EUROPEAN COMMISSION
DG Competition

Case M.8710 - JD / SONAE MC / BALAIKO / JDSH / SPORT ZONE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 17/01/2018

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EUROPEAN COMMISSION

Brussels, 17.1.2018
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying parties

Subject: **Case M.8710 – JD / SONAE MC / BALAIKO / JDSH / Sport Zone**
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 5 December 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which JD Sports Fashion Plc ("JD"), Balaiko Firaja Invest, S.L. ("Balaiko") and Sonae MC – Modelo Continente SGPS, S.A. ("Sonae MC") acquire within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation joint control of the whole of JD Sprinter Holdings 2010, S.L. ("JDSH"), which simultaneously acquires SDSR – Sports Division SR, S.A. ("Sport Zone" or "SPZ")[3]. JD, Balaiko and Sonae MC are designated hereinafter as the 'notifying parties' or 'parties to the proposed transaction'.

1. THE PARTIES

(2) JD, incorporated under the laws of England and Wales, is active in the retail trade and distribution of branded sports apparel and footwear. JD also operates fitness centres in the UK. JD is controlled by Pentland Group, which is active in the wholesale supply of branded outdoor products.

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 No C 429, 14.12.2017, p. 30.

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(3) Balaiko, incorporated under the laws of Spain, is an investment vehicle owned by the Segarra Family. As of 3 July 2017, it owns 33.3% of JDSH, a joint venture set up by JD and Sprinter on June 17, 2011 (Sprinter was previously owned by the Segarra family).

(4) Sonae MC, incorporated under the laws of Portugal, is active in the wholesale and retail of food and non-food products, including retail sports goods through its subsidiary Sport Zone. Sonae MC also manages real estate assets related to their wholesale and retail activities. Sonae MC is controlled by Sonae SGPS, S.A. (Sonae), which is engaged in different business such as: holding and management of shopping centres, telecommunications and media. Sonae is controlled by Efanor Investimentos, SGPS, S.A.

2. THE OPERATION

(5) Pursuant to an Investment Agreement, Sonae MC will transfer all its shares of Sport Zone to JDSH in exchange for consideration in cash and shares in JDSH. On its turn, JDSH will carry out a share capital increase by means of cash contribution made by Sonae MC. After closing, the share capital of JDSH will be distributed in the following proportion: JD will own a 50.00001% stake, Sonae MC a 29.999994% stake and Balaiko a 19.999996% stake.

(6) The Iberian sports businesses that will be combined through the transaction are the following:

(a) Sport Zone (SPZ) - a retailer for sports apparel, footwear and equipment active in Portugal (94 stores) and in Spain (46 stores). Sport Zone offers a balanced supplier-/ private –label multisport product range addressing the medium price-range mass market. Sport Zone is currently owned by Sonae MC.

(b) JD Spain/ JD Portugal – a premium sports retailer of branded footwear, apparel and accessories/equipment targeting the "aspirational" customer (aged 15-29 years, affluent, individual). It is positioned at the high(er) end of the market. It operates through its own banner stores (35 in Spain and 12 in Portugal), with the banner "The Athlete's Foot" (1 store in Portugal), and it is also responsible for the "Size?" business in Iberia (1 store in Madrid). JD Spain and JD Portugal are currently controlled by JDSH.

(c) "Size?" business, which offers an exclusive (essentially supplier based) product portfolio (latest trends in sneakers from most important supplier brands complemented by sport style apparel) addressing the medium/high price segment of the non-mass market. As mentioned, "Size?" has one store in Madrid and is part of JD Spain controlled by JDSH.

(d) Sprinter, which is a business focusing on sportswear (supplier- and private-label) apparel and footwear ranges, addressing the medium / low-price segment of the mass market. There are 126 Sprinter stores in Spain. Sprinter is currently controlled by JDSH.

3. THE CONCENTRATION

(7) The Parties intend to combine their Portuguese and Spanish sports retail businesses under the existing undertaking JDSH, and to simultaneously acquire joint control over JDSH.

