

Hunter Douglas / 247 Home Furnishings

Response to Provisional Findings

INDEX

Section	Title	Page
1	Introduction and Summary	3
2	Relevant Merger Situation	8
3	Counterfactual	9
4	Competitive Assessment	20
5	Entry and Expansion	58

1. Introduction and Summary

- 1.1. The assessment which the CMA needs to undertake in this case is unusual. Having correctly concluded that the CMA does not have jurisdiction to assess the 2013 Transaction, the CMA now needs to consider both whether a substantial lessening of competition (SLC) can be expected and that this results solely from the change in the nature of control which Hunter Douglas is able to exercise over the activities of 247 following the 2019 Transaction.
- 1.2. Whilst the Provisional Findings correctly identify the questions that the CMA needs to address, the resulting analysis fails to adequately address it. The Parties are concerned that the CMA has not undertaken a balanced review of the available evidence and that the Provisional Findings represent conclusions drawn from a highly selective approach to the information and evidence before it. In short, evidence that is supportive of the finding of an SLC has been highlighted to the detriment of any contrary evidence, which appears to have been entirely disregarded. The Parties are disappointed that, rather than taking a fresh look at the evidence in more detail in Phase 2, the CMA has continued to seek evidence to support the findings in made in Phase 1.
- 1.3. Notably, the Provisional Findings do not address at all how any effect on competition could result from the change in the nature of control that is essential to any proper assessment of the 2019 Transaction. When properly considered, the evidence in this case firmly shows that, on the balance of probabilities, a more likely outcome is that competition will not be materially affected, particularly given the likely market developments in the coming months and years that will replicate any limited loss of rivalry from 247 due to the 2019 Transaction.
- 1.4. The CMA's theory of harm in this case is that the 2019 Transaction has led to such a loss of rivalry between the parties that Hunter Douglas has acquired the ability and incentive to worsen both Blinds2Go's and 247's offers. The CMA attaches much weight to the Parties' combined market share within a narrow market, but such an analysis does little to support its theory of harm. Blinds2Go was the market leader prior to the 2019 Transaction and the Parties' high combined market share is therefore not a consequence of the 2019 Transaction. The CMA's core theory of harm must therefore rely on the proposition that Blinds2Go was constrained by 247 and this constraint has been lost due to the 2019 Transaction.
- 1.5. However, the reality is that Blinds2Go's market share is **[CONFIDENTIAL]** times that of 247 and its sales growth between 2016 and 2019 is several times 247's 2019 sales. It is not sufficient to assert that the loss of a much smaller direct competitor can lead to an SLC in such circumstances, and particularly where 247's market share has fallen by at least **[CONFIDENTIAL]**% since 2016 due to the entry and expansion of rivals and there are substantial "out-of-market" constraints. Given the nature of the 2019 Transaction, it is also

incumbent on the CMA to explain how the change in the nature of control gives rise to such an outcome – it is not sufficient for the CMA to rely solely on the loss of a competitor, where the counterfactual is plainly a situation where Hunter Douglas would have held at least a 49% stake in 247.

- 1.6. Similarly, the CMA must clearly set out how 247 can profitably increase its prices or worsen its offer in such an environment – the evidence for this is limited given that Interior Goods Direct (“IGD”) has displaced it to become the second largest rival, and the entry and expansion of larger omni-channel retailers and Amazon adding blinds customisation in 2020 has rendered the relevant market even more competitive. The CMA similarly agrees that it needs to assess the competitive constraints that the Parties face *in aggregate* from smaller rivals, omni-channel competitors, and out-of-market constraints. However, in the competitive assessment, the CMA fails to do this and is dismissive of the Parties’ evidence on the variety of competitive constraints faced by the Parties (including material diversion to omni-channel retailers). In effect, the CMA provisionally concludes that the only constraint on each of the Parties, other than that exercised on each other, results from the activities of IGD.
- 1.7. The approach to competition from smaller rivals is surprising. There is a wealth of smaller competitors that would stand to gain from any increase in prices or reduction in quality of the Parties. Indeed, contrary to the CMA’s conclusions, the CMA’s comparisons of prices, range/offers, and Trust Pilot score do not support any view that 247 or IGD for that matter are unique as rivals to Blinds2Go. In fact, the CMA finds that 247’s prices do not closely track those of Blinds2Go and there are a number of pure-play internet retailers with similar product ranges and good Trust Pilot scores.
- 1.8. Some, such as MakeMyBlinds, have aggressive expansion plans that will only further serve to increase the competitive constraints faced by the Parties. The CMA’s dismissal of MakeMyBlinds expansion plans is particularly puzzling, since the CMA appears to substitute its own view for that of MakeMyBlinds (and its shareholders that are funding its expansion) on the basis of no real evidence. Swift Direct Blinds has also been purchased by Decora since the publication of the Provisional Findings and it seems inconceivable that Decora, one of the leading manufacturers of assembled blinds in the United Kingdom, would not seek to grow Swift Direct Blinds aggressively.
- 1.9. The primary focus of the CMA in reaching its conclusions as to the competitive structure of the market appears to be its analysis of pay-per-click (PPC) advertising on Google. Despite having concluded that there are no economies of scale in PPC advertising, the CMA inexplicably goes on to consider that, other than IGD, no other parties are able to compete effectively.
- 1.10. This approach ignores the CMA’s own evidence and that of the Parties and suggests a fundamental misunderstanding of how PPC works. There is no capital investment required in

order to start using PPC advertising, advertisers can determine how much in aggregate they wish to spend when bidding, and the costs associated with PPC are quickly recouped, as shown by the Parties' own experience in both the UK and elsewhere. Yet the CMA relies upon the Parties' positions in Google advertising to support its view that only the Parties and IGD are close competitors, and ignoring the marketing and branding advantages of omni-channel retailers. It claims that this results from a "knowledge barrier" yet fails to articulate precisely what such a barrier amounts to and why competitors cannot purchase such expertise, despite this being precisely what **[CONFIDENTIAL]**.

- 1.11. Indeed, the approach of the CMA leads to a somewhat perverse outcome more generally. The PPC "knowledge barrier" and the "incumbency advantages" identified by the CMA, to the extent that they exist in relation to the online retail of M2M blinds, are also likely to exist in many online retail markets. The CMA has identified few, if any, features of how PPC works that are specific to the online retail of M2M blinds. Consequently, given the fact that there are only three or four available paid positions on Page 1 of Google listings, the CMA's logic leads to the conclusion that there can only ever be 3 or 4 close competitors in many online retail markets. That position is plainly not the case across a wide range of sectors.
- 1.12. The CMA has further failed to properly assess the constraint from omni-channel retailers. Those retailers do not need to compete actively through PPC since the strength of their own brands, coupled with an ability to cross sell blinds to customers of their other home decoration products, means that they are able to access customers without PPC marketing. Further, omni-channel retailers are already competing strongly with the Parties, with Next having recently dropped its prices to match those of Blinds2Go. Retailers such as Next, Dunelm and John Lewis have stated their intention to increase their online presence and therefore, on a forward-looking basis, the strength of those competitors will only increase.
- 1.13. Yet the CMA entirely dismisses the constraint exercised by omni-channel retailers, largely on the basis of unsubstantiated third-party comments. It is simply inconceivable that, in light of omni-channel retailers' publicly stated online expansion plans (and bearing in mind their strategic incentives to expand their on-lines sales due to the strong growth in these sales and the challenges for their in-store sales), they do not constrain, and will not further constrain in the near future, the activities of the Parties.
- 1.14. The CMA's assessment of the constraint from online marketplaces is equally unconvincing. The CMA selectively quotes from the BDRC Survey, a survey which was conducted amongst those that had already purchased from 247 and Blinds2Go and, by implication, had already decided not to use Amazon or eBay. The CMA further fails to sufficiently take into account the fact that Amazon has recently introduced a customization option and has spoken directly with blinds retailers about coming onto its platform (**[CONFIDENTIAL]**) and is therefore clearly

increasing its ability to offer M2M blinds, either directly or by increasing the distribution channels available to marketplace sellers, many of whom are online M2M retailers.

- 1.15. The rejection of the competitive constraint that these differing competitors individually exercise on Hunter Douglas is disappointing. The idea that in aggregate such competitors do not exercise a similar, if not stronger, constraint on Hunter Douglas than 247, a small player whose market share has declined significantly over time, is simply untenable. Taken together, the constraints which the Parties have identified are significantly greater than that of 247 (as evidenced, for example, by the BDRC survey).
- 1.16. The lack of any serious consideration of out-of-market constraints is equally concerning. The Parties have repeatedly pointed out that a meaningful assessment of out-of-market constraints (in-home/in-store and ready-made blinds, in particular, but also other window coverings) is important. The CMA acknowledges the need to conduct such an exercise and recognises that aggregate diversion to out-of-market retail channels and products is “material”. However, the CMA goes on to dismiss this constraint as weak, ignoring the evidence before it. This is particularly surprising in the case of the constraint from ready-made blinds given that the same diversion (12-13%) is used to support a finding that 247 is a close competitor of Hunter Douglas, exercising a material competitive constraint.
- 1.17. The CMA’s theory of harm also depends on Hunter Douglas having an incentive to raise prices or reduce quality. Despite having significant actual evidence of the fact that Blinds2Go did not do so when it merged with Web Blinds in 2017 (which was a similar size to 247) and that Hunter Douglas has not done so since the 2019 Transaction, a period of almost 9 months, the CMA chooses instead to rely on an entirely theoretical approach. This is largely based upon the fact that Hunter Douglas could raise 247’s prices as a matter of law rather than a serious economic analysis. When properly considered, the evidence shows that Hunter Douglas would not have the ability, far less the incentive to raise prices or reduce quality. **[CONFIDENTIAL]**.
- 1.18. Finally, even if the competitive analysis could be relied upon to support a finding of an SLC, an analysis of the barriers to entry and expansion demonstrates that there is no way in which Hunter Douglas could follow a strategy of raising prices or reducing quality as a consequence of the 2019 Transaction. The CMA has not identified any barriers that would prevent existing rivals from significantly improving their offering so as replicate any limited loss of rivalry from 247 and many are currently doing so. The omni-channel retailers are expanding. Rivals such as MakeMyBlinds are pursuing aggressive growth strategies. As predicted by the Parties, Decora has entered the online retail sector by purchasing Swift Direct Blinds and is likely to seek to grow its operations aggressively. The conclusion the CMA draws that these rivals could not replicate the limited constraint from 247, a declining rival with just £**[CONFIDENTIAL]** million in sales and in which Hunter Douglas holds a 49% interest, is deeply flawed.

- 1.19. The CMA's analysis of barriers to entry and expansion focusses almost solely on entry by a poorly financed start up. In the CMA's view, generation of traffic may constitute a barrier to entry on the basis of an unspecified "knowledge barrier" (despite the fact that **[CONFIDENTIAL]**, which would be available to any entrant). Further, claimed website costs of at least £100k (despite the Parties' evidence to the contrary) and a further "knowledge barrier" for website development are also presented as barriers to entry and expansion. Such an approach ignores the role of digital marketing agencies and e-commerce platforms (such as Magento and Shopify) which offer extremely low-priced solutions for quickly establishing professional, feature rich websites. These claimed barriers do not, in any event, apply to omni-channel retailers.
- 1.20. The Parties' experience demonstrates this lack of barriers to entry and expansion. Blinds2Go has been able to grow significantly, displacing 247 as the leading online retailer of M2M blinds. IGD has overtaken 247, whose share of online sales continues to fall despite significant revenue growth. MakeMyBlinds continues to grow rapidly in the UK, and it seems inevitable that Swift Direct Blinds will do the same following its acquisition. Further, it is inconceivable that, as online sales grow, omni-channel retailers will not further expand their online operations. Indeed, that is their publicly stated intention. In overseas markets, where similar barriers to entry and expansion might be expected, both 247 and Blinds2Go have also been able to significantly grow sales and gain share in a period of months.
- 1.21. Very little expansion or entry is required to replicate the limited competitive constraint which 247 exercises on Blinds2Go. 247 is a small retailer with sales of just £**[CONFIDENTIAL]** million and a declining share of sales. Again, the CMA must consider in this context the fact that the extent of the constraint it imposes on Blinds2Go, pre the 2019 Transaction, is limited by Hunter Douglas' 49% shareholding (under the counterfactual) and associated rights.
- 1.22. It is simply implausible that on the balance of probabilities, the change in the nature of control exercised by Hunter Douglas over 247 could lead to an SLC. The Provisional Findings fail to establish this in any way, taking a selective approach to the evidence and ignoring important evidence to the contrary. The analysis undertaken is clearly deficient and the conclusions reached as regards an SLC are accordingly irrational. The Parties would urge the panel to reconsider the position in light of the wealth of the evidence before the CMA.

2. Relevant Merger Situation

- 2.1 Chapter 5 of the Provisional Findings sets out the CMA's provisional conclusions as regards the first statutory question¹, namely for each of the 2013 Transaction and the 2019 Transaction, whether a relevant merger situation (RMS) has been created.
- 2.2 The Parties note the CMA's conclusions at paragraphs 5.25-5.29 of the Provisional Findings that Hunter Douglas did not acquire a controlling interest or *de facto* control over 247 as a result of the 2013 Transaction, but that Hunter Douglas did acquire material influence. As the Parties agree with the CMA's conclusion at paragraph 55 of the Provisional Findings that the 2013 Transaction did not create a RMS for the reasons set out in previous submissions to the CMA², it is not necessary to comment on the CMA's findings concerning the 2013 Transaction.
- 2.3 Finally, notwithstanding the fact that the Provisional Findings contain errors as to the facts and law relevant to this case, the Parties note that the CMA's conclusions as set out at paragraphs 5.30-5.32 of the Provisional Findings and summarised at paragraph 8.1 that the RMS found in respect of the 2019 Transaction "*involved an increase in Hunter Douglas' level of control in 247 from material influence to a controlling interest*", set the base line for consideration of the counterfactual and the SLC question which the Parties address in Chapters 3 and 4 below.

¹ See also paragraph 1.3 of the Provisional Findings.

² Notably the White Paper on Jurisdiction, 14 April 2020 and Response to Jurisdiction Working Paper, 16 June 2020.

3. Counterfactual

- 3.1 The CMA's counterfactual analysis in Chapter 6 of the Provisional Findings rightly focuses only on the appropriate counterfactual for the 2019 Transaction, given the CMA's provisional conclusions that it has no jurisdiction over the 2013 Transaction³. The Parties also agree with the CMA's statement at paragraph 6.3 of the Provisional Findings that, whilst the CMA may examine several likely future scenarios, it "*will select the most likely of these, based on the facts of the case, as the counterfactual scenario*"⁴. Whilst the CMA notes at paragraph 6.5 that the choice of counterfactual could be a situation that is either more or less competitive than the competitive conditions prevailing at the time of the 2019 Transaction, it is not open for the CMA simply to pick the one that results in a more competitive situation, just because that better supports the prospects of an SLC finding. Rather, it is incumbent on the CMA to select the counterfactual which is most likely.
- 3.2 However, for the reasons explained further below, the Parties consider that the CMA has failed in its execution of this task and has in fact selected a highly unlikely counterfactual scenario. It has also not addressed an alternative counterfactual which, as explained below, Hunter Douglas considers to be the most likely.
- 3.3 This counterfactual analysis is important so as to be able to properly assess the competitive effects of the 2019 Transaction, given that the CMA accepts that in any counterfactual Hunter Douglas would have had some level of influence over the activities of 247. It is therefore key in the assessment of competitive effects to focus on the nature of control under the counterfactual in order to assess how a change in the nature of that control may lead to the risk of an SLC.

The CMA's Provisional Findings

- 3.4 The CMA has considered three alternative counterfactual scenarios to the 2019 Transaction as regards the ownership of 247. In all three of these scenarios, the CMA has assumed that in the absence of the options being exercised under the 2019 Transaction, Hunter Douglas would have had a strong incentive to exercise its right to convert the loan notes it held as a result of the 2013 Transaction to a 49% equity interest in 247:
- (i) **Scenario 1:** Under this scenario, the CMA assumes that Hunter Douglas would have converted its loan notes to equity at some point prior to 30 June 2020 and that the 247 Founding Shareholders would have remained as majority owners of 51%. Hunter Douglas agrees that under this scenario, the rights under the Stakeholders Agreement

³ Provisional Findings, paragraph 6.2.

⁴ See also CMA Merger Assessment Guidelines, paragraph 4.3.6.

would continue to apply and therefore that the counterfactual is likely to mirror the prevailing conditions of competition that existed prior to the 2019 Transaction;

- (ii) **Scenario 2:** Under this scenario, the CMA assumes that Hunter Douglas would have converted its loan notes to equity at some point prior to 30 June 2020, but that the 247 Founding Shareholders would both have exited by selling their combined majority 51% stake to an alternative purchaser, with this presumably occurring against or regardless of the wishes or consent of Hunter Douglas as the CMA concludes by assuming that Hunter Douglas would not have retained any of the rights under the Stakeholders Agreement;
- (iii) **Scenario 3:** Under this scenario, the CMA assumes that Hunter Douglas and the Founding Shareholders (presumably at some point after Hunter Douglas had converted its loan notes to equity as in Scenarios 1 and 2) would have both chosen to sell 247, resulting in the sale of 100% of 247 to an alternative purchaser.

3.5 The CMA concludes at paragraph 6.34 that this Scenario 3 is not the most likely. The Parties agree with this conclusion. The CMA then focuses its attention on Scenarios 1 and 2. As the CMA notes, under both Scenarios 1 and 2, Hunter Douglas would continue to own a significant minority interest in 247 (49%, having converted its loan to equity). However, the CMA has concluded that the only difference between Scenarios 1 and 2 in respect of the counterfactual is that *“only under scenario 1 would Hunter Douglas have any additional rights in 247”*⁵.

3.6 The CMA provisionally concludes as follows:

*“We provisionally find that, absent the 2019 Transaction, the most likely scenario is that the 247 Founding Shareholders would have sought to sell their shares in 247 to a third-party buyer (as per Scenario 2). In our view, it was the continuing intention of the 247 Founding Shareholders to sell their shares in 247 and exit the business and that, at the point of the 247 Founding Shareholders selling their shares, Hunter Douglas would no longer be able to exercise the veto and other rights it previously held in 247. This would result in 247 having more independence than it had prior to the 2019 Transaction.”*⁶

Errors in the CMA's analysis

3.7 Whilst the CMA notes at paragraph 6.5 that the choice of counterfactual could be a situation that is either more or less competitive than the competitive conditions prevailing at the time of the 2019 Transaction, it is not open for the CMA simply to pick the one that results in a more

⁵ Provisional Findings, paragraph 6.35.

⁶ Provisional Findings, paragraph 34.

competitive situation, just because that better supports the prospects of an SLC finding. Rather, it is incumbent on the CMA to select the counterfactual which is most likely. In Hunter Douglas' view, the CMA's provisional findings fail to achieve this for a number of reasons:

- (i) The assumption that the Founding Shareholders would have declined to exercise the put options, but would have disposed of their shares to a third party, does not withstand scrutiny;
- (ii) There is no reason to believe that both Founding Shareholders would have disposed of their shares in the event the options were not exercised;
- (iii) The CMA's assessment of Hunter Douglas's ability to block a sale of shares by the Founding Shareholders is wrong as a matter of law; and
- (iv) Given the above, the CMA's analysis of Hunter Douglas' additional rights is therefore wrong on the facts.

Disposal by the Founding Shareholders of their shares to a third party

3.8 Scenario 2 is in fact equally as unlikely as Scenario 3 as a plausible counterfactual. Under Scenario 2, the CMA's thought experiment is that the Founding Shareholders (as well as Hunter Douglas) have chosen not to exercise the options set in place in 2013, yet the Founding Shareholders are assumed both to still be intent on exiting the business. The CMA does not explain why, having elected not to sell their shares (by not exercising the Put Options), the 247 Founding Shareholders would then elect to do precisely that to an unspecified third-party acquirer.

