

**INQUIRY INTO THE ACQUISITION BY SPORTS DIRECT
INTERNATIONAL PLC OF 31 STORES FROM JJB SPORTS PLC**

Provisional findings report

Published: 11 February 2010

The Competition Commission has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range. These are shown in square brackets.

Acquisition by Sports Direct International plc of 31 stores from JJB Sports plc

Contents

	<i>Page</i>
1. The reference.....	8
2. The parties and the industry.....	8
Sports Direct.....	8
JJB.....	9
Industry background.....	11
3. The transaction.....	12
Outline of the transaction.....	12
Events leading to the OFT's reference to the CC and the CC's initial steps.....	14
4. Jurisdiction.....	15
The statutory period for reference.....	15
Enterprises ceasing to be distinct.....	16
Share of supply test.....	17
5. The counterfactual.....	18
JJB's options for each store transferred to Sports Direct.....	18
Sports Direct's options.....	21
6. Market definition.....	22
Product market definition.....	23
Customer survey.....	23
Products sold by the parties and evidence that customers value a bundle.....	24
Candidate market.....	26
Further analysis on the candidate market.....	29
Sports Direct and third-party views.....	33
Provisional conclusions on product market definition.....	35
Geographic market.....	36
Customer shopping patterns and store catchment areas.....	37
Customer diversion ratios.....	38
Econometric analysis of entry.....	39
Sports Direct and third-party views.....	40
Internet sales.....	41
Provisional conclusion on geographic market.....	44
7. Barriers to entry and expansion.....	44
Access to brands.....	45
Premium-brand volume discounts.....	46
Set-up costs.....	48
Reputation advantage.....	49
Potential entrants' expansion plans.....	50
Evaluation of the likelihood of entry.....	50
JD.....	51
JJB.....	52
Provisional conclusion on barriers to entry.....	53
8. Effects on competition of the store transfers.....	53
Introduction.....	53
Constraint exercised by transferred JJB stores on existing Sports Direct stores.....	55
Constraint on Sports Direct by other retailers.....	55
Local effects.....	56
Existing local variable responsive to competition.....	57
Incentive to make local offering responsive to competition.....	57
Summary of analysis on local effects.....	59
Store closures.....	59

National effects	60
Actual increase in prices	61
Incentives to increase prices	63
Summary of analysis on national effects	64
Provisional conclusion on effects on competition of store transfers	65
9. Effects on competition of the store transfers through possible coordination.....	66
Markets conducive to coordination	67
Effect of the store transfers on the likelihood of coordination.....	67
Ability to identify and monitor coordination	68
Remaining constraints and barriers to entry	69
The individual interests of Sports Direct and JJB	69
Effect of store transfers on likelihood of future coordination	70
Provisional conclusion on coordinated effects on competition	74
10. Provisional findings	74

Appendices

- A Terms of reference and conduct of the inquiry
- B The counterfactual
- C Diversion ratios
- D Local entry analysis
- E Critical loss analysis
- F Local margin concentration analysis
- G National analysis

Glossary

Summary

1. On 7 August 2009, the Office of Fair Trading (OFT) referred the completed acquisition of 31 JJB Sports plc (JJB) stores by Sports Direct International plc (Sports Direct) to the Competition Commission (CC) for investigation and report. The reference was made under [section 22\(1\)](#) of the Enterprise Act 2002 (the Act) and requires us to determine whether a relevant merger situation has been created; and, if so, whether the creation of that situation has resulted in or may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
2. Following an extension of the original 24-week inquiry period under [section 39\(4\)](#) of the Act, we were required to publish our final report by 24 February 2010. Following a further extension under [section 39\(3\)](#) of the Act, we are now required to publish our final report by 21 April 2010.
3. Sports Direct was founded in 1982 by Mike Ashley and, as of August 2009, operated 363 stores in the UK. JJB was founded in 1971 by David Whelan and, as of July 2009, operated 251 stores in the UK. Both JJB and Sports Direct are active in the retail supply of sporting and leisure clothing, equipment and footwear. In addition to its retail activities, Sports Direct owns a number of brands under which it licenses and sells products. In 2008, the retailing of sports clothing and footwear in the UK was worth an estimated £4.5 billion.
4. The transaction comprised the completed transfer of 31 stores from JJB to Sports Direct over a period between November 2007 and December 2008. Following the transfer, both JJB and Sports Direct continued to operate.

5. We considered what was likely to have happened in the absence of the store transfers (ie the ‘counterfactual’), which provided a benchmark against which we assessed the effects of the transaction. We found that JJB would probably have closed ten of the 31 stores in any event, but the remainder would have remained in JJB’s portfolio. We judged that Sports Direct would probably have sought to acquire new stores in all of the locations where it in fact acquired JJB stores, if sites had become available, but we could not predict if it would have been successful or state with confidence where any such new stores would have been located. We also judged that, of the ten Sports Direct stores which were located near to acquired JJB stores and which Sports Direct closed during the period of the store transfers, five would have closed in any event.

6. We considered the definition of the relevant markets. We found that customers considered JJB and Sports Direct to be each other’s closest competitors and that diversion ratios from Sports Direct to JJB were far higher than to other retailers. We found evidence that the entry of a new JJB store had a strong effect on a Sports Direct store, even where other retailers were already present, while entry by other retailers had only a weak effect. We found evidence that the effect of entry by JJB was consistent across the products offered by both retailers, which suggested that the product market was wider than individual products. Further, few of the respondents in our [customer survey](#) named specialist retailers as an alternative to Sports Direct, which might be expected if customers were generally shopping for specific products. Therefore, we concluded provisionally that the product market included only Sports Direct and JJB. Nevertheless, we recognized that several retailers outside this market were likely to provide some competitive constraint on the parties, albeit weaker than the parties imposed on each other.

7. We found that the geographic market was local. We found that Internet sales did not constitute a significant proportion of sports goods sales and our survey indicated that customer substitution between Sports Direct, JJB and online retailers was relatively limited. We concluded provisionally that the market was no wider than a 2- to 5-mile radius around any given store, and did not include the Internet.
8. We considered whether a new entrant could replace any competition lost by the transfer of 31 JJB stores to Sports Direct. To provide a competitive constraint, a new entrant must be able to provide similar products at similar prices to Sports Direct and JJB. Sports Direct and JJB offer low prices due to the discounts they obtain from their suppliers (in particular Nike and Adidas), which are linked to sales volumes. These volumes are such that entry would need to be on a large scale and at significant cost. We did not identify any large retailers which had the intention of entering on such a scale and we judged that smaller retailers and direct retailers (eg Internet retailers) were unlikely to increase significantly the extent of their constraint on the parties. We recognized that JJB could open new stores in areas where it was not currently competing with Sports Direct, but we judged that significant store expansion by JJB was unlikely to occur in the near term.
9. We analysed the effects of the store transfers on competition. We noted that JJB remained a strong national competitive force and continued as a competitive constraint. We considered whether the store transfers had caused or were likely to cause any worsening in price, quality, range or service (PQRS) at the local or national levels, or whether it had caused or was likely to lead to store closures (possibly harming consumers through increased travel times).
10. We found that Sports Direct varied several non-price factors (QRS) at a local level, even between similar stores. However, we found no differences caused by the

strength of local competition. Similarly, while we found some evidence of a rise in average prices after the store transfers, it was unclear that this rise was associated with the store transfers. We conducted an analysis of profit margins at a local level, but we were unable to identify any variation linked to the strength of local competition.

11. We considered whether the store transfers changed the incentives for Sports Direct to adjust its local PQRS offering. Given the substantial number of areas where Sports Direct faced no local competition from JJB before the store transfers (24 per cent of Sports Direct's stores) and the relatively small change in this number as a result of the store transfers (an increase to 33 per cent at most), we did not consider it likely that Sports Direct's incentives had changed significantly.
12. We conducted a critical loss analysis, which indicated that the store transfers had created an incentive for Sports Direct to increase its national prices by a very small amount (less than one per cent). However, there was some uncertainty surrounding our estimates. We also noted that JJB remained in the market and, over the longer term, was likely to be able to expand into areas where it was not currently competing with Sports Direct (see paragraph 8). For all these reasons, we concluded that it was unlikely that, as a result of the store transfers, Sports Direct would increase its prices significantly.
13. Following the store transfers, Sports Direct closed ten of its stores within a 5-mile radius of an acquired JJB store. We judged that five of these stores would not have closed absent the store transfers (see paragraph 5). However, we found that these five closures had resulted in little effect on consumers given the proximity of remaining stores to the stores which had been closed.

14. We found no compelling evidence that the store transfers would increase the likelihood of tacit coordination. Due to historic reasons, Sports Direct and JJB are disproportionately prevalent in different parts of the UK. We found some evidence that the store transfers changed the number of areas of relative strength, particularly in Greater London. However, we found that JJB's 2008 store closure programme and the sale of some of its stores to DW Sports Fitness were more significant in increasing any observed geographic segmentation than the transfer of the 31 stores to Sports Direct. Even in London, Sports Direct would have had twice as many stores as JJB without the store transfers. Furthermore, recent store openings by Sports Direct and JJB did not indicate any coordination. Therefore, we found that the store transfers were unlikely to lead to any coordinated effects.

15. We concluded provisionally that the acquisition of 31 stores by Sports Direct from JJB has not resulted, and may not be expected to result, in an SLC in any market in the UK.

Provisional findings

1. The reference

1.1 On 7 August 2009, the OFT referred the completed acquisition of 31 JJB stores by Sports Direct to the CC for investigation and report. The reference was made under [section 22\(1\)](#) of the Act. Our terms of reference are set out in Appendix A. Following an extension of the original 24-week inquiry period under [section 39\(4\)](#) of the Act, we were required to publish our final report by 24 February 2010. Following a further extension under [section 39 \(3\)](#) of the Act, we are now required to publish our final report by 21 April 2010.

1.2 This document, together with its appendices, constitutes our provisional findings, which we are required to publish and notify to Sports Direct under the CC's [Rules of Procedure](#). Further information, including non-commercially-sensitive versions of main-party and third-party submissions, and summaries of evidence, can be found on our [website](#).

2. The parties and the industry

2.1 This section provides a brief overview of the parties to the transaction and the activities in which they overlap.

Sports Direct

2.2 Sports Direct was founded by Mike Ashley, who opened his first store in Maidenhead in 1982 under the name 'Mike Ashley Sports'. The business grew organically and through acquisition: Sports Direct acquired Lillywhites in 2002, McGurks in 2005, Gilesports, Hargreaves, the Original Shoe Company (sold to JJB in 2007) and Streetwise in 2006 and Field & Trek in 2007. As at August 2009, Sports Direct

operated 363 stores in the UK (excluding Northern Ireland).¹ Sports Direct's shares were listed on the London Stock Exchange in 2007.

- 2.3 Sports Direct sells a wide variety of sports and leisure clothing, footwear and equipment under a mix of own brands and well known third-party brands, including Adidas, Nike, Reebok, Umbro and Puma. Sports Direct owns a number of brands under which it licenses and sells equipment, clothing and footwear. These brands include Donnay, Dunlop, Slazenger, Kangol, Karrimor, Lonsdale, Everlast, Golddigga and Antigua. Through its Field & Trek stores, Sports Direct also sells an extensive range of camping and outdoor equipment, waterproof clothing and footwear, including third-party brands such as Berghaus, Merrell and Salomon.
- 2.4 In the 52 weeks to 26 April 2009, Sports Direct achieved UK revenues of £1 billion (2008: £1 billion) and profit before tax of £68 million (2008: £85 million).

JJB

- 2.5 David Whelan formed JJB in 1971 through the acquisition of a single sports store in Wigan and expanded the company to a portfolio of 120 stores by 1994, when JJB's shares were listed on the London Stock Exchange. David Whelan sold his shareholding in JJB in 2007.
- 2.6 JJB sells a range of sports and leisure clothing, footwear and equipment, stocking major sports brands, such as Nike, Adidas, Umbro and Reebok, as well as a number of brands and product ranges which are exclusive (owned or under licence) to JJB, including Slazenger Golf, Champion, Patrick and Olympus.

¹Sports Direct does not operate directly in Northern Ireland but holds an indirect shareholding in Heaton's, which operates stores in Northern Ireland and the Republic of Ireland. Sports Direct has recently exercised an option to increase its indirect shareholding in Heaton's to 50 per cent. Sports Direct also has retail interests in Belgium, Holland, Luxembourg and Slovenia, stores within another retailer's stores (Cyprus), and licence agreements in South Africa and the Middle East.

- 2.7 By the late 1990s, JJB was the largest sports retailer in the UK. Between 1999 and 2008, JJB maintained a portfolio of approximately 420 stores, but moved gradually from small high street stores to larger high street stores and out-of-town superstores. JJB also invested in its leisure division with the development of combined health club/superstores.²
- 2.8 In 2008, it was apparent that JJB was in serious financial difficulties. In September 2008, JJB announced its interim results³ showing a first half loss of £10 million (in the first half of 2007 it had made a profit of £8.3 million) and disclosing material uncertainty as to whether it would continue as a going concern. There was a dispute as to whether JJB had breached its banking covenants and, in October 2008, credit insurance to JJB's suppliers was withdrawn. In December 2008, JJB entered into a 'standstill' arrangement with its banks, with the effect of delaying the repayment of its debts. This arrangement was extended several times between December 2008 and March 2009, when JJB entered into new funding arrangements with its banks, and established a company voluntary arrangement (CVA) with its landlord creditors. During 2008 and the first seven months of 2009, JJB reduced its UK store portfolio from 414 stores to 251 stores. JJB's health clubs business (comprising 55 combined sites each with a fitness club and a retail store) was sold in March 2009 for £83 million to David Whelan, who named the business DW Sports Fitness.
- 2.9 In the 52 weeks to 25 January 2009, JJB generated revenues from its retail stores of £646 million (2008: £745 million), and operating profit of £13 million⁴ (2008: £49 million). In this period, JJB generated an overall loss before tax of £179 million⁵ (2008: profit before tax of £11 million). In October 2009, JJB conducted a share

²In 2007, JJB acquired the Original Shoe Company (from Sports Direct) and the Qube footwear company. These two footwear companies were put into administration in February 2009. The numbers of retail stores in the UK do not include the stores from these two chains.

³For the 26 weeks to 27 July 2008.

⁴Before central costs and exceptional operating items.

