EUROPEAN COMMISSION

Brussels,
C(2023) 7302 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10926 – FARFETCH / RICHEMONT / YNAP**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 15 September 2023, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which Farfetch Limited ("**Farfetch**") and Compagnie Financière Richemont S.A. ("**Richemont**", together with Farfetch, the "**Notifying Parties**") will acquire joint control within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, over YOOX Net-A-Porter Group S.p.A. ("**YNAP**") (the "**Transaction**").[3] Farfetch, YNAP and Richemont are hereinafter referred to as the "**Parties**".

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union, OJ C 334, 22.9.2023, p. 14.

1. THE PARTIES

(2) Farfetch, headquartered in the UK, is a global platform for the luxury fashion industry active in the retail supply of personal luxury goods.[4] Farfetch supports a broad range of commercial partners from global brands and department stores to family-owned boutiques, connecting them to more than 3.8 million active customers. Farfetch's principal businesses include:

(a) Farfetch Marketplace: a global online marketplace for luxury fashion which operates on a third-party model (the "3P" model)[5] as an online intermediation service facilitating transactions between brands[6], boutiques[7] and consumers. Farfetch Marketplace operates on commissions which are charged to brands and boutiques on each transaction with the end consumer.

(b) Farfetch Platform Solutions ("FPS"): a white-label enterprise[8] which builds and operates e-commerce services for brands, boutiques and department stores, utilising the proprietary Farfetch platform. FPS also offers luxury sellers ancillary services (e.g., digital marketing, product photography, etc.). FPS's offering includes front-end, back-end and additional services that are offered to brands as an end-to-end customisable solution as well as on a modular basis depending on discrete brand needs.

(c) Retail supply of luxury fashion brands: Farfetch operates a small number of retailers (e.g., Browns and Stadium Goods) and New Guards Group ("NGG"), a brand platform for the creation, incubation, design, production and distribution of luxury fashion brands. This represents only a small part of Farfetch's business.

(3) **Richemont** is a Swiss-based holding company[9] operating in the luxury goods sector. Through its 26 luxury brands (the "Richemont Maisons") Richemont is active in the design, production and distribution of luxury goods globally. The group focuses predominantly on (i) jewellery (mainly through its Buccellati, Cartier, and Van Cleef & Arpels Maisons) and (ii) specialist watchmaking (through, for example, Jaeger-LeCoultre, Vacheron Constantin and IWC Schaffhausen). It is also active in other areas, including luxury fashion and accessories (such as through Chloé, Alfred Dunhill and Montblanc). Richemont also operates a portfolio of online personal luxury distributors (i.e., the YNAP online stores), and Watchfinder & Co.

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4 Farfetch is a publicly traded company listed on the New York Stock Exchange.

5 Under this model, the brands and boutiques listing their products on Farfetch Marketplace retain ownership of the stock and the sale to the customer is made directly from the brand/boutique.

6 In this decision, brands refer to brand-owners that supply personal luxury goods to third-party retailers and their own mono-brand shops and websites (e.g., Balenciaga, Versace, Loewe, etc.).

7 In this decision, boutiques are retailers that specialise in the resell of personal luxury goods. they tend to operate both offline and online and can range significantly in scale, from privately owned/independent shops to large scale players such as Modes. Boutiques are highly selective in which products they offer.

8 Farfetch develops FPS and then sells it to brands and boutiques which can rebrand the software as their own.

9 Richemont is a publicly listed holding company.

(4) **YNAP,** headquartered in Italy and currently wholly owned by Richemont, is a global online retailer of personal luxury goods that sells a curated selection of luxury fashion goods through its suite of online stores:

(a) Net-A-Porter ("NAP"): offers a curated assortment of luxury products targeting women.

(b) Mr Porter ("Mr P"): provides a curated assortment of luxury products targeting men.

(c) YOOX: offers a wide selection of clothing and accessories for men and women, from luxury brands as well as more affordable options, as well as design and art.

(d) The Outnet ("TON"): an online luxury discount store offering end-of-season goods and limited-edition exclusives from designer fashion brands for men and women at discounted prices.

(5) YNAP operates primarily on a "1P" model: YNAP purchases stock from brands at wholesale price and then resells these stocks through its websites to consumers (In a 1P scenario, YNAP buys the products from the brands, takes ownership of the goods and bearing the inventory and return risks).

(6) To a lesser extent, YNAP also provides e-commerce services to a limited number of brands (including five Richemont Maisons) through its Online Flagship Store ("OFS") division which provides front-end, back-end and additional services, either as a complete "end-to-end" solution or on a modular basis.

2. THE OPERATION

2.1. The Transaction

(7) On 24 August 2022, Farfetch, Richemont and Symphony Global signed a sales and purchase agreement (the "SPA") under which Farfetch would acquire 47.5% of the shares of YNAP from Richemont for EUR [TRANSACTION VALUE ESTIMATE][10]. Post-Transaction, Richemont will own 49.3% of the shares of YNAP and Symphony Global, an investment vehicle of Mohamed Alabbar[11], will acquire the remaining non-controlling minority stake (3.2%) of YNAP.

(8) The Transaction rationale is to combine the Parties' businesses and strengths to offer improved options for brands, boutiques and consumers. [DETAILS OF COMMERCIAL OPERATIONS AND STRATEGY]. Farfetch is a technology company which has developed an online platform based on a 3P model and an e-commerce solution (FPS). Hence, Farfetch has the necessary expertise to successfully "re-platform" (i.e. develop a white-label e-commerce solution) to operate the YNAP stores and the Richemont Maisons, and to support YNAP's transition to a hybrid model.

10 [DETAILS OF TRANSACTION VALUE ESTIMATE].

11 Symphony Global is an investment vehicle of Emaar Properties PJSC, of which Mohamed Alabbar is the founder and chairman.

(9) The Transaction consists of a change of control within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, from sole control of YNAP by Richemont to joint control by both Richemont and Farfetch,

(a) Farfetch and Richemont will each have the right to appoint three out of the seven directors of the Board of Directors, with the remaining one director being appointed by Symphony Global.

(b) Farfetch and Richemont will have equal veto rights to determine YNAP's strategic commercial behaviour. Strategic decisions such as any material change in the nature or scope of the business, the adoption or amendment of any business plan and/or budget and the appointment of senior management (CEO/CFO) will require the approval of the majority of the directors, which shall include the favourable vote of all the Farfetch directors and the Richemont directors present at the relevant meeting. Thus, Farfetch and Richemont will each have the right to veto the adoption of the aforementioned strategic decisions.

(10) Hence, upon completion of the Transaction, Richemont and Farfetch will have joint control over YNAP.

(11) YNAP is a pre-existing and operationally autonomous undertaking and post-Transaction, it will continue to have sufficient resources to operate independently on the market[12], and its activities will continue to go beyond one specific function of Richemont or Farfetch.[13] YNAP will not have strong sales or purchase relations with either Richemont or Farfetch[14] and will continue to operate on a lasting basis.[15] Therefore, post-Transaction, YNAP will be a full function joint venture within the meaning of Article 3(4) of the EUMR.

(12) In addition, as a result of the Transaction, Richemont will acquire a 10-11% minority interest in Farfetch. Indeed, Farfetch will pay consideration to Richemont for YNAP's shares in the form of stock. As a result, Richemont will acquire a minority interest in Farfetch (expected to represent c. 10-11% of the fully diluted Farfetch share capital). As described in more details below, this will not lead to a change in the control of Farfetch.

(13) Currently, José Neves ("Mr Neves") holds 100% of Farfetch's Class B ordinary shares, amounting to 71.1% of Farfetch's total voting rights (as at 14 February 2023). The Transaction will not lead to any change with respect to the ownership of the Class B ordinary shares and Mr Neves' voting rights, as the Transaction does not relate to the transfer or issuance of Class B ordinary shares.

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12 YNAP has its own management dedicated to its day-to-day business and access to sufficient resources including finance, staff, and assets in order to perform its business on a lasting basis. See paragraph 51 of the Form CO.

13 YNAP will continue offering products from a variety of producers, including – but not limited to – the Parties' products. See paragraph 51 of the Form CO.

14 Prior to the transaction, only […]% of YNAP's total EEA sales in 2021 were generated from sales of Richemont products. As further explained in paragraph (28)(a), the broader partnership consists of an arm's length agreement pursuant to which Farfetch will also develop an e-commerce solution to re-platform and operate the YNAP online stores and help YNAP transition to a "3P" business model. The so called "re-platforming" will be provided as part of a standard IT services agreement pursuant to which YNAP's and the Richemont Maisons' e-commerce technology is to be supplied by Farfetch Platform Solutions ("FPS") just as FPS services its other customers.

15 YNAP has been active in the online retail supply of luxury goods for more than 20 years. [DETAILS OF COMMERCIAL STRATEGY]. See paragraph 51 of the Form CO.

(14) The rest of the voting rights are spread pro rata across all other shareholders but, due to the public nature of the company, the distribution of shareholdings and voting rights across the rest of Farfetch's shareholders cannot be predicted.

(15) Farfetch will issue between 53.0 and 58.5 million Farfetch Limited Class A ordinary shares to Richemont on completion of the Transaction ("Completion").

(16) On Completion, Richemont is expected to hold approximately 10-11% of the fully diluted Farfetch share capital, translating into c. […]% of voting rights.

(17) The c. […]% voting rights that Richemont will acquire on Completion will not confer on Richemont any possibility to exercise decisive influence over the strategic direction of Farfetch. The acquired shareholding will give Richemont a non-controlling stake only, with no veto rights over strategic decisions on Farfetch and without any right to representation on Farfetch's board.

(18) However, Richemont, Farfetch, Mr Neves and a Trustee Shareholder ("TGF") signed a Voting Commitment Deed of 24 August 2022 (the "VCD").

(19) Pursuant to clause 2.1 of the VCD Mr Neves agrees not to transfer his Class A ordinary shares in Farfetch Limited or his Class B ordinary shares in Farfetch Limited to […]. Mr Neves will also procure that his affiliate companies and/or […] will comply with the commitment. TGF agrees to the same provision mutatis mutandis.

(20) The clause is limited to preventing […], alone, from acquiring the Farfetch Limited Class A ordinary shares or the Class B ordinary shares held by Mr Neves or TGF from them (or their affiliate companies or […]). The clause does not prevent […] from purchasing Class A Shares on any listed exchange.

(21) Moreover, under clause 2.2 of the VCD, Mr Neves has agreed to exercise his majority voting rights in line with certain Richemont interests, most notably the undertaking of certain necessary steps to implement the potential future disposal by Richemont of its remaining shares in YNAP to Farfetch (and the resulting increase in Richemont's shareholding in Farfetch) should the put-and-call option mechanism (see paragraph (23) below) be exercised. In this regard, pursuant to clause 2.2.b) of the VCD, Mr Neves has agreed to do all such things as are in his reasonable control to convene a general meeting of Farfetch's shareholders to authorise and facilitate Farfetch's consummation of the put-and-call option mechanism. In addition, pursuant to clause 2.2.a) of the VCD, the shareholders have agreed to exercise all voting rights held by them to vote in favour of any shareholder resolution proposed by the Board for the purpose of authorising or facilitating Farfetch's obligations arising in connection with the exercise of any put-and-call option pursuant to the SPA.

(22) The Commission considers that the commitments undertaken by Mr Neves, mentioned in recitals (19) to (21) above, do not confer on Richemont the power to determine Farfetch's strategic commercial decisions.

(23) Following closing of the Transaction, the Transaction structure contemplates the possibility of Farfetch eventually increasing its stake in YNAP to 100% through a put and call option mechanism, subject to certain conditions ("**Stage 2 of the Transaction"**).[16] The put and call option mechanisms in the SPA are structured as follows:

(a) Richemont's put option: If exercised, the put option would require Farfetch to acquire all remaining YNAP shares which Farfetch does not own at the time of exercise at fair market value. Richemont can exercise the put option any time from the third to the fifth anniversary of closing of the Transaction.[17] However, Richemont can only exercise the put option if YNAP achieves positive adjusted EBITDA in the 12-month period prior to exercise as well as in 3 of the 4 consecutive quarters over that same 12-month period.

(b) Farfetch's call option: If exercised, the call option would enable Farfetch to acquire all remaining YNAP shares that Farfetch does not own at the time of exercise, at the higher of fair market value and certain agreed valuation floors (unless Richemont agrees otherwise). Farfetch can exercise the call option at any time from closing of the Transaction until its fifth anniversary.[18]

(24) The probability of the put and call option mechanism being implemented depends on YNAP satisfying various financial performance targets.[19] While the put and call options are foreseen in the SPA, there is no legally binding agreement that would require the call or put option to be exercised in the near future. As such it is not yet certain whether Stage 2 of the Transaction will be implemented, and is insufficient to confer sole control at this juncture.[20]

(25) If and when Farfetch were to acquire sole control over YNAP in the future, this change from joint to sole control would have to be notified in accordance with Article 4(1) of the Merger Regulation, to the extent that the turnover thresholds are met.

(26) Hence, Stage 2 of the Transaction will not be discussed further in this decision.

16 Stage 2 of the Transaction is anticipated to be subject to separate regulatory approval.

17 Subject to extension in specific circumstances, including: [DETAILS OF TRANSACTION DOCUMENTS].

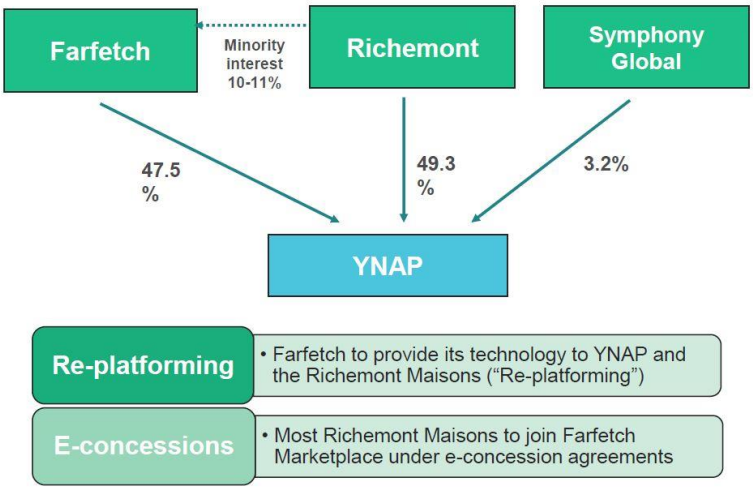
18 Subject to extension in specific circumstances, including: [DETAILS OF TRANSACTION DOCUMENTS].

19 YNAP achieving positive adjusted EBITDA (as defined in the shareholders' agreement) in the 12-month period prior to exercise of Richemont's put option as well as in 3 of the 4 consecutive quarters over that same period.

20 Consolidated Jurisdictional Notice, paragraph 60.

(27) In light of the above, the below figure provides a simplified overview of the Transaction:

Figure 1: Structure of the Transaction



Source: European Commission

2.2. The Partnership

(28) According to the SPA, the Transaction is part of a broader partnership between Farfetch and Richemont which envisages:

(a) The Re-platforming: An arm's length agreement based on which Farfetch will develop an e-commerce solution to re-platform and operate the YNAP online stores and help YNAP transition to a "3P" business model. This agreement also entails that Farfetch shall provide e-commerce solutions and re-platform the websites of most Richemont Maisons allowing them to implement omni-channel distribution strategies. With respect to the re-platforming of the Richemont Maisons, it is envisaged that FPS will provide all of the Richemont Maisons and retailers (with the exception of Watchfinder, Peter Millar, and AZ Factory) with an end-to-end solution encompassing website re-platforming. It is also envisaged that, in addition to their website re-platforming, the Richemont Maisons will also have access to a number of FPS technologies when selling their products in their own / operated stores in the EEA.

(b) The Maisons onboarding: An agreement by which most re-platformed Richemont Maisons[21] will become sellers on the Farfetch Marketplace through an "e-concession agreement". There is no obligation for Richemont Maisons to exclusively use Farfetch Marketplace to distribute their products.[22] The launch of the Maisons' e-concessions on the Farfetch Marketplace is governed by the terms of the Marketplace Undertaking Deed ("MUD").[23] The MUD also aims at protecting the Maisons' brand equity and

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21 The following Richemont Maisons will execute an e-concession agreement for the Farfetch Marketplace as part of the Partnership: Buccellati, Cartier, Van Cleef & Arpels, Baume & Mercier, IWC Schaffhausen, Jaeger-LeCoultre, Officine Panerai, Piaget, Roger Dubuis, Vacheron Constantin, Alfred Dunhill, AZ Factory, Chloé, Montblanc, and Serapian.

22 Form CO, paragraph 989.

23 Annex 113 to the Form CO.

the quality of the customer experience, consistent with the Richemont Maisons' other distribution channels.

(29) Although Farfetch considers the Maisons onboarding an important step towards improving the depth and quality of hard luxury inventory on its marketplace, the Maisons onboarding does not confer any material governance rights or influence over commercial strategy, and the anticipated financial increment brought about by the Maisons onboarding is [DETAILS OF FINANCIAL PROJECTIONS].[24] The Maisons onboarding and the Re-platforming [DETAILS OF FINANCIAL PROJECTIONS] for Farfetch post-Transaction.

(30) The Re-platforming will be provided as part of a standard IT services agreement pursuant to which YNAP's and the Richemont Maisons' e-commerce technology is to be supplied by FPS just as FPS services its other customers. The projected revenue derived from services provided to YNAP and Richemont's Maisons [DETAILS OF FINANCIAL PROJECTIONS].[25] As such, the Re-platforming would not give rise to any economic dependency of Farfetch on Richemont which could be considered as constituting decisive influence.

(31) Finally, Farfetch is not linked to Richemont by any long-term exclusivity agreements, nor are there any obligations for Richemont or its Maisons to exclusively use the Farfetch Marketplace for distribution of their products.

(32) An online intermediation service and a standard IT services agreement of relatively modest value relative to the overall level of sales on the Farfetch Marketplace, and conferring no material governance rights or influence over commercial strategy, would not amount to financial dependence.

(33) While as a result of the partnership agreement, Richemont would become a more important business and financial partner of Farfetch, the Commission concludes that Farfetch will not be financially dependent on Richemont post-Transaction in the sense of this leading to the ability of exercising decisive influence and conferring *de facto* control over Farfetch.

3. EU DIMENSION

(34) The Parties have a combined aggregate worldwide turnover of more than EUR 5 billion (Farfetch: EUR 2.2 billion; Richemont (including YNAP) EUR [DETAILS OF SALES]). In addition, the EU-wide turnover of each of the Parties exceeds EUR 250 million (Farfetch: EUR [DETAILS OF SALES]; Richemont (including YNAP): EUR [DETAILS OF SALES]). Furthermore, the Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within the same Member State.

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[24] [DETAILS OF FINANCIAL PROJECTIONS]. However, first, even if all the Richemont Maisons elected to join the Farfetch Marketplace, the Richemont Maisons would be only 26 among the over 1,400 sellers selling on the Farfetch Marketplace. Second, the Richemont Maisons account for a very small proportion of the overall personal luxury goods retail market ([0-5]% globally and [0-5]% in the EEA), and the online retail segment ([0-5]% globally and [0-5]% in the EEA), which in each case is generated by a large number of retailers. Third, Richemont Maisons' products account for less than [DETAILS OF SALES]% of the worldwide GMV for each of the YNAP sites.

[25] The FPS business accounts for only [0-5]% of Farfetch's global turnover.

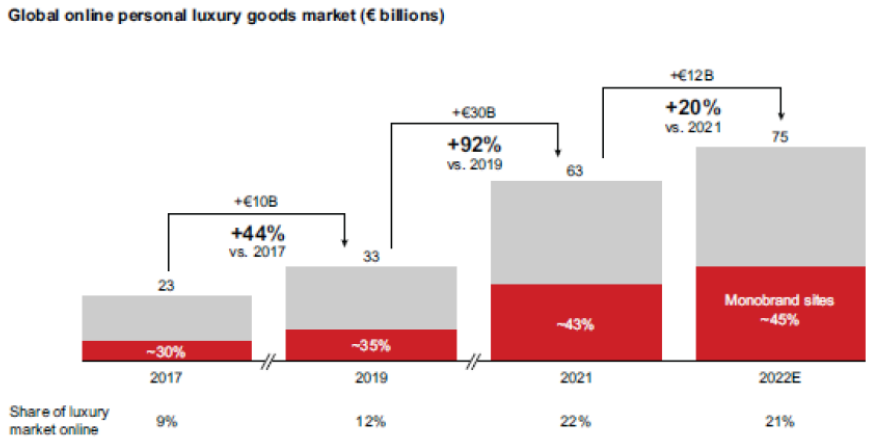
(35) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. INDUSTRY TRENDS AND DISTRIBUTION MODELS

4.1. Industry trends

(36) As shown in the figure below, the online luxury market size and share of overall luxury retail sales online more than doubled from 2019 to 2022:

Figure 2: The size of the global online luxury goods market (€ billions)



Source: Bain report, 'Renaissance in Uncertainty: Luxury Builds on Its Rebound', 17 January 2023, page 24, provided at Annex 105.

Source: Form CO, paragraph 374.

(37) In addition, brands have invested heavily to strengthen their online offering and are seeking greater control over how their luxury products are made available online.[26] Also, brands generally tend to develop the 'omni-channel' model, which seeks to create a seamless cross-channel shopping experience.[27]

(38) These trends, accelerated by the Covid-19 pandemic have been confirmed by the market investigation during which several brands of luxury goods explained that they have "*recently placed a strong emphasis on its online presence, a development which other brands operating in the luxury space have increasingly prioritized*"[28] or that "*clients are increasingly turning to online shopping and expect a seamless and personalized shopping experience, both online and offline*".[29]

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26 See, for example, Reuters article entitled 'Gucci parent Kering moves to tighten grip on e-commerce', 7 June 2019, available at: https://www.reuters.com/article/us-kering-digital-idUSKCN1T80RW

27 This includes functionalities such as 'click & collect' (i.e., buy online and pick up in store), the ability to buy online and return in-store, in-store apps (empowering sales associates to connect the online and in-store experience for each customer) and smart mirrors (which leverage online functionalities in-store).

28 Minutes from a call with a brand on 25 January 2023, paragraph 7, Doc ID782.

29 Minutes from a call with a brand on 26 January 2023, paragraph 7, Doc ID382.

4.2. Distribution models for personal luxury goods

(39) Personal luxury goods can be sold through various distribution channels namely:

(a) **Direct-to-consumers** ("DTC") where brands sell their products directly to the consumers through their network of physical stores and online "mono-brand" stores (e.g. Cartier.com),

(b) **1P/wholesale model**: luxury brands sell inventory to retailers, which take ownership of the stock (and thus inventory risk) before reselling the goods to their customers. These retailers include (i) multi-brand luxury department stores such as Galeries Lafayette and Breuninger, (ii) multi-brand boutiques (Leclaireur, Fashion Clinic) which generally operate both online and offline, and (iii) online multi-brand retailers, such as YNAP.

