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Determination

Essilor International (Compagnie Générale d'Optique) S.A. and Luxottica Group S.p.A [2017] NZCC 21

The Commission:	Dr Mark Berry Sue Begg Elisabeth Welson Sarah Court
Summary of application:	An application from Essilor International (Compagnie Générale d'Optique) S.A. and Luxottica Group S.p.A seeking clearance for the global merger of their businesses.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed merger insofar as it relates to markets in New Zealand.
Date of determination:	5 September 2017

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The proposed merger

Summary of the proposed merger

1. On 10 July 2017 the Commerce Commission (the Commission) registered an application under section 66(1) of the Commerce Act 1986 (the Act) from Essilor International (Compagnie Generale d'Optique) S.A. (Essilor) and Luxottica Group S.p.A (Luxottica) (together, the Applicants) seeking clearance for global merger of their businesses (the proposed merger).[1]

2. In terms of rationale for the merger, the Applicants submitted it would allow the merging parties to:[2]

   2.1 combine their complementary areas of expertise and products;

   2.2 be less exposed to risks affecting a specific line of business;

   2.3 generate significant distribution synergies through optimisation of the supply chain; and

   2.4 achieve further synergies due to acceleration in market growth.

3. This Determination considers the impact of the proposed merger on markets in New Zealand only.

Our decision

4. The Commission gives clearance to the proposed merger insofar as it relates to markets in New Zealand, as it is satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Our framework

5. Our approach to analysing the competition effects of the proposed merger is based on the principles set out in our Mergers and Acquisitions Guidelines.[3]

The substantial lessening of competition test

6. As required by the Act, we assess mergers using the substantial lessening of competition test.

7. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of

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[1] The proposed merger was announced publically on 16 January 2017. Implementation of the proposed merger is subject to regulatory approval in a number of jurisdictions.

[2] Application at 6-8.

[3] Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2013).

competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[4]

8. We make a pragmatic and commercial assessment of what is likely to occur in the future, with and without the merger, based on the information we obtain through our investigation and taking into account factors such as market growth and technological changes.

9. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),[5] or reduce non-price factors such as quality or service below competitive levels.

10. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.

11. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.[6]

When a lessening of competition is substantial

12. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.[7] Some courts have used the word 'material' to describe a lessening of competition that is substantial.[8] A substantial lessening of competition in a significant section of a market, may, according to circumstances, be a substantial lessening of competition in a market.[9]

13. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

14. A substantial lessening of competition is 'likely' if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of

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4 *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].
5 Or below competitive levels in a merger between buyers.
6 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].
7 *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].
8 *Woolworths & Ors v Commerce Commission* (HC) above n7 at [129].
9 *Dandy Power Equipment Pty Ltd & Anor v Mercury Marine Pty Ltd* (1982) 64 FLR 238, 260; 44 ALR 173, 192; ATPR 40-315, 43,888, cited with approval by McGechan J in *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406 at 435.

competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.[10]

The clearance test

15. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.[11] If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

Key parties

Essilor

16. Essilor is a global manufacturer and wholesale supplier of prescription lenses used by consumers to correct visual impairments. Essilor is also a supplier of ophthalmic machines and (to a limited extent) also a supplier of prescription frames.

17. Essilor is a public company, listed on the CAC 40 and the Euro Stoxx 50 indices.

18. Essilor's revenue in New Zealand in 2016 was $[ ].[12]

19. In New Zealand, Essilor is principally active in the wholesale supply of finished prescription lenses to optical retailers, with this comprising approximately $[ ] (or [ ]%) of Essilor's revenues in New Zealand.[13]

20. Essilor is also active in the retail market in New Zealand via its online-only store, clearly.co.nz, through which Essilor sells prescription glasses, contact lenses and sunglasses. Approximately $[ ] or ([ ]%) of Essilor's turnover comes from these retail sales.[14]

21. In addition to the above, $[ ] (or [ ]%) of Essilor's revenue in New Zealand derives from the wholesale of ophthalmic machines, and $[ ] (or [ ]%) from the wholesale of prescription frames.[15]

22. Throughout the world, Essilor has 32 lens manufacturing plants and 490 prescription laboratories and edging facilities. In New Zealand, Essilor has laboratories located in Auckland and Christchurch,
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10 *Woolworths & Ors v Commerce Commission* (HC) above n7 at [111].
11 Section 66(3)(a).
12 Application at [105].
13 Application at [33].
14 Essilor's retail revenue is broken down as follows: $[ ] (or [ ]%) are realised from sales of prescription glasses, $[ ] (or [ ]%) from contact lenses, and $[ ] (or [ ]%) from sunglasses. Application at [33] and Annex 3.
15 Essilor has sold frames in New Zealand largely as an intermediary for other parties, but recently started selling small quantities of its own Bolon-branded frames in New Zealand. Application at [33] and e-mail from Chapman Tripp (on behalf of Essilor) to the Commerce Commission (17 August 2017).

].[16]

Luxottica

23. Luxottica is a global manufacturer and wholesale supplier of prescription frames and sunglasses, whose brands include Ray-Ban and Oakley.

24. Luxottica is also a public company whose major shareholder is Delfin S.à.r.l., the Luxembourg based holding company of the Del Vecchio family.

25. In New Zealand, Luxottica's activities are limited to the wholesale supply of prescription frames and sunglasses, and the retail supply of optical products and services (via its OPSM, Sunglass Hut and Oakley stores). Under each of these brands Luxottica operates both 'bricks and mortar' and online stores. Luxottica's revenue in New Zealand in 2016 was AU$[ ].[17] The bulk of this revenue (AU$[ ] or [ ]%) is generated in the retail market.[18] Luxottica earns the remainder of its revenue from the wholesale supply of prescription frames and sunglasses (AU$[ ], or [ ]%, from sunglasses and AU$[ ], or [ ]%, from frames).[19]

Existing commercial relationship between the merging parties

26. Essilor and Luxottica already have a commercial supply relationship. Luxottica's requirements of finished prescription lenses in New Zealand are exclusively supplied by Eyebiz Laboratories Pty Ltd (Eyebiz), a 70/30 joint venture between Essilor and Luxottica.[20] The current exclusive supply agreement between Eyebiz and Luxottica [ ].[21]