3.1. Joint control

Rules governing the joint venture

(8) As mentioned above, the shareholding of the Joint Venture will be distributed between the parties in the following proportion: JD will have 50.00001% of the shares, Sonae will have 29.999994% and Balaiko will have 19.999996%. The Board of Directors will be composed of 8 members: […] appointed by JD, including the Chairman; […] appointed by Sonae, and […] appointed by Balaiko.

(9) The Parties agreed on establishing four different kinds of resolutions which require different majorities: Unanimity Resolutions, Key Resolutions, Ordinary Resolutions and Majority Resolutions[4]:

(a) Unanimity Resolutions, which require the vote of […], include matters such as: […].

(b) On the first voting, Key Resolutions are adopted with the same majority as Unanimity Resolutions. On the second voting, they are adopted with the votes of […]. Likewise, Ordinary Resolutions are adopted with […]. Nonetheless, the outvoted minority shareholder in both Key and Ordinary Resolutions is entitled to exercise a deadlock put option[5].

(c) Majority Resolutions require a simple majority of the votes of share capital or of the directors. The Chairman of the board, who is appointed by JD, has a casting vote. The outvoted majority shareholders are not entitled to trigger a deadlock put option in relation to majority Resolution except in the case of the approval of the management team. In a first voting, the management team member is approved by unanimity but on the second vote by simple majority. In this case, the minority shareholder whose proposed candidate to the management team was rejected can exercise its deadlock put option.

(10) During an initial period of two years, the adoption of any Key or Ordinary Resolutions requires the same majority as Unanimity Resolutions, which means the consent of all shareholders. These Resolutions cover, amongst others, the following matters: […]. Hence, during an initial period of two years, the three shareholders will have each a veto right over Unanimity, Key and Ordinary Resolutions, which include matters important to the strategic commercial behaviour of the JV.

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4 At the General Shareholders Meetings, there are, however, only three kinds of Resolutions: Unanimity Resolutions, Key Resolutions and Majority Resolutions.

5 A deadlock put option allows the minority shareholder to exit the JV and to be compensate in cash for its shares (and, if applicable, financing). The Remaining shareholders are obliged to acquire these shares (and financing) proportional to their stake in the JV.

(11) In addition, during this two-year period, the initial management team and the business plan for 2018-2022 are already appointed and established in Shareholders Agreement, […][6].

(12) During this initial two-year period, JD, Sonae MC and Balaiko will thus exercise joint control over the JDSH on a *de jure* basis. Two years can in this case be considered sufficient to bring about a lasting change in the control of the JDSH.

(13) Following the two-year period, the majority requirements and the deadlock put options (described above) will fully apply. This results in fewer rights for minority shareholders. They will still have positive veto rights regarding the Unanimity Resolutions. However, they will not have negative veto rights on Key and Ordinary Resolutions. On second voting, these Resolutions require a qualified majority which can only be achieved with the consent of JD together with the consent of just one of the minority shareholders. This can result in different combinations and lead to shifting alliances, as it is not possible to determine *ex ante* which minority shareholder will form the qualified majority. For this reason, the voting mechanism does not confer the power to cause a deadlock in the meaning of paragraph 62 of the Commission Consolidated Jurisdictional Notice[7].

(14) Following the two-year period, although the consent of all shareholders is required for the approval of the branding strategy and the criteria for store openings, joint control will not exist regarding strategic decisions such as: the approval or modification of the annual budget and financial forecast, the appointment and dismissal of the management team members, the approval of the business plan. Hence, following the two-years period, joint control cannot be established on *de jure* basis.

(15) The question remains whether a *de facto* joint control can be established following the two-year period. In this case, the unanimity required to approve the branding strategy and the criteria for store openings could reinforce the argument that minority shareholders enjoy factual veto rights following the two-year period.

