store and in-home retailers do not have any online sales. For example, for the in-home retailers Hillarys and Thomas Sanderson, their websites only provide lead generation and enable customers to provide contact details and request order samples.¹⁸⁹ Additionally, the multi-channel retailer [X].¹⁹⁰

7.61 Finally, we are unconvinced by the Parties’ argument that M2M blinds purchases are increasing due to substitution away from the in-store and in-home channels to the online channel. We do not consider that the Parties submission implies that offline channels pose a competitive constraint on the online channel:

- (a) First, a migration to online M2M blinds could reflect a shift in customer preferences, rather than a result of substitution, and therefore does not prove that customers would switch to online M2M blinds in response to a SSNIP. The Parties have not provided any evidence that supports that the observed migration is a result of substitution.
- (b) Second, even if customers would move from the in-store and in-home channels to the online channel in response to a SSNIP, this would only show that the online channel exercised a competitive constraint on the offline channel, but not vice versa.

7.62 Overall, we find that the in-store and in-home channels should not form part of the same product market as online M2M blinds. We take into account any out-of-market constraint exerted by M2M blinds sold through the in-

¹⁸⁸ Main submission, 20 May 2020, paragraph 5.16.

¹⁸⁹ Hillarys and Thomas Sanderson websites, accessed on 23 June 2020.

¹⁹⁰ [X].

store and in-home channels in the competitive assessment section, see paragraphs 8.241 to 8.252 below.

Geographic market definition

- 7.63 The Parties submitted that any retail product market identified should be considered national in scope.
- 7.64 In the SLC Decision, the CMA assessed the online retail supply of M2M blinds on a national basis.¹⁹¹
- 7.65 We have not received any evidence to suggest that an alternative geographic market definition would be more appropriate.
- 7.66 We therefore find that a national market definition is appropriate.

Conclusion on market definition

- 7.67 For the reasons discussed above, we find that the appropriate market definition in this case is the online retail supply of M2M blinds in the UK.

¹⁹¹ [Hunter Douglas/Hillarys](#), paragraph 99.

8. Competitive assessment

8.1 In this section, we assess the competitive effects of the 2019 Transaction as they relate to the online retail supply of M2M blinds in the UK. To inform this assessment, we have assessed whether, as a result of Hunter Douglas' ability to unilaterally determine all aspects of 247's competitive strategy (including the ability to set 247's prices), as well as its increased interest in the profits of 247, the 2019 Transaction would be likely to substantially lessen competition by resulting in the Merged Entity increasing prices, lowering the quality of its products or customer service, or reducing the range of its products/services.¹⁹² This is a horizontal unilateral effects theory of harm.

8.2 This section is structured as follows:

- (a) We first discuss our market share estimates for the Parties and their competitors in the online retail supply of M2M blinds in the UK.
- (b) We then describe the key characteristics of competition with respect to the retail supply of online M2M blinds.
- (c) We assess the closeness of competition between the Parties.
- (d) We assess the extent of the competitive constraint on the Parties from other competitors.
- (e) Finally, we set out our assessment of the impact of the Merger on competition.

Market shares

8.3 Market shares can give an indication of the potential extent of a firm's market power. The combined market shares of the merger firms, when compared with their respective pre-merger market shares, can provide an indication of the change in market power resulting from a merger.¹⁹³ While market shares do not provide a full picture, they can give an indication of the presence and size of the key competitors within the market as defined.

8.4 In this section we consider the market shares of the Parties and other suppliers in the market for the online retail supply of M2M blinds in the UK.

¹⁹² MAGs, paragraphs 4.2.3 and 5.4.1.c.

¹⁹³ MAGs, paragraph 5.3.4.

Approach to market share calculations

- 8.5 The Parties submitted market share estimates for the online retail supply of M2M blinds in the UK in 2019 based on their own sales data and their estimates for the sales of third parties. With respect to third-party sales estimates, the Parties initially estimated the sales of third parties for 2018 and then applied the growth rate of Blinds2Go in 2018 to these estimates to obtain 2019 values.¹⁹⁴
- 8.6 We were able to develop this methodology further by using third parties' actual sales data for 2019, which is not available to the Parties.¹⁹⁵ While we contacted all suppliers of online M2M blinds for which the Parties provided contact details, there are, however, retailers listed in the Parties' market share estimates from whom we did not receive responses and hence do not hold actual sales data.
- 8.7 Despite this lack of actual sales data for some retailers, we still consider it most appropriate to calculate market shares solely based on the actual sales data we hold:
- (a) While we reviewed information contained in market reports, we have not received any market reports that contain a market size estimate for online M2M blinds. We also find that it is not possible to obtain a reliable estimate for online M2M blinds in the UK by triangulating different market reports.
 - (b) While the Parties submitted estimates for the retailers from whom we did not receive responses, we consider that the Parties' estimates are likely to be highly inaccurate and therefore not reliable. In particular, a comparison of the Parties' estimates with actual sales data for suppliers from whom we did receive responses revealed that, in some cases, the Parties' estimates were overstating the actual sales by [REDACTED]. For example, the Parties estimated that Swift Direct Blinds' sales of online M2M blinds in 2019 amounted to £10.7 million, while Swift Direct Blinds submitted that its total sales of online M2M blinds in 2019 were lower than the Parties' estimates at £[REDACTED] million. Similarly, the Parties estimated that eBay's sales of online M2M blinds in 2019 amounted to £34.8 million[REDACTED].¹⁹⁶

¹⁹⁴ The sources used by the Parties in these estimates include publicly available information on the retailers' liabilities and assumptions on the minimum turnover necessary to be viable or deriving sales from the number of reviews on Amazon and eBay.

¹⁹⁵ The actual sales data from third parties in our shares incorporates all retailers that the Parties identified as their 'main competitors' and that, based on the Parties' estimates, had sales of more than £2 million in 2019 (with the exception of Powered Blinds, a retailer only supplying electric blinds).

¹⁹⁶ [REDACTED]. We note that, in the context of the CMA investigation on [Hunter Douglas/Hillarys](#), an email exchange started by David Sonnenberg (Co-President & CEO of the Hunter Douglas Group) and Mark Bramley (Blinds2Go Director) shows that Hunter Douglas used an approach to the eBay sales estimation similar to the one used in

While, due to the inaccuracy of the Parties' estimates, we do not include these estimates in our market share calculations, we nevertheless assessed what the Parties' position would have been had we included these estimates (see sensitivity analysis discussed in paragraph 8.11).

- 8.8 Overall, and for the reasons set out above, we consider that our market share estimates, calculated using actual sales data, are more reliable than the Parties' estimates. Nonetheless, as part of a sensitivity analysis, we have considered the impact of including the Parties' sales estimates for the retailers for whom we did not received actual sales data.

Market share estimates

- 8.9 Table 3 below shows the estimated market shares for the online retail supply of M2M blinds in the UK for 2019.

Table 3: 2019 market shares for the online retail supply of M2M blinds in the UK

<i>Retailers</i>	<i>£m Revenues</i>	<i>% Shares</i>
Blinds2go (incl. Web Blinds)	[£X]	[50 - 60]
247	[£X]	[5 - 10]
Combined	[£X]	[60 - 70]
Interior Goods Direct (incl. Wilsons)	[£X]	[10 - 20]
Swift Direct Blinds	[£X]	[0 - 5]
Bloc Blinds	[£X]	[0 - 5]
Next	[£X]	[0 - 5]
MakeMyBlinds	[£X]	[0 - 5]
Dunelm	[£X]	[0 - 5]
Order Blinds Online Ltd	[£X]	[0 - 5]
Blinds4UK	[£X]	[0 - 5]
Meadow Blinds Ltd / Lifestyle Blinds Ltd	[£X]	[0 - 5]
John Lewis	[£X]	[0 - 5]
eBay (incl. ready-made and shutters)	[£X]	[5 - 10]
Amazon Marketplace (incl. ready-made)	[£X]	[5 - 10]
Others (with turnover <0.5m)	[£X]	[0 - 5]
Total	175.9	100.0

Notes: The Parties' sales exclude any sales from Velux, namely £[X] for Hunter Douglas and £[X] for 247.

- 8.10 From these market share estimates, we note that:

- (a) Blinds2Go is by far the largest retailer and is several times larger than Interior Goods Direct, the second largest retailer;

the current investigation. In the same email exchange, John Andrews, proposing a methodology for estimating eBay's sales, writes: 'I'll try again with a different tool and see if I am able to get a bigger number'.

- (b) 247 is the third largest retailer and is approximately three times larger than Swift Direct Blinds, the fourth largest retailer;¹⁹⁷
- (c) The combined market share of the Parties is very high, and the increment from 247 is significant in the context of an already concentrated market;
- (d) Other than the Parties and Interior Goods Direct, there are no other online M2M retailers with a market share above 5%, and few retailers with a market share above 1%;
- (e) None of the multi-channel retailers has a market share above 2%; and
- (f) While the market shares of the marketplaces eBay and Amazon are not insignificant, their shares are likely to be significantly over-estimated as sales of ready-made blinds (and in the case of eBay also shutters) are included, and these are likely to account for a large proportion of their sales.¹⁹⁸ Further, we note that, as marketplaces, their share is attributable to collections of individual retailers rather than reflecting their share as a single retailer; as such, their individual shares are likely to be much lower. Both of these factors mean that the shares of Amazon and eBay in the above table are likely to significantly overstate their competitive constraint.

8.11 The Parties submitted that it is not reasonable to assume that the sales of other competitors (ie retailers for whom we do not hold actual sales data) are zero.¹⁹⁹ The Parties also submitted that adding in these omitted retailers would reduce the Parties' combined market share significantly.²⁰⁰ As noted above, we have conducted a sensitivity assessment of our market share estimates which includes these other retailers. Based on the Parties' estimates, these retailers would jointly account for only £39 million in revenue. Even if we added this £39 million to the total market size, the Parties' combined market share would still exceed 50%. As such, we find that the addition of these retailers does not significantly change the position of the Parties or the competitive landscape set out in paragraph 8.10 above.²⁰¹

8.12 The Parties argued that Velux should be included in the market share calculations as it is a competitor to the Parties. However, we do not agree because Velux sales do not appear to constitute a M2M product. In

¹⁹⁷ Although Amazon and eBay appear to have larger shares than Swift Direct Blinds in Table 3, we note that these are marketplace retailers, not a single retailer, and that their respective shares are likely to be significantly over-stated, as set out at 8.10(f).

¹⁹⁸ While unable to provide a clear split, eBay told us that M2M blinds account for only a small proportion of its overall blind sales. In particular, eBay noted that only around 18% of blind listings on eBay relate to M2M blinds.

¹⁹⁹ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.7.

²⁰⁰ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.8.

²⁰¹ As set out in paragraph 8.191 below, we also note that the BDRC Survey shows that there is very low diversion from the Parties to any of these additional retailers.

particular, Velux told us that it does not sell any M2M blinds and that it considers its products to be ready-made rather than M2M products. This is consistent with the Parties' own submission that the dimensions of Velux blinds are determined by a window code, rather than being specified by the customer, which indicates that they are ready-made rather than M2M products. Accordingly, we excluded Velux as a competitor from the market share estimates and any sales of Velux products from the Parties' sales.²⁰²

- 8.13 While we did not calculate market shares for previous years, the CMA's assessment of the Hunter Douglas/Hillarys merger in 2017 showed that, in 2017, Blinds2Go was already, by far, the largest retailer of M2M blinds online, with 247 and Interior Goods Direct being the next largest respectively.
- 8.14 In sum, our assessment of market shares above indicates that the Parties, together with Interior Goods Direct, are the largest suppliers of online M2M blinds and that other suppliers are, by comparison, of much smaller scale. Further, the Merged Entity is of significant scale in comparison to both Interior Goods Direct and all other retailers in the market.

How competition works in the market

- 8.15 As discussed in previous sections (see paragraphs 4.22 to 4.25), the retail supply of online M2M blinds involves customers measuring their window and then ordering their preferred choice of blinds directly from retailers' websites. As a result, a significant aspect of competition between retailers of online M2M blinds occurs online.
- 8.16 In order to be successful, retailers of online M2M blinds need both to attract customers to their websites, and to convert these visits into sales. A number of factors determine whether a customer 'converts' once they have navigated to a given website (including price, perceived quality of product, quality of website, etc), but prior to that, a significant aspect of competition in this market is competition for visibility in web search results, given the importance of traffic from this channel in generating revenues.²⁰³
- 8.17 In the section that follows, we assess the Parties' submissions on the customer journey and the importance of online traffic. We then present our views on how competition for traffic works, including our assessment of the

²⁰² We note that sales of Velux products may be included in the sales of third parties. However, we did not consider this undermined our ability to give weight to the shares set out in Table 3, because the inclusion of any Velux product sales would mean that the share estimates for the Parties were understated.

²⁰³ Search engines account for 75% of traffic by revenue across the online M2M retailers based on those responses received by the CMA.

evidence we have seen on; sources of traffic for online M2M blind retailers, their marketing spend, and customer search behaviour.

Parties' submissions on the customer journey and importance of online advertising

8.18 The Parties submitted that advertising in search engines is important for their businesses, since, as small online mono-line retailers, they do not have strong brand names, with this particularly being the case for 247.²⁰⁴

8.19 However, the Parties also argued that customers' purchasing journeys are not limited to paid Google Ads for generic terms such as blinds,²⁰⁵ and that customers will conduct extensive research to decide upon the product that they think will best suit their window, often visiting large home stores such as Next, John Lewis and Dunelm, high street blind and curtain specialists and online blind and curtain sites.²⁰⁶ In support of their argument, the Parties submitted the following points:

- (a) The BDRC Survey shows that approximately three quarters of the Parties' customers spend more than an hour researching and comparing products before purchasing.²⁰⁷ The BDRC Survey further suggests that customers compare products / prices across many websites and that customers do not just visit websites and physical stores as part of the purchase journey (with a significant number of respondents also reading reviews online and discussing with friends/family and a smaller number of respondents using social media, browsing magazines and using in-home fitting services).²⁰⁸²⁰⁹ With respect to these survey results, the Parties argued that, due to the survey being based only on the Parties' customers (including repeat customers), survey results would tend to under-report the amount of 'shopping around' by customers.²¹⁰
- (b) Google Analytics data shows that the average customer makes their purchase 10 days after the first website interaction and after having visited the website on three different occasions.²¹¹
- (c) The low session conversion (ie, proportion of single website visits that end up in a purchase) the Parties achieve (ranging from [X]%) indicates that

²⁰⁴ [Main submission](#), 20 May 2020, paragraph 6.27.

²⁰⁵ [Main submission](#), 20 May 2020, paragraphs 6.27 and 6.28.

²⁰⁶ [Main submission](#), 20 May 2020, paragraph 4.4.

²⁰⁷ [Main submission](#), 20 May 2020, paragraph 6.22.

²⁰⁸ [Main submission](#), 20 May 2020, paragraph 6.40.

²⁰⁹ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.28.

²¹⁰ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.29.

²¹¹ [Main submission](#), 20 May 2020, paragraph 6.22.

customers shop around before buying, and ultimately are not making purchasing decisions based on Google prominence.²¹²

- 8.20 In assessing the Parties' submissions, we have considered the importance of traffic and marketing spend, as well as search behaviour and customer journeys when purchasing online M2M blinds.

Traffic and marketing spend

- 8.21 There are several channels that can be used by customers to reach a retailer's website, including:

- (a) Internet search results – arrivals at the website by entering search terms into search engines (such as Google) and clicking on the results generated. Internet search results can be either:
 - (i) Paid search – paid search is where the retailer has paid to feature prominently in search results.
 - (ii) Organic search – results which are not influenced directly by advertising expenditure (although retailers may improve their ranking by investing in search engine optimisation ('SEO'));
- (b) Direct – Arrivals at the website by entering the retailer's address in the URL bar;
- (c) Email – Referrals to the retailer's website from email marketing sent to customers;
- (d) Referral – Referrals to the retailer's website from external websites; and
- (e) Affiliates – Referrals to the retailer's website from external websites who are paid commission.

- 8.22 For the reasons set out at paragraph 8.32 below, paid search is a significant source of traffic for online M2M blinds retailers. On Google, where the majority of this search activity takes place, there are several options advertisers can select including:²¹³

- (a) Google Ads – Links shown on both the top and bottom of a page of search results. Advertisers set up 'campaigns' where they select which search words they would like to target, as well as targeting specific locations, devices, times of day, and customer profiles. Advertisers 'bid'

²¹² [Main submission](#), 20 May 2020, paragraph 6.36.

²¹³ See Appendix E for more information.

on key words by indicating what they would be willing to pay for each click on its advertisement. Advertisers pay every time a consumer clicks on their advertisement – such advertising is referred to as ‘pay-per-click’ (PPC) advertising.

- (b) Product Listing Ads (PLA) – Short advertisements that include images and which are shown next to search results. Ads are for specific products rather than brands or websites, and advertisers must provide Google a products ‘feed’. Like Google Ads, this also works on a PPC basis – advertisers pay Google every time a customer clicks on their advertisement.
- (c) Google Shopping – Like PLA, Google Shopping allows advertisers to advertise products rather than websites or brands. Consumers access Google Shopping results by clicking on the ‘shopping’ link at the top of the search results page. Users can filter listings by price, product category, and brand.

8.23 In order to understand the relative importance of the above marketing channels, we have looked at two important sources of evidence, namely:

- (a) the sources of traffic to a retailer’s website; and
- (b) a retailer’s expenditure on marketing.

8.24 With respect to sources of traffic, it appears that, for each of the main online M2M blind retailers, paid search generated the largest proportion of traffic in 2019 (both by traffic volume and revenue).²¹⁴ More specifically, it appears that:

- (a) Paid search accounted for [X]% of revenue for Blinds2Go and [X]% of revenue for 247 in 2019. This confirms that paid search is a significant source of traffic for the Parties.
- (b) While we do not hold data to split paid search into Google and other search engines, the widespread use of Google indicates that traffic from paid search almost exclusively comes from Google.
- (c) Only a relatively small proportion of paid search revenue (less than 15%) relates to Google Shopping and PLA.

²¹⁴ In each of 2017 and 2018, paid search generated the largest proportion of traffic across the main online M2M blind retailers in aggregate, while it ranked either first or second for each of these retailers individually in these years.

8.25 After paid search, organic search is the next biggest source of traffic, accounting for [REDACTED]% of revenue for Blinds2Go and [REDACTED]% of revenue for 247 in 2019.²¹⁵

Table 4: Proportion of revenues by channel in 2019

Channel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Combined
Paid search	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	56%
Organic search	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	19%
Direct	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	10%
Email	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	6%
Referral	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	7%
Affiliates	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	1%
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	2%
Total revenue	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	£[REDACTED]

Source: CMA analysis of data from Parties and competitors Parties' response to CMA Questionnaire, 14 May 2020, Annex 0115, Annex 0116 and Annex 131; [REDACTED] response to CMA Questionnaires, 22 May 2020.

Notes: All retailers use the same attribution model²¹⁶ except [REDACTED] – so the data is comparable against all retailers except [REDACTED]. Retailers' revenues include VAT and shipping costs, except for [REDACTED]. However, this should not affect the distribution across channels.

Revenue from samples is unlikely to affect these results.²¹⁷

8.26 While we do not hold the same source-of-traffic data on multi-channel retailers, the third-party evidence we have obtained indicates that paid search is an important source of traffic for them, too. For example:

(a) [REDACTED].²¹⁸

(b) [REDACTED] told us that it occasionally bids for key search words related to M2M blinds to help improve customers' awareness, but that its marketing is often more general.²¹⁹

(c) Next told us that it does not use paid search specifically for its blinds, it uses it in a more general way for its entire product range.²²⁰

8.27 The Parties submitted that multi-channel retailers and marketplaces do not have to rely on PPC advertising to generate traffic to their websites. In particular, the Parties argued that multi-channel retailers receive many direct visits and a lot of traffic through brand searches and that 90% of UK shoppers use Amazon and 70% of these use Amazon as their first point of

²¹⁵ A relatively high proportion of organic search does not necessarily suggest good performance in organic search, but could also be an indication of bad performance in other channels.

²¹⁶ An attribution model is 'the rule, or set of rules, that determines how credit for sales and conversions is assigned to touchpoints in conversion paths.' See <https://support.google.com/analytics/answer/1662518?hl=en>

²¹⁷ The only case in which this could potentially affect our analysis is if samples are mainly requested through some particular channels versus others. However, revenues from samples are likely to constitute a very small percentage of revenues and, therefore, this is unlikely to create any significant bias.

²¹⁸ [REDACTED]

²¹⁹ [REDACTED].

²²⁰ [REDACTED].

call.²²¹ We agree that, in general, multi-channel retailers obtain a significant number of direct visits to their website. However, the Parties have not explained to what extent this also specifically applies to customers wanting to purchase online M2M blinds, nor have they submitted any evidence specific to traffic generation for online M2M blinds. It is therefore important to take into account the comments from multi-channel retailers – and on the basis of these comments, PPC advertising appears to be an important source of traffic. Overall, we therefore find that the evidence suggests that PPC advertising is an important source of traffic for multi-channel retailers, albeit less important than for online M2M blind retailers.

8.28 In relation to retailers' expenditure on marketing, Table 5 sets out the main online M2M blind retailers' expenditure by marketing channel. Consistent with the data on traffic, we also find that, for each of the main online M2M blind retailers, Google PPC accounted for the majority of marketing spend in 2019, often amounting to around or more than 80% of their total marketing spend. While there is some variation over time, Google PPC is always by far the largest source of spending. Further details are set out in Appendix E.

Table 5: Proportion of marketing spend by channel in 2019

Channel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]**	[REDACTED]	[REDACTED]
Google PPC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Bing/Yahoo PPC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Facebook	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Agency	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other categories	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of data from Parties and competitors. Parties' response to CMA Questionnaire, 17 April 2020 and 14 May 2020, Annex 0007, Annex 0054(Revised), Annex 0115, and Annex 0116; Interior Goods Direct, Swift Direct Blinds and MakeMyBlinds response to CMA Questionnaires, 22 May 2020.

Notes: [REDACTED]** [REDACTED]

8.29 The proportion of Google Shopping and PLA spend varies by retailer, with [REDACTED] and [REDACTED] spending 5% or less of their online marketing expenditure on these categories, Web Blinds, 247 and [REDACTED] around [REDACTED]% and Blinds2Go almost [REDACTED]%.

8.30 In 2019, marketing expenditure by the main online M2M blind retailers as a proportion of turnover tended to be around 15% (or higher for [REDACTED]), with the exception of [REDACTED] spending only around 9%.

8.31 Overall, the above source-of-traffic and marketing spend analysis shows the importance of online marketing for online M2M blind retailers. Paid

²²¹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.35.

search appears to be the most important source of traffic, particularly for the Parties for whom traffic obtained through paid search accounts for over half of their revenues. Organic search appears to be the second most important source of revenues for online M2M blind retailers. Consistent with the source-of-traffic data above, it appears that, for each of the main online M2M blind retailers, Google PPC accounted for the majority of marketing spend in 2019, often amounting to around or over 80% of their total marketing spend.

Search behaviour and customer journey

8.32 Given the importance of online search for retailers of online M2M blinds, we have reviewed the following sources of evidence on customer search behaviour:

- (a) the CMA's literature review on online search;²²²
- (b) the EC's Google Search (Shopping) decision²²³; and
- (c) The BDRC Survey submitted by the Parties.

8.33 Both the CMA's literature review and the EC's Google Shopping decision consider general search behaviour, rather than searches specific to blinds. However, the BDRC Survey specifically addresses customer search behaviour in relation to M2M blinds sold online.

8.34 The CMA's literature review considers a number of different search tools, including search engine results (assessing the entire page of search results, ie jointly assessing paid and organic search) and finds that, despite searching on the internet appearing to be fairly easy and simple, customers consider on average 2.1 to 3.0 brands when wanting to purchase a product online.²²⁴ It further finds that there is evidence that customers spend more time searching for complex or differentiated products.²²⁵ While we acknowledge that these findings do not necessarily mean that customers only consider up to three retailers when searching for online M2M blinds,

²²² CMA, April 2017, 'Online search: Consumer and firm behaviour - A review of the existing literature'.

²²³ EC, June 2017, Case AT.39740, Decision on Google Search (Shopping). This decision focuses on the positioning and display by Google, in its general search results pages, of its own comparison shopping service compared to competing comparison shopping services.

²²⁴ The finding that customers consider on average 2.1 to 3.0 brands is based on evidence in paragraphs 4.9 to 4.12 of the CMA's literature review. It constitutes the aggregate view based on a number of studies including a variety of products such as, but not limited to, CDs, music, books, travel products, airline tickets, hardware, phones, cars, banking products and groceries.

²²⁵ CMA, April 2017, 'Online search: Consumer and firm behaviour - A review of the existing literature', paragraph 1.6.

we do find that these results support the view that customers searching for online M2M blinds are likely to consider relatively few retailers.

- 8.35 The review also noted that consumers often use multiple channels for a single search before they make a purchase and that the ‘path’ to the final purchase is often quite complicated.²²⁶ Across different digital channels such as search engine results and price comparison websites, the review found that customers disproportionately focus their attention, clicks and purchases on links at the top of the returned search results. In particular:
- (a) On average, the first three links account for 40-65% of the total clicks on desktop devices.²²⁷
 - (b) On mobile devices, this tendency is even more accentuated, with the top three links, on average, accounting for more than 70% of the total clicks.²²⁸
 - (c) The focus on links at the top of the results page is not simply driven by the fact that top links are more likely to be relevant to customers’ searches, but also by the fact that customers seem to display an inherent bias towards clicking on links in higher positions.²²⁹
- 8.36 The EC’s Google Shopping decision found that organic search results generate significant traffic to a website when ranked within the first 3 to 5 organic search results, while customers pay little attention to the remaining results. However, the EC decision does not make clear how clicks for organic search compare to paid search, in particular Google Ads, which tend to be positioned above the organic search results.
- 8.37 The EC’s decision also found that the rank of a given link in organic search results on the first general search results page has a major impact on the click rates of that link, irrespective of the relevance of the underlying page. In line with this, the EC’s decision further found that moving the first ranked result to the third ranked resulted in a reduction in clicks of about 50%, while the effect was even stronger if the website was moved lower in the search rankings.
- 8.38 Overall, both the CMA’s literature review and the EC’s Decision indicate that customers do not tend to click beyond top results on the results page.

²²⁶ CMA, April 2017, ‘Online search: Consumer and firm behaviour - A review of the existing literature’, paragraph 4.20-4.29.

²²⁷ CMA, April 2017, ‘Online search: Consumer and firm behaviour - A review of the existing literature’, paragraph 1.6 c)

²²⁸ CMA, April 2017, ‘Online search: Consumer and firm behaviour - A review of the existing literature’, paragraph 1.6 c)

²²⁹ CMA, April 2017, ‘Online search: Consumer and firm behaviour - A review of the existing literature’, paragraphs 4.50 to 4.57.

This implies that if a website does not feature in the top results, it is unlikely to obtain significant traffic and therefore will be unable to effectively compete.

8.39 The BDRC Survey submitted by the Parties provides an overview of the customer search journey for online M2M blinds. In particular, the survey shows the following:

- (a) Large proportions of customers found the websites of Blinds2Go and 247 through generic search words such as 'blinds' or similar ([X] % for Blinds2Go / [X] % for 247); though a notable number of customers were aware of the brand prior to purchase and searched by name or went directly to the Parties' websites ([X] % of Blinds2go customers / [X] % of 247 customers).
- (b) Over 70% of Blinds2Go and 247's customers spend more than an hour on research prior to purchase.
- (c) 52% of Blinds2Go's customers and 65% of 247's customers looked on other websites (naming Blinds Direct, Dunelm, John Lewis, Blinds4UK, Amazon Marketplace, Next and eBay) prior to purchase. The proportions of respondents who looked in-store prior to purchase were lower: 19% of Blinds 2Go and 24% of 247 customers (naming Dunelm, John Lewis, B&Q, Ikea, Next and local blinds/curtains shops).
- (d) Customers tended to visit at most three other websites or fewer: Of the customers who looked at other websites before purchasing (52% for Blinds2Go and 65% for 247), most visited a maximum of three other websites (71-77% visited three other websites or fewer; half of Blinds2Go customers and 41% of 247 customers visited only one or two websites before purchasing).²³⁰

8.40 With respect to the time spent on research prior to purchase, the BDRC Survey does not provide further details of what this research entails. The response options suggest that the question was not necessarily exploring continued search, but time between first search and purchase. Moreover, time spent researching does not necessarily reflect time comparing the offering (in terms of eg price, quality and customer service) across retailers; it may also include significant within-website research (for instance, time taken to choose a design), and therefore, in our view, does not provide

²³⁰ There may be some under-reporting as it is possible that some respondents may not have been able to recall all the websites they visited.

reliable insights into the extent to which the offering of other retailers is assessed by customers.

- 8.41 In response to this point, the Parties submitted that the BDRC Survey provides concrete evidence that shows that consumers engage in significant research before they make their purchasing decisions and that this research entails visiting competitor websites. The Parties submitted that this evidence is dismissed based on pure speculation on the CMA's behalf about what exactly customers may do.²³¹ We note that we do not dismiss the survey's finding that customers spend significant time researching, and we also do not dismiss the survey's finding that customers visit certain other websites. However, and as set out above the time spent researching does not give reliable insights into the time spent comparing different retailers' offerings. The Parties have not provided additional evidence to support that the research primarily entails comparing different retailers' offerings.
- 8.42 With respect to search behaviour, and as noted above (at paragraph 8.19), the Parties submitted that the BDRC Survey shows that customers compare products / prices across many websites and further consult other channels – noting that the BDRC Survey would tend to under-report the amount of 'shopping around' by customers in the wider market as it was conducted only amongst the existing customers of the Parties, including repeat purchasers. The Parties also submitted Google Trends data for 2019 with respect to the search term 'blinds', which shows that users were also searching for Dunelm, Ikea, and Argos in the same search session, with 247 being outside the top 20 associated search terms.
- 8.43 However, we note that the BDRC Survey shows that the large majority of customers visited three other websites or fewer prior to purchasing. While we acknowledge that the inclusion of repeat customers may lead to the survey under-reporting the amount of 'shopping around' by customers, we also note that the finding on the number of websites visited is consistent with the findings of the CMA research on customer search behaviour. Additionally, we note that visiting several websites does not necessarily mean that those websites all exert a competitive constraint on the Parties – it may simply indicate that there is a long customer journey in which customers visit various websites which they might dismiss altogether once they have a better view of the offering. With respect to the Google Trends data, we note that, as explained in paragraph 8.43, we have not received

²³¹ Parties' response to Provisional Findings, 7 August 2020, paragraphs 4.40 and 4.41.

any evidence that this data is driven by customers considering both ready-made and M2M blinds as part of their purchase journey.

- 8.44 The Parties submitted that the BDRC Survey does not support the finding that, as per the CMA research and the EC Google Shopping decision, being ranked highly on search engines (paid and organic) is likely to be important in order to be successful in this market. The Parties note that among the websites listed by the survey respondents as sites visited (Dunelm, John Lewis, Amazon and Next) are those that do not rank highly on Google according to our analysis. The Parties also submitted that the CMA's interpretation of the available evidence overstates the importance of Google rankings, reiterating that customers spend a significant amount of time researching blinds across multiple websites (and stores) before they make their purchase.²³²
- 8.45 With respect to websites being visited that are not ranked highly on Google, we note that those listed by the Parties only relate to multi-channel retailers or marketplaces. However, the survey also shows that the majority of customers visited the websites of online M2M blind retailers (eg Blinds2Go or Blinds Direct) and, as per our analysis, these retailers feature prominently on Google. Regarding the multi-channel retailers, we further acknowledge that, as pointed out in paragraph 8.27, PPC advertising appears to be less important for these suppliers compared to online M2M blind retailers. Additionally, we note that, as shown by our ranking analysis of organic search results (see paragraph 8.103), Dunelm does frequently rank highly on Google, while Next and Amazon feature to a small extent.
- 8.46 With respect to the customers spending a significant amount of time researching, we note our discussion in paragraphs 8.40 to 8.43 above. Additionally, we note that a potentially longer customer journey does not contradict the importance of Google. We also note that the BDRC Survey supports the importance of online search, showing that 44% of Blinds2Go's customers and 59% of 247's customers found the respective website through a generic search.
- 8.47 Our finding on the importance of ranking high on search engines is in line with comments we received from third parties:
- (a) Swift Direct Blinds told us that the number of advertisements and ranking position on Google has a massive impact on visibility and thus customer conversion.²³³ Swift Direct Blinds further told us that without

²³² Parties' response to Provisional Findings, 7 August 2020, paragraph 4.42 and 4.44.