3.9 The CMA advances no evidence whatsoever that this possibility was even contemplated, far less seriously considered, by the 247 Founding Shareholders. This is particularly unlikely in view of (to put it most charitably) legal uncertainties concerning the Founding Shareholders' ability to do so. A hypothetical third-party acquirer would want to ensure that it was acquiring sound legal title and rights in 247 (i.e. the shares are not encumbered or subject to legal challenge) and would inevitably want reassurance of this prior to any acquisition. The CMA fails to consider the extent to which such a third party acquirer would be content to proceed on any other basis and without Hunter Douglas' consent (not least as Hunter Douglas would continue to hold a 49% stake), as assumed by the CMA under Scenario 2.

3.10 Nor does the analysis in the Provisional Findings support the CMA's position that finding such an alternative purchaser of the shares of the Founding Shareholders would have been likely in the hypothetical situation envisaged by the CMA under Scenario 2. At paragraph 6.22, the CMA states that the evidence shows that "*several purchasers were interested in acquiring 247 around the time of the 2019 Transaction*". Yet the evidence does not show that at all. In all

three cases cited at paragraph 6.21, the third parties in question were entirely unaware of the arrangements between 247 and Hunter Douglas. Furthermore, as regards the offer from [CONFIDENTIAL]. There is no evidence whatsoever that [CONFIDENTIAL] would have been interested in an acquisition of a majority stake in 247 *without* the involvement of the Founding Shareholders, still less that they would have entertained a partnership with [CONFIDENTIAL] Hunter Douglas. As regards the other instances cited, it stretches credulity to describe these speculative discussions that did not progress at all as being evidence of 'potential purchasers' as the CMA seeks to do.

- 3.11 There is therefore no reasonable basis upon which to consider as a likely alternative outcome the disposal of shares by the Founding Shareholders to a third party. This is all the more so when the different interests of the Founding Shareholders are considered, as addressed below.

Diverging interests of the Founding Shareholders

- 3.12 The choice of Scenario 2 as the most likely counterfactual further assumes that, in the event that the reciprocal options were not exercised by either the Founding Shareholders or Hunter Douglas, both Founding Shareholders would have sought to dispose of their shares in 247. However, such an assumption ignores the fact that the 247 Founding Shareholders are not corporate entities in one group, with one guiding mind.
- 3.13 As the CMA's Provisional Findings state (see further below), these were two individuals at different stages of life and with differing priorities and potentially therefore different levels of attachment to the 247 business. The 2013 Transaction documents did in fact recognise that the 247 Founding Shareholders may have to be treated separately at some point and accordingly sought to provide for this by inserting a negotiated level of protection for the option holding/note holding parties across this suite of documents that recognises that the 2013 Transaction documents⁷ may have to operate in a flexible manner.
- 3.14 Any rational consideration of the appropriate counterfactual is incomplete if it does not take the above facts into account and yet there is no evidence that the CMA has done so in the Provisional Findings (or earlier Working Papers). A proper consideration of these facts would in fact lead to the more plausible alternative counterfactual set out below.

⁷ These documents include *inter alia* the Put Option Agreement (which we note the Provisional Findings suggests is one agreement – this is incorrect as it is in fact two separate agreements), the Call Option Agreement (again, this is in fact two separate agreements and not one agreement as the CMA suggests) and the Stakeholders Agreement.

Hunter Douglas ability to block a sale of shares by the Founding Shareholders

- 3.15 Hunter Douglas agrees with the CMA's conclusion that it would have been able to prevent the sale by the 247 Founding Shareholders of their 51% shareholding to a third party under clause 3.2 of the Conditions to the Loan Note Instrument for so long as it remained a Noteholder – which would be until 30 June 2020 at the latest, at which point it would have been likely to convert its shares to equity. However, Hunter Douglas does not agree with the CMA's assessment that, once Hunter Douglas had converted its loan notes to equity, it would have lost the right to prevent a transfer of ordinary shares by the Founding Shareholders (either separately or together).
- 3.16 Under the Call Option Agreements granted to Hunter Douglas by each of the Founding Shareholders, the Founding Shareholders pledged that no sale or transfer of shares held by the Founding Shareholders may take place to any person other than Hunter Douglas⁸. Further, clause 3 of the Stakeholder Agreement provides that:
- “Without detracting from the Pledge set forth in the Put Option Agreement and Call Option Agreement among the Parties of even date, neither David nor Jason shall sell or dispose of their Shares except by operation of law (i.e. succession on death) during the term of the Call Option Agreement or the Put Option Agreement.”*
- 3.17 The question therefore is whether or not the Pledges and/or the provisions of clause 3 of the Stakeholder Agreement would have prevented the sale of shares by the Founding Shareholders in the event that the put and call options were not exercised. In this respect, the Call Option Agreement provides that options were normally exercisable *“in the period 1 March 2019 through 1 June 2019”*⁹. In addition, the call options were exercisable *“as soon as the Vendor is a Bad Leaver”*¹⁰.
- 3.18 The extent to which the Pledges and/or clause 3 of the Stakeholder Agreement persist is dependent upon whether the Call Option Agreement remained in force after 1 June 2019. In its response to the CMA's request for information of 30 June 2020, Hunter Douglas explained that the Bad Leaver provisions contained in the Call Option Agreement were not time limited and, consequently, neither were the Pledges nor clause 3 of the Stakeholder Agreement since

⁸ The Positive and Negative Pledges set out in Section C – Restrictions and Pledges of each of the Call Option Agreements (**“the Pledges”**)

⁹ Clause 1a of each of the Call Option Agreements.

¹⁰ Clause 1b of each of the Call Option Agreements.

the Call Option Agreement remained in force. Hunter Douglas would therefore have been able to prevent a sale of shares by the Founding Shareholders to a third party.

- 3.19 In the Provisional Findings, the CMA appears to have misunderstood Hunter Douglas' position. Hunter Douglas was not saying that a transfer of shares in breach of clause 3 of the Stakeholder Agreement would trigger the Bad Leaver provisions¹¹. Rather, the fact that the Bad Leaver provisions remained in force mean that the Call Option Agreements remain in force and, consequently, Hunter Douglas retained its right to prevent a sale of shares by the Founding Shareholders without its consent. Whether or not the Bad Leaver provisions are triggered is irrelevant.
- 3.20 As noted in paragraph 13 of Appendix B, all avenues to exercise the call option other than the Bad Leaver provisions are *expressly* time limited. By contrast, the opportunity for Hunter Douglas to exercise the option "*immediately*" in accordance with the Bad Leaver provisions is **not** time limited. It is not an event of "*Normal Exercise*" and therefore the period 1 March 2019 to 1 June 2019 is not relevant.
- 3.21 If the Parties intended the Bad Leaver provision to have a time limit, then it would have been straightforward to include this in the drafting of the Call Option Agreements by inserting the words "*at any time prior to 1 June 2019*" at the end of clause 1.b. Hunter Douglas does not agree (and believe that a court is unlikely to agree) that it is correct that such wording can somehow be implied into that Bad Leaver provision.
- 3.22 Under the general rules of contract interpretation which would be utilised by the English Courts were it to be invited by one of the Parties to imply such a term, the ordinary meaning of the words must first be contemplated, along with commercial common sense and reasonableness. The document must also be construed as a whole, and in its context. In addition, caution should be taken when arguing the commercial common sense route and the literal wording of the document should not be overridden in pursuit of commercial common sense - per Lord Neuberger in *Arnold v Britton*¹²:

"the reliance placed in some cases on commercial common sense and surrounding circumstances ... should not be invoked to undervalue the importance of the language of the provision ... the clearer the natural meaning the more difficult it is to justify departing from it."

¹¹ Provisional Findings, Appendix B, paragraph 11.

¹² [2015] UKSC 36, para 17

- 3.23 Accordingly, the Bad Leaver provisions cannot be “re-interpreted” retrospectively so as to give them an implied meaning that is not clearly stated in the wording of the text. Yet this is the implication of the conclusions the CMA reaches in Appendix B.
- 3.24 Moreover, it is particularly unlikely that the court would imply an end date to this provision that is not aligned to the legitimate interest it is seeking to protect. As stated above, the 2013 Documents envisage the potential continuation in the business of one of the Founding Shareholders and therefore the existence of an interest requiring protection after the other triggers in the option agreements have expired. In such a situation (i.e. were David to have exercised his option, but Jason decided to remain a shareholder), the ongoing Bad Leaver provisions in Jason’s Put Option Agreement and Call Option Agreements would provide protection for Hunter Douglas in ensuring that Jason did not leave the business for a competitor or breach any of the veto rights in the Stakeholders’ Agreement.
- 3.25 As a result, the CMA’s analysis in paragraphs 14(a) or 14(c) of Appendix B, with respect to the ongoing nature of the Bad Leaver provisions and the conclusion that the Call Option Agreement *must* have expired after 1 June 2019 is flawed. The absence of a statement that the Bad Leaver provisions are “intended to survive termination of the agreement” does not and cannot in itself mean that they were intended to end on 1 June 2019.
- 3.26 The CMA is also incorrect as regards two further points:
- (i) The express statement that a provision is “*intended to survive the termination of the agreement*” is only specifically required where an agreement would otherwise have terminated, usually for any reason. It is expressly required to ensure such survivability as it is intended to have effect in the period after termination – i.e. in the period following the operation of the obligation in the agreement that are its real substance. The provision being discussed here however is an operative trigger in an option agreement. The rest of the agreement is required to support the operation of the trigger and the remainder of the agreement would only terminate when that trigger was no longer operable. As previously stated, the Call Option Agreements do not (and nor do the Put Option Agreements) include a lapse provision or a termination clause, and so a statement as to the survivability of some of its provisions would not make any sense; and
 - (ii) As stated above, the CMA has not considered the flexible nature of the documents and the purpose of that flexibility. In the event that Jason had chosen not to exercise the put option and remain as a shareholder, the Bad Leaver provisions and related Call Option Agreement trigger would have formed an essential part of the continued protection for Hunter Douglas.

- 3.27 In light of the above, the CMA is therefore incorrect to state¹³ that Hunter Douglas did not have the ability to prevent a sale by the 247 Founding Shareholders and therefore did not have any leverage to impose conditions or obligations against any third party buyer of the Founding Shareholder's shares.

Hunter Douglas' additional rights

- 3.28 As a consequence, and contrary to the CMA's conclusion as to the bargaining position of Hunter Douglas in the event that the 2019 Transaction had not occurred, Hunter Douglas would not in fact have "*lost any leverage to impose any conditions or obligations*"¹⁴. Given that Hunter Douglas would have had the right to prevent any sale of shares by the Founding Shareholders, it would indeed have had such leverage to impose conditions and obligations, including the maintenance of the rights which it already held under the Stakeholder Agreement. A failure by a third party to agree to such terms could have resulted in Hunter Douglas withholding its consent and preventing the sale of the shares. Any third party would therefore have been likely to have agreed to Hunter Douglas insisting on its rights persisting post-transaction.
- 3.29 Regardless of whether or not Hunter Douglas had the ability to block a sale of shares by the Founding Shareholders, the assertion that Hunter Douglas did not have any leverage to impose any conditions or obligations disregards the commercial practicalities and imperatives of a situation where a planned exit in 2019 did not happen. The Parties would have had to reconsider elements of their strategy – now with Hunter Douglas as a 49% shareholder. In such circumstances, Hunter Douglas' ability to bring considerable commercial pressure to bear as part of any negotiation with the 247 Founding Shareholder(s) or with a third party on the basis of continuing/new joint venture arrangements should be properly recognised. As noted above, the remaining 247 Founding Shareholders and any hypothetical third party would have had strong incentives to avoid any disputes with Hunter Douglas and would have wanted to have a working relationship with Hunter Douglas given its continuing 49% stake.

Alternative Counterfactual

- 3.30 In the light of the above, the CMA's preferred counterfactual cannot be retained. The position on which it relies is flawed both as a matter of law and of fact. As a result, there is no basis for a finding that Scenario 2 is the most likely outcome in the event that the 2019 Transaction had not taken place.
- 3.31 As set out in paragraphs 3.12 to 3.14 the CMA has failed to consider that the 247 Founding Shareholders should be treated in any analysis as individuals. Instead, in its analysis of

¹³ Provisional Findings, paragraphs 6.25 and 6.26

¹⁴ Provisional Findings, Appendix B, paragraph 4.

Scenario 2 the CMA has treated both Jason and David identically, almost as one “Seller”, assuming that they would both have sold their shares if the 2019 Transaction had not happened as originally planned.

- 3.32 However, as the CMA notes in the Provisional Findings, the 2013 Documents (and the intended 2019 Transaction) provided the 247 Founding Shareholders with an exit plan¹⁵. These extracts summarising statements made by Jason show that, whilst the 247 Founding Shareholders were aligned in pursuing an exit via the 2013 Transaction (and ultimately the 2019 Transaction), one of the main drivers behind this was to facilitate the retirement of David, as has been consistently stated in 247’s responses to the CMA.¹⁶ This is not necessarily the case for Jason, whose exit plans were less firm. Indeed, Jason has continued to manage 247 following the 2019 Transaction and [CONFIDENTIAL]¹⁷.
- 3.33 The 2013 Documents support the proposition that the 247 Founding Shareholders might have needed to be treated differently and in fact envisage a scenario whereby one remains in the business and the other has departed. Paragraph 3 of the Stakeholders Agreement states that: *“If HD should acquire the majority of the Shares by acquiring Shares from Jason or David (or their successors), then the rights in Clauses 4 and 5 of this Agreement shall apply to the advantage of the Manager(s) who remains a holder of Shares...”*.
- 3.34 In addition, the “standalone” nature of the Put Option Agreements and the Call Option Agreements, and the fact that each of them can be exercised in an independent manner, lends further weight to the argument that this potential different timing of exercise (or no exercise at all) was within the contemplation of the Parties at the time of entry into the documents and aligns with the position that the 2013 Documents had been drafted in a manner that could be used flexibly.
- 3.35 It follows that, were Hunter Douglas not ready to purchase 100% of the business in February 2019 (i.e. it had taken the decision not to exercise both its call options for any reason) and knowing that it still had until June 2020 to convert its Loan Notes, it would still have been likely to acquire David’s shares (i.e. by operation of the Put Option Agreement or the Call Option

¹⁵ As Jason stated, *“David and myself to a lesser extent were both keen to give ourselves an exit plan.”* (paragraph 3.20). See also paragraph 3.21 *“David Maher, in particular, was looking to retire and the put option allowed both of the 247 Founding Shareholders to exit the business whilst maximising the value which could be achieved”* and paragraph 3.27 which describes that the 2019 Transaction was at the instigation of the 247 Founding Shareholders *“and in particular the retirement of David Maher”*.

¹⁶ See, for example, Response to section 109 notice dated 14 May 2020 (Consultation with 247) - paragraph 25.2; Transcript of CMA Hearing with 247 (17 June 2020), page 6 line 12

¹⁷ [CONFIDENTIAL]

Agreement it had with David) as that provided David's clear exit route. Indeed, it is both foreseeable (and in fact usual) that where Hunter Douglas did not want to acquire the whole business that Hunter Douglas would have wanted one of the founders (in this case Jason) to remain in the business and would have incentivised him to do so.

- 3.36 Such a partial/staggered acquisition scenario (the "**Alternative Counterfactual Scenario**") is in fact more plausible (or at the very least, just as likely) as the CMA's preferred Scenario 2 counterfactual. In the event of such a scenario materialising, Hunter Douglas would therefore have held not 49% of the shares but 74.5% of the shares.
- 3.37 Even if, as part of the discussions of there being an exit for both 247 Founding Shareholders in 2019 Hunter Douglas sought to continue with its stake in 247, but not as a majority shareholder, it is highly likely that Hunter Douglas would have insisted upon retaining the rights which it held prior to the conversion of its loan notes. Indeed, it may have considered not converting its loan notes but extending the term of those notes (and therefore retaining its rights under the Loan Note Instrument). Alternatively, it may have agreed to a sale of shares by one or both of the Founding Shareholders on condition that it held the same rights as those set out in the Stakeholder Agreement.

Conclusion

- 3.38 It is incumbent on the CMA to choose as its counterfactual the most likely alternative scenario. The scenario put forward by the CMA does not meet this test since it is wrong as a matter of law and of commercial reality.
- 3.39 In particular, and as explained above, the CMA is wrong to conclude that Hunter Douglas would not have been able to prevent the sale of either or both of David's and Jason's stakes against their will. Hunter Douglas would therefore have been able to impose conditions on any purchaser, including the retention of the rights which it held under the Stakeholders Agreement.
- 3.40 Even if the CMA disagrees that Hunter Douglas would have had the right to prevent a sale of shares by the Founding Shareholders, the CMA has not considered the likelihood that a third party purchaser of a 51% stake in a business would proceed with that purchase without entering into an agreement similar in nature to the Stakeholder Agreement with the significant minority shareholder (i.e. one holding 49%)¹⁸.
- 3.41 Given the above, if the CMA is to discount Scenario 1 and consider that an exit of the Founding Shareholders was still likely, despite their failure to exercise the exit option available to them, it

¹⁸ Further, the CMA fails to consider whether a purchaser would have accepted the continuation of the additional rights as a consequence of its acquisition to avoid the risk of conflict with a significant minority shareholder.

must consider that the most likely counterfactual in Scenario 2 would be the sale by the Founding Shareholders (or one of them in the Alternative Counterfactual Scenario) to a purchaser with the consent of Hunter Douglas and hence, as a result, that Hunter Douglas would in fact retain its rights as set out in the Stakeholder Agreement through a new shareholders arrangement negotiated as a condition of that consent.

- 3.42 In such circumstances, the relevant counterfactual under all of Scenario 1, Scenario 2 and the Alternative Counterfactual Scenario would be that Hunter Douglas would hold at least a 49% stake in 247 and would continue to benefit from the rights set out in the Stakeholder Agreement.

4. Competitive Assessment

Introduction

- 4.1 This Chapter assesses the evidence that underpins the CMA's analysis of competitive effects of the 2019 Transaction. The natural starting point to this assessment is the CMA's theory of harm:

*"whether Hunter Douglas' ability to unilaterally determine all aspects of competitive 247's strategy (including the ability to set 247's prices), as well as its increased interest in the profits of 247, would have the effect of removing a direct competitor from the market and/or would likely allow the Merged Entity to increase prices and/or lower the quality of its products or customer service, and/or reduce the range of its products/services."*¹⁹

- 4.2 The CMA reaches its provisional SLC finding²⁰ on the basis of the following factors:

- (i) The CMA refers to the Parties having a high combined market share of **[CONFIDENTIAL]**%, with Interior Goods Direct (IGD) the only other competitor of sufficient scale (with a market share of 10-15%). In basing its provisional conclusion on the merged entity's combined market share and the merger removing a direct competitor, the CMA has asked the wrong questions. All mergers between competitors have *"the effect of removing a direct competitor from the market"* by definition and it is not sufficient in and of itself for the CMA to find an SLC. The substantive issue for the CMA to determine is whether the loss of rivalry between the Parties due to the 2019 Transaction can be expected to lead to an SLC in the relevant market. Hunter Douglas was already the market leader pre-merger by a very substantial margin. Thus, the substantive question to be answered is whether the loss of rivalry from 247 due to the 2019 Transaction – a small and declining rival - would lead to an SLC in the relevant market. In assessing this question on a forward-looking basis, it is important to give due weight to competitive dynamics and out-of-market constraints, since relying purely on static market shares in a narrowly defined market to support an SLC finding assumes that rivalry is static and out-of-market diversion is zero. Neither of these assumptions describe the online retail of M2M blinds.
- (ii) The CMA asserts that the Parties are close competitors, with IGD not being a closer competitor to either of the Parties than they are to each other. Closeness of competition is important to the CMA's assessment of unilateral effects, namely whether the Parties' particularly lose revenues/customers between one another, such that post-merger the

¹⁹ Provisional Findings, paragraph 8.2.

²⁰ Provisional Findings, paragraph 8.229.

Parties find it profitable to increase prices or otherwise worsen their offer. Here the Parties fundamentally disagree that the body of evidence supports any conclusion other than that 247 is a minor and undifferentiated rival across all of the competitive constraints faced by Blinds2Go.

