

# Notice seeking clearance for the merger of Essilor International and Luxottica Group

7 July 2017

# ESSILOR

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## **CONTENTS**

<b>EXECUTIVE SUMMARY</b>	<b>1</b>
<b>PART 1: APPLICANTS' DETAILS</b>	<b>4</b>
<b>PART 2: TRANSACTION DETAILS</b>	<b>5</b>
<b>PART 3: THE OPHTHALMIC LENS SECTOR</b>	<b>10</b>
<b>PART 4: MARKET PARTICIPANTS</b>	<b>15</b>
<b>PART 5: THE PARTIES' ACTIVITIES IN NEW ZEALAND</b>	<b>19</b>
<b>PART 6: RELEVANT MARKETS</b>	<b>24</b>
<b>PART 7: COMPETITION ASSESSMENT</b>	<b>30</b>
<b>PART 8: CONFIDENTIALITY</b>	<b>41</b>
<b>ANNEX 1: COMBINATION AGREEMENT</b>	<b>44</b>
<b>ANNEX 2: PRESS RELEASE, TRANSACTION FACTSHEET AND INVESTOR PRESENTATION RELATING TO THE TRANSACTION</b>	<b>45</b>
<b>ANNEX 3: ESSILOR'S NEW ZEALAND REVENUES FOR THE LAST THREE YEARS</b>	<b>46</b>
<b>ANNEX 4: ESSILOR'S FIVE LARGEST CUSTOMERS AND REVENUES IN NEW ZEALAND FOR 2016</b>	<b>47</b>
<b>ANNEX 5: LUXOTTICA'S NEW ZEALAND REVENUES FOR THE LAST THREE YEARS</b>	<b>48</b>
<b>ANNEX 6: LUXOTTICA'S FIVE LARGEST WHOLESALE CUSTOMERS AND REVENUES IN NEW ZEALAND FOR 2016</b>	<b>49</b>
<b>ANNEX 7: SUPPLY AGREEMENT BETWEEN EYEBIZ AND LUXOTTICA</b>	<b>50</b>
<b>ANNEX 8: RELEVANT TRADE ASSOCIATION MEMBERSHIPS</b>	<b>51</b>
<b>ANNEX 9: MARKET SHARE ESTIMATES</b>	<b>52</b>
<b>ANNEX 10: PROFILES OF ESSILOR'S MAIN COMPETITORS IN NEW ZEALAND</b>	<b>54</b>
<b>ANNEX 11: PROFILES OF LUXOTTICA'S (OPSM'S) MAIN COMPETITORS IN NEW ZEALAND</b>	<b>56</b>
<b>ANNEX 12: CONTACT DETAILS OF THE PARTIES' MAIN COMPETITORS IN NEW ZEALAND</b>	<b>58</b>

## **SECTION 66 COMMERCE ACT 1986: NOTICE SEEKING CLEARANCE FOR BUSINESS ACQUISITION**

7 July 2017

The Registrar  
Mergers and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking clearance of a proposed business acquisition.

### **EXECUTIVE SUMMARY**

#### **The Parties**

- 1 This notice seeks clearance from the Commerce Commission for the global merger of the businesses of Essilor and Luxottica. At a global level, Essilor is predominantly a manufacturer and wholesale supplier of ophthalmic lenses,<sup>1</sup> competing worldwide with other global lens manufacturers such as Hoya Corporation, Carl Zeiss AG and Rodenstock GmbH. In New Zealand, Essilor is principally active in the wholesale supply of finished prescription lenses to optical retailers, although Essilor is also active in the retail market to a limited extent via its online store: [clearly.co.nz](http://clearly.co.nz) (**Clearly**).
- 2 Luxottica, by contrast, is predominantly a global manufacturer and wholesale supplier of prescription frames and sunglasses, and competes with other global prescription frame and sunglass manufacturers, such as Mondottica International Limited and Safilo Group S.P.A. Luxottica is also a global retailer of optical products and services through its bricks and mortar retail chains. In New Zealand, Luxottica's activities are limited to the wholesale supply of prescription frames and sunglasses, and the retail of optical products and services (via its OPSM, Sunglass Hut and Oakley stores). In these markets, Luxottica competes against the optical retail chain Specsavers, and against independent optical retailers in New Zealand.
- 3 A more detailed description of the Parties' New Zealand activities is set out in Part 5.

#### **The merger is complementary**

- 4 Essilor's and Luxottica's activities in New Zealand are complementary in nature.
- 5 In New Zealand, Essilor's main business is the wholesale supply of finished prescription lenses to optical retailers. This comprises approximately [ ]% of Essilor's revenues in New Zealand, as of 2016. In contrast, Luxottica's main business in New Zealand is the wholesale supply of prescription frames and sunglasses and the retail supply of optical products and services through its retail chains: OPSM, Sunglass Hut and Oakley branded bricks and mortar stores. The bulk of Luxottica's revenue is generated in the retail market: approximately [ ]% of its New Zealand revenue as of 2016.

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<sup>1</sup> The terms "ophthalmic lenses" and "prescription lenses" both refer to corrective lenses that are mounted on spectacle frames, and will be used interchangeably in this notice.

6 The relationship between the Parties is primarily vertical: Essilor supplies finished prescription lenses to Luxottica, which Luxottica then on-supplies to consumers as complete prescription glasses.

**The Transaction does not give rise to significant market concentration**

7 In New Zealand, while there is a *de minimis* horizontal overlap in relation to the wholesale supply of prescription frames, the Parties submit that this overlap is not material and does not require further analysis as explained further at paragraphs 128 to 132.

8 The only material horizontal overlap between the Parties is in relation to the retail supply of optical products. While this is the principal focus of Luxottica's business in New Zealand, Essilor is also active, to a very limited extent, in the optical retail market in New Zealand via its online retail store: Clearly. Approximately [ ]%<sup>2</sup> of Clearly's revenues in New Zealand are realised from the sale of [ ]. However, Clearly's share of the optical retail market is [ ] as it amounts to only approximately [ ]%.<sup>3</sup> Accordingly, Luxottica's market share in the optical retail market in New Zealand will not materially increase, and there is no prospect of a substantial lessening of competition as a result of the aggregation of the Parties' respective positions in the retail market.

**There is no realistic prospect of vertical foreclosure**

9 The Parties have considered the potential for:

9.1 input foreclosure (i.e. foreclosing optical retailers from obtaining supplies of finished prescription lenses); and

9.2 customer foreclosure (i.e. foreclosing wholesale prescription lenses suppliers from accessing retail channels).

10 The Parties submit that there is no realistic prospect of a substantial lessening of competition as a result of either input or customer foreclosure.

*Input foreclosure*

11 Essilor has no ability to foreclose retailers from obtaining supplies of finished prescription lenses. Essilor operates in a highly competitive market, in which optical retailers have a range of alternative suppliers available to them, whether located in New Zealand or overseas. Essilor's share of the market for the wholesale supply of finished prescription lenses in New Zealand is only approximately [ ]%.<sup>4</sup>

12 If the Commission were to focus its analysis on the supply to independent optical retailers only, Essilor is similarly constrained, with a share of supply of [ ]%<sup>5</sup> as of 2016. Essilor also faces substantial countervailing buyer power, and there are low barriers to new entry into the market for the wholesale supply of finished prescription lenses.

*Customer foreclosure*

13 As Luxottica's requirements of finished prescription lenses in New Zealand (and Australia) are exclusively supplied by Eyebiz Laboratories Pty Ltd (**Eyebiz**) – a

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<sup>2</sup> See Annex 3.

<sup>3</sup> Based on the Parties' internal estimates. See Annex 9.

<sup>4</sup> See Annex 9.

<sup>5</sup> See Annex 9.

70/30 joint venture between Essilor and Luxottica headquartered in Sydney, Australia – Luxottica’s share of purchases of finished prescription lenses in New Zealand is currently not contestable. Accordingly, the Transaction does not give rise to any merger-specific foreclosure of access to Luxottica in its capacity as a customer.

- 14 For completeness, the current exclusive supply arrangement between Eyebiz and Luxottica will expire in [

].

- 15 In any event, Luxottica’s demand for finished prescription lenses is not so significant that foreclosing access to Luxottica (in its capacity as a customer) would affect the competitive viability of competing lens wholesalers. Taking Luxottica’s share of retail supply of finished prescription lenses as a proxy for its demand, Luxottica represents only approximately [ ]%<sup>6</sup> of demand for finished prescription lenses in 2016. Accordingly, sufficient contestable demand will remain post-Transaction to provide competing lens wholesalers with viable channels to market. Moreover, many of Essilor’s global competitors at the wholesale level operate internationally, and would therefore continue to exercise a vigorous competitive constraint even in the unlikely event that they were to experience a decline in their share of the New Zealand market.

**Conclusion**

- 16 To conclude, a substantial lessening of competition is not likely as a result of the Transaction and the Commission should grant clearance.

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<sup>6</sup> See Annex 9.

## **PART 1: APPLICANTS' DETAILS**

### **APPLICANTS FOR CLEARANCE**

- 17 This notice seeking clearance is given by Essilor International (Compagnie Générale d'Optique) S.A. (**Essilor**) and Luxottica Group S.p.A (**Luxottica**) (together, **the Parties**).
- 18 Essilor is represented in New Zealand by its local operating subsidiary Essilor New Zealand Ltd. (**Essilor New Zealand**), and Luxottica by its local operating subsidiary Luxottica Retail New Zealand Limited and Australian subsidiary Oakley South Pacific Pty Limited (**Luxottica New Zealand**).
- 19 Contact details for the Parties are set out below.

#### **Essilor**

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Physical address: 147, rue de Paris, 94220 Charenton-le-Pont, France

Website: <https://www.essilor.com/en/>

Contact person: Alexander Lunshof  
Senior Vice-President, Chief Legal Officer  
[ ]

#### **Luxottica**

Postal address: 3 Piazzale Cadorna, 20123 Milan, Italy

Physical address: 3 Piazzale Cadorna, 20123 Milan, Italy

Website: <http://www.luxottica.com/en>

Contact person: Michael A. Boxer, Esq. Executive Vice President and Group  
General Counsel  
[ ]

- 20 All correspondence and notices in respect of this notice should be directed in the first instance to:

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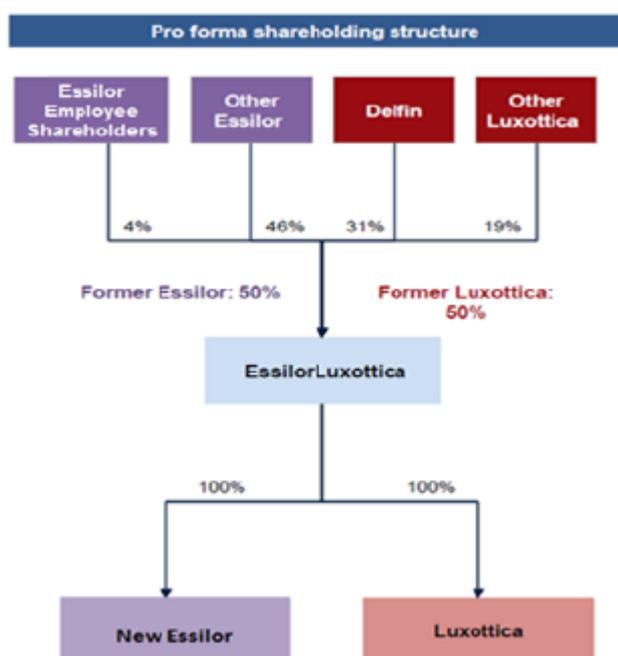
## PART 2: TRANSACTION DETAILS

### THE PROPOSED TRANSACTION

- 22 The Transaction is in substance a global merger of Essilor's and Luxottica's businesses.
- 23 Essilor is a public company, listed on the CAC 40 and the Euro Stoxx 50 indices. Its shares are widely dispersed and no natural person or legal entity, alone or in combination, has the power to exercise decisive influence over it.
- 24 Luxottica is also a public company. The following Luxottica shareholders hold an equity interest greater than 3%:
- 24.1 Delfin S.à.r.l. (**Delfin**) with 62.5% of the share capital. Delfin is the Luxembourg based holding company of the Del Vecchio family;
- 24.2 Deutsche Bank Trust Company Americas, with 5.7% of the share capital; and
- 24.3 Giorgio Armani, with 4.955% of the share capital.
- 25 The Transaction will be implemented under the terms of a Combination Agreement entered into by Luxottica's controlling shareholder Delfin and Essilor on 15 January 2017. A copy of the Combination Agreement is attached as **Annex 1**. The Transaction will consist of the following three steps:
- 25.1 first, Delfin will contribute its entire stake in Luxottica (approximately 62%) to Essilor in return for newly-issued Essilor shares at a fixed exchange ratio of 0.461 Essilor shares for 1 Luxottica share;
- 25.2 second, Essilor will launch a mandatory public exchange offer to acquire all of Luxottica's remaining issued and outstanding shares at the same exchange ratio and with a view to delisting Luxottica's shares; and
- 25.3 in parallel, Essilor will become a pure holding company with the new name "EssilorLuxottica" (the **Combined Entity**) via a hive-down of its operating activities into a wholly-owned company, New Essilor.
- 26 As a result of the Transaction, the Combined Entity will control two subsidiaries: Luxottica and New Essilor. The existing shareholders of Essilor and Luxottica will become shareholders of the Combined Entity. Depending on the acceptance rate of the mandatory public exchange offer by Essilor over Luxottica's outstanding shares, Delfin will own between 31% and 38% of the Combined Entity's shares and would be its largest – although not controlling – shareholder.
- 27 The Combination Agreement provides for a cap applicable to voting rights of all shareholders with a share beyond 31%. This is a mechanism intended by the parties to prevent any shareholder from exercising control over the Combined Entity.
- 28 **Figure 1** illustrates the pro forma shareholding structure following closing of the Transaction, based on an assumption of a 100% success rate of the exchange offer.