⁵After exceptional operating items and including the results of its fitness clubs operations.

issue, the proceeds of which it used to repay some of its debt, reducing its reliance on supplier credit, and to provide sufficient working capital to rebuild its stock levels. In January 2010, JJB confirmed that it was on track for its stores to be fully stocked by April 2010.⁶

Industry background

- 2.10 Sports Direct and JJB are retailers of sporting and leisure clothing, footwear and equipment. UK sales of sports clothing and footwear were worth an estimated £4.5 billion in 2008, up 0.6 per cent from 2007.⁷
- 2.11 JD Sports Fashion PLC (JD) is also active in the retail supply of sports and leisure clothing and footwear, with a focus on the principal sports and fashion brands (eg Nike, Adidas and Converse) and, particularly, on premium products supplied by these brands. JD is more focused on fashion than Sports Direct and achieves particularly strong sales in footwear. In December 2007, JD acquired the Bank chain, which increased JD's focus on youth fashion. JD has over 400 stores in the UK and is listed on the London Stock Exchange. In the 52 weeks to 31 January 2009, JD achieved turnover of £671 million (2008: £592 million) and profit before tax of £54 million (2008: £43 million).⁸
- 2.12 Many other retailers also sell sports clothing and equipment. However, usually, they are either independent generalist sports shops or they are shops focused on specific sports (eg Sweatshop, which concentrates on technical running clothing and shoes, with a high level of advice and service, through its 31 stores in the UK). The French retailer Decathlon also sells sports clothing and equipment, with six large out-of-town

⁶See www.jjbcorporate.co.uk/pdf/28012010%20JJB%20Sports%20Trading%20Update.pdf.

⁷Keynote, *Sports Clothing & Footwear 2009*, p11.

⁸Before exceptional items.

stores in the UK, as do the major supermarkets. Large clothing retailers, such as Next, stock some sports-themed fashion clothing.

- 2.13 Sports clothing and footwear are bought both for functional and fashion purposes. Since the 1980s, brands such as Nike and Adidas have sought to extend the appeal of their products beyond their original sports function to be worn as general leisure clothing. This approach has been very successful.⁹ Trainers, tracksuits and replica football shirts are now all worn as leisure clothing and footwear, as well as for sport.
- 2.14 Alongside the increased use of sports clothing and footwear for leisure purposes, the sector has also seen underlying technical advances. Regardless of the ultimate use, most sports clothing and footwear are designed for sport, and participants in all sports are often attracted by technical developments which improve performance.
- 2.15 Expenditure on sports clothing and footwear has grown for many years, driven by lower prices. However, in recent years, the rate of this growth has slowed. Sales of sporting goods are also linked to high-profile sporting events, so the England team's successful qualification for the football World Cup in 2010, and the hosting of the 2012 Olympics in London and the 2014 Commonwealth Games in Glasgow, are all expected to increase future sales. In addition, government policies aimed at raising participation in sport and reducing obesity could increase the sales of sports clothing, footwear and equipment.

3. The transaction

Outline of the transaction

- 3.1 The transaction comprised the completed transfer of 31 stores from JJB to Sports Direct. The stores were transferred over a period of 13 months between November

⁹Keynote, *Sports Clothing & Footwear 2009*, p3.

2007 and December 2008. The transfers were not legally conditional upon each other. The 31 stores and their date of transfer are set out in Table 1.

TABLE 1 JJB stores transferred to Sports Direct

<i>Store name</i>	<i>Date transferred</i>
Barnsley	November 2007
Wood Green	November 2007
Newcastle under Lyme	November 2007
Newport	November 2007
Huddersfield	December 2007
Basildon	January 2008
Newcastle	January 2008
Washington	February 2008
Llanelli	February 2008
Harrogate	February 2008
Eltham	February 2008
Truro	March 2008
Wolverhampton	March 2008
Poole	March 2008
Farnborough	April 2008
Twickenham	April 2008
Ilford	April 2008
Inverness	April 2008
Bristol	April 2008
Sutton	May 2008
Bradford	June 2008
Walthamstow	June 2008
Ealing	June 2008
Uxbridge	November 2008
Bedford	November 2008
Lancaster	November 2008
Orpington	November 2008
Cardiff Bay	December 2008
York	December 2008
Worthing	December 2008
Salisbury	December 2008

Source: JJB.

3.2 From an analysis of the contracts, we established that:

(a) 30 stores were transferred in standard form sale contracts.¹⁰

(b) 29 contracts¹¹ transferred: (i) the leasehold property (usually transferred for

£[redacted]);¹² (ii) the goodwill of the business of retailer of sports equipment and sports goods and associated leisurewear and sports footwear carried on by JJB at the property (transferred for £[redacted]); and (iii) the fixtures and fittings belonging to JJB at the property (transferred at [redacted]).

¹⁰The store at Ilford was empty and not transferred formally (that is, Sports Direct was occupying the site without a lease). The Inverness store was transferred under Scottish law, but essentially on the same terms as applied to the other transfers.

¹¹The contract for the Lancaster store transferred only the lease (for a [redacted]). The [redacted] store transfer had no formal contract and we are not aware of any payment made by Sports Direct to JJB.

¹²In the [redacted] most recent contracts ([redacted]) JJB received consideration of £3.4 million for the assignment of the four leases. The [redacted] store appears to have been occupied by consent but without a premium being paid.

- (c) The standard or special conditions of sale: (i) excluded any right to use JJB's name; (ii) agreed that the sale and purchase of the business and property constituted a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and, as a consequence, there was an agreed list of employees who were transferred (and an agreed list of senior employees who were not to be transferred) attached to each contract; and (iii) transferred the stock, at [redacted].¹³
- (d) Landlords' consents to the transfers were required, but there were no restrictive covenants on JJB.

Events leading to the OFT's reference to the CC and the CC's initial steps

- 3.3 The OFT became aware of the store transfers in December 2008. On 1 May 2009 the OFT decided to refer the transaction to the CC because it believed that, although the transfers did not raise any national competition issues, the store transfers did give rise to a realistic prospect of an SLC in five local areas where Sports Direct had existing stores (Basildon, Llanelli, Newport, Harrogate and Isleworth).
- 3.4 The OFT suspended its duty to refer in order to consider whether to accept undertakings in lieu of reference from Sports Direct. The OFT noted that the sale of stores in the five areas would remedy the competition concerns identified. However, the OFT was concerned at the potentially limited number of candidate purchasers for these stores so it required the identification of a buyer in advance. Sports Direct was given until the end of the extended divestment timetable on 31 July 2009 to identify a suitable purchaser (or purchasers) and agree a sale. However, no sale was agreed.

¹³There were [redacted] stores where no stock was transferred: [redacted].

- 3.5 On 7 August 2009, the OFT announced that it was not appropriate to extend the suspension of its duty to refer in order to give Sports Direct more time to agree a sale. Therefore, the OFT referred the transaction to the CC for investigation.
- 3.6 As set out in Appendix A, on 4 September 2009 the CC made an [Order](#) to ensure both that the stores purchased by Sports Direct remained viable businesses and that the CC had options for divestment in each of the affected local areas should remedies become necessary. On 11 September 2009, the CC issued [Directions](#) under the Order requiring Sports Direct to appoint a Monitoring Trustee. On 18 September 2009, Sports Direct appointed Smith & Williamson as Monitoring Trustee, with the agreement of the CC. Smith & Williamson's role was to monitor Sports Direct's compliance with the Order.

4. Jurisdiction

- 4.1 Pursuant to [section 35](#) of the Act and to our terms of reference (see Appendix A) we are required to decide whether a relevant merger situation has been created. A relevant merger situation is created where, within the statutory period for reference, two or more enterprises have ceased to be distinct, and either the share of supply test or the turnover test is satisfied.¹⁴

The statutory period for reference

- 4.2 [Section 24](#) of the Act states that a reference to the CC must be made within four months of the enterprises ceasing to be distinct, or of material facts about the transaction being made public or given to the OFT. However, [sections 27\(5\) and \(6\)](#) of the Act give the OFT power, for the purposes of a merger reference, to treat successive events occurring in consequence of successive arrangements between the same parties within a two-year period as having occurred simultaneously on the

¹⁴[Section 23](#) of the Act. Our terms of reference state that we can exclude from consideration one of these tests, if we find that the other is satisfied.

date on which the last of the events occurred. On this basis, the OFT treated the transfer of 31 stores from JJB to Sports Direct, which occurred as separate transactions between 5 November 2007 and 1 December 2008, as one single transaction occurring simultaneously on 1 December 2008. We agreed with this approach.

Enterprises ceasing to be distinct

4.3 Enterprises cease to be distinct if they are brought under common ownership or common control.¹⁵ A single store is capable of being an 'enterprise' for these purposes.¹⁶ 'Enterprise' is defined by the Act to mean 'the activities, or part of the activities, of a business',¹⁷ and the term 'business' is defined to include an 'undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods are supplied otherwise than free of charge'.¹⁸ The approach taken by the CC in applying these definitions is to consider the overall effect of the arrangements in question, and to see whether one party has, in effect, continued the business, or a significant proportion of the business, previously carried on by the other party.¹⁹ In making this assessment, the CC looks to the commercial realities, not the legal form, of the arrangements.²⁰ The CC takes the view that a business does not have to be trading at the time of its acquisition in order for it to be treated as an enterprise.²¹

¹⁵Section 26(1) of the Act.

¹⁶See, for example, *Tesco plc and the Co-operative Group (CWS) Limited. A report on the acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough, by Tesco plc*, 28 November 2007, paragraph 4.3.

¹⁷Section 129(1) of the Act.

¹⁸Section 129(1) of the Act.

¹⁹See, for example, *AAH Holdings plc and Medicopharma NV: A report on the merger situation*, 1992, paragraph 6.104 ('In our view, the overall effect of such arrangements, agreements and understandings was that the business carried on by AAH after 3 November 1991 was in part a continuation of a significant proportion of the business previously carried on from the three depots by Medicopharma UK').

²⁰See, for example, *Stagecoach Holdings plc and Lancaster City Transport Limited: A report on the merger situation between Stagecoach Holdings plc and Lancaster City Transport Limited*, 1993, paragraph 6.21 ('we believe that one of the intentions and purposes of the Act is to enable the MMC to consider commercial realities and results and not merely the results of legally enforceable agreements and arrangements ... It is, we believe, our duty to look at substance, not form').

²¹See, for example, *AAH Holdings plc and Medicopharma NV*, op cit.

4.4 The relevant contract documents show that, in 29 of the 31 reference transactions, Sports Direct acquired the leasehold property, goodwill and fixtures and fittings from JJB (see paragraph 3.2), and that the sale and purchase of the property and business was treated as a relevant transfer for the purpose of the TUPE regulations. The two other stores (Ilford and Lancaster) were empty immediately prior to the transfer to Sports Direct. Nevertheless, we noted that the acquisition of these two stores were not isolated events, but formed part of a number of similar transactions between JJB and Sports Direct. Therefore, it appeared that Sports Direct had assessed these stores against the same commercial criteria as the other stores it had acquired, and that the business carried on by Sports Direct from these stores would be a continuation of the business JJB had carried on at these stores previously. We also noted that only a short time elapsed between JJB ceasing trading at these stores and Sports Direct commencing trading there (a few weeks at Ilford; three months at Lancaster), which suggested that the action required to reactivate the business was limited. We concluded that all 31 transferred stores were part of JJB's business and 'enterprises', even though they were not all trading at the time of transfer.

Share of supply test

4.5 The share of supply test is met if, as a result of the transaction, the enterprises which have ceased to be distinct have a share of supply of goods or services of any description in the UK, or in a substantial part of the UK, of at least 25 per cent. The application of the share of supply test is different from the definition of market shares undertaken as part of any analysis of competition within an economic market, and for these purposes we apply such criteria as we consider appropriate.²²

4.6 We noted the importance of the five leading brands (Adidas, Nike, Puma, Reebok and Umbro) to the retailing of sportswear in the UK. In January 2008, Sports Direct's

²²Section 23(5) of the Act.

share of the total sales of these brands in the UK was over 25 per cent. As JJB also sold these products at the 31 reference stores, Sports Direct's share of supply of these products increased as a result of the store transfers. On this basis, we concluded that the share of supply test was satisfied and we did not consider the turnover test.²³

- 4.7 We concluded that a relevant merger situation under [section 23\(1\)](#) of the Act had been created.

5. The counterfactual

- 5.1 In order to assess whether the store transfers have resulted in or may be expected to result in an SLC, we considered what would have happened had the transfers not occurred. This situation, referred to as the 'counterfactual', is the benchmark against which we compared the competitive effects of the store transfers (see [Section 8](#)).

- 5.2 We assessed (a) the options available to JJB for each of the 31 stores; and (b) what Sports Direct would have done absent the store transfers, namely whether it would have closed its existing stores in the 31 locations (to the extent that it was present at the time of the store transfers) and whether it would have opened stores in the 31 locations (to the extent that it was not already present at the time of the store transfers), or in other areas close to JJB stores.

- 5.3 A detailed analysis is contained in Appendix B.

JJB's options for each store transferred to Sports Direct

- 5.4 The stores were transferred on an individual basis between November 2007 and December 2008 in a series of 31 separate transactions. The stores were never

²³See the footnote to paragraph 4.1.

marketed as a single undertaking. We therefore judged it unlikely that JJB would have considered the transfer as a bloc of all 31 stores to a third party. Instead, our view was that the stores would have remained in the JJB portfolio unless a particular store had such poor historic financial results or future prospects that it would be more sensible to remove it from the portfolio (by sale or closure).

- 5.5 JJB's submission supported this view, stating that the loss-making stores could have closed and the leases been passed on, while the profitable stores would have probably continued trading, provided that there was no reason why they would not continue to be profitable (eg because of increased rents following a rent review).
- 5.6 We therefore examined the options that would have been available to JJB at the time of each store transfer (ie November 2007 to December 2008), ie to keep the store open; to assign the lease on the store to another retailer,²⁴ or to close the store.
- 5.7 We judged that, if a store were profitable, it was reasonable to expect that JJB would have kept it open while, if it was loss-making, it was reasonable to expect that JJB would have closed it or disposed of it.
- 5.8 We considered that the appropriate measure of profitability was Earnings before Interest and Tax (EBIT), after each store's share of variable central costs. We used this measure because JJB's financial incentive would have been to keep open only those stores which contributed to fixed central costs.²⁵ If a store was not able to cover its share of variable central costs (thereby not contributing any profit to cover fixed central costs), JJB would have been better off closing or transferring the store.

²⁴Our provisional view on the relevant product market is that it should only include Sports Direct and JJB (see [Section 5](#)). Thus the competitive effect of assigning a lease on a store to any retailer, whether sports or non-sports, and closing a store, would be the same.

²⁵JJB told us that central costs were allocated on the basis of turnover and [redacted] of its central costs were fixed.