- (iii) The CMA claims that 'out-of-market' constraints pose a relatively weak competitive constraint on the Parties. As set out above, this is an important issue where the CMA places significant reliance on market shares in a narrowly defined market. In the Parties' view, the CMA's approach to out-of-market constraints is inappropriately dismissive and cursory.
- (iv) The CMA claims that Hunter Douglas will have the ability and incentive to increase 247 and B2G's prices (or reduce quality, range or customer service) following the 2019 Transaction. It is unfortunate that the CMA did not disclose any of its analysis at all on this issue in its working papers. The Parties fundamentally disagree with this statement: it cannot reasonably be concluded that 247 is a material constraint on Blinds2Go's competitive decision making and, in any event, the 2019 Transaction actually reduces Hunter Douglas' incentives to cede business from a wholly owned business (247) to a partially owned one (Blinds2Go), particularly given the management incentives that apply as regards Blinds2Go.

4.3 As explored further below, there is in fact no evidential basis for an SLC finding as a consequence of the 2019 Transaction, where the CMA must show that an SLC results from a change in the nature of control rather than a straightforward acquisition of control. This section considers:

- (i) The CMA's evidence on market shares and the arguments for an aggregate constraint on the Parties;
- (ii) The CMA's evidence on whether the Parties are close competitors relative to other retailers in the market;
- (iii) The significant constraint posed by other retailers of online M2M blinds;
- (iv) The significant constraint posed by omni-channel retailers;
- (v) The effect of out-of-market constraints on competition, particularly from ready-made blinds; and
- (vi) The CMA's evidence that Hunter Douglas has an incentive to worsen either Blinds2Go or 247's offering following the 2019 Transaction.

Market shares and the aggregate constraint

- 4.4 The CMA's approach to market definition in this case is to define a market for the online retail supply of M2M blinds in the UK, this being the principal overlap between the Parties.²¹ This definition notably excludes other sales channels for M2M blinds (in-store and in-home), ready-made blinds, and sales of other window coverings such as curtains or shutters. As set out in the Main Submission and the Parties' response to the Competitive Assessment Working Paper (CAWP), there is, however, strong evidence that these so-called 'out-of-market' constraints are a significant competitive constraint on retailers of online M2M blinds. On that basis, it is questionable as to whether the market shares on which the CMA relies so heavily do in fact reflect market power and consequently whether an SLC could in fact arise.

Market shares

- 4.5 The Parties fundamentally disagree with the CMA's reliance on its estimates of static market shares in online M2M blinds retailing to draw conclusions as to the competitive effects of the 2019 Transaction for a number of reasons.
- 4.6 First, the CMA relies heavily on its conclusion that the merging parties will have a high combined market share of **[CONFIDENTIAL]**%.²² In reaching any conclusions based on such market share, it is important to appreciate that this high combined market share is not a consequence of the 2019 Transaction, but instead arises because Blinds2Go, as the market leader, is over five times larger than 247 (a point the CMA admits).²³ The question for the CMA is not whether pre-merger competition is sufficient but solely whether the effect of the 2019 Transaction is to give rise to an SLC.
- 4.7 In any event, the CMA's approach to market shares is at best questionable. The CMA itself admits that it did not receive data from all relevant online M2M blinds retailers. The CMA's "solution" to this issue is to assume that all of these competitors' sales are zero, puzzlingly because the Parties' estimates of competitors' sales were too high (in an environment where the CMA finds that there is no reliable published market research).²⁴ Zero is not a reasonable assumption where the Parties have provided the CMA with details of the websites of over 50 competitors who all offer M2M blinds online.

²¹ Provisional Findings, paragraph 11.

²² Provisional Findings, paragraph 8.229(a).

²³ Provisional Findings, paragraph 8.10.

²⁴ Provisional Findings, paragraph 8.6.

- 4.8 When undertaking a sensitivity analysis using the Parties' data, the CMA reaches the provisional conclusion that "[e]ven if we added this £39 million to the total market size, the Parties' combined market share would still exceed 50%".²⁵ However, the reduction in the Parties' market share is not immaterial. Adding in these omitted retailers would reduce the Parties' combined market share significantly to [CONFIDENTIAL]%, consisting of [CONFIDENTIAL]% for Blinds2Go and only [CONFIDENTIAL]% for 247.
- 4.9 Second, the CMA places significant reliance on the Parties having a high market share post transaction. Yet that is not the SLC "exam question" before the CMA. In fact, that question, which the CMA fails to address, is exactly how a retailer as small as 247 (with a market share of less than [CONFIDENTIAL]% when all retailers are included) imposes any significant constraint on a market leader with a [CONFIDENTIAL]% market share.
- 4.10 Third, the CMA refers to this market share increment as "*meaningful*" and that the merger "*reduces the number of established suppliers of scale*".²⁶ However, an analysis of market shares alone is not sufficient to support an SLC finding. There is no evidence that the CMA has extensively sought, and critically analysed, the views of a range of small competitors as to how they compete and win business and how this is, or is not, affected by their scale relative to 247. The only smaller competitors who appear to have submitted any views are MakeMyBlinds (and the CMA has chosen to disregard its expansion plans) and Swift Direct Blinds (which has successfully expanded in the past). It is extremely surprising that the CMA has not further interrogated third parties as to how they view competition taking place in the market given that the purpose of a Phase 2 review is to allow the CMA to carry out a detailed investigation. The fact that the CMA has had not a single hearing with any third party is particularly surprising in this respect and demonstrates a narrow and entirely theoretical approach to the analysis.
- 4.11 Instead of a detailed investigation, the CMA's approach is to summarily exclude all small competitors. The Parties estimate that the combined revenues of the competitors that the CMA has arbitrarily excluded have UK M2M blinds sales which significantly exceed those of 247 at only £[CONFIDENTIAL] million.
- 4.12 Even when relying solely on market shares, the analysis shows the existence of one competitor with a significant market share (Interior Goods Direct – IGD), and several retailers with market shares between 0% and 5%, including the online M2M retailers Swift Direct Blinds, Bloc Blinds, MakeMyBlinds, Order Blinds Online Ltd, Blinds4UK, and Meadow Blinds Ltd. In addition, as set out in section 5, the analysis shows that large material omni-channel competitors including

²⁵ Provisional Findings, paragraph 8.11.

²⁶ Provisional Findings, paragraph 8.229(a).

Next, Dunelm and John Lewis will continue to constrain the Parties, with the threat from these retailers only growing in a post-COVID 19 world. A proper analysis of market shares must consider the current constraints imposed by such retailers and their likely expansion.²⁷

- 4.13 Fourth, the CMA seems to dismiss 247's decline in market share from [CONFIDENTIAL] in 2016²⁸ to [CONFIDENTIAL] in 2019.²⁹ Despite the CMA saying "*the decline in market share has been relatively limited.. amounting to less than [CONFIDENTIAL] percentage points over a period of three years*"³⁰, on any reasonable view this is a [CONFIDENTIAL] in market share, a decline of almost [CONFIDENTIAL] using the CMA's market share calculations ([CONFIDENTIAL]). The fact that 247 has grown its sales over the same period due to a rapid growth in online M2M blinds is irrelevant, and in fact highlights how strong market growth has facilitated entry and expansion.
- 4.14 The CMA also ignores how 247's declining market shares affect the CMA's unilateral effects theory of harm. One of the core questions necessary to underpin an SLC finding is whether, prior to the 2019 Transaction, Blinds2Go was particularly constrained by 247 in terms of losing customers. The short answer must be no given that 247's share has been falling. In addition, a key question is to whom 247 was losing market share prior to the 2019 Transaction. Since the CMA has (surprisingly) not carried out any detailed analysis of market shares over time, a precise answer to this question cannot be given. However, the qualitative answer is that IGD has grown its market share from 5-10% in 2016 to 10-20% in 2019, displacing 247 as the second largest competitor, and a series of competitors have entered and expanded.
- 4.15 Further, it is evident that in a growing market the Parties are primarily competing for new business from 'outside the market' rather than winning/losing business from each other: Blinds2Go's turnover has grown from £[CONFIDENTIAL] million in 2016 to £[CONFIDENTIAL] million in 2019, and thus the growth in its sales is substantially greater than 247's

²⁷ This is supported by the AMA Research Domestic Window Coverings Market Report 2020-2024, which notes: "*Many retailers with physical stores now also have omni-channel presence, with online transactional stores to support their outlets. There is therefore likely to be a degree of cross-over when analysing the market*". Annex 0161, page 92.

²⁸ The CMA provides no detail as to how this share is calculated, and thus the Parties cannot comment on this calculation.

²⁹ Provisional Findings, paragraph 8.129-8.130. The CMA has also not commented on how they have calculated the [CONFIDENTIAL] and whether it is on a consistent basis as the market shares in this case. Therefore, the market share decline could be even greater than reported here.

³⁰ Provisional Findings, paragraph 8.130(c).

£[CONFIDENTIAL] million sales in 2019. This highlights the need for the CMA to properly consider the customer journey and where these new sales are coming from, rather than considering that competition is just among a narrow set of competitors in a market for online M2M blinds.

Aggregate constraints

4.16 A key flaw in the CMA's analysis is that it singularly dismisses the aggregate constraint from retailers 'outside' the market³¹. Market shares cannot inform an analysis of 'out-of-market' diversion, particularly diversion to retailers of ready-made blinds or other M2M sales channels. For a unilateral effects theory of harm, it is the aggregate constraint of all alternatives to the Parties' offering that constrains their ability to raise price or otherwise worsen their offer post-merger.

4.17 The CMA acknowledges that:

*"The BDRC Survey shows that diversion to other retailers' online M2M blinds amounts to 66% for Blinds2Go's customers and 75% for 247's customers. This indicates that online M2M blinds sold by other retailers are the main competitive constraint on the Parties."*³²

4.18 However, the Parties submission puts the point more accurately. The survey results show that over a third of Blinds2Go's customers (34%) would divert away from the online M2M blinds market if Blinds2Go was unavailable. If 'out-of-market' diversion was a single competitor, it would be much larger than the next largest competitor – Dunelm with 17% diversion. Similarly, for 247, 25% of customers would divert to 'out-of-market' options, placing diversion to these alternatives second only to Hunter Douglas.

4.19 Second, the CMA also states:

*"Whilst we fully acknowledge that, in terms of sales lost in the event of a price increase, diversion is as relevant whether it is an aggregated diversion or diversion to a single competitor, it does not necessarily follow that the impact of this aggregate constraint on the Parties' behaviour will be as strong as the impact from a single competitor."*³³

³¹ The Parties do not agree with the CMA's approach to market definition and, consequently, the market shares on which it places such reliance. However, the CMA itself admits that it is necessary to consider 'out of market' constraints but then fails to do so.

³² Provisional Findings, paragraph 8.211(a).

³³ Provisional Findings, paragraph 8.212.

4.20 However, it is precisely the aggregate constraint from alternatives that constrains the merging Parties. Whether this diversion is to a single competitor or multiple competitors is not the test for horizontal unilateral effects. The simple fact is that post-merger if Blinds2Go decided to unilaterally raise its prices or worsen its offer, only 13% of its customers would divert to 247, leaving a very significant 87% diverting to constraints other than 247 (including a material amount of diversion to ready-made blinds, other M2M sales channels, and other window coverings). From 247's perspective, while diversion to Hunter Douglas is highest at 33%, this still leaves 67% diverting to other alternatives.

4.21 Third, the CMA notes:

*"The diversion to other products and channels is small when compared to the relative size of sales of these alternatives. In particular, market reports suggest that online M2M blinds account for less than 10% of the overall market for window coverings. Despite this, the results of the BDRC Survey show that the Parties' customers are substantially more likely to switch to other retailers selling online M2M blinds than to the other alternatives (ie other window coverings, ready-made blinds, M2M blinds in the in-store or in-home channel). This suggests that these alternatives would at best be a distant competitive constraint"*³⁴

4.22 However, this statement on the size of diversion relative to the size of the alternatives misses the point that the Parties have repeatedly made regarding the significance of the customer journey. The BDRC survey is a survey of 247 and Blinds2Go customers only as it was not possible in the time available and in the particular circumstances of the COVID-19 pandemic to conduct a wider survey. It is therefore a survey only of those customers who ultimately ended up choosing an online M2M blinds retailer, not of all customers who considered online M2M among a range of alternatives (i.e. other window coverings, ready-made blinds or the in-store or in-home channel). It follows that a survey of a narrow set of customers who have already chosen M2M blinds are more likely to consider another M2M blinds retailer. Yet the Parties are both focused (Blinds2Go in particular), on winning customers from the overall market for window coverings, which is where they focus their efforts. The Parties were indeed surprised/worried that such a large proportion of their customers were willing to divert back to the wider market after experiencing online M2M. The BDRC Survey does not therefore demonstrate that these alternatives are a distant competitive constraint – the Parties compete with these alternatives because they have to convince consumers to switch from these alternatives to the narrowly defined online M2M blinds market.

4.23 Fourth, on the specific diversion between the Parties, the CMA notes:

³⁴ Provisional Findings, paragraph 8.211.

“With respect to diversion from Blinds2Go to 247, the BDRC Survey implies a diversion ratio of 13%. We note that, while this diversion ratio is not particularly high, it is still the second highest diversion to an online M2M blind retailer, closely behind Blinds Direct (part of Interior Goods Direct).”³⁵

- 4.24 The CMA is right to identify the diversion ratio from Blinds2Go to 247 as “*not particularly high*”. Put more accurately, the diversion ratio of 13% is low, implying 87% of customers are choosing an alternative that is not 247. This diversion is roughly equivalent to the proportion of customers who said they would shop for ready-made blinds online or in-store (12% for Blinds2Go and 11% for 247).³⁶ Yet the conclusion which the CMA draws is that 247 is a close competitor of Blinds2Go but ready-made blinds do not act as a constraint. It is not tenable to adopt such a contrary approach. Furthermore, as acknowledged by the CMA³⁷, a diversion of 13% is much less than 247’s market share would suggest, highlighting the fact that market constraints are wider than just online M2M blinds.

The Parties being close competitors

Customer journey

- 4.25 As discussed at length in the Parties’ submissions, understanding the customer journey is a vital component of understanding how the Parties compete for customers.³⁸ Blinds2Go’s focus in particular is on making an appealing offer compared with a range of alternatives, including curtains, shutters, and other blinds retail channels. For this reason, Blinds2Go offers a range of designer brands to appeal directly to those customers looking for a higher quality product normally associated with an established omni-channel retailer like John Lewis.
- 4.26 As the CMA acknowledges: i) over 70% of the Parties’ customers spend more than an hour on research prior to purchase; ii) a large proportion start their search for a generic term such as blinds; iii) many customers are looking at other websites and browsing in-store; and iv) despite some under-reporting (as mentioned by the CMA), customers still visited up to three other websites in addition to the retailer they ultimately purchased from.³⁹ However, the CMA

³⁵ Provisional Findings, paragraph 8.110.

³⁶ BVA-BDRC Survey Final Report, page 18.

³⁷ Provisional Findings, paragraph 8.109.

³⁸ See Main Submission, 20 May 2020, paragraphs 6.19-6.37.

³⁹ Provisional Findings, paragraph 8.37.

systematically dismisses all this evidence that customers shop around and consider a range of alternatives.

4.27 First, the CMA downplays customer research speculating that “*time spent researching does not necessarily reflect time comparing prices across retailers*”. Even if the CMA was correct, this would not show that other websites do not impose a competitive constraint on the Parties. The CMA’s description appears to imply that time spent considering non-price dimensions across a range of alternatives is lesser evidence of a competitive constraint.⁴⁰ However, as the CMA’s own analysis shows, price is only one dimension of competition, with the Parties also competing across quality, range and customer service.

4.28 Second, customers do not just visit websites and physical stores as part of the purchase journey. A significant number also read reviews online and discuss with friends/family, with a smaller number using social media, browsing magazines, and using in-home fitting services.⁴¹ In contrast to the CMA’s position, this extensive research provides reliable insight into the fact that customers of the Parties are not just considering a very narrow set of online M2M retailers which, on the basis of the CMA’s interpretation of the competitive constraint, would be limited just to the Parties and IGD.

4.29 Third, the BDRC survey was a survey conducted only amongst the existing customers of the Parties, including repeat purchasers. If anything, the results would therefore tend to under-report the amount of shopping around by customers in the wider market.

4.30 The CMA also dismisses the evidence from Google Trends noting:

“With respect to the Google Trends data, we consider that this evidence is misleading because it covers all search sessions related to ‘blinds’, and hence will include the searches of customers looking for ready-made blinds instead of M2M blinds.”⁴²

4.31 As mentioned in the Parties Main Submission, the Google Trends data provides an important insight into what else customers are considering during their purchasing journey. The CMA considers this misleading as it includes customers looking for ready-made blinds. Yet, the CMA has not put forward evidence that consumers are looking only (or mostly) to purchase M2M blinds and to do so online. The CMA’s approach ignores the possibility that customers are googling generic terms because they are simply interested in covering their windows and finding the best window covering/blinds option for them and they are therefore open to (and will

⁴⁰ Provisional Findings, paragraph 8.38.

⁴¹ BDRC Survey Final Report, page 8.

⁴² Provisional Findings, paragraph 8.39.

consider) a range of alternatives, including ready-made and M2M blinds through a range of channels (online, in-store and in-home).⁴³ The CMA does not consider this possibility because it has made significant efforts to exclude ready-made blinds as a competitive constraint since their inclusion would mean that an SLC cannot be maintained.

Google search analysis

4.32 The CMA prepared a range of analysis in relation to Google search, which it identifies as a major source of sales for all online M2M blinds retailers. It highlights the importance of Google as a marketing tool and describes how consumers use the search engine to find the Parties' website.⁴⁴ Further, the CMA analyses the Parties' online search rankings and the effectiveness of their Google Ads expenditure to assess whether the Parties are close competitors.⁴⁵

(i) Traffic and marketing spend

4.33 The CMA acknowledges various sources of potential website traffic including direct traffic and referrals but identified search results – both paid and organic – as the most important source for online M2M blinds retailers. This finding is supported by an analysis of both revenues and marketing spend by channel for the Parties and three (pure online) competitors.⁴⁶ While the CMA acknowledges that it does not hold comparable data for omni-channel retailers, it finds that search is an important source of traffic for them as well (though it appears that they do not bid for M2M blinds related keywords).⁴⁷ The CMA later relies on these findings to support the conclusion that ranking highly on search engines is an important factor to compete effectively.⁴⁸

4.34 The Parties disagree with the CMA's conclusions. The traffic analysis, which is based on data from pure online retailers only, is overly simplified and overstates the importance of PPC advertising as a source of traffic in the industry. The Parties agree that PPC is an important

⁴³ Google Trends data clearly shows that consumers searches for "blinds" outnumber searches for "made to measure blinds", "made to measure blinds online" or "blinds online" by a factor of over 70:1 in each case. See <https://trends.google.com/trends/explore?geo=GB&q=blinds,made%20to%20measure%20blinds,made%20to%20measure%20blinds%20online,blinds%20online>

⁴⁴ Provisional Findings, paragraphs 8.21 – 8.42.

⁴⁵ Provisional Findings, Appendix E, paragraphs 8.65 – 8.106.

⁴⁶ Provisional Findings, Tables 4 & 5.

⁴⁷ Provisional Findings, paragraph 8.26.

⁴⁸ Provisional Findings, paragraph 8.46.

source of traffic for most pure online M2M blinds retailers. However, this does not mean that it is an important factor for all retailers.

- 4.35 As emphasised in response to the Google Analysis Working Paper (GAWP), omni-channel retailers and marketplaces do not have to rely on PPC advertising to generate traffic to their websites.⁴⁹ For example, Dunelm likely generates substantial direct traffic, as well as traffic through “branded” searches as highlighted by the Google Trends analysis – suggesting Dunelm does not have to engage in PPC advertising to compete.⁵⁰ Further, almost 90% of UK shoppers use Amazon and 70% of these use the site as their first point of call.⁵¹ This shows that a high ranking on Google is not a necessary condition for retailers to compete. Finally, there are various online retailers with non-negligible sales (e.g. MakeMyBlinds) who do not feature frequently among the top Google search results according to the CMA’s own analysis.⁵² If the CMA’s emphasis on the importance of Google as a source of traffic was correct, these retailers should not sell any blinds at all.