**Figure 1**

**Pro forma shareholding structure**



29 **Annex 2** contains a press release dated 16 January 2017 announcing the Transaction, a transaction factsheet, and a presentation to investors.

**COMMERCIAL RATIONALE**

30 The Transaction is driven by the Parties' global strategy, rather than by any New Zealand-specific considerations. At the global level, the Transaction will allow the Parties to combine their complementary areas of expertise, products, and brands in ophthalmic lenses, prescription frames, and sunglasses and develop comprehensive product and service offerings to address the growing needs in visual health and the appetite for high-quality eyewear products, particularly in under-served markets. The resulting integrated company would be present in almost every sector of the vision care and vision protection value chain, and would be able to provide comprehensive solutions for eye care professionals and consumers.

31 Essilor would benefit from the expertise that Luxottica has built in the design, manufacture and distribution of premium eyewear and in the retail market, while Luxottica would benefit from Essilor's worldwide innovation network, expertise in manufacturing of lenses and long history of working hand in hand with the trade networks around the world. This will allow for cross-pollination of products from their respective sectors.

32 The complementarity of the Parties' activities can be easily appreciated by looking at the breakdown of their 2015 worldwide turnover:

32.1 over [ ]% of Essilor's turnover derives from the wholesale of ophthalmic lenses and optical instruments (the latter representing around [ ]% of Essilor's sales) and [ ]% derives from the sale of ophthalmic machines, while Luxottica's activities in finished prescription lenses are limited to some prescription laboratories around the world serving its own retail network and/or certain branded products;

- 32.2 [ ]% of Luxottica’s turnover derives from the wholesale of sunglasses and prescription frames. Essilor’s activities in prescription frames are *de minimis*;
- 32.3 [ ]% of Luxottica’s turnover originates from retail sales (including online), while Essilor’s retail activities are very small and limited to online (which represents less than [ ]% of Essilor’s worldwide turnover).
- 33 In New Zealand, in 2016, approximately [ ]% of Essilor’s turnover derives from the wholesale of ophthalmic lenses.<sup>7</sup> Approximately [ ]% of Essilor’s turnover derives from retail sales (of which approximately [ ]% represents sales of [ ], approximately [ ]% sales of [ ], and approximately [ ]% sales of [ ]). Approximately [ ]% derives from the wholesale of ophthalmic machines, and approximately [ ]% from the wholesale of prescription frames (as an intermediary only).
- 34 Conversely, in New Zealand, approximately [ ]%<sup>8</sup> of Luxottica’s 2016 turnover derives from retail sales (of which approximately [ ]% represents sales of finished prescription lenses, approximately [ ]% sales of sunglasses, approximately [ ]% sales of prescription frames, approximately [ ]% sales of contact lenses, and approximately [ ]% sales of optometrical services). Approximately [ ]% of Luxottica’s turnover derives from the wholesale of sunglasses, and approximately [ ]% from the wholesale of prescription frames.
- 35 As a result of this complementarity, the Combined Entity will be less exposed to risks affecting a specific line of business. Indeed, key factors of success are not the same for finished prescription lenses, which is a business driven by technology, manufacturing process and product reliability, and frames and sunglasses, which are exposed to consumer trends.
- 36 Moreover, at the global level, in particular with respect to finished prescription lenses and prescription frames,  
[ ]  
[ ]. This is why globally the Transaction will generate significant distribution synergies with an optimization of the supply chain,  
[ ]  
[ ].
- 37 Even more important synergies will be accrued as a result of the acceleration in market growth brought by the Transaction. This is mostly due to the following reasons.
- 38 First, there is an increasing need for vision correction (and protection) throughout the world, with currently over 2.5 billion people in the world suffering from uncorrected vision problems and an estimated 5.8 billion people worldwide who are not equipped with vision protection from sunlight, UV rays and harmful blue light. It is estimated that in 2030, 6 billion people will need vision correction and 8.2 billion vision protection.
- 39 Together, the Combined Entity will be able to provide worldwide coverage and accessibility and benefit from additional reach in existing geographic markets where

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<sup>7</sup> See Annex 3. This does not include sales by Eyebiz that are attributable to the New Zealand market. See further at paragraphs 109 to 115 below.

<sup>8</sup> See Annex 5.

it is currently developing a presence. The Transaction will help increase the Combined Entity's exposure to emerging markets, where the Parties' presence is either not extensive or not sufficient to address the population needs.

40 Second, the combination of the Parties' activities in prescription lenses and frames will improve the conception and development of new business models aimed at tackling the current inefficiencies in the supply chain,

[ ]<sup>9</sup> [

].

As a result, the Combined Entity would be able to offer ECPs and retailers significant efficiencies that could result for them in working capital savings and the possibility to enlarge their offer (of both the Parties' products and third parties' products) to final customers.

41 The Transaction will also allow the Parties to keep pace with the recent changes in the eyewear industry worldwide, including luxury houses' evolving business models and the increasing shift towards in-house production. For example, the French group Kering<sup>10</sup> integrated its eyewear division through the creation of Kering Eyewear in 2014, and has recently announced an alliance with Compagnie Financière Richemont, whereby Kering Eyewear and the Maison Cartier, owned by Richemont, will enter into a strategic partnership bringing their operations together to create a platform for the development, manufacturing and worldwide distribution of the Cartier eyewear collection.<sup>11</sup> LVMH has recently followed suit, announcing in 2017 a joint venture agreement with the Italian sunglass and frame manufacturer Marcolin, and also purchased a 10% stake in the company.<sup>12</sup>

42 [

].

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<sup>9</sup> ECP is a term used to refer to opticians and other professionals, such as optometrists, who sell prescription glasses to final consumers.

<sup>10</sup> Kering's brands include Gucci, Bottega Veneta, Saint Laurent and Alexander McQueen.

<sup>11</sup> Kering 'Kering Eyewear and the Maison Cartier have completed the closing of their strategic partnership' (accessed 6 June): [http://www.kering.com/en/press-releases/kering\\_eyewear\\_and\\_the\\_maison\\_cartier\\_have\\_completed\\_the\\_closing\\_of\\_their\\_strategic](http://www.kering.com/en/press-releases/kering_eyewear_and_the_maison_cartier_have_completed_the_closing_of_their_strategic)

<sup>12</sup> Reuters 'LVMH to tighten grip on eyewear business with Marcolin deal' (accessed 6 June): <http://www.reuters.com/article/us-marcolin-lvmh-idUSKBN15G4NR>

## **OTHER COMPETITION AGENCIES BEING NOTIFIED OF THE PROPOSED TRANSACTION**

- 43 The implementation of the Transaction is subject to a range of conditions including regulatory merger control approvals in the European Union, the United States, Brazil, Canada, and China. In addition, the proposed Transaction has been, or will be, notified in [ ], India,<sup>13</sup> [ ], New Zealand, Russia,<sup>14</sup>[ ]. The Parties expect to close the proposed Transaction in the fourth quarter of 2017, [ ].

## **RELEVANT INDUSTRY ASSOCIATIONS**

- 44 We provide details of the Parties' membership of relevant trade associations at **Annex 8**.

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<sup>13</sup> Clearance obtained on July 3<sup>rd</sup> 2017.

<sup>14</sup> Clearance obtained on June 26<sup>th</sup> 2017.

## PART 3: THE OPHTHALMIC LENS SECTOR

### OVERVIEW

- 45 Ophthalmic lenses are medical devices. By nature, ophthalmic lenses enable people to correct visual impairments that have been diagnosed by a specialised health care professional, i.e., an optometrist or ophthalmologist.<sup>15</sup> As a result, ophthalmic lenses typically require a prescription by an optometrist or ophthalmologist and are purchased by the consumer based on a prescription that specifies the value of all parameters the prescriber has deemed necessary to construct the appropriate corrective lenses.
- 46 Because the consumer is rarely aware of specific lens brands, the choice of ophthalmic lenses is largely influenced by prescribers and/or retailers (which are sometimes the same, as explained in further detail below).
- 47 Visual impairments range from frequently diagnosed handicaps such as low vision, to new symptoms arising from the high and increasing use of digital devices, such as PCs, laptops, tablets, and smartphones, with screens that emanate blue light. The latter is a relatively recently discovered phenomenon.
- 48 The most frequent conditions that can be corrected with prescription glasses include astigmatism (where an eye's optical power and thus its focus differs according to its different meridians), hyperopia or hypermetropia (i.e., long-sightedness), myopia (i.e., short-sightedness), and presbyopia (which causes near objects to be seen as blurry.) Other visual impairments that can also be aided to some extent by prescription lenses include diplopia (double vision), accommodative esotropia (cross eye), amblyopia (lazy eye), and cataract (clouding).
- 49 Ophthalmic lenses are not the only way to correct the visual impairments described above. Contact lenses and laser corrective surgery may be appropriate alternatives for certain visual impairments, including astigmatism, hyperopia / hypermetropia, myopia, and presbyopia. Around 140 million people worldwide use contact lenses in addition to or instead of traditional ophthalmic lenses, and an estimated 2-3 million people undergo refractive eye surgery annually. In addition, intraocular lenses<sup>16</sup> are used following cataract surgery (Hoya and Zeiss are important suppliers of such lenses, while neither Essilor nor Luxottica is active in this sector).

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<sup>15</sup> In New Zealand, there are three types of eye care professionals (**ECPs**):

- Ophthalmologists are medical doctors who specialise in eye and vision care. Ophthalmologists diagnose and treat eye diseases, perform eye surgery, and write prescriptions for visual corrections.
- Optometrists are not medical doctors, but are educated and licensed professionals. Optometrists provide comprehensive vision care, including performing eye exams and vision tests, prescribing and dispensing corrective lenses, detecting certain eye abnormalities, and prescribing medications for certain eye diseases.
- Dispensing opticians interpret prescriptions for glasses and contact lenses and give advice to patients selecting lenses and frames. Dispensing opticians do not examine eyes or write prescriptions; however they are registered with the Optometrists and Dispensing Opticians Board.

<sup>16</sup> Intraocular lenses are medical devices in the form of an implant that is placed inside the eye to replace the eye's natural lens when it is removed through cataract surgery.