The Parties' arguments on joint control

(16) The Parties submitted that the arrangements will, on a lasting basis, confer upon them joint control over the JV, based on the following reasons:

(a) Sector and geographic know-how: Sonae MC and Balaiko have specific expertise in operating multi-sports full range (apparel, footwear and equipment) retail stores targeting the mass market in Portugal and Spain, respectively. Sonae MC and Balaiko are the founders of SPZ and Sprinter, respectively, and operate these businesses for more than 20 years. Although JD is present in the sports retail market, it operates a different business format (branded sports apparel and footwear for high/mid income consumers) and its entry in Iberia is relatively recent (it entered the Spanish market in 2012 and the Portuguese in 2016).

(b) Major role in the operation of the JV: [Each member of the Management Team of the JV is proposed by a minority shareholder].

6 […].

7 See Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p.1).

(c) Sonae MC's support functions: Sonae MC will continue to supply SPZ Portugal and SPZ Canary Islands with multiple support functions provided by the Sonae group, such as: […]. In addition, Sonae MC will also provide SPZ access to […].

(d) Berg and Deeply brands: Sonae MC will continue to supply the products under its own brands, Berg and Deeply, […]. Moreover, […][8]. However, […]. In 2016, these brands accounted for […] of SPZ revenues.

(e) Sonae MC's financial strength: Sonae MC can support the Joint Venture in terms of capital increases, shareholder loans and in getting access to third-party financing, as it is the parent with the biggest economic strength and financial leverage. Moreover, the exercise of the deadlock put call by Sonae MC would put a lot of stress on Balaiko which would have to pay a lump sum for Sonae MC's shares.

The Commission's assessment

(17) The Commission finds that while the rights afforded by shareholders in the initial two-year period are indicative of joint control, the Parties have not sufficiently substantiated that the degree of dependence of the JV on its minority shareholders is such to justify a finding of *de facto* joint control of JD, Sonae MC and Balaiko following the initial two-year period.

(18) First, although the market investigation confirmed the importance of branding strategy in the retail market of sports goods[9], the contribution of Sonae MC's and Balaiko's specific know-how cannot be considered vital to the operation of the joint venture, particularly as JD is already present in the retail sports market in Iberia. The know-how acquired in a specific business format within this market, although relevant, cannot be considered essential to the extent that without that specific know-how an operator already present in that market, cannot continue its activity and develop different business formats.

(19) Second, although Sonae plays an important role in the development of the SPZ format, the so-called support functions supplied by Sonae group of companies cannot be considered essential either. As a matter of fact, the Parties have already foreseen the possibility to procure these services from a third party[10].

(20) Third, in case a minority shareholder exits the JV, it is not entitled to withdraw its assets, nor are directors and management members appointed by it subject to any restrictive covenant in case they also leave the JV[11].

(21) Fourth, although a certain degree of financial dependence could be asserted in relation to Sonae the same does not hold for Balaiko. In fact, the Parties arguments seem to emphasize the JV's dependence on Sonae more than the dependence on Balaiko, which – were it to be sufficient – would also indicate a different configuration of joint control than in the initial two-year period.

8 Sonae group does not currently supply Berg and Deeply branded products to Decathlon nor Sports Direct.

9 See Questionnaires to competitors, question 5.

10 […].

11 Directors and management members are not legally oblige to leave the JV, in case the minority shareholder, they represent, triggers the put option.

(22) Fifth, the Parties acknowledged that the change in the governance rules of the JV after the first two years is mainly to allow JD to fully consolidate the JV's results into its own financial statements. This fact shows that the Parties accept that JD alone can steer the JV's operation.

(23) The question remains whether the initial period can be simply considered as a mere starting-up[12] period which would not trigger a change of control on a lasting basis. On this matter, the Commission finds that such period is not a mere starting-up period, but on the contrary it appears to be a significant time in view of the rapid evolution of the retail market for sports apparel, footwear and equipment. Moreover, given the extent of the veto rights conferred upon the minority shareholders, their joint control is not of a transitory nature.

(24) In conclusion, the acquisition of joint control by the Parties during the initial two-year period amounts to a change of control in the existing joint venture.

3.2. Full-Functionality

(25) The Commission finds that JDSH is a full function joint venture within the meaning of Article 3(4) for the following reasons.

