

COMMERCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE
(PUBLIC COPY)

Date: 7 October 2005

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business or shares acquisition.

PART 1: TRANSACTION DETAILS

1 The business or share acquisition for which clearance is sought

- 1.1 Clearance is sought for the acquisition by Essilor New Zealand Limited ("Essilor") of all shares in Prolab (Wellington) Limited ("Prolab") currently owned by 20 shareholders. The total number of shares in Prolab is 435,000.
- 1.2 Attached as Appendix D is a copy of the memorandum of understanding between Essilor and Prolab relating to the proposed share acquisition.

2. The person giving the notice

- 2.1 This notice is given on behalf of Essilor by:

Brookfields Lawyers (solicitor for the acquirer)
Brookfields House
Level 11
19 Victoria Street West
Auckland

PO Box 240, Auckland 1

Attention: Ewe Leong Lim

Telephone: (9) 379 9350

Fax: (9) 379 3224

DX CP24134

Email: lim@brookfields.co.nz

2.2 Contact details of the acquirer are:

Essilor Laboratories (NZ) Limited
c/- Ewe Leong Lim
Brookfields Lawyers
Brookfields House
19 Victoria Street West
Auckland

PO Box 240, Auckland 1

Telephone: (9) 379 9350

Fax: (9) 379 3224

DX CP24134

Email: lim@brookfields.co.nz

3. Confidentiality

Essilor seeks that the Commission treats the memorandum of understanding (and any subsequent acquisition agreement) provided under section 1.2 above as confidential on a permanent basis given the commercial nature of the contents of the agreement, and the likelihood that the disclosure of the contents of the agreement would prejudice the commercial position of the parties involved.

We would also request that the Commission considers that it maintains confidentiality in respect of the following information (highlighted throughout this application) on a permanent basis:

- (a) the purchase price of the shares;
- (b) the potential rebate on goods and services provided by Essilor to the shareholders of Prolab in the memorandum of understanding; and
- (c) the trading, market share and turnover information contained in this application.

Due to the commercial sensitivity of the information, if this information was not withheld, it would prejudice the commercial positions of both Essilor and Prolab.

If further information is required by the Commission from Essilor, then Essilor will advise the Commission if it wishes such information to be treated as confidential.

4. Details of the Participants

4.1 The person who proposes to acquire the shares referred to in section 1 above is Essilor. The owners of the shares are the shareholders set out in Appendix C.

4.2 Contact details for Essilor are set out in section 2 above.

Contact details for Prolab are:

Prolab (Wellington) Limited
c/o Miller Dean Chartered Accountants Limited
Level 5, South Mark House
203-209 Willis Street
Wellington

Telephone: (04) 385 0862
Fax: (04) 384 3381
Attention: Lance Burgess

5.1 Acquirer group/associates:

Essilor is a wholly owned subsidiary of Essilor International S.A., a listed French company. Essilor International S.A. has no other investment in New Zealand.

Essilor is a holding company of the following companies:

- (a) Essilor Laboratories (NZ) Limited (wholly owned). This is the Essilor group subsidiary operating in the ophthalmic lens processing market, in particular the edging and fitting of lenses.
- (b) Vision Web New Zealand Limited (wholly owned). This is a non-trading entity.
- (c) Xtra Vision Limited (wholly owned). This is also a non-trading entity.
- (d) Direct Optical Supplies Limited (wholly owned). This is the Essilor group company that supplies unprocessed and semi-processed lenses to Essilor Laboratories (NZ) Limited as well as other laboratories (excluding Hoya (Hoya's laboratory by choice, only processes Hoya lenses)).
- (e) Optical Laboratories NZ Limited (20% owned). This is a Christchurch based lens processing laboratory. The other 80% shareholder are the executors of the late Mr and Mrs Turner, who previously managed the day to day operation of Optical Laboratories NZ Limited.

5.2 Target company group/associates:

Prolab is a New Zealand company. It is owned by predominantly practicing and/or retired optometrists. The current shareholders are set out in Appendix C to this application.

