

Anticipated acquisition relating to Compagnie Financière Richemont S.A., YOOX S.p.A and The Net-A-Porter Group Limited

ME/6538-15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 2 September 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. YOOX S.p.A. (**Yoox**) has agreed to acquire The Net-A-Porter Group Limited (**Net-A-Porter**) from Compagnie Financière Richemont S.A. (**Richemont**) which simultaneously agreed to acquire a stake in the combined Yoox/Net-A-Porter entity (the **Combined Entity**) (the **Merger**). Yoox, Net-A-Porter and Richemont are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that Yoox and Net-A-Porter will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. In addition, the CMA believes that it is likely that Richemont will have material influence over the Combined Entity, although, it does not need to conclude on whether this results in the creation of a separate relevant merger situation.
3. Yoox and Net-A-Porter overlap in the retail of luxury products through online multi-brand stores in the United Kingdom (**UK**). The CMA believes, on a cautious basis, that this is a separate market from bricks and mortar retail outlets offering personal luxury goods, and from online mono-brand personal luxury goods stores. The CMA concluded that it was not appropriate to have a frame of reference for permanent discount luxury product websites as separate from premium websites because the evidence gathered indicated

that customers purchase luxury goods on both types of websites and any such distinction was not clear-cut from a consumer perspective. The CMA also considered whether different product categories and different customer types (ie men and women) should form a separate frame of reference but it was unnecessary for the CMA to conclude on this point because the Parties' offerings mainly focus on clothing apparel and shoes for both men and women.

4. In addition, Yoox and Net-A-Porter overlap in the supply of e-commerce services in, at least, the European Economic Area (**EEA**). The provision of e-commerce services involves creating and managing online stores and can be broadly split into front-end services, back-end services and additional services. The CMA considered whether separate frames of reference existed for the provision of e-commerce services to luxury fashion houses, and whether this could be further segmented by the provision of front-end, back-end and additional services. The CMA concluded this was not appropriate because existing e-commerce players supply these services across a range of sectors, including the fashion sector, and significant suppliers offers front-end, back-end and additional services to those customers who require them.
5. With regard to the retail of luxury products through multi-brand stores, the Merger gives rise to only a small increment due to Yoox's limited presence in the UK. Yoox and Net-A-Porter generally have different focusses and business models. In particular, 'Net-a-porter.com', 'Mr Porter' and 'Yoox.com' are not close competitors and there are numerous other rivals. Although Yoox.com appears to compete relatively more closely with Net-A-Porter's 'The Outnet', the CMA found that their respective offerings are differentiated to a considerable degree and that a wide range of alternatives remain, including premium retailers constraining the merged entity.
6. With regard to the supply of e-commerce services, the CMA considered whether concerns may arise as a result of a loss of both existing and potential competition. Yoox in particular supplies e-commerce services to several large customers. However, on the basis of the evidence available to the CMA, it found that there is a wide range of competitors to Yoox, which will continue to constrain the merged entity. In addition, Net-A-Porter's current presence is limited and [§] modest.
7. The CMA also considers whether competition concerns would arise as a result of the Merger from either customer foreclosure or input foreclosure. The CMA found that Richemont would not have the ability and incentive to foreclose other retailers, in particular in light of the presence of a wide range of alternative luxury brands and the negative impact any such foreclosure strategy would have on Richemont's earnings. The CMA also found that the

Combined Entity would not have the ability and incentive to foreclose third party luxury brands as there are sufficient alternative retailers and, for instance, nearly all of Net-A-Porter's turnover is derived from sales of third party brands' luxury products.

8. In summary, the CMA concluded that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral and/or vertical effects.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. Richemont is a Swiss-based holding company of several companies which mainly operate as luxury mono-brands with a focus on jewellery, watches and accessories. The turnover of Richemont in the financial year ending 2014 was around £8,983 million worldwide and around £[redacted] million in the UK.
11. Yoox is an online retailer of personal luxury goods with three websites named Yoox.com, The Corner and Shooscribe, and it provides e-commerce services to third parties. The turnover of Yoox in the financial year ending 2014 was around £423 million worldwide and around £[redacted] million in the UK.
12. Net-A-Porter is also an online retailer of personal luxury goods and is controlled by Richemont. Net-A-Porter operates three websites named Net-a-porter.com, The Outnet and Mr Porter, and provides e-commerce services. The turnover of Net-A-Porter in the financial year ending 2014 was around £514 million worldwide and around £[redacted] million in the UK.