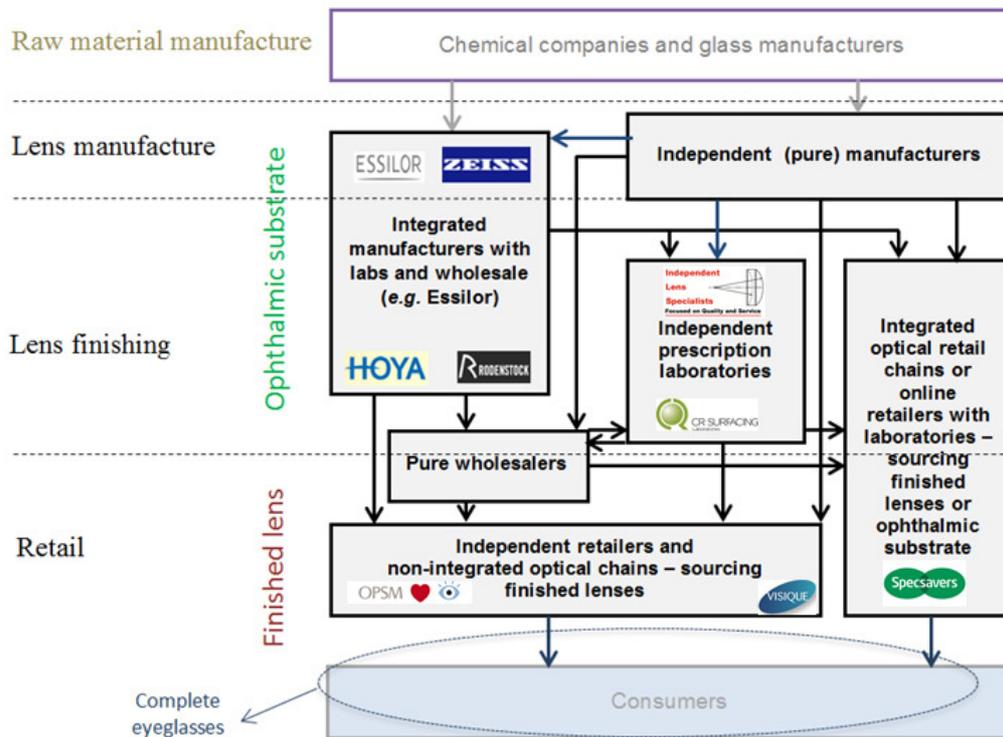
## **TYPES OF OPHTHALMIC LENSES**

- 50 Visual defects combine many parameters, and there are millions of possible combinations to correct such defects. Some visual corrections are quite common and justify that some types of lenses be produced in mass production and kept in stock. However, due to the large number of possible combinations, it is not possible to keep in stock a full range of lenses that correspond to all such possible combinations, and some lenses thus need to be produced "on-demand".
- 51 As a result, lens manufacturers produce large volumes of both (i) stock lenses that correspond to the most frequent visual corrections, where the two surfaces of the lens have an optical function, and (ii) "semi-finished" products where only the front surface has an optical function and the rear face is processed (or "finished") on-demand according to the specific combination requested (i.e., the exact prescription of the customer) in a second step which takes place in prescription laboratory.

## **LENS MANUFACTURING PROCESS**

- 52 The manufacturing process for prescription lenses entails several steps:
- 52.1 the manufacturing of raw materials;
  - 52.2 lens casting and moulding in manufacturing plants; and
  - 52.3 in some cases, finishing in prescription laboratories.
- 53 The general structure of the supply chain is illustrated in **Figure 2** below.

**Figure 2:**  
**Ophthalmic Industry Manufacturing and Supply Chain<sup>17</sup>**



**MANUFACTURING OF RAW MATERIALS**

54 The Parties are not active at this step of the process. This step consists of the manufacturing of glass and liquid monomer, i.e., the raw materials for the manufacturing of glass and plastic ophthalmic lenses. Depending on the type of material, i.e., plastic (thermosetting or thermoplastic) or glass, the material is supplied in liquid, granulated, or solid form. These materials are supplied by chemical companies and glass manufacturers. Lens manufacturers, even vertically integrated manufacturers, are generally not active at this step of the process.

**LENS MANUFACTURING**

55 Depending on whether the lens is made “on-demand” or not, lens manufacturing can be carried out at a single location (the manufacturing plant) or two different locations (the manufacturing plant and a prescription laboratory).

Steps taking place at the manufacturing plant include the casting of the raw material, which can be either cast in the form of a “semi-finished” product that is subsequently surfaced and treated in a prescription laboratory into the form of a finished single-vision or multifocal product, or directly cast in the form of a finished lens with the final optical power already implemented (i.e., stock lenses).

56 Some stock lenses are sent to a prescription laboratory for additional treatment, (e.g., tinting and/or coating) when they need to fit specific customer requirements.

<sup>17</sup> Some prescription laboratories also have wholesale facilities.

All products that require additional treatment in a prescription laboratory are collectively referred to in this application as "ophthalmic substrate".<sup>18</sup>

### ON-DEMAND FINISHING

- 57 As explained above, the activity performed in prescription laboratories is the processing of ophthalmic substrate, which comprises several distinct steps:
- 57.1 **Surfacing:** for "semi-finished" products, the optical power (prescription) element of the lens is introduced at this stage through machining or surfacing the rear face of the lens.
- 57.2 **Coating and/or tinting:** additional treatments may be applied to ensure transparency and durability of the lens, including the application of (i) anti-scratch, anti-reflective, anti-smudge, anti-dust, anti-UV, and blue-light coating; (ii) photochromic dye, which makes the lens turn darker when exposed to sunlight, and (iii) tinting. While some of these coating are almost universal (e.g., anti-scratch), others are optional.
- 57.3 **Glazing (edging and mounting):** the final step of the process is the edging or cutting of the lens into a shape that fits a specific prescription frame, and finally the mounting of the lens onto a prescription frame. The edging of the lenses can take place at (i) the premises of the retailer; (ii) glazing facilities that also mount the lenses on a frame sent by the ECP and subsequently send the assembled spectacles back to the ECP; or (iii) a prescription laboratory.

### PRESCRIPTION FRAMES

- 58 Frames for eyewear are typically made of metal, or a type of plastic called cellulose-acetate, which is derived from cotton, or injection-moulded plastic. Less frequently, they can be made from other material, such as wood.
- 59 The manufacturing process for both metal and plastic frames begins with the fabrication of precision tooling and molds based on prototypes. The manufacturing process for metal frames is comprised of approximately 70 phases, beginning with the production of basic components such as rims, temples and bridges, which are produced through a molding process. These components are welded together to form frames through numerous stages of detailed assembly work. Once assembled, the metal frames are treated with various coatings to improve their resistance and finish, and then prepared for lens fitting and packaging.
- 60 Plastic frames are manufactured through either a milling process (for acetate) or injection molding, depending upon the style and color of the frame. In the milling process, frames are carved from colored acetate sheets. This process produces rims, temples and bridges that are then assembled, finished and packaged. In the injection molding process, plastic resins are liquefied and injected in molds. The plastic parts are then assembled, coated, finished, and packaged.
- 61 Frame manufacturers may offer proprietary "house" brands or brands licensed from third parties. Luxury brands, fashion designers, and sporting and accessory brands have entered this industry to promote their own image. Instead of setting up their

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<sup>18</sup> The Commission has referred to ophthalmic substrate in its previous decisions as "blank" lenses. See: Decision 564, *Essilor New Zealand Limited / Prolab (Wellington) Limited*, 23 November 2005; Decision 565, *Essilor New Zealand Limited / Optical Laboratories NZ Limited*, 23 November 2005.

own manufacturing and logistics facilities, brand owners typically rely on frame manufacturers to produce and distribute their branded frames via license agreements. As a result, the main frame manufacturers generally produce and supply both third party brands and their own branded frames.

- 62 Prescription frames are highly diversified products. Categories can be identified for marketing purposes based on style, image, or materials. But from a demand standpoint, there is no functional difference between these categories of frames.
- 63 At the global level, Luxottica is a manufacturer, wholesaler and retailer of prescription frames. As explained in further detail in Part 5, in New Zealand Luxottica is active in the wholesale supply of prescription frames and the retail supply of optical products and services.
- 64 Although Essilor is active in the manufacture of prescription frames to a limited extent at the global level, it is not active in this market in New Zealand. As explained in further detail in Part 5, in New Zealand Essilor is active, to a very limited extent, in the wholesale supply of prescription frames as a mere intermediary on behalf of third party prescription frame manufacturers. In 2016 Essilor generated a minority of its revenue in New Zealand through the retail supply of optical products and services, of which a negligible percentage was generated through the retail of prescription frames.

## **PART 4: MARKET PARTICIPANTS**

- 65 There are a range of different market participants active at various levels of the ophthalmic lens value chain. Not all the activities described below take place in New Zealand.

### **LENS MANUFACTURING PLANTS.**

- 66 Lens manufacturing plants are operated by integrated lens manufacturers who are also active in downstream lens finishing (in prescription laboratories) and wholesale activities, as well as by independent lens manufacturers who may be active only at this level of the value chain. There are no lens manufacturing plants in New Zealand.
- 67 The integrated lens manufacturers that principally serve the New Zealand market are Essilor, Hoya and Carl Zeiss. In addition, a number of non-integrated lens manufacturers located abroad, especially China and South Asia, are in a position to supply stock finished single vision lenses in New Zealand, which can be sold directly to retailers.

### **PROCESSING AND WHOLESALE OF PRESCRIPTION LENSES**

- 68 There are a broad range of market participants involved in the market for the processing and wholesale supply of prescription lenses in New Zealand, including integrated lens manufacturers, and independent prescription laboratories.
- 69 Prescription laboratories process ophthalmic substrate that is imported into New Zealand, typically from low-cost Asian lens manufacturers, and distribute finished prescription lenses to retailers. The Parties note that it is not necessary to run a prescription laboratory to be active in the market for the wholesale supply of finished prescription lenses in New Zealand. Pure wholesalers can also import into New Zealand finished single-vision stock lenses from low-cost lens manufacturers located in Asia, especially China, and elsewhere, and distribute them directly to retailers, without need for further processing. They can also source finished lenses from third party prescription laboratories located in New Zealand and overseas. Alternatively, pure wholesalers can outsource lens processing to third party prescription laboratories located in New Zealand or abroad.
- 70 There are broadly three different types of prescription laboratories serving the New Zealand market:

#### **Laboratories owned by lens manufacturers**

- 71 Some prescription laboratories are either wholly or partially owned by the vertically integrated lens manufacturers, including Essilor, Hoya, Carl Zeiss and Rodenstock. Essilor, Hoya and Carl Zeiss all currently supply the New Zealand market, although not necessarily from prescription laboratories based in New Zealand. For example, Essilor primarily supplies the New Zealand market from laboratories located in [ ], as well as from [ ]. To the best of the parties' knowledge, Carl Zeiss supplies the New Zealand market exclusively from prescription laboratories based offshore. Hoya has a glazing lab in New Zealand but also supplies the New Zealand market from its prescription laboratory in Australia.

72 The Parties do not have any information regarding Rodenstock's sales in New Zealand, but submit that as a global lens manufacturer, Rodenstock would be well-positioned to supply the New Zealand market and therefore exerts a competitive constraint in the New Zealand lens market.

73 Further information regarding Hoya, Carl Zeiss and Rodenstock is provided in **Annex 10**.

#### **Laboratories owned by retailers**

74 In some cases vertically integrated retailers operate their own prescription laboratories. These prescription laboratories source ophthalmic substrates from third party lens manufacturers and process them into finished single-vision and multifocal lenses.

75 In New Zealand, Specsavers is the principal example of a partially vertically integrated retailer. Specsavers does not have a prescription laboratory in New Zealand. The Parties understand that all of Specsavers New Zealand's supplies of prescription lenses are provided by its Australian business, principally via its prescription laboratory located in Melbourne, Australia.

#### **Independent laboratories**

76 Other prescription laboratories are "independent", i.e. they are not owned by lens manufacturers or by retailers. These prescription laboratories source ophthalmic substrate from third party lens manufacturers, process them into finished single-vision and multifocal lenses, and sell the lenses directly to retailers.

77 Examples of independent laboratories based in New Zealand include CR Surfacing, TechLab NZ and Independent Lens Specialists. Further information regarding these suppliers is provided in **Annex 10**.

#### **OPTICAL RETAILERS**

78 Optical retailers (optometrists and dispensing opticians) sell prescription lenses, almost always together with ready-to-wear prescription frames, to final customers. In significantly fewer cases, final customers buy frames and lenses separately from different retailers (the most common reason is that the customer needs to change/update the lenses but can keep his/her prescription frames).

