



# DETERMINATION OF MERGER NOTIFICATION M/18/071 – HOUSE OF FRASER (DUNDRUM) / SPORTS DIRECT

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Sports Direct International plc of the asset constituting the House of Fraser store located at Dundrum Town Centre in Dublin

Dated 02 October 2018

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#### Introduction

1. On 24 August 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Sports Direct International plc (“Sports Direct”), through indirectly wholly-owned subsidiaries, would acquire the asset constituting the House of Fraser store at Dundrum Town Centre, Sandyford Road, Dublin 16 including the business carried on at that store (the “Target”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to an Asset Purchase Agreement dated 10 August 2018 between: House of Fraser Limited (in Administration), House of Fraser (Stores) Limited (in Administration) and James Beattie Limited (in Administration) (collectively the “Companies”); SDI (Propco 35) Limited, Shelfco A2 Limited and Shelfco A1 Limited (collectively the “Purchasers<sup>1</sup>”); Alan Michael Hudson, Craig Anthony Lewis, Robert Hunter Kelly and Colin Peter Dempster (collectively the “Administrators”); and Sportsdirect.com Retail Limited (the “APA”).
3. Under the terms of the APA, the Purchasers will acquire the “Transferred Assets”, as defined in the APA, comprising the business and certain assets of the House of Fraser

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<sup>1</sup> Shelfco A1 Limited, Shelfco A2 Limited and SDI (Propco 35) Limited are indirectly wholly-owned subsidiaries of Sports Direct.



group (in Administration) from the Companies. The Transferred Assets comprise the Target, as well as other House of Fraser stores located in England, Scotland and Northern Ireland.

4. Pursuant to a side letter to the APA (the “Side Letter”), the Target has been held separate and under the sole control of the Administrators, pending approval of the Proposed Transaction by the Commission<sup>2</sup>.

### **The Undertakings Involved**

#### *Sports Direct*

5. Sports Direct is an international sports and fashion goods retailer, headquartered in the UK. It operates a diversified portfolio of sports, fitness, fashion and lifestyle stores in over 20 countries worldwide, and is currently the UK’s largest sporting goods retailer by revenue.
6. Sports Direct’s ‘Premium Lifestyle’ division, which accounts for less than 5% of total group turnover, offers a broad range of clothing, footwear and accessories from contemporary and luxury brands through its network of 34 Flannels, Cruise and Van Mildert branded stores, all of which are located in the UK.
7. In addition to its retail activities, Sports Direct operates a wholesale and licensing business segment through which it (i) distributes on a wholesale basis, sports and leisure clothing, footwear and equipment, lifestyle and luxury apparel under its own “heritage” brands (notably Slazenger, Everlast, Lonsdale, Karrimor and USC) or licensed brands; and (ii) licenses its own “heritage” brands for use by third parties internationally. The wholesale and licensing business accounts for approximately 5.6% of total group revenue.
8. Following its acquisition of the Heatons group in March 2016<sup>3</sup>, Sports Direct’s activities in Ireland now comprise predominantly: (i) its own Sports Direct-branded retail sports

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<sup>2</sup> As part of the Side Letter, Sports Direct also signed a Transitional Services Agreement with the Companies on 23 August 2018 to provide the following services to the Target pending approval of the Proposed Transaction by the Commission: [...].

<sup>3</sup> M/15/054 Sports Direct/The Heatons Group (Warrnambool).



stores; and (ii) the Heatons chain of department stores. Heatons offers a wide range of men's, women's and children's clothing and footwear, as well as housewares, sportswear and other goods. Heatons is generally focused on the value end of the market.

9. Sports Direct is a public limited company, listed on the London Stock Exchange. Sports Direct's principal shareholder is Mike Ashley, who indirectly holds approximately 61% of the issued share capital with voting rights in the company<sup>4</sup>.
10. Sports Direct has non-controlling interests in a number of undertakings active in the retail sector, as described in the table below<sup>5</sup>:

**Table 1: Non-controlling interests held by Sports Direct**

Company	Sector	Interest held by Sports Direct
<b>Findel plc</b>	Retail/home shopping	29.90%
<b>Debenhams plc</b>	Retail	29.70%
<b>French Connection Group plc</b>	Retail/fashion	26.19%
<b>Game Digital plc</b>	Gaming	25.44%
<b>Goals Soccer Centres plc</b>	Soccer centres	18.92%
<b>MySale Group plc</b>	Online shopping	4.79%

11. For the financial year ending 29 April 2018, Sports Direct's turnover was approximately €3.77 billion, approximately [...] of which was generated in the State.

#### *The Target*

12. The Target specialises in retailing both luxury and high-street women's, men's and children's clothing, footwear and accessories, various homeware and furnishings, travel products such as suitcases, health and beauty products and certain electronics and appliances. Approximately [...] concessionaires operate from the Target, including brands such as Topshop, Ted Baker, Kurt Geiger, Laura Ashley and Hugo Boss. In

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<sup>4</sup> [...]