²³³ [REDACTED].

visibility on the first page of Google search results, ‘you are at a very large disadvantage’.²³⁴

(b) Blinds4UK told us that the ‘only way to survive’ as an e-commerce site is to be on the first page of Google’s organic search results.²³⁵

8.48 Additionally, we note that the number of search results shown on mobile devices without scrolling is very limited, given the typically small screen sizes of such devices. As such, positioning is likely to be even more important for traffic originating from mobile devices. With mobile devices playing an increasing role in generating traffic, this would suggest ranking is likely to become even more important going forward.

Conclusion

8.49 Overall, we consider that there is evidence which demonstrates that the customer journey in selecting online M2M blinds may be long and may involve customers looking at different products and/or consulting different channels. However, notwithstanding this position, we do not have sufficient evidence to conclude that alternatives considered as part of this journey ultimately impose a material competitive constraint on online M2M blinds.

8.50 We further find that paid search is the most important source of traffic for online M2M blind retailers (with paid search primarily relating to Google Ads), followed by organic search and, of considerably less importance, direct search. We also find that online M2M blind retailers spend the majority of their marketing spend on Google PPC, underlining the importance of paid search as a source of traffic.

8.51 The importance of these sources of traffic is also confirmed by the BDRC Survey, which shows that customers primarily reach the Blinds2Go’s and 247’s websites through either searching for a generic term such as ‘blinds’ (44% of Blinds2Go customers and 59% of 247 customers) or searching for the brand / going to the website directly (41% of Blinds2Go customers and 26% of 247 customers).

8.52 The BDRC Survey also shows that customers typically visit only a limited number of websites prior to making a purchasing decision. This is consistent with the findings from the CMA’s literature review on online search and the EC’s Google Search (Shopping) decision, which indicate

²³⁴ [REDACTED].

²³⁵ [REDACTED].

that customers focus their attention and clicks on links at the top of the returned search results.

- 8.53 Taken together, these factors suggest that ranking highly on search engines is likely to be an important factor in order to be able to effectively compete. Price, quality, range and service (PQRS) are also important aspects of competition. Our assessment of the closeness of competition between the Parties and the strength of the competitive constraint of other suppliers therefore takes into account PQRS, the competition for online traffic, as well as the interaction of the two.

Closeness of competition

- 8.54 Our guidelines note that the closeness of competition between the Parties is one factor to be taken into consideration for the assessment of horizontal unilateral effects. The guidelines state: 'If the products of the merger firms are close substitutes, unilateral effects are more likely because the merged firm will recapture a significant share of the sales lost in response to the price increase, making the price rise less costly.'²³⁶
- 8.55 The Parties submitted that 247 is a minor and undifferentiated rival and not a particularly close competitor to Blinds2Go.²³⁷ The Parties further submitted that 247 is 'not of any unique or special importance'.²³⁸ Additionally, they submitted that the competitive pressure 247 exerts on Blinds2Go is, at most, limited and declining.²³⁹
- 8.56 Before setting out our analysis, we note as a preliminary response to the Parties' submission that mergers may give rise to an SLC in situations where merging parties are not each other's closest competitors. In particular, a merger may lead to an SLC in situations where the merger removes an important competitive constraint, even if there is another competitor that is as close a competitor to the Parties as the Parties are to each other, or indeed closer.
- 8.57 In this section we assess how closely the Parties compete with one another, as well as relative to the competitive constraint from other retailers of M2M blinds online. In our assessment, we consider:

- (a) The Parties' service proposition;

²³⁶ *Merger Assessment Guidelines (OFT1254)*, paragraph 5.4.9.

²³⁷ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.2. [Main submission](#), 20 May 2020, paragraph 6.3.

²³⁸ [Main submission](#), 20 May 2020, paragraph 8.6.

²³⁹ [Main submission](#), 20 May 2020, paragraph 1.7.

- (b) The Parties' online presence;
- (c) Evidence from the Parties' customers in the form of the BDRC Survey submitted by the Parties;
- (d) Internal documents;
- (e) Pricing data included in Blinds2Go's internal documents; and
- (f) Views of the Parties' competitors.

8.58 We further discuss the Parties' submission that the competitive pressure 247 exerts on Blinds2Go is declining.²⁴⁰

The Parties' service proposition

8.59 We have looked at several different aspects of the Parties' service proposition with respect to online M2M blinds.

8.60 At a general level, the Parties' product and service propositions are very similar to one another. Both Parties offer the same types of M2M blinds (ie roller blinds, wooden blinds, vertical blinds, roman blinds, venetian blinds, day and night blinds and conservatory blinds) through the online sales channel.

8.61 At a more granular level, we assessed the Parties' offering in terms of price, quality and product range. These are key characteristics that customers consider when purchasing online M2M blinds. This is evidenced by the BDRC Survey, which shows that more than 40% of respondents indicated that each of 'good prices/offers', 'product quality' and 'good/wide product range' were reasons for their choice of retailer. Each of these factors were also listed amongst the top five in terms of the 'one main reason' that respondents identified for their choice of retailer.²⁴¹

Price

8.62 With respect to price, Blinds2Go monitors a number of retailers in the ordinary course of business, namely [REDACTED]. For each of these retailers it

²⁴⁰ [Main submission](#), 20 May 2020, paragraph 1.7.

²⁴¹ Similarly, two market reports submitted by the Parties indicate the following: the Verdict HRS Window Dressing Report 2016 identifies 'price', 'quality' and 'design' as the three main factors that customers consider important when shopping for M2M blinds, while the Global Data report indicates the same but with respect to shopping for window dressings. We further note that these three factors are largely considered the main factors for customer choice by the Parties and third parties. [Parties' main submission](#), 20 May 2020, paragraph 6.17.ii and 6.20 and [REDACTED].

collects their prices [§] (alongside its own prices).²⁴² On the basis of this data, we compared the prices of different retailers. The details of this analysis are set out in Appendix D.

- 8.63 From this analysis, we see that the Parties' prices are generally competitive, in the sense of their prices being generally at the lower end of the market, but that they do not consistently stand out as the cheapest retailers. We also note that the Parties' prices are neither consistently closer to each other than to those of other retailers, nor are they consistently further apart from each other than from those of other retailers.
- 8.64 We further note that, with the exception of [§] (which tends to be among the more expensive retailers), none of the other competitors included in the price data collected by Blinds2Go stands out as consistently more expensive.²⁴³ However, some retailers are more expensive for certain products. For example, Wilsons Blinds (part of Interior Goods Direct) is significantly more expensive than the Parties for a number of products (including 25mm slats white venetian, standard white roman and blackout white roman blinds), Interior Goods Direct's prices are also significantly higher than those of 247 and Blinds2Go for faux wooden blinds (with the exception of prices in 2020, when they align with the Parties), while Swift Direct Blinds' prices are significantly higher than those of either of the Parties for venetian blinds.
- 8.65 Our observation that certain retailers are more expensive for certain products than Blinds2Go and 247 is consistent with comments we received from third parties. In particular, Swift Direct Blinds told us that it sometimes cannot match the prices of Blinds2Go or 247 because of higher costs to obtain the blinds, while MakeMyBlinds told us that it no longer matches the prices of Blinds2Go and 247.

Quality

- 8.66 With respect to quality, the Parties submitted that product quality is 'key' and an important consideration for customers.²⁴⁴ This is consistent with the results from the BDRC survey: 44% of respondents quoted product quality as one of the reasons that influenced their choice of retailer, with 16% of respondents for Blinds2Go and 13% of respondents for 247 citing product quality as the main reason.

²⁴² The data covers the period from May 2016 until February 2020 (although for some competitors, only more recent data is recorded). [§].

²⁴³ The Parties submitted that Next has recently cut its prices on roman blinds and rollers blinds and that Next has therefore become much more competitive on price. We discuss this submission in paragraph 8.199.

²⁴⁴ [Main submission](#), 20 May 2020, paragraph 6.17.

8.67 We have received mixed evidence regarding the product quality of Blinds2Go and 247. On the one hand, the Parties submitted that [X] (and other competitors) and noted that they largely attribute the success of Blinds2Go to delivering quality products at the lowest possible price.²⁴⁵ On the other hand, Interior Goods Direct told us that Blinds2Go and 247 both use lower quality fabrics than they do.

8.68 We note that customers may take into account a number of other aspects of overall quality, including, for example, website quality, customer reviews for the retailer and a retailer's position on Google search results. This is either because the customers value these aspects in and of themselves or because they treat them as proxies for product quality. We assess these different aspects of overall quality below.

- (a) Four third parties indicated that website quality matters to customers, specifically referring to 'clean design' and 'look'. Similarly, the Parties submitted that visual merchandising and imagery is key, which implies that website quality is important.²⁴⁶ Additionally, we note that a website's quality is likely to impact its ranking on Google search results (see Appendix E). We note that while the Parties' websites have similar setups, looks and functionality (eg chat functionality or customer service number), this is also the case for each of the other six online M2M retailers with sales of more than £1 million in 2019. However, the websites of some of the smaller online M2M retailers have a significantly different (and arguably less appealing) look.²⁴⁷
- (b) Two online M2M retailers told us that customer satisfaction scores, especially those on Trustpilot, are important. Based on evidence submitted by the Parties, each of Blinds2Go and 247 has more than 10,000 reviews and excellent Trustpilot ratings, and there are only two other online M2M retailers with more than 10,000 reviews, namely Swift Direct Blinds and Interior Goods Direct – both of which also have an excellent rating. There are also at least four further online M2M retailers with excellent Trustpilot ratings and more than 1,000 reviews.²⁴⁸
- (c) Customers may also see the ranking of a website on Google search results as an indicator of the quality of the website. When asked whether appearing high up Google rankings was a signal of quality to customers, 247 said that appearing at the top of organic listings 'create[s] some credibility', whereas with respect to paid rankings 'there is an increasing

²⁴⁵ Main submission, 20 May 2020, paragraphs 5.4 and 5.5.

²⁴⁶ Main submission, 20 May 2020, paragraph 6.17.

²⁴⁷ For example, <https://www.conceptblindsdirect.co.uk/>.

²⁴⁸ This statistic excludes Bloc Blinds, a niche player for specialised roller blinds.

awareness now of the way paid search marketing works and they [ie the customers] know what they are actually looking at is an advert'. We note that the Parties, alongside Interior Goods Direct and Dunelm, feature frequently in the top positions on Google's organic search results (see table 7).

Range

- 8.69 The BDRC Survey indicates that customers consider range to be important, with 42% of respondents for Blinds2Go and 43% of respondents for 247 indicating a 'good/wide product range' as one of the reasons for choosing a retailer. Additionally, the survey shows that 'had what specifically wanted' was selected as the one main reason for choosing a certain retailer by the second highest proportion of respondents (namely by 46% of respondents for Blinds2Go and 50% of respondents for 247).
- 8.70 In line with this, the Parties submitted that product choice is key.²⁴⁹ This is also consistent with comments received from Swift Direct Blinds who told us that a wide range of products relative to its competitors contributed to its growth between 2014 and 2016.
- 8.71 However, the Parties also submitted the importance of range as a competitive constraint should not be overstated and that retailers do not need to sell a significant number of SKUs to be an effective competitor to the Parties given the concentration of sales among a relatively small number of popular blinds.²⁵⁰ The Parties submitted that the top nine variants of blinds account for [X]% of sales, while the top 243 SKUs for Blinds2Go account for [X]% of sales by value.^{251 252}
- 8.72 In response to these submissions, we first note that the presented analyses do not necessarily mean that sales are particularly concentrated, although we acknowledge that a relatively limited number of SKUs accounts for the majority of sales. With respect to the analysis of the top nine variants, we note that the Parties aggregated different SKUs based only on the blind type and a typically high-level colour (eg white, grey, blue).²⁵³ This assessment does not take into account other differences in colour, different fabrics or other options available for M2M blinds.²⁵⁴ Therefore, these top

²⁴⁹ [Main submission](#), 20 May 2020, paragraph 6.17.

²⁵⁰ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.62.

²⁵¹ The number of 243 SKUs was chosen because it equates to the total number of ready-made SKUs sold by Dunelm.

²⁵² [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.86.

²⁵³ For example, for a certain type of blind, any blind that in its description contained the word 'white' was aggregated as the 'white' variant of such blind type.

²⁵⁴ For example, the presence of patterns, the colour of some parts, the dimension of the slats for venetian blinds, and the option such as 'Enjoy' or 'DuoShare' for rollers.

nine variants may actually include a large number of SKUs. With respect to the analysis of the top 243 SKUs, we note that it remains unclear how the remaining more than 40% of sales are distributed. Second, we consider that identifying that a relatively limited number of SKUs accounts for the majority of sales does not mean that range is not important, and the Parties have not demonstrated how competitors can compete effectively if only offering a comparatively small number of SKUs. The Parties' submission also does not consider the extent to which a wide range is in and of itself attractive to customers (ie increases sales even if customers primarily buy a limited number of SKUs).²⁵⁵

8.73 On balance, we find that the evidence received suggests that range matters, and have therefore compared the overall number of SKUs as well as the number of SKUs relating to wooden venetian blinds (the top-selling type of blind for each of the top four online M2M blind retailers) offered by a number of different online M2M blind retailers, including each of Blinds2Go and 247. Table 6 shows this comparison.

Table 6: Number of SKUs for different online retailers of M2M blinds

<i>Retailers</i>	<i># of SKUs (all blinds)</i>	<i># of SKUs (wooden venetian blinds)</i>
Blinds2Go	4,497	225
Interior Goods Direct	4,014	40
247	2,823	245
Swift Direct	2,454	222
Wilsons Blinds*	1,778	96
MakeMyBlinds	700	64
Blinds4uk	2,228	97
So Easy Blinds	3,730	90
Blinds UK	2,570	117
Concept Blinds	1,637	73
English Blinds	1,305	182
Terrys Fabrics	1,300	48
Unbeatable Blinds	668	58

Source: Data based on Parties' desk research.

Note: [X] submitted data on number of SKUs that was broadly in line with these estimates; however [X] submitted that it sells a much larger number of SKUs (~[X]) in total (source: Blinds2Go, response to CMA Questionnaire, 20 April 2020, paragraph 2.5, and Interior Goods Direct, Swift Direct Blinds and MakeMyBlinds, responses to CMA Questionnaires, 28 April 2020).

Note: *Part of Interior Goods Direct since April 2020.

8.74 Each of Blinds2Go and 247 appears to offer a very wide range of products and several competitors offer a much narrower range than the Parties, albeit there are also at least six competitors that offer a broadly comparable overall range. Each of Blinds2Go and 247 also appears to offer a

²⁵⁵ We note that a similar argument was raised by the Parties, namely that [X]. [Main submission](#), 20 May 2020, paragraph 6.17(i).

particularly wide range of wooden venetian blinds, which is the top-selling type of blind for each of the top four online M2M blind retailers. With respect to the ten competitors for whom we hold information on the number of SKUs relating to wooden venetian blinds, only two competitors have a broadly similar range to the Parties for this type of blind.²⁵⁶

- 8.75 While we acknowledge the Parties' submission that the comparison is limited to a simple count of SKUs and that it does not take into account that, unlike 247, Blinds2Go sells a range of designer blinds,²⁵⁷ we still find that the SKU analysis shows that both Parties offer a wide range of products and that their offering is hence similar in terms of range.

Conclusion on price, quality and range

- 8.76 Overall, we find that the Parties' offerings in terms of price, quality and range are similar. While, as illustrated by paragraphs 8.168 to 8.176 below, Interior Goods Direct and Swift Direct Blinds have a broadly similar offering to the Parties, we find that the offerings of other smaller online M2M blind retailers (including MakeMyBlinds) is either differentiated, in at least some respects, to that of the Parties or we have insufficient evidence that their offerings are similar to the Parties'.²⁵⁸

Online presence

- 8.77 As explained above (see paragraphs 8.15 to 8.16), competition between retailers of online M2M blinds is likely to be heavily influenced by how effective a retailer is at attracting customers to its website. This in turn depends on how well a retailer ranks and performs on search engines (especially Google).
- 8.78 We therefore undertook a range of analyses of Blinds2Go and 247's online presence, to understand how effective each of them is when competing in the market as compared to their competitors:
- (a) Our main type of analysis assesses how well Blinds2Go, 247 and their competitors rank on Google paid search and Google organic search.
 - (b) Additionally, we compare Blinds2Go and 247's Google Ad campaigns performance with those of their competitors.

²⁵⁶ These two retailers are Swift Direct Blinds and English Blinds.

²⁵⁷ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.62.

²⁵⁸ For some of the smaller online M2M blind retailers, we do not hold sufficient evidence because these retailers did not respond to our requests and the Parties' submissions only included limited information on these retailers.

- (c) As a supplementary analysis, we also assess the ad search term bidding behaviour of Blinds2Go, 247 and their competitors.

8.79 The results provide evidence on the closeness of competition between Blinds2Go and 247 and the strength of the competitive constraint exerted by other M2M blind suppliers.

8.80 In relation to the relevance of these analyses, the Parties submitted that:

- (a) Google is neither the only source of traffic nor the only or most important determinant of competitive outcomes;
- (b) attracting traffic does not mean that the website will be successful at converting this traffic into sales; and
- (c) it is wrong to consider competition for traffic and other parameters of competition (on product offering or price, quality and range) separately without a proper consideration of how they interact.²⁵⁹

8.81 In response, we note that:

- (a) Google remains a very important route to market, not just when it comes to attracting traffic but also in terms of generating conversions – albeit not being the only one, as explained in paragraphs 8.49 to 8.53. We note that Blinds2Go and 247 generate most of their revenue from customers sourced through paid and organic Google searches – from [X] % (for Blinds2Go) to [X] % (for 247).²⁶⁰ For the other main online M2M blind retailers, the proportion of revenue generated from these sources ranges between [X] % and [X] %.
- (b) We recognise that attracting traffic to a website is only one (albeit an important) way in which retailers compete, and elsewhere in our competitive assessment, we have analysed other aspects of competition in the market for the retail supply of M2M blinds online. Our analysis of Blinds2Go's, 247's and other retailers' online presence therefore only constitutes part of our evidence basis.
- (c) We acknowledge that it is important to consider the interaction between competition for traffic and other parameters of competition. However, we note that we are not viewing the Google analyses presented below in isolation.

²⁵⁹ Parties' response to Provisional Findings, 7 August 2020, paragraphs 4.49.

²⁶⁰ We note that these values include all search engines, not just Google.

8.82 The Parties also submitted that our analyses failed to take into account the fact that non-Google spending (or non-PPC spend) is likely to affect retailers' rankings and performance on Google and that, therefore, any comparisons between Blinds2Go, 247 and other retailers must take this into account. As an example, the Parties noted [REDACTED].

8.83 We acknowledge that non-Google spending may be impacting the results of our analyses to some extent, including the analysis of ranking (see paragraph 8.78 above and paragraphs 8.87 to 8.107 below), the analysis of performance on Google Ads (see paragraph 8.66(b) above and paragraphs 8.109 to 8.118 below) and the analysis of ROI/CPA (see Appendix F). However, in our view, it is unlikely that non-Google spending is the only or main driver for the results we observe. While we acknowledge that such spending may influence results to some extent, we also note that with respect to the analysis of ranking (which constitutes our key analysis with respect to closeness of competition), the ranking position a retailer achieves is in and of itself highly relevant (ie it is relevant independent of how exactly the retailer obtained such ranking).

8.84 Below, we describe the results of our analyses of online presence and our respective conclusions.

Ranking in Google search results

8.85 As explained above (paragraphs 8.32 to 8.49) the search behaviour of customers indicates that if a website is not well represented on the first page (and to some extent even the first two or three results) it is unlikely to attract significant traffic and therefore be able to effectively compete in the market.

8.86 We therefore conducted an analysis of Google rankings. This analysis, set out below, covers analysis of rankings in search results, separately with respect to:

- (a) Google Ads; and
- (b) organic links.

Google Ads

8.87 We analysed four different sets of data on rankings in Google Ads:

- (a) The first consisted of rankings we were able to observe directly from Google web results with respect to the top 10 search words in the industry

related to blinds (not M2M specific) based on Google Trends in 2019 as explained in paragraph 8.88 below;

- (b) The second consisted of ranking data provided by Blinds2Go and 247 and two other retailers with respect to the top 10 search words used in their Google Ads campaigns for the period of 2017-2019.
- (c) The third consisted of ranking related data (but including other metrics than the data in (b)) provided by Blinds2Go and 247 and two other retailers with respect to the search words used in their Google Ads campaigns for the period of 2019.
- (d) The fourth consisted of ranking data found in Blinds2Go's internal documents, for a number of standalone periods covering 2016, 2017 and 2018.

8.88 The first piece of analysis consisted of recording the position of the Parties and competitors in the first page of Google Web results. In particular, this analysis systematically recorded results for:²⁶¹

- (a) 10 search words - 'blinds', 'blind', 'window blinds', 'blinds uk', 'roller blinds', 'venetian blinds', 'roman blinds', 'vertical blinds', 'wooden blinds', 'blackout blinds';²⁶² and
- (b) Four different times per day for a period of one week - 18 May 2020 to 24 May 2020 at 10h, 13h, 16h, and 19h (except Saturday and Sunday, when only 16h and 19h were considered).²⁶³

8.89 Details of this analysis are presented in Appendix E. The results for Ads shown at the top of the page are summarised below.

²⁶¹ This analysis therefore considerably expanded on the analysis of rankings done at P1 which covered only one search word and two dates.

²⁶² We obtained this list of search words by analysing the most popular related search queries (excluding branded search queries) for the word 'blinds' (based on Google Trends data for 2019, UK). We also checked that these search queries broadly coincide with the non-branded Google Ads search words the Parties and their largest competitors (ie Interior Goods Direct and Swift Direct Blinds) get most impressions from and spend the largest amount of money on in 2019.

²⁶³ To establish timings for the analysis, we looked at times of day there seemed to be more traffic on Parties' sites and simultaneously including other times in case those times corresponded to heavier traffic in the case of other retailers. The timings recorded also were chosen to accommodate team availability.

Table 7: Google Ads on top of page - Proportion of time and search word combinations that a given retailer ranked in a certain position in first page of results

<i>Retailer</i>	<i>Position</i>			
	1	2	3	4
Blinds2go	38%	39%	7%	
247	51%	22%	11%	
Wilsons*	5%	5%	4%	5%
Terrys Fabrics	3%			
Blinds Direct*	1%	12%	30%	6%
Make My Blinds	1%	3%	7%	2%
Blindsbypost	1%		1%	1%
Swift Direct Blinds			3%	22%
BlindsUK				6%
No Ad**		19%	37%	54%

Source: CMA analysis of publicly available data.

Notes:

Other retailers that never feature in the top position and have a share of lower than 5% in all other positions are not shown

*Part of Interior Goods Direct

**While we have excluded time and search word combinations where no ads were shown at all, combinations where just certain ad position were missing were kept in the analysis.

8.90 Table 7 above sets out, for each retailer, the proportion of times its ads appeared in first to fourth position in Google Ads, across the 10 search words we searched for. From these results, we note the following:

- (a) Blinds2Go and 247 rank very frequently among the top two positions of Google Ads (with respect to the first ad position, Blinds2Go shows up 38% of the times, whereas 247 appears 51% of the times; regarding the second ad position, Blinds2Go appears 39% of times and 247 22% of times). Interior Goods Direct (in this case, comprising Blinds Direct and Wilsons Blinds) is the only competitor that has a notable share of the two top positions (appearing in the first ad position 6% of times and second position 17% of times). Interior Goods Direct outperforms all other retailers regarding the third ad position, whereas Swift Direct Binds outperforms all other retailers regarding the fourth ad position.
- (b) Blinds2Go and 247's brands tend to appear in several of the top ads results.²⁶⁴ When more than one ad is shown on the first page, Blinds2Go and 247 feature in at least 2 of them in most cases (corresponding to a minimum of 50% share of top ads for most cases).²⁶⁵

8.91 For completeness, we have also assessed the ranking of retailers with respect to Google Ads at the bottom of the page. While the details of this

²⁶⁴ Including the several Hunter Douglas' brands (Blinds2Go, Web Blinds, Hillarys, Thomas Sanderson and Tuiss) and 247.

²⁶⁵ This is because there can be only a maximum of four ads show on the top ads of Google search results pages. This might however include situations where two brands of Hunter Douglas are present rather than both Parties *per se*.

analysis are set out in Appendix E, we note that there appear to be no further competitors that feature frequently in Google Ads at the bottom of the page. Additionally, featuring in Google Ads at the bottom of the page is less relevant than featuring in Google Ads at the top of the page for the reasons discussed in paragraphs 8.32 to 8.42 above. We have taken this into account when weighing this evidence.

8.92 The second piece of analysis involved looking at ranking metrics for the top 10 search words by number of impressions for each of Blinds2Go, 247, [X] in the period 2017 to 2019 with respect to their Google Ads campaigns.²⁶⁶ This analysis therefore covers the [X] in the market in terms of market share, although, as shown in Table 3 we note that Swift Direct Blinds' market share is significantly smaller than the market shares of the other retailers considered. In conducting this analysis, we looked at the following metrics, which are held by each retailer both in relation to itself and other retailers:²⁶⁷

- (a) Impression share – Percentage of impressions that a retailer's ad receives compared to the total number of impressions that the retailer's ad is eligible for.²⁶⁸ An impression share provides information on how often an ad is shown rather than on the positions in which it is shown.
- (b) Overlap rate – How often another retailer's ad received an impression while a given retailer also received an impression
- (c) Top of page rate – How often a retailer's ad shows at the top of the page (within the group of top ads – rather than the first ad that shows) above the organic results for a particular search word.
- (d) Absolute top of page rate – How often a retailer's ad shows at the absolute top of the search page (first ad that shows) above the organic results for a particular search word.

8.93 The main results of this analysis are summarised below (further details are presented in Appendix E):²⁶⁹

²⁶⁶ This includes Blinds-related search words only. Number of impressions means how often the ad is shown. An impression is counted each time the ad is shown on a search result page or other site on Google. For the avoidance of doubt, this analysis focused on the search words of each retailer as opposed to just looking only at the search words of Blinds2Go and 247. The top 10 search words assessed represent a large proportion of overall impressions for each retailer in this period ([X]% for 247, [X]% for Blinds2Go, [X]% for Web Blinds, [X]% for Blinds Direct and [X]% for Swift Direct Blinds).

²⁶⁷ Additional metrics that were provided are 'position above rate', 'absolute top of page rate' and 'outranking share', but we did not think they were as insightful and have therefore not analysed them in further detail.

²⁶⁸ 'Eligible for' in this case means that the given retailer participated in the auction for this search word.

²⁶⁹ The analysis is for the period 2017 to 2019 combined (we do not hold the data separately for each year), meaning that any recent growth of competitors may be underrepresented. We understand that both Interior Goods Direct and Make My Blinds have grown significantly in the last three years.

- (a) Blinds2Go consistently (ie across all retailers' data) has the highest average impressions share ([X]%), average top of page rate ([X]%) and average absolute top of page rate ([X]%).
- (b) 247 is typically the runner up to Blinds2Go, although it is sometimes outperformed by Blinds Direct (part of Interior Goods Direct) in terms of impression share and top of page rate. Blinds Direct (part of Interior Goods Direct) always outperforms 247 when it comes to absolute top of page rate.
- (c) Other than Blinds2Go, 247 and [X], there are no other retailers that perform highly on any of the metrics analysed.

8.94 The third piece of analysis involved analysing metrics related to ranking for the search words of each of Blinds2Go, Web Blinds, 247, [X] and [X] in the year of 2019.²⁷⁰ In particular, we assessed:

- (a) Impression share.
- (b) Quality score – this provides insights on the quality of a certain retailer's ad. The score has values of 1-10 (1 lowest, 10 highest) and is reported for each search word, providing an estimate of the quality of a retailer's ad and the landing pages triggered by it. Three factors determine quality score: expected click-through rate, ad relevance, landing page experience.²⁷¹

8.95 We focused our analysis on each retailer's top 3, 5, 10, 30 and 50 search words (by number of impressions in the year) as well as all search words in 2019.

8.96 Impression shares provide information on the extent to which a retailer's ads are shown and therefore allow inferences to be drawn about the extent to which a retailer is able to reach visibility, but they do not provide information on how well the retailer ranked. Quality scores are also informative in the sense that, despite not being directly used in the ad ranking algorithm,²⁷² they are based on much of the same data that is

²⁷⁰ This includes blinds-related search words only. For the avoidance of doubt by this we mean that the analysis focused on the search words of each retailer as opposed to just looking only at the search words of Blinds2Go and 247. There are several reasons why the results of this analysis may differ from the results of our previous analysis discussed above in relation to the metrics they both cover (in this case, impression shares). These reasons include that: (i) the top 10 search words for each retailer do not necessarily need to be the same when considering overall period of 2017 to 2019 versus the top 10 words in 2019 only; (ii) the previous analysis shows simple averages of impression shares, whereas this analysis shows weighted averages (weighted on the basis of impressions); and (iii) there might in general be some differences in impression shares even for same search words over the years.

²⁷¹ <https://support.google.com/google-ads/answer/7050591>

<https://support.google.com/google-ads/answer/2454010>

²⁷² <https://support.google.com/google-ads/answer/140351?hl=en-GB>

considered regarding quality in the Ad ranking algorithm, as explained in Appendix E.

- 8.97 With respect to the top 10 search words of each retailer, [X] and Blinds2Go are the best performing retailers when it comes to both impression shares ([X]) and quality scores ([X]). 247 performs comparatively worse on both bases ([X]% impression share and [X] quality score). [X] performs the worst, with a [X]% impression share.
- 8.98 We found similar results when we ran the analysis for all search words of each retailer, rather than just the top ten. Further details are set out in Appendix E.
- 8.99 The fourth piece of analysis involved a review of the 'Auction Insights' reports and 'Account Health' reports contained in Blinds2Go's internal documents. These reports show a number of different metrics related to ranking.
- 8.100 We have only identified three complete 'Auction Insights' reports and two 'Account Health' reports, each covering a week to a few months within the period from 2016 to 2018. As such, this evidence is likely to show an incomplete and outdated picture, and we have therefore placed limited weight on it. [X]. More details on the analysis of these internal documents can be found in Appendix E.
- 8.101 In response to the results of our analyses on ranking, the Parties submitted that there are various online retailers with non-negligible sales (eg MakeMyBlinds) that do not feature frequently among the top Google search results according to the CMA's own analysis.²⁷³ However, we note that the frequency at which MakeMyBlinds appears in the top Google Ads is in line with its relatively small sales and market share of [X]%. MakeMyBlinds, according to our ranking analysis, appears 1% of times in the top, 3% in the second, 7% in the third and 2% in the fourth ad position (see Table 7 above).

Organic search

- 8.102 With respect to rankings in organic search results, we considered the rankings we were able to observe directly from Google Web results with respect to top 10 search words in the industry related to blinds (ie not made-to measure specific search words) based on Google Trends in 2019, as explained in paragraph 8.88 above.

²⁷³ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.35.

8.103 The details of this analysis are set out in Appendix E. Below, we summarise the results of this analysis:

- (a) Each of Blinds2Go, 247, Dunelm and Interior Goods Direct features frequently in the top three positions. The only other competitors that rank frequently, but only in lower positions, are Argos, Swift Direct Blinds, The Range and Next. However, we note that some of these retailers (Dunelm, Argos, The Range, and Next) have a strong ready-made blind offering (and some of these, eg Argos and The Range, do not sell M2M blinds).
- (b) In the vast majority of cases (94%), the Parties' brands show in at least 2 of the top 5 organic links and show in 3 of the 5 top organic links in 30% of the cases.²⁷⁴

8.104 We also found an internal document commissioned by 247 [REDACTED]. [REDACTED] (see paragraph 8.177). More details on this can be found in Appendix E.

Conclusion on Google rankings

8.105 Overall, this analysis shows that both Parties' brands consistently rank highly in paid search, and across a number of different metrics, indicating that the Parties' brands are both highly effective at competing for the top positions. They also rank highly in organic search, though to a lesser extent. Additionally, the analysis shows that the Parties' brands tend to consistently rank the highest relative to other retailers, although with Interior Goods Direct outperforming 247 in some cases.

8.106 The results of our analysis on online presence, namely that the Parties consistently appear in the highest rankings relative to other retailers, with only Interior Goods Direct outperforming 247 in some cases, closely align with the market shares we found for different retailers in the online M2M blinds market (see Table 3). They further indicate that (i) the Parties, together with Interior Goods Direct, are the leading suppliers in this market and close competitors to each other and (ii) other online M2M blinds suppliers (including Swift Direct Blinds) may be a less effective constraint.