(26) First, JDSH has sufficient resources to operate independently on the market:

(a) The JV will own and operate the Parties' Portuguese and Spanish sports retail businesses, including tangible assets (e.g., outlets, stockholding, warehouses, transport fleets), intangible assets (e.g., the SPZ and Sprinter brands), and staff (e.g., sales personnel);

(b) The JV will have a management team dedicated to its day-to-day operations;

(c) The JV will obtain a substantial proportion of its supplies ([…]) from third parties.

(27) The JV will also operate on a lasting basis as it is set up for a period of at least 30 years.

3.3. Conclusion

(28) In the light of the above, the Commission considers that, at least for the initial two-year period, the operation constitutes a concentration within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation.

4. EU DIMENSION

(29) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million[13] (JD EUR […]; Sonae MC EUR […], JDSH EUR […]; SPZ EUR […]). Each of them has an EU-wide turnover in excess of EUR 250 million (JD EUR […]; Sonae MC EUR […], JDSH EUR […]; SPZ EUR […]), but they do not

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12 See paragraph 34 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p.1).

13 Turnover calculated in accordance with Article 5 of the Merger Regulation.

achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

5. DEFINITION OF RELEVANT MARKETS

5.1. Relevant Markets

(30) The Parties' activities overlap in relation to the specialised retail trade in sport goods. In addition, the parents of the Joint Venture are engaged upstream in the following business activities: (i) wholesale trade in sports goods; (ii) rental of retail space[14].

5.1.1. Retail trade in sports goods

5.1.1.1. Relevant product market for retail trade in sports goods

(31) The Joint Venture will operate in the retail trade in sports goods, including apparel, footwear and equipment.

The Parties' arguments

(32) The Parties consider that the relevant market should include the overall market for the retail trade in sports and similar goods, including apparel, footwear and equipment, developed by specialised stores and by stores with a more general offer where the sale of sports goods is carried out in a dedicated area (department stores). The Parties support their views based on an analogy with the Commission's decisional practice which distinguishes the retail trade in daily food and non-food goods (carried out in hypermarket, supermarkets and discount chains) from the retail trade which is limited to and specialised in certain product families[15].

(33) The Parties submit, in particular, that there is no need to further segment this market. No subdivision into segments for footwear, apparel and equipment is relevant based on the supply substitutability[16]. In addition, the Parties also refer to the Commission's precedent in the retail of daily consumer goods where no distinction is made between different families of products sold in supermarket, hypermarkets and discount chains[17].

(34) The Parties also submit that no distinction between online and offline sales is relevant since most of the main suppliers are active on both channels and consumers are increasingly purchasing online, sometimes "free-riding" on the services offered in the brick-and-mortar shops.

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14 Sonae has a subsidiary that invests and, at least, partly owns start-ups that provide services, such as: cybersecurity, data analytics, and data monetization, for the telecommunication and retails sectors. However, these cannot be considered important inputs for the retail trade in sports goods as the services merely facilitate certain back office functions (common to other retail trade services). The value the services provided to SPZ in 2016 (EUR […]) reflects the non-relevant character of these inputs.

15 See case M.5047 – REWE/ADEG, paragraphs 12-26; case M.3905 – Tesco/ Carrefour, paragraphs 9-17.

16 The Parties also refer to a decision of the Portuguese Competition Authority, which as considered such relevant market case CCent 26/2003- Sport Zone/GM &GF.

17 See case M.6506 – Group Auchan/ Magyar Hypermarket, paragraphs 8 et seq.; case M. 5047 – REWE/ADEG, paragraphs 12 et seq.

(35) The Parties have also argued that any segmentation according to the average sales areas of the retail stores is not needed since most sport retailers operate stores of different sizes.

The Commission's assessment

(36) In non-food retail markets, the Commission distinguished markets by product families, recognising sports goods and camping as one of those families. The Commission has also considered but ultimately left open whether the market for retail of sports goods and camping could be further segmented into sports textiles and sports shoes[18].

