

Completed acquisition by WGSN Inc. of Stylesight Inc.

ME/6409/14

The CMA's decision on reference under section 33(1) given on 25 June 2014. Full text of the decision published on 18 July 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. WGSN Inc. (WGSN) is a global provider of online subscription trend forecasting and related services to the fashion sector and design-led industries. Stylesight Inc. (Stylesight) is a US based company and also provides online subscription trend forecasting and related services to the fashion sector and design-led industries. In 2012 Stylesight achieved turnover in the UK of £[~~£~~]. On 20 November 2013 WGSN Inc. acquired 100% of the shares of Stylesight (the Merger). WGSN and Stylesight are together referred to as 'the parties'.
2. For the reasons set out in more detail below, the Competition and Markets Authority (CMA) considers that the Merger has resulted in enterprises ceasing to be distinct, that it has jurisdiction on the basis of the share of supply test and that it is or may be the case that a relevant MMerger situation has been created.
3. On the narrowest basis, the parties overlap in the provision of online subscription trend forecasting services to the fashion sector and design-led industries. The evidence provided to the CMA by the parties and third parties suggests that the parties were each other's closest competitors. In particular, the vast majority of customers considered the parties' products to be important alternatives to one another and many told the CMA that they used one party's prices in negotiation with the other. In addition, the CMA found evidence of customers switching between the parties. The CMA received complaints from customers and competitors that the Merger would remove a significant competitor and may lead to price rises.
4. The CMA found that the merged entity is likely to continue to face some constraints from competitors post-Merger and that it may face additional constraints from third parties arising from entry and expansion. Some

customers said that they would be able to switch to self-supply, but others mentioned that this would be difficult. Since the parties are able to price discriminate, the ability of some customers to self-supply will not prevent price increases to customers who do not have this option.

5. Overall, the CMA considers that a realistic prospect of a substantial lessening of competition arises as a result of the Merger.
6. However, the CMA believes that the market concerned is not of sufficient importance to justify the making of a reference and it has therefore decided to exercise its discretion pursuant to section 22(2)(a) of the Enterprise Act 2002 (the Act).

Decision

7. This Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the Act).

Parties

8. WGSN is a global provider of online subscription trend forecasting and related services to the fashion sector and design-led industries. It had global turnover in 2012 of £[~~£~~] of which £4.5 million was achieved in the UK. WGSN is owned and controlled by Top Right Group Limited (TRG).
9. Stylesight is a US based company and also provides online subscription trend forecasting and related services to the fashion sector and design-led industries. In 2012 Stylesight achieved turnover in the UK of £[~~£~~] with global turnover of £[~~£~~].

Transaction

10. On 7 November 2013 WGSN Inc. signed an agreement to acquire all of the issued and outstanding capital stock of Stylesight Inc. (the Merger). The Merger completed on 20 November 2013 and was made public by way of a press release on 22 November 2013.
11. The Office of Fair Trading (OFT), now the CMA,¹ initiated its investigation by way of an enquiry letter on 13 February 2013, following the receipt of a

¹ The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional

complaint by a third party. The deadline for the CMA's decision under section 34ZA(1) of the Act is 25 June 2014.

Jurisdiction

12. As a result of the Merger WGSN and Stylesight have ceased to be distinct. The parties overlap in the supply of online subscription fashion trend forecasting and related services² in the UK. The parties estimated that they have a combined share of supply of these services of [55 to 65] to [60 to 70]% with an increment of [5 to 15] to [10 to 20]%.³ The CMA considers that the share of supply test in section 23 of the Act is therefore met. The CMA therefore believes that it is or may be the case that a relevant MMerger situation has been created.

Product frame of reference

13. The CMA considers that market definition provides a framework for assessing the competitive effects of the Merger and involves an element of judgment. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the Merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which certain constraints are more important than others.⁴
14. The CMA's approach to market definition is to begin with the overlapping products of the parties, taking this as the narrowest plausible candidate product market and then to see if this can be widened on the basis of demand-side substitution.⁵
15. The parties submitted that the correct frame of reference is the provision of market research services for the fashion sector and design-led industries. However, they note that on the narrowest basis, they overlap in the provision of an online subscription to trend forecasting services and related services and tools for the fashion sector and design-led industries. They do not distinguish

Provisions and Savings) Order, No 416 of 2014, the OFT's Merger control functions were transferred to the CMA on 1 April 2014.

² These services include research reports, market intelligence, access to large image libraries and design tools (such as storyboards, colour palette builders, design tutorials, and design and artwork libraries), see paragraph 16 below.

³ Parties' estimates of revenue based shares of supply for the provision of trend awareness and inspiration services to the fashion sector and design-led industries (including trend forecasts, design tools and image libraries) offered on a subscription basis, excluding bespoke/advisory services.

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁵ This approach is in line with the CMA's [Merger Assessment Guidelines](#), paragraphs 5.26ff.

online subscription services from other methods of providing such services (or some aspects of these services) such as printed trendbooks.