Transaction

13. Richemont and Yoox have entered into a binding, conditional agreement to combine the operations of Net-A-Porter with Yoox in an all share transaction (the **Merger Agreement**). As a result of the Merger, Net-A-Porter will become a subsidiary of Yoox, and Richemont will hold a stake in the Combined Entity.
14. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Austria, Germany, Japan, Ukraine and the United States of America.

Jurisdiction

15. The Merger consists of two elements: first, the acquisition of Net-A-Porter by Yoox, and second, the acquisition of a stake in the Combined Entity by Richemont. Given that the enterprises involved in the two parts of the transaction are different, the CMA considered whether more than one relevant merger situation has arisen.

Relevant merger situation 1

16. As a result of the Merger, the enterprises of Yoox and Net-A-Porter will cease to be distinct.
17. The UK turnover of Net-A-Porter exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
18. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 July 2015 and the statutory 40 working day deadline for a decision is therefore 7 September 2015.

Relevant merger situation 2

20. The CMA also considered whether Richemont will gain material influence over the Combined Entity as a result of the Merger such that Richemont and the Combined Entity will cease to be distinct.
21. In the Merger Agreement Richemont agreed to acquire a 50% stake in the Combined Entity with voting rights limited to 25%. Richemont's board representation is limited to two out of, at least, 12 board members of which at least half need to be independent. Richemont will not have any special voting powers or veto rights.

Parties' submission

22. The Parties submitted that the Merger is designed to preserve the independence of the Combined Entity. Under Italian law – where the combined entity will be listed – two-thirds of attending shareholder votes are required to pass certain resolutions and, therefore, Richemont will not have the ability to block the equivalent of special resolutions under UK law unless there is a low shareholder turnout and low quorum requirements.

CMA's assessment

23. The CMA's approach in assessing whether a shareholding confers material influence is to focus on the acquirer's ability to influence policy relevant to the behaviour of the target. This includes the management of the business, and therefore the strategic direction of a company and its ability to define and achieve its commercial objectives.¹
24. The acquirer may have the ability to influence the target's policy through exercising votes at shareholder meetings, the ability to influence the board of the target, and through other arrangements, without the acquirer necessarily being able to block votes at shareholder meetings.²
25. Based on Richemont's shareholding and role in relation to the Combined Entity, and in particular taking account of Richemont's status and expertise in the fashion sector, the CMA believes that it is likely that Richemont may have material influence over the Combined Entity.
26. However, it was not necessary for the CMA to reach a conclusion in this regard, since, as set out below, no competition concerns arise as a result of Richemont's position in wholesale supply and retail supply of personal luxury goods through its brands in any event.

Counterfactual

27. The CMA assesses a merger's impact relative to the situation that would prevail in the absence of the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger.
28. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive as between the parties than these conditions.³
29. In this case, the Parties and third parties have not made any submissions with regard to the counterfactual. The CMA considers the prevailing conditions of competition to be the relevant counterfactual. Insofar as the Parties' internal

¹ *CMA2 Mergers: Guidance on the CMA's Jurisdiction and Procedure*, paragraph 4.14.

² *CMA2 Mergers: Guidance on the CMA's Jurisdiction and Procedure*, paragraph 4.16.

³ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

documents include a strategy to expand Net-A-Porter's e-commerce services, this has been taken account of in the CMA's competitive assessment.

Background

30. Net-A-Porter operates three websites:
 - (a) Net-a-porter.com: a premium⁴ online women's luxury fashion retailer which launched in 2000. Its UK turnover was around £[redacted] million in 2014
 - (b) The Outnet: an online discount women's luxury fashion outlet launched in 2009. Its UK turnover was around £[redacted] million in 2014, and
 - (c) Mr Porter: a premium online men's luxury fashion retailer launched in 2011. Its UK turnover was around £[redacted] million in 2014.
31. Yoox also operates three websites:
 - (a) Yoox.com: an online retailer of discount and off-season male and female fashion, design and art launched in 2000. Its UK turnover was around £[redacted] million in 2014
 - (b) The Corner: an online luxury boutique retailer launched in 2008. Its UK turnover was around £[redacted] million in 2014, and
 - (c) Shooscribe: an online retailer for women's footwear launched in 2012. Its UK turnover was around £[redacted] million in 2014.
32. Given that The Corner and Shooscribe each have a relatively small presence in the UK, based on their turnover, the CMA has focussed its competitive assessment on Yoox.com and Net-A-Porter's three websites.

