

## Completed acquisition by JD Sports Fashion plc of Footasylum plc<sup>1</sup>

### Final Undertakings given by JD Sports Fashion plc, Footasylum Limited and Pentland<sup>2</sup> to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

#### *Background*

- A. On 12 April 2019, JD Sports Fashion plc (**'JD Sports'**) completed its acquisition of Footasylum plc (**'Footasylum'**) (the **'Merger'**).
- B. On 17 May 2019, the Competition and Markets Authority (the **'CMA'**) made an initial enforcement order (**'IEO'**) pursuant to section 72(2) of the Enterprise Act 2002 (the **'Act'**) for the purpose of preventing pre-emptive action in accordance with that section. On 7 October 2019, the CMA issued directions under the IEO for the appointment of a monitoring trustee (the **'Monitoring Trustee'**) in order to monitor and ensure compliance with the IEO.
- C. On 1 October 2019, the CMA, in accordance with section 22(1) of the Act, referred the Merger to a group of CMA panel members to determine, pursuant to section 35 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 (**'SLC'**) in any market or markets in the United Kingdom (**'UK'**) for goods or services.
- D. On 26 November 2019, the CMA imposed an interim order (the **'Phase 2 IO'**) for the purpose of preventing pre-emptive action in accordance with section

---

<sup>1</sup> On 19 September 2019, Footasylum plc became Footasylum Limited. References to Footasylum in these Final Undertakings should be interpreted to mean both Footasylum plc (in the period prior to 20 September 2019) and Footasylum Limited (in the period since 20 September 2019).

<sup>2</sup> 'Pentland' means the following entities together, and their subsidiaries: (i) Pentland Capital Limited; (ii) Pentland Group Limited; (iii) Pentland Group Holdings Limited; and (iv) Pentland Group (Trading) Limited.

81 of the Act. The IEO consequently ceased to be in force under section 72(6) of the Act.

- E. On 6 May 2020, the CMA published a final report pursuant to section 38 of the Act (the '**Phase 2 Final Report**') which concluded that:
- (a) the Merger has created a relevant merger situation;
  - (b) the creation of that situation has resulted in, or may be expected to result, in SLCs in relation to the supply of sports-inspired casual footwear and apparel both in-store and online in the UK; and
  - (c) the CMA should take action to require the divestiture of the Footasylum business (the '**Phase 2 Remedy**') to remedy the SLCs found and any adverse effects resulting from them.
- F. On 17 June 2020, JD Sports made an application to the Competition Appeal Tribunal (the '**Tribunal**') pursuant to section 120 of the Act for a review of the CMA's decision in the Phase 2 Final Report.
- G. On 13 July 2020, the CMA accepted final undertakings (the '**Phase 2 Final Undertakings**') pursuant to section 82 of the Act to give effect to the Phase 2 Remedy. Pursuant to section 82 of the Act, the Phase 2 IO ceased to be in force on the date of acceptance by the CMA of the Phase 2 Final Undertakings.
- H. On 13 November 2020, the Tribunal handed down its judgment setting out its conclusion on each of the grounds of review (the '**Judgment**'). In the Judgment, the Tribunal quashed the Phase 2 Final Report in so far as its conclusions were based on the CMA's assessment of the likely effects of the COVID-19 pandemic on: (i) the relevant markets, (ii) the Merger parties and/or the merged entity, and (iii) on the competitive constraints likely to apply to the Merger parties and/or the merged entity. The Tribunal remitted the case to the CMA for reconsideration in the light of the Judgment.
- I. The CMA's subsequent applications for permission to appeal the Judgment were rejected by the Tribunal on 17 December 2020 and by the Court of Appeal on 3 March 2021. The CMA therefore conducted its remittal inquiry to reconsider, in light of the Judgment, whether the Merger has resulted, or may be expected to result, in an SLC, and if so, what action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC (the '**Remittal**').
- J. On 19 May 2021, the CMA released JD Sports, Footasylum and Pentland from the Phase 2 Final Undertakings, including their obligation to give effect to

the Phase 2 Remedy, pursuant to section 82(2)(c) of the Act. At the same time, the CMA imposed an interim order (the '**Remittal IO**') for the purpose of preventing pre-emptive action in accordance with section 81 of the Act.

- K. The CMA's final report on the Remittal (the '**Remittal Report**'), which was published on 5 November 2021, concluded that:
- (a) the Merger has created a relevant merger situation;
  - (b) the creation of that situation has resulted in, or may be expected to result, in SLCs in relation to the supply of sports-inspired casual footwear and apparel both in-store and online in the UK; and
  - (c) the CMA should take action to require the divestiture of the Footasylum business (the '**Remedy**') to remedy the SLCs found and any adverse effects resulting from them.
- L. The implementation of the Remedy will be subject to the following safeguards:
- (a) JD Sports will be subject to regular reporting requirements.
  - (b) The Monitoring Trustee, appointed in accordance with paragraph 6, will monitor compliance with these Final Undertakings, including the progress of the implementation of the Remedy.
  - (c) The purchaser must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 1.
  - (d) These Final Undertakings include provisions enabling the CMA to direct the appointment of:
    - (1) a Divestiture Trustee to effect the final disposal of the Footasylum business in accordance with the conditions set out at paragraph 10; and
    - (2) a Hold Separate Manager to act as an independent interim manager with executive powers to manage the Footasylum business in accordance with the conditions set out at paragraph 14.
- M. The Remittal IO ceases to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings.
- N. Now therefore each of JD Sports, Footasylum and Pentland gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose

of remedying, mitigating or preventing the SLCs identified in the Remittal Report and any adverse effects resulting from them.