27. While Eyebiz is a separate corporate entity from Essilor or Luxottica, for the purposes of our competition assessment, the fact of Essilor's 70% shareholding in Eyebiz means that we treat supply by Eyebiz as equivalent to supply by Essilor. Our analysis therefore starts from the current situation (pre-merger) where Essilor (via Eyebiz) exclusively supplies all of Luxottica's finished prescription lenses for the New Zealand and Australian markets. Luxottica then retails lenses to consumers, through OPSM, as complete prescription glasses. Essilor also supplies lenses to other optical retailers on a non-exclusive basis. The Applicants submitted that, given the existence of this

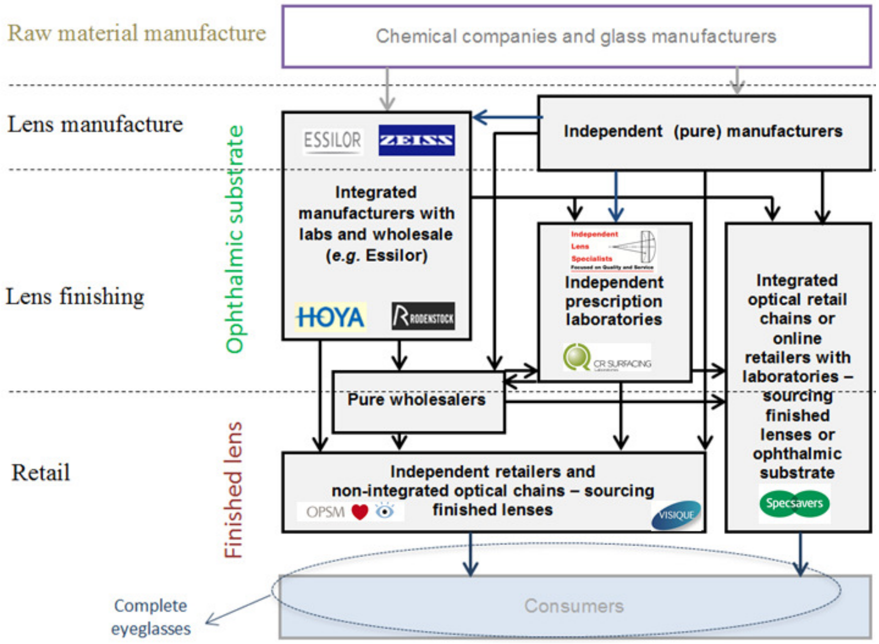
16 Application at [97].
17 Application at [122].
18 Luxottica's retail revenue is broken down as follows: $[ ] (or [ ]%) represents sales of finished prescription lenses, $[ ] (or [ ]%) sales of sunglasses, $[ ] (or [ ]%) sales of prescription frames, $[ ] (or [ ]%) sales of contact lenses, and $[ ] (or [ ]%) sales of optometrical services. Application at [34] and Annex 5.
19 Application at [34].
20 Application at [13].
21 Application at [14].

existing, exclusive, agreement, Luxottica's share of purchases of finished prescription lenses in New Zealand is currently not contestable.[22]

Industry background and other market participants

28. The proposed merger relates to the ophthalmic industry, in particular the provision of prescription glasses. The Applicants provided Figure 1 to show the structure of the industry and supply chain.

Figure 1: Industry structure and supply chain



Source: Application at 12.

29. The proposed merger brings together Essilor (a supplier of prescription lenses) with Luxottica (a supplier of prescription frames and sunglasses, and also retail optical services). As acknowledged by the Applicants, the merged entity would be present in almost every sector of the vision care and vision protection value chain.[23]

Lens manufacture and finishing

30. The manufacturing and finishing of prescription lenses can be carried out at a single location (the manufacturing plant) or two different locations (the manufacturing plant and a prescription laboratory).

31. Very little (if any) lens manufacturing occurs in New Zealand. The majority of lenses supplied in New Zealand, including all lenses supplied by Essilor, are manufactured at plants located outside of New Zealand. Some lenses supplied in New Zealand are imported as finished prescription lenses from overseas.

32. There are at least six prescription laboratories in New Zealand, including two laboratories operated by Essilor. These laboratories undertake finishing of lenses

[22] Application at [13].
[23] Application at [30].

imported from overseas. The process of lens finishing includes completing the surfacing of any lens (based on a consumers' specific prescription), any tinting or coating (eg, anti-stratch), and the fitting of lenses into frames (referred to as glazing).

33. Essilor's competitors in the supply of prescription lenses in New Zealand include:

    33.1 Hoya Corporation (Hoya), a global manufacturer and wholesale supplier of 7prescription lenses, supplying lenses in New Zealand using its manufacturing and processing facility in Australia, and laboratory in Auckland;

    33.2 the Zeiss Group (Zeiss), a global manufacturer and wholesale supplier of prescription lenses, that imports finished lenses for supply in New Zealand;

    33.3 CR Surfacing, an Australasian supplier of finished prescription lenses with a laboratory in Christchurch; and

    33.4 Independent Lens Specialists (ILS), a New Zealand-based wholesale supplier of prescription lenses with a Christchurch laboratory.

Frames manufacture and supply

34. All prescription frames supplied in New Zealand, including those supplied by Luxottica, are manufactured at plants located outside of, and imported into, New Zealand. Luxottica is one of a number of suppliers of prescription frames.

35. Luxottica's competitors in the supply of frames globally include Mondottica International Limited and Safilo Group S.P.A. In New Zealand, there are at least 18 wholesale suppliers of frames listed on the website of the New Zealand Optical Wholesalers Association.[24]

Retail optical products and services

36. Optical retailers (optometrists and dispensing opticians) supply prescription lenses and frames to consumers. Optometrists also perform eye tests for consumers in order to determine the lenses that a particular consumer needs in order to correct any visual defects.

37. In New Zealand, Luxottica retails prescription lenses and frames through close to 50 OPSM stores across the country. Competitors to Luxottica's OPSM in optical retail products and services in New Zealand include:

    37.1 Specsavers, an optical retail chain that entered the New Zealand market in 2008, with currently over 50 locations across the country;

    37.2 Visique, a co-operative network of optical retailers established in 2000, with currently close to 50 locations across the country;

    37.3 Eye Pro, an independent network of optical retailers established in 2005, whose members operate over 60 locations across the country; and

[24] http://nzowa.org.nz/members.