79 Retailers typically have access to the whole product range of all lens suppliers. To order ophthalmic lenses, they typically place orders on an information system that in some countries is common to all suppliers. Optical retailers are then invoiced on the basis of catalogue pricelists (minus negotiated and agreed discounts). This procedure applies irrespective of whether the optical retailer is completely independent, or independent and a member of a buying group, or a member of a chain.

80 Lens suppliers can also enter into direct supply agreements, partnership agreements or cooperation agreements with retailers, including both independents and members of a buying group or chain. Some retail chains and buying groups enter into supply agreements with multiple lens suppliers through a competitive bidding process. These supply agreements may offer better prices or rebates but do not prevent retailers from purchasing from other suppliers.

81 Retailers of prescription lenses in New Zealand fall into three broad categories.

### **Retail chains**

- 82 The principal retail chains in New Zealand are Specsavers and Luxottica's OPSM<sup>19</sup>. Specsavers and OPSM employ optometrists and dispensing opticians and supply a broad range of optical products and services.
- 83 Retail chains account for approximately [ ]%<sup>20</sup> of the optical retail market in New Zealand in 2016.

### **Independent optical retailers**

- 84 A substantial portion of the optical retail market in New Zealand is comprised of independent optical retailers, which are not part of, or owned by, a vertically integrated lens manufacturer, a retail chain, or a franchise. The Parties are unable to estimate the shares of the optical retail market in New Zealand held by independent optical retailers and online retailers respectively (see below), but estimate that the combined market share of these players at retail level amounts to approximately [ ]%.<sup>21</sup> Independent optical retailers often have only a single outlet, although some operate multiple outlets. They are often owned by the optometrists or dispensing opticians that practice there.
- 85 Some independent optical retailers have in-house glazing (edging and mounting) capabilities, since the necessary instruments (i.e., table-top edgers, tracers, and finishing blockers) are relatively compact and can be kept in the optometrist's/dispensing optician's back-office. Alternatively, independent optical retailers can rely on several independent glazing laboratories that can edge the lenses and mount them on the prescription frames selected by the customer.
- 86 Globally, independent optical retailers are often members of buying groups: associations of optometrists and dispensing opticians who use their collective purchasing power to secure the best possible commercial terms not only for prescription lenses, but also for prescription frames, contact lenses, and other optical products. In New Zealand, there are two major buying groups: Visique and Eye Pro. Further information regarding Visique and Eye Pro is provided in **Annex 11**.

### **Online retailers**

- 87 A more recent development in the New Zealand market is the proliferation of online retailers of optical products. These retailers typically sell all, or a combination of, prescription frames, sunglasses, prescription glasses, and contact lenses. Some online retailers are vertically integrated, and some operate their own centralized distribution facilities.
- 88 Online retailers that serve the New Zealand market include:
- 88.1 oscarwylee.com.au (an Australian company that ships internationally);
  - 88.2 sneakingduck.com (an Australian company that provides free delivery internationally);
  - 88.3 optically.co.nz;

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<sup>19</sup> OPSM's retail stores operate under the OPSM banner.

<sup>20</sup> See Annex 9.

<sup>21</sup> See Annex 9.

88.4 ezyglasses.co.nz;

88.5 smartbuyglasses.co.nz;

88.6 mrfoureyes.co.nz; and

88.7 clearly.co.nz (Essilor's online retailer).

89 As mentioned above, the Parties are unable to estimate the share of the optical retail market in New Zealand held by independent optical retailers and online retailers respectively, but estimate that the combined market share of these players at the retail level amounts to approximately [ ]%.<sup>22</sup>

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<sup>22</sup> See Annex 9.

## **PART 5: THE PARTIES' ACTIVITIES IN NEW ZEALAND**

### **OVERVIEW OF ESSILOR'S ACTIVITIES**

- 91 Globally, Essilor is active in every phase of ophthalmic lens development, from design to manufacture to wholesale, with a particular focus on research and development. Throughout the world, it has 32 plants, 490 prescription laboratories and edging facilities, as well as five research and development centers.
- 92 Its flagship brands are Varilux, Crizal, Transitions, Eyezen, and Xperio. Globally, Essilor also manufactures and markets machines, instruments and services for eye-care professionals. Essilor is also active, to a more limited extent, in the wholesale supply of sunglasses (although not in New Zealand).
- 93 Additional information on the Essilor group is available at [www.essilor.com](http://www.essilor.com).

#### **Essilor's activities in New Zealand**

- 94 Essilor's business in New Zealand primarily comprises:

94.1 wholesale supply of finished prescription lenses; and

94.2 an online retail business selling optical products.

#### ***Processing and wholesale supply of finished prescription lenses***

- 95 In New Zealand, Essilor is principally active in the processing and wholesale supply of finished prescription lenses to optical retailers, including retail chains [ ] and independent optical retailers.

- 96 Essilor has two [ ] laboratories in New Zealand:

96.1 a [ ] laboratory in Auckland, which handles approximately [ ]% of its volume; and

96.2 a [ ] laboratory in Christchurch, which handles approximately [ ]% of its volume.

- 97 [ ]<sup>23</sup> Essilor also serves the New Zealand market from prescription laboratories in [ ].

- 98 Essilor's processing activities [ ] include its 70% stake in Eyebiz, [ ]. As mentioned above, Essilor, via Eyebiz, is the exclusive supplier of prescription lenses to Luxottica [ ]. As explained below at paragraphs 109 to 115, [ ].

- 99 Essilor employs [ ] people in New Zealand across its [ ] laboratories and corporate office, including [ ] and staff for its commercial,

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<sup>23</sup> [ ]

marketing, logistics and other corporate functions. Over [ ]% of the employees are located in Auckland as the corporate office is based in Auckland.

**Online retail sales of optical products**

100 Essilor has a small presence in the retail supply of optical products through its online retail business: Clearly. Clearly offers contact lenses, prescription frames, prescription glasses and sunglasses for sale directly to consumers.

[<sup>24</sup> ].

[<sup>25</sup>

<sup>26</sup>			

]

101 Luxottica estimates that the size of the market for the retail supply of optical products and services in New Zealand is approximately AU\$[ ]. Essilor estimates that Clearly’s share of this market in New Zealand would be only approximately [ ]%.<sup>27</sup>

**Incidental adjacent activities**

102 In addition to its wholesale supply of finished prescription lenses and limited retail activities, Essilor has *de minimis* sales in New Zealand of certain adjacent products, including:

102.1 [ ]; and

102.2 [ ].

103 [ ].

<sup>24</sup> See Annex 3.

<sup>25</sup> See Annex 3.

<sup>26</sup> [ ]

<sup>27</sup> See Annex 9.

104 These incidental sales of adjacent products are not material, comprising approximately [ ]%<sup>28</sup> of Essilor’s annual revenue in New Zealand in 2016. Accordingly, Essilor does not view itself as participating in a material way in the markets for these adjacent products.

**Essilor’s revenue in New Zealand**

105 In 2016, Essilor generated NZ\$[ ] in revenue from sales in New Zealand.<sup>29</sup> Approximately [ ]%<sup>30</sup> of that revenue was from the wholesale supply of finished prescription lenses. Essilor’s revenues for the past three years, as well as a detailed breakdown of those revenues, are set out in **Annex 3**.

106 **Figure 3** below outlines the segmentation of Essilor’s revenues in New Zealand.

[  
  
] <sup>31</sup>  
  
[  
  
]

107 Information regarding Essilor’s five largest customers in New Zealand is set out in **Annex 4**.

108 Additional information on Essilor, including Essilor’s annual reports and financial statements, are available at: <https://www.essilor.com/en/>. Additional information on Essilor New Zealand is available at: <https://www.essilor.co.nz/>.

**EYEBIZ JOINT VENTURE**

109 In 2010, Luxottica and Essilor<sup>32</sup> entered into a joint venture agreement for the manufacture and supply of finished prescription lenses and related services in Australia and New Zealand. Under the terms of the joint venture agreement, Essilor acquired a majority interest (70%) in Eyebiz, i.e. in Luxottica’s Sydney-based prescription laboratory, with Luxottica retaining 30% ownership. The joint venture agreement  
[ ].

110 [ ].

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<sup>28</sup> See Annex 3.

<sup>29</sup> [ ].

<sup>30</sup> See Annex 3.

<sup>31</sup> See Annex 3. Note that revenue generated through the wholesale supply of prescription lenses includes revenues generated by prescription laboratories.

<sup>32</sup> Via Essilor International (Compagnie Générale d’Optique) and Luxottica Group S.p.A’s wholly owned subsidiary, Luxottica Australia Pty Ltd.

111 [ ]]. The supply agreement  
[ ]. A copy of the supply agreement is included in **Annex 7**.

112 [ ].

113 [ ]].

114 [ ]].

115 The Parties submit that, as a consequence of the exclusive supply agreement between Eyebiz and Luxottica, Luxottica's demand for prescription lenses in New Zealand [ ] should be treated as non-contestable. This has two consequences for the Commission's analysis:

115.1 in calculating Essilor's share of the wholesale supply of prescription lenses in New Zealand,  
[ ]; and

115.2 for the purposes of assessing the risk of vertical foreclosure, the Parties submit that there is no merger-specific risk of customer foreclosure as, in both the factual and counterfactual, Luxottica's demand will continue to be non-contestable.

## **OVERVIEW OF LUXOTTICA'S ACTIVITIES**

116 Luxottica designs, manufactures and distributes eyewear, i.e. prescription frames and sunglasses. Product design, development and manufacturing take place in 12 plants (six in Europe, three in China, one in US, one in Brazil and a small one in India). Its portfolio includes proprietary brands including Ray-Ban, Oakley, Vogue Eyewear, Persol, Oliver Peoples, and Alain Mikli, as well as licensed brands including Giorgio Armani, Burberry, Bulgari, Chanel, Coach, Dolce&Gabbana, Michael Kors, Prada, Ralph Lauren, Tiffany & Co., Valentino and Versace.

117 Luxottica's global wholesale distribution network covers more than 150 countries and is complemented by a retail network of approximately 8,000 stores, with LensCrafters and Pearle Vision in North America, OPSM and LensCrafters in Asia-Pacific, GMO in Latin America, Salmoiraghi & Viganò in Italy, David Clulow in the UK, and Sunglass Hut worldwide.

### **Luxottica's activities in New Zealand**

118 Luxottica operates at both the wholesale and retail levels of the market. Luxottica's activities in New Zealand include:

118.1 the wholesale supply of prescription frames and sunglasses to its own and franchised retail stores and other retailers; and

118.2 the retail supply of optical products and services (mainly of sunglasses, prescription frames and finished prescription lenses and, to a limited extent, contact lenses) as well as, to a very limited extent, optical dispensing services, via its OPSM stores (and Sunglass Hut and Oakley stores in relation to sunglasses).

119 Luxottica does not manufacture any of its products in New Zealand. Instead, all products are imported from overseas.

120 Luxottica operates a number of retail stores in New Zealand through a mixed business model where some stores are run under a franchise model. In New Zealand, Luxottica operates:

120.1 48 OPSM stores which specialise in prescription eyewear (of which seven are under franchise);

120.2 29 Sunglass Hut stores and 2 Oakley stores which sell sunglasses.

121 Luxottica's corporate and shared services are provided from its Australian business. Luxottica's employees in New Zealand are therefore limited to its retail operations.

### **Luxottica's revenue in New Zealand**

122 In 2016, Luxottica's sales in New Zealand were AU\$[ ]. Luxottica's revenues for the last three years are set out in **Annex 5**. **Figure 4** below sets out an approximate segmentation of Luxottica's revenues.

[ ]<sup>33</sup>

[ ]

123 Information regarding Luxottica's five largest wholesale customers is set out in **Annex 6**.

124 Additional information on Luxottica, including Luxottica's annual reports and financial statements, is available at <http://www.luxottica.com/en/>.

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<sup>33</sup> See Annex 5. Optical services include all consultations services, technologies and other specialty services.