## **1. Interpretation**

- 1.1. The purpose of these Final Undertakings is to give effect to the Remedy identified in the Remittal Report and they shall be construed in accordance with the Remittal Report.
- 1.2. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Remittal Report (as appropriate).
- 1.3. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5. References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, these Final Undertakings unless otherwise stated.
- 1.6. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 1.7. The annexes form part of these Final Undertakings.
- 1.8. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.9. Further in these Final Undertakings:

the '**Act**'

means the Enterprise Act 2002;

'**Affiliate**'

means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the **Act**;

<b>‘Approved Purchaser’</b>	means any purchaser approved by the <b>CMA</b> pursuant to the <b>Purchaser Approval Criteria</b> set out in Annex 1;
<b>‘Approved Timetable’</b>	means the timetable notified by the <b>CMA</b> to <b>JD Sports</b> in accordance with paragraph 9.1;
<b>‘Asset Maintenance Undertakings’</b>	means those undertakings set out in paragraph 4;
<b>‘Associated Person’</b>	means a person who is an associated person within the meaning of section 127 of the <b>Act</b> ;
<b>‘business’</b>	has the meaning given by section 129(1) and (3) of the <b>Act</b> ;
<b>‘CMA’</b>	means the Competition and Markets Authority;
<b>‘Commencement Date’</b>	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the <b>Act</b> ;
<b>‘Confidential Information’</b>	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;

<b>‘control’</b>	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the <b>Act</b> ;
<b>‘Divestiture Period’</b>	means the period starting with the <b>Commencement Date</b> and ending [✂] after the <b>Commencement Date</b> or such longer period as the <b>CMA</b> may approve in accordance with paragraph 19.1;
<b>‘Divestiture Trustee’</b>	means a person appointed in accordance with paragraph 10;
<b>‘Divestiture Undertakings’</b>	means those undertakings set out in paragraph 3;
<b>‘Final Disposal’</b>	means the divestiture of the <b>Footasylum business</b> to an <b>Approved Purchaser</b> ;
<b>‘Footasylum’</b>	means Footasylum Limited, and prior to 20 September 2019 Footasylum plc, a company registered in England and Wales with company number 05535565;
<b>‘Footasylum business’</b>	means the business conducted by <b>Footasylum</b> and its <b>Subsidiaries</b> ;
<b>‘Hold Separate Manager’</b>	means a person appointed in accordance with paragraph 14;
<b>‘JD Sports’</b>	means JD Sports Fashion plc, a company registered in England and Wales with company number 01888425;
<b>‘JD Sports business’</b>	means the business conducted by <b>JD Sports</b> and its <b>Subsidiaries</b> but excluding the <b>Footasylum business</b> ;

<b>‘Key Staff’</b>	means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business;
<b>‘Merger’</b>	means the completed acquisition by <b>JD Sports</b> of <b>Footasylum</b> ;
<b>‘Monitoring Trustee’</b>	means a person appointed or retained in accordance with paragraph 6;
<b>‘ordinary course of business’</b>	means matters connected to the day-to-day supply of goods and services by the <b>Footasylum business, JD business</b> or <b>Pentland business</b> and does not include matters involving significant changes to the organisational structure or related to the post- <b>Merger</b> integration of <b>Footasylum</b> and <b>JD Sports/Pentland</b> ;

<b>‘Pentland’</b>	<p>means:</p> <p>(a) prior to these Final Undertakings, the definition of ‘Pentland’ in the Remittal IO (as amended by the CMA’s Variation Order dated 21 October 2021); and</p> <p>(b) under these Final Undertakings, the following entities together, and their subsidiaries: (i) Pentland Capital Limited, a company registered in Jersey with company number 138181; (ii) Pentland Group Limited, formerly known as Pentland Group plc, a company registered in England and Wales with company number 793577; (iii) Pentland Group Holdings Limited, a company registered in Jersey with company number 129937; and (iv) Pentland Group (Trading) Limited, a company registered in England and Wales with company number 11439197;</p>
<b>‘Pentland business’</b>	means the business conducted by <b>Pentland</b> and its <b>Subsidiaries</b> but excluding the <b>JD Sports business</b> and the <b>Footasylum business</b> ;
<b>‘Phase 2 Final Report’</b>	means the <b>CMA’s</b> report titled <i>‘Completed merger on the acquisition of Footasylum plc by JD Sports Fashion plc’</i> published on 6 May 2020;
<b>‘Phase 2 IO’</b>	means the interim order made by the <b>CMA</b> on 26 November 2019;
<b>‘Purchaser Approval Criteria’</b>	means the criteria set out in Annex 1;
<b>‘Related Person’</b>	means any <b>Subsidiary</b> , <b>Affiliate</b> or <b>Associated Person</b> ;

<b>‘Relationship Agreement’</b>	means the agreement entered into on 30 October 2014 between <b>Pentland</b> and <b>JD Sports</b> ;
<b>‘Relevant Markets’</b>	means: (i) the retail supply of sports-inspired casual footwear (in-store and online) in the UK; and (ii) the retail supply of sports-inspired casual apparel (in-store and online) in the UK;
<b>‘Remedy’</b>	means the divestiture of the <b>Footasylum business</b> as set out in Chapter 14 of the <b>Remittal Report</b> ;
<b>‘Remittal IO’</b>	means the interim order made by the <b>CMA</b> on 19 May 2021;
<b>‘Remittal Report’</b>	means the <b>CMA’s</b> report titled <i>‘Completed acquisition by JD Sports Fashion plc of Footasylum plc – Final report on the case remitted to the CMA by the Competition Appeal Tribunal’</i> published 5 November 2021;
<b>‘SLC’</b>	means a substantial lessening of competition;
<b>‘Specified Period’</b>	means the period beginning on the <b>Commencement Date</b> and terminating on <b>Final Disposal</b> ;
<b>‘Subsidiary’</b>	unless otherwise expressly stated has the meaning given by section 1159 of the Companies Act 2006;
<b>‘Trustee Divestiture Period’</b>	means a period as the <b>CMA</b> may direct for the <b>Divestiture Trustee</b> to meet the <b>Trustee Obligation</b> commencing from the date of appointment of the <b>Divestiture Trustee</b> ;
<b>‘Trustee Obligation’</b>	means bringing about the <b>Final Disposal</b> , and includes the performance of all ancillary tasks as are necessary or desirable for the purpose

of effecting the Final Disposal promptly and, in any event, within the **Trustee Divestiture Period** [✂];

**‘UK’**

means the United Kingdom of Great Britain and Northern Ireland;

**‘Working Day’**

means a day that is not a Saturday or Sunday or a bank holiday in England; and

**‘written consent’**

means a consent given in writing, including by e-mail.