37.4 an estimated 150 independently owned and operated optical retailers.[25]

Market definition

38. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.

39. We define markets in the way that best isolates the key competition issues that arise from a merger.[26] In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services which fall outside the market but which would still impose some degree of competitive constraint on the merged entity.

Applicants' view of the relevant markets

40. The Applicants submitted that the relevant markets for assessing the proposed merger are national markets for:[27]

 40.1 the retail supply of optical products and services (including prescription glasses, contact lenses and sunglasses);[28] and

 40.2 the wholesale supply of finished prescription lenses.

41. The Applicants stated that, in line with previous decisions of the Commission, the market for the wholesale supply of finished prescription lenses excludes contact lenses and ready-made spectacles (or readers).[29] The Applicants further submitted that there was no basis for further segmenting the prescription lens market by lens type (eg, glass versus plastic, single-vision versus multi-focal, or polarised versus unpolarised).[30] The market for the wholesale supply of finished prescription lenses (as proposed by the Applicants) includes all prescription glasses lenses, including prescription sunglasses lenses.

42. The Applicants also referred to other markets which they did not consider needed to be analysed in assessing the merger, specifically:

 42.1 a market for the wholesale supply of prescription frames, as the Applicants submitted that there was *de minimis* overlap in this market;[31] and

[25] Based on data available at https://www.nzao.co.nz/locate-an-optometrist.
[26] *Mergers and Acquisitions Guidelines* above n3 at [3.10-3.12].
[27] Application at [126].
[28] The Applicants submitted that the retail market should not be defined more narrowly (eg, as a market for the retail supply of finished prescription lenses or glasses).
[29] Application at [140].
[30] Application at [141].
[31] Application at [127].

42.2 a market for the import and intermediate supply of blank (or unfinished) prescription lenses, as the Applicants submitted that [ ].[32]

Our view of the relevant markets

43. For the reasons set out below, we consider the relevant markets for assessing the proposed merger are national markets for:

43.1 the import and intermediate supply of blank (or unfinished) prescription lenses;

43.2 the wholesale supply of finished prescription lenses;

43.3 the wholesale supply of prescription frames;

43.4 the retail supply of prescription lenses and frames (whether sold separately or together as finished prescription glasses);

43.5 the retail supply of contact lenses; and

43.6 the retail supply of (non-prescription) sunglasses.

Markets at the wholesale level and above

44. The Commission has previously considered acquisitions in the supply of prescription lenses in *Essilor/Prolab* and *Essilor/Optical Laboratories*.[33] In those decisions, the Commission considered the impact of the acquisitions on the national markets for:

44.1 the import and intermediate supply of blank prescription lenses; and

44.2 the wholesale supply of processed (ie, finished) prescription lenses.

45. The Applicants submitted that the above market definitions continue to be appropriate, and supported a distinction between the supply of blank and finished lenses (which reflects the functional levels of the market).[34] However, as noted above, the Applicants did not consider that the market for the supply of blank lenses needed to be considered in assessing the proposed merger, given that [ ].

46. We consider it appropriate for us to consider markets for the supply of both blank lenses and finished lenses (as defined previously by the Commission). This is because there are market participants that compete against Essilor in the wholesale supply of finished prescription lenses and are not vertically integrated (like Essilor). These wholesalers instead seek outside supply of imported blank prescription lenses to

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[32] Application at [146].

[33] Essilor New Zealand Limited and Prolab (Wellington) Limited (Commerce Commission Decision 564, 23 November 2005) and Essilor New Zealand Limited and Optical Laboratories NZ Limited (Commerce Commission Decision 565, 23 November 2005).

[34] Application at [145].

compete with Essilor. It is relevant to assess if the proposed merger is likely to substantially lessen competition due to the merged entity refusing to supply (in the upstream blank lenses market) an input to a downstream competitor in the wholesale supply of finished prescription lenses.

47. We also consider it appropriate that we assess whether the merger would have any impact on the wholesale supply of prescription frames. While small, there is overlap between the merging parties in the supply of frames. In addition, a merger between a supplier of prescription lenses (Essilor) with a supplier of prescription frames (Luxottica) could result in vertical and conglomerate effects that affect the frames market, as well as lens market(s).

48. In addition, we have considered whether it would be appropriate to define narrow wholesale markets for the supply of lenses and frames to independent optical retailers only. The reasoning for doing so would be because supply to New Zealand's two retail optometrist chains (OPSM and Specsavers) may not be contestable. Therefore, the ability of those two chains to switch suppliers may be different to that for independent optical retailers, with competition between suppliers generally only occuring for independent optical retailers.[35] As noted above, OPSM is currently exclusively supplied lenses by Essilor (via Eyebiz). We understand that Specsavers largely obtains supply from its own laboratories rather than purchasing lenses on the wholesale market.[36] Other lens suppliers that we spoke to also stated that they only currently compete with Essilor for supply to independent optometrists.[37] However, we consider that this may not always be the case and that narrowly defining market(s) for only independent optical retailers might not survive a SSNIP test due to supply-side substitution.[38] We note that even though we have defined markets broadly to include supply to all optical retailers, our conclusions in this case would have been the same had we defined narrower wholesale market(s) for supply to independent optical retailers only.

Markets at the retail level

49. As noted above, the Applicants submitted that the relevant retail market is a broad market for the supply of optical products and services (including prescription glasses, contact lenses and sunglasses) and that the retail market should not be defined more narrowly. We consider that narrower retail product markets are more appropriate and would also best serve to highlight any competition issues arising from the merger.

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35 By independent optical retailers we mean all optometrists that are independently owned and operated, which in New Zealand is all optometrists other than OPSM and Specsavers (for whom each chains' locations are owned by a single company). Optometrists that are members of Visique and Eye Pro fall within the definition of independent optical retailers, as they still have the ability to make independent supply decisions even though they are part of a buying group.

36 Application at Annex 11.

37 [ ]

38 This is because, in response to a small, but significant, non-transitory increase in price (SSNIP) by the current lens suppliers to OPSM and Specsavers, other lens suppliers could easily start supplying lenses to these optical retailers (just as they are able to supply independent optical retailers).

50. We consider that sunglasses (which are non-prescription) are not a substitute on the demand side for lenses that correct any visual defects. Sunglasses therefore fall within a separate retail market to any market(s) for the supply of lenses that correct any visual defects. Because the merging parties overlap in the supply of sunglasses, we have defined a market for the retail supply of sunglasses as one of the relevant retail markets.