- 5.9 This analysis assumed that each store's direct costs were variable, including cost of goods sold, staff wages, overheads (eg rates and utilities), and rent. We considered whether it was reasonable to classify rental payments as variable, given that a lease commits a tenant to rental payments over a period of time. We noted that JJB had been able to enter into a CVA in April 2009 whereby it agreed to compromise claims of landlords of approximately 140 closed stores (see paragraph 2.8), and we judged that it was reasonable to expect that, if JJB had decided to close a store on the basis of financial performance, it would have been able to include the closed store within the CVA. Thus, we decided to classify rental payments as variable.
- 5.10 Sports Direct submitted that the key determinant of whether JJB would have kept open each store would have been its future prospects, not its historical results. We accepted this approach in principle, and applied it where possible; however, JJB could only provide forecast information for a few stores.
- 5.11 We found that five stores were loss-making pre-transfer²⁶ ([REDACTED]). We concluded provisionally that these five stores would have closed, or been transferred to a firm outside the relevant market, absent their transfer to Sports Direct.
- 5.12 We also concluded provisionally that a further five stores, all of which were profitable pre-transfer ([REDACTED]) would have closed, or been disposed of to a firm outside the relevant market, absent their transfer to Sports Direct. Two stores ([REDACTED]) were already vacant, while three stores (in [REDACTED]) were replaced by nearby stores in more favourable locations, which we believed would have happened in any event.

²⁶On the basis of EBIT and after variable central costs (see paragraph 5.8).

- 5.13 We concluded provisionally that the remaining 21 stores, all of which were profitable (ie covering their own variable costs (both direct and central), and contributing to fixed central costs), would have stayed open and continued trading as JJB stores.
- 5.14 Sports Direct highlighted that JJB's financial situation at the time of the store transfers was distressed. In order to avoid insolvency, JJB disposed of 72 stores and entered into a CVA (see paragraph 2.8). We accepted that some stores which were only marginally profitable might have also closed or been transferred to a firm outside the relevant market, absent the transfers to Sports Direct. Therefore, while we have performed our competitive effects analysis on the basis that the remaining 21 profitable stores would have remained open (see [Section 8](#)), we interpreted the results recognizing that some of these remaining stores might also have closed (see paragraph 8.40).

Sports Direct's options

- 5.15 What Sports Direct would have done both in terms of closing existing stores and opening new stores if it had not acquired the 31 JJB stores is important as it affects the number of areas where Sports Direct competes directly with JJB.
- 5.16 Following the store transfers, Sports Direct closed ten of its stores in locations near to JJB stores which it acquired (Barnsley, Bradford, Bristol, Harrogate, Huddersfield, Newcastle under Lyme, Poole, Sutton, Truro and Wolverhampton). We assessed the rationale for these store closures and found that Sports Direct would have closed five of these stores in any event. Three stores (Barnsley, Bradford and Newcastle under Lyme) were part of the Streetwise chain, which was sold in November 2008,²⁷ unrelated to the store transfers; and two stores (Poole and Bristol) had already closed before the JJB stores were transferred to Sports Direct. However, we

²⁷The Streetwise business was sold in November 2008 and subsequently put into administration in February 2009.

concluded provisionally that the remaining five stores (Harrogate, Huddersfield, Sutton, Truro and Wolverhampton) would have remained open in the absence of the store transfers.

5.17 With regard to possible store openings, Sports Direct told us that it had considered alternative sites in many of the locations where it had acquired a JJB store (see Appendix B for details). Sports Direct told us that it expanded on an opportunistic basis, as and when sites became available in locations it considered desirable. However, we could not say with confidence that Sports Direct would have opened a store in any of the 31 locations within a reasonable period. We recognized that Sports Direct might have aimed to open stores in the locations where it in fact acquired JJB stores, but we could not predict if it would have been successful or state with confidence where any such new stores would have been located. We took the possibility of new store openings into account in interpreting the results of our analysis (see paragraph 8.40), but did not include a specific expectation in our counterfactual.

6. Market definition

6.1 In defining the relevant product and geographic markets, we aim to identify the extent to which customers can easily switch to alternative products or suppliers, or suppliers can easily switch their facilities between the supply of alternative products, in response to a change in price imposed by a hypothetical monopolist of the relevant product or products.²⁸ Market definition is not an end in itself, but a framework within which to analyse the effects of a transaction.

²⁸The hypothetical monopolist test begins by identifying each product supplied by each of the merging firms. It then asks if there were only one supplier of a particular product stocked by the merging parties, whether that hypothetical supplier could profitably worsen its offer. If customers switching to alternative products would make this worsening unprofitable, the closest substitutes are added to the candidate market and the procedure is repeated. In this way, we aim to identify the narrowest set of products that could be monopolized profitably.

6.2 We assessed the relevant product and geographic markets in turn.

Product market definition

6.3 We considered a range of evidence in relation to product market definition, including results from our customer survey. In this section, we

- (a) describe the customer survey we commissioned;
- (b) describe the products sold by the parties and consider evidence that customers value the bundle of goods on offer;
- (c) identify a candidate product market which we submitted to further analysis;
- (d) describe the further analysis which we conducted on that 'market'; and
- (e) discuss views on the relevant product market submitted by Sports Direct and third parties.

Customer survey

6.4 We commissioned GfK NOP to conduct a customer survey at 18 Sports Direct and five JJB stores with a view to obtaining information on customer behaviour in choosing in which store and in which location to shop. Sports Direct commented in advance on the questions to be asked, and we adjusted the questions where appropriate. In total, 2,943 interviews were conducted between 17 and 29 September 2009.

6.5 The survey asked people about what they purchased 'today', where else they considered purchasing and how often they visited the store. Respondents were also asked hypothetical questions on what they would do if their chosen store was no longer available, and what they would do if prices rose by 5 per cent. While there are always difficulties in asking hypothetical questions, we sought to design the questions in a way which would minimize the risk of misleading responses. Respondents also provided data on how frequently they shopped at their chosen

store, how far they had travelled to the store, and whether they had planned their visit to the store or whether it was an impulse visit. Some demographic questions were also asked to enable analysis by different customer attributes.

6.6 The survey sought to identify which retailers customers considered to be substitutes for Sports Direct. The areas with a Sports Direct store which were surveyed included seven areas where a JJB store had been transferred to Sports Direct, [redacted] (see paragraph 3.3). As the transfers were completed in 2008, we recognized that customer responses in these seven areas might not be helpful for analysing the competitive situation before the transfers occurred. Therefore, we also conducted interviews in 11 Sports Direct comparator areas, which were chosen on the basis of the competitors present within certain distances. Responses from the comparator areas were intended to give an indication of how competition might have worked in the areas where a store had been transferred before the transfer occurred and, more generally, how customers' switching choices varied with local competitive conditions.

6.7 Full details of the survey are on our website.²⁹

Products sold by the parties and evidence that customers value a bundle

6.8 It was not possible to consider individual products stocked by the parties as both stock a very large number: in 2009, Sports Direct stocked approximately [redacted] stock-keeping units (SKUs), while JJB stocked approximately 198,000.³⁰

6.9 Sports Direct allocates each SKU into one of [redacted] product categories. Therefore, as a more practical starting point, we looked at the percentage of Sports Direct's total revenue accounted for by each of these categories. In particular, we looked at the best-selling categories of each retailer to see if there were some categories that were

²⁹See www.competition-commission.org.uk/inquiries/ref2009/jjb/index.htm.

³⁰Sports Direct and JJB use different SKU codes to identify different sizes and colours of the same product.

particularly important. We found that even Sports Direct's best-selling category accounted for less than [X] per cent of its total revenue in 2009. We also found that, while each individual category accounted for only a small proportion of sales for each party, the parties overlapped in almost all categories. As a result, we did not find it helpful to focus on any individual categories.

6.10 Given the large overlap in the parties' retail offerings, we considered whether we could include all their SKUs within a single product market. We considered that this approach would be appropriate if customers were attracted to the bundle of products offered by each party, or if the competitor set was the same in every narrow product market. We considered both these options.

6.11 We analysed data on a sample of 100,000 individual transactions at Sports Direct stores across the whole of the Sports Direct store portfolio between March and August 2009 (six months). We found that the average basket contained [X] products from [X] different categories. We did not see any evidence of correlation across categories of purchase (for example, someone buying running trainers was no more likely to be buying socks than they were a t-shirt). Our survey found a similar result for the average number of items per basket. The survey found that customers purchased from 1.2 categories on average, but the categories used in the survey were much more broadly defined than Sports Direct's categories.³¹

6.12 Our survey also found that the range of products on offer at Sports Direct was the second most frequently given reason for shopping at Sports Direct after price, with 18 per cent of respondents citing 'best range' as the reason for their visit and a further 17 per cent saying that they 'knew Sports Direct had what they wanted'.

Product range was even more important for JJB's customers, with 19 per cent giving

³¹The survey categories were: clothing items for sport use; clothing items for general use; footwear items for sport use; footwear items for general use; equipment; and football shirt.

'best range' as the reason for shopping at JJB, and a further 38 per cent saying that they 'knew JJB had what they wanted'.

- 6.13 Our survey also found that the next largest diversion alternatives for Sports Direct customers after JJB were JD, which stocks sports and fashion clothing and footwear, and the supermarkets, which stock general sports goods and some sports fashion items. We noted that, if competition were on a product-by-product basis, we would expect to see more diversion to other, more specialized stores (such as golf or running shops). Instead, our customer survey found that cumulative diversion to these specialized stores was low: only 4 per cent of customers said that they would switch to a retailer other than a general store stocking products across a range of categories (ie JJB, JD, general clothing/footwear retailers, Internet retailers, supermarkets, and branded outlets). We considered this 4 per cent to be an upper limit on switching to independent specialty sports retailers, because retailers other than such specialty sports retailers may also be included.
- 6.14 Accordingly, we took a bundled product market as the starting point for our analysis, though we recognized that some products stocked by both parties had specific uses (eg golf clubs or football boots) which meant that these products could not be considered to compete generally with other products on offer. Therefore, we also assessed competition on a category-by-category basis to ensure that our analysis captured all relevant competitive constraints (see paragraphs 6.42 to 6.44).

Candidate market

- 6.15 We attempted to identify the narrowest product market which encapsulated the bundle of goods on offer at both Sports Direct and JJB. We found that both retailers focused on: (a) sports goods and sports fashion items, (b) premium sport brands, and (c) discounted prices. We discuss each in turn.

Sports goods and sports fashion items

- 6.16 Most of the products available from Sports Direct and JJB can be classified as sports goods, regardless of whether they are used for sport or leisure purposes.³² We use the term 'sports goods' loosely to include all sports clothing and footwear (eg running trainers), all leisure clothing and footwear with a sporting theme (eg football replica kit and sports-branded t-shirts), and sports equipment (eg footballs).
- 6.17 We recognized that Sports Direct stocks some goods falling outside this category, such as suitcases and jeans. However, because JJB does not appear to stock these products and the hypothetical monopolist test requires us first to look at overlapping products only, these goods were not relevant to our initial assessment of whether a hypothetical monopolist could profitably sustain a small increase in its prices.
- 6.18 We also recognized that, by considering a product bundle, there are no clear lines regarding what is included or excluded from the definition. However, if this approach is not appropriate because the relevant market is wider than, when conducting our hypothetical monopolist test, we would expect to see sufficient switching away from these retailers to justify widening the candidate market.

Premium sports brands

- 6.19 We noted that brands could be an important feature of the relevant market because of their potential influence in determining preferences for clothing and footwear. We noted that five third-party brands (Nike, Adidas, Reebok, Umbro and Puma), owned by three suppliers (Nike, Adidas and Puma), were very important to both Sports Direct and JJB, accounting for [X] per cent and [X] per cent of their respective sales. We use the term 'premium brand' to refer to these brands for convenience.

³²We use the term 'sports' for convenience and because it appears to best characterize this area of overlap, given that both retailers have clear associations with sport through their product range, fascia names and store layouts (which typically feature pictures of sportsmen and women).

Value proposition

- 6.20 Sports Direct and third parties told us consistently that Sports Direct's business model involved offering significant discounts to customers on premium brands, relative to other retailers. JJB told us that it did not consider itself to be a discounter but marketed itself as 'serious about sport', with a pricing proposition in the middle of its perceived competitors (ie between Sports Direct and JD).
- 6.21 We found that Sports Direct and JJB, along with JD, had negotiated significant volume-related discounts with Nike and Adidas (between [REDACTED] and [REDACTED] per cent), compared with a maximum of 15 per cent attained by most other retailers. Therefore, these retailers can offer premium-branded goods at a significant discount. Given that Sports Direct and JJB purchase similar products from these branded suppliers and have [REDACTED],³³ we inferred that [REDACTED].
- 6.22 Sports Direct disagreed with our conclusion, stating that its business model was to offer 'the broadest product range offering the best value, which, in almost all circumstances, results in the lowest prices for the consumer'. Sports Direct said that this business model resulted in it charging lower prices than JJB, despite the fact that both retailers faced similar wholesale costs. Nonetheless, we considered that the fact [REDACTED].
- 6.23 When we considered other retailers, we found a large variation in prices charged for similar sports goods, which could reflect cost differences, the quality of advice or other in-store services. We assessed whether customers traded price and advice (which would be the case if a sufficient number of Sports Direct customers viewed specialist retailers as alternatives to Sports Direct) or if they traded between products of different quality (eg an entry-level versus a high-end running shoe). We considered

³³[REDACTED]

these possibilities when assessing the evidence of wider constraints (see paragraphs 6.32, 6.38 and 6.45).

Further analysis on the candidate market

6.24 Therefore, on the basis of our preliminary analysis, our candidate market was the totality of products available at Sports Direct and JJB (ie sports goods and sports fashion items, including premium sports brands).

6.25 We then considered whether a hypothetical monopolist of this 'market' could profitably increase prices, which, in this case, meant assessing whether a sufficient number of the customers of Sports Direct and JJB would switch to other retailers in response to a joint price increase.

6.26 We (a) assessed diversion ratios derived from our survey; (b) conducted an entry analysis to determine the effect of certain events on Sports Direct's sales; and (c) considered the views of Sports Direct, JJB and third parties. We discuss each in turn.

Diversion ratios from survey

6.27 Our customer survey asked customers where they would have shopped if the shop they visited that day had not been available. Responses to this question provided a strong indication of what customers perceive their switching possibilities to be. The total percentage of customers indicating they would switch to a particular retailer (or type of retailer) is referred to as the diversion ratio for that retailer (or type of retailer).³⁴

³⁴The standard definition for the diversion ratio from retailer A to retailer B is the value of retailer A's sales that would switch to B in the event of a price rise by A, expressed as a percentage of the total value of sales lost as a result of the price increase. Our reasons for estimating diversion ratios as defined in paragraph 6.27 rather than in this way are given in Appendix C.