## **2. Commencement**

- 2.1. These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

## **3. Divestiture Undertakings**

- 3.1. JD Sports gives the following undertakings:
- 3.1.1. to give effect to and implement the Final Disposal within the Divestiture Period having due regard to the findings in the Remittal Report; and
  - 3.1.2. to comply with any written directions given by the CMA under these Final Undertakings, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings, in particular the appointment of a Divestiture Trustee.
- 3.2. JD Sports undertakes to inform the CMA as soon as practicable, and in any event within two Working Days, of each of: (i) a shortlist of potential purchasers being drawn up for the CMA’s formal approval against the Purchaser Approval Criteria; (ii) a sale and purchase agreement being agreed; and (iii) completion of the Final Disposal.
- 3.3. JD Sports undertakes to provide the CMA with sufficient information regarding each potential purchaser for which JD Sports seeks formal approval from the CMA, having regard to the Purchaser Approval Criteria to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld.

- 3.4. The CMA will advise JD Sports whether any potential purchaser is an Approved Purchaser within a reasonable time of the CMA concluding it has received sufficient information. The CMA will inform JD Sports where it considers it has received insufficient information.
- 3.5. JD Sports undertakes to seek CMA approval of the final terms of the divestiture prior to the Final Disposal.
- 3.6. JD Sports undertakes to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve Final Disposal within the Divestiture Period.
- 3.7. Footasylum undertakes to cooperate with JD Sports and take all reasonable steps as may be required to assist JD Sports to comply with the Divestiture Undertakings, including complying with any written directions given by the CMA.
- 3.8. Pentland undertakes:
- 3.8.1. so far as is consistent with the Relationship Agreement, to assist JD Sports and Footasylum to the extent its assistance is necessary to achieve the objectives of these Final Undertakings;
- 3.8.2. not to impede or otherwise prevent JD Sports from meeting its obligations under these Final Undertakings; and
- 3.8.3. to comply with any written directions given by the CMA in relation to Pentland's obligations under these Final Undertakings, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings.
- 3.9. JD Sports undertakes that it will not, and to procure that any Related Person will not, for a period of ten years from the date of Final Disposal, bring under their common ownership or control, in whole or in part, Footasylum or any of its Subsidiaries, or any assets of Footasylum or any of its Subsidiaries, except with the prior written consent of the CMA.
- 3.10. Pentland undertakes that it will not, and to procure that any Related Person over which Pentland has control, will not, for a period of ten years from the date of Final Disposal, bring under their common ownership or control, in whole or in part, Footasylum or any of its Subsidiaries, or any assets of Footasylum or any of its Subsidiaries, except with the prior written consent of the CMA.

#### **4. Asset Maintenance Undertakings**

- 4.1. Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA pursuant to the IEO and Interim Order as listed in Annex 2 (as may be amended with the prior written consent of the CMA or otherwise updated by the CMA), which will remain applicable during the Specified Period), JD Sports and Footasylum undertake, during the Specified Period, not to take any action which might impede the Final Disposal, including any action which might:
  - 4.1.1. lead to the integration of the Footasylum business with the JD Sports Business;
  - 4.1.2. transfer the ownership or control of the Footasylum business; or
  - 4.1.3. otherwise impair the ability of the Footasylum business to compete independently in any of the Relevant Markets.
- 4.2. Further and without prejudice to the generality of paragraph 4.1, JD Sports and Footasylum undertake at all times during the Specified Period to procure that, except with the prior written consent of the CMA (which includes any previously granted derogations and consents listed in Annex 2):
  - 4.2.1. no action is taken by JD Sports to solicit the transfer of staff from the Footasylum business to JD Sports;
  - 4.2.2. the Footasylum business is carried on separately from the JD Sports business and the separate sales or brand identity of the Footasylum business is maintained;
  - 4.2.3. the Footasylum business is maintained as a going concern and sufficient resources are made available for the development of the Footasylum business, on the basis of its pre-Merger business plans (as updated by Footasylum from time to time in the ordinary course of business), and having due regard to the need to maintain and/or preserve the Footasylum business as an effective competitor and to all relevant circumstances as reasonably determined by the CMA;
  - 4.2.4. except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Footasylum business;
  - 4.2.5. the nature, description, range and quality of goods and/or services supplied in the UK by the Footasylum business are maintained and preserved;

- 4.2.6. except in the ordinary course of business for the separate operation of the Footasylum business and the JD Sports business:
- 4.2.6.1. all of the assets of the Footasylum business are maintained and preserved, including facilities and goodwill;
  - 4.2.6.2. none of the assets of the Footasylum business are disposed of; and
  - 4.2.6.3. no interest in the assets of the Footasylum business is created or disposed of;
- 4.2.7. there is no integration of the information technology of the Footasylum business and JD Sports business, and the software and hardware platforms of the Footasylum business remain essentially unchanged, except for routine changes and maintenance;
- 4.2.8. the customer and supplier lists of the Footasylum business and the JD Sports business are operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Footasylum business are carried out by the Footasylum business alone and for the avoidance of doubt the JD Sports business will not negotiate on behalf of the Footasylum business (and vice versa) or enter into any joint agreements with the Footasylum business (and vice versa);
- 4.2.9. all existing contracts of the Footasylum business and the JD Sports business continue to be serviced by the business to which they were awarded;
- 4.2.10. no changes are made to Key Staff of the Footasylum business;
- 4.2.11. no Key Staff are transferred between the Footasylum business and the JD Sports business;
- 4.2.12. all reasonable steps are taken to encourage all Key Staff to remain with the Footasylum business;
- 4.2.13. no Confidential Information passes, directly or indirectly, from the Footasylum business (or any of its employees, directors, agents or Related Persons) to the JD Sports business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the