51. We consider that for some consumers, contact lenses and prescription glasses are substitutes on the demand side. However, we do not consider that they are sufficiently close substitutes for all consumers to be in the same market. We also note that defining separate retail markets for the retail supply of prescription glasses versus contact lenses would best serve to highlight any competition issues from the merger. This is because:

    51.1 it would best highlight the potential for vertical and conglomerate effects from a merger between a supplier of prescription lenses (Essilor) and a supplier of prescription frames (Luxottica);

    51.2 it would highlight the extent of any overlap between the merging parties in the retail supply of contact lenses; and

    51.3 if we find no substantial lessening of competition in narrower retail markets, then there would be no substantial lessening of competition in a broader market.

52. We also note that separating out prescription glasses and contact lenses at the retail level is consistent with how the import and wholesale lens markets have been defined. As noted above, the Applicants submitted that these markets only relate to the supply of prescription lens for glasses and exclude the supply of contact lenses. However, we note that our competition analysis at the retail level in this case would be the same whether we defined retail market(s) narrowly or broadly.

53. We do not consider that we need to define a market for retail optical services separate from retail markets for the supply of prescription glasses, contact lenses and sunglasses, or include the provision of retail optical services in any of the retail market(s) defined. While the merging parties overlap in the retail supply of these products, there is no overlap between them in the supply of retail optical services.

54. In terms of the geographic scope of retail markets, we consider that it is appropriate to define national markets in this case. We do not consider that the cost of transporting the products is high relative to the price of the products. We note that, in the case of the retail supply of prescription glasses, they are already transported across New Zealand from Auckland and Christchurch labs to optical retailers as part

of the supply process. We also note that consumers can purchase the products online and from 'bricks and mortar' optical retailers.[39]

Different lens types

55. Notwithstanding the Applicants' submissions that there was no basis for segmenting prescription lens market(s) by lens type, we considered whether it may be appropriate to do so. This included considering whether to define separate lens markets at the wholesale and retail levels relating to prescription sunglasses and prescription safety glasses.

56. Different types of lenses all fall within their own specific product market, because one lens type may not be substitutable for another. However, we consider that there is no need to segment prescription lens market(s) by lens type in this instance. At the wholesale and retail levels, the competitive dynamics on the supply-side are the same for all types of lenses, such that we can consider market(s) for all lens types in aggregate.

With and without scenarios

57. To assess whether a merger is likely to substantially lessen competition in a market, we compare the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[40]

58. As noted by the High Court in *Woolworths*, the Commission is required to consider each of the counterfactuals that are real and substantial prospects. A relevant counterfactual involves more than a possibility but the effect does not need to be "more likely than not".[41]

59. We do not choose a counterfactual that we consider has the greatest prospects of occurring (ie, is the 'most likely'). Rather, a likely counterfactual is something that has a real chance of occurring.[42]

60. We usually assess competition effects over the short term. In this Determination, we consider that the relevant timeframe for our assessment includes the [ ].

With the merger

61. With the merger, Essilor and Luxottica will merge their businesses in New Zealand and globally.

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[39] We note that had it been relevant for us to define a product market for the supply of retail optical services (eg, relating to the provision of eye tests), for this market there would likely be a number of discrete local geographic markets, as consumers are unlikely to travel long distances to have an eye test.

[40] *Mergers and Acquisitions Guidelines* above n3 at [2.29].

[41] *Woolworths & Ors v Commerce Commission* (HC) above n7 at [111].

[42] *Woolworths & Ors v Commerce Commission* (HC) above n7 at [111].

62. The merger would bring together Essilor (a supplier of prescription lenses) with Luxottica (a supplier of prescription frames and sunglasses, and also retail optical services). As noted above, the merged entity would be present in almost every sector of the vision care and vision protection value chain.

Without the merger

63. The Applicants submitted that, absent the merger, they would continue to operate as separate entities.[43]

64. In considering what is likely to happen absent the merger, we have assessed in turn whether:

  64.1 Luxottica would continue to be exclusively supplied with lenses by Essilor (via Eyebiz), or whether it would change its supply arrangements; and

  64.2 Essilor and Luxottica would become competitors (or closer competitors) in any of the relevant markets.

Luxottica lens supply

65. In terms of how Luxottica would source lenses for the New Zealand market absent the merger, the Applicants submitted that there were two alternative likely counterfactuals:[44]

  65.1 the status quo ([ ]); and

  65.2 [ ].

66. The Applicants submitted that, in either counterfactual, [ ].[45]

67. We agree with the Applicants that the alternative supply scenarios stated above are likely counterfactuals in terms of how Luxottica would source lenses for the New Zealand market absent the merger.

  67.1 The first of these scenarios is a continuation of the status quo in terms of Luxottica lens supply. The current exclusive supply agreement between Essilor (via Eyebiz) and Luxottica [ ]. Luxottica advised that

43 Application at [158].
44 Application at [159-161].
45 Application at [160].

[
].[46]

67.2 We consider that there is also a real chance that, alternatively, [ ]. This is because Luxottica advised that [
].[47]

68. In addition, assuming that [ ] we cannot exclude the real chance that Luxottica would, absent the merger, switch to a competing lens supplier for prescription lenses. Luxottica advised the Commission that [
][48] and we cannot exclude it doing so again. We consider that other lens suppliers would have the capacity to supply Luxottica.[49] Luxottica switching to a competing lens supplier is a third likely counterfactual in terms of Luxottica lens supply.

Essilor and Luxottica becoming competitors (or closer competitors)

69. In considering whether, absent the merger, Essilor and Luxottica would become competitors (or closer competitors) in any of the relevant markets, we considered whether:

69.1 Luxottica would start competing with Essilor in the wholesale supply of prescription lenses;

69.2 Essilor would materially expand its sales of frames and become a closer competitor to Luxottica in the wholesale supply of frames; and

69.3 Essilor and Luxottica would compete more closely in retail markets.

70. We have conservatively conducted our competition analysis on the basis that each of the scenarios in paragraphs 69.1 to 69.3 are likely counterfactuals. We consider that regardless of whether or not Essilor and Luxottica would become competitors (or closer competitors) absent the merger, the proposed merger would not substantially lessen competition in any of the relevant markets.