Prolab is a holding company of the following companies:

- (a) Prolab Limited (wholly owned) This is a non-trading entity.

- (b) Professional Optical Laboratory Limited (wholly owned) This is a non-trading entity.
- 6 Neither Essilor nor Prolab nor any of their interconnected bodies corporate has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in the other participant.
- 7 Neither Essilor nor Prolab nor any of their interconnected bodies corporate has any links, formal or informal, with the other participant and other persons identified in section 5 and its/their existing competitors in each market, other than Direct Optical Supplies Limited which does however supply unprocessed and semi-processed lenses to Prolab, however so do other lens manufacturers.
- 8 Duy Phuong Nguyen, Frederic Mathieu, Philippe Bonnet, Patrick Cherrier and Carol Xueref are the directors of Essilor. They are also directors of the following companies:
- (a) Nguyen: Essilor Laboratories (NZ) Limited, Direct Optical Supplies (NZ) Limited, Xtra Vision Limited (non-trading company) and Optical Laboratories NZ Limited;
 - (b) Mathieu: Essilor Laboratories (NZ) Limited, Direct Optical Supplies (NZ) Limited and Xtra Vision Limited (non-trading company);
 - (c) Bonnet: Direct Optical Supplies (NZ) Limited; and
 - (d) Cherrier: Direct Optical Supplies (NZ) Limited and Xtra Vision Limited (non-trading company).
- 9 As stated in section 5, Essilor is a holding company for Essilor International S.A. Investment in New Zealand. Essilor was incorporated in 1999.
- Essilor Laboratories (NZ) Limited is the company that undertakes lens processing in New Zealand for the Essilor Group, in particular the grinding, coating, tinting, edging and fitting of lenses.
- Direct Optical Supplies Limited is the Essilor New Zealand Group company that supplies unfinished or partially finished lenses to Essilor Laboratories (NZ) Limited as well as to other laboratories including Essilor Laboratories (NZ) Limited's competitors' laboratories in New Zealand.
- Prolab is solely an optical laboratory lens processor which, in addition to edging and fitting of lenses, also carries out grinding and coating.
- 10 This proposal is made to seek clearance from the Commission to the acquisition by Essilor of the shares identified in section 1 above.

Currently there are two workshops in Wellington operated by Essilor Laboratories (NZ) Limited and Prolab. [].

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

- 11.1 We believe that there will be an aggregation of business activities in the New Zealand ophthalmic lens processing market as a result of the proposed acquisition.
- 11.2 We attach Appendix A which sets out our understanding of the New Zealand ophthalmic lens market and our estimates of turnover (and therefore market shares).

As you should be aware from the above, Essilor has the following companies operating in New Zealand in the ophthalmic lens processing market:

- (a) Essilor Laboratories (NZ) Limited is based in Auckland, Wellington, Hamilton, Palmerston North and Christchurch and services the national market. While the Wellington, Hamilton and Palmerston North workshops merely edge and fit lenses, the Auckland and Christchurch workshops in addition also grind and coat lenses; and
- (b) Optical Laboratories Limited (Essilor has a 20% shareholding). It is based in Christchurch but services nationwide.

Prolab predominantly services the Wellington area, including the surrounding areas of Levin, Napier and Palmerston North etc.

Differentiated Product Markets

- 12 There are no other avenues by which optometrists can have lenses processed other than the optical laboratories. There are no real differences between laboratories themselves as they all offer similar services. However, while they all process a variety of brands, there are some differences between exactly which brands they supply.

The optometrists individually may have preferred brands when it comes to special lenses, although no brand of lenses really excel in any specific area beyond other brands.

- 13 There are no real characteristics that cause products to be differentiated other than price and performance (the main characteristics) and the brand of lenses processed.

While there are no other way in which to get prescription lenses, there are substitutes to prescription lenses. A close substitute to prescription lenses spectacles is contact lenses. More distant substitutes are ready made spectacles and laser surgery. For both of the latter substitutes, optometrists are not involved. All lens processors are so substitutable that no optometrists would

hesitate to switch lens processors if there was a substantial price difference between them. The optometrists are usually well informed of the options available to them and the general prices and could easily and confidently switch lens processors. Indeed, most, if not all, optometrists maintain accounts with more than one laboratory.

