

Appendices and Glossary

Appendices

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Glossary

Appendix A: Terms of reference and conduct of the Remittal

Terms of reference

1. In exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act) the Competition and Markets Authority (CMA) believes that it is or may be the case that:
 - (a) a relevant merger situation has been created, in that:
 - (i) enterprises carried on by JD Sports Fashion plc (**JD Sports**) (which is 57% owned by Pentland Group Plc (**Pentland**)) have ceased to be distinct from enterprises carried on by Footasylum plc (**Footasylum**) (the **Parties**); and
 - (ii) the condition specified in section 23(1)(b) of the Act is satisfied; and
 - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services, including:
 - (i) the retail supply of sports-inspired casual apparel in-store on a national basis and thereby in each local area where one or more of the Parties' stores is present;
 - (ii) the retail supply of sports-inspired casual footwear in-store on a national basis and thereby in each local area where one or more of the Parties' stores is present;
 - (iii) the retail supply of sports-inspired casual apparel online at a national level; and
 - (iv) the retail supply of sports-inspired casual footwear online at a national level.
2. Therefore, in exercise of its duty under section 22(1) of the Act, the CMA hereby makes a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report, within a period ending on 16 March 2020, on the following questions in accordance with section 35(1) of the Act:
 - (a) whether a relevant merger situation has been created; and

- (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
1 October 2019

Conduct of the Remittal

3. On 1 October 2019, the CMA, in exercise of its duty under section 22(1) of the Act referred the completed acquisition by JD Sports Fashion plc (**JD Sports**) of Footasylum plc (**Footasylum**) (the Merger) for further investigation and report by a group of CMA panel members (Phase 2 Inquiry).
4. Following consideration of an appeal by JD Sports, the Competition Appeal Tribunal remitted the Merger back to the CMA for reconsideration. The CMA's applications for leave to appeal the Tribunal's judgment were not granted and the CMA therefore proceeded with its reconsideration of the Merger (the Remittal).
5. We published the [biographies of the members of the inquiry group](#) conducting the Remittal and an [administrative timetable](#) on the [inquiry webpage](#) on 31 March 2021.
6. We also published the [conduct of the Remittal notice](#) on 31 March 2021. The Parties' [initial and supplementary joint responses](#) to the conduct of the Remittal notice were received on 30 April 2021 and 28 May 2021, and published on 2 July 2021.
7. We received no other responses to the conduct of the Remittal notice.
8. We issued detailed questionnaires to various third parties including competitors and suppliers of JD Sports and Footasylum (the Parties) using our statutory information-gathering powers where appropriate. We supplemented these questionnaire responses with a number of telephone calls as well as supplementary written questions. Evidence submitted during Phase 1 and Phase 2 was also considered during the Remittal. We held separate oral representations meetings with JD Sports and Footasylum on 14 May 2021.
9. We commissioned DJS Research (DJS) to conduct a survey of a sample of the Parties' online customers. A copy of DJS' report of the survey methodologies and the findings, including the questionnaires used, is published on the inquiry webpage alongside this document.
10. We received written evidence from the Parties in the form of submissions and responses to information requests.
11. We held separate main party hearings with JD Sports and Footasylum and on 8 July 2021 and 6 July 2021 respectively. Prior to those meetings we sent a number of working papers to the Parties for comment. The Parties provided comments on those papers.

12. We published a notice of provisional findings, a summary of our provisional findings, and a press notice on the inquiry webpage on 2 September 2021.
13. Non-confidential versions of the provisional findings report and the remedies paper have been published on the inquiry webpage.
14. An Initial Enforcement Order was issued for [phase 1](#), and Interim Orders for [phase 2](#) and the [Remittal](#). Derogations for each have been published on the inquiry webpage
15. We would like to thank all those who have assisted in our inquiry

Appendix B: Suppliers and retail competition

Introduction

1. This appendix provides additional evidence on suppliers and retail competition. This evidence is in addition to the key evidence presented in the Provisional Report, and is not intended to provide a comprehensive set of evidence. It is structured as follows:
 - (a) Part 1 sets out the additional evidence on suppliers' strategies to increase Direct to Consumer (DTC) (and how much this increase might continue) and the extent to which they may act as a direct constraint on the Parties and other retailers.
 - (b) Part 2 sets out the additional evidence on the extent to which suppliers' strategies for DTC may also impact the overall allocation of products to retailers.

Part 1: Impact of suppliers on retail competition

2. The period since October 2019 has seen an increase in sales (both in absolute terms and in proportional terms) for suppliers' DTC offerings relative to the wholesale channel. This is at least in part due to the general move towards online, which has accelerated a pre-existing trend during the period that stores have been closed due to the Covid-19 pandemic.

Present and future plans regarding DTC

Parties' views

3. The Parties have highlighted the growth of DTC as a key concern. Their views (to the extent they are not captured in the main body of the Provisional Report) are set out below.
4. The Parties have highlighted key actions taken by Nike and adidas to achieve increases in their DTC channel sales:

- (a) Putting QR codes on products, which direct a customer to the Nike website, offering discounts or direct purchase from Nike, while a customer is in a retailer's store:¹ [REDACTED].²
 - (b) Working with third-party platforms where the brand can transact directly with consumers, making direct sales where the retailer does not have stock available (connected inventory). The Parties highlighted Zalando, Next and ASOS as doing so.³ [REDACTED].⁴
 - (c) Gaining insight on customers through an 'ecosystem' of online shopping, membership and apps, thereby gaining increased access to consumer data and increasingly direct relationships.⁵
 - (d) adidas's global strategy towards opening stores,⁶ although we note that the UK strategy is different.
5. JD Sports has also highlighted [REDACTED]⁷ [REDACTED]⁸[REDACTED]⁹.
 6. JD has highlighted [REDACTED],¹⁰ and [REDACTED].¹¹
 7. Lastly, JD noted [REDACTED].¹² [REDACTED]¹³

Current supplier strategies

8. Evidence on Nike's and adidas' respective current strategies for DTC not captured in the main body of our provisional findings is set out below.

Nike

9. [REDACTED].¹⁴

¹ Supplementary SLC analysis, 28 May 2021 page 29.

² Notes from the JD Sports October 2020 Board meeting, and quote from Peter Cowgill. Initial Submission, 30 April 2021, page 35-36

³ Initial Submission, 30 April 2021, page 9.

⁴ JD RFI3a page 2. Also discussed in JD RFI5 page 5 and Initial Submission, 30 April 2021, page 33

⁵ Initial Submission, 30 April 2021, page 28. The Parties note that while e-commerce generally makes customers less 'sticky', with ease of switching, the brands are able to leverage their product allocation advantage into an engaging membership environment, which "becomes a sticky ecosystem" with integrated apps, fitness behaviours and style knowledge.

⁶ JD RFI5 page 9.

⁷ Initial Submission, 30 April 2021, page 15 June 2020 board minutes Peter Cowgill.

⁸ Initial Submission, 30 April 2021, page 14

⁹ JD/FA Oral reps meeting.

¹⁰ JD RFI1 page 3-4.

¹¹ JD RFI1 page 10.

¹² Initial Submission, 30 April 2021, page 13 in answer to the question "where else do you buy sports footwear, accessories and apparel from?"

¹³ [REDACTED]

¹⁴ Nike hearing 21 May 2021 transcript page 25.

10. While Nike's online business has grown during this period, it also noted growth by 'pure players' as well as by bricks and mortar stores with a strong online presence.¹⁵
11. Converse, which is owned by Nike, [REDACTED]. It had a stated strategy since prior to the Covid-19 pandemic, to grow its DTC, in both footwear and apparel. Converse stated that "More specifically, Converse believes that connecting and engaging directly with consumers is the best way to build valuable, long-term relationships with them. Although the speed with which Converse will seek to implement this strategy has been accelerated by the COVID-19 pandemic, the strategy itself remains unchanged."¹⁶ We note however that Converse represents [REDACTED] of sales for each party.

adidas

12. adidas explained that a primary focus [REDACTED].¹⁷
13. The [REDACTED] of adidas's DTC is online and [REDACTED].¹⁸

Other suppliers

14. Other suppliers who detailed their strategy during the pandemic told us that they focussed on responses to the increased demand for online products and changes in patterns of demand. For example, demand increased for casual clothing, women's casual clothing, and for specific categories of sports equipment, such as running, while demand for equipment for organised sport reduced.

Supplier plans for the future

15. Evidence on Nike's and adidas' respective current plans for DTC not captured in the main body of our provisional findings is set out below.

Nike

16. Nike is also looking to achieve growth in physical stores,¹⁹ [REDACTED] in the UK Nike [REDACTED] – with one factory store having opened in 2021 and [REDACTED].²⁰

¹⁵ Nike RF11 page 6.

¹⁶ Converse RF11 response page 2.

¹⁷ Adidas RF11 response p11.

¹⁸ Adidas RF11 response p8.

¹⁹ Nike RF11 p8

²⁰ Nike RF11 p13-14.

17. Nike anticipates that its new strategy of “Consumer Direct Acceleration” (CDA) “will (i) create a more premium, consistent and seamless consumer experience across Nike’s owned and strategic partner ecosystem.”²¹ However, noting that that “many of the precise mechanics of CDA [Consumer Direct Acceleration] are still to be determined. Nike noted that it continuously adapts its organisation and strategy ... and, in this context, how CDA will be implemented is still being considered, and the overall process is very fluid.”²²
18. Nike highlighted a number of opportunities that it will potentially leverage to grow DTC sales, including: its membership programme, giving online engagement, offers and exclusive product access to customers who sign up to the membership scheme and engage with it; [REDACTED]; paid social media relationships and digital advertising; key sports marketing assets (eg football teams); and sports apps ([REDACTED]) noting that sales through these apps [REDACTED].²³

adidas

19. Given the maturity of the market in the UK, with a lot of retailers that have built up their brand, the expectation of the adidas members of staff was that [REDACTED].²⁴
20. adidas stated that [REDACTED]. The Own the Game strategy puts an emphasis on further DTC growth [REDACTED].²⁵
21. adidas has, and will continue to make, a number of investments, largely targeted at strengthening its [REDACTED] DTC [REDACTED]. These include:
- (a) [REDACTED]²⁶
 - (b) [REDACTED].²⁷
 - (c) [REDACTED]²⁸
 - (d) [REDACTED].²⁹
22. These developments are focussed on the digital DTC offering. adidas has stated that it will [REDACTED].³⁰

²¹ Nike RF11 p7

²² Nike RF11 p7.

²³ Nike RF11 p13-14.

²⁴ Adidas call May Q10.

²⁵ Adidas RF11 response p11.

²⁶ Adidas call May Q12.

²⁷ Adidas Internal document 12A, slide 3 and slide 5.

²⁸ Adidas RF11 response p13

²⁹ Adidas RF11 response p16

³⁰ Adidas RF11 response p8

23. adidas have provided forecasting data for the UK, which shows that [REDACTED].³¹

Other suppliers

24. [REDACTED].³²
25. Within their DTC offering, most other suppliers which responded have focussed on online DTC, anticipating that online demand will continue to be structurally higher than before the pandemic.³³ [REDACTED].³⁴ While [REDACTED] stated that its retail footprint is very limited in the UK, and its online DTC is normally the fastest growing channel, in the future it “expects digital sales to grow at a much faster pace than our Owned and Operated Retail sales”.³⁵ The move to online will be discussed further in the Appendix on the impacts of Covid-19.
26. However, the majority of the suppliers who responded are planning to open new stores in the UK, although some of these plans were tentative. These are plans for small numbers of stores, with most of these suppliers planning to increase their total number of stores by 1 or 2.³⁶ However, it is notable compared to the retailers, where most are planning to close a larger number of stores than they plan to open (although numbers remain relatively small for most retailers).

Views of other retailers

27. Most other retailers did not provide detailed analysis of the impact from the growth of suppliers’ DTC.
28. [REDACTED]. However, it was not aware of any loss of sales to DTC channels, and in cases where it was unable to get access to products then it was because supply was much lower than demand generally: [REDACTED].³⁷
29. The only other retailers that provided detailed commentary of the change to DTC offerings are [REDACTED] and [REDACTED]. [REDACTED] stated that:

"The biggest change in our retail space in our opinion has been the acceleration of the brands direct to consumer strategy from 5 years to almost straight away. Brands have been very public about it and it's

³¹ Adidas RF11, question 3 and document 3A

³² [REDACTED] RF11, response p 4.

³³ [REDACTED] did not anticipate any significant movement in the shape of the business. [REDACTED] did not respond to this question. All other suppliers who responded emphasised the importance of online during the covid-19 pandemic ([REDACTED]), and all of these suppliers except [REDACTED] emphasised online for the future.

³⁴ [REDACTED] RF11 response p1

³⁵ [REDACTED], RF11 response, p2

³⁶ [REDACTED].

³⁷ [REDACTED] call, Q8

probably the biggest threat to branded retailers as suddenly you're competing against your suppliers. [REDACTED]. Being able to stand for something that a brand can't do themselves. This foregoing has inevitably resulted in less competition in the market place."³⁸

30. In relation to JD's key competitors, [REDACTED] stated: "We are not aware of their total spend with these brands [Nike and adidas] but any change of distribution allocation one would imagine would hurt them significantly. As with [REDACTED], when your biggest suppliers are also your biggest competitors it must present significant challenges."³⁹
31. [REDACTED] expressed concerns that Nike and adidas' increasing DTC business, together with the fact that Nike and adidas retains in the main the JD Sports businesses as its largest wholesale partners and favours them with the most desirable ranges, taken together with the diminishing and less desirable ranges available to their remaining wholesale partners, has weakened [REDACTED], and is having a detrimental effect on the competitiveness of the market.⁴⁰

The impact of DTC strategy on wholesale

32. Suppliers actions to increase DTC could result in a decrease in the amount of product going to wholesale channels, and therefore disadvantage retailers compared with the suppliers' DTC channels. We set out below further evidence on allocations between individual retailers supplied through the wholesale channel.

Supplier plans for the wholesale channel

33. Evidence on Nike's and adidas' respective plans for the wholesale channel not captured in the main body of the Report is set out below.

Nike

34. [REDACTED]⁴¹ [REDACTED]⁴²
35. Nike have provided commercial forecasting data for their wholesale channel for Nike's fiscal year 22 at an EMEA level. This forecast shows their total wholesale channel sales in EMEA figures are increasing from USD [REDACTED] in Nike's fiscal year 20, to USD [REDACTED] in Nike's fiscal year 21, and USD [REDACTED]

³⁸ [REDACTED] RF11 response, p1

³⁹ [REDACTED] RF11 response p2.

⁴⁰ [REDACTED] RF11, p 1-3.

⁴¹ Nike RF11 p6.

⁴² Nike hearing 21 May 2021 transcript page 23.

forecast for Nike's fiscal year 22. This demonstrates that Nike anticipate growth in the wholesale channel overall.⁴³

36. Converse, which is owned by Nike, stated its intention to focus on increasing DTC sales. However, Converse stated that "it will also continue to rely on third-party multi-brand retail partners to provide consumers with access to Converse's products and branded experiences through a variety of channels and partners."⁴⁴

adidas

37. adidas's overarching global strategy is to grow DTC (discussed above), but adidas has also stated that this is alongside aiming for growth in its wholesale segment. adidas described its position [REDACTED].⁴⁵
38. When asked whether the increases in DTC would increase competition between adidas DTC and other retailers, adidas indicated [REDACTED].⁴⁶
39. In relation to instore sales, adidas stated that: "[REDACTED]. (This is different to online shopping where the consumers can more easily compare brand offers.) Therefore, [REDACTED]."⁴⁷
40. For online sales, adidas has included [REDACTED].⁴⁸

Other suppliers

41. The other suppliers have presented limited evidence of changes in approach to supplying retailers, which is explored in detail below. Those that specified their approach to wholesale in the future stated that they would continue a similar balance of DTC and wholesale.
42. For example, New Balance stated that it "still expect[s] retail to play a crucial part and [has] no plans to significantly deviate from this channel."⁴⁹ Puma stated that its "wholesale partners are still essential for the success of our business growth" and "existing key strategic partners have long since been identified. The UK is a well-established marketplace."⁵⁰ [REDACTED].⁵¹

⁴³ Nike internal document RFI2 document 11C.

⁴⁴ Converse RFI1 response, p2

⁴⁵ Adidas call May Q11

⁴⁶ Adidas call May Q11

⁴⁷ Adidas RFI1 response p8

⁴⁸ Adidas call May Answer to Q3.

⁴⁹ New Balance RFI1 response page 1.

⁵⁰ Puma response to RFI1, Email from Mark Brookes, 23 April 2021.

⁵¹ [REDACTED] RFI1 response page 1.

Part 2: Retail allocations

43. Most suppliers in this market wholesale their products to retailers through some form of selective distribution arrangement, which grants them a degree of control over where and how their products are resold and marketed. This means suppliers have control over which retailers sell their products and can control the type and volumes of products provided to different retailers.

Selective distribution arrangements and retailer segmentation

Parties' views

44. The Parties views on suppliers' distribution policies which are not captured in the main body of our provisional findings are set out below.
45. The Parties have cited adidas's terminations of 2,600 accounts in the United States,⁵² and Nike's termination of 15 retailers in the US and one in the UK, [REDACTED].⁵³ They also highlighted that retailers at risk of disintermediation or that are losing stock are having to close stores, and have more challenges making investments in digital.
46. They give examples of key retailers drawing closer to the suppliers, including Zalando's partner programme,⁵⁴ and ASOS's access to a collaboration with Beyoncé reserved for selected retailers and joining Nike's fulfilment network.⁵⁵

JD Sports

47. JD Sports stated that it has invested [REDACTED].⁵⁶
48. It summarised logistical issues such as manufacturing or shipping delays due to Covid-19 or the Suez Canal, stating that "[REDACTED]". JD Sports noted that [REDACTED].⁵⁷

Footasylum

49. Footasylum stated that it traded well, particularly through the initial phases of the COVID-19 pandemic, and successfully transitioned to online sales, with a

⁵² Initial Submission, 30 April 2021, page 22.

⁵³ Initial Submission, 30 April 2021, page 21.

⁵⁴ Initial Submission, 30 April 2021, page 18

⁵⁵ Parties joint response RFI1b, page 2

⁵⁶ JD RFI3a page 1.

⁵⁷ JD RFI1 page 7

functioning website and fulfilment capabilities.⁵⁸ Footasylum considered that its relationship with Nike was [REDACTED] in that period, particularly being [REDACTED]⁵⁹

50. Footasylum has stated [REDACTED]. These changes largely impacted Nike footwear. Footasylum stated that [REDACTED].⁶⁰ [REDACTED];⁶¹ and [REDACTED].⁶²

51. Footasylum gave details of some of the key [REDACTED]. During 2020 [REDACTED] due to Covid-19 related disruption which impacted across the market.⁶³ [REDACTED]. In addition to the overall reductions detailed in the Provisional report, Footasylum highlighted:

(a) [REDACTED].⁶⁴

(b) [REDACTED].⁶⁵

(c) [REDACTED]⁶⁶

(d) [REDACTED]⁶⁷ [REDACTED]⁶⁸

52. In discussing the strength of the relationship with Nike, the Parties compare the ability of Footasylum to invest in websites and digital to the leading brands: with Footasylum's planned budget spend on digital for FY22 at [REDACTED], compared to Foot Locker's plans for \$275m of capital expenditure in 2021; and Next's planned capital expenditure in its online business of £121 million on warehousing and systems. We would note that these expenditures do not appear to be directly comparable.⁶⁹

53. Footasylum stated that during 2020 in some cases where it [REDACTED], it was able to purchase stock on Nike.net, where any unallocated stock or stock that has become available is sold. Footasylum said that these products were available due to other suppliers facing challenges or going out of business during Covid-19. However, product purchased through Nike.net does not benefit from [REDACTED]⁷⁰.

⁵⁸ Initial Submission, 30 April 2021, page p44

⁵⁹ Initial Submission, 30 April 2021, page 44-45-46

⁶⁰ FA RF11 page 6

⁶¹ FA RF11 Q2&22 page 3

⁶² FA RF11 Q2&22 page 3 [REDACTED].

⁶³ FA RF11 page 8

⁶⁴ FA RF11 Q2&22 page 10-11

⁶⁵ FA RF11 Q2&22 page 3

⁶⁶ FA RF11 Q2&22 page 4-5

⁶⁷ FA RF11 Q2&22 page 9

⁶⁸ FA RF11 Q2&22 page 10

⁶⁹ Initial Submission, 30 April 2021, page 46-47

⁷⁰ FA RF11b p5-6

54. Footasylum has stated that these [REDACTED] led to it having to [REDACTED] to the vast majority of stores,⁷¹ contributing to the [REDACTED].⁷² Footasylum did acknowledge that it was difficult to speculate what action it would have taken with respect to these stores absent the pandemic, but that it was [REDACTED] without the impact of the pandemic.⁷³
55. In relation to its general [REDACTED] with Nike, Footasylum has stated that: “It is not possible for Footasylum to [REDACTED]”⁷⁴ It further stated that: [REDACTED].⁷⁵

Evidence from Nike

Nike’s [REDACTED]

56. Nike has confirmed that over time it expects to be working with a smaller number of retail partners, and that in late 2020 it served notice to terminate its relationships with [REDACTED] UK-based retailer partners “who fall far short of providing the level of consumer experience which is already required in the fast-moving marketplace of today”.⁷⁶
57. [REDACTED]⁷⁷

Nike’s product allocation strategies

58. [REDACTED] and they have provided a list of Nike Men’s footwear product styles within Nike’s Men’s Sportswear division which had restrictions during Nike’s Summer and Fall 21 selling seasons ([REDACTED] respectively).⁷⁸
59. [REDACTED], “given consumer expectations that Nike’s DTC channels will have (i) the best selection of the most high-demand Nike product styles; and (ii) the deepest inventory of such products”.⁷⁹ Third parties that [REDACTED]. During the pandemic Nike noted that priority was sometimes given to partners with strong digital businesses, or particular regions which had fewer social distancing restrictions.⁸⁰
60. Nike has confirmed that volume of Nike footwear styles made available to [REDACTED] has been reduced since March 2020. Nike has not noted any restrictions in

⁷¹ Initial Submission, 30 April 2021, page 25

⁷² Joint response RF11b page 10

⁷³ FA RF11 page 5

⁷⁴ FA RF11 Q2&22 page 5

⁷⁵ Initial Submission, 30 April 2021, page 7

⁷⁶ Nike RF11 page 7-8

⁷⁷ Nike hearing 21 May 2021 transcript page 47

⁷⁸ Nike RF11 document 10B and 10C

⁷⁹ Nike RF12 part 2, page 10

⁸⁰ Nike RF12 part 2, page 10-11

apparel. Nike noted a number of reasons for this, however, some of which are wider impacts across the market, and some of which reflect [REDACTED]:

(a) [REDACTED]

(b) [REDACTED].⁸¹

(c) [REDACTED].⁸²

(d) Allocations of high demand products in order of the [REDACTED].⁸³

61. Nike has explained that it has been “extremely challenging for us to reserve production capacity and to predict demand. [REDACTED].⁸⁴ [REDACTED].⁸⁵ In relation to JD Sports particularly, Nike has stated:

(a) [REDACTED]

(b) “More specifically, JD Sports [REDACTED]”⁸⁶

62. [REDACTED]⁸⁷ [REDACTED]⁸⁸

63. In response to Footasylum’s statements related to not receiving any allocations of specific product lines (AM97, Huarache and VM EVO) because they were prioritised [REDACTED], Nike provided evidence of the supply restrictions (and [REDACTED] in the case of Huarache) which led to them limiting supply to [REDACTED], that these restrictions led to Footasylum (and other retail partners) not receiving allocations, and that Footasylum (along with other retail partners) are now receiving allocations again.⁸⁹ These restrictions in supply were therefore not specific to Footasylum, and have now been removed.

64. Nike also responded to Footasylum’s specific statements related to products which Footasylum states were agreed as shared exclusives, but then removed. Nike states that these were only a *potential* shared exclusive, but that Nike eventually decided to allocate [REDACTED], and the lack of alternative suppliers in Europe leading Nike to seek to balance the supply across EMEA. Nike further states that these products will [REDACTED].⁹⁰

⁸¹ Nike RF11 page 8

⁸² Nike hearing 21 May 2021 transcript page 45

⁸³ Nike RF11 page 8-9

⁸⁴ Nike hearing 21 May 2021 transcript page 45

⁸⁵ Nike RF12 part 2 page 14

⁸⁶ Nike RF12 part 2 page 14.

⁸⁷ Nike RF12 part 2 page 4

⁸⁸ Nike RF12 part 2 page 5. [REDACTED]

⁸⁹ Nike RF12 part 2 page 7-8

⁹⁰ Nike RF12 part 1 page 3

65. [REDACTED],⁹¹ [REDACTED].
66. Nike was more positive about the performance of Sports Direct, which is in a different MPU to JD Sports and Footasylum – being more sports and fitness based - stating that Sports Direct had undertaken significant investment, and its elevation, [REDACTED]⁹² [REDACTED]⁹³ [REDACTED]. We would note that while Instagram shopping is available in the UK, Instagram checkout (enabling DTC purchases in the Instagram app – which is described as a gamechanger) is not.
67. Nike has provided forecast data of Nike purchases for a number of retailers up to Nike’s fiscal year 22. This data is at a EMEA level, so it is difficult to draw conclusions for retailers that operate across multiple countries. Data for Footasylum shows revenue of USD[REDACTED] in Nike’s fiscal year 20, USD[REDACTED] in Nike’s fiscal year 21 and forecast at USD[REDACTED] for Nike’s fiscal year 22. [REDACTED] is forecast growth in Nike’s fiscal year 22 after a dip the previous year (USD[REDACTED] in Nike’s fiscal year 20, USD[REDACTED] in Nike’s fiscal year 21 and USD[REDACTED] in Nike’s fiscal year 22).⁹⁴
68. Converse, which is owned by Nike stated that it has restricted the number of retail partners that it works with, stating that [REDACTED]⁹⁵
69. For the wholesale partners that Converse will continue working with, Converse has stated that it “does not have any specific ‘plans’ to [REDACTED]”⁹⁶

Evidence from adidas

70. [REDACTED].⁹⁷
71. The CMA considers that there is, however, evidence that adidas has made changes in response to the pandemic which have restricted supply to a greater extent than it had previously. Some of these changes impacted across the market, such as its decisions during 2020 to [REDACTED]. adidas stated that [REDACTED]⁹⁸
72. adidas stated that it is difficult to quantify the impact on Footasylum of [REDACTED]. However, adidas has provided data on [REDACTED].⁹⁹

⁹¹ [REDACTED].

⁹² Nike RFI1 page 17

⁹³ Nike hearing 21 May 2021 page 7 and page 15

⁹⁴ Nike RFI2 document 11C. Note that these are sales of Nike products to each retailer, combining footwear and apparel. [REDACTED].

⁹⁵ Converse RFI1 response, p1

⁹⁶ Converse RFI1 response p3

⁹⁷ Adidas RFI4 response, p1 and document 1A. [REDACTED].

⁹⁸ adidas response to RFI1 p6.

⁹⁹ Adidas RFI1 p4.

73. adidas provided more qualitative information on the change from [REDACTED]. adidas stated that the [REDACTED], [REDACTED].¹⁰⁰ [REDACTED].¹⁰¹
74. In a call with the CMA, staff from adidas stated that there have not been any [REDACTED]¹⁰²
75. Adidas has explained that its new category of Alliance Partners will [REDACTED]¹⁰³
76. adidas has also confirmed that, where it is necessary to prioritise the allocation of available products, they are provided in line with priorities between retailers and their own DTC. adidas however go on to note that, in relation to the allocation of available products, “[REDACTED]”¹⁰⁴
77. An adidas internal document provides a forecast (Figure 1) for wholesale [REDACTED].¹⁰⁵ [REDACTED].¹⁰⁶ [REDACTED].

Figure 1, adidas internal document: [REDACTED]¹⁰⁷

[REDACTED]

78. adidas stated that at the start of the pandemic [REDACTED].¹⁰⁸ [REDACTED].¹⁰⁹ [REDACTED].¹¹⁰
79. Discussions with adidas staff also explored in theory how a retailer might change their retail offering to access a wider range of products. [REDACTED].¹¹¹
80. As a whole, adidas forecasts [REDACTED].¹¹²
81. In general, when asked about restrictions of products to UK retailers since [REDACTED]¹¹³
82. In relation to [REDACTED] monitoring of its retail partners since March 2020, adidas stated [REDACTED].¹¹⁴

¹⁰⁰ Adidas RFI4 p5

¹⁰¹ Adidas RFI4 p3

¹⁰² Adidas call May Q16

¹⁰³ Adidas RFI4 p7

¹⁰⁴ Adidas RFI4 p9

¹⁰⁵ [REDACTED].

¹⁰⁶ Adidas call May Q20.

¹⁰⁷ Adidas internal doc 15A slide 6.

¹⁰⁸ adidas RFI1 Q5

¹⁰⁹ adidas internal document 5A. [REDACTED].

¹¹⁰ Adidas call May Q5 and Q17

¹¹¹ Adidas call May Q17

¹¹² Adidas call May Answer to Q3

¹¹³ Adidas RFI1 response p19

¹¹⁴ Adidas RFI4 p10. Adidas stated that: “[REDACTED].”

83. adidas has provided forecasting data for sales to a number of its retailers, and from this we can see that adidas are forecasting [REDACTED].¹¹⁵ [REDACTED].

Evidence from other suppliers

84. Other suppliers have presented limited evidence of the types of selective distribution arrangements that we have seen for Nike and adidas. [REDACTED].¹¹⁶
85. We therefore have no evidence that the other suppliers have changed their approaches to selective distribution and supply constraints since the Final Report.

Evidence from other retailers

86. We asked other retailers a question on any supply issues (e.g. delays, cancellations or lower than expected volumes of products) that were specific to the retailer and the supplier, and impacted the retailer directly, rather than impacts (such as covid-19) which were felt across the market. The retailers also replied with details of their wider allocations of products, and therefore these are also mentioned below, where relevant. The retailer responses fell broadly into three categories:
- (a) Giving no information or detailing only impacts which would have impacted the whole market
 - (b) Detailing impacts which are specific to the suppliers restricting supply, but without stating that the restrictions had increased compared to prior to October 2019
 - (c) Increased supply issues due to changes in the approach from suppliers.

Highlighting only supply issues which would impact across the market

87. [REDACTED] stated that they were not aware of any supply issues which impacted them directly. [REDACTED] stated that they were not aware of [REDACTED]. [REDACTED] highlighted impacts due to covid-19, the blocking of the Suez Canal or the political situation in Myanmar. [REDACTED]¹¹⁷

¹¹⁵ Adidas RF11 response document 3E, [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED]RF11 p3-4

Detailing supply issues, but without evidence of increased impacts

88. Some retailers detailed supply restrictions which impacted them directly, but did not provide any evidence of these restrictions having increased. [REDACTED]¹¹⁸. [REDACTED]¹¹⁹

89. [REDACTED] noted [REDACTED]¹²⁰. [REDACTED]¹²¹. [REDACTED].¹²²

Increased supply issues

90. [REDACTED]:

“[REDACTED].”¹²³

91. [REDACTED]¹²⁴

92. [REDACTED] stated their strategy is an increased range of Nike, adidas, and other brands, but that it has experienced reduced access particularly for [REDACTED]¹²⁵

93. [REDACTED], as detailed above, did not give evidence of any increases in supply issues they have experienced during this period.

94. [REDACTED]¹²⁶ [REDACTED].¹²⁷

95. [REDACTED] has described being [REDACTED].¹²⁸

96. [REDACTED] provided further evidence on [REDACTED]¹²⁹

¹¹⁸ [REDACTED]RFI1 response, p2

¹¹⁹ [REDACTED]RFI2 response, [REDACTED]

¹²⁰ [REDACTED] RFI1 response p16

¹²¹ [REDACTED]RFI1 response, p12, [REDACTED].

¹²² [REDACTED], 8 June 2021

¹²³ [REDACTED]

¹²⁴ [REDACTED]

¹²⁵ [REDACTED] RFI1 response, p2

¹²⁶ [REDACTED] RFI1 response p17

¹²⁷ Both quoted in [REDACTED] RFI1 response, p17, [REDACTED]

¹²⁸ [REDACTED] 8 June 2021.

¹²⁹ [REDACTED] 8 June 2021

Annex A: Data on supplier revenues

[✂]

Data on the changes in revenue for suppliers - divided by their wholesale and DTC channels. Note that the pairs of graphs are on the same axis to enable comparisons.

Annex B: Data on online sales – DTC, Parties, and other retailers

[✂]

Annex C: [✂]

[✂]

Appendix C: Retailer offerings, third party views, and shares of supply

Introduction

1. This appendix has three sections. First, we present the findings from our analysis of retail offerings, which includes summaries of retailers' offerings and how these have changed since the Phase 2 Final Report, a summary of evidence on Frasers Group's elevation strategy, and results of our analysis of the degree of product overlap between retailers. Second, we summarise third party views on closeness of competition. The final section presents shares of supply results for the sports-inspired casual footwear and apparel markets.
2. This evidence supports discussion in the main body chapters of our Remittal provisional findings. In particular, retailer offerings, Frasers Group elevation strategy, and third parties' views are discussed in chapter 7 on evidence relevant to footwear and apparel, and the product overlap and market shares analysis are referred to in chapters 8 and 9 which cover evidence relevant to the footwear and apparel markets, respectively. We consider the evidence at the time of this Remittal to be the most relevant, and hence only these results are presented in full in this Appendix.¹

Retail offerings

Retailers' offerings

3. In this section we assess the Parties' and third parties' retail offerings to judge similarities and differences of these across retailers. Given the differentiated nature of retailing sports-inspired casual footwear and apparel, we expect firms to be closer competitors where their offerings are similar on the most important parameters of competition.

Parties' views

4. The Parties submitted that in addition to the acceleration of DTC, the COVID-19 pandemic has strengthened and improved the relative position of pure-play online retailers (e.g. ASOS, Very, Zalando).²
5. The Parties also submitted that traditional retailers with the capability to invest significantly in their digital and physical offerings (e.g. Foot Locker, Next) have

¹ For results of the previous inquiry, see CMA (2020) [Final report](#) and [Appendices and glossary](#).

² [Parties' Response to Working Papers](#) (15 July 2021), paragraph 60.

also become stronger in the 14-month period since the Phase 2 Final Report was published.³

6. It is the Parties' view that the culmination of these changes is that [X].⁴
7. For each of the Parties and their relevant competitors in turn, we first summarise findings on their retail offering from the previous inquiry, and where retailers told us during the Remittal that there have been significant changes, we summarise these. This will help ascertain whether there has been a significant change in the competitive positioning of the Parties and their competitors since the previous inquiry.
8. In the following section we cover various aspects of the retail offering, including but not limited to areas such as the quality of the website and digital channel, the store environment, marketing and advertising, pricing, discounts, and offers, as well as the products they sell.

The Parties

9. In the CMA's Phase 2 Final Report the CMA found the following on the Parties' retail offerings in the sports-inspired casual footwear and apparel markets:⁵
 - Overall, the Parties have a similar retail offering, particularly in footwear.
 - There is a high degree of geographic overlap of the Parties' physical stores.
 - The Parties both have an instore and online offering. Both of their online offerings are important channels for their respective businesses.
 - Both Parties target a similar demographic - 16-24 year olds with a focus on males, although the focus on males is more pronounced for Footasylum.
 - Both stock a similar range of branded footwear products, with a large proportion of this being Nike, and to a lesser extent, adidas. In apparel, relative to footwear, their sales are spread over a wider set of brands, including the Parties' own-brands, which are particularly important for Footasylum.

³ Parties' Response to Working Papers (15 July 2021), paragraph 60.

⁴ Parties' Response to Working Papers (15 July 2021), paragraph 60.

⁵ See CMA (2020), [Phase 2 Final Report](#), paragraphs 8.133 to 8.164 for further detail.

- *JD Sports*

10. JD Sports submitted in the Remittal that [REDACTED].⁶
11. JD Sports submitted that [REDACTED].⁷
12. JD Sports submitted that [REDACTED]:⁸
 - (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED].
13. JD Sports has made £19.1m of investment on software development during the last financial year [REDACTED].⁹
14. [REDACTED], JD Sports said it has focussed on [REDACTED]:¹⁰
 - (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED].

- *Footasylum*

15. Footasylum submitted in the Remittal that there have been [REDACTED] are made since October 2019.¹¹
16. Footasylum submitted that there have been [REDACTED].¹² Footasylum has outlined the following reasons behind this shift:¹³

⁶ JD Sports (2021), [Response to RFI1a](#)

⁷ JD Sports (2021), [Response to RFI1a](#)

⁸ JD Sports (2021), [Response to RFI1a](#)

⁹ JD Sports (2021), [Response to RFI1a](#)

¹⁰ JD Sports (2021), [Response to RFI1a](#)

¹¹ Footasylum (2021), [Response to RFI1a](#)

¹² Note that in its Oral Rep sessions, Footasylum also mentioned it had [REDACTED]

¹³ Footasylum (2021),

(a) [REDACTED].

(b) [REDACTED]: Footasylum expects going forward [REDACTED]¹⁴ [REDACTED].¹⁵

17. Footasylum submitted that there has been a [REDACTED] to its online channel since its website continued to trade when its stores were required to close as a result of Covid-19 restrictions. In FY20, online sales accounted for [REDACTED] of Footasylum's overall sales. This has [REDACTED] in FY21.¹⁶

18. Footasylum submitted that it has launched and discontinued several of its own brand websites since October 2019. It launched a website for its own brand Zavetti in November 2019 and Monterra in October 2020. It has discontinued websites for its own brands Glorious Gangsta, Drome and Metissier in August 2020.¹⁷

19. Footasylum submitted that it has made some material changes to its website and app since October 2019:¹⁸

(a) New footasylum.com homepage in February 2020;

(b) New "Tracksuit Builder" function to its website in February 2020, allowing customers to easily locate and purchase the other items that are shown with the product they are viewing;

(c) New algorithmic product recommendation service to its website in March 2020, which recommends similar products to customers as they view items on the website;

(d) Free UK returns across all its websites from April 2020 onwards;

(e) New buy now pay later option to customers through Klarna on its website and app from May 2020 onwards;

(f) Personalised homepages controlled by the location of the customers for customers in Liverpool and Ireland in July 2020;

(g) Giving customers the ability to track progress of their online orders through the website since October 2020;

¹⁴ Note that this is the term Footasylum uses, but Nike does not accept the term 'cancellations' in this context.

¹⁵ Footasylum (2021), [Response to RF11a Questions 2 and 22](#), paragraph 22.1.2

¹⁶ Footasylum (2021), [Response to RF11a](#)

¹⁷ Footasylum (2021), [Response to RF11a](#)

¹⁸ Footasylum (2021),

- (h) An unlimited free premium delivery subscription service for customers if they pay an annual fee of £9.99;
- (i) Brexit has impacted the delivery options that Footasylum can offer through its websites and apps. For example, since January 2021 some international delivery options were no longer available, meaning Footasylum can no longer serve customers in certain countries;
- (j) New Outlet category to its main website where customers can browse some items with large reductions of up to 70% off.

Suppliers

- *Nike*

20. In the previous inquiry, we found that suppliers including Nike and adidas have been growing their DTC channels. They both have online offerings and deliver to all parts of the UK. They have a number of physical stores, including a few large flagship stores, but the majority are forms of factory or clearance stores [38]. The geographic overlap of these stores with the Parties is low. These suppliers typically offer their full range of products online, more than they make available to their wholesale customers. However, these are mono-brand footwear offers and they do not offer other brands alongside their own products.¹⁹
21. Nike submitted in the Remittal that Nike Direct's sales have grown since the previous inquiry. Nike also submitted that Nike Direct has continued to look to drive best-in-class experiences instore and online to remove friction and improve conversion by, for example:²⁰
 - (a) Faster delivery to consumers;
 - (b) Improved size and fit tools;
 - (c) Creating apparel purchasing journeys and assets;
 - (d) Additional payment and delivery options;
 - (e) Targeted communications and member benefits;
 - (f) Improved cross-sell and outfitting tools;

¹⁹ CMA (2020), [Phase 2 Final Report](#), paragraph 8.159

²⁰ Nike (2021), [Response to RFI1](#), page 13.

(g) Increased repeat purchase;

(h) Driving daily engagement in Nike's apps with more personalised content.

- *adidas*

22. adidas submitted in the Remittal that it estimates [REDACTED].²¹

23. adidas submitted in the Remittal that it plans to continue to invest into its e-com and retail infrastructures, [REDACTED].²²

- *Other suppliers*

24. In the previous inquiry, we considered other suppliers in addition to Nike and adidas, that also have DTC offerings. Puma and The North Face sell DTC. Puma has six stores in the UK and an online presence. The North Face has 28 stores in the UK and an online presence.²³

25. In the Remittal, Puma submitted that there has been no significant change in its strategy.²⁴ The North Face submitted that it has not changed its overall strategy on how it will bring its products to market through DTC channels. It said the only changes are short term and a reaction to the impact of COVID-19 lockdown restrictions. In particular, these changes consist of fulfilling more customer orders through online DTC, as in-store/physical DTC remained temporarily closed.²⁵

26. In the Remittal, in addition to Nike, adidas, Puma, and The North Face, we have also considered other suppliers with DTC offerings including Asics, Converse, New Balance, Vans, Under Armour, and Fila USA. All of these suppliers have online DTC channels serving UK customers. All of these suppliers, except for Fila USA, have a limited store presence in addition to their website offering.

27. [REDACTED].²⁶

28. Converse submitted that it has seen consumers moving (albeit through necessity) towards online and digital shopping experiences. Converse submitted that [REDACTED].²⁷

²¹ Adidas (2021), [Response to RF11](#), page 8.

²² Adidas (2021), [Response to RF11](#), page 13.

²³ CMA (2020), [Phase 2 Final Report](#), paragraph 8.160d

²⁴ Puma (2021), [Response to RF11](#), page 1.

²⁵ The North Face (2021), [Response to RF11](#), page 3.

²⁶ [REDACTED].

²⁷ Converse (2021), [Response to RF11](#), page 1.