Frames of reference

33. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. 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 merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more

⁴ The CMA considers 'premium' websites to offer high-end, current season luxury fashion products. Premium websites generally also offer discounts to customers but this is not their main focus point.

important than others. The CMA will take these factors into account in its competitive assessment.⁵

34. Yoox and Net-A-Porter overlap in the retail of personal luxury goods through online multi-brand stores in the UK and the supply of e-commerce services in, at least, the EEA, as set out below. Each will be discussed in turn.

Product scope

Retail of personal luxury goods through online multi-brand stores

35. The CMA's approach to assessing the product frame of reference is to begin with the overlapping products of the merger parties in the narrowest plausible candidate product frame of reference and then to see if this can be widened on the basis, primarily, of demand-side considerations.
36. The European Commission (**EC**) has previously distinguished between mass market goods and luxury products, finding that luxury goods are characterized by relatively high prices, rich creative content, and marketing under prestige trademarks.⁶ The EC further distinguished between the production and wholesale, and retail of luxury products.⁷
37. The evidence gathered by the CMA during its market testing largely confirmed the distinction between luxury goods and other mass market retail goods and, therefore, the CMA has considered the retail of personal luxury goods separately from other mass market retail offerings. However, any constraints from mass market retail offerings are taken into account in the CMA's competitive assessment.

Online and offline retail of personal luxury goods

38. Yoox and Net-A-Porter overlap in the *online* retail of personal luxury goods. However, the Parties submitted it would be artificial and inappropriate to segment the market into online and offline sales because the boundaries between offline and online retail are increasingly blurred as, for example, bricks and mortar retailers are developing their online presence and some physical stores also exhibit online features.
39. The Parties stated that each of the Net-A-Porter and Yoox websites face close competition from rivals with both online and offline activities (eg [✂]) and

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁶ For example Case M.6212 LVMH/Bulgari (2011).

⁷ For example Case M.1780 LVMH/Prada/Fendi (2000).

[X]). One internal document refers to an increase in competition from [X]. The Parties identified a physical outlet – [X] – as being a close competitor to The Outnet.

40. The CMA notes that, based on internal documents, [X]. In addition, it appears from a Net-a-porter.com survey that [X] primarily purchase their luxury goods from [X].⁸ Finally, third parties indicated that Yoox and Net-A-Porter's websites compete more closely with other online retailers than offline retailers.
41. On the basis of this evidence, and on a cautious basis, the CMA believes it appropriate to assess the Merger on the basis of a frame of reference for online retail of personal luxury goods. However, the CMA has taken into account any competitive constraints from bricks and mortar stores in its competitive assessment.

Mono-brand and multi-brand retailers

42. Yoox and Net-A-Porter's online platforms are multi-brand in that they all offer a wide variety of luxury fashion brands. The Parties submitted that there is a range of options for purchasing luxury goods including online multi-brand stores and mono-brand stores or boutiques, and that no distinction should be made as to whether a retailer's offering is multi or mono-brand.
43. Net-A-Porter's internal documents, in identifying competitors, refer mostly to [X] competitors, although, one internal document refers to an increase in competition from [X]. In addition, the Net-A-Porter surveys focused primarily on [X] in its queries to customers.⁹ In response to the CMA's market testing, third parties only mentioned multi-brand stores as competitors to the Yoox and Net-A-Porter websites.
44. One market research report indicated that mono-brand and multi-brand stores target different shopping occasions and different consumer groups, for example, as online multi-brand stores allow luxury brands to reach both time-sensitive and more rural consumers.

⁸ Net-a-porter.com survey showed that [X]% of UK Net-a-porter.com customers purchase [X]% or more of their luxury fashion online. The CMA notes there may be a response bias in favour of online retailers as the respondents are customers of Net-a-porter.com which purchase luxury goods online and, therefore, considers that this finding is of more limited probative value.

