



DETERMINATION OF MERGER NOTIFICATION M/07/068 – NIKE/UMBRO

Section 21 of the Competition Act 2002

Proposed acquisition of by Nike, Inc. of Umbro plc

Dated 23/01/07

INTRODUCTION

The Notification

1. On 21 December 2007 the Competition Authority (the “Authority”), in accordance with section 18(1)(a) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposed acquisition by Nike, Inc (“Nike”) of sole control over Umbro plc (“Umbro”).
2. On completion of the proposed transaction Nike and Umbro will cease to be distinct enterprises. However, the Umbro brand will continue as Nike intends to operate Umbro as a stand alone affiliate brand, with the Umbro business continuing to be headquartered in the UK.

The Undertakings Involved

The Acquirer

3. Nike is a company listed on the New York Stock Exchange. Nike’s principal business activity is the design, development and worldwide supply of athletic and casual footwear, apparel, equipment and accessories. Nike sells its products to retailers, through a mix of independent distributors and licensees, in over 180 countries around the world and through some own brand retail stores. Nike branded products are manufactured, mostly by independent contractors.
4. In Europe, Nike operates through Nike European Operations Netherlands B.V (“NEON”) [...].
5. In addition to the Nike brand, Nike has a number of subsidiaries which design and distribute sports/leisurewear and sports equipment, as well as casual and luxury shoes and accessories, under different brands such as Converse, Nike Bauer Hockey and Hurley.
6. Nike (UK) Limited is the marketing agent for NEON in Ireland, via its Irish branch office (“Nike Ireland”) [...].
7. In addition, Nike Retail B.V. has factory outlet stores near Kildare and in Killarney. NEON also distributes Nike products directly to Nike Retail B.V.. [...]. There is also a Nike-branded flagship store located at Grafton Street, Dublin 2. This store is operated by Champion Sports Limited [...].

8. For the year ending 31 May 2007, Nike's worldwide turnover was approximately USD 16.3 billion (approximately €12.55 billion¹).
9. For the year ending 31 May 2007, Nike's turnover in the State was approximately USD [...] (approximately €[...]²).

The Target

10. Umbro is a company listed on the London Stock Exchange. Umbro's principal business activity is the design, development and marketing of sports footwear, apparel and equipment (in particular in the Association Football ("football") sector). Umbro is headquartered in Cheshire (UK) and operates in over 90 countries through its own businesses in the UK and United States and through a network of [...] independent licensees who pay royalties on their sales of Umbro branded products. Umbro's products are manufactured by independent contractors.
11. Toplion Sportswear Limited (Toplion) is the Umbro licensee for the State. Toplion is an Irish-owned and an Irish-run business based in the West of Dublin with around 28 full-time employees. Toplion pays royalties to Umbro for the use of its brand.
12. Toplion has the exclusive licence to use the Umbro trademarks in the State for the purposes of marketing and selling Umbro products, and, for certain items, to use the trademarks for manufacturing those products [...].
13. While Umbro has no offices or subsidiaries in the State, it does have some direct sales in the State. Toplion will remain, post-completion of the proposed transaction, an independent third party.
14. For the year ending 31 December 2006, Umbro's worldwide turnover was approximately GBP 150 million (approximately €219 million³).
15. For the year ended 31 December 2006, Umbro's turnover in the State was GBP [...] (approximately €[...]⁴).

The Rationale for the Transaction

16. The proposed transaction will strengthen Nike's global position in the football sector, a key growth category for Nike. Umbro is a world-class, authentic football brand, with well-established positions in key growth markets and a deep football heritage. As such, it is highly complementary to Nike's existing football business [...].
17. On completion of the proposed transaction, Nike intends to apply its financial strength, product and brand development capabilities, global resources and sports marketing relationships to accelerate Umbro's existing growth strategy.

¹ Currency conversion is based on the average exchange rate for the 12 month period ending 31 May 2007.

² Currency conversion is based on the average exchange rate for the 12 month period ending 31 May 2007.

³ Currency conversion is based on the average exchange rate for the 12 month period ending 31 December 2006.

⁴ Currency conversion is based on the average exchange rate for the 12 month period ending 31 December 2006.

Relevant Product and Geographic Markets

18. In this section, the relevant market is defined in terms of its product and geographic dimensions.

Relevant Product Market

19. The Authority considers that there are four product markets affected by the proposed acquisition:
- (i) Supply of Replica Kits for each individual club/country;
 - (ii) Supply of Other Branded Apparel (excluding Replica Kits);
 - (iii) Supply of athletic footwear; and,
 - (iv) Supply of sports equipment.