(c) **3P model:** this model is based on the "concession" model applicable in physical department stores. In this scenario, the brand or boutique retains ownership of the stock and the sale to the customer being made directly from the brand or boutique. The brand or boutique retains control over pricing, marketing, product catalogue, shop design and sales staff. The marketplace is remunerated through a fixed fee and a variable element (commission) calculated as a percentage of the sales by the brand within the retailer. Online e-concessions follow the same principles in the digital world and are used, for instance, by Farfetch.

(d) **Hybrid 3P/1P model**: There are a range of models that sit on a spectrum between 1P and 3P (e.g., dropship, which allows the retailer to sell the products which the brand then fulfils), or which combine the two models. By way of illustration, department stores often employ a mix of 1P and 3P: certain products are owned/sold by the department stores under a 1P/wholesale model and other products are sold on the basis of a 3P concession model. That is, for instance, the case for Harrods, Galeries Lafayette and El Corte Inglés.

(40) As mentioned above, YNAP's online stores currently operate on a "1P" business model, where YNAP purchases a curated selection of products from brands at wholesale price, and then sells said products to consumers at retail price.[30]

(41) Farfetch operates under a 3P model, under which brands and boutiques retain the ownership of the luxury goods they list on Farfetch Marketplace, for which they set the prices of the luxury goods.[31] Farfetch provides services to brands and boutiques who list their products on Farfetch Marketplace and charges commissions to the brands and boutiques for each transaction with end consumers (typically between [DETAILS OF CONTRACTUAL RELATIONSHIPS]%).[32] Farfetch Marketplace can therefore be considered a two-sided platform: the "business-facing side" on which brands and boutiques are the relevant customers and the "consumer-facing side" on which consumers are Farfetch's customers.

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30 Under the 1P model, YNAP also takes ownership of the products and bears inventory risk. Through YOOX marketplace, YNAP currently operates a very small proportion of its business via the 3P business model.

31 Farfetch does not own the stock sold on its platform and thus does not carry inventory costs or risk for these products. Customers purchase directly from its partner luxury brands, boutiques or department stores.

32 Farfetch also earns limited revenues from optional premium services offered to brands.

5. RELEVANT MARKETS

5.1. Manufacture and wholesale supply of luxury goods

(42) The Parties are active to a limited extent, in the market for the manufacture and wholesale supply of personal luxury goods, as follows: (i) Farfetch has limited activities via its wholly owned subsidiary, NGG,[33] (ii) YNAP has very limited activities in the manufacturing of personal luxury goods,[34] which are only listed on its own websites Mr Porter, YOOX and The Outnet, (iii) Richemont is active in the production and wholesale supply of luxury watches and jewellery via its Maisons.

5.1.1. Product market definition

5.1.1.1. The Commission's past practice

(43) Similarly, to the online multi-product- multi-brand retail supply market (see Section 5.2 below), the Commission has in past decisions considered that the market for the manufacture and supply of personal luxury goods should be distinguished from mass-market products.[35] The Commission further considered whether the relevant market should include all luxury products or be segmented between different categories,[36] but ultimately left the market definition open.

5.1.1.2. The Notifying Parties' view

(44) The Notifying Parties submit that the manufacture and wholesale supply of personal luxury goods should not be segmented by product category,[37] given that luxury goods are characterised by the same commercial and production strategies, namely qualitative in terms of materials, design, craftsmanship and marketing.

5.1.1.3. The Commission's assessment

(45) The results of the market investigation do not provide any element that would contradict the Commission's previous findings.

(46) For the purpose of this decision, the Commission considers that the question of whether the relevant market should include all luxury products or be segmented between different categories can ultimately left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement irrespective of the market definition.

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33 Form CO, paragraph 25: For FY 2021, NGG's worldwide GMV was € [DETAILS OF SALES] and EEA GMV was € [DETAILS OF SALES]. The global NGG figure includes in-store sales (€ [DETAILS OF SALES]) and all sales on NGG websites (e.g., palmangels.com) (€ [DETAILS OF SALES]). It does not include wholesale NGG sales, or sales made on the Farfetch Marketplace.

34 Form CO, paragraph 977: Principally Iris & Ink, 8 by YOOX, Mr Porter, Porte & Paire and 42 SUNS. YNAP has also developed some beauty products and gift collections, i.e., Mr Porter Grooming Kit, YOOX Gift Box, and YOOX NAP for the Prince's Foundation.

35 Commission decision of 29 June 2011 in Case No COMP/M.6212 – LVMH/Bulgari, Commission decision of 29 June 2011, paragraph 15.

36 Commission decision of 29 June 2011 in Case No CVOMP/M.6212 – LVMH/Bulgari, para 17; Commission decision of 3 June 2021 in Case No COMP/M.9695 – LVMH/Tiffany, para 25.

37 From the supply-side perspective, the Parties claim that different categories of luxury goods are complementary. From a demand-side perspective, customers of luxury goods are driven by "emotional" and suggestive desires, rather than by practical needs for a specific type of product.

5.1.2. Geographic market definition

5.1.2.1. The Commission's past practice

(47) In previous cases, the Commission left open whether the geographic markets for the manufacture and wholesale supply of luxury goods are national, EEA-wide or wider in scope.[38] More recently, while ultimately leaving the precise geographic market definition open, the Commission noted that the market "*converges towards an at least EEA-wide scope*" irrespective of the trade channel.[39]

(48) Also, the Commission noted regarding the production and wholesale of luxury goods that the "*competitive conditions (suppliers, brands, prices, etc.) in the luxury industry are generally (and increasingly) the same on a worldwide level"* and *"large brands tend to develop a coherent approach globally to achieve homogenized perception*".[40]

5.1.2.2. The Notifying Parties' view

(49) The Notifying Parties submit that the market for the manufacture and wholesale supply of personal luxury goods to be at least EEA-wide, if not global. [DETAILS OF RICHEMONT'S COMMERCIAL STRATEGY].[41]

5.1.2.3. The Commission's assessment

(50) The results of the market investigation do not provide any element that would contradict the Commission's previous findings.

(51) For the purpose of this decision, the Commission considers that the geographic market is likely to be EEA wide or wider in scope. In any event, the relevant geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, irrespective of the market definition.

5.2. Retail supply of personal luxury goods

(52) The Parties are all active in the retail supply of personal luxury goods. Indeed, Farfetch is active through Farfetch Marketplace, an online retailing platform, YNAP is active thought its online stores (Yoox, NAP, Mr.P and TON) and Richemont is active through its 26 Maisons, both online and offline.

38 Commission decision of 25 May 2000 in Case No COMP/M.1780 – LVMH/Prada/Fendi, paragraphs 13-14; Commission decision of 29 June 2011 in Case No COMP/M.6212 – LVMH/Bulgari, paragraph 22.

39 Commission decision of 3 June 2021 in Case No COMP/M.9695- LVMH/Tiffany, paragraph 72.

40 Commission decision of 3 June 2021 in Case No COMP/M.9695 – LVMH/Tiffany, paragraph 64.

41 Form Co, paragraph 515.

5.2.1. Product market definition

5.2.1.1. Personal luxury goods

5.2.1.1.1. The Commission's past practice

(53) The Commission has previously distinguished luxury goods from mass-market goods: luxury goods are characterized by relatively high prices, rich creative content and are marketed under a prestige trademark.[42]

(54) The Commission has also previously assessed whether a distinction should be made between different categories of luxury goods such as (i) luxury fashion and leather goods; (ii) luxury fashion accessories and eyewear; (iii) luxury watches and jewellery; (iv) luxury perfumes and cosmetics; and (v) luxury home product, or whether the market for personal luxury goods should encompass all product categories. The Commission ultimately left the market definition open.[43]

(55) The Commission has also previously considered whether personal luxury goods should be further segmented by price point but ultimately left the exact product market definition open.[44]

5.2.1.1.2. The Notifying Parties' view

(56) With regard to the distinction between mass-market goods and personal luxury goods, the Notifying Parties agree with the Commission's practice of segmenting the product market between mass-market goods and luxury goods.[45] The Notifying Parties claim that definition of "luxury" is a blurred concept and that it is difficult to make a clear-cut distinction by brand categories.[46]

(57) However, the Notifying Parties submit that industry reports by the third-party consultancy Bain-Altagamma ("Bain reports") are viewed as an authoritative and comprehensive source of market intelligence for the market of personal luxury goods and base their market share methodology on Bain's analysis.[47] The analysis in the Bain reports includes 282 personal luxury brands and the key selection criteria to include a brand within the luxury perimeter are: (a) price positioning of the core category; (b) distribution model (e.g., retail vs. wholesale); (c) marketing/communication model (i.e., how the brand and its products are communicated); and (d) size (i.e., the Bain reports consider they have included all of the largest relevant brands).[48]

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42 Commission decision of 29 June 2011 in Case No COMP/M.6212 – LVMH/Bulgari, paragraph 15; Commission decision of 3 June 2021 in Case No COMP/Case M.9695 – LVMH/Tiffany, paragraphs 10, 19.

43 Case M.9695 – LVMH/Tiffany, Commission decision of 26 October 2020, paragraph 10 and Case M.6212 – LVMH/Bulgari, Commission decision of 29 June 2011, paragraph 17.

44 Commission decision of 3 June 2021 in Case No COMP/Case M.9695 – LVMH/Tiffany.

45 Form CO, paragraph 575.

46 Form CO, paragraph 471: (1) Mass market (e.g. Massimo Dutti, Zara), (2) Premium (e.g. Ralph Lauren, Michael Kors, Furla, Boss, Calvin Klein), (3) Accessible luxury (e.g. Max Mara, Stella McCartney, Burberry), (4) Luxury (e.g. Prada, YSL, Gucci, Armani), (5) Ultra-luxury (e.g. Hermés, Chanel, Bottega Veneta).

47 Form CO, Annex 36.

48 Form CO, paragraph 472.

(58) With regard to the segmentation of luxury goods by product category, the Notifying Parties first submit that it is not necessary for the purposes of the assessment of the impact of the Transaction to consider a further segmentation of luxury good markets by product.[49] Second, the Notifying Parties claim that, from a supply-side perspective, different luxury products are complementary and that all major luxury brands offer a wide range of heterogeneous products.[50] Third, the Notifying Parties mention emerging trends that have expanded the boundaries of what customers perceive as "luxury" (e.g., collaborations between sportswear/activewear companies and luxury brands).[51] Lastly, the Notifying Parties claim that, from a demand-side perspective, customers of luxury goods are driven by "emotional" and "suggestive desires" rather than practical needs.[52]

(59) With regard to a segmentation of personal luxury goods by price points, the Notifying Parties consider that it is unnecessary to sub-segment the market for personal luxury goods by price points, considering that brands and retailers offer portfolios which cover a broad range of price points.[53]

(60) In any event, the Notifying Parties suggest that the relevant market(s) can be left open.[54]

5.2.1.1.3. The Commission's assessment

(61) While the evidence collected during the investigation confirms the Commission's past practice of segmenting the relevant product market between mass-market and luxury goods, the evidence is inconclusive as regards a narrower segmentation by product category, or by specific price points, for the following reasons.

(62) First, with regard to the distinction between personal luxury goods and mass-market goods, the vast majority of brands and competitors[55]of the Notifying Parties who expressed a view during the Commission's market investigation confirmed that it is relevant to distinguish between these two categories.[56] The majority of brands and the Notifying Parties' competitors indicate several product characteristics that distinguish mass-market from luxury goods. In particular, two competitors of the Notifying Parties noted that (i) luxury goods tend to be of superior quality (in contrast with mass-market products), (ii) luxury goods tend to be priced higher than equivalent mass-market goods, (iii) luxury goods brands have an established brand recognition for luxury, (iv) luxury brands are typically sold via exclusive distribution networks, and (v) luxury brands employ well-known designers associated with the brands.[57]By contrast to mass-market goods, luxury goods brands are often associated with a sentiment of uniqueness and/or ancestral heritage or craftsmanship.[58]

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49 *Id*., paragraph 576.
50 *Id*., paragraphs 577.
51 *Id*., paragraph 578-579.
52 *Id*., paragraph 580.
53 *Id.*, paragraph 335.
54 *Id*., paragraph 581.
55 In this decision, "competitors of the Notifying Parties" refer to online retailers of multi-brand/multi-product personal luxury goods and department stores (only their online business).
56 Questionnaire to Competitors, question D.A.2; Questionnaire to Brands, question D.A.2.
57 See e.g., responses of two competitors to Questionnaire to Competitors, question D.A.1.
58 *Ibid.*

(63) Also, the Court of Justice in case C-230/16, Coty Germany GmbH, also stressed the distinction between mass-market products and luxury products: " *the quality of such goods [luxury goods] is not just the result of their material characteristics, but also of the allure and prestigious image which bestow on them an aura of luxury, that that aura is essential in that it enables consumers to distinguish them from similar goods*."[59] in a previous judgment, the Court had already mentioned that "*Since luxury goods are high-class goods, the aura of luxury emanating from them is essential in that it enables consumers to distinguish them from similar goods*."[60]

(64) Second, although distinguishable from mass-market goods, the market investigation also confirmed the difficulty in establishing neat boundaries for what can be considered as "luxury". Thus, some respondents noted that in the fashion industry there is a continuum in goods offered that makes it difficult to set out specific criteria that makes a specific brand "luxury". For example, one large German department store explained that "*there is no official definition of 'upper and premium market' as opposed to affordable luxury and other 'lower markets'*".[61] Further, by frequently referring to the broader descriptive elements mentioned in paragraph (62) as the defining characteristics of "luxury", respondents to the market investigation confirmed implicitly the difficulty in establishing clear boundaries.

(65) Third, with regard to a further segmentation of the market for personal luxury goods by product category, the majority of the brands which expressed a view during the market investigation confirmed they offer a wide array of different products, with most brands supplying more than one category of luxury goods.[62]

(66) With regards to the retailers who supply only one product category (e.g. Watchfinder for luxury watches, Sephora for luxury cosmetics), the results of the market investigation show that the majority of brands who expressed a view consider that online retailers who only offer one product category compete with multi-product online retailers.[63] Similarly, a majority of competitors of the Notifying Parties who expressed a view during the market investigation consider that online retailers who offer only one product category compete with multi-product online retailers.[64]However, considering that the Parties and the majority of their competitors offer a broad range of product categories, the Commission considers that the substitutability of mono-product personal luxury goods retailers ("mono-product luxury retailers") compared to multi-product personal luxury goods retailers appears to be low. During the market investigation, several competitors of the Notifying Parties mentioned that mono-product luxury retailers compete to some extent, but not closely because they compete only in one of the many product categories offered by multi-product retailers.[65] Also, the majority of

59 Court of Justice of the European Union (CJEU), Case C-230/16 Coty Germany GmbH v Parfümerie Akzente GmbH, judgment of 6 December 2017 recital 25.

60 CJEU, Case C-59/08 Copad, judgment of 23 April 2009, recital 25.

61 Minutes from a call with a competitor on 27 February 2023, paragraph 10, DocID 1064.

62 Questionnaire to Brands, question C.5.

63 Questionnaire to Brands, question DD1.

64 Questionnaire to Competitors, question DE1.

65 Questionnaire to Competitors, question DE1 and DE2.

the Parties' internal documents show that [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS].[66]

(67) Given the absence of competition concerns under any plausible market definition, it can be left open whether the market for personal luxury goods should be further segmented by product categories (such as (i) luxury fashion and leather goods; (ii) luxury fashion accessories and eyewear; (iii) luxury watches and jewellery; (iv) luxury perfumes and cosmetics; and (v) luxury home product.

(68) Fourth, with regards to a further segmentation of the market for personal luxury goods by price point, The market investigation did not provide any evidence that would justify a distinction by price points with regards to the online retail of multi-brand/multi-product personal luxury goods. Based on this, and the fact that the Parties and their competitors, carry a broad range of price points depending on the product categories and brands they offer to consumers, the Commission considers that a further distinction by price point is not relevant in the present case.

5.2.1.1.4. Conclusion on the relevant market for personal luxury goods

(69) For the purpose of this Decision, the Commission therefore concludes that there is a distinct product market for personal luxury goods. With regard to the potential segmentation of this market by product category or by price point, considering that the Transaction does not raise competition concerns irrespective of the exact product market definition, the Commission considers that the market for personal luxury goods comprises all product categories (such as (i) luxury fashion and leather goods; (ii) luxury fashion accessories and eyewear; (iii) luxury watches and jewellery; (iv) luxury perfumes and cosmetics; and (v) luxury home product) and price points. Also, the Commission considers that it is possible that mono-product luxury retailers do not compete in the same market from multi-product personal luxury goods retailers. In any event, whether multi-product personal luxury goods retailers and mono-product luxury retailers should be distinguished can be left open given that the Transaction does not raise competition concerns including under the narrowest plausible product market definition.

5.2.1.2. Retail supply of personal luxury goods

5.2.1.2.1. The Commission's past practice

(70) In its decisional practice, the Commission has assessed the retail supply of luxury products separately.[67] In this regard, the Commission considered further segmentation between (i) brick and mortar retail, (ii) online retail and (iii) travel retail. In *LVMH/Bulgari* and *L'Oréal/YSL Beauté*, the Commission considered travel retail outlets (i.e., the retail outlets at airports, on-board aircraft, on-board ships) as a potentially separate sales channel.[68] Also, the Commission found that the relevant market for the distribution of luxury products should encompass all distribution channels (i.e. brick and mortar and online retail).[69] Recently, in *LVMH/Tiffany*, the Commission left open the question whether retail channels

66 See for instance, Annex 10.5 for the Form CO or YNAP Market and Competitors Monitoring, Doc ID 1715-357.

67 Cases M.1780 – *LVMH/Prada/Fendi*, Commission decision of 25 May 2000; Case M.6212 – *LVMH/Bulgari*, Commission decision of 29 June 2011; and M.9695 – *LVMH/Tiffany*, Commission decision of 3 June 2021.

68 Case M.6212 – *LVMH/Bulgari*, paragraph 20.

69 *Idem.*

should be further segmented between brick and mortar, online and travel retail but acknowledged the "increasingly omnichannel" journey of luxury goods consumers.[70]

5.2.1.2.2. The Notifying Parties' view

(71) The Notifying Parties argue that all luxury goods retailers (irrespective of their business model and including marketplaces) compete with each other. Customers do not distinguish between the various distribution channels, which means that they are substitutes irrespective of the precise distribution arrangement between the brands and the retailers.

(72) According to the Notifying Parties, the online channel exerts a strong competitive constraint on brick and mortar stores. This is particularly so given the recent growth of the online channel and its increasing convergence with the offline channel ensuring that (both mono- and multi-brand) brick and mortar retailers compete directly with online retailers.[71] Also, any hypothetical loss of online sales due to customers' return to the offline channel represents a much bigger threat for pure online multi-brand retailers than for department stores and mono-brands which can leverage both their online and offline presence.

(a) Online stores and brick and mortar are seen as substitutes by both customers and suppliers: Brands' sales through mono-brand websites grew by 192% globally from 2019 to 2022. The mono-brand channel accounted for c. 45% of the online segment by 2022 (compared to c. 35% in 2019).[72] The rapid expansion of the mono-brands' online channel is partially due to changes to customer shopping habits during the Covid-19 pandemic and a period during which the brick and mortar channel was not always available.[73]

(b) Consumers' willingness to switch between channels: Consumers are increasingly willing to switch between offline and online shopping and see the two channels as interchangeable. Consumers have come to expect the channels to be seamlessly connected, with the same pricing, level of service and overall consumer experience. This consumer demand has driven luxury retailers to develop both online and offline presences and to incorporate omnichannel strategies. Past spending behaviour also shows multi-channel purchasing and search and comparison across channels before purchase. The Notifying Parties rely on a customer survey conducted in the UK in 2021, which shows that consumers of personal luxury goods tend to visit a brick-and-mortar store before purchasing the good online. The Parties claim that consumers switching behaviour actually impacts the growth of both offline and online channels.[74]

(c) Brands offer generally the same prices online and offline: According to the Notifying Parties, this is mainly due to customers switching between channels which creates pressure to equalise prices online and offline. In general, according to the Notifying Parties, customers would consider buying online or offline if the relative price difference between the two channels would increase. Also, a significant proportion of customers browse online

70 Case M.9695 – *LVMH/Tiffany*, paragraph 55.
71 Form CO, paragraph 435.
72 Bain report, 'Renaissance in Uncertainty: Luxury Builds on Its Rebound', 17 January 2023, page 24.
73 Form CO, paragraph 440.
74 Form CO, paragraphs 441-457.

before making a purchase. This allows consumers not only to browse for their product of interest, but also to compare prices.[75]

(d) Most retailers have both an online and offline presence: the Notifying Parties argue that most retailers are active across sales channels and could easily start selling through new channels. In addition, the Notifying Parties consider that competition between channels has intensified with offline stores incorporating web-based technologies and online customer sales/retention strategies in-store and online retail websites relying on industry innovations to mirror/emulate the offline shopping experience.[76]

(e) The online and offline channels are increasingly converging: According to the Notifying Parties, in luxury retail, the channels are now so interconnected that they are increasingly conceptualised within the industry as one "omni-channel" – i.e., a consolidated effort to build customer loyalty, capture spend and serve customers at all points throughout their shopping experiences.[77]

(73) Thus with respect to the various retail channels, the Notifying Parties submit that the scope of the relevant product market should encompass all distribution channels (including brick and mortar, online, multi-brand and mono-brand channels (including marketplaces)). This is particularly so given the recent growth of the online channel and its increasing convergence with the offline channel ensuring that (both mono- and multi-brand) brick and mortar retailers compete directly with online retailers.

5.2.1.2.3. The Commission's assessment

(74) The Commission finds that online and offline retail channels compete. From a demand-side perspective, while the evidence collected during the market investigation indicates a strong degree of substitutability between different distribution channels, in particular between brick and mortar and the online channels (DTC and multi-brand). However, the Parties' internal documents point to specific competition dynamics at play in the online channel on the supply- side. This supported by the brands' replies, whereby certain factors suggest that the different channels are rather complementary. As explained in further detail below in Section 6.2.4.2, brands and boutiques have the ability to switch distribution channels depending on their sales strategy. Because there are sufficient alternative luxury online multi-brand retailers, and out-of-market constraints pose a credible deterrent as an alternative outlet for their sales of luxury goods, brands pick and choose which distribution channels they use as a complement to their direct DTC channels.