⁹ Net-A-Porter carried out online consumer surveys through the Net-a-porter.com and Mr. Porter websites and provided data related to where its UK customers purchase luxury goods online. Net-A-Porter also provided consumer survey data with regard shopping behaviour of The Outnet customers, subscribers, visitors and non-visitors.

45. Based on the evidence above, and on a cautious basis, the CMA considers it appropriate to assess the Merger on the basis of a frame of reference for multi-brand stores.¹⁰ Any constraints from mono-brand stores are taken into account in the CMA's competitive assessment.¹¹
46. Taking into account the above evidence, the CMA considers that the retail of personal luxury goods through online multi-brand websites is an appropriate frame of reference for the purposes of examining the Merger. However, the CMA also considered whether this could be further segmented by:
- (a) websites offering off-season, permanent discount luxury goods;
 - (b) product category (ie clothes, shoes, handbags, jewellery, etc); and by
 - (c) customer type (ie male and female offerings).

Permanent discount and premium websites

47. Yoox's online platform, Yoox.com, and Net-A-Porter's online platform, The Outnet, are both permanent discount websites offering personal luxury goods. Accordingly, the CMA considered whether this could plausibly constitute a separate frame of reference.
48. The Parties submitted that a segmentation between permanent discount and premium websites would be artificial and inappropriate. The Parties stated that from a demand-side perspective, customers can compare and switch readily between these websites, and from a supply-side perspective, there is significant overlap with premium stores generally offering products (from a previous season or not) at discounted prices throughout the year.
49. The CMA considers that some evidence suggests that consumers shop on both premium and permanent discount websites. The Net-A-Porter consumer surveys indicated that a [redacted] of customers shop [redacted].¹² The Outnet survey specifically suggested that The Outnet competes particularly with [redacted].¹³ In addition, each of the Net-a-porter.com, Mr Porter and The Outnet surveys asked its customers about [redacted] as well as [redacted].

¹⁰ The CMA notes that focusing on multi-brand stores is a cautious approach even though Richemont owns mono-brand stores. Including both multi-brand and mono-brand stores would result in a wider frame of reference and the Parties' and Richemont's shares of supply would likely be lower in that case.

¹¹ The CMA notes that the constraint from mono-brand online retailers on multi-brand online retailers may be stronger with regards to current season items (as the same items may be available on both) compared to past season items (where consumers may be less likely to find past season items on some mono-brand websites).

¹² [redacted]% of respondents to the Net-A-Porter survey said they also used TheOutnet.com, and [redacted]% the other way round.

¹³ The Outnet UK customers were asked where they purchased discount luxury fashion.

50. The CMA notes that this survey evidence does not reveal whether customers were shopping for [redacted] products on, for example, Net-a-porter.com and Mr Porter. The Parties submitted that [redacted]% of Net-a-porter.com revenue in 2014 was from sales of discounted stock. In addition, The Outnet survey showed that [redacted] respondents buy discounted luxury goods at [redacted].
51. Some evidence also suggests that the distinction between premium and permanent discount websites is not clear-cut. For instance, [redacted] the respondents indicated that The Outnet is most similar to a [redacted] luxury retailer rather than a [redacted] luxury retailer [redacted]. The Outnet survey report confirmed this by stating that customers consider The Outnet as similar to [redacted].
52. Some Net-A-Porter internal documents indicated that The Outnet may compete more closely with [redacted] such as [redacted]. However, one other internal document listed The Outnet's competitors as being [redacted].
53. Based on the evidence available to the CMA, it is appropriate to include both permanent discount and premium websites in the same product frame of reference. In light of the main overlaps the Merger gives rise to, in its competitive assessment, the CMA focusses on closeness of competition between permanent discount online retailers Yoox.com and The Outnet and whether sufficient constraints remain from other online retailers (including premium retailers).