29. New Balance submitted that for its DTC channel, it closed all stores, including those in the UK at the start of the pandemic, and has since then given more focus to its online business, to ensure customers could access the brand in all its width.^{28, 29}
30. Vans submitted that it has not changed its overall strategy on how it will bring its products to market through DTC channels. However, due to lockdown restrictions and store closures, Vans DTC focused on driving consumer engagement by introducing omnichannel capabilities and pushing online consumer demand from store inventory.³⁰
31. [REDACTED].³¹
32. [REDACTED] submitted that it has not changed its strategy since March 2020, and only sells on a limited basis wholesale basis in the UK.³²

Multi-channel retailers

- *Foot Locker*

33. Foot Locker is a large global retailer of sports-inspired casual footwear. It has a comparable store estate to Footasylum. It has an online channel. It is predominantly focussed on footwear and has access to some of the higher-tier branded footwear products. It has a relatively high geographic overlap with both Parties, and targets the same demographic. This suggests it has a similar offering to the Parties.³³
34. Foot Locker submitted in the Remittal that its general retail proposition in relation to other retailers has not significantly changed in the UK market as a result of Covid-19. It noticed a shift from offline to online sales as a result of store closures during lockdowns, [REDACTED].³⁴

- *Sports Direct (part of Frasers Group)*

35. Sports Direct is a major retailer in the UK. It has a large number of UK stores and a high geographic overlap with the Parties and operates online. In the previous inquiry, it submitted that most of its products may be classified as

²⁸ New Balance (2021), [Response to RF11](#), page 1.

²⁹ Note, New Balance said there have been no major changes in strategy for its wholesale channel since March 2020.

³⁰ Vans (2021), [Response to RF11](#), page 3.

³¹ [REDACTED].

³² [REDACTED].

³³ CMA (2020), [Phase 2 Final Report](#), paragraph 8.153

³⁴ Foot Locker (2021), [Response to RF11](#), paragraphs 3.1 - 3.3.

sporting goods rather than sports-inspired casual footwear and that its current offering could be characterised as more of a value proposition in the lifestyle segment than either of the Parties. It does not target a specific demographic. This indicates that despite its size, there are some important differences in Sports Direct's offering in comparison with the Parties.³⁵

36. In the Remittal, Frasers Group submitted that over the pandemic period, it has been particularly disadvantaged compared to others such as JD Sports and Footasylum [X]. Frasers Group also said it believes that the shift in consumer demand from premium sporting goods to premium lifestyle products has [X].³⁶ [X]
37. Frasers Group has submitted that it announced a significant investment exceeding £100m into its digital elevation. [X]. It also considers digital elevation to be tied to brick and mortar elevation which it is continuing to pursue.³⁷ [X].
38. Frasers Group said, despite the impact of Covid-19 on its retail positioning, it [X].³⁸
39. Fraser Group has stated that past experience has [X].^{39, 40, 41}
 - *Schuh, Office, and [X]*
40. Schuh, Office, and [X] are all multi-brand retailers with instore and online channels that focus on footwear, including both sports-inspired casual and more general types of footwear. Schuh targets the 16-24 year old market. Office targets predominantly female consumers. [X] targets a wider demographic, aged between 16 and 45 years and both genders. Schuh and Office have a relatively high geographic overlap with the Parties, while [X] has a lower geographic overlap with the Parties.⁴²
41. Schuh did not submit detail on changes to its retail offering. However, it noted that the switch from physical to digital sales due to Covid-19 could reduce store sales making occupancy costs more challenging. It said that if much larger businesses are able to secure better rent deals than smaller ones, the

³⁵ CMA (2020), [Phase 2 Final Report](#), paragraph 8.154

³⁶ Frasers Group (2021), [Response to RF11](#), page 9

³⁷ Frasers Group (2021), [Response to RF11](#), pages 12-13.

³⁸ Frasers Group (2021), [Response to RF11](#), page 11.

³⁹ Frasers Group (2021), [Response to RF11](#), page 15.

⁴⁰ Note, in contrast to this, that in the call with Nike it [X].

⁴¹ Note, Frasers Group also submitted [X].

⁴² CMA (2020), [Phase 2 Final Report](#), paragraph 8.155

smaller traders will be at a disadvantage. It considers Schuh to be a medium sized business.⁴³

42. [X].⁴⁴

43. [X]. As a result of the pandemic it has had to discount stock online that had been intended for its offline business, meaning it has increased turnover but at considerably reduced margins. [X] believes it has been weakened by COVID-19 more than JD Sports has, because the DTC approach of the key brands, namely Nike and adidas, has accelerated as a result of the pandemic. [X] said it has been weakened by cutbacks in the range options provided to wholesale partners by these brands.⁴⁵

- *Other multi-channel retailers*

44. There are a number of other multi-channel retailers who we consider to have different offerings from the Parties, but considered the constraint from these retailers through our assessment of other evidence.

45. Deichmann is a general retailer for footwear and not focussed solely on sports-inspired casual footwear. It targets all ages but mainly less affluent consumers. Much like Sports Direct, its offering could be characterised as more of a value proposition than either of the Parties. This indicates that its offering is relatively different from that of either of the Parties.^{46, 47}

46. Decathlon is a sports-led retailer who sells sports-inspired casual footwear. It is a large sporting goods retailer that sells a broad range of products, including its own brands. It has 44 stores in the UK, which tend to be very large, and an online presence.^{48, 49}

47. John Lewis is a department store which sell sports-inspired casual footwear. It has a store and online presence. It has a high proportion of female customers.⁵⁰ John Lewis said its trading position has been disadvantaged versus purely online players who have not had the operational costs or challenges of store closures to manage. Nevertheless, it views its position as remaining strong in the market because of its already existing online capability

⁴³ Schuh (2021), [Response to RF11](#), page 1.

⁴⁴ [X] (2021), [Response to RF11](#), page 1.

⁴⁵ [X] (2021), [Response to RF11](#), page 1.

⁴⁶ CMA (2020), [Phase 2 Final Report](#), paragraph 8.160a

⁴⁷ Note, although Deichmann did respond to our RFI in this remittal, it did not provide any details on changes to its retail offering.

⁴⁸ CMA (2020), [Phase 2 Final Report](#), paragraph 8.160b

⁴⁹ Note, that Decathlon did not respond to our RFI in this remittal, so we don't have detail on changes to its retail offering.

⁵⁰ CMA (2020), [Phase 2 Final Report](#), paragraph 8.160c

and high-traffic website, and that this gave it an advantage over other, predominantly physical store led retailers. John Lewis submitted that it expects online to increase in importance once the pandemic is over, and that it is well placed to trade in this environment since it pledged to invest [REDACTED] more than current levels in digital capabilities overall in the next 2 years. Overall, it is John Lewis' view that this will leave it neither stronger nor weaker than the market as a whole.⁵¹

48. Clarks is a multi-channel retailer with an instore and online presence, with a focus on footwear. Clarks submitted that [REDACTED].⁵²
49. H&M is a multi-channel retailer with an instore and online presence, selling footwear and apparel, including some sports-inspired products. H&M submitted that [REDACTED].⁵³

Pure-play retailers

ASOS

50. ASOS submitted that in response to the pandemic, it undertook significant change to reshape every element of its business. It has built greater diversity into its product mix and its sports-inspired footwear and apparel (as defined) sales have grown during this period as consumer behaviour has shifted towards these categories⁵⁴. However, ASOS also submitted that it has suffered from late supplier deliveries, increased freight costs, and uncertain stock availability, [REDACTED].⁵⁵

Zalando

51. Zalando submitted that Covid-19 has led to a shift from offline to online, which has made (pure) e-commerce players like Zalando stronger versus brick and mortar retailers. However, Zalando said despite this shift, [REDACTED].⁵⁶

Amazon

52. Amazon submitted that throughout the Covid-19 pandemic, it has remained focussed on retaining customer trust, by continuously offering customers a

⁵¹ John Lewis (2021), [Response to RF11](#), pages 2-3.

⁵² Clarks (2021), [Response to RF11](#), page 1.

⁵³ H&M (2021), [Response to RF11](#), page 1.

⁵⁴ ASOS told the CMA during its third party call that it has noticed a strong growth in casualwear as people have been spending more time at home in recent times. ASOS said it had to quickly adapt its marketing and product focus to align with this shift.

⁵⁵ ASOS (2021), [Response to RF11](#), pages 1-2.

⁵⁶ Zalando (2021), [Response to RF11](#), page 1.

large selection of products at competitive prices along with convenient delivery.⁵⁷ Amazon submitted that it is constantly working to expand its product offerings, including its selection of footwear and apparel in the UK, and improving the experiences of selling partners and customers on Amazon's stores.^{58, 59}

Other pure-play retailers

53. Very submitted that [REDACTED].⁶⁰
54. M and M Direct submitted that as an online only retailer, the Covid-19 period has had an encouraging impact on the M and M Direct business, particularly as the consumer becomes more confident purchasing online. It expects that this will most certainly made it a stronger competitor relative to its rivals in the UK footwear and apparel markets over the coming years.⁶¹
55. [REDACTED].⁶²

Frasers Group elevation strategy

56. Frasers Group is a retailing group which includes fasciae such as Sports Direct and USC. In the previous inquiry we considered the publicly announced intentions of Frasers Group to elevate certain fasciae (including Sports Direct) in the coming years. We considered the impact that this elevation strategy could have on the retail offering of Frasers Group fasciae, and as a result, increase the closeness of competition between its fasciae and the Parties.
57. In the following section we discuss the extent to which these plans have been carried out since the previous inquiry, and any change to upcoming plans. We cover changes to instore elevation plans, online elevation plans, and changes to the product availability of key suppliers such as Nike and adidas. Specifically, we discuss how any changes might impact the strength of competition between Frasers Group fasciae such as Sports Direct and the Parties.

⁵⁷ Amazon (2021), [Response to RF11](#), page 2.

⁵⁸ Amazon (2021), [Response to RF11](#), page 6.

⁵⁹ See Amazon (2021), [Response to RF11 Annex 1](#) for internal documents relating to this strategy produced since March 2020.

⁶⁰ Very Group (2021), [Response to RF11](#), page 1.

⁶¹ M and M Direct (2021), [Response to RF11](#), page 2.

⁶² Farfetch (2021), [Response to RF11](#), page 3.

Changes to instore elevation plans

58. Frasers Group submitted that its strategy around elevation has not significantly changed.⁶³
59. From the previous inquiry, we collected instore elevation plans, which are shown in Table 1.

Table 1: Number of elevated Sports Direct stores in UK (plans collected in Phase 2)

	Open as of March 2020	Planned to be open by end 2020	Planned to be open by end 2021
Number of elevated Sports Direct fascia stores	[30-40]	[REDACTED]	[REDACTED]

Note: Plans accurate as of 13 March 2020 and do not reflect any changes that may or may not arise due to COVID-19.

60. In comparison, we collected the following updated plans from this Remittal, shown in Table 2.

Table 2: Number of elevated Sports Direct stores in UK (plans collected in Remittal)

	Open as of April 2021	Planned to be open by August 2021	Planned to be open by January 2022	Planned to be open by January 2023
Number of elevated Sports Direct fascia stores	40	[REDACTED]	[REDACTED]	[REDACTED]

61. We can see from Tables 1 and 2, that Sports Direct fascia instore elevation plans are [REDACTED].

Product availability from key suppliers

62. Frasers Group submitted that [REDACTED].⁶⁴
63. Frasers Group submitted [REDACTED].^{65, 66, 67}

Product overlap

64. In this section, we assess the extent to which Nike and adidas products sold by each Party are also sold by other retailers to show the Parties and their competitors overlap in terms of products offered.

⁶³ Frasers Group (2021), [Response to RF11](#), page 11.

⁶⁴ Frasers Group (2021), [Response to RF11](#), page 12.

⁶⁵ Frasers Group (2021), [Response to RF11](#), page 15.

⁶⁶ Note, in contrast to this, that in the call with Nike [REDACTED].

⁶⁷ Note, Frasers Group also submitted [REDACTED].

65. There are some limitations with this analysis, including:
- (a) it only covers Nike and adidas products;
 - (b) the Nike footwear data includes indoor football footwear products⁶⁸;
 - (c) the Nike apparel data may contain some headwear products⁶⁹;
 - (d) the adidas data only covers its top 11 UK retailers (by revenue); and
 - (e) Nike and adidas were only able to provide data on sales to retailer's European accounts for retailers active in continental Europe as well as the UK. The data reflects where the account is based and not necessarily where sales are made, meaning that if European based retailers such as Zalando did not offer all their products in the UK, their UK product overlap would be overestimated in our analysis.
66. The CMA acknowledges these limitations. However, since Nike and adidas are two major brands in the markets of sports-inspired casual footwear and sports-inspired casual apparel, and are also two major suppliers for each of the Parties, it gives us an indication of the closeness of the product offerings of the Parties and other retailers.

Parties' views

67. The Parties argue that market developments would have substantial implications for the value and interpretation of the product overlap evidence, for reasons including:
- (a) DTC: Nike and adidas have 100% overlap with retailers of their products, and are increasingly offering their members early access via DTC before making them available through the wholesale channel⁷⁰;
 - (b) Progressive disintermediation: further changes in allocations can, on a forward looking basis, be expected to substantially change the product overlap between JD Sports and Footasylum and their competitors. It is the Parties' view this can [X].⁷¹ The Parties also submitted that the product overlap analysis has only been updated to March 2021 and does not

⁶⁸ Nike submitted that it excluded performance only footwear to the best of its ability. It said it excluded all golf shoes and track shoes for running. For football, it has only included indoor football footwear.

⁶⁹ Nike submitted that it filtered most accessories such as headwear out by manually excluding from the data set those sub-categories of apparel products related to headwear. However, as there was not single field to filter out all headwear in one go, Nike said there might be some headwear still contained in the data provided.

⁷⁰ Compass Lexecon (2021), [Supplementary SLC analysis](#), paragraph 6.6a

⁷¹ Compass Lexecon (2021),

cover prospective overlaps between the Parties and competitors. It noted that since its report, [REDACTED]⁷²; and

- (c) Growth in digital: this can be expected to have substantially changed the nature of product overlaps between retailers since the previous analysis, and the overlaps between the Parties' and other retailers' offerings prospectively.⁷³

68. The CMA has the following comments on the arguments made in paragraph 67:

- (a) DTC: It is the CMA's view that the purpose of this analysis is to look at the overlap between retailers and the Parties, and deliberately excludes Nike and adidas, since these suppliers clearly have 100% potential overlap of their own product range available through their DTC channel;
- (b) The objective of this analysis was to inform part of our assessment of closeness of competition, by investigating the similarity in retail offerings. There may be speculation over how this may change in the future, but other evidence which was available to the CMA in this Remittal is used to assess future competition; and
- (c) The CMA agrees that this shift may have resulted in changes between the previous inquiry and the Remittal, which is one reason the CMA has repeated the product overlap analysis with updated data. Since the data is wholesale, it covers products sold by retailers on all channels, so any such change will be reflected in the CMA's latest product overlap analysis.

69. In response to Working Papers, the Parties submitted that the significant reduction in online diversion ratios between the Parties demonstrates that even a relatively high degree of product overlap between the Parties has not prevented the diversion between them from falling substantially. The Parties argue, therefore, that relative consistency in product overlap is a poor proxy for consistent 'closeness' as measured by the diversion ratio.⁷⁴

70. The CMA agrees that all available evidence on closeness, including diversion ratios, should be considered to form an overall assessment on closeness of competition. The product overlap analysis forms part of our assessment of the similarity in retail offerings between retailers, which, in turn, forms part of our assessment of the strength of competition between retailers.

⁷² Compass Lexecon (2021), [Submission following Working Papers](#), paragraph 3.6

⁷³ Compass Lexecon (2021), [Supplementary SLC analysis](#), paragraph 6.6c

⁷⁴ Compass Lexecon (2021), [Submission following Working Papers](#), paragraph 3.7

Data and methodology

71. We followed the same methodology as the previous inquiry, whereby we use data supplied by Nike and adidas on the products they sell to each wholesale partner. The previous analysis was conducted using the six months to June 2019. For the purposes of this Remittal, we re-ran the analysis with the latest available data provided by Nike and adidas and analysed the six months to March 2021.
72. One of the main limitations raised by the Parties during the previous inquiry was the lack of a sales-weighted estimate of the product overlap.⁷⁵ In this remittal inquiry, we conducted a sales-weighted version of the analysis.
73. In the non-sales-weighted analysis, we flag products sold by both the Party and another retailer, and present the products sold by both the other retailer and the Party as a proportion of the total products sold by the Party. However, in the sales weighted version, we calculate the proportion of the Parties' sales (of eg. Nike footwear) that the products sold by both the retailer and the Party account for.⁷⁶
74. An advantage of sales-weighting as a robustness check is to see if we are under-weighting the importance of the overlap to the Parties in terms of the revenue they gain from these products. Indeed, the Parties' analysis of the Nike and adidas data shows that a relatively small number of products make up a large proportion of sales.⁷⁷

Results

75. We cover the results for the footwear and apparel markets separately, in turn. For each market, and for Nike and adidas separately, we present the results using a raw product count, as well as the sales-weighted results.

Footwear results

76. Table 3 shows the number of Nike footwear products sold by the Parties that were also sold by other retailers during the six months to March 2021. Of the [X] products sold by JD Sports, [X]% or less were sold by another individual retailer, with [X]% being sold by [X]. Footasylum sold [X], but a greater

⁷⁵ See Alix Partners (2019), [Response to product overlap working paper](#).

⁷⁶ As an example, for Nike footwear in comparing ASOS to JD, we summed up the JD revenue of all products that both ASOS and JD sell, and present this as a proportion of all JD Nike footwear sales.

⁷⁷ Alix Partners (2019), [Response to product overlap working paper](#), paragraph 2.9

Nike and adidas data shows that a relatively small number of products make up a large proportion of sales.⁸⁰

Results

77. We cover the results for the footwear and apparel markets separately, in turn. For each market, and for Nike and adidas separately, we present the results using a raw product count, as well as the sales-weighted results.

Footwear results

78. Table 3 shows the number of Nike footwear products sold by the Parties that were also sold by other retailers during the six months to March 2021. Of the [X] products sold by JD Sports, [X]% or less were sold by another individual retailer, with [X]% being sold by [X]. Footasylum sold [X], but a greater proportion of these were also sold by other individual retailers, with the highest being [X], selling [X]%.

Table 3: Number of Nike footwear products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of products	Retailer	Number of products	Proportion of products
JD Sports	[X]		Footasylum	[X]	
[X]	[X]	66%	[X]	[X]	87%
[X]	[X]	43%	[X]	[X]	76%
[X]	[X]	32%	[X]	[X]	64%
[X]	[X]	29%	[X]	[X]	43%
[X]	[X]	28%	[X]	[X]	40%
[X]	[X]	25%	[X]	[X]	32%
[X]	[X]	24%	[X]	[X]	31%
[X]	[X]	24%	[X]	[X]	25%
[X]	[X]	16%	[X]	[X]	23%
[X]	[X]	15%	[X]	[X]	20%

Source: CMA analysis of data received from Nike and adidas.

79. Table 4 shows the Nike footwear product overlap between the Parties and other retailers, weighted as a proportion of the Parties' own sales of Nike footwear products. Footasylum's sales-weighted product overlap with JD Sports is [X]%. JD Sports' sales-weighted product overlap with Footasylum is [X]%.

Table 4: Sales weighted proportion of Nike footwear products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of JD sales	Retailer	Number of products	Proportion of FA sales
JD Sports	[X]		Footasylum	[X]	
[X]	[X]	71%	[X]	[X]	92%
[X]	[X]	58%	[X]	[X]	87%

⁸⁰ [X].

Table 5: Number of Adidas footwear products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of products	Retailer	Number of products	Proportion of products
JD Sports	[REDACTED]		Footasylum	[REDACTED]	
[REDACTED]	[REDACTED]	27%	[REDACTED]	[REDACTED]	59%
[REDACTED]	[REDACTED]	24%	[REDACTED]	[REDACTED]	48%
[REDACTED]	[REDACTED]	23%	[REDACTED]	[REDACTED]	42%
[REDACTED]	[REDACTED]	20%	[REDACTED]	[REDACTED]	33%
[REDACTED]	[REDACTED]	14%	[REDACTED]	[REDACTED]	32%
[REDACTED]	[REDACTED]	10%	[REDACTED]	[REDACTED]	31%
[REDACTED]	[REDACTED]	9%	[REDACTED]	[REDACTED]	20%
[REDACTED]	[REDACTED]	7%	[REDACTED]	[REDACTED]	17%
[REDACTED]	[REDACTED]	6%	[REDACTED]	[REDACTED]	11%
[REDACTED]	[REDACTED]	5%	[REDACTED]	[REDACTED]	4%

Source: CMA analysis of data received from Nike and adidas.

79. Table 6 shows the adidas footwear product overlap between the Parties and other retailers, weighted as a proportion of the Parties' own sales of adidas footwear products. Footasylum's sales-weighted product overlap with JD Sports is [REDACTED]%. JD Sports' sales-weighted product overlap with Footasylum is [REDACTED]%.

Table 6: Sales weighted proportion of adidas footwear products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of JD sales	Retailer	Number of products	Proportion of FA sales
JD Sports	[REDACTED]		Footasylum	[REDACTED]	
[REDACTED]	[REDACTED]	22%	[REDACTED]	[REDACTED]	72%
[REDACTED]	[REDACTED]	19%	[REDACTED]	[REDACTED]	67%
[REDACTED]	[REDACTED]	19%	[REDACTED]	[REDACTED]	67%
[REDACTED]	[REDACTED]	16%	[REDACTED]	[REDACTED]	62%
[REDACTED]	[REDACTED]	14%	[REDACTED]	[REDACTED]	48%
[REDACTED]	[REDACTED]	13%	[REDACTED]	[REDACTED]	45%
[REDACTED]	[REDACTED]	13%	[REDACTED]	[REDACTED]	37%
[REDACTED]	[REDACTED]	11%	[REDACTED]	[REDACTED]	28%
[REDACTED]	[REDACTED]	7%	[REDACTED]	[REDACTED]	10%
[REDACTED]	[REDACTED]	4%	[REDACTED]	[REDACTED]	5%

Source: CMA analysis of data received from Nike and adidas.

Apparel results

80. Table 7 shows the number of Nike apparel products sold by the Parties that were also sold by other retailers during the six months to March 2021. Of the [REDACTED] products sold by JD Sports, [REDACTED]% or less were sold by another individual retailer, with [REDACTED]% being sold by [REDACTED]. Footasylum sold [REDACTED], but a greater proportion of these were also sold by other individual retailers, with [REDACTED] selling [REDACTED].

Table 7: Number of Nike apparel products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of products	Retailer	Number of products	Proportion of products
JD Sports	[X]		Footasylum	[X]	
[X]	[X]	64%	[X]	[X]	79%
[X]	[X]	38%	[X]	[X]	63%
[X]	[X]	33%	[X]	[X]	58%
[X]	[X]	31%	[X]	[X]	52%
[X]	[X]	29%	[X]	[X]	49%
[X]	[X]	23%	[X]	[X]	40%
[X]	[X]	16%	[X]	[X]	34%
[X]	[X]	16%	[X]	[X]	18%
[X]	[X]	13%	[X]	[X]	16%
[X]	[X]	6%	[X]	[X]	16%

Source: CMA analysis of data received from Nike and adidas.

81. Table 8 shows the Nike apparel product overlap between the Parties and other retailers, weighted as a proportion of the Parties' own sales of Nike apparel products. Footasylum's sales-weighted product overlap with JD Sports is [X]%. JD Sports' sales-weighted product overlap with Footasylum is [X]%.

Table 8: Sales weighted proportion of Nike apparel products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of JD sales	Retailer	Number of products	Proportion of FA sales
JD Sports	[X]		Footasylum	[X]	
[X]	[X]	59%	[X]	[X]	87%
[X]	[X]	48%	[X]	[X]	73%
[X]	[X]	44%	[X]	[X]	69%
[X]	[X]	40%	[X]	[X]	62%
[X]	[X]	33%	[X]	[X]	60%
[X]	[X]	32%	[X]	[X]	59%
[X]	[X]	30%	[X]	[X]	42%
[X]	[X]	15%	[X]	[X]	25%
[X]	[X]	13%	[X]	[X]	21%
[X]	[X]	11%	[X]	[X]	19%

Source: CMA analysis of data received from Nike and adidas.

82. Table 9 shows the number of adidas apparel products sold by the Parties that were also sold by other retailers during the six months to March 2021. Of the [X] products sold by JD Sports, [X]% or less were sold by another individual retailer, with [X]% being sold by [X]. Footasylum sold [X], but a greater proportion of these were also sold by other individual retailers, with [X] selling [X].

Table 9: Number of adidas apparel products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of products	Retailer	Number of products	Proportion of products
JD Sports	[REDACTED]		Footasylum	[REDACTED]	
[REDACTED]	[REDACTED]	29%	[REDACTED]	[REDACTED]	54%
[REDACTED]	[REDACTED]	28%	[REDACTED]	[REDACTED]	53%
[REDACTED]	[REDACTED]	27%	[REDACTED]	[REDACTED]	49%
[REDACTED]	[REDACTED]	15%	[REDACTED]	[REDACTED]	36%
[REDACTED]	[REDACTED]	11%	[REDACTED]	[REDACTED]	17%
[REDACTED]	[REDACTED]	7%	[REDACTED]	[REDACTED]	7%
[REDACTED]	[REDACTED]	6%	[REDACTED]	[REDACTED]	2%
[REDACTED]	[REDACTED]	3%	[REDACTED]	[REDACTED]	0%
[REDACTED]	[REDACTED]	2%	[REDACTED]	[REDACTED]	0%
[REDACTED]	[REDACTED]	1%	[REDACTED]	[REDACTED]	0%

Source: CMA analysis of data received from Nike and adidas.

83. Table 10 shows the adidas apparel product overlap between the Parties and other retailers, weighted as a proportion of the Parties' own sales of adidas apparel products. Footasylum's sales-weighted product overlap with JD Sports is [REDACTED]%. JD Sports' sales-weighted product overlap with Footasylum is [REDACTED]%.

Table 10: Sales weighted proportion of adidas apparel products sold by the Parties that were also sold by other retailers (six months to March 2021)

Retailer	Number of products	Proportion of JD sales	Retailer	Number of products	Proportion of FA sales
JD Sports	[REDACTED]		Footasylum	[REDACTED]	
[REDACTED]	[REDACTED]	11%	[REDACTED]	[REDACTED]	71%
[REDACTED]	[REDACTED]	10%	[REDACTED]	[REDACTED]	63%
[REDACTED]	[REDACTED]	8%	[REDACTED]	[REDACTED]	58%
[REDACTED]	[REDACTED]	5%	[REDACTED]	[REDACTED]	52%
[REDACTED]	[REDACTED]	4%	[REDACTED]	[REDACTED]	26%
[REDACTED]	[REDACTED]	4%	[REDACTED]	[REDACTED]	19%
[REDACTED]	[REDACTED]	1%	[REDACTED]	[REDACTED]	1%
[REDACTED]	[REDACTED]	1%	[REDACTED]	[REDACTED]	0%
[REDACTED]	[REDACTED]	1%	[REDACTED]	[REDACTED]	0%
[REDACTED]	[REDACTED]	1%	[REDACTED]	[REDACTED]	0%

Source: CMA analysis of data received from Nike and adidas.

Third party views on closeness

84. In this section we cover retailers' views on the closeness of competition between the Parties and other competitors in the markets for sports-inspired casual footwear and apparel. We asked third party retailers whether, since March 2020, each of JD Sports or Footasylum had become a weaker or stronger competitor to them. With respect to the strength of competition, third parties were asked to comment on (i) the products they sell; (ii) the retail offer and experiences (for example, presentation and functionality of the website, and store environment); (iii) the marketing and advertising; and (iv) the pricing, discounts, and offers provided. In this section we cover responses to

this question specifically, as well as any unprompted views on closeness expressed in other parts of the RFI responses by competitors.^{78, 79}

85. We also asked third party retailers to list up to 10 retailers which they consider to be the closest competitors to each of JD Sports and Footasylum, for the footwear and apparel markets, respectively. There are limitations to this analysis as we are asking competitors to tell us about the constraints on the Parties. Closer competitors to the Parties should have a more informed view on this question. In addition, we have significantly fewer responses than in the previous inquiry.⁸⁰

Multi-channel retailers

Foot Locker

86. Foot Locker said that, in general, it did not consider each of JD Sports and Footasylum to have become stronger or weaker competitors in the UK market since March 2020. When scoring the Parties and their competitors on closeness of competition out of 10, it gave both Parties a score of 9 and gave itself a score of 7. It also gave Size? and Sports Direct a score of 7 for both Parties. It added that in its experience JD Sports appears to invest significantly more in marketing and advertising than Foot Locker does, although it also said this is partly a reflection of the larger size of JD Sports' UK business.⁸¹

Frasers Group

87. [X]. Frasers Group said it believes that there will have been a marked increase in demand for lifestyle-type products as consumers have moved to working from home. Frasers Group submitted that this has resulted in even less competition as weaker retailers have been cut off by the most important brands for supply of the most desirable products.⁸²
88. [X].⁸³

⁷⁸ Note that [X] have not responded to our RFI.

⁷⁹ [X] did respond to our RFI, but in relation to closeness of competition, either did not know or did not consider itself in a position to comment on the extent to which the Parties had become a stronger or weaker competitor.

⁸⁰ In the previous inquiry, we received a total of 21 responses with quantitative scores over Phase 1 and 2. In this remittal so far, we have received 10 responses which included quantitative scores on closeness.

⁸¹ Foot Locker (2021), [Response to RFI1](#), paragraphs 6.1 – 6.2.

⁸² Frasers Group (2021), [Response to RFI1](#), pages 19-20.

⁸³ Frasers Group (2021), [Response to RFI1](#), pages 20-21.

Schuh

89. Schuh submitted the following responses relating to changes in the strength of competition:⁸⁴
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].
 - (d) Pricing, discounts, and offers: For Schuh's branded products, pricing is broadly similar as they sell at initial suggested retail price. Schuh said that all businesses ran various promotions during lockdown periods particularly when trading online only.
90. In footwear, Schuh views JD Sports' closest competitors to be Footasylum and Foot Locker, giving them both scores of [REDACTED]. It also gave Nike DTC and adidas DTC [REDACTED] scores of [REDACTED] for JD Sports. For Footasylum in the footwear market, Schuh listed Foot Locker as its closest competitor with a score of [REDACTED], and also gave Size? a [REDACTED] score of [REDACTED]. The next closest competitor for both Parties in footwear was Sports Direct, for which Schuh gave a score of [REDACTED] to both Parties.⁸⁵
91. In apparel, Schuh views adidas and Nike DTC to be JD Sports' closest competitors, giving them both scores of [REDACTED], whereas for Footasylum it views Foot Locker to be the closest competitor, with a score of [REDACTED]. The next closest competitor for both Parties in apparel was Sports Direct, for which Schuh gave a score of [REDACTED] to both Parties.⁸⁶

Office

92. [REDACTED]⁸⁷

John Lewis

93. John Lewis submitted that its primary focus on Sports footwear relates to "performance" products, and the casual / streetwear market that the Parties target is lower in terms of focus [REDACTED] for John Lewis. John Lewis also said in

⁸⁴ Schuh (2021), [Response to RFI1](#), page 2.

⁸⁵ Schuh (2021), [Response to RFI1](#), pages 2-3.

⁸⁶ Schuh (2021), [Response to RFI1](#), pages 2-3.

⁸⁷ [REDACTED] [Response to RFI1](#), page 2.

its view there has been no significant change in its competitive position since March 2020.⁸⁸

94. [X].⁸⁹

Clarks

95. Clarks submitted that [X].⁹⁰

96. In footwear, Clarks views [X].

H&M

97. H&M submitted that [X].⁹¹

98. H&M regards [X].⁹²

[X]

99. [X] said it views Foot Locker and Offspring to be the closest competitor to both Parties in the footwear market, giving both a score of 5.⁹³

Deichmann

100. Deichmann views Foot Locker to be the closest competitor to both Parties.⁹⁴

Online-only retailers

Very

101. Very submitted that [X].⁹⁵

102. Very views [X].⁹⁶

⁸⁸ John Lewis (2021), [Response to RF11](#), page 3.

⁸⁹ John Lewis (2021), [Response to RF11](#), page 4.

⁹⁰ Clarks (2021), [Response to RF11](#), page 2.

⁹¹ H&M (2021), [Response to RF11](#), page 3.

⁹² H&M (2021), [Response to RF11](#), page 4.

⁹³ [X] (2021), [Response to RF11](#), page 2.

⁹⁴ Deichmann (2021), [Response to RF11](#), page 1.

⁹⁵ Very Group (2021), [Response to RF11](#), page 2.

⁹⁶ Very Group (2021), [Response to RF11](#), page 2.

ASOS

103. [REDACTED].⁹⁷
104. [REDACTED].⁹⁸
105. [REDACTED].⁹⁹
106. [REDACTED].¹⁰⁰ [REDACTED].¹⁰¹

Zalando

107. Zalando said it hadn't noticed any change since March 2020 regarding the Parties' competitive position towards Zalando. Zalando said the main shift it has noticed in the market, overall, is a shift from offline to online competition.¹⁰²
108. In footwear, Zalando views the Parties as [REDACTED] competitors to each other, giving a score of [REDACTED] to Footasylum for its closeness to JD Sports and a score of [REDACTED] to JD Sports for its closeness to Footasylum. Zalando also views Foot Locker as a [REDACTED] competitor, giving it a score of [REDACTED] for both Parties. In apparel, Zalando views the Parties as [REDACTED] competitors to each other, giving a score of [REDACTED] to Footasylum for its closeness to JD Sports and a score of [REDACTED] to JD Sports for its closeness to Footasylum.¹⁰³

M and M Direct

109. M and M Direct submitted that JD Sports has most certainly become a much stronger competitor due to its online focus over the last year, whereas Footasylum are a true retailer, with limited online resource and knowledge. M and M Direct said in addition that JD Sports remain the main destination for Nike and adidas in the UK.¹⁰⁴

Farfetch

110. [REDACTED].¹⁰⁵

⁹⁷ ASOS (2021), [Response to RF11](#), page 2.

⁹⁸ ASOS (2021), [Response to RF11](#), page 2.

⁹⁹ ASOS (2021), [Response to RF11](#), page 2.

¹⁰⁰ ASOS (2021), [Response to RF11](#), page 2.

¹⁰¹ ASOS (2021), [Response to RF11](#), page 3.

¹⁰² Zalando (2021), [Response to RF11](#), page 2.

¹⁰³ Zalando (2021), [Response to RF11](#), page 2-5.

¹⁰⁴ M and M Direct (2021), [Response to RF11](#), page 3.

¹⁰⁵ Farfetch (2021), [Response to RF11](#), page 4.

Shares of supply

111. In this section, we assess the market shares of suppliers in the sports-inspired casual footwear and apparel markets. We look at shares of supply as it gives an indication of each retailers' presence in the two respective markets.
112. In some markets where products are very similar, measures of concentration like market shares can usefully inform an assessment of the structural change as a result of a merger. But in other markets, where products are more differentiated, not all firms within a market compete with each other in the same way.¹⁰⁶ As such, within that market some firms will be closer competitors than others. In these cases, shares provide some relevant evidence but are not as informative about the effect of a merger, as such shares do not fully capture the closeness of competition between firms.
113. For the purposes of making an overall judgement on competition in each market, we place relatively more weight on other evidence on the extent to which the Parties compete closely, and the strength of constraints imposed by other retailers in the market.

Parties' views

114. In response to Working Papers, the Parties submitted that diversion ratios have changed significantly between Phase 2 and Remittal. The Parties said in circumstances where diversion ratios are volatile, an understanding of current and prospective market structure can be informative of the strength of competitive constraints, including the materiality of the constraint imposed by Footasylum.¹⁰⁷
115. The Parties submitted that while they agree that market shares do not fully capture the closeness of competition, [X] share of each brand's relevant product ([X]) is a key determinant of its closeness of competition with rivals.¹⁰⁸ It further submitted that market developments affecting [X] share of branded supply can be an important indicator of future closeness. It said that Nike's announced DTC target of 60% should result in [X]. The Parties argue the CMA should still be in a position to analyse [X] current and prospective branded share using information from the brands.^{109, 110}

¹⁰⁶ In addition, delineating markets in this type of differentiated sector can be somewhat artificial which can make calculating market shares difficult.

¹⁰⁷ Compass Lexecon (2021), [Submission following Working Papers](#), paragraph 3.3a

¹⁰⁸ Compass Lexecon (2021), [Supplementary SLC analysis](#), paragraph 6.3a

¹⁰⁹ Compass Lexecon (2021), [Submission following Working Papers](#), paragraph 3.3b

¹¹⁰ See also Compass Lexecon (2021), [Supplementary SLC analysis](#), paragraph 6.3a-d

116. The CMA acknowledges that market developments may change the closeness of competition between the Parties. However, the purpose of this market share analysis is to provide a snapshot of the shares of supply using the most recent and complete data at the time of the remittal inquiry. It is used to form part of our assessment of current competition in chapters 8 and 9. We believe it is not feasible to calculate market shares on the same basis for future periods, and have instead used other evidence to assess future competition.
117. With regard to the CMA using a narrower set of products in calculating market shares, the Parties submitted [REDACTED].¹¹¹ The CMA based this decision on [REDACTED].¹¹²

Data and methodology

118. For the purposes of the Remittal, we asked retailers to provide their UK revenue data covering the sports-inspired casual footwear and apparel markets, split by online and instore distribution channels. Using this data from retailers, we calculated shares of supply in the relevant markets for the latest full calendar year of data available (2020).
119. We estimated shares of supply for the two relevant markets – sports-inspired casual footwear and apparel. There are several limitations with these market shares including:
- (a) in a differentiated good market, market shares will not fully account for the constraints between retailers, due to the existence of other imperfect but close substitutes;
 - (b) there is not a clear boundary between products inside and outside the market;
 - (c) it is unlikely that all market participants hold data in categories that precisely match the sports-inspired casual footwear and apparel market definitions that we have adopted.
120. In the previous inquiry, results from two methodologies were presented. This was due to the fact that some retailers, but in particular Sports Direct, presented several different figures covering different product sets. [REDACTED]. As a result, this narrower set of figures provided by Sports Direct were used to calculate shares of supply in this remittal, and hence only one set of results are presented here.

¹¹¹ Compass Lexecon (2021), [Submission following Working Papers](#), paragraph 3.2

¹¹² [REDACTED]

Results

121. We present the results for footwear and then apparel.^{113, 114, 115, 116}

Footwear results

122. Table 11 shows the market shares for sports-inspired casual footwear for the calendar year 2020.

Table 11: UK market shares for sports-inspired casual footwear in calendar year 2020

Retailer	Market segment		
	All channels	Instore	Online
JD Sports	[20-30]	[40-50]	[20-30]
Nike	[10-20]	[5-10]	[20-30]
Office	[5-10]	[5-10]	[5-10]
adidas	[5-10]	[0-5]	[5-10]
Foot Locker	[5-10]	[5-10]	[5-10]
Footasylum	[0-5]	[5-10]	[0-5]
ASOS	[0-5]	[0-5]	[5-10]
Schuh	[0-5]	[0-5]	[0-5]
Very	[0-5]	[0-5]	[5-10]
M and M Direct	[0-5]	[0-5]	[0-5]
Other	[10-20]	[10-20]	[10-20]
JD + FA combined	[30-40]	[50-60]	[20-30]

Source: CMA analysis of Parties' and third parties' data.

Note: Other includes (in order) Sports Direct, Amazon, Primark, Vans, Next, Decathlon, Clarks, Converse, Sole Trader, New Balance, Deichmann, Zalando, Zara, Puma, Under Armour, The North Face, Asics, Farfetch, and John Lewis.

123. The results in Table 11 show that across all distribution channels in the UK, JD Sports is the largest retailer of sports-inspired casual footwear, with a [20-30]% share. The next largest competitors are Nike ([10-20]%), Office ([5-10]%), adidas ([5-10]%), and Foot Locker ([5-10]%). Footasylum is the sixth largest, and significantly smaller than JD Sports, with a [0-5]% share across all channels. JD Sports is the largest retailer of sports-inspired casual footwear in both the instore and online channels, but particularly large in the instore channel, with a [40-50]% share. The Parties' combined instore share

¹¹³ [X] are no longer active in the market, so whilst they were included in the 2018 figures of the previous inquiry, they are excluded from the 2020 figures for the remittal inquiry.

¹¹⁴ [X] were not included in the 2018 market shares presented in the previous inquiry, but we asked them for revenue data in this remittal. [X] figures are included, but [X] is excluded since they told us they were not able to provide revenue data split out according to our relevant market definition.

¹¹⁵ [X] were included in the 2018 market shares presented in the previous inquiry, but did not respond with revenue figures in this remittal. As we believe they remain in the market, we have included figures in the 2020 market shares, using 2018 figures applying the overall market growth rates of each channel (online and instore) for apparel and footwear separately to estimate 2020 figures for [X].

¹¹⁶ [X] provided us with 2020 revenue data split by online and instore but not by footwear and apparel. We applied the footwear/apparel split from the data used in the 2018 market shares presented in the previous inquiry to the 2020 figures supplied to us, to estimate footwear and apparel revenue figures for [X] in 2020.

([50-60]%) is higher than its combined online share ([20-30]%). Finally, the Parties' combined share across all channels is [30-40]%.

Apparel results

124. Table 12 shows the market shares for sports-inspired casual apparel for the calendar year 2020.

Table 12: UK market shares for sports-inspired casual apparel in calendar year 2020

<i>Retailer</i>	<i>Market segment</i>		
	<i>All channels</i>	<i>Instore</i>	<i>Online</i>
JD Sports	[30-40]	[40-50]	[20-30]
Primark	[10-20]	[20-30]	[0-5]
Nike	[5-10]	[10-20]	[5-10]
M and M Direct	[5-10]	[0-5]	[10-20]
adidas	[5-10]	[0-5]	[5-10]
ASOS	[0-5]	[0-5]	[5-10]
Footasylum	[0-5]	[0-5]	[0-5]
Very	[0-5]	[0-5]	[5-10]
Decathlon	[0-5]	[5-10]	[0-5]
Next	[0-5]	[0-5]	[5-10]
Other	[10-20]	[5-10]	[10-20]
JD + FA combined	[40-50]	[40-50]	[30-40]

Source: CMA analysis of Parties' and third parties' data.