Comparison of performance on Google Ads

8.107 Given the importance of Google Ads in obtaining traffic in this market, the extent to which retailers are able to perform well in Google Ad campaigns

²⁷⁴ The Parties' brands include the several Hunter Douglas' brands (Blinds2Go, Web Blinds, Hillarys, Thomas Sanderson and Tuiss) and 247. This might however include situations where two brands of Hunter Douglas are present rather than both Parties *per se*.

can provide an indication of how effective the Parties and their competitors are at obtaining traffic, which in turn provides an indication of closeness of competition. For example, if two retailers within a market are able to perform well on this metric whereas others are not, this might suggest that the former two will be closer competitors with each other and that the others pose a relatively less significant constraint in the market and are likely to be more distant competitors.

- 8.108 In the previous section, we have assessed the extent to which retailers perform differently with respect to relative positioning in Google Ad ranks, including considering the impact of quality on rankings.
- 8.109 However, it is also relevant to look at other aspects of performance that, to some extent, will reflect the impact of such rankings (through clicks and click-through rates, which are likely to depend on ad position, and consequently impact conversions).
- 8.110 We have therefore also analysed the performance of different retailers' Google Ad campaigns by looking at a number of performance metrics for these campaigns. In particular, we assessed data on Google Ad search words from each of Blinds2Go, Web Blinds, 247, Blinds Direct (part of Interior Goods Direct) and Swift Direct Blinds. We focused our analysis on the following performance metrics:²⁷⁵
- (a) Costs;
 - (b) Impressions, ie views – how often the ad is shown. An impression is counted each time the ad is shown on a search result page or other site on Google.²⁷⁶
 - (c) Interactions, ie clicks – the main user action associated with an ad format, in this case, clicks.²⁷⁷
 - (d) Conversions, ie sales – an action that has been defined as valuable to the business, such as an online purchase.²⁷⁸
 - (e) Costs per impression, per interactions and per conversions.

²⁷⁵ Blinds-related search words only. For the avoidance of doubt by this we mean that the analysis focused on the search words of each retailer as opposed to just looking only at the search words of Blinds2Go and 247.

²⁷⁶ See <https://support.google.com/google-ads/answer/6320?hl=en-GB>

²⁷⁷ See <https://support.google.com/google-ads/answer/6281923?hl=en-GB>

²⁷⁸ See <https://support.google.com/google-ads/answer/6365?hl=en-GB>

8.111 We focused our analysis on the performance of each retailer's top 3, 5, 10, 30 and 50 search words (by number of impressions in the year) as well as all search words in 2019.

8.112 Details of our analysis are set out in Appendix E. Below we summarise the main results with respect to the top 10 search words of each retailer in 2019:

- (a) Blinds2Go spends the most on Google Ads ([X]), whereas 247 spends slightly over £[X]. [X] spends a similar amount to Blinds2Go and significantly more than 247. [X] spends much less than all other retailers (less than £[X]).
- (b) Blinds2Go's and 247's ads outperform those of both [X] and [X] on number of views by a large extent ([X]). [X] has the most interactions and conversions by far, followed distantly by [X]. [X] has a very small number of interactions and conversions compared to the other retailers considered.
- (c) Although [X] has a much smaller number of interactions than [X], it is the retailer that performs best when it comes to generating traffic from views (as measured by interactions as a proportion of impressions). However, and more importantly, [X] is the best at converting when considering conversions as a proportion of interactions, distantly followed by [X] and [X].
- (d) The other retailers considered are paying similar or higher amounts per interaction to those of the Parties. However, they pay much more per conversion than the Parties, especially when compared to [X], suggesting that other retailers are not as successful at converting (and that their marketing spend is less effective) compared to the Parties [X].

8.113 The Parties submitted that the fact that 247 – according to some metrics – is a less effective PPC spender than some of its competitors is 'somehow brushed aside'.²⁷⁹ As set out in paragraph 8.112 above, we acknowledge that on the basis of certain metrics, 247 is indeed outperformed. However, we find that on balance (ie considering the evidence on all metrics in the round), 247 tends to perform better than the two other competitors considered. Additionally, we note that one competitor performing better on certain metrics does not mean that the Parties are not close competitors.

²⁷⁹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.55.

- 8.114 The Parties further submitted that we should focus our analysis on all search words instead of the top 10 search words only.²⁸⁰ We note that, as set out in paragraph 8.111 above, we have conducted the analysis not only on the basis of the top 10 search words, but also on the basis of all search words (as well as the top 3, 5, 30 and 50 search words). When considering all search words, we find broadly similar results to when the analysis is done for the top 10 search words (see Appendix E for details).
- 8.115 We note that retailers' values for conversions were not all provided on the same basis. In particular, conversions included revenue from providing samples to customers for all retailers except [X] and 247 (for which samples were excluded from conversions). This suggests that the number of conversions for the other retailers is likely to be overestimated compared to [X] and 247 – leading, in turn, to an underestimation of costs per conversion for Blinds2Go, Web Blinds and [X] and 247. However, when we adjust conversions to exclude sample sales,²⁸¹ the costs per conversion are still considerably smaller for the Parties than for other competitors. Similarly, the findings on the absolute and relative numbers of conversions (see paragraphs 8.112(b) and 8.112(c)) also continue to hold when removing samples from conversions.
- 8.116 Overall, this analysis indicates that Blinds2Go tends to perform better on Google Ads than the other online M2M blind retailers (247, [X]). With the exception of cost per impression, Blinds2Go performs best on all metrics analysed (number of views, interactions, conversions and costs per conversion and interaction) and has the highest overall spend. Blinds2Go is further the best at generating conversions from clicks, although [X] is the best at generating traffic out of views. 247 performs less well than [X], but better than [X], in terms of number of interactions and conversions; however it outperforms [X] and [X] when it comes to number of views and costs per conversion. In our view, these findings indicate that the Parties are both effective competitors for online M2M blinds, giving some indication that they are likely to be close competitors.

Ad search words bidding behaviour

- 8.117 We assessed the Parties' and other retailers' bidding behaviour, with respect to:

²⁸⁰ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.54.

²⁸¹ Conversions can be adjusted to exclude the provision of samples to customers as we have information on the percentage of conversions that represent samples for these retailers. Consistent with their responses to the CMA's Questionnaires on number of sales and samples in 2019, we have assumed that [X]% of conversions corresponded to samples for both Blinds2Go and Web Blinds and [X]% for [X].

- (a) the extent to which the search words²⁸² they bid on overlap; and
- (b) the extent to which branded search words are bid on and the non-brand bidding agreements ('NBBAs') are present in the market.

8.118 Details of these analyses are set out in Appendix E.

8.119 With respect to search word overlap, the analysis does not give a clear indication that there is one retailer that has a particularly high overlap with either of Blinds2Go and 247. Blinds2Go and 247 overlap with [X] to a broadly similar extent as they overlap with each-other. Therefore, this analysis does not allow us to draw any clear conclusions with respect to relative closeness of competition between Blinds2Go and 247 and between either of them and [X].

8.120 Similarly, the analysis of brand bidding and NBBAs, does not allow us to draw any clear conclusions on the effectiveness and strength of competition between the Parties and between the Parties and other retailers. Although we find that [X],²⁸³ this does not provide information on the strength of such retailers as a competitive force in the market or the extent to which they are able to successfully compete against the either Blinds2Go or 247.

8.121 Overall, we therefore agree with the Parties' submission that the 'ad search words bidding behaviour' analysis does not give any clear indication that the Parties are competing more closely between each other than with other retailers.²⁸⁴ However, this does not imply that the analysis provides evidence that the Parties are not close competitors.

Conclusions on online presence

8.122 On the basis of our analyses of the Parties' online presence, we find the following:

- (a) Our analysis of Google rankings, which includes all retailers present online, shows that both Parties consistently rank highly, indicating that the Parties are both highly effective at competing for the top positions, with only Interior Goods Direct outperforming 247 in some cases.

²⁸² We have considered blinds-related search words only.

²⁸³ According to the Parties, all these agreements are informal rather than formal written agreements.

²⁸⁴ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.54.

(b) Our analysis of Google Ads performance indicates that the Parties are both effective competitors for online M2M blinds.

8.123 Taken together, these analyses indicate that the Parties are likely to be close competitors.²⁸⁵

Survey evidence

8.124 As previously noted, the Parties submitted a survey, the BDRC Survey, which they commissioned to understand the purchase journey and choices of the Parties' customers.²⁸⁶ The Parties submitted that the BDRC Survey indicates that only a small proportion of Blinds2Go's customers, 12%, would switch to 247 if Blinds2Go stopped selling blinds – and that diversion to Dunelm (at 17%), Blinds Direct (part of Interior Goods Direct) (14%) and John Lewis (12%) are higher. The Parties submitted that this is further evidence supporting their view that 247 is not an important competitor to Blinds2Go.²⁸⁷

8.125 The Parties further submitted that with respect to diversion from 247 to Blinds2Go, one would expect relatively high diversion from small competitors to market leaders, simply reflecting relative market shares. The Parties argued that if 247 were to have a 7% share of online M2M blinds and Blinds2Go 55% and out-of-market constraints are very limited, then based on relative market shares one would expect diversion of about 59% ($55\%/(1-7\%)$). The Parties noted that substantially fewer of 247's customers, namely 33%, stated that they would switch to Hunter Douglas brands (predominantly Blinds2Go) if 247 stopped selling blinds.²⁸⁸

8.126 With respect to diversion from Blinds2Go to 247, the BDRC Survey implies a diversion ratio of 13%. We note that, while this diversion ratio is not particularly high, it is still the second highest diversion to an online M2M blind retailer, closely behind Blinds Direct (part of Interior Goods Direct). Additionally, we note that the third highest diversion to an online M2M blind retailer, namely Blinds4UK, only amounts to 4%. In our view, this confirms that there are only a small number of credible online M2M blind retailers, namely Blinds2Go, 247 and Interior Goods Direct.

8.127 While we acknowledge that the survey results show that diversion to Dunelm and John Lewis (combining diversion to both their online and their

²⁸⁵ As noted above, our analysis of search words overlap and brand bidding/NBBAs does not allow us to reach clear conclusions on the closeness of competition between the Parties and effectiveness of other retailers as competitors.

²⁸⁶ [Main submission](#), 20 May 2020, paragraph 1.8.

²⁸⁷ [Main submission](#), 20 May 2020, 8.18.

²⁸⁸ [Main submission](#), 20 May 2020, paragraph 8.19.

offline offering) is higher or similar to the diversion to 247, we consider that reported diversion to large multi-channel retailers (and, in particular, the diversion to the online offering of Dunelm and John Lewis) is likely subject to an upward bias (and hence that diversion to Blinds2Go and 247 and other online M2M blind retailers is likely subject to a downward bias) for the following reasons:

- (a) Customers are likely to be more familiar with the brands of large multi-channel retailers, given these are household names and customers may have shopped at them before for other products. In contrast, the brands of online M2M blind retailers tend to be less well known, and, indeed, the Parties submitted that there is relatively little brand recognition with respect to online M2M blind retailers.²⁸⁹ Accordingly, when asked to indicate which other retailer they would have purchased from, respondents, not being able to do further research in the course of responding to the survey, are more likely to have selected a familiar brand name than an unfamiliar brand name (or a brand name they encountered during their research process but subsequently forgot about).
- (b) However, respondents may have chosen Dunelm or John Lewis on the basis of brand familiarity, unaware of the true nature of their offerings. For example, Dunelm's website requires a virtual appointment and does not have an immediate option to order online M2M blinds while John Lewis only has a very limited offering online compared to its in-store range. In this regard, we note that the BDRC Survey shows that only 38% of Blinds2Go's customers and 43% of 247's customers that said they would divert to Dunelm indicated that they had visited Dunelm's website. Similarly, only 43% of Blinds2Go's customers and 48% of 247's customers that said they would divert to John Lewis indicated that they had visited John Lewis' website.

8.128 The Parties responded to this argument by submitting that the CMA's reported statistics only include customers who visited the website, but not researched in-store (or indeed via other channels).²⁹⁰ Additionally, the Parties submitted that because multi-channel retailers are trusted high quality retailers, can offer consumers broader design inspiration and a much wider range of products than M2M blinds, 'the CMA cannot reasonably conclude that their offerings would not in practice be chosen'.²⁹¹

8.129 With respect to customers researching in-store, we note that such research is unlikely to reveal the true nature of the online offering of these retailers.

²⁸⁹ [Main submission](#), 20 May 2020, paragraph 7.73 and Figure 7.10.

²⁹⁰ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.78.

²⁹¹ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.79.

For example, a customer visiting a John Lewis store may wrongly assume that the same offering is available online (and hence indicate diverting to the online offering of John Lewis), even though, and as noted above, John Lewis only has a very limited offering online compared to its in-store range. As such, we find that it is appropriate to focus on those customers that visited the respective website.

- 8.130 With respect to our wider conclusion, we do not suggest that multi-channel retailers would not be chosen at all. Our finding is that on the basis of the above, we consider that reported diversion to large multi-channel retailers (and, in particular, the diversion to the online offering of Dunelm and John Lewis) is likely subject to an upward bias. We also note that at least some of the factors the Parties listed on why multi-channel retailers would still be chosen (eg a much wider range of products than M2M blinds) do not necessarily apply to the online offering. Additionally, and as noted in paragraph 8.244, we find that the in-store offering of multi-channel retailers does not pose a material competitive constraint on the Parties, implying that their in-store presence is not significantly strengthening their constraint on the Parties.
- 8.131 With respect to diversion from 247, the BDRC Survey implies a diversion ratio of 34% to Blinds2Go and of 36% across all mentioned Hunter Douglas brands (Blinds2Go, Hillarys and Web Blinds). This diversion ratio is, as the Parties submitted, smaller than market shares suggest. However, we note that the survey results still imply that by far the largest proportion of 247 customers would divert to Blinds2Go / Hunter Douglas brands, suggesting that Blinds2Go / Hunter Douglas is the key competitive constraint on 247. Additionally, we consider that, as discussed in paragraph 8.126, the reported diversion to large multi-channel retailers is likely subject to an upward bias, implying that reported diversion to the Blinds2Go and 247 (and other online M2M blind retailers) is likely subject to a downward bias, which may at least in part explain the discrepancy between diversion ratio and market shares.
- 8.132 The BDRC Survey also indicates which websites the Parties' customers visited prior to placing their order. The results show a similar picture to the diversion ratios. While a higher proportion of Blinds2Go's customers visited the website of Blinds Direct (part of Interior Goods Direct) and Dunelm, a significant proportion, namely 12%, visited 247's website. The survey also shows that Blinds2Go was the website visited by the highest proportion of 247's customers, namely 33%.
- 8.133 Overall, we find that the results of the BDRC Survey are consistent with the Parties being close competitors. We additionally note that the competitive

constraint from Blinds2Go on 247 appears to be stronger than the constraint from 247 on Blinds2Go.

Internal documents

8.134 In the course of our inquiry we have reviewed more than 1,200 documents provided by the Parties at phase 2.²⁹² These were provided in response to requests for internal documents relating to:

- (a) Internal e-mails from the Parties discussing competitors, monitoring, and the competitive landscape;
- (b) Data and internal documents that show the monitored products and respective prices of competitors;
- (c) Documents and correspondence relating to marketing, and in particular Google advertising; and
- (d) A small number of Board reports and strategic documents related to the rationale for the Transaction.

8.135 The Parties have told us that neither of the Parties' strategic decision-making is usually documented in board reports or other strategic documents, but rather that decisions tend to be taken ad-hoc and by small groups of individual decision-makers. In general, the internal documents have been of a day-to-day rather than strategic nature.

8.136 We have received a large number of internal documents on the Parties' monitoring activities. These internal documents show, in line with the Parties' submissions, [REDACTED]. Blinds2Go records the prices of [REDACTED] for a number of different M2M blinds of a certain size on a weekly basis. 247 scrapes the website of [REDACTED], collecting the prices of [REDACTED].²⁹³

8.137 These internal documents further show that the Parties also monitor certain other retailers. In particular:

- (a) Blinds2Go records similar price information to that collected for 247 for [REDACTED];²⁹⁴ and

²⁹² While we set out below our analysis of the internal documents we have reviewed as they relate to the closeness of competition between the Parties, we also note that the internal documents do not in general support the Parties' submissions that ready-made blinds, blinds sold through alternative channels and alternative window covering pose a competitive constraint on the Parties.

²⁹³ The Parties described this monitoring as 'ad hoc'. While we agree that monitoring is not performed at regular intervals, there appears to be extensive documentation recording such monitoring: [REDACTED].

²⁹⁴ [REDACTED].

(b) [redacted].²⁹⁵

8.138 While this implies that Blinds2Go and 247 do not only monitor the prices of each other, the set of other retailers monitored is relatively small. In particular, 247 is one of [redacted] retailers whose prices Blinds2Go regularly monitors (for non-motorised M2M blinds), while Blinds2Go is one of [redacted] retailers that 247 monitors.

8.139 The Parties further submitted [redacted].²⁹⁶

8.140 The Parties further submitted that 247 only monitors Blinds2Go and [redacted] because of resource and time constraints (noting that coding/setting up the price scraping tool requires a significant upfront investment and that there is also a significant ongoing manual task associated with the exercise) and because it sees them as a 'proxy' for all of its competitors. In our view, this approach to monitoring does not contradict that 247 sees Blinds2Go and [redacted] as its key competitive constraints and in fact supports it.

8.141 Overall, we find that the evidence on the Parties' monitoring 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.

8.142 We have identified two further internal documents that speak to the closeness of competition between the Parties. We find that these also indicate that the Parties are close competitors:

(a) An email from [redacted] (both 247) from December 2018 requests that 247's prices for entry level roller blinds should be adjusted [redacted]. The email also refers to a similar adjustment for [redacted]. These adjustments show that 247 used the price scraping information it collects to adjust its prices, positioning itself as marginally cheaper than Blinds2Go and Interior Goods Direct.

(b) An internal 247 email from July 2020 notes that '[redacted]'. The expectation that a coordinated price increase by the Parties would not result in a decrease in sales indicates that the main competitive constraint on each of Blinds2Go and 247 is the respective other Party.²⁹⁷

²⁹⁵ 247's [redacted].

²⁹⁶ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.69.

²⁹⁷ The CMA notes that any agreement between Hunter Douglas or Blinds2Go and 247 to fix or coordinate their retail prices may breach the Chapter I prohibition in the Competition Act 1998 (as well as the equivalent EU prohibition). This report does not consider whether this correspondence discloses behaviour that is contrary to the Competition Act 1998.

8.143 The internal documents form part of a wider evidence base. The documents are consistent with our finding that Blinds2Go and 247 closely monitor online M2M blind retailers, and do not monitor other retailers closely. They are also consistent with the Parties being close competitors.

Pricing analysis

8.144 The Parties submitted that they used the pricing information collected by Blinds2Go through its monitoring of competitors (see paragraphs 8.137 and 8.138) to assess pricing trends over time:

- (a) The Parties assessed the extent to which weekly price changes by Blinds2Go correspond with other retailers moving their prices in the same direction across the various product categories.²⁹⁸
- (b) The Parties calculated the correlation between the weekly percentage changes of prices for each retailer pair.

8.145 Our assessment of this analysis, as well as our own analyses, are set out in Appendix D.

8.146 Overall, in our view the analysis submitted by the Parties is not suitable for determining the extent to which the prices of different retailers move together. We also find that our own analyses do not provide strong evidence that Blinds2Go and 247's prices follow each other more closely than the prices of other retailers. However, there is no indication that there is another retailer that Blinds2Go and 247 follow more closely.

8.147 In response to this, the Parties submitted that, given our findings, they do not understand how it could be concluded that Blinds2Go's prices are in any way constrained by 247's prior to the 2019 Transaction, nor that there would be an appreciable loss of price competition as a result of the 2019 Transaction.²⁹⁹ As set out above, we find that the price correlation is low between all retailers which we assessed. This finding highlights the limitations of looking at price correlation and shows that it is important to consider all factors in the round, rather than focusing on price correlation.

Third party evidence

8.148 As part of our investigation, we have contacted all third parties for which the Parties provided contact details. We received written responses on how and with whom they compete from eight third-party retailers of online M2M

²⁹⁸ [Main submission](#), 20 May 2020, paragraph 6.81.

²⁹⁹ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.60.

blinds and further conducted detailed calls with eight third parties. We therefore consider that we have extensively sought evidence from third parties.

8.149 Comments from third parties on how they perceive Blinds2Go and 247 suggest that they are close competitors with each other:

- (a) Interior Goods Direct told us ‘Most online customers value a good value product and will then shop from Blinds2Go or 247 because of their lower prices in comparison to competitors.’
- (b) Others, including MakeMyBlinds, said that Blinds2Go and 247 are frequently ‘ranked number one and two on Google for most search queries’.
- (c) We asked four third parties whether they viewed Blinds2Go and 247 as close competitors. All four confirmed that they did.

8.150 All online M2M blind retailers that submitted information on which retailers they monitor told us that they monitor both Blinds2Go and 247. Notably, the only other retailer apart from Blinds2Go and 247 that was monitored by all of these online M2M blind retailers is Interior Goods Direct. While this alone does not necessarily imply that the Parties are close competitors, it shows that Blinds2Go and 247 are, alongside Interior Goods Direct, considered by other online M2M blind retailers to be the key retailers of online M2M blinds.

8.151 Lastly, we note that no third party we spoke to provided evidence that conflicted with our view that Blinds2Go and 247 are close competitors.

Competitive significance of 247

8.152 The Parties submitted that the market share of 247 has steadily declined. They submitted that 247’s market share was in a range of between 10 to 20% in 2016, and that it declined to a range of between 5 to 10% in 2019.

8.153 With respect to the constraint from 247 on Blinds2Go, the Parties further submitted that such constraint is limited and declining. The Parties submitted that the CMA has failed to address how a retailer as small as 247 imposes any significant constraint on the market leader Blinds2Go.³⁰⁰ Additionally, the Parties submitted that [REDACTED].³⁰¹

³⁰⁰ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.9.

³⁰¹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.113.

- 8.154 Finally, the Parties submitted that by basing its provisional conclusion on the Merged Entity's combined market share and the merger removing a direct competitor, the CMA has asked the wrong questions, as all mergers between competitors have 'the effect of removing a direct competitor from the market' and it is not sufficient in and of itself for the CMA to find an SLC.³⁰²
- 8.155 In our view, 247's decline in market share is not particularly significant for the following reasons:
- (a) First, despite a loss in market share, 247 is still the third largest retailer in the market for online M2M blinds, and in terms of sales, is relatively close behind the second largest retailer, Interior Goods Direct.
 - (b) Second, in absolute terms, 247's sales of online M2M blinds have grown by more than [X]% in each of the last two years. While the Parties submitted that the absolute growth of 247 is irrelevant,³⁰³ we find that 247's ability to grow its sales is a relevant observation.
 - (c) Third, the decline in market share has been relatively limited, from [10-20]% in 2016 to [5-10]% in 2019. While the Parties submitted that this is a decline by [X]% and hence [X],³⁰⁴ we note that when expressed in percentage points, the decline only amounts to less than [X] percentage points over a period of three years.
- 8.156 We also note that the Parties' submission on the limited significance of 247 does not seem to align with the Parties noting that a merger between 247 and Interior Goods Direct, a retailer much smaller than Blinds2Go, would raise competition concerns.
- 8.157 In response to the Parties' submissions on the constraint from 247 on Blinds2Go, we note that while significantly smaller than Blinds2Go, 247 is still the second largest competitor to Blinds2Go, closely behind Interior Goods Direct. The Parties have also not submitted any evidence in support of the claim that [X].
- 8.158 Finally, we note that our assessment is not merely based on the Merged Entity's combined market share and the merger removing a direct competitor. We assessed the extent to which the 2019 Transaction has a significant effect on rivalry and the competitive pressure on the Parties by taking into account a range of evidence, with this evidence showing that the

³⁰² Parties' response to Provisional Findings, 7 August 2020, paragraph 4.2.

³⁰³ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.13.

³⁰⁴ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.13.

Parties are two of the three leading retailers of online M2M blinds and that the Parties are close competitors.

Conclusion on closeness of competition

8.159 Based on the assessment set out above, we find that:

- (a) Blinds2Go and 247 have a similar service proposition, in terms of price, quality and product range;
- (b) Both feature prominently in Google search results;
- (c) Survey evidence on the reported diversion of Blinds2Go's and 247's customers is consistent with them being close competitors with each other (high rates of diversion from 247 to Blinds2Go at 34% and lower but still significant diversion from Blinds2Go to 247 at 13%), with the constraint from Blinds2Go on 247 appearing to be stronger than the constraint from 247 on Blinds2Go;
- (d) Blinds2Go and 247 monitor each other's prices and each is part of a relatively small set of retailers that the respective other regularly monitors; and
- (e) Third parties have told us that they see Blinds2Go and 247 as being close competitors to each other.

8.160 Overall, we therefore find that the Parties are close competitors.

Remaining constraints

8.161 Unilateral effects are more likely where customers have little choice of alternative supplier. In this section, we consider the strength of the competitive constraint on the Merged Entity from alternative retailers. In their submissions, the Parties identified the following constraints:

- (a) Other online M2M blind retailers, including Interior Goods Direct, Swift Direct Blinds, MakeMyBlinds and a number of smaller online M2M blind retailers;
- (b) Multi-channel retailers, including Next, Dunelm and John Lewis;
- (c) Online marketplaces such as Amazon and eBay; and
- (d) Out-of-market constraints.

8.162 We assessed the level of constraint from each of these alternatives by taking into consideration:

- (a) The similarity of their service proposition compared to the Parties;
- (b) Their online presence;
- (c) Evidence from Blinds2Go and 247's customers in the form of the BDRC Survey submitted by the Parties;
- (d) Evidence on monitoring; and
- (e) Views from third parties.

Competition from other online M2M blind retailers

8.163 With respect to competition from other online M2M blind retailers, the Parties submitted that Blinds2Go and 247 are constrained not only by larger online M2M blind retailers, but also by smaller ones, that can and do compete with Blinds2Go and 247 given the lack of economies of scale and capacity constraints. The Parties specifically highlighted 'the breadth of competition on quality and the strength of a number of competitors'.³⁰⁵ The Parties also submitted that the Parties are one of many effective competitors in the retail of online M2M blinds.³⁰⁶

8.164 We assess each of Interior Goods Direct, Swift Direct Blinds and MakeMyBlinds in turn below. With the exception of BlocBlinds, a niche retailer for specialised roller blinds, these are the only online M2M blind retailers with a market share of more than 1%. We subsequently also consider the level of constraint from other smaller online M2M blinds retailers.

Interior Goods Direct

8.165 Interior Goods Direct is the second largest retailer in the online M2M blinds market, with sales of online M2M blinds amounting to £[REDACTED]million in 2019. Interior Goods Direct has grown significantly over the last years, with its sales of online M2M blinds growing by [REDACTED]% and [REDACTED]% in 2017 and 2018, respectively. Additionally, in April 2020, Interior Goods Direct acquired Wilsons Blinds, a smaller retailer with online M2M blind sales of £[REDACTED] in 2019. Interior Goods Direct is vertically integrated and has been trading blinds exclusively online since 2003.

³⁰⁵ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.61.

³⁰⁶ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.64.

8.166 The Parties submitted that Interior Goods Direct is an important and growing competitor, with survey evidence indicating significant diversion from the Blinds2Go and 247 to Interior Goods Direct.³⁰⁷ The Parties further submitted that the vertical integration of Interior Goods Direct allows it to stock over 1,000 M2M products offering next day delivery. The Parties noted that they expect that Wilsons Blinds will benefit from accelerated growth through the benefits of Interior Good Direct's vertical integration.³⁰⁸

8.167 The offering of Interior Goods Direct is broadly similar to that of Blinds2Go and 247. In particular:

- (a) Our analysis of prices (see paragraph 8.146) indicates that the prices of Interior Goods Direct are similar to those of Blinds2Go and 247.
- (b) In terms of quality, Interior Goods Direct markets itself as a slightly higher quality producer, noting that manufacturing its products in the UK helps in this regard. However, Interior Goods Direct has a lower Trustpilot score than either Blinds2Go or 247.³⁰⁹
- (c) While the Parties claimed that Interior Goods Direct offers next day delivery, a review of the Interior Goods Direct website showed that it only offers a 'fast track' option – which guarantees dispatch within 2 to 3 working days for orders made before 12pm at an extra cost (£4.95). Interior Goods Direct also states on its website that the estimated dispatch time does not include the delivery time (one day for deliveries to the UK Mainland).³¹⁰
- (d) In terms of range, while Interior Goods Direct has a larger overall range (in terms of SKUs) than Blinds2Go and 247, it offers significantly fewer SKUs for wooden blinds – which is, as discussed in paragraph 8.63 above, the top-selling type of blind for each of the top four online M2M blind retailers.³¹¹

8.168 Interior Goods Direct appears to be less successful than either Blinds2Go or 247 at ranking highly on Google paid search, although it does outperform 247 in some cases: our analysis of Google paid search (paragraph 8.90) found that Interior Goods Direct features significantly less frequently (and in lower positions) in the paid Google Ads search results than Blinds2Go and, to a lesser extent, 247 (Interior Good Direct does

³⁰⁷ [Main submission](#), 20 May 2020, paragraphs 6.38, 6.46, 6.60, 6.61, and 6.62.ii.

³⁰⁸ [Main submission](#), 20 May 2020, paragraphs 6.46.

³⁰⁹ Interior Goods Direct has a Trustpilot score of 87%, while Blinds2Go and 247 have a Trustpilot score of 97% and 91%, respectively Parties' response to Issues Letter, paragraph 3.62, 4 March 2020.

³¹⁰ Parties' main submission para 6.46, and [Direct Blinds website](#), accessed on 30 June 2020.

³¹¹ In particular, while the Parties offer more than 200 SKUs of wooden blinds each, Interior Goods Direct only offers 80.

outperform 247 in some cases). Interior Goods Direct's performance regarding organic search is better, with it tending to appear more frequently than 247 (though still less frequently than Blinds2Go) in the top positions.

- 8.169 The BDRC Survey submitted by the Parties shows significant diversion from each of Blinds2Go and 247 to Interior Goods Direct – 16% for Blinds2Go customers and 14% for 247 customers. We further note that 34% of Blinds2Go customers and 25% of 247 customers indicated that they visited the website of Blinds Direct (part of Interior Goods Direct) prior to their purchase, while only very small proportions of either Blinds2Go and 247 customers indicated that they visited the website of Wilsons Blinds.
- 8.170 With respect to evidence on monitoring, we note that [REDACTED]. However, and as discussed in Annex D, we found little correlation between the prices of Interior Goods Direct and those of the Parties. Additionally, we note that Interior Goods Direct is monitored by all online M2M retailers that submitted information on which competitors they monitor. Interior Goods Direct is further monitored by [REDACTED] (it is the only online M2M retailer other than the Parties that is monitored by [REDACTED]) but not by [REDACTED].
- 8.171 Finally, we note that the conversion rates of Interior Goods Direct are significantly lower than those of Blinds2Go and slightly lower than those of 247.³¹² This suggests that Interior Goods Direct is significantly less effective than Blinds2Go at converting visitors to its websites to sales.
- 8.172 Based on the evidence set out above, we find that Interior Goods Direct is a significant competitive constraint on the Parties, and that its constraint on Blinds2Go is similar to the constraint 247 poses on Blinds2Go: Interior Goods Direct has a similar offering to the Parties, it is the second largest supplier in the market and of similar size to 247, and survey evidence shows significant diversion to Interior Goods Direct – although we note that Interior Goods Direct is less often ranked highly on paid search than the Parties and is also less effective than the Parties in terms of conversion.

Swift Direct Blinds

- 8.173 With sales of online M2M blinds amounting to £[REDACTED]million in 2019, Swift Direct Blinds is the fourth largest retailer in the online M2M blinds market and has a considerably smaller share than 247 (the third largest retailer).³¹³

³¹² For user conversion, the rates are [REDACTED]% for Blinds2Go, [REDACTED]% for 247 and [REDACTED]% for Interior Goods Direct. For session conversions, the rates are [REDACTED]% for Blinds2Go, [REDACTED]% for 247 and [REDACTED]% for Interior Goods Direct. While Blinds2Go told us that the e-commerce conversion rates for Blinds2Go are not reliable as Google Analytics counts sample orders as transactions, the figures shown above were submitted by the Parties without this caveat, so we understand these to be reliable and not include samples as transactions. [Main submission](#), [REDACTED].

³¹³ [Main submission](#), 20 May 2020, para 7.47.ii and [REDACTED].