Product categories

54. The EC considered in *LVMH/Bulgari* segmentation of the luxury goods market by the following product types: i) fashion, leather goods and accessories, ii) perfumes and cosmetics, and iii) watches and jewellery. The EC did not need to reach a conclusion on this point. The OFT previously considered in *House of Fraser plc/James Beattie plc*¹⁴ the following product types: womenswear, menswear, childrenswear, homeware, fashion accessories and beauty products/perfumery/toiletries
55. The Parties argued there is likely to be demand-side substitutability between product categories as personal luxury goods are often purchased as gifts and there is likely to be supply-side substitutability as existing retailers can easily expand into new product areas. Net-A-Porter recently expanded into sports and beauty products.
56. The CMA notes that the principal overlap between Yoox and Net-A-Porter is in the online retail of apparel and shoes. The CMA considers, from a demand-

¹⁴ ME/1821/05, Anticipated acquisition by House of Fraser plc of James Beattie plc, 8 August 2005.

side perspective, that it is likely that individual categories constitute individual frames of reference. However, all main competitors to Yoox and Net-A-Porter (see Table 1 at paragraph 77) are active in the retailing of apparel and shoes.

57. Based on the above, and for the purpose of this assessment, it was not necessary for the CMA to consider separate product scopes by category, since, as set out below, no competition concerns arise on any plausible basis. For the purposes of assessing the Merger the CMA considers that the product frame of reference includes at least apparel and shoes.

Customer types

58. The Parties submitted that there is very limited demand-side substitutability between products that are aimed at female and male customers, although there is a high level of substitutability from the supply-side – that is, it is relatively straightforward for retailers to source and supply clothes for both male and female customers.
59. The CMA considers that Yoox and Net-A-Porter's overlapping websites sell both male and female clothing, although some cater for either men or women, and the majority of online multi-brand retailers identified by the Parties (see Table 1) supply both male and female luxury products.
60. Based on the above, and for the purpose of this assessment, it was not necessary for the CMA to consider separate product frames of reference by customer type, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on product scope

61. For the reasons set out above, the CMA has considered the impact of the Merger on the retail of personal luxury goods through online multi-brand stores including both premium and permanent discount websites. In its competitive assessment, the CMA has considered whether Yoox.com and the Outnet.com are particularly close competitors.

Supply of e-commerce services

62. The Parties submitted that both Yoox and Net-A-Porter provide e-commerce services to third parties. E-commerce services relate to the creation and management of online stores and include a range of different services:
- (a) Front-end services: creation and design of websites including creative concepts and transaction management.

(b) Back-end services: logistics and ordering process.

(c) Additional services: marketing, customer analytics and customer service.

63. Yoox offers a varying assortment of the above listed services to 37 luxury fashion house customers. In comparison, Net-A-Porter's e-commerce business is nascent in its development and it currently offers e-commerce services to [X] luxury fashion house customers. Richemont only provides e-commerce services in-house to its own brands.
64. The evidence available to the CMA indicated that e-commerce customers can and do use different suppliers for each of the services listed above, or may separately conduct these services in-house. However, evidence gathered by the CMA also indicated that several suppliers of e-commerce services offered each of the abovementioned services to customers that required them.
65. The CMA considered whether there is a separate frame of reference for the provision of e-commerce services to luxury fashion houses. One Net-A-Porter internal document suggested there is a broad market for e-commerce services, ie not delineated by sectors, in which IBM and Demandware were considered to be major players. It also discussed the positioning of Yoox and Farfetch, as well as the potential threat from Amazon and eBay.
66. The CMA's market testing and the tender data it obtained indicated that customers consider a wide range of generalist e-commerce service suppliers which provide a variety of services to customers from different sectors. Customers did not raise any reasons for requiring a luxury fashion specialist for their e-commerce services, although more general providers may have to tailor their offers to individual requirements.

Conclusion on product scope

67. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of e-commerce services.

Geographic scope

Retail of personal luxury goods through online multi-brand stores

68. The Parties argued that the geographic scope is broader than national. From a demand-side perspective, customers switch between purchasing personal luxury goods from retailers that are based in different countries. From a

supply-side perspective, the majority of significant retailers have a global sales footprint.

69. The CMA's analysis of the Yoox and Net-A-Porter websites and internal documents showed that there are price differences between countries and that promotional campaigns are sometimes targeted at specific countries or regions. In addition, third party customers and competitors contacted during the CMA's market testing indicated that the market is national in scope.
70. Accordingly, on a cautious basis, the CMA has considered the impact of the Merger on the retail of personal luxury goods through online multi-brand websites in the UK.