(37) The market investigation has confirmed that the majority of competitors to the Parties in Spain and Portugal do cover the three segments (apparel, footwear, and equipment), although some focus more on certain product categories, brands or type of sports[19]. The majority of competitors to the Parties are also of the view that consumers (which are not sports professionals) consider specialised and multisport shops as alternatives for apparel, footwear and equipment altogether[20]. As the concentration does not raise concerns even in the narrowest possible market definition (by product families), the exact market definition can however be left open.

(38) As regards the online / offline segmentation, the market investigation has shown that most of the Parties' competitors in addition to their brick-and-mortar shops have an online shop[21] and that similarly to the parties, their online sales still represent a low proportion of their total sales[22]. As the Joint-Venture together with their competitors operate essentially through brick-and-mortar shops, the assessment of this transaction will take place in this segment.

(39) As regards a possible segmentation by retail sale area, the market investigation has shown that the majority of competitors have stores of different sizes, and that the sales area of a retailer is not necessarily expressive of its business format[23]. However, as the concentration does not raise serious doubts under any plausible segmentation by retail size, the exact product market definition may be left open.

5.1.1.2. Relevant geographic market for retail trade in sports goods

(40) With regard to the relevant geographic market, the Parties submit that retail markets for sport products are national in scope. In particular, according to the Parties a narrower definition (similar to the retail trade in food products) would not be warranted as the products are durable (non-consumable) and therefore do not need to be purchased daily, nor close to the place of consumption. From a supply-side perspective, the Parties contend that the main competitors are present throughout the Portuguese and the Spanish territories, although the distribution of their stores may vary on the basis of the concentration of consumers. Finally, the Parties claim that all main parameters of competition (prices, product assortment, logistics, marketing, advertising and promotional campaigns) are evaluated and defined at a national level.

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18 See case M.5721 – Otto/ Primondo Assets, paragraph 19.

19 See replies to the Questionnaire to competitors, question 1.

20 See replies to the Questionnaire to competitors, questions 9 and 10.

21 See replies to the Questionnaire to competitors, question 4.

22 For the majority of the competitors online sales represent less than 5% of their total sales.

23 See replies to the Questionnaire to competitors, question 2.

(41) The Notifying Parties have, however, acknowledged that retail operators also consider local parameters when deciding on opening new stores, while, from a demand-side perspective, consumers will typically consider the travel time and cost of a purchase in a brick-and- mortar shop in proportion to the value of the purchase and its recurrence. In line with the Commission practice for the retail sector[24], the Parties have delineated 30 minutes' drive isochrones from each store of SPZ, Sprinter and JD Stores and have identified several overlapping catchment areas with a significant degree of commuting (specially in Portugal). Based on these catchment areas the Parties have defined relevant local markets.

(42) However, as the concentration does not raise serious doubts under the narrowest plausible market, the exact geographic market definition may be left open.

5.1.2. Relevant market for wholesale trade in sports goods

(43) Pentland group, owner of JD, and Sonae MC are active in the wholesale supply of apparel and footwear. According to the Parties the relevant product market would cover all segments (apparel, footwear, accessories) and would be national scope. The Commission has not adopted a definite market definition with respect to the scope of the relevant product market for the wholesale of clothing and footwear[25].

(44) As the concentration does not raise serious doubts under any alternative definition, the exact product and geographic delineation of the relevant market can be left open for the purpose of this decision.

5.1.3. Relevant market for rental of retail space

(45) Sonae Sierra SGPS, SA (Sierra), a company jointly controlled by Sonae (parent of Sonae MC) and the Grosvenor Group, is active in the provision of property management services (including, leasing), investment management services and development services (e.g. design, expansion, and refurbishment), related to shopping centres and retail parks in Portugal, Spain and other countries. Sierra also holds ownership interests in commercial centres, including in Portugal and Spain. In addition, Sonae MC has a fully owned and controlled subsidiary Sonae RP – Retail Properties, SA, which manages the group’s retail assets in Portugal. Most of these assets are occupied by hyper and supermarkets operated by the group. The remaining retail space is used by other brands of the group (including SPZ) and, to a lesser extent, rented out to third parties.

(46) In its practice, the Commission has considered but has ultimately left open whether the markets for rental of retail real estate could be further segmented according to type or property (shopping centres, retail parks) and by size. Also with regards to the relevant geographic market, the Commission has left open whether it can be viewed as national, regional or local[26].