- 6.28 The results are set out in detail in Appendix C. They show that Sports Direct's customers' primary diversion option is to JJB. The survey found:³⁵
- (a) in areas where neither a JJB store nor a JD store was present within 2 miles, 6 per cent of surveyed customers would switch to JJB;
 - (b) in areas where a JD store was present within 2 miles (but a JJB store was not), 33 per cent of surveyed customers would still switch to the nearest JJB store, indicating that Sports Direct customers would rather incur higher travel costs to shop at JJB than switch to JD, and suggesting that JD is a weak substitute for Sports Direct; and
 - (c) in areas where a JJB store was present within 2 miles (but a JD store was not), 61 per cent of surveyed customers would switch to JJB.
- 6.29 When looking at areas where the only other sports multiple present is a JJB store, diversion is very high compared with diversion to other retailers in the area: over 60 per cent compared with cumulative diversion to other general clothing and footwear retailers of 4 per cent.³⁶ When a JD store is also present this number falls somewhat, but remains high at nearly 50 per cent. This is strong evidence that Sports Direct customers see JJB as by far the closest substitute for Sports Direct.
- 6.30 The second most popular alternative for Sports Direct customers after JJB is a supermarket, although the cumulative diversion to supermarkets is approximately half that to JJB, suggesting that the supermarkets are a much weaker substitute. Diversion to JD is also small compared with the diversion to JJB, and lower than the diversion to supermarkets. The results also indicated that diversion to specialist retailers (such as running shops and golf shops) and to independent sports shops is

³⁵The results discussed in the text are based on adjusted estimates of diversion ratios. See Appendix C, Table 2, for the full set of results and an explanation of how these were obtained from customer responses.

³⁶To put these numbers in context, for a margin of 20 per cent, diversion to the candidate retailer would have to be greater than 35 per cent for these two retailers to be considered in the same market under the 5 per cent SSNIP test. For a margin of 10 per cent, diversion would have to be greater than 50 per cent.

very low (both types of retailer were captured in the 'other shop' category, which in total accounted for 5 per cent of diversion on average in overlap areas).

- 6.31 The survey also found that that the diversion from Sports Direct to JJB was broadly the same regardless of whether goods were purchased for general or sporting use. This result indicated that there is a market for sports goods distinct from general leisure goods, even when sports goods are purchased for general leisure use.
- 6.32 We used the diversion ratios from the survey to test whether a hypothetical monopolist of both Sports Direct and JJB could profitably increase prices by 5 per cent. We noted that this test was different from analysing the effects of the store transfers, as it looked at the hypothetical effect of a full merger between the two retailers in a single overlap area, but this test was relevant for market definition purposes. We found that using the average diversion ratio obtained from our survey of 32 per cent, a 5 per cent price increase would be profitable even under conservative assumptions.³⁷ We found the same result when we used the unadjusted average diversion ratio of 21 per cent. These results suggested that the constraints from other retailers are relatively weak and indicated a product market definition which includes only Sports Direct and JJB.
- 6.33 Sports Direct submitted that (a) the diversion ratios obtained from our survey were unreliable and as a result should not be used to inform market definition; (b) our analysis was based on the switching options identified by the average customer rather than by the customers who would be likely to switch in response to a price

³⁷We looked at the margin required for a 5 per cent price increase to be profitable, first given the average adjusted diversion ratio of 32 per cent, and second using the average unadjusted diversion ratio of 21 per cent (see Appendix C for a discussion of the differences between the adjusted and unadjusted figures). We found these critical margins to be 21 per cent and 38 per cent respectively assuming linear demand, which gives conservative results. The appropriate margin to use for such a calculation is the margin over any costs that would be avoided on lost sales. As the volume of lost sales is relatively small for a 5 per cent price increase, we think the costs that could be avoided are unlikely to be much greater than wholesale costs. As Sports Direct and JJB's margins over wholesale costs are above [redacted] per cent, we considered it likely that a hypothetical monopolist of the two retailers could profitably raise prices by 5 per cent.

increase ('marginal' customers); and (c) our analysis dismissed individual competitors on the basis of low diversion ratios, whereas the analysis should recognize the cumulative diversion to all alternatives. We considered these objections, but found that they did not undermine the reliability of the diversion ratios implied by the survey or our analysis (see Appendix C).

Entry analysis

- 6.34 We assessed the effect of entry by different potential competitors on the revenues of incumbent Sports Direct stores. This analysis is described in detail in Appendix D.
- 6.35 We found that the entry of a JJB store within 2 miles of an incumbent Sports Direct store was associated with a [X] per cent reduction in revenues at the incumbent Sports Direct store. In comparison, the entry of a new Sports Direct store within 2 miles of an incumbent Sports Direct store was associated with a [X] per cent reduction in revenues at the incumbent Sports Direct store.
- 6.36 We found that entry by other retailers, including JD, Tesco, Argos, Matalan and Footlocker, was not associated with a significant effect on the revenues of the incumbent Sports Direct store. Further, the effect of entry by JJB did not differ significantly depending on whether these other potential competitors were present in the same geographic area or not, indicating that these retailers are not close competitors to Sports Direct.
- 6.37 Sports Direct submitted that our entry results were inconsistent with our survey results, because our entry analysis suggested that a new JJB store obtained most of its revenues at the expense of retailers other than Sports Direct. Sports Direct also said that our entry analysis only tested the entry effects of a small proportion of competitors and did not consider the effect of cumulative constraints. We considered

these objections, but found that they did not undermine the reliability of our analysis (see Appendix D).

- 6.38 We concluded that the results of our entry analysis supported the evidence of our survey, ie that Sports Direct and JJB are each other's closest competitors and the constraints from other retailers (including JD, the supermarkets and general clothing and footwear retailers) are weak. The evidence from our entry analysis indicated a product market definition which includes only Sports Direct and JJB.

Sports Direct and third-party views

- 6.39 Sports Direct submitted that the relevant markets were (a) the retail supply of sports and leisure clothing; (b) sports and leisure footwear; and (c) sports and leisure equipment. Sports Direct stated that the majority of its products were not purchased for a specific sport or for general sporting use. Sports Direct submitted evidence from market research reports, showing that many customers buying sports clothing did so with the intention of using it for general leisure purposes. Sports Direct said that it considered there to be a continuum of products ranging from high performance specialist sports products to lower performance and general leisure products, with a chain of substitution linking one end of the spectrum to the other.
- 6.40 The results of our survey supported Sports Direct's submission that many of its customers purchased sports goods for general leisure use rather than for sporting use. However, although we often have regard to the intended use of a product when defining markets, it is more relevant when the technical ability to substitute one product for another limits customers' ability to switch products. In this case, there is no such technical obstacle (ie consumers can walk in running shoes and socialize in football replica kit). Rather, we were interested primarily in customers' switching preferences: while Sports Direct's customers might purchase sports clothing for

general leisure use, our survey results showed that they do not consider retailers of general leisure clothing as close substitutes. It appears that, for most Sports Direct customers, there is a strong demand for sports-themed casual clothing which cannot be satisfied by other styles of clothing.

- 6.41 The majority of other retailers which responded to our questionnaire submitted that there were separate markets for each product segment: ie for the equipment and clothing associated with each sport. Some respondents suggested that the market could be segmented further according to the quality of product. Two retailers submitted that the relevant markets were the retail supply of sports clothing, sports footwear and sports equipment; and two other retailers submitted that the relevant market was for sports retail in general. One Internet retailer submitted that the relevant market was retailing in general.
- 6.42 Given these competitor responses, and our own concerns discussed in paragraph 6.14, we considered whether the market should be defined more narrowly, on an individual product basis. We first repeated our entry analysis separately, using revenue data for each of the [X] Sports Direct product categories that we found together accounted for [X] per cent of Sports Direct's revenues in 2009. We found that the effect of entry by JJB was consistent across most of these categories ([X] out of [X]), with the exceptions being mainly products which JJB does not stock, for example beach shoes and denim. These results indicated that the competitive constraint from JJB to Sports Direct is similar in each category, which suggested that there is no great variation in the competitor set across categories.
- 6.43 Our customer survey found a similar result, as very few customers named a specialist retailer as an alternative to Sports Direct (less than 3 per cent overall). This response could be because independent and specialist retailers cannot compete on

price against Sports Direct and JJB, due to their volume discounts, and instead compete on advice and other services. However, our customer survey found that Sports Direct customers are very price conscious, with over 50 per cent giving price as the main reason for shopping at Sports Direct. The fact that more customers would switch to supermarkets, which have a value focus, than to specialist retailers, which focus on quality, indicated that Sports Direct customers tend not to be willing to make the trade-off between price and advice, or between price and quality.

6.44 Therefore, we concluded provisionally that while Sports Direct and JJB might constrain specialist retailers operating in individual product markets (eg running shoes or golf equipment), such specialist retailers were not likely to constrain Sports Direct or JJB. We saw no reason to narrow the market on a category-by-category, or product-by-product, basis.

6.45 We recognized that our market definition was at odds with many third-party views. However, while third-party views can provide useful evidence, we believed that our survey and entry analysis provided better evidence to answer the key question: ie which retailers and retail channels do Sports Direct customers consider to be substitutes for shopping at Sports Direct.

Provisional conclusions on product market definition

6.46 We concluded provisionally that the relevant product market should be defined to include only Sports Direct and JJB. As noted in paragraph 6.1, market definition is not an end in itself, but rather a tool to aid in the analysis of competitive effects, and we recognized that, in this case, a number of retailers outside of the market were likely to provide some competitive constraint on the parties, albeit weaker than the constraint imposed by the parties on each other. In particular, we recognized that there are many retailers with product offerings that overlap to a certain degree with

the parties (eg Tesco supplies value sports goods but not Nike and Adidas branded goods, while JD supplies Nike and Adidas branded sports fashion items but does not supply technical sports equipment). We recognized that some customers will consider these retailers substitutes for Sports Direct and JJB, but we found that most customers do not. Nevertheless, we reflected the constraint from other retailers in our analysis of competitive effects (see [Section 8](#)).

6.47 We also recognized that, within this market definition, Sports Direct and JJB are not identical retailers. Sports Direct positions itself as a discounter and focuses more on sports fashion items than technical performance items, whereas JJB aims to price in the middle of its perceived competition and focuses less on fashion. Nevertheless, we found that customer diversion between the two retailers is sufficiently large, and diversion to other retailers sufficiently low, that the two retailers can be considered in a separate product market.

6.48 We also recognized that there will be some areas where competition will occur on a product-by-product basis (eg golf clubs do not have a ready substitute within the general category of products on offer from Sports Direct and JJB). The relevant market is also likely to vary by locality because, as shown in Table 2 (see paragraph 6.54), customers' switching behaviour is a function of the choices they have available.

Geographic market

6.49 As with the product market, the hypothetical monopolist test is the appropriate conceptual framework for considering the geographic market. It involves assessing customers' willingness to switch to stores in other areas following a price rise or other worsening of the retail offer at stores in the candidate geographic market.

6.50 We considered a range of evidence to determine the relevant geographic market, including:

(a) customer shopping patterns and store catchment areas;

(b) customer diversion ratios;

(c) econometric analysis of entry;

(d) main-party and third-party views; and

(e) Internet sales.

We discuss each in turn.

Customer shopping patterns and store catchment areas

6.51 Our customer survey found that the average journey time to a Sports Direct store was 17.3 minutes, with 62 per cent of customers having travelled for less than 15 minutes. For JJB, the average journey time to the store was 16.4 minutes with 66 per cent of customers having travelled for less than 15 minutes.

6.52 The survey also found that 54 per cent of Sports Direct customers reached the store by car, 21 per cent on foot and 20 per cent by bus. The proportion of JJB customers that reached the store by car was higher, at 66 per cent, with 15 per cent reaching the store on foot and 17 per cent by bus.

6.53 As the majority of Sports Direct and JJB customers travelled less than 15 minutes and the primary mode of transport was by car, the survey suggested that there were local markets with a boundary of approximately 15 minutes drive-time centred on the store concerned. Given average urban road speeds, a 15-minute journey time by car would correspond to a 4-mile catchment area.³⁸ We noted that the journey times found in our survey and the resulting catchment areas were based on current prices at Sports Direct and JJB, and did not indicate customer switching behaviour in

³⁸DfT 'Transport Statistics Bulletin: Road Traffic and Congestion in Great Britain Q9', using the 2007–2008 average urban road speed of 3 minutes 31 seconds per mile.

response to any raised price. However, they provided some indication of the local pattern of current customer behaviour, and suggested a local market definition with a radius of approximately 4 miles around each store. We also recognized that this definition was based on national averages and there would be differences in travel time between locations (eg our survey found that average travel times were lower for out-of-town locations, where the average journey time was approximately 10 minutes).

Customer diversion ratios

6.54 Our survey assessed different categories of Sports Direct location according to whether there was a JJB or JD store present within different distances.³⁹ The survey asked customers at each of these types of Sports Direct locations where they would visit if their current store were not there. Table 2 shows the percentage of Sports Direct’s customers who would go to a JJB store, according to the distance from their chosen Sports Direct store to the nearest JJB and JD store.

TABLE 2 **Adjusted diversion ratios from Sports Direct to JJB**

	<i>Retailers present in the surveyed area</i>						<i>per cent</i>
<i>Sports Direct only</i>	<i>JD only within 2 miles</i>	<i>JJB only within 2 miles</i>	<i>JJB and JD within 2 miles</i>	<i>JD within 2 miles and JJB 2–5 miles</i>	<i>JD within 2 miles and JJB 5–10 miles</i>	<i>JJB only within 5–10 miles</i>	
JJB	6	33	61	48	22	23	44

Source: [GfK NOP survey](#); CC calculations.

Note: Original percentages adjusted to remove ‘don’t know’ and ‘another Sports Direct store’ responses.

6.55 Comparing areas with only JJB stores as a substitute (ie no JD store), if the JJB store was within 2 miles of a customer’s current Sports Direct store, 61 per cent of customers would switch in the absence of their Sports Direct store while, if the JJB store was 5 to 10 miles away, 44 per cent of customers would switch. As we might

³⁹Monopoly stores; stores with only a JJB within 2 miles; stores with only a JD within 2 miles; stores with both a JJB and a JD within 2 miles; stores with a JD within 2 miles and a JJB within 2–5 miles; stores with a JD within 2 miles and a JJB within 5–10 miles, and; stores with only a JJB within 5–10 miles.

expect, customers are more likely to switch to a JJB store if it is closer to their current Sports Direct store.

- 6.56 This evidence suggested that customers' willingness to switch between retailers is limited by geographic area and indicated that stores within 2 miles of each other are more substitutable than stores further away.