[]

While those with eye problems may consider ready made spectacles, contact lenses or laser surgery substitutes for prescribed spectacles, optometrists do not perceive these as substitutable for prescribed lenses.

In summary, while there is some product differentiation of specialty lenses in regard to brands, all lens processors are substitutable with one another.

Essilor acknowledges that should it and all its associated and interconnected companies disappear from the New Zealand market, this would not result in any material change to the eye care market in New Zealand. It is anticipated that other competitors would merely increase capacity to cover the market requirement. Capacity can be added fairly quickly.

There are usually no binding arrangements between a laboratory and an optometrist. The lack of any binding arrangement and the ease in which optometrists substitute laboratories (indeed most optometrists maintain accounts with all of the lens processing laboratories), these two factors lead to a very high degree of constraint on the laboratories in New Zealand. Most laboratories insofar as Essilor is aware offer some form of discount or rebate to seek to obtain optometrists' loyalty but optometrists are driven primarily by price, performance and customer service.

Vertical Integration

- 14 There is a degree of vertical integration but we believe the effect is small.

Direct Optical Supplies Limited (a wholly owned subsidiary of Essilor) is a manufacturer/ lens caster distributor and supplies downstream to lens processors nationwide. Direct Optical Supplies Limited supplies all laboratories other than Hoya. Hoya, by choice only uses its own Hoya lenses.

Prolab does acquire unprocessed and semi-processed lenses from Direct Optical Supplies (NZ) Limited (as well as from other manufacturers/lens casters).

- 15.1 In respect of the market the subject of this application, Essilor has not notified to the Commission in the last 3 years of the acquisition of any assets of a business in NZ or shares involving a company in NZ, nor has any interconnected body corporate of Essilor New Zealand Limited. Essilor may have or will shortly submit an application for a clearance for the acquisition of the shareholding in Optical Laboratories.

In respect of the market the subject of this application, Prolab has not notified to the Commission in the last 3 years the acquisition of any assets of a business in NZ or shares involving a company in NZ, nor has any interconnected body corporate of Prolab (Wellington) Limited.

- 15.2 In respect of the market the subject of this application, Essilor has not acquired any assets of a business in NZ or shares involving a company in NZ in the last 3 years [].

In respect of the market the subject of this application, Essilor has in the last 3 years entered into contracts with [] customers in NZ.

[]

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

16 Essilor's understanding of the New Zealand ophthalmic lens market is as set out in Appendix A.

As you will see from Appendix A, the market is broken up into 4 levels:

- (a) manufacturers/lens casters;
- (b) lens processors/optical laboratories;
- (c) retailers/optometrist practices;
- (d) consumer.

We believe the relevant market is the ophthalmic lens processing market but as Essilor (through Direct Optical Supplies Limited) supplies the unprocessed and semi-processed lenses, we also set out below the table for manufacturing/lens casters.

Manufacturer/Lens Casting Market

Rank	Supplier	Owner(s) of supplier	Estimated % of productive capacity	Estimated % of market sales
1	Direct Optical Supplies Limited	Essilor	N/A	[]
2	Sola	Sola International Inc	N/A	[]
3	Hoya	Hoya	N/A	[]
4	Others	Younger Optics, Gerber Coburn, Rodenstock, Zeiss and many others	N/A	[]

Ophthalmic Lens processing market

Rank	Supplier	Owner(s) of supplier	Estimated % of * productive capacity	Estimated % of market sales
1	OPSM	OPSM	N/A	[]
2	Essilor Laboratories (NZ)	Essilor	N/A	[]
3	Sola	Sola International Inc	N/A	[]
4	Optical Laboratories NZ Limited	Essilor (20%) & individuals	N/A	[]
5	Prolab (Wellington)	Individuals	N/A	[]
6	Hoya	Hoya	N/A	[]
7	Lensbiz	Individuals	N/A	[]
8	Others	Lensworx, Read Prescriptions, Universal, Stoco	N/A	[]

* All suppliers currently operate at substantially less than their productive capacity.