Supply of Replica Kits for each Individual Club/Country

20. Replica Kit consists of authentic reproductions of the short- and long-sleeved shirt (also called the 'jersey'), shorts and socks to which a club's or national team's logo or trademark and those of the manufacturer and any sponsors are applied and which are worn by the relevant club's or team's players when competing in tournaments.
21. Kit suppliers have to compete to win the deal with a club/national team ("Kit Deal") before they are able to supply Replica Kits. Kit suppliers evaluate each club or team on its own merits, in terms of its success on the field, its profile nationally and internationally, and the size of its fan base. This, in turn, translates to greater brand exposure designed to drive sales.
22. The parties submit that Replica Kit and other branded apparel together constitute a single product market. The parties argue that the two segments form a single product market because a vast majority of branded apparel suppliers, in particular the more traditional "sports" apparel manufacturers, are also able to bid for the contract to supply Kit Deals.
23. In the UK, the Office of Fair Trading ("OFT") has considered that the Replica Kit of each football club represents a separate market.⁵ The OFT reached its conclusion on the basis that from a demand side perspective, consumers will not consider one football club's Replica Kit to be substitutable with another.
24. Replica Kit serves two purposes, first as a means for sports enthusiasts to display visible support for a particular club or team, and second, to distinguish themselves from fans of other clubs or teams.⁶ The OFT also decided that a national team's football Replica Kit belonged to a separate product market because consumers tend to buy a national team's Replica Kit in addition to, rather than as a substitute for, a

⁵ *Umbro v OFT* [2005] CAT 22, para 101-152; *Argos Ltd & Another v OFT* [2006] EWCA Civ 1318 (19 October 2006), para 189.

⁶ UK OFT Decision CA9/06/2003, para 553.

club's Replica Kit.⁷ The OFT also found the pricing of national team Replica Kits does not exert a competitive pressure upon the price of club Replica Kits.⁸

25. The OFT's conclusions regarding football Replica Kits also apply to other sports such as rugby. Different Replica Kits are not substitutable from the perspective of retailers. Retailers stock items according to anticipated consumer demand. It is unlikely that retailers would choose to stock more of one Replica Kit simply because of an increase in the wholesale price of another Replica Kit. Consumers would clearly still wish to purchase only the Replica Kit of their favourite club or country and there would therefore be little commercial scope for retailers to attempt to substitute between different Replica Kits, especially the Replica Kits for the most popular teams, in response to a change in their relative wholesale prices
26. The Authority has reviewed the market characteristics for the supply of Replica Kits in the State and agrees with the OFT's market definition. The Authority considers that the Replica Kit of each club or national team occupies a separate product market.

Supply of Other Branded Apparel (excluding Replica Kits)

27. Products within this segment include training kit (such as performance shirts, socks and shorts) and lifestyle clothing (such as track suits and work-out clothes). While the parties submit that the narrowest possible relevant product market is the supply of branded leisure apparel (excluding Replica Kit), they argue that that the market is likely to be wider to include *all suppliers* of leisure apparel since there is significant competition between "branded" products and retailers' "own brand" products.
28. The parties submit that brands which may have once been associated with sport have increasingly moved into the mainstream apparel market and these products are now worn as everyday items of clothing. Increasingly the branded items sold by the main suppliers centre upon mainstream clothing items such as T-shirts and polo shirts, and even items which might previously have served a predominantly sporting purpose (such as tracksuit tops, sweatshirts or training tops) are now worn as everyday clothing items.
29. The parties further submit that this market also includes the retailer's own brand products and licensed apparel (excluding Replica Kits), i.e., clothing that bears the logo of a particular club or national team (T-shirts, polo shirts, sweatshirts and scarves). Although a consumer who buys such an apparel item identified with a particular club or team would not view another club's or team's apparel as a substitute, the parties submit that licensed apparel is substitutable for other branded items or non-branded items of the same type.
30. While the Authority considers that other branded apparel (excluding Replica Kits) is a distinct product market, the precise market definition for branded apparel (excluding Replica Kits) can be left open for the purposes of this determination, as the Authority's conclusions concerning the competitive effects of the proposed acquisition, outlined

⁷ UK OFT Decision CA9/06/2003, para 544.

⁸ UK OFT Decision CA9/06/2003, para 555.

below, will be unaffected whether the relevant product market is as narrow as "athletic apparel" or broader to encompass all branded apparel.

