

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 acquisition.

PART 1: TRANSACTION DETAILS

1 The business acquisition for which clearance is sought

- 1.1 Clearance is sought for the acquisition by Essilor New Zealand Limited ("Essilor") of shares in Optical Laboratories NZ Limited ("Optical") currently owned by the Estates of Edward Albert Turner and Elizabeth Turner (the "Turners") so as to increase Essilor's shareholding from 20% to up to 100% in Optical.
- 1.2 Attached as Appendix C is a copy of the call and put option for sale and purchase of shares entered into by Essilor and the Turners dated 10 October 2000, relating to the proposed share acquisition ("Call & Put Option").

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 New Zealand 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 Call & Put Option provided under section 1.2 above as confidential on a permanent basis given the commercial nature of the contents of the Call & Put Option, and the likelihood that the disclosure of the contents of the Call & Put Option 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; and
- (b) 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 position of both Essilor and Optical.

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 owner of the shares are the estates of the Turners, jointly.

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

Contact details for Optical are:

c/o Bennett Reddington Ltd
4th Floor, 199 Cashel Street
Christchurch 8032

Telephone: (03) 379 8630
Fax: (03) 366 6659
Attention: Mr Brian Reddington

Contact details for the estate of both Edward Albert Turner and Elizabeth Turner are:

c/o Anthony Harper, Solicitors
Anthony Harper Building
47 Cathedral Square
P O Box 2646
Christchurch 8015

Telephone: (03) 379 0920
Fax: (03) 366 9277
Attention: Mr Peter Phillips

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 (20% owned).

5.2 Optical has no subsidiaries. After the proposed acquisition, the interconnected bodies corporate of Optical will be the already interconnected bodies corporate of Essilor.

6 []

7 As a shareholder of Optical, Essilor has a degree of operational influence on Optical. However, none of their interconnected bodies corporate has any links, formal or informal, with the other participant or other persons identified in section 5 and its/their existing competitors in each market.

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;
- (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.

Optical is a Christchurch based company that undertakes lens processing, in particular grinding, coating, tinting and edging. Optical also sells stock lenses.

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 three laboratories in Christchurch, operated by Essilor Laboratories (NZ) Limited, Lensbiz and Optical. Essilor's reasons for the proposed acquisition and intentions are as follows:

11 []

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. Other than Auckland and Christchurch laboratories the other workshops merely edges and fits lenses. The Auckland and Christchurch laboratories in addition also grind and coat lenses; and
- (b) Optical predominantly services the South Island area.

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 known 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 optometrists (if not all) 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.

Optical only has a degree of vertical integration insofar as its links to Essilor and Essilor's other interconnected bodies corporates.

- 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 clearance for the acquisition of the shares of Prolab (Wellington) Limited.

In respect of the market the subject of this application, Optical 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 Optical.

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. However, there is proposed clearance application for Essilor to acquire the shares of Prolab (Wellington) Limited.

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 Laboratories (NZ) Limited (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 | Not Known | [] |
| 2 | Essilor Laboratories (NZ) | Essilor | Not Known | [] |
| 3 | Sola | Sola International Inc | Not Known | [] |
| 4 | Optical | Essilor (20%) & Turners (estates) (80%) | Not Known | [] |
| 5 | Prolab (Wellington) | Individuals | Not Known | [] |
| 6 | Hoya | Hoya | Not Known | [] |
| 7 | Lensbiz | Individuals | Not Known | [] |
| 8 | Others | Lensworx, Read Prescriptions, Universal, Stoco | Not Known | [] |

* 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's interconnected bodies corporates) 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 market conditions do not really apply to the import or processing 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 sales 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" entity's service;
- (b) all existing competitors can easily and quickly increase their capacity by merely leasing or purchasing equipment to meet any needs of customers dissatisfied with the "merged" entity's 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 Laboratories (NZ) Limited). 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 not increase opportunities for coordination. This is because Optical and Essilor Laboratories (NZ) Limited's laboratories are not the only two laboratories in Christchurch. There is another laboratory called Lensbiz in the Christchurch area. Further, all other laboratories have no difficulty supplying to Christchurch from outside of Christchurch.
- 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 that Hoya, Sola and Essilor Laboratories (NZ) Limited 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 that 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 named 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 Saver 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 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.

- 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 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 Optical debtors is attached as Appendix B. The list shows the optometrist practices supplied by Optical (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 | Lensbiz | Prolab (Wlgtn) | 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
Optical Debtors

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Appendix C
Call and Put Option

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