



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No. 1354/4/12/20

Pursuant to rules 14 and 26 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Rules”), the Registrar gives notice of the receipt on 17 June 2020 of an application for review under section 120 of the Enterprise Act 2002 (the “Act”) by JD Sports Fashion plc (“JD Sports”) against a decision of the Competition and Markets Authority (the “CMA”), dated 6 May 2020, to prohibit JD Sports’ completed acquisition (the “Transaction”) of Footasylum plc (“Footasylum”) and require JD Sports to divest Footasylum in its entirety (the “Decision”). JD Sports is represented by Linklaters LLP of One Silk Street, London EC2Y 8HQ (Reference: Nicole Kar / Simon Pritchard / Helen Crossley / Tom Clare) and Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, London, EC4Y 1HT (Reference: Simon Priddis / Lisa Eger / Michael Quayle).

JD Sports was established in 1981 and listed on the London Stock Exchange in 1996. It is an international multi-brand and multi-channel retailer of sports, fashion and outdoor products.

Footasylum was formed in 2005. Footasylum is a retailer of fashionwear and sports casualwear. Its shares were listed on the Alternative Investment Market in November 2017. At the time of the Decision, Footasylum owned and operated 69 stores in the UK.

According to the Notice of Application (the “NoA”), prior to the Transaction and in the run-up to JD Sports’ bid, Footasylum had run into trading difficulties and had released three profit warnings. JD Sports made a public bid for Footasylum on 18 March 2019. The bid was successful and JD Sports acquired Footasylum for a total consideration of approximately £90m on 5 June 2019.

Anticipating that the Transaction would complete, the CMA made an initial enforcement order on 17 May 2019. The CMA commenced its Phase 1 investigation on 24 July 2019 and announced on 19 September 2019 its decision that the test for a reference to Phase 2 was met. The Transaction was referred to Phase 2 on 1 October 2019. The Decision was adopted on 6 May 2020.

JD Sports submits that the Decision is unlawful in that:

1. (i) The CMA erred in law in failing to apply the Merger Assessment Guidelines (“MAG”) in determining whether any lessening of competition caused by the merger was “substantial” and/or its reasons were inadequate.

(ii) The CMA erred in law and/or failed rationally to assess the aggregate constraints on the combined JD Sports / Footasylum group (the “Merged Entity”) posed by (i) suppliers and (ii) retail rivals, currently and in the future and/or failed to provide sufficient reasons for its conclusion.
2. (i) The CMA erred in law and/or acted irrationally in excluding from the counterfactual the effect of COVID-19 on Footasylum.

(ii) The CMA erred in law and/or acted irrationally in finding that COVID-19 would not materially affect Footasylum’s competitive constraint.

3. (i) The CMA failed to provide adequate reasons, departed from the MAG and/or acted irrationally in finding that Frasers Group's elevation strategy will not significantly change the strength of the competitive constraint on the Merged Entity from Frasers Group in the next two years.

(ii) The CMA made irrational findings in concluding that the constraint posed by suppliers (in particular, Nike and adidas) was not so significant as to sufficiently discipline the Merged Entity, which had the consequence that the contribution to the aggregate constraint posed by suppliers was wrongly understated.

(iii) The CMA failed to provide adequate reasons and/or acted irrationally in finding that Nike's and adidas's own direct to consumer retail offer will not become a significantly stronger constraint on the Merged Entity.

JD Sports seeks:

- (a) A declaration pursuant to section 120(4) of the Act that one or more grounds of review are well-founded;
- (b) An order quashing the Decision and remitting the matter to the CMA for reconsideration;
- (c) An order that the CMA pay JD Sports the costs it has reasonably incurred in bringing this application; and/or
- (d) Any further or other relief the Tribunal considers appropriate.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

Please note that: (i) a direction of the President is currently in place as to the electronic filing of documents (see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020); and (ii) pursuant to the Order of the Chairman of the Tribunal abridging time for applying for permission to intervene (made on 23 June 2020) any request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk, so that it is received **no later than 5pm on 1 July 2020**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
Published 23 June 2020