Supply of Athletic Footwear

31. Regarding footwear, the parties submit that the narrowest possible relevant product market affected by the proposed acquisition is the supply of athletic footwear. Products within this market include for example, running shoes, tennis shoes, cross-training shoes, football boots (including performance football boots,⁹ moulded artificial turf football boots¹⁰ and indoor football boots¹¹) and sport inspired footwear that is used primarily for leisure.
32. There is considerable overlap between "athletic footwear" and other casual footwear. Footwear that was once associated with sports activities, such as running, basketball or tennis trainers are now frequently purchased for general leisure or "street" use. Nike estimates that [over 60%] of athletic footwear is now purchased for non-sports uses. Athletic footwear is therefore substitutable with other casual footwear for many consumers.
33. The parties submit that this view is supported by the submission of the merging parties in the European Commission's assessment of *Adidas/Reebok*.¹² The parties in that case took the view that the relevant product market was at least as wide as total athletic footwear. Although the industry often divides athletic footwear into the macro categories of sport shoes (i.e. footwear designed to play sport) and leisure/lifestyle shoes, the parties submitted that a significant proportion of consumers commonly purchase athletic footwear for prevalingly leisure use and substitute across all types of athletic shoes when making their purchases for both sport and leisure. Furthermore, many consumers buy, for example, a running shoe for its look, whilst never intending to practise sport in it. These observations accord with Nike's experiences. In addition, the major suppliers provide a selection of athletic footwear across the sports shoes and leisure/lifestyle shoes categories.
34. Notwithstanding their view that the supply of athletic footwear constitutes the narrowest possible product market, the parties acknowledge that the Authority may wish to assess the competitive impact of the proposed acquisition on the more specific areas of overlap between the parties' activities. Whilst not reaching a firm conclusion, the European Commission indicated in *Adidas/Reebok* that cleated (or "performance") football boots may constitute a separate product market, as it is the only sport category where the footwear appears to be used overwhelmingly for practising sport.¹³
35. In the parties' view, non-cleated football boots (i.e. turf and indoor boots) are part of the wider market of footwear for leisure purposes.

⁹ Cleated boots are used for playing on grass.

¹⁰ Non-cleated boots used for playing on artificial surfaces - these are also used for playing indoors and to a significant extent these are worn for leisure rather than for playing sport.

¹¹ Non-cleated boots used for playing football indoors - to a significant extent, these are also worn for leisure rather than for playing sport.

¹² Case No COMP/M.3942, *Adidas/Reebok*, 21 January 2006. (Hereinafter referred to as *Adidas/Reebok*)

¹³ *Adidas/Reebok*, para 16.

Consumers purchase Nike's best selling turf football boots ("Total 90") for "street" use. Indoor football boots are also used for general leisure wear. Both types of football boot offer consumers clear fashion appeal beyond their sporting function, and are viewed by a substantial proportion of customers as a lifestyle purchase. The parties submit that from a supply-side perspective, a manufacturer of other athletic footwear can readily produce turf and indoor boots without significant changes to its production facilities.

36. [...]
37. The parties also submit that in addition to investment in manufacturing capacity, a supplier of performance football boots also needs to invest in research and development in order to offer a credible product. Further investment will be required in marketing in order to build the brand. In this respect, existing sports apparel and footwear brands are well placed to move into or increase their production of performance football boots.
38. For the reasons set out above, the parties submit that the supply of performance football boots may form part of the overall athletic footwear market.
39. The Authority considers that the relevant product market affected by the proposed acquisition is at least as wide as the supply of performance football boots and may be wider to include the supply of all athletic footwear. However, the Authority does not need to come to a firm conclusion on the precise product market as the Authority's conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected whether the relevant product market is as narrow as performance football boots or broader to encompass all athletic footwear.

Supply of Sports Equipment

40. The final product market affected by the proposed acquisition is the market for the supply of sports equipment. Sports equipment encompasses product collections considered to be necessary to play a particular sport or fitness activity such as fitness products, golf products, backpacks/bags, eyewear/goggles, timing products (watches etc.), gloves and shin guards/kneepads. The particular area of overlap between the parties is in the supply of football related equipment, namely including, goalkeepers' gloves, footballs and shin guards.

Relevant Geographic Market

41. The parties submit that for each of the four product markets identified above the relevant geographic market is likely to be Europe-wide. The Authority believes that the relevant geographic market in each case is likely to be at least as wide as the State. However, it does recognise that the relevant geographic market may be wider than the State. The Authority does not need to come to a view on this because the Authority's conclusions concerning the competitive effects of the proposed acquisition, outlined below, will be unaffected if the relevant geographic market is considered as either the State or as Europe-wide.

Market Structure

42. Market structure can be characterised as the number and size distribution of firms. The initial impact of any merger is felt on market structure as two firms pre-merger become one firm post merger. In this section, the pre- and post-acquisition market shares in each of the four relevant markets identified above are considered.

Measuring Concentration

43. Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. It refers in particular to the number and size distribution of firms in the relevant market: the fewer the number of firms and/or the more disparate the firms are in terms of their sizes, the more concentrated the market. The significance of concentration in competition analysis is that in highly concentrated markets in which barriers to entry are also high, effective competition is likely to be weak.
44. The most commonly used measure of concentration is the Herfindahl-Hirschman index (HHI), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Competition Authority's *Merger Guidelines*,¹⁴ a HHI in excess of 1800 indicates a situation where "mergers occur in already highly concentrated industries".¹⁵
45. As the Competition Authority's *Merger Guidelines* make clear, in order to accurately characterise the competitive conditions in a market, attention has also to be paid to factors such as barriers to entry and exit, buyer power, switching costs, and so on. Thus, while market shares and the HHI index are used as screening mechanisms, reference to other market characteristics is necessary in order to determine the presence of market power post acquisition.