Econometric analysis of entry

- 6.57 In Appendix D (analysis of entry) we present an econometric analysis of the impact on the revenues of incumbent Sports Direct stores from the entry by JJB and JD at different distances. A reduction in revenues at an incumbent Sports Direct store following such entry indicates customer diversion from the Sports Direct store to the entrant. Therefore, comparing the reduction in revenues as a result of entry at different distances from the incumbent Sports Direct provides an indication of how customers' willingness to switch to a certain retailer varies with distance.

- 6.58 We found that the entry of a new Sports Direct store within 2 miles of an existing Sports Direct store is associated on average with a [X] per cent reduction in the incumbent store's revenues; the entry of a new Sports Direct store between 2 and 5 miles away is associated with a [X] per cent reduction; and the entry of a new Sports Direct store further away than 5 miles has no effect. Similarly, the entry of a new JJB store within 2 miles of an existing Sports Direct store is associated with a fall in revenues at the Sports Direct store of around [X] per cent, while JJB entry further away does not appear to have any effect.

- 6.59 These results indicated that a significant proportion of customers switch between competing retailers within 2 miles of each other and some customers switch between

retailers within 5 miles of each other, but there is little switching if the retailers are more than 5 miles apart.

Sports Direct and third-party views

- 6.60 Sports Direct told us that it viewed the local dimension of competition to be weak, partly because of its policy of setting competitive variables (ie PQRS) on a national basis, and partly because of the importance of Internet-based sales.
- 6.61 Sports Direct sets prices nationally⁴⁰ and we identified no national sports retailer that sets prices locally. However, when determining geographic markets, the relevant consideration is demand-side substitution. When substitution possibilities are local and pricing is national, a rational firm will set prices with regard to the average competitive constraint it faces across all local markets in which it is active. Both our customer survey and our econometric analysis of entry indicated that customer substitution is limited to local markets.
- 6.62 Further, we noted that uniform pricing is not necessarily a permanent characteristic of the market. Until 2007, JJB practised local pricing on some SKUs, although these SKUs were a very small proportion of total sales. Although Sports Direct told us that local variation in pricing would require a fundamental change to its current business strategy, it is possible that changes in competitive conditions could change the relative costs and benefits of local pricing in a way that would make it profitable. We discuss these costs and benefits in [Section 8](#). We also noted that there are other parameters of competition which vary on a local level, for example product range, store maintenance, staffing and refurbishment (see [Section 8](#)).

⁴⁰We noted that Sports Direct offered [§], but did so very rarely.

6.63 Third-party views on the geographic market definition varied. [redacted], [redacted], [redacted] and JD all told us that the catchment area for their stores was local, although these retailers differed in their view of the size of the relevant area. [redacted] told us that the catchment area for its stores was around a 10 to 20 minute drive-time, JD told us that customers travelled on average 8 miles to reach a JD store and [redacted] told us that its catchment area was as wide as a 45-minute drive-time. [redacted] was not specific about the size of its stores' catchment area. Most other respondents told us that the geographic market was the UK. eBay and Amazon told us that if Internet sales were included then the relevant geographic market might be even wider.

Internet sales

6.64 We assessed whether the constraint from the Internet was sufficient to prevent a local monopolist from profitably increasing prices. In particular, we considered whether the in-store customers of Sports Direct and JJB would switch to the Internet in response to a small price increase.

6.65 We used data from the main parties and third parties to assess the magnitude of Internet sales in comparison with non-Internet sales over recent years. We also used evidence from the customer survey to give an indication of whether customers perceive the Internet as an alternative to bricks-and-mortar stores.

Main-party and third-party data

6.66 Sports Direct told us that sales through its website currently accounted for approximately [redacted] per cent of its total sales. JJB told us that, since 2006, sales through its website accounted for just over [redacted] per cent of its total sales (throughout the period the proportion was [redacted]).

6.67 We also received yearly sales data from third-party sports goods retailers, including specialist Internet retailers. Using this third-party data, as well as the data we received from Sports Direct and JJB, we calculated that around 5 to 7 per cent of the overall sales of sports goods since 2005 took place over the Internet. We noted that, over this period, the proportion of sales over the Internet had remained relatively constant.

6.68 We recognized that we did not have sales data from all parties which sell sports goods, and some retailers told us that sales over the Internet had become increasingly important to them over the last three years. Nevertheless, the evidence we had indicated that Internet sales of sports goods do not constitute a significant proportion of overall sales, and the proportion of sales over the Internet has not increased significantly since 2005. We recognized that some Internet retailers had experienced significant growth but, even for these retailers, we found that, because the base from which they were growing was so small, their total volume of sales over the Internet remained low.

Survey evidence

6.69 Our customer survey asked customers which other retailers or sales channels they considered before purchasing at JJB or Sports Direct. Only 2 and 3 per cent of Sports Direct and JJB customers respectively considered the Internet before deciding to buy from their chosen store.

6.70 The survey also asked customers what they would do if their chosen store had not been there. Only 3 per cent of Sports Direct or JJB customers said spontaneously that they would look on the Internet. Even in areas with only a Sports Direct within 10 miles (ie no local JJB or JD store), only 5 per cent of customers said that they

would look on the Internet. These customer survey results suggested that customer substitution between Sports Direct/JJB and Internet retailers is extremely limited.

- 6.71 We noted that, although sales over the Internet may be low, customers could be using the Internet to search for prices, which would mean that the Internet could act as a constraint on bricks-and-mortar prices. However, our customer survey did not indicate that Sports Direct customers use the Internet in this way, as very few respondents said that they checked the price on the Internet before shopping. Further, the Internet can only act as a constraint if customers are willing to switch to the Internet in the event of a price differential, and customer survey responses suggested that the propensity of customers to switch is currently very limited.

Sports Direct and third-party views

- 6.72 Sports Direct told us there had been recent and continuing growth in the number of Internet operators selling sports goods in general, and argued that, as a result (and along with other factors), the local dimension to competition was weak. Sports Direct submitted evidence from market reports, including a recent Mintel report which found that 12 per cent of adults purchased sports goods online in 2007/08.⁴¹ Sports Direct raised many criticisms of our analysis, including:
- (a) The survey was likely to understate the effect of the Internet due to the structure of the questions. Our discussion of why we believe that we can rely on the survey is in Appendix C.
 - (b) Many consumers purchased sports goods online. Sports Direct cited statistics from industry reports on the number of consumers who purchased sports goods via the Internet. However, notwithstanding the number of consumers who purchase sports goods on the Internet the relevant question for defining the market is whether Sports Direct customers would switch to the Internet in response to a

⁴¹Mintel (2008) *Sports Goods Retailing*.

price increase of the order of 5 per cent. Our survey found that most Sports Direct customers did not consider the Internet as an option.

- (c) Calculating the proportion of sales made online on the basis of sales data from a subset of Internet retailers was unreliable. We acknowledged that we did not have data from all retailers of sports goods (see paragraph 6.68), but we believed that the results of our analysis were indicative. Some of the firms in our sample showed significant growth in Internet sales but from a very small base (eg [X]), while other firms had more consistent Internet sales (eg [X]).

Provisional conclusion on Internet sales

- 6.73 On the basis of the sales data available to us which showed a small proportion of sales made on the Internet, and on the basis of the customer survey evidence which found that very few customers perceive Internet retailers as an alternative to shopping at their local Sports Direct or JJB store, we concluded that customers would be unlikely to switch to the Internet in the event of a 5 per cent price rise at their local store. Therefore, we concluded that the geographic market should not be widened beyond local markets to include the Internet.

Provisional conclusion on geographic market

- 6.74 Overall, we concluded provisionally that the relevant geographic market was local and likely to be between a 2- and 5-mile radius around each store.

7. Barriers to entry and expansion

- 7.1 Barriers to entry are features of a market that give incumbent firms an advantage over potential new entrants. If barriers to entry to the relevant product and geographic markets are sufficiently low, no SLC would arise from the store transfers as we would expect entrants to replace any competitive constraint which had been lost.

7.2 In this section we describe possible barriers to entry, consider the plans of some potential entrants, and evaluate whether entry is likely to occur to counteract any anti-competitive effects caused by the store transfers. We identified four possible barriers to entry: (a) access to brands; (b) premium-brand volume discounts; (c) set-up costs; and (d) reputation advantages. We recognized that these barriers to entry would not affect all possible new entrants equally. We discuss each in turn.

Access to brands

7.3 As noted in [Section 6](#) (Market definition), Nike, Adidas and Puma branded products⁴² are an important feature of both main parties' offerings, accounting for [X] of their respective sales revenues. Therefore, any new entrant to the market would need to stock them.

7.4 Nike told us that it aimed to ensure that its products were retailed in an appropriate environment, which included meeting standards for presentation and service, as well as offering a wide product range. Sports Direct told us that Adidas operates a similar policy. One large general retailer told us that it had approached Nike and Adidas seeking to retail their footwear and clothing and was denied access on the grounds that it did not meet their policy requirements.

7.5 Sports Direct told us that access to premium brands was not an entry barrier for many reasons, including:

(a) Many existing retailers already met the required distribution criteria, including many direct retailers. We agreed that access to brands was not an entry barrier for all retailers.

(b) Non-branded goods were substitutes for branded goods. We accepted that some substitution might occur but we observed that premium-branded goods were a

⁴²Products purchased through Nike and Adidas also include Reebok and Umbro branded products.

very important part of the offering of Sports Direct and JJB, and customers did not appear to switch much to other retailers without these brands.

(c) If the store transfers led to increased retailer market power the brands could easily start to supply other retailers. We accepted that suppliers could seek new retail channels but we did not believe they were likely to do so in response to a very small retail price increase (see paragraph 8.40).⁴³

7.6 We accepted that access to premium brands was unlikely to represent a significant barrier to entry for most retailers as they would be able to meet the brand holders' criteria. However, access might represent a barrier for some general retailers.

Premium-brand volume discounts

7.7 Both Sports Direct and JJB receive large volume-related discounts from the premium brand suppliers (see paragraph 6.21), because they account for a significant volume of these suppliers' UK sales (eg Nike achieves [redacted] per cent of its UK sales through Sports Direct). Sports Direct and JJB are also eligible for discounts from Nike related to their [redacted].

7.8 The ability to offer significant discounts on the premium brands is an important part of Sports Direct's retail offering (see paragraph 6.20). For a new entrant to be able to constrain the incumbents' behaviour, it must be able to offer these brands at prices comparable with Sports Direct and JJB. While customers could trade-off the lower prices available at Sports Direct and JJB with better quality and/or advice at other retailers, our customer survey showed they did not do so (see paragraph 6.43).

⁴³Responses to our customer survey on what Sports Direct customers would do if Sports Direct's prices increased by 5 per cent suggest a price elasticity of 1.3. We calculated this elasticity by weighting each response by the amount the respondent had spent on the day of interview and the frequency with which they had visited the store in the last three months. We noted there is potential for significant bias in asking customers how they would react to such a price increase and, as a result, responses to this question are generally considered much less robust than responses to where customers would shop if their chosen store had not been there. However, an estimated price elasticity of 1.3 suggests that a 1 to 2 per cent retail price increase would lead to a 1.3 to 2.6 per cent reduction in the branded companies' sales through Sports Direct, or between 0.35 and 0.7 per cent of their total UK sales.

7.9 Table 3 outlines Nike's discount structure.

TABLE 3 Nike's discount structure

	<i>per cent</i>			
	<i>Over €10 million</i>	<i>€1–10 million</i>	<i>€0.1–1 million</i>	<i>€0.025–0.1 million</i>
Footwear	15	13	8	4
Clothing	15	13	8	4
	<i>Over €0.5 million</i>	<i>€0.2–0.5 million</i>	<i>€0.1–0.2 million</i>	<i>€0.015–0.1 million</i>
Equipment	15	13	10	8

Source: Nike.

7.10 Sports Direct, JJB and JD obtain significantly higher discounts than those illustrated in Table 3. We found that any competitor to these three retailers faced wholesale costs for premium-branded goods which were significantly ([redacted]) higher.

7.11 We noted that buying groups for independent sports retailers (ie INTERSPORT and Sports Traders Alliance Group Limited (STAG)) give affiliated independents access to the benefits of volume purchasing (STAG has 450 members). However, even these groups are not able to gain comparable discounts to those enjoyed by Sports Direct and JJB. Our consumer survey found that only a very small minority of Sports Direct's customers considered independent retailers to be a substitute for Sports Direct.

7.12 We noted that volume-related discounts are designed to reward suppliers' most important customers and reflect cost efficiencies. Therefore, in order to achieve discounts equivalent to those earned by Sports Direct and JJB, a new entrant would have to sell very large volumes of premium-branded goods.

7.13 We concluded that any new entrant could approach Nike or Adidas with a volume proposition similar to Sports Direct or JJB and seek to obtain similar discounts, but the required scale to achieve these volume discounts would make it necessary for the new entrant to have a large retail presence (eg JJB currently operates 251

stores). For many potential entrants, the required set-up costs would make entry unfeasible (see below).

Set-up costs

- 7.14 The set-up costs required to enter the market on a large scale (which would be necessary in order to gain volume discounts on the premium brands comparable with Sports Direct and JJB (see above)) would vary significantly depending on the type of entrant, their existing retail presence and the scale of their entry.
- 7.15 Sports Direct provided us with its costs from its three most recent store openings (Stafford, Camden and Banbury), which showed that its average capital cost was £[redacted] per store. Based on this data, a new entrant seeking to open around 250 stores would need to spend about £[redacted] million. Although we recognized the limitations of this brief analysis, it indicated that set-up costs were likely to represent a significant barrier to entry for some potential entrants.
- 7.16 Sports Direct submitted that set-up costs were not a barrier to entry since bricks-and-mortar retailers could enter on a small scale. We agreed that small-scale entry was feasible but, to compete with Sports Direct on price, a new entrant needed to gain sufficient scale to qualify for volume discounts from the premium brands.
- 7.17 Sports Direct noted that set-up costs could be low for existing retailers, eg clothing retailers, with established supply and distribution infrastructure, existing commercial terms and retail expertise. We agreed. Sports Direct also noted that, in 2009, the clothing retailer, Next, introduced a new sports range to some of its stores, while the general retailer, Debenhams, introduced a new Sport and Leisure concept in 41 of its stores. Sports Direct submitted that these examples of entry indicated that entry by general retailers was easy. However, we noted that Next and Debenhams are not

associated with a value sports clothing proposition. Although these retailers do stock premium-branded products, they are unlikely to be able to offer a range anywhere near as extensive as Sports Direct and JJB, given floor space limitations. Sports Direct said that they could always dedicate more floor space but we did not think it likely they would do so, in the event of a small price increase by Sports Direct. Furthermore, we noted that these retailers might only be able to offer a restricted range of goods from the premium-brand suppliers given these suppliers' display requirements. We concluded that, given the importance of price and range to the customers of both Sports Direct and JJB, it was unlikely that entry by general retailers would impose much of a competitive constraint.