(75) On the one hand, evidence collected suggests that the online retail supply of personal luxury goods competes with the offline retail supply of personal luxury goods to a certain extent.

(76) First, during the preliminary market investigation several competitors of the Notifying Parties suggested that the retail supply of luxury goods should not be segmented between online and offline retail supply: according to an online multi-brand competitor: "*the market for the sale of luxury products cannot be subdivided*

[75] Form CO, paragraphs 455-458.
[76] Form CO, paragraph 459.
[77] Form CO, paragraphs 460-462

along online/offline or mono-brand/multi-brand retail lines. The company sees these activities as clearly part of the same market, and benchmarks against competitors active in all of these spaces (including brand.com, online retailers, platforms and luxury department stores)".[78] Also, a recent entrant in the online supply of personal luxury goods, sees itself "*competing with mono-brands, multi-brands, DTC and all other marketplaces, both online and offline".* It explained that it *"benchmarks against all of these groups of retailers*".[79]

(77) Second, the results of the market investigation showed that the majority of competitors who expressed a view indicated that both prices and product assortment offered are broadly the same on online and offline supply channels[80] and (ii) consumers use both the online and offline sales channels to purchase personal luxury goods interchangeably.[81]

(78) On the other hand, the Parties' internal documents suggest that [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS]. The Parties' internal documents suggest that [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS]. Below, YNAP presents [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS]:

Figure 3: YNAP Market and Competitors Monitoring

Source: […].

(79) Farfetch's internal documents also suggest that [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS]:

Figure 4: Farfetch – Competitors' biannual review, 2022

Source: Form CO, Annex 10.5, page 35.

(80) Hence, the majority of the Parties' internal documents suggest that [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS].

(81) In addition, the majority of brands who expressed a view during the market investigation consider that from a brand's perspective, online and offline retail channels are not substitutable.[82] One brand mentioned "*online and brick-and-mortar customer experiences are very different and not often not [sic] interchangeable: the same product from the same brand might have different performances online and in stores*."[83] The majority of brands who expressed a view also mentioned that the product assortment offered online somewhat differs from the product assortment offline.[84] One brand mentioned that *"usually online has a broader offer given the fact that it less less limation [sic] of warehouse capacity"*[85]. Lastly, from a consumer's perspective, while most brands who expressed a view during the market investigation consider that consumers view

78 Minutes from a call with a competitor on 1 February 2023, paragraph 5, DocID669.
79 Minutes from a call with a competitor on 24 February 2023, paragraph 7, DocID940.
80 Questionnaire to competitors, questions DB5 and DB7.
81 Questionnaire to competitors, question DB11.
82 Questionnaire to Brands, question DB1.
83 Questionnaire to Brands, question DB2.
84 Questionnaire to Brands, question DB7.
85 Questionnaire to Brands, question DB8.

online and offline distribution channels as substitutes[86], the majority of these brands who expressed a view also consider that consumers who use both online and offline distribution channels use them mostly for different purposes (e.g., certain brands / products are mostly purchased online whereas other brands / products are mostly purchased offline).[87]

5.2.1.2.4. Conclusion on the retail supply of personal luxury goods

(82) In light of the above, the Commission considers it possible that the online retail supply of personal luxury goods constitutes a market that is distinct from the offline retail supply of personal luxury goods. However, whether the offline and online channels should be distinguished can be left open given that the Transaction does not raise competition concerns including under the narrowest plausible product market definition.

5.2.1.3. The online retail supply of personal luxury goods via multi-brand channels and "mono-brand" channels

5.2.1.3.1. The Commission's past practice

(83) In its decisional practice, the Commission has considered that personal luxury goods are distributed through "*mono-brand directly operated shops, franchised and licensed boutiques, authorised boutiques, duty free shops and other independent sellers.*"[88] The Commission has also considered the competitive constraint from DTC channels on indirect channels (i.e. multi-brand retailers), for different types of consumer goods.[89] However, the Commission has not considered whether multi-brand retailers and mono-brands channels belong to the same product market.

5.2.1.3.2. The Notifying Parties' view

(84) The Notifying Parties consider that both mono-brand and multi-brand retailers compete in the same market (both online and offline).[90]

(85) First, the Notifying Parties claim that mono-brands' DTC channels have been growing, which shows the ability of mono-brand stores to target the same demand as multi-brand stores, and thus mono-brand players are direct competitors to multi-brand players. In recent years, the online sales of personal luxury goods have significantly increased mainly due to the rapid growth of mono-brands' DTC channels. The Notifying Parties argue that luxury brands have a strong preference for DTC sales because (i) it enables them to capture the full proceeds of the sales of their products[91], (ii) they keep control over their online presence, customer data and the overall supply chain and (iii) they can ensure that the final customer receives the "luxury" experience that they want associated with their product.

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86 Questionnaire to Brands, question DB3

87 Questionnaire to Brands, question DB11.

88 Case M.1780- LVMH/Prada/Fendi, paragraph 12.

89 Case M.9445 - Natura Cosméticos/Avon Products (2019), paragraphs 12 and 13. The Commission reached similar conclusions in several cases. See for example, Case M.9000 - Bain Capital / Reifen Krieg Group (2018), paragraph 28; Case M.6314 – Telefónica UK / Vodafone UK / Everything Everywhere / JV (2012), paragraph 181 and Case M.8733 - Lone Star/Stark (2018), paragraphs 35 and 39.

90 Form CO, paragraphs 371 and subsequents.

91 Without foregoing any margin or paying any commission to their multi-brand rivals.

(86) Second, the Notifying Parties argue that consumers perceive mono-brands channels as a direct substitute to the multi-brand channel. Brands are the key players in this industry because it is the brands that both create and satisfy the demand for personal luxury goods. However, the prestigious "aura" of the luxury brands is reflected in the customer experience both via mono-brands' DTC channels and in the selected multi-brand channels.

(87) Third, the Notifying Parties consider that the growth of the DTC channel has been at the expense of distribution via multi-brand retailers. The Notifying Parties rely on the Bain reports which mention that multi-brands' share of supply across all distribution channels in the personal luxury goods market declined from over 70% in 2010 to 50% in 2022.[92] In addition, the Notifying Parties rely on some of their internal documents to support that [DETAILS OF THE PARTIES' INTERNAL DOCUMENTS]. For instance, YNAP's market intelligence from its buying team show that [DETAILS OF THE YNAP'S INTERNAL DOCUMENTS].[93] Farfetch's internal documents identify [INFORMATION REGARDING FARFETCH COMPETITOR / MARKET ASSESSMENT].[94] Lastly, the Notifying Parties estimate that when looking at the top 10 mono-brands in the EEA between 2021 and 2022, the average increase in online mono-brand's gross merchandise value ("GMV")[95] was 26.6%.[96]

(88) Fourth, the Notifying Parties conducted a customer survey in the UK in April 2021 to show that they compete closely with mono-brands DTC channels (the "Customer Survey"). The Notifying Parties consider that the results of this survey are also applicable to the EEA, due to customer behaviour and competitive conditions being similar in both markets. The Notifying Parties argue that the characteristics of personal luxury goods do not vary depending on the geographic area and customers expect a universal product collection internationally. The Customer Survey claims that the predominant destination customers would switch to if one of the Parties' websites became unavailable would be the relevant luxury brand corresponding to the product they purchased on the Parties' websites.

(89) Fifth, the Notifying Parties submit that the analysis of search engine data ("[CONFIDENTIAL THIRD-PARTY DATA]") indicates close competition between online mono-brand and multi-brand retailers. From the perspective of the consumer, the Notifying Parties claim that the [SEARCH ENGINE DATA] shows that a potential customer searching online for a specific luxury good or brand will see the Parties' text ads next to each other, as well as next to the ads of their competitors. [SEARCH ENGINE DATA] also show that, from the perspective of an online luxury goods retailer, mono-brands are paying for the same search terms as the Parties and other multi-brand retailers. The Notifying Parties submit, therefore, that (i) from a consumer perspective there are no significant differences between mono- and multi-brand retailers, and (ii) from a supplier/brand perspective, the fact that brands pay for ads to appear in search pages by bidding in

92 Bain report, 'Renaissance in Uncertainty: Luxury Builds on Its Rebound', 17 January 2023, page 16.
93 Form CO, paragraph 399.
94 Form CO, Annex 10.5 and 10.4, 10.53.
95 GMV is the total dollar value of orders processed excluding returns, cancellations, allowances and net of discounts. It is a standard metric in the industry and, unlike revenues earned, allows for a meaningful comparison of the position of competitors with different business models (e.g., 3P and 1P).
96 Form CO, paragraph 400.

search terms that would otherwise organically be listed by the search engine (such as by paying for ads as a result of a search to their own brand), indicates that mono-brands stores compete with multi-brand stores.

(90) Hence, the Notifying Parties consider that Mono-brands' DTC channels and multi-brand retailers should be part of the same product market, together with the other distribution channels mentioned above.

5.2.1.4. The Commission's assessment

(91) The Commission finds that mono-brand sales and multi-brand sales compete. However, the evidence gathered during the market investigation and detailed below, does not allow the Commission to conclude that the conditions of competition between mono-brand's DTC websites and multi-brand online stores are sufficiently homogeneous for these to be considered as forming part of a single product market. Similar to the interaction between the online retail supply of personal luxury goods and the offline retail supply of personal luxury goods, the evidence gathered during the investigation suggest that mono-brand's DTC websites and multi-brand online stores are both competing and complementary.

(92) On the one hand, the results of the market investigation revealed that brands tend to view multi-brand channels such as Farfetch and YNAP as an additional distribution channel rather than as a direct competitor.

(93) First, most brands who expressed a view during the market investigation responded that Farfetch is primarily a distribution channel and do not consider it as a direct competitor to their brand.[97] Two brands respectively mentioned "*We consider Farfetch brings a complementary audience to our Brand*." and "*FF is a market place that carries all brands. The competition is between brands, not with the market place*."[98] With regard to YNAP, most brands who expressed a view consider that YNAP is either a distribution channel only or both a distribution channel and a competitor to their brands.[99] However, brands also consider that prices of personal luxury goods tend to be the same on Farfetch, YNAP websites and on their mono-brand website.[100] Lastly, the majority of personal luxury brands who expressed a view consider that their consumers view their DTC websites as substitutes to online multi-brand retailers and platforms of personal luxury goods (such as Farfetch and YNAP).[101]

(94) Second, the above responses received during the market investigation reflect those that were gathered during the preliminary investigation, where brands often indicated that mono-brand stores and multi-brand stores are complementary sales channels. For example, one large brand explained that it "*does not consider online retail platforms such as Farfetch and YNAP to be their direct competitors. The online platforms are rather complementary*".[102] Another large French brand of international luxury fashion and other personal luxury goods explained that "*it does not view the Parties as its direct competitors, like Chanel might be*".[103] One small

97 Questionnaire to Brands, question D.C.1
98 Questionnaire to brands, question DC2.
99 Questionnaire to Brands, question DC3.
100 Questionnaire to Brands, questions DC5 and DC7.
101 Questionnaire to Brands, question DC9.
102 Minutes from a call with a brand on 1 March 2023, paragraph 3, DocID 843.
103 Minutes from a call with a brand on 9 June 2023, paragraph 10, DocID 1546.

Italian brand of luxury footwear explained that it "*does not consider multi-brand platforms, such as Farfetch, as a competitor but as an additional distribution channel*".[104] A large Italian brand of international luxury fashion and other personal luxury goods considers "*sales channels such as shopping platforms and online retailers as an extension of its own platform, viewing them together rather as an ecosystem*".[105] A well-known German brand of luxury fashion and other personal luxury goods also "*sees retailers such as Net-a-Porter, and Farfetch not as competitors, but rather as a complementary extension of its own online platform*". This is because it "*believes in meeting new clients where they prefer to shop, and therefore aims to maximize contact points between clients and its inventory through retailers and platforms*".[106]

(95) On the other hand, with regard to the views of the competitors of the Notifying Parties, the results of the market investigation are mixed. As detailed below, while some of the competitors of the Notifying Parties view brands' DTC channels as a direct competitor, other competitors of the Notifying Parties consider them only as indirect competitors.

(96) First, during the preliminary market investigation, some multi-brand online retailers and platforms indicated that brands' DTC channels are not such close substitutes to their websites. For instance, one respondent considered that "*mono-brands (through their DTC channel and brand.com) as indirect competitors because their business model is different*".[107] Another multi-brand online retailer mentioned that it "*does not benchmark against Mono-brand retailers and luxury brands/fashion houses themselves. It sees its primary competitors as multi-brand retailers/department stores and online luxury platforms such as Farfetch. This is because, according to the company, the consumer approaches both types of sites with a very different mind-set. A consumer on a mono-brand or brand.com site is most often looking for a specific product/item they wish to acquire. Meanwhile, consumers on multi-brand and online platforms are more likely to seek to fulfil a certain need, therefore looking for a broader assortment of products.*".[108]

(97) Second, in contrast, a majority of multi-brand online retailers and platforms who expressed a view during the market investigation consider that mono-brand and multi-brand online retailers and platforms compete closely and that prices for the same personal luxury good tend to be similar or in accordance to the brand's DTC website.[109] The reasons submitted during the market investigation for this alignment in prices between mono-brand and multi-brand retail stores include (i) the need to remain competitive across channels,[110] (ii) the business model of the multi-brand retail store, namely where the brands themselves set the prices,[111] and (iii) concerns regarding the credibility of the retail (where a significant price difference relative to the brand's own prices could question the authenticity of the product).[112]

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104 Minutes from a call with a brand on 3 July 2023, paragraph 11, DocID 1552.
105 Minutes from a call with a brand on 25 January 2023, paragraph 8, DocID 782.
106 Minutes from a call with a brand on 26 January 2023, paragraph 6, DocID 382.
107 Minutes from a call with a competitor on 30 June 2023, paragraph 7, DocID 1575.
108 Minutes from a call with a competitor on 3 February 2023, paragraph 9, DocID 526.
109 Questionnaire to Competitors, questions D.D.1 and DD3.
110 Questionnaire to Competitors, question D.D.4.
111 *Id.*
112 *Id.*

(98) In addition, with regard to pricing, there is a price discrepancy that arises when the multi-brand online retailer or platform focuses on off-season personal luxury goods.[113]

(99) Lastly, some of the multi-brand online retailers and platforms emphasised the ability and frequency with which consumers use both mono-brand and multi-brand simultaneously in a single "shopping journey"[114] and mentioned that the product offering between mono-brands and multi-brand retailers and platforms is equivalent, and therefore shoppers could use either interchangeably.[115]

(100) The evidence is therefore inconclusive on the degree of homogeneity of competition between the mono-brand websites and the multi-brand online retailers and platforms.

5.2.1.4.1. Conclusion on the market for the online retail supply of personal luxury goods via multi-brand channels vs. DTC channels ("mono-brand")

(101) In light of the above, the Commission considers, on a conservative basis, that the market for the online retail supply of personal luxury goods via multi-brand channels is a distinct market from the online retail supply of personal luxury goods via brands' DTC websites. The Commission will however take into account the competitive constraints exercised by the online retail supply of personal luxury goods via brands' DTC websites in the competitive assessment.

5.2.1.5. Pre-owned personal luxury goods vs. new personal luxury goods

5.2.1.5.1. The Commission's past practice

(102) The Commission has not previously considered whether new personal luxury goods belong to the same product market as pre-owned personal luxury goods.

5.2.1.5.2. The Notifying Parties' view

(103) The Notifying Parties consider that pre-owned personal luxury goods should be considered within the same market as new personal luxury goods and form together the market for personal luxury goods because (i) from a demand perspective pre-owned luxury products attract significant price-points and levels of prestige sometimes even exceeding that of new items; and (ii) from a supply perspective, as part of an industry trend known colloquially as the "circular economy", most luxury retailers have recently developed pre-owned offerings (often presented alongside their new offerings).[116] The Notifying Parties also mentioned the increased importance of the circular economy which is expected to bring increasing customer pressure on brands to be more sustainable. This shift in customer demand in favour of pre-owned products brings additional competitive pressure on personal luxury goods retailers, including the Notifying Parties, to add pre-owned goods to their offering.[117]

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113 Questionnaire to Competitors, question D.D.4.
114 Questionnaire to Competitors, question D.D.2.
115 non-confidential response to question D.D.2 of two competitors.
116 Form CO, paragraph 332.
117 Form CO, paragraphs 796 and 797.

5.2.1.5.3. The Commission's assessment

(104) The results of the market investigation tend to indicate that pre-owned personal luxury goods are within the same market as new personal luxury goods, unless there is a significant enough price difference that would make consumers switch.

(105) Indeed, the majority of the brands who expressed a view during the market investigation indicate that consumers view pre-owned personal luxury goods as substitutes to new personal luxury goods only if the price difference between the new good and the pre-owned one is large enough. Others clearly consider that consumers generally do not view pre-owned personal luxury goods as substitutes to new personal luxury goods.[118]

(106) With regard to competitors of the Parties (i.e. multi-brand online retailers and platforms), the majority of them consider that consumers view pre-owned personal luxury goods as substitutes to new personal luxury goods only if the price difference is large enough.[119] In addition, one competitor of the Parties mentioned that "*There is no general answer to this question. Currently, topics such as second hand are in demand among younger generations against the backdrop of sustainability. It is hard to say whether this will be a temporary trend. However, there are also luxury goods (especially handbags) that are only produced in small numbers and models are simply no longer available for regular sale. These thus acquire their own desirability value*."[120]

5.2.1.5.4. Conclusion on the market for pre-owned personal luxury goods vs. new personal luxury goods

(107) In light of the above, the Commission considers, on a conservative basis, that the market for pre-owned personal luxury goods is a distinct market from new personal luxury goods.

5.2.1.6. Conclusion on the relevant product market definition

(108) In light of the above, in the present case, the Commission considers that:

(a) the market for personal luxury goods is a separate market from mass-market goods;

(b) the Parties and their competitors are active across all product categories, and that since the Transaction does not raise concerns under any plausible market definition, it can be left open whether the market should be further segmented by product categories;

(c) With regard to a segmentation per type of sales channels, the online retail supply of personal luxury goods is a distinct market from the offline retail supply of personal luxury goods;

(d) Sales through mono-brands' DTC websites is a separate product market from sales of personal luxury goods through multi-brand online retailers and platforms.

118 Questionnaire to Brands, question DE1.
119 Questionnaire to Competitors, question DF1.
120 Questionnaire to Competitors, question DF2.

(e) The market for new personal luxury goods is a distinct from the market for pre-owned personal luxury goods.

(109) For the purpose of this decision and in light of all information available to it, on a conservative basis, the Commission considers that, the relevant product market definition is the online retail supply of multi-brand, multi-product personal luxury goods (excluding pre-owned personal luxury goods).

5.2.2. Geographic market definition

5.2.2.1.1. The Commission's past practice

(110) In previous cases involving the retail supply of luxury goods, the Commission has considered global, EEA-wide and national markets but ultimately left the geographic market definition open.[121] There are no previous cases that have looked specifically at the online retail supply of luxury goods.

5.2.2.1.2. The Notifying Parties' view

(111) The Notifying Parties argue that the geographic scope for the retail supply of luxury goods is at least EEA-wide for the following reasons:[122]

(a) **Product offering and consumer preferences**: According to the Notifying Parties, the range of products offered across the EEA is largely the same independently of the EEA country. This is because consumer preferences for luxury goods are broadly the same across the EEA.[123]

(b) **Product prices and delivery times/costs**: The Notifying Parties submit that retailers of luxury goods, including the Parties, generally set similar product prices across the EEA[124] and that delivery times and costs are also broadly the same for luxury goods across the EEA.[125]

(c) **Presence of competitors**: Similarly, the Notifying Parties argue that most retail competitors that are active in the supply of luxury goods in the EEA supply their goods in all EEA countries.[126]

(d) **Language and localised presence**: According to the Notifying Parties, it is further not necessary to have an online presence in the local language most commonly used in each EEA country or to adjust other localised aspects when supplying luxury goods in each EEA country.[127]

(112) The Notifying Parties further emphasise that the top retailers in the supply of luxury goods are similar across the EEA, that retailers tend not to have localised advertising campaigns for specific EEA countries, that the Parties' commercial strategy does not differ depending on the EEA country, that cross-border purchases are common for luxury goods and that no national regulatory standards apply for

121 M.1780 – LVMH / PRADA / FENDI, paragraph 14 ; M.2333 - DE BEERS / LVMH, paragraph 39; M.6212 – LVMH / BULGARI, paragraph 27; M.9695 – LVMH / TIFFANY, paragraph 72.
122 Form CO, paragraph 495.
123 Form CO, paragraphs 496-508.
124 Form CO, paragraphs 509-522.
125 Form CO, paragraphs 548-561.
126 Form CO, paragraphs 523-530.
127 Form CO, paragraphs 531-547.

luxury goods.[128] In addition, the Notifying Parties emphasise that YNAP only has [OPERATIONS INFORMATION] centralised warehouses, [OPERATIONS INFORMATION], whereas Farfetch only has [OPERATIONS INFORMATION] centralised warehouses in Italy, the Netherlands and [OPERATIONS INFORMATION], meaning that a physical local presence is not necessary to compete effectively across the EEA.

5.2.2.1.3. The Commission's assessment

(113) At the outset, it should be noted that based on the Commission's market investigation, there appear to be somewhat different competitive conditions with regard to the geographic market on the consumer- and business-facing sides of the market. This decision will therefore separately assess the geographic market definition for the consumer-facing side and for the business-facing side.

5.2.2.1.3.1. Consumer-facing side

5.2.2.1.3.1.1. Product offering and consumer preferences.

(114) The Commission finds that, while the quantitative analyses submitted by the Notifying Parties show some degree of homogeneity in product offering and consumer preferences in this market, these analyses also suggest that there is some heterogeneity across the EEA in this regard.[129]

(115) While the Notifying Parties submit that "*virtually all*" products from a sample of randomly selected products offered on YNAP's sites Net-A-Porter and Mr Porter are available in all EEA countries,[130] as regards Farfetch, the Notifying Parties' analysis suggests that only around [SELLER PARTNER INFORMATION]% of sellers on Farfetch made their products available in all EEA countries and that only around [STRATEGY INFORMATION]% of the content on its homepage is the same across the EEA.[131] The Parties have not submitted an equivalent analysis for YNAP's sites.