<sup>5</sup> [...] Accordingly, the parties have confirmed to the Commission that Sports Direct does not exercise control over Debenhams or French Connection for the purposes of Part 3 of the Act.



addition, the store sells a number of third party branded products as well as its own House of Fraser branded product lines. It is not, however, active in the wholesale supply of such products to third parties. A customer restaurant is also located in-store.

13. For the financial year ending 3 December 2017, the Target's turnover was approximately [...], all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

14. The notification states:

*“The Proposed Transaction arises in the context of the financial difficulties and administration of the wider House of Fraser group. The acquisition of the business and assets of House of Fraser by Sports Direct aims to secure the long-term viability of the business (including the Target), as the business will be operated going forward by an experienced and well-resourced international retail group. In the absence of a sale, there was a very real prospect that the survival of House of Fraser would not have been secured.*

*From Sports Direct's perspective, the wider transaction is also consistent with Sports Direct's 'elevation' strategy, which is designed to enhance the group's overall retail proposition across sport, lifestyle and fashion.”*

#### **Third Party Submissions**

15. The Commission received a single third party submission in relation to the Proposed Transaction. The main concern expressed in this submission was that the Proposed Transaction would affect the pension provision of employees of the Target. However, assessing concerns regarding employment is not within the Commission's remit and therefore such concerns have not been taken into account as part of the Commission's assessment of the competitive effects of the Proposed Transaction.<sup>6</sup>

#### **Competitive Assessment**

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<sup>6</sup> The Commission's remit under Part 3 of the Act is to review mergers on competition-related grounds, i.e., to determine whether the transaction will result in a substantial lessening of competition in the affected market(s).



### Horizontal overlap

16. The Commission considers that there are two areas of horizontal overlap that require analysis in the present case: (i) multi-category non-food retailing; (ii) the provision of sportswear.

#### *The provision of multi-category non-food retailing*

17. The Commission, and its predecessor the Competition Authority (the “Authority”), have previously considered a number of acquisitions in the potential market for the provision of multi-category non-food retailing<sup>7</sup> in the Greater Dublin Area (the “GDA”)<sup>8</sup>.

18. In *M-14-008 Fitzwilliam/Wittington Canada/Arnotts* the Authority carried out extensive surveying of customers and competitors of the parties involved. The Authority found that multi-category non-food retailers offer a shopping experience to customers which is quite different to that experienced when shopping in a specialist retailer. Furthermore, the wide range of products sold across multiple product categories, and the level of customer service offered to customers, distinguishes multi-category non-food retailers from specialist retailers who generally sell products in only one or two product categories. The Authority also found that some multi-category non-food retailers attempt to differentiate themselves from their rivals by investing in their staff to ensure a high standard of customer service.<sup>9</sup>

19. The Authority previously considered whether the potential market should be further segmented by product category (e.g., women’s apparel, men’s apparel, etc.) or by quality/sophistication of the products (luxury and non-luxury multi-category stores)<sup>10</sup>. The Commission has also considered whether the potential market should be further segmented by product category or quality, ultimately considering it unnecessary to define a precise relevant product market as its conclusions concerning the competitive impact of the Proposed Transaction would be unchanged regardless of the manner in which the relevant product market is defined. In this regard, the Commission considers

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<sup>7</sup> See, for example, M/15/036 *Fitzwilliam/Wittington Canada/Arnotts*, M/14/008 *Fitzwilliam/Wittington Canada/Arnotts*, and M/06/052 *Debenhams/Roches*.

<sup>8</sup> The geographic area comprising County Dublin.

<sup>9</sup> For example [...]

<sup>10</sup> See M/14/008 *Fitzwilliam/Wittington Canada/Arnotts*.



that there are no reasons to depart from its previous approach to market definition and has assessed the competitive impact of the Proposed Transaction on the potential market for the provision of multi-category non-food retailing.

20. Similarly, the Commission does not need to come to a definitive view of the geographic scope of the potential market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the market is local, regional or national. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the GDA, following its approach in M/14/008 FitzWilliam/Wittington Canada/Arnotts. In the present case, the Target comprises a single store in the GDA (i.e. in Dundrum Town Centre) while there are five dual Heaton's/Sports Direct stores and two standalone Sports Direct stores in the GDA. Sports Direct does not operate from Dundrum Town Centre.
21. Currently House of Fraser and Sports Direct face strong competition from a number of rival multi-category non-food retailers active in the GDA. These include:
  - Debenhams which has four multi-category non-food retail outlets located in County Dublin (Henry Street in Dublin city centre, Blackrock, Tallaght, and Blanchardstown Centre). Debenhams is a major international retail chain active across all overlapping product categories;
  - Brown Thomas is a luxury department store offering beauty, womenswear, menswear, childrenswear, footwear, accessories and homewares. BT2 is also a premium department store but carries a more limited range and targets a younger market than the main Brown Thomas stores. There is one Brown Thomas store (Grafton Street) and two BT2 stores in the GDA (Dundrum and Blanchardstown).
  - Arnotts is a multi-category retailer with a mix of own-label and branded products. Arnotts operates a single store in Dublin city centre.