- 7.18 Sports Direct also noted that set-up costs would be low for direct retailers, selling by mail order or over the Internet. These retailers could also access the premium brands and, due to lower operating costs, might not require such large premium-brand discounts in order to be able to offer products at prices comparable with Sports Direct and JJB. We agreed. However, Sports Direct's customers do not view direct retailers as close substitutes for Sports Direct (see paragraphs 6.64 to 6.68), meaning that the entry of such retailers would not replace any competition lost from JJB as a result of the store transfers. We estimated that, in order to match the sales of 21 JJB stores, Internet-only retailers would need to achieve annual growth of around 250 per cent a year (compared with actual recent growth of around 40 per cent).⁴⁴

Reputation advantage

- 7.19 Both Sports Direct and JJB have developed their national chains over many years and enjoy a strong reputation associated with premium-branded and other branded sports goods. A new entrant would need to invest significantly to develop a strong brand in competition with Sports Direct.

⁴⁴ [redacted]

- 7.20 Sports Direct submitted that it was not necessary to have a brand associated with sport to sell sports products, citing examples of recent entry by Debenhams and Next. Sports Direct also noted that retailers were able to acquire expertise in specialist areas by acquisition (eg Snow and Rock’s acquisition of Cycle Surgery in 2007), and could employ specialist personnel in niche areas.
- 7.21 We noted that the most important reasons given by Sports Direct’s customers for shopping at Sports Direct were price and range. We did not think it would be difficult for a new entrant to establish a reputation for low prices (if it was able to offer such prices) or a broad range (if it had such a range). Nonetheless, we recognized that building a reputation comparable to the parties’ reputations would be difficult within a short timescale.

Potential entrants’ expansion plans

- 7.22 Sport Direct told us that Sportec, an independent sports retailer, had recently opened a number of stores in London⁴⁵ and that both DW Sports Fitness and Decathlon planned to increase the number of their stores in the UK. However, DW Sports Fitness told us that a new build would take two to three years to open, while a conversion would take 9 to 18 months, and it had not yet secured any sites for future openings. Therefore, we concluded that little of DW Sports Fitness’s expansion was likely to occur in the near future. [REDACTED] For these reasons we did not believe that expansion by a large existing sports retailer was likely. We accepted that small sports retailers might expand, but they would still be far smaller than Sports Direct.

Evaluation of the likelihood of entry

- 7.23 We concluded that entry on a small scale was possible, either by a start-up or by a general retailer, but this entrant was unlikely to be able to compete with Sports Direct

⁴⁵Sportec now operates seven stores.

or JJB directly on price and/or range. We concluded that entry on a large scale by a start-up or a general retailer was very unlikely, given the high set-up costs involved. We concluded that entry by a direct retailer was possible, and such a retailer could offer similar products to Sports Direct and at similar prices, but we found that Sports Direct's customers were unlikely to switch to such retailers limiting the effect of these retailers' competitive constraint on Sports Direct.

- 7.24 We considered the likelihood of entry by JD and expansion by JJB separately, and discuss each in turn.

JD

- 7.25 JD is already a major retailer of premium-branded sports clothing and footwear. However, JD sells a different range of products than Sports Direct and JJB, and focuses more on sports fashion and, to some extent, on higher-value products (see paragraph 2.11). JD does not sell sports equipment. Nevertheless, JD already achieves high volume discounts from Nike and Adidas and, if Sports Direct were to increase its prices, JD could alter its range to become a closer competitor. The set-up costs for JD to change its offering would be similar to those of an existing clothing or general retailer, as it would need to reallocate space to accommodate different products. JD told us that a substantial increase in its product range could necessitate refitting some of its stores.
- 7.26 JD told us that, in general, it does not make adjustments to its product range in response to price rises by other retailers. JD said it would be unlikely to increase its product overlap with Sports Direct in response to a price rise by Sports Direct. JD said that the one possible exception was football replica kit, where a substantial price rise could lead it to consider stocking more product. However, the possible price rises

which we identified (see paragraph 8.40) would not be substantial and, furthermore, replica kit accounts for less than [X] per cent of Sports Direct's total sales.

7.27 We concluded that, while JD could change its offering relatively easily to compete more directly with Sports Direct and JJB, it was unlikely to do so in the near future.

JJB

7.28 We considered whether JJB was likely to expand, with the effect of replacing any competition lost as a result of the store transfers. In order to have this effect, JJB would have to enter a sufficient number of areas where a Sports Direct store is currently operating but a JJB store is not.

7.29 The potential barriers to entry identified previously do not apply to JJB, which is already operating in the market. We observed that there were no non-compete clauses in the contracts for each of the 31 store transfers so JJB could open new stores in the areas which it had exited. However, we noted that JJB had declined twice to repurchase stores which it had sold to Sports Direct.⁴⁶

7.30 We noted that JJB had stated its intention to open 30 new stores by the end of 2011, and to focus on areas where it was currently under-represented (see paragraph 9.10). However, JJB was unable to provide us with any detailed plans for its programme of store expansion. Furthermore, we judged that JJB's recent financial condition (see paragraph 2.8) meant that JJB's ability to expand its store portfolio within the near future was likely to be limited. We recognized that, in October 2009, JJB raised money through a share issue (see paragraph 2.9) but this money was needed primarily to repay its bank loans and rebuild its stocks, rather than to finance the opening of new stores.

⁴⁶[X]

7.31 Sports Direct told us that JJB had opened stores in 2009. However, JJB told us that it had opened one store in December 2009 in Chatham, but it had been leasing this site for approximately two years before it had the resources to fit out the store, and it had converted a clearance store in Bradford into a full-service store in October 2009.

7.32 We recognized that, in the longer term, JJB intended to expand and was likely to be able to do so, increasing the extent of the competitive constraint it imposed on Sports Direct. However, given JJB's recent performance and continuing recovery, we concluded that it was not likely that JJB would expand significantly in the near future, even in the event of a small price increase by Sports Direct.

Provisional conclusion on barriers to entry

7.33 We concluded provisionally that, due to entry barriers and JJB's recent performance, entry into the market by any party and expansion in the market by JJB were both unlikely to occur in the near term, even if Sports Direct were to worsen its offer. We noted that JJB was likely to be able to expand its presence in the market in the longer term.

8. Effects on competition of the store transfers

Introduction

8.1 We recognized that analysing the competitive effects of the store transfers differed from an analysis of a merger in which rivalry between two competitors is completely eliminated. While the store transfers have reduced competition between Sports Direct and JJB in some local areas, JJB remains a strong national competitor to Sports Direct with a portfolio of approximately 250 stores. Therefore, in carrying out our analysis, we have focused on the extent to which Sports Direct, as a result of the transfers, has increased its ability to exercise market power and, if so, whether that increase represents an SLC.

- 8.2 We identified three ways in which the store transfers could result in this harm:
- (a) through the loss of competition in a number of local areas leading to a worsening of Sports Direct PQRS at a local level;
 - (b) through the loss of competition in a number of local areas and the closure of the existing Sports Direct store in some of these areas; or
 - (c) through the loss of competition in a number of local areas leading to a worsening of Sports Direct's PQRS at a national level.
- 8.3 First, we identified which local areas had been affected by the store transfers. We identified all Sports Direct stores within 5 miles of a transferred JJB store⁴⁷ and, for each affected Sports Direct store, we then looked at the distance to the nearest non-acquired JJB store.⁴⁸ Table 1 in Appendix E shows these results.
- 8.4 We found that there were 49 Sports Direct stores which were within 5 miles of a transferred JJB store. However, in our counterfactual, we found that 15 of these stores would have closed in any event or were within 5 miles of an acquired JJB store that would have closed in any event. Therefore, we have not included these 15 stores in our consideration of affected local areas.
- 8.5 We noted that there were a number of affected areas where the nearest non-acquired JJB store was closer to the Sports Direct store than the acquired JJB store. However, we considered that there could still be a loss of competition in these areas as the extent of the competitive constraint on Sports Direct had reduced from two JJB stores to one. We recognized that the extent of the lost competition in these areas was likely to be smaller than in areas where the acquired JJB store was closest to the Sports Direct store.

⁴⁷We only included Sports Direct stores which had been trading for at least one year prior to the transfer.

⁴⁸We only included non-acquired JJB stores which were still open at the end of the acquisition period (December 2008).

- 8.6 In order to assess the loss of competition, we considered first whether:
- (a) the transferred JJB stores imposed a competitive constraint on one or more Sports Direct stores; and
 - (b) constraints from other retailers were weak.

We discuss each in turn.

Constraint exercised by transferred JJB stores on existing Sports Direct stores

- 8.7 Our entry analysis (see paragraphs 6.34 to 6.38) showed that there is significant diversion from Sports Direct to JJB, indicating that JJB is a close substitute for Sports Direct and that the transferred JJB stores acted as a constraint on Sports Direct at the local level prior to their transfer. This local constraint also affected competition at the national level. Even though Sports Direct told us that it did not set prices [✂], the process of setting prices has reference to demand, which is a function of customers' propensity to switch to other retailers.

- 8.8 Our customer survey also found that Sports Direct's customers were more likely to switch to JJB than any other retailer if their chosen Sports Direct store were no longer available.

- 8.9 We concluded that JJB's stores competed with Sports Direct's stores in the same area.

Constraint on Sports Direct by other retailers

- 8.10 Our entry analysis (see paragraphs 6.34 to 6.38) compared the effect of entry by JJB on an incumbent Sports Direct store with the effect of entry by other retailers. We found that, on average, other retailers' entry within 2 miles did not have a significant effect on an incumbent Sports Direct store's revenues, indicating that there is no significant diversion of customers between Sports Direct and other retailers, and

suggesting that other retailers are a weak competitive constraint on Sports Direct.

We also found that the effect of JJB's entry on an incumbent Sports Direct store was not affected by the presence of other retailers nearby, supporting this conclusion.

- 8.11 Our customer survey also found that diversion to other retailers was small compared with diversion to JJB. The cumulative diversion to all other retailers was 24 per cent compared with a diversion ratio to JJB of 61 per cent in overlap areas.⁴⁹
- 8.12 We concluded that other retailers did not act as a sufficiently strong competitive constraint on Sports Direct to replace any competition between JJB and Sports Direct which was lost as a result of the store transfers.
- 8.13 Given our finding that Sports Direct and JJB compete, and they face a limited competitive constraint from other retailers, and given our finding that there is little likelihood of entry or expansion (see paragraph 7.33), we then considered the possible adverse effects on competition which might arise from the store transfers (see paragraph 8.2).

Local effects

- 8.14 We considered whether:
- (a) there was an existing local variable (at least one of PQRS) which Sports Direct had an incentive to alter in response to changes in the extent of local competition;
 - or
 - (b) the change in incentives resulting from a reduction in local competition might lead the firms to create a local variable which responds to the degree of local competition.

⁴⁹These figures are taken from Table 2 in Appendix C and relate to diversion ratios obtained from areas where there was a JJB store within 2 miles of the Sports Direct store, and no JD store. Cumulative diversion is obtained by summing diversion ratios to all retailers other than JJB. These figures do not include those customers who said that they would go nowhere else (ie they would cease purchasing).

Existing local variable responsive to competition

- 8.15 Sports Direct told us that it set prices on a national basis and there were no local promotions. We noted that [REDACTED], but this local variation happened rarely (in the 26 weeks from 10 June to 9 December 2009, it accounted for only [REDACTED] per cent of Sports Direct's total value of sales). Furthermore, where it did occur, local prices were not affected because [REDACTED].
- 8.16 We considered whether Sports Direct was able to vary non-price aspects of its competitive offering on a local basis, eg range, the availability of stock, delivery frequency, staffing levels, advertising, maintenance and refurbishment expenditure, and opening hours. Our analysis is presented in Appendix F. We found that these factors vary significantly at a local level. Sports Direct grades its stores from [REDACTED], according to [REDACTED] and, since many of these factors are likely to vary according to [REDACTED], we also looked at the performance of stores belonging to the same grade. We found significant variation within grade which could not be explained by [REDACTED].
- 8.17 Overall, we found that Sports Direct can and does vary a number of aspects of its local non-price offering (QRS), even when we controlled for [REDACTED]. However, we did not find any evidence that Sports Direct varies any aspect of PQRS in response to local competition. Therefore, we concluded that Sports Direct can, but does not, vary aspects of its offering in local stores depending on local competitive conditions.

Incentive to make local offering responsive to competition

- 8.18 Since the store transfers have reduced competition between Sports Direct and JJB in some local areas, Sports Direct's incentives to flex local factors (PQRS) in response to local competition could have increased. We found that a number of non-price factors of Sports Direct's offering vary across similar stores in different local areas so, for each of these variables, we considered whether the current methods used by

Sports Direct to determine the variable for each store could be modified to respond to changes in local competitive conditions, and whether Sports Direct would have an incentive to do so as a result of the store transfers. As Sports Direct sets prices nationally, we also considered whether Sports Direct would have the incentives to move to local pricing as a result of the store transfers.

- 8.19 We considered possible costs and benefits of flexing in response to changes in competition (a) product range; (b) delivery frequency; (c) staffing levels; (d) advertising, maintenance and refurbishment expenditure; (e) store grading; and (f) pricing (see Appendix F). We could not quantify these costs and benefits but, since we found no evidence that Sports Direct flexed these variables in response to changes in local competition prior to the store transfers, we assumed that the benefits before the store transfers were outweighed by the costs.
- 8.20 We assessed whether the store transfers were likely to have increased substantially the benefits of flexing local PQRS by comparing the number of 'monopoly' Sports Direct areas before and after the store transfers. We found that, before the transfer period, 266 Sports Direct stores out of 348 were within 5 miles of a JJB store, implying 82 Sports Direct stores, or 24 per cent of its total store portfolio, did not overlap with a JJB store prior to the store transfers. We found that 34 Sports Direct stores were within 5 miles of an acquired JJB store, where both the Sports Direct and JJB store concerned would have remained open under our counterfactual, implying that the store transfers have caused the number of Sports Direct stores not overlapping with a JJB store to increase to, at most, 116 stores, or 33 per cent of its total store portfolio. We also considered the increase in 'monopoly' areas using a 2-mile geographic market and found that the number of Sports Direct stores not overlapping with a JJB store increased from 125 to 139, or from 36 to 40 per cent of Sports Direct's total store portfolio as a result of the store transfers.