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46 E-mail from Chapman Tripp (on behalf of Luxottica) to the Commerce Commission (22 August 2017).
47 E-mail from Chapman Tripp (on behalf of Luxottica) to the Commerce Commission (22 August 2017).
48 E-mail from Chapman Tripp (on behalf of Luxottica) to the Commerce Commission (22 August 2017).
49 For example, as noted later, [
]

Luxottica competing in the wholesale supply of lenses

71. In terms of it competing in the wholesale supply of lenses, Luxottica submitted that:[50]

    71.1 [ ];

    71.2 [ ]; and

    71.3 [ ].

72. There may be a possibility that Luxottica, absent the merger, would start competing with Essilor in New Zealand in the wholesale supply of finished prescription lenses. Luxottica has indicated that [ ]. This would put Luxottica in a position to [ ] and enter the wholesale lens market. We have conservatively conducted our competition analysis on the basis that Luxottica competing with Essilor in the wholesale supply of finished prescription lenses is a likely counterfactual.

Essilor competing in the wholesale supply of frames

73. Essilor has recently started selling its Bolon brand of frames in New Zealand. Essilor submitted that [ ].[51]

74. Notwithstanding Essilor's submission, it is possible that Essilor could, absent the merger, start competing in a material way with Luxottica in the wholesale supply of prescription frames in New Zealand. We have conservatively conducted our competition analysis on the basis that a likely counterfactual is that Essilor would materially expand its sales of frames and become a closer competitor to Luxottica absent the merger in the wholesale supply of frames.

Essilor and Luxottica competing in retail markets

75. Essilor and Luxottica already compete in the retail supply of prescription glasses, contact lenses and sunglasses (Luxottica with 'bricks and mortar' and online stores, and Essilor with exclusively online sales).

76. A likely scenario absent the merger is that the current extent of retail competition between Essilor and Luxottica would continue. However, it is possible that Essilor and Luxottica could compete more closely in retail markets absent the merger (eg, due to one or both of the parties expanding their online sales). We have

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50 E-mail from Chapman Tripp (on behalf of Luxottica) to the Commerce Commission (22 August 2017).

51 E-mail from Chapman Tripp (on behalf of Essilor) to the Commerce Commission (17 August 2017).

conservatively conducted our competition analysis on the basis that a likely counterfactual is that Essilor and Luxottica would compete more closely in the retail supply of prescription glasses, contact lenses and sunglasses.

Conclusion on counterfactual

77. In summary:

77.1 we consider that absent the merger there is a real chance that, in terms of Luxottica sourcing lenses for the New Zealand market absent the merger, it would:

77.1.1 continue to get exclusive supply from Essilor (via Eyebiz);

77.1.2 [ ]; or

77.1.3 switch to sourcing lenses from another lens supplier (ie, a competitor to Essilor); and,

77.2 in addition, in terms of Essilor and Luxottica becoming competitors (or closer competitors) in any of the relevant markets, we have conservatively conducted our competition analysis on the basis that:

77.2.1 Luxottica could start competing with Essilor in the wholesale supply of finished prescription lenses;

77.2.2 Essilor could materially expand its sales of frames and become a closer competitor to Luxottica in the wholesale supply of frames; and

77.2.3 Essilor and Luxottica could compete more closely in retail markets.

78. As noted above, we consider that regardless of whether or not Essilor and Luxottica would become competitors (or closer competitors) absent the merger, the proposed merger would not substantially lessen competition in any of the relevant markets as a result of the loss of this competition. Our reasoning as to why this is the case is set out in the unilateral effects section of this Determination.

How the merger could substantially lessen competition

79. Our assessment of the proposed merger has considered the unilateral, vertical and conglomerate effects that might result from the merger. However, the main focus of our investigation has been on vertical and conglomerate effects. This is because a merger between suppliers who are not direct competitors and operate in related but separate markets is less likely to result in unilateral effects.

80. We have not analysed coordinated effects in detail as part of our assessment of the proposed merger. The horizontal aggregation as a result of the proposed merger is sufficiently limited such that the merger is unlikely to result in any material increase in the risk of coordination in the relevant markets.

Unilateral effects

81. Where two suppliers compete in the same market, a merger could remove a competitor that would otherwise provide a competitive constraint, allowing the merged entity to raise prices. A merger could also reduce competition if the target was a potential or emerging competitor. In such a case, a merger could result in higher prices compared to the scenario without the merger.[52]

82. Although there may be limited horizontal overlap between Essilor and Luxottica currently, we have considered whether the merging parties would become more meaningful competitors without the merger. For example, we have considered whether, without the merger, either party might start to compete directly with the other. If such expansion would be likely without the merger, then any potential competitive constraint from this would be lost as a result of the proposed merger. This could result in higher prices or decreased service levels relative to the without the merger scenario.

Vertical and conglomerate effects

83. A merger between suppliers who are not direct competitors and operate in related markets is less likely to result in unilateral effects. However, such a merger can result in a substantial lessening of competition due to vertical or conglomerate effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively.[53] [54]

    83.1 A vertical merger is a merger between firms operating at different levels of a supply chain (eg, a wholesaler and a retailer). Vertical mergers can increase a merged entity's ability or incentive to foreclose its competitors. Foreclosure can either be:

        83.1.1 customer foreclosure – where the merged entity disadvantages an upstream competitor in the sale of that competitor's products by limiting access to customers; or

        83.1.2 input foreclosure – where the merged entity refuses to supply an input to a downstream competitor or raises the price of the input.

    83.2 A conglomerate merger is a merger between firms that supply products that may relate to each other (eg, complementary products). Foreclosure can arise in the case of conglomerate mergers due to:

        83.2.1 bundling – where the merged entity provides bundled discounts to customers that buy the merging parties' products together rather than separately; or

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52 *Mergers and Acquisitions Guidelines* above n3 at [3.62-3.63].

53 *Mergers and Acquisitions Guidelines* above n3 at [5.2].

54 When we refer to foreclosure, this includes behavior that both forecloses rivals or otherwise renders a competitor less competitively effective.

83.2.2 tying – where the merged entity refuses to sell one of the merging parties' products unless customers also buy the other parties' product.

84. The proposed merger brings together Essilor (a supplier of prescription lenses) with Luxottica (a supplier of prescription frames and sunglasses, and also retail optical services). As the merging parties themselves stated when they announced the proposed merger, the merger will create a global integrated player in the eyewear industry.[55] The proposed merger potentially raises both vertical and conglomerate effects.