Note: Other includes (in order) The North Face, Sports Direct, Under Armour, Amazon, Vans, Foot Locker, Zalando, Puma, New Balance, Converse, John Lewis, Schuh, Farfetch, and Asics.

125. The results in Table 12 show that across all distribution channels in the UK, JD Sports is the largest retailer of sports-inspired casual apparel, with a [30-40]% share. The next largest competitors are Primark ([10-20]%), Nike ([5-10]%), M and M Direct ([5-10]%), and adidas ([5-10]%). Footasylum is the sixth largest, and significantly smaller than JD Sports, with a [0-5]% share across all channels. JD Sports is the largest retailer of sports-inspired casual apparel in both the instore and online channels, but particularly large in the instore channel, with a [40-50]% share. The Parties' combined instore share ([40-50]%) is higher than its combined online share ([30-40]%). Finally, the Parties' combined share across all channels is [40-50]%.

Appendix D: Footasylum's Financial Position

Chronology of events in relation to Footasylum's discussion with the primary lender

1. By way of background information, we set out below the chronology of events in relation to Footasylum's discussion with the primary lender.

Pre-March 2020

2. The primary lender told us that it agreed to [REDACTED] due to Footasylum's [REDACTED].¹

March 2020

3. Footasylum told us that on [REDACTED].²
4. Footasylum's notes of a [REDACTED].³

April 2020

5. Footasylum told us [REDACTED].
6. We note [REDACTED].⁴
7. The primary lender told us that following the closure of non-essential stores in late March 2020, Footasylum provided it with a revised forecast that showed [REDACTED].⁵
8. On 24 April 2020 (and during the Phase 2 inquiry), the Parties submitted an analysis to the CMA, undertaken by its external advisers, based on Footasylum's management financial scenario planning, of the impact of COVID-19 on Footasylum's ability to compete in the absence of the Merger. The analysis presented three scenarios [REDACTED]. In each scenario, [REDACTED].

¹ Primary lender response to RFI, question 1.

² Footasylum [response](#) to section 109 dated 6 April 2021, question 5

³ Footasylum [response](#) to section 109 dated 6 April 2021, [question 7](#)

⁴ Footasylum [response](#) to section 109 dated 6 April 2021, [question 7](#)

⁵ Primary lender response to RFI, question 3 (a).

9. On 28 April 2020, the CMA received an email from Footasylum that [REDACTED]. Footasylum also stated [REDACTED].^{6,7}

May 2020

10. The primary lender told us that [REDACTED]. It noted that under the CMA's Interim Order⁸, JD Sports would have to ensure that Footasylum remained a going concern, but also noted [REDACTED].⁹
11. Footasylum told us that in May 2020, [REDACTED].^{10,11}
12. The CMA published its Final Report on 6 May 2020, and found that a full divestiture remedy, requiring JD Sports to sell Footasylum to a suitable purchaser, was the only effective remedy.¹² The Tribunal issued its judgment on 13 November 2020, and remitted the case to the CMA.¹³

June 2020 - February 2021

13. Between [REDACTED], Footasylum told us [REDACTED].
14. The primary lender told us that [REDACTED]. It also told us that [REDACTED].¹⁴
15. The primary lender told us that in [REDACTED], and the uncertainty of Footasylum's ownership, which was expected to be resolved during 2021. Further, the primary lender told us that based on Footasylum's November 2020 forecasts, [REDACTED].¹⁵
16. In an email on [REDACTED] to the primary lender, Footasylum noted [REDACTED].¹⁶
17. Footasylum told us that [REDACTED].¹⁷ [REDACTED].¹⁸
18. Footasylum told us that, [REDACTED].¹⁹

⁶ Email from Eversheds Sutherland 28 April 2020.

⁷ [REDACTED].

⁸ During our investigation, JD Sports has been ordered to maintain Footasylum as a going concern and make sufficient resources available for the development of its business (see paragraph 5(b) of the Interim Order).

⁹ Primary lender response to RFI, question 3 (a) and question 4 (a).

¹⁰ Footasylum [response](#) to section 109 dated 6 April 2021, [question 7](#)

¹¹ [REDACTED].

¹² Phase 2 Report, paragraph 13.162.

¹³ [JD Sports Fashion plc v Competition and Markets Authority](#) [2020] CAT 24 (Judgment).

¹⁴ Primary lender response to RFI, question 3 (a).

¹⁵ Primary lender response to RFI, questions 7 and 8.

¹⁶ Footasylum [response](#) to section 109 dated 6 April 2021, [question 7](#)

¹⁷ Footasylum response to s109, question 6, [Annex 184 – Multicurrency revolving facility agreement dated 12 February 2021](#)

¹⁸ Footasylum response to RFI dated 6 April 2021, question 6.

¹⁹ Footasylum response to RFI dated 6 April 2021, question 6.

19. Footasylum told us that the [✂].²⁰ Figure 1 shows the covenant forecast from January 2021 to January 2023.

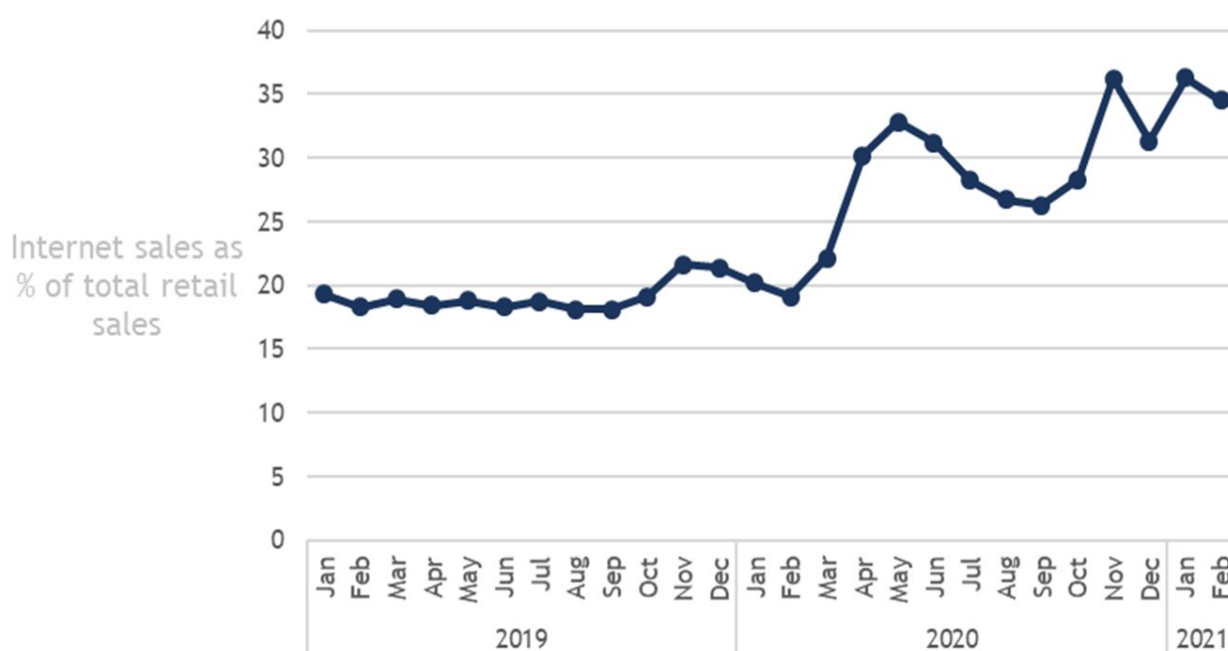
[✂]

²⁰ Footasylum response to RFI dated 6 April 2021, question 6.

Appendix E: Research on consumer retail behaviour

1. We assessed third party research evidence to understand consumer shopping behaviour during the pandemic and future intentions coming out of the pandemic, particularly for 16-24 year olds and those shopping for sports clothing and footwear.
2. In particular we drew on the ONS Opinions and Lifestyle Survey, and two reports from Mintel (COVID-19 - Retail and E-commerce: A Year On - UK - April 2021, and Footwear retailing in the UK – April 2021).
3. Evidence from ONS and Mintel show that during the Covid pandemic, there was a large shift to online purchasing across retail, and footwear and sports fashion was no exception. Figure 1 shows internet sales as a percentage of total retail sales¹.

Figure 1: Internet sales as a percentage of total retail sales, monthly 2019-21



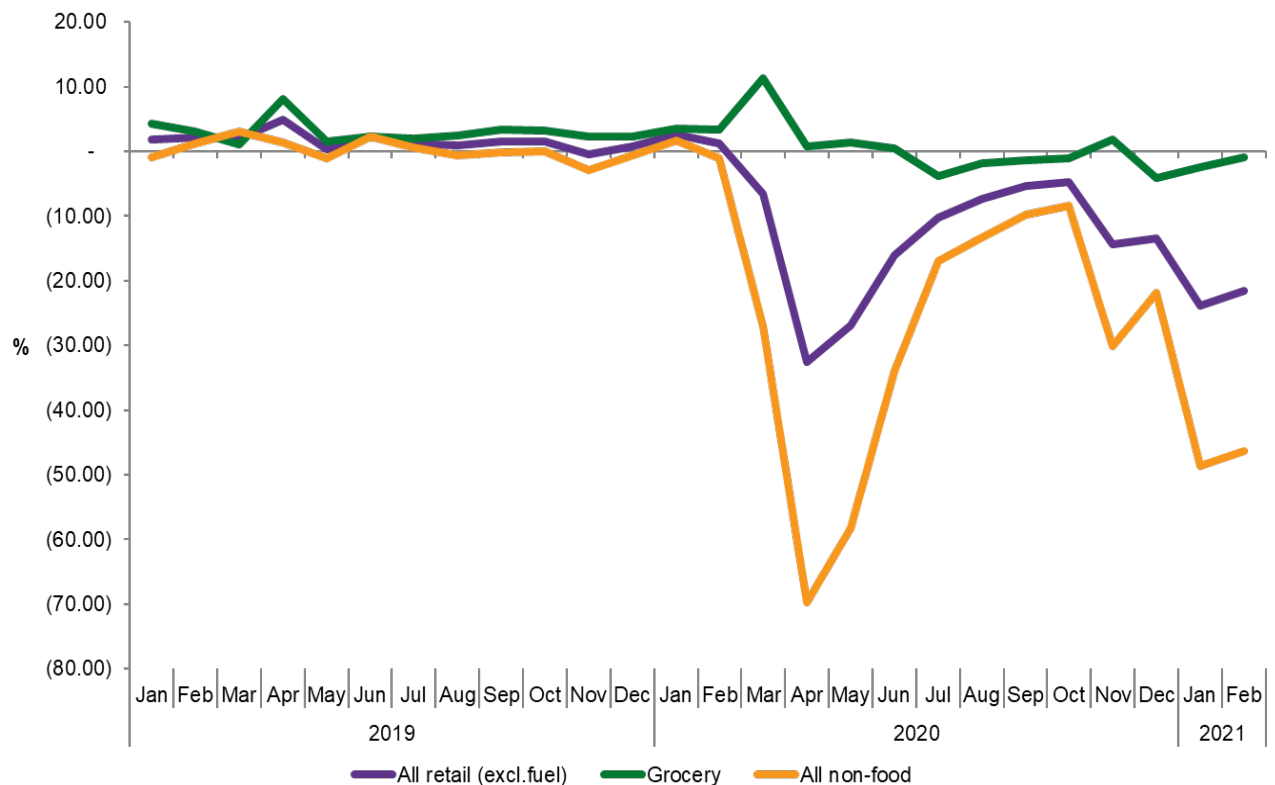
Source: ONS/Mintel

4. Mintel estimates that in-store retail sales declined by 24.3% when excluding food and groceries in 2020 (see Figure 2).²

¹ Mintel report: Footwear retailing UK - April 2021 <https://www.mintel.com/>

² Mintel report: COVID-19 - Retail and E-commerce: A Year On - UK - April 2021 <https://www.mintel.com/>

Figure 2 Estimated growth/decline in in-store sales by major category Jan 2019 – Feb 2021



Source: Office for National Statistics/Mintel COVID-19 Retail and E-commerce: A Year On April 2021

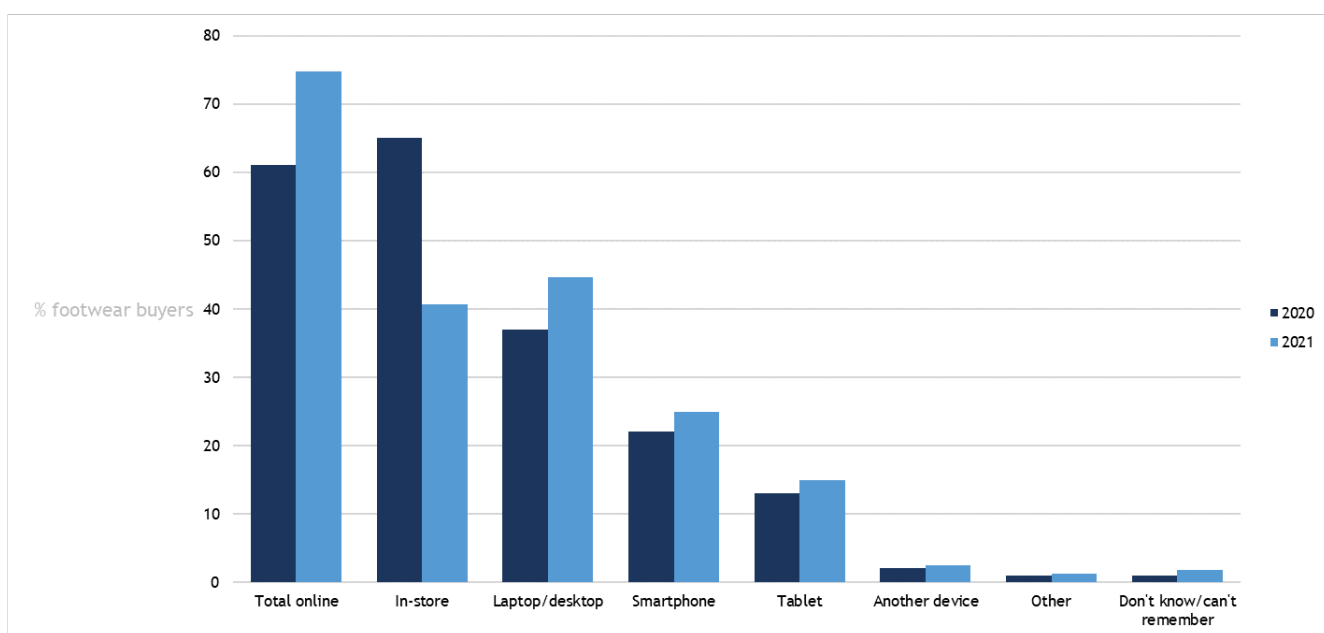
5. 54% of respondents in the ONS survey³ said they had done more online shopping for goods (excluding groceries) since the start of the pandemic.
6. There has been a significant increase in the number of consumers shopping for footwear online among all consumers including those aged 16-24. In 2019, prior to the COVID-19 outbreak, just over half (54%) of people shopped online and three quarters (73%) bought footwear in-store. However, this trend has now reversed with just two in five (41%) shopping for footwear in-store over the last year and three quarters (75% all consumers and 73% 16-24's) shopping for footwear online when surveyed in 2021.⁴

³ ONS (2021) [Coronavirus and the Social Impacts on Great Britain 10-14 March 2021](#), Opinions and Lifestyle Survey, Table 1: Changes in behaviour during and after the coronavirus pandemic

⁴ Mintel report: Footwear retailing UK - April 2021 <https://www.mintel.com/>

Figure 3: Channels used for footwear purchasing May 2020 – Feb 2021

"How have you bought footwear in the last 12 months? Please select all that apply."

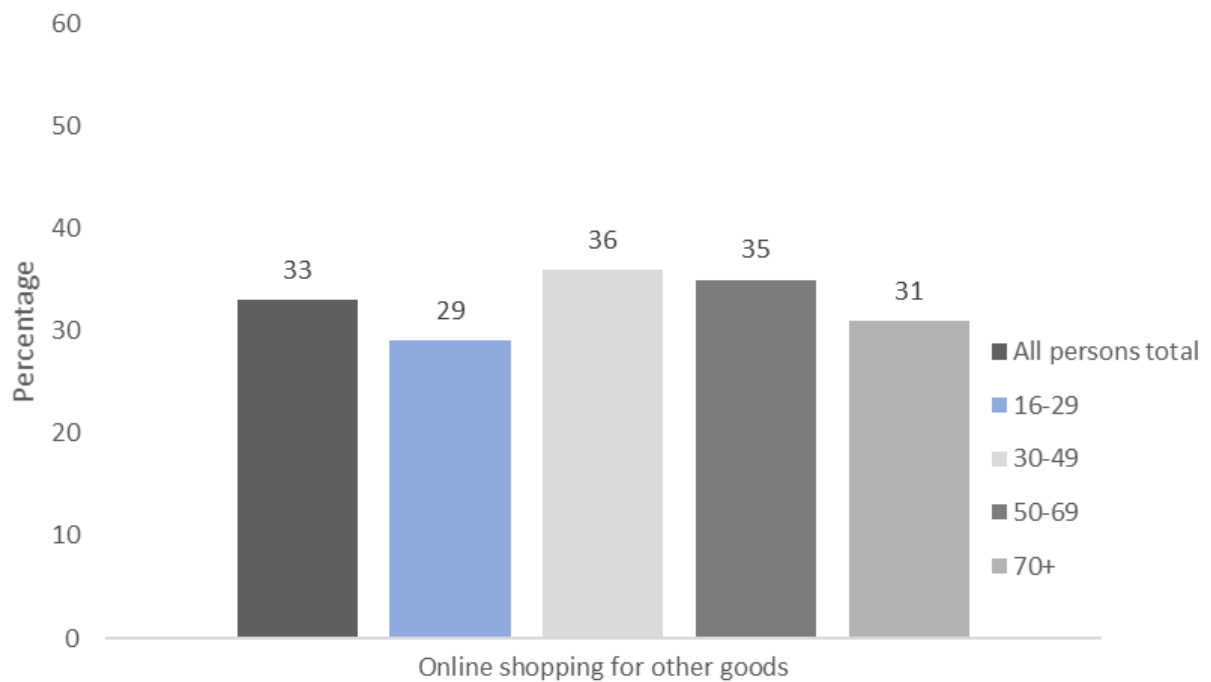


Base: 1,602 internet users aged 16+ who have purchased footwear in the last 12 months . Source: Mintel/Lightspeed

Source: Office for National Statistics/Mintel COVID-19 Retail and E-commerce: A Year On April 2021

7. The research also indicates that some proportion of the shift to online shopping is expected to remain as Covid restrictions ease. ONS research shown in Figure 4 shows that approximately a third of young people (16-29) plan to do more of their non-grocery shopping online compared to what they did before the pandemic (an even greater proportion of all other age groups said they would do more online shopping post-pandemic).

Figure 4: People saying they will keep online shopping for goods (excluding groceries) more often after the COVID-19 pandemic. Population estimates by age group



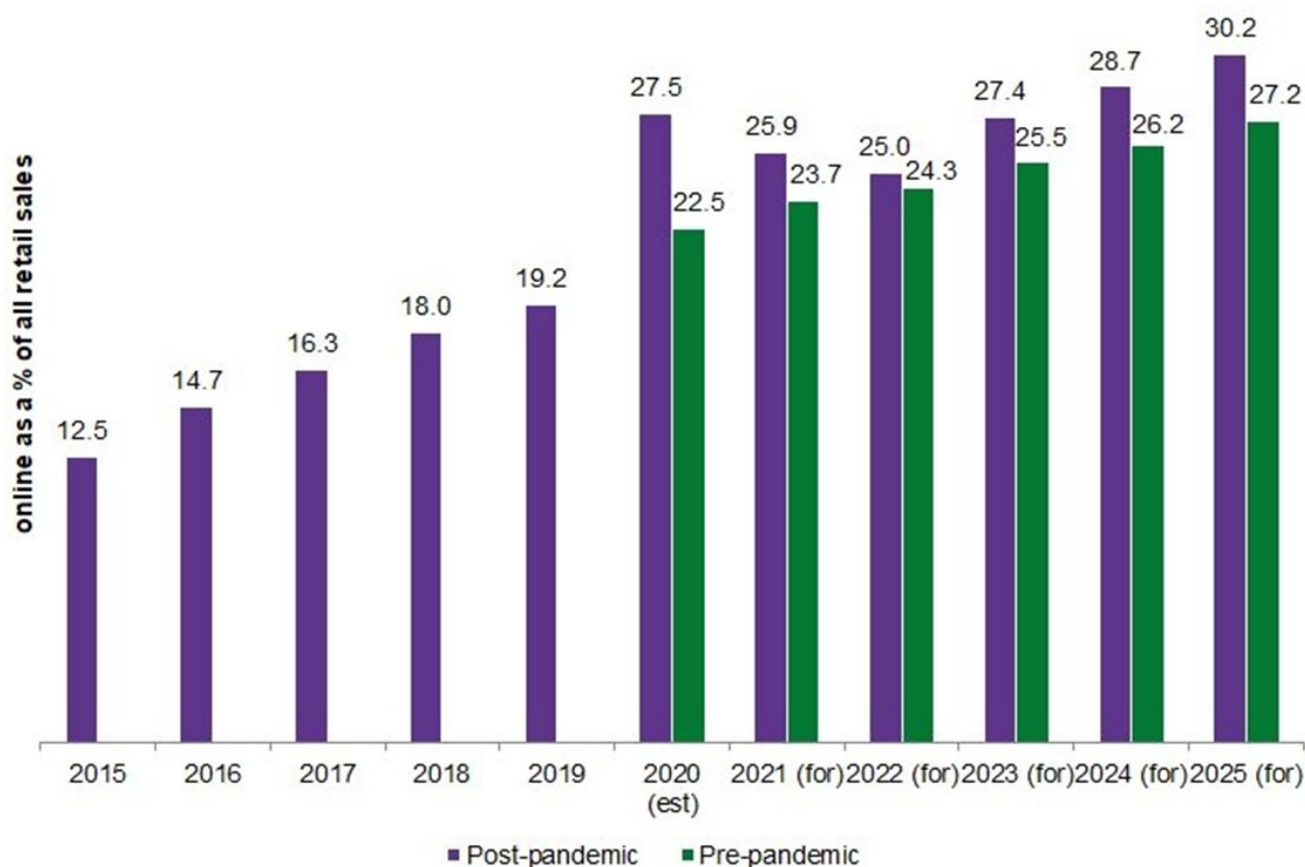
Source: Opinions and Lifestyle Survey (COVID-19 module), 10 to 14 March 2021

Bases: n= 4,490 (All persons), 700 (16-29), 1,200 (30-49), 1,580 (50-69), 1,010 (70+)

8. Whilst survey data suggests quite a large shift to online shopping post-pandemic, in terms of actual sales, retail analysis by Mintel expects this will increase by 3 percentage points compared to pre pandemic forecasts by 2025. Mintel expect online sales to account for 30.2% of all retail sales by 2025 compared to 27.2% in their pre-pandemic forecast (see Figure 5).⁵

⁵ Mintel report: COVID-19 - Retail and E-commerce: A Year On - UK - April 2021 <https://www.mintel.com/>

Figure 5: Forecast online sales as a percentage of all retail sales, pre and post pandemic, 2020-25 – (2015-19 ONS recorded %)



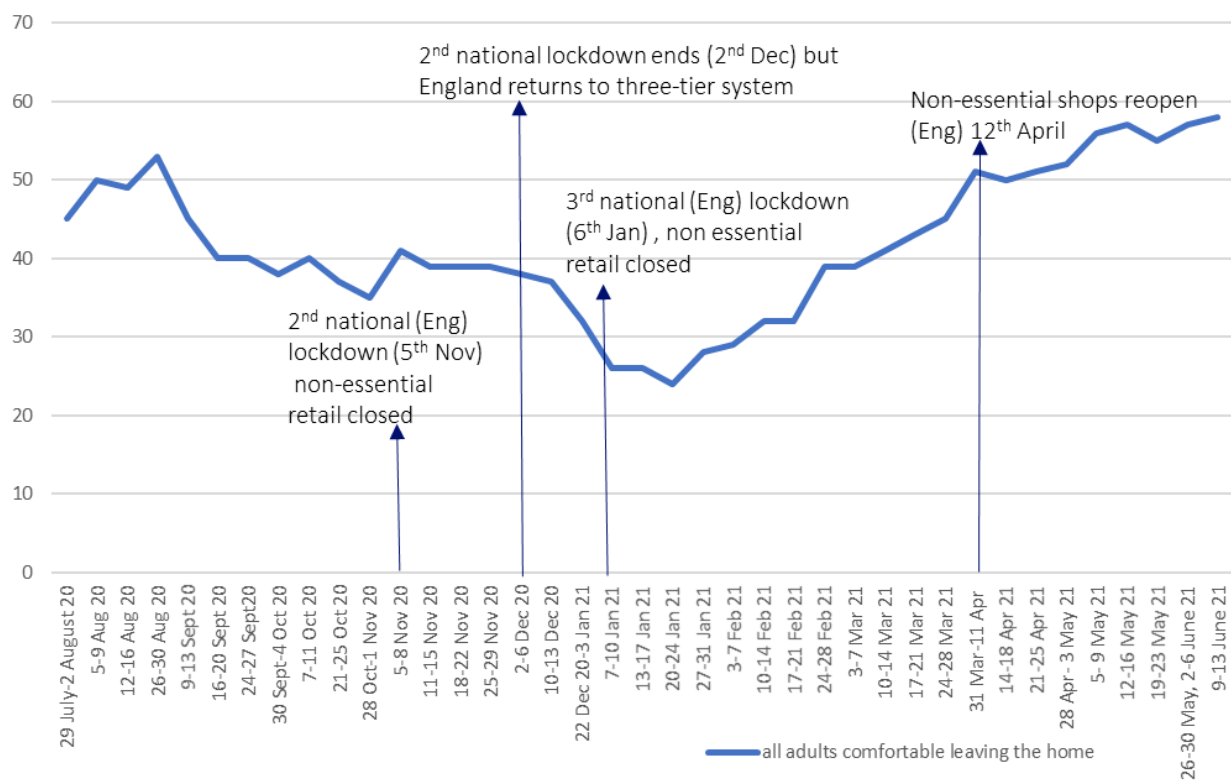
Source: ONS/Mintel analysis April 2021

9. ONS and Mintel research shows comfort levels around leaving the home and spending time in stores have reached their most positive levels since summer 2020 (when ONS began tracking this) with 59% of adults (16-20 June 2021)⁶ saying they are now either comfortable or very comfortable leaving the home. This compares to a low of 24% recorded in January 2021. Younger people are the most comfortable leaving the home with two-thirds of 16-29 year olds now saying they are comfortable or very comfortable leaving the home. Mintel reports a downward trend in the percentage of UK internet users trying to limit the time they spend in-store from April 2020-21 as reported levels of concern about the pandemic have also decreased.⁷

⁶ ONS (2021) [Coronavirus and the Social Impacts on Great Britain 16-21 June 2021, Opinions and Lifestyle survey, Table 6: Leaving home](#)

⁷ Mintel report: COVID-19 - Retail and E-commerce: A Year On - UK - April 2021 <https://www.mintel.com/>

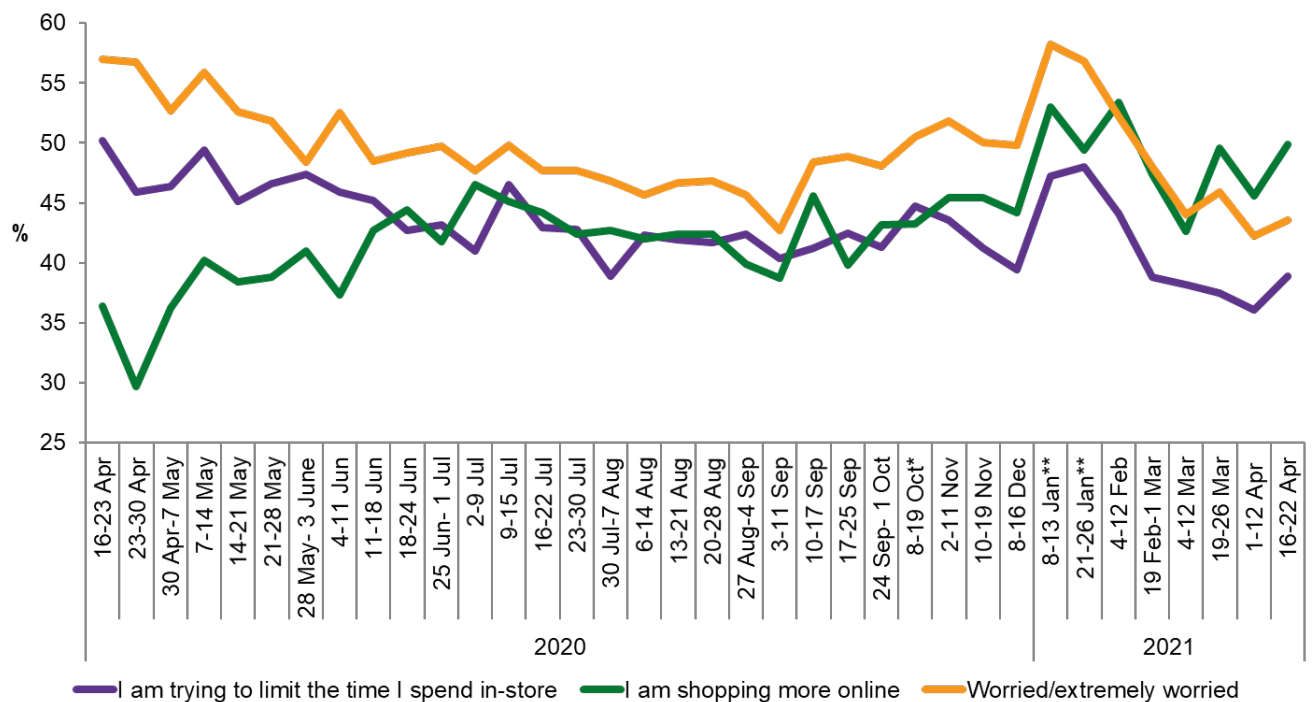
Figure 6: Percentage very comfortable/comfortable leaving their home due to the coronavirus (COVID-19) pandemic



Source: ONS Opinions and Lifestyle Survey (COVID-19 module)

Figure 7: COVID-19 impact on online shopping and time spent in-store April 2020 to April 2021

"Since the start of the COVID-19 outbreak, which of the following apply to you?"



Base: 1,000 UK internet users aged 16+, *separate base of 2,000 internet users aged 16+, ** separate base of 500 internet users aged 16+. Source: Lightspeed/Mintel

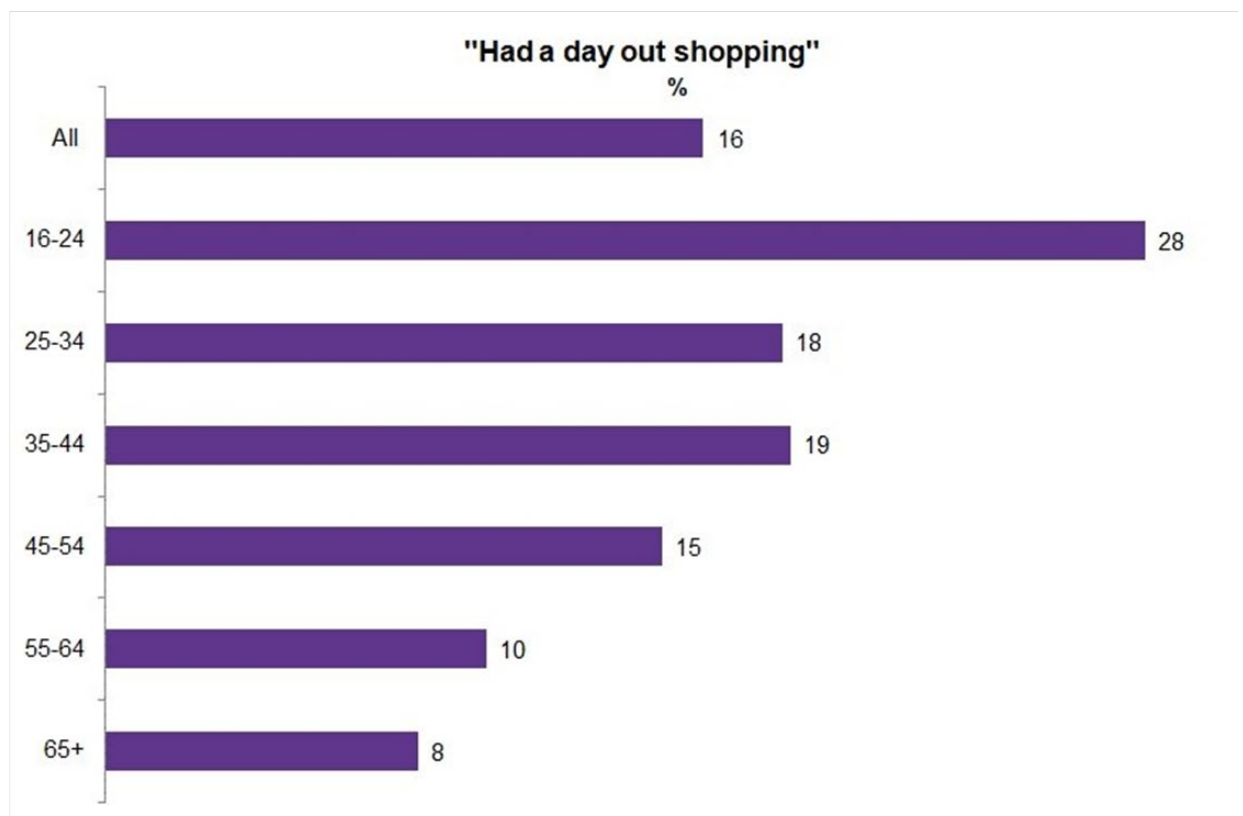
Source: Mintel Retail and E-commerce Report: UK - April 2021

10. Mintel research also indicates that younger consumers are more likely to have had a day out shopping as Covid-19 restrictions have eased⁸ as shown in Figure 8.

⁸ Mintel report: COVID-19 - Retail and E-commerce: A Year On - UK - April 2021 <https://www.mintel.com/>

Figure 8: Activities undertaken as Covid-19 restrictions eased 16-22 April 2021

“Which of these have you done in the last week?”



Source: Mintel/Lightspeed. Base: 1,000 UK internet users aged 16+

11. There are some perceived advantages to buying footwear in-store for consumers. In July 2020 37% of footwear shoppers stated they liked to browse in-store for inspiration⁹ and 53% of shoppers said the inconvenience of returning items puts them off buying footwear online.¹⁰

⁹ Mintel Footwear Retailing: Impact of COVID-19 – UK, July 2020 Report <https://www.mintel.com/>

¹⁰ Mintel report: Footwear retailing UK - April 2021 <https://www.mintel.com/>

Appendix F: Impact of COVID-19 analysis

1. This appendix sets out the methodology and results of our analysis looking at the impact of COVID-19 on the revenues of the Parties, other retailers and suppliers.

Data

2. To conduct the analysis, we collected data on monthly revenues for sports-inspired casual footwear and apparel, over January 2015 to March 2021. We collected these data from the Parties, ASOS, Foot Locker¹, Next, Schuh, Sports Direct, Zalando, Adidas and Nike.² The revenues were broken down into footwear and apparel, and in-store and online (for Adidas and Nike, the breakdown was: wholesale, DTC in-store and DTC online).

Methodology

3. After constructing a time series for each revenue variable³, we regressed each variable on monthly dummies and a linear trend, for the pre-pandemic period (up to and including February 2020). We then used the estimated coefficients to predict revenues for the period March 2020 to March 2021. By way of example, Figure 1 plots actual monthly total revenues⁴ for JD Sports sports-inspired casual fashion footwear (blue series) alongside predicted revenues (orange series).⁵ By comparing the values of actual and predicted monthly revenues during the pandemic, we can infer the impact of COVID-19 on revenues.

[✂]

Figure 1: Actual and predicted monthly revenue for JD Sports footwear

Limitations

4. The principal limitation of this analysis is that the accuracy of forecasted revenues depends on the extent to which pre-pandemic revenues are

¹ Foot Locker was able to provide separate revenue figures for footwear and apparel over the period January 2015 to September 2019, but not October 2019 to March 2021. As such, we used the total revenue share of footwear during the earlier period to apportion revenues during the later period.

² Adidas and Nike were included as they are the two key suppliers in the market, whilst ASOS, Foot Locker, Next, Schuh, Sports Direct and Zalando were retailers that were able to provide revenues for sport-inspired casual fashion products over the relevant time period.

³ I.e. for each combination of brand, product type (footwear/apparel) and channel (in-store/online or wholesale/DTC in-store/DTC online for Adidas and Nike).

⁴ I.e. in-store and online.

⁵ Predicted revenues are calculated for the full time period, but only values during the pandemic are used in our analysis.

modelled correctly. For simplicity, we adopted the same specification for each brand and breakdown (footwear/apparel and in-store/online), consisting of monthly dummies and a linear trend (to control for seasonality and growth over time, respectively). It is possible that, in some cases, an alternative specification may better explain the data, and therefore produce more accurate forecasts.

5. Additionally, our approach assumes that the only distinguishing feature of the period March 2020 to March 2021 is that it was concurrent with a pandemic. If there were other structural factors that affected revenues during this period (but not the pre-pandemic period), the impact of these will be conflated with that of COVID-19.
6. Finally, it is unlikely that all market participants hold data in categories that precisely match the sports-inspired casual footwear and apparel market definitions that we have adopted.

Results

In-store sales

Table 1: Impact of COVID-19 on total in-store revenues during the pandemic (March 2020 to March 2021), relative to the alternative scenario (actual revenue compared with predicted revenue)

JD Sports		Footasylum	
Change in total revenues		Change in total revenues	
Footwear	[✂]	Footwear	[✂]
Apparel	[✂]	Apparel	[✂]
Foot Locker		Next	
Change in total revenues		Change in total revenues	
Footwear	[✂]	Footwear	[✂]
Apparel	[✂]	Apparel	[✂]
Schuh		Sports Direct	
Change in total revenues		Change in total revenues	
Footwear	[✂]	Footwear	[✂]
		Apparel	[✂]
Adidas		Nike	
Change in total revenues		Change in total revenues	
Footwear	[✂]	Footwear	[✂]

7. Table 1 compares the actual and predicted revenues for the period March 2020 to March 2021, ie showing the impact of the pandemic as compared to the alternative scenario.⁶ For example, it shows that JD Sports' actual in-store revenue for footwear was [X] than predicted revenue over the pandemic period (March 2020 to March 2021). As shown in Table 1, COVID-19 had an adverse impact on in-store actual revenues during the pandemic, relative to the alternative scenario, for v, [X], [X], across footwear and apparel. While [X] actual revenue [X] than its predicted revenue, it has performed [X] than [X], [X] for both footwear and apparel, and [X] for footwear. Its performance was similar to [X] for footwear and apparel, and worse than [X] for both footwear and apparel. [X] performance is better than [X] for both footwear and apparel, and [X] for footwear. Its performance is equivalent to that of [X] for apparel and worse for footwear, and worse than [X] and [X] for both apparel and footwear.
8. We also compared actual in-store revenues for July and August 2020 with both predicted in-store revenues for July and August 2020 (ie our alternative scenario), and actual instore revenues for July and August 2019 to assess the performance of stores during a period in which stores were open for the entire period, and both restrictions and COVID-19 levels were relatively lower.⁷

Table 2: Impact of COVID-19 on total in-store revenues in July and August 2020, relative to July and August 2019, and the alternative scenario

JD Sports			Footasylum		
Change in total revenues relative to:			Change in total revenues relative to:		
	2019	Alternative		2019	Alternative
Footwear	[X]	[X]	Footwear	[X]	[X]
Apparel	[X]	[X]	Apparel	[X]	[X]
Foot Locker			Next		
Change in total revenues relative to:			Change in total revenues relative to:		
	2019	Alternative		2019	Alternative
Footwear	[X]	[X]	Footwear	[X]	[X]
Apparel	[X]	[X]	Apparel	[X]	[X]
Schuh			Sports Direct		

⁶ By alternative scenario we refer to predicted sales absent the pandemic.

⁷ July and August 2020 were selected, as a short-term 'boom' may have taken place in June after the reopening of non-essential shops on June 15th, and restrictions were increasingly put in place from September onwards prior to the second lockdown taking effect on 31st October.

Change in total revenues relative to:			Change in total revenues relative to:		
	2019	Alternative		2019	Alternative
Footwear	[X]	[X]	Footwear	[X]	[X]
			Apparel	[X]	[X]
Adidas			Nike		
Change in total revenues relative to:			Change in total revenues relative to:		
	2019	Alternative		2019	Alternative
Footwear	[X]	[X]	Footwear	[X]	[X]
Apparel	[X]	[X]	Apparel	[X]	[X]

9. As shown in Table 2, [X] saw [X] in-store revenues in July and August 2020, relative to both July and August 2019 and the alternative scenario, for footwear, and [X] revenues for apparel. [X] saw [X] revenues for footwear and apparel relative to both July and August 2019 and the alternative scenario. [X] performed better than [X] for both footwear and apparel, than [X] for footwear and [X] for apparel. Its performance is similar to that of [X] for both footwear and apparel, worse than [X] for both footwear and apparel, and worse than [X] for footwear. [X] performed better than [X] for footwear and better than [X] for apparel. Its performance was similar to that of [X] for footwear, and worse than [X] for both footwear and apparel, and [X] for apparel.
10. The evidence above suggests that the pandemic, and the various associated lockdowns had a large negative impact on store sales across the Parties and other retailers. It also shows that some retailers performed even better than would have been expected during periods when restrictions were more limited, while others performed worse than would be expected.

Online sales

11. In addition to assessing the impact of COVID-19 on in-store revenues, we have assessed the impact on online revenues, relative to the alternative scenario.⁸ When we compare total online revenues across many firms in the industry⁹ during the pandemic (March 2020 to February 2021¹⁰), we see these are 54% higher for footwear and 73% higher for apparel, relative to the alternative scenario.