8.21 Given the relatively small change in the number of Sports Direct's 'monopoly' areas as a result of the store transfers, we did not think it likely that the transfers would have increased significantly Sports Direct's incentives to flex its PQRS in response to changes in local competition and, therefore, the costs of doing so were likely to continue to outweigh the benefits.

Summary of analysis on local effects

8.22 We found that Sports Direct varies significantly a number of non-price factors (QRS) at a local level, even after controlling for [X]. However, we found no evidence linking this variation to differences in the strength of local competition. We found that the store transfers were unlikely to increase substantially Sports Direct's incentives to flex any variables of local competition (price or non-price), given the relatively small change in the proportion of areas where Sports Direct faces local competition from JJB. We concluded provisionally that the store transfers were unlikely to result in a significant change to any aspect of Sports Direct's PQRS in any local area.

Store closures

8.23 We considered whether the loss of competition in local areas due to the store transfers could lead to the closure of existing Sports Direct or acquired JJB stores, resulting in consumer harm.

8.24 We investigated whether any Sports Direct stores near to a transferred JJB store had closed since the transfer. We found that ten Sports Direct stores located within 5 miles of a transferred JJB store had been closed since November 2007 (when the transfers began). These stores were in Bristol, Truro, Poole, Sutton, Barnsley, Huddersfield, Newcastle under Lyme, Bradford, Wolverhampton and Harrogate.

8.25 Our assessment of the counterfactual (see [Section 5](#)) found that, absent the transaction, it is unlikely that Sports Direct would have closed the stores in Truro, Sutton, Huddersfield, Wolverhampton, and Harrogate, but would have closed the stores in Barnsley, Bradford, Bristol, Newcastle under Lyme, and Poole.

8.26 We noted that store closures affect customer welfare by reducing convenience because customers of the closed store will have to travel further to an alternative store. However, we examined the distances between the closed Sports Direct stores and the transferred JJB stores (see Table 4), and we found that the average distance was very small: 0.22 miles. Using standard estimates of the value of travel time, the estimated customer detriment was also very small.

TABLE 4 Distance from closed Sports Direct store to transferred JJB store

<i>Affected area</i>	<i>Distance (miles)</i>
Sutton	0
Truro	0.2
Huddersfield	0.2
Harrogate	0.3
Wolverhampton	0.4
Average	0.22

Source: CC analysis.

8.27 As a result, we concluded that the Sports Direct store closures have not had a significant effect on consumers.

National effects

8.28 We considered whether a loss of competition in some local areas due to the store transfers had led to an increase in Sports Direct's national prices or at least a change in Sports Direct's incentives to increase its prices.

Actual increase in prices

- 8.29 To assess whether there had been a worsening in Sports Direct's national offering, we looked at actual performance of gross margins⁵⁰ and weighted average prices before and after the store transfers. We found that average prices (excluding VAT) increased from £[redacted] in the period before November 2007 (when the acquisitions began) to £[redacted] in the period subsequent to December 2008 (after the acquisitions), constituting a price increase of [redacted] per cent. At the same time gross margins increased slightly from [redacted] to [redacted] per cent.
- 8.30 Sports Direct raised a number of concerns in relation to these comparisons: first, the average 'before' values were dependent on the period used; second, because we used average performance measures, any change could reflect compositional changes in the products purchased, ie a shift in demand towards higher-priced and higher-margin products; and third, any change in performance could be the result of other structural changes occurring at the same time, including JJB's store disposals. Sports Direct submitted that there was no price effect but, even if there was, only a small proportion of the estimated price effect could be attributed to the store transfers.
- 8.31 We used the longest time period available to us to calculate the 'before' values in order to make maximum use of the available information. We also recognized the problems in using average measures of performance but we believed the results were still informative and the method was preferable to looking at the performance of individual SKUs, given the very large number of SKUs stocked by Sports Direct and the typical pricing profile for an individual SKU, which tends to decline over the product lifetime.

⁵⁰Defined as value of sales (excluding VAT) less wholesale costs, as a percentage of value of sales.

- 8.32 We also recognized that there were many factors which could have affected Sports Direct's national performance during this period, including changes in market structure, the state of the economy, the financial position of JJB, and foreign exchange rates. We tried to isolate the effect of the acquisitions on Sports Direct's performance by controlling for these factors within a regression framework, which is discussed in more detail in Appendix G. This analysis included a study of the impact of the store transfers on Sports Direct's prices after controlling for changes in unit cost. We found that average Sports Direct prices (excluding VAT) were approximately 2 per cent higher in the period after the acquisitions began, after we accounted for changes in unit cost.
- 8.33 However, we recognized that there were still some problems with this estimate and other factors could have affected the result. In particular, it is very difficult to predict how Sports Direct would have set prices differently absent the store transfers, given other circumstances at the time. We also noted that the identified price increase could reflect a change in the products sold by Sports Direct as the introduction of more expensive, higher margin products would increase its average prices (even allowing for costs). For example, Sports Direct told us that it had recently begun to sell bicycles. Finally, we recognized that there were a number of problems with the model (see Appendix G).
- 8.34 Nevertheless, we used the result of this analysis to estimate the national price effect attributable to the store transfers. We found that 267 Sports Direct stores were within 5 miles of a JJB store in November 2007 and this figure had fallen to 208 by December 2008, representing a reduction of competition in 59 local areas. We found that 34 Sports Direct stores were within 5 miles of an acquired JJB store (considering only stores which we judged would have remained open in the absence of the transfers). Therefore, if all of the 2 per cent price increase related to a loss of

competition between Sports Direct and JJB, approximately 58 per cent⁵¹ of this price increase (ie a price increase of approximately 1.2 per cent) could be attributed to the store transfers.⁵²

8.35 We considered the impact of a narrower geographic market, and found that 218 Sports Direct stores were within 2 miles of a JJB store at the beginning of the transfer period and 155 at the end, representing a reduction of 63 stores. As only 14 Sports Direct stores were within 2 miles of an acquired JJB store, adopting this narrower geographic market would result in only 22 per cent of the identified price increase (ie a price increase of approximately 0.4 per cent) being linked to the transfers.

8.36 We concluded that, although there were limitations to this analysis, following the store transfers there appears to have been a national price increase by Sports Direct of between approximately 0.4 and 1.2 per cent (depending on the geographic market used) that could be attributable to the store transfers.

Incentives to increase prices

8.37 Sports Direct told us that it did not set prices [~~§~~]. Nevertheless, Sports Direct does set prices with regard to the volume of sales it expects to achieve. Therefore, if the competitive constraint on Sports Direct reduces in a few local areas, the overall constraint would also reduce, even if only by a small amount. The extent of the national effect on incentives will be determined by the closeness of competition between Sports Direct and JJB, the number of overlap areas affected and any other competitive constraints remaining in the affected areas.

⁵¹Calculated as 34 divided by 59.

⁵²We recognized that JJB was reducing its portfolio significantly during this time, but its other store closures were not within 5 miles of an existing Sports Direct store.

8.38 We assessed this change in incentives using a critical loss test (described in Appendix E). This test compared the additional revenue which would be earned from customers staying with Sports Direct or switching to a transferred JJB store in the event of a national price increase with the sales which would be lost to other retailers (including non-transferred JJB stores). We recognized that this analysis required us to adopt many assumptions (eg about margins, diversion ratios and the nature of demand), which limited the reliability of the results. The analysis found that the store transfers had created an incentive for Sports Direct to increase national prices by [less than one] per cent using a geographic market of 5 miles, or [less than one] per cent using a market of 2 miles. We treated these estimated price effects as indications of the degree of pricing pressure faced by Sports Direct rather than as predictions of any actual price effect.

8.39 Sports Direct told us that the transfers could not be regarded as having any effect on the general dynamics of competition at the national level because there had been no change in the number, identity or strength of competitors. Sports Direct said that the number of overlap areas affected by the store transfers was small in comparison with general fluctuations due to the continuous opening and closing of stores by all retailers. However, we sought to control for the general fluctuations in overlaps, which would have occurred in the absence of the store transfers, in our counter-factual.

Summary of analysis on national effects

8.40 We found that Sports Direct's national prices had increased since the store transfers began and estimated that a price rise between approximately 0.4 and 1.2 per cent was attributable to the store transfers (though we interpreted this result with caution, aware of the limitations of our modelling approach). We also found that, due to the store transfers, Sports Direct appeared to face less pressure on its national prices

which could lead to its prices increasing by less than one per cent ([~~0.03~~]) (though we also interpreted this result with caution). We noted that, if our counterfactual underestimated the number of JJB stores which would have closed in any event, the loss of pricing pressure faced by Sports Direct would be smaller, resulting in less of a price increase; while, conversely, if Sports Direct would have opened more 'overlap stores' in the absence of the store transfers, the loss of pricing pressure due to the store transfers would be greater.⁵³ Given the small size of the possible (or actual) price increase due to the store transfers, and the uncertainty surrounding these estimates, we concluded provisionally that it was unlikely that the store transfers had resulted, or would result in, a significant deterioration in Sports Direct's pricing at the national level.

Provisional conclusion on effects on competition of store transfers

8.41 Overall, we found no evidence that Sports Direct flexes its PQRS at the local level in response to local competition (even where it can) and we found that the store transfers have not affected significantly its incentives to do so. We found that the closure of some Sports Direct stores following the transfers have adversely affected consumer welfare, due to longer travel times, but only very slightly. We found some evidence of an actual price rise following the store transfers, and a reduction in the pressure faced by Sports Direct to keep prices down, but only by a very small amount, and with some uncertainty surrounding our estimates. We also noted that Sports Direct's principal competitor, JJB, remained in the market and, over the longer term, was likely to be able to expand into areas where it was not currently competing with Sports Direct. Furthermore, although we had defined the market to include just Sports Direct and JJB, we recognized that these retailers faced some degree of competitive constraint from other existing retailers of sports and leisure goods. For all

⁵³We estimated that each overlap area which disappeared as a result of the store transfers translated into a possible profitable price rise of approximately [0–0.03] per cent, while recognizing that the effect of each additional overlap area lost increases very slightly as the total number of overlap areas lost rises.

these reasons, we concluded provisionally that there was insufficient evidence to support an SLC on the basis of unilateral effects resulting from the store transfers.

9. Effects on competition of the store transfers through possible coordination

9.1 We considered if the store transfers might give rise to an increased likelihood of future coordination between Sports Direct and JJB (eg by dividing the market geographically). We recognized that such market segregation did not need to be complete, but could be achieved through a tacit agreement to compete less aggressively in some geographic areas.

9.2 Where Sports Direct has more stores in a region than JJB, each Sports Direct store is less likely to have a JJB store nearby, and where JJB stores are more prevalent, each is less likely to have a Sports Direct nearby.⁵⁴ Both firms set national prices and the more Sports Direct stores which face local competition from JJB, the stronger the aggregate competitive constraint from JJB on the national pricing of Sports Direct, and vice versa (see paragraphs 8.28 to 8.40). If the firms become more geographically separated, they are less likely to face local competition from each other, which we would expect to result in higher national prices (as well as a possible worsening of any locally-set elements of QRS). Equally, as firms become more geographically segregated, it becomes more likely that future tacit coordination of store locations may occur, since fewer changes are needed to segregate the market and detection of cheating (where one party departs from the agreed coordination) becomes easier.

9.3 We assessed whether the store transfers had increased the likelihood of such coordination.

⁵⁴For example, Sports Direct has a much higher share of the stores in the East of England than it does in Scotland. As a result, 95 per cent of Sports Direct locations in Scotland had a JJB within 5 miles at the beginning of 2009 while, in the East of England, the proportion was only 54 per cent.

Markets conducive to coordination

9.4 A history of tacit or explicit coordination can be an indicator of whether a market is conducive to coordinated interaction. Also, the more concentrated a market, the more likely that tacit coordination may arise.⁵⁵ We considered both factors.

9.5 In 2003, the OFT found that several retailers of sports goods had colluded to fix the prices of football replica kit in 2000 to 2001.⁵⁶ Sports Direct (then operating as Sports Soccer) and JJB were both involved.⁵⁷ Since 2003, the industry has become even more concentrated, eg Sports Direct has purchased Gilesports (72 stores in 2006), Hargreaves (45 stores in 2006), Streetwise (33 stores in 2006), Lillywhites (10 stores in 2002) and McGurks (8 stores in 2005);⁵⁸ and JD has purchased First Sport (over 200 stores in 2002) and Allsports (over 70 stores in 2005).⁵⁹ More recently, JD has also differentiated itself from Sports Direct and JJB so that these two firms are now the main competitive constraints to each other. These changes have enhanced the conditions which make the market more conducive to coordination.

Effect of the store transfers on the likelihood of coordination

9.6 For the store transfers to increase the likelihood of coordination, it must be the case that:

- (a) Sports Direct and JJB can identify and monitor the terms of coordination;
- (b) the remaining constraints on Sports Direct and JJB are weak, and entry and expansion are unlikely to defeat the coordination (ie coordination is 'externally sustainable');
- (c) such coordination is in the individual interests of both Sports Direct and JJB (ie coordination is 'internally sustainable'); and

⁵⁵See Motta (2004) *Competition Policy: Theory and Practice*, Cambridge University Press, pp142&143.

⁵⁶www.of.gov.uk/shared_of/ca98_public_register/decisions/replicakits.pdf.

⁵⁷Other retailers involved included JD, Allsports, and Blacks.

⁵⁸www.sports-direct-international.com/library/prospectus1pdf.pdf, p20.

⁵⁹www.jdsports.co.uk/webapp/wcs/stores/servlet/AboutUsView?langId=&storeId=10151&catalogId=&pagename=JDHistory.

(d) the store transfers increased significantly the likelihood of coordination.

We discuss each in turn.

Ability to identify and monitor coordination

- 9.7 We found that coordination in the industry in the past (see paragraph 9.5), with the involvement of both Sports Direct and JJB, indicated that the parties would probably be able to identify and monitor coordination in the future.
- 9.8 We also noted that, as a result of historical factors (in particular, where each group was founded), each firm has 'strong' areas, where it has a higher proportion of its stores than the other party, for example, Sports Direct has traditionally had more stores in the South-East, while JJB has had more stores in the North-West, Scotland and Northern Ireland. We noted that this historical geographic segmentation could also be the result of operational efficiencies, eg lower distribution costs, which arise through developing fully in one area before moving into a new area. We found that this historic geographic segmentation between Sports Direct and JJB would make it easier for them to identify the potential for geographic coordination.
- 9.9 We also noted that coordination on store locations would be easy to monitor, since new store openings are easily detected.
- 9.10 Despite the apparent feasibility of coordination, we noted that recent actions by both companies made it less likely. JJB has stated its intention to open 30 new stores by the end of 2011, and is focusing upon opening stores in areas where it is currently under-represented (including London and the South-East); while, in recent years, Sports Direct has increased the number of its stores in Scotland, an area in which it has been under-represented historically.