The above are estimates only given that no competitor shares such market information. However, we believe our estimates to be accurate to within 10%.

Other Considerations

16.5 We believe that all participants of the ophthalmic lens processing market (including Essilor) are currently operating substantially below their full productive capacity. Accordingly, we believe that there are no "near entrants" who have productive capacity but are not utilising it at all.

16.6 Not applicable

16.7 All domestic suppliers of lenses in New Zealand have to import their lenses and thus are all subject to the same constraints in regard to imports and currency fluctuations. The only difference is whether the lenses are ground before they come to New Zealand or after they come to New Zealand. Where this is done does not materially affect the cost of importing or the price of the final product.

16.8 It is understood that no products are exported.

16.9 []

Conditions of Expansion

17 These do not really apply to the import of lenses.

Other than general health and safety standards there are no special legislative or regulatory conditions when it comes to lenses (at manufacturer and processor levels). The health and safety standards would not act as a barrier to the expansion of existing competitors as they are easily met.

As explained above, existing competitors would not have to expand to increase their productivity as none of them are operating to their full productive capacity. However, if they did wish to increase their productive capacity none of these elements would act as a barrier to the expansion. There are minimal sunk costs as all necessary equipment can be leased. While the lenses themselves are branded, most lens processing laboratories are not branded (with the exception of OPSM and Hoya). Technical knowledge can be purchased for example by sublicensing.

Most lens manufacturers endeavour to channel their lenses through as many lens processing laboratories as possible (with the exception of Hoya). The fact that a lens processing laboratory may be in competition with a laboratory owned by a lens manufacturer will not restrain the lens manufacturer from supplying to the competing laboratory.

Market participants do not share this type of information so we can at best, only supply our inferences from their behaviour.

[] This does not seem to have been at the expense of any other supplier but has simply been taking advantage of growth in the New Zealand market.

- 18 Although unnecessary, all current participants could easily and cheaply increase their supply using existing capacity
- 19 As discussed in our answer to question 17, the conditions of expansion listed above pose almost no barrier to expand or increase supply. If the demand was there, any supplier could instantly increase its supply.
- 20 We would expect such supply to increase virtually immediately.
- 21 In response to competition or to constrain the merged entity, a lens caster/supplier could do various things, including decreasing prices, conducting marketing promotions, making sale visits to optometrists and advertising their competitive offer through trade ads etc.
- 22 The merged entity would be constrained in its actions by the conduct of existing competitors due to the following reasons:
 - (a) all competitors are operating well under their productive capacity, accordingly they could easily increase their operations to supply any optometrists dissatisfied with the merged entities' service;

- (b) all existing competitors can easily and quickly increase their capacity by merely leasing equipment to meet any needs of customers dissatisfied with the merged entity service;
- (c) the fact that there is surplus capacity has not stopped new lens processing laboratories from being set up. A recent example is Lensworx (set up by a former employee of Essilor). The cost of establishing a laboratory is not high (between \$100,000 to \$150,000) and historically optometrists have shown themselves more than willing to do so if they feel it necessary; and
- (d) The historical fact that optometrists would traditionally set up a laboratory themselves when they find the current offer is not good enough.

Coordinated Market Power

- 23 While there will be less competitors in the market after the proposed acquisition we consider that the acquisition will actually reduce opportunities for coordination. []

The acquisition of Prolab by Essilor Laboratories (NZ) Limited is unlikely to increase (or decrease) coordination in the sense that there will still be the same supply demand in the Wellington area as before the acquisition given that all other laboratories have no difficulty supplying to Wellington from outside of Wellington.