(47) As the concentration does not raise serious doubts under any alternative definition, the product and geographic delineation of the relevant markets can be left open for the purpose of this decision.

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24 See case M. 5047 – REWE/ADEG, paragraph 27.

25 See case M.6726-AAEC/Rabo Investments/ Vecelia/ HVEG, paragraph 14.

26 See case M.8229 – Hammerson/ Irish Life/ ILAC Shopping Centre, paragraphs 16 and 19; and case M.6400 – ECE/ Metro/ MEC JV, paragraphs 43 and 44.

6. COMPETITIVE ASSESSMENT

6.1. Horizontal overlaps: retail trade in sports goods

(48) Under the narrowest plausible geographic market definition, the concentration results in affected markets in the following local areas:

(a) In Portugal: metropolitan areas of Lisbon, Porto, Coimbra and the West Algarve, including Faro.

(b) In Spain: metropolitan areas of Granada, Huelva, Ourense, Segovia; and the area of Úbeda/Jaén/Andújar[27].

(49) First, the Parties' horizontal overlaps in the geographical areas identified above lead to market shares (in sales area and in value), which are moderate throughout Spanish and Portuguese local markets, where they remain almost always below or close to [30-40]%, with one exception (Coimbra by sqm), where the share increment is very modest at [0-5]%.

Table 1 - Parties Market Shares in the Retail Trade in Sports Goods

2016	Market		SPZ		JD		SPZ + JD	
	sqm	M€	% sqm	% €	% sqm	% €	% sqm	% €
Lisbon	[…]	[…]	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Porto	[…]	[…]	[30-40]%	[30-40]%	[0-5]%	[0-5]%	[30-40]%	[30-40]%
Coimbra	[…]	[…]	[40-50]%	[20-30]%	[0-5]%	[0-5]%	[40-50]%	[30-40]%
Barlavento	[…]	[…]	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[20-30]%	[30-40]%
Ourense	[…]	[…]	[10-20]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%
Segovia	[…]	[…]	[5-10]%	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Granada	[…]	[…]	[0-5]%	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Huelva	[…]	[…]	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%
Úbeda/Jaén/Andújar(*)	[…]	[…]	[0-5]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%

***SPZ open one store in Úbeda in March 2017**

(50) As the table suggests, market share increments, including in the Coimbra catchment area, are very limited and remain below 5% in all geographical areas except for Ourense (in sqm and value) and Segovia (in sqm). As regards the latter, the combined share of the Parties only slightly exceeds [30-40]% when assessing the Ourense catchment area (by value).

(51) Second, the different businesses contributing to the JV do not compete closely.

(52) When looking at catchment areas in Portugal, the horizontal overlap is limited to the business of SPZ and JD. SPZ and JD have a differentiated offer and format. SPZ is a full range retailer offering apparel, footwear and equipment. It is positioned in the medium/low price segment and targets mainly the "functional" customer. SPZ offers both private label and third party brands, including premium and second-tier brands. SPZ has larger stores with less staff and in-store service. In turn, JD offers apparel and footwear, and targets the higher-end market with an offer made of premium brands. JD operates smaller shops with more staff and service. This is in line with the

[27] SPZ open one store in Úbeda in March 2017 with a sales area of […] sqm.

feedback received within the market investigation, where all respondents, except one, did not consider JD to be the third closest competitor of SPZ[28].

(53) In Spain, the overlap includes the two banners currently owned by JDSH, JD and Sprinter, and SPZ. Different from Portugal, SPZ also competes with Sprinter which has some similar features: both businesses are full range suppliers; target the mass market; offer a combination of third party brands and private labels; and operate stores with a lower in-store service offer. However, there are still elements of differentiation between Sprinter and SPZ: Sprinter has a positioning on the lower end of the mass market; it has a greater focus on private labels, and a lesser focus on equipment. This is in line with the feedback received within the market investigation, where only one respondent considered Sprinter the second closest competitor of SPZ. Moreover, the majority of respondents have identified Decathlon as the closest competitor of both banners[29].