Remaining constraints and barriers to entry

9.11 The remaining constraints on Sports Direct and JJB appeared to us to be weak (see [Section 6](#)), and we concluded that it was unlikely that entry or expansion would defeat any anti-competitive effects (including coordinated effects) which might arise as a result of the store transfers (see [Section 7](#)).

The individual interests of Sports Direct and JJB

9.12 Given our finding that Sports Direct and JJB are each other's closest rivals, it would appear to be in their individual interests to coordinate (so that each could charge higher prices). However, we noted that coordination might involve foregoing profitable opportunities, for example, JJB might consider itself under-represented in London and might perceive there to be profitable opportunities in this region which it would be restricted from capturing if it were to coordinate geographically with Sports Direct. We did not undertake a detailed analysis of these incentives but we noted that, at the beginning of 2007, roughly 6 per cent of JJB's stores were in Greater London and they generated [redacted] per cent of its operating profit, suggesting that JJB [redacted]. We also considered it reasonable to expect that JJB and Sports Direct have opened stores in the locations where they perceive the greatest opportunities for profit and, therefore, any locations in which they are under-represented might offer only limited benefits.

9.13 We noted that coordination could improve current profitability as, if JJB were to leave an area where Sports Direct has a store, we would expect Sports Direct's revenues to increase (and vice versa).⁶⁰ Also, the fewer locations overall where Sports Direct competes with JJB, the less the overall competitive constraint on Sports Direct (see paragraphs 8.28 to 8.40), and the greater the opportunity for Sports Direct profitably to raise its national prices.

⁶⁰This expectation is consistent with our finding in paragraphs 6.34 to 6.38 that, when JJB enters near a Sports Direct store, Sports Direct's revenues fall by [redacted] per cent.

Effect of store transfers on likelihood of future coordination

9.14 We assessed how the store transfers changed the likelihood of future coordination. In a full merger of two firms, this likelihood increases as coordination generally becomes easier with fewer firms in the market. However, after the store transfers, both Sports Direct and JJB remain as competitors, although they compete directly in fewer local markets.

9.15 We considered what change in geographic market segregation had been caused by the store transfers and whether this change in market segregation had increased significantly the likelihood of future coordination on geographic market sharing.

Change in geographic segregation of the market

9.16 Given that geographic markets are small (ie a 2- to 5-mile radius centred on the relevant store (see paragraph 6.74)), coordination at the level of local geographic markets would be more complex than tacitly agreeing to allocate broad regions, such as 'Greater London' or 'Scotland'.

9.17 We performed a geographic analysis of the store transfers. We also assessed the changes in geographic segregation due to store closures and store sales but only to put the effect of the store transfers into perspective.

9.18 We compared the distribution of Sports Direct and JJB stores in November 2007 and August 2009 in order to look at whether the transactions were concentrated in particular geographic regions. We found that many of the transfers occurred in the London Government Office Region (Greater London).⁶¹

⁶¹We received location data on all Sports Direct and JJB stores, along with opening and closing dates for all stores operating at some point after 1 January 2005. We used the postcodes of the store address to match the locations to the Government Office Regions. Both Sports Direct and JJB operate fascias that are not focused on sports. For example, the Original Shoe Company, which was owned by Sports Direct and then JJB, and later went into administration, is not focused on a sports offering. The fascias that were included in this analysis were, for JJB: JJB Sports, Sports Division, and JJB Fitness; and, for Sports Direct: Sports Direct, Sports Soccer, Gilesports, Hargreaves, Sports World, Sports & Things, Sport & Ski, Sports Link, Lillywhites, Exsports, and Streetwise.

9.19 Table 5 shows the location of JJB stores in November 2007, the number of its stores transferred to Sports Direct in each region, the net number of its closures, and the number of its stores sold to DW Sports Fitness.

TABLE 5 JJB stores by Government Office Region

<i>Region</i>	<i>Number of stores November 2007</i>	<i>Number of stores sold to Sports Direct</i>	<i>Net number of stores closed</i>	<i>Number of stores sold to DW Sports Fitness</i>	<i>Number of stores August 2009</i>
East Midlands	22	0	2	5	15
East of England	28	2	6	2	18
London	24	9	10	0	5
North-East	17	2	4	2	9
North-West	64	1	14	15	34
Northern Ireland	21	0	-1	3	19
Scotland	51	1	5	5	40
South-East	35	2	6	1	26
South-West	27	4	3	3	17
Wales	24	3	0	6	15
West Midlands	34	2	7	3	22
Yorkshire and The Humber	<u>35</u>	<u>5</u>	<u>4</u>	<u>5</u>	<u>21</u>
Grand total	382	31	60	50	241

Source: Sports Direct and JJB, CC analysis.

9.20 Table 6 shows the location of Sports Direct and JJB stores in November 2007 and August 2009.

TABLE 6 Sports Direct and JJB stores by region

<i>Region</i>	<i>Number of JJB stores November 2007</i>	<i>Number of Sports Direct stores November 2007</i>	<i>Number of JJB stores August 2009</i>	<i>Number of Sports Direct stores August 2009</i>
East Midlands	22	25	15	23
East of England	28	34	18	34
Greater London	24	29	5	41
North-East	17	17	9	18
North-West	64	44	34	35
Northern Ireland ⁶²	21	0	19	0
Scotland	51	19	40	21
South-East	35	46	26	47
South-West	27	28	17	30
Wales	24	25	15	26
West Midlands	34	31	22	29
Yorkshire and The Humber	<u>35</u>	<u>27</u>	<u>21</u>	<u>27</u>
Grand total	382	325	241	331

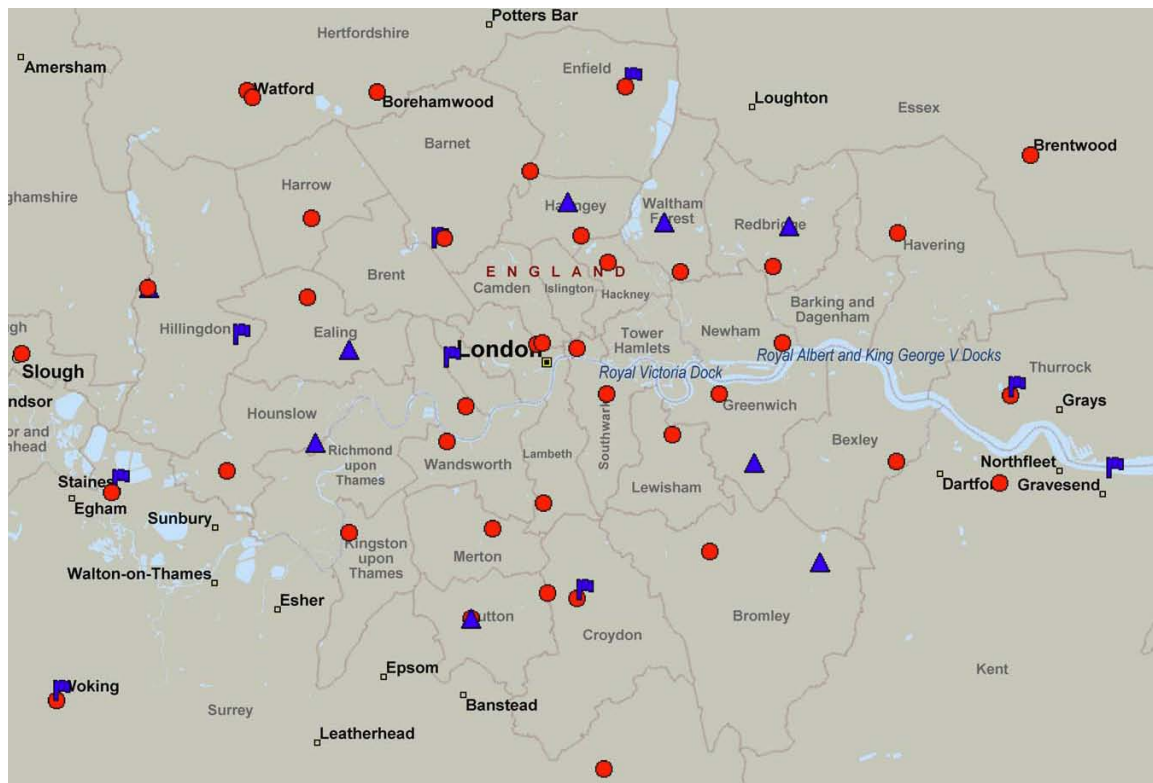
Source: Sports Direct and JJB, CC analysis.

⁶²Sports Direct owns 42.5 per cent of Heatons which operates in Northern Ireland. This table does not take into account Sports Direct's partial ownership of these stores. As of 30 November, 2009, there were 11 Heatons stores in Northern Ireland.

9.21 Table 6 shows that, over the period, while Sports Direct has increased the size of its store portfolio, JJB's portfolio has fallen. Table 6 also shows that the greatest change in geographic segregation has occurred in London, which is illustrated in Figures 1 and 2. Figure 1 shows the location of Sports Direct and JJB stores around London in November 2007, while Figure 2 shows their locations in August 2009. To focus on the effects of the store transfers, the closed stores and stores sold to DW Sports Fitness are not included in these maps. In both figures, Sports Direct stores are red and JJB stores are blue, with the transferred stores indicated by triangles (ie a blue triangle in Figure 1 indicates a JJB store which was transferred, while the blue flags indicate a JJB store that it continued to operate; similarly, in Figure 2, a red triangle indicates a Sports Direct store previously owned by JJB, while the other Sports Direct stores are indicated by red circles).

FIGURE 1

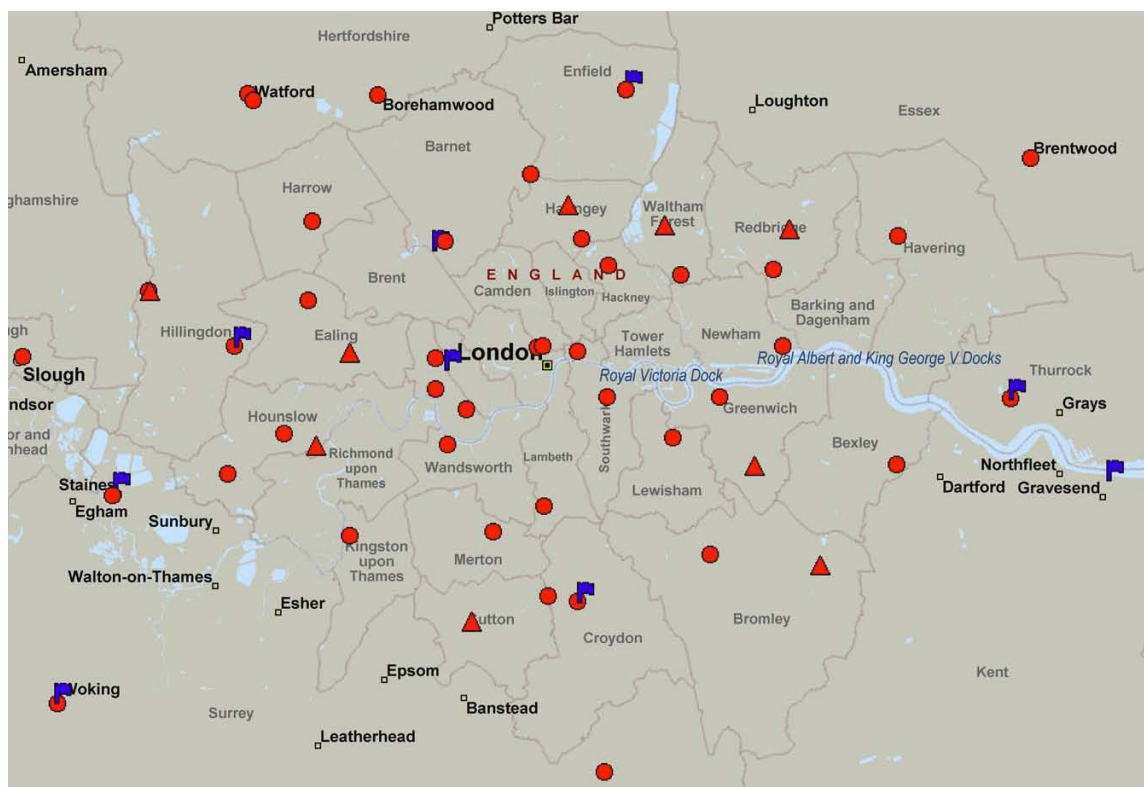
Sports Direct and JJB store locations in Greater London, November 2007



Source: Sports Direct and JJB, CC analysis.

FIGURE 2

Sports Direct and JJB store locations in Greater London, August 2009



Source: Sports Direct and JJB, CC analysis.

9.22 Comparing the 'before' and 'after' maps, we found that there was a noticeable increase in the number of Sports Direct stores, and a decrease in the number of JJB stores, in and around London over the period, due to the store transfers. We concluded that, at least in London, the store transfers have increased the extent of geographic segregation between Sports Direct and JJB.

Likelihood of future coordination

9.23 Before the store transfers, we found that, out of the 12 geographic regions in the UK, Sports Direct and JJB were each 'stronger' than the other in at least one region (in terms of the number of stores owned in the area), and there were eight regions which

were balanced between them.⁶³ After the store transfers, the store closures, and the sale of JJB stores to DW Sports Fitness, Sports Direct is stronger in five of the 12 regions, JJB is stronger in two regions, and there are five regions which are balanced between them (see Table 6). However, we found that most of this change was due to JJB's programme of store closures and the sale of stores to DW Sports Fitness, rather than the transfer of stores from JJB to Sports Direct. In all areas other than London, the store transfers made little difference. Even in London, we found that Sports Direct would have had 18 more stores over the period regardless of the store transfers.

Provisional conclusion on coordinated effects on competition

9.24 Given that the market contains just two firms, and there has been one finding of coordination in the past, we concluded that the market could be conducive to coordination. However, we found no evidence to indicate that the store transfers increased significantly the likelihood of such coordination.

10. Provisional findings

10.1 On the basis of all the evidence and analysis set out above and in the appendices, we concluded provisionally that the acquisition of 31 stores by Sports Direct from JJB has not resulted, and may not be expected to result, in an SLC in any market in the UK.

⁶³There were many different ways in which we could have considered relative 'strength'. For the purposes of this analysis, we defined 'stronger' as an area where a firm has at least ten more stores than the other.