⁸ As with instore sales we modelled the pre-pandemic revenues from January 2015 to February 2020, to create predicted revenues for March 2020 to March 2021 and compared this with actual sales for this period.

⁹ Ie for the Parties, Asos, Foot Locker, Next, Schuh, Sports Direct, Zalando, Adidas and Nike.

¹⁰ March 2021 is not included as we do not have data for Footasylum for this month.

12. As with in-store revenues, we have also assessed the impact of COVID-19 on online revenues for individual retailers.

Table 3: Impact of COVID-19 on total online revenues during the pandemic (March 2020 to March 2021), relative to the alternative scenario (actual revenue compared with predicted revenue)

Online			
JD Sports		Footasylum	
Change in total revenues		Change in total revenues	
Footwear	[X]	Footwear	[X]
Apparel	[X]	Apparel	[X]
Asos		Foot Locker	
Change in total revenues		Change in total revenues	
Footwear	[X]	Footwear	[X]
Apparel	[X]	Apparel	[X]
Next		Schuh	
Change in total revenues		Change in total revenues	
Footwear	[X]	Footwear	[X]
Apparel	[X]		
Sports Direct		Zalando	
Change in total revenues		Change in total revenues	
Footwear	[X]	Footwear	[X]
Apparel	[X]	Apparel	[X]
Adidas		Nike	
Change in total revenues		Change in total revenues	
Footwear	[X]	Footwear	[X]
Apparel	[X]	Apparel	[X]

13. As shown in Table 3, COVID-19 had a positive impact on online revenues for footwear and apparel during the pandemic, relative to the alternative scenario for [X], [X], [X] footwear. This was also the case for [X] for apparel but not footwear and was not for [X] in both footwear and apparel. [X] performed better than [X] for footwear and apparel, and [X] for footwear; better than [X] for footwear but worse for apparel. For both footwear and apparel, [X] performed better than [X] and [X] but worse than [X].

Appendix G: GUPPI methodology

Introduction

1. This appendix sets out our approach and methodology to calculating Gross Upward Pricing Pressure Indices (GUPPIs) from the results of our commissioned surveys of online and in-store customers.

Our approach

2. We conducted an online survey of online shoppers in May 2021 (the Remittal Online Survey) and an exit store survey was conducted in November 2019¹ (the Phase 2 Exit Survey) from which diversion ratios were estimated. For each of these surveys, diversion ratios were estimated and combined with information on the Parties' variable profit margins to estimate separate GUPPIs for online and instore sales. These were weighted together, in proportion to relative sales between the two channels, to estimate an overall GUPPI.
3. The GUPPI provides an estimate, based on current market conditions, of the incentive that the merged entity faces to worsen PQRS as a result of the merger.² The rationale underpinning the GUPPI is that post-merger, it is less costly for one of the merging parties to worsen its offering as it will recoup the profit on recaptured sales from those customers that purchase products from the other merging party.
4. As an example, suppose that post-Merger Footasylum increased its prices by 5%. A proportion of Footasylum's customers (price marginal customers) will switch to purchase the same or comparable product(s) at an alternative retailer or to forego the purchase altogether. Of these customers, some will complete their purchases at a JD Sports store (or on the JD Sports website). Pre-Merger, Footasylum would have lost the margin from the price marginal customers who divert to JD Sports. However, these sales would remain within the Merged Entity. This recapture alters the incentives of the Merged Entity which may give rise to the potential for horizontal unilateral Merger effects.

¹ An exit survey was not commissioned as part of the Remittal due to various factors associated with the COVID 19 pandemic. Non-essential shops have been shut for much of the time since November 2019 and there have been no clear structural changes in the store estates of the merger parties or their main competitors over the intervening period. We therefore take as our starting point diversion ratios estimated from the November 2019 survey. Adjustments which could be made to these estimates are considered later in this appendix.

² We note that in this context a deterioration is relative to the counterfactual i.e. absent the merger and as such a deterioration in PQRS could amount to a failure to improve PQRS to the extent that would have occurred absent the merger.

Calculations and methodology

5. We estimated a GUPPI for each of the Parties separately, recognising that the constraints between the Parties may not be symmetric.
6. In practical terms, for Footasylum, its GUPPI is equal to the product of the diversion ratio from Footasylum to JD Sports and JD Sports' variable profit margin. The diversion ratio is the proportion of Footasylum's customers who state that if they knew that all Footasylum (and other Footasylum fasciae) stores had closed and their website was closed down, that they would have completed their purchases at JD Sports. The variable profit margin is the difference between incremental sales revenue and the incremental cost of achieving this revenue. If prices are different across the Parties, the GUPPI would also need to be scaled according to the corresponding price ratio.
7. Below is the formula that the CMA used to calculate the in-store GUPPIs. In doing so, the following notation was used for the relevant inputs:
 - (a) p refers to the price level of a given supplier,
 - (b) m refers to a margin, and
 - (c) $DR_{A \rightarrow B}$ refers to the diversion ratio from party A to party B.
8. The CMA also used the following subscripts to refer to each of the Parties:
 - (a) J refers to a JD Sports store, and
 - (b) F refers to a Footasylum store.
9. The CMA used the following superscripts to refer to the relevant distribution channel:
 - (c) O refers to online, and
 - (d) S refers to in-store
10. The formula is shown below for Footasylum for an in-store GUPPI. For the reverse case (JD Sports' GUPPI) and for the online segment of the market an analogous formula is used. The analogous formulae are also used to calculate diversion ratios for in-store customers based on the Phase 2 Exit Survey.

$$\begin{aligned}
GUPPI_{F \rightarrow J} = & \left(([diversion \text{ from a Footasylum store to JD Sports store}] \right. \\
& \cdot [JD Sports' \text{ in-store variable margin}]) \\
& + ([diversion \text{ from a Footasylum store to JD Sports online}] \\
& \cdot [JD Sports' \text{ online variable margin}])) \\
& \cdot [Ratio \text{ of JD Sports' price to Footasylum's price}]
\end{aligned}$$

11. Or, algebraically:

$$GUPPI_{F \rightarrow J} = (DR^{SS}_{F \rightarrow J} m^S_J + DR^{SO}_{F \rightarrow J} m^O_J) \left(\frac{p_J}{p_F} \right)$$

Diversion ratios

12. There are several different options for the methodology for calculating diversion ratios which we discuss below.

Spend weighting or unweighted

13. We used unweighted rather than spend weighted estimates of the diversion ratios for our GUPPI estimates. Spend weighting would mean that the weight afforded to an individual's diversion destination choice would be greater the higher their spend. Often spend-weighted diversion ratios are used in the analysis of survey findings; however, the decision whether to spend-weight or not involves a trade-off between precision and potential bias of the estimates (both of which are aspects that contribute to the overall robustness of survey estimates). Spend-weighting invariably increases the variance, and so reduces the precision, of survey estimates. In this case using unweighted diversion ratios makes little empirical difference to the findings, compared with using non-spend-weighted diversion ratios and is therefore unlikely to lead to any substantive bias. For these reasons, the unweighted estimates of diversion for both the Remittal Online Survey and the Phase 2 Exit Survey were used.

Including or excluding all own-party diversion

14. When asked where they would divert in response to website closures, some customers may answer that they would divert to another store of the same fascia or one of the same Party's other fasciae. In these cases, the CMA asked a follow-up question as to what they would do if that fascia was unavailable.

15. It is therefore possible to calculate diversion either permitting customers to divert to the same Party (whether in-store or online) or not. We excluded all

own party diversion as the incentive to increase prices or worsen QRS post-Merger would be the same across all of the Parties' fasciae post-Merger. The result of this would be that price rises (or QRS deterioration) at one fascia would be replicated in other fascia belonging to the Parties. GUPPIs estimated using diversion ratios where own-party diversion is not allowed will be higher than those estimated where own-party diversion is allowed.

All customers or price marginal customers

16. As described above, the GUPPI is a measure of the extent to which the merger may change the merger parties' incentive to deteriorate their offering to customers. The diversion ratio component of the GUPPI calculation rests on the extent to which the merger party is the next best alternative for each party's customers and may therefore be 'recaptured' if they are lost due to an offering deterioration. Conceptually, it may therefore be more appropriate to consider only price marginal customers, as identified by the price marginal questions in each of the surveys, for the estimation of diversion ratios feeding into the GUPPI calculations. However, the sample sizes for these customers are much smaller and the increase in sampling error therefore incurred needs to be considered against the 'conceptual' gain.³ We therefore use diversion ratios based on the full samples of respondents for our GUPPI calculations.

Diversion ratios

17. Tables 1 to 4 present the relevant diversion ratios that were used to calculate the GUPPIs for footwear and apparel:

Table 1: Online footwear diversion ratios with no spend-weighting, excluding own-party diversion

	JD Sports to Footasylum	Footasylum to JD Sports
Online to online	5%	31%
Online to in-store	4%	12%

Source: Diversion ratios estimated from the Remittal Online Survey.

³ JD Sports in-store footwear diversion ratio increases from 21% when all customers are considered to 24% when price marginal customers are considered, the in-store apparel diversion ratio increases from 17% to 22%. Footasylum in-store footwear diversion ratio decreases from 68% when all customers are considered to 64% for price marginal customers, the in-store apparel diversion ratio decreases from 69% to 67%. JD Sports online footwear diversion ratio increases from 9% when all customers are considered to 11% when marginal customers are considered, the online apparel diversion ratio increases from 8% to 11%. Footasylum online footwear diversion ratio decreases from 43% when all customers are considered to 41% when marginal customers are considered, the online apparel diversion ratio increases from 50% to 59%.

Table 2: Online apparel diversion ratios with no spend-weighting, excluding own-party diversion

	JD Sports to Footasylum	Footasylum to JD Sports
Online to online	6%	37%
Online to in-store	2%	13%

Source: Diversion ratios estimated from the Remittal Online Survey.

Table 3: In-store footwear diversion ratios with no spend-weighting, excluding own-party diversion

	JD Sports to Footasylum	Footasylum to JD Sports
In-store to online	4%	11%
In-store to in-store	17%	57%

Source: Diversion ratios estimated from the Phase 2 Exit Survey.

Table 4: In-store apparel diversion ratios with no spend-weighting, excluding own-party diversion

	JD Sports to Footasylum	Footasylum to JD Sports
In-store to online	4%	13%
In-store to in-store	13%	57%

Source: Diversion ratios estimated from the Phase 2 Exit Survey.

Variable margins

18. The CMA used variable margins for the purpose of calculating the GUPPI. This is because the GUPPI is concerned with the marginal incentives of the merged entity, ie those that reflect the profit or loss resulting from the incremental change in associated sales volumes in the relevant market as a result of the merger. The CMA's 'Retail Mergers Commentary'⁴ states that 'variable margins are made up of the sales of the relevant products which both Parties supply less their variable costs'.
19. The Parties provided variable margin estimates relevant to apparel and footwear for both in-store and online channels, shown in Table 5. The Parties also provided accounting data to show the cost variability for some of the individual cost items.

⁴ Retail Mergers Commentary, CMA62, 10 April 2017.

Table 5: The Parties' instore and online variable margin estimates for apparel and footwear

				%
	JD Sports		Footasylum	
	Apparel	Footwear	Apparel	Footwear
In-store	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Online	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: JD Sports response to s109 RFI dated 26 May 2021, Annex 749_JD Variable Margin Analysis for CMA_Revised 4 June 2021.xlsx

FA response to s109 RFI dated 27 May 2021, Annex 1 – Footasylum Variable Margin Analysis – PLs FY17 to FY21.xlsx

20. The Parties use Footasylum's branded product margin for their GUPPI calculation.⁵ This, they argue, is because survey respondents diverting from JD Sports to Footasylum are likely to be diverting to purchase branded products, resulting in minimum recapture on Footasylum's own-brand products for which margins are [REDACTED]. We regard this as speculative; the survey questionnaire did not ask which brand of products had been made in the original purchase, nor which would have been chosen in the diversion questions. We have therefore not applied this adjustment to the margins we have used in our calculations.
21. We otherwise largely agree with the assumptions the Parties used to determine their variable margin figures. However, [REDACTED] in the Parties' figures. We disagree with this assumption and consider that the [REDACTED].
22. As a result, on the basis that staff cost includes both [REDACTED], we have taken the average of the percentage split between [REDACTED] and adjusted it upward to take into account [REDACTED]. As a result, we consider it is appropriate to treat [REDACTED] as being [REDACTED]% variable.
23. After applying this adjustment to the employed staff costs Table 6 shows the estimated national variable margins that were used to calculate the GUPPIs.

Table 6: CMA variable margin estimates for apparel and footwear

				%
	JD Sports		Footasylum	
	Apparel	Footwear	Apparel	Footwear
In-store	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Online	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis.

⁵ Appendix A of 'Submission following Working Papers', Compass Lexicon, 15 July 2021 (hereafter referred to as Compass Lexicon Appendix A).

Using a price ratio of one

24. The CMA assumed a price ratio of one since the [REDACTED], and descriptive data analysis confirms, that the Parties broadly do not tend to [REDACTED].

GUPPIs

25. Table 7 shows the GUPPI estimates for the Remittal Online Survey, the Phase 2 Exit Survey and a GUPPI combining the two. To calculate a combined GUPPI, the online and in-store GUPPIs need to be weighted together in proportion to their online and in-store sales. This would ordinarily be calculated using total sales values for a recent period, such as over the last year, via each of the channels. However, we consider that this approach is not appropriate as many of the Parties' stores have been shut for much of the past year due to the COVID-19 pandemic. It also appears likely that there will be some permanent shift in the balance between the two channels resulting from customers' increased use of online shopping over the COVID-19 pandemic period.
26. For the purpose of the GUPPI calculation for JD Sports we have used the same proportions as used by Compass Lexecon which are based on total sales revenues online and in-store for the period of 20 June 2021 to 3 July 2020.⁶ For the Footasylum GUPPI we use the proportions based on total sales revenues in the period of 20 June to 10 July.⁷

Table 7: CMA GUPPI estimates for JD Sports and Footasylum

				%
	JD Sports		Footasylum	
GUPPI	Footwear	Apparel	Footwear	Apparel
Online	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Instore	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Combined	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis

Sensitivity Analysis

27. As described above, the estimates in Table 7 are based on the Phase 2 Exit Survey and the Remittal Online Survey. The conceptual aim is to estimate a combined GUPPI that reflects the underlying state of the market at the time of the Remittal Online Survey, ie after the re-opening of non-essential shops.

⁶ Compass Lexecon Appendix A, paragraph A13.

⁷ Parties' response to CMA Working Papers, paragraph 13(iii).

Recent variable margins are applied rather than those calculated for the Phase 2 case. However, there are several adjustments that may be made to the inputs of the combined GUPPI estimates based on different assumptions, for example, about how some of the results from the Remittal Online Survey may be used to update some of the components of the Phase 2 Exit Survey findings conducted 18 months earlier.

28. This section looks at some of these adjustments and compares and comments on a similar sensitivity analysis submitted by the parties.⁸ Like the Parties, we focus on JD Sports GUPPIs. Footasylum's combined GUPPIs are high, suggesting that the merger gives rise to a strong incentive to deteriorate Footasylum's offering to its customers and this conclusion remains robust even if we were to take an extreme low estimate of the combined GUPPI represented by the online GUPPI alone.
29. Compass Lexecon starts by estimating combined GUPPIs for JD Sports that appear to be on a very similar concept basis to the CMA estimates presented in Table 7. However, their estimates, [X]% for footwear and [X]% for apparel,⁹ are somewhat smaller. A simple reconciliation of the two sets of estimates is difficult, although some of the differences may be explained by different analyses of the Phase 2 Exit Survey GUPPIs.
30. Our analysis builds on our own estimates and considers their sensitivity to various scenarios, the lower limits of which we regard as being extreme. For footwear, the two scenarios we consider are:
 - (a) Adjustments that assume:
 - (i) The online constraint on in-store customers has increased since the Phase 2 Exit Survey was conducted due to more use of online shopping and the growth of DTC online – assume that diversion from in-store to online doubles from 22% to 44%;
 - (ii) Footasylum gets a smaller share of the diversion from in-store to online, as in the findings of the Remittal Online Survey – assume a reduction from 19% to 10%;
 - (b) Applying the same adjustments at (i) and (ii) above, but assuming that Footasylum is also weaker in-store – assume that Footasylum's share of in-store to in-store diversion drops by a third from 26% to 17%.

⁸ Compass Lexicon Appendix A, paragraph A10

⁹ Compass Lexicon Appendix A, Table 3

31. Under the first scenario the in-store GUPPI falls from [X]% to [X]% giving a combined GUPPI of [X]% and under the second scenario the in-store GUPPI falls to [X]% giving a combined GUPPI of [X]%. We consider these, particularly the second, to be extreme, providing the lowest variant of a range of possibilities. Evidently the adjustments are not exact and any of the factors feeding into the scenario may be flexed, for example assuming that instore to online diversion falls by a quarter rather than about a half.
32. For apparel, we created the same two scenarios:
 - (a) Adjustments that assume:
 - (i) The online constraint on in-store customers has increased since the Phase 2 Exit Survey was conducted due to greater use of online shopping and the growth of DTC online – assume that diversion from in-store to online doubles from 24% to 48%;
 - (ii) Footasylum gets a smaller share of the diversion from in-store to online, as in the findings of the online survey – assume a reduction from 17% to 9%;
 - (b) As above, but assuming that Footasylum is weaker instore – assume that Footasylum's share of in-store to in-store diversion drops by a third from 22% to 15%.
33. Under the first scenario the in-store GUPPI falls from [X]% to [X]% giving a combined GUPPI of [X]% and under the second scenario the in-store GUPPI falls to [X]% giving a combined GUPPI of [X]%. As for footwear, we consider these, particularly the second, to be extreme, providing the lowest variant of a range of possibilities. Evidently the adjustments are not exact and any of the factors feeding into the scenario may be flexed, for example assuming that instore to online diversion falls by a quarter rather than about a half, will generate a combined GUPPI estimate lying within the range of [X]% to [X]%
34. Compass Lexecon makes a similar set of adjustments and estimates combined GUPPI's of [X]% for footwear and [X]% for apparel.¹⁰ Compass Lexecon attempts to be more precise about some of the adjustments, basing for example, a decrease in diversion to Footasylum stores on a calculation of the impact of [X] and citing the opening of some third party competitor stores, not taken into account in their calculation, as a reason why their adjustment may be an under-estimate of the suggested decline in Footasylum's in-store

¹⁰ Compass Lexecon Appendix A, Table 4.

constraint on JD Sports. However, they do not take into account third party store openings [REDACTED] in their calculations.

35. Compass Lexecon also cite [REDACTED], that the 'third best' alternative for a consumer would not be an offering of the merger party, that [REDACTED] and, as discussed elsewhere in this report, that [REDACTED]. It is also unclear whether [REDACTED] and a [REDACTED] may involve an element of double-counting since [REDACTED].
36. A key difference in interpretation is therefore that Compass Lexecon present their estimates as being conservative, whereas the CMA regards the adjustments as more speculative and therefore considers the lowest estimates of its sensitivity analysis (above [REDACTED]% for footwear and [REDACTED]% for apparel) to be the low variants of a range of possible GUPPI estimates, i.e. [REDACTED]% to [REDACTED]% for footwear and [REDACTED]% to [REDACTED]% for apparel.
37. The Compass Lexecon submission presents a third set of adjustments¹¹ which it describes as 'prospective', based on the possible market developments; [REDACTED] by Nike and Adidas, more DTC store openings, more Sports Direct elevated store openings and more Footlocker store openings. It assumes that Footasylum [REDACTED], calculates an implied GUPPI for June 2024.
38. The CMA has chosen not to predict GUPPIs for future periods, but instead, has stopped at estimating GUPPIs that reflect underlying market conditions up to the time period the evidence relates to, thus measuring the changed incentives that may arise as a result of the merger under those conditions. Forward looking issues, such as the potential for future disintermediation by Nike and adidas and the potential for future elevation of Sports Direct stores are considered separately in the report and may be regarded as part of the assessment of whether the merger parties will be able to act on these changed incentives.

¹¹ Compass Lexicon Appendix A, Table 5

Appendix H: Internal documents

Part A: Remittal assessment

1. This Part of the Appendix sets out our assessment of the Parties' internal documents submitted during the Remittal.
2. We have analysed a large number of the Parties' internal documents, which in our view, are informative evidence of how the Parties view the market and their competitors in the ordinary course of business and, in particular, during the COVID-19 pandemic.¹

Parties views

3. During the Remittal, the Parties submitted that their internal documents were corroborative evidence that the COVID-19 pandemic has caused a very substantial acceleration in the growth of digital sales, DTC sales and disintermediation². The Parties also submitted that, while these trends are prevalent throughout the Parties' documents, they are particularly present [REDACTED].³
4. The Parties submitted⁴ that their internal documents showed the following trends:
 - (a) **Digital:** The growth of digital sales and digital competitors is reflected in [REDACTED].
 - (b) **DTC:** The growth and acceleration of the brands' DTC channel is discussed in [REDACTED] in their capacity as competitors to Footasylum.
 - (c) **Disintermediation:** [REDACTED]. The threat of disintermediation and [REDACTED] is [REDACTED] discussed in [REDACTED].
5. In their response to the CMA's Working Papers the Parties also submitted that by treating documents produced after the Merger with a degree of caution, the CMA risks minimising over two years of internal documents that provide

¹ In our requests for internal documents from the Parties we generally defined internal documents as 'Internal documents refer to documents in any form including, but not limited to, minutes, memoranda, reports, presentations, studies, internal analyses, analyst reports, industry/market reports or analysis, including customer research and pricing studies (whether prepared internally or by external consultants). The timeframes and precise definitions varied depending on each specific question, but generally covered internal documents created since October 2019.

² JD Sports / Footasylum –Internal Documents Submission, 11 June 2021, JD Sports/Footasylum - Parties' Response to CMA Working Papers, 15 July 2021 and JD Sports Fashion PLC / Footasylum Limited – Parties' Opening Submission on Remittal, 30 April 2021.

³ Parties' Internal Documents Submission, paragraph 4.

⁴ Parties' Internal Documents Submission, paragraph 5.

valuable insight into the Parties' recent strategy and actions, and that it is wholly unrealistic to assume that the Parties prepared their internal documents with a view to how they would be considered during a CMA remittal.⁵

6. The Parties also submitted that:

- (a) JD Sports' internal documents evidence JD Sports monitoring and responding to the threat of brands' DTC, providing examples from [REDACTED].⁶
- (b) The Parties monitor a large and typically double-digit number of competitors, and in particular the internal documents evidence that JD Sports competes with a wide-ranging competitor set.⁷
- (c) Since the Final Report, DTC and online pureplay have become more prominent in the documents due to the pandemic's impact, both in terms of [REDACTED].⁸
- (d) Neither the CMA's Working Papers or otherwise in the Remittal (matching the Final Report) is there a single cited instance of a JD Sports competitive response or reaction to Footasylum specifically (or vice versa)⁹, which indicates that [REDACTED], and to conclude otherwise risks adopting asymmetric evidential standards.¹⁰

7. The Parties submitted that the arguments in paragraph 1.5 above are consistent with [REDACTED], regardless of the competitive parameter in question, that: a) Footasylum does not stand out as a "close competitor" benchmark relative to all other rivals in the competitor set (and in contrast to most Phase 2 unilateral effects SLC cases); and b) JD Sports is constrained by intense market-wide rivalry as a whole post-pandemic (consistent with dynamic replacement of any (modest) loss in competition, and no SLC).

Our assessment

8. During the Remittal we gathered a large volume of the Parties' internal documents and have undertaken a targeted review of a sub-set of these documents to inform our competitive assessment.¹¹ We carried out an overall

⁵ Parties' Response to Working Papers, paragraph 39

⁶ Parties' Response to Working Papers, paragraph 38.

⁷ Parties' Response to Working Papers, paragraphs 68(i), 69 and 70.

⁸ Parties' Response to Working Papers, paragraph 68(ii).

⁹ Parties' Response to Working Papers, paragraph 68(iii).

¹⁰ Parties' Response to Working Papers, paragraph 40

¹¹ During the course of the Remittal, we received over 3,000 internal documents produced by the Parties since October 2019. We conducted a targeted review of these documents to assess any changes in the Parties' offerings and competitor monitoring and, in particular, the impact of COVID-19.

assessment of the documents as part of this review, rather than applying any mechanistic or arithmetic assessment (eg by adding up mentions or counts of competitors).

9. We have also reviewed and taken into account the submissions made by the Parties including the documents referenced in those submissions, as well as their response to the Working Papers.¹²
10. Our assessment of the internal documents submitted by the Parties during the Phase 2 investigation is set out in Part B of this Appendix. Whilst we have continued to take into account this assessment for the purposes of the Remittal, we have only placed limited weight on the internal documents from the Phase 2 process given the fact that some of them are now several years old. We have placed more weight on more recent internal documents which are likely to be more informative as to the current position, particularly in relation to the impact of Covid-19 on the Parties.
11. In the Remittal, and where we are able to, we have been cognisant of the purpose of each document, the timeframe over which it was produced and/or relates to, and its audience. We have also considered its context, including whether it is part of a series of documents or standalone. For example, the fact that a competitor's name appears in a document is less informative than the context in which it appears including the detail and nature of the commentary regarding that competitor. It may be appropriate to consider references to certain competitors less probative where the analysis of these competitors is more cursory or substantively different to others in the document.
12. We acknowledge the Parties' submission regarding the treatment of internal documents prepared after the Merger with a degree of caution.¹³ We recognise that not all of the internal documents submitted since the Merger will have been prepared with the CMA's review in mind, and the extent to which the CMA review was a consideration may vary significantly between the documents. For this reason we have not disregarded any of the internal documents on the basis that they were prepared after the Merger, however we do still consider it to be a relevant consideration.
13. We have not relied on the Parties' internal documents as standalone confirmation of any one of our findings or even individual pieces of analysis. Instead, we have looked at all the evidence in the round and used the internal

¹² See footnote 2.

¹³ Parties' response to working papers, paragraph 39.

documents to corroborate or to contradict other evidence or to otherwise inform us of the context in which other evidence should be interpreted.

14. Overall, we found evidence that the Parties regularly monitor both each other and other retailers. References to competitor retailers in the Parties' internal documents do not usually distinguish between footwear and apparel, or in-store and online. Rather, they cover competing retailers in general and as such they tell us about competition in each of the relevant markets.

JD Sports' internal documents

Monitoring documents

15. We have found in our review of JD Sports' internal documents that JD Sports monitors a wide range of competitors, comprising both pureplay and multichannel retailers. Competitors that are regularly monitored include [REDACTED], although the competitor set is not fixed and often includes a range of other retailers. Specific (but non-exhaustive) examples of monitoring are set out below.
16. In its [REDACTED]¹⁴:
 - (a) [REDACTED].
 - (b) [REDACTED]¹⁵.
 - (c) [REDACTED]¹⁶.
17. This competitor set is broadly similar to the Weekly Competitor Packs submitted at Phase 2, although some pureplay retailers (Amazon and Very) are now routinely included.
18. Other discrete internal documents provide examples of JD Sports' competitor monitoring. [REDACTED]. JD Sports monitored [REDACTED].¹⁷
19. [REDACTED]. The same document also [REDACTED].¹⁸

¹⁴ [REDACTED]

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED]

20. [REDACTED]¹⁹. [REDACTED]²⁰. The Parties submit that [REDACTED].²¹ Our view is that that the competitors listed in these [REDACTED] documents include most of the competitors that appear throughout JD Sports' monitoring documents, although [REDACTED].
21. A later [REDACTED]²²
22. In a review of [REDACTED].²³
23. In a comprehensive review of [REDACTED].²⁴
24. A document tracking [REDACTED].²⁵
25. A presentation by [REDACTED]²⁶

Market developments

26. We broadly agree with the Parties' submission that JD Sports' internal documents are corroborative evidence that the COVID-19 pandemic has caused an acceleration in the growth of digital sales, DTC sales and [REDACTED].
27. JD Sports' internal documents support the view that there has been growth of digital sales and digital competitors in the market as a result of the COVID-19 pandemic. [REDACTED]²⁷ [REDACTED] are also increasingly being monitored by JD Sports (for example [REDACTED]).
28. JD Sports' internal documents also feature some discussion of the growth of the brands' DTC offerings and the potential threat of disintermediation, [REDACTED]. For example, in a presentation by [REDACTED]²⁸ [REDACTED] .²⁹

Footasylum's internal documents

Monitoring documents

29. We have found in our review of Footasylum's internal documents that Footasylum [REDACTED].

¹⁹ JD Sports (2021), Response to RFI3, Annex 681_Cardlytics x JD Sports PCA_ May 2020 campaign

²⁰ [REDACTED].

²¹ [REDACTED]

²² [REDACTED]

²³ [REDACTED]

²⁴ [REDACTED]

²⁵ [REDACTED]

²⁶ JD Sports (2021), Response to RFI3, Annex 374_DF_DECK_25.01.21-EDIT.pptx

²⁷ [REDACTED]

²⁸ [REDACTED]

²⁹ [REDACTED]

30. Specific (but non-exhaustive) examples of monitoring include:

- (a) [REDACTED]³⁰ [REDACTED].³¹ In more recent documents (from April 2021) [REDACTED] which had been included in the competitor set from May 2020).
- (b) A [REDACTED]. It is the only retailer listed;³²
- (c) An online search term comparison analysis compares Footasylum with [REDACTED];³³
- (d) A Google report for Footasylum discussing forecasts for fashion retail from January 2021 lists [REDACTED] as competitors. The document also tracks fashion pureplay retailers, including [REDACTED].³⁴
- (e) A document comparing Footasylum's mobile app consumer experience with rivals' apps uses [REDACTED].³⁵
- (f) A strategy document says that Footasylum should "stay different from [REDACTED]".³⁶
- (g) A strategy document that discusses (inter alia) a local store closure notes that "NM feels that [REDACTED]".³⁷
- (h) A presentation for Footasylum from April 2021 tracks various competitors throughout on different aspects of their online performance. [REDACTED] appears in all competitor analyses, with [REDACTED] featuring in almost all analyses. Other competitors regularly mentioned include [REDACTED]. In the context of a tracked keyword comparison against competitors, the document mentions that "*largest competition overall does come from [REDACTED], as would be expected - they and [REDACTED] are also the strongest 2 of our tracked competitors*". It also notes that, whilst Footasylum's visibility for the tracked keyword set is stronger than the purely shoe retailers [REDACTED], Footasylum does face competition from the likes of [REDACTED].³⁸

³⁰ Footasylum (2021), Response to RFI3, Annexes 0041-0093, Annexes 0095-0107 and Annexes 0109-0120

³¹ [REDACTED].

³² Footasylum (2021), Response to RFI3, Annex 14 FY21 Weekly Ops Presentation - Retail - FW24.pptx

³³ Footasylum (2021), Response to RFI3, Annex 22 Content Audit.xlsx

³⁴ Footasylum (2021), Response to RFI3, 0033 - Footasylum 2021 Outlook .pdf

³⁵ Footasylum (2021), Response to RFI3, Annex 26 App Competitor Analysis.pdf

³⁶ Footasylum (2021), Response to RFI3, Annex 2085 Ops Strategy 2020 Meeting - RH.pptx

³⁷ Footasylum (2021), Response to RFI3, 0346 - Senior Strategy Meeting & General update – 6 and 13 August 2020

³⁸ Footasylum (2021), Response to RFI3, 0121 - TID_Footasylum Group - QBR Meeting - Apr2021 - MASTER[35].pptx

Market developments

31. We broadly agree with the Parties' submission that Footasylum's internal documents are corroborative evidence that the COVID-19 pandemic has caused an acceleration in the growth of digital sales, DTC sales and disintermediation.
32. Footasylum's internal documents generally support the view that there has been a growth of digital sales and digital competitors in the market. For example, [REDACTED] are being monitored more frequently by Footasylum in more recent internal documents (although not to the same extent as [REDACTED]).
33. Footasylum's internal documents also feature some discussion of the growth of the brands' DTC offerings and the threat of disintermediation, largely in the context of discussions around [REDACTED]. This is covered in more detail in Chapter 7 of the Provisional Report.

Conclusion on internal documents

34. It is clear from the Parties' internal documents that they [REDACTED], although the documents suggest that [REDACTED].
35. In the case of JD Sports, Footasylum is one of several competitors that is monitored closely by JD Sports. Other competitors monitored closely include [REDACTED], although they are often monitored alongside a range of other competitors. Although Footasylum appears frequently in JD Sports' internal documents, it is not always included in lists of competitors. In addition, a number of recent internal documents, including senior management presentations, discuss [REDACTED].
36. In the case of Footasylum, JD Sports is its most closely monitored competitor. Other competitors such as [REDACTED] are also monitored but less frequently and consistently than JD Sports.
37. The Parties' internal documents, including third party analyst reports submitted by the Parties, generally support the Parties arguments that since the Covid-19 pandemic there has been a growth in digital sales and the brands' DTC strategies which include potential disintermediation of certain types of retailers.

Part B: Phase 2 assessment

38. We analysed a large number of the Parties' internal documents, which, in our view, are informative evidence of how the Parties viewed the market and their competitors in the ordinary course of their business prior to the Merger.³⁹

Parties' views

39. JD Sports submitted that while the Parties referenced each other in their internal documents, these documents simply reflected the respective Party's monitoring of market activities.⁴⁰ It said that many of its documents discussed a wide range of competitors in addition to Footasylum.⁴¹ Further, it submitted that [REDACTED].⁴² It also submitted that closeness of competition was not a simple function of the number of mentions in or across a given set of internal documents.⁴³
40. JD Sports further submitted that 'on a correct analysis of the Parties' internal documents, there is no basis for a finding that they are closer competitors to one another than they are to the host of other competitors mentioned in those documents.'⁴⁴ It also submitted that:

the Parties remain of the strong view that the simple fact and degree of competitor monitoring of each other as reflected in the internal documents cited in the PFs does not sustain a finding of "closeness" of competition between them and is in any event clearly insufficient to support an SLC finding without evidence that the Parties are reacting to each other when they choose to set their national PQRS variables (as opposed to competitive pressure in aggregate, or other rivals).⁴⁵

³⁹ In our requests for internal documents from the Parties we generally defined internal documents as 'Internal documents refer to documents in any form (including, but not necessarily limited to, reports, presentations, studies, internal analyses, analyst reports, industry/market reports or analysis, including customer research and pricing studies) which have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of [either Party] (whether prepared internally or by external consultants).' The timeframes and precise definitions varied depending on each specific question, but generally covered the last two years.

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ The Parties, Response to Provisional Findings, paragraph 281. The Parties also stated that 'the PFs misrepresent a number of the documents cited, fail to acknowledge explanations made by the Parties in previous submissions with respect to particular documents and fail to take proper account of a number of documents submitted by the Parties which have not been referenced in the PFs.' The Parties, Response to Provisional Findings, paragraph 282.

⁴⁵ The Parties, Response to Provisional Findings, paragraph 293.

41. The Parties also submitted that we had: (i) not identified any document which evidenced JD Sports responding to Footasylum in the implementation of its student discounts scheme, though we had recognised that JD Sports' documents referred to ASOS as the 'dominant' retailer in relation to student discounts;⁴⁶ (ii) misrepresented a number of documents cited; (iii) failed to acknowledge explanations made by the Parties in previous submissions with respect to particular documents; and (iv) failed to take proper account of a number of documents submitted by the Parties which had not been referenced in the Provisional Findings.⁴⁷ We consider these submissions throughout the following paragraphs as we assess each type of internal document.

Our assessment

42. We found evidence that the Parties regularly monitor both each other and some other retailers. References to competitor retailers in the Parties' internal documents do not usually distinguish between footwear and apparel, or in-store and online. Rather, they cover competing retailers in general and as such they tell us about competition in the relevant markets.
43. As explained in chapter 6, we have undertaken a targeted review of a sub-set of the Parties' relevant internal documents.⁴⁸ We carried out an overall assessment of the documents as part of this review, rather than applying any mechanistic or arithmetic assessment (eg by adding up mentions or counts of competitors). In our review, we have been cognisant of the purpose of each document, the timeframe over which it was produced and/or relates to, its author and its audience, and considered its context, including whether it is part of a series of documents or standalone. In general, we placed more weight on documents prepared by or for more senior levels of decision making within the Parties.
44. The internal documents provided by the Parties include the following categories of documents:
- (d) from JD Sports: [REDACTED]; and

⁴⁶ The Parties, Response to Provisional Findings, paragraph 308.

⁴⁷ The Parties, Response to Provisional Findings, paragraphs 39, 282 and 294.

⁴⁸ During the course of phase 1, we gathered a large volume of internal documents from each Party (over 1,400 documents in total). We used a set of criteria to identify documents of most relevance to our assessment of the Parties' monitoring of competitors and identified over 200 relevant documents for which an in-depth review was undertaken. The Parties also submitted additional documents during the course of phase 2 which have also been reviewed. The CMA estimates to have reviewed in total more than 2,500 internal documents, more than 900 of them have been explicitly assessed in the internal documents section.

(e) from Footasylum: [REDACTED].

45. Both Parties also provided other documents that did not belong to any of the categories set out above, but that either they considered relevant for the CMA's Merger inquiry or which were submitted as they fell within the scope of the CMA's information requests. We considered these documents (where we have found them to be relevant) either as part of our targeted review of internal documents or elsewhere in our assessment as appropriate.
46. The Parties submitted in response to the Provisional Findings that the CMA failed 'to take proper account of a number of documents submitted by the Parties which have not been referenced in the PFs,' and that the CMA drew 'conclusions about an entire category of documents from an analysis of a small proportion of those documents.'⁴⁹ We have carefully assessed the Parties' submissions and the internal documents to which their submissions relate. This is reflected in our analysis, as set out in this section.
47. In our analysis, we also considered the Parties' submission that 'many of the documents were created over two years ago [...] and thus do not reflect the current competitive dynamics of the market.' We accept that older documents may be less reflective of current market dynamics than more recent documents, and have therefore carefully considered market developments in a separate section (from paragraph 8.311). As a result, we have interpreted internal documents in light of these market developments and exercised caution in interpreting older documents. We consider that internal documents can provide informative evidence on the Parties' views during the ordinary course of business at a point in time (ie pre-Merger) and as such have assessed these to inform our assessment of current competitive constraints. Moreover, we note that the Parties did not point to any specific evidence that contradicts findings based on older documents. We have also separately considered internal documents which set out future plans and strategies, as relevant to our assessment of market developments over the next two years (see paragraphs 8.366-8.375).
48. In the final days of our investigation, the Parties submitted that 'the rapid changes in the market as a result of the COVID-19 pandemic mean that the body of internal documents provided to the CMA during the merger investigation are no longer reflective of the competitive dynamics in this market',⁵⁰ although they did not provide any explanation of how COVID-19 has affected the competitive dynamics set out in the internal documents. As set out above, we have considered the internal documents as providing

⁴⁹ The Parties, Response to Provisional Findings, paragraph 39, 282 and 304(b).

⁵⁰ [REDACTED].

informative evidence on the Parties' views during the ordinary course of business. As with much of our evidence base, we recognise that the internal documents do not take account of COVID-19. There is considerable uncertainty about the extent and duration of the impact of COVID-19, but as far as possible we have considered its impact in our assessment, both now (see overview of current constraints section, from paragraph 8.278) and in the foreseeable future (see market developments section, from paragraph 8.444).

Footasylum's internal documents

49. For Footasylum, we found that [REDACTED] in its internal documents.^{51,52}

- (a) [REDACTED]⁵³ are reports by executive management [REDACTED] to senior management and heads of department (and are, therefore, particularly useful in gaining an insight into the issues which inform Footasylum's strategic thinking).⁵⁴ [REDACTED] 2019 included information about competitors; the remaining reports were created in 2018 and 2017.⁵⁵ [REDACTED]⁵⁶ [REDACTED]. Some documents also include other retailers [REDACTED]⁵⁷ [REDACTED].⁵⁸
- (b) Footasylum prepares [REDACTED].⁵⁹ These were prepared by the Head of Ecommerce for Footasylum's senior management as well as heads of department.⁶⁰ These reports monitor [REDACTED]⁶¹ [REDACTED]⁶² [REDACTED]⁶³ [REDACTED]⁶⁴ [REDACTED].⁶⁵

⁵¹ Across several of the documents described here, Footasylum submitted that [REDACTED]. We consider this argument after our assessment of relevant internal documents (see paragraphs 8.183-8.187).

⁵² The Parties stated that 'Even if JD Sports is [REDACTED] in the documents in which Footasylum refers to competitors, this is not commensurate to any particular closeness of competition between the Parties' ([REDACTED]) and that 'the CMA fails to note that other competitors are also [REDACTED] in Footasylum's documents. Footasylum consistently monitors a wide range of competitors throughout its internal documents' (The Parties, Response to Provisional Findings, paragraph 300). We address these arguments in paragraphs 8.179-8.180, 8.183-8.190.

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ Footasylum submitted that 'the Provisional Findings do not address the fact that over a third of these documents were created over two years ago and may no longer reflect the competitive dynamics in the market.' ([REDACTED]). As set out in paragraphs 8.170 and 8.174, we considered the time period over which documents were produced, in our assessment. However, we note that the Parties have not submitted any explanation on why the facts reported in these documents do not reflect the current competitive dynamics in the market.

⁵⁶ Footasylum submitted [REDACTED]. We note that [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ JD Sports submitted that a large portion of these documents were created over two years ago and may therefore not reflect the current competitive dynamics of the market. We have addressed this submission in paragraphs 8.170 and 8.174.

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ We could only find one exception: [REDACTED].

⁶⁵ [REDACTED].