Market Structure for the Supply of Replica Kits for each individual club/country in the State

46. Since there is a separate market for the supply of Replica Kits for each individual club/country and one supplier supplies the Replica Kit, it is not necessary to calculate the HHI index. As will be described below, intense competition takes place between suppliers for the rights to supply each club's/country's Replica Kit. The more high-profile the club/country, the more intense the competition between suppliers. The Authority examines in detail below whether the proposed acquisition might in some way lessen the degree of competition between suppliers.

Market Structure for the Supply of Branded Apparel (excluding Replica Kits) in the State

47. Precise data on the market shares of each participant in the market for the supply of branded apparel (excluding Replica Kit) in the State is not available. However, the parties provide internal estimates of shares

¹⁴ Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004, hereinafter referred to as Competition Authority, *Merger Guidelines*, which are available on the website, www.tca.ie.

¹⁵ Competition Authority, *Merger Guidelines*, paragraph 3.10.

of supply in the narrower branded athletic apparel segment (excluding Replica Kits) for the Irish market. These are presented in Table 1 below.

Table 1
Estimated Shares in the Supply of Branded Athletic Apparel, the State, Pre & Post-acquisition, 2007¹

Supplier	Estimated Market Shares Pre-acquisition (%)	Estimated Market Shares Post-acquisition (%)	Change in Summary Measures
Nike	[20-25]	[30-35]	
Adidas/Reebok	[25-30]	[25-30]	
O'Neills	[5-10]	[5-10]	
Canterbury	[0-5]	[0-5]	
Puma	[0-5]	[0-5]	
Umbro	[0-5]	-	
Others ²	[35-40]	[35-40]	
Total	100	100	
Summary Measures			
C ₂	[50-55]	[55-60]	[0-5]
HHI ³	1556	1660	104

Notes:

1. In order to calculate these estimates, Nike extrapolated estimates of overall market share based on its share of supply to its key retailers in the State. The parties state that this does not take into account the wider market both in terms of other retailers and in terms of brands sold through that brand's own retail outlets. By contrast, these factors are taken into account in [proprietary] data for Great Britain. The parties submit that if the data were calculated consistently with [proprietary] data for Great Britain then Nike's share would decline substantially and would be in line with the figures for Great Britain.
2. Other brands include: Starter, Diadora, Le Coq Sportif, Champion, Russell Athletic, Under Armour, Fila, Converse, USA Pro, Asics, Speedo, Ellesse, New Balance, Donnay and Fred Perry.
3. For the purposes of calculating the HHI index, a market share of [0-5%] is attributed to each of the "Others".

Source: The Parties

48. Based on the estimated figures in Table 1 above for 2007, the merged entity post-acquisition will have a market share of [30-35%] and the HHI index will increase from 1,556 to 1,660, an increase or delta of 104.
49. The Authority's merger guidelines set out a series of thresholds that can be used as a rough and ready method of screening mergers. The increase in the HHI between the pre- and post-acquisition environments (i.e., a 'delta' of 104) combined with a post-acquisition HHI of 1,660 indicates that the proposed acquisition would give rise to a merger Zone B situation. Mergers cases falling in Zone B are characterised by the Authority's *Merger Guidelines* as those that may raise significant competitive concerns. However, as mentioned in paragraph 45 above, an examination of other market characteristics is

necessary in order to determine the competitive effects of the proposed acquisition. Such an examination is described in detail below.

Market Structure for the Supply of Athletic Footwear in the State

50. As with branded apparel (excluding Replica Kits) above, precise data on the market shares of each participant in the market for the supply of athletic footwear in the State is not available. However, the parties provide internal estimates of shares of supply in athletic footwear in the State. These are presented in Table 2 below.

Table 2
Estimated Market Shares in the Market for the Supply of Athletic Footwear, the State, Pre & Post-acquisition, 2007¹

Supplier	Estimated Market Shares Pre-acquisition (%)	Estimated Market Shares Post-acquisition (%)	Change in Summary Measures
Nike	[35-40]	[35-40]	
Adidas/Reebok	[30-35]	[30-35]	
Puma	[5-10]	[5-10]	
Asics	[0-5]	[0-5]	
K-Swiss	[0-5]	[0-5]	
Umbro	[0-5]	-	
Others ²	[15-20]	[15-20]	
Total	100	100	
Summary Measures			
C ₂	[65-70]	[70-75]	[0-5]
HHI ³	2480	2620	140

Notes:

1. In order to calculate these estimates, the Nike extrapolated estimates of overall market share based on its share of supply to its key retailers in the State. The parties state that this does not take into account the wider market both in terms of other retailers and in terms of brands sold through that brand's own retail outlets. These factors are taken into account in the third party Great Britain data. For example, the estimates exclude brands such as Clarkes, CICA, Next, Tesco, Marks & Spencer, Diesel and Heeleys, which the parties claim clearly compete with Nike in the State. Such brands, however, are taken into account in the [proprietary data for] Great Britain. The parties submit that if the data were calculated consistently with the [proprietary] data for Great Britain then Nike's share would decline substantially and would be in line with the figures for Great Britain.
2. Other brands include: Diadora, New Balance, Mizuno and Lacoste.
3. For the purposes of calculating the HHI index, a market share of [0-5%] is attributed to each of the "Others".