(54) Third, post-transaction, the Joint Venture will continue to face competition in all local markets from at least three competitors, with a national or a regional footprint. These include the market leader, Decathlon, which is currently present in all affected catchment areas with the exception of Úbeda/Jaén/Andújar[30].

(55) Even when assessing the transaction under narrower markets corresponding to the three different product segments (apparel, footwear and equipment), the assessment does not differ significantly, despite a higher market share in the footwear market. Following this market segmentation, there would be other affected catchment areas in Spain (Vigo, Almeria and Costa de Cádiz) in relation to footwear, but Huelva would not be considered an affected market in relation to apparel and equipment, and neither would be Granada in relation to equipment.

Table 2 - Parties Market Shares in the Retail Trade of Sports Apparel

2016	Market		SPZ		JD		SPZ + JD	
	M€	%	M€	%	M€	%	M€	%
Lisbon	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Porto	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Coimbra	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Barlavento	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Ourense	[...]	100%	[...]	[5-10]%	[...]	[20-30]%	[...]	[30-40]%
Segovia	[...]	100%	[...]	[0-5]%	[...]	[20-30]%	[...]	[20-30]%
Granada	[...]	100%	[...]	[0-5]%	[...]	[20-30]%	[...]	[20-30]%
Úbeda/Jaén/Andújar	[...]	100%	[...]	[0-5]%	[...]	[20-30]%	[...]	[20-30]%

28 See replies to Questionnaire to competitors, question 18.

29 See replies to Questionnaire to competitors, question 19.

30 Decathlon has opened a shop in Segovia in October 2017.

Table 3 - Parties Market Shares in the Retail Trade of Sports Footwear

2016	Market		SPZ		JD		SPZ + JD	
	M€	%	M€	%	M€	%	M€	%
Lisbon	[...]	100%	[...]	[20-30]%	[...]	[10-20]%	[...]	[30-40]%
Porto	[...]	100%	[...]	[30-40]%	[...]	[0-5]%	[...]	[30-40]%
Coimbra	[...]	100%	[...]	[30-40]%	[...]	[5-10]%	[...]	[40-50]%
Barlavento	[...]	100%	[...]	[20-30]%	[...]	[5-10]%	[...]	[30-40]%
Almeria	[...]	100%	[...]	[5-10]%	[...]	[20-30]%	[...]	[30-40]%
Costa de Cadiz	[...]	100%	[...]	[0-5]%	[...]	[20-30]%	[...]	[20-30]%
Vigo	[...]	100%	[...]	[5-10]%	[...]	[10-20]%	[...]	[20-30]%
Ourense	[...]	100%	[...]	[5-10]%	[...]	[20-30]%	[...]	[30-40]%
Segovia	[...]	100%	[...]	[0-5]%	[...]	[20-30]%	[...]	[30-40]%
Granada	[...]	100%	[...]	[0-5]%	[...]	[30-40]%	[...]	[30-40]%
Huelva	[...]	100%	[...]	[5-10]%	[...]	[10-20]%	[...]	[20-30]%
Úbeda/Jaén/Andújar	[...]	100%	[...]	[0-5]%	[...]	[30-40]%	[...]	[30-40]%

Table 4 - Parties Market Shares in the Retail Trade of Sports Equipment

2016	Market		SPZ		JD		SPZ + JD	
	M€	%	M€	%	M€	%	M€	%
Lisbon	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Porto	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Coimbra	[...]	100%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
Barlavento	[...]	100%	[...]	[30-40]%	[...]	[0-5]%	[...]	[30-40]%
Ourense	[...]	100%	[...]	[5-10]%	[...]	[20-30]%	[...]	[30-40]%
Segovia	[...]	100%	[...]	[0-5]%	[...]	[20-30]%	[...]	[20-30]%
Úbeda/Jaén/Andújar	[...]	100%	[...]	[0-5]%	[...]	[30-40]%	[...]	[30-40]%

(56) Despite the higher share for the footwear segment (ca. [40-50]% in Porto and Coimbra; ca. [30-40]% in Granada; and ca. [30-40]% in Segovia, Almeria and Úbeda/Jaén/Andújar), in the other segments market shares are in the same range as for the overall sports retail market. In addition, also in the footwear product market the transaction results in small increments; the Parties are not considered to be close competitors; and the JV will face pressure from other competitors.