- 24 We consider that the acquisition would make no difference to the monitoring and enforcement of co-ordinated behaviour by market participants
- 25 There is a trend in the ophthalmic lens processing market and the lens casting market that Hoya, Sola and Essilor will often respond to one another's actions in the market (eg by bettering prices, launching promotions, increasing marketing activities, etc).
- 26 For the reasons explained in question 23.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

- 27 As explained in section 17, frontier entry conditions and legislative/regulatory conditions do not pose a barrier to the entry of new competitors. There are minimal sunk costs as almost all equipment can be leased. Capital required is nominal as a lab can be set up within a month for (on average) around \$150,000. Almost all brands are happy to supply to a new laboratory (except for Zeiss and Hoya). Technical knowledge can be bought together with basic training from all lessors and vendors of the equipment. The group of people most likely to enter as new competitors would be optometrists who have the necessary knowledge of the industry and are the customers affected by the service supplied by current competitors. Almost all optometrists in New Zealand could invest in new production facilities to produce the product. An example of where this has happened is the Mathews' group investment in Lensworx.
- 28 Many companies could easily divert production to New Zealand, (if it were profitable to do so). One company in the market who has done this is Rodenstock through association with a laboratory in Christchurch called Lensbiz.
- 29 As entry is so affordable and could be done so quickly the only two conditions really dissuading new entrants are:
- (a) market share; New Zealand is insignificant in the world scale and the top three suppliers already exist in New Zealand;
 - (b) over capacity; there is no margin in the market for a new competitor, all existing competitors are already operating under their potential capacity. A recent example is Spec Savers from the United Kingdom who recently researched entering the New Zealand market and just "walked away", even though Spec Savers strictly speaking is more of a competitor of OPSM than Essilor. However, as stated earlier, this does not seem to have deterred a former employee of Essilor Laboratories (NZ) Limited from setting up Lensworx recently.

Likelihood, Sufficiency and Timeliness of Entry

- 30 A laboratory/workshop could be set up and potential capacity increased within one month of deciding to do so, subject to machine delivery and installation.
- 31 No. Although market entry is incredibly affordable and easy, we believe the current over capacity of the market would make it unlikely that a potential entrant would consider entry profitable.

Please note that one of the reasons the acquisition is being proposed is to consolidate the two laboratories into one, thus reducing surplus capacity. In this

respect, the acquisition would reduce the barriers to entry by reducing market capacity which is currently dissuading new entrants.

- 32 While due to current market capacity and behaviour there is no real threat of entry, entry is so easy that it constrains current market participants considerably.
- 33 The same considerations as described in our answer to question 29.
- 34 If de novo entry were to occur we would expect it to happen in less than one month.
- 35 While the possibility of de novo entry is of some constraint to the merged entity it is far more constrained by the possibility of entry into the market by those who are currently optometrists.

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

- 36 The suppliers of goods to the merged entity would be
- (a) Sola owned by Sola International Inc of United States of America;
 - (b) Younger owned by Younger MFG Company of United States of America;
 - (c) Rodenstock owned by Optische Werk G Rodenstock of Germany;
 - (d) Gerber Coburn owned by Gerber Coburn of United States of America;
and
 - (e) Direct Optical Supplies Limited owned by Essilor International S.A. of France.
- 37 See above.
- 38 The merged entity would always be supplied by Essilor International S.A. since this is its parent company. However, it would still be detrimental to the merged entity if the other suppliers listed above ceased supplying to it as it would not be able to offer the optometrists a variety of brands. Although most suppliers cross supply to both their laboratories and other laboratories they would probably cease supplying to the merged entity or increase the price of goods required if the merged entity started using non-competitive tactics against the other laboratories.

Constraints on Market Power by the Conduct of Acquirers

- 39 Optometrists would be the only acquirers of the services supplied by the merged entity.
- 40 A list of Prolab debtors is attached as Appendix B. The list shows the optometrist practices supplied by Prolab (among other things).
- 41 The conduct of the optometrists is the main constraining factor on the merged entity. They act as a constraint in two ways:
- (a) as the sole customers of the merged entity they are generally knowledgeable of the product and of the market generally. They are not bound to use any particular lens processor and can easily switch from one to another with a mere phone call. If they were in any way dissatisfied with the service of the merged entity they would not hesitate in switching their business to another laboratory; and
 - (b) due to their considerable knowledge of this area they are the most likely to enter the market of all the possible new entrants. This likeliness is

increased by the ease and affordability with which they could do so if dissatisfied with the service offered by the merged entity and all other existing competitors (they could with on average \$150,000 and in less than a month's time set up their own laboratory).