- (c) [REDACTED]⁶⁶ are prepared by Footasylum's Retail Sales and Operations Manager for senior management and heads of department. [REDACTED]⁶⁷ [REDACTED]⁶⁸ Footasylum submitted that [REDACTED]⁶⁹ Although we accept that [REDACTED] may make it more likely to be mentioned in the internal documents, we believe this reflects [REDACTED] and does not limit the internal documents' relevance to our competitive assessment. Moreover, we note that the argument that the frequency with which a competitor is mentioned is simply a reflection of the size of its estate is undermined by the fact that [REDACTED] is monitored in these documents as closely as [REDACTED] despite having a smaller store estate.⁷⁰ Moreover, some comments in these documents highlight [REDACTED]. For example, one document states: [REDACTED].⁷¹ Another document states [REDACTED]⁷² There are a limited number of other documents that [REDACTED].^{73,74}
- (d) [REDACTED],⁷⁵ prepared by Footasylum's Head of Retail for senior management and heads of department, [REDACTED].⁷⁶ [REDACTED].⁷⁷
- (e) [REDACTED]⁷⁸ [REDACTED] produced by Footasylum's CFO to report Footasylum's financial information to its Board. In the (limited number of such) documents which refer to competitors, [REDACTED].⁷⁹ [REDACTED] we note that there are instances in these documents where [REDACTED]. For example, one document states that [REDACTED]⁸⁰ [REDACTED].⁸¹

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ And equally other retailers with a store estate of a similar size to that of [REDACTED] (eg [REDACTED]) are not monitored to the same extent as [REDACTED] and [REDACTED].

⁷¹ [REDACTED]. We consider that the document nonetheless constitutes an example of Footasylum monitoring [REDACTED] activities and specifically [REDACTED].

⁷² [REDACTED].

⁷³ Retailers mentioned only occasionally are: [REDACTED]

⁷⁴ Footasylum also submitted that [REDACTED], however, our assessment showed that [REDACTED] is highly prominent in these documents relative to other competitors.

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

- (f) [redacted]⁸² [redacted]⁸³ [redacted]⁸⁴ [redacted].⁸⁵ [redacted]. Most of the information reported about these retailers is factual; however, we note [redacted] in these documents. Footasylum submitted that [redacted].^{86,87} However, some quotes indicate that Footasylum considers [redacted]⁸⁸ [redacted].⁸⁹ [redacted].
- (g) [redacted].⁹⁰ [redacted].⁹¹ [redacted]⁹² [redacted];⁹³ [redacted].⁹⁴
- (h) Several Footasylum internal documents suggest that [redacted]. For example:
- (i) [redacted];⁹⁵
 - (ii) [redacted];⁹⁶ [redacted],⁹⁷ [redacted];⁹⁸ and
 - (iii) one internal document which [redacted]⁹⁹
- (i) Several documents refer to the impact of [redacted]. For example, one document [redacted]¹⁰⁰ In our view, the fact that the Parties [redacted].¹⁰¹ Other documents note that Footasylum [redacted].¹⁰²

⁸² [redacted]. We reviewed a random sub-sample of five documents per area for the calendar year 2018. Reports for 2019 have been reviewed under [redacted] documents above. We also considered these documents to assess the level of local flexing undertaken by the Parties.

⁸³ This information is fed back to the relevant area manager and compiled into a report which is then submitted to [redacted]. Footasylum submitted that 'local store managers are inevitably exposed to the activity of [redacted] stores given the large number of [redacted] stores compared to other competitors in the market (there are sometimes [redacted] stores in an area where Footasylum is present), and their observations are likely to be influenced by this. As such, the content of these reports is likely to be influenced by geographic proximity rather than any particular competitive closeness.' [redacted]. However, we believe that this type of evidence, assessed in aggregate, has some evidential value for our competitive assessment as evidence of competitive constraints which have been communicated to the central management of Footasylum to inform commercial decisions which are made and set nationally, albeit informed by local conditions.

⁸⁴ [redacted]

⁸⁵ [redacted].

⁸⁶ [redacted].

⁸⁷ As set out earlier, we also note that although we accept that [redacted] size and activity makes it more likely to be mentioned in the internal documents, we believe this reflects JD [redacted] rather than limiting the internal documents' relevance to our competitive assessment. Equally, other retailers with a store estate of a similar size to that of [redacted].

⁸⁸ [redacted]

⁸⁹ [redacted]

⁹⁰ [redacted]

⁹¹ [redacted], however we have not deemed these reports to be informative for this inquiry as our review did not find information on other competitors or competitive parameters contained in these.

⁹² [redacted].

⁹³ [redacted].

⁹⁴ [redacted].

⁹⁵ [redacted] We nevertheless are of the view that this type of monitoring constitutes evidence of closeness of competition.

⁹⁶ [redacted].

⁹⁷ We note that [redacted]

⁹⁸ [redacted].

⁹⁹ [redacted].

¹⁰⁰ [redacted].

¹⁰¹ Footasylum submitted that the Parties each have a different focus, having pursued a significantly differentiated customer offer and [redacted]. We believe the explanation offered by Footasylum is not consistent with the comment made in [redacted] which states that Footasylum has [redacted].

¹⁰² [redacted]

- (j) [REDACTED]¹⁰³ prepared by Footasylum's Retail Sales and Operations Manager for senior management and heads of department, track the financial performance of individual stores [REDACTED].¹⁰⁴ [REDACTED],¹⁰⁵ [REDACTED].¹⁰⁶ [REDACTED]¹⁰⁷ [REDACTED]^{108, 109}
- (k) [REDACTED]¹¹⁰ prepared for senior management and heads of department, [REDACTED].¹¹¹ [REDACTED]¹¹² From our assessment however, we note that [REDACTED] of the documents that mention competitors referred [REDACTED],¹¹³ while the remaining documents referred to [REDACTED].¹¹⁴
- (l) [REDACTED].¹¹⁵ [REDACTED].¹¹⁶ Footasylum submitted that '[REDACTED]'.¹¹⁷ We note this, but do not consider it to be a valid reason to discount this document as evidence of closeness of competition between the Parties; [REDACTED]. In this case, Footasylum's monitoring of [REDACTED] as an active retailer in the market, suggests it considers itself to compete with [REDACTED].
- (m) One document contained notes prepared by Footasylum's Buying and Marketing Director highlighting that [REDACTED]. It states: [REDACTED]¹¹⁸ [REDACTED]¹¹⁹ [REDACTED], as set out in paragraphs 8.20 and 8.22, access to branded products from suppliers, particularly Nike and adidas, is a key element of differentiation for retailers in this market to be able to compete effectively. This has been reflected in submissions received from the Parties and third parties. Therefore, we interpret the monitoring of [REDACTED] by Footasylum in this area as evidence of closeness of competition between [REDACTED].
- (n) A presentation circulated in advance of a Board meeting shows how [REDACTED]¹²⁰ [REDACTED].¹²¹

50. The documents described above are consistent with internal documents prepared by independent third parties for or about Footasylum, for example:

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED]

¹⁰⁵ Footasylum submitted that '[REDACTED]'.

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ Footasylum submitted that it is '[REDACTED]'. We responded to a similar argument in paragraph 8.176c.

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED]

¹¹⁶ We note that the analysis presented in the Footasylum document may be biased due to the other factors that are not accounted for. [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED]

¹²⁰ [REDACTED]

¹²¹ [REDACTED]

- (a) one document prepared by Peel Hunt¹²² notes that [REDACTED].¹²³ Footasylum submitted that ‘this document was produced by an independent third party, Peel Hunt, [REDACTED]’¹²⁴ However, we note that we have seen no evidence that Footasylum [REDACTED] Peel Hunt’s statement [REDACTED]; and
 - (b) the valuation document prepared by Footasylum’s independent advisers in the context of its acquisition by JD Sports notes the following: [REDACTED].¹²⁵
51. In addition to the Footasylum documents in which monitoring of JD Sports is [REDACTED], several Footasylum documents also mention JD Sports though it is not the [REDACTED] retailer monitored, for example:
- (a) an internal document [REDACTED]¹²⁶[REDACTED]; and
 - (b) one internal document shows, [REDACTED].¹²⁷
52. On balance, we consider that the nature and magnitude of the monitoring evidenced in Footasylum’s internal documents demonstrates [REDACTED]. These documents show that Footasylum also closely monitors [REDACTED] (though not to the same extent as [REDACTED]). They also show some monitoring by Footasylum of other retailers, including [REDACTED], but to a lesser extent.

JD Sports’ internal documents

53. For JD Sports, we found that Footasylum is also prominent in the monitoring that it conducts, alongside other retailers.¹²⁸
- (a) JD Sports submitted weekly reports referred to as [REDACTED], which monitor elements of its [REDACTED].¹²⁹ These documents were described by JD Sports as being prepared by and for its multi-channel team. JD Sports submitted that ‘a large portion of these documents were created over two years ago

¹²² Peel Hunt is a Broking House - a firm that provides financial services on a commission basis.

¹²³ [REDACTED].

¹²⁴ [REDACTED].

¹²⁵ [REDACTED] is a statement of opinion made [REDACTED]. We accept this but consider it relevant given the source is a third party which was advising Footasylum and therefore could be considered knowledgeable and informed about the business. We also note that the comment is consistent with the thrust of our review of Footasylum’s internal documents.

¹²⁶ [REDACTED].

¹²⁷ [REDACTED].

¹²⁸ Across several of the documents described here, JD Sports submitted that these documents are largely factual and provide no strategic commentary on Footasylum. We consider this submission after our assessment of relevant internal documents from paragraph 8.182.

¹²⁹ [REDACTED]

and may no longer reflect the competitive dynamics in the market,’¹³⁰ however, we note that the majority of the documents are from 2018. These reports typically include [REDACTED]. In examining [REDACTED].¹³¹

- (b) [REDACTED]¹³² are used by JD Sports in the ordinary course of business to analyse the impact of competitor store openings, closures and refurbishments at a local level.¹³³ This analysis is prepared for the property, merchandising, retail, marketing and finance teams at JD Sports and compiled on a monthly basis. We have considered these documents to be particularly relevant as they specifically assess the constraint of other competitors’ stores on JD Sports: each report [REDACTED]. In these documents, JD Sports consistently [REDACTED].¹³⁴ JD Sports submitted that ‘the assessment contained in these documents did not affect its decision-making [REDACTED].¹³⁵ However, we consider these documents to provide evidence of monitoring of a limited set of retailers [REDACTED].¹³⁶ As part of our assessment, we also analysed [REDACTED]).
- (c) [REDACTED]¹³⁷ prepared by JD Sports’ retail marketing team record data for general information-gathering purposes on trading conditions, as well as noting other factors – [REDACTED].¹³⁸ JD Sports submitted 33 of these reports drafted at different points in time between 2017 and 2019 (mostly in 2018).¹³⁹ JD Sports submitted that when competitor activity was discussed, [REDACTED].¹⁴⁰ We note that while most of these reports include a

¹³⁰ [REDACTED] JD Sports also added that ‘Given recent developments it is clear that these documents do not reflect the current competitive dynamics of the market.’ [REDACTED]. We considered this argument in paragraphs 8.170 and 8.174.

¹³¹ JD Sports submitted that in these documents, competitors are addressed in a consistent manner throughout [REDACTED]. However, our assessment highlights that [REDACTED] examined individually and more extensively than any other retailer.

¹³² [REDACTED].

¹³³ [REDACTED].

¹³⁴ We note that JD Sports stated that ‘JD Sports often prepares competitor impact reports that look at a far wider range of competitors.’ JD Sports submitted one document ([REDACTED]). We consider that as this document was prepared for the purpose of the Merger, it is reasonable to consider that they are less likely to reflect the usual running of the business and as such we have not given it the same weight. [REDACTED] consider that the fact that, despite the information being available for a range of retailers, internal reports were created [REDACTED], reflects their particular consideration by JD Sports.

¹³⁵ [REDACTED]. JD Sports also submitted that ‘these reports are reflective of competitor activity at the time they are prepared. The competitor impact analysis referenced in this extract is now almost three years old and is, therefore, no longer reflective of current competitive conditions (particularly given the ongoing Covid-19 crisis)’ [REDACTED]). We addressed these arguments in paragraphs 8.170 and 8.174.

¹³⁶ Additional [REDACTED]. These reports [REDACTED]). However, we note that, while information is available for a wide set of competitors, before this Merger, JD Sports had prepared reports only for [REDACTED]. Moreover, we note that the analysis does not give any perspective of the relative scale of the impact. For example, [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ [REDACTED].

¹³⁹ JD Sports submitted that ‘a significant portion of these [REDACTED] are now over two years old and no longer reflect competitive conditions’ and that ‘Given recent developments it is clear that these documents do not reflect the current competitive dynamics of the market. This is now especially true given the ongoing Covid-19 crisis.’ ([REDACTED]). These arguments are addressed in paragraphs 8.170 and 8.174. JD Sports also submitted that ‘[REDACTED].’ These arguments are addressed in chapter 5 on the counterfactual and market developments section of this chapter (from paragraph 8.311).

¹⁴⁰ [REDACTED].

section called [REDACTED], there are also references elsewhere in these reports which reflect monitoring of and reaction to competitors, as set out below:

- (i) in these [REDACTED].¹⁴¹ Excluding references [REDACTED];¹⁴¹ [REDACTED]¹⁴² [REDACTED];¹⁴³
 - (ii) [REDACTED]¹⁴⁴ [REDACTED]¹⁴⁵;
 - (iii) in some instances, [REDACTED];¹⁴⁶
 - (iv) [REDACTED].¹⁴⁷ [REDACTED];¹⁴⁸ and
 - (v) [REDACTED].¹⁴⁹
- (d) In a number of other documents, [REDACTED].¹⁵⁰ These documents cover comparisons of competitors' discounts for Black Friday¹⁵¹ and some of the documents discuss JD Sports' student customer segment (documents on the student segment are discussed further below).¹⁵²
- (e) Two internal presentations prepared by the merchandising team for JD Sports' Merchandising Director dated 2017 and 2018 [REDACTED]. The presentations [REDACTED].¹⁵³ JD Sports submitted to us that [REDACTED].¹⁵⁴ JD Sports also submitted that the presentations did not contain any analysis that [REDACTED]. However, we consider the existence of these presentations is evidence of JD Sports' monitoring of [REDACTED], and we note that no similar presentations were prepared [REDACTED], and that these presentations were prepared for two consecutive years and not as a one-off.
- (f) Another internal document prepared by and for the multi-channel team [REDACTED].¹⁵⁵ While we do give limited weight to the results of the analysis, given the date it was produced and the period covered [REDACTED], we consider

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ [REDACTED]

¹⁴⁴ [REDACTED]

¹⁴⁵ [REDACTED]

¹⁴⁶ [REDACTED]

¹⁴⁷ [REDACTED]

¹⁴⁸ [REDACTED].'

¹⁴⁹ For example, [REDACTED].

¹⁵⁰ JD Sports submitted that it '[REDACTED]. However, our assessment of these internal documents shows that Footasylum is the most prominent. [REDACTED]. We have addressed these arguments from paragraph 8.185.

¹⁵¹ See for example, [REDACTED]. We found no evidence that supported JD Sports' statement and therefore interpreted the significantly larger space dedicated to Footasylum in these documents as evidence of closeness of competition.

¹⁵² [REDACTED].

¹⁵³ [REDACTED]

¹⁵⁴ [REDACTED].

¹⁵⁵ [REDACTED]. JD Sports submitted that 'This document is from November 2017 and is no longer representative of current competitive conditions or the way the Parties currently price their products.' [REDACTED]

the existence of this product comparison as informative evidence of JD Sports' monitoring of [REDACTED].

(g) Several internal documents discuss and monitor competition in the student customers segment:¹⁵⁶

(i) the majority of documents [REDACTED],¹⁵⁷ [REDACTED];¹⁵⁸

(ii) these and other internal documents focussing on student customers [REDACTED]¹⁵⁹ [REDACTED].¹⁶⁰ [REDACTED];¹⁶¹ and

(iii) some strategic documents [REDACTED].¹⁶² [REDACTED] but consider that it is still relevant evidence of JD Sports monitoring and considering potential commercial action conditional on [REDACTED].

(h) Some of the documents described above were based on analysis performed by Cardlytics on purchases made by JD Sports customers.¹⁶³ Similar data and analysis were used by JD Sports in areas [REDACTED].¹⁶⁴ [REDACTED].¹⁶⁵ [REDACTED]. The analysis may be subject to some limitations (eg the representativeness of the customer sample is not clear, and spending might not be restricted to an appropriate set of products). Moreover, as some of the analysis in these documents is from 2016/17, it may be less reflective of current market dynamics than more recent documents and analysis.¹⁶⁶ For these reasons, we have given limited weight to these documents (and the results they contain). However, we note that in different analyses [REDACTED].¹⁶⁷

54. In addition to the JD Sports documents in which monitoring of Footasylum is prominent, several of JD Sports' documents mention Footasylum though not as the most prominent retailer, for example:

(a) [REDACTED].¹⁶⁸ The most cited retailer in these documents is [REDACTED].¹⁶⁹ [REDACTED];

¹⁵⁶ [REDACTED]

¹⁵⁷ [REDACTED].

¹⁵⁸ [REDACTED]

¹⁵⁹ [REDACTED].

¹⁶⁰ [REDACTED].

¹⁶¹ [REDACTED].

¹⁶² [REDACTED]. We have not assessed in detail the segment for students, but we recognise that JD Sports' documents refer to [REDACTED]

¹⁶³ [REDACTED]

¹⁶⁴ [REDACTED].

¹⁶⁵ [REDACTED].

¹⁶⁶ For example, as JD Sports highlighted [REDACTED], we accept that 'the document referring to [REDACTED] precedes Footasylum's financial difficulties.'

¹⁶⁷ [REDACTED].

¹⁶⁸ [REDACTED]. We note that more than half of these reports [REDACTED].

¹⁶⁹ We accept the Parties' submission in The Parties, Response to Provisional Findings, paragraph 296(f).

- (b) one internal note dated 21 June 2017 assessed the [REDACTED];
- (c) some documents include data on [REDACTED];¹⁷⁰
- (d) out of home (OOH) advertising monitoring reports prepared by [REDACTED] for JD Sports. Except for one presentation dated 2017 which was dedicated solely to [REDACTED]. The Parties submitted that these documents ‘contain no information at all about Footasylum, but contain information for a range of other competitors.’¹⁷¹ We note that these reports rarely contain any data for the following [REDACTED], contrary to what may be expected given these retailers sell sports-inspired casual products like JD Sports;¹⁷² and
- (e) an email from [REDACTED].¹⁷³

55. On balance, we consider that the nature and extent of the monitoring evidenced in JD Sports’ internal documents demonstrates that Footasylum is one of the competitors most closely monitored by JD Sports, alongside Foot Locker, ASOS, Nike and adidas. These documents show some monitoring by JD Sports of other retailers including Sports Direct, Schuh, Office, Zalando and End, though to a lesser extent.

The extent to which the Parties’ monitoring of each other indicates closeness of competition

- 56. The Parties submitted that ‘simple monitoring’ does not of itself support an SLC finding without evidence that the Parties are reacting to each other when they choose to set their national PQRS variables (as opposed to competitive pressure in aggregate, other rivals or consumer expectations)’¹⁷⁴ and that ‘monitoring in and of itself does not evidence closeness of competition.’¹⁷⁵
- 57. We observed a small number of examples showing that competitor monitoring is likely to inform the Parties’ commercial decision making and is sometimes followed directly by responsive actions (with this also being the case for other retailers). For example:¹⁷⁶

¹⁷⁰ Google Trends - 2017-2018.xlsx

¹⁷¹ The Parties, Response to Provisional Findings, paragraph 296(e).

¹⁷² [REDACTED].

¹⁷³ [REDACTED] and that it does not fall into the definition of internal document as per footnote 39, alongside the date of the email and therefore we have not put weight on this in our assessment.

¹⁷⁴ The Parties, Response to Provisional Findings, paragraph 283.

¹⁷⁵ The Parties, Response to Provisional Findings, paragraph 302.

¹⁷⁶ We amended this section after considering the Parties’ arguments in sections III and IV of chapter 5 of the Parties’ response to the Provisional Findings. The Parties’ submissions covered documents previously referenced in the Provisional Findings including documents on student discounts (some references to student discounts are retained where we did not accept the Parties’ arguments), Footasylum’s strategic documents, and pay-later options.

- (i) one Footasylum document states [REDACTED],¹⁷⁷ and another document [REDACTED];¹⁷⁸
 - (j) another Footasylum document [REDACTED];¹⁷⁹
 - (k) one Footasylum document [REDACTED];¹⁸⁰
 - (l) a few JD Sports documents report marketing [REDACTED];¹⁸¹ [REDACTED];¹⁸² and
 - (m) as discussed above, a strategic document by JD Sports suggests [REDACTED].¹⁸³
58. These documents show that, in some instances, the Parties' monitoring of each other and of other retailers is likely to have influenced their commercial decisions and was sometimes followed by competitive responses to each other (for example around student discounts). This supports our view that the purpose of monitoring competitors' activities is likely to be to inform business decisions either indirectly or directly.
59. Notwithstanding this evidence in the Parties' internal documents which suggests that in some cases they have taken action in response to their monitoring of each other's activity, we do not consider that a direct response to competitor monitoring is required in order to demonstrate closeness of competition. We consider that monitoring in itself is demonstrative of close competition, noting that:
- (a) it is unlikely that the Parties would undertake extensive regular monitoring of competitors' activities if it were not to inform business decisions either indirectly or directly. The fact that the results of that monitoring are reported to the Parties' senior management is a significant indication that this is indeed the case; and
 - (b) the Parties' internal documents do not tend to include detailed reasoning for each commercial decision, so we would not expect to frequently see clear trails from a reference to a competitor in an internal document to a commercial reaction.
60. In light of the above, the fact that the Parties undertake extensive regular monitoring of each other supports a more general finding that they are close

¹⁷⁷ [REDACTED]

¹⁷⁸ [REDACTED].

¹⁷⁹ See paragraph 8.176(g).

¹⁸⁰ See paragraph 8.176(i).

¹⁸¹ See paragraph 8.180(c)(i).

¹⁸² See paragraph 8.180(c)(iii). JD Sports submitted that this type of local marketing activity may be employed for a range of reasons, and that spend on local marketing represents a [REDACTED] of JD Sports' overall marketing spend [REDACTED]. However, we believe that the documents are still valid evidence of JD Sports monitoring and reacting to Footasylum.

¹⁸³ See paragraph 8.180(g)(iii).

competitors.¹⁸⁴ This position would not be undermined even if the internal documents contained no specific record of the Parties having taken responsive actions, either as regards each other or as regards other retailers, as a result of such monitoring.

Conclusion on internal documents

61. The detailed monitoring of each other in the Parties' internal documents is evidence supportive of a finding of closeness of competition between them. It is unlikely that the Parties would engage in detailed monitoring of retailers which they do not consider to be close competitors, and which does not feed indirectly or directly into their commercial decisions. Indeed, there is some evidence of it influencing their decisions directly, although this is not extensively reported in these internal documents for any retailers.
62. In particular, we found that:
 - (a) Footasylum's internal documents demonstrate that [REDACTED]. These documents show that Footasylum also closely monitors [REDACTED] (though not to the same extent as [REDACTED]); and
 - (b) JD Sports' internal documents demonstrate that Footasylum is one of the competitors most closely monitored by JD Sports, alongside Foot Locker, ASOS, Nike and adidas.
63. The Parties' internal documents show a low degree of monitoring by the Parties of a range of other competitors,¹⁸⁵ showing that they are seen as more distant competitors. It is notable that [REDACTED], which is a large retailer in the industry, is monitored to a much lesser extent, especially by Footasylum. More generalist retailers, including department stores, are hardly mentioned at all.

¹⁸⁴ We note that we based our finding that the Parties are close competitors on a range of evidence (set out throughout this chapter and in chapter 9), which we considered in the round.

¹⁸⁵ These were [REDACTED].

Appendix I: Extracts from the CMA's Phase 2 Final Report

Introduction

- 1.1 This paper is an extract from the [CMA's Phase 2 Final Report](#), which covers our assessment of market definition, the impact of suppliers on retail competition, and how retailers compete.

1. Market definition¹

Introduction

- 1.1 In this chapter we have defined the relevant market(s) which framed the analysis of the competitive effects of the Merger.² In general, the boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger, 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.³ We have taken these factors into account in our assessment.
- 1.2 This Merger is in a sector where the offerings of retailers are highly differentiated. Differentiation typically means that a spectrum of offerings exists that are close but imperfect substitutes; for example retailers may have a wide range of products covering different types of footwear, from trainers to formal shoes. Delineating a relevant market on such a spectrum can be difficult and somewhat artificial, for example it might lead to very narrow markets, such as for a specific trainer type or brand. Therefore, as stated above, the boundaries of the market do not determine the outcome of our competitive assessment.
- 1.3 This chapter is structured as follows:
- (a) background;
 - (b) general approach to market definition;
 - (c) product market definition;
 - (i) footwear and apparel;
 - (ii) footwear;

¹ Extract from [CMA Phase 2 Final Report](#), chapter 7.

² [CMA Guidance, paragraph 5.2.1.](#)

³ [CMA Guidance, paragraph 5.2.2.](#)

- (iii) apparel;
- (d) geographic market definition; and
- (e) conclusion.

Background

- 1.4 The Parties are retailers of footwear and apparel specialising in sports-inspired casualwear (ie sportswear worn as fashionwear rather than for sports performance). They offer ranges of different branded products, including from the two key suppliers of branded footwear, Nike and adidas, and a broad range of other suppliers' footwear and apparel brands.
- 1.5 The growth in sports-inspired casualwear as a trend is a common feature of the wider fashion industry. Fashion is trend-driven and influenced by marketing, events, designers, social media, celebrities and other factors. Suppliers change their available products, typically seasonally, and retailers can also change their proposition, both in terms of their product offering and positioning.
- 1.6 Demand creation appears increasingly to start online through social media, with consumers then having the ability to browse and shop online or in-store. Consumers can also purchase products online and collect and/or return them in-store. Therefore, we recognise that there is fluidity between how consumers browse, purchase and receive products across these channels.
- 1.7 Overall, the fluidity in the sector means that drawing clear distinctions between product types, channels and retailers is likely to be difficult and of limited analytical value, particularly recognising that such distinctions may change over time.

General approach to market definition

- 1.8 The purpose of market definition is to provide a framework for our analysis of the competitive effects of the Merger. Our analysis of competitive effects looked at the level of competition between the Parties, and with other retailers, and the competitive constraint from suppliers, in aggregate.
- 1.9 In practice, the analysis underpinning the market definition and the assessment of competitive effects overlap, with many of the factors being relevant to both. In our assessment of whether the Merger may give rise to an SLC, we took into account constraints outside of the relevant market(s), and to the extent necessary, segmentation within the relevant market(s), or other ways in which some constraints are more important than others.

- 1.10 The relevant market(s) contain the most significant alternatives available to the customers of the Parties and includes the most relevant constraints on the behaviour of the Parties.⁴
- 1.11 In defining the relevant market(s), we looked at two dimensions: a product dimension and a geographic dimension.⁵ The relevant product market is a set of products that consumers consider to be close substitutes, for example in terms of utility, brand or quality. The relevant geographic market is primarily the area in which competition occurs and may be local, regional, national or international.
- 1.12 In this chapter we first assess the relevant product market and then turn to the relevant geographic market.

Product market definition

- 1.13 We took the products where the Parties overlap as our starting point for determining the relevant product market.⁶
- 1.14 The Parties both supply footwear and apparel products both in-store and online. We investigated different aspects of these products and the extent to which different types of products belong in the same relevant market.

Footwear and apparel

Parties' views

- 1.15 The Parties submitted that footwear and apparel were separate markets and that this accorded with industry practice and common sense on demand-side substitutability.⁷

Our assessment

- 1.16 We consider that it is appropriate to define each of footwear and apparel as separate markets, as these markets are sufficiently distinct to justify separate examination. From a demand-side perspective, they are functionally different and so substitution between the two is unlikely. From a supply-side perspective, some retailers focus on apparel, some on footwear and some on both. Therefore, across footwear and apparel there are different relevant competitors (and constraints), which indicate that they are separate markets. Further, while supply-side substitution (at the retail level) is possible, we recognise that it would require obtaining access to a different set of products, repositioning of the retail brand and changes to store and website layouts and operations. This suggests that retailers are unlikely to be able to change whether

⁴ CMA Guidance, paragraph 5.2.1.

⁵ CMA Guidance, paragraph 5.2.5.

⁶ CMA Guidance, paragraph 5.2.11.

⁷ JD Sports, Response to the Issues Statement, November 2019, paragraph 86.

they supply footwear or apparel sufficiently quickly (ie generally within a year)⁸ and effectively for us to consider classifying both product types within a broad market.

- 1.17 Defining separate markets for footwear and apparel is in line with previous CMA merger inquiries, such as in JD Sports/Go Outdoors, in which the CMA defined separate markets for the retail supply of outdoor footwear on the one hand, and the retail supply of outdoor clothing on the other.⁹
- 1.18 We have not found any evidence that it is appropriate to assess a separate market for bundles of footwear and apparel and the Parties supported this approach in their submissions.¹⁰

Footwear

Different types of footwear

- 1.19 There are many different types of footwear including formal footwear, sports performance footwear and sports-inspired casual footwear. Demand for sports-inspired casual footwear has grown rapidly in recent years. We recognise that some types of footwear may be bought and used differently by different consumers eg some shoes designed for use for a particular sport may also be purchased and worn casually. Nevertheless, we considered which types of footwear belong within the relevant market, as set out in this section.

Parties' views

- 1.20 The Parties submitted that the relevant product frame of reference for footwear was:¹¹

the retail supply of casual fashion footwear (such as trainers and classic trainers (including hi-tops), boots, slides, canvas and plimsolls, brown and black casual shoes or brogues, espadrilles and Flip Flops).

- 1.21 JD Sports also submitted that the CMA should conduct a brand-by-brand assessment of footwear sales, although it did not have strong views on how this assessment should be distributed across market definition (eg whether these brands were defined as separate markets, segments or looked at through a separate lens).¹²

⁸ CMA Guidance, paragraph 5.2.17.

⁹ Completed acquisition by JD Sports Fashion Plc of Go Outdoors Topco Limited, ME/6648/16, dated 7 June 2017 (JD/Go Outdoors).

¹⁰ [REDACTED]

¹¹ [REDACTED]

¹² JD Sports, Response to the Issues Statement, November 2019, paragraph 92.

Third parties' views

- 1.22 One third party submitted that it was appropriate to consider a narrower product market than sports-inspired casual footwear, specifically a market for 'restricted products' (these are Nike and adidas special make-up/exclusive and high-end/premium products that are currently supplied to only a limited number of multi-brand retailers in the UK).¹³
- 1.23 That third party submitted that there was not any substitution from restricted products to other products. Further, it submitted that restricted products are materially and noticeably distinct from other products and that the high diversion ratios between the Parties found by the CMA's survey were because each of the Parties sells restricted products.
- 1.24 The third party told us that even though products may change from being restricted to non-restricted, this did not prevent these categories from being a suitable basis for a market definition. It submitted that market definition was not a static concept and the fact that the exact set of products contained within the definition may differ slightly from season to season was not evidence of a lack of a separate market. It submitted that at any given time, there was a distinct set of restricted products that was well understood by the key suppliers and offered to only some retailers, and that the core of these products remained more or less constant.

Our assessment

- 1.25 We recognise that the Parties stock a range of footwear that may fall across different categories such as sports-lifestyle or fashion. However, for the purpose of market definition we started by classifying the category where the Parties overlap and then considered the constraints on these products.¹⁴
- 1.26 We have defined a category of footwear as sports-inspired casual footwear, which are products designed to reflect athletic fashion trends and used primarily for leisure purposes.¹⁵ For the purposes of illustration, we consider that this would include products such as Nike Air Max 720, adidas Originals Ozweego, Puma RS-X Winterised, vans BruX Wc and Jordan Mars 270. However, we have not exhaustively defined the precise products or suppliers that fall within this category.
- 1.27 We consider that the Parties overlap in the supply of sports-inspired casual footwear. For example, both Parties stock Nike Air Max 720 and adidas Originals Ozweego. Indeed, more generally, for Nike and adidas footwear, [redacted] of Footasylum's Nike

¹³ [redacted]

¹⁴ [CMA Guidance, paragraph 5.2.11](#).

¹⁵ This excludes non-sports-inspired casual products, such as boots, performance sport footwear, outdoor footwear and formal footwear.

branded footwear products and [X] of its adidas branded footwear products are also stocked by JD Sports.

- 1.28 We have therefore taken as our starting point the retail supply of sports-inspired casual footwear.

Restricted products

- 1.29 Before discussing restricted products and whether it is appropriate to define a separate market for them, it is helpful to first summarise suppliers' general approach to determining which products individual retailers can access.
- 1.30 Suppliers in this market typically have internal segmentation policies whereby they place retailers into different categories (eg sport or lifestyle/fashion-focussed) and sometimes tiers within these categories. A retailer's category then largely determines the assortment of products that a supplier will offer that retailer. Suppliers also classify products to determine to which retailer categories they will be offered. Some products are available to only one category/tier of retailers while others might be available to multiple categories/tiers or all retailers.
- 1.31 It is this segmentation of retailers and products that appears to underpin the definition of restricted products raised by a third party. This third party submitted that it was appropriate to consider a narrower product market than sports-inspired casual footwear, specifically a market for 'restricted products'.
- 1.32 In our competitive assessment, we have taken account of constraints within the market including segments within that market. As such, a broader market definition does not preclude us from finding an SLC within a segment of that broader market. Nevertheless, we considered whether a market definition focused on restricted products would be appropriate.
- 1.33 The third party submitted that restricted products are materially different from non-restricted products. We acknowledge that suppliers undertake substantial efforts to differentiate themselves and certain products. However, we consider that consumers' preferences and behaviour are a better indicator of whether or not such products are so differentiated from each other that they are not substitutes. We do not consider the claim that restricted products are materially different to non-restricted products to be a strong indicator that restricted products comprise a separate market.
- 1.34 On the demand-side, it has been put to us that one of the benefits of restricted products is that they drive footfall,¹⁶ which helps to generate sales of other products. This means that retailers are likely to benefit most from having both restricted products and other products. This presence of 'spill-over' effects from restricted products to other products means the extent of substitutability from restricted product to other products is not clear, making it difficult to determine whether a narrower

¹⁶ [X]

market for restricted products exists or whether the market should be defined more broadly, to include restricted and other products. It is possible that when considering a purchase of a restricted product, some consumers would be willing to substitute to an alternative (implying a broader market definition covering restricted and other products). For example, our store exit survey found that only 9% (JD Sports) to 13% (Footasylum) of footwear customers listed 'products that other stores don't have' as a reason for why they chose to shop at one of the Parties' stores.¹⁷ The evidence does not support a finding that consumers have strong preferences for restricted products to the exclusion of non-restricted products.

- 1.35 On the supply-side, we note that restrictions in access to branded products are based on suppliers' categorisation of retailers and products, which can, at least in principle, be amended by suppliers at any time post-Merger. A supplier's unilateral decision to make a branded product available to more retailer categories would in effect change that product from being 'restricted' to 'non-restricted'. For example, we have seen evidence that suppliers manage their products over a product life cycle (throughout which they expect to sell different volumes of the product) and products may be made more widely available over that life cycle.¹⁸ Therefore suppliers control whether or not a product is considered to be restricted.
- 1.36 We agree with the third party's submission that given that the markets in question are influenced by fashion trends, it is likely that the products within the relevant markets and/or market segments will change over time (particularly between seasons). However, this can present a practical difficulty in identifying a clear delineation of these products for the purpose of market definition.
- 1.37 Therefore, we do not consider it appropriate to define a narrower product market for restricted products. Nevertheless, we consider that access to these products plays a key role in assessing competition, as reflected in our competitive assessment.

Other types of footwear

- 1.38 We considered whether there was any basis to widen our product market definition from the retail supply of sports-inspired casual footwear to include other types of footwear. Nike, adidas and other suppliers of branded sports-inspired casual footwear typically also produce sports performance footwear but not other types of footwear.
- 1.39 On the demand-side, for at least some sports performance products such as football boots, due to their functional differences, demand-side substitutability from sports-inspired casual footwear is limited. Therefore, these performance type products are generally unlikely to belong in the relevant market. Equally, other types of footwear (eg formal shoes and boots) are unlikely to be seen as demand-side substitutes to sports-inspired casual footwear, due to their functional differences, as well as not

¹⁷ [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

¹⁸ [REDACTED]

generally being available from the same suppliers and hence not having equivalent appeal to consumers with strong brand preferences.

- 1.40 On the supply-side, with regard to sports performance products, suppliers typically allocate their branded products into different categories which are only available to certain retailer categories and while these can change, we found little evidence that they do. Nike submitted that it was ‘not uncommon’ for it to re-categorise products over the long term, although it only identified one instance of re-categorisation between product segments since January 2018 – the VaporMax, which was reclassified from a running shoe to a lifestyle product.¹⁹ As such, we consider that these products should not be included in the market on the grounds of supply-side substitution. With regard to other types of footwear (eg formal shoes and boots), the suppliers are typically different from those of sports-inspired casual footwear, such that the conditions of competition are different, suggesting a lack of supply-side substitution.²⁰
- 1.41 Our view on the basis of the evidence set out above is that the relevant product market is the retail supply of sports-inspired casual footwear.²¹ However, we acknowledge that the boundaries of the market are blurred and we have therefore taken account of constraints from outside the market. As such we considered the strength of the constraint from retailers stocking other types of footwear, including sports performance footwear, casual fashion footwear, and/or other categories of footwear, in our competitive assessment.

In-store and online sales

- 1.42 We also considered whether the product market for footwear should be segmented by distribution channel, ie between in-store and online sales (including both online delivered and online click and collect).
- 1.43 We note that all retail stores selling non-essential goods, including the Parties’ and those of other retailers of sports-inspired casual products, have been closed by government order since 23 March 2020 due to COVID-19. JD Sports reported that its online sales during the week ending 28 March 2020 were [REDACTED]% on a like-for-like basis. [REDACTED]. We consider that the medium and long term impact of COVID-19 is uncertain. However, given that we combined the in-store and online channels in the same market based on a range of other evidence (as set out below), we consider that it does not impact our conclusions on market definition.

¹⁹ [REDACTED]

²⁰ [CMA Guidance, paragraph 5.2.17.](#)

²¹ We note that even within sports-inspired casual footwear and apparel there are different types of branded products that may not be close substitutes (eg higher-tier and lower-tier branded products). If two products perform the same purpose, but one is of higher price and quality, they might be included in the same market. The question is whether the price of one constrains the price of the other. Although one is of lower quality, consumers might still switch to this product if the price of the more expensive product rose such that they no longer felt that the higher quality justified the price differential. [CMA, CA98 Market definition guidelines, paragraph 3.5.](#)

Relative size of in-store and online

- 1.44 As relevant context, we first reviewed the relative size of the in-store and online channels in the relevant product market. The in-store channel is currently the larger of the two channels. Our analysis of data received from the Parties and third parties suggests that in 2018 in-store accounted for 60% and online accounted for 40% of total sports-inspired casual footwear sales.²²
- 1.45 The proportion of in-store and online sales varies across retailers. JD Sports has a larger in-store proportion ([X]%) than the sports-inspired casual footwear market as a whole, whereas Footasylum has a proportion ([X]%) that is more in line with the overall market.²³ Nike's and adidas's in-store footwear sales account for [X]% and [X]% of their total DTC footwear sales, respectively.²⁴
- 1.46 This indicates that in-store is currently the main channel, but online accounts for a substantial proportion of sales. We recognise that the market is dynamic to some extent and that these proportions may therefore change in the foreseeable future (we examined the role of DTC expansion in our competitive assessment). Having reviewed the proportion of in-store and online sales, we then turned to the growth of online sales.

Growth of online

- 1.47 Sales across the whole market have grown (19% in the in-store channel and 154% growth in the online channel respectively between 2015 and 2018), but the online channel has grown faster, leading to an increase in its relative size.²⁵ Online's share of the total revenue of sports-inspired casual footwear has risen, from around 22% of total revenue of sports-inspired casual footwear in 2015 to around 37% in 2018.²⁶
- 1.48 Looking specifically at the Parties, between September 2014 and September 2019, JD Sports' revenue from footwear within the relevant product market sold through its online channel increased from approximately [X] to approximately [X] of its total footwear revenue. Between September 2014 and September 2019, Footasylum's revenue from such footwear sold through its online channel increased from approximately [X] to approximately [X] of its total footwear revenue.
- 1.49 Given that in-store sales are still growing (albeit at a much lower rate than online),²⁷ it is likely that the growth of online is explained both by new market growth and some migration of consumers who previously purchased only, or primarily, in-store, to increasingly purchasing online. Such migration can cause a competitive tension

²² CMA analysis of the Parties' and third parties' data.

²³ Values based on September 2019. CMA analysis of the Parties' data.

²⁴ CMA analysis of Nike and adidas data [X]

²⁵ CMA analysis of the Parties' and third parties' data.

²⁶ Comparison based on a sub-set of retailers which provided data back to 2015, hence the 2018 value differs from that stated in 7.444. Source: CMA analysis of the Parties' and third parties' data.

²⁷ We note that this does not reflect the effects of retailers' non-essential stores being closed by government order since 23 March 2020 due to COVID-19.

between channels and retailers can compete to slow down or speed up such migration, or encourage the use of a particular channel, for example through making gift cards redeemable in both channels or only one channel or making discounts greater in one channel than another.²⁸ It is also possible that continuing migration may over time reinforce in-store and online preferences in distinct sets of consumers who primarily use one channel or the other.

Parties' views

- 1.50 JD Sports submitted that the distinction between the in-store and online channels was blurred and that it was not appropriate to identify distinct frames of reference for in-store and online sales.²⁹
- 1.51 It submitted that the CMA's surveys supported the view that there was a market that included online and in-store due to the extent of diversion across these channels.³⁰
- 1.52 JD Sports also submitted that 'the digitally-inspired customer journey, evidence of actual store to online substitution, the immediate price constraint of online, and the pressure to differentiate the store means that online is an important constraint on in-store, regardless of market definition'.³¹

Our assessment

- 1.53 We recognise that there are significant linkages between the in-store and online channels in this market. Each of the channels can be used for different aspects of the consumer journey – search, comparison and purchase – and these can be done interchangeably across channels. While some consumers may have strong preferences for one channel, others use these channels as substitutes or in combination. For example, consumers may first see products online, including on social media (eg on Instagram) or in-store (eg at a flagship store) and then purchase in the other channel. Some consumers might search online and then buy in-store, or the other way around, for example trying on products in-store and then buying online.
- 1.54 Given the above, we acknowledge that the linkages between in-store and online are sufficiently material such that the distinction between the two channels is blurred and that it is therefore important not to consider each channel in isolation without recognising these linkages. On that basis, we assessed whether the two channels are in the same market for the purposes of market definition.