16. The overlap product consists of access to an online platform via an annual subscription (customers are provided with log-in usernames and passwords) that contains a number of services for the fashion sector and design-led industries, including:
 - trend forecasting (ie the prediction of future trends relating to colour, shapes and materials, etc. based on the observation of current trends in catwalks, art, music and the analysis of these trends). The forecasts are then used by customers to inform them in the design of clothes (in respect of the fashion sector) and other design-led products such as the interiors of cars)
 - access to large online libraries of, for example, catwalk images
 - market intelligence
 - research reports
 - design tools (such as storyboards, colour palette builders, design tutorials and design and artwork libraries)
17. Together these services are referred to throughout this decision as 'online subscription trend forecasting services'. The CMA considers it appropriate to view these services together as they are provided to the customer through the same online platform. Purchasing a subscription provides a customer with access to all of the above services and these services are not marketed separately by the parties.
18. The CMA has considered whether to define a separate product frame in relation to non-fashion customers.⁶ In this case, the CMA considers that price discrimination is possible across customer groups (fashion and non-fashion customers), given that prices are negotiated with customers individually. The parties have submitted evidence showing that the parties compete less strongly for non-fashion customers and therefore these are less likely to be impacted by any loss of competition resulting from the Merger. The CMA has not seen any compelling evidence that groups of customers as a whole have been targeted for price discrimination. The CMA has not received any concerns from non-fashion customers (although the number of responses received to our

⁶ [Mergers Assessment Guidelines](#), paragraphs 5.2.28 ff.

questions from these customers was very small). On the basis of the evidence available to it, the CMA considers that it does not have sufficient evidence to reach a firm conclusion that non-fashion customers represent a separate segment and are affected differently by the Merger. The CMA will nonetheless consider this evidence in the round in the competitive assessment.

19. The parties also overlap in the provision of bespoke market research and advisory services which are purchased by customers on an *ad hoc* basis. The parties submitted that Stylesight only provides these services [X]. However, the CMA notes that, depending on which subscription package a customer signs up to, Stylesight may [X]. The CMA does therefore not consider it necessary to consider bespoke market research and advisory services separately from the provision of online subscription trend forecasting services. The narrowest overlap between the parties is in online subscription of trend forecasting services and therefore the CMA provisionally considers the narrowest plausible candidate market is for these services.
20. Below the CMA considers whether this should be widened to include printed trendbooks and free online image libraries.

Constraint from printed trendbooks and free online image libraries

21. Trendbooks are books of fashion and trend images and colours⁷ that may also contain swatches of material. The parties submitted that they are used as inspirational tools and may also contain trend forecasting and analysis.
22. The parties submitted that there are a number of free online image libraries available, such as Pinterest, Instagram and Style.com, which provide access to a sizeable searchable database of images which is constantly updated. The CMA therefore considers the extent to which there is scope for demand side substitution from the parties' online subscription trend forecasting services to trendbooks, in combination with online image libraries that are freely available.
23. During its market testing exercise only a small minority of customers who responded to the CMA's enquiries listed trendbooks as an alternative to the parties' online services (either alone or in combination with other sources).
24. This was corroborated by a publisher of trendbooks who told the CMA that its trendbook customers do not perceive these products as an alternative to the online subscription services provided by the parties. The trendbooks offered far

⁷ Generally available either in printed hard-copy or in pdf online

more limited and targeted information than that found on WGSN or Stylesight.
[REDACTED]

25. This may be because of the differences in frequencies with which online services and trendbooks are updated. A competitor to the parties told the CMA that trendbooks are published every quarter or every six months and therefore go out of date relatively quickly. In the past designers created seasonal collections in which case quarterly trendbooks may be considered sufficient. However, the competitor told the CMA that designers are shifting away from a seasonal model and instead expected to continuously update their collections. An online platform is by its nature easier and faster to update. Indeed, an internal document submitted to the CMA by the parties shows that TRG expects a [REDACTED].⁸ TRG also expects that there will be [REDACTED]",⁹ which suggests to the CMA that products such as printed trendbooks that are updated less frequently will become less desirable to some customers.
26. The CMA has not found it necessary to conclude on the product frame of reference in this case. On a cautious basis, it has assessed the Merger on the basis of a frame of reference consisting of online subscription trend forecasting services, as defined above, but has taken account of the constraints from other types of online fashion trend forecasting including from printed trendbooks used on their own and/or in combination with free image libraries.

Geographic frame of reference

27. The parties submitted that it is unclear whether the relevant geographic market is global or regional (or even national) in scope.
28. The parties provide their online fashion trend forecasting services in multiple countries around the world. The parties submitted that the online product is identical in all jurisdictions (although translated into different languages). The parties also indicated that, at least to some extent, customers in different countries have different preferences for types of content.
29. The CMA understands that the product is marketed by local sales teams based in each of the countries they provide services in. These sales teams market the product by calling potential customers and providing demonstrations. Also, the competitive strength of a particular supplier in any one country is related to the strength of its local sales team.

⁸ Annex 17g of the parties' response to the CMA's Information Request dated 10 March 2014.

⁹ Annex 17g of the parties' response to the CMA's Information Request dated 10 March 2014, at page 5.

30. On a cautious basis, the CMA has taken the UK as its geographic frame of reference for the assessment of this Merger. However, the CMA has not found it necessary to determine conclusively the precise geographic frame of reference in this case.