Source: The Parties

51. Based on the market share figures in Table 2 above for 2007, the merged entity post-acquisition will have a market share of [35-40%] and the HHI index will increase from 2,480 to 2,620, an increase or delta of 140.

52. The increase in the HHI of 140 combined with a post-acquisition HHI of 2,620 indicates that the proposed acquisition would give rise to a merger Zone C situation. Mergers cases falling in Zone C are characterised by the Authority's *Merger Guidelines* as those that usually raise significant competitive concerns. However, an examination of other market characteristics is necessary in order to determine the competitive effects of the proposed acquisition.

Market Structure for the Supply of Sports Equipment in the State

53. Precise data on the market shares of each market participant in the market for the supply of sports equipment in the State is not available. However, the parties provide internal estimates of shares of supply in sports equipment in the State. These are presented in Table 3 below.

Table 3
Estimated Market Shares in the Market for the Supply of Sports Equipment, the State, Pre & Post-acquisition, 2007

Supplier	Estimated Market Shares Pre-acquisition (%)	Estimated Market Shares Post-acquisition (%)	Change in Summary Measures
Nike	[20-25]	[25-30]	
Adidas/Reebok	[15-20]	[15-20]	
O'Neills	[5-10]	[5-10]	
Umbro	[5-10]	-	
Canterbury	[5-10]	[5-10]	
Puma	[1-5]	[1-5]	
Others ¹	[35-40]	[35-40]	
Total	100	100	
Summary Measures			
C ₂	[35-40]	[45-50]	[5-10]
HHI ²	1065	1385	320

Notes:

1. Other brands include: Le Coq Sportif, Jansport, Sondica, Uhlsport, Reusche, Mitre and Patrick.
2. For the purposes of calculating the HHI index, a market share of [5-10%] is attributed to each of the "Others".

Source: The Parties

54. Based on the market share figures in Table 3 above for 2007, the merged entity post-acquisition will have a market share of [25-30%] and the HHI index will increase from 1,065 to 1,385, an increase or delta of 320.
55. The increase in the HHI of 320 combined with a post-acquisition HHI of 1,385 indicates that the proposed acquisition would give rise to a merger Zone B situation. Mergers cases falling in Zone B are characterised by the Authority's *Merger Guidelines* as those that may raise significant competitive concerns. The competitive effects of the proposed acquisition in the market for the supply of branded athletic apparel in the State are assessed below.

Competitive Analysis

56. In this section, the issue of whether or not the proposed acquisition will result in a substantial lessening of competition ("SLC") in any of the four markets identified above is addressed. Both unilateral and co-ordinated effects are considered.¹⁶
57. During the course of its investigation, the Authority sent a detailed questionnaire to Nike's five largest customers in the State: [...]. Nike's sales to these five retailers accounted for [80-90%] of Nike's total sales in the State in 2007. Three retailers responded to the Authority's questionnaire.

Market for the Supply of Replica Kits for each Individual Club/Country

Unilateral Effects

58. Unilateral effects refers to a situation where the merged entity has the ability post-acquisition to unilaterally exercise market power by, for example, raising price or reducing output.
59. Although there is no overlap between the merging parties in the State, given that the supply of the Replica Kit of each individual club/country represents a separate market, this does not mean that unilateral effects should not be considered. This reflects the fact that the undertakings involved may bid against each other for the right to supply Replica Kit. The acquisition of a competitor by Nike may increase the market power of Nike post-acquisition. However, as set out below, when discussing co-ordinated effects, there are a number of firms that compete in this market and as a result post-acquisition the merged entity would not unilaterally be able to raise price.

Co-ordinated Effects

60. The negotiation and securing of Kit Deals for top-tier sports teams such as the Irish national rugby and football teams are highly contested. In order to retain/gain rights, suppliers must offer very competitive terms in the face of aggressive competition. Major clubs/national teams have significant bargaining power and negotiate with suppliers to secure the best commercial deal. The Authority has therefore considered whether the proposed acquisition may lead to a substantial lessening in the level of competition between suppliers for contracts to supply Replica Kits. In particular, the likelihood of co-ordinated effects is considered.
61. Co-ordinated effects is where the proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will engage in co-ordinated interaction to raise prices or decrease output. Such interaction refers to actions that are profitable only as a result of each firm accommodating the reactions of others. In this instance, the Authority has examined whether the proposed acquisition may alter the nature of competition for contracts to supply Replica Kits between rival suppliers by making co-ordinated interaction a more attractive and viable option.