(116) As to customer preferences, the Notifying Parties' analysis of the Parties' most sold brands per EEA country shows that [DETAILS OF SALES] brands sold on Farfetch appear in the top 10 most sold brands in [DETAILS OF SALES] of the 30 EEA countries. With regard to YNAP, an equivalent analysis shows that [DETAILS OF SALES] brands sold on YNAP's sites appear in the top 10 most sold in [DETAILS OF SALES] of the 30 EEA countries.[132] This means that there are many brands that appear in the top 10 of the Parties' most sold brands in only a limited number of countries.

(117) In relation to the formal market investigation, a vast majority of competitors indicated that consumer preferences for luxury goods either do not differ substantially across the EEA or only differ somewhat across.[133] In addition, almost

128 Form CO, paragraphs 561-571.
129 Form CO, paragraphs 501-505.
130 Form CO, paragraph 501.
131 Form CO, paragraphs 502-503.
132 Form CO, paragraph 505.
133 Questionnaire to Competitors, question E.13.

all competitors and brands that expressed a view that the luxury products they offer are the same or very similar across the EEA.[134]

(118) On balance, while consumer preferences and product availability do not appear to be the exact same across the EEA, there is substantial evidence that the majority of the products are available across the entire EEA and that consumer preferences for luxury goods are broadly the same. This would point towards an EEA-wide market.

5.2.2.1.3.1.2. Product prices and delivery times/costs

(119) The Commission finds that, based on the Notifying Parties submission, the Parties' prices and delivery costs are broadly the same across the EEA.[135] The analysis submitted by the Notifying Parties shows that, while brands and boutiques offering their products on Farfetch can choose to offer different prices per country, most sellers ([SELLER PARTNER INFORMATION]%) offer the same products at similar prices (within a 5% range) in most EEA countries with EUR as their currency.

(120) For YNAP's sites, the Notifying Parties submit that [DETAILS OF YNAP PRICING DATA].[136]

(121) With regard to delivery times and costs, the Notifying Parties submit that these are broadly the same for the Parties across the EEA and that delivery costs, in any event, only constitute a limited proportion of the overall sales value of typical luxury goods (and are hence unlikely to prevent cross-border competition in the EEA).[137] In particular, the Notifying Parties argue that their standard and express delivery fees tend to be the same across the EEA.[138] However, these submissions also show that the Parties' standard and express delivery fees are significantly higher in a number of smaller EEA countries, including for Farfetch in [DETAILS OF PRICING DATA] and for YNAP in [DETAILS OF PRICING DATA].

(122) The Commission's market investigation has largely confirmed the notion that online prices for luxury goods tend to be the same across the EEA. For example, a large British department store with a global online presence explained that it "*sells its inventory for the same prices regardless of location when exchange rate, local taxation and shipping is taken into account*".[139] Similarly, a large majority of competitors that expressed a view during the formal market investigation indicate that the prices for luxury goods that they sell online are either the same or very similar (within 5%) across the EEA.[140] For brands, the large majority of respondents that expressed a view indicate that the retail prices of their products offered on Farfetch and YNAP's sites are the same or very similar (within 5%) across the EEA.[141] In addition, a majority of competitors that expressed a view state that the shipment costs for the luxury goods that they sell are either the same, very similar (within 5%) or similar (within 10%).[142]

134 Questionnaire to Competitors, question E.7, and Questionnaire to Brands, question E.15.
135 Form CO, paragraphs 512-513.
136 Form CO, paragraph 514.
137 Form CO, paragraphs 548-560.
138 Form CO, Table 31 and Table 32.
139 Minutes from a call with a competitor on 1 February 2023, paragraph 8, DocID 400.
140 Questionnaire to Competitors, question E.9.
141 Questionnaire to Brands, questions E.11 and E.13.
142 Questionnaire to Competitors, question E.11.

(123) Overall, therefore, while there do appear to be some differences in terms of product prices and delivery costs across the EEA, these differences appear limited and consistent also with an EEA-wide market.

5.2.2.1.3.1.3. Presence of competitors

(124) The Commission has further assessed the Notifying Parties' argument that most online retailers and platforms of luxury goods supply their products across the EEA and that the list of the top competitors is relatively homogenous across the EEA.[143]

(125) In relation to the claim that most online retailers and platforms of luxury goods supply across the EEA, the Notifying Parties show that most competitors active in this market have shipping options across the EEA and also have localised websites in many EEA countries.[144]

(126) Regarding the notion that the list of the top competitors is relatively homogenous across the EEA, the Notifying Parties submit that some of the Parties' top competitors, including LuisaViaRoma, Matchesfashion, ASOS, and Zalando are within the top ten competitors in many EEA countries.[145]

(127) The Commission's market investigation has provided evidence that broadly supports the notion that the presence and competitive strength of online retailers and platforms of luxury goods is largely homogenous across the EEA. For example, one of the Parties' closest competitors, an Italian retailer of luxury fashion with a large online presence, explained that it "*generally meets the same competitors across the EEA*".[146] Similarly, another close competitor of the Parties went as far as saying that "*the market for the sale of luxury products has a global dimension*" and that "[c]*onsumers around the world generally will meet the same market participants when looking for luxury products*".[147] A large British department store with a global online presence also finds "*competitive conditions being mostly homogenous globally*".[148]

(128) During the formal market investigation, however, a large majority of responsive competitors and brands stated that presence and strength of competitors either differ substantially or somewhat across the EEA.[149]

(129) Similarly, the Notifying Parties' national market share estimates show significant variations that are not consistent with their claim that the presence and strength of competitors is relatively consistent across the EEA (see Section 6.2.2 for a detailed description of the national market share estimates following some adjustments by the Commission). In particular, the Parties' own combined market share vary significantly from less than [20-30]% in some of the larger EEA member states (including Germany and France) to over [40-50]% in some of the smaller EEA member states (including Ireland and Portugal). In addition, the list of the Parties' top five competitors as well as their market share differs substantially in most EEA

143 Form CO, paragraphs 523-530 and paragraph 561.
144 Form CO, paragraphs 523-526.
145 Form CO, paragraph 561.
146 Minutes from a call with a competitor on 3 February 2023, paragraph 8, DocID 526.
147 Minutes from a call with a competitor on 1 February 2023, paragraph 7, DocID 669.
148 Minutes from a call with a competitor on 1 February 2023, paragraph 8, DocID 400.
149 Questionnaire to Competitors, question E.15, and Questionnaire to Brands, question E.19.

countries, indicating that the competitive strength of individual competitors is not homogeneous across the EEA.

(130) A possible explanation for the apparent inconsistency between the claims of the Notifying Parties and certain other market participants, on the one hand, and the significant differences in terms of market shares across EEA countries, on the other hand, may be that the presence and competitive strength of most department stores, including their online business, is more regional than pure online players, including the Parties. The difficulties for certain department stores to successfully operate across the EEA is exemplified by a large Dutch department store. This department store has a localised online presence only in the Netherlands and (Flemish-speaking) Belgium and has recently decided to cease its localised online presence in Germany, France and Austria due to limited commercial success in these countries.[150] Hence, the regional nature of competition from most department stores may be the underlying reason for the differences in observed market shares.

(131) In summary, while most online retailers and platforms of luxury goods do appear to offer shipping options across the EEA (with the exception of certain large department stores), the competitive strength of most competitors does seem to vary significantly across the EEA and therefore this aspect would point towards national markets for the online multi-brand, multi-product supply of luxury goods.

5.2.2.1.3.1.4. Language and localised presence

(132) With regard to language preferences and the need to have a localised presence in each EEA country, the Notifying Parties have provided survey data according to which the majority ([CUSTOMER INFORMATION]%) of all Farfetch customers in the EEA indicated that they speak English. Further, based on desk research the Notifying Parties find that the vast majority of online retailers and platforms of luxury goods have websites that are available in English, giving those customers that speak English the option to shop from these competitors even if they do not have a localised presence in each country.[151]

(133) In terms of the Parties' own experience, Farfetch provides localised websites for seven EEA countries (Germany, Italy, Spain, France, Denmark, Sweden and the Netherlands) whereas YNAP's offers four languages spoken in the EEA on Net-A-Porter (English, French, German and Italian) and six languages spoken in the EEA on YOOX (English, French, German, Greek, Italian and Spanish).

(134) The market investigation suggests that almost half of all responsive competitors have a localised website in at least ten EEA countries.[152] However, the extent to which localised websites are used appears to depend significantly on the competitors, with some competitors in the market investigation indicating that they do not have localised websites at all, whereas other indicated that they have a localised websites in all EEA countries (and many responses in between these two extremes). In terms of actual delivery options, over half of all responsive competitors indicated that they deliver to over 20 EEA countries.[153]

150 Minutes from a call with a brand on 23 February 2023, paragraph 3, DocID 271.
151 Form CO, paragraph 531.
152 Questionnaire to Competitors, question E.3.
153 Questionnaire to Competitors, question E.2.

(135) In terms of the ability to supply across the EEA with only a limited number of centralised warehouses, a large international brand that operates a significant DTC business explained that it "*operates through one single warehouse from which they deliver all the European countries*".[154] Similarly, all competitors (except one) that was responsive to the market investigation indicated that they have warehouses in three or less EEA countries.[155] This is in line with the Parties' distribution model where YNAP only has [OPERATIONS INFORMATION] centralised warehouses in the EEA, [OPERATIONS INFORMATION], whereas Farfetch only has [OPERATIONS INFORMATION] centralised warehouses in the EEA.

(136) Therefore, the evidence on language preferences and the need to have a localised presence is mixed and consistent both with a national and an EEA-wide market for the online multi-brand, multi-product supply of luxury goods.

5.2.2.1.3.1.5. Commercial strategies

(137) The Notifying Parties further argue that the Parties do not determine their commercial strategy at national level for each EEA country. To support this claim, the Notifying Parties cite a number of internal documents from Farfetch and YNAP in which [DETAILS OF INTERNAL DOCUMENTS].[156]

(138) However, the internal documents provided by the Notifying Parties show a more nuanced picture. Many of the internal documents provided by the Notifying Parties suggest that [DETAILS OF INTERNAL DOCUMENTS].

Figure 5: YNAP – Black Friday insights – Competitive intelligence – internal presentation

Source: […].

(139) [DETAILS OF INTERNAL DOCUMENTS].

Figure 6: YNAP – Brand Health 2021 – internal presentation

Source: […].

(140) Similarly, Figure 7 shows [DETAILS OF INTERNAL DOCUMENTS].

Figure 7: YNAP – Voice of the customer – internal presentation

Source: […].

(141) Finally, there are also internal documents where [DETAILS OF INTERNAL DOCUMENTS].

154 Minutes from a call with a brand on 1 March 2023, paragraph 3, DocID 843.
155 Questionnaire to Competitors, question E.4.
156 Form CO, paragraphs 563-565.

Figure 8: Farfetch – markdown and promos trend benchmarking – internal document

Source: […].

(142) While it is not entirely clear to what extent the Parties adjust their commercial strategies specifically for individual EEA countries, the close monitoring of individual EEA countries by both Parties does at the very least suggest that the Parties consider these countries separately in their commercial strategies. This being said, it appears that the Parties are primarily monitoring those EEA countries with the largest demand for luxury goods (i.e., Italy, Germany, France, Netherlands and Spain). However, these are also the EEA countries in which the Parties' combined market share is the lowest (<[20-30]%) and therefore the effects of the Transaction can be expected to be limited.

5.2.2.1.3.1.6. Conclusion

(143) Taking into account the various factors considered above, which are specific to the online multi-brand, multi-product supply of luxury goods, the Commission considers that there is substantial evidence pointing towards the market being EEA-wide in scope. However, there are also elements of competition which, on a conservative basis, could appear narrower than EEA-wide in scope, such as differences in the presence and strength of certain competitors across the EEA. Given that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement irrespective of the geographic market definition, the present decision will therefore leave open whether the geographic market for the consumer-facing side of the online multi-brand, multi-product supply of luxury goods is national or EEA-wide.

5.2.2.1.3.2. Business-facing side

(144) For the business-facing side, most of the factors considered in the previous section are also relevant as boutiques and brands that are selling via the Parties would also take into account the degree of homogeneity in terms of competitive conditions across the EEA as well as the ability to access consumers in various EEA countries through the different online retailers and platforms available.

(145) However, one important difference between the consumer- and the business-facing sides is that boutiques and brands primarily contract with online retailers and platforms using a single distribution contract that applies at least regionally but often globally. According to the Notifying Parties, Farfetch's contracts with brands and boutiques are [DETAILS OF CONTRACTUAL RELATIONSHIPS]. Further, YNAP's contracts with brands are [DETAILS OF CONTRACTUAL RELATIONSHIPS].[157] The large majority of brands that expressed a view confirmed that the geographic scope of their contracts with Farfetch and YNAP are worldwide in scope.[158] Similarly, a large majority of competitors that expressed a view confirmed that the geographic scope for the distribution contracts that they negotiate with brands is either global or European-wide in scope.[159]

157 Form CO, paragraph 506.
158 Questionnaire to Brands, to questions E.3 and E.5.
159 Questionnaire to Competitors, question E.5.

(146) Within its distribution contracts, Farfetch typically negotiates [DETAILS OF CONTRACTUAL RELATIONSHIPS]. Similarly, the wholesale price that YNAP negotiates with brands [DETAILS OF CONTRACTUAL RELATIONSHIPS].[160]

(147) Overall, and taking account in particular the fact that distribution contracts between brands and online retailers and platforms are normally at least EEA-wide in scope, the Commission therefore concludes that, on the business-facing side, the geographic market for the online multi-brand, multi-product supply of luxury goods is EEA-wide in scope.

5.2.2.1.3.3. Conclusion

(148) In conclusion, and taking account of the various evidence considered above, the Commission concludes that for the purposes of the present decision, for the consumer-facing side, it can be left open whether the geographic market for the online multi-brand, multi-product supply of luxury goods is national or EEA-wide in scope since the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement irrespective of the geographic market definition adopted. For the business-facing side, the Commission concludes that the market is EEA-wide in scope.

5.3. Supply of e-commerce services

(149) Both Parties are active in the market for the supply of e-commerce services to customers (luxury fashion brands, boutiques, and department stores) in the retail supply of personal luxury goods. Farfetch has a growing e-commerce services business […] through its Farfetch Platform Solutions ("FPS") division. YNAP has a [DETAILS OF COMMERCIAL ACTIVITIES] e-commerce services business […] through its Online Flagship Store ("OFS") division. YNAP, apart from a limited number of brands also provides e-commerce services to five Richemont Maisons.[161]

5.3.1. Product market definition

5.3.1.1. The Commission's past practice

(150) There are no past Commission decisions assessing full-service providers of e-commerce services that include front-end, back-end and additional services,[162] which would be reflective of the Parties' activities in this area.

5.3.1.2. The Notifying Parties' view

(151) The Notifying Parties submit that the relevant product market is the market for the supply of e-commerce services. They argue that this is supported by the fact that customers consider a wide range of e-commerce service providers which provide a variety of services to clients and use different suppliers for each of the relevant

160 Form CO, paragraph 507.

161 Form CO, paragraph 31.

162 E-commerce services involve creating and managing online stores for brands, boutiques, and department stores, using as basic required components: a) 'front-end' services relating to the e-commerce platform itself, the customers' perception of it and its customer-facing, and b) 'back-end' services relating predominantly to logistics, finance services etc. E-commerce service providers offer either the whole service or a portfolio of components according to customer's needs.

services (i.e., front-end, back-end and additional services) including conducting some or all of these services in-house.

5.3.1.3. The Commission's assessment

(152) The results of the market investigation do not provide any element that would contradict the Notifying Parties' submission.

(153) For the purpose of this decision and in light of all information available to it, the Commission considers that the relevant product market is likely the market for the supply of e-commerce services including front-end, back-end and additional services. In any event, the relevant product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement irrespective of the market definition.

5.3.2. Geographic market definition

5.3.2.1. The Commission's past practice

(154) There are no Commission precedents related to this market.

5.3.2.2. The Notifying Parties' view

(155) The Notifying Parties submit that e-commerce services are to a significant extent supplied cross-border within, and from outside of, the EEA. Both Parties and other competitors provide their e-services to luxury brands and boutiques across many EEA countries, and regions. The market for the provision of e-commerce services is at least EEA wide in its scope.

5.3.2.3. The Commission's assessment

(156) The results of the market investigation did not provide any element that would contradict the Notifying Parties' submission.

(157) For the purpose of this decision and in light of all information available to it, the Commission considers that the relevant geographic market for the supply of e-commerce services is likely to be EEA-wide or wider in scope. In any event, the geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement irrespective of the market definition.

6. COMPETITIVE ASSESSMENT

6.1. Legal framework

(158) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a merger can entail horizontal and/or non-horizontal effects.

(159) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the

relevant markets concerned. The Commission appraises horizontal effects in accordance with the Horizontal Merger Guidelines.[163] According to paragraph 26 of the Horizontal Merger Guidelines, a non-exhaustive list of relevant factors needs to be assessed in order to determine whether significant non-coordinated effects are likely to result from a concentration. Accordingly, Sections 6.2.1 to 6.2.6 assesses market shares, closeness of competition between the Parties, important dynamics of the markets where the Parties' activities overlap, the alternatives to the Parties, barriers to entry, as well as evidence of new entrants and the constraint by competitors. Based on all these factors considered together, conclusions on horizontal non-coordinated effects are drawn in Section 6.2.7.

(160) Non-horizontal effects relate to the foreclosure of competitors that can arise from vertical integration. In general, vertical integration is the consequence of the combination of products, services or businesses across different levels of the same supply chain. Pursuant to the Non-Horizontal Merger Guidelines,[164] vertical integration may result in two forms of foreclosure: input foreclosure, where the concentration is likely to raise costs of downstream rivals by restricting access to an important input or deteriorating supply conditions, and customer foreclosure, where the concentration is likely to foreclose upstream rivals by restricting their access to a sufficient customer base. In assessing the likelihood of foreclosure scenarios, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers. In practice, these factors are often examined together as they are closely intertwined. Eventually, for foreclosure to lead to consumer harm, it is not necessary that the merged entity's rivals are forced to exit the relevant market, but it is sufficient that their costs are increased in a way that is likely to lead to higher prices for consumers.

6.2. Horizontal non-coordinated effects

(161) The Parties horizontally overlap in relation to the following product markets: a) the online multi-brand, multi-product supply of luxury goods, b) the supply of e-commerce services, and c) the manufacture and wholesale supply of luxury goods.

(162) The Parties' combined market shares in the supply of e-commerce services for the past three years in the EEA have been below [20-30]%, in a market that it is at least EEA-wide, and even on the basis of the narrow segment of e-commerce services to the luxury retail customers.[165] All e-commerce providers wherever they are based can serve all sectors including the online retail supply of personal luxury goods as there are no e-commerce services or features that are specific to the retail supply of personal luxury goods and/or to a specific geographic area. During the pre-notification market investigation there were no concerns from any e-commerce provider competing with, the Parties.[166] These findings were confirmed by the results of the market investigation that suggest that for the vast majority of

163 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2014.

164 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings. OJ C 265, 18.10.2008, p. 6.

165 Form CO, paragraph 693.

166 Such as Shopify, Adobe, Salesforce, SAP.

respondents (competitors, brands and boutiques) the e-commerce providers they use are diverse (including in house development), worldwide based, and in most of the cases do not include the Parties. [167] As the Transaction does not lead to horizontally affected markets e-commerce services the market will not be further assessed.

(163) Similarly, the Parties' combined market shares in the manufacture and wholesale supply of luxury goods in the past three years in the EEA have been below [10-20]% GMV.[168] The Transaction does not lead to horizontally affected markets in relation to the manufacture and wholesale supply of luxury goods and the market will not be further assessed.

(164) The Transaction gives rise mainly to horizontally affected markets in the online multi-brand, multi-product supply of luxury goods in the following 17 geographies: EEA (overall), Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Greece, Hungary, Ireland, Luxembourg, Poland, Portugal, Romania, Slovakia and Slovenia.

6.2.1. Market share methodology

6.2.1.1. Notifying Parties' market share methodology

(165) The Notifying Parties provide market shares estimates based on gross merchandise value ("GMV") at both national and EEA level.[169] The market share estimates are primarily based on market size estimates from the Bain reports which use data for 282 personal luxury brands.[170] The Notifying Parties use a range of additional data sources and assumptions to further adjust the data from the Bain reports in order to make them more in line with the market definition used by the Parties. In this process, the Notifying Parties identify the Parties' own sales and estimate competitor sales at both national and EEA level and estimate total market sizes at both national and EEA level. In order to do so, the Parties further adjust the data from the Bain reports, including to estimate the missing sales of luxury brands that are not part of the 282 luxury brands considered by Bain and account for sales of luxury products by brands that are not considered luxury brands by Bain.

(166) The Notifying Parties submit market share estimates including for the Parties and their competitors up until 2022 for the EEA and for 2021 at national level.

(167) The following summarises the methodology of the Notifying Parties in more detail, including highlighting several limitations around the market share estimates.

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167 Questionnaire to Brands, questions G1, G2; Questionnaire to Competitors, questions G1, G2; Questionnaire to Boutiques, questions G1, G2.

168 Form CO, paragraph 700- Table 37.

169 GMV is the total dollar value of orders processed excluding returns, cancellations, allowances and net of discounts. It is a standard metric in the industry and, unlike revenues earned, allows for a meaningful comparison of the position of competitors with different business models (e.g., 3P and 1P). See also: Annex 36 of the Form CO (Market shares data methodology).

170 For instance, the Parties rely on *"Bain-Altagamma reports Luxury Goods Worldwide Market Study Fall 2021"*. The key criteria that Bain uses to decide whether to include a brand within the luxury definition are price positioning, distribution model (e.g. retail vs wholesale), marketing/communication model (i.e. how the brand and its products are communicated) and size. Annex 36 of the Form CO (Market shares data methodology).

(168) First, for the market share numerators (i.e., the size of the Parties and their main competitors), the Notifying Parties use the Parties' internal sales data, including Farfetch's GMV from Farfetch Marketplace, Browns and Stadium Goods and YNAP's GMV from Net-A-Porter, Mr Porter, The Outnet and YOOX.[171] To estimate the GMV for competitors in the EEA, the Notifying Parties have drawn on a wide array of sources, including publicly available data such as annual financial statements, eCommerceDB, and other sources.[172] To estimate competitors' GMV at the national level, the Notifying Parties provide high-level estimates based on the available data and business estimates.