Counterfactual

31. The CMA assesses a Merger's impact relative to the situation that would prevail absent the Merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-Merger conditions of competition as the counterfactual against which to assess the impact of a Merger. However, the CMA will assess a Merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.¹⁰ In this case, there is no evidence supporting a different counterfactual, and the parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

Share of supply

36. The parties submitted their share of supply estimates based on the description of 'online subscription based services'. The CMA considers this description to correspond to its frame of reference of online subscription trend forecasting services. The parties submitted that after the Merger they will together account for [55 to 65] to [65 to 75]% of online subscription based services in the UK market (with an accretion of [5 to 15] to [10 to 20]%).
37. The parties therefore have a significant combined share of online subscription trend forecasting services.
38. The CMA further notes that one of the parties' competitors stated that the parties have a combined share of at least [80 to 90]% of the provision of online trend forecasting services to the fashion sector in the UK, since they believe that only WGSN, Stylesight and Fashionsnoops provide such services. This was broadly corroborated by the parties who provided estimated combined market shares in this narrower segment (i.e. excluding revenue from customers

¹⁰ See [Mergers Assessment Guidelines](#), paragraph 4.3.5 *et seq.*

in design-led industries) of [70 to 80] to [75 to 85]%.¹¹ However, the CMA has not assessed the Merger on this basis.

Closeness of Competition

39. The parties told the CMA that the price of online fashion trend forecasting services is determined to the greatest extent through individual negotiations with each customer. Although WGSN and Stylesight both [✂]. The parties submitted that pricing is [✂].
40. A Merger of competitors prevents customers from playing previously competing sellers off against each other in negotiations, potentially enhancing the ability of the merged entity to raise prices. The degree to which this may happen depends on the extent to which the parties represent a close alternative to each other.¹² The CMA therefore considers the extent of the closeness of competition between the parties.

Switching analysis

41. The parties submitted a detailed switching analysis exercise to demonstrate that there was limited switching (and therefore competition) between them relative to switches elsewhere.
42. Based on full switches where a customer fully switched away from one party and within three months opened a new account with the other party¹³, the parties estimate an average switching rate¹⁴ (between 2009 and 2013 for UK customers) of approximately [0 to 15]% for WGSN and [0 to 15]% for Stylesight. The parties submitted that this demonstrates that there is limited competition between them and also shows that customers have the ability to switch to other providers or self-supply.
43. The CMA is conscious that the switching analysis is based on a relatively small number of contracts in the UK and therefore an even smaller number of

¹¹ Based on a total market size of around £[6 to 7] million.

¹² This was for instance discussed in "[A report on the completed acquisition by Global Radio Holdings Limited of GMG Radio Holdings Limited](#)", Competition Commission, 21 May 2013, paragraph 7.10

¹³ The parties also submitted data for 'partial' switches where, within three months of a customer partially switching away from one party, this customer increased its spend with the other party by at least 10%. However, the CMA does not consider it appropriate to place much weight on evidence of partial switches given that, whilst some may represent purchasing a different service from the other party, some of these may represent instances of competition between the parties, where a customer has negotiated a lower price on the basis of a threat to switch, rather than partial switching to a third party.

¹⁴ The switching rate for each party shows the proportion of customers terminating contracts with one party who then start a new contract with the other party.

switches each year. As such the CMA has adopted a cautious approach in drawing conclusions from this evidence.

44. In the data submitted a switching event is a situation where the new contract is signed within three months after the end of the contract with the previous supplier. This is because if a customer was contemplating switching from one product for another, it would want to minimise the period in which it was paying for both products simultaneously. The analysis also assumes that the transition time between products is minimal and that the parties offer free one month trials for their products. However, the CMA notes evidence that some customers have nevertheless started a new contract with the other party before the end of their current contract. Its market testing revealed examples of customers switching to the new supplier (even several months) in advance of terminating their current contract. As a result, the CMA considers that there may be situations where the customer has decided to trial both products together for a period before deciding to ultimately switch to the other party's product or where customers have switched from one party to another after a period of more than three months.¹⁵
45. The CMA also notes that over half of the customers switching away from the parties have only used their products once, typically for one year. Therefore, it is possible that some of the contract terminations identified in the parties' analysis as switching away from the parties, may be accounted for by customers who would have stopped using the product in any event, and therefore who would have been unlikely to be affected by the Merger. If this is the case the switching rate may be calculated as lower than it really is.
46. The CMA recalculated the switching analysis to take account of some of these concerns, in particular by defining switching between the merged parties as occurring when customers start a contract with the rival supplier within seven months either before or after the termination of the previous contract. The results are as follows:
 - Switches from WGSN to Stylesight: [20 to 30]%
 - Switches from Stylesight to WGSN: [30 to 40]%
47. The CMA considers that this suggests that the switching rates between the parties are likely to be higher than what the parties submitted.

¹⁵ In addition, some customers classified by the parties as switching to third parties indicated in their responses that they would have switched to Mudpie, which was acquired by WGSN in 2013. These customers were incorrectly classified by the parties' database as switching to third parties.

48. The CMA notes that although the evidence on switching is not of itself conclusive, it points to the parties competing closely, which is consistent with the overall evidence available to the CMA. The switching data also indicates that some customers are switching away from the parties, including to third party competitors or to self-supply. The CMA has examined the degree of each of these constraints separately further below.