(ii) Search behaviour and customer journey

- 4.36 The CMA relies on its own literature on online search, the EC’s Google Search (Shopping) decision and the BDRC Survey submitted by the Parties to assess how customers use search engines as part of their purchasing journey.⁵³ According to the CMA, the evidence from the literature review and the EC decision (which the CMA acknowledges is not specific to blinds) shows that consumers do not tend to click beyond the first results.⁵⁴
- 4.37 The Parties have already commented extensively on the CMA’s interpretation of these studies in response to the GAWP.⁵⁵ First, the CMA’s own literature review highlights that consumers tend to spend more time online when searching for complex or differentiated products. The finding that consumers only consider 2.1-3.0 brands when they shop online is informed by a study about the shopping behaviour of consumers who bought music – the Parties do not believe that this study is in any way informative about the customer journey for blinds.

⁴⁹ Response to Google Analysis Working Paper, paragraph 3.12.

⁵⁰ Main Submission, Table 6.1.

⁵¹ Main Submission, paragraph 7.12.

⁵² Provisional Findings, paragraphs 8.72 *ff.*

⁵³ Provisional Findings, paragraph 8.31.

⁵⁴ Provisional Findings, paragraph 8.36.

⁵⁵ Response to Google Analysis Working Paper, paragraphs 3.6 – 3.7.

- 4.38 Second, the CMA's own literature review highlights that the "customer journey" is significantly more complex than suggested in the Provisional Findings. The review stresses that consumers often interact with multiple channels before they purchase and finds that the "path" to the final purchase is often "quite complicated". The conclusion drawn from the study in the Provisional Findings, that websites that do not feature in the top results are unlikely to obtain significant traffic, is an unduly selective summary of the CMA's own literature review.
- 4.39 The CMA then goes on to consider the evidence from the BDRC survey in relation to the customer journey. The survey shows that the Parties' customers often found the Parties websites through generic search words, that they spend a lot of time before they make their purchasing decisions, and that the majority (65% in the case of 247) looked at other websites (in particular Blinds Direct, Dunelm, John Lewis, Amazon, Next) prior to purchase, but that the number of websites visited was typically lower than four.⁵⁶
- 4.40 The CMA does not attach any weight to the Parties' submissions that this shows that these websites impose a competitive constraint. It simply dismisses the relevance of these findings by noting that: (a) consumers may spend significant time on one website to look for the right design as opposed to spending the hours of research comparing prices across websites; and (b) that the websites that are visited do not necessarily impose a competitive constraint.⁵⁷ The finding that consumers tend to visit a maximum of three other websites is taken as confirmation of the validity of the findings based on its literature review that ranking highly on Google is a determinant factor of success in the market.⁵⁸
- 4.41 The Parties do not follow the CMA's reasoning. Concrete evidence that shows that consumers engage in significant research before they make their purchasing decisions and that this research entails visiting competitor websites is dismissed based on pure speculation on the CMA's behalf about what exactly customers may do. The Parties do not believe that this is a fair assessment of the evidence.
- 4.42 Further, the CMA's claim that the BDRC survey supports its findings that being ranked highly on search engines is a crucial factor for success is plainly wrong. The websites listed by the respondents to the BDRC survey – e.g. Dunelm, John Lewis, Amazon and Next – are not those that ranked highly on Google according to the CMA's own analysis.⁵⁹ If the CMA's understanding of the customer journey was correct – consumers only click on the first three

⁵⁶ Provisional Findings, paragraph 8.37.

⁵⁷ Provisional Findings, paragraphs 8.38 – 8.39.

⁵⁸ Provisional Findings, paragraphs 8.40.

⁵⁹ Provisional Findings, paragraph 8.72.

results – names such as Dunelm, John Lewis, Next or Amazon should not appear as frequently on the list of websites that consumers visited before their purchase.

- 4.43 The CMA then makes the following conclusion about the importance of Google and its findings about consumer search behaviour:

*“Taken together, these factors suggest that ranking highly on search engines is likely to be an important factor in order to be able to effectively compete. Price, quality, range and service are also important aspects of competition. Our assessment of the closeness of competition between the Parties therefore takes into account these parameters as well as the competition for online traffic.”*⁶⁰

- 4.44 For the reasons explained above, the CMA’s interpretation of the available evidence overstates the importance of Google rankings. Consumers spend a significant amount of time researching blinds across multiple websites (and stores) before they make their purchase. Further, the websites that they visit are not necessarily those that rank highly on Google. This shows that the brand recognition of omni-channel retailers and marketplaces plays an important role that the CMA appears to ignore. This has implications for the assessment of the closeness of competition.

(iii) Online Presence

- 4.45 The CMA describes online presence as one of the factors that determines competition between retailers:

*“[C]ompetition between retailers of online M2M blinds is likely to be heavily influenced by how effective a retailer is at attracting customers to its website. This in turn depends on how well a retailer ranks and performs on search engines (especially Google).”*⁶¹

- 4.46 The CMA thus undertakes three different types of analysis to assess how well the Parties and their competitors perform on Google:

- (a) a comparison of their rankings;
- (b) an assessment of their Google Ads campaign performance; and
- (c) a comparison of search term bidding behaviour.

⁶⁰ Provisional Findings, paragraph 8.46.

⁶¹ Provisional Findings, paragraphs 8.65.

- 4.47 This analysis is supposed to determine whether the Parties are close competitors and whether other M2M retailers will impose a competitive constraint on them following the 2019 Transaction.⁶²
- 4.48 It is important to highlight two conceptual shortcomings of the CMA's approach. First, the CMA overemphasises the importance of Google rankings. As set out at paragraph 4.33 above, Google is not the only source of traffic for retailers. Omni-channel retailers and marketplaces do not have to rely on high Google rankings (neither paid nor organic) to attract traffic. This is further supported by the evidence from the BDRC survey. The sources of competitive constraint clearly thus extend beyond the first three Google Ads or organic positions.
- 4.49 Second, the CMA is wrong to consider competition for traffic and other parameters of competition (on product offering or price, quality and range) separately without a proper consideration of how they interact. This omission is particularly crucial in light of the CMA's concession that there are no economies of scale in PPC advertising.⁶³
- 4.50 The CMA's analysis shows that the Parties are more prominent than most of their competitors on Google Ads (their most important source of traffic and revenue). The Parties are not surprised by these findings. The simple explanation for this observation is that the Parties' (Blinds2Go's in particular) PPC budget is proportionate to their market shares.
- 4.51 What the CMA fails to acknowledge is the interaction between competition for Google prominence on the one hand and competition on the product offering on the other. As acknowledged by the CMA, a deterioration in the Parties' product offering would likely lead to a fall in conversion rates.⁶⁴ Consequently, the Parties would generate a lower return on their PPC spend than is currently the case. They would thus not be able to maintain their PPC budget and would fail to maintain their prominent position on Google. Consequently, if the Parties were to deteriorate their product offering in the future, competitors could take advantage and outcompete the Parties for traffic.
- 4.52 The CMA's concession that there are no economies of scale in PPC advertising is particularly relevant in this context. The absence of economies of scale means that smaller competitors – even those who currently do not seek to generate traffic via PPC advertising – could take advantage of any deterioration in the Parties offering.

⁶² Provisional Findings, paragraphs 8.66.

⁶³ Provisional Findings, Appendix F, paragraph 21. See further discussion in Chapter 5.

⁶⁴ Provisional Findings, Appendix F, paragraph 22. The CMA further states that this may show that there is a knowledge barrier. This is further discussed in Chapter 5.

- 4.53 In conclusion, a separate assessment of competition for online presence and competition on the product offering prevents the CMA from appreciating their pro-competitive interrelationship. Any deterioration in the Parties' product offering would not only lead to diversion to other retailers, it would also undermine the ability of the Parties to maintain their prominent position on Google search going forward. This is a significant factor that will continue to constrain the Parties post-merger.
- 4.54 As regards the three sets of analysis undertaken by the CMA, the Parties have already commented extensively.
- (i) The ranking analysis presented in Table 7 and paragraph 8.89 is based on observations from a single week during the COVID-19 related nationwide lock-down, which had a significant effect not only on store openings but also on supply chains more generally.⁶⁵ The CMA's rebuttal of the concerns raised with regards to this analysis is unconvincing. In particular, the Phase 1 analysis was subject to further limitations and the claim that an analysis based only on London is representative because it accounts for a significant part of the market is plainly insufficient.⁶⁶ With regards to the analysis based on the Parties' Google Analytics data, as noted above, the Parties are unsurprised to find that they often appear on top of the search results.
 - (ii) The Google Ads performance analysis shows that Blinds2Go outperforms all other M2M blinds retailers in terms of overall spend, number of views, interactions, conversions and cost per conversion and interaction. 247 performs worse than some of the retailers on some metrics, but apparently better (to some unspecified extent) in terms of cost per conversion.⁶⁷ As previously noted, the Parties do not understand why the CMA focused the analysis on a selection of keywords only as this risks biasing the comparison of overall PPC spending effectiveness.⁶⁸ The comparison across all keywords used by the Parties and their competitors is thus preferable. Further, a comparison based on cost per acquisition or ROI says nothing about the effectiveness of PPC spending and is thus irrelevant, as discussed in further detail in Chapter 5. Due to the significant redactions in Appendix F (and the CMA's dismissal of the option to make the information available only to the Parties' external advisors), the Parties are unable to provide further comments on the results. This is particularly frustrating as issues such as the effect of non-PPC advertising spend on PPC performance, which

⁶⁵ Response to Google Analysis Working Paper, paragraph 3.16.

⁶⁶ Provisional Findings, Appendix E, paragraph 27.

⁶⁷ Provisional Findings, paragraphs 8.94 – 8.102.

⁶⁸ Response to Google Analysis Working Paper, paragraph 4.8.

the Parties had highlighted in response to the Working Papers, are simply brushed aside by the CMA as “unlikely” to have an effect on the results.⁶⁹ As a result of the redactions, the Parties are not in a position to assess whether the CMA’s claim is accurate.

- (iii) The “Ad search words bidding behaviour” analysis still does not give any clear indication that the Parties are competing more closely between each other than with other retailers.⁷⁰

4.55 While the CMA acknowledges that the last set of analysis does not allow it to draw any conclusions about closeness of competition, it still finds that the Parties are close competitors because they consistently rank highly and are effective at competing for top positions.⁷¹ The fact that 247 – according to some metrics – is a less effective PPC spender than some of its competitors is somehow brushed aside. Due to the significant redactions to Appendix E and the main report, the Parties are unable to assess whether the CMA’s findings are robust or driven by other factors such as the effects of TV advertising or the complexities of making comparisons using the Google data.

Similarity of offering and service proposition

4.56 Another aspect of the closeness of competition between the Parties is the different aspects of their service proposition. Before discussing the detail of the CMA’s analysis, it is worth mentioning that the Parties’ business models are not predicated on winning business from each other. **[CONFIDENTIAL]**.

4.57 **[CONFIDENTIAL]**. In fact, since the date of the last price scrape provided to the CMA, Next has cut its prices on Roman Blinds and Rollers Blinds, such that it has become much more competitive on price. A summary of the price changes is in Table 1 below (including Blinds2Go’s price for the same products).

Table 1: [CONFIDENTIAL]

Source: Blinds2Go, Next

4.58 The CMA also concludes that *"the Parties’ prices are neither consistently closer to each other than to those of other retailers, nor are they consistently further apart from each other than from*

⁶⁹ Provisional Findings, paragraph 8.70.

⁷⁰ Provisional Findings, paragraphs 8.104 – 8.105.

⁷¹ Provisional Findings, paragraph 8.107.

those of other retailers".⁷² The Parties wholly agree with this conclusion, which is consistent with a range of different competitors matching or beating the Parties across multiple products and across time. **[CONFIDENTIAL]**⁷³. Indeed, this conclusion is entirely consistent with the diversion data from the BDRC Survey which shows that the Parties are no closer competitors with each other than with other retailers, both online and offline.

4.59 The CMA has also undertaken a price comparison analysis (visual examination of the data), and a price correlation analysis, examining the correlation coefficient between the weekly prices of each of the Parties and the other retailers (from May 2016 to March 2020).⁷⁴ The CMA concludes: *"Our own analyses do not provide strong evidence that Blinds2Go and 247's prices follow each other more closely than the prices of other retailers. However, there is no indication that there is another retailer that Blinds2Go and 247 follow more closely."*⁷⁵

4.60 The first part of this conclusion resonates with the Parties' own analysis of the Blinds2Go price scrape data and is consistent with Blinds2Go and 247 responding to a range of different competitors on price and not just to each other. The second part of the analysis that there is no indication that there is another retailer that they follow more closely in no way detracts from the finding that the Parties are not close competitors on price. Given this, the Parties do not understand how it could be concluded that Blinds2Go's prices are in any way constrained by 247's prior to the 2019 Transaction, nor that there would be an appreciable loss of price competition as a result of the 2019 Transaction.

4.61 With respect to quality, the CMA's analysis highlights the breadth of competition on quality and the strength of a number of competitors.⁷⁶ In particular:

- (i) In addition to the Parties, at least four other online M2M blinds retailers have excellent Trustpilot scores and more than 1,000 reviews;
- (ii) The CMA identifies six online M2M retailers with similar setup, look and functionality (with each retailer selling more than £1m in 2019); and

⁷² Provisional Findings, paragraph 8.56.

⁷³ **[CONFIDENTIAL]**.

⁷⁴ Provisional Findings Appendix D.

⁷⁵ Provisional Findings, paragraph 8.125.

⁷⁶ Provisional Findings, paragraph 8.61.

(iii) IGD and Dunelm appear frequently in the top organic search positions⁷⁷.

4.62 Finally, with respect to range, the CMA's analysis has identified 11 retailers with more than 600 SKUs, with nine of those having more than 1,000 SKUs. As the Parties have previously submitted, retailers do not need to sell a significant number of SKUs to be an effective competitor to the Parties given the concentration of sales among a relatively small number of popular blinds.⁷⁸ Moreover, it is easy to add additional SKUs and if retailers considered it necessary to add SKUs to be competitive, they would do so.⁷⁹ Nevertheless, the CMA's very narrow analysis of wooden venetian blinds concludes that only two other retailers have a comparable range (Swift Direct Blinds and English Blinds). However, this analysis is overly simplistic and overstates the importance of range. It discounts the fact that each competitor analysed has at least 40 wooden venetian SKUs (with one of the Parties' main competitors - IGD - having the lowest number of SKUs of this group), which may be more than enough. Further, the CMA does not advance any analysis of how comparable the SKUs are, relying instead on a simple count. Indeed, the CMA disregards that, unlike 247, Blinds2Go sells a range of designer blinds.

4.63 The CMA then concludes:

*"We provisionally find that the Parties' offerings in terms of price, quality and range are similar. While, as illustrated by paragraphs 8.140 and 8.148 below, Interior Goods Direct and Swift Direct Blinds have a broadly similar offering to the Parties, we also find that the Parties' offering is, in some respects, differentiated to that of other online M2M blind retailers."*⁸⁰

4.64 However, this conclusion fails to acknowledge that there are many other competitors that are also similar in terms of price, quality and range. The Parties do not therefore compete any more closely with one another than with a whole range of competitors. In fact, the available evidence does not support the conclusions drawn by the CMA. There is no evidence that the Parties compete closely on price (with no apparent visual correlation, and very low statistical correlation), there are a number of other competitors with similar quality metrics, and a large number of retailers offer a comparable number of SKUs (with the CMA cursory review of wooden blind SKUs lacking any analytical rigour). Therefore, the only conclusion that the CMA can draw from this analysis is that the Parties are one of many effective competitors in the retail

⁷⁷ The CMA quotes 247 as stating that [CONFIDENTIAL].

⁷⁸ Response to Competitive Assessment Working Paper, paragraphs 5.41-5.47.

⁷⁹ Suppliers offer a wide range of blinds SKUs and actively market their products to online M2M blinds retailers. See for example: <https://www.decora.co.uk/index.php#products>.

⁸⁰ Provisional Findings, paragraph 8.64.

of online M2M blinds. This flatly contradicts any conclusions that the Parties are close competitors or that 247 is of any particular unique significance.

Internal documents / Monitoring strategy

4.65 The CMA has reviewed 1,200 internal documents, focusing in large part on the Parties' monitoring activities. This includes the Blinds2Go's price scraping of [CONFIDENTIAL] M2M blinds retailers, and 247's scraping of [CONFIDENTIAL]. The CMA also found two emails out of the 1,200 internal documents suggesting that [CONFIDENTIAL].⁸¹ The CMA then concludes:

*"In our view, this approach to monitoring indicates that 247 sees Blinds2Go and Interior Goods Direct as its key competitive constraints... We provisionally find that the evidence on the Parties' monitoring is consistent with the Parties being close competitors, and consistent with there being few other retailers that the Parties view as a significant competitive constraint"*⁸²

4.66 However, the CMA's cursory analysis and conclusion significantly oversimplifies the Parties' monitoring strategy. Moreover, it completely disregards the actual evidence as to how the Parties set prices and how prices vary over time. The CMA knows that the price correlations between the Parties are low. It therefore makes no sense for the CMA to rely on just two emails by 247 to reach its conclusions given its detailed analysis of prices.

4.67 First, turning to 247's price monitoring, [CONFIDENTIAL]:

(i) [CONFIDENTIAL]

(ii) [CONFIDENTIAL]

4.68 247's monitoring strategy is therefore clearly not indicative of who its closest competitors are.

4.69 From Blinds2Go's perspective, the CMA has grossly oversimplified its monitoring strategy, but the CMA cannot tenably argue from this that 247 is somehow a unique or close rival – 247 is one of many. In Blinds2Go's view, [CONFIDENTIAL].⁸³ [CONFIDENTIAL].

⁸¹ [CONFIDENTIAL].

⁸² Provisional Findings, paragraph 8.119-8.120.

⁸³ [CONFIDENTIAL].

Constraint from other online M2M retailers

- 4.70 As the CMA rightly acknowledges, unilateral effects are much more likely when customers have little choice of alternative retailers.⁸⁴ The Parties agree with the CMA assessment of IGD as a significant competitor to the Parties.⁸⁵ However, the Parties do not agree that Swift Direct Blinds and MakeMyBlinds in particular provide only a limited competitive constraint. The Parties have already outlined at length the evidence for this as regards Swift Direct Blinds, MakeMyBlinds, and many other online M2M blinds retailers including Blinds4UK and Concept Blinds (see Section 6 of the Main Submission). They are therefore not repeated here.
- 4.71 However, the Parties would like to highlight the very recent acquisition of Swift Direct Blinds by Decora which we understand the CMA are aware of. As outlined during Phase 1, Decora is one of the leading suppliers of blinds in the UK and Ireland, with a UK turnover of £46.2m in 2018 (17% of the wholesale supply of assembled blinds in the UK).⁸⁶ This acquisition, and Decora's larger resources, will significantly improve Swift Direct Blinds' ability to grow the business and compete directly with the Parties. In particular, Decora is the leading supplier of wood/faux wood blinds, which is the most popular category for customers purchasing online M2M blinds. Further, the statement in the Provisional Findings that Swift Direct Blinds had indicated to the CMA that they could not match the prices of the Parties due to higher costs of obtaining their blinds⁸⁷ can no longer be sustained. Both Parties (and 247 in particular) procure a large proportion of their blinds from Decora. The Decora acquisition will ensure that Swift Direct Blinds is able to obtain its blinds from Decora at the same, if not lower, prices than those faced by the Parties. Swift Direct Blinds will therefore be able to compete with the parties on price even more aggressively.
- 4.72 Swift Direct Blinds will also undoubtedly benefit from Decora's partnership with Domus Lumina, a leader in blinds manufacturing and sales of window coverings in Lithuania and over 30 European countries. Domus Lumina pride themselves in following market design trends and leading in terms of technological innovation, range of fabric patterns and colour, structures and mechanisms, and automating production.⁸⁸ The CMA identifies that Swift Direct Blinds only had 2,454 SKUs in April 2020. It is therefore likely that Swift Direct Blinds will now have access to a significantly greater range of blinds, including new colours, fabrics and structures, allowing

⁸⁴ Provisional Findings, paragraph 8.133.

⁸⁵ Provisional Findings, paragraph 8.144.

⁸⁶ Final response to Issues Letter (Phase 1), Table 4.2.

⁸⁷ Provisional Findings, paragraph 8.58.