**PART 6: RELEVANT MARKETS**

126 The Parties submit that the only relevant frames of reference, for the purposes of the Commission’s competition analysis, are:

126.1 the horizontal overlap in the market for the retail supply of optical products and services, as a consequence of Essilor’s limited online retail sales via clearly.co.nz; and

126.2 the vertical relationship between the Parties relating to the wholesale supply (by Essilor) of finished prescription lenses and the retail supply of optical products and services (by Luxottica).

127 To the extent that, in New Zealand, there is a *de minimis* horizontal overlap in relation to: the wholesale supply of prescription frames, the Parties submit that this overlap is not material and does not require further analysis as explained further below. The Parties further submit that they do not overlap in the wholesale supply of prescription lenses in New Zealand, as explained further below.

**No relevant horizontal overlap in the wholesale supply of prescription frames**

128 As noted above at paragraph 103,  
[

].

129 [

].

130 [

].

131 [

].

132 The Parties submit that this activity does not give rise to a relevant overlap in the wholesale supply of prescription frames because:

132.1 this activity is *de minimis*. In 2016, Essilor sold approximately [ ] frames via this intermediary mode, at a value of NZ[ ];<sup>34</sup>

132.2 [ ]; and

132.3 therefore Essilor should not be viewed as a genuine competitor in this market.

**No horizontal overlap in the wholesale supply of finished prescription lenses**

133 Luxottica has an interest in the wholesale supply of finished prescription lenses in a very limited sense by virtue of its 30% stake in Eyebiz.

134 However, the Parties submit that Luxottica should not be viewed as a competitor in this market

[ ], as explained in detail at paragraphs 109 to 115.

Accordingly,

[ ].

135 The Parties submit therefore that Luxottica cannot be treated, for the purposes of the competition analysis, as active in the wholesale supply of finished prescription lenses.

**Conclusion on relevant markets**

136 The Parties therefore submit that the relevant markets are:

136.1 the national (and arguably worldwide) market for the wholesale supply of finished prescription lenses; and

136.2 the national (and arguably worldwide) market for the retail supply of optical products (including prescription frames, finished prescription lenses, sunglasses and contact lenses) and services.

**WHOLESALE SUPPLY OF FINISHED PRESCRIPTION LENSES**

137 The Commission has considered the ophthalmic (prescription) lens markets in two previous decisions: *Essilor/Prolab*<sup>35</sup> and *Essilor/Optical Laboratories*.<sup>36</sup> These decisions were issued simultaneously and applied to related transactions, and hence are identical as regards market definition.

138 In those cases, the Commission defined markets for:

138.1 the import and intermediate supply of blank prescription lenses (i.e. ophthalmic substrate); and

138.2 the wholesale supply of processed (i.e. finished) prescription lenses.

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<sup>34</sup> See Annex 3.

<sup>35</sup> Decision 564, *Essilor New Zealand Limited / Prolab (Wellington) Limited*, 23 November 2005.

<sup>36</sup> Decision 565, *Essilor New Zealand Limited / Optical Laboratories NZ Limited*, 23 November 2005.

### **Product dimension**

139 In its earlier decisions, the Commission considered the potential substitutability of contact lenses, 'ready-made' spectacles (or 'readers') and corrective laser surgery for finished prescription lenses, and concluded that these products constituted separate markets. The Commission observed that:

139.1 optometrists do not regard contact lenses, readers or laser treatment as substitutes for finished prescription lenses;

139.2 consumers tend to purchase contact lenses to complement their finished prescription lenses, rather than as substitutes;

139.3 readers are viewed by industry participants more as reading aids than as finished prescription lenses, and are not customised to the individual consumer;

139.4 while there is some demand-side substitutability between contact lenses, readers and finished prescription lenses, it is modest. Demand-side substitution between finished prescription lenses and readers is limited to some consumers with very basic short or long sightedness; and

139.5 there is no supply-side substitutability between contact lenses and finished prescription lenses, and limited supply-side substitution in practice between readers and finished prescription lenses.

140 Consequently, the Commission concluded that, while there is some competition at the margins, contact lenses and readers do not compete in the same market as finished prescription lenses. Without expressing a concluded view on the appropriate market definition, the Parties have proceeded on the basis of a market for the wholesale supply of finished prescription lenses, which excludes contact lenses, readers and laser surgery, in line with the Commission's previous decisions.

141 In its earlier decisions, the Commission also did not further segment the prescription lens market by, for example, lens material (glass or plastic), single-vision versus multi-focal finished prescription lenses, or polarised versus unpolarised finished prescription lenses. The Parties agree that that approach is appropriate, and that there is no basis for further segmentations within the prescription lens market.

### **Functional dimension**

142 The Commission in *Essilor/Prolab* and *Essilor/Optical Laboratories* distinguished between 'blank' lenses (i.e. ophthalmic substrate) and finished prescription lenses. The Commission observed that no ophthalmic substrate is manufactured in New Zealand. To the Parties' knowledge, that continues to be the case. Ophthalmic substrate is imported into New Zealand for processing and onward supply in New Zealand.

143 Lens processing is carried out by prescription laboratories, which may be located in New Zealand or offshore. Prescription laboratories do not supply consumers directly (except to the extent they are integrated downstream through their own retail stores); their immediate customers are optometrists and dispensing opticians. Lens processors therefore operate at the wholesale level of the market.

144 The Commission consequently defined markets for:

144.1 the import and intermediate supply of blank prescription lenses (i.e. ophthalmic substrate); and

144.2 the wholesale supply of processed (i.e. finished) prescription lenses.

145 The Parties submit that these market definitions continue to be appropriate. The Parties support a distinction between ophthalmic substrate<sup>37</sup> and finished prescription lenses, as these reflect different functional levels of the prescription lens value chain, and to the Parties' knowledge, prescription laboratories and pure lens wholesalers are not typically active in the manufacturing and/or supply into New Zealand of ophthalmic substrate. For example, CR Surfacing is a New Zealand-based prescription laboratory that imports ophthalmic substrate from a range of manufacturers, but does not manufacture its own ophthalmic substrate.

146 [ ]].

### **Geographic dimension**

147 In its earlier decisions, the Commission concluded that the market for the wholesale supply of finished prescription lenses is national in scope. The Parties submit that the market is at least national in scope, and in fact arguably worldwide in scope, because:

147.1 ophthalmic substrate is not manufactured in New Zealand, but rather imported;

147.2 finished prescription lenses are supplied at the wholesale level in New Zealand from suppliers located in New Zealand and offshore (particularly from Australia);

147.3 finished prescription lenses can be readily transported internationally, and the costs associated with shipping do not constitute a barrier to the international supply of finished prescription lenses;

147.4 in practice, optical retailers based in New Zealand readily source finished prescription lenses from overseas suppliers; and

147.5 there are in practice no material barriers to serving the New Zealand market from an offshore prescription laboratory.

148 For example, Essilor supplies the New Zealand market from [ ]glazing laboratories located in [ ],<sup>38</sup> as well as from [ ]. Zeiss and Hoya supply the New Zealand market exclusively from prescription laboratories based offshore. [ ]].

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<sup>37</sup> The Commission has referred to ophthalmic substrate in its previous decisions as "blank" lenses. See: Decision 564, *Essilor New Zealand Limited / Prolab (Wellington) Limited*, 23 November 2005; Decision 565, *Essilor New Zealand Limited / Optical Laboratories NZ Limited*, 23 November 2005.

<sup>38</sup> These laboratories in New Zealand [ ]

- 149 In any event, it is unnecessary for the Commission to reach a conclusive position on the geographic dimension of the market as, on any plausible market definition, there is no likelihood of a substantial lessening of competition.

### **Conclusion**

- 150 The Parties therefore submit that the relevant market, as regards finished prescription lenses, is the national (and arguably worldwide) market for the wholesale supply of finished prescription lenses.

### **RETAIL SUPPLY OF OPTICAL PRODUCTS AND SERVICES**

- 151 Luxottica is active in the supply of optical products at both the wholesale and retail level. However, for the purposes of the Commission's analysis, the relevant overlaps are:

151.1 the limited horizontal overlap in the retail market as a result of Essilor's limited online sales through clearly.co.nz; and

151.2 the vertical relationship between: (i) Essilor's activities in the wholesale supply of finished prescription lenses to Luxottica and other optical retailers; and (ii) Luxottica's retail supply of optical products and services (including finished prescription lenses (fitted to glasses)) to consumers.

### **Product dimension**

- 152 The Commission has not considered the retail optical market in its previous decisions. The Parties submit that the product dimension of the relevant retail market comprises all eyewear products,<sup>39</sup> as well as other ancillary and related optical products and services.
- 153 This market definition is consistent with the decisional practice of the European Commission, which the Parties submit should be applied in this case. According to the European Commission's decisional practice, it is possible to identify a single market for the retail of all types of eyewear (sunglasses, finished prescription lenses and frames) as well as other optical related products and services (e.g. cleansing liquids, optical dispensing, contact lenses, etc), without further segmentation based on the product type, sales channel, price, or any other factor.<sup>40</sup> This is consistent with the fact that most if not all optical retailers offer all or a combination of these various optical products and services.
- 154 In any event, the Parties submit that the precise definition of the retail market can be left open as, on any plausible market definition, the Transaction is not likely to substantially lessen competition.

### **Functional dimension**

- 155 The Parties submit that the appropriate functional dimension is the retail market, as this market can be distinguished from the wholesale supply of eyewear products.

### **Geographic dimension**

- 156 The Parties submit that the appropriate frame of reference for the Commission's analysis is at least a national market and arguably a worldwide market given the

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<sup>39</sup> Eyewear products include sunglasses, prescription frames, finished prescription lenses and contact lenses.

<sup>40</sup> Case COMP/M.5693, *Hal Holding/Safilo Group*, 11 December 2009.

prevalence of online retail channels that operate on a multinational basis. There are no regional distinctions or variations in the retail supply of optical products and services that would support segmentation on a local level.

**Conclusion**

157 The Parties therefore submit that the relevant market, as regards the retail level of the market, is the national market for the retail supply of optical products and services.

## PART 7: COMPETITION ASSESSMENT

### COUNTERFACTUAL

158 Absent the Transaction, the Parties would continue to operate as separate entities. Accordingly, the Parties submit that the status quo is an appropriate counterfactual.

159 [ ]:

159.1 [

]

159.2 [

].

160 [

41

].

161 Relative to those counterfactuals, the Transaction would not have the effect, or likely effect, of substantially lessening competition in any market.

### HORIZONTAL OVERLAP IN THE RETAIL MARKET

162 In New Zealand, Essilor is active, to a very limited extent, in the retail market for optical products and services by virtue of its online store: clearly.co.nz.

163 As explained at paragraphs 151 to 157 above, the Parties submit that the appropriate frame of reference for the Commission's analysis is an optical retail market that includes all eyewear products. Luxottica estimates the size of the New Zealand optical retail market to be approximately AU\$[ ]. Accordingly, Clearly's share of that retail market is only approximately [ ]%.<sup>42</sup>

164 **Table 2** below sets out the Parties' estimates of market shares in the retail optical products market. As there is no comprehensive third party market share data available for New Zealand, the information below represents the Parties' best estimates.

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<sup>41</sup> [ ]

<sup>42</sup> See Annex 9.

**Table 2:**

**Retail Supply of Optical Products and Services (2014 -2016) By Value<sup>43</sup>**

<b>Company</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Luxottica	[ ]%	[ ]%	[ ]%
Specsavers	[ ]%	[ ]%	[ ]%
Visique	[ ]%	[ ]%	[ ]%
Others <sup>44</sup>	[ ]%	[ ]%	[ ]%
Essilor	[ ]%	[ ]%	[ ]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source: Parties' Estimates*

165 Given Essilor's very small share of this market, and thus the negligible increment in share attributable to the Transaction, the Parties submit there is no realistic prospect of a substantial lessening of competition in this market.

166 The Parties submit that it would not be appropriate to define the retail market more narrowly. However, were the Commission to define narrower markets, the Parties nonetheless submit that there is no prospect of a substantial lessening of competition. The bulk of Clearly's revenue in New Zealand is derived from the sale of [ ] ([ ]%<sup>45</sup> in 2016). Were the Commission to define a market for the retail supply of [ ] in New Zealand, Luxottica estimates the size of that market to be approximately NZ\$[ ]. Clearly's sales of [ ] in New Zealand would accordingly amount to approximately a [ ]% share, whereas Luxottica's sales of [ ] in New Zealand would amount to approximately a [ ]% share of that market.

167 Accordingly, given their combined share amounts to only approximately [ ]% of retail sales of contact lenses in New Zealand, there is no likelihood of a substantial lessening of competition in the contact lens segment. The Combined Entity would continue to face vigorous competition from a diverse range of market participants, including a number of online retailers of contact lenses.

**VERTICAL RELATIONSHIP**

168 The Parties have a vertical relationship in relation to the wholesale supply of finished prescription lenses on the one hand, and the retail of optical products and services on the other. Essilor is active in the wholesale supply of finished prescription lenses. Essilor is Luxottica's exclusive supplier of finished prescription lenses (via Eyebiz), and Essilor also supplies other optical retailers (on a non-exclusive basis). Luxottica is a customer of Essilor and competes in the downstream retail market for optical products and services.

169 The Parties consider that this vertical relationship does not give rise to any realistic prospect of:

<sup>43</sup> See Annex 9 for more detailed information regarding market shares.

<sup>44</sup> This category gathers a wide range of companies, none of which have a significant market share (i.e. a market share of above 5%).

<sup>45</sup> See Annex 3.

169.1 **input foreclosure:** foreclosing competing optical retailers from obtaining supplies of finished prescription lenses; or

169.2 **customer foreclosure:** foreclosing competing wholesale lens suppliers from accessing retail channels.

170 We address each of those potential theories of harm below. In analysing the risk of foreclosure, the Parties have considered, per the Commission's *Mergers & Acquisitions Guidelines*:

170.1 the ability of the Combined Entity to foreclose customers or inputs;

170.2 its incentives to do so; and

170.3 the consequential effect on competition.

### **NO REALISTIC PROSPECT OF INPUT FORECLOSURE**

171 There is no realistic prospect of a substantial lessening of competition in the retail market as a consequence of the Combined Entity:

171.1 refusing to supply retailers other than Luxottica ([ ]) with finished prescription lenses; or

171.2 supplying competing retailers only on materially worse terms.

#### **Ability to foreclose**

172 First, Essilor has no ability to foreclose retailers from obtaining supplies of finished prescription lenses. Essilor operates in a highly competitive market, in which optical retailers have a range of alternative suppliers available to them.

173 There are three main factors that constrain Essilor in the market for the wholesale supply of finished prescription lenses, and which render a foreclosure strategy impossible:

173.1 strong competition in the market for the wholesale supply of finished prescription lenses;

173.2 substantial countervailing buyer power; and

173.3 low barriers to new entry and expansion into the wholesale supply of finished prescription lenses.

#### **Competition in the lens wholesale market**

174 Essilor faces strong competition from a wide range of suppliers active in the wholesale supply of finished prescription lenses in New Zealand, based both in New Zealand, Australia, and internationally.

175 **Table 3** below sets out Essilor's and its main competitors' market shares in the contestable market for the wholesale supply of finished prescription lenses in New Zealand. As there is no comprehensive third party market share data available for New Zealand, the information below represents the Parties' best estimates.

176 In estimating the market shares below, the Parties have included only the contestable market,

[

]). This is on the basis

that Luxottica’s demand for prescription lenses is non-contestable, as explained above at paragraphs 109 to 115 and paragraphs 158 to 161.

177 The Parties have included Specsavers as a wholesale competitor in this market, notwithstanding they understand Specsavers is at least partially vertically integrated, and principally supplies its own retail business. This is because the Parties understand that, while Specsavers New Zealand obtains its supplies of prescription lenses from its Australian business, the Australian business may source prescription lenses from third parties, and should therefore be treated as contestable for the purposes of the Commission’s analysis. Further information regarding Specsavers is set out in **Annex 11**.

**Table 3:**

**Wholesale supply of Finished Prescription Lenses (2014-2016) By Value<sup>46</sup>**

<b>Company</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Essilor	[ ]%	[ ]%	[ ]%
Specsavers <sup>47</sup>	[ ]%	[ ]%	[ ]%
Hoya	[ ]%	[ ]%	[ ]%
Carl Zeiss	[ ]%	[ ]%	[ ]%
Independent Lens Specialists	[ ]%	[ ]%	[ ]%
Others <sup>48</sup>	[ ]%	[ ]%	[ ]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source: Essilor’s Estimates*

178 As this table shows, Essilor’s share of the market for the wholesale supply of finished prescription lenses in New Zealand is only approximately [ ]%, suggesting that Essilor is not in a position to foreclose access to prescription lenses as an input.

179 In addition, given that, (i) post-Transaction, Luxottica’s requirements will continue (as is currently the case) to be supplied exclusively by Essilor, and (ii) the Parties understand that Specsavers’ sources prescription lenses primarily from its Australian business, the Parties have conservatively assessed the risk of foreclosure in relation to independent optical retailers only (i.e. those that are not part of an integrated retail chain such as OPSM or Specsavers).

180 **Table 4** below sets out Essilor’s share estimates for this segment.

<sup>46</sup> See Annex 9 for more detailed information regarding market shares.

<sup>47</sup> Specsavers New Zealand is supplied by Specsavers Australia. The Parties understand that the Australian business may source some portion of its requirements of prescription lenses from suppliers such as Honk Kong Optical and Thai Optical Group.

<sup>48</sup> Other suppliers of prescription lenses include suppliers such as CR Surfacing, Read and TechLab NZ, for which the Parties are unable to provide market share estimates.

**Table 4:**

**Wholesale Supply of Finished Prescription Lenses to Independent Optical Retailers only (2014 -2016) By Value<sup>49</sup>**

<b>Company</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Essilor	[ ]%	[ ]%	[ ]%
Hoya	[ ]%	[ ]%	[ ]%
Carl Zeiss	[ ]%	[ ]%	[ ]%
Independent Lens Specialists	[ ]%	[ ]%	[ ]%
Others <sup>50</sup>	[ ]%	[ ]%	[ ]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source: Essilor' Estimates*

- 181 As the Commission will see, Essilor's share of the wholesale supply of finished prescription lenses does not exceed [ ]%, whether the Commission examines the total market or only sales to independent optical retailers. Accordingly, were Essilor to refuse to supply independent optical retailers in New Zealand, there are a variety of alternative sources of supply to which independent optical retailers could easily shift their demand to, including integrated lens manufacturers such as Hoya and Carl Zeiss, and a number of independent prescription laboratories such as CR Surfacing, Independent Lens Specialists and TechLab NZ. In addition, optical retailers can source ophthalmic lenses from pure wholesalers, which are equally credible alternatives to the lens suppliers identified above.
- 182 The Parties submit this demonstrates that the lens wholesale market in New Zealand is highly competitive, and particularly for the business of independent optical retailers. In New Zealand Essilor faces competition from a wide range of lens suppliers, including global suppliers such as Hoya and Zeiss, and local or regional suppliers such as CR Surfacing or Independent Lens Specialists.
- 183 We set out further information on each of Essilor's major competitors at **Annex 10**.
- 184 The Commission will also note that Essilor faces competition both from domestic and international lens wholesalers. From the perspective of the optical retailer, there is no consistent advantage to being supplied by a domestic supplier; nor is there any particular disadvantage in sourcing finished prescription lenses from an offshore supplier. This reflects the genuinely worldwide scope of the lens wholesale market.
- 185 Many of the international lens wholesalers have manufacturing facilities in Asia, from where it is straightforward to ship finished prescription lenses to New Zealand. International suppliers have also invested in other supply chain management techniques to ensure timely delivery of finished prescription lenses. The result is that ordering a lens from an international wholesaler is usually no less timely than ordering from a New Zealand wholesaler.

<sup>49</sup> See Annex 9 for more detailed information regarding market shares.

<sup>50</sup> Other suppliers of prescription lenses include suppliers such as CR Surfacing, Read and TechLab NZ, for which the Parties are unable to provide market share estimates.

- 186 That independent optical retailers treat offshore suppliers as ready substitutes for domestic suppliers is also demonstrated by the substantial share of the independent segment that the offshore suppliers have captured.
- 187 Were the Combined Entity to refuse to supply finished prescription lenses to independent optical retailers, competing lens wholesalers would have sufficient capacity to satisfy any unmet demand quickly. In fact, to the best of the Parties' knowledge, any of the international suppliers of finished prescription lenses would be able to serve the entire demand of the New Zealand market by themselves if necessary. Local suppliers such as CR Surfacing would also have sufficient capacity to substantially increase their output, if the opportunity arose.
- 188 An example from the Australian market illustrates the ease with which suppliers can expand their production. When Hoya's Thailand prescription laboratory was damaged by floods approximately 6 years ago, Hoya increased production in its Sydney laboratory to cope with approximately 50% of the volume of lenses that were being processed in the damaged laboratory. In addition, the overflow demand was met by other prescription laboratories, including those owned by Essilor, Carl Zeiss, CR Surfacing and Opticare and other lens wholesalers as well.
- 189 There are also no 'must-have' lens types supplied by Essilor for which its competitors do not offer ready substitutes. All lens wholesalers are able to supply a full range of finished prescription lenses, suitable for all prescriptions.
- 190 Finally, there are no particular barriers to switching lens suppliers. In most cases, independent optical retailers will already be sourcing finished prescription lenses from at least two suppliers in parallel.  
[  
]. In addition, there are no material costs associated with switching supplier that would serve as a barrier to obtaining supply from a supplier that does not currently serve the retailer. Setting up a new ordering and billing relationship with a lens supplier is not viewed by optical retailers as a material barrier to switching. The administrative steps required to establish a trading relationship are simple and straight-forward.
- 191 The consequence is that, were the Combined Entity to decline to supply independent optical retailers, or supply them only on materially worse terms, then Essilor's competitors would be well-placed to capture that unmet demand. Essilor therefore has no ability to foreclose access to finished prescription lenses. Were Essilor to decline to supply independent optical retailers, it would simply lose that share of supply to its competitors, without any expectation of disadvantaging independent optical retailers, or of re-capturing forgone revenues in the downstream retail market.
- Countervailing buyer power***
- 192 Essilor also faces significant countervailing buyer power in the independent segment due to the role of the two major buying groups: Eye Pro and Visique. Further information regarding Eye Pro and Visique is set out in **Annex 11**.
- 193 Buying groups give independent optical retailers benefits such as access to supplier rebates. Buying groups exercise their buyer power by periodically tendering for 'preferred supplier' arrangements with lens wholesalers on preferential supply terms. Members of the buying group are then able to avail themselves of the trading terms negotiated by the buying group.

[

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194 [

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195 [

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196 [

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[

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197 [

Sales (NZD 000s)  
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198 [

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<sup>51</sup>

[

]

[

]

199 [

].

200 [

].<sup>52</sup>

201 [

]

201.1 [

]

201.2 [

].

***Low barriers to entry into the wholesale supply of finished prescription lenses***

202 In response to an increase in price of prescription lenses, or declining terms of trade, the Parties would expect to see entry into the wholesale market in New Zealand either from:

202.1 pure wholesalers of prescription lenses; or

202.2 new prescription laboratories.

*Entry from pure wholesalers*

203 As explained at paragraph 69 above, lens manufacturers compete internationally with pure wholesalers, who supply stock finished single-vision lenses obtained from low-cost lens manufacturers. The Parties understand that currently there is minimal supply in New Zealand by pure wholesalers, given how competitive the market currently is. However, the Parties anticipate that pure wholesalers would enter the New Zealand market in response to increasing prices or declining terms of trade for optical retailers. For example, the Parties would expect to see entry from pure

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<sup>52</sup> [

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wholesalers obtaining prescription lenses from low-cost manufacturers based in Asia, and especially in China.

*Entry from new prescription laboratories*

204 Essilor estimates that setting up a greenfields prescription laboratory to process lenses would cost approximately \$700,000. There are a number of suppliers in the market that can deliver a complete prescription laboratory to allow a new entrant to become a wholesaler of finished prescription lenses on a turnkey basis, including Coburn Technologies<sup>53</sup> and Schneider,<sup>54</sup> which manufacture and supply high-end, proprietary lens processing machines.

205 While it is likely not practical for individual optometrists/dispensing opticians to invest in a prescription laboratory, the buying groups would be well-positioned to either vertically integrate into processing if they should ever be subjected to worsening supply terms from the various existing lens processors, or to sponsor a third party to enter.

**No incentive to foreclose**

206 Furthermore, the Combined Entity would not have the incentive to foreclose prescription lenses.

[ ]. This is impractical, or at the least extremely risky given that:

206.1 currently, sales to independent optical retailers comprise approximately NZ\$[ ]<sup>55</sup> of Essilor's sales of finished prescription lenses in New Zealand, whereas Essilor estimates that sales to [ ] are substantially lower; and

206.2 independent optical retailers currently represent [ ]%<sup>56</sup> of the retail supply of prescription lenses whereas Luxottica represents only [ ]%<sup>57</sup> of the market.

207 The consequence is that the Combined Entity would be placing a substantial proportion of its current revenue at risk against a strategy that relies on expanding Luxottica's retail share very significantly. The Parties submit that the risks involved mean that the Combined Entity would not be incentivised to pursue a foreclosure strategy. Rather, the Combined Entity would be incentivised to maximise utilisation of its production facilities by supplying to as many customers as possible.

**No effect on competition**

208 It follows from Essilor's inability to foreclose retailers from obtaining supplies of finished prescription lenses that there would be no effect on competition in the retail market if the Combined Entity, post-Transaction, declined to supply optical retailers other than Luxottica.

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<sup>53</sup> <http://www.coburntechnologies.com/>.

<sup>54</sup> <http://www.schneider-om.com/home.html>.

<sup>55</sup> See Annex 3.

<sup>56</sup> See Annex 9.

<sup>57</sup> See Annex 9.

## NO REALISTIC PROSPECT OF CUSTOMER FORECLOSURE

209 The status quo, pre-Transaction, is that Luxottica’s requirements of finished prescription lenses are exclusively supplied by the Parties’ Eyebiz joint venture. Accordingly, Luxottica’s share of purchases of finished prescription lenses is not currently contestable.

210 [ ]. It follows that the Transaction will have no effect on the contestability of Luxottica’s share of purchases (as in either case Luxottica will not be buying from Essilor’s competitors in the wholesale market), and therefore there is no merger-specific foreclosure effect that would warrant intervention by the Commerce Commission.

211 But even were Luxottica’s demand to be treated as contestable for the purposes of the Commission’s analysis, the Combined Entity would not have the ability to foreclose access to the retail market due to Luxottica’s relatively low share of demand for prescription lenses.

212 **Table 5** below summarises shares of retail supply of finished prescription lenses. For the avoidance of doubt, the Parties do not consider that retail supply of finished prescription lenses constitutes a distinct market (for the reasons discussed at paragraphs 151 to 157 above). Rather, the Parties submit that Luxottica competes in a general market for the retail supply of all optical products and services.

213 However, for the purposes of assessing the significance of Luxottica’s position as a purchaser of finished prescription lenses, we set out Luxottica’s and its major competitors’ respective shares of the retail supply of finished prescription lenses. This analysis indicates that Luxottica is not a sufficiently significant purchaser of prescription lenses that competing wholesale suppliers of lenses would face any material disadvantage in the market as a consequence of not being able to supply Luxottica post-Transaction. There is, accordingly, no prospect of foreclosure of the retail market.

**Table 5:**

**Retail Supply of Finished Prescription Lenses (2014-2016) By Value<sup>58</sup>**

Company	2014	2015	2016
Specsavers	[ ]%	[ ]%	[ ]%
Luxottica	[ ]%	[ ]%	[ ]%
Visique	[ ]%	[ ]%	[ ]%
Others	[ ]%	[ ]%	[ ]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source: Luxottica’s estimates*

214 As the Commission will see, Luxottica’s share of the retail supply of finished prescription lenses was only [ ]% in 2016. That still leaves over [ ]% of the New Zealand market open to competing lens wholesalers.

<sup>58</sup> See Annex 9 for more detailed information regarding market shares.

- 215 Furthermore, many of the lens wholesalers that serve the New Zealand market operate internationally. Were the Combined Entity to somehow attempt foreclosure of the New Zealand retail market, those international suppliers can and would continue to operate and compete vigorously with the Combined Entity in New Zealand and on a worldwide basis.
- 216 Accordingly, even if the Combined Entity were to pursue a foreclosure strategy (and for the reasons given above, it would not be able or incentivised to do so) there is no realistic prospect of a substantial lessening of competition in relation to the market for the wholesale supply of finished prescription lenses (upstream) and the market for the retail of optical products and services (downstream).

**PART 8: CONFIDENTIALITY**

- 217 Confidentiality is requested for all the information contained in this version of the notice.
- 218 A "public version" of this notice will be provided subsequently that will specifically identify all information that is commercially sensitive to the Applicants.
- 219 The Applicants request that they be notified if a request is made to the Commission for release of the information under the Official Information Act 1982.

**DECLARATION BY ESSILOR**

I, [name], have prepared, or supervised the preparation of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- All information specified by the Commission has been supplied;
- If information has not been supplied, reasons have been included as to why the information has not been supplied;
- All information known to me that is relevant to the consideration of this notice has been supplied; and
- All information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

\_\_\_\_\_

**Sign:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**DECLARATION BY LUXOTTICA**

I, [name], have prepared, or supervised the preparation of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- All information specified by the Commission has been supplied;
- If information has not been supplied, reasons have been included as to why the information has not been supplied;
- All information known to me that is relevant to the consideration of this notice has been supplied; and
- All information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

\_\_\_\_\_

**Sign:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **ANNEX 1: COMBINATION AGREEMENT**

**ANNEX 2: PRESS RELEASE, TRANSACTION FACTSHEET AND INVESTOR  
PRESENTATION RELATING TO THE TRANSACTION**

**ANNEX 3: ESSILOR'S NEW ZEALAND REVENUES FOR THE LAST THREE YEARS**

<b>Essilor's revenues in New Zealand<sup>59</sup></b> <b>(In NZD)</b>		
<b>2014</b>	<b>2015</b>	<b>2016</b>
\$[ ]	\$[ ]	\$[ ]

**BREAKDOWN OF ESSILOR'S REVENUES IN NEW ZEALAND**

<b>Breakdown of Essilor's revenues in New Zealand</b> <b>(In NZD)</b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>WHOLESALE</b>			
Prescription lenses	\$[ ]	\$[ ]	\$[ ]
Prescription frames	\$[ ]	\$[ ]	\$[ ]
<b>TOTAL WHOLESALE</b>	<b>\$[ ]</b>	<b>\$[ ]</b>	<b>\$[ ]</b>
<b>RETAIL<sup>60</sup></b>			
Contact lenses	\$[ ]	\$[ ]	\$[ ]
Prescription glasses	\$[ ]	\$[ ]	\$[ ]
Sunglasses	\$[ ]	\$[ ]	\$[ ]
<b>TOTAL RETAIL</b>	<b>\$[ ]</b>	<b>\$[ ]</b>	<b>\$[ ]</b>
<b>OTHER</b>			
Lens surfacing machines and related product	\$[ ]	\$[ ]	\$[ ]
<b>TOTAL OTHER</b>	<b>\$[ ]</b>	<b>\$[ ]</b>	<b>\$[ ]</b>

<sup>59</sup> Represents sales realised by Essilor in New Zealand.

<sup>60</sup> Sales realised by clearly.co.nz.

**ANNEX 4: ESSILOR'S FIVE LARGEST CUSTOMERS AND REVENUES IN NEW ZEALAND FOR 2016**

Essilor's five largest customers in New Zealand				
Name	Address	Telephone	Email	2016 Revenue (NZD)
[ ] <sup>61</sup>	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ] <sup>62</sup>	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]

<sup>61</sup> [ ]

<sup>62</sup> [ ]

**ANNEX 5: LUXOTTICA'S NEW ZEALAND REVENUES FOR THE LAST THREE YEARS**

**LUXOTTICA'S REVENUES IN NEW ZEALAND**

<b>Luxottica's revenues in New Zealand<sup>63</sup></b>		
<b>(In AUD)</b>		
<b>2014</b>	<b>2015</b>	<b>2016</b>
\$[ ]	\$[ ]	\$[ ]

**BREAKDOWN OF SALES OF OPTICAL PRODUCTS AND SERVICES IN NEW ZEALAND BY LUXOTTICA AND LUXOTTICA FRANCHISEES**

<b>Breakdown of sales of optical products and services in New Zealand by Luxottica and Luxottica franchisees<sup>64</sup></b>			
<b>(in AUD)</b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>WHOLESALE</b>			
Prescription frames	\$[ ]	\$[ ]	\$[ ]
Sunglasses	\$[ ]	\$[ ]	\$[ ]
<b>TOTAL WHOLESALE</b>	<b>\$[ ]</b>	<b>\$[ ]</b>	<b>\$[ ]</b>
<b>RETAIL</b>			
Prescription frames	\$[ ]	\$[ ]	\$[ ]
Finished prescription lenses	\$[ ]	\$[ ]	\$[ ]
Sunglasses	\$[ ]	\$[ ]	\$[ ]
Contact lenses	\$[ ]	\$[ ]	\$[ ]
Optometrical services	\$[ ]	\$[ ]	\$[ ]
<b>TOTAL RETAIL</b>	<b>\$[ ]</b>	<b>\$[ ]</b>	<b>\$[ ]</b>

<sup>63</sup> Includes sales of all products (including apparel, footwear and accessories) by OPSM, Sunglass Hut and Oakley stores in New Zealand, as well as sales to OPSM franchise stores.

<sup>64</sup> Includes sales of specified products by OPSM, Sunglass Hut and Oakley stores, as well as sales by OPSM franchise stores. Excludes sales of apparel, footwear, accessories, cases and contact lens solution.

**ANNEX 6: LUXOTTICA'S FIVE LARGEST WHOLESALE CUSTOMERS AND REVENUES IN NEW ZEALAND FOR 2016**

<b>Luxottica's five largest wholesale customers in New Zealand</b>				
<b>Name</b>	<b>Address</b>	<b>Telephone</b>	<b>Email</b>	<b>2016 Revenue (AUD)</b>
[				
				]

**ANNEX 7: SUPPLY AGREEMENT BETWEEN EYEBIZ AND LUXOTTICA**

## ANNEX 8: RELEVANT TRADE ASSOCIATION MEMBERSHIPS

Optical industry associations in which one or both of the Parties participate				
Name	Address	Telephone	Email / website	Participant
<b>New Zealand Optical Wholesalers Association</b>	PO Box 79 – 175 Royal Heights Auckland 0656	+64 27 494 8096	<a href="mailto:enquiries@nzowa.org.nz">enquiries@nzowa.org.n z</a>	Essilor

## ANNEX 9: MARKET SHARE ESTIMATES

The Parties are not aware of any independent third party data on market shares in New Zealand. Accordingly, the information set out below represents their best estimates only.

### Wholesale Supply of Finished Prescription Lenses (2014-2016)

Company	2014		2015		2016	
	Val M NZD	%	Val M NZD	%	Val M NZD	%
Essilor <sup>65</sup>	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Specsavers	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Hoya	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Carl Zeiss	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Independent Lens Specialists	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Others	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
<b>TOTAL</b>	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%

*Source: Essilor's Estimates*

### Wholesale Supply of Finished Prescription Lenses to Independent Optical Retailers only (2014-2016)

Company	2014		2015		2016	
	Val M NZD	%	Val M NZD	%	Val M NZD	%
Essilor <sup>66</sup>	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Hoya	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Carl Zeiss	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Independent Lens Specialists	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Others	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
<b>TOTAL</b>	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%

*Source: Essilor's Estimates*

<sup>65</sup> Source: Essilor. This includes edging, mounting, tinting, and coating services.

<sup>66</sup> Source: Essilor. This includes edging, mounting, tinting, and coating services.

### Retail Supply of Optical Products and Services (2014-2016)

Company	2014		2015		2016	
	Val M AUD	%	Val M AUD	%	Val M AUD	%
Luxottica <sup>67</sup>	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Specsavers	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Visique	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Others	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
Essilor <sup>68</sup>	[ ]	[ ]%	[ ]	[ ]%	[ ]	[ ]%
<b>TOTAL</b>	<b>[ ]</b>	<b>[ ]%</b>	<b>[ ]</b>	<b>[ ]%</b>	<b>[ ]</b>	<b>[ ]%</b>

Source: Luxottica's Estimates

### Retail Supply of Finished Prescription Lenses (2014-2016)

Company	2014			2015			2016		
	Vol M units	Val M AUD	% <sup>69</sup>	Vol M units	Val M AUD	% <sup>70</sup>	Vol M units	Val M AUD	% <sup>71</sup>
Luxottica <sup>72</sup>	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%
Specsavers	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%
Visique	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%
Others	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%	[ ]	[ ]	[ ]%
<b>TOTAL</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]%</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]%</b>	<b>[ ]</b>	<b>[ ]</b>	<b>[ ]%</b>

Source: Luxottica's Estimates

<sup>67</sup> Includes sales of prescription frames, finished prescription lenses, contact lenses, sunglasses and optometrical services by OPSM, Sunglass Hut and Oakley stores. Excludes sales of apparel, footwear, accessories, cases and contact lens solution. Includes sales realised by OPSM franchise stores.

<sup>68</sup> Originally provided in New Zealand dollars, and converted to Australian dollars at conversion rates of: 0.92019 (2014), 0.92757 (2015) and 0.93884 (2016).

<sup>69</sup> Percentage based on value.

<sup>70</sup> Percentage based on value.

<sup>71</sup> Percentage based on value.

<sup>72</sup> Luxottica sales include all sales realised by franchised stores.

## **ANNEX 10: PROFILES OF ESSILOR'S MAIN COMPETITORS IN NEW ZEALAND**

### **Hoya**

- 1 Hoya Corporation is a global medical technology company and an integrated lens manufacturer, active in the manufacture and supply of both ophthalmic substrate and finished prescription lenses, headquartered in Tokyo, Japan. Hoya manufactures and supplies a full range of unbranded finished prescription lenses. Hoya Corporation steers a global group of 119 companies and has a number of prescription laboratories and manufacturing plants around the world. As at March 2016, Hoya Corporation's global revenue was ¥499.2 billion.<sup>73</sup>
- 2 In New Zealand, Hoya Corporation operates through its wholly-owned Australian subsidiary, Hoya Lens Australia Pty Limited, which is headquartered in Sydney, Australia. It manufactures and processes a full range of finished prescription lenses in Australia and supplies these to opticians in Australia and New Zealand.<sup>74</sup> Hoya also has a glazing lab in New Zealand.

### **CR Surfacing**

- 3 CR Surfacing is an Australian company and supplier of finished prescription lenses to the Australian and New Zealand markets.<sup>75</sup> CR Surfacing was formed in 1976 and is headquartered in Melbourne, Australia. In New Zealand, CR Surfacing operates through its wholly-owned subsidiary, CR Surfacing Laboratories Limited. CR Surfacing has an office and laboratory in Christchurch.

### **Carl Zeiss**

- 4 The Zeiss Group is a group of companies operating worldwide in the optical and optoelectronic industry, specialising in designing, developing, producing and distributing measuring technology, microscopes, prescription lenses, camera and cine lenses, binoculars and semiconductor manufacturing equipment. Its ultimate parent is Carl Zeiss AG and is headquartered in Oberkochen, Germany.<sup>76</sup> Zeiss Group operates in more than 40 countries. In the 2015/2016 financial year, the Zeiss Group earned €4.88 billion in revenue globally, of which €1.089 billion was from the vision care / consumer products segment.<sup>77</sup> Zeiss has a very strong brand image and is associated with high quality products.
- 5 In New Zealand, Zeiss operates through its wholly-owned subsidiary, Carl Zeiss (N.Z.) Limited which operates out of Auckland. To the Parties' knowledge, Carl Zeiss does not have any laboratories in New Zealand. Rather, its supplies to New Zealand come from either its laboratories in Australia or from China.

### **Rodenstock**

- 6 Rodenstock is a global manufacturer of ophthalmic lenses and frames, active in the manufacture and supply of both ophthalmic substrate and finished prescription

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<sup>73</sup> HOYA, 'Corporate Profile' (accessed 22 May 2017): [http://www.hoya.com/company/pdf/hoya\\_corporate\\_en\\_2016.pdf](http://www.hoya.com/company/pdf/hoya_corporate_en_2016.pdf)

<sup>74</sup> Ibis World, 'Photographic and Optical Goods Manufacturing in Australia' (February 2017), p. 26.

<sup>75</sup> CR Surfacing 'About' (accessed 22 May 2017): <http://www.crsurfacing.com.au/>

<sup>76</sup> Zeiss 'About Zeiss' (accessed 22 May 2017): <https://www.zeiss.com/corporate/the-company/company-profile.html>

<sup>77</sup> Zeiss 'About Carl Zeiss Vision' (accessed 22 May 2017): [https://www.zeiss.com/vision-care/en\\_de/about-zeiss/about-us.html](https://www.zeiss.com/vision-care/en_de/about-zeiss/about-us.html)

lenses, headquartered in Munich, Germany. Rodenstock operates in over 85 countries. In 2014, Rodenstock generated a global turnover of £417 million.<sup>78</sup>

- 7 In New Zealand, Rodenstock operates through its Australian wholly-owned subsidiary, Rodenstock Australia Pty Ltd, which is headquartered in Sydney, Australia. To the Parties' knowledge Rodenstock does not have any laboratories in New Zealand. All of its suppliers to New Zealand come either from its laboratory in Thailand or from Germany.
- 8 The Parties do not have any information regarding Rodenstock's sales in New Zealand, and have therefore excluded Rodenstock from their market share estimates.

#### **Independent Lens Specialists**

- 9 Independent Lens Specialists is a New Zealand company formed in 2006. Independent Lens Specialists is a full service lens laboratory, processing Freeform, conventional and AR coating from their Christchurch laboratory.<sup>79</sup>
- 10 Independent Lens Specialists imports finished prescription lenses from all parts of the globe, meaning that it can offer many specialty lenses.

#### **TechLab NZ**

- 11 TechLab NZ is an independent ophthalmic lens supplier headquartered in Auckland, New Zealand. They provide a full range of finished prescription lenses from their Auckland laboratory.<sup>80</sup>
- 12 They also offer edging and fitting full frames, polished edges, custom shaping, and lens tinting services.<sup>81</sup>

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<sup>78</sup> Rodenstock, 'About Rodenstock' (accessed 20 April 2017): <http://www.rodenstock.com/com/en/index.html>

<sup>79</sup> New Zealand Optical Wholesalers Association 'Independent Lens Specialists: Description' (accessed 22 May 2017): <http://nzowa.org.nz/profiles/account-f1b80798-fb9e-11e5-9921-fefdade69b51>

<sup>80</sup> Techlab 'Services' (accessed 22 May 2017): <https://www.techlab.co.nz/index.htm>

<sup>81</sup> Techlab 'Services' (accessed 22 May 2017): <https://www.techlab.co.nz/index.htm>

## **ANNEX 11: PROFILES OF LUXOTTICA'S (OPSM'S) MAIN COMPETITORS IN NEW ZEALAND**

### **Specsavers**

- 1 Specsavers is a global, vertically integrated optical retailer owned by the Perkins family and based in Guernsey, United Kingdom.<sup>82</sup>
- 2 Specsavers has over 1,750 retail stores and 30,000 employees across 10 countries.<sup>83</sup> Each retail store provides eye care services and retails eyewear products to end-customers. At the end of February 2016, Specsavers sold 19.5 million prescription frames worldwide in the preceding year.
- 3 In New Zealand, Specsavers operates through its wholly-owned subsidiary, Specsavers New Zealand Ltd. Specsavers entered into the New Zealand market in November 2008. Specsavers now has approximately 52 retail stores in New Zealand.<sup>84</sup>
- 4 The Parties do not have detailed direct knowledge about Specsavers' supply arrangements for prescription lenses in New Zealand. Specsavers is at least partially vertically integrated as it operates a prescription laboratory in Melbourne, which the Parties understand supplies the New Zealand business (although the Parties do not have direct knowledge of the nature of the processing activities carried out at Specsavers' Melbourne laboratory). However, the Parties also understand that Specsavers Australia may obtain at least some of its requirements in the form of finished prescription lenses from suppliers such as Hong Kong Optical and Thai Optical Group.
- 5 Again, the Parties do not have direct knowledge of the nature of those supply arrangements. But for the purposes of this filing, the Parties have therefore proceeded on the basis that Specsavers' demand for prescription lenses in New Zealand is contestable, and have therefore included Specsavers' demand in their estimates of market share.

### **Eye Pro**

- 6 Eye Pro is an independent network of independent optical retailers established in 2005. Members must meet specialist standards of professionalism, accountability and competency.<sup>85</sup> Eye Pro supplies a range of products and services including optical prescriptions, prescription frames and finished prescription lenses, contact lenses and sunglasses.
- 7 According to their website, the Eye Pro network gives their independently owned members "the buying power and strength to compete effectively with the larger overseas owned optical chains operating in our market."<sup>86</sup>

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<sup>82</sup> Ibis World, 'Company Report: Specsavers Pty Ltd' (28 February 2015), pp. 2, 10.

<sup>83</sup> Specsavers, '2015-2016 Annual Review' (February 2016): [https://www.specsavers.com.au/sites/default/files/uploads/specsavers\\_annual\\_report\\_2015.pdf](https://www.specsavers.com.au/sites/default/files/uploads/specsavers_annual_report_2015.pdf)

<sup>84</sup> This is based on a count of the store locations on their website.

<sup>85</sup> Eye Pro 'About Us' (accessed 23 May 2017): <http://eyepro.co.nz/about-us/>

<sup>86</sup> Eye Pro 'About Us' (accessed 23 May 2017): <http://eyepro.co.nz/about-us/>

**Visique**

- 8 Visique is a New Zealand co-operative network of independent optical retailers established in 2000. Members can choose whether to be an unbranded practice or whether to use Visique's branding.
- 9 Members are able to access buying group benefits and discounts negotiated by Visique on behalf of its members.
- 10 Based on Visique's website, Visique currently comprises 46 retail outlets around the country.
- 11 Further information on Visique is available at: <http://www.visique.co.nz/>.

**ANNEX 12: CONTACT DETAILS OF THE PARTIES' MAIN COMPETITORS IN  
NEW ZEALAND**

<b>Key competitors of Essilor and Luxottica in New Zealand</b>			
<b>Name</b>	<b>Address</b>	<b>Telephone</b>	<b>Email</b>
<b>Hoya Corporation</b>	Hoya Corporation PO Box 67036, Mt Eden, Auckland 1349, New Zealand	0800 744 692  +64 275 733 250	stuart.whelan@hoya.com
<b>Carl Zeiss AG</b>	Carl Zeiss 22 Fremlin Place Avondale Auckland 1026 New Zealand	0508 765 271	-
<b>Rodenstock GmbH</b>	Rodenstock Australia PTY Ltd. 100 - 108 Asquith Street Silverwater BC NSW 1811, Australia	+ 61 297 480 988	australia@rodenstock.de
<b>Mondottica International Limited</b>	Mondottica Locked Bag 5000 Artarmon NSW 1570 Australia	02 8436 6666	gailhoole@mondottica.com.au
<b>Safilo Group S.P.A.</b>	Safilo Group does not have an office in New Zealand. Safilo brands are distributed via VMD Eyewear and Black Eyewear.  VMD Eyewear 22 Kalmia St, Ellerslie, 1051 Auckland  Black Eyewear Unit 6/1 Porters Ave Eden Terrace 1024 Auckland	VMD Eyewear: +64 9 525 6601  Black Eyewear: +64 21 395299	-
<b>Specsavers</b>	Specsavers New Zealand Ltd, Unit A, 26 Triton Drive, Mairangi Bay,	+61 3 8532 8553	vincent.caruso@specsavers.com

	Auckland 0632, New Zealand		
<b>Visique</b>	Visique Members Company Ltd PO Box 106-912 Auckland 1143, New Zealand	+64 9 302 0820	enquiries@visique.co.nz
<b>Eye Pro</b>	Eye Pro PO BOX 1262 Christchurch	-	see@eyepro.co.nz