Pricing

49. The parties submitted that their products are differentiated and that they target customers with different preferences; this differentiation is evidenced by significant and persistent differences in the pricing of their services. Some customers and competitors also noted the differences in the parties' products, for example noting that Stylesight offers a wider content in its image library than WGSN.
50. The parties and the CMA made several comparisons of the parties' prices using different measures of pricing and obtained mixed results. In particular, the CMA found that the parties' average monthly prices per licence, although different, tend to become closer between 2010 and 2013 and are very similar in 2013. The parties, however, noted that they generally [redacted]. Therefore, the converging nature of their prices per licence may be the result of [redacted] rather than [redacted]. In support of this view, the parties recalculated these prices as the *weighted* average monthly price per licence, using the total contract value as weights. The parties' analysis shows no convergence or even trend toward convergence between these prices.
51. The parties drew the conclusion from this that any price-matching is sporadic and that in general the parties do not compete strongly on price.
52. The CMA is cautious about drawing such conclusion from the parties' analysis. The CMA received evidence from some customers not only that WGSN [redacted]t but also that WGSN [redacted]. The tendency of WGSN [redacted] is consistent with CMA's and with the parties' pricing analysis.
53. Overall, the CMA therefore considers that, although this evidence may suggest that the parties' services are somewhat differentiated and being offered at different price levels, it does not consider this is inconsistent with the parties being close competitors. Even if the parties' prices had been consistently different over time, this would not be inconsistent with the overall evidence which strongly suggests that the parties are close competitors.

Comparison of prices charged to customers switching between the parties or to third parties

54. The parties' analysis also considered whether the prices charged to customers who had switched between WGSN and Stylesight were lower than for customers who had (a) switched to third parties; or (b) never switched at all. If this was not the case, the parties argued that it would be evidence that the parties are not close competitors.
55. The parties submitted that the evidence did not suggest that the parties charged lower prices to customers who had switched between them compared to the other groups of customers. The parties told the CMA that this shows that they are facing the same degree of competition from third parties that they pose on each other.
56. However, the CMA considers that the prices of customers who had not switched between the parties may also be determined in part by the threat of switching between them. Moreover, the CMA is concerned that the reduction in customer choice as a result of the Merger may lead to increased prices (or reduced quality of service) for all customers, not just those who would have switched between the Merger parties.¹⁶

Customer evidence

57. The CMA contacted all the parties' current customers and received responses from 97. Overall, the significant majority of each party's customers who responded considered the other party to be their closest alternative. Some customers also indicated other suppliers they are currently purchasing fashion trend forecasting from or have considered in the past, although these were not generally regarded as the closest alternative.
58. With respect to Stylesight's customers, a majority of those who responded indicated that WGSN is the closest alternative to Stylesight or indicated that they use WGSN to negotiate prices with Stylesight. Only one customer mentioned another supplier, D'cipher Trend Books, as its closest alternative to Stylesight.
59. As regards WGSN's customers, the majority indicated that Stylesight was the closest alternative to WGSN. Some of these customers told the CMA that the Merger would limit the choices available to them and some customers said that

¹⁶ See also paragraphs 75 to 80 of the decision.

it would leave them with no alternatives. Only four WGSN customers mentioned other competitors as the closest alternative to WGSN (one mentioned Futurelab, one Fashionsnoops, one TrendStop, and one Trendzine). Five WGSN customers indicated that they would switch to self-supply either in response to a non-negotiable 5% price raise or as a consequence to the unavailability of WGSN.

60. The CMA also received responses from customers purchasing both parties' products. The parties submitted that the use of both parties' products by some customers suggest that their products are complementary, in that these customers do not consider the parties' services as substitutes. However, the CMA did not find any compelling evidence supporting the parties' view. Customers purchasing both parties' products generally indicated that they did so in order to receive multiple opinions on future trends and that the parties are the two most reputable suppliers. The CMA considers that this is consistent with the parties being perceived as alternatives by their customers, who select the two preferred suppliers within a range of potential alternatives.
61. Although these responses present a less clear pattern of substitution than the responses of customers purchasing only one of the parties' products, the CMA notes that five of these customers indicated that they use one party's prices to negotiate with the other and two other customers said that, if one party were to increase prices by 5% or if that party's products were hypothetically to become unavailable, they would switch to the other party. One further customer said that it would be forced to reduce its purchase, as it would not be able to afford a 5% price raise and there is no viable alternative to the parties. These customers represented 53% of respondents. Only one customer indicated that it would switch to a competitor, Trendstop.
62. The CMA considers that this evidence is indicative of a high degree of competition between the parties which will be lost as a result of this Merger.

Internal documents

63. The parties' internal documents (provided to the CMA during the course of its investigation) appear to confirm that they are each other's closest competitors and that other suppliers provide a relatively weaker competitive constraint.
64. For example, a WGSN internal document¹⁷ identified the two most important contract wins and the two most important contract losses in the period

¹⁷ WGSN Planet Retail Board Packs and WGSN Group Board Packs dated April 2014

considered.¹⁸ When wins or losses are made from/to a competitor, [REDACTED]. Other than [REDACTED]. Likewise a Stylesight document contains references to [REDACTED].¹⁹ In the same document Stylesight indicates that [REDACTED]. Indeed, [REDACTED] are all defined as non-significant threats.

65. In November 2013 WGSN carried out a customer survey.²⁰ At the global level, [REDACTED]. In particular, [REDACTED]. [REDACTED], at significant distance. Further, in another slide, [REDACTED]. The CMA was not presented with compelling evidence to show why these results do not apply specifically to the UK.
66. Similarly, TRG carried out a customer survey in September 2013.²¹ This survey reveals that [REDACTED]. Instead, [REDACTED]. This survey shows that, [REDACTED]²², [REDACTED].