⁸⁸ <https://www.domuslumina.com/en/about-us/>

them to compete directly with Blinds2Go and the omni-channel retailers in particular, who focus on the more design-conscious consumer.

- 4.73 The Parties invite the CMA to investigate precisely what Swift Direct Blinds has told Decora about its plans for expansion and how Decora can improve those expansion prospects, including a detailed business plan for the combined business post-acquisition. As explored further below in Section 5, there only needs to be a small amount of expansion to offset the limited rivalry lost from 247 as a result of the 2019 Transaction.
- 4.74 Finally, even if the CMA disagrees with the Parties' assessment of the constraint from individual competitors, what is important in the SLC analysis is the aggregate constraint from the long tail of online M2M retailers. The CMA is dismissive of this requirement and fails to conduct any meaningful analysis of the aggregate constraint at all. This is highly surprising in the context of a Phase 2 investigation where the assessment of the effect of a change in the nature of control (as opposed to an acquisition of control) is a necessarily complex exercise.

Constraint from omni-channel retailers

- 4.75 The Parties have submitted at length the strong evidence supporting the omni-channel retailers as an important and growing constraint on the Parties. This includes material diversion as reported in the BDRC Survey of 17% to Dunelm, 12% to John Lewis and 5% to Next for Blinds2Go customers, and 15% to Dunelm, 9% to John Lewis and 4% to Next for 247's customers. The CMA tries to dismiss this evidence:

"While we acknowledge that the survey results show that diversion to Dunelm and John Lewis (combining diversion to both their online and their offline offering) is higher or similar to the diversion to 247, we consider that reported diversion to large multi-channel retailers (and, in particular, the diversion to the online offering of Dunelm and John Lewis) is likely subject to an upward bias (and hence that diversion to Blinds2Go and 247 and other online M2M blind retailers is likely subject to a downward bias)"⁸⁹

- 4.76 The source of this upwards bias according to the CMA is due to: i) customers being more familiar with the brands of omni-channel retailers, given they are household names, and the possibility that customers were more likely to select a familiar brand rather than an unfamiliar online M2M brand; and ii) customers being unaware of the true nature of their offerings, with the CMA noting: *"only 38% of Blinds2Go's customers and 43% of 247's customers that said they would divert to Dunelm indicated that they had visited Dunelm's website. Similarly, only*

⁸⁹ Provisional Findings, paragraph 8.111.

43% of Blinds2Go's customers and 48% of 247's customers that said they would divert to John Lewis indicated that they had visited John Lewis' website"⁹⁰.

- 4.77 Taking both these points together, the CMA's argument relies on its analysis that "only" 38/43% of Blinds2Go/247's customers who said they would divert to Dunelm actually visited Dunelm's website during the customer's journey (and a similar statistic for John Lewis). That is, other customers were somehow mis-informed about their chosen retailer because they did not visit the website during their purchase journey.
- 4.78 At the outset, it should be noted that the CMA's reported statistics above only include customers who visited the website, but not researched in-store (or indeed via other channels). If this issue is addressed, then as shown in Table 2, 46-51% of the Parties' customers saying that they would divert to Dunelm had either visited its websites or stores and for John Lewis the comparable figures are 50-55%.

Table 2: Proportion of customers diverting to certain omni-channel retailers, who also viewed those same retailer's offering (website or physical store)

Retailer	Total (%)	Blinds2Go (%)	247 (%)	Base
Dunelm	47%	46%	51%	249
John Lewis	51%	50%	55%	168

Source: BDRC Survey; AlixPartners analysis

- 4.79 It is also important to appreciate that the branding advantages rightly identified by the CMA mean that these retailers are important competitors. Further, the CMA cannot reasonably conclude that their offerings would not in practice be chosen, not least as they are trusted high quality retailers and they can offer consumers broader design inspiration and a much wider range of products than M2M blinds.
- 4.80 Moreover, the CMA fails to give due weight to the fact that these retailers' stores were all closed at the time the survey was carried out, which would be likely to reduce stated diversion to these retailers, however carefully the survey is carried out.
- 4.81 The CMA also rejects the notion that customers are making a price-quality trade-off when considering omni-channel brands noting:

⁹⁰ Provisional Findings, paragraph 8.111(b).

“price differentials indicate that multi-channel retailers (in particular John Lewis) may have a potentially differentiated (with respect to price and quality) online offering which may limit the multi-channel retailers’ competitive constraint on the Parties”⁹¹

4.82 However, the CMA advances no evidence to support this statement. On the contrary, the BDRC Survey noted significant diversion to John Lewis (12% and 9% for Blinds2Go and 247 respectively), which means customers must see the offerings as substitutes. The CMA also seems to down-weight (or ignore) numerous other pieces of evidence showing the strength of competition from omni-channel retailers:

- (i) [CONFIDENTIAL].
- (ii) John Lewis identified the Parties and IGD as competitors, while Next identifies Blinds2Go⁹²; and
- (iii) Dunelm appears frequently at the top of organic searches for ‘blinds’ and other generic search terms.

4.83 The CMA also isolates online M2M diversion considering it to be only 10/7% for Dunelm (Blinds2Go and 247 respectively), and 8/4% for John Lewis.⁹³ As outlined in detail above, however, diversion away from the Parties to all channels is relevant to the SLC assessment and not just within an artificial market for 'online M2M blinds'.

4.84 The CMA also mentions that omni-channel retailers have a different commercial focus to an online M2M blinds retailer and therefore they do not impose a competitive constraint.⁹⁴ This is a particularly surprising conclusion since it would mean that omni-channel retailers would never impose a constraint on single product firms. On the contrary, the ability to market “the home” holistically is a distinct advantage vs. a retailer focusing exclusively on blinds.⁹⁵ Furthermore, the omni-channel retailers are many times’ larger than the Parties, such that even a small

⁹¹ Provisional Findings, paragraph 8.171.

⁹² Provisional Findings, paragraph 8.186.

⁹³ Provisional Findings, paragraph 8.184.

⁹⁴ Provisional Findings, paragraph 8.187.

⁹⁵ This is further supported by the AMA Research Domestic Window Coverings Market Report 2020-2024, which states: “*Such a competitive marketplace has resulted in suppliers trying to offer a broader solution, for example by expanding the range of products which they offer, from window coverings to colour-co-ordinated ranges of curtains, bedding and cushions. This results in greater market fragmentation and may also constrain market value by keeping prices lower.*”, **Annex 0161** page 18.

department that focuses on M2M blinds can replicate the constraint lost by 247 with even a small change in focus.

- 4.85 The CMA also suggests that design was a key driver of choice, thereby dismissing the Parties' observations that range as a competitive constraint should not be overstated **[CONFIDENTIAL]**.⁹⁶ The Parties disagree with this for a number of reasons.
- 4.86 First, the CMA has criticized this analysis on the grounds that "[t]his assessment does not take into account nuances in colour, fabrics and other options available for M2M blinds."⁹⁷ The CMA does not provide any evidence to support this assertion and merely offers options that may play a part in the customer's choice.⁹⁸ Without any evidence, the Parties find no reason to agree with the CMA's assertion on this point. To further evidence the Parties' position, the Parties have analysed the March 2020 sales data at the level of blind type, colour and product (with the inclusion of product defining the SKU level). In the CAWP, the CMA presented research showing that Dunelm have 243 SKUs of ready-made blinds.⁹⁹ Analysing the top 243 SKUs for **[CONFIDENTIAL]**.¹⁰⁰ So even taking the CMA's very granular view of product range, which the Parties note is too narrow, there is still a significant concentration of sales in a relatively small number of SKUs.
- 4.87 Second, the CMA states that "[i]n addition, survey results showed that design was the key driver of customers' choice"¹⁰¹. If this is, as we assume, a reference to Question 09 of the survey "Why did you eventually decide to purchase [...] instead of alternative window coverings?", the Parties do not agree with the CMA's conclusion on this and believe this is a very selective interpretation of that question. As the question refers to their purchase of M2M blinds "...instead of other window coverings" it is wrong to attribute this, at least wholly, to the design elements relating to colour, patterning or other aspects of the product. Rather, it is more likely that the responses are referring to the choice of a blind, versus a curtain or shutter, or a certain type of blind (e.g. roller) versus other blinds types available.

⁹⁶ Provisional Findings, paragraph 8.176.

⁹⁷ Provisional Findings, paragraph 8.176.

⁹⁸ Provisional Findings, footnote 418.

⁹⁹ Competitive Assessment Working Paper, page 23.

¹⁰⁰ **[CONFIDENTIAL]**.

¹⁰¹ Provisional Findings, paragraph 8.176.

4.88 Finally, the constraint from omni-channel retailers is also evident throughout the latest AMA Domestic Window Coverings Market Report. A range of quotes from throughout the report are as follows:

- (i) *“Larger organisations have developed an omni-channel presence in order to compete with purely online operators.”*¹⁰²
- (ii) *“Spiralling price competition at the bottom to mid-range of the market, with e-commerce sites and home improvement retailers competing with dedicated window covering specialists.”*¹⁰³
- (iii) *“A further significant factor supporting this growth has been the steep rise in online sales, with consumers able to order blinds 24/7. However, this has also led to more intense competition within the industry, amongst pureplay retailers and omni-channel retailers, including window specialists, home retailers and other types of retailer.”*¹⁰⁴
- (iv) *“Sales via the internet have therefore encroached upon sales of suppliers with physical premises and showrooms and also high street retailers offering blinds.”*¹⁰⁵
- (v) *“Some of the larger suppliers have an omni-channel approach, for example with displays in selected retailers, or they supply dedicated facilities, such as Dunelm’s Made To Measure facility for curtains blinds, shutters and accessories. Customer service in store can therefore be used as a powerful selling tool. However, shoppers may research in store and still purchase online with a competitor. Speed of delivery can also be a key point of difference between suppliers, with consumers expecting fast turnaround to suit their busy lifestyles.”*¹⁰⁶

4.89 Therefore, this evidence further re-enforces the evidence from the BDRC Survey that omni-channel retailers are a significant constraint on the Parties and other retailers of online M2M blinds.

¹⁰² **Annex 0161** – AMA Research Domestic Window Coverings Market Report 2020-2024, page 11

¹⁰³ **Annex 0161** – AMA Research Domestic Window Coverings Market Report 2020-2024, page 18.

¹⁰⁴ **Annex 0161** – AMA Research Domestic Window Coverings Market Report 2020-2024, page 52.

¹⁰⁵ **Annex 0161** – AMA Research Domestic Window Coverings Market Report 2020-2024, page 53.

¹⁰⁶ **Annex 0161** – AMA Research Domestic Window Coverings Market Report 2020-2024, page 53.

Constraint from Amazon and eBay

- 4.90 Amazon's recent addition of the 'customise now' shows Amazon's current and growing threat in the online M2M blinds market. However, the CMA dismisses the threat of Amazon (and eBay) due to difference in filtering / ease of use, a cumbersome sample service, and absence of a chat functionality. However, the fact is that the marketplaces are very important players in the online M2M blinds market (and wider blinds market including ready-made blinds). The CMA notes the lack of filtering and chat functionality as a mark against Amazon's offer, without any specific evidence that these exact features are highly valued by customers under the 'ease of use' umbrella. Indeed, **[CONFIDENTIAL]**.¹⁰⁷
- 4.91 The CMA should also down-weight inaccurate third party comments on the 'high cost' of selling via Amazon and eBay. The Parties have already shown that the commission charged is comparable to any equivalent PPC spending.¹⁰⁸ Finally, the CMA notes that diversion to Amazon and eBay is not as high as competitors such as IGD, John Lewis, Dunelm, and ready-made blinds. However, diversion to Amazon and eBay is still 5% for Blinds2Go customers and 6% for 247 customers, such that it materially contributes to the aggregate constraint on the Parties (see paragraphs 4.16 to 4.23 above).

Out-of-market constraints

- 4.92 In the section on market definition, the CMA considered the various evidence on the constraint from different window coverings (curtains/shutters), ready-made blinds; and M2M blinds supplied in-store and in-home. The Parties have already set out at length the arguments for in-store and in-home sales channels of M2M blinds, and alternative window coverings acting as a constraint on the Parties.¹⁰⁹ These are not repeated here. However, as emphasised above the CMA must properly consider the aggregate constraint from in-store and in-home M2M blinds, and alternative window coverings.
- 4.93 The CMA's analysis of ready-made blinds starts with demand-side substitution, acknowledging the results of the BDRC Survey showing that 13% of respondents for Blinds2Go and 12% for 247 would divert to ready-made blinds if the Parties were unavailable. However, the CMA's assessment is that:

¹⁰⁷ Parties CAWP Response, paragraph 5.15.

¹⁰⁸ Main Submission, paragraph 4.30.

¹⁰⁹ Main Submission, Section 6.

“the percentages for ready-made blinds are still small compared to the proportion of respondents indicating they would divert to other retailers of online M2M blinds, namely 66% for Blinds2Go and 75% for 247.”¹¹⁰

- 4.94 As mentioned above, this 12-13% diversion is very similar to the diversion from Blinds2Go to 247, which when describing the closeness of competition between the Parties the CMA called “significant”. If 12-13% diversion means the Parties are close competitors, then ready-made should be equally as close for Blinds2Go’s customers as the constraint from 247.
- 4.95 Second, the CMA neglects the fact that the survey population was, by necessity, customers who had purchased a M2M blind and therefore there is likely a good deal of inertia in their responses. A fairer characterisation of the survey results would be that even amongst customers who had decided to purchase a M2M blind, 12-13% would still divert to ready-made blinds. The competitive constraint should ideally be viewed from the perspective of a customer who is considering a range of different window coverings (which is consistent with the Parties understanding of consumer behaviour).
- 4.96 The CMA also acknowledges that the BDRC Survey shows that the proportion of respondents that considered purchasing ready-made blinds instead of M2M blinds is ‘material’. However, the CMA’s contention that *“the fact that customers ‘considered’ ready-made blinds does not allow for strong conclusions regarding their willingness to switch and hence the competitive constraint ready-made blinds exert on M2M blinds”¹¹¹* is simply not credible. The Parties have put forward objective evidence from the Survey results that a significant proportion of customers, who eventually purchased a M2M blind, considered purchasing a ready-made blind.¹¹² These customers did ultimately purchase a M2M blind but this fact is self-evident by virtue of the specification of the population surveyed. Furthermore, the CMA’s contention that *“[t]his is consistent with the view that customers may consider the option of ready-made blinds but ultimately decide at an early stage that they are not suitable for their requirements”* is not backed by any evidence. Therefore, as well as down-weighting objective evidence provided by the Parties that was sourced from actual customers, the CMA then offers no evidence to support its own view.
- 4.97 The CMA also dismisses the Google Trends data showing that when searching for ‘blinds’ customers are also searching for Ikea and Argos. Specifically, the CMA states that *“this data could primarily be driven by customers looking exclusively for ready-made blinds, and therefore*

¹¹⁰ Provisional Findings, paragraph 7.29.

¹¹¹ Provisional Findings, paragraph 7.31.

¹¹² BDRC Survey Final Report, page 14.

does not necessarily demonstrate that Ikea or Argos are posing a competitive constraint on the Parties".¹¹³ However, as mentioned above this data provides vital insight into the purchase journey of customers who are likely considering many types of window coverings, including both M2M and ready-made blinds. The CMA suggests that this is driven by people looking 'exclusively' for ready-made blinds, again without any evidence to back up this statement. The fact that customers are searching for generic terms likely indicates that they have not made up their mind prior to searching, only choosing an appropriate window covering after considering retailers of both ready-made and M2M blinds.¹¹⁴ The CMA also neglects the evidence that the Parties presented in Phase 1 (and repeated in the Hunter Douglas Hearing on 18 June 2020), that [CONFIDENTIAL].¹¹⁵ Additionally, Blinds2Go clarified in the Hunter Douglas Hearing that [CONFIDENTIAL]¹¹⁶, [CONFIDENTIAL].

4.98 The CMA also assessed the propensity of customers to switch by considering to what extent ready-made blinds offer the same dimensions as M2M blinds. This includes comments from two third parties who noted that *"different customer needs are met by ready-made and M2M items, with one of the main reasons for selecting a M2M product being a complicated size of window"*¹¹⁷. The Parties have already submitted that window sizes are in fact relatively standard, so there should be very few windows that need a bespoke solution that a ready-made blind cannot provide.¹¹⁸ The CMA should therefore treat third party comments with caution.

4.99 As regards the Parties' tolerance analysis the CMA states:

*"the analysis on which the Parties base these results applies tolerances which appear to be very generous in terms of which sizes would still constitute an 'equivalent'"*¹¹⁹.

¹¹³ Provisional Findings, paragraph 7.32.

¹¹⁴ There are very few searches for "made to measure blinds" or "ready-made blinds", compared with the popular generic term "blinds". See: <https://trends.google.co.uk/trends/explore?geo=GB&q=ready%20made%20blinds,blinds,made%20to%20measure%20blinds>.

¹¹⁵ As mentioned, in October 2015 IKEA stopped selling ready-made corded blinds due to increased publicity surrounding incidents of infant strangulation caused by the same type of cords as those used on IKEA blinds. In 2016, Blinds2Go's sale of wooden blinds [CONFIDENTIAL].

¹¹⁶ [CONFIDENTIAL].

¹¹⁷ Provisional Findings, paragraph 7.34.

¹¹⁸ CAWP Response, paragraph 5.37(c).

¹¹⁹ Provisional Findings, paragraph 7.35.

- 4.100 However, in the Parties' view, the negative and positive tolerance on width inside the recess are very conservative as explained at length in previous submissions.¹²⁰ The CMA notes that *"depending on the type of blind, the positive width or drop tolerance amounted to up to 50cm"*,¹²¹ However, this is mis-characterisation of the analysis. A positive 50cm width tolerance is only applied for blinds fitted outside the recess (which the CMA's footnote neglects), which is entirely reasonable given the needs for customers wanting to fit blinds this way. Furthermore, a 50cm drop tolerance would also only apply to blinds whose fall does not require an exact drop measurement (e.g. Rollers and Venetians). The CMA also down-weights the Parties' analysis due to having to make an adjustment to [CONFIDENTIAL]. [CONFIDENTIAL].
- 4.101 As we have explained previously, the measurements on which the tolerances analysis is based likely represents the measurements that the customer recorded, rather than the ones they absolutely required. To therefore conclude that a ready-made blind must be identical (2% of sales value according to the CMA's calculations) or within very small tolerances (5% by sales value according to the CMA's calculations), is simply not credible. Further, it is not consistent with the 12-13% of survey respondents who stated they would divert to ready-made.
- 4.102 The CMA also states: *"We also note that the claimed availability of ready-made equivalents calls into question why customers purchase M2M blinds when ready-made blinds are considerably cheaper even for comparable quality (see paragraph 7.40)"*¹²². However, this narrow focus on price ignores the other factors that some customers value, including easy to use website, product quality, and product range. If the Parties were to worsen their M2M offering, the fact is that customers do have a ready-made equivalent for a significant proportion of the sales analysed.
- 4.103 Finally, on whether customers would modify a ready-made blind themselves, the CMA notes: *"with respect to the prospect of the customer modifying the ready-made product themselves, we have not received any evidence to suggest that a significant proportion of customers would be willing to do this"*¹²³. The Parties have already submitted that many tutorials are readily available online, giving customers a practical step-by-step guide on how to trim their ready-made blinds to size (with a B&Q video on how to cut/modify a roller blind reaching over 1.2m views)¹²⁴. These videos/tutorials would not be so popular (and retailers would not go to the

¹²⁰ CAWP Response, paragraphs 5.35-5.40.

¹²¹ Provisional Findings, footnote 210.

¹²² Provisional Findings, paragraph 7.35.

¹²³ Provisional Findings, paragraph 7.36.