²⁸ JD Sports submitted that prior to 13 February 2019 its physical gift cards were only redeemable in-store and there was no e-gift card, but after this date physical gift cards were made redeemable online and e-gift cards were introduced in response to customer feedback that gift cards should be redeemable both in-store and online and to [X]. [JD Sports, Response to the Issues Statement, November 2019, paragraphs 115-116.](#)

²⁹ [X]

³⁰ [X]

³¹ [JD Sports, Response to the Issues Statement, November 2019, page 13.](#)

- *Qualitative difference between in-store and online*

- 1.55 We consider that the shopping experience is qualitatively different between the two channels. In-store, consumers are able to touch and try on footwear in a way that they cannot online. In-store service can be delivered in person. Further, purchases made in-store are received immediately whereas online purchases have a short delivery delay before receipt by the consumer.³²
- 1.56 However, these types of differences are not in themselves sufficient to indicate whether or not the two channels are seen as substitutes by consumers themselves. We therefore consider that consumer behaviour and stated preferences are more informative of whether the two channels are in the same market.

- *Past-spending behaviour*

- 1.57 Our store exit survey found that 41% of JD Sports and 36% of Footasylum in-store customers bought all or nearly all of their footwear products in-store over the last year.³³ About a third (28% JD Sports; 32% Footasylum) did the same for most of their footwear and around a fifth (22% JD Sports; 20% Footasylum) spent about the same amounts on footwear in-store and online.³⁴
- 1.58 Although we have not given full evidential weight to our online survey, our best estimates for online customers are from this survey, where around a quarter of the Parties' customers (27% JD Sports, 28% Footasylum) said that they had bought all or nearly all of their footwear products online over the last year.³⁵ About a third (35% JD Sports; 33% Footasylum) said that they had bought most of their items online and over a fifth (21% JD Sports; 24% Footasylum) had bought about the same online and in physical stores.
- 1.59 When examining actual behaviour rather than reported behaviour, the proportions of multi-channel shoppers are lower for one sub-group - members of UNLCKD (Footasylum's loyalty scheme) - than we found in our surveys. For example, only [%] % of UNLCKD customers have made a purchase both in-store and online.³⁶

- *Search and comparison before purchase*

- 1.60 We considered where consumers actively search or learn of a product prior to purchase. There is evidence that a proportion of consumers search in the other

³² The range of available delivery options, such as next day delivery or standard delivery allow consumers some discretion over the length of this delay and the associated cost of delivery.

³³ CMA analysis of exit survey data with responses weighted to be nationally representative.

³⁴ CMA analysis of exit survey data with responses weighted to be nationally representative.

³⁵ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

³⁶ [%]

channel than that of their final purchase. This may be looking in-store, on a website or on an app on a smartphone, tablet or other device.

- 1.61 For in-store customers, around a third (32% JD Sports, 35% Footasylum) of customers had visited a relevant retailer's website, compared prices online or seen the item online, in advance of purchasing in-store.³⁷
- 1.62 Our online survey³⁸ found that around a quarter of the Parties' customers (24% JD Sports; 22% Footasylum) said that they had looked for the item in a physical store before placing their order online.³⁹

- *Willingness to divert*

- 1.63 In terms of the potential for direct substitution between the channels, 45% (JD Sports) and 35% (Footasylum) of all in-store footwear customers said that they would switch to online if all of the stores of the retailer they had purchased from closed.⁴⁰ We note that the wording of these survey questions stated that in this scenario the relevant Party was still selling online, which may have prompted customers to think of that Party's online channel. As such the diversion estimates to online may have some upward bias. This appears to be reflected in the results to the following question, where customers were subsequently asked which online retailer they would have been most likely to switch to. The majority stated the relevant Party's own online channel (about 77% for JD Sports and 60% for Footasylum).⁴¹
- 1.64 Our online survey provides some evidence of the potential for direct substitution from online to in-store, where 40% of JD Sports online customers and 31% of Footasylum online customers said that they would switch to a physical store if the relevant Party had stopped selling online. A large proportion of this switching was to the relevant Party's own stores (53% for JD Sports and 30% for Footasylum).⁴²

- *Customer demographics and use of in-store and online*

- 1.65 The Parties' focus is on the 16-24 year old age group⁴³ (99% of whom use the internet),⁴⁴ suggesting that their customers' access to and use of online stores is likely to be high. Indeed, 79% of this entire age group had bought clothes or sports goods online in the last 12 months.⁴⁵ The Parties also have a proportion of customers outside this age group, who may also purchase online. For example, 65%

³⁷ CMA analysis of exit survey data with responses weighted to be nationally representative.

³⁸ We have not put full evidential weight on our online survey results due to low response rates.

³⁹ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#).

⁴⁰ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁴¹ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁴² [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#).

⁴³ Footasylum's [Annual Report and Accounts 2018](#) states that its target audience is '16-24 year-old digital natives. JD Sports' checkout survey found that [88%].

⁴⁴ [Ofcom, Adults Media Use and Attitudes, 2019](#), page 2.

⁴⁵ [Office for National Statistics, Internet Access – Households and Individuals, 12 August 2019, Table 16](#).

of people in the 45-54 age group had bought clothes or sporting goods online in the last 12 months.⁴⁶

- 1.66 Our surveys do not indicate a clear segmentation in customer type between in-store and online, with respondents to both surveys having a broadly similar composition of age categories, though we note that a higher proportion of respondents to the store exit survey were male, compared with the online survey.⁴⁷

- *Retailer operations*

- 1.67 All national in-store retailers of sports-inspired casual footwear also have an online offering. These retailers operate their in-store and online businesses together, typically using the same distribution centres to supply both, purchasing from suppliers without commitments to the channel through which stock must be sold. Retailers also increasingly facilitate consumers' switching between channels, for example the availability of click and collect at JD Sports has recently started to be introduced via in-store kiosks, allowing its online range to be accessed in-store. The Parties also do not generally distinguish between competitors' in-store and online propositions in their internal documents. Some retailers are online-only eg ASOS, Amazon, and Zalando.
- 1.68 There are some similarities and differences between the offerings of retailers in this market (including the Parties) in-store and online. Retailers in this market, including the Parties, as a matter of policy tend to align their list prices between in-store and online. However, there is evidence of some discounts being available online but not in-store (eg JD Sports' year-round student discount of 10% is available online⁴⁸ but not in-store)⁴⁹ and delivery charges apply online (below a certain threshold). The Parties' full range of stock is typically available online, but not all products are available in-store due to limited space. JD Sports submitted that [REDACTED].⁵⁰

Conclusion on footwear

- 1.69 We recognise that the evidence discussed above is not clear-cut. The survey evidence shows that, in relation to the demand-side, there is an apparent willingness of a sizeable proportion of consumers within each channel to divert to the other channel and that past spending behaviour of consumers is consistent with these switching proportions. We consider that these switching proportions are likely to be large enough to act as a constraint on the alternative channel. On the supply-side,

⁴⁶ Office for National Statistics, Internet Access – Households and Individuals, 12 August 2019, Table 16.

⁴⁷ DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020 and DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.

⁴⁸ JD Sport website, as visited on 23 January 2020.

⁴⁹ [REDACTED]

⁵⁰ [REDACTED]

generally retailers operate their in-store and online businesses together, although we recognise some retailers are present only online.

- 1.70 On balance, our view is that a sufficient proportion of consumers currently shop in both the in-store and online channels, or would be prepared to move between the two channels, in order for the two channels to be considered within the same product market.⁵¹ Nevertheless, we examined any material differences between the channels in the constraints on the Parties and the strength of constraint on the Parties of retailers who operate only or primarily in each channel, in our competitive assessment.

Apparel

- 1.71 As with footwear, apparel can be differentiated based on many factors such as price, materials, creative content and marketing. While there are many different types of apparel, from formalwear to leisurewear, the extent to which these can be considered substitutes and within the same market is largely dependent on consumer preferences.

Parties' views

- 1.72 The Parties submitted that they competed in a broad fashion segment. The Parties submitted that the relevant product frame of reference for apparel was:⁵²

the retail supply of casual fashion apparel/clothing (such as T-Shirts and polo shirts, shirts, gilets, tracksuits, denim, sweatshirts, hooded tops, shorts and swim shorts, leggings, skirts and dresses, replica football kits, chinos, formal or printed shirts etc).

- 1.73 The Parties further submitted that a narrower market segmentation such as athleisure or activewear/sportswear was not appropriate in this case because, among other reasons, athleisure forms part of the wider casual fashion apparel market and the boundaries were not clear.⁵³
- 1.74 The Parties submitted that within the fashion segment they each had a different focus. JD Sports submitted that it focused more on reselling sports heritage brands⁵⁴ and Footasylum focussed more on own-brand/Bedroom Brand⁵⁵ 'urban male fashion'.⁵⁶ Footasylum submitted that [REDACTED].⁵⁷

⁵¹ The surveys were commissioned at phase 2 and so the results were not available at phase 1. At phase 2, they have informed our conclusion to combine the in-store and online channels.

⁵² [REDACTED]

⁵³ CMA, Phase 1 decision, paragraph 64.

⁵⁴ JD Sports, Response to the Issues Statement, November 2019, page 13 and in the [REDACTED].

⁵⁵ A term used by the Parties to describe emerging fashion brands that start life in their founders' bedrooms (ie are founded by individual entrepreneurs).

⁵⁶ JD Sports, Response to the Issues Statement, November 2019, page 13.

⁵⁷ [REDACTED].

- 1.75 The Parties submitted that Footasylum own-label brands such as Glorious Gangsta and Kings Will Dream were not sports-inspired.⁵⁸

Third parties' views

- 1.76 One third party submitted that, as with footwear, it was appropriate to consider a narrower product market for restricted products.⁵⁹

Our assessment

- 1.77 We recognise that the Parties stock a range of apparel that may fall across different categories of fashion. However, for the purpose of market definition we started by classifying the category where the Parties overlap and then considered the constraints on these products.⁶⁰
- 1.78 We have defined a category of apparel as sports-inspired casual apparel, which are products designed to reflect athletic fashion trends and used primarily for leisure purposes.⁶¹ For the purposes of illustration, we consider that this category would include products such as Vans Classic Logo t-shirt, Nike Futura t-shirts, Nike Tech Fleece Joggers, adidas Originals 3 Stripes Tee and adidas Originals Essential Overhead Hoodies. However, we have not exhaustively defined the precise products or suppliers that fall within this category.⁶² Indeed, this category is intended to be representative of the Parties' product overlap, ie it is a loose term and not determinative.
- 1.79 We consider that the Parties overlap in the supply of sports-inspired casual apparel. For example, both Parties stock Nike and adidas products and, more generally, [X] of Footasylum's Nike branded apparel products and [X] of its adidas branded apparel products are also stocked by JD Sports. Although their degree of specific product overlap is lower than it is in footwear, we consider that it is still sizeable, and there is evidence from our surveys that consumers consider the Parties' apparel offerings to be substitutable.
- 1.80 We have therefore taken as our starting point the supply of sports-inspired casual apparel.

⁵⁸ [The Parties, Response to Provisional Findings, paragraph 79.](#)

⁵⁹ [X]

⁶⁰ [CMA Guidance, paragraph 5.2.11.](#)

⁶¹ This excludes non-sports-inspired casual products, such as denim.

⁶² We note that for the purposes of market definition the category should include products which customers view as substitutes to each other, which may include some products which are not themselves directly sports-inspired.

Restricted products

- 1.81 For the same reasons given for footwear, we consider that it is not appropriate to define a narrower product market for restricted products. Rather we consider that the most appropriate product market is the retail supply of sports-inspired casual apparel.

Other types of apparel

- 1.82 We considered whether there is any basis to widen our product market definition from the retail supply of sports-inspired casual apparel to include other types of apparel.
- 1.83 The Parties submitted that they competed in a wider fashion segment. For example, [X].⁶³
- 1.84 In general, we consider that highlighting the apparent similarity between certain products is not informative of the extent to which consumers consider these products (and the retailers they are stocked in) to be significant alternatives to the Parties' products in a differentiated frame of reference. Objectively identifying constraints in fashionwear markets, where perceptions of products and brands are subjective, is challenging.
- 1.85 We consider that evidence of consumer behaviour is the most informative source in assessing the extent to which other fashionwear products compete with sports-inspired casual apparel. Our store exit survey found that the closest competitors to the Parties were those that also stock sports-inspired casual apparel. Customers did not state that more general fashion retailers were close substitutes. For example, our store exit survey found that only 1% of Footasylum customers gave [X] as their next best alternative.⁶⁴ [X] itself did not view itself as a competitor of Footasylum or JD Sports, stating:

We fundamentally believe [X] not to compete directly with either of JD Sports, Foot Asylum [sic], or any other sports inspired business. We are a fashion retailer that offers casual clothing in addition to smarter products.⁶⁵

- 1.86 Evidence from the Parties and third parties shows that the Parties are focussed on sports-inspired casual apparel:⁶⁶
- (a) the Parties' range is different from the range offered by non-specialist general retailers, with the Parties more focussed on branded products from suppliers such as Nike or adidas that other high street retailers do not typically offer. This

⁶³ [X]

⁶⁴ [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

⁶⁵ [X]

⁶⁶ [CMA, Phase 1 decision, paragraph 71.](#)

suggests that the Parties' offerings would not be considered substitutable by consumers with the non-branded offerings of non-specialist high street retailers;

- (b) third parties submitted that the Parties focussed on sports-inspired apparel for the purpose of casual fashion rather than practising sports. Several non-specialist retailers, such as [X] and [X], stated that they did not compete with the Parties or did so to only a limited extent, further suggesting a distinction between retailers of sports-inspired apparel and casual fashionwear more generally; and
- (c) the Parties' internal documents suggest that their competitor monitoring focusses mainly on retailers that either exclusively sell sports-inspired casualwear, or that devote a substantial portion of their offering to sports-inspired casualwear.

1.87 We therefore consider that there is unlikely to be significant demand-side substitution between sports-inspired casual apparel and broader casual fashionwear. However, we considered the strength of the constraint from other types of apparel, including casual fashionwear and other categories of clothing in our competitive assessment.

In-store and online sales

1.88 We next considered whether the product market for apparel should be segmented by channel, ie between in-store and online sales (including both online delivered and online click and collect).

1.89 Much of the discussion for footwear is also relevant for apparel. The Parties' and third parties' submissions on the roles of the in-store and online channels for footwear were made also for apparel and are therefore not repeated here.

1.90 As for footwear, we have the same considerations regarding COVID-19.

Relative size of in-store and online

1.91 As relevant context, we reviewed the relative size of in-store and online channels. The in-store channel is currently the larger of the two channels. Our analysis of data received from the Parties and third parties suggests that in 2018 in-store accounted for 70% and online accounted for 30% of total sports-inspired casual apparel sales.⁶⁷

1.92 The proportion of in-store and online sales varies across retailers. JD Sports has a larger in-store proportion ([X]%) than the sports-inspired casual apparel market as a whole, whereas Footasylum has a slightly smaller proportion ([X]%).⁶⁸ Nike's and

⁶⁷ CMA analysis of Parties' and third parties' data.

⁶⁸ Values based on September 2019. CMA analysis of Parties' data.

adidas's in-store apparel sales account for [REDACTED]% and [REDACTED]% of their total DTC apparel sales, respectively.⁶⁹

- 1.93 This indicates that in-store is currently the main channel, but online accounts for a substantial proportion of sales. We recognise that the market is dynamic to some extent and that these proportions may change in the foreseeable future (we examined the role of DTC expansion in our assessment of competitive effects). Therefore, building on the proportions of in-store and online sales, we next examined the growth of online sales.

Growth of online

- 1.94 Sales in the market have grown (45% growth in the in-store channel and 167% growth in the online channel respectively between 2015 and 2018), but the online channel has grown faster, leading to an increase in its relative size.⁷⁰ Online's share of the total revenue of sports-inspired casual apparel has risen, from around 20% in 2015 to around 31% in 2018.⁷¹
- 1.95 Looking specifically at the Parties, between September 2014 and September 2019, JD Sports' revenue from apparel within the relevant product market sold through its online channel increased from approximately [REDACTED] to approximately [REDACTED] of its total apparel revenue. Between September 2014 and September 2019, Footasylum's revenue from such apparel sold through its online channel increased from approximately [REDACTED] to approximately [REDACTED] of its total apparel revenue.
- 1.96 As for footwear, we recognise that in-store sales are still growing (albeit at a much lower rate than online) and it is likely that the growth of online is explained both by new market growth and some migration of consumers who previously purchased only, or primarily, in-store, to increasingly purchasing online. Such migration can cause a competitive tension between channels, and retailers can compete to slow down or speed up such migration, or encourage the use of a particular channel, for example through making gift cards redeemable in both channels or only one channel. It is also possible that continuing migration may over time reinforce in-store and online preferences in distinct sets of consumers who primarily use one channel or the other.

⁶⁹ CMA analysis of Nike and adidas data [REDACTED]

⁷⁰ CMA analysis of the Parties' and third parties' data.

⁷¹ Comparison based on a sub-set of retailers which provided data back to 2015, hence the 2018 value differs from that stated in 7.91. CMA analysis of Parties' and third parties' data.

Parties' views

- 1.97 JD Sports submitted several points relevant to the distinction between the in-store and online channels which apply across footwear and apparel. In summary, it submitted that the distinction between the in-store and online channels was blurred.⁷²

Our assessment

- 1.98 As for footwear, we acknowledge that the linkages between the in-store and online channels are sufficiently material such that the distinction between the two channels is blurred and that it is therefore important not to consider each channel in isolation without recognising these linkages. On that basis, we assessed whether the two channels are in the same market for the purposes of market definition.

- *Qualitative difference between in-store and online*

- 1.99 For the same reasons as for footwear, we consider that the shopping experience is qualitatively different between the two channels.

- 1.100 However, again on the same basis as for footwear, we consider that consumer behaviour and stated preferences are more informative of whether the two channels are in the same market, than observations about differences between the two channels.

- *Past spending behaviour*

- 1.101 Our store exit-survey found that around a third (34% JD Sports; 31% Footasylum) of the Parties' in-store apparel customers bought all or nearly all of their apparel in-store over the last year.⁷³ About a quarter (26% JD Sports; 28% Footasylum) did the same for most of their apparel and around a quarter (28% JD Sports; 26% Footasylum) spent about the same amounts on apparel in-store and online.⁷⁴

- 1.102 Our online survey of the Parties' customers found that between a fifth and a quarter (23% JD Sports; 21% Footasylum) said they had bought all or nearly all of their apparel products online over the last year.⁷⁵ A further two-fifths (38% JD Sports; 39% Footasylum) said they had bought most of their items online, and over a quarter (26% JD Sports; 28% Footasylum) said they had bought about the same online and in stores.

- 1.103 Footasylum's assessment of UNLCKD customer purchases shows a lower proportion of multi-channel shoppers.

⁷² [X]

⁷³ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁷⁴ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁷⁵ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

- *Search and comparison before purchase*

1.104 We considered where consumers actively search or learn of a product prior to purchase. There is evidence that a proportion of consumers search in the other channel than that of their final purchase. This may be looking in-store, on a website or on an app on a smartphone, tablet or other device.

1.105 Between a quarter and a third of the Parties' customers (26% JD Sports; 31% Footasylum) of in-store apparel had visited a relevant retailer's website, compared prices online or seen the item online, in advance of purchase in-store.⁷⁶

1.106 Our online survey found around a fifth of the Parties' customers (19% JD Sports; 19% Footasylum) said that they had looked for the item in a physical store before placing their order online.

- *Willingness to divert*

1.107 In terms of potential for direct substitution between channels, 47% (JD Sports) and 39% (Footasylum) of all in-store apparel customers said that they would switch to online if all of the stores of the retailer they had purchased from closed.⁷⁷ The wording of these survey questions stated that in this scenario the relevant Party was still selling online. As such the diversion estimates to online may have some upward bias. This appears to be reflected in the results to the following question, where respondents were subsequently asked which online retailer they would have been most likely to switch to. The majority stated the relevant Party's own online channel (about 77% for JD Sports and 66% for Footasylum).⁷⁸

1.108 Our online survey provides some evidence of the potential for direct substitution from online to in-store, where 36% of JD Sports online customers and 34% of Footasylum online customers said that they would switch to a store if the relevant Party stopped selling online. A large proportion of this switching was to the relevant Party's own stores (58% for JD Sports and 36% for Footasylum).⁷⁹

- *Customer demographics and use of in-store and online*

1.109 As for footwear, the Parties' consumer bases are likely to be familiar with and frequent users of online shopping. Our surveys did not indicate a clear segmentation in customer type between in-store and online.

⁷⁶ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁷⁷ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁷⁸ CMA analysis of exit survey data with responses weighted to be nationally representative.

⁷⁹ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

- *Retailer operations*

1.110 On the same basis as for footwear, we consider that all national in-store retailers in this market also have an online offering and that there are some similarities and differences between the offerings of retailers in this market (including the Parties) in-store and online.

Conclusion on apparel

1.111 As with footwear, we recognise that the evidence discussed above is not clear-cut. The survey evidence shows that, in relation to the demand-side, there is an apparent willingness of a sizeable proportion of consumers within each channel to divert to the other channel and that past spending behaviour of consumers is consistent with these switching proportions. We consider that these switching proportions are likely to be large enough to act as a constraint on the alternative channel.

1.112 On balance, our view is that a sufficient proportion of consumers currently shop in both the in-store and online channels, or would be prepared to move between the two channels, in order for the two channels to be considered within the same product market.⁸⁰ Nevertheless, we examined any material differences between the channels in the constraints on the Parties and the strength of constraint from retailers who primarily operate only or in each channel, in our competitive assessment.

Geographic market definition

1.113 We also considered the relevant geographic market definition, which sets out the area within which we assessed the Merger. A relevant geographic market definition could be, for example, local, regional, national or international. The scope of the geographic market influenced the consumers, retailers, stores and websites that we considered in our competitive assessment.

Parties' views

1.114 JD Sports submitted that there was no difference in the geographic market between footwear and apparel and that in-store demand was locally driven.⁸¹

1.115 It also submitted that the precise geographic market could be left open, as no SLC would arise regardless of the geographic frame of reference adopted.

⁸⁰ The surveys were commissioned at phase 2 and so the results were not available at phase 1. At phase 2, they have informed our decision to combine the in-store and online channels.

⁸¹ [X]

Our assessment

- 1.116 We consider that the geographic aspect of the sports-inspired footwear and apparel markets is likely to be the same. On that basis, we have not assessed each of these separately. The degree of demand-side substitutability across different geographies is likely to be the same for each of footwear and apparel. Further, the Parties stock both footwear and apparel in the majority of their physical stores as well as online.
- 1.117 We found that the in-store and online channels for footwear, and separately for apparel, are in the same market. Within each market we recognise that aspects of geographic competition may differ between the two channels, as we have considered below.

Demand-side substitution

- 1.118 Consumers generally choose to make their purchases either at stores in their local area or online. Where they purchase online, this is usually for delivery to a home or work address or click and collect at a store in the same local area.
- 1.119 In the in-store segment of the market, consumers generally choose among in-store retailers in the local area where they live (or work). Our store exit survey asked customers about the duration of their trip to the store. It found that less than 20% of the Parties' customers travelled for more than 30 minutes to reach the store.^{82,83} This would suggest that their demand is locally based.
- 1.120 In the online segment, consumers generally purchase for delivery to a fixed location (eg home or work address) or click and collect at a store in the same local area. Therefore, there is unlikely to be any significant demand-side substitution by consumers to retailers that do not deliver to their preferred address or store, although all significant online retailers typically deliver nationally.
- 1.121 Given the above, we consider that demand is locally driven. However, we also considered various relevant supply-side factors.

Supply-side considerations

- 1.122 In defining the geographic market, we considered the supply-side of the market and took into account whether retailers compete at the national level, or more locally, and how this affects our competitive assessment.
- 1.123 We considered whether retailers flex elements of their PQRS locally in their stores or online in response to local competition or whether PQRS is set centrally and applied

⁸² [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

⁸³ It is possible that some consumers may not be particularly time sensitive for purchases of apparel and footwear. That is, they may be willing to defer purchases until they are going to another nearby destination. Nevertheless, our store exit survey suggested that demand-side substitution between local areas is limited and demand is locally driven.

uniformly across all of their stores and their online offerings. We set out below our key considerations on this point while Appendix D sets out the submissions and evidence from the Parties and further detail on our assessment.

Homogeneity of competitive conditions

1.124 We considered whether the same retailers compete across different geographic areas and whether the conditions of competition between them are the same in each area. Where they are the same, there is a case for aggregating the local supply of these products and analysing them as one national market.⁸⁴

1.125 We found the following:

- (a) based on store location data provided to us by the Parties we observed that all Footasylum stores have a JD Sports store and a Sports Direct store within a 20-minute drivetime.⁸⁵ Further, [X] of Footasylum's stores have [X] Schuh, Foot Locker or Office within 20 minutes. [X] of the JD Sports stores [X];
- (b) for JD Sports stores, [X] have a Sports Direct store within 20 minutes. [X] of JD Sports stores [X] Footasylum, Schuh, Foot Locker and Office within 20 minutes;⁸⁶
- (c) therefore, for the in-store segment: for Footasylum, the competitive environment (ie the presence of other retailers' stores) and the time taken to drive to the nearest JD Sports store is broadly similar across the country. This homogeneity limits the potential for local variation to be driven by differences in local competitive conditions;
- (d) however, there is more variation in competitive conditions for JD Sports stores because it faces greater variation in competitive conditions across the local areas in which it has stores; and
- (e) for the online segment, both of the Parties' online offerings are available to consumers throughout the UK and this is the case for their competitors too.^{87,88} Therefore, retailers with an online presence are able to serve all individual local areas and so operate nationally overall. Since all relevant online retailers offer their products nationally, there is homogeneity of competitive conditions.

⁸⁴ CMA Guidance, paragraphs 5.2.17 and 5.2.24.

⁸⁵ [X].

⁸⁶ Figures calculated by the CMA using the store location data provided by the Parties.

⁸⁷ See: [Footasylum website](#) and [JD Sports website](#), as visited on 07 February 2020.

⁸⁸ We note that in some markets online retailers do not deliver across the whole UK. This is typically the case where services are delivered from local or regional distribution services, such as for online delivered groceries.

Local flexing of parameters of competition

- 1.126 We considered whether there is evidence of the Parties engaging in local flexing of competitive parameters in response to local competition, which would indicate that the market is local.
- 1.127 We found that:
- (a) on price: retailers told us that their starting point was typically suppliers' RRP's, although we note discounting does occur. The evidence shows that most pricing is set nationally. There are exceptions to this in terms of student discounts, student events, clearance and discounting of damaged goods. Our view is that such exceptions are not sufficient to alter the overall view that pricing is broadly set on a national basis;
 - (b) on quality: the Parties conduct store refurbishments at individual stores (rather than across their national store estate as a whole). However, where store refurbishments have occurred, internal documents do not show that local competitive conditions were a material factor in these decisions (see Appendix D);
 - (c) on range:
 - (i) Footasylum [redacted] its in-store range [redacted] as part of its national [redacted]. We consider that Footasylum's [redacted]⁸⁹ [redacted] In internal documents [redacted] our view that local competition is not a material factor in Footasylum's range decisions but that those decisions are instead based on consumer preferences;
 - (ii) there is no evidence that JD Sports flexes its range in response to local competition in-store or online; and
 - (d) on service: from our review of internal documents we found that service levels are on the whole set nationally. Staffing decisions appear to be based on policy decisions made centrally, rather than in direct response to local competition, and the bulk of marketing spend is national. There is evidence that local events (such as DJ nights) are flexed locally but that this is not generally a response to local competitive conditions.
- 1.128 In our view, the evidence set out above indicates that there is limited local flexing of the Parties' in-store offerings and no local flexing of their online offering.⁹⁰ To the extent there is any local flexing on range in-store, this is not generally a response to local competitive conditions. Therefore, we conclude that the extent of local flexing is limited and that local competition is not a material factor in driving the limited

⁸⁹ [redacted]

⁹⁰ Although websites may be configured to display different products depending on local areas, the offering available is the same.

variation that is observed. There is no evidence that local flexing by the Parties would become more likely post-Merger and we have not seen plans to do so.⁹¹

Geographic basis of our competitive assessment

1.129 As the parameters of competition are set nationally, we focused our competitive assessment of the Merger on a national basis, taking account of the aggregation of any local effects but not undertaking separate analyses in each local area. We note that submissions from the Parties and third parties support this approach. For the purpose of conducting the competitive assessment in this case, we therefore defined the relevant markets as national.⁹²

Conclusion on geographic market definition

1.130 In forming our view on the relevant geographic markets for both footwear and apparel we recognise that there are some differences between the in-store and online segments of these markets, such as the main competitors being present nationally in the online channel whereas in the in-store channel the main competitors are present in local areas.

1.131 For the in-store segment, we found that demand is locally driven. However, we also found that the main parameters of competition are uniformly and centrally set. As such, we found that competition occurs predominately nationally and therefore it would be appropriate to assess the in-store segment on a national basis.

1.132 For the online segment, we found that demand is locally driven. However, online delivery (and click and collect) is offered nationally and the conditions of competition are homogenous nationally, such that it is appropriate to consider the geographic scope of this segment to be national.

1.133 On that basis, and in light of the evidence set out above, we found that the appropriate geographic market definition for both sports-inspired casual footwear and apparel is national ie the whole of the UK.

Conclusion

1.134 We defined the relevant markets as:

⁹¹ We consider that across Footasylum stores the conditions of competition are homogenous and across JD Sports stores, the Merger makes the conditions of competition more homogenous rather than less. As such the Merger does not increase incentives to flex locally.

⁹² If it was the case that there was local flexing in stores due to local competition and national online offerings constrained in-store offerings (they were part of the same market), we could define local markets where the online constraint could be considered as additional competitors in each local market. The French Competition Authority has adopted this approach in two recent cases [19-DCC-65](#) and [16-DCC-111](#).

- (a) the retail supply of sports-inspired casual footwear (in-store and online) in the UK; and
- (b) the retail supply of sports-inspired casual apparel (in-store and online) in the UK.

2. The impact of suppliers on retail competition

Footwear⁹³

- 2.1 In this section we consider the extent to which suppliers have an impact on retail competition within the sports-inspired casual footwear market and whether and to what extent they would constrain the Merged Entity from deteriorating its post-Merger offering. We use the term ‘deterioration’ in this section and throughout our report to cover both any worsening in absolute terms of the Merged Entity’s offering (eg a reduction in discounting) and/or any lack of improvement that might have happened faster or to a greater extent, absent the Merger.
- 2.2 Suppliers of branded products impact this market in several ways, including by:
 - (a) creating and driving consumer demand;
 - (b) competing at the retail level through their DTC channels (further explored in our assessment of the constraints of Nike’s and adidas’s DTC channels both currently and in the foreseeable future); and
 - (c) wholesale supply of their products to retailers – where they control the type and volume of products that are provided to retailers (as explored further in this section).
- 2.3 We begin this section with a description of the general approach most suppliers take to the DTC and wholesale supply of their products, involving a combination of selective distribution arrangements and segmentation of retailer accounts. We then assess the extent to which suppliers have an impact on retail competition within this market. This assessment focusses on the two biggest suppliers in the market by revenue, Nike and adidas, dealing with other suppliers mainly in areas where it is relevant to identify distinctions between the influence of Nike and adidas relative to that of other suppliers.

Suppliers’ DTC and wholesale offerings

- 2.4 A key trend in this market is an increased focus by suppliers on offering their products directly to customers through their DTC channels. Key suppliers, namely

⁹³ Extract from [CMA Phase 2 Final Report](#), chapter 8, paragraphs 8.24 to 8.100

Nike and adidas, have seen an associated expansion in their sales via these channels and both forecast their UK DTC to grow in the future, [REDACTED].

- 2.5 In terms of revenue, while DTC is growing, suppliers' wholesale sales to retailers [REDACTED], accounting for [REDACTED]% of Nike's and [REDACTED]% of adidas' UK footwear revenue.⁹⁴ Suppliers' forecasts suggest [REDACTED].
- 2.6 Suppliers take both DTC and wholesale channels into account in setting their distribution strategies. Given that suppliers' DTC and wholesale channels typically serve different purposes, suppliers may not have the same incentives to allocate products to each channel, but instead will allocate them across channels in the way that best furthers their interests overall. Since DTC channels compete with the retailers to which suppliers wholesale, in some instances suppliers may use distribution strategies to promote their DTC channels (eg releasing products first via these channels).

Selective distribution arrangements and retailer segmentation

- 2.7 Most suppliers in this market wholesale their products to retailers through some form of selective distribution arrangement, which grants them a degree of control over where and how their products are resold and marketed. This means suppliers have control over which retailers sell their products and can control the type and volumes of products provided to different retailers.
- 2.8 These arrangements enable suppliers to require that retailers observe a minimum standard of quality and service in selling suppliers' products, whether in-store or online. The ultimate purpose of such arrangements is to ensure that products are marketed in a manner consistent with the supplier's brand image generally or in-line with the perception of a particular product, for example as being high-end or luxury. This approach in turn helps suppliers to shape consumer perceptions and preferences across a range of their products.
- 2.9 A standard feature of such arrangements is that the supplier agrees to supply only those retailers which meet certain specified criteria (eg financial and quality requirements)⁹⁵ and only supply a certain volume of its product to these retailers. An inherent consequence of suppliers controlling volumes by narrowing distribution is a potential reduction of intra-brand price competition. It has long been recognised that this potential impact on price competition is in principle offset by an increase in

⁹⁴ July 2018 to June 2019.

⁹⁵ For example, adidas's global policy manual sets out the criteria for [REDACTED]. For Nike, one of the criteria to become a Nike authorised retailer is to have [REDACTED].

authorised retailers' incentives to compete on other relevant parameters of competition, including in particular quality and service.^{96,97}

- 2.10 These selective distribution arrangements are incorporated into the supplier's standard terms and conditions and individual trade terms with retailers.
- 2.11 Suppliers in this market typically also have segmentation policies whereby authorised retailers are placed into different categories (eg sport or lifestyle/fashion-focussed) and suppliers tailor the product ranges made available to retailers accordingly.⁹⁸ Suppliers use this segmentation to optimise their overall supply to consumers and may review their general approach to such segmentation over time.⁹⁹
- 2.12 Within each category, some suppliers [REDACTED] define different tiers which further tailors the type and volume of products that are made available to retailers.¹⁰⁰ In addition, suppliers may assign retailers that operate different store formats into more than one category/tier. In that case, a store-by-store assessment is performed by the supplier and the categorisation/tiering applies to each specific store. A product may also be allocated to more than one category/tier and therefore in some instances, products may be available to retailers in multiple categories.¹⁰¹ Suppliers' decisions on the categorisation/tiering of both products and retailers (including of retailers' individual stores) may change over time, with such changes typically based on information obtained through monitoring and auditing activities. As a result, in practice a given retailer is generally able to select from a cut-down version of a given supplier's catalogue that contains only the products that are currently available to that retailer's applicable categories and/or tiers.
- 2.13 In light of the above, the process by which suppliers determine a given retailer's product access may be quite complicated in practice.¹⁰² Suppliers' decisions in this context may also take into account more general action taken by a retailer to reposition its offering (for example, Frasers Group's elevation strategy). There is a broad understanding among retailers about a supplier's segmentation policy and where the retailer sits within it. However, the criteria on which suppliers classify certain retailers into different categories or tiers is not always fully transparent, and it

⁹⁶ For example, see Judgement of 25 October 1983, *AEG v Commission*, C-107/82, EU:C:1983:293, paragraph 42 ('A restriction of price competition must however be regarded as being inherent in any selective distribution system in view of the fact that prices charged by specialist traders necessarily remain within a much narrower span than that which might be envisaged in the case of competition between specialist and non-specialist traders. That restriction is counterbalanced by competition as regards the quality of the services supplied to customers, which would not normally be possible in the absence of the appropriate profit margin making it possible to support the higher expenses connected with those services.')

⁹⁷ In this context, we note that the European Commission has recognised that, in certain circumstances, there may be legitimate reasons (including the efficient operation of a selective distribution arrangement) why a supplier may seek to have some form of control over retail pricing. See: [European Commission Vertical Guidelines](#).

⁹⁸ For example, [REDACTED].

⁹⁹ For example, an internal document from [REDACTED].

¹⁰⁰ For example, [REDACTED] UK 2020 segmentation includes, among others, [REDACTED] high level categories [REDACTED] within each of these are various [REDACTED]. Within the [REDACTED] Channel there [REDACTED].

¹⁰¹ CMA analysis of segmentation policies of [REDACTED].

¹⁰² [REDACTED].

is not always clear how this impacts the products that retailers can access. Nike's and adidas's segmentation policies appear to be less transparent than other suppliers', which means that it is harder for retailers to understand and engage with such policies.¹⁰³

- 2.14 We note that there appears to be limited ability for retailers to change their allocated segmentation category once this is unilaterally determined by a supplier.¹⁰⁴ Further, some suppliers [X] include broad [X] cancellation provisions within their standard terms and conditions, enabling [X].^{105, 106}

Parties' views

- 2.15 JD Sports submitted that the Parties were subject to a 'significant degree of control and influence' from key suppliers (Nike and adidas) who were 'must-stock' brands.¹⁰⁷
- 2.16 JD Sports submitted that the key suppliers' influence and control over retailers' offerings manifested itself in a number of ways, namely that they controlled:¹⁰⁸
- (a) who participated at the retail level for supply of their products by placing retailers into segments or tiers;
 - (b) distribution of products within these segments, both in terms of the particular products that were allocated to individual retailers, and the volumes made available to them; and
 - (c) the PQRS offerings of downstream retailers via detailed selective distribution arrangements.
- 2.17 JD Sports submitted that Nike and adidas [X] and unilaterally controlled who was able to participate (and to what extent)' in the market.¹⁰⁹ This resulted in substantial ongoing influence as a result of the constant threat of being disintermediated (ie suppliers no longer using retailers to sell products) or receiving less product access relative to other retailers in future.¹¹⁰

¹⁰³ CMA analysis of segmentation policies of [X] stated that it is 'only shown the products that Nike and Adidas choose to show [...], and these do not include those outside of its distribution allocation'. [X]. [X] stated that 'selective distribution agreements [...] are never shared with their retail partners & no details are ever disclosed. Requests by the retail customers to see these agreements are always refused.' [X]. We note that by contrast [X].

¹⁰⁴ For example, see discussion of the success of the Frasers Group's elevation strategy in enabling Frasers Group to obtain additional products from [X].

¹⁰⁵ [X] submitted that 'Nike or Adidas can cancel [orders]: (i) at will; (ii) without any penalty; and (iii) without any reason.' [X].

¹⁰⁶ [X] told us 'Sometimes the order is cancelled by the brand – sometimes with a reason, sometimes without any justification at all'. [X]

¹⁰⁷ For example, [JD Sports, Response to Issues Statement, paragraph 8](#).

¹⁰⁸ [X]

¹⁰⁹ [X]

¹¹⁰ [X]

- 2.18 The Parties submitted that in relation to supplier constraints the Provisional Findings addressed the wrong question, applied the wrong test, were a misdirected and incomplete analysis, failed to take account of, and/or gather, relevant evidence, misinterpreted evidence and reached the wrong conclusion. The Parties submitted that the Provisional Findings had also misrepresented the constraints imposed by suppliers.¹¹¹
- 2.19 The Parties submitted that the Provisional Findings' concern with the question of the Parties' ability to flex their offering post-Merger was the wrong question and that for the purpose of our assessment of the Merger the relevant question was whether post-Merger, retailers would have the incentive to significantly and permanently degrade their offer, taking account of the ability and incentives of suppliers to react to any such degradation.¹¹²
- 2.20 In assessing incentives, the Parties submitted that having accepted that retail competition was heavily influenced by suppliers that had the ability and incentive to condition it (indeed, that key suppliers 'shape' the retail market), we should not treat the degree of retail competition independently of supplier constraints or ignore the effect on retailers' incentives from the threat of reduced allocations and disintermediation (including the effect on retailers' incentives today from the threat of reduced allocations or disintermediation in future).¹¹³
- 2.21 The Parties submitted that our assessment of supplier restrictions as set out in the Provisional Findings, was incorrectly concerned with the notion of a floor above which retailers set their offer. They submitted that this ignored the Parties' evidence that they were not constrained to any explicit minimum standard (and that the threat of reduced allocations entailed substantial influence for suppliers across all aspects of their PQRS-setting) and that it failed to include any meaningful analysis or evidence establishing that retailers were above the notional floor.¹¹⁴
- 2.22 The Parties submitted that: (i) there was evidence consistent with the proposition that suppliers would discipline worse retail quality / service in the Provisional Findings; (ii) the Provisional Findings ignored evidence that suppliers imposed granular compliance standards on retailers' quality and service offering; and (iii) there was no contrary evidence in the Provisional Findings on this point, such that a material degradation in quality/service would be met with adverse responses by suppliers (such as reduced allocations) and that this was a strong disciplining factor on all aspects of the Parties' quality and service offering. Further, the Parties submitted that we had failed to ask suppliers directly how they would respond to any such degradation by retailers.
- 2.23 The Parties submitted that in relation to suppliers' DTC offerings dampening suppliers' incentive to resist a reduction in competition between the Parties in relation

¹¹¹ [REDACTED]

¹¹² [REDACTED]

¹¹³ [REDACTED]

¹¹⁴ [REDACTED]

to store openings, the basis for the CMA's concern was not clear. The Parties submitted this was unclear since suppliers had both this ability and incentive pre-Merger and there was no evidence cited in the Provisional Findings that this ability and incentive would be moderated or removed as a result of the Merger, and therefore that there would be any Merger effect.¹¹⁵

- 2.24 The Parties submitted that the CMA's theory of harm was that there was pre-Merger competition on price, that the Merger would reduce this discounting and that suppliers would be happy with this outcome and would therefore not act to restore pre-Merger pricing.¹¹⁶ They submitted that the problem with this theory was that if suppliers preferred less discounting post-Merger, they would also prefer it pre-Merger and they had the ability to achieve this pre-Merger via product allocations.¹¹⁷
- 2.25 The Parties submitted that the CMA failed to assess the key issue of whether they had the incentive to degrade their PQRS offering post-Merger, taking account of the threat of reduced access to products or volumes or disintermediation from suppliers.¹¹⁸ The Parties submitted that it was not the existence of any explicit minimum standards that acted as a constraint on them but rather the potential threat of reduced access. Progressive disintermediation and a great deal of uncertainty about the standards that they were expected to adhere to meant that, as well as suppliers having direct influence over given PQRS parameters, the threat of being disintermediated or at least relatively disfavoured in the future entailed substantial influence for suppliers across all aspects of retailers' PQRS-setting.¹¹⁹
- 2.26 JD Sports submitted that 'Nike and adidas also exercise quality control over JD Sports' national-level, non-price offer, with high expectations regarding store and product presentation.'¹²⁰ According to JD Sports, Nike and adidas did this by (i) [REDACTED], (ii) [REDACTED], and (iii) implicitly threatening to move the retailer to another segment if the quality of the stores decreased.
- 2.27 The Parties submitted that the key suppliers, Nike and adidas, would discipline any worsening of their offering in terms of quality or service. In support of this proposition, the Parties submitted the following evidence:¹²¹

- (a) evidence of [REDACTED] standards and protocols provided to the Parties by Nike and adidas;

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ The Parties accepted that retailers had the ability to degrade their offering but said that the relevant question was whether they had the incentive to do so, taking account of the threat of reduced allocations from or disintermediation by suppliers. [REDACTED]. We do not consider the distinction between ability and incentive to be binary nor such a distinction to be the key issue.