CMA) and any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed; and

- 4.2.14. records should be kept of any communications between the Key Staff of the JD Sports business and the Key Staff of the Footasylum business (including an agenda and minutes of any meetings, including calls), and these records must be made available to the CMA on request.
- 4.3. JD Sports and Footasylum each undertakes that until Final Disposal, it will keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 8 of these Final Undertakings) relating to the Footasylum business, which include but are not limited to:
  - 4.3.1. details of Key Staff who leave or join the Footasylum business;
  - 4.3.2. any interruption of the Footasylum business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - 4.3.3. substantial changes in the Footasylum business's contractual arrangements or relationships with key suppliers; and
  - 4.3.4. substantial adverse changes in the financial position and/or performance of the Footasylum business.
- 4.4. Pentland undertakes at all times during the Specified Period that, except with the prior written consent of the CMA:
  - 4.4.1. no action is taken by Pentland which might impede the Final Disposal, including any action which might: (i) lead to the integration of the Footasylum business with the Pentland business and/or the JD Sports business; or (ii) otherwise impair the ability of the Footasylum business to compete independently in any of the Relevant Markets;
  - 4.4.2. no action is taken by Pentland to solicit the transfer of staff from the Footasylum business to Pentland;
  - 4.4.3. the Pentland business is carried on separately from the Footasylum business and the separate sales or brand identity of the Footasylum business from the Pentland business is maintained;

- 4.4.4. there is no integration of the information technology of the Pentland business and Footasylum business;
- 4.4.5. the customer and supplier lists of the Pentland business are operated and updated separately from the Footasylum business and for the avoidance of doubt the Pentland business will not negotiate on behalf of the Footasylum business or enter into any joint agreements with the Footasylum business;
- 4.4.6. no Key Staff are transferred between the Pentland business and the Footasylum business;
- 4.4.7. no Confidential Information passes, directly or indirectly, from the Pentland business (or any of its employees, directors, agents or Related Persons) to the Footasylum business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA) and any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed; and
- 4.4.8. any commercial or other trading activities between the Pentland business and the Footasylum business are conducted on an arm's length basis and on normal commercial terms.
- 4.5. Pentland undertakes at all times during the Specified Period that, except with the prior written consent of the CMA, which shall not be unreasonably withheld-
  - 4.5.1. the Relationship Agreement is not terminated;
  - 4.5.2. no material amendments are made to the Relationship Agreement unless strictly necessary as a result of changes to the Listing Rules or any other regulatory or legislative requirement; and
  - 4.5.3. [X]
- 4.6. Pentland undertakes that until Final Disposal, it will keep the CMA informed of any material developments in relation to its obligations under paragraphs 4.4 and 4.5.
- 4.7. JD Sports, Footasylum and Pentland each undertakes that within a period of five Working Days from the Commencement Date, they will provide written

compliance statements to the CMA in a form set out in Annex 3, confirming compliance with their respective obligations under paragraph 4 of these Final Undertakings (subject to any granted derogations). In the case of JD Sports and Footasylum, each shall set out any details of material developments for the purposes of paragraph 4.3 of which they are aware. Pentland shall set out details of any material developments for the purposes of paragraph 4.6 of which it is aware. Thereafter, JD Sports, Footasylum and Pentland will provide similar compliance statements to the CMA on a monthly basis until Final Disposal, with the first such monthly statement to be submitted to the CMA no later than one month from the first written statement.

## **5. Procedure for consent and notification/Directions**

- 5.1. JD Sports, Footasylum and Pentland each undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.
- 5.2. JD Sports, Footasylum and Pentland each recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 5.3. In the event that JD Sports, Footasylum or Pentland each discovers that an application for consent or approval has been made without full disclosure to the CMA, in accordance with paragraph 5.1, JD Sports, Footasylum or Pentland each undertakes to:
  - 5.3.1. inform the CMA in writing, identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
  - 5.3.2. at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 5.3.1 above, provide to the CMA an application for consent that includes the missing information.
- 5.4. JD Sports, Footasylum and Pentland shall each use all reasonable endeavours to make each application, or to procure that each application for consent or approval is made, so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Final Undertakings.

- 5.5. The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five Working-Day period referred to in paragraph 5.4 above. This provision is without prejudice to the CMA's duties under the Act.
- 5.6. JD Sports, Footasylum and Pentland will comply with such written directions as the CMA may from time to time issue and will take such steps as may be specified or described in such directions for complying with these Final Undertakings.
- 5.7. JD Sports, Footasylum and Pentland acknowledge that the CMA may choose not to issue directions immediately upon becoming entitled to do so, and recognises that any delay by the CMA in making a written direction shall not affect the obligations of JD Sports, Footasylum and Pentland at such time as the CMA makes any written direction under paragraph 5.6.