Constraint posed by alternative suppliers

67. The CMA has considered which other suppliers customers may continue to have available to them post-Merger. The existence of sufficiently close competitors to the merging parties could constrain the prices of the parties post-Merger as customers could continue to play these providers off against them in negotiations and/or switch to these providers in the event of a price rise. Unilateral effects are more likely where customers have little choice of alternative supplier.²³
68. The parties submitted that they face significant competition from existing suppliers such as Carlin, Mode Information, Peclers, Nelly Rodi, Trendlab, Trendstop, Doneger, Fashionsnoops, Trendzine, Style.com, EDITD and Pantone.
69. They also submitted that they compete with numerous trendbook providers and free online image libraries such as Pinterest, Instagram and Style.com. The CMA notes that these products appear to be used by customers as tools to self-supply fashion trend forecasting rather than as standalone services, and therefore the considerations set out for self-supply below are also relevant to the assessment (which is considered below).

¹⁸ WGSN Planet Retail Board Packs and WGSN Group Board Packs, annexes from 10 to 21 of the parties' response to the CMA's Information Request dated 4 April 2014.

¹⁹ Stylesight's presentation for the 2 May 2012 Board Meeting, Annex 17b of the parties' response to the CMA's Information Request dated 10 March 2014.

²⁰ Annex 30 of the response to the CMA Information Request dated 4 April 2014.

²¹ Top Right Group WGSN Survey Findings, September 2013.

²² The CMA considers that [REDACTED].

²³ [Merger Assessment Guidelines](#), paragraph 5.4.5.

70. Only four out of 38 WGSN customers that responded to the CMA's questions mentioned other competitors as the closest alternative to WGSN. Fashionsnoops was mentioned as a possible alternative by a number of Stylesight and WGSN customers. However, as set out above, the vast majority of customers that responded considered the parties to be the best alternative to each other. Other competitors listed by the parties were only mentioned by a few customers as possible alternatives. Below the CMA considers those competitors who are most likely (based on customer responses and the parties' estimated market shares) to constrain the parties post-Merger.
71. Fashionsnoops provides online subscription trend forecasting services globally (including in the UK). Customer responses suggest that this service is the next closest alternative to the parties. The parties also provided evidence of customers switching to this competitor. In addition, a competitor that raised concerns about the Merger listed Fashionsnoops as the parties' key competitor. However, the CMA notes that the share of supply of Fashionsnoops in the UK would appear to be negligible at present and is in any event significantly lower than the merging parties' share of supply.²⁴ In addition, an internal document provided to the CMA by Stylesight states that [redacted].²⁵
72. Trendstop is a London based company which provides a mix of subscription services, one-off trend reports and advisory services. Throughout our investigation Trendstop was mentioned as a possible alternative by only two WGSN customers and two Stylesight customers. The parties provided only two examples of customers switching to Trendstop. An internal document provided by the parties stated that Trendstop [redacted].²⁶
73. Finally, Stylus provides research, information, advice and consultancy services across all industries including fashion, although they do not provide fashion forecasting specifically. Currently fashion sector customers account for only [5 to 15]% of its turnover and Stylus told the CMA that it does not appeal directly to customers in the fashion sector (which on the other hand makes up [redacted]% of the parties' revenues). However Stylus is launching a fashion-specific online

²⁴ The parties' estimates of competitors in the supply of online subscription trend forecasting services and related services to the fashion sector suggest that Fashionsnoops has less than [0 to 10]% share of supply. The parties did not provide competitor's shares of supply for online subscription trend forecasting services and related services to the fashion sector and design-led industries but the CMA has not seen evidence to suggest that Fashionsnoop's UK share of supply would be significantly higher in that case. A competitor to the parties noted that even if all of Fashionsnoop's customers were UK customers (which may be unlikely given that it is a US based company) it would have a market share of approximately [10 to 20]% with the merging parties holding the remaining [80 to 90]%.
²⁵ Stylesight's presentation for the 2 May 2012 Board Meeting, Annex 17b of the parties' response to the CMA's Information Request dated 10 March 2014.
²⁶ Stylesight board meeting presentations dated 2 May 2012, page 38.

product (which the CMA considers further as part of its entry and expansion analysis below). The parties estimated that Stylus currently accounts for approximately [5 to 15]% of the market for online subscription and related services to the fashion sector in the UK. The parties did not provide an estimate including customers in design-led sectors. The parties did provide examples of customers switching to Stylus. However, only two of WGSN's customers referred to Stylus as an alternative and it was not mentioned by any of Stylesight's customers that responded to the CMA's enquiries.

Conclusion on closeness of competition

74. On the basis of the evidence set out above the CMA considers that the parties are close competitors and that third party competitors currently impose a significantly weaker constraint on the parties than that imposed by each other.

Constraint posed by self-supply

75. The parties submitted that they face competition from a high proportion of actual or potential customers relying (or threatening to rely) on internal capabilities to conduct trend forecasting. The parties submitted that several sources needed to provide trend inspiration services in relation to the fashion, style and design sectors are freely-accessible (for example, free online image libraries such as Pinterest and free products such as Style.com) and that some fashion designers rely on internal resources for trend forecasts.

76. The CMA's third party enquires asked the parties' current customers whether they would switch to self-supply in response to a small price rise for the parties' services. The CMA received 10 responses from customers indicating that they would consider self-supply as an alternative but only a minority of these would actually switch following a small price rise.