(169) Second, the market size estimates (denominators) are primarily based on data from the Bain reports, which include a breakdown of sales by retail type (e.g. online, mono-brand stores, outlet stores, specialty stores, department stores and travel retail) as well by certain geographies, including global, Europe and certain EEA countries.[173] The Notifying Parties rely on market size estimates from Statista in order to allocate the European-level market size estimates from the Bain reports to those EEA countries that are not directly covered in the Bain reports.[174]

(170) Third, the Parties make two further adjustments to the market size data from the Bain reports to account for (i) the large tail of luxury brands not covered by the 282 luxury brands considered in the Bain reports, and (ii) sales of luxury goods by brands that are not primarily luxury brands (e.g. certain products by non-luxury brands Nike and Adidas may be considered luxury goods).

(a) First, as the methodology in the Bain reports is based on a bottom-up analysis of 282 luxury brands, a long tail of smaller brands (many of which are seen in the Parties' sales data) is omitted from the original market size estimates.[175] The Notifying Parties have therefore further inflated by 2.5% the market size estimates from the Bain reports to account for the luxury brands omitted by Bain, based on internal and publicly available data. According to the Notifying Parties, this uplift of the market size estimates was done on a conservative basis.

(b) Second, a significant proportion of the Parties' sales relate to products of brands that are not ordinarily considered luxury brands (e.g. Nike and Adidas). These sales may be either luxury goods (i.e., part of the high-end product range of these brands) or lower priced items that nevertheless appeal to the Parties' customers. These type of sales by brands that are not typically considered luxury brands are not included in the Bain estimates. The particular methodology that the Parties use to make this adjustment is to assume that the proportion of the Parties' sales that is not accounted for by the 282 brands covered in the Bain reports is representative of this proportion

171 All of YNAP's GMV is from online multi-brand sales. YNAP does not make any in-store (offline) or online mono-brand sales – all of its own brand products are sold only on its multi-brand websites. Form CO, Annex 36 (Market shares data methodology).

172 For example, Businesslive, CNBN, Companies House, Euromonitor, Similarweb, Statista, WWD, ZoomInfo.

173 The Bain reports contain direct market size estimates for the following EEA countries: France, Germany, Italy, Portugal and Spain. Paragraph 2.20, Annex 36 of the Form CO (Market shares data methodology).

174 Statista provides the percentage of consumer expenditure on luxury goods on a per-country basis and is used as a proxy for the relative market size of each EEA country.

175 For example, the following luxury brands are not part of the [over 280] brands considered in the Bain reports: [CONFIDENTIAL THIRD-PARTY DATA].

in the wider market. The Parties therefore further inflate the market size estimates to account for these sales. The Notifying Parties estimate this proportion as around [0-5]% in 2021.[176]

(171) On the basis of the above, the Notifying Parties have then calculated their market shares and that of their competitors. The Notifying Parties submit that their estimates and particularly the estimates for competitor market shares are less reliable at the national level compared to the EEA-level due to the combination of various sources necessary to compute national market shares as well as the fact that competitor share estimates at national level primarily rely on high-level business estimates.[177]

6.2.1.2. Commission's adjustments

(172) The Commission has applied four additional adjustments to the Notifying Parties' market share estimates for the purposes of this decision.

(173) First, in line with the relevant product market definition as presented in Section 5.2.1, the Commission excludes pre-owned product sales from the market share estimates, as they are not part of the relevant product market**.**

(174) Second, in line with the relevant product market definition as presented in Section 5.2.1, the Commission excludes specialist sites from the market share estimates. The Commission has identified as specialists those competitors that either a) do not sell fashion and leather luxury goods (as this is the Parties' main business) or b) that only sell fashion and leather luxury goods (and no goods from any other product category, and would therefore not fall into the multi-product category).[178]

(175) Third, the Commission presents a version of the market share estimates in which it excludes the proportion of the market that the Notifying Parties are unable to allocate to any specific competitor (the "unknown competitor" category). The share of the market attributable to unknown competitors is removed because the Commission is unable to verify whether specialist sites are considered or whether this category includes sales coming from other segments or channels. The share of "unknown competitors" at EEA-level in the Notifying Parties' estimates is approximately [30-40]% at EEA level.

176 The Notifying Parties consider the Farfetch estimate is more conservative, therefore it is the figure used to expand the different segment sizes.

177 Form CO, paragraph 2.28, Annex 36 (Market shares data methodology).

178 This was done based on sheet "Product ranges of competitors" in Annex 274 of the Form CO. The product categories considered in this Annex are i) fashion and leather goods, ii) accessories and eyewear, iii) perfume and cosmetics and iv) watches and jewellery.

(176) Fourth, at national level, in order to be able to remove sales that the Notifying Parties cannot allocate to any specific competitor (i.e., the sales of "unknown competitors") and to remove sales from specialist sites, additional adjustments are necessary prior to removing these competitors. This is because the Notifying Parties have only provided competitor share estimates at national level in ranges (e.g., 5-10%). The adjustments applied to convert the national market share estimates provided in ranges into point estimates (and thereby make it possible to remove certain competitors) are as follows:

(a) First, all competitor market share estimates that are expressed in ranges are replaced by the mid-point.

(b) Second, where the competitors' shares (including the "unknown competitor" category) and the Parties' shares add up to more than 100% as a result of applying the mid-points where competitors' shares were previously expressed in ranges, all competitor shares (but not the Parties' shares) are rescaled to add up to 100%.

(c) Third, specialist sites and the "unknown competitor" category are removed from the market share estimates.

(177) In light of the significant uncertainties around the national market sizes (involving the combination of various sources) as well as the fact that competitor share estimates at national level primarily rely on high-level business estimates, the Commission agrees with the Notifying Parties' assessment and considers the market shares for the EEA as more reliable than those presented for the individual countries.

6.2.2. Market shares

(178) This section provides the market share estimates at the EEA and national level under the methodology outlined in Section 6.2.1.

6.2.2.1. EEA

(179) Table 1 shows the EEA-wide market share estimates based on the methodology outlined in Section 6.2.1. It shows that the Parties' combined share would remain at about [10-20]% when including unknown competitors and about [20-30]% when excluding the unknown competitors. This provides a strong indication that the concentration is not liable to impede effective competition when considering an EEA-wide market.

(180) However, the market share estimates also show that the combined entity would become the largest competitor with more than twice the share of the second largest competitor (Breuninger) currently competing in this market. In particular, the Parties' combined share would remain moderate primarily because of the very large tail of relatively smaller competitors which are active in this market according to the Notifying Parties' estimates. In addition, as shown in Table 1, there would remain seven competitors with market shares between 5-10%. These competitors are Breuninger, MyTheresa, Best Secret, Vente Privee, Zalando, De Bijenkorf and El Corte Ingles.

Table 1: EEA-wide market shares of the Parties and main competitors, 2022

Competitor	Including unknown competitors		Excluding unknown competitors	
	GMV (EUR, million)	Share	GMV (EUR, million)	Share
Farfetch	[…]	[5-10]%	[…]	[10-20]%
YNAP	[…]	[5-10]%	[…]	[10-20]%
Combined	[…]	***[10-20]%***	[…]	***[20-30]%***
Breuninger	[…]	[5-10]%	[…]	***[10-20]%***
MyTheresa	[…]	[5-10]%	[…]	[5-10]%
Best Secret	[…]	[5-10]%	[…]	[5-10]%
Vente Privee	[…]	[0-5]%	[…]	[5-10]%
Zalando	[…]	[0-5]%	[…]	[5-10]%
De Bijenkorf	[…]	[0-5]%	[…]	[5-10]%
El Corte Ingles	[…]	[0-5]%	[…]	[5-10]%
Other	[…]	*[50-60]%*	[…]	*[30-40]%*
Total	[…]	***100%***	[…]	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

(181) This is broadly in line with the estimates from one of the Parties' closest competitors, a retailer of personal luxury goods with a strong online presence, according to which "*[p]ost-transaction [the competitor] expects the merged entity to have around 20% market share (online, multi-brand, personal luxury goods)*".[179]

6.2.2.2. Country-by-country market shares

(182) Figure 2 to Table 17 show the market share estimates for the online multi-brand, multi-product supply of personal luxury goods in the affected national markets of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Greece, Hungary, Ireland, Luxembourg, Poland, Portugal, Romania, Slovakia and Slovenia.

Table 2: Market shares in Austria of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[10-20]%
YNAP	[10-20]%	[10-20]%
Combined	***[20-30]%***	***[20-30]%***
Bestsecret	[10-20]%	[10-20]%
Breuninger	[10-20]%	[10-20]%
Mytheresa	[5-10]%	[5-10]%
Zalando	[5-10]%	[5-10]%
Fashionette	[0-5]%	[0-5]%
Kastner-Oehler	[0-5]%	[0-5]%
El Corte Ingles	[0-5]%	[0-5]%
Other	*[20-30]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

[179] Minutes from a call with a competitor on 3 February 2023, paragraph 12, DocID 526.

Table 3: Market shares in Belgium of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[10-20]%
YNAP	[10-20]%	[10-20]%
Combined	*[20-30]%*	*[20-30]%*
De Bijenkorf	[10-20]%	[10-20]%
Zalando	[10-20]%	[10-20]%
Vente Privee	[10-20]%	[10-20]%
Mytheresa	[5-10]%	[5-10]%
Luisaviaroma	[0-5]%	[0-5]%
La Redoute	[0-5]%	[0-5]%
About you	[0-5]%	[0-5]%
Other	*[20-30]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 4: Market shares in Bulgaria of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[20-30]%*
YNAP	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[40-50]%***
Mytheresa	[5-10]%	[5-10]%
Answear	[0-5]%	[5-10]%
Fashion Days	[0-5]%	[0-5]%
MDL Shop	[0-5]%	[0-5]%
About you	[0-5]%	[0-5]%
El Corte Ingles	[0-5]%	[0-5]%
Matchesfashion	[0-5]%	[0-5]%
Other	*[40-50]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 5: Market shares in Croatia of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[20-30]%
YNAP	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]%***
Mytheresa	[10-20]%	[10-20]%
Bestsecret	[5-10]%	[5-10]%
Asos	[0-5]%	[5-10]%
About you	[0-5]%	[5-10]%
Zalando	[0-5]%	[0-5]%
El Corte Ingles	[0-5]%	[0-5]%

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Matchesfashion	[0-5]%	[0-5]%
Other	*[30-40]%*	*[10-20]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 6: Market shares in Cyprus of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[20-30]%*
YNAP	[5-10]%	[10-20]%
Combined	*[20-30]%*	***[30-40]%***
Mytheresa	[10-20]%	[10-20]%
Bestsecret	[10-20]%	[10-20]%
Luisaviaroma	[5-10]%	[5-10]%
Matchesfashion	[0-5]%	[5-10]%
Notos	[0-5]%	[5-10]%
El Corte Ingles	[0-5]%	[0-5]%
Answear	[0-5]%	[0-5]%
Other	*[20-30]%*	*[10-20]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 7: Market shares in Czechia of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[20-30]%*
YNAP	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]%***
Zalando	[10-20]%	[10-20]%
Mytheresa	[5-10]%	[5-10]%
Asos	[5-10]%	[5-10]%
Bibloo	[0-5]%	[0-5]%
Matchesfashion	[0-5]%	[0-5]%
El Corte Ingles	[0-5]%	[0-5]%
Luisaviaroma	[0-5]%	[0-5]%
Other	*[20-30]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 8: Market shares in Denmark of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[10-20]%
YNAP	[10-20]%	[10-20]%
Combined	*[20-30]%*	*[20-30]%*
Mytheresa	[5-10]%	[5-10]%
Miinto	[0-5]%	[0-5]%
Zalando	[0-5]%	[0-5]%
END	[0-5]%	[0-5]%
Matchesfashion	[0-5]%	[0-5]%
Ditur	[0-5]%	[0-5]%
Quint	[0-5]%	[0-5]%
Other	*[50-60]%*	*[50-60]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 9: Market shares in Greece of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[10-20]%
YNAP	[10-20]%	*[20-30]%*
Combined	***[30-40]%***	***[30-40]%***
Attica	[10-20]%	[10-20]%
Eobuwie	[0-5]%	[5-10]%
Mytheresa	[0-5]%	[5-10]%
Notos	[0-5]%	[5-10]%
Luisaviaroma	[0-5]%	[5-10]%
Matchesfashion	[0-5]%	[0-5]%
Answear	[0-5]%	[0-5]%
Other	*[30-40]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 10: Market shares in Hungary of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[30-40]%*
YNAP	[10-20]%	[10-20]%
Combined	*[30-40]%*	***[40-50]%***
Answear	[5-10]%	[5-10]%
Mytheresa	[0-5]%	[5-10]%
Bestsecret	[0-5]%	[5-10]%
About you	[0-5]%	[0-5]%
Luisaviaroma	[0-5]%	[0-5]%
Fashion Days	[0-5]%	[0-5]%

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Matchesfashion	[0-5]%	[0-5]%
Other	*[40-50] %*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 11: Market shares in Ireland of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[20-30]%*
YNAP	*[20-30]%*	*[20-30]%*
Combined	***[40-50]%***	***[40-50]%***
Matchesfashion	[5-10]%	[5-10]%
Zalando	[5-10]%	[5-10]%
Mytheresa	[5-10]%	[5-10]%
Selfridges	[0-5]%	[0-5]%
Harvey Nichols	[0-5]%	[0-5]%
House of Fraser	[0-5]%	[0-5]%
Arnotts	[0-5]%	[0-5]%
Other	*[20-30]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 12: Market shares in Luxembourg of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[10-20]%
YNAP	[10-20]%	[10-20]%
Combined	*[20-30]%*	*[20-30]%*
Smets	[10-20]%	[10-20]%
Zalando	[10-20]%	[10-20]%
Vente Privee	[10-20]%	[10-20]%
Mytheresa	[5-10]%	[5-10]%
Bestsecret	[5-10]%	[5-10]%
Breuninger	[0-5]%	[0-5]%
Luisaviaroma	[0-5]%	[0-5]%
Other	*[10-20]%*	*[10-20]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 13: Market shares in Poland of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	*[20-30]%*
YNAP	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]%***
Zalando	[10-20]%	[10-20]%
Eobuwie	[5-10]%	[5-10]%
Breuninger	[5-10]%	[5-10]%
Mytheresa	[5-10]%	[5-10]%
Luisaviaroma	[0-5]%	[0-5]%
Answear	[0-5]%	[0-5]%
El Corte Ingles	[0-5]%	[0-5]%
Other	*[20-30]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 14: Market shares in Portugal of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[30-40]%	[30-40]%
YNAP	[10-20]%	[10-20]%
Combined	***[40-50]%***	***[50-60]%***
El Corte Ingles	[10-20]%	[10-20]%
Mytheresa	[5-10]%	[5-10]%
La Redoute	[0-5]%	[0-5]%
Luisaviaroma	[0-5]%	[0-5]%
Nordstrom	[0-5]%	[0-5]%
Otrium	[0-5]%	[0-5]%
Saks Fifth Avenue	[0-5]%	[0-5]%
Other	*[30-40]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 15: Market shares in Romania of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[20-30]%*
YNAP	[10-20]%	[10-20]%
Combined	[30-40]%	***[40-50]%***
Mytheresa	[5-10]%	[5-10]%
B-Mall	[0-5]%	[5-10]%
Answear	[0-5]%	[5-10]%
Fashion Days	[0-5]%	[0-5]%
Luisaviaroma	[0-5]%	[0-5]%

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
About you	[0-5]%	[0-5]%
Matchesfashion	[0-5]%	[0-5]%
Other	*[40-50]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 16: Market shares in Slovakia of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	*[20-30]%*	*[20-30]%*
YNAP	[10-20]%	[10-20]%
Combined	[30-40]*%*	[30-40]*%*
Zalando	[10-20]%	[10-20]%
Mytheresa	[10-20]%	[10-20]%
Asos	[0-5]%	[5-10]%
Modivo	[0-5]%	[0-5]%
El Corte Ingles	[0-5]%	[0-5]%
Luisaviaroma	[0-5]%	[0-5]%
About you	[0-5]%	[0-5]%
Other	[30-40]*%*	*[10-20]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

Table 17: Market shares in Slovenia of the Parties and main competitors, 2021

Competitor	Market shares	
	Including unknown competitors	Excluding unknown competitors
Farfetch	[10-20]%	[10-20]%
YNAP	[10-20]%	[10-20]%
Combined	[30-40]*%*	[30-40]*%*
Mytheresa	[10-20]%	[10-20]%
Bestsecret	[5-10]%	[5-10]%
Zalando	[5-10]%	[5-10]%
Asos	[5-10]%	[5-10]%
Matchesfashion	[0-5]%	[0-5]%
Sportina	[0-5]%	[0-5]%
Emporium	[0-5]%	[0-5]%
Other	*[20-30]%*	*[20-30]%*
Total	***100%***	***100%***

Source: Estimates by the European Commission based on Annex 274 of the Form CO.

(183) These market share tables show that following the Transaction, the Parties would become the largest competitor in each of the affected countries. However, in most of the countries, the combined market share would remain relatively moderate at about 15-25% when including unknown competitors and about 25-35% when excluding the unknown competitors. Only in a few smaller member states, namely

Bulgaria, Hungary, Ireland, Romania and Portugal, the shares would exceed [40-50]%.

(184) In addition, as shown in Table 2 to Table 17, there would remain a number of important competitors in most EEA countries with shares above 10%, including Breuninger, MyTheresa, Best Secret, Vente Privee, Zalando, De Bijenkorf, El Corte Ingles and others. Even in countries where the Parties' market shares exceed [40-50]%, there will remain several international competitors with shares above 5-10%.

(185) While there seem to be regional differences, most of the global players are active in the whole EEA. This seems to be confirmed in the internal documents of the Parties that [DETAILS OF INTERNAL DOCUMENTS].[180]

6.2.3. Closeness of competition

(186) As the market for the online multi-brand, multi-product supply of luxury goods is highly differentiated, the following sections consider the closeness of competition between the Parties as well as how close other sites within this market compete with the Parties.

(187) Given that the market investigation has not revealed significant differences in terms of closeness of competition at the national level, the following sections apply equally at the EEA level as well as in each potential affected national market.

6.2.3.1. Closeness of competition between the Parties

6.2.3.1.1. The Notifying Parties' view

(188) The Notifying Parties argue that Farfetch and YNAP are not close competitors in the market for the online multi-brand, multi-product supply of personal luxury goods and instead are part of a broader set of competitors. The Notifying Parties base their assessment that Farfetch and YNAP are not close competitors particularly on the following factors:

(a) **Diversion ratios**: According to the Notifying Parties, the diversion ratios between Farfetch and YNAP's sites are limited and lower than the Parties' diversion ratios to mono-brands and other direct competitors. The Notifying Parties primarily support this claim using a customer survey based on customers located in the United Kingdom.[181] In addition, the Notifying Parties submit [SEARCH ENGINE] advertising data for Europe which looks at the proportion of search ad impressions that competitors received when Farfetch also received a search ad impression. Similar to the customer survey, the Notifying Parties argue that the [SEARCH ENGINE] advertising data indicate low levels of diversion between the Parties and a general lack of closeness of competition.[182]

(b) **Brand and product overlap**: The Notifying Parties submit an analysis that seeks to show that the proportion of brands and products offered on Farfetch

180 For example, "Personal Luxury Growth Outlook – EMEA Deep Dive" – Annex 10.4, p.15.
181 Form CO, paragraphs 918-921.
182 Form CO, paragraphs 922-929.

that are also offered on YNAP's sites (as well as vice versa) is relatively low and that therefore the Parties are not particularly close competitors.[183]

(c) **Customer bases**: The Notifying Parties argue that Farfetch has a [INFORMATION REGARDING CONFIDENTIAL CUSTOMER SURVEY] customer base compared to YNAP's sites. In addition, according to survey data from the Notifying Parties, customers on Farfetch are more likely to already know the item they are purchasing prior to visiting the website compared to customers on YNAP's sites, and more likely than YNAP's customers to be redirected from a different website (e.g., Google) when visiting Farfetch.[184]

(d) **Business models**: According to the Notifying Parties, Farfetch is primarily a technology company and online platform for luxury goods, rather than a retailer of luxury goods. YNAP, on the other hand, operates under a more traditional online retail business model. In addition, Farfetch' business model focusses on having as wide a product selection as possible, whereas YNAP has a more curated approach and therefore also a more limited range of products available.[185]

6.2.3.1.2. The Commission's assessment

(189) With regard to the diversion ratios calculated based on the customer survey data, the Commission places limited weight on these results due to the fact that a) these diversion ratios are calculated based on responses from customers located in the United Kingdom only (and hence from customers located outside the relevant markets under investigation), and b) the design of the customer survey is likely to overstate the diversion ratios from the Parties to mono-brands.

(190) The Commission finds that the design of the customer survey is likely to overstate the diversion ratios from the Parties to mono-brands because it is based on responses from the Parties' customers that were contacted after a recent purchase and asked where they would have purchased the product in question if Farfetch had not been available. Given that in this context, the response is framed towards the purchase of a specific product by a specific brand, it seems plausible that customers are (potentially significantly) more likely to point towards mono-brands' websites as the next best option than prior to having made the purchasing decision (at which point they may not yet have known what product by which brand they wanted to purchase).

(191) With these qualifications in mind, the Commission notes that, while the absolute value of the estimated diversion ratios between the Parties is not very large, the Parties appear to be particularly close competitors relative to other multi-brand, multi-product online suppliers of luxury goods. In particular, for Farfetch, the estimated total diversion ratio to YNAP's sites is around […]%.[186] The estimated diversion ratio from Farfetch to YNAP's sites is significantly higher than the estimated diversion ratios to the Parties' closest competitors in terms of business

183 Form CO, paragraphs 867-905.
184 Form CO, paragraphs 906-916.
185 Form CO, paragraphs 860-866.
186 This is equal to the diversion ratio estimated for [INFORMATION REGARDING CONFIDENTIAL CUSTOMER SURVEY] and therefore less relevant for the assessment of competition in the EEA.

model, namely to [INFORMATION REGARDING CONFIDENTIAL CUSTOMER SURVEY] ([…]%), […] ([…]%), […] ([…]%) and […] ([…]%).[187]

(192) In relation to the [SEARCH ENGINE] advertising data, the Commission places less weight on this analysis as evidence towards a lack of closeness of competition between the Parties because a) the [SEARCH ENGINE] advertising data do not allow for any direct inferences about customer preferences or behaviour, including diversion ratios, since the [SEARCH ENGINE] advertising data is primarily based on advertising decisions made on the supply-side of the market rather than based on customer behaviour, and b) the common occurrence of [SEARCH ENGINE ADS] from certain competitors together with [SEARCH ENGINE ADS] sponsored by Farfetch may just be a reflection of a focus of these competitors on online advertising (or even just temporal advertising campaigns during the period in which the data was collected), rather than an indication of closeness of competition between Farfetch and these competitors.