¹¹⁹ [REDACTED].

¹²⁰ JD Sports, [Response to the Issues Statement, paragraph 212](#). Footasylum similarly stated [REDACTED][REDACTED]

¹²¹ [REDACTED].

(b) internal documents containing correspondence with Nike and adidas which in their view showed that [REDACTED]; and

(c) internal board documents showing that [REDACTED].

2.28 The Parties also submitted that the key suppliers' control extended to their forward-looking strategy, as well as their retail store offering. The Parties submitted as examples evidence that: [REDACTED].¹²²

Third parties' views

2.29 A number of third parties highlighted in their submissions that suppliers had an important and influential role in the market, particularly in terms of retailers' access to branded products. Some examples are set out below.

2.30 [REDACTED] submitted that:¹²³

(a) adopting a belief that the key suppliers would maintain minimum standards for consumers would imply that the CMA could allow a retail level monopoly and that this would have no effect on consumers;

(b) JD Sports' own arguments that it faced retail competition were inconsistent with an argument that there would be no meaningful impact on PQRS because the key suppliers constrained PQRS;

(c) the key suppliers set a minimum standard for QRS and there was significant competition above this minimum, which is why the Parties offered different store experiences and invested at the retail level in their in-store environment, marketing etc, and that many of these investments were being made to improve the retail offer vis-à-vis retail competitors;

(d) there was price competition across a wider set of products, and retailers such as Footasylum discounted products more often than JD Sports; and

(e) JD Sports was arguing that no parameter of competition was responsive to any retail competition (other than dictated by suppliers) and that consequently there would be no impact on PQRS. There was a particularly high evidential threshold to show this, which JD Sports' submission had not met.

2.31 [REDACTED] submitted that the Parties claimed that suppliers' constraint on PQRS was binding and they then asked what would happen if the Parties deteriorated their offering.¹²⁴ The Parties' framework suggested that:

¹²² [REDACTED]

¹²³ [REDACTED]

¹²⁴ [REDACTED]

- (a) JD Sports had no negotiating strength or leverage over suppliers of branded products at all [X] and the retailers merely acted as an agent for suppliers. If that were the case, JD Sports [X] should not make any profit on sales of Nike or adidas products as Nike and adidas would dictate PQRS and the investment to meet those standards and then set the wholesale price to capture that profit, yet both were very profitable retailers (in an extremely challenging retail environment in recent years); and
- (b) there was no process of rivalry between retailers, and competition between the Parties (and between each of the Parties [X]) created no incentives to improve the competitive offer that would be lost as a result of the Merger or indeed a subsequent merger [X].
- 2.32 [X] said that consequently the Parties in effect argued that there was coordination in the sector.
- 2.33 [X] said that ‘some products are limited by supply constraints (for example: production capacity) and this [is] more prevalent for footwear than it is apparel.’¹²⁵
- 2.34 [X] said ‘From time to time we are refused products from [brands other than Nike and adidas] - not just sportswear brands. It’s part of the usual course of business. Often, it’s because there is demand for the most popular products, across multiple retailers, that exceeds the quantity manufactured or available in a territory.’¹²⁶
- 2.35 [X] stated that it had ‘very little leverage over the major suppliers (adidas and Nike) on these particular issues’ which included ‘enhanced margin discount support on selected styles, product access and distribution policies, level of marketing support, allocations (restriction of buying volume applied by suppliers)’.¹²⁷

Our assessment

- 2.36 In order to explore to what extent suppliers affect retail competition, we assessed a wide range of information provided by retailers and from suppliers on their selective distribution arrangements, segmentation policies, standard terms and conditions and individual trade terms with retailers.
- 2.37 In this section, we assess the possible impact suppliers have on retailers’ offerings as a result of their wholesale relationship with retailers. In particular, we consider the extent to which retailers’ ability and/or incentives to flex the PQRS aspects of their retail offerings are constrained by suppliers - that is, whether the relationship is such

¹²⁵ [X]

¹²⁶ [X]

¹²⁷ [X]

as to prevent retailers from deteriorating PQRS in light of how suppliers could in theory or do in practice respond to any such deterioration.¹²⁸

- 2.38 This assessment is relevant to our investigation because it informs our determination of whether the Merged Entity would have the ability and/or incentive to deteriorate its offering post-Merger.
- 2.39 To some extent, we can distinguish between the impact of suppliers' actions on a retailer's ability and on a retailer's incentives to deteriorate their PQRS, for example:
- (a) suppliers may impact a given retailer's ability mainly by imposing or enforcing a contractual condition of sale. For example, the Merged Entity would have no ability to deteriorate its offering post-Merger if suppliers, in effect, determined all aspects of its offering as part of contractual requirements; and
 - (b) suppliers may impact a given retailer's incentives directly through the provision of recommendations, or indirectly by comparing it to other retailers. We consider that a given retailer's incentives to comply with any such recommendations or feedback depend mainly on the extent to which these are (or that retailer perceives that they are) connected directly or indirectly to product access or volumes. For example, the Merged Entity may not have an incentive to deteriorate its offering post-Merger if it perceived that suppliers' reaction (or the threat of potential reaction), in terms of cancelling orders or reducing access to its products, outweighed the gains from such a deterioration.
- 2.40 We note the Parties' submissions, however, in many cases, suppliers' actions may impact both retailers' ability and incentives. As such there can be some overlap between ability and incentive, and in some cases it may therefore be unclear whether a factor should be categorised as impacting on a retailers' ability or its incentive. Therefore, in our assessment we focussed on the ways that suppliers may impact on retail competition in this market in general, considering both aspects but without distinguishing between whether this is through influence on ability or incentives.¹²⁹
- 2.41 We consider that there is a spectrum of constraints that suppliers may possibly exert on retailers' offerings and the level of such constraint may depend on the precise element of PQRS under consideration. Within this spectrum, we consider that there are broadly three levels of any such constraint:
- (a) no constraint – suppliers do not act as a constraint on retailers' ability and/or incentive to deteriorate their offering. For example, this may be because suppliers do not actively monitor aspects of retailers' PQRS offerings so that any

¹²⁸ For the purpose of this assessment, we use the term 'deterioration' to cover both any worsening in absolute terms and/or any lack of improvement that might have happened faster or to a greater extent, absent the Merger.

¹²⁹ We recognise that suppliers' actions may in some cases impact both retailers' ability and incentives and as such there is some overlap between those categories. Nonetheless, the CMA considers that this framework sufficiently covers each of the relevant ways that suppliers may impact on retail competition in this market.

potential deterioration would not be subject to detection or observation, and/or because any such deterioration would not harm suppliers' interests;

- (b) some constraint – suppliers exert some constraint on retailers' ability and/or incentive to deteriorate their offering. Retailers perceive that there is a likelihood that some potential deterioration of aspects of their PQRS offering would be detected and responded to by suppliers, either in the form of some reduction in product access or volume allocation (including through re-segmentation), worse future trade terms, or, at the extreme, through disintermediation. As a result, retailers' ability and/or incentive to deteriorate PQRS is reduced; or
- (c) a significant constraint – suppliers exert a significant constraint on retailers' ability and/or incentive to deteriorate their offering. Retailers will not deteriorate most aspects of their PQRS offering due to the expectation that suppliers will detect and respond to any such deterioration either through reduced product access or volume allocation, worse future trade terms, or through disintermediation.

2.42 In considering whether the relationship between retailers and suppliers is such as to prevent retailers from deteriorating PQRS we considered: (i) whether the extent of any constraint we have found, taken alone, is so significant as to sufficiently discipline the Merged Entity's ability and/or incentive to deteriorate its offering post-Merger (the focus of this section); and, if not (ii) whether the extent of any constraint we found is sufficient in aggregate with other constraints on the Merged Entity to prevent the Merged Entity from deteriorating its offering post-Merger.

Suppliers' impact on retailers' ability and/or incentive to flex PQRS

2.43 Below we assess whether and the extent to which suppliers constrain aspects of retailers' PQRS. We then consider the extent to which suppliers monitor PQRS aspects of retailers' offerings as a potential means to impact PQRS.

Pricing

2.44 In terms of retail pricing, the presence of suppliers' selective distribution arrangements may cause a potential reduction of intra-brand price competition in this market. Notwithstanding that context, retailers are contractually free to set their own prices in the relevant markets. We note that suppliers usually include recommended retail prices (RRPs) in the product catalogue presented to retailers in this market. Retailers told us that their starting point was typically the RRP, although we note discounting does occur.¹³⁰ Some retailers told us that they felt some pressure (at least implicitly) to sell products at RRP. This pressure is perceived by retailers to be greater as regards Nike and adidas than other suppliers.¹³¹ This indicates that

¹³⁰ As set out in our analysis of the Parties' historic discounting behaviour, a sizeable proportion of the Parties' sales in 2018 had been discounted.

¹³¹ [REDACTED]

suppliers may be at least perceived to exert some upward pressure on the retail pricing of their branded products.

- 2.45 We consider that suppliers may not be concerned about or react adversely to a reduction in price competition post-Merger¹³² (for example a reduction in discounting or less competition over other pricing elements, such as the minimum spend thresholds for free delivery). Suppliers may not have an incentive to drive retail price competition where it undermines consumers' perceptions of their branded products. For example, suppliers take great care to establish their products as 'status' products and enforce this through their selective distribution arrangements which control volumes of and access to their products. Discounting of branded products may in certain instances undermine this to some extent.¹³³
- 2.46 As noted above, notwithstanding suppliers' use of selective distribution arrangements and RRP, we observed that there is discounting in this market, for example JD Sports conducts discounting (clearance and non-clearance) worth around [X]% of its revenues ([X]% clearance and [X]% non-clearance). There could be less discounting post-Merger as a result of any loss of competition between the Parties.¹³⁴ It is also unlikely that suppliers would react negatively to a reduction in discounting post-Merger. On that basis, we disagree with the Parties' submission that the stance of suppliers would result in the Merger being unlikely to have a material impact on price competition.

Range

- 2.47 In terms of range, we consider that a supplier's selective distribution arrangements and its segmentation decisions typically have a direct impact on a given retailer's product access and, in turn, provide a constraint on its retail offering in terms of product range.
- 2.48 Retailers however can and often do offer less than the full range available to them in their stores due to limitations in store size, although they typically offer a fuller range online.
- 2.49 In this context, there is limited evidence that suppliers may influence retailers' incentives to flex their range of other suppliers' brands and products. For example, [X] said that 'certain audits review other brands offered in store and this helps to determine the account segmentation'. However, [X] said that changes in the range of other brands stocked by a retailer were not considered in themselves to

¹³² [X]

¹³³ We recognise that discounting in some instances, such as for end-of-range products, may support suppliers' efforts to establish newer products as 'status' products.

¹³⁴ Regarding clearance discounting, we consider it is driven by a range of factors including product lifecycle/seasonal changes. However, we also consider that competition influences clearance discounting, because where seasonal changes in products apply equally to all retailers, multiple retailers may engage in clearance discounting and compete with each other. As such, we consider that the Merged Entity could reduce such discounting post-Merger as a result of any loss of competition between the Parties.

demonstrate a deterioration in the quality or services offered by a retailer.¹³⁵ We have not seen any evidence of suppliers taking action in response to retailers flexing their range of other supplier's brands or products.

- 2.50 In relation to product access, suppliers vary in the level of restrictions they impose on retailers. Nike's and adidas's segmentation policies are materially more restrictive compared to those of smaller suppliers such as [REDACTED].¹³⁶ In particular, the evidence indicates that compared to smaller suppliers, Nike and adidas are [REDACTED]. We received evidence on this from both of the Parties and other retailers,¹³⁷ for example:

(a) JD Sports submitted that:

if a product that JD Sports would like to sell is not included in the catalogues, then [REDACTED]. However, in JD Sports' experience Nike and adidas are [REDACTED] grant access to products that are not already listed in the catalogues and JD Sports does not consider that [REDACTED]. These discussions are typically [REDACTED]¹³⁸

(b) Footasylum stated that a retailer [REDACTED];¹³⁹ and

(c) [REDACTED]

- 2.51 However, we note that the restrictions we observed on product access (including volume) arise from suppliers' own strategic decisions.¹⁴⁰ As such, these restrictions reflect suppliers' aggregate incentives across their DTC and wholesale channels. On the basis of the evidence available, we do not consider that suppliers' incentives in this regard are likely to change significantly in the foreseeable future, although we recognise that, at least in principle, selective distribution arrangements and segmentation policies could be amended by suppliers at any time post-Merger.¹⁴¹

- 2.52 [REDACTED] submitted that it agreed that its distribution strategy and policies could be changed at any time, but stressed that it would always want to ensure its products

¹³⁵ [REDACTED].

¹³⁶ CMA analysis of segmentation policies of [REDACTED].

¹³⁷ Other third party submissions include: [REDACTED] stated that 'Despite making presentation after presentation to our key suppliers, and constantly asking for such top selling styles we are, without meaningful reason, always rebuffed.' ([REDACTED]). [REDACTED] submitted that it had more negotiating power with smaller brands than with more successful ones. [REDACTED].

¹³⁸ [REDACTED]. JD Sports stated that 'Other footwear suppliers can occasionally be [REDACTED] with the products that are available to retailers, but this is [REDACTED]... The process operates largely the same for non-Nike and adidas suppliers of apparel and accessories. However, usually the arrangements are [REDACTED], and JD Sports is [REDACTED]. JD Sports' expectation is that this is the same for other retailers.' ([REDACTED]) We note that JD Sports has made other submissions on this issue which we have also taken into account in our assessment.

¹³⁹ [REDACTED]

¹⁴⁰ Suppliers can change their retailer distribution strategy, for example Nike announced in 2017 (as reported by [trade press](#)) that it would be looking to globally focus on a number of its retailers as it believes they will be able to drive a differentiated consumer experience going forward. Nike submitted that this concentration of resources on selected retail partners was to accommodate shifting consumer preferences and to help retailers offer the best possible Nike products and services to the different consumer audiences they serve [REDACTED].

¹⁴¹ We note in this context that [REDACTED]

were presented in the best possible way in the best environment and it was very unlikely to amend its distribution and/or segmentation policies in the future to require a lower level of service or quality from its retailers.¹⁴²

- 2.53 We recognise that access to branded products, particularly from the key suppliers, is important to retailers and the risk of losing this access can provide a material disincentive for retailers in terms of deteriorating certain aspects of their offerings. We consider that, potentially, suppliers could withdraw/lessen retailers' access to their products, (for example through different segmentation, reduction of the available catalogue choices or cancellation of product orders), or threaten to do so, as a way to exert influence on retailers. We consider that the presence of those provisions may create a degree of uncertainty for retailers as regards product access.¹⁴³ Access to range can be viewed as an actual or potential means by which suppliers may respond to or constrain deterioration of retailers' offerings. However, in principle we consider this would be the case only if the deterioration of PQRS damages suppliers' sales or brand image.

Quality and service

- 2.54 Quality and service are often related, and some aspects of a retailer's offering could be placed in either category. In general, for the purpose of our assessment, in this case we consider quality to capture aspects of the retail presentation of the products (such as store environment, website design) and service to capture aspects related to the customer journey and the process of purchase (eg staff knowledge and availability, queuing times and payment terms).
- 2.55 Suppliers impose some explicit restrictions affecting the consumer experience offered by retailers in relation to quality and service levels (both in-store and online) through their standard terms and conditions. Many of these requirements capture aspects related to a store or website as a whole and therefore apply equally to footwear and apparel (eg requiring there to be a 'FAQ' section on a retailer's website), whereas others apply to specific products (ie some of the [REDACTED] requirements).¹⁴⁴
- 2.56 Where restrictions on quality and service are imposed under suppliers' standard terms and conditions, suppliers establish a minimum contractual standard, beyond which retailers can, at least in principle, flex their offering. In setting such 'floors', suppliers enable retailers to differentiate aspects of their QRS offering above this floor, while still ensuring that their minimum standards are met. In the following section on how retailers' compete, we have considered evidence on the extent to which retailers flex their PQRS offerings.

¹⁴² [REDACTED]

¹⁴³ [REDACTED] submitted that 'Nike or Adidas can cancel [orders]: (i) at will; (ii) without any penalty; and (iii) without any reason.' [REDACTED]

¹⁴⁴ CMA analysis of selective distribution arrangements of [REDACTED].

- 2.57 We have seen evidence that some quality and service requirements for retailers' in-store and online offerings are set out in granular detail by suppliers.¹⁴⁵ An example of such a requirement affecting quality in-store is that [X] typically provide very detailed instructions on how [X] products should be displayed (including requirements on, for example, [X]).¹⁴⁶ An example of supplier requirements affecting service online is that [X] standard trade terms include detailed requirements concerning the functionality of retailers' websites (including that it be possible to view footwear from at least five different angles and that it be possible to zoom in on any images).¹⁴⁷ We note that the granularity with which certain aspects of the offering are specified by suppliers does not extend to every area of retailers' quality and service offerings.
- 2.58 We recognise that the presence of such granular requirements impacting specific aspects of quality and service, means that there may not be deterioration of those aspects in absolute terms. However, this may still be an area where improvement could happen more slowly than it would have done absent the Merger.
- 2.59 Other requirements on quality and service are specified in broader terms, which introduces a degree of subjectivity (eg [X]).¹⁴⁸ As a result, this may lead to some uncertainty for retailers as to what exactly suppliers will require in practice (we consider in the next section the extent to which such uncertainty impacts on retailers' incentives to flex quality and service).¹⁴⁹
- 2.60 As noted above, retailers can in principle compete above and beyond any such minimum contractual standards. The use of broad terms can also be considered as giving retailers some leeway to differentiate their offer. We have seen evidence of such differentiation in practice with variation in retailers' offerings on important aspects of quality and service, and consider this is indicative of such competition. We note that overall such differentiation appears to be largely in areas other than in-store quality (ie where in-store quality covers factors such as [X] and display screens). We would also expect suppliers to encourage such competition in accordance with their use of selective distribution arrangements. There is evidence of this occurring in practice; for example, [X]¹⁵⁰
- 2.61 We observed the following examples of competition above minimum contractual standards imposed by suppliers (we set out other examples of variation in retailer offerings in the following section on how retailers compete:
- (a) [X], yet retailers can and do compete to offer faster deliveries than these minimal requirements.¹⁵¹ For orders below the free delivery threshold,

¹⁴⁵ The Parties submitted evidence of [X].

¹⁴⁶ [X] We also note that [X].

¹⁴⁷ [X].

¹⁴⁸ CMA analysis of selective distribution arrangements of [X]. Another example is that one of [X] trade terms with [X] includes in part that 'each season, Customer shall create bespoke and innovative content'. [X]

¹⁴⁹ We note that the converse of this uncertainty is that suppliers may face some difficulty in enforcing such restrictions.

¹⁵⁰ [X]

¹⁵¹ [X].

Footasylum offers Next Day evening delivery at a cost of £6.99 and JD Sports offers Next Day evening delivery at a cost of £5.99.¹⁵² JD Sports also offers unlimited Next Day delivery for the year for a one-off payment of £9.99 to members of its 'JDX' app;¹⁵³

- (b) [X] require retailers to have a returns policy and to comply with applicable consumer laws, yet retailers clearly do compete to offer policies that are more advantageous than that required by such laws (for example on the options for making returns).¹⁵⁴ While [X] requires that consumers have at least 14 days to make returns there is clear competition above this threshold (eg JD Sports and Footasylum both offer 28 days to make returns);¹⁵⁵ and
- (c) [X] requires that retailers' websites meet minimum loading speeds, yet retailers do compete to offer websites that load more quickly than this minimum.¹⁵⁶

2.62 In our view, store numbers, locations and openings can be thought of as part of retailers' quality and service offering because they are relevant factors for consumers. Suppliers may therefore act to prevent retailers from deteriorating these aspects. However, suppliers' DTC channels, which compete directly with retailers, may reduce their incentive to encourage increased retail competition in this regard, particularly in locations near their own DTC stores.¹⁵⁷ We consider that the magnitude of this effect is likely to be small because the key suppliers have relatively few stores, and the majority of these are clearance stores with a somewhat different consumer proposition from the Parties' stores. Despite the likely small magnitude, we disagree with the Parties' view that there is no possible Merger effect on store locations, since the incentive for any Merger effect arises between the Parties themselves (eg they may wish to close locally competing stores) and where suppliers have nearby DTC stores they would likely benefit from this outcome such that they would not act to prevent it.

2.63 Suppliers are able to use wholesale pricing as a way to incentivise retailers on other aspects of QRS. Retailers can receive individual discounts from suppliers' wholesale price, which are often subject to the retailer meeting certain conditions or key performance indicators (KPIs) set by the supplier. Such individual discounts (and the components of this) are typically set out in the selective distribution arrangement between the retailer and supplier. These KPIs may include meeting certain thresholds for volumes, growth, returned orders and store quality.¹⁵⁸ Accordingly, such discounts create some incentive for retailers to meet any such targets.

¹⁵² Taken from [Footasylum's website](#) and [JD Sports' website](#) as of 30 January 2020.

¹⁵³ Taken from [JD Sports' website](#), February 2020.

¹⁵⁴ [X].

¹⁵⁵ CMA analysis of [X] selective distribution arrangements.

¹⁵⁶ CMA analysis of [X] standard terms and conditions. One of [X]. We note that Footasylum regularly monitors its performance in relation to [X].

¹⁵⁷ [X] After some further review [X].

¹⁵⁸ [X].

- 2.64 Suppliers also sometimes provide financial assistance for [X]. In doing so they exercise a degree of control over the quality of this part of the retail offer. However, they do not pay for [X] of an individual retailer nor for [X] at all retailers and therefore this remains an aspect over which retailers have some control.

Suppliers' monitoring of retailers and potential response to deterioration

- 2.65 As a means both to support and enforce compliance with their selective distribution arrangements, suppliers conduct both general monitoring of retailers' behaviour¹⁵⁹ and more comprehensive (typically less frequent) audits of their retail offerings.¹⁶⁰ Suppliers can use the information gathered as a basis to give retailers either mandatory instructions or non-binding recommendations. We consider that a supplier's ability to respond to any deterioration on the part of retailers' PQRS offerings would depend in practice on the scope and frequency of any such monitoring and audit activities.
- 2.66 We assessed the extent to which the Parties' ability and/or incentive to flex their PQRS offerings may be impacted by such monitoring. In this context, we consider that the following factors are of particular relevance:
- (a) suppliers typically monitor and audit retailers' compliance with the minimum requirements for quality and service included in their standard terms and conditions;
 - (b) suppliers may find it difficult in some cases to detect a deterioration of retailers' offerings, particularly if the deterioration involves a lack of improvement relative to what otherwise would have been achieved; for example, retailers may not decide to reduce the levels of their offering but may slow their rates of innovation or other improvements which would be much more difficult for suppliers to monitor and detect; and
 - (c) suppliers may monitor retailers infrequently such that there are periods of time during which a change in a retailer's standards may occur unobserved. This means that a supplier may not identify any deterioration until some time after it was first initiated. This may make it more difficult for suppliers to respond directly to such deterioration. Suppliers would still be able to take any such deterioration into account in the context of their full audits of retailers, though as noted above these occur relatively infrequently.¹⁶¹

¹⁵⁹ We note that JD Sports has submitted examples of correspondence with Nike and adidas which show those suppliers [X].

¹⁶⁰ For example, [X] last conducted a full audit of all of its retail accounts in 2016. Since then, it has conducted specific audits of the retailers falling within [X].

¹⁶¹ For example, [X] conducted a full audit of its retail accounts in 2016 and 2019. [X]

- 2.67 Evidence from suppliers on the scope of their monitoring and audit activities shows that they do not seek to monitor all aspects of retailers' PQRS offerings.¹⁶² Given this and factors (a)-(c) we consider that suppliers' monitoring is such that they are likely to have some but not full visibility over some aspects of retailers' offerings.
- 2.68 Suppliers are likely to benefit from competition between retailers on quality and service, and hence have an incentive to encourage such competition. We have seen evidence that suppliers monitor retailers and use this to benchmark retailers against each other to incentivise them to improve their offerings. For example, there is evidence that suppliers compare and monitor retailers' store quality, app capabilities, payment and checkout, customer services, delivery, and the quality of marketing campaigns across retailers.¹⁶³ We note that the Merger reduces the extent to which suppliers can rely on such benchmarking to improve the Parties' offerings as they can no longer benchmark JD Sports and Footasylum operating as independent competitors against each other post-Merger.
- 2.69 We also considered how suppliers may respond to any observed deteriorations in retailer offerings and the potential consequences of this for retailers:¹⁶⁴
- (a) suppliers may have little (if any) incentive to respond to some deteriorations eg reduction in student discounts or loyalty schemes as these may improve consumer demand due to associated status effects, making products more desirable, or are not likely to consider some changes to be deteriorations from their perspective eg changes in the retail of other suppliers' products (where we have seen evidence for example from [REDACTED] that it does not monitor this);
 - (b) even if suppliers did identify and respond to a deterioration by one of the fascia of the Merged Entity post-Merger (eg if Nike were hypothetically to reduce product access for Footasylum), there is a likelihood that some customers would react by diverting to the other fascia of the Merged Entity.¹⁶⁵ The higher that likelihood the greater the incentive on the Merged Entity to engage in any such deterioration at one fascia post-Merger, despite any constraint exerted by suppliers.¹⁶⁶ Based on the results of our consumer surveys, we found that the diversion ratios between the Parties are high (particularly from Footasylum to JD Sports). This indicates that the Merged Entity would have an incentive to engage in such deterioration post-Merger, even if customers responded to the

¹⁶² For example, [REDACTED] submitted that the following aspects of retailers' offerings were not formally monitored or taken into account for customer segmentation: [REDACTED]. [REDACTED] submitted that these aspects may be reviewed on ad hoc basis by the account manager or shared with [REDACTED] by the retailer [REDACTED].

¹⁶³ [REDACTED] [REDACTED]

¹⁶⁴ We also recognise that in making any decision suppliers will be conscious of their wider strategies and the implications for both their DTC channels and their wholesale relationships with retailers. For suppliers with active DTC channels, the consequences of adversely affecting wholesale partners may be less if their DTC channel is one of the beneficiaries, however, we consider that their wholesale channel as a whole [REDACTED].

¹⁶⁵ The Parties may take account of suppliers' reactions when deteriorating their offerings.

¹⁶⁶ Assuming that any deterioration is fascia-specific and any response from suppliers is also specific to that fascia rather than to the Merged Entity as a whole.

deterioration itself and/or to any response from suppliers by diverting away from their first choice retailer; and

- 2.70 there is very limited evidence of Nike and adidas having taken action to respond to a retailer for a deterioration in quality and/or service.^{167, 168} We recognise that the threat of any action being taken may to some extent act as some constraint without evidence of direct response. We note the two examples of response to deterioration raised by the Parties. We consider that it is not clear that either of these are direct responses to deterioration. The [X] example could equally be explained as a more general recalibration of its segmentation policy.¹⁶⁹ [X] described the impact of this change for retailers in positive terms, noting that it would help retailers to sell more appropriately targeted products.¹⁷⁰ In the [X]. Taking into consideration the evidence set out in a)-c), we consider that suppliers have some impact on aspects of retailers' PQRS through monitoring and benchmarking. However, suppliers have little incentive to respond to some deteriorations post-Merger and suppliers would be unlikely to identify all instances of any deterioration. Further, we have seen limited evidence of suppliers responding to deteriorations of retailers' PQRS.

Conclusion on the impact of suppliers on retail competition

- 2.71 Suppliers play an important role in the sports-inspired casual footwear market. Their overall strategies take account of both their DTC channel and their wholesale supply ([X]). They use selective distribution arrangements and segmentation policies to control the access and volumes of their products that are available to retailers.
- 2.72 Given suppliers' importance in this market, we considered their impact on retailers' ability and incentives to flex PQRS. We found that:
- (a) suppliers exert some influence over retailers' pricing, for example by providing the RRP for products, although while retailers generally adopt RRP, they do discount prices and flex other elements of pricing such as delivery costs, which could be deteriorated post-Merger;
 - (b) suppliers can control retailers' range through the products and volumes that they can access and can implement this primarily through their segmentation policies. In the short term and in relation to specific orders, the use of, or threatened use

¹⁶⁷ We asked Nike and adidas to provide any examples where they took general action in reaction to a deterioration of retail quality or service in the last couple of years. [X] submitted that [X] We consider that, [X] it was not clear [X] was in direct response to a deterioration in the quality and service of any individual retailer. [X]. We note we have also seen evidence from [X].

¹⁶⁸ We note the Parties submitted that [X]. For example, they submitted [X]. We consider that this is evidence of suppliers ensuring compliance with existing standards and it therefore does not suggest a significantly greater constraint beyond that already imposed by the standards themselves.

¹⁶⁹ We note that [X] did not take targeted action impacting only [X] this change to its retailer categorisation would have impacted other retailers and not only [X].

¹⁷⁰ [X].

of, suppliers' cancellation provisions may create a degree of uncertainty for retailers as regards product access;

- (c) suppliers exert some influence on retailers' quality and service offerings. While suppliers place restrictions on retailers' offerings in this regard through minimum contractual standards, retailers can and do flex their offerings above those standards (as shown by the variation in their offerings). On some aspects of retailers' offerings, suppliers impose and ensure compliance with granular standards [X], but these do not encompass all aspects of retailers' offerings. However, we have seen evidence that suppliers may also encourage retailers to compete with each other beyond minimum requirements; and
- (d) suppliers undertake engagement, feedback, monitoring and benchmarking of retailers on some but not all aspects of PQRS, which can directly or indirectly influence retailers' choices over their PQRS offerings. We note that post-Merger, suppliers' ability to benchmark would be hindered by the loss of one independently owned retail comparator.

- 2.73 We therefore consider that suppliers play an important role in shaping retail competition in this market.¹⁷¹ In particular, we consider that Nike and adidas impose the most restrictions and have the greatest influence, given their importance for retailers in this market. Other suppliers also have some influence, but this is considerably less than that of Nike and adidas.
- 2.74 However, we note that these restrictions and requirements arise primarily from suppliers' own strategic decisions. Further, their incentives as to how they allocate products are derived from an overall view taking account of both their wholesale and DTC channels. We also found that the constraint suppliers exert on retailers has limits (eg they do not monitor all aspects of a retailer's offering) and, as such, retailers have the ability and incentive to flex important aspects of their offering in relation to PQRS.
- 2.75 We consider that suppliers can, and to some extent do, act as a constraint on retailers' ability and/or incentive to deteriorate their offering. On that basis we found that suppliers exert some constraint on the Merged Entity's ability and/or incentive to deteriorate PQRS. However, taking account of the evidence set out in this section in the round, we found that on balance this constraint is not so significant as to sufficiently discipline the Merged Entity's ability and/or incentive to deteriorate its offering post-Merger. In particular this is for the following reasons:

¹⁷¹ We note that the Parties submitted that this includes playing a role in determining JD Sports' long term strategy/investment decisions ([The Parties, Response to Provisional Findings, chapter 4](#)), which is evidence there might be some influence on strategy but we consider this is only relevant to the extent that it ultimately influences PQRS.

- (a) retailers can and do compete on various aspects of PQRS as is evidenced by variations in their offerings including levels of discounting, delivery charges and times, customer service and innovation;
- (b) there are limits to suppliers' ability to detect a deterioration of retailers' offerings, for example less and slower rates of innovation or other improvements and we note the Merger reduces the ability to benchmark; and
- (c) suppliers have no incentive to discipline retailers where any deterioration of a retailer's offering does not harm supplier interests or where such deterioration may benefit suppliers, for example less discounting.

2.76 Given this, we also considered whether the extent of the constraint we found is sufficient, when taken in aggregate with other constraints on the Merged Entity, to prevent the Merged Entity from deteriorating its retail offering post-Merger. The aggregate constraint is evaluated directly in some of the evidence, eg diversion ratios, but more generally we considered the aggregate constraint by recognising that it is appropriate to consider the effect of all of the retailers and suppliers together as a combined constraint on the Parties.

Apparel¹⁷²

- 2.77 In this section we consider the extent to which suppliers have an impact on retail competition within this market and whether and to what extent they would constrain the Merged Entity from deteriorating its post-Merger offering. As for footwear, we use the term 'deterioration' in this section and throughout our report to cover both any worsening in absolute terms of the Merged Entity's offering (eg a reduction in discounting) and/or any lack of improvement that might have happened faster, or to a greater extent, absent the Merger.
- 2.78 In apparel, like in footwear, branded products comprise the majority of the market.¹⁷³ However, sales are dispersed across more suppliers of branded products in apparel than in footwear and the Parties also stock more apparel brands than footwear brands.
- 2.79 We note that the lower concentration of supplier brand sales in apparel means that individual brands are less influential in apparel than in footwear since retailers are less dependent on each individual supplier for sales revenue. Nike and adidas are the two largest suppliers of branded products in the market but they account for a smaller proportion of sales in apparel than in footwear. For the Parties, they accounted for [X]% of JD Sports' 2018 apparel revenues and [X]% of Footasylum's, compared to [X]% and [X]% respectively in footwear.

¹⁷² Extract from [CMA Phase 2 Final Report](#), chapter 9, paragraphs 9.16 to 9.71

¹⁷³ For example, across the market as a whole, together adidas, Nike, Puma, Under Armour, Reebok, New Balance, Converse, The North Face, Vans, Ellesse, Fila and Asics accounted for 80% of revenue.

- 2.80 Suppliers of branded products impact this market in several ways, including by:
- (a) creating and driving consumer demand;
 - (b) competing at the retail level through their DTC channels (further explored in our assessment of the constraints of Nike's and adidas's DTC channels both currently and in the foreseeable future); and
 - (c) wholesale supply of their products to retailers – where they control the type and volume of products that are provided to retailers (as explored further in this section).
- 2.81 Own-brand products are also a significant part of the apparel market and account for a greater proportion of the Parties' sales than in footwear. Footasylum has a number of own-brands, including Kings Will Dream and Glorious Gangsta, and own-brand accounted for [X]% of its apparel revenue in 2018.¹⁷⁴ JD Sports also sells own-brands including Supply & Demand and McKenzie, and own-brand accounted for around [X]% of its apparel revenue in 2018.¹⁷⁵
- 2.82 Much of the framework of our assessment is similar as for our assessment in footwear and therefore much of the discussion for footwear applies equally to apparel. Accordingly, we refer to that assessment in this chapter, except where there are relevant differences in apparel which we consider here.
- 2.83 We begin this section with a description of the general approach most suppliers take to the DTC and wholesale supply of their products, involving a combination of selective distribution arrangements and segmentation of retailer accounts. We then assess the extent to which suppliers have an impact on retail competition within this market. This assessment covers all suppliers of branded products in the market. Where relevant we focus on the two biggest suppliers in the market by revenue, Nike and adidas, particularly because they account for [X] of JD Sports' apparel sales, and [X] of Footasylum's apparel sales. Where relevant, we identify distinctions between the influence of Nike and adidas relative to that of other suppliers.

Suppliers' DTC and wholesale offerings

- 2.84 A key trend in this market is an increased focus by suppliers on offering their products directly to customers through their DTC channels. For example, Nike and adidas have growing DTC channels alongside their wholesale channels. In terms of

¹⁷⁴ We note that our estimate of the proportion of Footasylum's own-brand revenues relates to its total sports-inspired casual apparel revenues (eg excluding denim, underwear, bags etc). The Parties submitted that for the same period (calendar year 2018) [X]% of Footasylum's apparel sales were from its own-label Bedroom brands and for January-September 2019, the equivalent proportion was [X]%.

¹⁷⁵ We note that our estimate of the proportion of JD Sports' own-brand apparel revenues relates to its total sports-inspired casual apparel revenues (eg excluding denim, underwear etc).

revenue, their wholesale sales to retailers [X], accounting for [X]% of Nike's and [X]% of adidas's UK apparel revenue,¹⁷⁶ and [X].

- 2.85 As for footwear, suppliers take both DTC and wholesale channels into account in setting their distribution strategies for apparel. Given that suppliers' DTC and wholesale channels typically serve different purposes, suppliers may not have the same incentives to allocate products to each channel, but instead will allocate them across channels in the way that best furthers their interests overall. Since DTC channels compete with the retailers to which suppliers wholesale, in some instances, suppliers may use distribution strategies to promote their DTC channels (eg releasing products first via these channels).

Selective distribution arrangements and retailer segmentation

- 2.86 As discussed for footwear, most suppliers in this market use selective distribution arrangements and segmentation policies to control where and how their products are made available to retailers and the volume of their product supplied to retailers. These arrangements enable suppliers to require that retailers observe a minimum standard of quality and service in selling suppliers' products, whether in-store or online. An inherent consequence of suppliers controlling volumes by narrowing distribution is a potential reduction of intra-brand price competition. It has long been recognised that this potential impact on price competition is in principle offset by an increase in authorised retailers' incentives to compete on other relevant parameters of competition, including in particular quality and service.^{177,178}
- 2.87 These selective distribution arrangements are incorporated into the supplier's standard terms and conditions and individual trade terms with retailers.
- 2.88 We have seen evidence that, while suppliers control volumes of branded products that retailers can access (as in footwear), the volume restrictions that are part of suppliers' selective distribution arrangements are less restrictive for apparel than they are for footwear. Typically, once a retailer is given access to branded apparel it does not face restrictions on the volume of that product which it can order.
- 2.89 Where suppliers categorise retailers into segments, retailers are generally allocated to the same category and tier for apparel as they are for footwear. The process by which suppliers determine a given retailer's product access may be quite complicated

¹⁷⁶ July 2018 to June 2019.

¹⁷⁷ For example, see Judgement of 25 October 1983, *AEG v Commission*, C-107/82, EU:C:1983:293, paragraph 42 ('A restriction of price competition must however be regarded as being inherent in any selective distribution system in view of the fact that prices charged by specialist traders necessarily remain within a much narrower span than that which might be envisaged in the case of competition between specialist and non-specialist traders. That restriction is counterbalanced by competition as regards the quality of the services supplied to customers, which would not normally be possible in the absence of the appropriate profit margin making it possible to support the higher expenses connected with those services.').

¹⁷⁸ In this context, we note that the European Commission has recognised that, in certain circumstances, there may be legitimate reasons (including the efficient operation of a selective distribution arrangement) why a supplier may seek to have some form of control over retail pricing. See [European Commission Vertical Guidelines](#).

in practice. The criteria on which suppliers classify certain retailers into different categories or tiers is not always fully transparent, and it is not always clear how this impacts the products that retailers can access. We also note that there appears to be limited ability for retailers to change their allocated segmentation category once this is unilaterally determined by a supplier, and that some suppliers [REDACTED] include broad [REDACTED] cancellation provisions within their standard terms and conditions, enabling [REDACTED].^{179, 180}

Parties' views

2.90 Footasylum submitted that there were [REDACTED]. It highlighted that [REDACTED].¹⁸¹ However, it also submitted in contrast to footwear that [REDACTED].¹⁸²

2.91 JD Sports submitted that other suppliers were [REDACTED] with regard to [REDACTED] than [REDACTED], and that the arrangements for apparel allocations were usually '[REDACTED]' than for footwear, with JD Sports [REDACTED].¹⁸³

Third parties' views

2.92 Some third parties which operate in both the footwear and apparel markets highlighted in their submissions the important role of suppliers in the market, including in terms of retailers' access to branded products, though less so in apparel than in relation to footwear.

2.93 [REDACTED] said that 'some products are limited by supply constraints (for example: production capacity) and this [is] more prevalent for footwear than it is apparel.'¹⁸⁴

2.94 [REDACTED] submitted that while suppliers set a minimum standard for QRS, retailers did engage in retail competition on QRS over and above this minimum, which is also relevant to apparel.¹⁸⁵

Our assessment

2.95 In order to explore to what extent suppliers affect retail competition, we assessed a wide range of information provided by retailers and suppliers on suppliers' selective

¹⁷⁹ [REDACTED] stated that 'Nike or Adidas can cancel [orders]: (i) at will; (ii) without any penalty; and (iii) without any reason.' [REDACTED]

¹⁸⁰ [REDACTED] told us 'Sometimes the order is cancelled by the brand – sometimes with a reason, sometimes without any justification at all'. [REDACTED]

¹⁸¹ [REDACTED]

¹⁸² [REDACTED]

¹⁸³ [REDACTED]. We note that JD Sports also made submissions on the role of suppliers other than Nike and adidas in the market, which we considered in our assessment.

¹⁸⁴ [REDACTED]

¹⁸⁵ [REDACTED]

distribution arrangements, segmentation policies, standard terms and conditions and individual trade terms with retailers.