Swift Direct Blinds' sales of online M2M blinds decreased [REDACTED] in 2019, by £[REDACTED]million compared to 2018, and [REDACTED] [Another retailer] told us that Swift Direct Blinds has been struggling over the last year or two.³¹⁴ Swift Direct Blinds is a vertically integrated supplier. While it was active as an in-store retailer in the 2000's, Swift Direct Blinds moved online in 2010.³¹⁵

8.174 The Parties submitted that Swift Direct Blinds is a key online retailer of M2M blinds and that it has registered significant growth since its launch in 2012.³¹⁶ The Parties further submitted that Swift Direct Blinds concentrated its efforts on the Google organic channel and regularly featured in the number one position.³¹⁷ Finally, the Parties submitted that Swift Direct Blinds' confidence in the quality of their blinds is such that they offer a five-year guarantee on all products.³¹⁸

8.175 Swift Direct Blinds' offering is broadly similar to that of the Parties. In particular:

- (a) Our analysis of prices (see Annex D) indicates that the prices of Swift Direct Blinds are similar to those of the Parties, although we note that Swift Direct Blinds' prices are significantly higher than those of either of the Parties for venetian blinds;
- (b) In terms of quality, Interior Goods Direct told us that the product quality of Swift Direct Blinds is similar to that of the Parties. We also note that Swift Direct Blinds' Trustpilot score is similar to those of the Parties.³¹⁹ We acknowledge the Parties' submission that Swift Direct Blinds offers a five-year guarantee on all products. However, we note that offering several years guarantee is a common practice in the market, and therefore we do not consider it as a significant element of differentiation.³²⁰
- (c) In terms of range, we find that Swift Direct Blinds offers a similar number of SKUs as the Parties, both overall and with respect to wooden blinds, the top-selling type of blind for each of the top four online M2M blind retailers.

8.176 Swift Direct Blinds is less successful than the Parties at ranking highly on Google paid search, with our analysis of Google paid search showing that

³¹⁴ [REDACTED].

³¹⁵ [REDACTED].

³¹⁶ [Main submission](#), 20 May 2020, paragraph 7.47.ii.

³¹⁷ [Main submission](#), 20 May 2020, paragraph 7.19.

³¹⁸ [Main submission](#), 20 May 2020, paragraph 6.49.

³¹⁹ Parties' response to Issues Letter, paragraph 3.62, 4 March 2020.

³²⁰ 247 offers three years guarantee, MakeMyBlinds four years and Swift Direct Blinds, Interior Goods Direct and Blinds2Go five years.

Swift Direct Blinds very rarely features in the top positions of paid Google Ads.

- 8.177 With regard to organic search, our analysis of Google organic rankings shows that, contrary to the Parties' submission, Swift Direct Blinds does not feature prominently: the highest position in which Swift Direct Blinds showed was the fourth position, and Swift Direct Blinds occupied this position in only 4% of the conducted searches. We also note that Swift Direct Blinds told us that its organic positioning on Google suffered after it changed its website URL (from Direct Blinds to Swift Direct Blinds) in August 2019, and provided us with the respective underlying data (see Appendix F).
- 8.178 The BDRC Survey submitted by the Parties shows very limited diversion from each of the Parties to Swift Direct Blinds – less than 1%. We consider this to be strong evidence of the limited constraint imposed by Swift Direct Blinds on the Parties. We further note that only 2% of Blinds2Go's customers and 3% of 247's customers indicated that they visited Swift Direct Blinds' website prior to their purchase. This is further evidence that Swift Direct Blinds only poses a limited competitive constraint on the Parties.
- 8.179 With respect to evidence on monitoring, we note that [REDACTED], other online M2M retailers (including 247) and multi-channel retailers do not tend to monitor Swift Direct Blinds. The only exception to this is.³²¹ [REDACTED], and as discussed in Appendix D, we found little correlation between the prices of Swift Direct Blinds and Blinds2Go (and likewise 247).
- 8.180 Finally, we note that the conversion rates of Swift Direct Blinds are significantly lower than those of the Parties. This implies that Swift Direct Blinds is significantly less effective than the Parties at converting visitors to its website to sales.³²²
- 8.181 Based on the evidence set out above, we find that while Swift Direct Blinds appears to have a similar offering to the Parties, it performs significantly less well in terms of its online presence and its effectiveness in terms of conversion. We also find that its revenue and market share are significantly smaller than 247's, and that its sales have significantly decreased in 2019.

³²¹ [REDACTED].

³²² For user conversion, the rates are [REDACTED]% for Blinds2Go, [REDACTED]% for 247 and [REDACTED]% for Swift Direct Blinds. For session conversions, the rates are [REDACTED]% for Blinds2Go, [REDACTED]% for 247 and [REDACTED]% for Swift Direct Blinds. While Blinds2Go told us that the e-commerce conversion rates for Blinds2Go are not reliable as Google Analytics counts sample orders as transactions, the figures shown above were submitted by the Parties without this caveat, so we understand these to be reliable and not include samples as transactions. [Main submission](#), 20 May 2020, Figure 6.8.

We therefore conclude that the current competitive constraint from Swift Direct Blinds on the Parties is limited.

- 8.182 However, and as also pointed out by the Parties,³²³ we acknowledge that Swift Direct Blinds was recently acquired by Decora, and that this may impact its future performance. We consider this in more detail in our assessment of entry and expansion (see paragraphs 9.56 to 9.63 below).

MakeMyBlinds

- 8.183 MakeMyBlinds is a relatively new and small player in the online M2M blinds market, having entered the market in 2015. In 2019, MakeMyBlinds' sales of online M2M blinds amounted to £[REDACTED], leading to a market share of [0-5]%.³²⁴

- 8.184 The Parties submitted that MakeMyBlinds' growth has been due, in part, to an effective online marketing strategy that has focussed not just on PPC advertising but also on social media, in particular Instagram. Consistent with this, Interior Goods Direct told us that MakeMyBlinds targets younger customers.

- 8.185 While MakeMyBlinds offers all main types of blinds and has a website with similar functionalities to those of the Parties, there appear to be certain differences between MakeMyBlinds' offering and those of the Parties:

- (a) While we do not hold detailed pricing data from MakeMyBlinds, MakeMyBlinds told us that it 'used to be very price conscious against Blinds2Go and 247', but that it was not making the required margin and therefore no longer price matches. Instead, it tries to position its blinds as quality products.
- (b) MakeMyBlinds' range in terms of SKUs is significantly more limited than those of the Parties: MakeMyBlinds offers 820 SKUs, while Blinds2Go and 247 offer 4,497 and 2,823 SKUs, respectively.
- (c) MakeMyBlinds' Trustpilot score is comparable to that of the Parties. However, we note that MakeMyBlinds has significantly fewer reviews, namely around 1,000 while Blinds2Go and 247 each have more than 10,000 reviews. This is likely to be a function of MakeMyBlinds having been in the market for less time. However, the fact that they have been active for less time and hence have fewer reviews is itself likely to disadvantage them to some extent over more established firms.

³²³ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.71.

³²⁴ [REDACTED].

- 8.186 MakeMyBlinds appears to be less successful than the Parties at ranking highly on Google search: our analysis found that MakeMyBlinds only features sporadically in the paid Google Ads search results and never appears among the organic Google search results on the first page. While we acknowledge that MakeMyBlinds spends a higher proportion of its marketing spend on social media as compared to other online M2M blind retailers, we note that Google paid and organic search are still the largest two sources of revenue for MakeMyBlinds, with Google paid search being the channel on which MakeMyBlinds spends the largest proportion of its marketing spend.
- 8.187 With respect to evidence on monitoring, we note [REDACTED] even though [REDACTED] (see paragraph 8.138). This indicates that MakeMyBlinds is not seen as a strong competitive constraint by either Blinds2Go or 247. For completeness, we note that MakeMyBlinds is monitored by [REDACTED].
- 8.188 The BDRC Survey submitted by the Parties shows very limited diversion from each of the Parties to MakeMyBlinds – less than 1%. We consider this to be strong evidence that MakeMyBlinds imposes only a limited competitive constraint on the Parties. We further note that only 2% of Blinds2Go's and 1% of 247's customers indicated that they visited MakeMyBlinds' website prior to their purchase. This is further evidence that MakeMyBlinds only poses a limited competitive constraint on the Parties.
- 8.189 Based on the evidence set out above, MakeMyBlinds appears to have a similar offering to the Parties, albeit its range is more limited. MakeMyBlinds also appears to be less successful than the Parties at ranking highly on Google search and it currently is a small player in the online M2M blinds market.³²⁵ We therefore find that MakeMyBlinds currently only poses a limited competitive constraint on the Parties. However, we note that MakeMyBlinds has experienced significant growth in the past years, and that it has plans for significant further growth. We consider this in more detail in our assessment of entry and expansion (see paragraph 9.64 below).

Other smaller online M2M blind retailers

- 8.190 In addition to the online M2M blind retailers discussed above, the Parties submitted that there is a large number of other online M2M blind retailers with a similar offering and that the aggregate competitive constraint from 'many smaller players' should not be ignored. The Parties provided a

³²⁵ We do not hold data on MakeMyBlinds' conversion rates and are hence unable to comment on the effectiveness of MakeMyBlinds in terms of converting visitors to its website into sales.

selection of screenshots of the websites of such other online M2M retailers and further specifically discussed the following retailers:³²⁶

- (a) The Parties submitted that Blinds4UK has over 35 years' experience in window coverings, that its blinds featured on BBC Grand Designs and In-House Beautiful magazine and that it has an excellent rating on Trustpilot, with over 3,000 reviews.³²⁷ The Parties further submitted that the BDRC survey shows that approximately a quarter of customers visited Blinds4UK before making their purchase with the Parties, and that this is evidence of Blinds4UK' competitive constraint.³²⁸
- (b) The Parties submitted that Terrys Fabrics was established 46 years ago, that it offers payment through a credit provider and that it has been featured on ITV's This Morning and in the Good Housekeeping magazine.³²⁹ The Parties further submitted that in August 2019, Terrys Fabrics released an augmented reality window dressing app to help customers visualise its blinds in their home before placing an order.³³⁰
- (c) The Parties submitted that Concept Blinds is rated 4.9 out of 5 on Trustpilot and has been online for 14 years.³³¹ The Parties further submitted that Concept Blinds claims to have the lowest UK prices and that it does its best to match any listed price for an equivalent product on another online site 48 hours after purchase.³³²

8.191 Whilst we acknowledge that there are a number of smaller online M2M blind retailers, we note the following:

- (a) With the exception of Interior Goods Direct, Swift Direct Blinds and MakeMyBlinds (and the specialised retailer Blocblinds), all other online M2M blind retailers are small and have remained small, despite having been active in the market for a number of years. Even the largest of the other online M2M blind retailers, OrderBlindsOnline, has a market share of less than [%], with sales of online M2M blinds amounting to only £[£] million in 2019. The Parties submitted that the combined market share of these smaller retailers was 20%. However, the evidence we have seen does not support such a high estimate. Based on the actual sales data we received from the smaller retailers that responded to our request

³²⁶ Main submission, 20 May 2020, Annex 0099.

³²⁷ Main submission, 20 May 2020, paragraph 6.47.

³²⁸ Main submission, 20 May 2020, paragraph 6.47.

³²⁹ Main submission, 20 May 2020, paragraph 6.50.

³³⁰ Main submission, 20 May 2020, paragraph 6.50.

³³¹ Main submission, 20 May 2020, paragraph 6.51.

³³² Main submission, 20 May 2020, paragraph 6.51.

for sales data, other online M2M blind retailers only account for a market share of 2%.³³³

- (b) The Parties do not consider these smaller retailers in their strategic decision making. For example, with the exception of [X].
- (c) The other online M2M blinds retailers do not tend to rank frequently in paid Google Ad search results or the first page of Google organic search results.³³⁴
- (d) The BDRC Survey submitted by the Parties shows limited diversion from each of the Parties to the other online M2M retailers. The highest diversion is to Blinds4UK (4% for Blinds2Go customers and 5% for 247 customers), with diversion to all other online M2M retailers in aggregate amounting to less than 1% for Blinds2Go and 247 customers. Additionally, the survey shows that the Parties' customers did not tend to visit the websites of the other online M2M retailers prior to their purchase. The exception is Blinds4UK, although we note that, in contrast to the Parties' submission that around a quarter of customers visited Blinds4UK, the BDRC Survey actually shows the proportions were lower: 11% of Blinds2Go customers visited Blinds4UK and 18% of 247 customers visited Blinds4UK.³³⁵
- (e) The Parties have not provided evidence to show how they are constrained by the smaller online M2M blind retailers, either individually or in aggregate.

8.192 Based on the above, we find that the smaller online M2M blind retailers do not, either individually or in aggregate, constitute a significant competitive constraint on the Parties: they have not managed to grow despite having been active in the market for a number of years, they are not able to attract a significant number of potential customers and they do not appear to influence the Parties' behaviour.

Conclusion on constraint from online M2M blind retailers

8.193 We find that Interior Goods Direct is a significant competitive constraint on the Parties, and that its constraint on Blinds2Go is similar to the constraint 247 poses on Blinds2Go.

³³³ See Table 3, where the market shares of Order Blinds Online Ltd, Blinds4UK, Meadow Blinds Ltd / Lifestyle Blinds Ltd, and Others (with turnover <0.5m) add up to 2%.

³³⁴ See paragraphs 8.90, 8.93 and 8.103, as well as the more detailed discussion in Appendix E.

³³⁵ The Parties' appear to only count customers that in a preceding question indicated that they visited other websites, rather than counting all customers.

8.194 Apart from Interior Goods Direct, the constraint from other online M2M blind retailers on the Parties is relatively weak. This is consistent with the view that there are few credible sizeable online M2M blind retailers.

Competition from multi-channel retailers

8.195 Multi-channel retailers are retailers that are active in several channels, namely both the offline channel (in-store and/or in-home) and the online channel. In this section, we focus on the online M2M blind offering of these retailers.

8.196 On the basis of the Parties' submission and responses from third parties, we understand that Next, Dunelm and John Lewis are the only multi-channel retailers with an online offering of M2M blinds (although we note that Dunelm's website currently does not have click-to-order functionality, see paragraph 4.34).³³⁶ We note that, as set out in paragraph 8.10 above the sales of online M2M blinds for each of these multi-channel retailers are small: in 2019, the sales of online M2M blinds for Next, Dunelm and John Lewis amounted to £[X]million, £[X]million and £[X]million, respectively.³³⁷

Similarity of service proposition

8.197 We assessed the similarities between the online offering of the multi-channel retailers and online M2M blind retailers. In particular, we focus on the most important factors that affect a customers' choice of retailer: price, quality and range.³³⁸

8.198 Overall, we find that multi-channel retailers' service propositions tend to be materially different from those of online M2M blind retailers when assessed on the above parameters.

8.199 Multi-channel retailers tend to price higher than online retailers.

- (a) Price comparisons submitted by the Parties suggest that the prices of John Lewis are significantly higher than those of online M2M retailers (between 70% more and more than double), although we note that these comparisons only assess two M2M blind products for John Lewis, namely roller blinds and roman blinds.

³³⁶ While the Parties further included Laura Ashley in the online M2M market shares, it does not appear to be possible to order M2M blinds through the Laura Ashley website.

³³⁷ Corresponding to market shares of [0-5]%, [0-5]%, and [0-5]% respectively.

³³⁸ When asked about the reasons that influenced the choice of the retailer, the majority of the Parties' customers interviewed responded 'Good prices/offer', followed by 'Had what specifically wanted', 'Website easy to use', 'Product quality', and 'Good/wide product range'.

- (b) John Lewis noted that its products tend to fall within the mid-range to higher end of the market pricewise due to a range of factors including its use of higher quality materials relative to some of its competitors and its higher overheads compared to online competitors.
- (c) Next, the only multi-channel retailer included in the price monitoring data of Blinds2Go, tends to be among the more expensive retailers of online M2M blinds. The Parties submitted that Next has cut its prices of roman blinds and roller blinds since the date of the last price scrape that the Parties had submitted to the CMA, arguing that Next has therefore become much more competitive on price.³³⁹ However, the new Next prices submitted by the Parties are similar to the ones used in our comparison, implying that even on the basis of the new prices, Next remains among the more expensive retailers of online M2M blinds.
- (d) Blinds2Go states on its website that it compared its prices with the five main M2M blind retailers on the high street and that 'in almost 25% of cases we were cheaper by 60% or more'. It further advertises on its website that 'you can also save up to 60% off High St. prices'.³⁴⁰

8.200 While the Parties agreed that multi-channel retailers tend to charge higher prices, the Parties submitted that the price differential does not suggest that multi-channel and online M2M blind retailers do not compete, arguing that customers are likely to make a quality-price trade-off as a brand like John Lewis has built a reputation for the quality of their products over time. The Parties also submitted that the CMA has advanced no evidence to support that differentiation may limit the multi-channel retailers' competitive constraint on the Parties, and that the significant diversion to John Lewis indicates that customers see the offerings as substitutes.³⁴¹ We note that the presence of price and quality differences (which, according to the Parties, customers trade-off against each other) is an indicator of differentiation. All else equal, the more differentiated the offering of retailers are, the lower the competitive constraint these retailers are likely to exert on each other. While we further acknowledge that some customers may still see the offering of certain multi-channel retailers as a substitute (although, as discussed in 8.127, we consider that reported diversion to large multi-channel retailers is likely to be subject to an upward bias), we

³³⁹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.57.

³⁴⁰ Blinds2Go website, accessed 23 June 2020. Although these comparisons refer to the in-store prices of the multi-channel retailers, the multi-channel retailers tend to apply the same price online as offline. Next told us that it charges the same price for its M2M blinds online and in-store (Call with Next, 5 May 2020). John Lewis states on its website that 'We apply the same national price to products in our shops and online.'

<https://www.johnlewis.com/customer-services/prices-and-payment/never-knowingly-undersold>

³⁴¹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.82.

have not received evidence that multi-channel retailers exert a significant competitive constraint on the Parties.

- 8.201 In terms of quality, multi-channel retailers may benefit from brand recognition and the perception that they offer higher quality. For example, John Lewis noted that it considers itself to be a very trusted brand, taking pride in quality and design. It also noted that it uses higher quality materials relative to some of its competitors.³⁴²
- 8.202 Multi-channel retailers offer a significantly smaller online range than the Parties. In particular, while Blinds2Go and 247 respectively offer 4,497 and 2,823 SKUs, the Parties submitted that Next offers 844 SKUs online, John Lewis 511, and Dunelm 285.
- 8.203 We note that the more limited range of multi-channel retailers seems to be driven by system and/or website functionality. For instance, one multi-channel retailer ([REDACTED]) told us that whilst it sold some types of blinds online, it was still not able to provide a full offering via this channel. [REDACTED] told us that its webstore is not currently versatile enough to offer larger ranges of highly bespoke products, such as M2M blinds, and that it currently offers only [REDACTED]% of its made-to-measure products online.³⁴³
- 8.204 Both Next and John Lewis have told us that they would like to increase their range going forward. However, the significance and/or timing of such any increase remains unclear, particularly given the technical difficulties of system and/or website functionality noted above, the competing priorities resulting from selling products other than M2M blinds within these businesses and the impact of the current COVID-19 pandemic. This is discussed in further detail in paragraphs 9.76 to 9.80.
- 8.205 The Parties submitted that Next materially improved its offering in Autumn 2019. However, we note that Next was selling online M2M blinds throughout 2019 and its sales did not change substantially in the course of 2019. Moreover, Next forecasted similar revenues for 2020.
- 8.206 We also note that Dunelm exited the market for the online retail supply of M2M blinds, although it plans to re-enter. Dunelm currently does not offer click-to-order functionality and is offering online consultations via Microsoft Teams. Customers have to look through a catalogue of c.300 pages to browse the selection and cannot place an order without the assistance of a

³⁴² We acknowledge the Parties' submission that that Blinds2Go uses the same supplier as John Lewis. We have not verified whether this implies that Blinds2Go and John Lewis offer comparable quality. However, even if the quality of Blinds2Go and John Lewis was comparable, it is our view that when considering all of the evidence in the round, we do not find that John Lewis is a strong constraint on either of the Parties

³⁴³ [REDACTED].

consultant.³⁴⁴ Dunelm told us that they have put their plans for online click-to-order functionality for M2M blinds on hold as a result of the current COVID-19 pandemic.³⁴⁵

8.207 Finally, and as a more general point, the Parties submitted that Next, Dunelm and John Lewis have stated their intention to increase their online presence.³⁴⁶ As further discussed in the countervailing factors section below (paragraphs 9.76 to 9.93), we note that the claims cited by the Parties are not specific to M2M blinds and that the evidence submitted by multi-channel retailers contains no significant expansion plans for their online M2M blinds sales in the near future.

Brand recognition

8.208 The Parties submitted that the multi-channel retailers have the ability to attract customers directly to their websites, that they have a natural competitive advantage in that customers will frequently visit their websites, and that they can run large scale email marketing campaigns.

8.209 We note that, while in principle this could be the case, in practice we observe that the multi-channel retailers achieve very low sales in online M2M blinds despite this advantage.

8.210 Additionally, we note the following comments from third parties:

- (a) Only one third party considered that high street retailers with well-known brands may have some advantages in online advertising because of brand recognition.
- (b) One multi-channel retailer told us that it appears in a relatively low position in the organic search results on Google for the search word 'blinds' and received only a limited number of site visits through that search word.

Survey evidence

8.211 The Parties submitted that the BDRC Survey shows that the multi-channel operators are a constraint on the Parties.³⁴⁷ The Parties submitted that 17% of Blinds2Go's customers and 15% of 247's customers would divert to Dunelm, that 12% of Blinds2Go's customers and 9% of 247's customers would divert to John Lewis and that 5% of Blinds2Go's customers and 4%

³⁴⁴ [REDACTED].

³⁴⁵ [REDACTED].

³⁴⁶ Parties' response to Provisional Findings, 7 August 2020, paragraph 1.12.

³⁴⁷ [Main submission](#), 20 May 2020, paragraph 6.41.

of 247's customers would divert to Next.³⁴⁸ The Parties also submitted that Dunelm's and John Lewis' websites feature strongly in the BDRC Survey as websites where the Parties' customers compare products and prices, noting for example that 43% and 22% of 247's customers make comparisons against Dunelm and John Lewis, respectively.³⁴⁹

8.212 We acknowledge that the BDRC Survey submitted by the Parties shows a relatively high diversion to (at least some of) the multi-channel retailers. However, and as set out in 8.138, in our view, that diversion to large multi-channel retailers (and in particular the diversion to the online offering of Dunelm and John Lewis) 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 (ie that Dunelm required a virtual appointment and that John Lewis only has a very limited offering online compared to its in-store range).

8.213 Additionally, we note that the diversion to multi-channel retailers includes diversion to M2M blinds bought online, M2M blinds bought in-store or in-home, as well as ready-made blinds bought through any of these distribution channels – and therefore aggregates a number of different constraints. While we accept that overall diversion is relevant, in our view, the cited diversion overstates the constraint from the multi-channel retailers' online M2M offering (the diversion to the online M2M offering of these retailers amounts to 10% of Blinds2Go customers and 7% of 247 customers for Dunelm, 8% of Blinds2Go customers and 4% of 247 customers for John Lewis, and 3% of Blinds2Go and 247 customers for Next).

8.214 With respect to the proportion of customers visiting websites, we note that the Parties appear to only take into account customers that, in a preceding question, indicated that they visited other websites, rather than taking into account all customers. As a proportion of all customers, we note that it is not 43% and 22% of 247's customers that make comparisons against Dunelm and John Lewis, respectively, but only 28% and 14%. For Blinds2Go's customers, the percentages as a proportion of all customers are 25% for Dunelm and 16% for John Lewis.

Third party views

8.215 The competitors identified by multi-channel retailers were different to those identified by online M2M blinds retailers, and included both online and in-

³⁴⁸ [Main submission](#), 20 May 2020, paragraphs 6.53, 6.60 and 6.61; Parties' response to Provisional Findings, 7 August 2020, paragraph 4.75.

³⁴⁹ [Main submission](#), 20 May 2020, paragraph 6.40.

store retailers. Multi-channel M2M blinds retailers generally identified other multi-channel retailers and in-home retailers as their main competitors. However, they also identified some online M2M blind retailers as competitors:

- (a) One multi-channel M2M blinds retailer, [X], identified the Parties and Interior Goods Direct as competitors, although [X] also told us that they were not significant competitors to either of the Parties due to their limited online presence in M2M blinds.
- (b) Another multi-channel retailer, Next, considered Blinds2Go to be the only online M2M retailer that is a close competitor.

8.216 The Parties submitted that these third-party comments show the strength of competition from multi-channel retailers. We acknowledge that the views of multi-channel retailers suggest that multi-channel retailers compete at least to some extent with online M2M retailers. However, we also note that they do not show that multi-channel retailers are a strong constraint, and this is consistent with the other evidence we received taken in the round.

8.217 Multi-channel retailers appear to have a different commercial focus than online M2M retailers. In particular, rather than marketing online M2M blinds specifically, their approach to marketing tends to encompass a broader range of interior products:

- (a) John Lewis told us that its online competitors can focus on M2M blinds while John Lewis is a department store selling many products. Its marketing efforts are focused more on the entire home as opposed to blinds specifically.
- (b) Dunelm told us that it has a wider range of products to promote using its marketing spend.
- (c) Next emphasised a customer's ability to purchase from a whole range of interior products. Next told us that its catalogue contains its entire product range and that it is not specific to blinds. Next also told us that while it performs general market research, it does not perform market research specific to blinds. Next told us that it places emphasis on its ready-made fabrics and in-house design. Finally, we note that Next told us that it is focused on selling M2M products to expand the ready-made selection with additional sizes.

8.218 The Parties submitted that the ability of multi-channel retailers to market 'the home' holistically is a distinct advantage as compared to a retailer

focusing exclusively on blinds.³⁵⁰ The Parties further submitted that if having a different focus implies that multi-channel retailers do not impose a competitive constraint, then, having a different commercial focus would mean that multi-channel retailers would never impose a constraint on single product firms.³⁵¹

8.219 We acknowledge that the ability to use a wider marketing approach can constitute an advantage. However, we note that despite this apparent advantage, the online M2M blind sales of multi-channel retailers have remained small. Additionally, we do not find that multi-channel retailers do not impose a competitive constraint due to their different focus – we find that their different commercial focus is one of many characteristics that differentiate multi-channel retailers from online M2M blind retailers.

Internal documents and monitoring

8.220 The Parties do not consistently monitor the prices of multi-channel retailers. [REDACTED].

8.221 The Parties submitted that Blinds2Go [REDACTED]. At the same time, the Parties submitted that [REDACTED].³⁵²

8.222 However, the Parties have not provided any evidence of such informal monitoring. [REDACTED]., [REDACTED].

8.223 The Parties further submitted that the latest AMA Report highlights the constraint from multi-channel retailers.³⁵³ We acknowledge that the excerpts quoted by the Parties suggest at least some competition between multi-channel retailers and online M2M blind retailers. However, this does not imply that multi-channel retailers pose a significant competitive constraint on online M2M blind retailers. In particular, the AMA report does not provide any detail on the strength of the competition from multi-channel retailers. Additionally, when taking the overall body of evidence in the round, we find that there is not sufficient evidence for us to conclude that the constraint from multi-channel retailers is material.

Conclusion on multi-channel M2M blinds retailers

8.224 Based on the evidence set out above, we note that multi-channel retailers had very limited online sales of M2M blinds in 2019. We further note that their online offering is materially different to that of the Parties and other

³⁵⁰ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.84.

³⁵¹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.84.

³⁵² Parties' response to Provisional Findings, 7 August 2020, paragraph 4.69.

³⁵³ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.88.

online M2M blind retailers: multi-channel retailers offer online M2M blinds at an often substantially higher price point than online M2M retailers and their online range is more limited. Compared to online M2M blind retailers, multi-channel retailers have a different business model and commercial focus, which is not specifically on the M2M blinds product category, and they feature significantly less prominently in online search results.

- 8.225 While survey evidence indicates material diversion to Dunelm and John Lewis online, these results are likely to be biased upwards due to customers being more familiar with these brands and/or customers not realising that Dunelm no longer offers a click-to-order functionality, while John Lewis' range online is very limited.
- 8.226 Finally, we note that multi-channel retailers are not consistently monitored by the Parties and most other online M2M blind retailers (although Next is monitored by Blinds2Go, and Interior Goods Direct monitors various multi-channel retailers).
- 8.227 We therefore find that multi-channel retailers only exert very limited competitive constraints on the Parties and are not an effective alternative for most of the Parties' customers. However, we assess in more detail in paragraphs 9.76 to 9.94 whether the constraint they exert may increase going forward.

Competition from eBay and Amazon

- 8.228 In the UK, the main marketplaces on which retailers sell M2M blinds are eBay and Amazon. Marketplaces are primarily e-commerce sites that provide a platform for other retailers (ie marketplaces do not tend to be retailers in their own right). While we note that Amazon also directly sells certain products on its platform ('first-party sales'), Amazon does not have any first-party sales of M2M blinds.
- 8.229 As set out in paragraph 8.7(a), eBay and Amazon submitted that sales of blinds (including both M2M blinds and ready-made blinds, and in the case of eBay further including shutters) on their marketplaces amounted to £[REDACTED] and £[REDACTED], respectively, in 2019. While neither eBay nor Amazon was able to provide a separate sales figure for M2M blinds only, eBay noted that only approximately 18% of the blinds listed on eBay are M2M.
- 8.230 All of the main types of M2M blinds (ie venetian blinds, wooden and faux wooden blinds, roller blinds, roman blinds and vertical blinds) appear to be available on each of eBay and Amazon. However, it appears that eBay is

currently not configured to effectively sell M2M products in a way that is comparable to the Parties' own websites. In particular:

- (a) eBay told us that within a sellers' listing, it is not possible to have a data field for buyers to specify the exact dimensions of the blinds. eBay further told us that the only way to sell M2M products on its platform is for the seller to state in its listing that the buyer should message the seller with their exact measurement requirements. One retailer that used to sell on these platforms told us that this is a slow and cumbersome way to sell. Another retailer which currently sells on these platforms confirmed that it considers this to be a 'messy process'.
- (b) While sellers can alternatively display several drop-down menus with a large number of entries on the product pages (which would in principle allow for an offering that to some extent resembles M2M), we consider this option to not be particularly user-friendly. Indeed, eBay confirmed that sellers do not tend to provide too many increments on their listings since this is considered to be not appealing to customers.
- (c) Additionally, eBay told us that it is not possible to offer free products on eBay, and hence not possible to offer a free sample. While some sellers may offer samples for a small fee and then reimburse that fee to the customer later, eBay submitted that this process is less attractive for customers than being able to receive a free sample.
- (d) Finally, we note that contacting a seller on eBay is more complex than contacting an online M2M blind retailer. First, it is only possible to contact the seller on eBay if the buyer has an eBay account. Second, eBay does not offer instant chat functionality. Third, eBay submitted that the platform is not quite designed for potential buyers to contact sellers and that there could be practical issues. However, we acknowledge the Parties' submission that Blinds2Go and 247 introduced chat functionality on their websites only recently and that only a very limited amount of customers used it which may indicate that chat functionality is not a decisive factor for many customers.

8.231 With respect to Amazon, we acknowledge that Amazon has recently introduced a 'customise now' button, which allows customers to enter the desired measurements of a product before the purchase. We also acknowledge that this feature makes Amazon more attractive for selling online M2M blinds.³⁵⁴

³⁵⁴ This was also noted by the Parties. [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 5.72.

8.232 The Parties further submitted that Amazon offers a free sample service. However, it appears that it is not possible to directly order a free sample: Amazon told us that sellers wanting to offer free samples would have to do so via the ‘contact the seller’ features. Amazon was not aware of a functionality that enable free samples to be offered otherwise.³⁵⁵

8.233 Additionally, we note that the options to filter results on Amazon are very limited compared to websites of online M2M blind retailers. For example, it is not possible to filter by colour, and other filters (eg for fabric) either do not exist or are limited to few choices. In our view, this is an important limitation given that the BDRC Survey shows that 45% and 47% of respondents for Blinds2Go and 247, respectively, indicated that ‘website easy to use’ is a factor that influenced their choice of retailer. Also, and similar to eBay, Amazon does not offer instant chat functionality.

8.234 The Parties submitted that there is no specific evidence that filters and [✂].³⁵⁶ However, we find that the presence of filters is likely to be an important characteristic given the number of different options (eg type of blind, colour, fabric) and the resulting large number of SKUs. This is supported by many websites for M2M blinds featuring several filtering options in prominent positions. However, and as already highlighted in paragraph 8.230(d) above, we acknowledge that chat functionality may not be a decisive factor for many customers.

