

COMPLETED ACQUISITION BY JD SPORTS FASHION PLC OF FOOTASYLUM PLC

Decision to release undertakings pursuant to section 34C(1)(k) of the Enterprise Act 2002 (the Act) and dispense with the requirements of Schedule 10 of the Act pursuant to paragraph 9 of Schedule 10 of the Act¹

1. On 6 May 2020, the CMA announced its decision that the completed acquisition by JD Sports Fashion plc (**JD Sports**) of Footasylum plc² (**Footasylum**) (the **Merger**) had resulted or may be expected to result, in a substantial lessening of competition as a result of horizontal unilateral effects in certain markets. CMA panel members accepted final undertakings on 13 July 2020 (the **Final Undertakings**) to give effect to the remedy decision in the Phase 2 report (**Phase 2 Final Report**) and a remedies group was appointed (the **Remedies Group**) on 14 July 2020.
2. On 17 June 2020, JD Sports submitted a Notice of Application to challenge certain of the CMA's findings in the Phase 2 Final Report to the Competition Appeal Tribunal (**Tribunal**). On 13 November 2020, the Tribunal dismissed JD Sports' appeal under certain grounds, but upheld other grounds to the extent that they concerned the CMA's assessment of the likely effects of COVID-19 and quashed the Phase 2 Final Report in so far as its conclusions are based on that assessment. The Tribunal considered that this finding required further examination of the Phase 2 Final Report as a whole and remitted the case to the CMA on that basis. Following the Court of Appeal's decision not to grant the CMA's application for leave to appeal the Tribunal's judgment, the CMA commenced its reconsideration of the Merger in light of the Tribunal's judgment (the **Remittal**).
3. In light of the Tribunal's judgment and the commencement of the Remittal, the Remedies Group has decided to release the Final Undertakings given by JD Sports, Footasylum and Pentland³ (together, the **Parties**) and accepted by the CMA on 13 July 2020 pursuant to section 34C(1)(k) of the Act.

¹ Published pursuant to section 107(2)(r) of the Act.

² On 19 September 2019, Footasylum plc became Footasylum Limited. References to Footasylum elsewhere in this decision should be interpreted to mean Footasylum Limited.

³ The Final Undertakings were given by Pentland Group Limited (Jersey) and Pentland Group Limited. On 1 December 2020, Pentland Group Limited (Jersey) became Pentland Group Holdings Limited. References in the Final Undertakings to Pentland Group Limited (Jersey) are deemed to refer to Pentland Group Holdings Limited.

4. The Remedies Group notes that the CMA panel members appointed to consider the Remittal have decided to impose an interim order on the Parties pursuant to section 81 of the Act in order to address the risk of pre-emptive action during the Remittal. That interim order will be served on the Parties at the same time as the decision to release the Final Undertakings.
5. The Remedies Group further notes that, in accordance with paragraph 9 of Schedule 10 of the Act, the CMA may dispense with the requirements of Schedule 10 in relation to the release of the Final Undertakings, including the notice requirements under paragraph 7, where there are special reasons for doing so.
6. In the present case the Remedies Group considers that:-
 - a. maintaining the Final Undertakings in force would not be consistent with the scope and purpose of the Remittal; and
 - b. the risk of pre-emptive action arising during the Remittal can be managed effectively by imposition of a new Interim Order.
7. In combination, these constitute special reasons for dispensing with the procedural requirements in Schedule 10 of the Act.

Kip Meek

Remedies Group Chair

19 May 2021