## **6. *Monitoring Trustee – Appointment***

- 6.1. JD Sports undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 8 on behalf of the CMA. Provided that the other conditions set out in this paragraph 6 are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the written directions made by the CMA on 7 October 2019 under the IEO. In the event that JD Sports proposes to retain the current Monitoring Trustee, no later than five Working Days after the Commencement Date, JD Sports shall provide the CMA with a copy of the updated agreed terms and conditions of appointment that reflect these Final Undertakings.
- 6.3. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
- 6.4. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
- 6.5. JD Sports shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
- 6.6. Unless paragraph 6.2 applies:

- 6.6.1. the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. JD Sports shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by JD Sports, JD Sports shall provide the CMA with a copy of the agreed terms and conditions of appointment.
- 6.6.2. If the proposed Monitoring Trustee is rejected by the CMA, JD Sports shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 6.3 to 6.5 above.
- 6.7. The provisions of paragraph 6.8 below shall apply if:
- 6.7.1. paragraph 6.2 does not apply;
  - 6.7.2. JD Sports fails to nominate persons in accordance with paragraph 6.6 above;
  - 6.7.3. those further persons nominated by JD Sports in accordance with paragraph 6.6 above are rejected by the CMA; or
  - 6.7.4. JD Sports is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 6.8. The CMA shall nominate one or more persons to act as Monitoring Trustee, and JD Sports shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 6.9. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in paragraph 8 below and that the Monitoring Trustee will monitor the compliance of JD Sports, Footasylum and Pentland with their respective obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

## **7. *Monitoring Trustee – replacement, discharge and reappointment***

- 7.1. JD Sports acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require JD Sports to replace the Monitoring Trustee.
- 7.2. If the Monitoring Trustee is removed under paragraph 7.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 6 above.

## **8. *Monitoring Trustee – functions***

- 8.1. The Monitoring Trustee's functions as set out in this paragraph 8 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:
  - 8.1.1. monitoring compliance with the Divestiture Undertakings and the Asset Maintenance Undertakings; and
  - 8.1.2. monitoring the progress made against the Approved Timetable towards Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
    - 8.1.2.1. the steps that have been taken towards the preparation of agreements for the transfer of the Footasylum business and the persons to whom such agreements have been distributed;
    - 8.1.2.2. where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between JD Sports and its financial or other advisers and possible purchasers or its financial or other advisers in connection with the disposal process;
    - 8.1.2.3. report on any developments that the Monitoring Trustee reasonably considers may have a material impact on JD Sport's ability to meet a step or deadline in the Approved Timetable;
    - 8.1.2.4. in instances where the Monitoring Trustee reasonably considers there to be a material risk that JD Sports will not

meet a step or deadline in the Approved Timetable, the Monitoring Trustee may attend meetings between JD Sports and possible purchasers in connection with the disposal process;

8.1.2.5. make recommendations to the CMA in order to ensure an efficient divestiture process and within the Divestiture Period; and

8.1.2.6. undertake any further investigations as may be required by the CMA in relation to compliance with these Final Undertakings and/or any proposed extension of the Divestiture Period.

8.2. The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks, the first report to be submitted not later than three weeks from the Commencement Date.

## **9. *Divestiture Reporting Obligations***

9.1. JD Sports undertakes that within the period of five Working Days from the Commencement Date, or such other period as may be agreed by the CMA, it will provide a timetable that it proposes to adopt, subject to the CMA's approval, to ensure the Final Disposal. The CMA will either approve this timetable as proposed or require reasonable amendments to it and will notify JD Sports of the Approved Timetable.

9.2. Thereafter, JD Sports will provide a written report to the CMA every three weeks or such other interval as agreed with the CMA, until Final Disposal and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee. The reports will outline the progress that JD Sports has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:

9.2.1. the progress that has been made against the Approved Timetable;

9.2.2. the status of any discussions that have been held with potential purchasers of the Footasylum business;

9.2.3. the progress that has been made towards agreeing heads of terms (if applicable);

- 9.2.4. the steps that have been taken towards reaching a sale and purchase agreement and the persons to whom any draft agreement has been distributed; and
- 9.2.5. such other matters as may be directed by the CMA from time to time.
- 9.3. JD Sports undertakes that in the report to the CMA, it shall, among other things, provide to the CMA:
  - 9.3.1. the total number of persons who have lodged a formal bid with JD Sports for the acquisition of the Footasylum business since the publication of the Remittal Report;
  - 9.3.2. the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with JD Sports, since the publication of the Remittal Report and subsequently been short-listed by JD Sports as a preferred purchaser; and
  - 9.3.3. details of the efforts taken by JD Sports and its financial advisers to solicit purchasers for the Footasylum business.
- 9.4. In the event that JD Sports does not meet a step as set out in the Approved Timetable or is otherwise delayed in implementing the Final Disposal, JD Sports undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than three Working Days from becoming aware that a step in the Approved Timetable has not been met.

## **10. *Divestiture Trustee – appointment***

- 10.1. JD Sports recognises and acknowledges that the CMA may direct the appointment of a Divestiture Trustee at any time after the expiry of the Divestiture Period, or prior to the expiry of the Divestiture Period including where:
  - 10.1.1. the CMA reasonably considers that JD Sports has not complied with the Approved Timetable in such a way that Final Disposal is unlikely to take place within the Divestiture Period; and/or
  - 10.1.2. the CMA reasonably considers, after raising any concerns with JD Sports (and where appropriate the Monitoring Trustee), that JD Sports has not engaged constructively with its obligations under these Final Undertakings or that it has otherwise failed to comply with its obligations under these Final Undertakings.

- 10.2. JD Sports undertakes that on the direction of the CMA and in accordance with such directions given as to timing, JD Sports shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 10.3 below and shall include among other things:
- 10.2.1. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and
- 10.2.2. a schedule of the steps to be taken to give effect to the mandate.
- 10.3. Each person on the list referred to in paragraph 10.2 shall be independent of and unconnected to JD Sports, Footasylum and Pentland, and possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 10.4. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, JD Sports shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, JD Sports shall be free to choose the Divestiture Trustee to be appointed from among the names approved. JD Sports undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 10.5. If all the proposed Divestiture Trustees are rejected by the CMA, JD Sports shall submit the names of at least two further persons within four Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 10.2 to 10.4 above.
- 10.6. The provisions of paragraph 10.7 below shall apply only if:
- 10.6.1. JD Sports fails to nominate persons in accordance with paragraph 10.2 above;
- 10.6.2. those further persons nominated by JD Sports in accordance with paragraph 10.5 above are rejected by the CMA;