8.235 In line with the above, the Parties’ customers do not appear to see eBay and Amazon as close substitutes for the offering of the Parties. In particular, the BDRC Survey shows that only 1% of respondents for Blinds2Go and 3% of respondents for 247 would divert to eBay if the respective Party was no longer selling blinds. For Amazon, the percentage is 4% for both Blinds2Go and 247.³⁵⁷

8.236 Similarly, comments from third parties indicate that online M2M blind retailers do not tend to see selling through eBay or Amazon as a substitute for selling through their own website, highlighting a number of limitations with these marketplaces:

- (a) MakeMyBlinds, an online M2M blind retailer that used to sell on eBay and Amazon, told us that one of the reasons for ceasing to sell on these platforms was their refunding policies. The same retailer told us that it does not see Amazon or eBay as useful long-term engagements,

³⁵⁵ [✂].

³⁵⁶ [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.90.

³⁵⁷ The higher diversion figures quoted by the Parties, namely 5% for Blinds2Go customers and 6% for 247 customers, arise because the Parties appear to be aggregating diversion to Amazon and eBay. [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.91.

although it did consider eBay and Amazon useful to ‘get started’, to initially generate some extra volume and to gain experience of the industry. It also told us that one advantage of selling on eBay as a new entrant to the market was that it was able to use eBay as a testbed, as poor reviews wouldn’t affect its Trustpilot score.

- (b) One online retailer told us that it tried to sell via Amazon, but that it was not successful because customers tried to make an excuse not to pay.³⁵⁸ It further told us that it would rather keep Amazon as only a small part of its revenue to reduce the risk of dependency on another business and that it currently sells only end of line products that it wants to get rid of on Amazon. Additionally, it told us that using platforms such as Amazon and e-Bay means losing control over the brands, and that it considers Amazon as generally offering ‘cheap and cheerful’ products.
- (c) Two retailers of M2M blinds (Blinds4UK and Dunelm) pointed to the high costs of selling on Amazon and eBay. For example, Blinds4UK told us that the marketplaces take a big cut from sellers and Dunelm told us that it considers that Amazon charges a high commission rate. We acknowledge the Parties’ submission that the commission charged by the platforms is comparable to any equivalent PPC spending,³⁵⁹ and give accordingly less weight to these third-party comments. However, we also note that, as the Parties pointed out, multi-channel retailers like Dunelm do not have to rely on PPC advertising to generate traffic to their websites.³⁶⁰ As such, the cost of selling on Amazon and eBay may deter multi-channel retailers from selling through these marketplaces.

8.237 We further note that the Parties do not appear to monitor the offerings on eBay and Amazon. In particular, we are aware of only two instances where Blinds2Go conducted some research on Amazon and eBay sales. However, we note that these were in relation to the CMA’s investigation into the Hillarys’ acquisition and the current CMA investigation.

8.238 Similarly, none of the other M2M blind retailers we spoke to indicated that they are monitoring eBay or Amazon or that they consider marketplaces as competitors:

- (a) One competitor that works with Amazon and eBay considered that these marketplace platforms mainly ‘compete with Dunelm, Argos and B&Q’.³⁶¹

³⁵⁸ [REDACTED].

³⁵⁹ Parties’ response to Provisional Findings, 7 August 2020, paragraph 4.91.

³⁶⁰ Parties’ response to Provisional Findings, 7 August 2020, paragraph 4.35.

³⁶¹ [REDACTED].

- (b) Three retailers of M2M blinds (Blinds4UK, Dunelm, and Swift Direct Blinds) told us that they think only a very limited amount of M2M blinds are sold on Amazon or eBay. In particular, Blinds4UK told us that the platforms are not big players in the market and that sellers on Amazon and eBay sell only ready-made products. Dunelm told us that it does not believe that there are any M2M products available on Amazon. Swift Direct Blinds told us that Amazon and e-Bay are active in this sector but more for ready-made products.

8.239 Finally, while [REDACTED], we have otherwise not received any evidence that would suggest that the role of eBay and Amazon would significantly change going forward. In particular:

- (a) [REDACTED] told us that it does not expect its sales on Amazon of M2M blinds to grow beyond £[REDACTED] within the next year.³⁶²
- (b) eBay told us that it expects sales in the blinds category to grow at around [REDACTED]% per year, in line with its other categories.
- (c) Amazon told us that blinds make up a very small part of its product range and so very little time is devoted to it. It therefore appears unlikely that Amazon would have strong incentives to improve the offering of these products.

8.240 Overall, we find that Amazon and eBay only exert a very limited competitive constraint on the Parties. Additionally, we note that marketplaces would, in any case, not act as separate competitors, but merely constitute platforms for other retailers to sell online M2M blinds.

Out-of-market constraints

8.241 As set out in paragraph 7.8, the Parties referred to the constraint from (i) different window coverings including curtains and shutters, (ii) ready-made blinds and (iii) in-store and in-home channels to M2M blinds supplied through the online channel.³⁶³ The Parties submitted that even if these are not considered as part of the relevant market, it is highly relevant to consider how such out-of-market factors exercise a competitive constraint on their activities.³⁶⁴

8.242 The Parties submitted that it is necessary to consider the aggregate constraint of out-of-market constraints on the Parties and that it is the

³⁶² [REDACTED].

³⁶³ [Main submission](#), 20 May 2020, paragraph 6.76 and 6.77.

³⁶⁴ [Main submission](#), 20 May 2020, paragraph 6.65.

aggregate constraint from alternatives that constrains the Parties.³⁶⁵ As evidence of this aggregate constraint, the Parties submitted the following points based on the results of the BDRC Survey:

- (a) First, according to the BDRC Survey, 33% of Blinds2Go's customers and 25% of 247's customers stated that they would not have shopped for M2M blinds online in the event that their chosen online retailer (i.e. either Blinds2Go or 247) was no longer selling M2M blinds. The Parties submitted that this out-of-market diversion is larger than the diversion to the next largest competitor.³⁶⁶
- (b) Second, according to the BDRC Survey, the diversion ratio from Blinds2Go to 247 amounts to 13%, and is thereby much lower than 247's market share would suggest. The Parties submitted that this highlights the fact that market constraints are wider than just online M2M blinds.³⁶⁷

8.243 In addition, the Parties submitted that it is evident that, in a growing market, the Parties are primarily competing for new business from 'outside the market' rather than winning/losing business from each other, and that this highlights the need for the CMA to properly consider the customer journey and where these new sales are coming from.³⁶⁸

8.244 As set out in the market definition section, we assessed the constraint from each of the alternatives listed by the Parties individually. For the same reasons as set out in that section, we find that:

- a) curtains and shutters do not pose a material competitive constraint on the Parties;
- b) ready-made blinds pose a weak competitive constraint on the Parties, and
- c) M2M blinds sold through the in-store and in-home channel do not pose a material competitive constraint on the Parties.

8.245 With respect to the aggregate constraint from out-of-market alternatives, we acknowledge the Parties' submission that the BDRC Survey indicates that a significant proportion of the Parties' customers (34% for Blind2Go and 25% for 247) would not have bought online M2M blinds if the respective Party had stopped selling blinds.

³⁶⁵ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.20.

³⁶⁶ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.18.

³⁶⁷ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.24.

³⁶⁸ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.15.

8.246 Whilst we acknowledge that this aggregate diversion is material, we also note the following:

- (a) The BDRC Survey shows that diversion to other retailers' online M2M blinds amounts to 66% for Blinds2Go's customers and 75% for 247's customers. This indicates that online M2M blinds sold by other retailers are the main competitive constraint on the Parties.
- (b) The diversion to other products and channels is small when compared to the relative size of sales of these alternatives. In particular, market reports suggest that online M2M blinds account for less than 10% of the overall market for window coverings.³⁶⁹ Despite this, the results of the BDRC Survey show that the Parties' customers are substantially more likely to switch to other retailers selling online M2M blinds than to the other alternatives (ie other window coverings, ready-made blinds, M2M blinds in the in-store or in-home channel). This suggests that these alternatives would at best be a distant competitive constraint.³⁷⁰

8.247 While we also acknowledge that diversion from Blinds2Go to 247 is lower than 247's market share would suggest, we note that this is consistent with our finding that 'out-of-market' constraints pose some competitive constraint on the Parties. Additionally, and as discussed above, we consider that diversion to 247 is likely subject to a downward bias (see paragraph 8.127).

8.248 Additionally, we note that the constraint from each of the individual out-of-market constraints is weak (as evidenced by the low individual diversion). Whilst we fully acknowledge that, in terms of sales lost in the event of a price increase, diversion is as relevant whether it is an aggregated diversion or diversion to a single competitor, it does not necessarily follow that the impact of this aggregate constraint on the Parties' behaviour will be as strong as the impact from a single competitor. While the aggregate constraint will by definition impact on the extent to which the Parties can increase their prices (or otherwise deteriorate their offering) post-merger in a static way, in terms of the dynamics of competition and the process of rivalry, the individual constraint from single competitors is much more relevant than the aggregate constraint from a disperse and diverse group of small competitors: if a competitor improves their offering going forward, the

³⁶⁹ While we acknowledge that market reports may not be reliable, we find that they are likely to give a directional indication of the relative size of online M2M blinds compared to other products and channels.

³⁷⁰ In particular, if ready-made blinds were as close a competitor as online M2M blinds, we would expect diversion rates to be in line with the magnitude of sales, ie we would expect higher diversion to ready-made blinds than to online M2M blinds.

Parties will have much stronger incentive to react by also improving their offer if diversion to this competitor is large.

8.249 The fact that the Parties do not monitor any of these alternatives (or at least not in any significant way, see paragraphs 8.138 to 8.141) indicates that these alternatives, even in aggregate, do not exert a significant competitive constraint on the Parties, in the sense that it does not appear that the conduct of any of the retailers offering such alternatives would cause the Parties to change their competitive behaviour. The Parties have also not provided any evidence that they give strong consideration of these constraints on an individual or aggregate basis.

8.250 With respect to the Parties' submission that the Parties are primarily competing for new business from 'outside the market', we note that this may be caused by a shift in customer preferences away from alternatives to online M2M blinds. The observation that the market is growing therefore does not show whether these alternatives pose any constraint on online M2M blind retailers.

8.251 Overall, 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.

Conclusion on remaining constraints

8.252 Overall, we conclude the following on the remaining constraints on the Parties:

- (a) Interior Goods Direct is a significant competitive constraint on the Parties, and its constraint on Blinds2Go is similar to the constraint 247 poses on Blinds2Go.
- (b) Other online M2M retailers are small and only pose a relatively weak constraint on the Parties, while the online offering of multi-channel retailers and marketplaces exert very limited competitive constraints on the Parties. Even in aggregate, we find that these constraints are not particularly high.
- (c) 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, but we find that this is likely to only exert a weak competitive constraint on the Parties.

Impact of the Merger

- 8.253 On the basis of our assessment set out above, we find that the Parties are two of the three leading retailers of online M2M blinds and that the Parties are close competitors. We find that there are few remaining constraints: while Interior Goods Direct is a significant competitive constraint on the Parties and its constraint on Blinds2Go is similar to the constraint 247 poses on Blind2Go, other suppliers of online M2M blinds as well as alternatives from outside of the market at most pose a relatively weak constraint on the Parties.
- 8.254 Against this background, we have assessed the impact of the 2019 Transaction as a result of the change in Hunter Douglas' interest in 247, resulting in Hunter Douglas holding a controlling interest over 247 and an increase in its profit share in the company to 100%. We find that, following the 2019 Transaction, Hunter Douglas has both the ability and the incentive to increase the price (or otherwise worsen the offering) of both 247 and Blinds2Go.
- 8.255 In assessing the impact of the 2019 Transaction, we note the following preliminary observations when considering the ability and incentive of Hunter Douglas to increase 247 and/or Blinds2Go's prices:
- (a) We note that, through the 2019 Transaction (ie through acquiring 100% of the shares in 247), and as discussed in paragraphs 5.31 to 5.33, Hunter Douglas gained the ability to unilaterally determine all aspects of 247's competitive strategy (including the ability to set 247's prices) – which it did not have prior to the 2019 Transaction.³⁷¹
 - (b) We acknowledge that a shareholding of 65% in Blinds2Go implies that any incentive to increase 247's price and capture diversion to Blinds2Go is lower than under a 100% shareholding (ie that Hunter Douglas only benefits from 65% of sales diverted to Blinds2Go). We also note that Hunter Douglas has the option to acquire an additional 15% in 2021 and the remaining 20% in 2026.³⁷² [§].³⁷³
 - (c) The evidence discussed above indicates that the Parties are close competitors, with high rates of diversion from 247 to Blinds2Go at 34% (with this diversion being likely subject to a downward bias, see paragraphs 8.131 and 8.132). Therefore, in this context, Hunter Douglas'

³⁷¹ Notwithstanding any material influence that Hunter Douglas may have held over 247 prior to the 2019 Transaction, we note that the ability to unilaterally determine 247's competitive strategy and the benefit from an increase in 247's profits are a direct consequence of the 2019 Transaction.

³⁷² [Main submission](#), 20 May 2020, paragraph 6.10.

³⁷³ [§].

65% shareholding in Blinds2Go (potentially rising to 80% in the near-future) creates an incentive to increase 247's prices as Hunter Douglas still benefits from a significant share of sales that will likely be diverted to Blinds2Go in the event of an increase. Hunter Douglas' ability to increase 247's prices results directly from the 2019 Transaction.³⁷⁴

- (d) We note that the 2019 Transaction increased Hunter Douglas' share in the profits of 247. Given that the Parties appear to be close competitors, it follows that the increase in Hunter Douglas' share of 247's profits implies an incentive for Hunter Douglas to increase Blinds2Go's prices, as Hunter Douglas now benefits from 100% of profits from sales diverted to 247. While we acknowledge that the diversion from Blinds2Go to 247 found by the BDRC Survey is, at 13%, not particularly high, we also note that this diversion is likely subject to a downward bias, see paragraph 8.131.³⁷⁵ Additionally, we have found that the Parties are two of the three leading retailers of online M2M blinds and that the Parties are close competitors, and that they will face limited remaining constraints post-merger. We therefore consider that, combined with an increase of 51% in a party's interest in the profits of a target, this implies that Hunter Douglas will have the incentive to increase Blinds2Go's prices following the 2019 Transaction.³⁷⁶

8.256 For these reasons, we find that, following the 2019 Transaction, Hunter Douglas has both the ability and the incentive to increase 247's prices. This may also result in a reduction in product quality or customer service, and/or a reduction in the range of products or services. The incentive to increase 247's prices (or otherwise worsen the offering of 247) arises from (i) the Parties being close competitors and (ii) Hunter Douglas benefitting from a significant [REDACTED] share in Blinds2Go.

8.257 In addition, we find that, following the 2019 Transaction, Hunter Douglas has both the ability and the incentive to increase Blinds2Go's prices. This may also result in a reduction in product quality or customer service, and/or a reduction in the range of products or services. The incentive to increase Blinds2Go's prices (or otherwise worsen the offering of Blinds2Go) arises from (i) the Parties being close competitors and (ii) Hunter Douglas, as a consequence of the 2019 Transaction, benefitting from a 100% interest in 247, rather than only 49% pre-merger.

³⁷⁴ To the extent that Hunter Douglas had an incentive to increase 247's prices prior to the 2019 Transaction, it lacked the ability to do so (paragraph 5.30).

³⁷⁵ [REDACTED]. Parties' response to Provisional Findings, 7 August 2020, paragraph 4.108.

³⁷⁶ [REDACTED]. Parties' response to Provisional Findings, 7 August 2020, paragraph 4.105.

Parties submissions on the impact of the merger

8.258 The Parties submitted that Hunter Douglas has a strong interest in ensuring that 247 maximises its own profits and maximises its own cash generation, and that the nature of Hunter Douglas' shareholding in Blinds2Go and the accompanying management incentives make this more likely. In particular, the Parties pointed out that Hunter Douglas only has a 65% shareholding in Blinds2Go and that the agreed buy-out calculates the purchase price for the remaining shares based on Blinds2Go's profits in the three years prior to the exercise of a call option to acquire the remaining shares. According to the Parties, these characteristics imply the following:

(a) [REDACTED].³⁷⁷

(b) [REDACTED].³⁷⁸

8.259 [REDACTED].³⁷⁹

8.260 Additionally, the Parties submitted that the 2019 Transaction has reduced Hunter Douglas' incentives to worsen 247's offer, pointing to the fact that Hunter Douglas' share of profits stood at 49% prior to the 2019 Transaction.³⁸⁰

8.261 The Parties also submitted that, following the 2019 Transaction, 247 would remain an independent competitor and that Hunter Douglas would continue its 'hands-off' approach of not interfering with the business decisions of the companies it owns.

8.262 Finally, the Parties submitted that the 2019 Transaction completed in February 2019, around nine months before the CMA imposed the IEO. The Parties argued that, if the increase in ownership of 247 by Hunter Douglas results (or has resulted) in an SLC, one would expect to see evidence of that (eg in the form of price changes) in the nine months of data following the completed 2019 Transaction. The Parties submitted that, on the contrary, there has been no discernible impact of the 2019 Transaction on either Blinds2Go's or 247's margins. Similarly, the Parties submitted that there is no evidence that Blinds2Go has worsened its offering at all following the transfer of Web Blinds from Hillarys, with this rival having a similar 5-10% share to 247.³⁸¹

³⁷⁷ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.117.

³⁷⁸ Parties' response to Provisional Findings, 7 August 2020, paragraphs 4.119 and 4.120.

³⁷⁹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.116.

³⁸⁰ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.111.

³⁸¹ Parties' response to Provisional Findings, 7 August 2020, paragraph 4.106.

Our assessment of the Parties' submissions

8.263 We consider each of the Parties arguments in turn.

The effect of Hunter Douglas' 65% interest in Blinds2Go and buy-out formula

8.264 We have significant doubts about the Parties' assessment of the impact of the 2019 Transaction with respect to its current shareholding in Blinds2Go and subsequent buy-out formula:

- (a) First, the Parties' submission only assesses the position in the short-term and does not take into account the subsequent profits Hunter Douglas would obtain if it has increased its shareholding in Blinds2Go (as described above). [§].
- (b) Second, the calculations submitted by the Parties imply that any increase to Blinds2Go's profit would necessarily result in a decrease in Hunter Douglas' profits, through the impact it has on the price at which it would then acquire the remaining Blinds2Go shares. In other words, the calculations submitted by the Parties imply that Hunter Douglas would be better off if Blinds2Go was less profitable. This would therefore imply that Hunter Douglas would have an incentive to actively decrease Blinds2Go's profits. We disagree with this implication on the basis that it is inconsistent with Blinds2Go having grown substantially in recent years, despite being controlled by Hunter Douglas. It is also unclear why this would be of commercial benefit to Hunter Douglas and it has not explained how it will ultimately benefit from any such strategy.
- (c) Finally, we note that, insofar as the buy-out formula dampens Hunter Douglas' incentive to divert profits from 247 to Blinds2Go, by the same logic, this would also increase Hunter Douglas' incentive to divert profits from Blinds2Go to 247. Therefore, [§].

8.265 In response to our arguments regarding diverting profits from Blinds2Go, the Parties submitted that this 'completely disregards the whole purpose of the incentive arrangements, which is to incentivise Blind2Go's management to pursue profitable growth'.³⁸² However, we note that Hunter Douglas has a majority stake and thus a controlling interest in Blinds2Go. Hunter Douglas can therefore control the composition of Blinds2Go's board and thus, indirectly, the behaviour of Blinds2Go's management as well as determining Blinds2Go's competitive strategy. As such, in our view, it is the

³⁸² [Parties' response to Provisional Findings](#), 7 August 2020, paragraph 4.109.

incentives of Hunter Douglas, not the management of Blinds2Go, that will determine Blinds2Go's future behaviour.

8.266 Overall, and for the reasons discussed above, we do not find the Parties' submissions in relation Hunter Douglas' incentives as a result of its current shareholding in Blinds2Go and the subsequent buy-out formula to be persuasive.

8.267 While we acknowledge the Parties' submission that it is [REDACTED].

Impact of the 2019 Transaction on the incentive to increase 247's prices

8.268 As noted above, [REDACTED]. However, prior to the 2019 Transaction, Hunter Douglas did not have the **ability** to act upon **any incentive** to increase 247's prices or otherwise worsen the offering of 247, as it was not able to unilaterally determine the competitive strategy of 247. Hunter Douglas only gained this ability as a direct consequence of the 2019 Transaction.

8.269 As such, it is not relevant whether Hunter Douglas' incentive to increase 247's prices (or otherwise worsen the offering of 247) decreased as a consequence of the 2019 Transaction. Instead, it is relevant whether Hunter Douglas has an incentive to increase 247's prices (or otherwise worsen the offering of 247) compared to the prices 247 would have set unilaterally in the absence of the 2019 Transaction. As discussed in paragraph 8.255 above, and due to the high rates of diversion from 247 to Blinds2Go and Hunter Douglas' 65% shareholding in Blinds2Go, we find this to be the case.

Hunter Douglas' management style

8.270 As set out above, the Parties submitted that 247 would remain an independent competitor and that Hunter Douglas would continue its 'hands-off' approach of not interfering with the business decisions of the companies it owns. For the reasons discussed above, we consider that following the 2019 Transaction Hunter Douglas has both the ability and incentive to increase both 247 and Blinds2Go's prices, and accordingly we consider that it is not appropriate to give weight to the Parties' statements about their past chosen management style and how they might or might not choose to adapt that in the future absent legal or other constraints.

Observed competitive outcomes following the 2019 Transaction and the Hunter Douglas/Hillarys transaction in 2017

8.271 We now address the Parties' submission that there has been no discernible impact of the 2019 Transaction on either Blinds2Go's or 247's margins,

despite the transaction completing nine months before the CMA imposed the IEO.

8.272 In our view, an absence of evidence of price/margin increases in the period immediately following the completion of a transaction is not determinative and does not imply a lack of ability or incentive to increase prices in the future. Nor is it particularly compelling evidence that parties will not act on any such incentive in the future. In addition, we find that there is a material risk that this data is affected by the prospect of a CMA investigation. This prospect would have militated against any incentive to increase prices until the risk of an investigation had passed, or the 2019 Transaction had received clearance from the CMA.³⁸³

8.273 With respect to the Parties' submission that there is no evidence that Blinds2Go has worsened its offering following the transfer of Web Blinds from Hillarys, we note that it is not necessarily possible to obtain insights on the likely competitive effects of one merger by looking at a different merger. In the case at hand, the competitive conditions in 2017 were different to those observed now, including for example the fact that in 2019, Hunter Douglas' position was already strengthened by it owning Web Blinds. This implies that insights from 2017 cannot necessarily be transferred to 2019. Additionally, when assessing whether the Hunter Douglas / Hillarys transaction resulted in Hunter Douglas worsening its offering, we only examined prices, meaning that the analysis did not control for changes in any other factors, including costs.

Conclusion on impact of the 2019 Transaction

8.274 In light of the above findings, we find that following the 2019 Transaction, Hunter Douglas has both the ability and the incentive to raise both 247 and Blinds2Go's prices (or otherwise worsen the offering of 247 and Blinds2Go, including through a reduction in product quality or customer service, and/or a reduction in the range of products or services). We note that this holds in the short-term, with the incentive to increase 247's prices increasing over time (should Hunter Douglas acquire an additional 15% and the remaining 20% in Blinds2Go).

Conclusion on competitive assessment

8.275 On the basis of our competitive assessment, we find that:

³⁸³ In this regard, we note Hunter Douglas' submission that it has in relation to previous acquisitions taken preparatory steps to mitigate the risk and effects of CMA intervention.

- (a) The market shares we have calculated indicate that the Parties have a high combined share of [60-70]%. Blinds2Go is by some distance the leading supplier in this market with a share of [50-60]% and 247 is the third largest at approximately [5-10]%. Interior Goods Direct is the only other competitor of any meaningful scale, with a market share of [10-15]%. The remainder of suppliers in the market have a limited presence, with no other supplier holding a market share in excess of 5%. In the context of this competitive landscape, the 2019 Transaction represents a material increment to Blinds2Go's existing scale and reduces the number of established suppliers of scale.
- (b) The Parties are close competitors and pose a significant competitive constraint on each other;
- (c) Interior Goods Direct is the only other significant constraint on the Parties, but is not a closer competitor to either of the Parties than the Parties are to each other;
- (d) While there are other constraints (from smaller online M2M retailers, from the online offering of multi-channel retailers, from marketplaces and from out-of-market constraints), these alternatives pose a relatively weak competitive constraint on the Parties; and
- (e) Our assessment of the impact of the merger shows that Hunter Douglas has acquired the ability to increase 247's prices as a direct consequence of the 2019 Transaction. 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 in the case of an increase through its 65% shareholding in Blinds2Go. At the same time, we consider that, following the 2019 Transaction, Hunter Douglas also has the ability and the incentive to increase Blinds2Go's prices. This may also result in a reduction in product quality or customer service, and/or a reduction in the range of products or services.

8.276 We therefore find that the Merger may be expected to result in an SLC in relation to the supply of online M2M blinds in the UK.

8.277 In the next section, we have considered whether there are any countervailing factors (such as entry or expansion by other rivals) which would be timely, likely and sufficient to outweigh the SLC.

8.278 Further, in paragraph 6.20 above, we have identified a number of possible counterfactual scenarios to the 2019 Transaction. We note that our finding of an SLC in relation to the supply of online M2M blinds in the UK (which is

subject to our views on countervailing factors), may be expected to result in each of the counterfactual scenarios considered.

9. Countervailing factors

- 9.1 Our guidelines state that, in considering whether a merger may be expected to result in an SLC, the CMA will consider factors that may mitigate the initial effect of a merger on competition (often known as countervailing factors), which in some cases may mean that there is no SLC. These factors include:
- (a) the responses of others in the market (rivals, customers, potential new entrants) to the merger, for instance the entry into the relevant market of new providers or expansion by existing providers;
 - (b) the ability of customers to exercise countervailing buyer power; and
 - (c) the effect of any rivalry-enhancing efficiencies arising as a direct consequence of the merger.³⁸⁴
- 9.2 With respect to these countervailing factors, the focus of our inquiry has been the assessment of the potential entry and/or expansion of rivals. The Parties have not made any submissions suggesting that their customers have significant buyer power or that there are any rivalry-enhancing efficiencies. Accordingly, we do not consider these additional factors any further in this section.

Entry and Expansion

CMA framework for assessing entry and expansion

- 9.3 As part of the assessment of the effect of a merger on competition, we look at whether entry by new firms or expansion by existing firms may mitigate or prevent an SLC.³⁸⁵ We have considered whether such entry and expansion would be likely to outweigh the SLC we have found in relation to the retail supply of online M2M blinds. In assessing this, we have considered whether entry and/or expansion would be timely, likely and sufficient.³⁸⁶
- 9.4 We have considered the extent to which there are barriers to entry and expansion in the retail supply of online M2M blinds. We discuss the

³⁸⁴ [MAGs](#), para 5.8.1.

³⁸⁵ [MAGs](#), para 5.8.1.

³⁸⁶ The timeliness of entry/expansion is assessed on a case-by-case basis, however the CMA would normally consider entry or expansion within two years to be timely ([MAGs](#) 5.8.11). In assessing whether entry or expansion may be likely, the CMA will consider the scale of any barriers to entry and/or expansion that may impact on the likelihood of entry or expansion but also whether firms have the ability and incentive to enter the market (or the intent to do so) ([MAGs](#) 5.8.8). Finally, with respect to sufficiency, the CMA will assess whether entry or expansion is of sufficient scope so as to deter or defeat any attempt by the Parties to exploit any lessening of competition ([MAGs](#) 5.8.10).

presence of such barriers first, before examining the possible sources of entry and expansion from rivals.³⁸⁷

The Parties' views

- 9.5 The Parties submitted that there are no material barriers to entry or expansion in the market for the retail supply of online M2M blinds. They argued that 'there are no material economies of scale that would constitute a significant barrier to an entrant or smaller rival that made a determined effort to increase its sales rapidly.'³⁸⁸
- 9.6 It is the Parties' view that the market is highly dynamic as demonstrated by examples of successful recent entry both in the UK and other countries. The Parties recognise that the market has matured since their own respective entries, however, they submitted that prospective entrants could readily replicate the Parties' approach.³⁸⁹
- 9.7 The Parties consider that UK manufacturers are likely to enter the retail market either through launching their own retail operations or through purchasing an existing retailer.
- 9.8 The Parties further submitted that evidence of entry and expansion should be considered in aggregate when assessing if entry and expansion could replicate the lost rivalry resulting from an incremental change in Hunter Douglas' influence over 247.³⁹⁰

Our assessment of barriers to entry and expansion

- 9.9 We note that our SLC finding is based on Hunter Douglas acquiring the ability to determine all aspects of 247's competitive strategy as a result of the 2019 Transaction (which it previously did not have). Therefore, our assessment of entry and expansion is based on whether the loss of 247 as an independent competitor can be replicated by competitors in the market.
- 9.10 Our assessment of barriers to entry and expansion will first consider what potential barriers may exist with respect to generating traffic to retailers' websites. We then consider what barriers may exist with respect to website costs, before finally considering other potential barriers to entry and expansion.

³⁸⁷ Barriers to entry and expansion are specific features of a market that give incumbent businesses advantages over potential competitors. Where such barriers are low, the merged entity is more likely to be constrained by entry. Conversely, this is less likely where barriers are high (MAGS 5.8.4).

³⁸⁸ [Main submission](#), 20 May 2020, para. 7.4.

³⁸⁹ [Main submission](#), 20 May 2020, para. 7.5 and 7.6.

³⁹⁰ Parties' response to Provisional Findings, paragraph 5.3.

- 9.11 We also assess the extent to which a potential barrier to entry or expansion may change depending on the nature of rival.

Generating traffic

- 9.12 As set out in paragraphs 8.15 to 8.30 above, a significant aspect of competition in this market is competition for visibility in web search results, given the importance of traffic from this channel in generating revenues. As also discussed above, we find that online M2M blind retailers primarily generate traffic to their websites through paid search and organic search. As such, this section focuses on assessing the extent to which there are barriers to entry and expansion with respect to generating traffic through these channels, although we also discuss other traffic sources where appropriate.³⁹¹
- 9.13 Our assessment of the extent to which the generation of traffic may constitute a barrier to entry and expansion in the retail supply of online M2M blinds is set out in Appendix F. Our findings can be summarised as follows:
- (a) Developing sufficient ability to convert traffic into sales constitutes a barrier to entry and expansion, with low conversion rates implying that retailers need to spend significantly more on marketing per conversion. We find that effectively converting traffic relies on overcoming certain knowledge barriers and that brand recognition, which tends to be more prominent for established websites, is likely to improve conversions.
 - (b) There appears to be some incumbency advantage with respect to paid search, with Blinds2Go [X]. In addition to this being driven by Blinds2Go's ability to [X], we have identified the presence of knowledge barriers and the role of brand recognition with respect to PPC advertising as a barrier to entry and expansion.
 - (c) It appears that a significant investment is required, at least for smaller retailers, to attract significant traffic through organic search and that the return from this investment is not immediate. While we acknowledge that it is in principle possible to circumvent such investment by entering into a profit-sharing agreement with an SEO provider, we have seen no evidence on the potential cost effectiveness of such an agreement for the retailer.

³⁹¹ We accept that entry in the literal sense does not require the generation of significant traffic (ie in the sense that a retailer 'entered' as soon as this retailer made 'a sale'). However, in our view, the generation of traffic is required to enter with at least some scale (as well as for expansion). As such, we refer to 'barriers to entry and expansion' when discussing the barriers associated with generating traffic.

- (d) New entrants and smaller retailers have difficulty in achieving sufficient visibility through Google, with the limited number of available positions on Google search results that obtain significant proportions of clicks constituting a natural barrier to entry.

9.14 We note that the findings set out above primarily apply to online M2M blind retailers. The evidence received from multi-channel retailers indicates that multi-channel retailers are less likely to consider the cost of digital advertising as a barrier to entry and expansion, although some did cite this as a barrier.³⁹² Additionally, it appears that multi-channel retailers tend to have a broader approach to online advertising, ie their marketing efforts are focused more on the entire home category as opposed to blinds specifically,³⁹³ and that they benefit at least to some extent from brand recognition. As such, generating traffic appears to be less of a barrier to entry and expansion for multi-channel retailers, and this is reflected in our assessment of the likelihood of entry and expansion from multi-channel retailers discussed below.

9.15 Overall, we find that generating traffic constitutes a barrier to entry and expansion in the retail supply of online M2M blinds, in particular for online M2M blind retailers. We note that the impact of this barrier may vary depending on the nature of the rival seeking to enter or expand, with the barrier being more significant for new entrants than for existing retailers.

Website costs

9.16 In this section we consider the extent to which the cost of establishing and maintaining a website may be a barrier to entry or expansion in the online M2M blinds market.³⁹⁴ Website costs have been identified as the primary capital cost incurred by entrants to the market, with other typical costs such as office premises and distribution centres not required at a large scale or in the initial stage of development.³⁹⁵

9.17 The Parties submitted that website costs are not a barrier to entry or expansion. They submitted that, like 247, new entrants are able to use third-party providers (such as Magento or Shopify) to set-up websites in order to

³⁹² For example, Dunelm told us it was unable to match the marketing spend of the Parties in relation to M2M blinds because it has a wider range of products to promote using its marketing budget – although we consider it unlikely that Dunelm would not be able to afford such spending (given its overall size).