85. Whether or not any foreclosure is likely to have the effect of substantially lessening competition in a market depends on the state of competition in that market and the competitive constraints that would remain post-merger. If existing competition in a market is currently weak, then the potential for new entry or expansion may be important to our assessment of the competitive constraints that would be imposed on a merged entity.

Competition analysis – unilateral effects

86. The Applicants submitted that there is no or limited horizontal overlap between them in the relevant markets because:

86.1 Essilor is not a genuine competitor in the wholesale supply of prescription frames;[56]

86.2 while Luxottica holds a 30% share in Eyebiz (a joint venture with Essilor), it is not active in the wholesale supply of finished prescription lenses;[57] and

86.3 Essilor is active only to a very limited extent in the retail supply of optical products through its online store clearly.co.nz.[58]

87. The Applicants submitted that their activities in New Zealand are complementary in nature[59] and that there is no prospect that the merger will substantially lessen competition due to unilateral effects.[60]

88. While there is currently no overlap between Essilor and Luxottica in the wholesale supply of prescription lenses, the merging parties could overlap in the supply of lenses absent the merger. In addition, there are four other markets in which some overlap currently occurs:

88.1 the wholesale supply of prescription frames;

55 Essilor and Luxottica media release (16 January 2017).
56 Application at [132.3].
57 Application at [135].
58 Application at [162].
59 Application at [4].
60 Application at [7-8].

88.2 the retail supply of prescription lenses and frames (whether sold separately or together as finished prescription glasses);

88.3 the retail supply of contact lenses; and

88.4 the retail supply of sunglasses.

89. For the reasons detailed below, we consider that the merged entity would be sufficiently constrained by the presence of existing competitors in each of these markets.

Competition in the supply of lenses

90. Essilor is currently a wholesale supplier of prescription lenses. Luxottica is not. There is currently no overlap between Essilor and Luxottica in the wholesale supply of prescription lenses.

91. As noted earlier, we have conservatively conducted our competition analysis on the basis that Luxottica competing with Essilor in the wholesale supply of finished prescription lenses is a likely counterfactual.

92. Any increased competition provided by Luxottica would be lost with the merger. However, we do not consider that this would substantially lessen competition. This is because there is already significant existing competition in the wholesale supply of prescription lenses.

93. In the wholesale supply of prescription lenses, Essilor is currently the number one player in terms of market share and the merged entity would continue to be so. However, as Table 1 shows, there are other significant existing competitors.

Table 1: Estimated market shares in the wholesale supply of prescription lenses[61]

Supplier	Sales value ($m)	Market share (%)
Essilor (including sales via Eyebiz)	[ ]	[ ]%
Specsavers	[ ]	[ ]%
Hoya	[ ]	[ ]%
Zeiss	[ ]	[ ]%
ILS	[ ]	[ ]%
CR Surfacing	[ ]	[ ]%
Others	[ ]	[ ]%
Total	**[ ]**	**100%**

Source: Application and market participants.

94. There is evidence, even before the merger, of other suppliers of prescription lenses competing with Essilor for the business of optical retailers (and winning business off

61 The figures in this table include Essilor's (via Eyebiz) supply to Luxottica and Specsaver's self-supply of lenses.

Essilor). [ ].[62] No market participants suggested that the merged entity would not be constrained by existing competitors or that the market was not competitive.

94.1 [ ] commented that Hoya offered very good products and pricing (that was materially lower than Essilor's in the case of some products). [ ] noted that it also had other options in terms of suppliers.[63]

94.2 [ ] advised that CR Surfacing was competitive with Essilor on pricing. [ ][64]

94.3 [ ] advised that its market share has been growing since 2011 and that its growth had increased since the announcement of the proposed merger earlier this year, and commented that it might continue to pick up further market share post-merger. [ ] said that it had experienced a lot of growth in [ ] business. [ ] stated that "a lens is a lens" and that all suppliers can supply similar products at similar prices. [ ] advised that it could easily expand production, [ ].[65]

94.4 [ ] described the market as being competitive and "cut throat", but noted that it was continuing to grow market share. It advised that since the announcement of the proposed merger earlier this year, it had become the preferred supplier to [ ] and had also had an enquiry from [ ] commented that it may continue to benefit from the merger as more independent optometrists look to switch lens supply away from the merged entity (which will be a competitor at the retail level via OPSM). [ ] said that it can supply all of the lenses that Essilor supplies, [ ]. It indicated that it competes on the quality of its products and service, [ ]. It commented that it can compete on price [ ]

62 Application at 37-38.

63 [ ]

64 [ ]

65 [ ]

advised that it had capacity to significantly expand its sales, [ ].[66]

94.5 [ ] It advised that while it was not able to compete with large suppliers like Essilor on price, it could compete with them based on quality of service and range of products offered. [ ] noted that it had the ability to expand capacity [ ].[67]

94.6 Independent optometrists all stated that there were alternative lens suppliers to Essilor. They stated that all the major lens suppliers generally offered the same types of lenses and lenses of a similar quality. They also stated that prices were comparable between suppliers.[68]

95. We do not consider that the proposed merger (even if it were to remove potential competition absent the merger between Essilor and Luxottica in the supply of lenses) is likely to result in a substantial lessening of competition in the wholesale supply of prescription lenses.

Competition in the supply of frames

96. The merging parties currently overlap to a limited extent in the supply of prescription frames. Luxottica is a significant supplier of frames, but Essilor also has a small presence in this market. As noted earlier, Essilor has recently started selling its Bolon brand of frames in New Zealand. However, [ ].[69]

97. As noted earlier, we have conservatively conducted our competition analysis on the basis that Essilor becoming a closer competitor to Luxottica in the wholesale supply of prescription frames in New Zealand is a likely counterfactual.

98. Any increased competition from Essilor would be lost with the merger. However, we do not consider that growth by Essilor in the wholesale supply of frames would provide material additional constraint on Luxottica absent the merger.

99. In the wholesale supply of prescription frames, we consider that the merged entity would be constrained by existing competition from at least 18 other wholesalers of frames. Luxottica's competitors in the supply of frames globally include Mondottica International Limited and Safilo Group S.P.A.