- 10.6.3. JD Sports is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 10.7. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and JD Sports shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

## **11. *Divestiture Trustee – functions***

- 11.1. Each of JD Sports and Footasylum recognise and acknowledge that:
- 11.1.1. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;
  - 11.1.2. in order to implement the divestiture of the Footasylum business, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee to amend the scope of the Footasylum business, where the CMA has reasonable grounds for believing that the divestiture of the Footasylum Business cannot be achieved within the Trustee Divestiture Period;
  - 11.1.3. the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and
  - 11.1.4. the Divestiture Trustee shall protect the legitimate financial interests of JD Sports subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.
- 11.2. JD Sports recognises and acknowledges that the Divestiture Trustee shall take such steps and measures as it considers necessary to discharge the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to JD Sports and Footasylum. JD Sports and Footasylum undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.
- 11.3. JD Sports recognises and acknowledge that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of JD Sports or Footasylum.

JD Sports undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

**12. *Divestiture Trustee – duties and obligations of JD Sports***

- 12.1. JD Sports and Footasylum undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the divestiture but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require to divest the Footasylum business.
- 12.2. JD Sports and Footasylum recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information related to the Footasylum business necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and JD Sports and Footasylum undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, JD Sports and Footasylum undertake to make available to the Divestiture Trustee one or more offices on their respective premises and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for divestiture, subject in each case to the Divestiture Trustee's compliance with Footasylum's or JD Sports' internal policies.
- 12.3. JD Sports and Footasylum undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. JD Sports and Footasylum undertake that upon the reasonable request of the Divestiture Trustee they shall execute the documents required to give effect to the Trustee Obligation.
- 12.4. JD Sports and Footasylum undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest the Footasylum business and JD Sports and Footasylum recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to JD Sports or Footasylum or any of their respective Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest the Footasylum business, except to the extent that such liabilities result from the

wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

- 12.5. JD Sports undertakes that, at JD Sports' expense, the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate for the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by JD Sports. Should JD Sports refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with JD Sports, approve and direct the appointment of such advisers.
- 12.6. Each of JD Sports and Footasylum undertake to make no objection to the Final Disposal save on the grounds of either bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of the Parties, subject to the Trustee Obligation. Where either of JD Sports or Footasylum wish to make an objection on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee reasonably to protect its legitimate financial and business interests, the relevant party shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

### **13. *Divestiture Trustee – replacement, discharge and reappointment***

- 13.1. JD Sports acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require JD Sports to replace the Divestiture Trustee.
- 13.2. If the Divestiture Trustee is removed under paragraph 13.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has affected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 10 above.
- 13.3. JD Sports recognises and acknowledges that, other than in accordance with paragraph 13.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

#### **14. *Hold Separate Manager***

- 14.1. JD Sports recognises and acknowledges that the CMA may direct the appointment by JD Sports of a Hold Separate Manager as an independent interim manager with executive powers to manage the Footasylum business.
- 14.2. The Hold Separate Manager shall be appointed at the written direction of the CMA where the CMA, upon reasonable grounds, considers that there has been a material change in relation to the Footasylum business including a material change to the existing Footasylum senior management team and the Hold Separate Manager shall undertake such matters as the CMA may specify in the written direction.

#### **15. *Variations to these Final Undertakings***

- 15.1. The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 15.2. Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Remittal Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 15.3. The consent of the CMA shall not be unreasonably withheld.

#### **16. *General obligations to provide information to the CMA***

- 16.1. JD Sports, Footasylum and Pentland each undertakes that it shall promptly provide to the CMA such information and such cooperation as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83 and 94 of the Act.
- 16.2. JD Sports, Footasylum and Pentland each undertake that should it at any time be in breach of any provision of these Final Undertakings it will notify the CMA within two Working Days starting with the date it becomes aware of the breach or relevant circumstances, to advise the CMA that there has been a breach and of all the circumstances of that breach.
- 16.3. JD Sports, Footasylum and Pentland each undertake that should it be aware of any circumstances which may materially impact on its ability to comply with its obligations under these Final Undertakings it will notify the CMA within two Working Days starting with the date it becomes aware of the relevant circumstances.

- 16.4. Where any person, including a Monitoring Trustee, Divestiture Trustee or Hold Separate Manager must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, JD Sports, Footasylum and Pentland each undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of JD Sports, Footasylum or Pentland to any person other than to the CMA, without the prior written consent of both the CMA and JD Sports, Footasylum or Pentland (as applicable).

## **17. Acceptance of service**

- 17.1. JD Sports hereby authorise JD Sports' Legal Representatives, Linklaters whose address for service is c/o Nicole Kar, Linklaters LLP, One Silk Street, London, EC2Y 8HQ; Footasylum hereby authorises Footasylum's Legal Representatives, Eversheds Sutherland (International) LLP, whose address for service is c/o Peter Harper / Julia Woodward-Carlton, Eversheds Sutherland, One Wood Street, London, EC2V 7WS; and Pentland authorises Pentland's Legal Representatives, Eversheds Sutherland (International) LLP, whose address for service is c/o Ros Kellaway, Eversheds Sutherland (International) LLP, One Wood Street, London, EC2V 7WS - to accept on its behalf service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to JD Sports, Footasylum or Pentland and their respective Subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 17.2. Unless JD Sports, Footasylum or Pentland (as the case may be) each informs the CMA that its Legal Representatives have ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, written directions, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on JD Sports, Footasylum or Pentland if it is served on their respective Legal Representatives, and service or receipt shall be deemed to be acknowledged by it if it is acknowledged by email from their respective Legal Representatives to the CMA.
- 17.3. Paragraph 17.1 has effect irrespective of whether, as between JD Sports/Footasylum and their Legal Representatives, JD Sports'/Footasylum's Legal Representatives have or continue to have any authority to accept and acknowledge service on behalf of it (unless it informs the CMA that JD Sports'/Footasylum's Legal Representatives have ceased to have authority to

accept and acknowledge service on its behalf), and no failure or mistake by JD Sports'/Footasylum's Legal Representatives (including a failure to notify JD Sports'/Footasylum of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