(193) In relation to the data submitted on brand overlaps between Farfetch and YNAP, the Commission notes that, based on the Notifying Parties' own analysis, the brands offered on Farfetch have by far the highest overlap with the brands offered on YNAP's sites ([INFORMATION REGARDING FARFETCH COMPETITOR ASSESSMENT]%) compared to the brand overlap with the next closest competitor in this regard, [INFORMATION REGARDING FARFETCH COMPETITOR ASSESSMENT] ([…]%).[188] Similarly, the brands offered on YNAP's sites have by far the highest overlap with the brands offered on Farfetch ([…]%) compared to the brand overlap with the next closest competitor in this regard, [INFORMATION REGARDING FARFETCH COMPETITOR ASSESSMENT] ([…]%).[189] This analysis suggests that the Parties are close competitors.

(194) On the overlap in terms of products, the Commission notes that the Notifying Parties have not provided any data that would allow a meaningful comparison. This is because the analysis presented based on the products offered on Farfetch does not provide an overlap analysis with YOOX, which is YNAP's largest site in the EEA. For the products offered on YNAP's sites, on the other hand, the Notifying Parties have not provided a product overlap analysis with Farfetch's site at all.

(195) Further, the Parties' internal documents suggest that [DETAILS OF INTERNAL DOCUMENTS] which does suggest that the Parties may compete closely with one another.

(196) For example, Figure 9 shows a slide from a YNAP presentation from October 2020 which refers to [DETAILS OF INTERNAL DOCUMENTS]. This shows that YNAP is monitoring Farfetch closely including on Farfetch's predicted future performance.

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187 Form CO, Annex 21, "Survey Diversion Ratios – by destination". The survey data estimates a diversion ratio from Farfetch to the brand itself equal to […]%. However, as noted, the Commission finds that the diversion ratios to mono-brands based on the customer survey are potentially significantly over-estimated. In addition, the customer survey estimates significant diversion ratios from Farfetch to Flannels ([…]%), Harrods ([…]%) and End ([…]%). However, these are UK-focussed competitors and therefore the relevance of these diversion ratios is less clear for the EEA assessment.

188 Form CO, Table 53.

189 Form CO, Table 55.

Figure 9: YNAP - Strategic Plan – slide deck

Source: […].

(197) Similarly, Figure 10 shows that Farfetch monitors YNAP's site Net-A-Porter among a relatively small set of other competitors.

Figure 10: Farfetch – bi-annual competitor review – slide deck

Source: […].

(198) While the data and the internal documents suggest that Farfetch and YNAP are close competitors, the feedback from the market tends to support the Notifying Parties' submissions with regard to the differences in the Parties' customer bases and business models.

(199) For example, a multi-national luxury brand headquartered in France finds that "*Farfetch and YNAP have different audiences which allows [them] to attract a large customer base*". In particular, it considers that "*Farfetch's customer base is young and focused on affordable luxury while YNAP's customer base has a slightly older clientele*".[190]

(200) Similarly, a German department store notes that "*[t]he main difference [between the Parties] is that YNAP is more of curated fashion for the elaborate luxury shopper who is inspired by the editorials and marketing, which YNAP invests in heavily. Farfetch, on the other hand, is less about customer loyalty and more about a 'Google Shopping' option, when searching for a particular product*". This department store concludes that "*Farfetch is more product driven, YNAP is more editorial driven*".[191]

(201) In the same vein, a large French brand of international luxury fashion and other personal luxury goods considers that "*Farfetch and YNAP are not 'close' competitors but are rather complementary*". The brand further explains that *"Farfetch indeed has a younger clientele and a marketplace business model, whereas YNAP is more of a fashion store (through Net-a-Porter)*".[192]

(202) A brand for jewellery further states that "*Farfetch and Net-a-Porter have two different business models, merchandizing assortment, and end-consumer base: there is no strong overlap between YNAP and Farfetch's end-consumer base and Farfetch's is younger*".[193] Also according to a multinational brand of luxury fashion, "*Farfetch is a company with a younger and more diverse consumer base [than YNAP], which tends to focus on casual and street-style clothing*".[194]

(203) The results of the formal market investigation were more nuanced, as about half of all competitors that expressed a view indicate that Farfetch is a close competitor to YNAP's sites in the EEA, whereas over two-thirds of the limited number of brands

190 Minutes from a call with a brand on 1 March 2023, paragraph 8, DociD 843.
191 Minutes from a call with a competitor on 27 February 2023, paragraph 23, DocID 1064.
192 Minutes from a call with a brand on 9 June 2023, paragraph 11, DocID 1546.
193 Minutes from a call with a brand on 21 June 2023, paragraph 15, DocID 1580.
194 Minutes from a call with a brand on 25 January 2023, paragraph 9, DocID 782.

that expressed a view on this issue consider that Farfetch is a close competitor to YNAP's sites in the EEA.[195]

(204) In conclusion, the Commission finds that, while there are important distinguishing characteristics between Farfetch and YNAP, including in their business model and the type of customer that each of these online suppliers of luxury goods attracts, the Parties' internal documents as well as the Notifying Parties' analyses on diversion ratios and brand/product overlap confirm that among the set of competitors active in the online multi-brand, multi-product supply of luxury goods, the Parties are close competitors. This conclusion applies equally to the EEA overall as to all affected EEA countries.

(205) However, as the next sections show, there are a range of other competitors active in this market against which the Parties also compete.

6.2.3.2. Other close competitors to the Parties

(206) While the Parties are close competitors in the EEA, there are a range of other platforms and retailers that operate within the EEA that also have a strong focus on personal luxury goods and that primarily sell online. These sites can also be described as close competitors to the Parties among a wider set of competitors that are described in more detail in the subsequent sections.

(207) The main other online platforms and retailers that have a strong focus on luxury goods in the EEA are:

(a) MyTheresa: A German luxury fashion retailer that originally opened as a brick-and-mortar boutique in Munich but today primarily operates as an online retailer across the EEA. Based on the Notifying Parties' estimates, MyTheresa would become the third largest competitor in the EEA post-Transaction (after the Parties and Breuninger).

(b) Best Secret: A German online multi-brand retailer that according to the Notifying Parties focusses on "*mid-market to luxury fashion*" and which also has a brick-and-mortar presence in Munich, Vienna and Dornach.[196] According to the Notifying Parties, Best Secret would become the fourth largest competitor in the EEA post-Transaction (after the Parties, Breuninger and MyTheresa).

(c) LuisaViaRoma: An Italian luxury fashion retailer that originally opened as a luxury fashion store in Florence but today primarily operates as an online retailer across the EEA (with a focus on Italy). LuisaViaRoma would become the eight largest competitor in the EEA post-Transaction (and second largest in Italy).

(d) Matchesfashion: A luxury fashion retailer that began operations as a boutique store in Wimbledon, UK, but currently operates a website across the EEA.

195 Questionnaire to Competitors, question F.A.5 and Questionnaire to Brands, question F.C.1.

196 Form CO, paragraph 712.

(208) In addition, the Parties face significant additional competition from other platforms and retailers of luxury goods with a strong online focus, including Veepee, Ssense, Miinto, and others.

(209) As described in the next sections, the Parties also compete with websites of department stores (particularly Breuninger, see also Section 6.2.3.2) as well as with large non-luxury-focussed online retailers such as Zalando (see also Section 6.2.3.4).

(210) With regard to the closest competitors facing the Parties in the EEA, a competitor explained that it "*sees its primary competitors within the EEA as MyTheresa, Net-a-Porter, Matchesfashion, Farfetch as well as various department stores with large online platforms such as Selfridges*".[197] Another competitor stated that "*within the multi-brand luxury products space [it] sees the strongest players as Net-a-Porter (by far the strongest and most established player), Farfetch, Matches, Browns, Essence and LuisaViaRoma*".[198] According to a large Italian brand of luxury fashion, "*MyTheresa and MatchesFashion are seen as Net-a-Porter's primary competitors […], although it is noted that the three companies have a focus on different aesthetics and products*".[199]

(211) According to a recent entrant in the online supply of personal luxury goods, other competitors, in addition to Farfetch, include "*Net-A-Porter and MyTheresa, as they sell designer/ premium brands that [the recent entrant] also offers, as well as MatchesFashion and Saks Fifth Avenue*". In addition, this recent entrant explained that there are "*also 'local heroes', meaning strong local players active in particular geographic areas, like Boozt in the Nordics, AboutYou in Germany, De Bijenkorf and Wehkamp in the Netherlands, Galeries Lafayette and Veepee in France, or CCC and LPP in Eastern Europe*".[200]

(212) In their replies to the market investigation, competitors stated that the following third-party sites could be considered the closest competitors to the Parties in the EEA (in order of the number of times they were considered the closest competitor):[201]

(a) Closest competitors to Farfetch: MyTheresa, Breuninger, Lyst, LuisaViaRoma, Matchesfashion, Vestiaire Collective, and Zalando.

(b) Closest competitors to YNAP: MyTheresa, LuisaViaRoma, Best Secret, Breuninger, Lyst, Matchesfashion, Veepee, Vestiaire Collective, and Zalando.

(213) Other than the Parties, competitors listed the following sites among the most important online retailers and platforms for luxury goods that currently operate in the EEA (ordered by number of mentions): MyTheresa, Matchesfashion, LuisaViaRoma, Ssense, Breuninger, Harrods, 24S, Vestiaire Collective, The Real, GOAT, END, Lyst, and Galleries Lafayette.[202]

197 Minutes from a call with a competitor on 3 February 2023, paragraph 7, DocID 526.
198 Minutes from a call with a competitor on 1 February 2023, paragraph 6. DocID 669.
199 Minutes from a call with a brand on 25 January 2023, paragraph 9, DocID 782.
200 Minutes from a call with a competitor on 24 February 2023, paragraph 7, DocID 940.
201 Questionnaire to Competitors, questions F.A.8 and F.A.10.
202 Questionnaire to Competitors, question F.A.13.

(214) Similarly, as part of the formal market investigation, brands stated that the following third-party sites could be considered the closest competitors to the Parties in the EEA (in order of the number of times they were considered the closest competitor):[203]

(a) Closest competitors to Farfetch: MyTheresa, Lyst, and Zalando.

(b) Closest competitors to YNAP: MyTheresa, Matchesfashion, Antonioli, End, LN-CC, LuisaViaRoma, and Zalando.

(215) The responses to this were generally the same independently of whether the question was asked for the EEA as a whole or when referring to specific EEA countries.[204] This suggests that, notwithstanding apparent differences in terms of market shares across EEA countries, the Parties' closest competitors (which are mainly active across the EEA and have a strong online focus) appear to be the same across EEA countries.

(216) The fact that there are sites with which the Parties compete closely is also confirmed by [DETAILS OF INTERNAL DOCUMENTS].

Figure 11: Customer Profile of Farfetch vs Competitors

Source: […].

(217) Similarly, Figure 12 shows an internal document from YNAP which shows [DETAILS OF INTERNAL DOCUMENT].

Figure 12: YNAP – Bi-weekly key competitors MD and promos

Source: […].

(218) [DETAILS OF YNAP INTERNAL DOCUMENT].

Figure 13: YNAP terms and conditions comparison, EU/Italy

Source: […].

(219) Again, as for the market investigation, the Parties' internal documents [DETAILS OF YNAP INTERNAL DOCUMENT]. This suggests, again, that the Parties' closest competitors are broadly the same across the EEA.

(220) In conclusion, therefore, as evidenced by the market investigation and by the Parties' internal documents, there are a range of competitors that supply personal luxury goods in the EEA that have a strong online focus and against which the Parties would continue to closely compete post-Transaction, both in the EEA overall and in each of the potentially affected EEA countries. These close competitors include MyTheresa, LuisaViaRoma, Ssense, and Matchesfashion.

[203] Questionnaire to Brands, questions F.C.4 and F.C.6.

[204] Questionnaire to Brands, question F.C.10.

6.2.3.3. Department stores

(221) The Parties further compete against the websites of a range of department stores that sell luxury goods within the EEA. These department stores include Breuninger, El Corte Ingles, De Bijenkorf, Selfridges, and more.

(222) While department stores tend to have a stronger focus on their offline sales compared to more online-focussed competitors (such as the Parties or MyTheresa), the websites of department stores offer a broad range of luxury goods online and are seen by many competitors and brands as viable alternatives to the Parties.

(223) There appears to be some heterogeneity among department stores in the EEA in the degree to which they consider themselves close competitors to the Parties. For example, a large department store explained that it considers "*YNAP and Farfetch to be competitors*",[205] whereas another large department store "*does not consider the Parties as close competitors*" to its own business.[206]

(224) Based on the results of the market investigation, the vast majority of competitors that expressed a view consider that the websites of department stores are either important competitors to the Parties or compete somewhat with the Parties.[207] For brands, an equal number of respondents consider that the websites of department stores compete at least somewhat with the Parties as those that consider that the websites of departments do not compete with the Parties.[208]

(225) In their responses to the market investigation, competitors and brands explained that, while the websites of department stores generally compete with the Parties, department stores often have a more national focus than pure online players, normally focusing on those countries in which the department stores also have a brick-and-mortar presence.[209]

(226) In line with the Parties' market share estimates, competitors and brands consider the following as the most important department stores with a successful online offering of luxury goods in the EEA: Breuninger, Galleries Lafayette, El Corte Ingles, de Bijenkorf, Selfridges, Le Printemps, La Rinascente, Harrods, KaDeWe, Le Bon Marche, and others.[210]

(227) In conclusion, therefore, while the websites of department stores may not compete as closely with the Parties as other platforms and retailers of personal luxury goods with a stronger focus on the online distribution channel at the EEA level, the websites of department stores appear to be important competitors to the Parties at the national level, particularly in those countries where they also have a brick-and-mortar presence.

6.2.3.4. Sites without luxury focus

(228) In addition to online retailers and platforms with a strong focus on luxury goods, as well as the websites of department stores, the market for the online multi-brand,

205 Minutes from a call with a competitor on 27 February 2023, paragraph 23, DocID 1064.
206 Minutes from a call with a brand on 23 February 2023, paragraph 8, DocID 571.
207 Questionnaire to Competitors, question F.B.1.
208 Questionnaire to Brands, question F.D.1.
209 Questionnaire to Competitors, question F.B.2 and Questionnaire to Brands, question F.D.2.
210 Questionnaire to Competitors, question F.B.3; Questionnaire to Brands, question F.D.4.

multi-product supply of personal luxury goods also contains a range of online retailers and platforms that do not focus exclusively on selling luxury goods. For example, according to the Notifying Parties' own estimates, only [0-5]% of both Asos' and Zalando's sales can be attributed to the sale of luxury goods.[211]

(229) The market shares submitted by the Notifying Parties do not include the sales of non-luxury goods (i.e., the market share estimates only consider the percentage of sales attributable to luxury products, see also Section 6.2.1). The following assesses the constraint imposed by these sites without luxury focus.

(230) One popular online fashion retailer that is included in the Notifying Parties' market share estimates, for example, does not consider at all "*that it offers luxury products, but [that] it has a selection of more high-end products (e.g., Nike and The North Face) than some of its direct competitors*".[212] It therefore "*does not consider it is a direct competitor of either Farfetch or YNAP*".[213]

(231) Further, a small brand explained that "*it would not sell products on platforms such as ASOS which are too mainstream*", while it "*considers Zalando to be at the border of [the brand's] understanding of the luxury market*".[214] With respect to Amazon's (so far unsuccessful) attempt to enter the online supply of luxury goods, this brand stated that it had "*started working with Amazon, but [that] it considers that [Amazon] is not the most adequate channel for the luxury industry*".

(232) The nature of the problems facing sites that do not have a reputation for luxury products and therefore struggle to successfully compete in the market for the online supply of luxury goods was further elaborated on by the example of Amazon by one of the Parties' competitors: "*Amazon is a particular example of a company with significant resources and know-how in the online retail sector that has tried unsuccessfully to enter the luxury products market. This might be attributed […] to the fact that both Kering and LVMH feared that a brand such as Amazon selling their products would dilute their premium brand image*".[215] Similarly, with regard to Zalando, a close competitor to the Parties explained that it is "*not actively benchmarking against platforms such as Zalando that while having invested heavily in luxury has not made much progress on entering the market*".[216]

(233) Therefore, while sites such as Amazon, Asos and Zalando do appear to at least somewhat compete with the Parties (with those sales on their sites that represent personal luxury goods), these sites appear significantly less important competitors to the Parties than sites with a clear focus on personal luxury goods (e.g., MyTheresa, LuisaViaRoma and others) as well as the websites of luxury department stores.

6.2.3.5. Conclusions on closeness of competition

(234) In summary, while the Parties do appear to compete closely in the EEA in the market for the online multi-brand, multi-product supply of personal luxury goods, there are also a range of other competitors active in this market that will continue to

211 Form CO, Annex 274
212 Minutes from a call with a competitor on 30 June 2023, paragraph 4, DocID 1575.
213 Minutes from a call with a competitor on 30 June 2023, paragraph 7, DocID 1575.
214 Minutes from a call with a brand on 3 July 2023, paragraph 9, DocID 1552.
215 Minutes from a call with a competitor on 3 February 2023, paragraph 11, DocID 526.
216 Minutes from a call with a competitor on 1 February 2023, paragraph 9. DocID 669

compete closely with the Parties post-Transaction, including MyTheresa, Best Secret, LuisaViaRoma, Matchesfashion, Veepee, Ssense, Miinto, and others. In addition, the Parties will continue to compete post-Transaction against a large number of department stores via their websites (including Breuninger, Galleries Lafayette, El Corte Ingles, de Bijenkorf, Selfridges, Le Printemps, La Rinascente, Harrods, KaDeWe, Le Bon Marche, and others). While these sites are less close competitors, the Parties will also continue to compete against a range of sites that supply luxury goods in the EEA without having a focus on luxury (e.g., Amazon, Asos, Zalando, and others).

(235) With the exception of the websites of department stores, which have a more national or regional focus, these conclusions apply equally to the potential EEA-wide market as well as in each of the potential affected national markets.

6.2.4. Customers' ability to switch and the relevance of the out-of-market constraint

6.2.4.1. The Notifying Parties' view

(236) The Notifying Parties submit that (i) from a customer perspective, the online environment ensures that consumers of luxury goods can switch easily between mono-brand and multi-brand websites at no cost;[217] and (ii) from a sellers' (brands and boutiques) perspective, switching is easy and possible because contracts with brands, boutiques and department stores do not lock suppliers to the Parties.[218]

(237) With regard to the consumers' ability to switch, the Notifying Parties refer to the evidence provided regarding consumers' switching between different channels: between online and offline,[219] and within the online channels.[220] With regard to sellers' ability to switch, the Notifying Parties note that sellers rely interchangeably on a wide mix of sales channels to have as many touch points with personal luxury goods customers as possible and to reach as wide an audience as possible.[221]

6.2.4.2. The Commission's assessment

6.2.4.2.1. Ability to switch

(238) For the reasons indicated below, the Commission finds that consumers and business customers (brands and boutiques) in this market are unlikely to face difficulties in switching to other suppliers. With regard to consumers, as set out in paragraph (239), the Commission finds that they can switch at no relevant cost to alternative and equivalent online retailers, and/or other distribution channels. With regard to sellers (brands and boutiques), as set out in paragraph (241), the Commission finds that there are sufficient alternative luxury online multi-brand retailers, and that out-of-market constraints pose a credible deterrent as an alternative outlet for their sales of luxury goods. The Commission's conclusions are the same on consumers and sellers' respective ability to switch in either the wider geographic market considered (EEA), or at national level (by Member State), because those elements driving the ability to switch are similar in nature.

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217 Form CO, paragraph 1206.
218 *Id*.
219 Form CO, paragraphs 441-454,
220 Form CO, paragraphs 748-798.
221 Form CO, paragraph 1199.

(239) The Commission finds that consumers of personal luxury goods have the ability to switch to alternative suppliers of luxury goods without incurring any relevant switching costs, for the following reasons:

(a) **Multi-brand online stores offer similar products**. Because there is a significant degree of similarity between the brands offered by the Parties and their competitors,[222] a consumer of luxury goods will find the same product available online across multiple multi-brand stores, and across different Member States.[223] Because most smaller multi-brand retailers offer a similar selection of personal luxury goods as those listed by the Parties, there are no direct costs associated with finding suitable alternatives for consumers. There are no other directs costs associated with switching (e.g., the Parties' loyalty programmes are not particularly meaningful, and on average consumers purchase luxury goods infrequently).[224]

(b) **Prices for luxury goods are broadly the same across platforms (and distribution channels)**. Multi-brand/multi-product online stores generally align prices with the mono-brands' online stores, which leads to prices being similar across multi-brand/multi-product online stores,[225] which was confirmed by the Commission's market investigation.[226] Prices are also very similar across the EEA.[227] It follows that the size of the multi-brand store is less important for the price the consumer ultimately pays for the purchase of the luxury good. Therefore, there is no (or only a limited) direct cost to the consumer in the purchase of the luxury good when choosing between multi-brand online retailers.

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222 See Section 6.2.3.1 above.

223 For example, several multi-brand online rivals deliver in all EEA countries, with similar product offerings (including across different EEA countries). Multi-brand online retailers offer these products often irrespective of whether they have a localised website. See responses to Questions E.1-E.3 and E.7 of the Questionnaire to Competitors In particular, in the EEA countries where the Parties' combined market shares are higher, post-Transaction, the Parties will continue facing competition from rival suppliers such as: (i) in Bulgaria, Mytheresa and Answear, that deliver through their localised stores; (ii) in Hungary, Answear and Mytheresa that deliver through their localised stores, and Best Secret that delivers without a localised store; (iii) in Ireland, Zalando and Mytheresa, that supply and deliver through localised online stores; (iv) in Portugal, Mytheresa and El Corte Ingles, that deliver through their localised online stores; and (v) in Romania, Answear and About You, that deliver and have localised online stores.See responses to Questions E.1-E.3 and E.7 of the Questionnaire to Competitors In particular, in the EEA countries where the Parties' combined market shares are higher, post-Transaction, the Parties will continue facing competition from rival suppliers such as: (i) in Bulgaria, Mytheresa and Answear, that deliver through their localised stores; (ii) in Hungary, Answear and Mytheresa that deliver through their localised stores, and Best Secret that delivers without a localised store; (iii) in Ireland, Zalando and Mytheresa, that supply and deliver through their localised online stores; (iv) in Portugal, Mytheresa and El Corte Ingles, that deliver through their localised online stores; and (v) in Romania, Answear and About You, that deliver and have their localised online stores.

224 The average consumer on the Farfetch Marketplace is [INFORMATION REGARDING FARFETCH CUSTOMERS]. A comparison of the Farfetch Marketplace's active customer overlap on a year-to-year basis from 2018 to 2022, is indicative of the [INFORMATION REGARDING FARFETCH CUSTOMERS] of the Farfetch Marketplace.