¹⁶ For further discussion of unilateral and co-ordinated effects see section 4 of the Authority's Merger *Guidelines*.

62. Co-ordinated effects depend on market characteristics supporting such strategic interaction. Firms must be able to observe each other's actions and must be able to detect and punish deviations from the common (joint profit maximising) strategy.¹⁷
63. There are a number of high-profile sports teams in the State that generate intense competition amongst suppliers for the right to supply the teams' kit. These include the Irish national football team, the Irish national, Leinster and Munster rugby teams, and each of the 26 counties participating in the hurling and Gaelic football competitions organised by the Gaelic Athletic Association ("GAA").¹⁸
64. Nike does not currently supply Replica Kit for any Irish sports team. Nike has not won any contracts to supply Replica Kits in the State since 2000 [...]. Nike held the contract for the Irish Rugby Football Union ("IRFU") between August 1997 and July 2000. Since that date, the contract has been held by Canterbury and is next due for renewal in 2009. Canterbury also has a contract to supply the Replica Kit with Leinster Rugby. Adidas currently has a contract with Munster Rugby.
65. Nike is constantly evaluating opportunities to bid for and win Kit Deals for both football and rugby across Europe, including Ireland, and, therefore, is a potential bidder for contracts to supply Replica Kits in the State.
66. [...] The contracts for any clubs/teams in the State that have worn Umbro branded Replica Kit since 2002 have been held by Toplion, Umbro's licensee for the State. In 2006, Toplion renewed its contract with the Irish national football team until 2014. The Irish national football team has worn Umbro-branded kit since 1994.
67. Neither Nike nor Umbro have submitted any bids in respect of GAA teams in the State. Their position as potential bidders for contracts to supply Replica Kits might be affected by Rule 13 of the *GAA Official Guide* (January 2007 edition¹⁹) which states:

The following regulations shall apply to playing gear, specifically jerseys, shorts, stockings, track-suits and kit-bags worn/used for games, training, interviews and photographs.

(a) **They shall be of Irish manufacture** and shall be readily available through normal retail outlets. **These requirements shall also apply to replica playing gear.** (Emphasis added)

68. The Authority is satisfied that the proposed acquisition will not lead to a decline in the level of competition amongst suppliers for securing contracts to supply Replica Kits. Clubs and national teams in the State seeking contracts to supply Replica Kits will continue to have a significant number of suppliers competing for those contracts. Rival competitors include Adidas, Puma, Canterbury, and O'Neills. In order to retain their existing rights or to acquire further rights, Nike/Umbro

¹⁷ For a discussion of the conditions required for co-ordinated behaviour, see Marc Ivaldi, Bruno Jullien, Patrick Rey, Paul Seabright and Jean Tirole, *The Economics of Tacit Collusion*, Final Report for DG Competition, European Commission, March 2003.

¹⁸ The Kit Deals for larger and historically more successful counties such as Dublin and Cork will generate more competition amongst suppliers than Kit Deals for counties with a lower profile.

¹⁹ http://www.gaa.ie/files/official_reports/og_part1_jan_2007.pdf.

would need to offer competitive terms and would face aggressive competition from a number of suppliers.

69. The Authority considers that this is not a market that lends itself to tacit coordination. As noted above, there are a significant number of suppliers in this market with varying market shares. All suppliers have and will continue to have an incentive to compete fiercely with each other to gain contracts to supply Replica Kits.
70. Furthermore, the Authority's analysis indicates that the proposed acquisition will not change the prevailing market conditions that serve to make it difficult for competitors to be able to reach a common understanding to lessen competition. This is because:
- Bilateral negotiations take place between suppliers and clubs/national teams regarding contracts to supply Replica Kits and the details of such negotiations are not publicly disclosed. This will continue to be the case post-acquisition. As a result, it would be very difficult for suppliers to detect any deviation by a rival from any agreement to limit the degree of competition for a particular contract(s)²⁰;
 - Contracts for the supply of Replica Kits for high-profile clubs/national teams tend to be lengthy in duration and, therefore, infrequent in nature.²¹ As a result, suppliers have a substantial incentive to deviate from any agreement to limit the degree of competition for a particular contract(s);
 - The value of a contract for the supply of Replica Kits is partly dependent on the success of the club/country. Given the lengthy nature of these contracts, it is therefore likely to be difficult to predict their precise value, thus making it difficult for suppliers to reach agreement on a common valuation. This makes it even more difficult for suppliers to reach any agreement to limit the degree of competition for a particular contract(s); and
 - The relevant market will continue to be served by a large number of competitors that are quite varied in size pre- and post-merger.

Market for the Supply of Branded Apparel (excluding Replica Kits) in the State

71. As described in paragraphs 47-49 above, the HHI index indicates that the proposed acquisition will give rise to a merger Zone B situation in the market for the supply of branded apparel (excluding Replica Kit) in

²⁰ Given the lucrative nature of Kit Deals with high-profile clubs/national teams, it is highly unlikely that suppliers would have an incentive in the first place to enter into a tacit agreement whereby suppliers would divide out contracts to supply Replica Kits.