E-commerce services

71. The Parties noted that that geographic scope is likely to be at least EEA-wide and in any event broader than national, because, for instance, customers are global and numerous suppliers provide services efficiently on a global basis.
72. The CMA did not find evidence to suggest that the geographic scope is as narrow as national. The CMA's market testing indicated that some contracts appear to be global and one customer indicated that it held separate tenders for its European, US and Asian businesses.
73. For the reasons set out above, the CMA has considered the impact of the Merger in, at least, the EEA while focussing its competitive assessment on effects of the Merger in the UK.

Conclusion on frame of reference

74. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
 - retail of personal luxury goods through online multi-brand stores in the UK (including permanent discount and premium websites); and
 - supply of e-commerce services in, at least, the EEA.

Competitive assessment

Horizontal unilateral effects

75. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and

without needing to coordinate with its rivals.¹⁵ Horizontal unilateral effects are more likely when the merger parties are close competitors.

76. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the retail of personal luxury goods through online multi-brand stores in the UK, and the provision of e-commerce services in, at least, the EEA.

Retail of personal luxury goods through online multi-brand stores

Shares of supply

77. The Parties estimated shares of supply for the retail of personal luxury goods by online mono-brand and multi-brand stores in the UK based on turnover.¹⁶ The CMA has excluded mono-brand stores from the Parties' calculations on a cautious basis (see paragraphs 42 to 45).

Table 1: Estimated shares of supply of online retail of personal luxury goods by multi-brand stores in the UK

	Turnover (mln £ in 2014)	%
Net-A-Porter	[X]	[10-20]
Yoox	[X]	[0-5]
Combined	[X]	[20-30]
Farfetch	[X]	[30-40]
Neiman Marcus	[X]	[5-10]
BrandAlley	[X]	[5-10]
Shopbop	[X]	[5-10]
Matches Fashion	[X]	[5-10]
Gilt	[X]	[0-5]
Selfridges	[X]	[0-5]
Harrods	[X]	[0-5]
Luisa Via Roma	[X]	[0-5]
Browns	[X]	[0-5]
Barneys	[X]	[0-5]
Nordstrom	[X]	[0-5]
Saks Fifth Avenue	[X]	[0-5]
Moda Operandi	[X]	[0-5]
Joseph	[X]	<[0-5]
Total	[X]	100

¹⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹⁶ Richemont does not retain any multi-brand activities.

78. Table 1 shows that, based on the Parties' estimates, Yoox and Net-A-Porter will be the second largest online multi-brand retailer of personal luxury goods in the UK with a combined share of supply of [20-30]%, and a relatively small increment of [0-5]%. Yoox and Net-A-Porter's main competitors listed are Farfetch, Neiman Marcus (including Mytheresa), BrandAlley and Shopbop, as well as a long tail of competitors which the Parties indicate are larger than Yoox in the UK.
79. The CMA's market testing revealed that the Yoox and Net-A-Porter have significantly overestimated the turnover of, at least, two of their competitors. Therefore, the CMA believes that Yoox and Net-A-Porter's combined share of supply might be significantly higher.
80. However, where products are differentiated, as in this case, unilateral effects are more likely where the merger parties' products compete closely.¹⁷ Therefore, the CMA focusses its assessment on closeness of competition between Yoox and Net-A-Porter and competitive constraints imposed by third parties.

Closeness of competition and competitive constraints

81. The Parties submitted that the focus of the Yoox and Net-A-Porter businesses is different as the core of Yoox's offer is off-season, discounted products whereas Net-A-Porter focusses on offering premium products and customer service. In addition, Net-A-Porter's customer base consists of high spending individuals whereas Yoox.com has a broader customer base including those seeking discounts.
82. The Parties argued that each of Yoox and Net-A-Porter's websites compete closely with the following retailers:
- (a) Net-a-porter.com: [REDACTED];
 - (b) Mr Porter: [REDACTED];
 - (c) The Outnet: [REDACTED]; and
 - (d) Yoox.com: [REDACTED].
83. Several internal documents discussed the competitive positioning of Net-A-Porter's websites. [REDACTED] was mentioned as one of numerous competitors to

¹⁷ See [Merger Assessment Guidelines](#), paragraph 5.4.6.