225 Questionnaire to Brands, question D.B.5 and D.C.5.

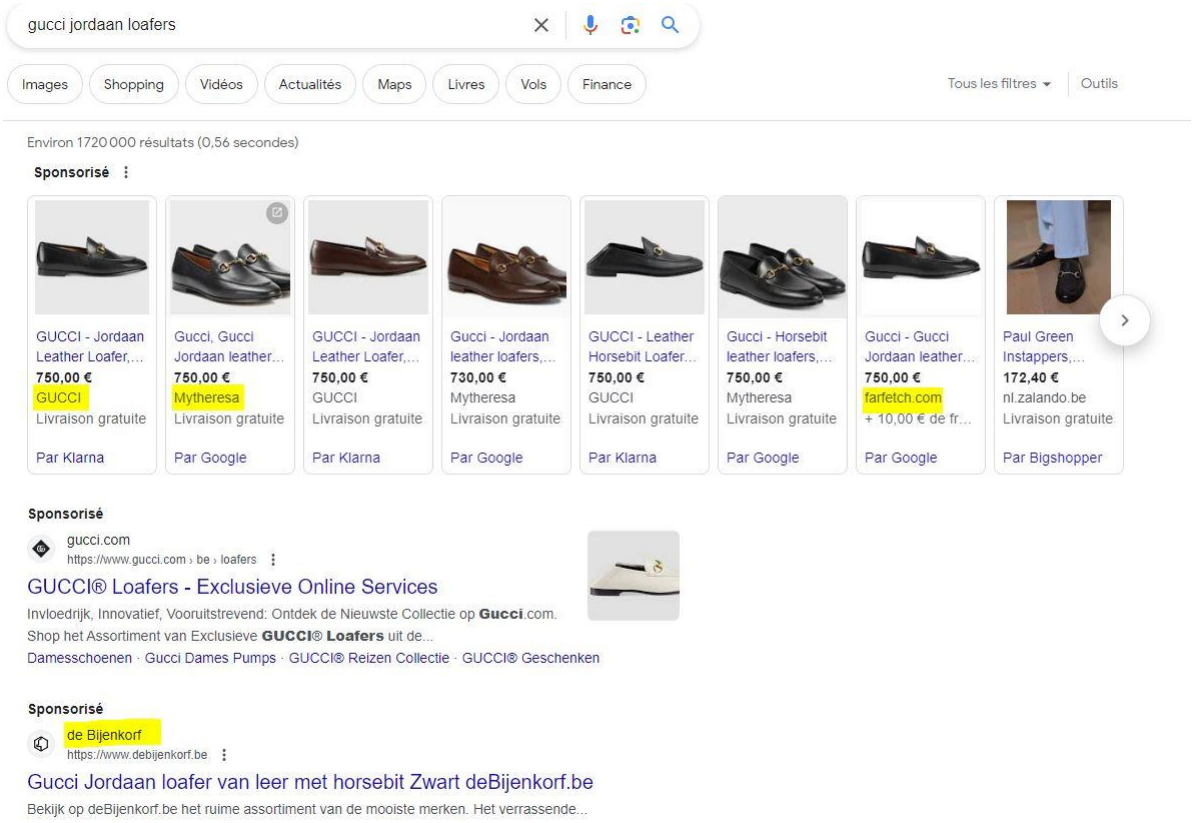
226 Questionnaire to Competitors, question DB5 and DD3.

227 Questionnaire to Competitors, question E.7. It follows that prices for luxury goods charged by the Parties post-Transaction in EEA countries such as Bulgaria, Hungary, Ireland, Portugal or Romania – where the Parties' combined market shares are higher – are both influenced by the prices charged for the same products via other distribution channels, as by prices charged for the same products in other EEA countries (where the Parties' combined market shares are smaller).

(c) **The "purchase journey" of consumers may lead to alternative multi-brand stores.** Multi-brand stores attract potential consumers of luxury goods through marketing (e.g., online advertising expenditure), the shopping experience they offer, and through their ability to present a diverse range of personal luxury goods. When searching online for a luxury good, consumers often find alternative multi-brand retailers, offering the same products with similar prices. It follows that often there is no additional cost incurred by consumers to find alternatives to the Parties multi-brand online retail outlets.

For instance, as illustrated below when searching on Google for a pair of Gucci shoes, the consumer is presented with several options: one of the Parties, the mono-brand, MyTheresa and De Bijenkorf. Hence, the Notifying Parties are not the only options offered to a consumer when browsing online for a personal luxury product.

Figure 14: Google Search results for "Gucci Jordaan loafers"



Source: Desktop research by the Commission.

(d) **Personal luxury goods consumers compare prices online.** The Commission finds that underlying the fact that prices are similar across platforms (and distribution channels) is that brands and retailers expect consumers of luxury goods to compare prices across distribution channels in their purchase journey. The Commission finds that consumers compare prices both across distribution platforms and EEA countries: e.g., in Portugal, the Parties' most important rival is a department store (El Corte Ingles) that has a significant presence in the multi-brand offline segment. The Commission therefore finds that there is no incremental switching cost that results from the Transaction (e.g., the need to search, and compare different offers). This is also illustrated by Figure 14 above.

(240) Finally, as discussed in paragraphs (94)-(99), there is an appreciable level of substitutability across channels from a consumer perspective in the retail supply of personal luxury goods.[228] The Commission finds that such substitutability indicates the absence of relevant switching costs to consumers. The results of the market investigation showed that consumers consider online and offline distribution channels as substitutes. For example, consumers will often initiate their purchase journeys in one distribution channel and end in another.[229] Further, the constraint placed by mono-brand/DTC stores (online and offline) on online multi-brand/multi-product personal luxury retailers is important. Evidence collected from the market investigation indicates that multi-brand online retailers perceive mono-brand/DTC stores as close competitors.[230] The Parties also perceive that mono-brand/DTC stores as their rivals. The Commission finds that this is representative of the consumers' ability to switch between these channels.

(241) With regard to sellers (brands and boutiques), the Commission finds that post-merger sellers will have the ability to promote the sale of their products in outlets within the multi-brand online stores channel, as well as across distribution channels (the so-called omni-channel mode: online, with mono-brand/DTC and in the brick-and-mortar business)[231]. This is for the following reasons:

(a) **Most brands and boutiques are present across multiple channels**. Brands and boutiques are typically present both in the brick-and-mortar channel, and online (with their mono-brand/DTC stores), and are generally present across all Member States.[232] Because such channels are perceived as competing with multi-brand online retail (at least to a degree), brands and boutiques have available to them an alternative and credible distribution channel to promote their sales.[233]

(b) **Brands are not required to use multi-brand online retailers**. Although most large brands use multi-brand online retailers, certain brands choose not to do so.[234] In such cases, brands perceive their mono-brand/DTC as a suitable alternative to the use of the multi-brand online retailer, and have ultimately "switched" their entire demand for multi-brand online retail services (or sales to multi-brand online retailers).

(c) **Brands and boutiques are not prevented contractually from using alternative multi-brand online retailers.** Brands and boutiques generally do not have exclusive agreements with either of the Parties.[235] In the few cases that the Parties have exclusivity provisions with brands or boutiques, the evidence collected from the market investigation shows that these provisions [DETAILS OF CONTRACTUAL RELATIONSHIPS].[236] Further, the Commission finds that the short duration of agreements between sellers and multi-brand online retailers such as the Parties, also facilitates "switching". For instance, Farfetch's template "E-commerce service agreement" with

228 Questionnaire to Brands, questions D.B.3 and D.C.9; Questionnaire to Competitors, questions D.B.1 and D.D.1.
229 Questionnaire to Brands, Question DB3, DB9 and DC9. See also, paragraph (99) above.
230 Questionnaire to Competitors, question DE1.
231 Form CO, Annex 217.
232 Questionnaire to Brands, questions C4.
233 Questionnaire to Brands, questions DC5 and FA3.
234 Minutes from a call with a competitor on 9 June 2023, paragraph 5, DocID 1546.
235 Questionnaire to Brands, questions F.B.6 and F.B.9.
236 Questionnaire to Brands, question H.9.

brands is [DETAILS OF CONTRACTUAL RELATIONSHIPS][237] and YNAP [DETAILS OF COMMERCIAL STRATEGY].[238] In addition, agreements between brands, boutiques and multi-brand online retailers are typically global in scope.[239] The short duration of agreements between the Parties and brands or boutiques means that sellers are not constrained contractually by existing agreements, and that contractual conditions in Member States where the Parties' shares are higher do not differ from those where the Parties will face more competition post-merger.

6.2.4.2.2. Relevance of the out-of-market constraint

(242) While the offline sales channel and the DTC mono-brand sales channel are not considered part of the same market as the online, multi-brand, multi-product supply of personal luxury goods (see Section 5.2.1), this is an industry in which out-of-market constraints do play an important role. In particular, there are a wide range of out-of-market options that allow consumer to purchase the same luxury goods at similar prices and that will remain available post-Transaction.

(243) From the consumer perspective, the market size data from the Bain reports shows that only about 19% of total sales of personal luxury goods in the EEA in 2022 can be attributed to the online sales channel with the remaining 81% of sales made via the offline channel (i.e., in traditional brick-and-mortar stores).[240] Further, of those 19% of total sales of personal luxury goods that are sold online, only about 53% can be attributed to the multi-brand, multi-product segment (i.e., only 10% of the total sales).[241] This means that, as of today, most of the personal luxury goods purchased by consumers are purchased via distribution channels that are not part of the same market as the Parties. However, when making their strategic decisions (e.g., to increase prices or otherwise worsen terms), the Parties must take into account the potential diversion of their sales to these out-of-market distribution channels.

(244) From the perspective of the Parties' business customers, it is also clear that post-Transaction, a range of distribution channels will continue to be available. In particular, for all brands that responded to the market investigation, sales via the Parties' sites account for no more than […]% of their total sales and for the majority of these brands, sales via the Parties' sites account for less than […]% of their total sales.[242] Instead, for brands that responded to the market investigation, direct-to-consumer sales (via their own websites or via their own brick-and-mortar stores) accounted for, on average, 40% of their total sales, whereas sales from third-party brick-and-mortar stores accounted for another 30% (on average).[243] Again, this shows that also for business customers, most of the personal luxury goods they sell are via distribution channels that are not part of the same market as the Parties. When negotiating with these business customers, the Parties must, however, take into account that these business customers have various other

237 Form CO, for instance Annexes, 450, 156.2, 439.
238 Form CO, paragraph 1093.
239 Questionnaire to Brands, questions E.3 and E.5.
240 Commission calculations based on Annex 274 of the Form CO.
241 Commission calculations based on Annex 274 of the Form CO.
242 Questionnaire to Brands, question F.A.1.
243 Questionnaire to Brands, question F.A.3.

credible and important distribution channels available to them which they could focus their attention on.

6.2.4.3. Conclusion on customers' ability to switch and the relevance of the out-of-market constraint

(245) It follows that the characteristics of the multi-brand online retail of luxury goods are such that the consumers, brands and boutiques can find suitable alternatives to promote sales of their luxury goods. The Commission finds that the absence of switching costs is an important driver of competition in the retail of luxury goods, both at the EEA level, and at the Member State level: the threat of loss sales (particularly from out-of-market alternatives) to rival multi-brand online retailers is sufficiently present both at EEA and Member State level, to act as a constraint to the business of the Parties post-Transaction.

6.2.5. Barriers to entry and expansion

6.2.5.1. The Notifying Parties' view

(246) According to the Notifying Parties, the retail luxury goods market (both at the EEA-level and nationally) is dynamic and characterised by low barriers to entry and expansion for all types of retailers (mono-brands, traditional 1P and 3P marketplace suppliers). They argue that the main prerequisites for successful entry and expansion do not vary by EEA country and can be easily satisfied for all EEA countries, without the need for significant incremental investment. This is also demonstrated by the large number of players who entered the market or expanded significantly over the last few years. Post-Transaction, the Parties will continue being exposed to significant competitive pressure from expanding competitors and new entrants.[244]

(247) The Notifying Parties consider that the main features required for an online retailer to compete on the market for the multi-brand, multi-product online supply of personal luxury goods are the following:

(a) Entrants and expanding players can form relationships with luxury brands: the Notifying Parties argue that building relationships with brands is paramount but not hard to overcome, because online sales through third parties is generally part of a mono-brand's marketing and sales strategy. Luxury brands are equally open to launch collaboration with new entrants, and opportunities to establish brand relationships arise often in the luxury goods industry (i.e., each season retailers can set up appointments with brands to shop or identify the product they are interested in). When partnering with multi-brand retailers, brands are usually interested in (i) storefronts with an elevated aesthetic (i.e. sufficient to support and appropriately portray the luxury nature of their products), (ii) the overall positioning of the retailer and understanding of the brand's perspective, (iii) other brands listed in the retailers' portfolio, (iv) the targeted customer(s) group(s) and (v) the retailer's reputation and experience in the industry.[245]

(b) Logistics and physical infrastructure: in order to deliver their products to consumers, retailers can use in-house services or third-party services such as

244 Form CO, paragraph 799.
245 Form CO, paragraphs 804-807.

cross-border shipping and delivery companies. Similarly, access to warehouses and fulfilment centres can be handled by third party providers. In addition, the Notifying Parties argues that barriers to entry in the EEA are low because retailers already supply customers all over the EEA, without physical presence in each of the countries nor large infrastructures.[246]

(c) E-commerce environment: on top of a competitive assortment of luxury goods, online multi-brand retailers need a sophisticated e-commerce environment to make sure their online store remains attractive to consumers. Online multi-brand retailers can either (i) use in-house solutions to manage their digital stores while using third-party software or (ii) outsource the provision of front-end, back-end and additional services to a third-party supplier.[247]

(d) Sales, marketing and customer service: the key teams which handle the commercial strategy altogether; more specifically an online multi-brand retailer will need significant external and targeted advertising by investing in ads on Google Search or partnering with social media influencers at a relatively low cost.[248]

(e) Digital comparison tools and search functions facilitate entry and expansion: the fact that many customers multi-home and use several websites for their luxury fashion purchases further lowers barriers to entry. Customers often search for their desired items through search engines and price comparison sites.[249] The Notifying Parties estimate that almost [DETAILS OF SALES] of the Parties' GMV is generated via the paid search channel.[250]

(248) In addition, the Notifying Parties consider that Zalando, Amazon, Ottrium, Cettire, StockX, The List, ASOS and 24S are new entrants on the market for the online retail supply of multi-brand, multi-product luxury goods. The Notifying Parties also claim that the market is highly fragmented hence there is a long tail of multi-brand competitors.[251]

(249) The Notifying Parties also consider that the market has seen recent notable expansion including by Ssense, MyTheresa, LuisaViaRoma, Printemps, Breuninger or La Rinascente.[252] Lastly, the Notifying Parties consider that Heat, ASOS and Next are potential entrants on the market for the online retail supply of multi-brand, multi-product luxury goods.[253]

6.2.5.2. The Commission's assessment

(250) The results of market investigation in this case indicate that barriers to entry on the market for the online retail supply of multi-brand, multi-product personal luxury goods are high. On the other hand, the results with regard to the barriers to expansion were mixed.

246 Form CO, paragraphs 808-810.
247 Form CO, paragraphs 811-812, online multi-brand retailers can also choose mix-and-match solutions from several providers.
248 Form CO, paragraphs 813-814.
249 i.e. Google Search, Google Shopping, Lyst.
250 Form CO, paragraphs 815-816.
251 Staiy, Highsnobiety, HBX, Threads Styling.
252 Form CO, paragraphs 821-822.
253 Form CO, paragraphs 825-828.

6.2.5.2.1. Barriers to entry

(251) The luxury sector is characterised by an aura of prestige which entails that brands seek to retain full control over their brand image. Hence, luxury brands tend to be conservative when it comes to selecting new distribution channels.[254] In order to enter the market, the majority of market participants consider that it is important and difficult for a new entrant to:

(a) Find mono-brand partners and establish long lasting partnerships in which mono-brands and boutiques are willing to list their products on their website.[255] As mentioned by the Notifying Parties, there is a list of criteria that luxury brands tend to apply in order to select a new online retailer in their selective distribution strategy: (i) storefronts with an elevated aesthetic (i.e. sufficient to support and appropriately portray the luxury nature of their products), (ii) the overall positioning of the retailer and understanding of the brand's perspective, (iii) other brands listed in the retailers' portfolio, (iv) the targeted customer(s) group(s) and (v) the retailer's reputation and experience in the industry. Hence, a new entrant would have to fulfil all these criteria in order to be considered by luxury brands.

(b) Grow a solid customer base and develop brand awareness with customers.[256]

(c) Develop their own retail website/platform of personal luxury goods (through e-commerce services).[257]

(252) While the results of the market investigation indicated that developing a website (including self-owned or third-party e-commerce technology) is easy and does not constitute a barrier to entry,[258] they also showed that that the main barriers to entry are the need to establish long-lasting commercial relationships with luxury brands and difficulty to build a customer base.

(253) During the preliminary investigation a large Italian brand of luxury fashion mentioned *"[…] luxury companies such as [the brand] value maintaining their brand identity and image, which is why it is selective in its choice of sales partners. It hence would not consider selling its products on platforms or to retailers that do not comply with the image the brand is trying to convey"*.[259] Another online retailer of multi-brand, multi-product luxury goods said that "*there are high barriers to entry in the luxury goods market, especially online. These barriers to entry relate primarily to the fact that luxury brand retailers require established and good relationships with major fashion houses – especially the Kering Group and LVMH, which unite the world's most sought-after between them. In order for a company to enter the retail market and be able to scale in any meaningful manner, retailers require direct relationships and supply agreements with these large fashion houses*".[260] In addition, during the market investigation a competitor stated that

254 Annex 105, Bain Altagamma report Renaissance in uncertainty.

255 Minutes of a call with a competitor of the Parties, on 24 February 2023, paragraph 8, DocID 940.

256 Questionnaire to Competitors, questions F.D.2 and Questionnaire to Boutiques, question F.F.2, Questionnaire to Brands, question F.F.2.

257 *Idem.*

258 Questionnaire to Competitors, question F.D.2.

259 Minutes from a call with a brand on 25 January 2023, paragraph 8, DocID 782.

260 Minutes from a call with a competitor on 3 February 2023, paragraph 11, DocID 526.

"[…] luxury brands already have quite selective approach to choose partners they work with, […] that will generate significant sales for them".[261]

(254) The majority of competitors who expressed a view consider that it would be very difficult for a new entrant to successfully enter the market for the online retail supply of multi-brand/multi-product personal luxury goods.[262] More specifically, the majority of competitors who expressed a view consider that it is very difficult to build relationships with brands and difficult to reach customers and develop brand awareness with them.[263] Also, the majority of competitors who expressed a view are not aware of any recent market entry in the EEA in the last 5 years on the market for the online retail supply of multi-brand/multi-product personal luxury goods, who has been able to develop a significant market presence.[264] One competitor did mention that MyTheresa had entered the market a bit more than 5 years ago and was showing interesting growth.[265]

(255) The majority of brands who expressed a view consider that it would be difficult for a new entrant to successfully enter the market in the EEA.[266] More specifically, brands consider that it is difficult to build relationships with them and to reach customers. These brands also consider that building brand awareness with customers is very difficult.[267] Also, these brands and boutiques stated that they are not aware of any recent successful entry (in the last five years).[268]

(256) Another example, which shows that luxury brands partnerships are crucial and rather difficult to secure for a new entrant in the market for the online retail supply of multi-product/multi-brand personal luxury goods is the fact that Amazon, the largest online retail platform is struggling to enter the luxury market due to its reputation as the "*everything store*".[269] This is also expressed in one of the Annexes to the Form CO, which is an article from the Business of Fashion mentioning that "*Amazon's formidable resources and reputation for convenience and value represent a challenge, but Farfetch still sees them as a long way off from cracking the luxury market due to lower perception among both brands and consumers. Amazon has struggled to sign up major fashion brands who are very sensitive to this*."[270]

6.2.5.2.2. Barriers to expansion

(257) For online retailers that are already supplying luxury goods online in some EEA countries, the barriers to expansion into other EEA countries appear to be significantly lower than barriers to entry, as retailers already active in one or more Member States already have an established relation with luxury brands, which appear to be the highest barrier to entry.

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261 Questionnaire to Competitors, question H.10.
262 Questionnaire to Competitors, question F.D.1.
263 Questionnaire to Competitors, question FD2.
264 Questionnaire to Competitors, question F.D.4.
265 Questionnaire to Competitors, question F.D.5.
266 Questionnaire to Brands, question F.F.1.
267 Questionnaire to Brands, question F.F.2.
268 Questionnaire to Brands, question F.F.3 ; Questionnaire to Boutiques, question F.F.3.
269 The New York Times, 'the Luxury E-commerce wars heat up', 29 November 2020 https://www.nytimes.com/2020/11/29/business/amazon-farfetch-richemont-ecommerce-wars.html.
270 Form CO, Annex 114* (*Should read: '*Annex 10.53'*) - Business of Fashion, Farfetch Case study.

(258) During the phase I market investigation the views of the respondents on the ability to expand of an already successful online supplier of personal luxury goods to another EEA country were mixed.[271]

(259) While some respondents considered it easy to develop a new localised website in a new EEA territory, [272] many considered it difficult – if not very difficult – to develop a distribution network in a new EEA country and brand awareness with customers of a new EEA country, as well as relationships with new luxury brands that are popular in these countries.[273]

(260) However, many operators indicated during pre-notification that barriers to expansion are not significant.

(261) For example, one competitor mentioned that "*expanding to additional European countries would not necessarily be burdensome. Marketing spends will be needed but there are no particular barriers within Europe (i.e., as compared to China where there might be specific tax requirements in order to ship products)*".[274] This is confirmed also by the fact that shipping costs are relatively low when compared to the overall price of most luxury goods. It is therefore not necessary for online retailers active in only part of the EEA to have a physical presence (such as warehouses) when entering a new country. Indeed, the Notifying Parties and their competitors ship the luxury goods they sell to almost all EEA countries.[275] Also, the market investigation confirmed that the majority of the Notifying Parties' competitors have contracts with brands which are EEA-wide and that their luxury product offering as well as their price are similar across the EEA.[276]

6.2.5.2.3. Conclusion on barriers to entry and expansion

(262) In light of the above, with regard to the business side of the market for the online retail of multi-brand/multi-product personal luxury goods, the Commission considers that the market is characterised by high barriers to entry. On the other hand, the Commission considers that the barriers to expansion to a new EEA country are not high and that competitors active in one Member State, with an already established relation with brands, would be able to expand in another Member State.