³⁹³ For example, John Lewis mentioned this.

³⁹⁴ We note that multi-channel retailers typically do not have a standalone website for the supply of M2M blinds online and that these services are incorporated into their wider websites. As such, the focus of this section is on websites selling online M2M blinds and we address potential costs specific to multi-channel retailers below.

³⁹⁵ We note that the manufacturers of blinds typically send the final product direct to customers without the need to go via the retailer.

sell M2M blinds. However, Hunter Douglas acknowledged that replicating the Blinds2Go website, for example, which was developed in-house over many years, would result in additional costs.³⁹⁶

9.18 The Parties further submitted that the costs for development and continuous improvement of a website would account for only a small share of revenue for successful retailers and that the costs of developing and hosting a website of comparable quality to that of 247 are not prohibitive. Blinds2Go submitted that its total website development costs amounted to £[REDACTED] in 2019.

9.19 The Parties separately submitted that new entrants could also choose to avoid website development costs altogether by selling through established marketplaces such as Amazon, eBay or Wayfair.³⁹⁷ They submitted that the commission charged by Amazon does not place retailers who choose this route at a competitive disadvantage to incumbents; the commission covers various cost elements that incumbents who have their own websites need to cover through their gross margin.

9.20 Our assessment of evidence provided by online M2M blind retailers indicated that website set-up costs are a significant barrier to entry for new entrants given the level of sophistication of the market leading websites that supply M2M blinds. In summary, they told us that:

(a) Developing a fit-for-purpose website for a new entrant would cost at least £100k. MakeMyBlinds entered the online M2M blinds market in 2015, they submitted that their website cost in excess of £[REDACTED].

(b) CGI imagery of products would also result in meaningful costs on an ongoing basis for new and existing retailers. 247 launched high-quality CGI imagery in 2016 at a cost of £[REDACTED] per annum. This implementation alone led to an increase in sales of [REDACTED] times ROI. We currently consider that incumbent websites could also be subject to further technical advantages. Decora submitted that visualisation software will become a key part of the online offering by retailers, adding an element of differentiation for online retailers. Decora also submitted that the bigger online retailers will probably be the first to implement this. This type of technology will play a part in the expansion for online M2M retailers.

(c) For an online blinds company to compete effectively with leading rivals it is essential to constantly invest in its website. MakeMyBlinds submitted

³⁹⁶ [Main submission](#), 20 May 2020, paragraph 7.9.

³⁹⁷ Parties Main Submission, paragraph 7.9.

that in addition to its upfront website development costs, it incurs an ongoing cost of several thousand pounds per month to improve its website and search ranking. Some retailers emphasised the importance of website quality and the customer experience.

- 9.21 The above indicates that even once a retailer has an online presence, it is likely to incur ongoing costs to improve its website (which may in turn impact search ranking, see discussion in Appendix F, paragraph 23), albeit, depending on scope, this could be developed on an incremental basis.³⁹⁸
- 9.22 In assessing the effectiveness of open-source platforms such as Magento and Shopify for the sale of online M2M blinds, we note the Parties' submissions that they may be a cost-effective alternative to a bespoke website. However, we also note the Parties' submission [X].^{399,400} In light of this, in our view, obtaining a low cost open source solution will allow entry to the online M2M market, however, in order to compete effectively with the leading rivals, further investment will likely be required in order to optimise these standardised platforms, as is done so by 247 who outsource their website operations.⁴⁰¹

Online marketplaces

- 9.23 With respect to online marketplaces, some third parties trade through these marketplaces in addition to their main sites, albeit on a smaller scale. The Parties submitted that they expect that online marketplaces will represent a growing proportion of the online M2M blinds offering in future. [X].
- 9.24 [X] submitted that it initially sold products on eBay and Amazon until 2017, commenting that '[t]he reason for selling on eBay and Amazon was to get generate volume for their suppliers and gain experience of the industry.' However, [X] stopped selling on external platforms at the end of that year, and it does not see Amazon and eBay as useful long-term engagements.
- 9.25 We discuss the constraint posed by marketplaces in our Competitive Assessment (paragraphs 8.228 to 8.240). Below we list several issues, as identified by four third parties, with the use of online marketplaces as an alternative way to sell M2M blinds.

³⁹⁸ An example of ongoing website develop costs is the use of A/B testing, a type of user research methodology where two versions of a webpage (or app) are compared against each other to determine which works better.

[X],³⁹⁸ [X].

³⁹⁹ [Main submission](#), 20 May 2020, paragraph 6.17(v).

⁴⁰⁰ We note that the Parties submitted in their response to the Provisional Findings that [X].

⁴⁰¹ [Main submission](#), 20 May 2020, paragraph 5.18.

- (a) Restricted functionality: third parties noted that, in order to customise their blinds, customers must message sellers separately through a 'contact the seller' function. For example, MakeMyBlinds offered M2M products on eBay in certain sizes but then received requests to modify the product. MakeMyBlinds described it as a slow and cumbersome way to sell and Swift Direct Blinds described it as a 'messy process'.⁴⁰² Amazon's recently added 'customise now' function allows customers to input dimensions prior to check-out; however, this isn't a widely used function. [X] also submitted that Wayfair had 'been considered as a sales channel, but it is not good at offering M2M products.'⁴⁰³
- (b) One competitor also commented that online platforms can dilute brand image and can be seen as 'cheap and cheerful', as a result, they currently only sell end of line products that they want to get rid of on Amazon.⁴⁰⁴
- (c) Fees and policies: whilst listing is free, two third parties highlighted the commission taken from sales by the marketplaces. For example, Blinds4UK told us that the marketplaces take a big cut from sellers and Dunelm told us that it considers that Amazon charges a high commission rate.

9.26 The evidence we have seen indicates that there are low cost options to enable small scale entry into the online market for M2M blinds, however, website costs may constitute a barrier to entry for a retailer wishing to compete on similar terms to the more established players in the market. In particular, we note that the costs of establishing a new website and associated features are not immaterial for online retailers. Further, whilst new entrants may be able to utilise open-source options to create and host a simple website for a relatively low cost, the evidence provided by the Parties and third parties indicates that a knowledge barrier exists in order to set-up a credible website to compete effectively with the largest retailers in the market.

9.27 However, we also note that for current more established rivals, or smaller retailers who have already established high quality websites, the costs of maintaining and improving their existing websites may not be particularly high relative to their existing revenues, suggesting that website costs may not be an equally significant barrier to further expansion of existing online M2M blinds retailers.

⁴⁰² [X].

⁴⁰³ [X].

⁴⁰⁴ [X].

- 9.28 Finally, while marketplaces such as Amazon and eBay were identified as introductory low-cost routes to enter the market, we are unconvinced they would facilitate effective entry or expansion for a sizeable online M2M blinds retailer for the reasons discussed above. We assess the evidence on website costs to multi-channel retailers separately below.

Other barriers to entry/expansion

- 9.29 In this section we discuss the possibility of other barriers to entry or expansion, including: (i) the role of an existing customer base and brand awareness; and (ii) supplier relationships.

Role of an existing customer base and brand awareness

- 9.30 The Parties submitted that an existing customer base and brand awareness play a limited role in the online M2M blinds market. They argued that the estimate for the share of revenue from repeat customers overstates actual long-term brand loyalty, [REDACTED]. The Parties further argued that [REDACTED].
- 9.31 Additionally, the Parties submitted that brand awareness for 247 in the general population is limited when compared to Blinds2Go and multi-channel retailers such as Dunelm and Next. The Parties cited evidence from the BDRC Survey, which shows that only 26% of customers (who bought from 247) mentioned the reputation of 247 as an important factor affecting their choice of retailer, with six other factors being identified as important by more customers and with only 9% identifying brand as the most important factor.
- 9.32 Despite M2M blinds not being a very frequent purchase, the data we received from the main online M2M blind retailers shows that the proportion of revenues from repeat customers is relatively high, ranking between 26% and 42% in 2019. In addition, and as also noted in the Parties' submissions, [REDACTED]% and [REDACTED]% of purchases are from customers who returned to Blinds2Go and 247, respectively, more than one year after their first purchase. On the basis of this data, we find that at least a proportion of customers appear to exhibit loyalty towards the retailer from whom they previously made a purchase.

- 9.33 We also consider that retailers with an established customer base benefit from word-of-mouth recommendations⁴⁰⁵ and the ability to engage in more effective e-mail marketing campaigns.⁴⁰⁶
- 9.34 In line with there being benefits from an established customer base, an email from 247 to Hunter Douglas in 2018 notes that 247 is [X].’
- 9.35 We agree with the Parties’ submission that multi-channel retailers are likely to have a more significant repeat customer base than online M2M blind retailers and that they enjoy brand recognition. However, it seems unlikely in our view that the brand recognition of multi-channel retailers and marketplaces has been created on the back of M2M blind sales. While the Parties submitted that this does not matter,⁴⁰⁷ we find that it is likely to play at least some role: just because a customer bought for example a TV from John Lewis, this does not necessarily mean that this customer is more likely to buy M2M blinds from John Lewis than a customer that had not shopped at John Lewis before. By the same token, although almost 90% of UK shoppers use Amazon and 70% of these indicate that Amazon ‘is the first online retailer they go to’ (as submitted by Parties, referencing a Mintel report), this does not mean that customers will choose Amazon for their online M2M blind purchases. Accordingly, while we acknowledge that the general brand recognition of multi-channel retailers and marketplaces is likely to benefit these retailers’ online M2M blind sales to at least some extent, we find that the benefits are likely to be less pronounced than if the brand recognition would have been created on the back of M2M blind sales.
- 9.36 In light of the above, in our view, there is some evidence that established suppliers of online M2M blinds benefit both from an existing customer base and brand awareness. Although this may not appear to be a strong barrier, it does indicate that a new entrant may initially struggle to compete against existing established suppliers who benefit from these factors. At the same time, it may also be the case that existing suppliers (including multi-channel retailers) are able to use their customer base and brand awareness to assist in further expansion.

⁴⁰⁵ This channel of ‘advertising’ was specifically mentioned by Blinds2Go and the BDRC Survey shows that ‘recommendations’ are, after previous purchases, the second most important way in which the Parties’ customers became aware of their respective brands. See comment made by Blinds2Go during CMA site visit, 24 April 2020.

⁴⁰⁶ While we acknowledge that email marketing is not a major source of traffic for any of the main online M2M blind retailers in percentage terms, it still generated revenues of more than £[X] and c.£ [X], respectively, for each of Blinds2Go and 247 in 2019 – and, as noted in the Parties’ submissions, at a very low cost.

⁴⁰⁷ Parties’ response to Provisional Findings, 7 August 2020, paragraphs 5.32 and 5.70.

Supplier relationships

- 9.37 The Parties submitted that there are no direct costs associated with the establishment of supplier relationships. They stated that there are many suppliers who can deliver direct to the customer, with no shortage of logistics providers to support the direct-to-customer model, concluding that both existing players and new entrants can operate entirely on a 'drop ship' basis whereby they need to hold no stock and require no warehousing.⁴⁰⁸
- 9.38 However, certain third parties referred to the need for new entrants and smaller retailers to establish relationships with new suppliers and noted that this can be difficult. In particular, one multi-channel retailer told us that there are only a limited number of suppliers in addition to Hunter Douglas, restricting their ability to move to a different supplier.⁴⁰⁹ In addition, [REDACTED] submitted that some suppliers will not supply goods to new businesses due to the relatively high failure rate of these businesses and have encountered some difficulties in finding new suppliers due to suppliers not wanting to disrupt their existing relationship with Hunter Douglas.
- 9.39 Swift Direct Blinds also submitted that 'to operate at maximum efficiency relative to the larger players in the market (obtaining the best deals on materials, supplies etc) a turnover of approximately £20m would be required.'
- 9.40 We find that, while there may be some difficulties in establishing relationships with suppliers, the evidence we have received does not suggest that this is a significant barrier to entry and expansion.

Conclusion on barriers to entry and expansion

- 9.41 We have found that there is evidence of some barriers to entry and expansion in the retail supply of online M2M blinds. These barriers relate to generating 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 rival seeking to enter or expand.
- 9.42 Whilst individual barriers may, in some circumstances, be overcome, their cumulative effect could be significant. With respect to existing online M2M blind retailers, we note 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)

⁴⁰⁸ [Main submission](#), 20 May 2020, paragraph 7.13.

⁴⁰⁹ [REDACTED].

mean that it is likely to be difficult for rivals to achieve sufficient expansion to replace the loss of 247 as an independent rival. Indeed, the fact that there has been little change in the identity of the leading suppliers in the market in the past few years indicates that there is a degree of incumbency advantage in the market that may constrain further expansion.

Possible sources of entry and expansion

- 9.43 In this section, we assess possible sources of entry or expansion. In line with our Guidelines and past experience, this assessment considers the plans of actual and potential rivals as to how entry or expansion may be achieved.⁴¹⁰ In order to outweigh the SLC that we have identified, we must be satisfied that the evidence available to us clearly shows that entry or expansion from these sources will be timely, likely and sufficient.⁴¹¹ Speculative entry or expansion plans from unspecified sources therefore will not meet this test.
- 9.44 Given that the online market for M2M blinds is a growing market and is forecast to continue to grow, potentially accelerated by the current COVID-19 pandemic, we would expect that there would be expansion from most retailers as the market grows. An increase in turnover in a growing market does not necessarily represent a growing competitive constraint that may offset the SLC identified.
- 9.45 As part of our assessment, we have considered the possibility of actual entry or expansion by: (i) online M2M blinds retailers; (ii) overseas retailers; (iii) online marketplaces; (iv) multi-channel retailers; and (v) blinds manufacturers.

The Parties' views

- 9.46 The Parties cited several examples of recent entry into the market for online retail supply of M2M blinds as evidence of their claim that the costs of entry and expansion are limited. The Parties submitted that:
- (a) Blinds Direct (Interior Goods Direct), which was established in 2004 and relaunched its website in 2018, grew rapidly in recent years and overtook 247 as the second largest online-only M2M blinds retailer.
 - (b) Swift Direct Blinds also registered significant growth since its launch in 2012. Additionally, the Parties submitted that the recent acquisition of

⁴¹⁰ MAGs, paragraph 5.8.12.

⁴¹¹ As part of this assessment, and in accordance with our guidelines, we may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants. – See MAGs, paragraph 5.8.11.

Swift Direct Blinds by Decora will only strengthen Swift Direct Blinds and its ability to compete.⁴¹² The Parties also submitted recent press reports as regards Swift Direct Blinds' revenue growth citing 'Monthly ex VAT revenue figures have increased from around £500,000 prior to lockdown to over £1 million during and post.'

(c) MakeMyBlinds was founded in 2015 and has exhibited rapid growth since then. It has a similar business model to 247.⁴¹³

9.47 The Parties stated that overall they 'believe that expansion from existing online M2M retailers alone is sufficient to replicate the rivalry that would be lost by 247 – [X].'⁴¹⁴

9.48 Additionally, the Parties referenced their own expansion in other European countries, such as the Netherlands and Ireland, where they submitted that they generated profits in a short period of time.⁴¹⁵

9.49 The Parties also argued that multi-channel retailers have a strong incentive to expand their offering of online M2M blinds in order to 'defend their existing sales' and expand their presence.⁴¹⁶ They consider that the COVID-19 pandemic will 'turbo-charge' multi-channel retailers' expansion to online sales, as the Parties believe the pandemic will lead to a change in customer behaviour that will result in multi-channel retailers rapidly developing their online offerings.⁴¹⁷

9.50 The Parties also asserted that manufacturers have a strong incentive to enter the market for the online retail supply of M2M blinds. They referred to Interior Goods Direct and Swift Direct Blinds as examples of vertically integrated online retailers of M2M blinds. The Parties stated that they expect other UK manufacturers to enter in the retail market in the near future, either through launching their own retail operations or through purchasing an existing retailer.⁴¹⁸

Our assessment

Online retailers

9.51 As explained in paragraph 8.10 above, the Parties comprise two of the three largest online M2M blinds retailers. Interior Goods Direct is the only other

⁴¹² Parties response to Provisional Findings, paragraph 5.86(ii), Parties' email to the CMA, 7 September 2020.

⁴¹³ Parties response to Provisional Findings, paragraph 5.87.

⁴¹⁴ Parties response to Provisional Findings, paragraph 5.87.

⁴¹⁵ [Main submission](#), 20 May 2020, paragraph 7.48. [X].

⁴¹⁶ [Main submission](#), 20 May 2020, paragraph 7.68.

⁴¹⁷ [Main submission](#), 20 May 2020, paragraph 7.74.

⁴¹⁸ [Main submission](#), 20 May 2020, paragraphs 7.75-7.77.

online M2M blinds retailer of meaningful scale (with a similar share to 247), with no other supplier holding an individual market share in excess of 5%. Further, we also note that 247's market share is approximately three times bigger than the next largest supplier in the market.

- *Interior Goods Direct*

9.52 Interior Goods Direct was first launched 17 years ago under a different brand. Blinds Direct, its current brand, is only 3 years old whereby Interior Goods Direct was able to leverage traffic from the smaller websites it owned e.g. Wooden Blinds Direct, Roller Blinds Direct, into the new Blinds Direct website.⁴¹⁹

9.53 Interior Goods Direct recently acquired Wilsons Blinds, with the aim of increasing its market share and turnover. While Interior Goods Direct did not actively seek out this opportunity, it submitted that it is very difficult to gain more market share in this sector other than through acquisition. Interior Goods Direct stated that it intends to keep the two websites separate as it sees that repeat customers, and thus customer loyalty, is a key component in ongoing sales.

9.54 Interior Goods Direct submitted that it has not experienced growth that significantly exceeds growth in the overall market. [REDACTED]. Therefore, we find that despite not having certain or detailed plans for growth, Interior Goods Direct continues to look for growth in an expanding market.

9.55 However, we also note that in order to address the SLC identified in paragraph 8.276, the growth of Interior Goods Direct would have to replace the constraint currently posed by 247 on Blinds2Go as the third largest competitor in the market. Accordingly, as the second largest competitor, Interior Goods Direct would have to grow to such an extent that it posed the combined constraint of both Interior Goods Direct and 247 together on Blinds2Go. Whilst we acknowledge that Interior Goods Direct may have some high-level growth plans, in the absence of certain or detailed plans, we consider the evidence does not demonstrate that any expansion by Interior Goods Direct will be timely, likely and sufficient so as to offset the loss of competition identified in our SLC finding.

- *Swift Direct Blinds*

9.56 Swift Direct Blinds was recently acquired by Decora, a leading M2M blinds manufacturer. As a preliminary matter, we note that Swift Direct Blinds

⁴¹⁹ [REDACTED].

currently is a third of the size of 247 (by sales value). Therefore, in order to replicate the constraint of 247, significant growth by Swift Direct Blinds would be required (beyond that of the market) in a relatively short period of time and evidence would have to demonstrate that growth of such scale is likely to be achieved.

- 9.57 We discussed with Decora its rationale for purchasing Swift Direct Blinds and its future plans. [REDACTED]. We understand from Swift Direct Blinds that it experienced a period of growth from 2014 to 2016. [REDACTED]. Swift Direct Blinds submitted that an increased number of competitors in the market and difficulties in finding the right price point and positioning on Google has meant that the growth rate of its competitors has outpaced its own. Therefore, Swift Direct Blinds' [REDACTED] experience provide evidence of negative performance even in the context of a fast-growing market.
- 9.58 Decora submitted [REDACTED].
- 9.59 In order to verify this position, the CMA required the production of internal documents by Decora in relation to its acquisition of Swift Direct Blinds and future growth plans. In response, Decora explained that it did not possess significant volumes of documents in relation to this acquisition as 'Decora's acquisition of Swift did not require scrutiny by any third party (such as a lender) [REDACTED].
- 9.60 Decora submitted a planning document prepared by an external third-party consultant as part of its pre-acquisition planning which forecasts possible future scenarios of sales revenue growth for Swift Direct Blinds. Decora submitted that these forecasts were prepared when Decora was assessing its e-commerce strategy. [REDACTED].
- 9.61 However, Decora noted that it does not consider this document as a strategy document and that business plans and strategies for the online market for M2M blinds has not been developed yet due to the current business circumstances it faces, such as purchasing Swift Direct Blinds and the current COVID-19 pandemic. Moreover, the document submitted to the CMA does not detail, even at a high-level, how such growth may be achieved. Indeed, the documents submitted to the CMA noted that '[REDACTED]'.⁴²⁰ As explained in paragraph 9.13 above, and in Appendix F, there are a number of factors which affect the efficacy of marketing spend; doubling marketing spend does not necessarily result in a doubling of sales.

⁴²⁰ [REDACTED].

9.62 As a result, Decora submitted that while the evidence provided to the CMA may form the basis for devising a future strategy, it does not currently have firm plans or sales growth projections for Swift Direct Blinds.

9.63 We accept that some degree of growth may well be likely for Swift Direct Blinds given the growing market and increased marketing spend as a result of the Decora acquisition. However, given the absence of any firm strategy or growth plans, we consider the evidence does not demonstrate with sufficient certainty that Swift Direct Blinds' expansion following Decora's acquisition of Swift Direct Blinds would be timely, likely and sufficient to offset the SLC we have found.

- *MakeMyBlinds*

9.64 MakeMyBlinds submitted that it aims to become the number one online blinds company in the UK. We understand that it has seen significant growth year on year,⁴²¹ and in 2020 is forecasting revenues of over £[REDACTED] million. MakeMyBlinds has experienced increased turnover month on month and year on year as a result of the COVID-19 pandemic⁴²² and therefore, [REDACTED].

9.65 MakeMyBlinds is currently running its first TV advertising campaign, which it said is boosting sales and brand awareness.⁴²³ MakeMyBlinds submitted that TV advertising is important to prove legitimacy and adds weight to a company's proposition, noting that 247 and Blinds Direct utilised TV advertising in the past.⁴²⁴

9.66 [REDACTED].⁴²⁵ [REDACTED].⁴²⁶

9.67 [REDACTED].

9.68 Notwithstanding its stated ambitions, the evidence available to us does not demonstrate that MakeMyBlinds itself is likely to experience sufficient growth within two years in order to replicate the constraint posed by 247 within the online market for M2M blinds. In particular, we note the following:

- (a) MakeMyBlinds is currently the seventh largest online M2M blind retailer (with a share of [0-5]%) and revenues of £[REDACTED]million in 2019. This compares to 247's existing share of [5-10]% and revenues of approximately £[REDACTED] million in 2019. Indeed, the company would

⁴²¹ Its last years of revenue were £[REDACTED] in 2018, £[REDACTED] in 2019, 2020 is projected to generate £[REDACTED].

⁴²² [REDACTED].

⁴²³ [REDACTED].

⁴²⁴ [REDACTED].

⁴²⁵ [REDACTED].

⁴²⁶ [REDACTED].

need to experience significant growth from a small starting point to replicate the level of competitive constraint posed by 247.

- (b) Moreover, any growth on the part of MakeMyBlinds would require not just keeping pace with the market but also winning market share from incumbents over and above this.
- (c) Whilst some degree of expansion appears likely for MakeMyBlinds over the next two years (given its [REDACTED] and its current TV advertising campaign) the evidence does not show that growth of sufficient scale is likely to be achievable within this timeframe. In particular, the CMA requested internal documents from MakeMyBlinds to support its growth plans, however, [REDACTED]. [REDACTED]. Therefore, given the low base from which MakeMyBlinds would have to grow substantially, in the absence of any more detailed strategy or plans to achieve growth, the CMA has no reliable basis on which it can be confident that MakeMyBlinds is likely to grow to offset the competitive constraint of 247 lost as a result of the 2019 Transaction.
- (d) Additionally, we note that MakeMyBlinds will also be focussing its efforts, and to some extent resources, on [REDACTED]. As a result, growth experienced by MakeMyBlinds will not be limited to increasing its market share of online M2M blinds but also in the adjacent markets. However, we also note that building the 'MakeMy' brand across markets could also develop MakeMyBlinds' position.

9.69 Overall, in the absence of a reliable basis demonstrating that MakeMyBlinds' stated expansion plans are achievable within the next two years, and given the low base from which MakeMyBlinds would have to grow substantially within that period, we do not consider that the evidence demonstrates that MakeMyBlinds' expansion plans will be timely, likely and sufficient so as to offset the SLC arising as a result of the 2019 Transaction.

- *Other smaller online M2M blind retailers*

9.70 In addition to the above, we observe that there is a long tail of online M2M blinds retailers with a limited share of the market. However, we also note that there has been limited growth by these retailers in recent years and they remain very small. As we have seen only limited growth from these smaller retailers on an individual basis, we do not consider it likely that they will collectively account for a material aggregate competitive constraint on the Parties going forward.

- *Aggregate constraint*

9.71 Whilst we have found that, for each specialist online M2M blind retailer identified above, their expansion would not be timely, likely and sufficient to offset the SLC on an individual basis, we have also considered the aggregate position. We note, in this regard, that some degree of expansion may be timely and likely for each of Interior Goods Direct, Swift Direct Blinds and MakeMyBlinds (based on their high level plans) and if both Swift Direct Blinds and MakeMyBlinds were to achieve their aspirational high level growth plans, this could theoretically be sufficient to replicate the constraint exerted by 247 prior to the 2019 Transaction. However, each of these retailers lacks detailed and firm plans as to how such growth would be achieved and, accordingly, we do not consider any of them likely to be fully achieved in practice. Moreover, given the significant growth that would be needed across all three of these retailers to be able to replicate the constraint from 247, we consider that only a small proportion of such growth is likely to be achieved in a timely manner. Accordingly, even on an aggregate basis we consider that the expansion of Interior Goods Direct, Swift Blinds Direct and MakeMyBlinds would not be timely, likely and sufficient to offset the SLC we have found.

Overseas retailers

- 9.72 The Parties submit that there is evidence of successful entry in other European countries and cite their own experience expanding into Europe as evidence. However, we do not have any evidence of overseas retailers looking to expand into the UK market.
- 9.73 In relation to an overseas retailer as a potential purchaser of 247, Hunter Douglas submitted limitations on the success of an overseas retailer entering the UK online M2M blinds market, citing ‘they would have to be interested in coming into the UK, knowledgeable about the UK: [X]. Each market is just different: the taste is different, the structure is different. It would be a challenge for someone from outside the UK coming into the UK.’ Therefore, even in the event that an overseas retailer were to enter the UK market for online M2M blinds, we have no reason to believe that they would grow to the extent to pose a constraint on the Merged Entity.

Online marketplaces

- 9.74 With respect to marketplaces, Amazon’s and eBay’s current sales of online M2M blinds are low and both retailers submitted that they had no plans to grow their respective offering of M2M blinds.

- 9.75 We note that as of the beginning of 2020 Amazon has introduced new functionality such as its 'customise now' function, and as such the platform may increasingly be used for M2M blinds. However, since, other than [✂], we have not received any evidence that would suggest that the role of Amazon would significantly change (see paragraph 8.239), we have no reason to believe that Amazon's sales of online M2M blinds will substantially increase going forward.

Multi-channel retailers

- 9.76 As highlighted in the Industry Background section, multi-channel retailers offer M2M blinds online to varying extents, with not all retailers offering the same click-to-order functionality as the Parties. We recognise that multi-channel retailers may not face the same barriers to entry or expansion as online-only retailers and may also benefit from greater financial resources and brand recognition. However, the online M2M blind sales of multi-channel retailers are currently low, implying that any expansion of these retailers starts from a low base. We have also not received any evidence to suggest that multi-channel retailers are using their brand recognition to grow their share of the online M2M blinds market.
- 9.77 Additionally, multi-channel retailers face different challenges with the online retail supply of M2M blinds. In particular, all of the main multi-channel retailers identified by the Parties as competitive constraints have emphasised the complexity of adding and integrating website functionality for M2M blinds with their existing websites (where they sell other products and services not related to the window coverings sector). They noted that, as a result, new functionality tends to be added as part of a wider overhaul/relaunch of a retailer's website and therefore the timescales are much longer and costs much higher. This suggests that reputational and operational risks are a greater consideration for multi-channel retailers than other sources of entry and expansion.
- 9.78 Moreover, multi-channel retailers have emphasised that the current COVID-19 pandemic has impacted them to a significant extent. Given that their in-store or in-home offering of M2M blinds has been halted in recent times, this has in turn impacted their ability to expand further. This also indicates that multi-channel retailers may have competing priorities in their business ahead of online M2M blinds.
- 9.79 The Parties, however, refute the stated impact of COVID 19 on the multi-channel retailers. The Parties submitted that:

- (a) Dunelm has seen year-on-year increases of over 100% and that it will invest in its digital capabilities.
- (b) John Lewis stated that '[b]efore the virus struck, 40 percent of John Lewis sales were online. This could now be closer to 60 to 70 percent of total sales this year and next'. The Parties further submitted that John Lewis is also conducting a digital transformation and significantly expanding its click & collect service.
- (c) Next has returned its next day delivery service and rumoured to launch an online platform that will allow other brands to sell products through its website.⁴²⁷

9.80 We assess below the evidence submitted to us by each retailer in relation to any plans to expand or enter the market, including how these plans may be impacted by the current COVID-19 pandemic.

- *John Lewis*

9.81 John Lewis told us that it offers a variety of blinds online with click-to-order functionality, although it currently has only [REDACTED]% of its M2M products online. Indeed, many of the blinds advertised are listed as in-store only. We understand that there has been a drive to increase this for the last [REDACTED], however John Lewis said that 'it would need significant investment in its online systems and website update to achieve this.'⁴²⁸ [REDACTED]. We note that these costs are far in excess of those submitted by other parties, including other multi-channel retailers. John Lewis submits that these costs are specific to John Lewis and relate to setting up the required functionality and do not include the cost of making the products available online.⁴²⁹

9.82 [REDACTED]⁴³⁰ John Lewis noted further that, while its online businesses and factories for M2M blinds were closed due to the COVID-19 pandemic, many online competitors remained open for business.⁴³¹ John Lewis submitted that while online sales of M2M blinds would restart once the COVID-19 pandemic guidance changed, absent its website upgrade project, John Lewis does not expect any growth and sales are likely to go down due to its limited online offering of M2M blinds.⁴³²

⁴²⁷ Parties' response to Provisional Findings, paragraph 5.90.

⁴²⁸ [REDACTED].

⁴²⁹ [REDACTED].

⁴³⁰ [REDACTED].

⁴³¹ [REDACTED].

⁴³² [REDACTED].

9.83 The John Lewis Partnership is currently undergoing a business-wide strategic review of its digital offering, as referenced by the Parties (see paragraph 9.79(b)),⁴³³ with the aim of improving general performance within 3 to 5 years.⁴³⁴ However, this review is not specific to online M2M blinds. In terms of how this could impact blinds, John Lewis submitted that [REDACTED].

9.84 Therefore, notwithstanding the impact of COVID-19 on John Lewis' sales of online M2M blinds, the evidence submitted to us by John Lewis [REDACTED]. As a result, we are not satisfied that any further expansion by John Lewis in the online M2M blinds market would be timely or likely. [REDACTED].

- *Next*

9.85 Next integrated its click-to-order functionality for online M2M blinds with its main website in Autumn 2019. Next explained that it changed supplier for M2M blinds in 2019 and brought its entire M2M blinds offering in house, enabling more control of what products it was able to sell.

9.86 Next told us that the current COVID-19 situation had initially prevented both ready-made and M2M blinds being sold both in-store and online due to Next's two-man delivery service. However, both products can now be purchased online once again. [REDACTED], however, this is currently on hold due to the team responsible for this currently being unavailable, although Next expects that this will continue once the COVID-19 pandemic subsides. Next reconfirmed that the current situation still remains and that there has been no change in their plans.

9.87 Crucially, however, Next believes its share of the market is small compared to other M2M blind retailers and is not forecasting an increase in sales from 2019 to 2020 on a like for like basis. As confirmed in our market share estimates, Next's share of the online M2M blinds market is modest at [0-5]% and significantly smaller than the Parties. Therefore, given Next's position in the market and the fact that it has no significant plans to expand its online retail offering of M2M blinds, we do not consider that any further expansion by Next would be timely or likely. Given Next's limited share of the market we also consider that even if further expansion by Next was timely and likely, substantial growth would be needed in order to be timely, likely and sufficient to offset the SLC we have found.

⁴³³ Parties response to Provisional findings, paragraph 5.90(ii).