- Marks and Spencer, a major international retail chain, has five multi-category retail outlets located in the GDA (two in Dublin city centre, Liffey Valley, Dundrum Town Centre, and Blackrock);<sup>11</sup>
  - Harvey Nichols, a major international retail chain, has one multi-category non-food retail outlet located in Dundrum Town Centre. Harvey Nichols is a luxury multi-category non-food retailer active across all overlapping product categories;
  - Penneys which has ten multi-category non-food retail outlets located in the GDA (O'Connell Street and Mary Street in Dublin city centre, Artane, Santry, Blanchardstown, Dun Laoghaire, Dundrum, Nutgrove, Liffey Valley and Rathfarnham); and,
  - Dunnes Stores operates twelve multi-category retail outlets in the GDA which sell, in addition to food products, womenswear and women's footwear, menswear and men's footwear, childrenswear, accessories, and homewares.
22. Given the large number of multi-category non-food retailers active in the GDA, the Proposed Transaction will result in only a minor increment in the merged-entity's market share in terms of store count, increasing from five to six multi-category stores.
23. While this analysis has largely pertained to competition in multi-category non-food retailing in the GDA it also important to note that, post-transaction, the Target will continue to face competition within Dundrum Town Centre from rival multi-category non-food retailers including: BT2; Harvey Nichols; Marks and Spencers; Penneys; and TK Maxx.
24. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with respect to the parties' overlapping activities related to the provision of multi-category non-food retailing in the GDA.

### *Sportswear*

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<sup>11</sup> All five Marks and Spencer stores in the GDA sell food products in addition to womenswear, menswear, beauty, etc.



25. There is an additional horizontal overlap between the Target and Sports Direct in the supply of sportswear. However, while Sports Direct's standalone retail outlets are specialist stores focusing on the supply of sports apparel and equipment, sportswear accounts for a relatively small proportion of House of Fraser's turnover, generating only [...] worth of sales in the year to December 2017, equivalent to less than [...] of the total value of sales made at the store during that period. As such, the Proposed Transaction will result in only a very minor increment in Sports Direct's share of sales in sportswear in the GDA.
26. Furthermore, post-transaction, Sports Direct will continue to face competition in the provision of sports apparel from a number of dedicated sportswear providers. These include:
- JD Sports/Champion Sports, who operate nine sportswear stores in the GDA;
  - InterSport Elverys, which operates twelve sportswear stores in the GDA;
  - Lifestyle Sports, which operates thirteen sportswear stores in the GDA;
  - Footlocker, which operates five sportswear stores in the GDA.
27. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the provision of sportswear within the GDA.

#### Vertical Relationship

28. There are no existing supply arrangements between Sports Direct and the Target. Sports Direct is active in the wholesale supply of non-food retail goods but does not supply any products on a wholesale basis to the Target. Furthermore, the Target is not active at the wholesale level.
29. Post-transaction there may be a potential relationship between Sports Direct and the Target, whereby Sports Direct supplies wholesale non-food retail goods to the Target. The Commission does not consider that the Proposed Transaction gives rise to any vertical foreclosure concerns in the State for the following reasons:





- Input foreclosure: Sports Direct is active in the wholesale supply of non-food retail goods. However, its wholesale sales amounted to just over [...] in turnover for the last financial year. [...] <sup>12</sup> [...]. There are, and will continue to be, a large number of wholesalers which compete with Sports Direct in the provision of children's apparel including major international brands such as Petit Bateau, Next and Intidex (Zara) as well as established domestic brands such as Dunnes Stores<sup>13</sup>. There are also a number of wholesale suppliers of children's sports equipment present in the State such as Apollo, Wiggins and Carrera. Post-transaction, wholesale customers of Sports Direct will still have access to these wholesalers.
- Customer foreclosure: Post-transaction there will remain a large number of customers, as outlined in paragraph 21, which will continue to purchase wholesale products from competitors of Sports Direct. Furthermore, the Commission considers it unlikely that Sports Direct will acquire the ability to foreclose wholesale suppliers from the market given the small market share increment resulting from the Proposed Transaction.

## Conclusion

30. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

## Ancillary Restraints

31. No ancillary restraints have been notified.

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<sup>12</sup> [...].

<sup>13</sup> None of which brands are distributed by Sports Direct at a wholesale level in the State.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Sports Direct International plc, through indirectly wholly-owned subsidiaries, would acquire the asset constituting the House of Fraser store at Dundrum Town Centre, Sandyford Road, Dublin 16 including the business carried on at that store, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**