

Completed acquisition by JD Sports Fashion plc of Footasylum plc¹

Notice of proposal to accept Final Undertakings pursuant to sections 41, 82 and 90 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Final Undertakings

Background

1. On 12 April 2019, JD Sports Fashion plc (**'JD Sports'**) completed its acquisition of Footasylum plc (**'Footasylum'**) (the **'Merger'**).
2. On 1 October 2019, the Competition and Markets Authority (**'CMA'**), in accordance with section 22(1) of the Enterprise Act 2002 (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.
3. On 6 May 2020, the CMA published its 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.

¹ On 19 September 2019, Footasylum plc became Footasylum Limited. References to Footasylum 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).

4. 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.
5. On 13 July 2020, the CMA accepted final undertakings (the '**Phase 2 Final Undertakings**') from JD Sports, Footasylum and Pentland pursuant to section 82 of the Act to give effect to the Phase 2 Remedy.
6. 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.
7. On 19 May 2021, the CMA released JD Sports, Footasylum and Pentland² 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.
8. 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 to remedy the SLCs found and any adverse effects resulting from them.
9. The CMA has reached agreement with JD Sports, Footasylum and Pentland as to the terms of Final Undertakings for the purpose of remedying, mitigating or preventing the SLCs it has identified in the Remittal Report and any adverse effects arising from the SLCs. The proposed Final Undertakings are attached to this Notice.

Notice of proposal to accept undertakings

10. The CMA now hereby gives notice under paragraph 2 of Schedule 10 to the Act that:

² As defined in the proposed Final Undertakings attached to this Notice.

(a) the CMA proposes to accept the attached proposed Final Undertakings;
and

(b) the proposed Final Undertakings seek to address the SLCs identified in the Remittal Report and any adverse effects arising from the SLCs.

11. The CMA invites written representations on the proposed Final Undertakings from any person or persons who wish to comment.
12. Representations should reach the CMA via email by 5pm on 21 December 2021 and should be addressed to: JDSports.Footasylum@cma.gov.uk.
13. The CMA will consider any written representations made in accordance with this Notice and may make modifications to the proposed Final Undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made and not withdrawn, not to amend the proposed Final Undertakings, the CMA proposes to accept the proposed Final Undertakings in their present form pursuant to section 82 of the Act. If the CMA considers that any representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications.
14. Once accepted, the Final Undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
15. This Notice and a non-confidential version of the proposed Final Undertakings will be published on the CMA website.

Signed by authority of the CMA

Kip Meek
Remittal Group Chair
6 December 2021