²¹ For example, Nike's current contract for the supply of Replica Kits for Manchester United runs for the period 2002-2015 while the period of Nike's [current] contract with Arsenal is [expected to last until 2011]. However, high-profile clubs/countries can switch supplier during a contract as evidenced by Chelsea's recent decision to terminate its contract with Umbro mid-term and switch to Adidas. Thus, the threat of high-profile clubs/countries switching supplier during a contract increases uncertainty and makes it even more difficult for suppliers to reach an agreement to limit the degree of competition for these contracts. In effect, suppliers have the ability and incentive to deviate from any agreement to limit competition even after a contract for the supply of Replica Kit has been awarded by a club/country.

the State.²² Mergers cases falling in Zone B are characterised by the Authority's *Merger Guidelines* as those that may raise significant competitive concerns.

Unilateral Effects

72. The parties submit that this market is characterised by strong competition from powerful competitors such as Adidas, and a host of other players (both "fashion" and "sports" brands) which together account for the majority of the share of supply. The parties submit that Umbro is a relatively small player in this market and this has also been confirmed to the Authority in its survey of customers. All three respondents to the Authority's questionnaire stated that Umbro has never been an important player in the branded apparel (excluding Replica Kit) market in the State and that its share of this market has been falling in recent years. One retailer expressed the view that Umbro is no longer a premium sports brand. All three retailers expressed the view that the proposed acquisition may be beneficial if Nike reinvigorates the Umbro brand.
73. The parties submit that there will continue to be significant constraints on Nike's ability to raise prices post acquisition. The parties also submit that there will continue to be strong competition from its competitors such as Adidas/Reebok and there will also continue to be significant countervailing power on the part of the retail chains.
74. Given the large number of competitors currently active in the supply of branded apparel in the State and Umbro's small market share, the Authority has formed the view that the merged entity will not have the power to unilaterally exercise market power. There are many suppliers who currently exert and will continue to exert a competitive constraint on the combined Nike/Umbro entity.

Co-ordinated Effects

75. The parties submit that the market for branded apparel (excluding Replica Kit) is characterised by intense competition between suppliers, whose strategies are based upon increasing share of supply rather than stabilising prices and shares of supply. The parties submit that this market is not characterised by stagnation and a lack of competition. This is a dynamic segment with frequent changes in usage, appeal and trend.
76. The parties further submit that this is not a market that lends itself to tacit coordination. Products are differentiated through design features and through the development of important brand identities. Clothing suppliers invest significant amounts on these elements in order to distinguish their products from their competitors. As noted above, there are a significant number of suppliers in this market with varying market shares. All suppliers have and will continue to have an incentive to compete vigorously with each other to gain further sales. Any tacit coordination in such a segment would be very difficult to develop or sustain. Finally, the major retailers have countervailing power which would undermine any tacit coordination.

²² As noted in paragraph 47 above, the HHI figures are based on the parties' internal estimates of shares of supply in the narrower branded athletic apparel segment (excluding Replica Kits) for the Irish market.

77. The Authority's analysis indicates that the proposed acquisition will not change the prevailing market conditions that serve to make it difficult for competitors to be able to reach a common understanding to lessen competition. This is because:
- The relevant market will continue to be served by a large number of competitors, that are quite varied in size pre- and post-merger; and
 - Price discounting will remain a feature of the competitive process.

Market for the Supply of Athletic Footwear in the State

78. As described in paragraphs 50-52 above, the HHI index indicates that the proposed acquisition will give rise to a merger Zone C situation in the market for the supply of Athletic footwear in the State.²³ Mergers cases falling in Zone C are characterised by the Authority's *Merger Guidelines* as those that usually raise significant competitive concerns.

Unilateral Effects

79. As is the case in the market for the supply of branded apparel (excluding Replica Kit) in the State, Umbro is a very small player in the market for the supply of athletic footwear in the State. Not only will Adidas/Reebok remain a significant competitor with a similar market share to the merged entity but there are also a significant number of other competitors such as Puma, Asics, Lonsdale, Lacoste and K-Swiss - all of whom are bigger players in the athletic footwear sector than Umbro (which has a share of [0-5%] in the State).
80. The parties submit that the main competitive constraints upon Nike in this market are competitors such as Adidas/Reebok, K-Swiss and Puma. This will remain unchanged as a result of the proposed acquisition. Although it is currently a very concentrated market, the increment in market share arising from the proposed acquisition is very small and a merged Nike/Umbro entity will continue to be subject to competitive pressure and price constraints from a wide variety of competitors.
81. The parties further submit that, with reference to the performance football boots segment of the athletic footwear market, Adidas is the current leader in the State with an estimated share of supply of approximately [40-45%]. Following the proposed acquisition, the parties estimate that a combined Nike/Umbro will have an estimated share of supply of approximately [40-45%]. Adidas will remain a very strong competitor in this sector. There are also other significant players such as Puma with an estimated [15-20%] share of supply and which has a strong presence in the Gaelic Athletic Association. In addition, the parties submit that niche football brands such as Diadora, Lotto, Joma, and Mizuno also supply performance football boots in the State. Accordingly, the wide range of competitors will continue to act as an effective competitive constraint upon the combined Nike/Umbro entity in the performance football boot segment.