77. However, when the CMA contacted these customers to discuss their responses further, it became clear that in general self-supply was not considered an attractive option. Customers gave the following reasons:

- Overall quality: customers would be unable to reach the same overall quality of the parties' services.
- Information coverage: they would be unable to cover the same breadth of information.
- Objectivity: they would lose a third party's independent and authoritative view on new trends.

- High cost: developing in-house coverage of the information collected through the parties' products would be excessive. Customers identified costs, such as additional overheads and additional trips abroad.
 - Competitive disadvantage: competitors would be likely to continue purchasing fashion trend forecasting, so they would face a competitive advantage. Also, customers would also use these services, so the other suppliers would have access to trend predictions in line with customers.
 - Risk of missing trends: customers would face the risk of missing some trends that are developing.
78. The parties noted that self-supply could be a sufficient option for customers without the need to fully recreate the parties' products. They also noted that for customers in fashion and design-led sectors trend forecasting and inspiration services were an essential input and therefore it was not an option simply to do without them. In addition, the parties provided a number of examples of customers that had terminated contracts with the parties and were now relying solely on self-supply.
79. The CMA was not provided with evidence of customers threatening explicitly to switch to self-supply in negotiations with the parties in order to obtain a lower price. In any event, the CMA notes that in a market where prices are negotiated on an individual basis, suppliers are able to price discriminate and the ability of one customer to switch to self-supply will not necessarily constrain the prices for another customer who lacks this ability.²⁷
80. The CMA understands that, based on the evidence available, self-supply may be an option for some customers, notably large, global, brands with substantial budgets. However, for the reasons set out in this section, the CMA considers that self-supply imposes a weak constraint on the merged entity.

Countervailing factors

Barriers to entry and expansion

89. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers

²⁷ ME/5229/11, Anticipated acquisition by Dods Group plc of DeHavilland, political intelligence division of Emap Limited, 21 June 2012, at paragraph 79.

whether such entry or expansion would be timely, likely and sufficient. In terms of timeliness, the CMA's guidelines indicate that the CMA will generally look for entry to occur within two years.²⁸

90. The parties submitted that new entrants are able to enter the market with relative ease, because of the combination of a relatively immature segment, low penetration in the potential market, high growth rates and low barriers to entry.
91. However, the CMA received responses from some third party competitors suggesting that barriers to entry and expansion are significant and include the need to source and invest in experienced staff (both creative and sales staff), the ability to develop relatively sophisticated technology platforms and the need to build up a brand and reputation that customers will be willing to rely on.
92. The parties provided examples of recent new entrants to the market, including Fashionsnoops in 2001, Stylus in 2009, EDITD in 2009, Trendpulse, and USP in 2014.
93. The CMA raised enquiries with each of these third parties:
 - EDITD provides quantitative product information and analysis and does not consider itself to be competing with the parties. EDITD told the CMA that it considered entering the trend forecasting market three years ago but [REDACTED]. It estimated that it would need to [REDACTED].
 - USP does not provide an online subscription service. It submitted that it does not envisage [REDACTED] but that it is [REDACTED].
 - Trendpulse declined to engage with the CMA's investigation. Its website indicates that it provides fashion trend forecasting on an online subscription basis and that some of its creative directors and technology specialists previously worked for WGSN, Stylus and Mudpie.
 - Stylus told the CMA that it has plans to launch a fashion specific online subscription trend forecasting service. Investment in the specific site was approximately £[REDACTED] and it forecasts a turnover of approximately £[REDACTED] in the UK in the next year. The CMA considers that such entry may thus be timely and likely.²⁹

²⁸ [Merger Assessment Guidelines](#), paragraph 5.8.11.

²⁹ [Merger Assessment Guidelines](#), paragraphs 5.8.8 to 5.8.9 and 5.8.11.

94. The CMA recognises that entry by Stylus may in time result in an additional competitor to the merging parties. However, given that the parties are currently close competitors, the CMA does not have compelling evidence to consider that this entry would be sufficient to negate any substantial lessening of competition represented by the Merger. Indeed, Stylus' own forecasts show that it expects to have a [X] presence in the marketplace than [X].

Third party views

98. The CMA has sought views on the Merger from customers and competitors of the merging parties. Third party comments have been taken into account where appropriate in the competitive assessment above.

99. The CMA contacted all of the parties' current customers and received responses from around 100 current customers. Over 40% of customers raised concerns about the Merger (these include approximately half of Stylesight's customers who responded, a third of WGSN customers and just under half of the parties' common customers). The concerns raised by these customers mainly related to loss of variety and choice as well as price increases. Some told the CMA that WGSN would hold a monopoly post-Merger.

100. A small number of customers were in favour of the transaction, highlighting possible benefits and synergies.

101. The CMA also received complaints from competitors which raised concerns that the parties were each other's closest competitor and therefore that the Merger would reduce competition significantly.

Conclusion on unilateral effects in the supply of online fashion trend forecasting

102. Based on the evidence set out above, the CMA considers that the parties are currently each other's closest competitors and pre-Merger posed a significant competitive constraint on each other. Remaining competitors and the ability of some customers to self-supply appears unlikely to be sufficient to constrain the merged entity. However, the CMA considers that the ability of some customers to self-supply is likely to limit the scope of the loss of competition for them.