- 2.96 In this section, we assess the possible impact suppliers have on retailers' offerings as a result of their wholesale relationship with retailers. In particular, we consider the extent to which retailers' ability and/or incentives to flex the PQRS aspects of their retail offerings are constrained by suppliers - that is, whether the relationship is such as to prevent retailers from deteriorating (or not improving) PQRS in light of how suppliers could in theory or do in practice respond to any such deterioration.¹⁸⁶
- 2.97 This assessment is relevant to our investigation because it informs our determination of whether the Merged Entity would have the ability and/or incentive to deteriorate its combined offering post-Merger.
- 2.98 Suppliers' actions can sometimes affect a retailer's ability and/or its incentives to deteriorate PQRS. Therefore, in our assessment we focussed on the ways that suppliers may impact on retail competition in this market in general, considering both aspects and without distinguishing between whether this is through influence on ability or incentives.
- 2.99 We applied the same framework for assessing constraints in apparel as we did for footwear.
- 2.100 We consider that there is a spectrum of constraints that suppliers may possibly exert on retailers' offerings and the level of such constraint may depend on the precise element of PQRS under consideration. Within this spectrum, we consider that there are broadly three levels of any such constraint:
- (a) no constraint – suppliers do not act as a constraint on retailers' ability and/or incentive to deteriorate their offering. For example, this may be because suppliers do not actively monitor aspects of retailers' PQRS offerings so that any potential deterioration would not be subject to detection or observation, and/or because any such deterioration would not harm suppliers' interests;
 - (b) some constraint – suppliers exert some constraint on retailers' ability and/or incentive to deteriorate their offering. Retailers perceive that there is a likelihood that some potential deterioration of aspects of their PQRS offering would be detected and responded to by suppliers, either in the form of some reduction in product access or volume allocation (including through re-segmentation), worse future trade terms, or, at the extreme, through disintermediation. As a result, retailers' ability and/or incentive to deteriorate PQRS is reduced; or
 - (c) a significant constraint – suppliers exert a significant constraint on retailers' ability and/or incentive to deteriorate their offering. Retailers will not deteriorate

¹⁸⁶ For the purposes of this assessment, we use the term 'deterioration' to cover both any worsening in absolute terms and/or any lack of improvement that might have happened faster or to a greater extent, absent the Merger.

most aspects of their PQRS offering due to the expectation that suppliers will detect and respond to any such deterioration either through reduced product access or volume allocation, worse future trade terms, or through disintermediation.

- 2.101 In considering whether the relationship between retailers and suppliers is such as to prevent retailers from deteriorating PQRS we considered: (i) whether the extent of any constraint we have found, taken alone, is so significant as to sufficiently discipline the Merged Entity's ability and/or incentive to deteriorate its offering post-Merger (the focus of this section); and, if not (ii) whether the extent of any constraint we found is sufficient in aggregate with other constraints on the Merged Entity to prevent the Merged Entity from deteriorating its offering post-Merger.

Suppliers' impact on retailers' ability and/or incentives to flex PQRS

- 2.102 We assessed whether and the extent to which suppliers constrain aspects of retailers' PQRS. We then considered the extent to which suppliers monitor PQRS aspects of retailers' offerings as a potential means to impact PQRS.

Pricing

- 2.103 In terms of retail pricing, we considered the retail pricing of both branded and own-brand products given the latter is also important in apparel, unlike in footwear.
- 2.104 For branded products, retailers are contractually free to set their own prices in the relevant markets. However, suppliers usually include (RRPs in the product catalogue presented to retailers in this market. Retailers told us that their starting point was typically the RRP, although we note discounting does occur.¹⁸⁷ Some retailers told us that they felt some pressure (at least implicitly) to sell products at RRP. This pressure is perceived by retailers to be greater as regards Nike and adidas than other suppliers.¹⁸⁸ This indicates that suppliers may be at least perceived to exert some upward pressure on the retail pricing of their branded products.¹⁸⁹
- 2.105 The same constraints do not apply to the pricing of own brand products. Among the Parties, these own-brand products comprise a significant minority of the Parties' sales ([X] % of JD Sports' apparel sales and [X] % of Footasylum's apparel sales). Suppliers therefore have no direct influence over the retail pricing of these products, although there may be some indirect influence where own-brand products compete with those of suppliers.

¹⁸⁷ As set out in our analysis of the Parties' historical discounting behaviour, a sizeable proportion of the Parties' sales in 2018 had been discounted.

¹⁸⁸ [X]

¹⁸⁹ In this context, we note that the European Commission has recognised that, in certain circumstances, there may be legitimate reasons (including the efficient operation of a selective distribution arrangement) why a supplier may seek to have some form of control over retail pricing. See [European Commission Vertical Guidelines](#).

- 2.106 We consider that suppliers may not be concerned about, or may not react adversely to, a reduction in price competition post-Merger¹⁹⁰ (for example a reduction in discounting, or less competition over other pricing elements such as the minimum spend thresholds for free delivery). Suppliers may not have an incentive to drive retail price competition where it undermines consumers' perceptions of their branded products. For example, suppliers take great care to establish their products as 'status' products and enforce this through their selective distribution arrangements which control access to their products. Discounting of branded products may in certain instances undermine this to some extent.¹⁹¹
- 2.107 As noted above, notwithstanding suppliers' use of selective distribution arrangements and RRP, we observed that there is discounting in this market (eg JD Sports engaged in clearance and non-clearance discounting of [X]% and [X]% of apparel revenues respectively which is similar to its level of discounting in footwear). There could be less discounting post-Merger as a result of any loss of competition between the Parties.¹⁹² It is also unlikely that suppliers would react negatively to a reduction in discounting post-Merger. On that basis, we disagree with the Parties' submission that the stance of suppliers would result in the Merger being unlikely to have a material impact on price competition.

Range

- 2.108 In terms of range, we consider that a supplier's selective distribution arrangements and its segmentation decisions typically have a direct impact on a given retailer's product access and, in turn, provide a constraint on its retail offering in terms of product range. Retailers however can and often do offer less than the full range available to them in their stores due to limitations in store size, although they typically offer a fuller range online.
- 2.109 Similar to footwear, Nike and adidas are the two biggest suppliers of apparel in this market and represent a [X] proportion of the Parties' sales ([X]% of JD Sports' apparel revenue and [X]% of Footasylum's apparel revenue). However, Nike and adidas have a smaller share of the apparel market than in footwear. Retailers stock a larger range of brands for apparel compared to footwear,¹⁹³ and retailers' own-brand apparel products also account for a significant minority of their sales in this market.
- 2.110 Consistent with the above, which shows that suppliers of branded products are less influential in apparel than in footwear, there is limited evidence that suppliers may influence retailers' incentives to flex their range of other suppliers' brands and

¹⁹⁰ [X]

¹⁹¹ We recognise that discounting in some instances, such as for end-of-range products, may support suppliers' efforts to establish newer products as 'status' products.

¹⁹² Regarding clearance discounting, we consider that it is driven by a range of factors including product lifecycle/seasonal changes. However, we also consider that competition influences clearance discounting, because where seasonal changes in products apply equally to all retailers, multiple retailers may engage in clearance discounting and compete with each other. As such, we consider that the Merged Entity could reduce such discounting post-Merger as a result of any loss of competition between the Parties.

¹⁹³ Our analysis of the Parties' brand level data found that each stocked more than 100 different apparel brands.

products. We have also not seen any evidence of suppliers taking action in response to retailers flexing their range of other supplier's brands or products.

- 2.111 In relation to product access, suppliers vary in the level of restrictions they impose on retailers through their selective distribution arrangements and these restrictions arise from suppliers' own strategic decisions. Nike's and adidas's policies are more restrictive in apparel than those of smaller brands in terms of product access. For example, we have seen evidence of retailers seeking access to certain Nike and adidas apparel products but being denied them,¹⁹⁴ whereas this is not the case for suppliers of smaller brands. However, unlike in footwear, suppliers typically do not restrict the volumes of apparel products available to retailers, if those retailers have access to them.¹⁹⁵ This was supported by evidence from [X] who told us that [X].

Quality and service

- 2.112 Quality and service are often related, and some aspects of a retailer's offering could be placed in either category. In general, for the purpose of our assessment in this case we consider quality to capture aspects of the retail presentation of the products (such as store environment, website design) and service to capture aspects related to the customer journey and the process of purchase (eg staff knowledge and availability, queuing times and payment terms).
- 2.113 Suppliers impose some explicit restrictions affecting the consumer experience offered by retailers in relation to quality and service levels (both in-store and online) through their standard terms and conditions. For example, [X].
- 2.114 Where restrictions on quality and service are imposed under suppliers' standard terms and conditions, suppliers establish a minimum contractual standard, beyond which retailers can, at least in principle, flex their offering. In setting such 'floors', suppliers enable retailers to differentiate aspects of their QRS offering above this floor, while still ensuring that their minimum standards are met. In the following section on how retailers compete we have considered evidence on the extent to which retailers flex their PQRS offerings.
- 2.115 We have seen evidence that some quality and service requirements for retailers' in-store and online offerings are set out in granular detail by suppliers. Many of these requirements capture aspects related to a store or website as a whole and therefore apply equally to footwear and apparel, whereas others apply to specific products (ie some of the [X] requirements).
- 2.116 As for footwear, while such granular requirements exist, we found that they typically apply only to certain aspects of a retailer's offering rather than its full offering, do not capture situations where improvements might occur more slowly and leave scope for retailers to compete above these minimum levels, which is sometimes encouraged

¹⁹⁴ For example, [X]. [X].

¹⁹⁵ JD Sports told us that for smaller suppliers the allocation arrangements for apparel [X].

by suppliers. Given suppliers' incentives to encourage competition on important aspects of quality and service, in accordance with their use of selective distribution arrangements, we recognise that they may react negatively to a reduction in such competition in some cases. There are however limitations on suppliers' ability and incentives to react in this way, as set out in the next section.

- 2.117 We also found that other requirements on quality and service are specified in broader terms, which introduces a degree of subjectivity (eg [REDACTED]). The use of broad terms can also be considered as giving retailers some leeway to differentiate their offer; we have seen evidence of this in practice and consider this to be indicative of retail competition on quality and service.

Suppliers' monitoring of retailers and potential response to deterioration

- 2.118 As explained for footwear, suppliers conduct both general monitoring of retailers' behaviour¹⁹⁶ and more comprehensive (typically less frequent) audits of their retail offerings.¹⁹⁷ Suppliers can use the information gathered as a basis to give retailers either mandatory instructions or non-binding recommendations. This supplier behaviour can directly or indirectly influence retailers' choices over their PQRS offering.

- 2.119 We recognise that such monitoring might impact on a retailer's ability and/or incentives to deteriorate PQRS. However, as explained for footwear, we note that:

- (a) suppliers typically monitor and audit retailers' compliance with the minimum requirements for quality and service included in their standard terms and conditions;
- (b) suppliers may not be able to detect all deteriorations, particularly if the deterioration involves a lack of improvement relative to what otherwise would have been achieved; and
- (c) suppliers may monitor retailers infrequently such that there are periods of time during which a change in a retailer's standards may occur unobserved.

- 2.120 Evidence from suppliers on the scope of their monitoring and audit activities shows that they do not seek to monitor all aspects of retailers' PQRS offerings in apparel, as in footwear, for example they do not monitor, or monitor to a lesser extent than for their own branded products, the display of retailers' own-brand or other suppliers' branded products. Given this and factors (a)-(c) we consider that suppliers' monitoring is such that they are likely to have some but not full visibility over some aspects of retailers' offerings.

¹⁹⁶ We note that JD Sports submitted examples of correspondence with Nike and adidas which show those suppliers [REDACTED].

¹⁹⁷ [REDACTED].

- 2.121 Suppliers are likely to benefit from competition between retailers on quality and service, and hence have an incentive to encourage such competition. We have seen evidence that suppliers monitor retailers and use this to benchmark retailers against each other to incentivise them to improve their offerings. For example, there is evidence that suppliers compare and monitor retailers' store quality, app capabilities, payment and checkout, customer services, delivery, and the quality of marketing campaigns across retailers.¹⁹⁸ We note that the Merger reduces the extent to which suppliers can rely on such benchmarking to improve the Parties' offerings as they can no longer benchmark JD Sports and Footasylum operating as independent competitors against each other post-Merger.
- 2.122 We also considered how suppliers may respond to any observed deteriorations in retailers' offerings and the potential consequences of this for retailers:¹⁹⁹
- (a) suppliers may have little (if any) incentive to respond to some deteriorations;
 - (b) merging retailers may still have an incentive to deteriorate their offerings despite there being some likelihood that customers and/or suppliers would respond; and
 - (c) there is very limited evidence of Nike and adidas having taken action to respond to a retailer for a deterioration in quality and/or service.
- 2.123 Taking into consideration the evidence set out in a)-c), we consider that suppliers have some impact on aspects of retailers' PQRS through monitoring and benchmarking. However, suppliers have little incentive to respond to some deteriorations post-Merger and suppliers would be unlikely to identify all instances of any deterioration. Further, we have seen limited evidence of suppliers responding to deteriorations of retailers' PQRS.

Conclusion on the impact of suppliers on retail competition

- 2.124 Suppliers play an important role in the sports-inspired casual apparel market, although to a lesser extent than for footwear. Their overall strategies take account of both their DTC channel and their wholesale supply ([§]). They use selective distribution arrangements and segmentation policies to control the level of product access granted to retailers.
- 2.125 The control and influence suppliers exert is less significant in apparel than in footwear. This lesser constraint stems from the following:

¹⁹⁸ [§] [§]

¹⁹⁹ We also recognise that in making any decision suppliers will be conscious of their wider strategies and the implications for both their DTC channels and their wholesale relationships with retailers. For suppliers with active DTC channels, the consequences of adversely affecting wholesale partners may be less if their DTC channel is one of the beneficiaries, however, we consider that their wholesale channel as a whole is [§].

- (a) a greater proportion of apparel sales comes from a wider range of suppliers of branded products, such that there is less dependence on any individual supplier (including less dependence on Nike and adidas) in apparel than in footwear;
- (b) as well as accounting for a greater proportion of sales, other suppliers are generally less restrictive than Nike and adidas in terms of product access;
- (c) [X] less restrictive with regard to volume allocations in apparel than in footwear. Typically, once a retailer is given access to branded apparel it does not face restrictions on the volume of that product; and
- (d) retailers in this market (including the Parties) also design, stock and price their own-brands and therefore do not face the same constraints from suppliers (eg in relation to pricing) on these products.

2.126 Given suppliers' role in this market however, we considered their impact on retailers' ability and incentives to flex PQRS. We found that:

- (a) suppliers exert some influence over retailers' pricing, for example by providing the RRP for branded products, although while retailers generally adopt RRP, they do discount prices and flex other elements of pricing, such as delivery costs, which could be deteriorated post-Merger. We note that retailers do not face the same constraints in relation to their own-brand products, which comprise a significant minority of the market;
- (b) suppliers can control retailers' range through the products and volumes that they can access (though suppliers are less restrictive on volume access in apparel than in footwear) and can implement this primarily through their segmentation policies. In the short term and in relation to specific orders, the use of, or threatened use of, suppliers' cancellation provisions may create a degree of uncertainty for retailers as regards product access;
- (c) suppliers exert some influence on retailers' quality and service offerings. While suppliers place restrictions on retailers' offerings in this regard through minimum contractual standards, retailers can and do flex their offerings above those standards (as shown by the variation in their offerings). On some aspects of retailers' offerings, suppliers impose and ensure compliance with granular standards [X], but these do not encompass all aspects of retailers' offerings. However, we have seen evidence that suppliers may also encourage retailers to compete with each other beyond minimum requirements; and
- (d) suppliers undertake engagement, feedback, monitoring and benchmarking of retailers on some but not all aspects of PQRS, which can directly or indirectly influence retailers' choices over their PQRS offering. We note that post-Merger, suppliers' ability to benchmark would be hindered by the loss of one independently owned retail comparator.

- 2.127 We therefore consider that suppliers play an important role in shaping retail competition in this market.²⁰⁰ In particular, we consider that Nike and adidas impose the most restrictions and have the greatest influence, given their importance for retailers in this market, though we note that this is less than in footwear. Other suppliers also have some influence, but this is considerably less than that of Nike and adidas.
- 2.128 We note that supplier restrictions and requirements arise primarily from suppliers' own strategic decisions. Further, their incentives as to how they allocate products are derived from an overall view taking account of both their wholesale and DTC channels. We also found that the constraint suppliers exert on retailers has limits (eg they do not monitor all aspects of a retailer's offering) and, as such, retailers have the ability and incentive to flex important aspects of their offering in relation to PQRS.
- 2.129 We consider that suppliers can, and to some extent do, act as a constraint on retailers' ability and/or incentive to deteriorate their offering. On that basis we found that suppliers exert some constraint on the Merged Entity's ability and/or incentive to deteriorate PQRS. However, taking account of the evidence set out in this section in the round, we found that on balance this constraint is not so significant to sufficiently discipline the Merged Entity's ability and/or incentive to deteriorate its offering post-Merger. In particular this is for the following reasons:
- (a) retailers' (including the Parties') sales in this market are dispersed across a number of suppliers of branded products. As a result, retailers are less dependent on individual suppliers for sales revenue meaning that suppliers are less influential in this market than in footwear; in particular, Nike and adidas account for a smaller proportion of retailers' (including the Parties') sales in apparel than in footwear and therefore are less influential in this market;
 - (b) the Parties each have own-brand apparel propositions which comprise a significant minority of the Parties' sales and do not face the same constraints from suppliers on these products;
 - (c) retailers can and do compete on various aspects of PQRS as is evidenced by variations in their offerings including levels of discounting, delivery charges and times, customer service and innovation;
 - (d) there are limits to suppliers' ability to detect a deterioration of retailers' offerings, for example less and slower rates of innovation or other improvements and we note the Merger reduces the ability to benchmark; and

²⁰⁰ We note that the Parties submitted that this includes playing a role in determining JD Sports' long term strategy/investment decisions. ([The Parties, Response to Provisional Findings, chapter 4](#)), which is evidence there might be some influence on strategy but we consider this is only relevant to the extent that it ultimately influences PQRS.

- (e) suppliers have no incentive to discipline retailers where any deterioration of a retailer's offering does not harm supplier interests or where such deterioration may benefit suppliers, for example less discounting.

2.130 Given this, we also considered whether the extent of the constraint we found is sufficient, when taken in aggregate with other constraints on the Merged Entity, to prevent the Merged Entity from deteriorating its retail offering post-Merger. The aggregate constraint is evaluated directly in some of the evidence, eg diversion ratios, but more generally we considered the aggregate constraint by recognising that it is appropriate to consider the effect of all of the retailers and suppliers together as a combined constraint on the Parties.

2.131 We assess how retailers compete on important parameters of competition in the next section.

3. How retailers compete

Footwear²⁰¹

3.1 We found that suppliers affect some aspects of retailers' offering. In this section we have considered in further detail how retailers compete in this market and the different aspects of the Parties' PQRS offering which could be flexed post-Merger to the detriment of consumers.

Parties' views

3.2 JD Sports submitted that the footwear and apparel markets were each subject to intense market-wide rivalry,²⁰² and that it faced dynamic and disruptive competition from a wide range of other retailers.²⁰³

3.3 JD Sports also submitted that there was a number of reasons why the Merged Entity would have no incentive to worsen PQRS. These reasons included the aggregate competitive pressures of horizontal and vertical constraints from suppliers of branded products, intense competition from rivals across the spectrum of products the Parties offered, and its view that Footasylum under the counterfactual was not a material constraint on JD Sports.²⁰⁴

3.1 The Parties submitted that the CMA did not find evidence that the Parties were materially influencing and/or responding to each other on the parameters in relation to which the CMA considered the Parties could worsen their consumer offer post-

²⁰¹ Extract from [CMA Phase 2 Final Report](#), chapter 8, paragraphs 8.101 to 8.119

²⁰² [JD Sports, Response to Issues Statement, paragraph 4\(iii\)](#).

²⁰³ [JD Sports, Response to Issues Statement, Part C](#).

²⁰⁴ [§§].

Merger (or indeed any other parameter) at the national level.²⁰⁵ Moreover, JD Sports submitted that JD Sports sets many of its QRS parameters at a group level (including its UK and international businesses) and that therefore, an analysis of incentive which was rooted in a single fascia (or two fasciae) in the UK did not correctly capture the investment decisions that the JD Sports group makes, for example in respect of technological improvements.²⁰⁶

- 3.2 With regard to pricing, the Parties submitted that there was insufficient evidence to show that competition between them pre-Merger had any material effect on price or in any event that the loss of such competition would not be replaced dynamically by other retailers.
- 3.3 The Parties also submitted that the CMA failed to consider whether the extent of costs saved from a worsening of non-price parameters would be sufficiently profitable to justify an SLC finding (which it must be for the incentive to degrade to exist), taking into account the likelihood of adverse responses by the suppliers of branded products to a deterioration of the retail offer which can be expected to be a strong disciplining factor on all aspects of the Parties' quality and service offering.²⁰⁷

Third parties' views

- 3.4 Overall, third parties who offered a view submitted that the market was competitive and that retailers competed on different areas of PQRS, for example:
- (a) [X] submitted that the sports-inspired casual footwear market was competitive and comprised a range of competing retailers, from well-known high street retailers to small boutiques. It also submitted that suppliers competed in the market through their DTC offer, though less directly with multi-brand retailers;²⁰⁸
 - (b) [X] explained that the market had three tiers,²⁰⁹ and that the middle tier - 'sportswear-inspired fashion' was the most competitive. [X] submitted that within this middle tier, in which it and the Parties sat, retailers competed on their differentiated offer which was largely based on access to exclusive products;²¹⁰
 - (c) [X] submitted that retailers competed on different aspects of PQRS including: the size and location of new store openings; in-store environment, including through collaborations with suppliers to improve the in-store experience for consumers; loyalty schemes; marketing; and through access to 'exclusive' branded products. It asserted that retailers made such investments to strengthen

²⁰⁵ The Parties, Response to Provisional Findings, paragraphs 42, 290 and 314.

²⁰⁶ The Parties, Response to Provisional Findings, paragraph 315.

²⁰⁷ The Parties, Response to Provisional Findings, paragraph 316.

²⁰⁸ [X]

²⁰⁹ [X] noted that, in its view, there are three main tiers in the sports-inspired casualwear market in the UK. First, is the 'aspirational tier'; the 'middle tier' is 'sportswear-inspired fashion' and the final tier is the 'value', 'discount' or 'commodity' tier.

²¹⁰ [X]

their retail offer, which reflected the fact that there was significant retail competition in the market;²¹¹ and

- (d) [redacted] submitted that it and other retailers competed on price, particularly through student discounting.²¹²

Our assessment

3.5 We considered whether the Parties are able to, and do, compete on PQRS and therefore whether the Merged Entity could flex aspects of its offering post-Merger to the detriment of consumers. We would expect an SLC to occur if the Merged Entity worsened its PQRS offering or did not improve its offering as much or as quickly as it otherwise may have done absent the Merger.

3.6 Regarding price, we found that retailers generally price in line with RRP provided by suppliers, but that they also undertake discounting. We consider that discounting is evidence of competition between retailers. For example, a sizeable proportion of the Parties' sales in 2018 had been discounted:

- (a) the value (ie the difference in gross sales value against the sales value if sold at full price) of JD Sports' footwear clearance discounts amounted to [redacted] ([redacted] of its footwear net revenue);²¹³

- (b) the value of JD Sports' footwear non-clearance discounts amounted to [redacted] ([redacted] of its footwear revenue);²¹⁴

- (c) the value of Footasylum's total (footwear and apparel) clearance discounts were [redacted] ([redacted] of revenues);²¹⁵ and

- (d) the value of Footasylum's total (footwear and apparel) promotional discounts (temporary reductions in price) amounted to [redacted] ([redacted] of revenues).²¹⁶

3.7 The Parties are also generally free to choose the minimum spend thresholds on their online delivery services and the pricing of other delivery elements. They also choose whether to take part in cashback websites such as TopCashback and Quidco, which

²¹¹ [redacted].

²¹² [redacted].

²¹³ [redacted].

²¹⁴ [redacted].

²¹⁵ [redacted].

²¹⁶ [redacted].

give discounts to consumers online.²¹⁷ The Parties also choose whether to offer student discounts and the level of those discounts.²¹⁸

- 3.8 Similarly, the Parties compete on other aspects of their QRS offering; examples include their marketing activity (on which they spend a sizeable amount²¹⁹ and is a key way for retailers to differentiate themselves), store opening times, refurbishment plans, store fittings, in-store queuing times, staff training and knowledgeability, website functionality, loyalty programmes, the range of brands offered and staffing levels and quality.²²⁰ As discussed in the previous section, we recognise that suppliers may have some control or influence over some of these aspects.
- 3.9 We have seen documentary evidence of the Parties monitoring some of these aspects of QRS, such as: [REDACTED]; [REDACTED].²²¹ We considered the level of this monitoring and its impact on the strategic decisions of the Parties.
- 3.10 In addition to the competition which occurs on these existing aspects of competition, innovation also plays a role in this market in terms of changes and improvements to retailers' services and offerings. For example technological improvements such as: JD Sports' introduction of in-store kiosks, which give consumers access to a broader range of products than is available in a specific store; improvements to website and app functionality and design; digital content displays in-stores; more efficient in-store product retrieval systems; and running different forms of marketing campaigns or partnerships with social media influencers and celebrities, including 'live streaming' of in-store promotion events online. While such innovation is, by its nature, hard to predict, we have seen retailers making improvements across these areas.²²²

²¹⁷ As at 23 January 2020, the Parties were offering cashback of between 4% and 12.15% to customers who click through these two websites (see for example JD Sports on [Topcashback](#) and [Quidco](#)) before completing their purchase on the Parties' websites as normal.

²¹⁸ The Parties submitted two chronologies on student discounts. The Parties submitted that the first chronology on the introduction of student discounts showed that JD Sports did not respond to Footasylum when it launched its student discount in 2012 ([The Parties, Response to Provisional Findings, paragraph 329](#)). The Parties submitted that the second chronology showed no evidence that JD Sports followed Footasylum when setting its student discount. However, we note that JD Sports' internal documents [REDACTED]

²¹⁹ JD Sports' total marketing spend in calendar year 2019 was [REDACTED] while Footasylum's total marketing spend in financial year 2019 was [REDACTED].

²²⁰ For some of these aspects the Parties submitted that no evidence was cited by the CMA in relation to competition between the Parties on this parameter ([The Parties, Response to Provisional Findings, chapter 5, section V](#)).

²²¹ The Parties submitted that the CMA cited 'a very small number of instances in which JD Sports has engaged in local marketing initiatives (such as an in-store DJ) in response to a new Footasylum store opening. However, such activities are also used in a range of other circumstances, for example JD Sports store openings / anniversary events, to promote JD Sports stores in the event of roadworks or local factors that may be impacting the store, as well as other competitor activities' ([The Parties, Response to Provisional Findings, paragraph 344](#)). Further, the Parties submitted that local marketing represents a [REDACTED] of its overall marketing spend and that the Provisional Findings cite no evidence to support the proposition that the Parties are strategically influencing or responding to each other in relation to national marketing activities ([The Parties, Response to Provisional Findings, paragraph 345](#)). We note that the fact that these promotional activities are also used for reasons other than reacting to Footasylum does not diminish the value of this finding.

²²² For example, the use of new technology, [REDACTED] and the introduction of in-store kiosks at JD Sports' stores.

- 3.11 These aspects of competition are all features that consumers value and from which they benefit.²²³ Our store exit survey shows that around a third of customers reported 'quality' or 'service' as a reason for choosing to shop at the Parties' stores.²²⁴
- 3.12 In our view, store numbers, locations and openings are also aspects of a retailer's offerings via which it competes with other retailers. We considered whether in the event of an SLC finding the Merged Entity could be incentivised to close some or all Footasylum fascia stores post-Merger, to the detriment of consumers. Our estimates suggest that closing all Footasylum stores would likely be profitable for the Merged Entity post-Merger.²²⁵ Further, the likelihood of these closures to be profitable (or the amount of additional profits) increases if, instead of closing all Footasylum stores, only the least profitable/most loss-making Footasylum stores were to close. We interpret these results with caution as we recognise that estimating the cost of closing some or all Footasylum stores is difficult for several reasons, including:
- (a) the need for a detailed assessment of several cost items (eg exiting leases, redundancies, unwinding contracts and stock etc); and
 - (b) the difficulty in estimating any costs to JD Sports of recapturing additional sales (these might be significant due to material increase in sales, although the recaptured sales from Footasylum are likely to be spread across a number of nearby JD Sports stores).

Conclusion on how retailers compete

- 3.13 We found there is evidence that the Parties compete head-to-head, as well as with other competitors, on various different PQRS aspects in a bid to attract consumers and generate sales. Retail competition in this market manifests in many different ways and these aspects are important to consumers. Indeed, we consider that the evidence of the Parties' market monitoring indicates that there is retail level competition across all aspects of PQRS. This supports our view that, while suppliers impose some constraint on retailers in this market (as considered in the previous section), there is retail competition on various important aspects of PQRS which could be lost as a result of the Merger.
- 3.14 While we accept that some of the Parties' competitive parameters are influenced by factors other than competitive constraints (eg vertical constraints from suppliers, stocking decisions, sales performance, etc) and that JD Sports operates in areas

²²³ For example, an online survey by [REDACTED] used by JD Sports found that respondents ranked factors as most important in the following order: [REDACTED] in response to the question 'Which factors are most important to you when deciding where to buy footwear? Please rank up to 3 in order of importance, with 1 being the most important'. [REDACTED], JD Sports submitted that it [REDACTED] UK as this is something its customers value and expect.

²²⁴ [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#).

²²⁵ If all Footasylum stores were to close, the Merged Entity would recapture a profit margin of [REDACTED] (Footasylum revenue of [REDACTED] * [REDACTED]% estimated diversion ratio * [REDACTED]% profit margin on sales). This is compared to an active Footasylum net profit of [REDACTED]. The difference is a positive [REDACTED] profit.

where Footasylum is not present (within or outside the UK),²²⁶ the evidence assessed above suggests that the Merged Entity could change some aspects of its offering in the UK in response to changes in competitive pressure post-Merger.

3.15 We considered the Parties' argument that the CMA did not find evidence that the Parties are materially influencing and/or responding to each other on any of the identified aspects of PQRS, and that the CMA failed to consider whether the extent of costs saved from a worsening of non-price parameters would be sufficiently profitable. In this regard, we note that:

- (a) the parameters assessed above represent what the CMA believes are the most straightforward ways in which an SLC could manifest, but this is not necessarily exhaustive;
- (b) the effect of the Merger on the Merged Entity's incentives may not be uniform across all aspects of PQRS. Evidence such as our survey results and our GUPPI estimates capture the overall incentive of the Merged Entity to deteriorate its offering post-Merger, but we note that the GUPPI is agnostic as to the specific PQRS parameter that could be flexed post-Merger;
- (c) we accept that any quantification of the Merged Entity's incentive to deteriorate (worsen or improve relatively more slowly or to a lesser extent than in absence of the Merger) specific aspects of PQRS post-Merger is subject to uncertainty and should be interpreted with caution; and
- (d) nonetheless, we note that the evidence assessed above suggests that the Parties can and do flex some competitive parameters, and therefore we expect that if there were a substantial lessening in the competitive constraints due to the Merger this would create the incentive for the Merged Entity to deteriorate (worsen or improve relatively more slowly or to a lesser extent than in absence of the Merger) any of these aspects of PQRS.

3.16 In subsequent sections we have looked at a range of evidence relating to the closeness of competition and the constraints from other retailers, to understand the aggregate competitive constraint on the Merged Entity in footwear.

Apparel²²⁷

3.17 We found that suppliers affect some aspects of retailers' offering but that this is of less significance in apparel than in footwear. In this section we have considered in further detail how retailers compete in this market and the different aspects of the Parties' PQRS offering which could be flexed post-Merger to the detriment of consumers.

²²⁶ We note that the same argument does not apply to Footasylum.

²²⁷ Extract from [CMA Phase 2 Final Report](#), chapter 9, paragraphs 9.72 to 9.88

Parties' views

- 3.18 JD Sports submitted that the footwear and apparel markets were each subject to intense market-wide rivalry,²²⁸ and that it faced dynamic and disruptive competition from a wide range of other retailers.²²⁹
- 3.19 JD Sports also submitted that there were a number of reasons why it had no incentive to worsen PQRS. These reasons included the aggregate competitive pressures of horizontal and vertical constraints from suppliers of branded products, intense competition from rivals across the spectrum of products they offered and its view that Footasylum under the counterfactual was not a material constraint on JD Sports.²³⁰
- 3.20 The Parties submitted that the CMA did not find evidence that the Parties were materially influencing and/or responding to each other on the parameters in relation to which the CMA considered the Parties could worsen their consumer offer post-Merger (or indeed any other parameter) at the national level.²³¹ Moreover, JD Sports submitted that JD Sports sets many of its QRS parameters at a group level (including its UK and international businesses) and that therefore, an analysis of incentive which was rooted in a single fascia (or two fasciae) in the UK did not correctly capture the investment decisions that the JD Sports group makes, for example in respect of technological improvements.²³²
- 3.21 With regard to pricing, the Parties submitted that there was insufficient evidence to show that competition between them pre-Merger had any material effect on price or in any event that the loss of such competition would not be replaced dynamically by other retailers.
- 3.22 The Parties also submitted that the CMA failed to consider whether the extent of costs saved from a worsening of non-price parameters would be sufficiently profitable to justify an SLC finding (which it must be for the incentive to degrade to exist), taking into account the likelihood of adverse responses by the suppliers of branded products to a deterioration of the retail offer which could be expected to be a strong disciplining factor on all aspects of the Parties' quality and service offering.²³³

Third parties' views

- 3.23 Overall, third parties who offered a view on both the footwear and apparel markets submitted that these markets were competitive and that retailers competed on different areas of PQRS.

²²⁸ [REDACTED]

²²⁹ [REDACTED]

²³⁰ [REDACTED]

²³¹ [The Parties, Response to Provisional Findings, paragraphs 42, 290 and 314.](#)

²³² [The Parties, Response to Provisional Findings, paragraph 315..](#)

²³³ [The Parties, Response to Provisional Findings, paragraph 316.](#)

Our assessment

- 3.24 We considered whether the Parties are able to, and do, compete on PQRS and therefore whether the Merged Entity could flex aspects of its offering post-Merger to the detriment of consumers. We would expect an SLC to occur if the Merged Entity worsened its PQRS offering or did not improve its offering as much or as quickly as it otherwise may have done absent the Merger.
- 3.25 We consider that many of the parameters of competition that the Parties compete on are broadly the same for apparel as they are for footwear (such as minimum spend thresholds on their online delivery services, the pricing of other delivery elements, discounting, store opening times, refurbishment plans, in-store queuing times, pay-later options, marketing activity and innovation), and therefore our assessment on the parameters of competition for footwear largely also applies to apparel. Regarding pricing of branded products for example, in apparel as in footwear, there is evidence that, while retailers' pricing typically follows RRP, discounting does occur which is evidence of competition between retailers. Taking the Parties' pricing as an example:
- (a) the value (ie the difference in realised sales value against the sales value if sold at full price) of JD Sports' apparel clearance discounts amounted to [REDACTED] ([REDACTED] of its apparel revenue);²³⁴
 - (b) the value of JD Sports' apparel non-clearance discounts amounted to [REDACTED] ([REDACTED] of its apparel revenue);²³⁵
 - (c) the value of Footasylum's total (footwear and apparel) clearance discounts were [REDACTED] ([REDACTED] of revenues);²³⁶ and
 - (d) and the value of Footasylum's total (footwear and apparel) promotional discounts (temporary reductions in price) amounted to [REDACTED] ([REDACTED] of revenues).²³⁷
- 3.26 Two further elements which are specific to apparel are the range and mix of brands that are stocked by retailers and the importance of own-brand products. First, the range of brands that is stocked by retailers is much broader in apparel than in footwear (although the range within brands may be smaller), which means there is even greater competition between retailers over the selection of brands to stock.²³⁸ Nike and adidas remain important in apparel with a larger share of the market than other brands, however, their combined share is smaller in apparel than in footwear. Therefore, Nike and adidas are less important in the sports-inspired casual apparel market than in the footwear market.

²³⁴ [REDACTED]

²³⁵ [REDACTED]

²³⁶ [REDACTED]

²³⁷ [REDACTED]

²³⁸ For example, one internal document from Footasylum stated that [REDACTED]. Another document from Footasylum stated: '[REDACTED]'.

- 3.27 Second, own-brand products are a significant part of the sports-inspired casual apparel market. Own-brand is a way in which retailers can differentiate themselves and another parameter on which they compete. For example, [REDACTED] (Footasylum's own-brand) was the [REDACTED] apparel brand for Footasylum in 2018. The Parties both offer a number of their own-brand sports-inspired apparel products and in the case of Footasylum these brands represent a significant minority portion (approximately [REDACTED]% in 2018) of its sales. JD Sports also identified the importance of own-brands as part of its rationale for the Merger, [REDACTED].
- 3.28 Unlike branded products where retailers typically use suppliers' RRP as a starting point, retailers do not face the same constraints when pricing own-brand products. We note that retailers typically have regard to other price points in the market, including those of branded products, when pricing own-brand apparel. JD Sports submitted that it prices its own-brand products by reference to the [REDACTED].²³⁹

Conclusion on how retailers compete

- 3.29 As for footwear, we found that there is evidence that the Parties compete head-to-head, as well as with other competitors, on various different PQRS aspects in a bid to attract consumers and generate sales. Evidence of the Parties' market monitoring across footwear and apparel, indicates that there is retail level competition across all aspects of PQRS in apparel. There is some influence and restrictions from suppliers, though we note that this is less than in footwear, and therefore there is to some extent greater freedom to flex PQRS in apparel than footwear.
- 3.30 Retail competition in this market manifests in many different ways and these aspects are important to consumers. There are significant aspects of retailers' offerings over which the Parties and other retailers compete, eg the price and development of own-brands, range and mix of suppliers' branded apparel products, level of discounts, customer service, loyalty schemes, future innovation, delivery speed and website functionality.
- 3.31 While we accept that some of the Parties' competitive parameters are influenced by factors other than competitive constraints (eg vertical constraints from suppliers, stocking decisions, sales performance, etc) and that JD Sports operates in areas where Footasylum is not present (within or outside the UK),²⁴⁰ the evidence assessed above suggests that the Merged Entity could change some aspects of its offering in the UK in response to changes in competitive pressure post-Merger.
- 3.32 We considered the Parties' submissions on the flexing of competitive parameters covering both footwear and apparel. Our response to these points do not differ between footwear and apparel.

²³⁹ [REDACTED].

²⁴⁰ We note that the same argument does not apply to Footasylum.

3.33 In subsequent sections we have looked at a range of evidence relating to the closeness of competition and the constraints from other retailers, to understand the aggregate competitive constraint on the Merged Entity in apparel.

Glossary

Term	Definition
adidas	Adidas AG
Apparel	Sports-inspired casual apparel
Athleisure	Sports apparel and footwear worn for both sport and other activities
Brand	Supplier of apparel and footwear
Brick and mortar store	Physical retail outlet
Clicks and bricks	Retailer with a mix of instore and online outlets
CMA	Competition and Markets Authority
CMA Guidance	Merger assessment guidelines (CC2/OFT1254), published 1 September 2010
CMA's Phase 2 Final Report	Completed merger on the acquisition of Footasylum plc by JD Sports Fashion plc: Final Report, published 6 May 2020
Counterfactual	The counterfactual is a benchmark against which the expected effects of the Proposed Merger can be assessed. The counterfactual takes events of circumstances and their consequences into account to the extent that they are foreseeable
DJS Research	Independent market research agency commissioned by the CMA to conduct a store exit survey and online survey in 2019 and an online survey in 2021.
DTC	Direct-to-consumer; direct transaction between supplier and individual consumer
Fascia	The fascia on a store front is any surface on the outside of the store that displays the company name, company logo and company colour scheme. By fascia we refer to different retailers (eg JD Sports, Footasylum, Foot Locker, Sports Direct).
Footasylum	Footasylum Limited (formerly, Footasylum plc)

Footwear	Sports-inspired casual footwear
Frasers Group	Frasers Group plc (formerly Sports Direct International plc until 17 December 2019).
Higher-tier branded products	Branded footwear and apparel products which are most in demand by consumers in the relevant markets , including exclusive limited supply products.
Inquiry Group	The appointed Panel Members and decision-makers of the CMA's phase 2 investigation into the Merger .
In-store	Physical retail outlet
Interim Order	Interim Order made by the CMA on 19 May 2021 pursuant to section 81 of the Act and addressed to Pentland Group Holdings Limited, Pentland Group Limited, JD Sports Fashion Plc and Footasylum Limited
Issues statement	Issues Statement on the Merger published on 24 October 2019
JD Sports	JD Sports Fashion plc
Key suppliers	adidas and Nike
Mono-brand retailer	Retailer which sells one brand.
Multi-brand retailer	Retailer which sells multiple different brands
Multi-channel	Use of both in-store and online channels to sell products to consumers
Nike	Nike, Inc.
Online	Selling of products via the internet
Remittal Online Survey	The online survey that DJS Research conducted in May 2021 on behalf of the CMA with a sample of the Parties' online customers
Pentland	Pentland Group Limited (Jersey), formerly known as Pentland Group plc, the majority owner of JD Sports

Phase 2 Exit Survey	The exit survey of in-store shoppers, conducted by DJS Research on behalf of the CMA in November 2019 as part of the Phase 2 Inquiry
Phase 2 Online Survey	The online survey that DJS Research conducted in 2019 on behalf of the CMA with a sample of the Parties' online customers
PQRS	Price, quality, range or service
Relevant markets	In-store and online retail supply of sports-inspired casual footwear and sports-inspired casual apparel in the UK
SLC	Substantial lessening of competition
Sports-inspired casual products	Sports-inspired casual apparel and footwear [this covers athletic-inspired products primarily used for leisure purposes]
Suppliers of sports-inspired casual products	Suppliers of apparel and/or footwear to retailers i.e. adidas, Nike, Puma, Under Armour.
the Act	The Enterprise Act 2002
The Merged Entity	The combined business following the completed merger between JD Sports and Footasylum .
The Merger	The completed acquisition by JD Sports of Footasylum
The Parties	JD Sports and Footasylum
The Tribunal	Competition Appeal Tribunal