¹²⁴ Parties CAWP response, paragraph 5.40.

effort to produce them) if customers were not willing to modify the ready-made blinds themselves. In addition, the latest AMA report also highlights how many customers are willing to alter ready-made blinds noting: *"It was the ease of availability of these products through channels such as DIY and specialist multiples in standard sizes that made these products so attractive to many consumers. These consumers were then prepared to carry out some alteration work to get blinds to fit windows"*.¹²⁵

[CONFIDENTIAL]

Conclusion on competitive assessment

- 4.104 The CMA's competitive effects analysis has failed to focus on the correct question, whether any loss of rivalry between the Parties, due solely to the 2019 Transaction, can be expected to lead to an SLC. In addressing this question, the CMA's analysis fails to appropriately recognise that pre-merger Hunter Douglas was the market leader by a very substantial margin and that the addition of 247, a relatively small and declining rival, has a very limited impact on competition in a market which is growing rapidly.
- 4.105 The rapid growth of the market is due to consumers changing their preferences and increasingly purchasing online and purchasing M2M blinds. The CMA's approach of defining a narrow market for online M2M blinds retailing, while excluding a number of smaller competitors from its main market share calculations and largely ignoring 'out of market' constraints, fails to recognise the actual market dynamics and constraints on the Parties. It is also evident that in a growing market the Parties are primarily competing for new business from 'outside the market' rather than winning/losing business from each other.
- 4.106 Market shares also cannot inform an analysis of 'out-of-market' diversion, particularly diversion to retailers of ready-made blinds or other M2M sales channels. For a unilateral effects theory of harm, it is the aggregate constraint of all alternatives to the Parties' offering that constrains their ability to raise price or otherwise worsen their offer post-merger. The evidence from the BDRC Survey shows that over a third of Blinds2Go's customers (34%) would divert away from the online M2M blinds market alternatives (including to ready-made and in-store / in-home M2M blinds) if Blinds2Go was unavailable, while 25% of 247 customers would do the same. This means that if either Party decided to raise prices or worsen their offer, a material amount of sales would be lost to retailers selling products other than online M2M blinds. The BDRC Survey does not therefore demonstrate that these alternatives are a distant competitive constraint –

¹²⁵

the Parties compete with these alternatives because they have to convince consumers to switch from these alternatives to the narrowly defined online M2M blinds market.

4.107 The CMA has also considered whether the Parties are “close” competitors, concluding that¹²⁶:

- (i) Blinds2Go and 247 having a similar service proposition in terms of price, quality, and product range;
- (ii) Both Parties appear prominently in Google search;
- (iii) There is ‘high’ diversion from 247 to Blinds2Go, and ‘significant’ diversion from Blinds2Go to 247.
- (iv) Both Blinds2Go and 247 monitoring each other’s prices; and
- (v) Third parties view Blinds2Go and 247 as close competitors.

4.108 However, in the round, the evidence supports that Blinds2Go and 247 are not particularly close competitors. Instead, the evidence points to 247 being one of many competitors that have a similar service proposition.

4.109 In particular, the diversion from Blinds2Go to 247 is small (just 13%), which is consistent with 247 being a small undifferentiated rival to Blinds2Go. There is also no evidence that the Parties compete more closely on price, quality or range than numerous other blinds retailers. The CMA’s own analysis on price concludes that there is no strong evidence that Blinds2Go and 247’s prices follow each other more closely than other retailers (with no apparent visual correlation, and very low statistical correlation). As regards quality, at least four other retailers have excellent Trustpilot scores, and at least six online M2M retailers have a similar setup, look and functionality to the Parties. With respect to range the CMA’s analysis has identified 11 retailers with more than 600 SKUs, with nine of those having more than 1,000 SKUs.

4.110 In addition, Google prominence is only one aspect of competition and does not show that Blinds2Go and 247 are close competitors, but rather reflects the attractiveness of their consumer offerings (which can be replicated by rivals). Also, the CMA has focused on a very narrow and minor part of Blinds2Go’s monitoring activities with 247 **[CONFIDENTIAL]** monitored by Blinds2Go through both formal and informal channels. 247’s strategy is **[CONFIDENTIAL]**, so its strategy is clearly not indicative of who its closest competitors are.

4.111 The CMA has discounted the competitive constraint from major omni-channel retailers, such as Dunelm, John Lewis and Next, despite material diversion to all three retailers. The CMA

¹²⁶ Provisional Findings, paragraph 8.131.

dismisses the evidence as subject to upward bias, but around half of the diverting customers to Dunelm and John Lewis had considered the specific retailer's offering during their purchase journey. Therefore, the CMA cannot reasonably conclude that their offerings would not in practice be chosen, not least as they are trusted high quality retailers and they can offer consumers broader design inspiration and a much wider range of products than M2M blinds.

- 4.112 As regards 'out of market' constraints, the CMA equally dismisses the constraint from ready-made blinds, which the BDRC Survey shows is the preferred option for 12/13% of 247 and Blinds2Go customers respectively. The Parties note that 12-13% diversion is similar to the diversion from Blinds2Go to 247, which the CMA calls 'significant'. There were also many customers who considered purchasing ready-made blinds before ultimately deciding to purchase a M2M blind, as well as an analysis of tolerances suggesting that a significant proportion of M2M blinds sold by the Parties have a ready-made equivalent. There is therefore objective evidence of the constraint from ready-made blinds on M2M.
- 4.113 In summary, the evidence shows that 247 is a minor part of the aggregate competition that Blinds2Go faced prior to the 2019 Transaction, with this coming from other online M2M retailers, omni-channel retailers and out of market constraints (including in-store/in-home M2M blinds and ready-made blinds).
- 4.114 Finally, due to Hunter Douglas's partial ownership of Blinds2Go, the cost to Hunter Douglas of Blinds2Go's management's incentive scheme and the rapid growth of the M2M blinds sales, the 2019 Transaction does not give Hunter Douglas' incentives to increase either 247's prices or Blinds2Go's prices.
- 4.115 Overall, therefore, the evidence shows that the loss of any rivalry that 247 may have exerted on Blinds2Go prior to 2019 is minimal, particularly given the fact that Hunter Douglas already held a position of influence within 247 as a result of the 2013 Transaction. The CMA's analysis presents no serious consideration of the extent to which Blinds2Go is constrained by 247 prior to the 2019 Transaction and how such rivalry will be lost. Neither does the CMA demonstrate in any meaningful way how Hunter Douglas has the ability and incentive to raise prices, reduce quality or reduce output. In those circumstances, it is inconceivable that an SLC can be found solely on the basis of a static analysis of market shares on a very narrow market.

5. Entry and Expansion

- 5.1 Chapter 9 of the Provisional Findings sets out the CMA's assessment of countervailing factors, namely entry and expansion, that may mitigate any SLC associated with the 2019 Transaction. Contrary to the Parties' submissions, the CMA has provisionally found that entry or expansion would be unlikely to offset the SLC that it provisionally identified in Chapter 8.¹²⁷
- 5.2 The Parties fundamentally disagree with the CMA's conclusions which appear to deliberately disregard the evidence in order to support an SLC finding. This is particularly surprising given the findings of the CMA from which it fails to draw the proper conclusions, namely:
- (i) The CMA accepts that the 2013 Transaction did not create a RMS and the 2019 Transaction is one in which there is a change in the nature of control, not an acquisition of control. Accordingly, the CMA needs to assess whether any loss of rivalry between the Parties resulting from the change in the nature of control would be offset by entry/expansion, yet it proceeds as if the 2019 Transaction amounted to an acquisition of control;
 - (ii) The CMA finds that: "*the [relevant] question for the CMA's assessment [with regards to barriers to entry and expansion] must be whether the rivalry from 247 [and not Blinds2Go] could be replicated...*".¹²⁸ However, the CMA's assessment of barriers to entry and expansion repeatedly references replicating Blinds2Go rather than solely focussing on 247 – a company that has lost **[CONFIDENTIAL]**.
- 5.3 It follows that the relevant question for the CMA's assessment is whether entry or expansion in aggregate could replicate the lost rivalry resulting from an incremental change in Hunter Douglas' influence over 247. This is important. In short, to replicate any lost rivalry from 247, aggregate entry or expansion does not even have to be of the limited scale as the current 247 business. The CMA does not appear to take account of this point and thus sets a threshold for required entry/expansion that is too high.
- 5.4 The CMA accepts that its analysis needs to be based on both evidence of barriers to entry and expansion and the absence of evidence of actual and/or planned entry or expansion. The reality is that the CMA has found no actual evidence of any material barriers to expansion for omni-channel retailers or major e-commerce platforms, and establishing that there are some costs to expansion is insufficient to demonstrate that these outweigh the strategic imperative of these rivals to grow their businesses.

¹²⁷ Provisional Findings, paragraph 9.3.

¹²⁸ Provisional Findings, Appendix F, paragraph 36.

- 5.5 The only significant barrier for online retailers (not for omni-channel retailers or marketplaces) is vaguely defined as a “knowledge barrier”, which the CMA seeks to substantiate by evidence of Blinds2Go’s superior performance – this evidence is neither relevant (as all that is required is to replicate the constraint from 247 that is lost due to the move to sole control, not Blinds2Go which is many times larger than 247) nor determinative (for the reasons as set out below).
- 5.6 The CMA acknowledges that there are no economies of scale in pence per click (PPC) advertising.¹²⁹ Economies of scale are only identified with regards to search engine optimisation (SEO)¹³⁰, though these are immaterial given the very modest scale of expenditure on SEO **[CONFIDENTIAL]** and as there is clear evidence that these services can be procured on a revenue share basis (see further below).
- 5.7 The lack of any material barriers to entry or expansion is corroborated by evidence of recent entry and expansion in the market, **[CONFIDENTIAL]**. There has been substantial entry and expansion in recent years: Interior Goods Direct’s market share has grown materially to become the number two competitor in online M2M blinds displacing 247; Dunelm entered the online M2M market in March 2018; Next entered with a substantially improved offering in Autumn 2019; MakeMyBlinds entered in the market in 2015 and has clear expansion plans (for which it has investor support, including for TV advertising); and Amazon recently added customisation features in 2020.
- 5.8 The finding of a lack of material barriers to entry is further supported by the evidence about the Parties’ **[CONFIDENTIAL]** – evidence that the CMA has ignored in the Working Papers as well as in the Provisional Findings.
- 5.9 The Parties believe that entry and expansion in the market will continue in the coming years as the online sales channel is expected to grow significantly. Retailers such as MakeMyBlinds are convinced that they can take advantage of these opportunities, and plan to invest on this basis. The claims by some omni-channel and online M2M retailers that they do not have any expansion plans over the next two years are simply implausible and should be dismissed.
- 5.10 Indeed, it is perverse for the CMA to suggest that the disruption caused by COVID-19 makes it unlikely that omni-channel rivals will not grow their online businesses materially in the next two years – particularly given their recent entry and expansion, their public statements that emphasise their growing focus on online sales, and the strategic imperative on them to do so. It is even more puzzling that the CMA has not given weight to such strategic imperatives given

¹²⁹ Provisional Findings, Appendix F, paragraph 21.

¹³⁰ Provisional Findings, Appendix F, paragraph 51.

that it considered that Amazon would re-enter the UK take away food delivery market for these reasons in its revised provisional findings of June 2020 in *Amazon-Deliveroo*.

- 5.11 In light of this and the limited amount of rivalry that can be lost as a result of the 2019 Transaction, even if the CMA does not agree with the position as set out in Chapter 4 that no SLC can arise on a proper consideration of the evidence, it should conclude that the lack of barriers to entry and expansion are sufficient to outweigh any competition concerns the CMA may have identified.

Barriers to entry and expansion

- 5.12 The CMA starts the discussion of barriers to entry and expansion by noting that the initial entrants in the online M2M blinds retail market have remained the largest online retailers since at least 2017, which – according to the CMA – indicates that there are barriers to entry and expansion.¹³¹
- 5.13 The CMA's assessment of market dynamics and the conclusions it draws are not, however, tenable. First, the fact that no competitor has displaced Blinds2Go in the last three years is irrelevant to the CMA's SLC assessment (although it is odd that the CMA does not give any weight to fact that 247 was displaced as the market leader): as emphasised above, the relevant SLC question is whether the entry and expansion of rivals would offset the loss of rivalry from 247, which is a small and declining rival. The CMA's argument indicates that it is applying the wrong standard to assess whether entry/expansion is sufficient to offset any SLC.
- 5.14 Second, the CMA's summary of the history of the market is factually incorrect. None of 247, Blinds2Go or Interior Goods Direct were the first to sell M2M blinds online in the UK. Web-Blinds started to sell online in the summer of 2000, before any of the three had entered the market.¹³² Blinds-UK.net¹³³, Blinds4UK¹³⁴ and Wilson Blinds¹³⁵ all sold online before 247 launched its website.¹³⁶ Despite this, 247 overtook all of these websites to become the market leader before eventually losing this position to Blinds2Go.

¹³¹ Provisional Findings, paragraph 9.8.

¹³² See https://web.archive.org/web/2019*/https://www.web-blinds.com/.

¹³³ See https://web.archive.org/web/2019*/http://blindsuk.net/.

¹³⁴ See <https://www.blinds4uk.co.uk/about-us> and https://web.archive.org/web/*/www.blinds4uk.co.uk.

¹³⁵ See https://web.archive.org/web/2019*/http://wilsonsb blinds.co.uk/.

¹³⁶ 247 started to sell blinds online in late 2005. See https://web.archive.org/web/*/https://www.247blinds.co.uk/ and site visit presentation.

- 5.15 Further, the observations that the composition of the top three has been unchanged since 2017 – a period of just over three years – does not demonstrate that there are barriers to entry or expansion. To the contrary, the dynamics of the online M2M blinds market tell a very different story. As emphasised in response to the Working Papers, the ranking of the top three has changed significantly over time with 247 being relegated from first to second place due to the rapid expansion by Blinds2Go a number of years ago and then from second to third place due to Interior Goods Direct's recent expansion and in an environment where there was other material entry/expansion by well-resourced omni-channel rivals and Amazon.¹³⁷ In addition, there has been significant recent entry including by MakeMyBlinds – a retailer with aggressive expansion plans. This is all in the context of a rapidly growing market which facilitates entry and expansion –a market in **[CONFIDENTIAL]**.¹³⁸
- 5.16 If anything, these dynamics demonstrate the barriers to entry and expansion in the market for online M2M blinds are low and that aggregate expansion/entry by rivals can readily replicate the declining competition from 247.

Generating traffic

- 5.17 The CMA provisionally finds that the ability to generate traffic may constitute a barrier to entry for online M2M retailers but acknowledges that the same does not hold for omni-channel retailers (and presumably for marketplaces, though this is not explicitly mentioned).¹³⁹ The only exception appears to be Dunelm, which told the CMA that it cannot match the online marketing spend of the Parties.¹⁴⁰ The Parties find this claim surprising for a number of reasons.
- 5.18 First, the CMA is again directing itself to the wrong question: Dunelm does not need to match Blinds2Go, it (in aggregate with all other competitive constraints) merely needs to be able to expand sufficiently to replicate the loss of rivalry from 247 associated with the 2019 Transaction.
- 5.19 Second, the CMA overstates the importance of 247's PPC expenditure as a barrier to entry. What is being discussed amounts to only **[CONFIDENTIAL]** of 247's modest revenues. Moreover, as explained before¹⁴¹, PPC advertising is cash generative and thus pays for itself. It is not credible that a large omni-channel retailer such as Dunelm, with turnover of over £1

¹³⁷ Response to BTEE Working Paper, paragraph 4.2.

¹³⁸ **[CONFIDENTIAL]**

¹³⁹ Provisional Findings, paragraphs 9.11 – 9.12.

¹⁴⁰ Provisional Findings, footnote 484.

¹⁴¹ Main Submission, paragraph 7.16(iv); Response to BTEE Working Paper, paragraph 6.7(c).

billion could not afford to spend a couple of million pounds on PPC advertising if it decided to do so.

- 5.20 Third, this statement ignores that the fact that Google Trends confirms that many consumers searching for “blinds” visit Dunelm’s website in the same search session, whereas 247 is not amongst the top 20 websites visited. This statement thus completely ignores the fact that Dunelm benefits from the branding advantages it enjoys as an omni-channel retailer.
- 5.21 Fourth, customers attracted to an omni-channel retailers’ website, such as the Dunelm website, are likely to purchase a wider range of products, which increases the benefits of such marketing. This is ignored by the CMA.
- 5.22 With regards to the ability of online M2M retailers to generate cash, the CMA states that it “*appears*” that there is an incumbency advantage with regards to paid search, that there are some economies of scale with respect to organic search, and that the limited number of available positions on Google’s search results page constitutes a natural barrier to entry.¹⁴² The Parties strongly disagree with these findings.

(i) Paid search

- 5.23 The CMA now acknowledges – as explained repeatedly in the Parties’ Main Submissions and responses to the Working Papers¹⁴³ – that there are no economies of scale in PPC advertising. This is significant given the fact that PPC advertising is by far the most important channel of traffic for the Parties and some other online retailers.
- 5.24 Nevertheless, the CMA still finds that “[t]here appears to be some incumbency advantage with respect to paid search, with Blinds2Go getting a higher return from its marketing spend than other retailers.”¹⁴⁴ (emphasis added). The barrier to entry is thus described as “*some*” difficulty in converting traffic into sales as opposed to PPC marketing as such.
- 5.25 The CMA then goes on to describe various factors that may explain the lower conversion rates (inferior website design or worse product offering in terms of price, quality and range) and concludes that these factors speak for the existence of a “knowledge barrier” – entrants may not be able to compete because they don’t know the market as well as incumbents.¹⁴⁵
- [CONFIDENTIAL].**

¹⁴² Provisional Findings, paragraph 9.12.

¹⁴³ Provisional Findings, Appendix F, paragraph 21.

¹⁴⁴ Provisional Findings, paragraph 9.12(a).

¹⁴⁵ Provisional Findings, Appendix F, paragraphs 22-23.

- 5.26 The Parties disagree with this characterisation for a number of reasons.
- 5.27 First, it is 247’s “knowledge advantage” that would need to be overcome as it is 247’s rivalry that must be replicated by entry or expansion (to be precise, only the rivalry that is lost from the change in the nature of control needs to be replicated). Again, the CMA is not directing itself to the relevant question. 247 does not do “everything a bit better” than its rivals as demonstrated by its declining market share. The hurdle that entrants would need to overcome is thus lower than suggested by the CMA.
- 5.28 The CMA’s evidence with regards to 247’s PPC performance appears to be vague. While the CMA refuses to provide access to the precise figures, it does state that 247 performs worse on a Cost Per Acquisition (CPA) basis than one of the two competitors used for the comparison but generates a higher return on advertising spend (ROI) than both. Due to the redactions the Parties are unable to assess whether this difference is in any way material. In any case, these factors have nothing to do with PPC advertising or the ability to generate traffic. The CMA’s conclusions, even if they could be sustained, thus do not demonstrate that there are barriers to entry or expansion in terms of generating traffic.
- 5.29 Third, the CMA’s description of conversion rates ignores the fact that higher conversion rates may be driven by factors that have nothing to do with any “knowledge barrier”. Conversion rates fall in response to a deterioration in PQRS, which could be if prices increase, quality drops, product range deteriorates, or customer service levels decline. Any deterioration of (or failure to improve) the Parties’ offering (as the CMA believes is likely to happen as discussed above) would lead to a decline in their conversion rates, which would open up an opportunity for entrants to outperform them in terms of conversions. There is nothing preventing entrants from offering an attractive range of products at competitive prices online without extensive knowledge of the market, indeed, 247’s website is based on a third-party platform.
- 5.30 Fourth, the CMA fails to explain why any hypothetical knowledge advantage could not be addressed by poaching existing staff from 247, Interior Goods Direct or Blinds2Go, with many entrepreneurs starting new businesses when they leave their existing employer.
- 5.31 The other incumbency advantage that may affect conversion rates identified by the CMA is brand recognition. The CMA notes that a “limited” number of Trustpilot reviews could deter potential customers and that higher conversion rates for branded keywords are taken as evidence of the importance of brand awareness.¹⁴⁶ The BDRC survey, which shows that many

¹⁴⁶ Provisional Findings, Appendix F, paragraph 24.

customers who bought from the Parties were already aware of their respective brands, is taken as further evidence for the resulting incumbency advantage.¹⁴⁷

- 5.32 Analogous points as already discussed with regards to the “knowledge barrier” also apply here. First, brand recognition may be a factor that drives conversion to some extent, but it does not show that there are incumbency advantages with regards to PPC advertising. Certainly, brand recognition will be an advantage (not a disadvantage) to established omni-channel retailers and online marketplaces; indeed, brand recognition is already discussed by the CMA as a separate barrier to entry and expansion in another section.¹⁴⁸
- 5.33 Second, the CMA’s description of the importance of brand recognition is exaggerated in this context. There are already eight websites with more than 1,000 Trustpilot reviews and the Parties are not aware of any evidence (and the CMA advances no evidence to the contrary) that suggests that an increase from 1,000 to 10,000 Trustpilot reviews makes any material difference. The brand value of the Parties is no more significant than their online rivals and significantly less than omni-channel retailers such as Dunelm, John Lewis and Next. The Parties’ brands therefore offer no particular competitive advantage, particularly where consumers are searching for generic terms such as “blinds” which results in a wide range of results from online and omni-channel retailers.
- 5.34 Third, the higher conversion rates for branded keywords are likely to be explained by the fact that customers search for the brand when they want to return to the website to make a purchase after first becoming aware of it after an initial generic search.¹⁴⁹ Many consumers who decided to make a purchase still search for the brand and click on the paid ad because it is more convenient than typing in the URL or scrolling down to the organic section.
- 5.35 Finally, a survey of the Parties’ own customers which shows that customers who bought from the Parties were aware of their brand before the purchase does not demonstrate that brand is important. **[CONFIDENTIAL]**.¹⁵⁰ Further, given the rapid growth of the online M2M blinds market and the fact that customers buy blinds relatively infrequently, the existence of an established customer base would only create a relatively minor advantage.
- 5.36 Finally, the CMA identified other barriers to entry and expansion that are unrelated to conversion rates. These include expertise in picking the right keywords, lower CPCs for

¹⁴⁷ Provisional Findings, Appendix F, paragraph 24.