Accordingly all business decisions of the merged entity will be heavily constrained by the optometrists.

Conclusion

We enclose our cheque for \$2,250 being the fee payable for this application.

THIS NOTICE is given by Essilor New Zealand Limited.

Essilor New Zealand Limited hereby confirms that insofar as it is aware:

- all information specified by the Commission has been supplied;
- all information known to the applicant which is relevant to the consideration of this application has been supplied;
- all information supplied is correct as at the date of this notice.

Essilor New Zealand Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

DATED the day of 2005

ESSILOR NEW ZEALAND LIMITED

Director/Authorised Solicitor

Name:

I am a director/the authorised solicitor of Essilor New Zealand Limited and am duly authorised to make this application.

Appendix A

NZ OPHTHALMIC LENS PROCESSING MARKET

Manufacturer
 NZ Market Turnover
 ^
 ^ \$[]

Hoya	Essilor Labs	Sola	Others
\$[]	\$[]	\$[]	\$[]

Note: By choice Hoya only supplies Hoya. All other manufacturers supply to all other lab processors

Lab Processor
 NZ Market Turnover
 ^
 ^ \$[]

OPSM	Hoya	Essilor Labs	Sola	Optical Labs	Lensbiz	Prolab Wtgn	Others
\$[]	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]

Retailer
 NZ Market Turnover
 ^
 ^ \$[]

OPSM	Other Independent Optometrist Retailers
\$[]	\$[]

Note: OPSM uses its laboratory in NSW, Australia

Consumer

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Appendix B

Prolab Debtors

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Appendix C

Prolab Shareholders

Shareholder surname	Shareholder name	Address	A Shares	B Shares	Home Address
1 Aldridge	David H T	100 Riddiford Street	7,000		
2 Andersen	John E	236 The Parade	35,000	12,500	
3 Bennett	Quentin M	PO Box 79			20 Napier Terrace Napier
4 Bennett	The Trustees: E & Q	PO Box 79	14,000		20 Napier Terrace Napier
5 Bentley	Phillip	11 Geange Street	5,600		
6 Bishop	Lloyd Stafford	C/- Leaders Building	14,000		
7	Callaghan & McKinlay Ltd	35 Waterloo Road	14,000		68 Tweed Road Paremata
8 Calver	Lesley	11-13 Broderick Road	28,000		
9 Grimmer	Peter R	14 Newcombe Crescent	21,000		
10 Grylls	John L	18 Bearing West Court	28,000	12,500	
11 Heginbotham	Peter K	4th Floor	7,000		
12 Jeffreys	David R	C/- R Dong	14,000		6 Jallioce Towers 189 The Terrace Wellington
13 Little	G Bruce	171 Bartholomew Road	19,600	12,500	
14	Meek G P A & Dong R	50 Brunswick Street	56,000	12,500	
20 Morgan	Annette R M	C/- Ysique Kapiti			
15 Moss	Desmond C	4 Friend Street	7,000		
16 Rhodes	Alien G				
17 Salek	Stacey P	40a Waitui Street	7,000		
18 Sargent	Geoffrey I	PO Box 11326	32,200		
19 Shanks	Ken R	20 Churton Drive	28,000		64 Hector Street Seatoun Wellington
21 Sue	Wilson	11 Geange Street	5,600		20 Churton Drive Churton Park Wellington
22 Turner	Peter J	20 The Anchorage	42,000		
24	Barry & Sargent Limited	PO Box 11326			
25	Bentley & Sue	11 Geange Street			The Grand Arcade 15-18 Willis Street Wellington
26 Black	Andrew	7 Bay Road			
27	Focus Optometrists	C/- Mark Humphries			
28	McClellan & Grimmer	139-141 Featherston Street			
29	Lower Hutt Optical	C/- Robert Dong			
30	Capital Eyes Optometrists	L Level 2 Rockshop Plaza			
		Manners Mall	385,000	50,000	

Appendix D

Memorandum of Understanding

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