⁴³⁴ <https://www.johnlewispartnership.co.uk/media/press/y2020/progress-update-on-the-strategic-review.html>

- *Dunelm*

- 9.88 Dunelm does not currently offer click-to-order M2M blinds online. As described in paragraph 4.34, Dunelm currently offers M2M blinds online through virtual consultations. However, for the reasons described in that section, we do not consider that Dunelm’s current offering is comparable to that of the Parties or their rivals in the online M2M blinds market.
- 9.89 Dunelm previously had a platform offering M2M blinds online, however this was removed as a part of a major update of its website in Autumn 2019 requiring development work. [REDACTED].⁴³⁵ Dunelm also estimated that the third-party cost of developing the online blinds element was in the region of £1.5m, which does not include internal costs or time’.⁴³⁶ We therefore consider that the costs of Dunelm integrating online M2M blinds into its web platform are considerable.
- 9.90 [REDACTED]. A date to implement M2M online functionality has not been set.⁴³⁷
- 9.91 The Parties have indicated that they expect re-entry by Dunelm to be timely and significant, stating their view that Dunelm ‘[REDACTED].’ In response to this, we note that Dunelm submitted that sales of online M2M blinds were £[REDACTED] in 2019, compared to in-store sales of £[REDACTED].
- 9.92 The Parties further submit that Dunelm made the following statements: ‘We continue to invest in our digital capabilities [...]. We will also be investing in supply chain capacity to meet the high growth ambition for our home delivery channels.’ Additionally, the Parties have submitted recent press reports citing Dunelm’s positive performance as a result of the COVID-19 pandemic. However, we note that the referenced growth and investment is not limited to Dunelm’s online offering of M2M blinds [REDACTED], additionally that its reported growth also relates to sales earned in-store across all products.
- 9.93 Whilst we note that [REDACTED]. Therefore, we do not consider that re-entry by Dunelm would be timely or likely. Moreover, Dunelm’s online sales of M2M blinds were low prior to its exit in 2019 and significantly below those of the Parties. We therefore consider that any re-entry by Dunelm would need to be likely to achieve significant scale within a short timeframe in order to be sufficient to offset the SLC we have found.

⁴³⁵ [REDACTED].

⁴³⁶ [REDACTED].

⁴³⁷ [REDACTED].

- *IKEA*

9.94 IKEA has been identified as a current competitor by the Parties and also described as an entrant, or re-entrant, to the blinds market by the Parties, and a 'serious competitor'. However, IKEA has confirmed to us that it has no plans to enter the online M2M blinds market.

Manufacturers

9.95 The Parties identified Decora as a recent entrant to the online M2M blinds retail market. In support of this, the Parties noted Decora's recent acquisition of Swift Direct Blinds, as well as its investment in the Netherlands (via the acquisition of Coolblinds). The Parties also cite that 'Decora and its investment partners plan to 'transform a family owned business into a European leader'.⁴³⁸

9.96 As a manufacturer and distributor for M2M blinds, Decora submitted that it is interested in entering the online retail market for M2M blinds, but only through acquisition of an existing online platform. This is consistent with evidence available to the CMA, [REDACTED], as well as the successful acquisition of Swift Direct Blinds described above. The CMA also understands that Decora has held, and will continue to hold, informal discussions with other potential targets. However, these discussions have not resulted in any opportunity that Decora has considered commercially viable, or, only initial inquiries have been made. In response to the CMA's questions related to Decora's potential acquisition strategy, Decora submitted that it has no current plans to acquire any additional companies active in the online M2M blinds market in the UK (with the exception of 247). Decora also submitted that it has no internal documents discussing or assessing a future acquisition strategy and/or potential targets.⁴³⁹ Therefore, whilst Decora may be interested in acquiring companies active in the market in the future, in the absence of any current plans to acquire companies, the CMA does not consider that future expansion by Decora will be timely, likely and sufficient to offset the SLC we have found.

9.97 Separately, we also note Decora submitted it would take at least five to seven years for a new company to build any significant market share and such new company will likely take losses in five to seven years of operation.⁴⁴⁰

⁴³⁸ Quote from Don Harrington (director of Goodbody Corporate Finance, who advises Decora's parent company) from an article in the Irish News dated 8 August 2020.

⁴³⁹ [REDACTED].

⁴⁴⁰ [REDACTED].

Conclusion on sources of entry and expansion

- 9.98 Whilst we understand that certain competitors do have plans to grow, their growth plans 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. The evidence available to us does not reliably indicate how these growth plans would be achieved so as to result in these competitors being a significantly increased individual or aggregate constraint on the Parties post-Merger.
- 9.99 The evidence above shows that expansion from individual existing online retailers of M2M blinds will not be timely, likely and sufficient to offset the SLC we have found. In particular, whilst we acknowledge that Interior Goods Direct (being an online retailer of comparable scale to 247) may have some high-level growth plans, it does not have certain or detailed plans on how such growth will be achieved, and therefore we do not consider its expansion would be timely, likely and sufficient to offset the loss of 247 as an independent competitor. [REDACTED]. Whilst MakeMyBlinds has told us that it also intends to expand further, given it is currently the [REDACTED] largest online M2M retailer, the evidence available to us does not demonstrate that it is likely that it will achieve sufficient scale in a timely manner in order to be a sufficient competitive constraint on the Parties in the near future given the significant level of growth required from a small starting base.
- 9.100 The evidence from multi-channel retailers does not demonstrate that any expansion (in the case of John Lewis and Next) or re-entry (Dunelm) will be timely or likely. Further, the fact that multi-channel retailers have previously been able to achieve only a limited presence in the online M2M blinds market means that, even if expansion or re-entry were timely and likely, we do not consider that it would be timely, likely and sufficient to offset the SLC we have found. 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 these plans have been significantly impeded by the current COVID-19 pandemic. 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. When questioned, multi-channel retailers confirmed that there were no specific plans, or unlikely to be, for M2M blinds. Moreover, the significant development costs and lead times incurred by multi-channel retailers indicates that they face specific challenges in developing a market presence that is consistent with their wider reputational and operational objectives. In this respect, it is notable that Dunelm has exited the market previously having entered in 2018. Dunelm's current online M2M blinds offering is still some way off the functionality offered by the online M2M blind retailers,

given that it does not offer click-to-order M2M blinds. Similarly, John Lewis told us that development in this area is significantly more costly than other retailers and reflects its company-specific considerations. We also note that the evidence available from all of these multi-channel retailers indicates that they have been unable to develop a market presence comparable to that of the Parties. Accordingly, our view is that any expansion or entry by multi-channel retailers would not, individually, be timely, likely and sufficient to prevent an SLC from arising.

- 9.101 Finally, we note that the evidence from manufacturers does not demonstrate that entry or expansion would be timely, likely and sufficient. In particular, whilst we note Decora's entry into this market through acquisition, the evidence available to us does not indicate that it has any current plans to acquire future targets. Moreover, additional evidence indicates to us that *de novo* entry by a manufacturer would be risky, costly and with no guarantee of success.

Aggregate constraint

- 9.102 The CMA also has considered the extent to which these potential sources of entry and expansion may pose a competitive constraint on the Parties when considered in aggregate, including in the relevant market and across channels. However, we note that in each instance in which potential entry or expansion has been assessed, we have not obtained sufficient evidence to give us confidence that the requisite growth will be achieved. We also note that, except for Interior Goods Direct, each potential rival is of significantly smaller scale than 247. Therefore, any aggregate constraint on the Parties would require several rivals to achieve significant growth beyond both their previous performance and any current growth in the market. In the absence of evidence showing that rivals are likely to achieve this individually, we do not consider it likely that this constraint will be achieved on an aggregate basis.

Conclusions

- 9.103 Based on the evidence as set out above we have found there to be evidence of barriers to entry and expansion in the supply of online M2M blinds. Whilst individually, these barriers are not insurmountable, the cumulative effect of these barriers could be significant for new entrants. We have also found that barriers to entry may be higher for entry at scale than barriers to expansion for existing rivals. However, the fact that there has been little change in the identity of the leading suppliers in the market in the past few years suggests

that there is a degree of incumbency advantage in the market that may constrain expansion by existing rivals.

9.104 Notwithstanding this finding, we have further found there to be limited evidence of actual and/or planned entry or expansion from third parties in this market. This reflects the following:

- (a) Some online retailers may have plans to expand, however, the evidence available to us does not reliably indicate how these growth plans would be achieved so as to result in these competitors being a significantly increased individual or aggregate constraint on the Parties post-Merger. Furthermore, we observe limited growth from the tail of smaller retailers in recent years. Plans for expansion, for both Swift Direct Blinds and Make My Blinds, have, in our view, been more of a statement of intent, as opposed to developed or detailed plans.
- (b) Whilst MakeMyBlinds has grown in recent years, as noted at paragraph 9.64 its current market position indicates that it is unlikely to expand sufficiently to offer a significant competitive constraint on the Parties in the near future and we do not have sufficient evidence as to how this company may achieve its stated growth plans.
- (c) While manufacturer Decora has entered the retail market for M2M blinds via Swift Direct Blinds, evidence received as part of our investigation indicates that it is unlikely to represent a sufficient competitive constraint on the Parties [REDACTED]. In addition, even if Swift Direct Blinds' growth significantly outpaced that of the market, it would still not be comparable in size to 247 for several years.
- (d) The evidence received from multi-channel retailers also does not demonstrate that any expansion or re-entry into the market will be timely or likely as they deal with the consequences of the COVID-19 pandemic.
- (e) 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. Where multi-channel retailers have stated their ambitions to expand their online offering for customers, we have no evidence that this is relevant to M2M blinds. 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.

9.105 In summary, the evidence available to us does not demonstrate that entry or expansion will be timely, likely and sufficient, either on an individual or aggregated basis.

9.106 In light of the foregoing, we conclude that the evidence does not support the view that timely, likely and sufficient entry or expansion will outweigh the SLC we have identified.

10. The decision

10.1 We have found that the 2013 Transaction has not resulted in the creation of a relevant merger situation.

10.2 We have found that the 2019 Transaction has resulted in the creation of a relevant merger situation.

10.3 We have concluded that the 2019 Transaction 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.

10.4 We conclude that the adverse effect arising from the identified SLC would be that there would be the 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.

11. Remedies

Introduction

- 11.1 We have found that the 2019 Transaction may be expected to result in a SLC.
- 11.2 Where the CMA finds an SLC in its final report, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.⁴⁴¹
- 11.3 This chapter considers possible remedies to the SLC that we have identified in this report and contains our decision on remedies. In reaching our final decision on the appropriate remedy, we have considered evidence from the Parties and third parties, including:
- (a) Responses to our notice of possible remedies (Remedies Notice);⁴⁴²
 - (b) Response hearings with both Hunter Douglas and 247;
 - (c) Questionnaires and calls with third parties; and
 - (d) The Parties' response to our Remedies Working Paper, which set out our provisional decision on remedies.⁴⁴³
- 11.4 This chapter sets out:
- (a) The CMA's framework for assessing remedies;
 - (b) An overview of the remedy options;
 - (c) Our assessment of the effectiveness of each remedy option;
 - (d) Our assessment of the proportionality of each remedy option, including our assessment of any associated Relevant Customer Benefits;
 - (e) Our assessment of remedy implementation for each remedy option; and

⁴⁴¹ Enterprise Act 2002, section 35(3).

⁴⁴² [Remedies Notice](#)

⁴⁴³ The Parties and Decora submitted responses to our Remedies Notice. We held hearings with Hunter Douglas and 247 and calls with four third parties. We also sent a questionnaire to 20 third parties and received two responses.

- (f) Our final decision on remedies.

CMA framework for assessing remedies

- 11.5 The Enterprise Act 2002 (the 'Act') requires that the CMA, when considering possible remedial actions, shall 'in particular, have 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'.⁴⁴⁴
- 11.6 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:
- (a) impact on the SLC and the resulting adverse effects;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality in terms of implementation and any subsequent monitoring; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.⁴⁴⁵
- 11.7 The CMA will then select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,⁴⁴⁶ to the effect of any remedial action on any relevant customer benefits arising from the merger.

Overview of remedy options

- 11.8 As set out in the CMA guidance, remedies are conventionally classified as either structural or behavioural.⁴⁴⁷ In merger inquiries, the CMA generally prefers structural remedies over behavioural remedies because:⁴⁴⁸

⁴⁴⁴ Enterprise Act 2002, section 35(4).

⁴⁴⁵ [Merger remedies guidance CMA87](#), paragraph 3.5

⁴⁴⁶ Enterprise Act 2002, section 35(5).

⁴⁴⁷ [Merger remedies guidance CMA87](#), paragraph 3.34. Some remedies, such as those relating to access to IP rights may have features of structural or behavioural remedies depending on their particular formulation.

⁴⁴⁸ [Merger remedies guidance CMA87](#), paragraph 3.46.

- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
- (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
- (c) structural remedies rarely require monitoring and enforcement once implemented.

11.9 In this chapter, we set out the following remedies 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.

11.10 In the Remedies Notice, we invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise. These may include requirements relating to the scope of any divestiture package, the process of selecting the assets to be divested, the identification of suitable potential purchaser(s), and the divestiture process including the timing of divestiture.

11.11 In the Remedies Notice, we also said that behavioural remedies were unlikely to be effective in addressing the SLC that we had found. We said that we were willing to consider any behavioural remedies that were put forward as part of the consultation, but none were proposed. We therefore did not consider behavioural remedies further.

11.12 A successful divestiture will effectively address at source the loss of rivalry resulting from the merger by changing or restoring the structure of the market.⁴⁴⁹

11.13 There are three categories of risk that could impair the effectiveness of any divestiture remedy; composition risk, purchaser risk and asset risk:⁴⁵⁰

- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a

⁴⁴⁹ [Merger remedies guidance CMA87](#), paragraph 3.38.

⁴⁵⁰ [Merger remedies guidance CMA87](#), paragraph 5.3.

suitable purchaser, or does not allow a purchaser to operate as an effective competitor;

(b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and

(c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.

11.14 An effective divestiture remedy must give us sufficient confidence that these practical risks can be properly addressed in its design. We therefore consider the following design issues:

(a) the appropriate scope of the divestiture package;

(b) the identification and availability of suitable purchasers; and

(c) ensuring an effective divestiture process

11.15 We consider each of these in turn below, where we set out the views of the Parties and third parties on each aspect of the remedy design. To be effective in remedying the SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor. Independence is a key consideration in the remedy option where Hunter Douglas retains a minority stake in 247.

11.16 In the following sections, for each remedy option we set out:

(a) A brief description of the proposed remedy;

(b) The general views from the Parties and third parties on the effectiveness of the remedy; and

(c) Our assessment of the effectiveness of each remedy.

Full divestiture of 247

Description of remedy

11.17 Under a full divestiture remedy, Hunter Douglas would be required to divest 100% of 247's ordinary share capital within a timeframe specified by the CMA.

Remedy design issues

Scope of divestiture package

11.18 In considering the appropriate scope for a divestiture package, we should ensure that it:

- (a) is sufficiently broad in scope to address all aspects of the SLC and resulting adverse effects;
- (b) would enable the eventual purchaser to operate the divested business as an effective competitor; and
- (c) is sufficiently attractive to potential purchasers.

11.19 In the Remedies Notice, the Remedies Hearings and on calls with third parties, we sought views on the scope of the divestiture package, including the level of shareholding that Hunter Douglas should be required to divest and whether 247's international operations should be included in the divestiture package.

Parties' and third-party views on the scope of the divestiture package

11.20 In their response to the Remedies Notice, the Parties told us that full divestiture would be 'ultra vires' and 'disproportionate to the SLC identified in the Provisional Conclusions' however that a partial 'divestment of 51% of the ordinary share capital of 247 would be linked to the SLC... and could be proportionate.'⁴⁵¹

11.21 The Parties submitted that there was no basis for anything other than restoring the pre-merger ownership structure of 247.⁴⁵² The Parties also submitted that 'the aim of the remedy is not to create a situation in which 247 operates in a wholly independent [original emphasis] manner to Hunter Douglas'⁴⁵³ which would be the case in the event of a full divestiture of 247.

11.22 In the remedies hearing, Mr Peterkin, one of the Founding Shareholders of 247 who continues to run 247, commented that a full divestiture of 247 from Hunter Douglas 'would certainly remedy the situation, depending on who bought it. Whether or not it would be effective in leaving 247 competitive is obviously another hypothetical issue.'⁴⁵⁴

⁴⁵¹ Parties' response to Remedies Notice, paragraph 1.5

⁴⁵² Parties' response to Remedies Notice, paragraph 1.4

⁴⁵³ Parties' response to Remedies Notice, paragraph 1.4

⁴⁵⁴ Remedies hearing with 247, page 6, lines 15-17.

11.23 However, all four⁴⁵⁵ third parties with whom we held calls expressed that in their view a 100% divestiture of 247 would be the only effective remedy to the SLC we found, noting that anything less would allow Hunter Douglas to retain a degree of control over the strategy of 247.

11.24 [One third party] submitted that it ‘considered that the only viable remedy to address the SLC is a 100% divestiture of the ordinary share capital of 247.’⁴⁵⁶ [redacted] describes that it ‘arrived at this position because Hunter Douglas is not only dominant in the online retail supply of M2M blinds but has a significant presence in both related horizontal and vertical markets.’⁴⁵⁷

11.25 [One third party] also ‘believes that a full divestiture of 247 is the most effective remedy for addressing the provisional SLC.’⁴⁵⁸

11.26 [Two third parties] also considered full divestiture the best option in order to remedy the SLC.⁴⁵⁹ [One of the two third parties] added, however, that this was dependent on the suitability of the acquirer.’⁴⁶⁰

11.27 Neither the Parties nor any third parties considered that, in order to effectively remedy the SLC, it was necessary to include 247’s international operations in the scope of the divestiture package.

CMA assessment of the scope of the divestiture package

11.28 The CMA takes divestiture of all or part of the acquired business as its starting point because ‘restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.’⁴⁶¹

11.29 In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.^{462 463}

⁴⁵⁵ [redacted].

⁴⁵⁶ [redacted].

⁴⁵⁷ [redacted].

⁴⁵⁸ [redacted].

⁴⁵⁹ [redacted].

⁴⁶⁰ [redacted].

⁴⁶¹ [Merger remedies guidance CMA87](#), paragraph 5.6.

⁴⁶² [Merger remedies guidance CMA87](#), paragraph 5.7.

⁴⁶³ We note that neither Hunter Douglas nor third parties thought that it was necessary to include 247’s overseas operations within the scope of the divestiture package. Given the small size of these operations, we consider

- 11.30 The divestiture may comprise the sale of all relevant assets in one package or the sale of assets grouped together in a limited number of packages.⁴⁶⁴
- 11.31 We note Hunter Douglas' comments at paragraph 11.20 that structural remedies which re-establish the pre-merger ownership structure (ie Hunter Douglas owning 49% of 247) should be expected to address the adverse effects at source, and that re-establishment of this structure would not require a full divestiture. We also note its submission in the same paragraph that a full divestiture would be *ultra vires* and disproportionate.
- 11.32 We do not agree that a full divestiture would be *ultra vires*. The CMA has a statutory duty to decide whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC,⁴⁶⁵ and the CMA must have regard to the need to achieve as comprehensive a remedy as is reasonable and practicable. The guidance says that 'in identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business.'⁴⁶⁶
- 11.33 In this case we consider that the full divestiture of 247 would represent an effective remedy which would be relatively easy to implement. We acknowledge that the scope of a full divestiture goes beyond what would be required to restore 247's ownership structure to the level that would have prevailed absent the 2019 Transaction, which would be the minimum scope of any remedy package. However, the CMA's guidance recognises that merger parties may be required to add further assets to a remedy package in order to secure divestment to a suitable purchaser⁴⁶⁷.
- 11.34 Our assessment of the proportionality of effective remedies is set out in paragraphs 11.147 to 11.173.

Identification of a suitable purchaser

- 11.35 In our Remedies Notice, we invited views on whether there were any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.⁴⁶⁸
- 11.36 The CMA will wish to satisfy itself that a prospective purchaser:

that they do not have a material impact on 247's ability to compete in the UK. As a result, we propose to exclude them from the divestiture package under both remedy options.

⁴⁶⁴ [Merger remedies guidance CMA87](#), paragraph 5.8.

⁴⁶⁵ Sections 35 and 26 of the Act

⁴⁶⁶ [Merger remedies guidance CMA87](#), paragraph 5.6.

⁴⁶⁷ [Merger remedies guidance CMA87](#), paragraph 5.9. See for example Eurotunnel/SeaFrance.

⁴⁶⁸ Remedies Notice, paragraph 20(a).

- (a) is independent of the merger parties;
- (b) has the necessary capability to compete;
- (c) is committed to competing in the relevant market;
- (d) and that divestiture to the purchaser will not create further competition concerns.⁴⁶⁹

Parties' and third-party views on the identification of a suitable purchaser

- 11.37 The Parties submitted that there should not be any difficulty in finding a suitable purchaser, or purchasers, meeting the CMA's normal purchaser suitability criteria as set out in the Remedies Notice⁴⁷⁰ for any potential divestiture package. Hunter Douglas submitted that '247 is a profitable business with growth potential, notwithstanding that its market share has fallen in recent years, and therefore attractive for a potential purchaser.'⁴⁷¹
- 11.38 However, Hunter Douglas submitted that a primary concern, whether the purchaser be a retailer or a private equity firm, was the risk of losing the expertise of one of the Founding Shareholders, Jason Peterkin, who continues to manage the business.

Third party views

- 11.39 There was broad consensus from the parties and third parties on the need for a suitable purchaser to meet our normal purchaser suitability criteria. Third parties also submitted that a suitable purchaser should be independent from Hunter Douglas. One third party, [X], submitted that '[s]hould a purchaser come forward which has an existing corporate relationship with these two entities it is suggested that this will likely stifle the development of this market.'⁴⁷²
- 11.40 All third parties who submitted evidence commented on the importance of e-commerce experience in order to remain competitive in the online market. One third party commented it is easy to lose money very quickly.⁴⁷³
- 11.41 [X] submitted that '[h]aving a background in e-commerce would be essential, but not necessarily within the blinds space.' Further noting that

⁴⁶⁹ Further detail of the purchaser suitability criteria are set out in [Merger remedies guidance CMA87](#), paragraph 5.21.

⁴⁷⁰ Parties' response to Remedies Notice, paragraph 4.11.

⁴⁷¹ Parties' response to Remedies Notice, paragraph 4.11.

⁴⁷² [X].

⁴⁷³ [X].

‘[f]or example, Dunelm or Next could potentially be suitable acquirers where they have a big home furnishing outlet already.’⁴⁷⁴

11.42 [X] said that ‘[a] potential purchaser would need either a good amount of e-commerce experience, or to be an existing blinds manufacturer or have substantial experience within the blinds and/or window coverings industry. Possessing all of these attributes would be ideal but need to have at least one or the other to be best placed.’⁴⁷⁵

11.43 [X] said that ‘full divestiture of 247 is the best option for remedying the provisional SLC finding. However, that remedy is based upon the suitability of the acquirer. To avoid 247 being run inefficiently and risking its viability, the acquirer of the company must have at least a considerable amount experience within the e-commerce sector, ideally within home furnishings.’⁴⁷⁶

11.44 [X] also highlighted the importance of online retail experience to 247’s ability to remain a strong competitor, commenting that ‘an acquirer without this proven industry experience and expertise is highly likely to result in the competitive landscape for online MTM blinds becoming worse, not better. We reach that conclusion because in the scenario 247 blinds market share reduces, then consistent with the CMA findings and conclusions, the Hunter Douglas share of the market would be even greater.’⁴⁷⁷

Expressions of interest

11.45 [Three third parties] submitted that they would be interested in purchasing 100% of 247. [One third party] said that they would not be interested in purchasing 247.⁴⁷⁸

11.46 [X].⁴⁷⁹

11.47 [X].⁴⁸⁰

CMA assessment of identification and likely availability of a suitable purchaser

11.48 Hunter Douglas characterises 247 as a profitable and growing business in an expanding market, which should prove attractive to potential

⁴⁷⁴ [X].

⁴⁷⁵ [X].

⁴⁷⁶ [X].

⁴⁷⁷ [X].

⁴⁷⁸ [X].

⁴⁷⁹ [X].

⁴⁸⁰ [X].

purchasers. Evidence from both the main and third parties suggested that there would be a wide pool of potential purchasers.

- 11.49 With a full divestiture, we consider that the CMA's usual suitability criteria, as set out in paragraph 11.36, would be appropriate. In considering the capability of potential purchasers, we consider that any potential purchaser would need to identify a management team with experience of online retailing or e-commerce, preferably in blinds or similar products. This could be achieved either from within the purchaser's existing operations or recruitment of an experienced management team. Based on the evidence available to us, we consider it likely that a suitable purchaser could be identified to acquire 100% of 247.

Conclusions on identification and availability of a suitable purchaser

- 11.50 Based on the information currently available, our view is that it is likely that a suitable purchaser would be found for this remedy option. We further consider that there are likely to be buyers that could satisfy our suitability criteria set out in paragraph 11.36 above.

Ensuring an effective divestiture process

- 11.51 It is the CMA's standard practice to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package, if Hunter Douglas fails to achieve an effective disposal within the Initial Divestiture period, or if the CMA has reason to be concerned that Hunter Douglas will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that Hunter Douglas has a sufficient incentive to implement the divestiture promptly and effectively.

Views of the Parties and third parties on an effective divestiture process

- 11.52 In the event of divestiture Hunter Douglas said that:

'[I]n the context of the global Covid-19 pandemic, a timescale of at least 9 months is appropriate in order to allow for the divestment to take place. Such a period will allow Hunter Douglas to identify a suitable buyer, engage in appropriate negotiations with that buyer, obtain CMA approvals and put in place necessary documentation. Hunter Douglas will endeavour to identify a buyer and complete a sale process as quickly as possible, however, given the current, unprecedented situation resulting from the Covid-19 pandemic, it may

take more time than usual to do so and a modest extension from the CMA's usual practice of 6 months is therefore appropriate.⁴⁸¹

11.53 Hunter Douglas also said that there would be no risk to the 247 business during the divestiture period, given that:

- (a) The measures put in place under the IEO would continue to ensure that 247 is run in a profitable manner; and
- (b) there is no asset risk since Hunter Douglas has no incentive to run down a business in which it would continue to hold a significant minority stake.⁴⁸²

11.54 Furthermore, Hunter Douglas submitted that it 'did not consider it necessary or proportionate to mandate a divestiture trustee to oversee the divestment process, submitting that there is no reason to believe that Hunter Douglas will not be able to identify a suitable purchaser and that it will not proceed with divestment. As a result, Hunter Douglas believes that mandating a divestiture trustee would incur an unnecessary cost and would be disproportionate.'⁴⁸³

- *Third party views*

11.55 In response to Hunter Douglas' request for a 9-month divestiture process, third parties commented that it is likely only 6 months would be required and 9 months for the divestiture would involve unnecessary delay to the process.

11.56 [X] described the request as 'excessive' and submitted that '[u]ntil a divestiture is achieved the main parties will continue to grow at an enhanced rate due to current market conditions and their positions – as such it will become increasingly difficult for any new entrants to establish themselves in the market.'⁴⁸⁴

11.57 [X] supported this view stating that it 'does not believe nine months will be required to sell 247, due to the profitability of the business. The online M2M blinds market is not so niche that it would be difficult to find buyers.'⁴⁸⁵

11.58 As regards the appointment of a divestiture trustee, [X] submitted that 'It is suggested that the manner in which the parties attempted to implement the transaction giving rise to the CMA's investigation showed a surprising lack

⁴⁸¹ Parties' response to Remedies Notice, paragraph 4.14.

⁴⁸² Parties' response to Remedies Notice, paragraph 4.15.

⁴⁸³ Parties' response to Remedies Notice, paragraph 4.17.

⁴⁸⁴ [X].

⁴⁸⁵ [X].

of transparency. Therefore, it is suggested that the CMA may wish to keep open the possibility of appointing a divestiture trustee to ensure that should it deem that a divestiture is necessary – that it is appropriately implemented.’⁴⁸⁶

CMA assessment of an effective divestiture process

- *Timescale allowed for divestiture*

11.59 While the Coronavirus (COVID-19) pandemic has had a significant impact on a number of markets, the online M2M blinds market does not appear to have been negatively affected. [REDACTED].⁴⁸⁷

11.60 Unlike bricks and mortar retailers, online retailers have not had to close their stores, and do not need to demonstrate a post-lockdown trading record to determine the value of the business to a potential purchaser. We [REDACTED] consider that a divestiture period of [REDACTED] (the Initial Divestiture Period) would be appropriate in this case.

- *Provision for appointment of a divestiture trustee*

11.61 We did not receive any evidence to suggest that a Divestiture Trustee should be appointed at the outset of the divestiture process. As a result, we do not propose to appoint a Divestiture Trustee at the outset of the divestiture process.

11.62 However, to ensure a timely completion of this remedy, we conclude that we should reserve the right to appoint a Divestiture Trustee if:

- (a) Hunter Douglas fails to complete the divestiture process within the Initial Divestiture Period;
- (b) We believe that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
- (c) We believe that Hunter Douglas is not engaging constructively with the divestiture process; and / or
- (d) There is a material deterioration in 247’s business during the divestiture process.

⁴⁸⁶ [REDACTED].

⁴⁸⁷ [REDACTED].

11.63 In line with the CMA's normal practice,⁴⁸⁸ if appointed, a Divestiture Trustee would be tasked with completing the divestiture of 247 to a potential purchaser approved by the CMA and at no minimum price. We propose, again in line with the CMA's normal practice, that the Monitoring Trustee's appointment should cover oversight of the divestiture process and continue until completion of the divestiture.

Assessment of the effectiveness of full divestiture

11.64 We consider that the full divestiture of 247 would represent an effective remedy and provide a comprehensive solution to the SLC we have found.

Partial divestiture of 247

Description of remedy

11.65 This remedy option would involve Hunter Douglas divesting 51% of 247's ordinary share capital, whilst retaining 49% of 247's share capital as a significant minority shareholder. This would lead to an ownership structure similar to the one set out in our counterfactual.

Remedy design issues

11.66 The framework for addressing design issues for divestiture remedies is set out in paragraphs 11.12 to 11.15.

Scope of divestiture package

11.67 The general considerations that the CMA will take into account when assessing the scope of a divestiture package are set out in paragraphs 11.28 to 11.30 above.

11.68 A specific issue with this divestiture option is that it anticipates Hunter Douglas retaining a substantial minority shareholding in 247. A key design consideration is which, if any, rights in 247 Hunter Douglas should also be permitted to hold, in addition to its minority shareholding. In our Remedies Notice, we set out a number of potential veto rights that could be held by Hunter Douglas in the event of a partial divestiture of its stake in 247.⁴⁸⁹ Until completion of the 2019 Transaction, Hunter Douglas held a number of veto and other rights in 247, which were set out in the Stakeholder

⁴⁸⁸ [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 5.43.

⁴⁸⁹ [Remedies Notice](#)

Agreement signed at the time of the 2013 Transaction. These are set out in paragraph 3.4.

11.69 Under this remedy, and taking into account the treatment of minority shareholdings in other contexts, the divestiture of 51% of 247 may include Hunter Douglas holding some or all of the following veto rights:

- (a) Appointment of additional directors;
- (b) Approval of the annual budget;
- (c) Acquisitions;
- (d) Entering into new lines of business;
- (e) Geographic expansion into new countries;
- (f) Any backward integration into assembly or production of any of the products sold by 247;
- (g) Long term agreements (exceeding one year in duration);
- (h) Financing arrangements with banks or other parties;
- (i) Dividends in excess of 35% of profit after tax;
- (j) Offers on 247's website at less than 15% gross profit; and/or
- (k) Transactions with related parties (eg companies within the same corporate group as the purchaser or Hunter Douglas).

11.70 Consideration of the effect of each of these rights on the effectiveness of this remedy option is set out in the assessment section below.

Parties' and third-party views on the scope of the divestiture package

11.71 As set out above, this remedy would lead to an ownership structure similar to that set out in our counterfactual with Hunter Douglas owning 49% of 247. However, we note the Parties' submission that they 'consider that this conclusion has been reached on the basis of an incorrect assessment of the nature of the rights acquired by Hunter Douglas in 2013 and the legal rights and obligations created by the suite of documents entered into by Hunter Douglas and the Founding Shareholders at the time.'⁴⁹⁰

⁴⁹⁰ Parties' response to Remedies Notice, paragraph 4.9.