6.2. Vertical effects: wholesale trade in sports goods

(57) In Iberia, Pentland only sells the brand *Speedo* to JD and to third parties (ca. EUR […] million in Spain and ca. EUR […] million in Portugal). As a consequence, Pentland has a market share of less than [0-5]% in each country. Sonae MC sells the brands

Berg and Deeply mainly to SPZ and to a much lesser extent to third parties (EUR […] in Portugal and EUR […] in Spain), resulting in a market share close to [0-5]%[31]. Because sales to third Parties are extremely limited, and given the availability of brands from several other suppliers (Nike, Adidas, Puma, Asics, Converse), input foreclosure concerns are unlikely.

(58) As regards customer foreclosure, there are at least three other sports retail operators in the affected catchment areas and all these operators, and the Joint Venture's businesses, procure different brands from suppliers other than the Joint Venture Parents. Therefore, customer foreclosure concerns are also unlikely.

6.3. Vertical effects: rental of retail space

(59) As mentioned, Sonae is present in the rental of retail space. This is an affected market in relation to the following local markets: Porto, Coimbra, West Algarve, Ourense and Úbeda/Jaén/Andújar.

(60) Sonae, through a jointly controlled subsidiary, Sonae Sierra, has a market share of [20-30]% in Portugal[32] and [0-5]% in Spain, taking into consideration all commercial centres with a Gross Floor Area of at least 5,000 sqm that Sonae Sierra controls, or has an equity interest or manages[33]. Although, in Portugal, Sonae Sierra is the biggest provider of retail rental space, there are other five operators with national presence. The Commission finds, therefore, that Sonae does not have the ability to foreclose access to retail space to competitors of the JV.

(61) Moreover, whatever Sonae's incentives, a foreclosing strategy concerning such access appears unlikely, given that its subsidiary is jointly owned by Grosvenor Group. The latter jointly controlling entity would not share any incentive to engage in a foreclosing strategy, as it has no interests in the retail trade of sports (nor in any other activities of the Sonae group)[34], and therefore it would not reasonably endorse a strategy resulting in its jointly controlled subsidiary foregoing revenues in the retail space rental market when it cannot recover any such revenues downstream. In addition, the past behaviour of Sonae is also not indicative of any foreclosing incentive, as most commercial centres controlled and managed by Sonae rent retail space to competitors of SPZ.

(62) Likewise, customer foreclosure is also not likely in relation to retail space not only in Spain (where Sonae's market share is very small) but also in Portugal. The combined total sales area of all the Sport Zone and JD stores in Portugal represents only [0-5]% of the retail space in commercial centres, and the average size of SPZ stores (ca. […]

31 This market share does not take into account the wholesale activity of SPZ to its franchisees (located in Azores and in France, Ceuta, Morocco, Angola and India) which will pass to the Joint Venture.

32 As mentioned above, Sonae also rents retail space through its subsidiary Sonae RP, including to SPZ stores. However, Sonae RP rental of retail space is usually ancillary to the operation of hyper and supermarkets. If the rent of those spaces to third parties is considered, Sonae's market share in Portugal is closer to [20-30]%.

33 In Spain Sonae Sierra does not own or manage any shopping centre in areas of Granada, Huelva, Ourense and Segovia.

34 In addition to the commercial centres owned by Sonae Sierra, this company has stakes in real estate investment vehicles (funds) whose remaining shares are held by international investment and asset management firms which are not active in retail trade in sports goods and not have any interest in any other activity developed by the Sonae group.

sqm) and JD stores (ca. […] sqm) corresponds respectively to [0-5]% and [0-5]% of the retail space of a commercial centre with a medium dimension (ca. 20,000 sqm).

7. CONCLUSION

(63) 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)

Margrethe VESTAGER
Member of the Commission