103. The CMA also considers that Stylus is credibly planning to expand in competition with the parties. The CMA considers that there is insufficient evidence that any such expansion would negate any substantial lessening of competition the Merger may give rise to.

104. Accordingly, the CMA finds that it is or may be the case that the Merger gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of online subscription trend forecasting services in the UK.

Exceptions to the duty to refer

De minimis

105. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 22(2)(a) of the Act, choose not to refer the Merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference.³⁰ This is considered below.

Markets of insufficient importance

106. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.³¹

107. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* discretion exception where clear-cut undertakings in lieu of a reference could be offered by the parties to resolve the concerns identified.³²

108. In most cases, a clear-cut undertaking in lieu will involve a structural divestment. The CMA considered whether the parties could have divested either of their respective online subscription trend forecasting services in the UK. However, the CMA notes that the UK part of each of the parties' businesses is integrated with the remainder of their business. In particular, the content of the parties' online product offering is identical in all countries where they do business and the content producers are also the same. The CMA is therefore of the view that the divestment of either of the parties' online subscription trend forecasting services would be tantamount to reversing the Merger. The CMA does not include what would amount to a prohibition of the

³⁰ [OFT1122 – Mergers, Exceptions to the duty to refer and undertakings in lieu of reference guidance, December 2010](#). This guidance was originally published by the Office of Fair Trading (OFT) and has been adopted by the CMA Board (**Guidance on the exceptions to the duty to refer**).

³¹ Guidance on the exceptions to the duty to refer, paragraph 2.8 to 2.11 and 2.16.

³² Guidance on the exceptions to the duty to refer, paragraph 2.2.

Merger when considering whether an 'in principle' undertaking in lieu is available.

109. Accordingly, the CMA did not consider that an 'in principle' clear-cut undertaking in lieu was available in this case.

Relevant factors

110. As outlined in the Guidelines, the CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the Merger, the magnitude of competition that would be lost by the Merger, and the likely durability of the Merger's impact.³³ Each is considered in turn below.

Market size

111. The CMA has concluded that the Merger gives rise to a realistic prospect of a substantial lessening of competition in the supply of online subscription trend forecasting services to fashion and non-fashion customers (operating in design-led industries) in the UK. Information submitted by the parties is that this market is worth an estimated £[8.5 to 9.5] million. The CMA has examined relevant turnover data from the parties and some competitors and is satisfied that this market size estimate is reasonable.
112. One third party competitor estimated the market size for online subscription-based fashion trend forecasting services solely to fashion customers in the UK to be around £12 to 15 million. The same third party also estimated the parties' combined share of supply for fashion customers only at approximately [75 to 85]%. The CMA notes that this estimate of the size of the fashion customer segment would appear to be predicated on figures that significantly overestimate the parties' turnover generated from sales to both fashion and non-fashion customers and cannot be reconciled with the other data available to the CMA. The CMA notes that, based on the third party's estimate of the parties' market share and using the parties' actual turnover as a starting point, the size of the fashion customer segment would amount to approximately £[5.5 to 6.5] million. This is consistent with the parties' estimate of the size of this segment, which excludes revenue derived from non-fashion customers.³⁴ The CMA considers the size of this market (ie the frame of reference excluding non-

³³ Guidance on the exceptions to the duty to refer, paragraph 2.12.

³⁴ See also paragraph 119 of the decision below.

fashion customers to be relevant to its *de minimis* assessment given the likely focus of the harm arising from the Merger (see paragraph 119 below).

113. In any event, the size of the market for the supply of online subscription trend forecasting services to fashion and non-fashion customers is below the £10 million threshold above which *de minimis* exception will generally not be applied.³⁵

Strength of the CMA's concerns

114. The parties submitted that the likelihood and duration of the harm was likely to be limited given that the market is evolving rapidly and entry and expansion could happen quickly.
115. For the purposes of its first-phase investigation in this case, the CMA's assessment that the transaction results in a substantial lessening of competition is made on the basis of the 'realistic prospect' standard rather than being on the balance of probabilities.³⁶
116. The Merger results in the loss of a close competitor. However, the CMA notes the presence of a variety of existing constraints on the merged entity, such as the possibility for some of the parties' customers to switch to self-supply in response to a price increase. For the parties' customers that are not in a position to self-supply, the CMA notes the presence of other competitors including Fashionsnoops, and Trendstop. It also notes the likely and timely entry of Stylus which is about to launch a fashion specific online subscription trend forecasting service and which benefits from important sector-expertise (it is led by the founder of WGSN), has significant financial support and forecasts turnover in the UK of £[~~3~~] in this segment within the next year.
117. Therefore, the strength of the CMA's belief that the Merger will have an anti-competitive effect is, overall, more than fanciful but not at a very high degree of confidence.³⁷

Magnitude of competition lost

³⁵ Guidance on the exceptions to the duty to refer, paragraph 2.14.

³⁶ Guidance on the exceptions to the duty to refer, paragraph 2.33 and CR/019/09, Anticipated acquisition by Prince Minerals Limited of Castle Colours Limited, 6 May 2009, at paragraph 67.

³⁷ Guidance on the exceptions to the duty to refer, paragraph 2.31 to 2.33.