- 17.4. Paragraph 17.1 has effect irrespective of whether, as between Pentland and Pentland's Legal Representatives, Pentland's Legal Representatives have or continue to have any authority to accept and acknowledge service on behalf of it (unless it informs the CMA that Pentland's Legal Representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Pentland's Legal Representatives (including a failure to notify Pentland of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

## **18. *Effect of invalidity***

- 18.1. JD Sports, Footasylum and Pentland each undertakes that should any provision of these Final Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

## **19. *Extension of time***

- 19.1. JD Sports and Pentland recognises and acknowledges that the CMA may, where it considers it appropriate, in response to a written request from JD Sports showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which JD Sports, the Monitoring Trustee, the Divestiture Trustee and/or the Hold Separate Manager (as the case may be) must take action.

## **20. *Undertakings given jointly and severally***

- 20.1. Where undertakings in these Final Undertakings are given by JD Sports and Footasylum, they are given jointly and severally.

## **21. *Governing Law***

- 21.1. These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

21.2. Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF JD SPORTS FASHION PLC:

.....

Signed

.....

Name

.....

Title

.....

Date

FOR AND ON BEHALF OF PENTLAND:

.....

Signed

.....

Name

.....  
Title

.....  
Date

FOR AND ON BEHALF OF FOOTASYLUM LIMITED:

.....  
Signed

.....  
Name

.....  
Title

.....  
Date

## **Annex 1: Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Remittal Report.

### ***1. Independence***

At the time of the Final Disposal, the Approved Purchaser must have no current significant connection (for example financial, ownership or management links) to JD Sports and/or Pentland that may compromise the Approved Purchaser's incentives to compete with JD Sports after Final Disposal.

### ***2. Capability***

The Approved Purchaser must have access to or be able to secure appropriate financial resources and expertise (including managerial, operational and technical capability) to enable the Footasylum business to be an effective competitor in the market. This access should be sufficient to enable the Footasylum business to continue to develop as an effective competitor.

### ***3. Commitment to the Relevant Markets***

The Approved Purchaser must demonstrate to the satisfaction of the CMA that it has an appropriate business plan to maintain and operate the Footasylum business as a viable and active business in competition with JD Sports and other competitors in the Relevant Markets so as to remedy the SLCs and their adverse effects that are expected to result from it, as set out in the Remittal Report.

### ***4. Absence of competitive or regulatory concern***

In considering whether to give consent to an Approved Purchaser, the CMA shall consider whether the terms of the sale and purchase agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the Footasylum business would not remedy the relevant SLCs and the adverse effects that may be expected to result from them. In addition, the CMA shall require that the divestiture of the Footasylum business to the Approved Purchaser must not raise further competition or regulatory concerns in the Relevant Markets.

## **Annex 2: List of derogations**

### **Derogations granted under the Remittal IO:**

- Derogation 12 November 2021
- Derogation 8 November 2021
- Derogation 20 September 2021
- Derogation 9 October 2021
- Derogation 22 September 2021
- Derogation 17 September 2021
- Derogation 8 September 2021
- Derogation 20 August 2021
- Derogation 11 August 2021
- Derogation 24 July 2021
- Derogation 9 July 2021
- Derogation 6 July 2021
- Derogation 29 June 2021
- Derogation 25 May 2021
- Derogation 19 May 2021

### **Consents granted under the Phase 2 Final Undertakings:**

- Derogation 17 May 2021
- Derogation 15 April 2021
- Derogation 18 January 2021
- Derogation 26 November 2020
- Derogation 19 October 2020
- Derogation 9 October 2020
- Derogation 28 September 2020
- Derogation 11 September 2020
- Derogation 11 August 2020
- Derogation 11 August 2020
- Derogation 17 July 2020

### **Derogations granted under the Phase 2 IO:**

- Derogation 18 June 2020
- Derogation 11 June 2020
- Derogation 5 June 2020

- Derogation 4 June 2020
- Derogation 3 June 2020
- Derogation 7 May 2020
- Derogation 5 May 2020
- Derogation 20 April 2020
- Derogation 8 April 2020
- Derogation 27 March 2020
- Derogation 26 March 2020
- Derogation 20 March 2020
- Derogation 18 March 2020
- Derogation 18 March 2020
- Derogation 17 March 2020
- Derogation 13 March 2020
- Derogation 2 March 2020
- Derogation 2 March 2020
- Derogation 25 February 2020
- Derogation 20 February 2020
- Derogation 10 February 2020
- Derogation 20 January 2020
- Derogation 20 January 2020
- Derogation 19 December 2019
- Derogation 19 December 2019
- Derogation 15 December 2019
- Derogation 4 December 2019
- Derogation 27 November 2019
- Derogation 30 November 2019

### **Derogations granted under the IEO:**

- Derogation 14 October 2019
- Derogation 23 September 2019
- Derogation 12 August 2019
- Derogation 8 August 2019
- Derogation 5 August 2019
- Derogation 29 July 2019
- Derogation 25 July 2019
- Derogation 15 July 2019
- Derogation 9 July 2019

- [Derogation 1 July 2019](#)
- [Derogation 28 June 2019](#)
- [Derogation 28 June 2019](#)
- [Derogation 25 June 2019](#)
- [Derogation 11 June 2019](#)
- [Derogation 4 June 2019](#)
- [Derogation 4 June 2019](#)

## **Annex 3: Compliance statement**

### ***Joint Compliance Statement for JD Sports Fashion plc and Footasylum Limited***

We [insert names] confirm on behalf of JD Sports Fashion plc (JD Sports) and Footasylum Limited (Footasylum) that:

#### ***Compliance in the Relevant Period***

1. In the period from [insert date] to [insert date] (the Relevant Period), JD Sports and Footasylum have complied with the Final Undertakings given to the CMA in relation to the Merger on [Date] (the Undertakings).
2. Except with the prior written consent of the CMA:
  - (a) no action has been taken by JD Sports/Footasylum which might impede the Final Disposal, including any action which might:
    - (i) lead to the integration of the Footasylum business with the JD Sports Business;
    - (ii) transfer the ownership or control of the Footasylum business; or
    - (iii) otherwise impair the ability of the Footasylum business to compete independently in any of the Relevant Markets.
  - (b) no action has been taken by JD Sports to solicit the transfer of staff from the Footasylum business to JD Sports;
  - (c) the Footasylum business has been carried on separately from the JD Sports business and the Footasylum business's separate sales or brand identity has been maintained;
  - (d) the Footasylum business has been maintained as a going concern and sufficient resources have been made available for the development of the Footasylum business, on the basis of its pre-Merger business plans (as updated by Footasylum from time to time in the ordinary course of business), and having due regard to the need to maintain and/or preserve the Footasylum business as an effective competitor and to all relevant circumstances, as reasonably determined by the CMA;
  - (e) except in the ordinary course of business, no substantive changes have been made to the organisational structure of, or the management responsibilities within, the Footasylum business;

- (f) the nature, description, range and quality of goods and/or services supplied in the UK by the Footasylum business have been maintained and preserved;
- (g) except in the ordinary course of business for the separate operation of the Footasylum business and the JD Sports business:
  - (i) all of the assets of the Footasylum business have been maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Footasylum business have been disposed of; and
  - (iii) no interest in the assets of the Footasylum business has been created or disposed of;
- (h) there has been no integration of the information technology of the Footasylum business and JD Sports business, and the software and hardware platforms of the Footasylum business have remained essentially unchanged, except for routine changes and maintenance;
- (i) the customer and supplier lists of the Footasylum business and the JD Sports business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Footasylum business have been carried out by the Footasylum business alone and for the avoidance of doubt the JD Sports business has not negotiated on behalf of the Footasylum business (and vice versa) or entered into any joint agreements with the Footasylum business (and vice versa);
- (j) all existing contracts of the Footasylum business and the JD Sports business have been serviced by the business to which they were awarded;
- (k) no changes have been made to Key Staff of the Footasylum business;
- (l) no Key Staff have been transferred between the Footasylum business and the JD Sports business;
- (m) all reasonable steps have been taken to encourage all Key Staff to remain with the Footasylum business;
- (n) no Confidential Information has passed, directly or indirectly, from the Footasylum business (or any of its employees, directors, agents or Related Persons) to the JD Sports business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example,

where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA);

(o) records have been kept of any communications between the Key Staff of the JD Sports business and the Key Staff of the Footasylum business (including an agenda and minutes of any meetings, including calls), which are available to the CMA on request; and

(p) Except as listed in paragraph (q) below, there have been no:

(i) Key Staff that have left or joined the Footasylum business;

(ii) interruptions of the Footasylum business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) substantial changes in the Footasylum business's contractual arrangements or relationships with key suppliers; and

(iv) substantial adverse changes in the financial position and/or performance of the Footasylum business.

(q) [list of material developments]

3. JD Sports / Footasylum remain in full compliance with the Undertakings and will continue actively to keep the CMA informed of any material developments relating to the Footasylum businesses in accordance with paragraph 4.7 of the Undertakings.

### ***Interpretation***

4. Terms defined in the Undertakings have the same meaning in this compliance statement.

**FOR AND ON BEHALF OF JD SPORTS FASHION PLC / FOOTASYLUM LIMITED**

**Signature.....**

**Signature.....**

Name.....

Name.....

Title.....

Title.....

Date.....

Date.....

***Compliance Statement for Pentland***

I [insert name] confirm on behalf of Pentland that:

***Compliance in the Relevant Period***

1. In the period from [insert date] to [insert date] (the Relevant Period), Pentland has complied with the Final Undertakings given to the CMA in relation to the Merger on [Date] (the Undertakings).
2. Except with the prior written consent of the CMA:
  - (a) no action has been taken which might impede the Final Disposal, including any action which might: (i) lead to the integration of the Footasylum business with the Pentland business and/or the JD Sports business; or (ii) otherwise impair the ability of the Footasylum business to compete independently in any of the Relevant Markets;
  - (b) no action has been taken by Pentland to solicit the transfer of staff from the Footasylum business to Pentland;
  - (c) the Pentland business has been carried on separately from the Footasylum business and the Footasylum business's separate sales or brand identity from the Pentland business is maintained;
  - (d) there has been no integration of the information technology of the Pentland business and Footasylum business;

- (e) the customer and supplier lists of the Pentland business have been operated and updated separately from the Footasylum business and for the avoidance of doubt the Pentland business has not negotiated on behalf of the Footasylum business or entered into any joint agreements with the Footasylum business;
- (f) no Key Staff have been transferred between the Pentland business and the Footasylum business;
- (g) no Confidential Information has passed, directly or indirectly, from the Pentland business (or any of its employees, directors, agents or Related Persons) to the Footasylum business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA);
- (h) any commercial or other trading activities between the Pentland business and the Footasylum business have been conducted on an arm's length basis and on normal commercial terms;
- (i) the Relationship Agreement has not been terminated;
- (j) no material amendments have been made to the Relationship Agreement unless strictly necessary as a result of changes to the Listing Rules or any other regulatory or legislative requirement; and
- (k) [✂].

3. Pentland remains in full compliance with the Undertakings and will continue actively to keep the CMA informed of any material developments in accordance with paragraph 4.7 of the Undertakings.

### ***Interpretation***

4. Terms defined in the Undertakings have the same meaning in this compliance statement.

## **FOR AND ON BEHALF OF PENTLAND**

**Signature .....**

**Name .....**

**Title .....**

**Date .....**