¹⁴⁸ Provisional Findings, paragraph 9.25-9.31.

¹⁴⁹ This was already explained in the Response to the Google Analysis Working Paper, paragraph 3.13.

¹⁵⁰ **[CONFIDENTIAL]**.

branded keywords, and difficulties in increasing quality scores.¹⁵¹ With regards to picking keywords, the CMA re-emphasises that the outsourcing of digital advertising strategy may not be as effective as an in-house team and claims that the Parties did not submit any evidence to the contrary.

- 5.37 The Parties have already responded to these issues in response to the Barriers to Entry and Expansion Working Paper. In summary, the Parties are surprised about the CMA's claim that they have not provided any evidence with regards to the effectiveness of digital marketing agencies. **[CONFIDENTIAL]**.¹⁵² Further, **[CONFIDENTIAL]**.¹⁵³ This evidence is particularly important given the agreed fact that entry or expansion would only need to replicate 247's rivalry.

(ii) Limited number of ad positions

- 5.38 The third and last potential barrier to entry or expansion highlighted in the CMA's Provisional Findings relates to the limited number of available positions on Google's general search results page, though Appendix F only talks about the limited number of Google Ads positions.¹⁵⁴
- 5.39 The CMA, based on submissions from third parties, notes that Hunter Douglas owns several websites that can occupy large parts of the Google search results page.¹⁵⁵ While the CMA acknowledges the Parties' submissions made in response to the Working Papers, some concerns remain. In particular, the CMA notes that having only four top Google Ads spots renders expansion difficult independently of the merger. Further, it suggests that the merger may give Hunter Douglas further scope to crowd out competitors. This is because "*by crowding out other competitors, Hunter Douglas would obtain more traffic for a given CPC than if it shared the ad positions with these competitors.*"¹⁵⁶

¹⁵¹ Provisional Findings, Appendix F, paragraphs 26-31.

¹⁵² **[CONFIDENTIAL]**.

¹⁵³ **[CONFIDENTIAL]**.

¹⁵⁴ Provisional Findings, paragraph 9.12(c). The issue is described in more detail in paragraph 37 to 41 of Appendix F of the Provisional Findings.

¹⁵⁵ Provisional Findings, Appendix F, paragraph 38.

¹⁵⁶ Provisional Findings, Appendix F, paragraphs 40-41.

- 5.40 The Parties do not believe that a limit of four top positions generates a natural barrier to entry or expansion. First, as mentioned before, Google Ads is only one of many potential routes to market and websites do not have to appear within the top four positions to generate traffic.¹⁵⁷
- 5.41 Second, the first four Google Ads spots are not ‘reserved’ by or for established competitors. Google runs an auction every time a keyword is entered by a consumer and competitors are free to adjust their bids at any point in time. Smaller competitors could pay for a spot within the top four positions if they wanted to do so. If they are too uncertain about their returns, they can test the waters by bidding only for specific keywords, for customers in specific geographic locations, during certain times of the day, or simply by limiting their campaign budgets.¹⁵⁸ A temporary top four position can be achieved with an advertising budget of less than £100. The absence of any economies of scale in PPC advertising, as acknowledged by the CMA¹⁵⁹, means that holding this position would be no more expensive for a smaller competitor than it would be for Blinds2Go or 247.
- 5.42 As regards the second point raised by the CMA (i.e. that crowding out would lead to more traffic for a given CPC), the Parties do not understand the point being made. The only way to crowd out a competitor from the top four positions is to increase bids above its level. If Hunter Douglas were to instruct its retailers to crowd out competitors, it would need to instruct them to increase their bids. Consequently, CPCs for all Hunter Douglas entities would increase.
- 5.43 Further, as explained before, Hunter Douglas does not have the incentive to crowd out competitors. If Hunter Douglas companies were to increase their bids above the profitable level, they would become loss making as the cost of attracting a customer would exceed the return. In the absence of any long-term recoupment (which is unlikely given the absence of significant fixed or sunk costs), Hunter Douglas would not have the incentive to do what the CMA appears to suggest.¹⁶⁰ In short, the CMA has failed to explain why this would be a profitable strategy, why it has not been observed pre-merger if it is, and why the 2019 Transaction changes matters.
- 5.44 Overall, the Parties are concerned that the CMA did not properly address their previous submissions with regards to the issue of the number of ad positions. The points raised by the CMA show that it either: (a) still fails to understand how PPC advertising works – despite the

¹⁵⁷ Response to Google Analysis Working Paper, paragraph 3.11.

¹⁵⁸ Main Submission, paragraph 7.16(iii).

¹⁵⁹ See paragraph 5.23 above.

¹⁶⁰ Response to Barriers to Entry and Expansion Working Paper, paragraph 6.4.

Parties' repeated submissions on the topic; or (b) that it unduly relies on unsubstantiated third-party submissions without proper scrutiny of the logic behind their arguments.

(iii) Organic search

- 5.45 With respect to organic search the CMA finds that “*significant investment is required, at least for smaller retailers, to attract significant traffic through organic search, that the return from this investment is not immediate and that there appear to be at least some economies of scale with respect to organic search.*”¹⁶¹ This is explained in further detail in Appendix F, which discusses the importance and cost of SEO and presents a case study that is redacted to such an extent that the Parties cannot even deduce its implications.¹⁶²
- 5.46 The CMA's conclusion that there are economies of scale in PPC advertising is based on the finding that online M2M blinds retailers spend in the region of between £10,000 to £15,000 per month on SEO (i.e. £120,000 to £180,000 per year).¹⁶³ The CMA judges this amount to be material as it is likely to constitute a substantial proportion of gross profits of smaller online retailers. Using [CONFIDENTIAL].¹⁶⁴
- 5.47 [CONFIDENTIAL] the Parties cannot comment on the CMA's findings with respect to SEO costs. However, the Parties fundamentally disagree with the characterisation of the amounts as “material”:
- (i) First, even at face value, the CMA's calculations do not show that even small M2M blinds retailers would be unprofitable due to the costs of SEO. In fact, they show that they would still be profitable, since they would still generate material gross profits, and these are self-evidently low fixed cost businesses. As the CMA will remember from 247's virtual site visit, 247 has no manufacturing or distribution facilities, and the video tour of its small premises (unsurprisingly) took only a few minutes.
 - (ii) Second, the CMA cannot reasonably treat expenditure of £0.1-£0.2 million per annum as a material barrier to entry and expansion to any omni-channel retailer or marketplace, which will be adept at ensuring that their websites place well in organic search;

¹⁶¹ Provisional Findings, paragraph 9.12(b).

¹⁶² Provisional Findings, Appendix F, paragraphs 50-58.

¹⁶³ Provisional Findings, Appendix F, paragraph 50.

¹⁶⁴ [CONFIDENTIAL].

- (iii) Third, the CMA presumes that agencies providing SEO services cannot tailor their services on a cost-effective basis to smaller retailers (see further below for detail on revenue share agreements) or smaller retailers cannot achieve this in-house with one member of staff. MakeMyBlinds, for example, is growing its business successfully from scratch.
- (iv) Fourth, the profit margin used by the CMA is the variable profit margin (after deducting items such as PPC advertising expenditure, customer service, etc.). [CONFIDENTIAL]. For a retailer with 247's gross profit margin and revenues of £2 million, 247's SEO budget would account for [CONFIDENTIAL]. To put the point differently, expenditure on SEO is self-evidently a small element of total costs even for a small retailer;
- (v) Fifth, revenues of £2 million are not an appropriate starting point for an assessment of materiality. Retailers could easily exceed such a level of revenues within a very short timeframe. As set out in the Main Submission, 247 was able to generate sales equivalent to [CONFIDENTIAL].¹⁶⁵ In the Netherlands, it achieved sales equivalent to [CONFIDENTIAL].¹⁶⁶ As stated before, the CMA has failed to consider this evidence and has given no good reasons for doing so.¹⁶⁷

5.48 The CMA further emphasises that it takes time for SEO to generate returns. The evidence put forward by the Parties in response to the Working Papers is judged to be too vague with regards to timing and the return that retailers can expect.¹⁶⁸ The CMA thus concludes that "*investment in SEO is unlikely to generate an immediate substantial return.*"¹⁶⁹

5.49 The Parties note that SEO does not have to generate an "*immediate substantial return*" to be a worthwhile investment. As long as SEO leads to good rankings for some keywords within a period of 6-12 months, an investment of £10,000 - £15,000 per month may well pay off very quickly. In this regard the CMA has ignored the evidence provided by [CONFIDENTIAL].¹⁷⁰

¹⁶⁵ Main Submission, paragraph 7.50.

¹⁶⁶ Main Submission, paragraph 7.54.

¹⁶⁷ Response to Barriers to Entry and Expansion Working Paper, paragraphs 4.5 & 4.6.

¹⁶⁸ Provisional Findings, Appendix F, paragraph 53.

¹⁶⁹ Provisional Findings, Appendix F, paragraph 53.

¹⁷⁰ [CONFIDENTIAL].

- 5.50 Finally, the CMA notes that the Parties provided no evidence to **[CONFIDENTIAL]**.¹⁷¹
- 5.51 247 has gathered further evidence from its digital advertising agency on this issue. **[CONFIDENTIAL]**.¹⁷²
- 5.52 He also notes that **[CONFIDENTIAL]**.¹⁷³
- 5.53 Contrary to the CMA's conclusions, there is therefore actual, direct evidence of smaller online M2M blinds retailers using cost-effective SEO solutions to boost website traffic.

(iv) Other issues

- 5.54 The CMA identified financial resources as a potential constraint that affects the ability of smaller independent retailers to compete on PPC advertising.¹⁷⁴ The CMA acknowledges that PPC requires no working capital and that risks can be managed. Nevertheless, it comes to the *“provisional view that at least some risk remains, in particular for retailers that have limited clarity about how successful they are likely to be in terms of conversions when competing against established rivals such as the Parties.”*¹⁷⁵
- 5.55 The Parties agree that there are some risks in relation to PPC advertising, as there are risks with any forms of advertising. However, the risks associated with PPC advertising are extremely limited and can be managed to an extent that is uncommon to most (if not all) other types of advertising. Google Analytics allows retailers to assess the effectiveness of their advertising campaigns within days if not hours of being launched and campaign settings can be changed at any point in time (as well as the ability to set budgets to limit spending). The Parties are unaware of any other type of advertising that can be managed to such an extent.
- 5.56 Towards the end of Appendix F, the CMA acknowledged the Parties' submissions with regards to the importance of other channels of traffic such as Google Shopping and social media, but then dismisses them due to their limited importance.¹⁷⁶ The importance of social media is largely dismissed based on redacted submissions made by MakeMyBlinds.¹⁷⁷ The Parties note

¹⁷¹ **[CONFIDENTIAL]**.

¹⁷² **[CONFIDENTIAL]**.

¹⁷³ **[CONFIDENTIAL]**.

¹⁷⁴ Provisional Findings, Appendix F, paragraphs 42-44.

¹⁷⁵ Provisional Findings, Appendix F, paragraph 44.

¹⁷⁶ Provisional Findings, Appendix F, paragraphs 62-66.

¹⁷⁷ Provisional Findings, Appendix F, paragraphs 63 and 66.

that a traffic share of 5% (the higher end of the bracket provided) is not an immaterial amount. With regards to Google Shopping, the CMA notes that the change from a paid to a free model does not necessarily change the barriers to entry as retailers are still likely to incur SEO costs. The CMA ignores that the Parties would also have to incur these costs once Google switches to the new model.

5.57 Finally, the CMA refers to third party comments, some of which were already summarised in the Working Papers.¹⁷⁸ The Parties' submission in response to the Working Papers and additional points made above already address the substance of these claims. The Parties would like to reemphasise that many of the respondents may have ulterior motives. Un evidenced claims by Decora that it is impossible to achieve top positions on Google or that new entrants would need to incur losses for five to seven years adding up to £3.7m should thus be taken with a substantial pinch (or tablespoon) of salt. This is particularly the case in the face of the evidence of the Parties' entry in the UK and the examples of their recent entry in Ireland and the Netherlands. **[CONFIDENTIAL]**.¹⁷⁹ While some expertise may be required to develop the website and ad campaigns, there is nothing to prevent companies such as Decora from acquiring this at limited cost,

5.58 The Parties are particularly concerned about the CMA's conclusion with regards to third party submissions in relation to the favouring of larger and/or established players by platforms. The CMA acknowledges that "[n]o documentary evidence was submitted to corroborate the [...] comments [such as that Google has an incentive to favour players with a history of high expenditure]".¹⁸⁰ Nevertheless, it appears to take these comments into account because they are consistent with its own analysis.¹⁸¹ As already stressed in response to the Barriers to Entry and Expansion Working Paper, the Parties would urge the CMA to reconsider relying on such fabricated claims. Instead, the CMA should rely on public domain statements about Google's algorithms and look at its own evidence – evidence that shows that CPCs do not vary with the size of the retailer.¹⁸²

(v) Conclusions as regards blinds retailers generating traffic

5.59 To sum up, the evidence is that any barriers to entry and expansion associated with generating traffic are at most limited, particularly as regards omni-channel retailers and marketplaces. It

¹⁷⁸ Provisional Findings, Appendix F, paragraphs 67-72.

¹⁷⁹ **[CONFIDENTIAL]**.

¹⁸⁰ Provisional Findings, Appendix F, paragraphs 73.

¹⁸¹ Provisional Findings, Appendix F, paragraphs 73.

¹⁸² Response to Barriers to Entry and Expansion Working Paper, paragraph 6.20.

is also important to consider any costs in a proper context, namely relative to the strategic imperative for these rivals to grow their online sales.

- 5.60 The only significant economy of scale identified is in relation to SEO, but such costs are limited, and even small retailers would still be profitable on the basis of the CMA's calculations.
- 5.61 PPC advertising levels essentially come down to retailers' budgets. This is not a barrier to entry – it is only a question of financing and PPC advertising generates traffic quickly.
- 5.62 All of the above only applies to pure online players in any case, while omni-channel retailers and marketplaces can rely on other sources of traffic (as acknowledged by CMA).¹⁸³

Website costs

- 5.63 The CMA's second potential barrier to entry relates to the cost of establishing and maintaining a website, which have been identified as the primary capital cost incurred by entrants.¹⁸⁴ The evidence gathered by the CMA suggest that initial set-up costs would amount to at least £100k, that entrants would incur additional costs for CGI imagery and that continuous investment in the website would be required.¹⁸⁵ The potential entry route using an open-source software is downplayed¹⁸⁶, as is the use of online marketplaces.¹⁸⁷
- 5.64 The Parties submit that the CMA's description of these factors unduly overstates the importance of website costs as a barrier to entry and the incumbency advantage that the Parties may enjoy.
- (i) First, as acknowledged by the CMA, there are already numerous online M2M blinds retailers in the market who do not have to incur website setup costs – they already have functional websites with CGI imagery.¹⁸⁸ Therefore, most of the discussion in this section is only relevant to a truly new entrant. Such new entry from scratch is not required to replicate 247's rivalry, merely the aggregate expansion of a large number of existing online M2M blinds retailers (including pure online retailers, omni-channel retailers and marketplaces).

¹⁸³ Provisional Findings, paragraph 9.13.

¹⁸⁴ Provisional Findings, paragraph 9.14.

¹⁸⁵ Provisional Findings, paragraph 9.18.

¹⁸⁶ Provisional Findings, paragraph 9.19.

¹⁸⁷ Provisional Findings, paragraphs 9.20 – 9.21.

¹⁸⁸ Provisional Findings, paragraph 9.22.

- (ii) Second, even taking at face value the £100k estimate put forward by IGD for the development of a fit-for-purpose website by a new entrant, this is not material.¹⁸⁹ The fact that there is such a long tail of competitors who still operate shows that these initial costs or further development costs are not prohibitive.¹⁹⁰
- (iii) Third, ongoing website improvement costs are incurred by all competitors, not just new entrants or smaller players. **[CONFIDENTIAL]**.¹⁹¹ The fact that 247 invested **[CONFIDENTIAL]** in CGI imagery back in 2016 is therefore irrelevant for the assessment of any incumbency advantage.
- (iv) Fourth, the statement that retailers who use open-source platforms still require specialist knowledge is taken out of context. **[CONFIDENTIAL]**.
- (v) Fifth, the CMA dismisses the relevance of third-party platforms as a potential future route to market based on past experiences of third parties. The fact that third parties noted that customisation on platforms was cumbersome or that Amazon's recently introduced customisation function is not (as yet) frequently used¹⁹² does not show that these platforms will be unsuitable in the future. To the contrary, the fact that the customisation function was introduced shows that Amazon wants to expand into this segment. The fact that **[CONFIDENTIAL]**. As regards the other claims made by third parties, the Parties have already provided extensive comments in response to the Working Papers which the CMA has failed to adequately address in the Provisional Findings.¹⁹³

5.65 Overall, the Parties note that website setup costs cannot be a significant barrier to entry or expansion, particularly for retailers who are already in the market (as acknowledged by the CMA).

¹⁸⁹ Provisional Findings, paragraph 9.18(a).

¹⁹⁰ This is further supported by the AMA Research Domestic Window Coverings Market Report 2020-2024, which notes: "*The number of smaller online suppliers is fluid, given the relative ease of setting up a transactional website for these products. Competition via the internet is expected to intensify*". **Annex 0161**, page 93.

¹⁹¹ **[CONFIDENTIAL]**

¹⁹² Provisional Findings, paragraph 9.21.

¹⁹³ Response to Barriers to Entry and Expansion Working Paper, paragraphs 5.4 - 5.6.

Existing customer base and brand awareness

- 5.66 The CMA finds some evidence that shows that online M2M blinds retailers benefit from an existing customer base and brand awareness, which may create a competitive advantage vis-à-vis new entrants. It finds that at least a proportion of customers exhibit loyalty towards the retailer from whom they previously made a purchase.¹⁹⁴ Word-of-mouth recommendations and an ability to engage in e-mail marketing campaigns are also mentioned as a competitive advantage.¹⁹⁵ While the CMA agrees that this “*may not appear to be a strong barrier, it does indicate that a new [online M2M blinds retailer] entrant may initially struggle to compete against existing established suppliers who benefit from these factors.*”¹⁹⁶
- 5.67 With regards to marketplaces and multi-channel retailers, the CMA acknowledges that the Parties may be at a disadvantage when it comes to brand awareness and repeat customers. However, the CMA then notes that the brand awareness was not built on the back of M2M blinds sales and that there is no evidence that multi-channel retailers are leveraging their brand recognition to increase sales in the M2M market.¹⁹⁷
- 5.68 The Parties have already commented on the importance of brand recognition and repeat customers.¹⁹⁸ The CMA appears to have taken these submissions on board (at least to some extent) and now considers that these factors do not constitute a strong barrier for potential new entrants in the M2M market. The Parties would like to reemphasise the limited importance of these factors.
- 5.69 In this context the online sales channel for M2M blinds is and will continue to expand at substantial pace. The proportion of window covering sales that were made online was estimated to be only 17.1% in 2019.¹⁹⁹ The Parties expect that this will increase rapidly in the coming years. Further, brand awareness for 247 in the general population is almost non-existent, as demonstrated by the Mediacom survey. Retailers therefore cannot rely on their existing customer base. Competition for new customers who may never have bought M2M

¹⁹⁴ Provisional Findings, paragraph 9.27.