- 11.72 In their response to the Remedies Notice, the Parties submitted that ‘a divestment of 51% of the ordinary share capital of 247 will clearly be effective in addressing the SLC identified by the CMA. No additional measures are required in this respect.’⁴⁹¹
- 11.73 In the Hunter Douglas remedies hearing, Hunter Douglas stated ‘I have never seen a no-rights participation of that size, I have never seen it in practice.’ Hunter Douglas further submitted that ‘49% is not control’ as the 51% shareholder would be the majority shareholder and in control.
- 11.74 Hunter Douglas described the rights that it acquired as a result of the 2013 Transaction as ‘guardrails to prevent a defocus of the business.’
- 11.75 Hunter Douglas also said ‘if we were working with, let us say, a 51 per cent other party, the first thing we would have to do is agree on a manager; that would be the essential piece. We would want to be able to veto the manager or we would not invest, because this business is nothing without the manager.’
- 11.76 Hunter Douglas said that there were some rights that it might be less concerned about holding as a 49% investor. These included vetoes over the annual budget, on offers at less than 15% gross profit and long-term agreements. However, it also said that there were other veto rights that it might require, such as the identity of a CEO, expansion into other product or geographic markets, and related party transactions.
- 11.77 At its remedies hearing, 247 said that the presence of veto rights made no difference, and that between 2012 and 2019 Hunter Douglas had never exercised any of the veto rights. It also said that the existence of the veto rights would not constrain 247’s ability to compete effectively.
- 11.78 In its response to the Remedies Working Paper, the Parties said that ‘The CMA is not required to remove all influence in order to remedy the SLC provisionally found in the Provisional Findings. Rather, the CMA should be concerned only to ensure that the remedy removes control as this was the change resulting from the 2019 Transaction.’
- 11.79 The Parties also said that ‘the limit of the CMA’s jurisdiction concerning the impact of the rights is set by the relevant counterfactual.’

⁴⁹¹ Parties’ response to Remedies Notice, paragraph 4.2

- *Third party views*

11.80 In the event that a partial divestiture of 247 was required, all four⁴⁹² third parties, with whom we held calls, commented that this was unattractive, with or without rights attached for Hunter Douglas' 49% stake. Notwithstanding that a purchaser of 51% of 247 would be a majority shareholder, these third parties considered that Hunter Douglas would still have significant influence over 247 given the nature of its commercial relationship with 247 and other M2M blinds retailers. As a result, they did not think that a partial divestiture would remedy the SLC.

11.81 [X], for example 'does not believe a partial divestment would be effective. As Hunter Douglas supply to 247 and various other companies, Hunter Douglas could behave as though it still has complete control of 247.'⁴⁹³

11.82 [X] submitted that having Hunter Douglas as a 49% shareholder may be beneficial for certain purchasers, although this may limit the effectiveness of the remedy:

'If Hunter Douglas was to retain 49% of 247, this would still allow it to exert significant influence on 247, namely through product sourcing and pricing agreements. It would be appealing for an investor to have Hunter Douglas on board as a partner in 247, due to Hunter Douglas' presence in the market. For these reasons, [X] doesn't believe shared ownership would truly remedy the SLC.'⁴⁹⁴

11.83 The third parties with whom we held calls, by contrast, were clear that the rights set out in the Remedies Notice make the prospect of owning 51% of 247 unattractive given the influence retained by Hunter Douglas over the business as a result of the rights.

11.84 [X] submitted that 51% would be an insufficient stake to attract a purchaser, 'especially if the veto/rights HD were seeking were given as these will effectively restrict 247 Blinds so much as to make them unable to make the changes required to grow and become competitive in future.'⁴⁹⁵ Therefore, a divestiture of 51% of 247 could be effective 'only on the basis that... Hunter Douglas do not have the vetoes and rights suggested.'⁴⁹⁶

⁴⁹² [X].

⁴⁹³ [X].

⁴⁹⁴ [X].

⁴⁹⁵ [X].

⁴⁹⁶ [X].

11.85 Similarly, [X] submitted that '[i]n the event of shared ownership of 247, [X] would not want Hunter Douglas involved in any decision making within 247 of any sort. Information Hunter Douglas would receive would also be the bare minimum.'⁴⁹⁷

CMA assessment of the scope of the divestiture package

11.86 As set out in paragraph 11.3 above, this chapter sets out the inquiry group's decision on what remedy would be effective and proportionate in addressing the SLC identified in the group's findings.

11.87 The divestment of 51% of 247 would replicate the ownership structure that we have found would exist in the absence of the Merger, with Hunter Douglas retaining 49% of the shares.

11.88 We have assessed the scope of this option in line with CMA guidance, which says that 'the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.'

11.89 In order to comprehensively remedy the SLC, the scope of the divestiture package should be sufficient to create market conditions no less competitive than those set out in the counterfactual in this final report. In this counterfactual, 247 would have more independence than it had had prior to the 2019 Transaction, with Hunter Douglas no longer being able to exercise the same veto and other rights it held prior to the 2019 Transaction under the Stakeholder Agreement.

11.90 We do not agree with the Parties' submission in paragraph 11.79 that our choice of counterfactual limits the scope of our proposed remedies. We are required to 'have 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'.⁴⁹⁸ This may mean pursuing a remedy which goes beyond the counterfactual scenario, if more limited remedies are not found to be effective e.g. because no suitable purchaser can be found or the proposed divestment package is unviable.

11.91 The third-party evidence shows concerns that were Hunter Douglas to hold extensive rights over 247's operations, it would be able to exert significant additional influence beyond the most likely counterfactual scenario set out at paragraph 6.49 above. This would undermine the independence of 247

⁴⁹⁷ [X].

⁴⁹⁸ Enterprise Act 2002, section 35(4).

(for example by restricting its growth prospects) and therefore the effectiveness of the remedy in restoring competition. It would also potentially further reduce the pool of interested purchasers, increasing the risk profile of this remedy option.

11.92 We note Hunter Douglas' characterisation of the veto rights as 'guardrails' to keep the business focussed. We are concerned that the presence of such extensive rights might focus the business away from direct competition with Blinds2Go. More broadly, given that these veto rights do not exist in the counterfactual that we have found and the fact that Hunter Douglas and 247 are important rivals to each other, we consider that inclusion of extensive rights in the divestiture package would undermine the effectiveness of the remedy.

11.93 We consider that a limited set of veto rights could, in theory, be designed so as to ensure that Hunter Douglas would have limited influence over the operational independence and competitive strategies of 247, and so present a significantly lower, and more manageable, risk to the effectiveness of this remedy option.

11.94 Therefore, we consider that it is conceivable that Hunter Douglas could hold a limited set of veto rights whilst still providing for the divestiture package to represent an effective remedy.

11.95 Should this remedy be implemented, these rights are likely to form part of the divestiture negotiations between Hunter Douglas and potential purchasers. As a result, we do not think that it is appropriate at this stage to specify precisely what form these rights might take. In line with normal practice, the final divestiture (including any additional rights held by Hunter Douglas) is subject to approval from a CMA Remedies Group.

11.96 However, we would expect any rights held by Hunter Douglas to be consistent with the following principles:

- (a) The right(s) must not have a material impact on the ability of the purchaser to pursue an independent competitive strategy with 247 from Hunter Douglas' other business interests, including Blinds2Go; and
- (b) The rights may be consistent with protecting the value in Hunter Douglas's 49% equity stake in 247.

11.97 Should this remedy option be implemented, we will consider whether these principles need to be further refined as part of the remedies implementation process. In addition, during the divestiture process it is usual practice for

the Sale and Purchase Agreement to be approved by the CMA. This gives us further assurance that any rights held by Hunter Douglas would not undermine the effectiveness of the remedy.

11.98 We conclude that partial divestiture of 51% of the ordinary share capital in 247 could be sufficient in scope to remedy the SLC we have found, provided any limited rights held by Hunter Douglas post divestiture adhere to the principles set out in paragraph 11.96. Such a divestiture would replicate the ownership structure of 247 absent the merger, enabling 247 to operate with sufficient independence of Hunter Douglas to remedy the SLC we have found. We consider the costs of this remedy and its proportionality in paragraphs 11.147 to 11.173 below.

Identification of a suitable purchaser

11.99 We set out the CMA's criteria for the identification of a suitable purchaser in paragraphs 11.35 and 11.36.

Parties' and third-party views on the identification of a suitable purchaser

11.100 Hunter Douglas said that whether or not it holds the rights set out in the Annex to the Remedies Notice, it should not be difficult to find a suitable purchaser for a 51% shareholding in 247. Hunter Douglas submitted that the 'rights do not significantly go beyond rights which would typically be granted to a minority investor for the protection of its investment. Such rights should not, therefore dissuade a potential purchaser or purchasers from acquiring 51% of the ordinary shares of 247. Indeed, many private equity and conglomerate businesses have partial stakes in their portfolio companies.'⁴⁹⁹ In their response to the Remedies Working Paper, the Parties said that they did not think that identifying a suitable purchaser for 51% of 247 would be any more difficult than for 100%.

11.101 At the remedies hearing, [REDACTED].

11.102 [REDACTED].

11.103 With regards to the rights held by Hunter Douglas, at the 247 remedies hearing, Mr Peterkin said 'none of the veto rights were ever exercised, and I was never really put under any pressure to change the things that I was doing.'

⁴⁹⁹ Parties' response to Remedies Notice, paragraph 4.12.

11.104 [REDACTED], Mr Peterkin also said ‘In terms of Hunter Douglas’s veto rights and shareholder rights, I personally did not have any problems with them.’ [REDACTED].

11.105 In their response to the Remedies Working Paper, the Parties said that 247 had a track record of competing strongly against other Hunter Douglas entities, [REDACTED].

- *Third party views*

11.106 There were a variety of views from third parties as to a suitable purchaser of 51% of 247. As described in paragraphs 11.39 to 11.44 above, third parties generally deemed it essential that any purchaser had e-commerce experience.

11.107 However, in the scenario of owning 51%, third parties commented on their concerns regarding the operational relationship with Hunter Douglas as a significant shareholder of 247 and therefore impacting the attractiveness of owning 51% of 247 as opposed to 100%.

11.108 [REDACTED], commented that ‘Assuming the current leadership at 247 retain their roles, a less experienced acquirer of the 51% share could still make it work. However, if a new Managing Director came in, that person would need e-commerce experience.’ Adding that, ‘[i]f the acquirer didn’t have a clear plan for online marketing, they could lose a lot of money very quickly.’
500

11.109 [REDACTED] explained that they would not wish to own 51% of 247, ‘[t]his is due to the control and insight shared ownership would give to Hunter Douglas. Knowledge of [REDACTED]’ marketing techniques and popular products could be gained and exploited by Hunter Douglas.’ Furthermore, ‘[e]ven if Hunter Douglas were to operate as a silent partner in 247, Hunter Douglas would still be able to apply backdoor pressure through Arena (one of its subsidiaries).’⁵⁰¹ Hunter Douglas responded to this evidence, saying that we should place no weight on this statement since Arena does not supply 247, and it was not explained how this pressure would be asserted given the purchaser’s majority stake.

11.110 [REDACTED] submitted that, ‘[e]xpertise can be bought provided sufficient funds are available’. [REDACTED] further submitted that:

‘If the purchaser is not a blinds manufacturer who can be competitive regarding product sourcing and pricing, then it is likely

⁵⁰⁰ [REDACTED].

⁵⁰¹ [REDACTED].

that purchaser would want Hunter Douglas to retain a 49% share in 247. This allows the purchaser to tap into Hunter Douglas' expertise and product sourcing. 49% is a large portion of 247, so Hunter Douglas would use every resource available to it to achieve success. If the purchaser was a company like [REDACTED], the purchaser would likely want 100% of 247.⁵⁰²

11.111 [REDACTED] stated that:

'The only scenario in which [it] would consider a 51% ownership of 247 would be if Hunter Douglas operated as a passive partner with no control rights, no veto rights, no influence whatsoever. Hunter Douglas would be treated like a minority investor and its interest to be purely financial return. [REDACTED] would report numbers to Hunter Douglas on an annual or quarterly basis. Anything more than that invites a level of insight or involvement that is not consistent with the role of a passive or minority shareholder.'⁵⁰³

11.112 [REDACTED] commented that 'Whether or not a 51% stake vs. a 100% stake would be desirable to a potential buyer would depend on their individual circumstances and the attributes that they would need... having some experience in the market would of course be advantageous and probably necessary to balance out Hunter Douglas' influence over 247.'⁵⁰⁴

CMA assessment of identification and availability of a suitable purchaser

11.113 As set out in paragraph 11.48, the evidence suggests that 247 is an attractive business to potential purchasers wishing to own assets in this sector. We would also expect a majority owner to have, or be able to procure, the expertise set out in paragraph 11.49. We would note our finding that we consider this expertise to be sufficiently uncommon as to represent a barrier to entry or expansion, and so may also limit the number of suitable purchasers.⁵⁰⁵

11.114 For the reasons set out at paragraph 6.46 above, we found that, in the most likely counterfactual to the 2019 Transaction, the interest in 247 held by the 247 Founding Shareholders would have been sold to a single purchaser. As such, to ensure that Hunter Douglas is not able to exercise more influence over 247 than in the most likely counterfactual, our strong preference is a requirement that the 51% shareholding to be divested to a

⁵⁰² [REDACTED].

⁵⁰³ [REDACTED].

⁵⁰⁴ [REDACTED].

⁵⁰⁵ This is discussed further in the chapter on countervailing factors, paragraphs [9.12 to 9.15]

single purchaser. If the divestiture is to be made to more than one suitable purchaser, we would need to be satisfied that this would not lead to additional effectiveness risk.

11.115 We note the mixed evidence from third parties as to whether a potential purchaser would want to own a business where Hunter Douglas was a significant minority shareholder, having direct material influence over 247 through an ability to, at least, block special resolutions, or indirect influence through the commercial relationships of its other group companies. We also note the evidence from [X] that Hunter Douglas might be able to exert ‘backdoor pressure’. While we accept Hunter Douglas’ response that Arena does not supply 247, we would note that Hunter Douglas is a significant and growing player in the wholesale supply of M2M blinds, which may mean it will have an increasing ability to influence any owners of 51% of 247.⁵⁰⁶

11.116 As a result of this evidence we would expect the pool of potential purchasers to be significantly smaller than that for a full divestiture, [X]. This significantly smaller pool would materially increase the risk that a suitable purchaser might not be found to effectively remedy the SLC.

11.117 The CMA’s guidance says that a prospective purchaser should:

- (a) be independent of the merger parties;
- (b) have the necessary capability to compete; and
- (c) be committed to competing in the relevant market.

The guidance further states that divestiture to the purchaser will not create further competition concerns.⁵⁰⁷

11.118 Given Hunter Douglas’ majority ownership of and potentially increasing stake⁵⁰⁸ in the largest supplier in the market, Blinds2Go, we have particular concerns with the ability, incentives and commitment of a potential purchaser to ensure that 247 has the necessary capability to compete independently with Blinds2Go. We consider that a financial purchaser would generally have less ability to mitigate the potential influence of Hunter Douglas on 247’s competitive strategy than would a trade purchaser with its own expertise and perspective on competitive conditions.

⁵⁰⁶ For example, in July 2020, Hillarys Blinds Holdings Limited purchased TLC Shutters S.R.L., a Romanian assembler of shutters which supplies Blinds2Go and other UK retailers outside the Hunter Douglas group.

⁵⁰⁷ [Merger remedies guidance CMA87](#), paragraph 5.21.

⁵⁰⁸ Hunter Douglas currently owns 65% of Blinds2Go, with options to acquire a further 15% in 2021 and the remaining 20% in 2026.

11.119 We also have concerns that Hunter Douglas and a potential purchaser may enter into further arrangements (for example, such as those Hunter Douglas made with the 247 Founding Shareholders) that may limit 247's future competitive capability and incentives. While this risk will be reduced by the fact that the entry into such arrangements between competitors is restricted by competition law, we still consider this to be a real risk. This risk can be mitigated by making provision in any final undertakings or Order to prohibit Hunter Douglas from entering into any such arrangements that limit 247's competitive capabilities. However, effective mitigation relies on the CMA being able to successfully monitor and enforce this provision.

11.120 Purchaser suitability is usually assessed by a CMA Remedy Group as part of the purchaser approval process during the implementation phase of a divestiture remedy, using evidence such as detailed business plans. As we are not likely to receive such evidence before publication of our Final Report, we are unable to assess at this stage whether any proposed standalone purchaser, [REDACTED] meets the criteria to be considered a suitable purchaser.

11.121 [REDACTED]:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

11.122 In summary, we consider that a small pool of potential purchasers may exist for the divestiture package specified in this remedy option. It is possible that a suitable purchaser could be found from this pool of potential purchasers, in which case an effective divestiture could take place.

11.123 However, the evidence available to us on the existence of an interested suitable purchaser for 51% of 247 is incomplete at this point as such a package has not been widely marketed, we have not yet conducted a full suitability assessment of potential purchasers, and we can only judge levels of interest on the basis of what we have been told by third parties.⁵⁰⁹

11.124 On the basis of the information currently available to us we consider that, in principle, there is sufficient likelihood of one or more potential purchasers meeting our suitability requirements, and associated restrictions being put in place to prevent Hunter Douglas from subsequently seeking to

⁵⁰⁹ This is not uncommon at this stage of a merger inquiry.

limit 247's future competitiveness through separate agreements with any such purchaser. However, we also consider that there remains a material risk that no purchaser will meet the requirements needed for an effective divestiture.

11.125 CMA guidance states that 'substantial uncertainty as to whether a suitable purchaser will emerge will generally not be sufficient for the CMA to conclude that any form of divestiture remedy is not feasible. The CMA has found that it is normally possible to implement divestiture remedies, despite such uncertainties, given flexibility in the disposal price.'⁵¹⁰

11.126 However, we note the evidence from several third parties, who suggested that a potential purchaser might not want to own a business where Hunter Douglas was the minority shareholder.

11.127 As noted in paragraphs 11.115 to 11.116 above, the more extensive the rights that Hunter Douglas holds in 247, the less likely that the remedy package will be effective, or that a suitable purchaser will be available.

11.128 On the basis of the evidence we have seen, we conclude that a majority ownership stake in 247 would be less attractive and would lead to a smaller pool of potential purchasers in a situation where Hunter Douglas holds more than a limited set of minority rights.

11.129 In the circumstances of this case, and consistent with CMA guidance, we consider that the level of uncertainty around finding an interested suitable purchaser of 51% of the shares in 247 falls within acceptable bounds, and so does not in itself prevent the remedy from being effective.

Ensuring an effective divestiture process

11.130 Our assessment of an effective divestiture process for a Full Divestiture is set out above at paragraphs 11.51 to 11.63.

11.131 In our view, the steps needed to ensure an effective divestiture process are similar for partial divestiture. We received no evidence from main or third parties to suggest otherwise.

11.132 [§]. We also do not propose to appoint a divestiture trustee at the outset of the divestiture process for this option, but reserve the right to do so if any of the situations set out in paragraph 11.62 come to pass. We also

⁵¹⁰ [Merger remedies guidance CMA87](#), paragraph 3.51

propose to continue the Monitoring Trustee's appointment until completion of the divestiture.

11.133 [X].

Assessment of the effectiveness of partial divestiture

11.134 We consider that the partial divestiture of 51% of the ordinary share capital of 247 with a limited set of veto rights presents a certain level of risk in terms of effectiveness, principally the uncertainty around the existence of an interested and suitable purchaser. However, consistent with CMA guidance and given flexibility in the disposal price, we consider that these risks are within tolerable bounds. Therefore, this remedy option would represent an effective remedy and provide a comprehensive solution to the SLC we have found, provided that a suitable purchaser can be found.

Conclusion on remedy effectiveness

11.135 We conclude that the following remedies would be effective in addressing the SLC and resulting adverse effects that we have found:

- (a) Full divestiture of 247; and
- (b) Partial divestiture of 247, subject to a suitable purchaser being found.

Relevant customer benefits (RCBs)

11.136 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs. In this sub-section, we consider whether there are any RCBs (within the meaning of section 30 of the Act) that should be taken into account in our remedy assessment.

11.137 An effective remedy to an SLC could be considered disproportionate if it prevents customers from securing substantial benefits arising from the Merger, where these benefits outweigh the SLC and any resulting adverse effects. Insofar as these benefits constitute RCBs for the purposes of the Act, the statutory framework allows us to take them into account when we decide whether any remedy is appropriate.

11.138 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or it may decide that no remedy is appropriate.

Framework for assessing RCBs

- 11.139 The burden of proof of whether RCBs arise from a merger is on the merging parties. CMA guidance states that the 'merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits.'
- 11.140 The Act defines RCBs as a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services. For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution - they are not limited to final consumers.
- 11.141 In addition, in the case of completed mergers, to be properly considered as an RCB under the statutory definition, the CMA must believe that:
- (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
 - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
- 11.142 When assessing the merger parties' evidence on the claimed benefits, the CMA must therefore ask itself whether each claimed benefit has or may be expected to accrue as a result of the merger ((a) above), and, whether that benefit was, or is, unlikely to accrue without the merger or a similar lessening of competition ((b) above). With regard to the latter, in practice the CMA will consider whether the merger parties' evidence is sufficient to demonstrate that the claimed benefit could not be achieved by plausible less anti-competitive alternatives to the merger.
- 11.143 In previous cases where RCBs have been accepted, the type of evidence accepted included implementation plans which have been found more persuasive were detailed and advanced. The merging parties' incentives to implement and pass on the benefits post-merger will also be relevant to the likelihood of RCBs being realised in practice.

Parties' and third-party views on RCBs

11.144 In our Remedies Notice, we invited views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these were affected by different remedy options.

11.145 We received no submissions on RCBs from the Parties or third parties.

Assessment of RCBs

11.146 Since we have received no evidence on the nature or scale of RCBs, we conclude that there are no RCBs associated with the remedy options we have found to be effective.

The proportionality of effective remedies

11.147 In paragraph 11.135, we summarised our conclusions on which remedies would be effective in addressing the SLC and the resulting adverse effects. We set out below our assessment of, and conclusions on, which of these would constitute a proportionate remedy.

Framework for assessment of proportionality of remedies

11.148 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive (we call this the 'least onerous effective remedy'). In addition, the CMA will seek to ensure that no remedy is more onerous than necessary or disproportionate in relation to the SLC and its adverse effects.⁵¹¹

11.149 To fulfil this, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA's considerations may include (but are not limited to):⁵¹²

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and

⁵¹¹ [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 3.6.

⁵¹² [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 3.10.

(c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

11.150 However, CMA guidance states that '[as] the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties.⁵¹³ In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy', as it is 'for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price'.⁵¹⁴

11.151 Having identified the least onerous effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.⁵¹⁵

Views of the Parties

11.152 The Parties consider the only remedy proportionate to the SLC to be that where Hunter Douglas divests itself of 51% of 247's ordinary share capital and goes no further than this. Hunter Douglas submitted that any further restrictions would exceed the scope of the SLC found by the 2019 Transaction and would both impose unnecessary costs and be disproportionate.⁵¹⁶

11.153 As noted at paragraph 11.20 above, in their response to the Remedies Working Paper, the Parties said that a full divestiture remedy would be *ultra vires* because there was an alternative, less costly, less intrusive and complete remedy – a partial divestiture. We do not agree that a full divestiture is *ultra vires*, for the reasons set out at paragraphs 11.31 and 11.32 above. [REDACTED].

Assessment of proportionality

11.154 In our assessment of proportionality, we first identified those remedies that are likely to be effective and selected the remedy with the lowest cost, or that was least restrictive ('the least onerous effective remedy'). We then

⁵¹³ [Merger remedies guidance CMA87](#), paragraph 3.8.

⁵¹⁴ [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 3.9.

⁵¹⁵ [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 3.6.

⁵¹⁶ Hunter Douglas response to the Remedies Notice, paragraph 4.2.

considered whether this remedy was disproportionate to the SLC and its adverse effects.

11.155 Hunter Douglas acquired its 100% shareholding as a result of two connected transactions. The 2019 Transaction, the SLC arising from which we are looking to remedy, took its stake from an effective 49% to 100%. The 2019 Transaction arose from the exercise of call options by the 247 Founding Shareholders. These call options had been granted at the time of and as part of the 2013 transaction, when Hunter Douglas acquired loan notes which gave it an effective 49% shareholding in 247.

11.156 The CMA's guidance says:

'In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy, as it is open to the merger parties to make merger proposals conditional on the approval of the relevant competition authorities. It is for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price. Since the cost of divestiture is, in essence, avoidable, the CMA will not, in the absence of exceptional circumstances, accept that the cost of divestiture should be considered when selecting remedies.'⁵¹⁷

11.157 While we note the circumstances surrounding the two transactions, we still consider that the risk of an SLC finding was foreseeable and so have not considered the cost of divestiture in choosing our preferred remedy.

Full divestiture

11.158 A full divestiture would not lead to any market distortions, and the CMA would not face any monitoring costs. As set out in paragraph 11.146, we have not identified any RCBs.

11.159 In line with CMA guidance set out at paragraph 11.150 above, we have not taken into account any additional cost or loss to Hunter Douglas arising from a full divestiture compared to a partial divestiture.

11.160 As a result, we do not consider there to be any material costs associated with full divestiture. However, we do consider that a full divestiture may be considered to be more intrusive than a partial divestiture

⁵¹⁷ [Merger remedies guidance](#), CMA87, paragraph 3.9.

in this case, since Hunter Douglas held the equivalent of 49% of 247's shares before the 2019 Transaction.

Partial divestiture

11.161 A partial divestiture would not lead to any market distortions, and as set out in paragraph 11.146, we have not identified any RCBs. Given that the rights granted to Hunter Douglas are limited to those necessary to protect the underlying value of its minority stake, we do not consider that the existence of these rights would lead to market distortions.

11.162 However, as set out in our assessment of effectiveness in paragraph 11.119 above, we consider that under this remedy option it would be necessary to monitor the relationship between Hunter Douglas and the purchaser of 247's shares to ensure that there were no agreements between them that might undermine the ongoing effectiveness of the remedy.

11.163 As a result, we consider that partial divestiture would incur some additional monitoring costs relative to full divestiture. However, as discussed in paragraph 11.160, weighed against this, partial divestiture would be less intrusive than full divestiture.

Identification of the least onerous effective remedy

11.164 We identified the following remedies as being effective solutions to the SLC that we have found:

- (a) Full divestiture of 247; and
- (b) Partial Divestiture of 51% of 247, subject to a suitable purchaser being found.

11.165 We have found that both remedies are, in principle, effective, provided a suitable purchaser could be found.

11.166 We have found that full divestiture has a lower cost associated with it than the second remedy option as it would not require any ongoing monitoring by the CMA. However, this option is also significantly more intrusive as it would leave Hunter Douglas with no shareholding in 247. This compares to the pre-Merger conditions of competition that we found, where it would still hold a 49% stake.

11.167 Set against these costs is the intrusiveness of Hunter Douglas divesting its entire shareholding in 247. Balancing this cost and

intrusiveness, we find that full divestiture, despite avoiding monitoring costs associated with partial divestiture, is not the least onerous effective remedy.

11.168 We therefore conclude that, [X], partial divestiture represents the least onerous effective remedy. It is therefore our preferred remedy option.

11.169 [X].

Are the remedies disproportionate to the SLC and / or adverse effects?

11.170 As set out in paragraph 10.4, 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 has removed 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.

11.171 As discussed in paragraphs 11.154 to 11.169, the costs of our preferred remedies are low in comparison to the harm that has arisen, or may be expected to arise, from the SLC.

11.172 We note that, by its nature, divestiture is an intrusive intervention. However, given the expected level of consumer harm which is expected to arise from the SLC resulting from the Merger, we consider that this intrusion is justified.

Conclusion on proportionality

11.173 We have found that each of the options set out in paragraph 11.164 would be an effective and proportionate remedy to the SLC and its resulting adverse effects we have identified.

Remedy implementation

11.174 Having identified our preferred remedy, we now consider how it should be implemented. We start by describing the risks associated with remedy options, how these might materialise during the implementation process and how they could be effectively managed. We then consider issues relating to purchaser suitability.

Divestiture risks

11.175 The incentives of merger parties may serve to increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves. Parties may therefore have, on balance, an incentive to make divestitures to weaker competitors of less competitive assets and may also allow the competitiveness of divestiture packages to decline during the divestiture process.⁵¹⁸

Composition risk

11.176 Having specified the scope of the effective divestiture package, this should remedy the SLC and its adverse effects. However, partial divestiture package has some residual composition risk due to the uncertainties around any rights being granted to Hunter Douglas. We propose to manage this through close oversight of the divestiture process, for example the specification of principles that would govern such rights and by retaining the right to approve the Sale and Purchase Agreement accompanying any divestiture.

Asset risk

11.177 In the context of the Merger, asset risk would be most likely to materialise through the degradation of the business (intentional or otherwise) via:

- (a) Loss of customer contracts, or reducing quality of service;
- (b) Insufficient maintenance of physical assets; and/or
- (c) Key staff leaving;

11.178 Since the start of the CMA investigation, the Parties have been subject to an Initial Enforcement Order (IEO) aimed at preventing pre-emptive action through any potential asset degradation. Since November 2019, compliance with the IEO has been overseen by a Monitoring Trustee. The CMA will therefore maintain these arrangements in force, by introducing similar provisions in the final undertakings or Order. This will ensure that effective asset maintenance obligations are put in place during the

⁵¹⁸ [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 5.4

divestment process to minimise the risk of any degradation of the divestment package.

Purchaser risk

11.179 Purchaser risk would apply if a suitable purchaser is not available or if, following the divestment, the purchaser acted in such a way that the competition that is expected to be substantially lessened as a result of the merger is not restored. The effect of purchaser risk on the effectiveness of each remedy option is discussed in the 'identification of a suitable purchaser' sub-sections of the effectiveness assessment above.

11.180 [REDACTED]. Evidence from third parties suggested that the pool of potential purchasers might be limited under the options where Hunter Douglas was to retain a 49% shareholding in 247, and possibly further limited if Hunter Douglas were to hold limited additional rights.

11.181 We consider that divestiture risk in general, and these purchaser risks in particular, can be partially mitigated by specifying the characteristics of an effective divestiture process and setting out the criteria that we will apply to establish purchaser suitability in the divestiture package. In particular, we propose to require:

- (a) CMA oversight of the divestment process, including the continued use of a monitoring trustee;
- (b) the suitability of potential purchasers to be approved by the CMA;
- (c) the final divestiture proposed by the Parties, including the identity of the purchaser, be subject to approval by the CMA;
- (d) the final divestment be completed in accordance with any order issued or undertakings accepted; and
- (e) the option for the CMA to appoint a Divestiture Trustee.

11.182 [REDACTED].

11.183 [REDACTED].

11.184 [REDACTED].

11.185 [REDACTED].

Decision on remedies

11.186 We have decided that each of the remedy options set out in paragraph 11.9 would be an effective and proportionate remedy to address the SLC and its resulting adverse effects we have found.

11.187 Partial divestiture of 51% of the ordinary shares of 247, with Hunter Douglas potentially holding certain limited rights (in accordance with the principles set out in paragraph 11.96) represents the least onerous remedy of the effective options. [REDACTED].

11.188 We have therefore decided that the following will represent an effective and proportionate remedies package, and so require the Parties to Divest 51% of the ordinary shares of 247, with Hunter Douglas being permitted to hold limited certain rights, in accordance with the principles set out in paragraph 11.96 [REDACTED].

11.189 [REDACTED].

11.190 Furthermore, we have decided that the following is required:

- (a) a restriction on agreements between Hunter Douglas and the purchaser;
- (b) CMA oversight of the divestment process, including the continued use of a monitoring trustee;
- (c) the suitability of potential purchasers to be approved by the CMA;
- (d) the final divestiture proposed by the Parties, including the identity of the purchaser, be subject to approval by the CMA;
- (e) the final divestment be completed in accordance with any order issued or undertakings accepted; and
- (f) the option for the CMA to appoint a Divestiture Trustee.

11.191 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to Section 82 of the Act if the Parties wish to offer them, or by making a final order under Section 84 of the Act. Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (or extended once by up to 6 weeks under exceptional circumstances),⁵¹⁹ including the period for any formal public consultation on the draft undertakings or order

⁵¹⁹ Section 82 (final undertakings) and Section 84 (final order) of the Act.

as specified in Schedule 10 of the Act. We expect to implement the structural remedy by seeking suitable undertakings from the Parties. We will make an Order if we are unable to obtain suitable undertakings from the Parties.

11.192 In line with CMA guidance once this remedy has been fully implemented in line with the conclusions set out in this decision, we have decided that Hunter Douglas should be prohibited from subsequently acquiring additional assets or shares of 247 or acquiring any additional material influence or control over 247. CMA guidance states that the CMA will normally limit this prohibition to a period of 10 years.⁵²⁰ We find no compelling reason to depart from the Guidance in this case by seeking a shorter or longer prohibition period.

⁵²⁰ [Merger remedies guidance](#), CMA87 (13 December 2018), paragraph 5.10.