Net-a-porter.com and Mr Porter. One document suggested that [X] is The Outnet's closest competitor in terms of business models, amongst many other rivals such as [X]. The CMA notes that these documents were not UK focused and therefore it places limited weight on them with regard to Yoox and Net-A-Porter's competitive positioning in the UK.

84. A wide range of online articles and fashion blogs collectively indicated that there is a wide range of alternatives to Yoox and Net-A-Porter's websites. Some online articles indicated that Yoox.com and The Outnet are potentially close competitors. However, it is also noted by several articles that the Yoox and Net-A-Porter's offerings are differentiated to a considerable extent. In this respect, the CMA notes, again, that these articles are not UK focussed and, as such, are of more limited probative value.
85. The Parties provided information on their top 20 natural search terms for traffic and revenue in the UK and their top 20 Google click search terms the Parties spend most on in the UK for each of their websites.¹⁸ The CMA found that there is very limited to no overlap between Yoox and Net-A-Porter's search terms.
86. The Parties also provided the average order value for each of its websites. Customers spend on average £[X] on Net-a-porter.com, £[X] on Mr Porter, £[X] on The Outnet and £[X] on Yoox.com. These average order values indicate significant differences between the Yoox and Net-A-Porter's websites, including the off-season/discount websites The Outnet and Yoox.com.
87. Net-A-Porter's consumer surveys for each of its websites indicated that its customers shop from a wide variety of online luxury retailers and relatively few shop at [X] (see for example Table 2).¹⁹ The Outnet survey specifically suggested that customers shop for discount products across a range of sales channels and that The Outnet competes particularly with [X].²⁰

¹⁸ Natural search terms are search terms used resulting in natural indexing of a search engine. Google click search terms are search terms that people have used before seeing an advertisement and clicking it.

¹⁹ The Outnet survey asked UK customers to identify the top online retail site they shopped at in terms of spend.

²⁰ The Outnet UK customers were asked where they purchased discount luxury fashion.

Table 2: Top 10 online retailers determined by spending of The Outnet UK customers

Ranking	Online retailers	%
1	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]

88. The CMA’s market testing²¹ indicated that wholesalers (ie brands) generally do not consider Net-a-porter.com or Mr Porter, and Yoox.com to be close competitors. One wholesaler mentioned that Net-a-porter.com is UK centric while Yoox.com is not really established in the UK, and they appeal to different customer bases. Another wholesaler mentioned that Yoox and Net-A-Porter have different business models. These third parties listed Matches.com and Mytheresa as close competitors to Net-a-porter.com and Mr Porter.
89. Some third parties identified Yoox.com and The Outnet as being closest competitors for off-season products. However, one wholesaler party said that consumers had a number of other off-season options including online flash sale sites (and bricks and mortar outlets). Another wholesaler explained that it supplied off-season stock to many other (online) retailers. Some wholesalers described the market as being highly competitive and fragmented and others said that the Merger should benefit Yoox and Net-A-Porter’s customers by sharing best practices.

Conclusion on horizontal unilateral effects

90. As set out above, the CMA considers that the Merger results in a small increment due to Yoox’s limited presence in the UK and Yoox and Net-A-Porter have generally different focusses and business models. Net-a-Porter.com, Mr Porter and Yoox.com are not close competitors and there are numerous other rivals that will provide sufficient constraint on the merged entity. With regard to permanent discount websites, Yoox.com appears to be a closer competitor to The Outnet although their offerings are differentiated

²¹ The CMA notes that several respondents are brands of Kering which is a joint venture partner of Yoox. These third parties all responded very similarly.

and a wide range of alternatives remain including premium retailers. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to retail of personal luxury goods by online multi-brand stores in the UK.

E-commerce services

Existing competition

91. The Parties declined to estimate their share of supply of e-commerce services in total or specifically with regard to services provided to luxury brands.
92. One Net-A-Porter internal document stated that Yoox is the only vertically-integrated service provider for mono-brands. It noted that [REDACTED].
93. Details of 25 recent e-commerce tenders Yoox participated in showed that Yoox [REDACTED]. Yoox was unsuccessful in tenders that involved prestige luxury brands or that were contract renewals for existing customers. For all tenders alternative competitors were listed with different suppliers for e-commerce platform services and operations. Net-A-Porter was not mentioned as a competitor. In more than half of the tenders the one alternative listed for operations was 'internalised'.
94. The CMA's market testing demonstrated that customers considered a wide range of generalist providers to be a credible alternative to Yoox. Customers confirmed that they were able to combine outsourcing and developing in-house capabilities. Customers were not concerned about the Merger and were prepared to switch if prices would increase. Some customers mentioned an opportunity for Yoox and Net-A-Porter to improve their performance and gain negotiating power with other providers such as logistics companies as a result of the Merger.