¹⁹⁵ Provisional Findings, paragraph 9.28.

¹⁹⁶ Provisional Findings, paragraph 9.31.

¹⁹⁷ Provisional Findings, paragraph 9.30.

¹⁹⁸ Response to Barriers to Entry and Expansion Working Paper, paragraphs 3.11 – 3.17.

¹⁹⁹ Page 17, Global Data Window Dressings 2018, Parties’ response to CMA Questionnaire, 15 November 2019, Annex A22.2

blinds online is the more important factor driving PQRS decisions in this market.
[CONFIDENTIAL].²⁰⁰

- 5.70 With regards to brand awareness of omni-channel retailers, the Parties do not follow the CMA's reasoning. It does not matter whether brand awareness was built based on the back of M2M blinds sales. What matters is that consumers visit these websites when they search for blinds and that they trust their brands, which could lead to higher click-through and conversion rates. As demonstrated by the Google Trends analysis, consumers who search for blinds often also search for the names of omni-channel retailers such as Dunelm and Ikea.²⁰¹
- 5.71 Further, omni-channel retailers are well known for their M2M offering as demonstrated by the Mediacom report. The evidence explicitly asked about brand awareness in relation to M2M window furnishing.²⁰² There is thus no need for omnichannel retailers to leverage their brand into the M2M segment – consumers already know that they operate in this area.
- 5.72 Finally, with regards to marketplaces, the Parties would like to reemphasise their previous submissions. Almost 90% of UK shoppers use Amazon and 70% of these use the site as their first point of call.²⁰³ Amazon does not have to leverage its market position – consumers already come to its website by default. However, to compete effectively it did have to improve its customer experience for M2M purchases to become more attractive for consumers and retailers – a process that it has started with the introduction of the M2M 'customise now' functionality and will undoubtedly continue.

Supplier relationships

- 5.73 The CMA provisionally finds "*the evidence [it] ha[s] received so far does not suggest that this is a significant barrier to entry and expansion.*"²⁰⁴
- 5.74 However, for the sake of completeness it may be helpful to comment on some submissions from certain third parties. One omni-channel retailer noted that there are few suppliers apart from Hunter Douglas.²⁰⁵ Another third party (which appears to be Interior Goods Direct based

²⁰⁰ See paragraph 5.13 above.

²⁰¹ Main Submission, Table 6.1.

²⁰² See Main Submission, Figure 7.10.

²⁰³ Main Submission, paragraph 8.28(v); Response to Barriers to Entry and Expansion Working Paper, paragraph 5.4.

²⁰⁴ Provisional Findings, paragraph 9.34.

²⁰⁵ Provisional Findings, paragraph 9.33.

on footnote 518 and 519) submitted that “*some suppliers will not supply goods to new businesses due to the relatively high failure rate of these businesses and have encountered some difficulties in finding new suppliers due to suppliers not wanting to disrupt their existing relationship with Hunter Douglas*”.²⁰⁶

5.75 As set out in response to the Barriers to Entry and Expansion Working Paper, these claims are unsubstantiated and not credible.²⁰⁷ It is particularly surprising that they come from a vertically integrated retailer (Interior Goods Direct) who overtook 247 as the second largest online M2M blinds retailer. However, a number of further points should be noted.

5.76 First, Hunter Douglas is clearly not the only supplier of M2M blinds in the UK. As noted before, numerous suppliers who deal with the Parties also supply other retailers in the UK (e.g. Harris, Innov8, Styleline and Arena).²⁰⁸ Some suppliers (e.g. Decora) have a sufficiently large range that would allow a retailer to start selling M2M blinds online with a single supplier relationship.

5.77 **[CONFIDENTIAL].**

5.78 There are thus no major barriers to replicating 247’s business model. As noted above, the task to replicate rivalry would only need to be accomplished partially as the 2019 Transaction only leads to a change from material influence to controlling interest).

Conclusion

5.79 The CMA concludes that there is evidence for barriers to entry and expansion with regards to (a) generating traffic and to a lesser extent with regards to (b) website costs and (c) brand awareness / customer loyalty.²⁰⁹ While the CMA agrees that individual barriers can be overcome, it concludes that the “*cumulative effect could be significant*.”²¹⁰ Further, “[w]ith respect to existing online M2M blinds retailers, [the CMA notes] *that barriers to further expansion may not be as high as for new entrants, [but that] the Parties’ existing strengths (as discussed above) mean that it is likely to be difficult for rivals to achieve sufficient expansion to become an effective competitive constraint on the Merged Entity.*”

5.80 The Parties disagree with the CMA’s conclusions. First, the observations are at odds with observed market dynamics as discussed at 5.13 above. Due to entry and expansion by

²⁰⁶ Provisional Findings, paragraph 9.33.

²⁰⁷ Response to Barriers to Entry and Expansion Working Paper, paragraph 3.18 – 3.21.

²⁰⁸ Response to Barriers to Entry and Expansion Working Paper, paragraph 3.19.

²⁰⁹ Provisional Findings, paragraph 9.35.

²¹⁰ Provisional Findings, paragraph 9.36.

Blinds2Go and Interior Goods Direct, 247 has been relegated from first to third place. **[CONFIDENTIAL]**. Recent entry by companies such as MakeMyBlinds – a retailer with aggressive expansion plans – demonstrates that any limited barriers to entry and expansion can easily be overcome.

- 5.81 Second, as discussed above, none of the individual barriers to entry are “high” in any sense. The “knowledge barriers” identified with regards to PPC advertising are simply speculation on the CMA’s behalf about the reasons that may explain differences in conversion rates. The fact that conversion rates are driven by a competitive offering – which would suggest that the Parties are constrained by potential entry and smaller competitors – is not considered. Further, the only economies of scale identified by the CMA relate to SEO expenditure of between £10,000 to £15,000 per month. This fails to address the reality that even small retailers would be viable with such costs, and that revenue share agreements can be entered into. In these circumstances, that Parties consider it untenable that the cumulative barriers to entry and expansion are somehow high.
- 5.82 Further, the CMA continues to ask the wrong question with regards to what entry or expansion must achieve to offset any SLC. Much of the analysis still focuses on Blinds2Go’s superior performance and return on advertising spend. The relevant question, however, is whether entry or expansion could replicate the rivalry that is lost due to a change in the nature of control over 247’s business, and against the reality that its market share has fallen by at least **[CONFIDENTIAL]**% over the last three years in the face of the entry/expansion by a number of rivals (as set out above). The superior performance of Blinds2Go is irrelevant for this assessment.
- 5.83 Finally, the Parties note that the CMA did not identify any barrier to entry or expansion for omni-channel retailers or marketplaces. The section only mentions that omni-channel retailers lack stated ambitions to expand and that marketplaces were historically unsuitable as a route to market.²¹¹ In the absence of the Provisional Findings setting out proper evidence as to these rivals’ current plans over the next two years, it seems important to consider their current plans in more detail based on publicly available information, rather than claims made in the context of the CMA investigation where they may have an incentive to downplay their own expansion plans.

²¹¹ In line with the structure of the Provisional Findings, the issue of website development costs for multi-channel retailers is deferred to the next section.

Possible sources of entry and expansion

- 5.84 The CMA considered whether entry by (i) online M2M blinds retailers, (ii) omni-channel retailers, or (iii) blinds manufacturers will be timely, likely and sufficient to outweigh the SLC that it provisionally identified. It comes to the provisional conclusion that entry from neither of these sources individually or in combination will suffice.²¹²
- 5.85 As set out below, the Parties do not believe that the evidence gathered by the CMA accurately reflects expansion plans and disagrees with its conclusions. As emphasised above, aggregate entry or expansion must only replicate the rivalry that is lost as a result of a change in the nature of control which Hunter Douglas exercised over 247's business. It does not appear that the CMA has taken this properly into account. Contrary to the position advanced by the CMA, the three sources of potential entry identified by the CMA would be more than sufficient to outweigh any SLC. It is also important to discuss potential expansion of marketplaces – a source of rivalry that the CMA appears to have overlooked.

Online retailers

- 5.86 The CMA gathered evidence from Interior Goods Direct, Swift Direct Blinds and MakeMyBlinds about their expansion plans. They are all dismissed for different reasons:
- (i) Interior Goods Direct is dismissed as a potential source of expansion as it claims that it has no expansion plans – a claim that the Parties find most surprising given its recent growth and the fact that it overtook 247 as the second largest online retailer.²¹³
 - (ii) Swift Direct Blinds is dismissed because it has struggled in recent years, which it links to an increasingly competitive market and a deterioration of its Google ranking (possibly due to the change in its URL).²¹⁴ The Parties note that Swift Direct Blinds **[CONFIDENTIAL]**. In particular, Swift Direct Blinds has identified that the market is increasingly competitive and does not identify any reduction in the intensity of competition as a result of the 2019 Transaction. Furthermore, the recent acquisition of Swift Direct Blinds by Decora, which has occurred since the Provisional Findings, can only strengthen Swift Direct Blinds and its ability to compete. It would be surprising if Decora did not have plans to significantly expand Swift Direct Blinds' offering as a result of its acquisition (as outlined above in Chapter 4).

²¹² Provisional Findings, paragraph 9.69.

²¹³ Provisional Findings, paragraph 9.44.

²¹⁴ Provisional Findings, paragraph 9.45.

- (iii) MakeMyBlinds, which has the stated aim of becoming the “number one online blinds company in the UK” and is backed by investors, is dismissed because the CMA does not believe that its growth plans are realistic.²¹⁵ To attach any weight to the expansion plans, the CMA would want “*to see convincing evidence that growth of such scale was likely to be achievable*”.²¹⁶ While the Parties do not know about the required growth rates, they would reemphasise that the CMA should reconsider the evidence about to the Parties’ rapid entry and expansion in Ireland and the Netherlands – evidence that the CMA has so far ignored. In any case, it seems strange for the CMA to set aside MakeMyBlinds’ (and its investors’) own expansion plans and to override them with its own judgement. Further, the Parties note that MakeMyBlinds alone does not need to replicate the rivalry lost due to the 2019 Transaction – the CMA needs to consider the aggregate expansion of all market participants.

5.87 Overall, the Parties thus believe that expansion from existing online M2M retailers alone is sufficient to replicate the rivalry that would be lost by 247 [CONFIDENTIAL].

Omni-channel retailers

5.88 Based on responses from John Lewis, Next and Dunelm, the CMA identified an additional barrier to entry for omni-channel retailers, namely “*the complexity of adding and integrating website functionality for M2M blinds with their existing websites*”.²¹⁷ Further, omni-channel retailers emphasised that they are struggling with the current COVID-19 pandemic, which may affect their expansion plans due to conflicting priorities. None of the retailers stated that they expect to significantly increase their online M2M sales.

5.89 The Parties do not believe that either of these claims are credible. John Lewis and Next already offer a click-to-order online M2M order functionality, while Dunelm used to have the same but currently offers a virtual consultation option. If the additional functionalities were as expensive as claimed by the retailers, the features should never have been available from any omni-channel retailer.

5.90 Further, the claim that COVID-19 will dampen their online expansion plans are at odds with public statements made by the very same retailers:

²¹⁵ Provisional Findings, paragraph 9.46.

²¹⁶ Provisional Findings, paragraph 9.47.

²¹⁷ Provisional Findings, paragraph 9.50.

- (i) Dunelm's results for the quarter ending June 2020 show a year-on-year increase in online sales of more than 100%.²¹⁸ In its future plans it states that *"FY21 P&L will increase by around £8m as we continue to invest in our digital capabilities [...]. We will also be investing in supply chain capacity to meet the high growth ambition for our home delivery channels."*
- (ii) John Lewis stated that *"[b]efore the virus struck, 40 percent of John Lewis sales were online. This could now be closer to 60 to 70 percent of total sales this year and next."*²¹⁹ It recently entered into a partnership with Capgemini to support this digital transformation²²⁰ and significantly expanded its click & collect functionality by partnering with 900 Co-op locations.²²¹
- (iii) Next, which temporarily closed its online offering due to the interlinkages between its brick-and-mortar shops and online warehousing system²²², now proudly announces on its website that *"Next day delivery is back"*.²²³ It is rumoured that Next will further launch an online platform that will allow other brands to sell products through its website.²²⁴

5.91 Overall, the Parties therefore remain convinced that their previous submissions – that the COVID-19 pandemic will turbo-charge online expansion by omni-channel retailers – are a more accurate prediction of the coming years.

²¹⁸ Dunelm Group plc, Fourth quarter trading update 2020, 15 July 2020. Available here: <https://polaris.brighterir.com/public/dunelm/news/rns/story/w0lqgzw>.

²¹⁹ John Lewis press notice, EIGHT JOHN LEWIS SHOPS NOT TO REOPEN AS THE PARTNERSHIP PROGRESSES WITH MAJOR BUSINESS STRATEGY REVIEW, 9 July 2020. Available here: <https://www.johnlewispartnership.co.uk/media/press/y2020/eight-john-lewis-shops-not-to-reopen.html>.

²²⁰ John Lewis press notice, JOHN LEWIS PARTNERSHIP SELECTS CAPGEMINI TO DELIVER SPECIALIST APPLICATION SERVICES FOR ITS TECHNOLOGY ESTATE, 14 July 2020. Available here: <https://www.johnlewispartnership.co.uk/media/press/y2020/jlp-selects-capgemini.html>.

²²¹ John Lewis press notice, JOHN LEWIS & PARTNERS EXTENDS CLICK & COLLECT PARTNERSHIP WITH CO-OP TO PROVIDE CUSTOMERS WITH NEARLY 900 COLLECTION LOCATIONS IN THE UK, 17 July 2020. Available here: <https://www.johnlewispartnership.co.uk/media/press/y2020/jl-extends-c-and-c-partnership-with-co-op.html>.

²²² Financial Times, 'Next warns coronavirus recovery will be slower than expected', See <https://www.ft.com/content/4f76a92c-c7f6-4acf-8931-a52a56d828e2>.

²²³ See <https://www.next.co.uk/> (accessed 23 July 2020).

²²⁴ Retail Gazette, 'Next mulls online expansion plans', 11 May 2020. Available here: <https://www.retailgazette.co.uk/blog/2020/05/next-mulls-online-expansion-plans/>.

Manufacturers

- 5.92 The CMA fails to highlight that Decora has explicitly told the CMA that it is interested in entering the online retail market. Instead, it notes that Decora believes that it would take at least five to seven years for a new company to build any significant market share.²²⁵ The Parties note that this claim is neither supported by any evidence nor accurate, as demonstrated *inter alia* by examples of the Parties' international success stories in Ireland and the Netherlands.²²⁶ Further, manufacturers could enter the market through the acquisition of a smaller online retailer. This could substantially reduce the time required to build market share.

Marketplaces

- 5.93 The CMA fails to acknowledge the role of marketplaces as a source of increased competition. Marketplaces can act as a low-cost form of entry and help entrants to reach scale. The power of their brand and the fact that they are the first point of call for many consumers means that they can impose a competitive constraint on the Parties, even if individual retailers who sell through them operate at a smaller scale.
- 5.94 The Parties believe that sales through Amazon in particular are likely to exert an increasing competitive constraint in the market for online M2M blinds. The relevance of Amazon is dismissed in Chapter 8 of the Provisional Findings because its limited functionalities are unsuitable for M2M blinds sales. The same arguments are deployed in Chapter 9 when the CMA discusses website setup costs (see paragraph 5.64(v) above). This description of Amazon is problematic – the assessment of barriers to entry and expansion must be forward looking. The fact that Amazon did not have a customisation function or that it was not yet extensively used is irrelevant for the analysis of future entry and expansion. What counts is that the functionality is now available, and that new entrants or smaller retailers can now use Amazon to gain market share at limited cost.
- 5.95 As regards the issue of fees charged by Amazon, which two third parties noted are high, the Parties have already commented on this extensively.²²⁷ The commission **[CONFIDENTIAL]**. Given that 90% of UK shoppers use Amazon and 70% of these use the site as their first point of call, it appears appropriate to include marketing costs in the comparison.²²⁸ In any case, the claim that Amazon's fees are too high or that it has too much of a "cheap and cheerful" image

²²⁵ Provisional Findings, paragraph 9.65.

²²⁶ Main Submission, paragraphs 7.49 – 7.65.

²²⁷ Response to Barriers to Entry and Expansion Working Paper, paragraph 5.5.

²²⁸ Response to Barriers to Entry and Expansion Working Paper, paragraph 5.4.

is contradicted by the fact that Amazon accounted for more than 30% of the UK e-commerce market in 2019, followed by eBay (9.8%), the big supermarkets (13.0%) and John Lewis (3.6%).²²⁹ Amazon's recent investments suggest that it will not give up this position easily. It recently announced that it has opened 15,000 new full and part-time positions²³⁰ and launched a free "Small Business Accelerator" programme that helps small companies to set up or expand their online businesses.²³¹

- 5.96 Amazon is not the only marketplace to invest in growth. Wayfair, a platform specialised in furniture and home goods, recently appointed a new Chief Technology Officer to scale its operations.²³² Over the course of 2020 its share price increased by more than 140% as it benefited from increased sales during the COVID-19 pandemic.²³³

Conclusion

- 5.97 Countervailing factors such as entry and expansion can offset any finding of an SLC. In this case, any SLC can only arise as a result of the 2019 Transaction. The relevant question is thus whether entry or expansion is timely, likely and sufficient to outweigh the rivalry that is lost from the change in the nature of control which Hunter Douglas exercises over 247. The Parties submit that the available evidence demonstrates that this is the case.
- 5.98 The CMA did not identify any major barriers to entry or expansion for omni-channel retailers or marketplaces. The only significant barrier to expansion identified for online retailers relates to "knowledge" of the industry. The evidence used by the CMA to substantiate this finding – Blinds2Go's superior conversion rates – is neither relevant (as rivalry from 247 needs to be replicated) nor determinative (superior conversion rates may be driven by a competitive offering as opposed to unobservable knowledge). The absence of significant barriers to entry for online

²²⁹ UKTN, 'Amazon dominates 30% of UK ecommerce market in 2019', 13 December 2019. Available here: <https://www.uktech.news/need-to-know-2/amazon-dominates-30-of-uk-ecommerce-market-in-2019-20191213>.

²³⁰ Amazon press notice, 'Amazon's actions to help employees, communities, and customers affected by COVID-19', 21 July 2020. Available here: <https://blog.aboutamazon.co.uk/amazons-actions-to-help-employees-communities-and-customers-affected-by-covid-19>.

²³¹ See <https://www.enterprisenation.com/accelerator/>.

²³² Wayfair press release, Wayfair Appoints Jim Miller as Chief Technology Officer, 20 April 2020. Available here: <https://investor.wayfair.com/news/news-details/2020/Wayfair-Appoints-Jim-Miller-as-Chief-Technology-Officer/default.aspx>.

²³³ See <https://finance.yahoo.com/quote/W/>.

retailers is corroborated by examples of recent entry and expansion, which has relegated 247 from first to third place in the market.

- 5.99 Given this apparent lack of any material barriers to entry, the Parties remain convinced that further expansion in this market will occur. The online sales channel, which was still relatively small in 2019, is expected to grow significantly over the coming years. Some retailers, such as MakeMyBlinds, openly state that they want to take advantage of the resulting opportunities. The claims made by omni-channel and some online M2M blinds retailers about a lack of expansion plans are thus implausible in these circumstances. Overall, it thus appears very likely that sufficient expansion will occur – in aggregate – to offset any rivalry that may be lost due to the 2019 Transaction.