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66 [ ]

67 [ ]

68 [ ]

69 E-mail from Chapman Tripp (on behalf of Essilor) to the Commerce Commission (17 August 2017).

100. Industry participants commented that:[70]

 100.1 there are a large number of frames suppliers; and

 100.2 competing frames suppliers offer comparable, alternative, high value frame brands to those supplied by Luxottica (eg, Prada versus Gucci).

101. We consider that the proposed merger will result in minimal aggregation in the wholesale supply of prescription frames. We do not consider that the proposed merger (even if it were to remove Essilor's potential expansion in the supply of frames absent the merger) is likely to result in a substantial lessening of competition in this market.

Competition at the retail level

102. Both merging parties retail optical products. Essilor operates an online retailer, clearly.co.nz, while Luxottica is a significant retailer through its 'bricks and mortar' and online stores. The merging parties overlap at the retail level in the supply of prescription glasses, contact lenses and sunglasses. For the reasons set out below, we do not consider that the merger is likely to result in a substantial lessening of competition in any retail market.

103. The area of most significant retail overlap currently is in the supply of contact lenses. The Applicants estimate the size of the market for the retail supply of contact lenses in New Zealand to be approximately $[ ] million. Clearly's revenue from the sale of contact lenses in 2016 was $[ ],[71] giving it a market share of approximately [ ]% of this market. Luxottica has an estimated [ ]% market share. This would give the merged entity a relatively low combined market share of [ ]%.[72]

104. As noted earlier, we have conservatively conducted our competition analysis on the basis that Essilor and Luxottica competing more in the retail supply of prescription glasses, contact lenses and sunglasses is a likely counterfactual.

105. Any increased competition between the parties in retail markets would be lost with the merger. However, we do not consider that the possibility of this increased competition would provide material additional constraint on either party absent the merger.

106. We consider that the merged entity would be sufficiently constrained at the retail level in the supply of contact lenses because there are a large number of contact lens retailers in New Zealand, particularly online.[73] The proposed merger would not result in a significant reduction in the number of market participants (even compared to a counterfactual where Essilor and Luxottica compete more closely), and the merged

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[70] [ ]

[71] Application at [100].

[72] Application at [166].

[73] For example, online retailers include quicklens.co.nz, lensesonline.co.nz and ezyvision.co.nz.

entity would continue to be constrained by vigorous competition in the contact lens market.

107. We also consider that the merged entity would be sufficiently constrained at the retail level in the supply of prescription glasses and sunglasses. While Luxottica's OPSM has close to 50 stores across the country, there are (as noted earlier) similar numbers of Specsavers, Visique and Eye Pro locations, as well as an estimated 150 other independent optical retailers.[74] The merged entity would operate less than 15% of the 'bricks and mortar' optical retailers (by number) in New Zealand and would again, face additional competition from several online retailers.

Competition analysis – vertical and conglomerate effects

108. The Applicants submitted that there is no realistic prospect of a substantial lessening of competition as a result of input or customer foreclosure (vertical effects) because:[75]

108.1 there are no 'must-have' lens types supplied by Essilor for which its competitors do not offer ready substitutes;

108.2 Essilor has no ability to foreclose optical retailers from obtaining supplies of finished prescription lenses, who have a range of alternative suppliers available to them and have substantial countervailing buyer power; and

108.3 Luxottica's demand for finished prescription lenses is not so significant that (even if its demand was to become contestable, which is not currently the case) foreclosing access to Luxottica would affect the competitive viability of competing lens wholesalers.

109. In assessing whether the proposed merger might substantially lessen competition due to vertical and/or conglomerate effects, we have considered:

109.1 whether the proposed merger would give the merged entity the incentive and ability to engage in behaviour that might foreclose rivals in the relevant markets or otherwise render them less competitively effective; and

109.2 whether any foreclosure is likely to have the effect of substantially lessening competition in a market in light of remaining competitive constraints.

110. For the reasons set out below, we are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition due to vertical and/or conglomerate effects in any of the relevant markets.

74 Based on analysis of information on the number of optometrists and locations as listed on the New Zealand Association of Optometrists website at https://www.nzao.co.nz/.

75 Application at 2-3 and [189].

Incentives to foreclose

111. We consider that the proposed merger could potentially increase the incentive for the merged entity to engage in behaviour that might foreclose rivals and, thereby, increase its profits.

112. We consider that the merged entity may be incentivised to foreclose rivals by:

112.1 refusing to supply (in the upstream blank lenses market) unfinished lenses to a downstream competitor in the wholesale supply of finished prescription lenses;

112.2 refusing to supply any 'must-have' products supplied by the merged entity[76] on a wholesale basis to competing optical retailers, either at all or at a price that enables them to compete with the merged entity in retail market(s); and

112.3 wholesaling any 'must-have' products supplied by the merged entity bundled or tied with other products for which there are competitive alternatives, thereby affecting competition in wholesale market(s) relating to the supply of the other products.

113. While the merged entity may be incentivised to foreclose rivals, for foreclosure to arise, it needs to also have the ability to engage in behaviour that would foreclose. We consider this in the next section.

Ability to foreclose

114. We consider that the merged entity would have no ability to engage in behaviour that would foreclose rivals. This is because existing competition in both the upstream and downstream markets means that there would be no market power to leverage.

115. No market participants raised serious concerns about the merger resulting in foreclosure. Essilor is not the only supplier of prescription lenses (either finished or unfinished). Essilor does not supply any 'must-have' lenses that cannot be sourced from alternative lens suppliers. Even though Luxottica sells some popular brands of frames (such as Ray-Ban and Oakley), there is evidence that Luxottica does not supply any 'must-have' brands of frames in New Zealand.[77] We do not consider that the merged entity would have the ability to use Luxottica's position as a frames supplier to foreclose access to Essilor lenses, or Essilor's position as a lens supplier to foreclose access to Luxottica frames.

115.1 [ ] noted that Luxottica currently promotes some Ray-Ban products as being exclusively available via OPSM and commented that post-merger you might see a product like Essilor's Transitions lenses being exclusively available via OPSM too. However, [ ] noted that it and other lens suppliers offer an

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76 The products being 'must-have' because they are only supplied by the merged entity and alternative products are not available through other suppliers, and/or the merged entity supplies brands that are popular with consumers to such an extent that optical retailers need to stock them to be competitive.