6.2.6. Business customers' countervailing bargaining power and the Parties' limited ability to raise prices.

6.2.6.1. The Notifying Parties' views

(263) The Notifying Parties submit that brands have countervailing buyer power that would discipline the Parties post-merger. In the Notifying Parties' view, (i) [DETAILS OF SALES / STRATEGY],[277] and (ii) brands are able to exercise

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271 Questionnaire to Competitors, question F.D.7; Questionnaire to Brands, question F.F.5; Questionnaire to Boutiques, question F.F.5.

272 Questionnaire to Competitors, question F.D.8, and Questionnaire to Boutiques, question F.F.6.

273 Questionnaire to Brands, question F.F.6; Questionnaire to Boutiques, question F.F.6 ; Questionnaire to Competitors, question F.D.8.

274 Minutes from a call with a competitor on 30 June 2023, paragraph 9, DocID 1575.

275 Questionnaire to Competitors, question E.1

276 Questionnaire to Competitors, questions E5, E7 and E9.

277 Form CO, paragraphs 938, 940.

countervailing buyer power through the different sales channels that are available to them (including within multi-brand outlets).[278] The Notifying Parties substantiate the claim that the Parties (or other online multi-brand outlets) are not a [DETAILS OF SALES / STRATEGY].[279]

(264) The Notifying Parties conclude that the existing power dynamics between brands and the Parties will not change post-merger, and that an attempt to deteriorate price or non-price terms would result in brands reducing their stock or ceasing sales to the Parties, which would be liable to deteriorate the Parties' range and appeal to customers.[280]

6.2.6.2. The Commission's assessment

(265) Due to the specific nature of demand and supply for luxury goods, the Commission finds that brands and boutiques have an appreciable degree of countervailing power in their relationships with the Parties. This degree of countervailing buyer power exists in the wider EEA market, and also at national level, to differing but important extents (e.g., due to regional specificities, certain brands may have a greater degree of countervailing power in certain Member States, relative to that experienced in the wider EEA market) and also expresses itself in the Parties' limited ability to raise prices to consumers.

(266) *First*, brands' role in creating demand for luxury products puts brands in a bargaining position *vis-à-vis* the Parties that enables brands to threaten credibly to switch to alternative solutions. From a brand's perspective, there are credible alternatives in the multi-brand online retail market (i.e., the Parties' direct competitors), and through the use of other distribution channels (e.g., the brands' own DTC online channel or brick-and-mortar stores). This is for the following reasons:

(a) **Brands have extensive brand recognition for luxury**. As noted in Section 5.1, brands are the creators of the differentiated products that are sold as luxury items. By partnering or associating with specific online multi-brand retail outlets, brands confer credibility to any one retailer (and, conversely, decrease their credibility once they withdraw their products). For instance, a major international luxury fashion brand does not sell any of its products on Farfetch or YNAP for reasons related to brand positioning and image.[281] According to this brand, "*other brands have taken the same decision recently and there is a trend to limit third-party sales channels, since brands are now more capable to provide e-commerce services themselves*" and that "*[i]n recent years, mono-brands invested heavily in e-commerce expertise and a partnership with platforms is no longer the only choice available: it is now a pure marketing arbitration*".[282] Further, most luxury brands' appeal and recognition is global in scope, and therefore of equal importance in individual countries across the EEA (namely in those where the Parties' shares are higher post-merger). Luxury brands are in a position to select their distributors, as evidenced in the market investigation, where competitors

278 Form CO, paragraphs 361, 939.
279 Form CO, paragraphs 941-946.
280 Form CO, paragraph 947.
281 Minutes from a call with a competitor on 9 June 2023, paragraph 5, DocID 1546.
282 Minutes from a call with a competitor on 9 June 2023, paragraph 7, DocID 1546.

noted the lengthy and difficult process to establish relationships with brands.[283]

(b) **Brands are vertically integrated and experienced counterparties**. Through their presence across distribution channels, and often their large number of agreements with individual retailers, brands are well positioned to identify a potential increase in the terms practiced by the Parties post-merger. Further, through their increased presence in the DTC/mono-brand channel, brands pose a challenge to the Parties, as they rely less heavily on online multi-brand retailers.[284] Both enable brands to threaten credibly to focus their sales either through specific channels, or to specific retailers in response to the Parties worsening terms on their agreements.

(c) **Brands' revenues from multi-brand online retail platform are relatively small**. Because luxury brands are typically present across distribution channels, and typically are also present in each EEA country,[285] the multi-brand online channel is but one of the channels contributing to their sales. Generally, the multi-brand online channel represents the smaller percentage of total revenues, and a small percentage in absolute terms.[286] It follows that most brands are able to negotiate from a position of relative strength, which puts brands in a good position to threaten credibly to use alternative suppliers.

(d) **Brands are a significant driver for luxury goods demand**. In addition to product creation, brands also invest significantly in marketing to promote their products across all distribution channels. Brands promotional efforts also confer upon brands an important role in shaping where consumers ultimately purchase the luxury goods. In turn, this confers on the brands an ability to threaten credibly the Parties post-merger to divert demand away from their outlets.

(267) *Second*, brands and boutiques retain almost full control over the prices charged on Farfetch and potentially also on YNAP in the future. This means that the Parties' ability to harm consumers is limited and at most would occur indirectly via the cost-raising effect of increased commission rates (which as discussed above is unlikely to occur in any event). In particular, under the "3P" marketplace business model, Farfetch only has very limited control over the prices charged on its website to consumers. For example, all brands that expressed an opinion during the market investigation confirmed the Notifying Parties' submission that prices on Farfetch are not set by Farfetch but rather that brands are either in full control or mainly in control of the prices charged for their products on Farfetch (with Farfetch's influence limited to promotions and discounts).[287] As YNAP is also expected to transition towards a "3P" business model (see Section 2.1), the Parties would have very limited direct influence on the prices that consumers pay for luxury goods on their sites. The ability to set prices – characteristic in multi-brand online retail – confers on brands and boutiques countervailing bargaining power: brands and boutiques control a variable (consumer price) that is decisive in the competition between distribution channels. Post-merger, the Parties would be constrained by

283 Questionnaire to Competitors, question F.D.6; Questionnaire to Competitors, question F.D.6.

284 Annex 10.4 – 2022 FF Global Insights, p. 37, Competitive Landscape – Group Dynamics – Brand Partners.

285 Questionnaire to Brands, question C4.

286 Questionnaire to Brands, question F.A.3.

287 Questionnaire to Brands, question F.B.3.

the brands and boutiques' ability to set prices, as high commissions makes the multi-brand online retail less appealing.

6.2.6.3. Conclusions on countervailing bargaining power and the limited ability to raise prices.

(268) The Commission finds that in the online multi-brand, multi-product supply of personal luxury goods, brands and boutiques possess a degree of bargaining power that would limit the Parties ability to exercise any potential increase in market power post-Transaction. In addition, as brands and boutiques currently have almost full control over the prices charged on Farfetch with the prospect of this also being the case on YNAP in the near future, the Parties have relatively limited scope to harm consumers post-Transactions via higher prices.

(269) This is also the case for the smaller markets at the Member State level. Such markets share most of the characteristics of the wider EEA market affecting the brands bargaining power – as noted in 5.2.2 above, the geographic scope of agreements between brands and the Parties is typically at least EEA-wide.

6.2.7. Likely impact of the Transaction

6.2.7.1. Likely impact on consumers

6.2.7.1.1. Observations on the likely impact of the Transaction on consumers

(270) Based on the evidence reviewed, the Commission considers that the Transaction is unlikely to have significant negative effects on consumers. This is primarily for the following reasons:

(a) Limited combined market shares: While the Parties are close competitors and will become the largest competitor post-Transaction in the market for the multi-brand, multi-product online supply of personal luxury goods in the EEA and in most EEA member states, the Parties' combined market share remains limited at EEA level at only around [20-30]% (see Section 6.2.2) with national market shares above [30-40]% in only a few small member states. In addition, post-Transaction, there remain a significant number of credible alternatives available to consumers in each of the affected potential national markets (and in the EEA more widely), including MyTheresa, Breuninger, Best Secret, LuisaViaRoma, Matchesfashion, Veepee, Ssense, and others.

(b) Significant out-of-market constraints: As outlined in Section 6.2.4, post-Transaction, consumers will continue to be able to purchase luxury goods from a range of important out-of-market options including by purchasing the luxury goods from the brands' websites directly as well as from brick-and-mortar department stores, boutiques and the brands' own stores. This option will be available to consumers in each of the affected potential national markets as well as in the EEA more generally.

(c) Barriers to expansion are not high: As outlined in Section 6.2.5, barriers to geographical expansion are not high. Therefore, it appears unlikely that the Parties would be able to have significant market power as a result of their relatively high market shares in some of the affected potential national markets, as any attempt to leverage this market power would likely result in

entry or expansion of competitors that are already active in neighbouring countries where the Parties have lower market shares.

(d) Limited ability to raise prices: As outlined in Section 6.2.6, under the "3P" marketplace business model, Farfetch only has very limited control over the prices charged on its website to consumers.[288] As YNAP is also expected to transition towards a "3P" business model (see Section 2.1), the Parties would have very limited influence on the prices (mainly indirectly via the commissions charged to brands) that consumers would have to pay for luxury goods on their sites. This applies for each affected potential national market as well as in the EEA more generally.

6.2.7.1.2. Results of the market investigation

(271) The market investigation overall did not reveal concerns with regard to the likely impact of the Transaction on consumers.

(272) First, a large majority of brands, boutiques and competitors expressing a view submit that the Transaction will have a neutral impact on the prices paid by consumers for luxury goods in the EEA.[289] In addition, even when prompted, none of the brands, boutiques and competitors expressing a view find that the Transaction will have specific effects in any particular EEA country, over and above those predicted for the EEA more generally. [290] One competitor states that "*neither offering has enough brand power or relevance to significantly impact overall competition in the region"*.[291] Another competitor of the Parties, LuisaViaRoma, considers that "*the market for luxury goods is generally competitive, with various competitors active in the space adopting both a retail and/or platform model*".[292]

(273) Some respondents even indicated that the Transaction could have a positive effect. For example, a brand states that "*the operation will allow Brands to increase the efficiency of operations to better serve the customer and generate additional business. Consumers will also benefit in our opinion from better assortment, better after sale policy and services, better territorial coverage*."[293]A competitor stresses that the Transaction could be beneficial for consumers, depending on the future behaviour of the merged entity: "*It depends on how financial gains of the transaction are potentially shared with consumers. As previously outlined, Farfetch is likely to increase margins as they can charge higher commissions due to the customer base gains through reaching existing YNAP customers. […] Farfetch could now either opt to share the margin gains (partly) with consumers by decreasing prices without harming gross profit. This could make sense to yield a price advantage over other competitors, leading to sales growth. [Secondly]*

288 For example, in response to question F.B.3. of the questionnaire to brands, all responsive brands confirmed that they are either in full control or mainly in control of the prices charged for their products on Farfetch (with Farfetch's influence limited to promotions and discounts).

289 Questionnaire to Brands, question H.13, Questionnaire to Competitors, question H.3, and Questionnaire to Boutiques, H.13.

290 Questionnaire to Brands, questions H.2, H.4, H.6, H.8, H.10, H.12, H.14, Questionnaire to Competitors, questions H.2, H.4, H.6, H.8, H.10, H.12, H.14, and Questionnaire to Boutiques, questions H.2, H.4, H.6, H.8, H.10, H.12, H.14.

291 Questionnaire to Competitors, question H.14.

292 Minutes from a call with a competitor on 3 February 2023, paragraph 7, DocID 526.

293 Questionnaire to Brands, question H.4.

Farfetch [could] fully realizes the gross profit gains from higher margins to boost profitability. In this scenario, prices are kept the same for consumers".[294]

6.2.7.2. Likely impact on business customers

6.2.7.2.1. Observations on the likely impact of the Transaction on business customers

(274) Based on the evidence reviewed, the Commission considers that the Transaction is also unlikely to have significant negative effects on the Parties' business customers, i.e., brands and boutiques. This is primarily for the following reasons:

(a) No material impact of the Transaction for boutiques: Boutiques are currently primarily selling on Farfetch with only extremely limited operations on YNAP's sites, namely, only on YOOX marketplace, which in itself represents only [DETAILS OF SALES]% of YOOX's total GMV in 2022.[295] In addition, according to the Notifying Parties' estimates, of those boutiques that sell on YOOX marketplace, only [SELLER PARTNER INFORMATION] also sell on Farfetch. There is therefore no material scope for boutiques to be impacted by the Transaction.

(b) Availability of various other distribution channels for brands: As outlined in Section 6.2.4, for brands, various other distribution channels will remain available post-Transaction, including the possibility to sell their products directly to consumers (both online and offline) as well as via third-party brick-and-mortar stores (e.g., department stores and boutiques). In particular, for all brands that responded to the market investigation, sales via the Parties' sites account for no more than [DETAILS OF SALES]% of their total sales and for the majority of these brands, sales via the Parties' sites account for less than [DETAILS OF SALES]% of their total sales.[296] Instead, for brands that responded to the market investigation, direct-to-consumer sales (via their own websites or via their own brick-and-mortar stores) accounted for, on average, 40% of their total sales, whereas sales from third-party brick-and-mortar stores accounted for another 30% (on average).[297] Therefore, a variety of distribution options will remain available to luxury brands post-Transaction.

(c) Large brands have significant bargaining power: As outlined in Section 6.2.6, large luxury brands which by some are considered "must-have", such as Gucci, Prada, and Balenciaga, have substantial bargaining power vis-à-vis online retailers and platforms, including the option not to sell their products on these sites at all.

(d) The Parties only account for a relatively small proportion of the overall business of smaller brands: In relation to smaller brands, the Notifying Parties have submitted an analysis according to which for brands that sell on both Farfetch and YNAP, the overall share of sales of these brands on these sites is very limited.[298] This was also confirmed in the market investigation in which for all brands that self-identified s a small brand, sales via the Parties'

294 Questionnaire to Competitors, question H.14.
295 Form CO, paragraph 375.
296 Questionnaire to Brands, question F.A.1.
297 Questionnaire to Brands, question F.A.3.
298 Form CO, Annex 455.

sites account for, on average, only 5% of their total sales.[299] Therefore, also with respect to smaller brands, the impact of the Transaction is likely to be limited.

6.2.7.2.2. Results of the market investigation

(275) The market investigation also did not reveal material concerns with regard to the likely impact of the Transaction on business customers.

(276) While some brands have expressed concerns on the future ability of the Parties to increase commission levels, [300] which the Commission has addressed above in Section 6.2.7.2.1, the majority of brands submits that in their view the Transaction will have a neutral impact on their company and in general on the sector of personal luxury brands operating in the EEA.[301]

(277) Some brands even consider that the Transaction might have a positive impact as "*the operation will allow Brands to increase the efficiency of operations to better serve the customer and generate additional business. Consumers will also benefit in our opinion from better assortment, better after sale policy and services, better territorial coverage*." Another large international luxury fashion brand believes that "*YNAP could benefit from a revamp through the Farfetch e-commerce services to be more competitive*" and that as a result of the Transaction it "*could increase their online business*".[302]

6.3. Vertical effects

(278) The Transaction gives rise to a number of potentials vertically affected markets between the activities of Farfetch and the activities of YNAP only if the geographic market for the online multi-brand, multi-product supply of luxury goods is defined on a national level (and not EEA wide).[303] In addition, during the pre-notification market investigation some concerns were raised from some market participants with regard to the potential effects of vertical links between the activities of Farfetch and Richemont.

6.3.1. Vertical links between Farfetch and YNAP

(279) The following vertical links arise from the Transaction:

(a) Farfetch's activities in the manufacture and wholesale supply of luxury goods (through NGG) (upstream) and YNAP's activities downstream as an online retailer, and vice-versa between YNAP's limited activities upstream

299 Questionnaire to Brands, question F.A.1.

300 Minutes from a call with a brand on 9 June 2023, paragraph 14. DocID 1546 and minutes from a call with a brand on 3 July 2023, paragraph 19, DocID 1552.

301 Questionnaire to Brands, questions H.1 and H.3. In addition, while there were relatively few boutiques that responded to the Commission's market investigation, none of the boutiques that expressed a view considered that the Transaction would have a negative impact on their business or the personal luxury sector for boutiques more generally. See: Questionnaire to Boutiques, questions H1 and H.3.

302 Minutes from a call with a brand on 1 March 2023, paragraph 11, DocID 843.

303 Provided that the market for the online retail supply of multi-brand, multi-product luxury goods is defined at national level, the Parties' combined market share exceed 30% in Bulgaria, Croatia, Czechia, Greece, Hungary, Ireland, Poland, Portugal, Romania, Slovakia and Slovenia.

in the manufacture and wholesale supply of luxury goods and Farfetch's activities downstream as a distributor on its marketplace;[304]

(b) Farfetch's activities upstream in the provision of white label e-commerce services to brands and retailers through FPS and YNAP's activities downstream as an online retailer, and vice-versa between YNAP's OFS services upstream and Farfetch's activities downstream as a manufacturer and wholesale supplier of luxury goods (through NGG).

6.3.1.1. Foreclosure concerns involving the Parties' activities in the manufacture and wholesale supply of luxury goods and their distribution at retail level.

(280) Given that the market investigation has not revealed significant differences at the national level, the following sections apply equally in each potential affected national market.

6.3.1.1.1. Input foreclosure

(281) The Parties' activities upstream are immaterial. Farfetch's activities (through NGG) on the production and wholesale supply market for luxury goods is quite small, representing an estimated share of [0-5]% of the EEA total market for 2021.[305] YNAP's activities on the production and wholesale supply market for luxury goods (currently sold only to YNAP's stores) is also limited, amounting [0-5]% of the total EEA wide market for 2021.[306] Both Parties negligible shares do not give them the ability to foreclose rival retailers and marketplaces by for e.g., raising wholesale prices or refusing to supply their offerings (in the case of Farfetch).

(282) As the Commission considers, in light of the above, that neither Farfetch nor YNAP would be able to engage in an input foreclosure strategy, the Commission considers that it is not necessary to establish if they would have an incentive to do so.

6.3.1.1.2. Customer foreclosure

(283) *First*, while both Parties are important players in online multi-brand, multi-product supply of personal luxury goods, as described above, neither one is a must-have distributor/retailer for brands and boutiques. Indeed, as shown above (see paragraph 241), brands and boutiques have indicated that they have a policy of using multiple supply channels and can rely on many alternatives (other online multi-brand retailers, the offline channel, and their own DTC channel) to sell their personal luxury goods.

(284) *Second*, given the very limited market presence in the production and wholesale supply of luxury goods the Parties have no incentive whatsoever to foreclose other clients (brands and boutiques) from selling on their websites and to rely for revenues only on their own brands' limited sales.

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304 Similarly, Richemont is also active on a market that is upstream from that of YNAP, i.e., the market for the production and wholesale supply of luxury goods. However, any existing or potential vertical relationships between Richemont and YNAP are pre-existing and non-merger specific given Richemont being YNAP's current sole owner.

305 Form CO, paragraph 986.

306 Form CO, paragraph 987.

(285) The Commission considers therefore that neither Farfetch nor YNAP would have the ability or incentive to engage in customer foreclosure post-Transaction.

6.3.1.2. Foreclosure concerns involving the Parties' activities in the provision of white label e-commerce services to retailers and manufacturers.

6.3.1.2.1. Input foreclosure

(286) Both Parties' e-commerce services account for less than [0-5]% of the global e-commerce services market and their combined market share in the EEA would remain significantly below [20-30]%[307] even on the basis of the narrow segment of e-commerce services to the luxury retail customers.

(287) The market for the supply of e-commerce services is a highly competitive and on growing market as all providers have stated during the prenotification phase. For e.g., one e-commerce provider stated: "*the online e-commerce shopping space is becoming more and more diverse, with an increasing number of touchpoints for consumers […] the company overserves the market for e-commerce services as a highly competitive and dynamic environment, characterized by ongoing innovation and product development efforts*."[308] Online retailers and other customers of e-commerce services would therefore have the possibility to source e-commerce services for luxury goods from a multitude of alternative competitors active in this market.

(288) As the Commission considers therefore that neither Farfetch nor YNAP would be able to engage in an input foreclosure strategy, the Commission considers that it is not necessary to establish if they would have an incentive to do so.

6.3.1.2.2. Customer foreclosure

(289) The Parties are also white label e-commerce providers. However, they would have no ability to foreclose other suppliers of e-commerce services. Farfetch and YNAP, to a large extent, already self-supply their e-commerce requirements. Therefore, they do not constitute measurable customer base which could be foreclosed as a result of the Transaction. Indeed, these services can be and are offered to a variety of e-commerce activities, not limited to those of the Parties. In that context, given the negligible relevance of both Farfetch and YNAP in the broader e-commerce market, neither one would have neither the ability nor the incentive to foreclose other e-commerce services' providers, who would be able to turn to the, at least EEA wide if not global market, and find alternative customers (brands, retailers), particularly given the ongoing growth of the e-commerce market. Moreover, there is no obligation for the Parties' partners to use the Parties' e-commerce services. Neither of the Parties has (or would have) the ability to impose an obligation on its partners to use their e-commerce offering.[309]

(290) As the Commission considers therefore that neither Farfetch nor YNAP would be able to engage in a customer foreclosure strategy, the Commission considers that it is not necessary to establish if they would have an incentive to do so.

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307 Form CO, paragraph 693.

308 Minutes from a call with an e-commerce provider on 26 January 2023, paragraphs 9, 8.

309 Form CO, paragraph 1010.

6.3.2. Vertical links between Farfetch and Richemont

(291) As a matter of context, the Transaction is a part of a broader business partnership described in section 2.1 above and which envisages that (a) Farfetch will re-platform most Richemont Maisons ("Richemont Re-Platforming"); and that (b) most Richemont Maisons will become sellers on the Farfetch Marketplace (the "Maisons Onboarding").

(292) During the preliminary investigation, some market participants have raised concerns about a risk of exclusive distribution between the Richemont Maisons and Farfetch which would prevent competing online multi-brand/multi-product retailers and platforms to have Richemont Maisons as customers and distribute their luxury products.

(293) However, the Transaction does not give rise to a concentration between the activities of Richemont and Farfetch who will remain independent entities post-Transaction. In addition, under the terms of the business partnership, Richemont Maisons have no obligation to exclusively sell on Farfetch post-Transaction and the market investigation has not confirmed a risk of vertical foreclosure.

7. CONCLUSION

(294) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Didier REYNDERS
Member of the Commission