Potential competition

95. The CMA considers that unilateral effects may also arise from the elimination of potential competition. In order to assess this, the CMA considers: i) would the potential entrant be likely to enter in the absence of the merger, and ii) would such entry lead to greater competition.²²

²² [Merger Assessment Guidelines](#), from paragraph 5.4.13.

96. Based on Net-A-Porter's detailed business plan and internal emails, the CMA considers that it is likely that Net-A-Porter would have expanded in the absence of the Merger.
97. This business plan showed that Net-A-Porter, in expanding its e-commerce services, would have supplied [REDACTED].²³ Overall, however, the CMA considers that this early stage plan to provide e-commerce services would not be sufficient to result in greater competition as it would be a form of self-supply rather than supplying any third parties with e-commerce services.
98. The business plan also showed Net-A-Porter's ambition to start providing services to [REDACTED]. To serve these customers [REDACTED]. Based on this evidence, Net-A-Porter's expansion plans were modest and would have taken effect in the medium term. Moreover, given the robust level of existing competition for the provision of e-commerce services the CMA considers any loss of potential competition from Net-A-Porter would be minimal.

Conclusion on horizontal unilateral effects

99. As set out above, the CMA considers that there is a wide range of competitors to Yoox, Net-A-Porter's current presence is limited and the extent of its expansion appears uncertain and modest. Accordingly, the CMA finds that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the provision of e-commerce services in, at least, the EEA.

Vertical effects

100. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
101. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive for it to do so, and (c) the overall effect of the strategy on competition. In practice, the analysis of these questions may overlap.²⁴

²³ [REDACTED].

²⁴ [Merger Assessment Guidelines](#), paragraph 5.6.6 and 5.6.7.

102. In this case, the CMA considered whether as a result of the Merger the Parties have the ability and incentive to harm rivals, for example, through raising prices or refusing to supply them.
103. The Parties submitted that they would not have the ability and incentive to engage in input or customer foreclosure. Richemont's presence on the wholesale market in the UK is relatively small with numerous other luxury brands for apparel and shoes. In addition, brands owned by Richemont account for less than [0-10]% of Net-A-Porter's current sales and Yoox is not directly supplied by Richemont's brands.
104. Based on the above, the CMA believes that Richemont would not have the ability and incentive to foreclose other retailers as there is a wide range of alternative luxury brands and given that any attempted foreclosure strategy may have a negative impact on Richemont's profits. The CMA also believes that the Combined Entity would not have the ability and incentive to foreclose third party luxury brands as there are sufficient alternative retailers and, for instance, over [90-100]% of Net-A-Porter's turnover is derived from sales of third party brands' luxury products.²⁵
105. Given that the CMA believes that the Parties would not have the ability and incentive to foreclose other retailers and brand owners, it has been unnecessary for the CMA to consider the effects of any such foreclosure. Accordingly, the CMA found that the Merger would not give rise to a realistic prospect of an SLC as a result of input foreclosure.

Barriers to entry and expansion

106. Entry, or expansion of existing firms, can mitigate the initial effect of a merger 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 whether such entry or expansion would be timely, likely and sufficient.²⁶
107. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

²⁵ The CMA notes that Yoox is in a joint venture with Kering, however, the inclusion of Kering, on a cautious basis, would not change the conclusions of this assessment.

²⁶ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Third party views

108. The CMA contacted customers and competitors of Yoox and Net-A-Porter in online retail of luxury goods and e-commerce services. With regard to online retail of luxury goods, one competitor raised concerns as discussed in the Vertical effects section. No other third parties raised concerns about the Merger. With regard to e-commerce services, no third parties raised concerns about the Merger.
109. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

110. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
111. The Merger will therefore **not be referred** under section 33(1) of the Act.

Nelson Jung
Director, Mergers Group
Competition and Markets Authority
2 September 2015