118. In this case the CMA considers the parties to be close competitors. Nevertheless, the parties provided examples of customers terminating contracts with them and switching to self-supply. The ability of some customers to switch to self-supply in response to a price-increase and the credible threat of doing so is likely to limit the magnitude of harm resulting from the Merger.³⁸
119. The CMA also considers that the magnitude of the SLC is likely to be limited insofar as non-fashion customers are concerned. Non-fashion customers operate mainly in design-led industries such as the furniture, home interiors or automotive sectors. The parties submitted that their sales to non-fashion customers amounted to £[~~£~~] only and that their combined share of supply in relation to non-fashion customers is just [10 to 20] to [15 to 25]%. In addition, they stated that they face a number of other strong competitors in relation to non-fashion customers. The CMA notes that over [~~£~~]% of the parties' turnover is generated by sales to fashion customers and that no competition concerns were raised by non-fashion customers in relation to the Merger. As such, any harm arising from the Merger is likely to relate primarily to fashion customers. The size of the market for sales to these customers only (that is the frame of reference excluding non-fashion customers) amounted to approximately £[5.5 to 6.5] million.³⁹
120. Overall, the CMA does not consider that the magnitude of competition lost by the Merger is a factor pointing strongly against the application of the *de minimis* exception.

³⁸ The CMA in its assessment of the *de minimis* exception may focus on certain customer segments where the magnitude of harm appears to be greatest, and on the other hand exclude customers where the magnitude of harm is low, see: Anticipated acquisition by Orbital Marketing Services Group Limited of Ocean Park Limited, Case ME/3863/08, OFT decision 14 November 2008; and Anticipated acquisition by FMC Corporation of the alginates business of ISP Holdings (UK) Limited, Case ME/3688/08, OFT decision 30 July 2008.

³⁹ Nevertheless, the CMA notes that even when all sales to non-fashion customers are included, the benefit of a reference in terms of the potential customer harm saved would not be materially greater than the cost of a referral for a Phase 2 investigation.

Durability

121. The parties submitted that barriers to entry are low, that there have been recent examples of entry (e.g., USP in 2014), and that there are new suppliers planning to enter or expand in the near future (significantly, Stylus). Third parties told the CMA that there are barriers to entry in relation to staff, technology (online platforms), reputation and regulation.
122. However, the CMA considers that the market is becoming increasingly dynamic in light of recent developments, including the availability of free online tools and the likely entry of Stylus, which benefits from significant financial support from a large, international publishing house as well as relevant sector-expertise of the founder of WGSN. As a result, the CMA considers that the impact of the SLC arising from the Merger will be relatively short-lived and that it will gradually reduce as free online tools improve and other third parties' competitive positions in the UK develop.
123. The CMA considers that the relatively low durability in this case points towards the application of the CMA's *de minimis* discretion.

Replicability

124. The CMA will also take account of the wider implications of its decisions in this area, and will be less likely to exercise its discretion, and therefore more likely to refer, where a Merger is potentially replicable across a number of similar markets in a particular sector.⁴⁰
125. In exercising its discretion not to refer this Merger for an in-depth phase 2 investigation, the CMA has taken into account that this sector appears to be developing at a relatively fast pace, with new entrants likely to emerge in the near future. It also took into consideration the ability of some of the parties' customers to switch to self-supply in response to a price increase. The CMA considers that this, together with the relatively small size of the affected market, is likely to limit the impact of the SLC. It is not obvious that the Merger is one of a potentially large number of similar Mergers that could be replicated across the sector. In any future transactions in this sector the CMA would, in any event, examine to what extent the competitive conditions are comparable to those it has assessed for the purposes of this decision.
126. In considering the wider implications of a particular decision as to whether to exercise its discretion to apply the *de minimis* exception, the CMA may also

⁴⁰ Guidance on the exceptions to the duty to refer, paragraph 2.4.

have regard to the economic rationale behind an individual transaction.⁴¹ As set out above, WGSN submitted that the rationale for the Merger is to [X]. In addition, [X].

127. The CMA thus considers, on the basis of the evidence available to it, that its *de minimis* decision is not likely to be replicable in similar markets across the sector.

Conclusion on the application of the discretionary de minimis exception

128. The CMA therefore considers that, taking all the above factors into consideration, the market concerned in this particular case is not of sufficient importance to justify the making of a reference. As such, it is appropriate for the CMA to exercise its discretion to apply the *de minimis* exception.

Conclusion

129. Consequently, the CMA believes that it is or may be the case that the Merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
130. However, for the reasons set out above and pursuant to section 22(2)(a) of the Act, the CMA believes that the market concerned is not of sufficient importance to justify the making of a reference.
131. This Merger will therefore **not be referred** under section 22(1) of the Act.

Andrea Coscelli
Executive Director, Markets and Mergers
Competition and Markets Authority
25 June 2014

END NOTES

I. With regards to paragraph 8, the parties note that WGSN Inc. did not have global turnover of £35 million in 2012. Rather, WGSN Inc.'s parent company Worth Global Style Network Limited achieved this turnover figure in 2012.

II. With regards to footnote 15, the parties note that switches to Mudpie were identified by the parties as switches to a third party since, at the

⁴¹ Guidance on the exceptions to the duty to refer, paragraph 2.43.

time the data relied on for the switching analysis was collected, Mudpie had not yet been acquired by WGSN.

III. With regards to paragraphs 3 and 99, the parties wish to clarify that references by the CMA to views of customers of the parties only relate to views of those customers that responded to the CMA's enquiries.