77 Evidence from other lens suppliers and optometrists on this point is set out at paras 115.1-115.9 below.

equivalent product to Essilor's Transitions lenses, which would be available to other optical retailers. [ ] commented that there could also be more bundled lenses and frames offers in the market post-merger, but did not see this as a major issue as [ ] could similarly offer bundles of lenses and frames (noting that it gets approaches from frames suppliers seeking to work with it and can access comparable high value frame brands to those supplied by Luxottica).[78]

115.2 [ ] commented that post-merger it might be the case that some Luxottica frames may only be able to be purchased bundled with Essilor lenses, or that the merged entity might not wholesale some products (eg, new colours of Transitions lenses) and only sell them at the retail level via OPSM. However, [ ] noted that while Luxottica supplies a number of the world's biggest frame brands, there were other frames brands and new brands coming along, and optical retailers would survive if they could no longer sell some brands. It also noted that other lens suppliers could supply similar lens products to Transitions, and could also offer lenses bundled with frames. [ ] currently offers some lenses and frames packages to optical retailers (sourcing frames from suppliers other than Luxottica) and said it would continue to do so where this provided supply chain benefits.[79]

115.3 [ ] noted that there are some cost savings from bundling frames and lenses together and suggested that the merged entity might be able to bundle more cheaply than other suppliers. However, [ ] did not see this as a problem, commenting that the frames market is very fragmented, with a lot of choice. [ ] also commented that while Ray-Ban is popular today, it may not be in two years' time, noting that frames brands come and go from the market.[80]

115.4 [ ] said that it remained to be seen whether any issues would arise post-merger in accessing the merged entity's products on a wholesale basis. It suggested that the merged entity might be more aggressive in offering frame and lens packages via OPSM, but was not sure whether any foreclosure would arise.[81]

115.5 [ ] raised no concerns about the vertical and/or conglomerate effects of the merger. It said that the lens market was very competitive and the merged entity would risk losing business if it restricted supply or raised prices. [ ] commented that it would probably choose not to use Essilor as a lens supplier post-merger because the merged entity's OPSM would be a competitor to [ ].[82]

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78 [ ]

79 [ ]

80 [ ]

81 [ ]

82 [ ]

115.6 Independent optometrist, [ ], did not think that the merged entity would exclusively sell some products via OPSM only. It expressed some concern that the merged entity might be able to offer more attractive deals to consumers via OPSM, but acknowledged that as an independent optometrist the supply deals it got were already not as good as what buying groups or chains got. [ ] currently sources lenses from Essilor and Hoya, but could switch suppliers post-merger if need be.[83]

115.7 Independent optometrist, [ ] acquires [ ]% of its frames from Luxottica ([ ]). It expressed a concern that the merged entity might start selling all Luxottica frames via OPSM and/or get very good prices on lenses and frames that enabled OPSM to undercut the market. It had been advised that it would still be able to sell Luxottica frames post-merger, but commented that it could replace the Luxottica frames with other brands if need be as there were a large number of frames suppliers.[84]

115.8 Independent optometrist, [ ], is supplied lenses by Essilor [ ]. It expressed some concern that the merged entity might post-merger not supply some types of lenses to independent optometrists, prioritise (in terms of timeliness) supply to OPSM over independent optometrists, and/or offer more bundled deals. However, it stated that if the merged entity behaved badly it could switch to getting lenses from another supplier. It already sources around [ ]% of its lenses from other suppliers, and said that there would be no issue in switching suppliers.[85]

115.9 Independent optometrist, [ ], is supplied lenses by Essilor [ ] and sources [ ]% of its lenses from Essilor. It also sells Luxottica's Oakley frames, as well as other brands of frames. [ ] stated that the only way that the merger would adversely impact it would be if the merged entity became restrictive about what Essilor lenses were sold to independent optometrists, versus via its own retail arm, OPSM. However, [ ] did not think that the merged entity would behave in this way, as it would risk losing sales. It advised that if it were to experience issues in getting supply from the merged entity post-merger, it had other supply options (for lenses as well as frames) that it could utilise and could switch suppliers relatively easily. It stated that not being able to stock Oakley frames would not be an issue, as they are only a small portion of its frame sales.[86]

115.10 [ ] advised that the merger is a significant development which could "result in huge supply chain and retail implications for the industry and

[83] [ ]
[84] [ ]
[85] [ ]
[86] [ ]

consumers worldwide”,[87] but did not elaborate further on why this would be the case. However, [ ] also indicated that it had multiple supply options, noting that it would “continue to work with a range of suppliers to ensure great value and choice for its customers”.[88]

116. Given the above, we do not consider that the merged entity would have the ability to engage in behaviour that might foreclose rivals in any of the relevant markets or otherwise render them less competitively effective.

Whether any foreclosure would have the effect of substantially lessening competition

117. We consider that any foreclosure (were it to arise) is unlikely to have the effect of substantially lessening competition in a market in light of remaining competitive constraints. The merged entity would be sufficiently constrained by the presence of existing competitors with the ability to expand in all relevant markets.

118. The merging parties face competition from multiple other existing competitors at all levels of the supply chain and in all relevant markets. Competition appears strong.

118.1 In the wholesale supply of prescription lenses (as discussed earlier under unilateral effects), the merged entity would be constrained by competition from other existing competitors, including, Hoya, Zeiss, ILS and CR Surfacing, all of whom have the ability to expand.

118.2 In the wholesale supply of prescription frames (as discussed earlier under unilateral effects), the merged entity would be constrained by existing competition from numerous other manufacturers and wholesalers of frames.

118.3 At the retail level (as discussed earlier under unilateral effects), the merged entity would be constrained by competition from other optical retailers, including both Specsavers and the numerous independent optical retailers.

119. Given the above, we consider that any attempt to foreclose by the merged entity would be ineffective and defeated due to the existing competition that the merged entity would face. Any foreclosure (were it to arise) is unlikely to have the effect of substantially lessening competition in any of the relevant markets.

Overall conclusion

120. We are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition due to unilateral, vertical or conglomerate effects in any of the relevant markets.

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87 [ ]

88 [ ]

Determination on notice of clearance

121. We are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

122. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to the global merger of the businesses of Essilor International (Compagnie Générale d'Optique) S.A. and Luxottica Group S.p.A insofar as they relate to markets in New Zealand.

Dated this 5th day of September 2017

Dr Mark Berry
Chairman