²³ As noted in paragraph 52 above, the HHI figures are based on the parties' internal estimates of shares of supply in the narrower branded athletic apparel segment (excluding Replica Kits) for the Irish market.

82. All three respondents to the Authority's questionnaire stated that Umbro is a relatively small player in the market for athletic footwear in the State and that its share of this market has been falling in recent years. All three retailers expressed the view that the proposed acquisition may be beneficial if Nike reinvigorates the Umbro brand.
83. Given the large number of competitors currently active in the supply of athletic footwear in the State and Umbro's small market share, the Authority has formed the view that the merged entity will not have the power to unilaterally exercise market power.

Co-ordinated Effects

84. The parties submit that there is no possibility of co-ordinated behaviour post-acquisition because of the nature of the products in question and the competitiveness of the market. Both Nike and Adidas invest heavily in product innovation and in extensive advertising campaigns for new athletic footwear and football boots. The parties note that Nike and Adidas each launch approximately 30 new styles of football boot every year. Nike and Adidas also compete to gain endorsements from top sportsmen and sportswomen.
85. The parties submit that such product innovation and aggressive marketing is not indicative of a stable market with limited competition. The competitive landscape will not be affected by the acquisition by the proposed acquisition. In addition, both Nike and Adidas face competition from the likes of Puma, which has been growing its market share in recent years, and also niche football brands such as Diadora, Mizuno, Lotto, Uhlsport and Kelme. The parties note that Umbro is a relatively small and declining player in the performance football boot segment. This view was confirmed in the Authority's survey of customers.
86. For the same reasons outlined in paragraph 76 above in relation to the market for the supply of branded apparel (excluding Replica Kit) in the State, the Authority's analysis indicates that the proposed acquisition will not change the prevailing market conditions that serve to make it difficult for competitors to be able to reach a common understanding to lessen competition.

Market for the Supply of sports equipment in the State

87. As described in paragraphs 53-55 above, the HHI index indicates that the proposed acquisition will give rise to a merger Zone B situation in the market for the supply of sports equipment in the State. Mergers cases falling in Zone B are characterised by the Authority's *Merger Guidelines* as those that may raise significant competitive concerns.

Unilateral Effects

88. The parties submit that the supply of sports equipment is characterised by the existence of numerous multi-national suppliers who provide full ranges of sports equipment. Brands such as Adidas/Reebok, Puma, Asics, Mizuno, Le Coq Sportif, Fila and Diadora all exert competitive constraints upon Nike and Umbro across a broad range of sports equipment.

89. The parties further submit that in the key areas of product overlap between Nike and Umbro (footballs, shin guards and goalkeepers' gloves), Nike and Umbro face competition from a number of other players such as Adidas, Mitre, Puma, Patrick, O'Neills. The parties argue that these competitors will continue to act as competitive constraints against Nike/Umbro and the merged entity will not be in a position to raise prices above the competitive level.
90. Both respondents to the Authority's questionnaire stated that Umbro is a relatively small player in the market for sports equipment in the State. Both retailers expressed the view that the proposed acquisition may be beneficial if Nike reinvigorates the Umbro brand.
91. Given the large number of competitors currently active in the supply of sports equipment in the State, the Authority is satisfied that the merged entity will not have the power to unilaterally exercise market power.

Co-ordinated Effects

92. The parties submit that the proposed acquisition does not raise any concerns regarding coordinated effects in the sports equipment sector. This market is characterised by the supply of highly differentiated branded products by a wide variety of suppliers. The parties state that these suppliers compete aggressively with each other and will continue to do so post-acquisition. The suppliers expend great effort and cost on developing and marketing new equipment and marketing them globally. The rights, for example, to supply official match balls for sports such as football and rugby are keenly contested. Endorsements for particular items of kit such as goalkeepers' gloves and shin guards are achieved at great expense. These efforts are all undertaken with the aim of competing with other suppliers and increasing share of supply.
93. As with the other relevant markets affected by the proposed acquisition, the Authority is satisfied that the proposed acquisition will not change the prevailing market conditions that serve to make it difficult for competitors to be able to reach a common understanding to lessen competition.

Conclusion

94. The Authority is of the view that for the reasons set out above, the proposed acquisition will not substantially lessen competition in any of the four relevant markets outlined in paragraphs 18-41 above.

Determination

The Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition of sole control of Umbro plc by Nike Inc will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority