EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.9569 - ESSILORLUXOTTICA / GRANDVISION

(Only the English text is authentic)

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8(2) Regulation (EC) 139/2004
Date: 23/03/2021

EUROPEAN
COMMISSION

Brussels, 23.3.2021
C(2021) 1769 final

COMMISSION DECISION

of 23.3.2021

declaring a concentration to be compatible with the internal market and the EEA Agreement

(Case M.9569 - ESSILORLUXOTTICA / GRANDVISION)

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 06.02.2020 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

1. INTRODUCTION

(1) On 23 December 2019, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which EssilorLuxottica S.A. ('EssilorLuxottica') acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of GrandVision N.V. ('GrandVision')[2] (the 'Transaction'). EssilorLuxottica is

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (the 'TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision. For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

2 Publication in the Official Journal of the European Union No C 5, 9.1.2020, p. 5.

designated hereinafter as the 'Notifying Party'. EssilorLuxottica and GrandVision are designated hereinafter as the 'Parties'.

(2) EssilorLuxottica is a French-Italian vertically integrated multinational company based in Paris and created on 1 October 2018 after the merger of the Italian Luxottica Group S.p.A. ('Luxottica') and the French Essilor International S.A. ('Essilor'). EssilorLuxottica is active in (i) every phase of the ophthalmic (corrective) lens development, from design to manufacture to wholesale, (ii) the design, manufacture and distribution of eyewear, namely optical frames (references to 'prescription frames', or 'frames' in this document should be read as references to optical frames) and sunglasses, and (iii) the retail sales of optical products, through a network that counts over [more than 9000] own, franchise and online retail stores globally.[3] The concentration that led to the creation of EssilorLuxottica was, after an in-depth examination, declared compatible with the internal market and the functioning of the EEA Agreement without conditions, by Commission decision of 1 March 2018.[4]

(3) GrandVision is a Dutch-based global company active in retail sale of optical products, with concentration in eye care. GrandVision offers a wide range of services linked to its large assortment of optical products comprising of prescription glasses, including frames and lenses, contact lenses and contact lens care products, as well as sunglasses, both plain or with prescription lenses. GrandVision operates [more than 7000] owned, franchise and online stores (including [more than 5000] stores in the EEA) and is the largest retailer of optical products in the EEA, almost twice the size of the second largest (Specsavers, the United Kingdom). GrandVision is currently under the sole control of the investment company HAL Optical Investments B.V. ('HAL'), which owns approximately 76.72% of the issued ordinary shares in GrandVision. The remainder of the shareholding is publicly traded on the Amsterdam Stock Exchange.

2. THE TRANSACTION

(4) The Transaction consists in the acquisition of GrandVision by EssilorLuxottica. On 30 July 2019, HAL and EssilorLuxottica entered into a block trade agreement by means of which EssilorLuxottica will purchase the entire shareholding of HAL in GrandVision at a price per share of EUR 28, representing a total consideration of approximately EUR 5 500 million. After the closing of the Transaction, EssilorLuxottica will launch a mandatory public offer for all outstanding GrandVision shares. After the mandatory public offer, EssilorLuxottica intends to delist GrandVision from Euronext Amsterdam and privately own 100% of the shares of GrandVision. The Transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

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[3] 'Prescription frames' refers to the bundle of optical frames and lenses, while 'frames' refers to optical frames sold alone.

[4] Commission Decision C(2018) 1198 final of 1.3.2018 declaring a concentration to be compatible with the internal market and the EEA Agreement (Case M.8394 – ESSILOR / LUXOTTICA) ('M.8394 Essilor/Luxottica').

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million [EssilorLuxottica: EUR 16 160 million; GrandVision: EUR 3 721 million]. Each of them has a Union-wide turnover in excess of EUR 250 million [EssilorLuxottica: EUR […] million; GrandVision: EUR […] million], but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. PROCEDURE

(6) On 23 December 2019, the Notifying Party notified the Transaction to the Commission.

(7) During its initial Phase I investigation, the Commission contacted market participants (mainly other manufacturers of optical products and other optical retailers), requesting information through targeted telephone calls and written requests for information pursuant to Article 11(2) of the Merger Regulation, including questionnaires.

(8) In addition, the Commission sent several targeted written requests for information to the Parties and reviewed their submissions and internal documents.

(9) On 23 January 2020, a State of Play meeting took place between the Commission and the Parties.

(10) On 6 February 2020, after an examination of the notification and based on the Phase I market investigation, the Commission concluded that the Transaction raised serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement, in relation to the wholesale markets for ophthalmic lenses, frames and sunglasses, as well the retail markets for the supply of spectacles and sunglasses in specialised stores. The Commission consequently decided to initiate proceedings under Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement (the 'Article 6(1)(c) decision').

(11) On 16 February 2020, the Notifying Party submitted its written observations on the Article 6(1)(c) decision. The observations and the main issues of the investigation were discussed at a subsequent State of Play meeting, which took place on 19 February 2020.

(12) On 25 February 2020 (i.e. 13 working days after the initiation of proceedings under Article 6(1)(c) of the Merger Regulation), the Notifying Party asked for an extension of ten working days to the deadlines for adopting a final decision laid down in Article 10(3), first paragraph of the Merger Regulation. The extension was granted by the Commission on 25 February 2020 under Article 10(3), second paragraph of the Merger Regulation.

(13) Within the framework of the Phase II investigation, in order to be able to finalise its assessment of the impact of the Transaction on the markets in the light of the serious doubts identified in the Article 6(1)(c) decision, the Commission collected further information through additional telephone calls and written requests for information addressed to other market players pursuant to Article 11(2) of the Merger Regulation, including questionnaires.

(14) The Commission obtained feedback from a large number of optical retail chains through the use of its questionnaires and targeted requests for information. On 31 March 2020, the Notifying Party expressed concerns on the representativeness of the investigation in view of the closure of many optical retail businesses caused by the COVID-19 pandemic. Moreover, the retail markets affected by the present Transaction are characterised by the presence of many very small retailers throughout Europe. In order to reach as many retailers as possible, and in order to address the Notifying Party concerns over the feedback to the market investigation, the Commission issued a shorter and simplified questionnaire in a format that could accommodate a very large number of respondents, and with analogous tools to those used in Essilor/Luxottica[5] ('Simplified Questionnaire to EssilorLuxottica's EEA customer base' or 'Simplified Questionnaire to retailers').[6] The Commission received replies from more than 4300 respondents located in all EU Members States as well as the United Kingdom. Around 80% of respondents are independent opticians, and around 18% of respondents are retail chains.

(15) In addition, in order to complement the replies received to the Article 6(1)(c) decision, the Commission addressed to the Parties several requests for information under Article 11(2) of the Merger Regulation.

(16) On 16 March 2020, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation to suspend a time limit set in accordance with Article 10(3) of the Merger Regulation with effect on 3 March 2020. The suspension ended on 18 March 2020.

(17) On 15 April 2020, the Commission again suspended the time limit with effect on 7 April 2020. The suspension ended on 30 April 2020.

(18) On 15 May 2020, the Commission informed the Parties of the preliminary results of the Phase II investigation during a State of Play meeting.

(19) On 5 June 2020, the Commission adopted a Statement of Objections (the 'SO'). On the same day, the Parties were granted access to the Commission's file and the Notifying Party requested an oral hearing

(20) The Notifying Party submitted its reply to the SO on 20 June 2020 (the 'Reply to the SO').

(21) An interested third person submitted observations to the SO on 25 June 2020.[7]

(22) An Oral Hearing that was held on 26 June 2020.

(23) On 2 July 2020, a State-of-Play meeting between the Commission and the representatives of EssilorLuxottica and GrandVision took place, in which the Commission presented the remaining competition concerns after having considered the arguments of the Notifying Party.

(24) On 7 July 2020, the Commission adopted a decision extending the deadlines to adopt a final decision by 5 working days pursuant to the third sentence of the second subparagraph of Article 10(3) of the Merger Regulation.

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5 M.8394 Essilor/Luxottica, recital 25.
6 Simplified Questionnaire to retailers, Doc ID 3126.
7 Observations on the SO of a retail chain, doc. ID 3369.

(25) On 8 July 2020, the Commission sent the Notifying Party a Letter of Facts (the 'LoF') to inform it of pre-existing evidence that had not been relied on in the SO, but that was considered potentially relevant to substantiate this decision. The LoF also informed the Notifying Party of certain additional evidence brought to the Commission's attention after the adoption of the SO. The Notifying Party submitted its comments on the LoF on 15 July 2020 (the 'Reply to the LoF').

(26) On 15 July 2020, the Commission adopted another decision extending the procedure by 5 working days pursuant to the third sentence of the second subparagraph of Article 10(3) of the Merger Regulation.

(27) On 22 July 2020, the Commission issued a decision pursuant to Article 11(3) of the Merger Regulation to suspend a time limit set in accordance with Article 10(3) of the Merger Regulation with effect on 22 July 2020. The suspension ended on 8 February 2021, when the Notifying Party provided the information requested in the Commission's decision of 22 July 2020. On the same day, the Notifying Party submitted commitments pursuant to Article 8(2) of the Merger Regulation (the 'Initial Commitments') in order to address the competition concerns identified by the Commission.

(28) On 9 February 2021, the Commission launched a market test of the Initial Commitments. On 19 February 2021, the Notifying Party was granted additional access to the Commission's file, relating in particular to the results of the market test of the Initial Commitments.

(29) Based on the results of the market test, the Notifying Party submitted an amended set of commitments on 22 February 2021 (the 'Second Commitments'). On 22 February 2021, the Commission launched a second market test.

(30) On 1 March 2021, the Notifying Party submitted a further amended and finalised set of commitments (the 'Final Commitments').

(31) On 3 March 2021, the Notifying Party was granted additional access to the Commission's file, relating in particular to the results of the market test of the Second Commitments.

(32) The Advisory Committee discussed a draft of this decision on 19 March 2021 and issued a favourable opinion.

5. INTRODUCTION TO THE OPTICAL AND EYEWEAR INDUSTRY

(33) This section describes the optical and eyewear value chain and the relevant products. In that supply chain, the concerned inputs entering into the value chain of a given optical product are not necessarily procured from the same manufacturer.

5.1. Ophthalmic lenses

(34) Ophthalmic lenses are medical devices enabling people to correct visual impairments that have usually been diagnosed by a specialised health care professional, i.e. an optometrist or ophthalmologist. The most frequent conditions

that can be corrected with ophthalmic lenses include astigmatism, hyperopia, myopia and presbyopia.[8]

(35) Ophthalmic lenses can be manufactured from either glass or plastic and are made according to two main correction designs: single-vision and multifocal.[9] Single-vision ophthalmic lenses have the same optical correction over the entire surface of the lens and therefore only correct vision in a particular vision range. Multifocal ophthalmic lenses provide two or more different vision corrections in different areas of the lens surface.[10] There are different types of multifocal lenses: (i) 'lined' multifocals, which can be either bifocal or trifocal or (ii) progressives, which have a continuous variation of focals, with a change in correction graduated across the lens surface so that there is no visible line between different corrections.[11] Progressive lenses are also generally more expensive as the manufacturing process and the technology required are more complex.

(36) The manufacturing process for ophthalmic lenses entails several steps. The main raw materials required for the production of lenses are glass and liquid monomers (thermoplastic). EssilorLuxottica is not active in the manufacturing of these materials, which it generally sources directly from chemical companies and glass manufacturers.[12]

(37) The raw material is then casted in manufacturing plants. This can be done in the two following ways.

(38) The raw material can be directly casted in the form of finished ophthalmic lenses with the final optical power already implemented. These are known as stock lenses. They have full optical power and do not need to undergo 'prescription manufacturing', such as surfacing, coating and finishing, in a prescription laboratory.[13]

(39) Alternatively, the raw material can be casted in the form of a 'hockey puck' or 'semi-finished' product. These intermediary products are usually referred to as 'ophthalmic substrate'. They need to be subsequently surfaced and treated in a prescription laboratory in order to implement the optical power and transform them into finished single-vision or multifocal products.[14] The treatment in prescription laboratories of casted, semi-finished ophthalmic lenses includes (i) surfacing, (ii) coating and/or tinting, and (iii) sometimes glazing.[15]

(40) Surfacing is the process by which the optical power (prescription) element of the lens is introduced through machining or surfacing the rear face of the lens.[16]

(41) Coating consists in incorporating additional treatments to ensure transparency and durability of the lens. These treatments include the application of (i) anti-scratch, anti-reflective, anti-smudge, anti-dust, anti-UV, and blue-light coating; (ii)

8 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 94.
9 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 100.
10 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 100.
11 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 100.
12 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 106.
13 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 108.
14 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 108.
15 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 109.
16 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 109.

photochromic dye, which makes the lens turn darker when exposed to sunlight; and (iii) tinting. While some of these coatings are almost always applied (for instance anti-scratch), others are optional.[17]

(42) Finally, glazing is the final step of the process. It consists in edging or cutting the lens into a shape that fits a specific prescription frame, and finally the mounting of the lens onto a prescription frame. The edging and mounting of the ophthalmic lenses can take place in any of the following locations: (i) at the premises of the retailer; (ii) at glazing facilities that also mount the ophthalmic lenses and subsequently send the assembled spectacles back to the eye-care professional ('ECP'); or (iii) in a prescription laboratory of a lens manufacturer.[18]

5.2. Eyewear

(43) Eyewear consists of sunglasses and spectacles. Eyewear is typically made of metal or plastic and less frequently from other material, such as wood. To produce complete pairs of spectacles for vision correction, ophthalmic lenses are edged and mounted on optical frames. To produce sunglasses, light filtering ophthalmic lenses without vision correction ('shaded plano lenses') are assembled in the sunglass frame. Given their simple technology, most shaded plano lenses for sunglasses are not sourced from manufacturers of corrective ophthalmic lenses but are produced by eyewear producers themselves or sourced from other third parties.[19] While wholesalers would generally supply ECP's with optical frames without ophthalmic lenses mounted, sunglasses can be supplied both with lenses (i.e. without vision correction) or without lenses (i.e. on which specific corrective lenses according to the final customers' needs are subsequently mounted).

(44) Manufacturers of branded frames and sunglasses offer their products either under proprietary 'house' brands or under brands licensed from third parties. Luxury brands, fashion designers, and sporting and accessory brands typically do not produce and distribute branded eyewear themselves but rely on frame manufacturers to produce and distribute their branded frames and sunglasses via license agreements. Eyewear licensing is characterised by long-term partnerships with an average length of around 7 years and normally a worldwide scope.[20]

5.3. Ophthalmic machines

(45) Ophthalmic machines are used to manufacture ophthalmic lenses. A number of machines are necessary to transform ophthalmic substrate into finished ophthalmic lenses.[21] There are three main categories of machines, which correspond to the three main steps of this manufacturing process, namely (i) surfacing; (ii) coating; and (iii) glazing. Most of this process is carried out in prescription laboratories with the use of industrial machines. However, the glazing stage may be carried out by independent opticians and optical retail chains with the use of commercial glazing machines.[22]

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17 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 109.
18 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 109.
19 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 273.
20 Form CO, Sections 1-6 and Introduction to Section 7, paragraphs 279 to 281.
21 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 197.
22 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 197.

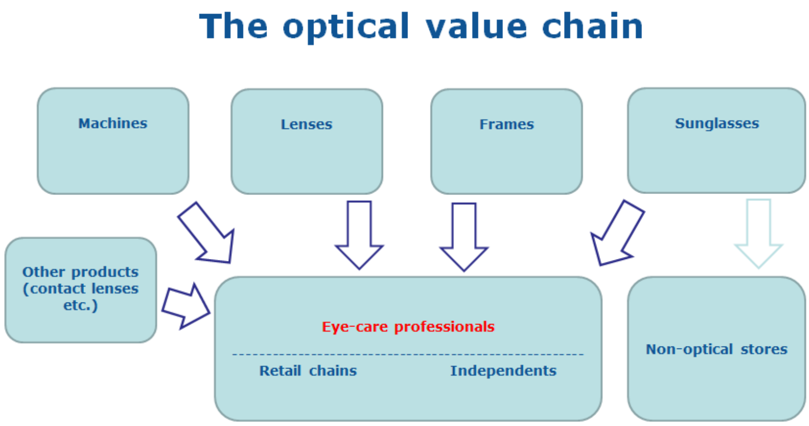
5.4. Supplies to ECPs

(46) EssilorLuxottica sells their lenses, frames and sunglasses to ECPs including independent opticians, which operate individual optical retail shops, and chains like GrandVision. Additionally, they also sell sunglasses to non-optical retailers, such as department and fashion stores. Separately, EssilorLuxottica also supplies ophthalmic machines to other lens producers and retailers. Finally, EssilorLuxottica operates its own optical retail shops including, in the EEA, some optical retail chains like Salmoiraghi & Viganò in Italy, David Clulow in the UK, and Sunglass Hut worldwide as well as a number of online retailers that are accessible globally.[23]

(47) Optical retail distribution, including both brick-and-mortar and online shops, can be broken down into two main distribution channels, including: (i) the independent opticians[24] and (ii) the optical retail chains. Independent opticians are individual shops run by qualified opticians, which often have in-house glazing capabilities to edge and mount lenses onto the chosen frames. Independent opticians are sometimes members of buying groups to centralise the sourcing of prescription lenses, frames and other products. Optical retail chains like GrandVision comprise several stores, whether owned or franchised, operating under the same banner with a centralised commercial, sourcing and marketing policy. They usually have centralised glazing facilities and some produce their own ophthalmic lenses.

(48) The ECPs generally procure their lenses and frames separately. They then assemble them into complete pairs of spectacles on demand of final customers. The revenues that ECPs generate with the products vary significantly, with margins being much higher for lenses than for optical frames.

Figure 1: Simplified optical value chain



(49) According to the Notifying Party, the choice of lenses by the consumer is typically determined by the ECPs. Consumers generally tend to focus their choice on frames and rely on ECPs' advice for lenses.[25] After the customer has selected the frame, the optician may suggest one or more lens options, usually presented in terms of a price point or technical specifications (e.g., thickness, weight, scratch-resistance, etc.).

[23] Form CO, Sections 1-6 and Introduction to Section 7, paragraph 33.
[24] Independent opticians are those that operate a limited amount of stores, compared to retail chains who operate a large number of stores under a single banner.
[25] Form CO, Sections 1-6 and Introduction to Section 7, paragraph 160.

Consumers rarely ask for, or are even aware of, specific lens brands. There are however exceptions, such as EssilorLuxottica's very well-known brand of progressive lenses - Varilux.[26]

6. RELEVANT MARKETS

(50) EssilorLuxottica is active both upstream, namely in (i) every phase of the ophthalmic (corrective) lens development, from design to manufacture to wholesale, (ii) and the design, manufacture and distribution of eyewear, and downstream in (iii) the retail sale of its own and third-party manufactured optical products. EssilorLuxottica is active worldwide, including in the EEA.

(51) GrandVision is only active downstream, namely in the retail sale of optical products, globally but with a particular focus on, and footprint in, the EEA. GrandVision's stores, which operate under a number of different banners, offer a wide range of optical services, prescription glasses, including frames and lenses, contact lenses and sunglasses, both plain and with prescription lenses.

(52) The Transaction therefore leads to horizontal overlaps between the retail activities of GrandVision and EssilorLuxottica downstream, as well as to vertical links between the wholesale activities of EssilorLuxottica and the retail activities of GrandVision.

6.1. Product market definition

6.1.1. Upstream: wholesale supply of optical products

6.1.1.1. Ophthalmic lenses

(53) Ophthalmic lenses are a distinct product from other optical products. In *Essilor/Luxottica*,[27] the Commission established a separate product market for the wholesale supply of ophthalmic lenses and then considered whether this market can be further sub-segmented based on lens types between (i) glass and plastic as well as (ii) single-vision and multifocal designs. The Commission also analysed a possible distinction based on distribution channels (i.e. sales to independent opticians as opposed to sales to retail chains). In that case, while the results of the market investigation provided certain indications in support of such possible sub-segmentations of the market for wholesale supply of optical lenses, the Commission ultimately conducted its assessment on the latter market as a whole, leaving open the possible market segmentation.

(54) In the present case, the Notifying Party submits that the wholesale supply of finished ophthalmic lenses constitutes a separate relevant product market, without any further sub-segmentation of this market being appropriate.[28]

(55) The Commission discusses the possible sub-segmentations already considered in *Essilor/Luxottica*[29] in further detail below.

[26] Form CO, Sections 1-6 and Introduction to Section 7, paragraph 160.
[27] M.8394 Essilor/Luxottica, Section 7.1.2.3.
[28] Form CO, paragraphs 176-181.
[29] M.8394 Essilor/Luxottica, Section 7.1.2.3.

Glass and plastic lenses

The Notifying Party's view

(56) As regards the distinction between glass and plastic lenses, the Notifying Party submits that the market for finished ophthalmic lenses should include both types of lenses as lenses made of both materials are substitutable from both a demand- and a supply-side perspective.[30]

The Commission's past practice

(57) In *Essilor/Luxottica*, the Commission considered the sub-segmentation of the lenses market by material, but ultimately left this distinction open due to a lack of impact on the competitive assessment.[31] The Commission found that plastic lenses represented more than 90% of the lens sales in each of the EEA countries (and more than 98% in many EEA countries) with the exception of Romania where glass finished lenses represented 27% of sales. Moreover, Essilor's market position was considered to be similar in these two market segments.

The Commission's assessment

(58) With regard to demand-side substitutability, the Commission finds that the use of glass and plastic lenses is not equally common among final consumers, with a clear majority preferring plastic lenses. According to the results of the market investigation, a large majority of lens manufacturers state that glass and plastic ophthalmic lenses are not substitutable in terms of their product characteristics, price, intended use and consumer preferences.[32] However, a majority of optical retailers who contributed to the market investigation consider these products to be substitutable.[33]

(59) As established in *Essilor/Luxottica*[34] and further confirmed by the Notifying Party,[35] a large majority of lens sales in the EEA concern plastic lenses. According to the Notifying Party's estimates, in the EEA, glass lenses accounted for [0-5]% of the total volumes sold in 2018 (as opposed to around [10-20]% in 2011).[36] The remaining demand for glass lenses is concentrated in few Member States,[37] e.g. […] (see Figure 2) which reflects the portfolio of lens manufacturers with an important presence on these markets.[38] More importantly, the Notifying Party submits that […] of EssilorLuxottica's ophthalmic lenses are made from glass.[39]

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30 Form CO, Section 1-6 and Introduction to Section 7, paragraph 176.

31 M.8394 Essilor/Luxottica, rec. 107.

32 Questionnaire to suppliers of lenses and eyewear (Q3), question 3.1, Doc ID 2541. Summaries, statistics and conclusions on feedback of the market investigation referred to in this decision refer to the responses of those that took a position on the respective question being posed. Those responses that indicated 'not applicable' or 'do not know' are not taken into account.

33 Questionnaire to optical retail chains (Q2), question 4.1, Doc ID 2540.

34 M.8394 Essilor/Luxottica, rec. 107.

35 Form CO, Section 1-6 and Introduction to Section 7, paragraph 176.

36 Form CO, Section 1-6 and Introduction to Section 7, paragraph 101.

37 According to the country papers submitted by the Notifying Party as Form CO, Annex 7.1, the split between glass and plastic lenses respectively, by volume, in 2018, is the following: […].

38 Form CO, Section 1-6 and Introduction to Section 7, paragraph 101.

39 Form CO, Section 1-6 and Introduction to Section 7, paragraph 101.

Figure 2 [40]

[…]

Single-vision and multifocal

The Notifying Party's view

(60) As regards the distinction between (i) single-vision and (ii) multifocal, and within multifocal between (a) bi- or trifocal and (b) progressive finished ophthalmic lenses, the Notifying Party submits that such sub-segmentation would not be appropriate. It submits that single-vision lenses are to some extent substitutable with multifocal lenses and that the demand-side substitutability is even greater between bi- or trifocals and progressive lenses.[41] For instance, an end-customer with presbyopia can either i) use multifocal lenses or ii) use single-vision lenses and, in order to see distant objects, either a) take off the spectacles or, if necessary, b) use a second pair with a different correction.

The Commission's past practice

(61) In *Essilor/Luxottica*, the Commission considered the sub-segmentation of the market by optical design, but ultimately left this distinction open due to a lack of impact on the competitive assessment.[42] The Commission nevertheless observed a lack of supply-side substitutability related to high costs and risks related to switching between selling lenses with a different optical design.

The Commission's assessment

(62) With regard to demand-side substitutability, the Commission finds that single-vision and multifocal lenses correct vision impairments in a different manner. Thus, these two types of lenses are perceived as different by consumers, whose preferences depend on their specific needs. Beside very different product characteristics, single-vision and multifocal lenses have also significantly different prices.

(63) This view has been widely corroborated by the market investigation, with a majority of lens manufacturers considering that single-vision and multifocal finished ophthalmic lenses are not substitutable in terms of their product characteristics, price, intended use and consumer preferences.[43] However, a majority of optical retailers consider that these two types of lenses are substitutable.[44]

(64) Overall, price and comfort considerations are the parameters that would lead a presbyotic customer to choose either multifocal lenses or single vision lenses. Thus, multifocal lenses can to a certain extent be considered substitutable with single-focal ones, yet not *vice versa*.

Sales to optical retail chains and sales to independent opticians

The Notifying Party's view

40 Form CO, Annex CO 7.1.7. Germany, page 2.

41 Form CO, Section 1-6 and Introduction to Section 7, paragraph 178.

42 M.8394 Essilor/Luxottica, para. 108.

43 Questionnaire to suppliers of lenses and eyewear (Q3), question 3.1, Doc ID 2541.

44 Questionnaire to optical retail chains (Q2), question 4.1, Doc ID 2540.

(65) As regards a sub-segmentation by a distribution channel, the Notifying Party submits that such sub-segmentation would not be appropriate since all lens suppliers can and do supply to both optical retail chains and independent opticians.[45]

The Commission's past practice

(66) In *Essilor/Luxottica*, the Commission considered the sub-segmentation of the market by distribution channel, but it ultimately left this distinction open due to a lack of impact on the competitive assessment. Nevertheless, the Commission established that wholesale prices (due to differences in quantities and product types ordered), delivery conditions as well as services that lens manufacturers offered to retail chains were different than those offered to independent opticians.[46]

The Commission's assessment

(67) The Commission considers that there is at most limited demand-side substitutability. Firstly, retail chains source mainly unbranded lenses while independent opticians mainly source branded products.[47] Secondly, according to the results of the market investigation, a large majority of lens manufacturers offer different wholesale prices for finished ophthalmic lenses to independent opticians and optical retail chains.[48] Similarly, services offered to these customer groups also differ.[49] For instance, one lens manufacturer explains that it '*provides a number of services and support to independent opticians, which it does not provide to retail chains. This includes marketing support, education campaigns, sales representatives, customer service, etc.*'[50]

(68) Finally, the Notifying Party itself distinguishes between these two customer groups. This is reflected, for instance, in its internal documents concerning the risks of retaliation from its customers, following the Notifying Party's decision to take a larger position in the retail sector through the acquisition of GrandVision. First, the Notifying Party […].[51] Moreover, the Notifying Party anticipates that […].[52]

(69) With regard to supply-side substitutability, the results of the market investigation point to higher costs for lens manufacturers to supply independent opticians. This relates in particular to distribution costs – while optical retail chains normally receive products at their central hubs and then further manage individual store deliveries themselves, each independent optician requires a direct in-store delivery.[53] Another difference relates to contract negotiations, with one of the respondents to the market investigation explaining that while contracts with retail chains are negotiated at a central level, sales to independent opticians are a '*door-to-door business*'.[54]

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45 Form CO, Section 1-6 and Introduction to Section 7, paragraph 179 to 180.
46 M.8394 *Essilor/Luxottica*, rec. 110.
47 Questionnaire to suppliers of lenses and eyewear (Q3), question 17, Doc ID 2541; Non-confidential minutes of a call with a lens supplier of 14 November 2019, Doc ID 957.
48 Questionnaire to suppliers of lenses and eyewear (Q3), questions 17, 18, Doc ID 2541.
49 Questionnaire to suppliers of lenses and eyewear (Q3), questions 17, 18, Doc ID 2541.
50 Questionnaire to suppliers of lenses and eyewear (Q3), questions 17, Doc ID 2541.
51 Form CO, Annex 5.4.1 EL\25 – Europe Retaliation Estimates.
52 Form CO, Annex 5.4.1 EL\25 – Europe Retaliation Estimates.
53 Non-confidential minutes of the call with a lens manufacturer on 8 October 2019, Doc ID 64.
54 Questionnaire to suppliers of lenses and eyewear (Q3), question 17, Doc ID 2541.

Conclusion on the possible segmentation of the market for the wholesale supply of ophthalmic lenses

(70) For the purposes of this decision, on the basis of the above considerations and in line with its previous practice, the Commission concludes that, although there are elements that suggest a degree of differentiation (between the wholesale of glass and plastic lenses, the wholesale of single vision and multi-focal lenses, and wholesale to independent opticians and optical retail chains), this market should be considered as a single overall product market.

6.1.1.2. Eyewear

(71) In *Essilor/Luxottica*, the Commission distinguished separate product markets for wholesale supply of frames (for prescription spectacles) as opposed to sunglasses. It also considered whether the markets for prescription frames and sunglasses could be further segmented by (i) price point, (ii) between branded and unbranded and (iii) by distribution channel. The Commission ultimately, however, left open the exact product market definition.[55]

(72) In this case, the Notifying Party submits that the wholesale supply of frames (for prescription spectacles) and the wholesale supply of sunglasses constitute separate product markets, but without any further segmentation of such markets being necessary.[56]

(73) However, since the results of the market investigation largely support further sub-segmentations of the wholesale markets for frames and sunglasses, respectively, pointing to a high degree of differentiation, in line with what is typical for branded consumer products, the Commission finds it appropriate to examine in the following sections in detail the possibility of segmenting the market for eyewear.

Branded and unbranded

The Notifying Party's view

(74) As regards a potential sub-segmentation into branded and unbranded eyewear (for frames and for sunglasses), the Notifying Party submits that all products belong to the same market, as from a supply-side perspective, switching from the manufacturing of a branded to an unbranded product (and *vice versa*) could be made instantly and without any meaningful costs.[57]

The Commission's past practice

(75) In *Essilor/Luxottica*, the Commission considered a sub-segmentation between branded and unbranded eyewear, but it ultimately left this distinction open due to its lack of effects on the competitive assessment.[58] The Commission, nevertheless, found evidence for an absence of either demand-side substitutability, related to different customer preferences, or supply-side substitutability, resulting from significant costs and risks of switching between manufacturing and marketing of these two types of products.

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55 M.8394 Essilor/Luxottica, Sections 7.1.3. and 7.1.4.

56 Form CO, Section 1-6 and Introduction to Section 7, paragraph 305 ff.

57 Form CO, Section 1-6 and Introduction to Section 7, paragraph 315 to 325.

58 M.8394 Essilor/Luxottica, rec. 120.

The Commission's assessment

(76) In line with the findings in *Essilor/Luxottica*,[59] the market investigation in the present case points to a possible strong differentiation between branded and unbranded eyewear.

(77) Manufacturers of branded eyewear produce frames and sunglasses either under proprietary 'house' brands or under brands licensed from third parties. With a few exceptions, e.g. the Kering Group, luxury brands, fashion designers, and sports and accessory brands typically do not produce and distribute branded eyewear themselves but leverage their brand equity vis-à-vis eyewear and rely on frame manufacturers to produce and distribute their branded frames and sunglasses via brand licensing agreements. Eyewear brand licensing is based on specific contractual arrangements characterised by long-term partnerships with an average length of around 7 years and usually on a global basis.[60] Ray-Ban and Oakley, unlike luxury brands in EssilorLuxottica's portfolio, do not leverage the brand equity of third parties (since they belong to EssilorLuxottica), but capitalise on their own notoriety in the eyewear industry.

(78) With regard to demand-side substitutability, the Commission finds that brands are a key differentiating factor for consumers purchasing eyewear. This is corroborated by the results of the market investigation, with a large majority of eyewear manufacturers as well as a significant number of retailers stating that branded and unbranded frames or sunglasses are not substitutable in terms of product characteristics, price, intended use and consumer preferences.[61,62]

(79) Many retailers stressed the importance of brands. For instance, one independent optician states, with regard to frames, that '*customers who want branded will always buy the brand of product they want, so they will not substitute for an unbranded frame. Those buying unbranded frames will not pay extra for branded frames*.'[63]

(80) Similarly, with regard to sunglasses, an optical retail chain claims that '[b]*randed and unbranded sunglasses are generally not seen as substitutable by consumers. Consumers generally have a high brand awareness and are strongly guided by brand image. Branded and unbranded sunglasses are sold at different price points, but consumers are prepared to pay a higher price for brand image. Brand awareness is of particular importance for consumers seeking to buy sunglasses, especially with respect to the dominant Ray-Ban brand*.'[64] According to one independent retailer, brands are in fact particularly important for sunglasses, as the latter are often considered by final customers as a fashion accessory.[65]

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59 M.8394 Essilor/Luxottica, rec. 120.

60 M.8394 Essilor/Luxottica, rec. 58; Non-confidential minutes of a call with a fashion brand licensor held on 11 March 2020, Doc ID 2664.

61 Questionnaire to suppliers of lenses and eyewear (Q3), questions 3.2 and 3.3, Doc ID 2541.

62 Questionnaire to independent opticians – Q1 (DE), Q1 (EN – UK respondents), Q1 (NL – Dutch respondents), Q1 (PL) – questions 6.2 and 6.3, Doc IDs 2535, 2534, 2538, 2537. Questionnaire to optical retail chains – Q2 – questions 4.2 and 4.3, Doc ID 2540; Questionnaire to independent opticians (Q11), questions 6, 11, Doc ID 2545.; Questionnaire to optical retail chains (Q12), questions 6, 11, Doc ID 2546.

63 Questionnaire to independent opticians (Q11), question 6.1, Doc ID 2545.

64 Questionnaire to optical retail chains (Q12), questions 11.1, Doc ID 2546.

65 Questionnaire to independent opticians (Q11), question 11.1, Doc ID 2545.

(81) The importance of eyewear brands is further corroborated by the fact that a majority of retailers consider that if the retail price of branded frames or sunglasses were to increase by 5-10%, only at most 25% of their customers would switch their purchases to unbranded products.[66] The same percentage range of customers is expected to switch in case of an equivalent price increase for private label eyewear.[67]

(82) The importance of eyewear brands is also explicitly recognised by the Notifying Party in its internal documents. One of documents on retaliation risks states that […].[68] Furthermore, the Parties systematically track the importance of brands and customers' brand awareness.[69] As part of such brand trackers, there are sections labelled […].

(83) Additionally, the market investigation points to a degree of differentiation and thus a possible further sub-segmentation within the branded eyewear. In fact, the Parties in their internal documents apply their own brand classifications. For instance, EssilorLuxottica distinguishes between […] (see Figure 3 EssilorLuxottica's brand classification below), while GrandVision distinguished between […] (see Figure 4 below).

Figure 3 EssilorLuxottica's brand classification[70]

[…]

Figure 4 GrandVision's brand classification[71]

[…]

(84) Similarly, the Notifying Party's internal documents mention […]. For instance, […].[72]

(85) The supply-side substitutability is also highly limited, as manufacturing of branded eyewear requires not only an entirely different contractual framework (as explained in recital (77), e.g. a licensing agreement) but also a different marketing strategy. Suppliers of branded products need to carry out a lot of advertising and promotion in various media channels, in order to build on their brand equity and awareness. A strong difference between private labels and branded products lies in the marketing and advertising costs, as these are normally higher for branded products. Moreover, for private labels these are borne by the retailer commercialising the private label rather than by the manufacturer and/or the licensor. In addition, as a consequence of

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66 Questionnaire to independent opticians (Q11), questions 7.1 and 12.1, Doc ID 2545; Questionnaire to optical retail chains (Q12), questions 7.1 and 12.1, Doc ID 2546.

67 Questionnaire to independent opticians (Q11), questions 7.2. and 12.2, Doc ID 2545; Questionnaire to optical retail chains (Q12), questions 7.2. and 12.2, Doc ID 2546.

68 Form CO, Annex CO 5.4.1 EL/07, Assessment of Retaliation.

69 See, for instance, Form CO, Annex 5.4.1 EL/Oakley France Brand Tracker 2018.

70 RFI 10 reply (first batch of documents) - RFI#10_Prod12V1-V2 - P012-00014968_Fielmann Meeting 31.05.2017, Doc ID 1335-1818, slide 13.

71 RFI 10 reply with Grand Vision data - ListUSB_02 - LL_00070286, Doc ID 1280-22405, page 6.

72 Form CO, Annex 5.4.1 EL\ Ray Ban brand tracker – wave_7 Italy, slide 31.

the different contractual structures and centralised trade patterns, costs relating to the setting up of sales force may also be higher for suppliers of branded products.[73]

Segmentation by retail price point

The Notifying Party's view

(86) As regards a potential sub-segmentation of eyewear markets by price (at the wholesale or retail level), the Notifying Party submits that such sub-segmentation would not be meaningful.[74] The Notifying Party argues that, even within brands, there is a wide variety of eyewear models covering relatively broad price ranges and customers typically purchase a wide variety of models and styles. The Notifying Party also submits that there is no clear and obvious break point on the basis of which one could delineate two or more separate product markets either for frames or for sunglasses and submits that, for that reason, the segmentation based on price is arbitrary and not meaningful.

The Commission's past practice

(87) In *Essilor/Luxottica*, the Commission considered a sub-segmentation based on a price point, but it ultimately left this distinction open due to a lack of impact on the competitive assessment.[75] The Commission took as a cut-off point a EUR […] retail price, having established that Luxottica […]. The market investigation pointed to a lack of either demand-side substitutability, resulting from different customer preferences, or, supply-side substitutability related to different production processes.

The Commission's assessment

(88) As regards a potential sub-segmentation of eyewear by a price point, the Commission, in line with *Essilor/Luxottica*, investigated whether the relevant markets could be further segmented into markets for frames and sunglasses below and above the retail price of EUR […].

(89) Overall, the results of the market investigation concerning this sub-segmentation largely mirror the feedback gathered with regard to the distinction between branded and unbranded eyewear. This can be explained by the fact that these two sub-segmentations largely overlap, with branded eyewear commonly priced above EUR […] at the retail level.

(90) The Commission considers that demand-side substitutability is highly limited, with a price point being an important differentiating factor for final consumers purchasing eyewear. According to the majority of eyewear manufacturers, frames and sunglasses sold to final consumers in a lower price bracket (below EUR […]) on the one hand and in a higher price bracket (above EUR […]) on the other hand are not substitutable, due to, e.g., customer preferences.[76]

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73 Form CO, Section 1-6 and Introduction to Section 7, paragraphs 321; Reply to the SO, paragraphs127 to 131.

74 Form CO, Section 1-6 and Introduction to Section 7, paragraphs 306 to 314.

75 M.8394 Essilor/Luxottica, rec. 119.

76 Questionnaire to suppliers of lenses and eyewear (Q3), questions 3.2 and 3.3, Doc ID 2541.

(91) At the same time, while most optical retailers, considering the sales strategy and procurement patterns, agree on the appropriateness of a price point distinction,[77] they have diverging views on the relevant cut-off point.[78] In fact, many retailers use their own price point categories, with no universal use of terminology and associated pricing. For example, when asked about the price point applied for 'luxury' sunglasses, the replies of independent opticians range from EUR 90 to EUR 800.[79]

(92) Nevertheless, a majority of retailers consider that if retail prices of either frames or sunglasses priced below EUR […] (at retail level) were to increase by 5-10% while the prices of those above EUR […] remained the same, only at most 25% of their customers would switch their purchases from the lower to the higher range.[80]

(93) Finally, a price point segmentation is also used by the Parties in their internal documents. Figure 5 reflects a sub-segmentation used by EssilorLuxottica with regard to eyewear sales to independent opticians, […].

Figure 5 EssilorLuxottica's eyewear price bands[81]

[…]

(94) The results of the market investigation also point to a lack of supply-side substitutability. For instance, one of the respondents specifies that '*the business model of manufacturers of frames in a lower price bracket (less than […]) totally differs from the business model of manufacturers which focus on the production of frames in a higher price bracket (above […]).*'[82] Moreover, for both frames and sunglasses, a large majority of suppliers state that they focus mainly on the higher priced segment.[83]

<u>Sales to optical retail chains and sales to independent opticians</u>

The Commission's past practice

(95) In *Essilor/Luxottica*, the Commission considered a sub-segmentation based on a distribution channel, but it ultimately left this distinction open due to a lack of impact on the competitive assessment.[84] The results of the market investigation pointed to largely similar prices and delivery conditions offered to both optical retail chains and independent opticians, but certain respondents also stated that the market position of frames suppliers differed to a certain extent between sales to retail chains and sales to independent opticians.

The Notifying Party's view

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77 Questionnaire to independent opticians (Q11), questions 5 and 10, Doc ID 2545; Questionnaire to optical retail chains (Q12), questions 5 and 10, Doc ID 2546.

78 Questionnaire to independent opticians (Q11), questions 5.1 and 10.1, Doc ID 2545; Questionnaire to optical retail chains (Q12), questions 5.1 and 10.1, Doc ID 2546.

79 Questionnaire to independent opticians (Q11), question 10.3, Doc ID 2545.

80 Questionnaire to independent opticians (Q11), questions 4 and 9, Doc ID 2545; Questionnaire to optical retail chains (Q12), questions 4 and 9, Doc ID 2546.

81 RFI 10 reply (full) - RFI#10_Part40 of 74_PROD012-VOL0005 - RFI and not LPP - G02-MUM - P012-00061164_North Europe - Kick Off Budget 2019 Brainstorming, Doc ID 1517-15436, page 4.

82 Questionnaire to suppliers of eyewear (Q13), question 6.1, Doc ID 2547.

83 Questionnaire to suppliers of eyewear (Q13), questions 6 and 10, Doc ID 2547.

84 M.8394 Essilor/Luxottica, rec. 121.

(96) As regards the possible further segmentation based on a distribution channel, the Notifying Party submits that it would not be appropriate, as, in their view, there is no meaningful distinction between end-customers' habits of purchasing a pair of eyewear from an independent store or from a store belonging to an optical chain.[85]

The Commission's assessment

(97) The Commission considers that demand-side substitutability is highly limited. According to the results of the market investigation, a significant number of eyewear suppliers charge different prices to optical retail chains and independent opticians.[86] Moreover, according to one of national associations of opticians, '[t]*he chains are mainly selling low-end, unbranded, cheaper products, whereas the independent opticians are mainly selling branded products*.'[87]

(98) With regard to the supply-side substitutability, eyewear suppliers point out that supplying independent opticians entails higher distribution costs compared to supplying optical retail chains.[88] At the same time, they recognise that they face the same competitors when selling to retail chains and independent opticians.[89]

<u>Overall conclusion on the markets for the wholesale supply of frames and sunglasses</u>

(99) For the purposes of this decision, based on the above considerations and in light of its previous decisional practice, the Commission concludes that there are two distinct markets, respectively for (i) the wholesale supply of frames and (ii) the wholesale supply of sunglasses. Each of these two markets is within itself highly differentiated, in particular with regard to branded and unbranded products, and price points. Nonetheless, the Commission finds that the precise market definition for each of these two separate markets can be left open for the purposes of the present case, as the outcome of the competitive assessment would not change irrespective of the possible segmentation analysed above.

(100) In the competitive assessment the Commission therefore analyses the effects on the respective markets for wholesale supply of frames and wholesale supply of sunglasses. However, the Commission considers that in well-defined cases, specified in the competitive assessment, the anticompetitive effects of the Transaction are stronger when having regard to a possible segmentation consisting in branded/unbranded and priced at over/below […] EUR products. The Commission will accordingly take into account, where relevant, the differentiation between branded/unbranded and priced at over/below […] EUR products.

6.1.1.3. Readers

The Notifying Party's views

(101) The Notifying Party submits that readers constitute a separate product market from other categories of spectacles. The Notifying Party also submits that an additional

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85 Form CO, Section 1-6 and Introduction to Section 7, paragraph 326 to 333.

86 Questionnaire to suppliers of lenses and eyewear (Q3), question 18, Doc ID 2541; Questionnaire to suppliers of eyewear (Q13), question 4, Doc ID 2547.

87 Non-confidential minutes of a call with a national association of opticians of 10 October 2019, Doc ID 1124.

88 Questionnaire to suppliers of lenses and eyewear (Q3), question 17, Doc ID 2541.

89 Questionnaire to suppliers of eyewear (Q13), question 5, Doc ID 2547.

segmentation of the market based on the category of readers (i.e., traditional readers on one hand, and screen readers on the other hand) would not be appropriate.

The Commission's past practice

(102) In previous decisions, the Commission has not assessed the market for readers. However, at the national level, the question of market definition for traditional or screen readers was raised before the German Competition Authority. The German Authority considered that prescription glasses and readers were not substitutable products, including because (i) readers are not prescribed for medical purposes and are not customised to correct a particular vision impediment of an individual and (ii) readers only correct certain vision impediments, such as long or short sightedness, but not other impediments such as astigmatism, (iii) readers are also usually only available in half-dioptre increments and (iv) readers are usually much cheaper than prescription glasses.

The Commission's assessment

(103) The market investigation did not provide any compelling reason to depart from the market definition proposed by the Notifying Party.

(104) It can be left open whether the wholesale supply of readers forms part of a product market separate from the wholesale supply of optical frames and prescription lenses, as the finding of such a market would not affect the outcome of the competitive assessment.

6.1.1.4. Contact lenses

The Notifying Party's views

(105) The Notifying Party submits that although, from a demand-side perspective, there is a degree of substitutability between contact lenses and ophthalmic lenses, there is no straightforward supply-side substitutability between the products, due to difference in manufacturing and technology. It concludes that contact lenses form part of a separate product market.[90]

The Commission's past practice

(106) In *Essilor/Luxottica*, the Commission defined the market for contact lenses as a separate product market from ophthalmic lenses.[91] In particular, it found that there were significant differences between contact lenses and ophthalmic lenses in their characteristics and intended use. Contact lenses may be worn for aesthetic reasons as well as for contact sports and can be paired with non-corrective sunglasses. Contact lenses are purchased periodically and in the long-term the price is more expensive than for prescription lenses. From the supply side perspective, there is no substitutability due to the differences in production processes and the suppliers of the products differ. The Commission left open whether a potential distinction between soft and hard lenses would be appropriate.

The Commission's assessment

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90 Form CO, paragraph 182.

91 M.8394 Essilor/Luxottica, paragraph 140-142

(107) In the present case, the market investigation did not provide any reason to depart from the Commission's past practice regarding product market definition for the wholesale supply of contact lenses.

(108) For the purposes of this Decision, the Commission will consider the wholesale supply of contact lenses to be a separate product market. The potential distinction between soft and hard lenses can be left open in this case as that distinction does not have any impact on the outcome of the assessment under both alternative market definitions, because the Parties' activities in contact lenses in the EEA are marginal.

6.1.1.5. Ophthalmic machines

(109) Ophthalmic machines are used to manufacture prescription lenses. A number of machines are necessary to transform ophthalmic substrate into finished lenses. This manufacturing process comprises three main steps: (i) surfacing; (ii) coating; and (iii) glazing. Most of this process is carried out in prescription laboratories with the use of industrial machines. The glazing stage may be carried out either in prescription laboratories with the use of industrial machines, or by opticians and optical retail chains with the use of commercial machines (i.e., table-top edgers). There are three main categories of machines, which correspond to the three main steps of this manufacturing process, namely (i) surfacing; (ii) coating; and (iii) glazing.[92]

(110) In its past practice, the Commission considered but eventually left open whether the relevant product market could be segmented into (i) surfacing machines, (ii) coating machines, (iii) industrial glazing machines and (iv) table-top edgers.[93]

(111) The Notifying Party submits that such segmentation is justified but that the market definition can be left open as this would not affect the outcome of an assessment of horizontal or vertical relations.

(112) The market investigation in the current proceedings did not provide any reason to depart from the Commission's past practice of considering the wholesale of ophthalmic machines to be a separate product market. The market investigation was inconclusive as to whether the abovementioned segmentations are justified for delineating the relevant product market.[94]

(113) In any event, the Commission leaves open whether the relevant product market of ophthalmic machines could be further segmented, as this would not affect the outcome of the competitive assessment.

6.1.2. Downstream retail sales of optical products

6.1.2.1. Retail sale of optical products in optical stores.

The Notifying Party's view

(114) The Notifying Party submits that the relevant product market for retail distribution of optical products should be defined broadly and include all retail sales for eye protection (sunglasses and blue light readers) and eye correction (prescription frames

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92 Form CO, Section 1-6 and Introduction to Section 7, paragraph 197.

93 M.8394 Essilor/Luxottica, recital 132.

94 Questionnaire to optical retailers – Q1 – question 6.4 and questionnaire to optical retail chains – Q2 – question 4.4.

and lenses, readers, and contact lenses), as well other optical-related products and services (such as cleaning liquids). The Notifying Party submits that the market should not be segmented by (i) product type, (ii) retailer type (i.e., independent opticians and retail chain) and (iii) online and brick-and-mortar retail.[95]

The Commission's past practice

(115) In past cases,[96] the Commission defined the retail market for optical products, services and eyewear (prescription lenses, frames and sunglasses) as a whole without further segmentation based on the sales channel, on the price of the product or any other factor.

The Commission's assessment

(116) In this decision, for the purposes of the competitive assessment downstream, where the Parties are present with their own retail stores, the Commission considers that it is appropriate, in line with what decided in case M.8394 Essilor/Luxottica, to define the relevant product market as the market for the retail supply of optical products including all products sold in an optical store to final consumers. Indeed, the market investigation has shown that all optical stores supply the same range of goods (lenses, frames, contact lenses and sunglasses) to consumers seeking vision correction products or vision protection products. [97] The retail level is different from the wholesale level where different suppliers provide the optical goods to retailers, which justifies the finding of separate markets for these optical products (lenses, frames and sunglasses). As will be explained below in point 6.1.2.4., the only exception to the above comprehensive definition is the one for the market of retail sales of non-prescription sunglasses as they are also sold in non-optical stores such as sport stores and department stores. For the latter segment, the Commission finds it appropriate to separately examine the market for the retail sale of non-prescription sunglasses in optical and non-optical stores as a separate relevant product market.

6.1.2.2. <u>Independent opticians versus optical retail chains</u>

(117) Independent opticians typically offer a high level of service, which is considered to be one of the important drivers to generate customer traffic to these stores. They focus on branded products, have a higher positioning in the value-luxury spectrum and, therefore, compete more on quality.[98] Optical retail chains, on the other hand, are seen by customers as offering products at lower prices. In this regard, the Commission considers that independent opticians are typically rather active in

95 Form CO, Section 1-6 and Introduction to Section 7, paragraph 382 to 387.

96 Case COMP/M.5693, Hal Holding/Safilo Group, Commission decision of December 11, 2009, para 7, M.8394 Essilor/Luxottica, rec. 135.

97 By analogy, when assessing the retail market for distribution of fuel, the Commisison defines a market which encompasses all types of motor fuels available at service stations. Although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), these are (almost) always available at the distribution level at the same point of sales and therefore substitutable from a supply-side perspective (see M.7603, Statoil Fuel and Retail/ Danske Fuel, paragraph 24)..

98 Non-confidential minutes of a call with an optical retail chain on 21 April 2020, doc. ID 2969.

premium segments, offering premium products, while optical retail chains are typically more economical and tend to be slightly more focused on mass products.[99]

(118) The results of the market investigation demonstrate that independent opticians consider having a different customer base than the one of optical retail chains.[100] In particular, independent opticians take the view that if their store is closed, their customers are more likely to switch to another independent optician than to a chain.[101] Similarly, customers of chains are more likely to switch to another chain than to an independent optician.[102] Furthermore, independent opticians tend to offer products at higher prices compared to optical retail chains.[103] The higher prices are the result of higher wholesale prices that independents pay in comparison to retail chains as they purchase in smaller volumes[104] and of their focus on branded, high end products.

(119) On the other hand, retail chains responded that they consider having the same customer base as independent opticians, since the primordial needs of the customers are similar.[105] The majority of independent opticians as well as the majority of optical retail chains consider that they compete to the same extent with each other. A significant minority of the responding retail chains, however, has explained that it considers competition from other chains to be stronger,[106] as they have '*a similar store footprint*'.[107,108]

(120) Suppliers of eyewear usually supply both independent opticians and retailers. However, they supply different volumes under different conditions according to each of their customers' business model.[109] A majority of suppliers of lenses and eyewear responding to the market investigation indicate that they offer different conditions to independent opticians and optical retail chains (e.g., different prices and discount policies stemming from bigger volumes purchased, a higher market positioning of independent opticians, centralised delivery and other costs, etc.) which translate into different prices at the retail level.[110] Respondents to the market investigation also point to other factors as elements of differentiation between

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99 Case M.9569 – ESSILORLUXOTTICA / GRANDVISION Commission decision pursuant to Article 6(1)(c) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area; paragraph 69.

100 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 28.

101 Questionnaire to independent opticians - Q11 – question 24.

102 Non-confidential minutes of a call with an optical retail chain of 21 April 2020, doc. ID 2969 and Questionnaire to optical retail chains - Q12 – question 27.

103 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 30.

104 Questionnaire to suppliers of eyewear – Q13 – question 15.

105 Questionnaire to Optical retail chains – Q2 – question 29.

106 Non-confidential replies of optical retail chains to the questionnaire to optical retail chains – Q2 – question 29.

107 Non-confidential reply of optical retail chain to the questionnaire to optical retail chains – Q2 – question 29.

108 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 29 and Questionnaire to optical retail chains – Q2 – question 30.

109 Questionnaire to suppliers of eyewear – Q13 – questions 3 and 25.

110 Questionnaire to suppliers of lenses and eyewear – Q3, question 18 and Questionnaire to suppliers of eyewear – Q13 – question 4 and reply of eyewear supplier to RFI of 12 May 2020 to suppliers of eyewear, doc ID 3055, question 1.

optical retail chains and independent opticians, such as delivery conditions.[111] Independent opticians as well as buying groups (see point (33) above) opt for high-end products which also means a lower volume of purchases, incur high distribution costs, and are less likely to offer additional services (e.g. marketing). For all these reasons their negotiating power is not equivalent to the one of retail chains, resulting in generally less favourable terms and conditions.[112]

(121) Furthermore, Essilor's internal documents drafted before the merger with Luxottica demonstrate that […].[113] The documents also demonstrate that Essilor […].[114]

(122) For the purposes of the assessment of the present Transaction, the Commission will assess competition between independent retailers and chains as taking place in the same retail market, as independent retailers and retail chains appear to target the same customers and source their products from the same suppliers. Nevertheless, there are several indications that retail by independent opticians has important elements of differentiation compared to chains, such as different focus as regards product assortment and different conditions of supply from wholesalers. These elements will be further assessed as parameters of closeness of competition.

6.1.2.3. Brick-and-mortar versus online retail sales

The Notifying Party's view

(123) The Notifying Party submitted that the market should not be segmented by online and brick-and-mortar retail. The Parties submitted that online retail exerts sufficient competitive pressure to be integrated into the market for brick-and-mortar retail, regardless of whether this competitive pressure comes from pure online players or from stores' own websites, which compete with in-store physical sales.[115] This is because, according to the Notifying Party, consumers tend to compare prices across different channels when purchasing eyewear and would readily switch from one channel to the other should they observe a price increase. Moreover, from a supply-side perspective, many retailers distribute products through different channels.

The Commission's past practice

(124) In *Essilor/Luxottica*, the Commission left open the question of whether the market should be separated between online and brick-and-mortar retail sales, as it did not have any impact on the assessment.[116]

The Commission's assessment

(125) The availability of retail channels differs for spectacles compared to sunglasses. Brick-and-mortar stores remain the most common channel for overall eyewear sales. The reason for this is that opticians are still perceived as playing an important role in advising on eye healthcare. Sunglasses are more widely available, including in

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111 M.8394 Essilor/Luxottica, rec. 110.

112 Questionnaire to suppliers of eyewear – Q13 – question 26.

113 Reply to RFI 10, Presentation Overview of KA Business in Europe, ListUSB_Part 05 of 05 - ESS-0112614_EuropeKAoverview Sept 2017 v1, doc ID: 1289-16614.

114 Reply to RFI 10, Essilor group benelux strategic roadmap (2015-2018), ESS-0119467_20150430 - C3SR - Benelux - Final presentation, doc ID 1409-15266 and Essilor Strategy Germany, ListUSB_Part 03 of 05 - ESS-0052196_Germany MC September 31082018 v1, doc ID 1287-4196.

115 Form CO, Section 1-6 and Introduction to Section 7, paragraph 382 to 387.

116 M. 8394 Essilor/Luxottica, paragraph 139.

optical stores, but also in sport stores, department stores, specialised stores selling exclusively sunglasses (such as Sunglass Hut) and online.[117] This will be examined further below.

(126) The Commission has further investigated the potential segmentation of online compared to brick-and-mortar retail. According to the market investigation, online and brick-and-mortar retail sales could be considered as two distinct markets, particularly with regard to prescription spectacles in view of the service element that sees very limited competition from online sales. This is due to the fact that each type of seller generally offers different advantages to consumers; brick-and-mortar retailers tend to focus on service, advice, personalization in addition to the product while online retailers tend to offer competitive prices/promotions and have wider assortment.[118] The situation, however, is different for non-prescription sunglasses, as some retail chains benchmark against online retailers. Non-prescription sunglasses consumers find themselves more interested in the brand/style of the product, which render the additional services offered by brick-and-mortar retailers redundant. [119]

(127) Most independent opticians consider that they face only limited competition from online retailers for spectacles and prescription sunglasses.[120] A small but significant non-transitory increase in the price (SSNIP) of spectacles and prescription sunglasses would cause very few customers to switch from brick-and-mortar to online retailers.[121]

(128) For non-prescription sunglasses, however, independent opticians think that there is significant competition from online retailers. A small but significant non-transitory increase in the price (SSNIP) of non-prescription sunglasses would cause the majority of customers to switch from brick-and-mortar to online retailers.[122] In their replies, respondents explained that online shops can offer cheaper products but cannot give advice. This is why products with no service requirements (such as non-prescription sunglasses) are easier to buy online.[123] The market investigation results were mixed about whether independent opticians consider that they win or lose significant volumes from or to online players.[124] Similarly, most retail chains consider that they face only limited competition from online retailers for spectacles and prescription sunglasses[125] but significant competition for non-prescription sunglasses. A small but significant non-transitory increase in the price (SSNIP) of lenses and prescription sunglasses would cause very few customers to switch from

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117 Case M.9569 – ESSILORLUXOTTICA / GRANDVISION Commission decision pursuant to Article 6(1)(c) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area; paragraph 78.

118 It is appropriate to note that, in some Member States such as France, online eyewear sales entail a regulatory framework by which such sales, besides being performed under the supervision of opticians, are subject to the same rules as brick and mortars opticians regarding consumer information and individual advice.

119 Questionnaire to retail chains – Q12– question 18.

120 Questionnaire to independent opticians – Q11- questions 18.1-2.

121 Questionnaire to independent opticians – Q11- questions 20.1 and 20.2.

122 Questionnaire to independent opticians – Q11- question 20.3.

123 Questionnaire to independent opticians – Q11- questions 18.3-4.

124 Questionnaire to independent opticians – Q11- question 19.

125 Questionnaire to retail chains – Q12– questions 18.1-2.

brick-and-mortar to online retailers.[126] A small but significant non-transitory increase in the price (SSNIP) of non-prescription sunglasses would cause more customers to switch from brick-and-mortar to online retailers.[127] According to retail chains *'branded sunglasses is the only segment where online retailers are performing*'[128] which explains why they believe that they lose (sunglasses) customers to online competitors.[129]

(129) Suppliers take the view that while online retail of eyewear is a growing market for certain products (such as readers, sunglasses and contact lenses), brick-and-mortar stores are expected to remain the most common channel for eyewear retailing. *'Online sales of frames and lenses are expected to remain marginal. This is primarily because customers generally prefer to try on frames before buying them and opticians offer eye tests to determine the correct prescription for lenses – neither of which can be done online.'*[130] Luxury brands are usually the most marketable brands online, due to the lower prices offered. However, since this is still considered a developing market '*a lot of work would need to be done to tackle this market and to understand the consumers' needs*'.[131]

(130) For the purposes of this decision, the Commission finds that the online and brick-and-mortar retail sales constitute two separate markets. However, the Commission considers that it is appropriate to also take into account the competitive pressure exercised on brick-and-mortar retailers by the online retailers, in the competitive assessment of the effects of the Transaction.

6.1.2.4. Sales of sunglasses in optical and non-optical stores

The Notifying Party's view

(131) The Notifying Party submits that brick & mortar distribution of sunglasses can occur at opticians, pharmacies, department stores, specialty stores, brand stores, sports stores, travel retail boutiques. Sunglass specialist corners are typically found in department stores, travel retail stores, or optical chains. According to the Notifying Party, the sunglass specialist store category has no additional features compared to any other retailer of sunglasses.

The Commission's assessment

(132) Retail sales of non-prescription sunglasses often take place in non-optical stores ('non-specialised stores') such as sport stores, department stores, supermarkets. They also take place in stores that specialise in sunglasses (such as Sunglass Hut). Based on this distinction the Commission considered that a further segmentation between (i) retail sales of non-prescription sunglasses in non-optical stores and (ii) retail sales of non-prescription sunglasses in optical stores could be relevant and further investigated this matter in its in-depth inquiry.

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126 Questionnaire to retail chains – Q12– question 20.2.
127 Questionnaire to retail chains – Q12– question 20.3.
128 Non-confidential reply of retail chain to questionnaire to retail chains – Q12– question 18.4.
129 Questionnaire to retail chains – Q12– questions 18.3-4 and 19.
130 Non-confidential reply of lens supplier to questionnaire to suppliers of lenses and eyewear – Q3 – question 29.
131 Questionnaire to suppliers of lenses and eyewear – Q3 – question 29.

(133) A majority of independent opticians consider both non-optical retailers, such as sport stores, department stores, supermarkets and specialised stores selling only sunglasses to be their competitors as regards the sale of non-prescription sunglasses as they mostly have the same groups/types of customers.[132] They also claim to have a narrower assortment of branded non-prescription sunglasses compared to non-optical retailers, since they purchase in smaller volumes. Independent opticians are equally split between those whose prices of non-prescription sunglasses are similar to the prices charged by non-optical retailers and those whose prices are higher than non-optical retailers.[133]

(134) The majority of retail chains considers both non-optical retailers, such as sport stores, department stores, supermarkets and specialised stores selling only sunglasses to be their competitors as all these types of retailers have the same customers for non-prescription sunglasses.[134] Retail chains also consider that they have a wider assortment of non-prescription sunglasses compared to non-optical retailers. Additionally, most chains state that their prices of non-prescription sunglasses are similar to those of non-optical retailers.[135]

(135) Both retail chains and independent opticians indicate, in their majority, that the fraction of prescription sunglasses as a percentage of their total sales of sunglasses is relatively small (0-25%).

(136) Eyewear suppliers consider that they face the same competitors when they sell to opticians and to non-optician retailers. The prices they charge to each of their customers varies according to the volume purchased. Suppliers have indicated supplying the same assortment to optical and non-optical stores. [136] This was also supported by a major fashion brand whose products are sold in both specialised eyewear retailers and more general stores, such as fashion and department stores. The company notes that what is important is that the products are merchandised according to brand standards and certain sales levels are maintained. In practice, however, frames are typically only sold in specialised (optician) retailers, in view of the need for specialist advice for testing and lenses, whereas sunglasses are more easily sold in either optical stores or non-optical retailers.[137]

(137) As a differentiating factor from the retail sales of optical products in optical stores, the market investigation confirmed that it is appropriate to consider the retail sale of non-prescription sunglasses as including both brick-and-mortar online channels. Independent opticians consider that there is significant competition from online retailers and a small but significant non-transitory increase in the price (SSNIP) of non-prescription sunglasses would cause the majority of customers to switch from brick-and-mortar to online retailers.[138] Moreover, in light of the inherent characteristics of these products, the online retail of non-prescription sunglasses is significantly more developed than the online retail of prescription sunglasses. This is

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132 Questionnaire to independent opticians - Q11 – questions 13 and 15.
133 Questionnaire to independent opticians - Q11 – question 14.
134 Questionnaire to optical retail chains – Q12 – questions 13 and 16.
135 Questionnaire to optical retail chains – Q12 – question 15.
136 Questionnaire to suppliers of eyewear – Q13 – question 14, 15 and 16.
137 Non-confidential minutes of a call with luxury fashion house,17 March 2020, doc ID 2465.
138 Questionnaire to independent opticians – Q11- question 20.3.

due to the fact that non-prescription sunglasses are non-medical devices and – unlike prescription eyewear – do not require specialist advice prior to their purchase.[139]

(138) As a result of the market investigation, the Commission will consider retail sales of non-prescription sunglasses in optical stores and in non-optical stores as two separate markets while taking into account the findings of the investigation concerning retail sales of non-prescription sunglasses in optical and non-optical stores in its competitive assessment of the effects of the Transaction.

Conclusion on the relevant product market for the retail sales of optical products

(139) In light of the above, for the purposes of this decision, the Commission concludes that there are the following separate product markets in the retail of optical products: (i) an overall market for retail sales of lenses, frames and sunglasses in optical stores, (ii) an overall market for retail sales of lenses, frames and prescription sunglasses online, and (iii) an overall market for the retail sales of non-prescription sunglasses in non-optical stores, encompassing both online and brick-and-mortar sales. Furthermore, the Commission will thus assess the effects of the Transaction in the market for retail sales in specialised brick-and-mortar stores of independent opticians and optical retail chains cumulatively without considering chains as constituting a separate market from the independent opticians.

6.2. Geographic market definition

6.2.1. Upstream: Wholesale supply of optical products

(140) As background, the Commission notes that the arguments submitted by the Parties as to the geographic scope of the relevant markets for the wholesale supply of optical products in this case mirror those submitted in the framework of the review of the Essilor/Luxottica merger. In that respect, the Commission considers that while in general the arguments of the Parties remain valid when examining the geographic scopes of the upstream product markets, the specificities of the downstream markets must also be assessed, in particular given that the key aspect of the present Transaction is the further vertical integration of the Parties into the downstream optical retail market.

6.2.1.1. Wholesale supply of lenses

The Notifying Party's view

(141) The Notifying Party claimed that the market has significantly changed since Essilor/Luxottica, where the Commission found that lenses markets were national in scope. In particular, suppliers would be increasingly centralising their processing facilities to serve Europe as a whole and opticians would increasingly source finished lenses from other countries. In addition, large customers of lenses would source European-wide.

The Commission's past practice

(142) In past cases, the Commission considered that the geographic market for ophthalmic lenses was national in scope.[140] In Essilor/Luxottica,[141] the Commission found that

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[139] The Notifying Party's response to RFI 36, Question 7c.

[140] M.3670 Zeiss/EQT/Sola JV, para. 13; and M.8394 Essilor/Luxottica, rec. 152.

[141] M.8394 Essilor/Luxottica, rec. 149–150.

(i) market shares of lens suppliers differ considerably between countries, indicating that conditions of competition also change, (ii) there are national preferences and differences in brand awareness, (iii) lens producers need to have a local presence (either sales people or at least distributors) in order to have a market presence, (iv) lens producers develop national strategies depending on the reimbursement and insurance policies that differ across countries, (v) retail chains (with the few exceptions of chains that have a pan-european presence) typically negotiate supply contracts on a national basis or at least define their purchasing needs on the basis of requirements of their national subsidiaries, (vi) independent opticians represent the largest customer group for lenses and purchase lenses at the national level.

The Commission's assessment

(143) Based on the evidence available in this case, the considerations as regards the relevant geographic market definition relative to the wholesale supply of lenses found in Essilor/Luxottica remain, to some extent, unchanged.

(144) The market shares of lenses per supplier still continue to differ considerably between countries, indicating that conditions of competition vary significantly across countries. For EssilorLuxottica, these shares are below 20% in Austria, and Finland, between 20 and 30% in Sweden and the Netherlands, between 50 and 60% in the UK and Portugal and above 70% in France.[142]

(145) The market investigation demonstrates that national preferences and differences in brand awareness have not changed significantly since Essilor/Luxottica.[143] The Commission noted in Essilor/Luxottica that lens producers need to have a local presence in order to maintain their levels of penetration and this remains true in the circumstances of the present case. There are, however, some exceptions to the local presence requirement. Two German lens suppliers state that they supply their products from one central location. The first is only able to do so in case of sales agreements with international retailers, where optical products are delivered to central warehouses of such retailers.[144] The second ships the products from a central location to stocking points in different countries.[145] All the other retailers indicate that local presence is essential.

(146) In that regard, the Notifying Party's argument about suppliers increasingly centralising their processing facilities would not be particularly relevant since lens producers continue to consider local presence significant for maintaining market penetration. In any case this centralisation was already a given to a large extent at the time of Essilor/Luxottica and therefore does not constitute a market change.

(147) A majority of independent opticians indicate that they purchase lenses at national or regional level, with the fraction of respondents indicating that they source nationally being larger than those indicating that they source locally.[146] The responses from optical retail chains vary, with 17 respondents indicating that they purchase lenses at

142 Form CO, annex 7.2

143 Questionnaire to suppliers of lenses and eyewear – Q3 – question 4.

144 Questionnaire to eyewear suppliers – Q13 – question 20.

145 Non-confidential minutes of a call with a lens supplier on 8 October 2019, doc ID 64.

146 Questionnaire to independent opticians – Q1 (DE – Austrian respondents), Q1 (DE – German respondents), Q1 (EN), Q1 (FR), Q1 (IT), Q1 (NL – Dutch respondents), Q1 (NL – Belgian respondents), Q1 (PL) – question 7. Th

an EEA or worldwide level, and 18 respondents indicating that they purchase lenses at a national or local level.[147] There is a slight majority of retailers purchasing at a national or local level, with 11 retailers indicating that they source on a local level. The majority of independent opticians from the UK, Italy, France, Belgium, Poland and the Netherlands source lenses on a national level.[148]

(148) The Commission infers from Essilor/Luxottica that competitors develop national strategies based on the reimbursement and insurance policies that differ nationally. The Notifying party has provided elements showing significant differences in terms of reimbursement policies, which have an impact on the willingness to pay of final customers and consequently on the pricing of the products. For example in the Czech Republic, there are no longer any reimbursement for optical aids from public insurance and private insurance does not in general cover optical products.[149] The same is true in Spain where public health insurance does not provide any coverage for prescription frames and lenses private health insurance plays a marginal role with regard to prescription frames and lenses.[150] By contrast, in France, public and private health insurance cover on average 79% of the optical expenses for almost 95% of the population.[151]

(149) Suppliers of lenses determine the supply conditions according to their customers' presence and business model.[152] For example, a major German manufacturer of ophthalmic lenses has indicated that '*In case of local retailers, the agreements are different from retailer to retailer and each country has a different agreement. Furthermore, local retailers in a given country are managed by our local subsidiaries. However, for international retail chains, it is usual to have one master agreement that comprises all relevant countries. This is because some rebates have to be paid to the headquarter of the retail chains and not to the local subsidiaries or franchisees*.'[153] A supplier of lenses has indicated that prices are also set at the national level.[154]

(150) The Commission recalls that in accordance to its 1997 Notice on the definition of relevant market for the purposes of competition law,[155] the relevant geographic market comprises the area in which the conditions of competition are shown to be sufficiently homogeneous. In this regard, the competing lens suppliers responding to the market investigation have indicated that they consider commercial conditions to be typically the same at the national level within the EEA.[156] In addition to the

147 Questionnaire to optical retail chains – Q2 – question 5

148 Questionnaire to independent opticians – Q1 (DE – Austrian respondents), Q1 (DE – German respondents), Q1 (EN), Q1 (FR), Q1 (IT), Q1 (NL – Dutch respondents), Q1 (NL – Belgian respondents), Q1 (PL) – question 7.

149 Form Co, annex 7.1.4

150 Form CO, anne 7.1.15.

151 Form CO, annex 7.1.6.

152 Questionnaire to eyewear suppliers – Q13 – question 3.

153 Questionnaire to eyewear suppliers – Q13 – question 18.

154 Non-confidential reply of a lens supplier to RFI of 12 May 2020 to suppliers of eyewear, doc ID 3003, question 1.

155 OJ C 372, 9.12.1997, p. 5.

156 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.

above, the Notifying party's internal documents demonstrate that […].[157] To this end, the STARS system is being […].[158]

(151) Based on the above considerations, for the purposes of this decision, the Commission therefore concludes that the market for the wholesale supply of ophthalmic lenses is organised primarily at the national level and is therefore national in scope.

6.2.1.2. Wholesale supply of prescription frames

The Notifying Party's view

(152) As in *Essilor/Luxottica*, the Notifying Party submitted that markets for prescription frames are at least EEA-wide and possibly worldwide in scope, because (i) there are large amount of imports and transportation costs are relatively low, (ii) pricing and collections are broadly homogeneous throughout the EEA, (iii) main manufacturers are present in all Member States, (iv) national subsidiaries are not strictly necessary for the wholesale distribution of eyewear and (v) brand licenses are generally granted on a worldwide or at least EEA-wide basis. The Notifying Party took the view that the market for prescription frames should be defined in line with the precedents set in *Essilor/Luxottica*.

The Commission's past practice

(153) In past cases, the Commission left open the geographic market for prescription frames.[159] In Essilor/Luxottica,[160] the Commission found that (i) there are national preferences and different levels of brand awareness across countries in the EEA, (ii) frames producers need to have a local presence in order to supply their products, (iii) a majority of retail chains and eyewear producers negotiate and conclude contracts on a national basis, but on the other hand that (iv) production facilities are located mainly outside the EEA and supply EEA countries through local distributors in those cases where they do not have their own distribution and logistics centres at national level in the EEA.

The Commission's assessment

(154) The market investigation gives indications that the geographic market for the wholesale supply of frames is national in scope.

(155) First similarly as for lenses, market shares of frames suppliers still continue to differ considerably between countries, indicating that conditions of competition vary significantly across countries. For EssilorLuxottica, these shares are below 10% in a number of EEA countries but above 30% in Greece and Romania and above 40% in Italy. [161]

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157 Reply to RFI 10, e-mail of 16/11/2017, RFI#10_Part38 of 74_PROD012-VOL0001-VOL0002 - RFI and not LPP - G02-MUM - P012-00033105_Conditions Générales de vente_Tarifs 2018, doc ID:1515-17817.

158 Reply to RFI 10, Aggiornamento stars, RFI#10_Part66 of 74_PROD024-VOL0002 - RFI and LPP and NP - G02-POH - P024-00034410_Approfondimento STARS Milleri v3, doc ID: 1543-21898.

159 M.5693 Hal Holding/Safilo Group, paras. 8 and 9; and M.8394 Essilor/Luxottica, rec. 158.

160 M.8394 Essilor/Luxottica, rec. 149–150.

161 Form CO, annex 7.2

(156) While retailers appear to source both at the EEA and worldwide level, commercial conditions as indicated by competing eyewear suppliers appear to be uniform only at national level (and not at worldwide or EEA level).[162] Independent opticians' replies are mixed as to whether they source at the local, national, EEA or worldwide level. A slight majority of respondents indicated sourcing at the EEA level or wider,[163] with the majority of optical retail chains indicating sourcing at the EEA or worldwide level.[164]

(157) However, most of the suppliers consider customers' brand awareness and preferences to be homogeneous throughout the EEA. Half of the respondents consider that preferences differ across the EEA while the other half considers the preferences to be different within individual countries in the EEA.[165]

(158) A majority of suppliers of frames indicate that the commercial conditions (e.g. pricing) for the wholesale of optical frames are typically the same across the national or sub-national level (as opposed to the worldwide or EEA level) with a non-negligible amount of respondents indicating that these are the same across the sub-national level.[166] A major eyewear supplier indicates that it has different price lists per country per customer and that discounts are also based on each customer's features (loyalty level, volumes purchased, place of delivery).[167] Wholesale suppliers of frames contract both nationally and EEA-wide, while rebates are usually implemented at the national level.[168]

(159) Suppliers of frames indicate that they organise the supply of optical frames at worldwide level, and track their sales performance of optical frames at the worldwide level, as opposed to the EEA-wide level. On the other hand, a significant amount of respondents also indicates tracking sales performance at national level within the EEA or at sub-national level.[169]

(160) In addition to the above, the Notifying party's internal documents demonstrate that […].[170] […].[171]

(161) Based on the above considerations, for the purposes of this decision, the Commission concludes that the definition of the market for the wholesale supply of prescription frames is national in scope, considering the predominance of national requirements in the market for prescription frames.

6.2.1.3. Wholesale supply of sunglasses

The Notifying Party's view

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162 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.
163 Questionnaire to independent opticians – Q1 (DE), Q1 (EN), Q1 (IT), Q1 (PL) – question 7.
164 Questionnaire to independent opticians – Q1 (FR), Q1 (NL) – question 7.
165 Questionnaire to suppliers of eyewear – Q 13 – question 23.
166 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.
167 Non-confidential reply of eyewear supplier to RFI of 12 May 2020 to suppliers of eyewear, doc ID 3128, questions 1.1. and 2.1.
168 Questionnaire to suppliers of eyewear– Q13 – questions 18 and 19.
169 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.
170 Reply to RFI 10, e-mail of 16/11/2017, RFI#10_Part38 of 74_PROD012-VOL0001-VOL0002 - RFI and not LPP - G02-MUM - P012-00033105_Conditions Générales de vente_Tarifs 2018 doc ID:1515-17817.
171 Reply to RFI 10, Aggiornamento stars, RFI#10_Part66 of 74_PROD024-VOL0002 - RFI and LPP and NP - G02-POH - P024-00034410_Approfondimento STARS Milleri v3 doc ID: 1543-21898.

(162) The Notifying Party submitted the same arguments as for prescription frames and similarly argues that the relevant market is at least EEA-wide and possibly worldwide in scope. The Notifying Party took the view that the market for sunglasses should be defined in line with the precedents set in *Essilor/Luxottica*.

The Commission's past practice

(163) In past cases, the Commission left open the geographic market for prescription sunglasses.[172] In the *Essilor/Luxottica decision*,[173] the Commission obtained the same findings for sunglasses as for optical frames, as regards the scope of the relevant geographic market, with elements point to both national and wider than national definitions.

The Commission's assessment

(164) The market investigation gives indications that the geographic market for the wholesale supply of sunglasses is national in scope.

(165) Similarly to the results of the investigation for frames, while retailers appear to source at the EEA and worldwide level, commercial conditions as indicated by suppliers of optical products appear to be uniform only at national level (and not at worldwide or EEA level).[174]

(166) Independent opticians can source at the local, national, EEA or worldwide level. A slight majority of respondents indicated sourcing at the EEA level or wider.[175] Dutch and French speaking respondents (covering Belgium, France and the Netherlands), as well as respondents based in the UK, however, indicated that they source nationally or locally. Half of Italian respondents indicated sourcing nationally.[176]

(167) Suppliers indicate that they organise the supply of sunglasses at worldwide level and track their sales performance of sunglasses at the worldwide level, as opposed to the EEA-wide level. [177] However, a significant number of respondents indicates that sales performance is monitored at national level within the EEA or at sub-national level. A majority of suppliers of sunglasses indicate that the commercial conditions (e.g. pricing) for the wholesale of sunglasses is typically the same across the national or sub-national level (as opposed to the worldwide or EEA level), with a non-negligible amount of respondents indicating that these are the same across the sub-national level.[178] A major eyewear supplier indicates that it has different price lists per country per customer and that discounts are also based on each customer's features (loyalty level, volumes purchased, place of delivery).[179] Wholesale suppliers of sunglasses contract both nationally and EEA-wide, while rebates are usually implemented at the national level.[180]

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172 M.5693 Hal Holding/Safilo Group, paras. 8 and 9; and M.8394 Essilor/Luxottica, rec. 162.
173 M.8394 Essilor/Luxottica, rec. 162.
174 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.
175 Questionnaire to independent opticians – Q1 (DE), Q1 (EN), Q1 (IT), Q1 (PL) – question 7.
176 Questionnaire to independent opticians – Q1 (FR), Q1 (NL) – question 7.
177 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.
178 Questionnaire to suppliers of lenses and eyewear – Q3 – question 5.
179 Non-confidential reply of eyewear supplier to RFI of 12 May 2020 to suppliers of eyewear, doc ID 3128, questions 1.1. and 2.1.
180 Questionnaire to suppliers of eyewear– Q13 – questions 18 and 19.

(168) Market shares of sunglasses suppliers confirm this as they still continue to differ considerably between countries, indicating that conditions of competition vary significantly across countries. For EssilorLuxottica, these shares are below 20% in the Czech Republic and Poland, between 40 and 50% in France and the UK, between 50 and 60% in Portugal and Greece and above 60% in Italy.[181]

(169) In addition to the above, the Notifying Party's internal documents demonstrate that […].[182] […].[183]

(170) Based on the above considerations, to the effect of the present decision, the Commission concludes that the market for the wholesale supply of sunglasses is national in scope since national elements are predominant.

6.2.1.4. Wholesale supply of readers

The Notifying Party's views

(171) The Notifying Party submits that market conditions have changed since the Invoptic-Rupp decision and that there is now a series of factors that indicate that the market for readers should be at least EEA wide on the basis that (i) a large number of suppliers are active in various EEA Member States, (ii) norms and specifications are set at the EEA level, (iii) product information provided with traditional readers is generally provided in several EEA languages and (iv) transportation costs are very low and products are often exported from the EEA or outside.

The Commission's past practice

(172) In previous decisions, the Commission has not examined the market for readers. In the Invoptic-Rupp decision, the German Competition Authority considered that the geographic market for readers was national because (i) suppliers tend to be national and imports from producers which are not already active within Germany with their own distributors are rare and (ii) transportation costs or other structural factors do not suggest that a further regional market division is possible or necessary.

The Commission's assessment

(173) In any event, the exact delineation of the geographic market definition can be left open, as this would not affect the outcome of the competitive assessment.

Wholesale supply of contact lenses

The Notifying Party's views

(174) The Notifying Party submits that the relevant geographic market for the wholesale supply of contact lenses is national or EEA-wide in scope. It explains that while most of the markets in the EEA are still structured at a national level, in some cases there are EEA-wide negotiations for the supply of contact lenses.[184]

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181 Form CO, annex 7.2

182 Reply to RFI 10, e-mail of 16/11/2017, RFI#10_Part38 of 74_PROD012-VOL0001-VOL0002 - RFI and not LPP - G02-MUM - P012-00033105_Conditions Générales de vente_Tarifs 2018 doc ID:1515-17817.

183 Reply to RFI 10, Aggiornamento stars, RFI#10_Part66 of 74_PROD024-VOL0002 - RFI and LPP and NP - G02-POH - P024-00034410_Approfondimento STARS Milleri v3, doc ID: 1543-21898.

184 Form CO, paragraph 188.

The Commission's past practice

(175) In *Johnson & Johnson/Abbott Medical Optics*, while leaving the exact market definition open, the Commission considered that the markets for contact lenses could be considered national in scope for reasons related to the national marketing patterns, national distribution channels and leaflet information in different languages.[185] In *Essilor/Luxottica*, the Commission considered that the markets could be either national or EEA-wide in scope, but left the question open.[186]

The Commission's assessment

(176) In the present case, the market investigation indicated that the online channel was particularly well developed for the sale of contact lenses.[187] However, the market investigation did not provide any reason to depart from the Commission's past practice regarding geographic market definition for the wholesale supply of contact lenses.

(177) For the purposes of this Decision, the Commission will consider the wholesale supply of contact lenses to be either national or EEA-wide in scope but can leave the geographic market definition open since it does not have any impact on the outcome of the Commission's assessment because there are no horizontal overlaps and the vertical links are minimal under both alternative market definitions.

6.2.2. Downstream: Retail supply of optical products

(178) As background, the Commission notes that the arguments submitted by the Parties as to the geographic scope of the relevant markets for the retail supply of optical products in the current case mirror those submitted in the framework of the review of the Essilor/Luxottica merger. In that respect, the Commission considers that while in general the arguments of the Parties remain valid when examining the geographic scope of the upstream product markets, it is important nevertheless to assess the relevant market for the downstream products.

6.2.2.1. Retail supply of lenses, frames and sunglasses

The Notifying Party's views

(179) The Notifying Party argues that the relevant retail markets are at least national in scope, and in this regard submitted that (i) there is an increasing presence of national retail chains which have a commercial and pricing policy as well as marketing campaigns at national level, (ii) frames and sunglasses do not need to be purchased frequently or close to the place of consumption.

The Commission's past practice

(180) In other cases concerning retail distribution of physical goods, the Commission concluded that the geographic range in which retail outlets compete with each other could be local.[188] The Commission has for instance also previously considered that a

185 M.8237 *Johnson & Johnson / Abbott Medical Optics*, paragraph 22.

186 M.8394 Essilor/Luxottica, recital 177

187 See for example responses to Questionnaire Q12 to optical retail chains, question 19; responses to Questionnaire Q3 to suppliers to lenses and eyewear , question 29.

188 For instance, M.4301 Alliance Boots/Cardinal Health, paragraphs 26–27; M.7283 Kingfisher/Mr Bricolage, paragraph 17; M.7817 OBI/Baumax Standort Steyr, paragraph 39; M.7818 McKesson/UDG

radius of a certain amount of travel time constituted a relevant geographic market.[189] In *Essilor/Luxottica*, the Commission assessed the markets for optical retail at national level, taking into account past practice and that the market investigation has not given any indication that the geographic market should be wider. The Commission's investigation indicated that optical retail chains tended to operate at national level and that those that had an international presence tended to operate under retail brands that varied among countries. In addition, the Commission found no indications that a significant number of retail customers purchased their optical goods across borders.[190]

The Commission's assessment

(181) Similarly, in the current case, the market investigation has revealed several factors that point at a local geographic scope of the markets for the retail sale of optical products in optical stores. These factors, relating both to demand and supply-side considerations, indicate a significant likelihood that that the markets for the retail supply of lenses, frames and sunglasses[191] are local in scope.

(182) From a demand-side perspective, the decisive consideration is that, similarly to other retail markets previously defined by the Commission and national competition authorities, consumers typically do not travel great distances when purchasing the products at hand. [192]

(183) The specific ranges may vary depending on circumstances which vary between urban and densely populated areas on the one hand, and less densely populated areas on the other hand. As regard the specific distances, independent opticians indicate that most of their customers typically travel less than 20 kilometres to their retail outlets.[193] For some countries, this range is even narrower.[194]

(184) This view is also shared by retail chains despite the fact they typically have a wider geographic coverage through their operations. In particular, a majority of responding retail chains clarified that customers travel less than 10 kilometres to purchase their products.[195]

Healthcare, paras. 40–41, M.8468 Norgesgruppen/Axfood/Eurocash, paragraphs 24–27, M.8569 Europcar/Goldcar, paragraphs 38–43.

189 M.7702 Koninklijke Ahold/Delhaize Group, paragraphs 17–18.

190 M.8394 Essilor/Luxottica, rec. 175.

191 As explained in section 6.1.2.1 paragraph (116) and section 6.1.2.4 paragraph (139) above, the Commission considers the relevant (downstream) product market to be the supply of lenses, frames and sunglasses in optical retail stores. This includes in particular: the supply of spectacles in specialised brick-and-mortar stores and the supply of sunglasses in specialised brick-and-mortar stores, in each case by either independent opticians or optical retain chains.

192 For instance, M.4301 Alliance Boots/Cardinal Health, paragraphs 26–27; M.7283 Kingfisher/Mr Bricolage, paragraph 17; M.7817 OBI/Baumax Standort Steyr, paragraph 39; M.7818 McKesson/UDG Healthcare, paras. 40–41, M.8468 Norgesgruppen/Axfood/Eurocash, paragraphs 24–27, M.8569 Europcar/Goldcar, paragraphs 38–43, M.7702 Koninklijke Ahold/Delhaize Group, paragraphs 17–18, CMA decision of 20 October 2017, anticipated acquisition by Vision Express (UK) Limited of Tesco Opticians, para. 118.

193 Questionnaire to independent opticians – Q1 (EN), Q1 (FR), Q1 (NL) – question 27.

194 Questionnaire to independent opticians – Q1 (DE), Q1 (EN – UK respondents), Q1 (NL – Dutch respondents), Q1 (PL) – question 27.

195 Questionnaire to optical retail chains – Q2 – question 23.

(185) From a supply-side perspective, the conditions of competition are different within each local area. This is because different optical retailers are active in different local areas, so the range of available alternatives for consumers varies across different local geographic areas. This is due to the presence of independent and small retailers with local presence and a local customer target. While retail chains tend to have a broader and sometimes national geographic coverage, meaning that they tend to present in more local areas, their distribution on a national territory is uneven.

(186) As a result, the range of suppliers available to a consumer in the area where they can travel to source these products is different, reflecting different conditions of competition between local areas from a supply-side perspective.

(187) It is however necessary to recall that, particularly from the perspective of chains, some parameters of competition are assessed or determined at a broader level, reflecting a somehow national strategy. Hence, despite the essentially limited geographic scope of the market (i.e. local in nature), there are factors which are more homogeneous on a broader (i.e. national) level.

(188) For most retail chains, the target pricing of the products is determined on a national level.[196] In addition, half of the responding chains indicated that they decide the assortment of their products on a national level, with the other half indicating that they decide on a local level.[197]

(189) As regards independent opticians, the majority runs advertising campaigns, locally.[198]A slight majority of chains run marketing campaigns at national level though many run it at local level.[199]

(190) Moreover, it is clear from the Notifying Party's internal documents that […]. This is illustrated by the figures in Sections 9.4.3.2 and 9.5.3.2 referring to closeness of competition in Italy and the UK. In addition, the Party uses […].[200]

(191) The final determination of the parameters of competition is therefore local, but subject to certain national influences. As a result, while the relevant retail market is to be defined at the local level, because the Parties are chains which also have national targets and strategies that have an influence on the overall set of local areas within a country, the Commission will also analyse in its competitive assessment those features of competition which are determined on a national basis, as explained below in section 8.1.5.

(192) As regards the exact scope of the relevant local catchment area around a given store, as explained above, these can be differentiated based on geographic features and population density as well as store-specific features (for example, the size of a store may influence the distance customers are prepared to travel). Overall, the evidence points at catchment areas which are typically not broader than 10 km. In particular:

196 Questionnaire to optical retail chains – Q12 – question 22 and non-confidential minutes of a call with an optical retail chain, 21 April 2020, doc ID 2969

197 Questionnaire to optical retail chains – Q12 – question 23.

198 Questionnaire to independent opticians - Q11 – question 35..

199 Questionnaire to independent opticians - Q11 – question 36.

200 Reply to RFI 10, price list management presentation, RFI#10_Prod04V1 - P004-00006606_2015_03_31 Price list overview_all with Vian Mar15, doc.ID:1321-2488.

(193) In the first place, both independent opticians and retail chains indicate that the retail outlets that directly compete with them are located within 5 kilometres or less of their store(s).[201] The radius indicated by respondents to the Simplified Questionnaire to EssilorLuxottica's EEA customer base is even smaller with 76% of the respondents indicating that they compete with stores situated in a radius of 0-2 kilometres.

(194) In the second place, as regards benchmarking for price, range, service and positioning, both retail chains and independent opticians tend to benchmark against stores located in a radius of 0-5 km[202] as their customers are likely to switch to competitors situated in this radius.[203] Based on the above, optical retailers compete on a local level of less than 5 kilometres.

(195) In the third place, an analysis of the catchment area that generates 80% of the Parties' stores sales shows that different stores attract customers from different distances - this catchment area varies store-by-store. Illustratively, in the UK, GrandVision stores located in smaller cities/rural areas on average made sales to customers from within a radius of [8-10] kilometres of the relevant store, whereas in large cities they attracted customers from [6-8] kilometres away and in large metropolises they attracted customers from [4-6] kilometres away.[204]

Conclusion regarding geographic market definition for retail of optical products

(196) Based on the above elements and considerations, the Commission concludes that the geographic scope of retail markets for the supply of optical products in optical stores by independent opticians and by optical retail chains is essentially local in scope, and more specifically consisting of catchment areas with a radius that is not wider than 10km.

6.2.3. Downstream: online retail of optical products

The Notifying Party's views

(197) The Notifying Party submits that the relevant scope of a market for the online retail of optical products is national. However, it argues that it is not necessary to distinguish between the brick-and-mortar and online channels.[205]

The Commission's past practice

(198) In other cases concerning the optical industry, the Commission has not considered the relevant geographic market for the online retail of optical products.[206] However,

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[201] Some however submit that this might differ between urban and rural areas: '*It can vary, but having national coverage in most territories, this is less than 5km distance in urban areas but may be more in rural areas.'; 'In bigger cities the distance to competition are less than 5 km, sometimes neighbour. In very small villages there could be only one optician'* as seen in Case M.9569 – ESSILORLUXOTTICA / GRANDVISION Commission decision pursuant to Article 6(1)(c) of Council Regulation No 139/20041 and Article 57 of the Agreement on the European Economic Area, para. 118 and Questionnaire to optical retail chains – Q2 – question 23.

[202] Questionnaire to independent opticians – Q 11 – question 22 and Questionnaire to optical retail chains – Q 12 – question 25.

[203] Questionnaire to optical retail chains – Q 12 – question 24 and questionnaire for retailers, question 7.

[204] Reply to RFI 29 Q3. […].

[205] Notifying Party's response to RFI 36.

[206] See M.8394 Essilor/Luxottica and M.5693 HAL Holding/Safilo Group

it has conducted its assessment of the online retail of optical products (together with the brick-and-mortar retail of these products) at national level.[207]

The Commission's assessment

(199) In the present case, the market investigation indicated that the relevant geographic market for the online retail of optical products would be national.

(200) First, the presence and market shares of online optical retailers vary substantially from country to country.[208] The largest optical retailers selling online are either 'pure' online retailers (in that they do not operate a brick-and-mortar presence) or traditional brick-and-mortar retailers who have expanded their presence online. In individual EEA countries, market shares and competitive conditions appear different, much like the difference in conditions in the brick-and-mortar segment.

(201) Second, brand recognition of online retailers is an important factor in attracting consumers.[209] This may explain why, even for optical retailers active across several countries in the EEA, market shares can vary at national level. Online optical retailers must build up consumer awareness at a country level and contend with the consumer awareness that nationally known brick-and-mortar chains have built up and used to enter the online market.

(202) Third, while the online optical retail market is expanding, levels of adoption vary between countries and the extent to which consumers shop online for eyewear vary. Illustratively, a GrandVision internal document assessing its online expansion strategy for […] notes that […].[210] See also Figure 6 below.

Figure 6 – GrandVision internal document assessing national level differences in online penetration of contact lenses and solutions[211]

[…]

(203) Fourth, […] optical retailers assess the online market and determine their commercial strategies at national level, taking into the characteristics of the market in that country – see for example Figure 7 and Figure 8 below.

Figure 7 – GrandVision internal document assessing online optical retail market and strategy for Italy specifically[212]

[…]

207 M.8394 Essilor/Luxottica, recital 175 and Section 10.4.

208 Notifying Party's response to RFI 36.

209 Questionnaire to optical retail chains – Q12 – question 67. See for example GrandVision internal document '09 – Introduction to Italy (Supervisory Board Meeting)', slide 15.

210 GrandVision internal document Annexed to the Form CO as Annex PN RFI2 Q14.1, Budgets, '201812_Budget_Budget Powerpoint_Lenstore', slide 19.

211 Questionnaire to suppliers of lenses and eyewear – Q3 – question 29. Notifying Party's response to RFI 36. GrandVision internal document attached to Form CO as Annex 5.4.1.GV.12 eCommerce Roadmap, slide 15; see also slide 12.

212 GrandVision internal document '09 – Introduction to Italy (Supervisory Board Meeting)', slide 15.

Figure 8 – GrandVision internal document assessing strategy at national level for […][213]

[…]

(204) On the other hand, there is some evidence that in some EEA countries, online retailers based elsewhere in the EEA (typically in neighbouring markets) may act as a constraint.

(205) First, in many EEA countries, barriers to expansion for an established online retailer another EEA country appear to be modest. This is particularly the case given that in many countries online optical retailers based elsewhere in the EEA are not prevented from selling prescription eyewear products to consumers.[214] Therefore, the primary hurdles for an online optical retailer seeking to expand its presence into a new country would rather be marketing costs to ensure consumer recognition.[215] […].[216]

(206) Second, suppliers of lenses and eyewear that responded to the market investigation considered that, over time, the emergence of online retail may make pricing more geographically uniform across the EEA.[217] They note that consumers' increasing ability to shop online and reach retailers based elsewhere in the EEA may impact the prices offered by online retailers in a given country.

Conclusion regarding geographic market definition for online retail of optical products

(207) Based on the above elements and considerations, the Commission concludes that the geographic scope of the retail market for the online supply of optical products is national in scope. However, in its competitive assessment the Commission will also take into account the fact that barriers to expansion for a retailer established in one EEA Member State seeking to expand into a neighbouring country appear to be low.

6.2.4. Downstream: retail of non-prescription sunglasses in specialist and non-optical stores

The Notifying Party's views

(208) The Notifying Party submits that the relevant scope of a market for the retail of non-prescription sunglasses in specialist and non-optical stores is EEA-wide or, at least, national, mainly based on the following factors:[218]

(a) Firstly, purchase of sunglasses in non-optical shops is impulse-based and performed, among other instances, during holidays, at airports or online, making the presence of a non-optical store selling sunglasses in the proximity of consumers' addresses irrelevant.

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213 GrandVision internal document Annexed to the Form CO as Annex PN RFI2 Q14.1, Budgets, '201812_Budget_Budget Powerpoint_Lenstore', slide 32. See also slides 16-20.

214 Notifying Party's response to RFI 36, Form CO paragraph 386. See further Judgment of the Court of Justice of December 2, 2010, Case C-108/09, *Ker-Optika* and Press release, European Commission website, available at: http://europa.eu/rapid/press-release_IP-08-1354_en.htm.

215 See for example GrandVision internal document Annexed to the Form CO as Annex PN RFI2 Q14.1, Budgets, '201812_Budget_Budget Powerpoint_Lenstore', slide 18 […].

216 GrandVision internal document attached to Form CO as Annex 5.4.1.GV.12 eCommerce Roadmap, slide 3.

217 Questionnaire to suppliers of lenses and eyewear – Q3 – question 31.

218 Notifying Party's response to RFI 36.

(b) Secondly, online stores can ship their sunglasses everywhere in EEA without the need of (i) a physical presence in the country where the customer is based and (ii) any license or government permit to be obtained beforehand.[219]

The Commission's past practice

(209) In other cases concerning the optical industry, the Commission has not considered the relevant geographic market for the retail of non-prescription sunglasses in specialist and non-optical stores.[220] However, it has conducted its assessment of the retail of sunglasses (prescription and non-prescription alike) at national level.[221]

The Commission's assessment

(210) In the present case, the market investigation indicated that the relevant geographic market for the online retail of non-prescription sunglasses in specialist and non-optical stores would be national.

(211) First, in line with the Notifying Party's submissions, the purchase of non-prescription sunglasses appears to be much more of an impulse purchase driven by fashion considerations than the purchase of prescription eyewear. Indeed, respondents to the market investigation explained that: '*sunglasses are more an impulse purchase driven by fashion rather than visual need'* and accordingly '*since it is an impulse purchase loyalty do not play a major role'*.[222] This is clear from the fact that, unlike prescription eyewear, non-prescription sunglasses are sold also in stores that do not focus on optical products, such as fashion retailers and sports stores. Similarly, sunglass specialists operate stores in areas such as airport departure areas (where consumers are unlikely to go with the specific aim of purchasing sunglasses but they may purchase sunglasses on impulse ahead of a holiday) and shopping malls or high streets (where consumers may be shopping for other products). Moreover, online purchases of non-prescription sunglasses are more common than of prescription eyewear. Accordingly, unlike prescription optical products where consumers' brick-and-mortar purchases are typically conducted within a particular catchment area and with a high degree of loyalty to the optician, the geographic scope of consumers' purchases of non-prescription sunglasses can be much broader.

(212) Second, the presence and market shares of online optical retailers vary substantially from country to country.[223] In individual EEA countries, market shares and competitive conditions appear different. Although certain players, especially international companies well-known for their online offering (e.g., Amazon and Zalando), are present in a number of EEA countries, the vast majority of the brick-and-mortar segment is characterised by recognisable national players.[224]

(213) Third, the retailer's brand is an important factor in attracting consumers.[225] This may explain why, even for optical retailers active across several countries in the EEA,

[219] Notifying Party's response to RFI 36.
[220] See M.8394 Essilor/Luxottica and M.5693 HAL Holding/Safilo Group
[221] M.5693 HAL Holding/Safilo Group, Sections 10 and 12.
[222] Questionnaire Q12 to optical retail chains, question 64; see also question 20.4.
[223] Notifying Party's response to RFI 36.
[224] Notifying Party's response to RFI 36.
[225] Questionnaire to optical retail chains – Q12 – question 67. See for example GrandVision internal document '09 – Introduction to Italy (Supervisory Board Meeting)', slide 15.

market shares can vary at national level. Non-optical retailers, very much in line with optical retail chains, must build up consumer awareness at a country level and contend with the consumer awareness that nationally known retailers have built up.

(214) Fourth, conditions of competition vary at national level, in particular as regards the importance of sunglass specialist stores in the overall sales of sunglasses in a given country. While the specialist and non-optical retail market is expanding, especially online in light of the current Covid pandemic, the prominence of this channel as a sales medium for sunglasses varies between countries. Illustratively, the Parties' market share estimates imply that the Parties' sales of sunglasses in non-optical stores of all sales of sunglasses vary quite significantly (e.g., [0-5]% in the Netherlands and [20-30]% in Malta).

(215) On the other hand, there is some evidence that, in some EEA countries, online retailers of sunglasses based elsewhere in the EEA (typically in neighbouring markets) may act as a constraint – for the same reasons as outlined for the online retail of optical products in Section 6.2.3 above.

Conclusion regarding geographic market definition for non-prescription sunglasses in sunglass specialist and non-optical stores

(216) Based on the above elements and considerations, the Commission concludes that the geographic scope of the retail market for the supply of non-prescription sunglasses in specialist and non-optical stores is national in scope. However, in its competitive assessment the Commission will also take into account the fact that barriers to entry and expansion for a specialist, non-optical retailer of non-prescription sunglasses established in one EEA Member State seeking to expand into a neighbouring country appear to be low.

6.2.5. Ophthalmic machines

(217) In its past practice, the Commission considered the market for ophthalmic machines to be at least EEA-wide.[226]

(218) The Notifying Party considers that the relevant geographic market is worldwide. It supports its position with the following arguments: (i) suppliers conduct global supply agreements and do not require local presence, (ii) all major suppliers are active in multiple countries at the worldwide level and distribute their products from one or more plants, (iii) transport costs are not significant compared to the price of the machines and (iv) imports from the EEA account for a large share of the total sales of ophthalmic machines at worldwide level.

(219) The market investigation in the current proceedings is inconclusive as to the relevant geographic market. While a slight majority of independent opticians indicate that they source at the national or local level, chains are split between whether the relevant market is national or smaller or whether it is EEA-wide or even wider.[227]

(220) In any event, the Commission leaves the exact delineation of the geographic market definition open, as this would not affect the outcome of the competitive assessment.

226 M.8394 Essilor/Luxottica, recital 132.

227 Questionnaire to optical retailers – Q1 – question 7 and questionnaire to optical retail chains – Q2 – question 5.

7. GENERAL PRINCIPLES OF THE COMPETITIVE ASSESSMENT

7.1. Overview of the horizontal and non-horizontal (non-coordinated) effects

(221) Due to its vertical integration scope and horizontal size for the supply of optical and eyewear products both at the wholesale and the retail levels, the Transaction entails a number of horizontal and non-horizontal (non-coordinated) effects and vertical links that interact amongst them (see recital (226) below for the interaction of horizontal and vertical effects).[228] Therefore, before presenting the legal and economic assessment of the different theories of harm, the Commission sets out in this section an introductory description of such different effects and their interactions.

(222) The Commission has identified three main reasons why the Transaction has the potential to lead to significant anticompetitive price and non-price (e.g. variety of choice, quality) effects:

(a) horizontal effects at the downstream retail level;

(b) vertical effects at the downstream retail level;

(c) frames and sunglasses vertical effects at the upstream input level and downstream retail level;

(223) First, on some retail markets, there could be a direct horizontal effect of the concentration, due to the elimination of competition between EssilorLuxottica's own retail stores and GrandVision's retail stores. The Transaction would eliminate an important competitive constraint because the Parties together will have significant market shares, the merging Parties' retail banners are close competitors and GrandVision is an important competitive force exerting significant competitive pressure on EssilorLuxottica and the other rival retailers ('***horizontal effects downstream***').[229]

(224) As a result, potential price increases would occur for (i) frames, (ii) sunglasses, (iii) lenses at EssilorLuxottica and GrandVision retail stores as a consequence of the Transaction.

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228 The Horizontal Merger Guidelines envisage that a combination of horizontal and vertical effects can significantly impede effective competition. For example, Paragraph 36 of the Horizontal Merger Guidelines envisages that '*[s]ome proposed merger would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential customers more difficult or otherwise restrict the ability of rival firms to compete… For instance, the merged entity may have such a degree of control, or influence over, the supply of inputs or distribution possibilities that expansion or entry by rival firms may be more costly*'. This vertical element is one of the factors that follows the explanation in Paragraph 26 of the Horizontal Merger Guidelines that: '*[a] number of factors, when taken separately are not necessarily decisive, may influence whether significant non-coordinated effects are likely to result from a merger. Not all of these factors need to be present for such effects to be likely. Nor should this be considered an exhaustive list*'. Accordingly, in the present case, the Commission considers it necessary and appropriate to take account of horizontal and vertical effects of the Transaction in assessing its impact on competition.

229 As explained in paragraph 24 of the Horizontal Merger Guidelines: '*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms.*'

(225) As regards the possible competitive pressure from rival retailers, these rivals would (i) have an incentive to also increase prices in turn (because a relaxation of competition between the Parties generates extra demand for the Parties' rivals, and an increase in demand generates an incentive for rivals to increase prices),[230] and (ii) would also see their ability to compete aggressively be reduced because of the likelihood of the Parties implementing input foreclosure practices on frames and sunglasses (see third point below).

(226) Second, there could be additional opportunities for the Parties to the Transaction to increase retail prices in GrandVision retail stores (in each country, even in those without overlap) because EssilorLuxottica is a leading wholesale supplier of optical and eyewear products to GrandVision's rival retailers ('***vertical effects downstream***'), which highly value such products. Prior to the Transaction, if GrandVision had increased prices at retail level, it would have lost a number of customers to rival retailers and, consequently, the entirety of the profits it used to make on those customers. After the Transaction, in case of a price increase at retail level by GrandVision, EssilorLuxottica will likely be able to recoup the wholesale margin on sales lost by GrandVision to rival retailers. This is because many of the GrandVision rivals offer EssilorLuxottica's products at their stores and, therefore, a portion of the customers leaving GrandVision to rival retailers would in any event end up buying EssilorLuxottica products thus offsetting at least in part the proceeds of lost sales by GrandVision. In other words, GrandVision, as a retailer that is independent pre-Transaction and constrained by competing retailers, would have an incentive to raise prices post-Transaction for two reasons. First, because in case of a price increase it recoups the margins lost on customers that switch to the EssilorLuxottica retail arm, in the cases where it is present in the geographic market in question. Second, because in the event of a price increase GrandVision will also be able to recoup the wholesale margins on those customers who switch to rival retailers that are supplied by EssilorLuxottica (to the extent that these customers end up buying products of EssilorLuxottica).

(227) This 'vertical effect downstream' which is common to many horizontal mergers is particularly evident in this case concerning a Transaction that has at the same time both a vertical and an horizontal logic, because: (1) EssilorLuxottica is pre-Transaction an important supplier to the rivals of GrandVision (which generates a high expectation of recoupment on customers leaving GrandVision); and (2) EssilorLuxottica is pre-Transaction only supplying limited volumes to GrandVision (depending on the country and product). This second feature makes the vertical efficiency known as elimination of double marginalisation limited in this case. More specifically, it is recognised that a vertical merger can lead to efficiencies to the extent that the downstream arm of the merged entity was pre-Transaction paying a mark-up above cost for the inputs received from its upstream supplier (the upstream arm of the merged entity), while it would receive the input at cost after the Transaction. However, in this case this effect is limited, due to the fact that

[230] This follow-on effect is summarised in paragraph 24 of the Horizontal Merger Guidelines: '*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices*'.

GrandVision sources from EssilorLuxottica a more limited share of its requirements compared to other rival retailers. [231] [232]

(228) Due to EssilorLuxottica's strong upstream presence and importance for a large proportion of optical retailers, the Transaction has a similar effect to GrandVision acquiring a profit share in a large number of its rivals at retail level. The Commission's Horizontal Merger Guidelines recognise the importance of links between competitors as part of the assessment of non-coordinated effects of a concentration. The Guidelines note that in markets where there are '*significant cross-shareholdings among the market participants'* a low HHI is not in itself an indicator of a lack of competition concerns.[233] In accordance with the Guidelines recognising that in the presence of cross-shareholdings among competitors the standard HHI and market share indicators may underestimate the competition concerns, the Commission finds that in this case the Transaction introduces a coupling between the profits of GrandVision and the profits of its rival retailers who sell EssilorLuxottica's products, and, as such, the simple HHI and market share indicators underestimate the impact of the Transaction on GrandVision's pricing incentives. If those rivals increase their sales of EssilorLuxottica's frames, sunglasses or lenses, GrandVision (as part of the combined EssilorLuxottica and GrandVision entity (the 'Merged Entity')) benefits through increased wholesale sales of EssilorLuxottica. Accordingly, EssilorLuxottica's upstream strength impacts GrandVision's incentive to compete at retail level: the impact on GrandVision of losing a customer is mitigated after the Transaction, because every time GrandVision increases prices at retail level, some of the margin lost on at retail level (due to customers leaving) is recaptured at wholesale level through greater sales of EssilorLuxottica's products in rivals' stores. This effect is quantified as described in recitals (268) to (270) below.

(229) As a result, the Commission considers that potential price increases could occur for (i) frames, (ii) sunglasses, (iii) lenses at GrandVision's retail stores.[234] As discussed for the horizontal effects downstream, rivals of GrandVision[235] would react by increasing their prices in turn (because of the standard follow-on effect whereby rivals find it profitable to increase prices when faced with reduced competitive pressure from GrandVision).[236] In addition, rivals would also be subject to the

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231 In this respect, the Transaction is more akin to a diagonal merger, that is, a merger between a downstream firm D and an upstream firm U that supplies the rivals of D (while supplying D to a more limited extent).

232 The elimination of double marginalisation refers to the incentive, post vertical integration, for the merged entity to charge its downstream arm at cost. See paragraph 13 of the Non-Horizontal Merger Guidelines.

233 Paragraph 20(c) of the Horizontal Merger Guidelines.

234 This effect does not apply to EssilorLuxottica's own retail stores because it is already internalised by EssilorLuxottica prior to the Transaction.

235 In light of the findings presented in section 6, this feedback can be expected to be higher on rival retail chains who appear to compete more fiercely with the Parties.

236 See paragraph 24 of the Horizontal Merger Guidelines, as quoted in footnote 230 above in relation to the follow-on effect.

Merged Entity's ability and incentive to raise these rivals' costs for frames and sunglasses[237] (i.e. input foreclosure, see next effect below).

(230) Third, the Transaction could lead to input foreclosure, namely, the possibility that EssilorLuxottica denies (total foreclosure) or restricts (partial foreclosure) supply of frames and sunglasses to retailers that are rivals of GrandVision ('***frames and sunglasses vertical effects upstream and downstream***').[238]

(231) Table 1 summarises the possible effects identified above. The Commission considers that these effects would be in place simultaneously and would cumulatively have a significant impact on the relevant markets, as further discussed in sections 8 and 9.

Table 1 – Summary of the horizontal and non-horizontal effects

	Frames	Lenses	Sunglasses
Horizontal effects downstream	✓	✓	✓
Vertical effects downstream	✓	✓	✓
Frames and sunglasses vertical effects upstream and downstream	✓		✓

(232) As regards frames and sunglasses vertical effects upstream and downstream, the Commission's assessment takes into account the fact that consumers typically buy frames together with lenses (and this is also taken account for sunglasses, to the extent relevant, though a substantially lower proportion of sunglasses are purchased together with corrective lenses). If the Merged Entity were to engage in an input foreclosure strategy that results in consumers of frames switching to the Parties' stores, the Merged Entity would gain additional sales of frames as well as lenses. It is accordingly appropriate to take lenses into account in the calculation of the Merged Entity's incentive to engage in input foreclosure of frames (and sunglasses, to the extent relevant), as detailed in the methodology in the Economic Annex (Annex 1).

(233) Conversely, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from an input foreclosure strategy with respect to the wholesale supply of lenses. On the one hand, EssilorLuxottica's market shares in the wholesale supply of lenses are material in the EEA as a whole and in some Member States,[239] and the Commission has in past cases considered that

[237] As explained in paragraph 36 of the Horizontal Merger Guidelines: '*Some proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. In such a case, competitors may not, either individually or in the aggregate, be in a position to constrain the merged entity to such a degree that it would not increase prices or take other actions detrimental to competition*.'

[238] See paragraph 31 et supra. of the Non-Horizontal Merger Guidelines regarding input foreclosure.

[239] See Table 2 below. EssilorLuxottica's market share in the wholesale supply of lenses is estimated to be 30% or more in: the EEA ([40-50]%), Bulgaria ([30-40]%), Croatia ([40-50]%), the Czech Republic ([40-50]%), France ([70-80]%), Hungary ([30-40]%), Ireland ([40-50]%), Italy ([30-40]%), Latvia ([30-40]%), Liechtenstein ([50-60]%), Norway ([30-40]%), Poland ([50-60]%), Portugal ([50-60]%), Romania ([40-50]%), Slovakia ([50-60]%), Slovenia ([30-40]%), Spain ([40-50]%) and the UK ([50-60]%).

there are some indications that EssilorLuxottica has a certain degree of market power in the wholesale of lenses.[240] On the other hand, there are good reasons to consider that the characteristics of lenses and the lenses markets mean that an attempted foreclosure strategy for lenses alone would be unlikely to succeed in the EEA or at national level in affected EEA Member States.

(234) First, in the EEA, EssilorLuxottica faces competition from major global players such as Hoya ([30-40] million pieces, [10-20]%), Carl Zeiss ([20-30] million pieces, [10-20]%), and Rodenstock ([10-20] million pieces, [5-10]%). The market investigation showed that these lens suppliers are by and large viewed as significant competitors and credible alternatives to EssilorLuxottica.[241] The Commission's market investigation has found that these suppliers are strongly marketing to new and existing customers to expand their supply opportunities, in particular in light of the Transaction.[242] Similarly, smaller lens manufacturers, including those that focus on a more limited number of Member States, also act as a constraint on the Merged Entity at national level.[243] The Merged Entity is also constrained by the threat of new entry and low-cost manufacturers in Asia to an extent as found in Essilor/Luxottica.[244]

(235) Second, lenses are a relatively commoditised product; in particular, brand awareness is low for lenses and plays a significantly lower role in consumers' choice of lenses than it does for frames.[245] This is reflected in the fact that most of the margin in the value chain for lenses is realised at retail level by opticians (for lenses, the retail margin is […] than the wholesale margin), unlike for frames and sunglasses where the wholesale margin is larger.[246] Indeed, suppliers generally rated the lens product portfolio of Hoya and Zeiss as either 'very important' or 'essential', like they did for EssilorLuxottica, reflecting the fact that product differentiation is less significant for lenses than it is for frames and sunglasses.[247] Accordingly, unlike frames and sunglasses which are more driven by fashion considerations, consumers typically choose particular lenses on the advice of their optician.[248]

(236) Third, opticians are able to switch from one supplier to another. Some market participants indicated that opticians have a preference for staying with a particular lens supplier, in particular for progressive lenses, for the consumer's convenience.[249] However, as explained in Essilor/Luxottica: '[*o*]*pticians may prefer a certain brand, but are prepared to switch to alterantive lens suppliers depending on commercial or other conditions. A majority of respondents among retail chains replied that they could switch away from Essilor and purchase all their lens requirements in the EEA from alternative suppliers. About one in two respondents among independent*

240 Case M.8349 Essilor/Luxottica, paragraphs 683ff.
241 Questionnaire Q3 to suppliers of lenses and eyewear, question 21, Questionnaire Q2 to optical retail chains, question 6, Questionnaire Q11 to independent opticians, question 72.2, Questionnaire Q12 to optical retail chains question 74.2. See also Case M.8349 Essilor/Luxottica, paragraphs 690-692.
242 See recitals (1419) - (1422).
243 Such as Prats, Indo, Uniglass, Vision-Ease, Optovision, Optovista, Seiko
244 Case M.8349 Essilor/Luxottica, paragraphs 694-695.
245 Case M.8349 Essilor/Luxottica, paragraphs 693, 699 and 702.
246 See Table 9 and recitals (407) - (408).
247 Questionnaire Q3 to suppliers of lenses and eyewear, question 21.
248 Case M.8349 Essilor/Luxottica, paragraph 82.
249 See recital (1444).

opticians replied that they had considered changing their main lens supplier in the last five years.'[250] This is also illustrated by the fact that even a retail network as large as GrandVision has been able to substantially change its lens suppliers […].[251] Likewise, the market investigation revealed that there are limited switching costs for independent opticians in lenses.[252] Unlike for frames and sunglasses, the majority of chains and independents that expressed a view indicated that they would switch lenses supplier if EssilorLuxottica were to worsen commercial conditions.[253] The Notifying Party's internal documents also suggest that […].[254]

(237) In light of the above, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure of lenses (upstream) sold to optical retailers (downstream). Nevertheless, for the reasons outlined above, the impact of won/lost lens sales to consumers is taken into account for the assessment of input foreclosure strategies relating to frames and sunglasses.

7.2. Legal Framework of the competitive assessment

(238) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(239) In this respect, a merger may entail horizontal or vertical effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. A concentration may involve both types of effects. In such a case, the Commission will appraise horizontal and vertical effects in accordance with the guidance set out in the relevant notices, that is to say the Horizontal Merger Guidelines[255] together with the Non-Horizontal Merger Guidelines.[256]

(240) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

(241) The Horizontal Merger Guidelines describe <u>horizontal non-coordinated effects</u> as follows:

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250 Case M.8349 Essilor/Luxottica, paragraph 698.

251 See Figure 130 below.

252 See recitals (1422) - (1423).

253 Questionnaire Q2 to optical retail chains, question 19, Questionnaire Q1 to independent opticians, question 19.

254 See recital (545) - (546) and Figure 57 and Figure 58.

255 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2004.

256 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines'), OJ C 265, 18.10.2008, paragraph 7.

‘*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*’[257]

(242) Therefore, under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening of a dominant position on the affected market may create competition concerns. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[258] This is in view of the more significant consequences that mergers may have on such markets. For this reason, Recital 25 of the Merger Regulation provides that ‘*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*’.[259]

(243) Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines, which explains that ‘*mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition*.’[260]

(244) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[261] Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including countervailing buyer power, entry and efficiencies.

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257 Horizontal Merger Guidelines, paragraph 24.
258 Merger Regulation, recital 25.
259 Merger Regulation, recital 25.
260 Horizontal Merger Guidelines, paragraph 25.
261 Horizontal Merger Guidelines, paragraph 26.

(245) Pursuant to the Non-Horizontal Merger Guidelines, vertical mergers do not entail the loss of direct competition between merging firms in the same relevant market and provide scope for efficiencies.

(246) However, there are circumstances in which vertical mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure.

(247) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure: input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input, and customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.

(248) The Non-Horizontal Merger Guidelines clarify the framework of assessment of input foreclosure. In particular, the guidelines set out that a significant impediment to effective competition would be created if the Merged Entity could profitably increase the price charged to consumers. This does not require that rivals would be forced to exit the market: '*Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition. As indicated above, for input foreclosure to lead to consumer harm, it is not necessary that the merged firm's rivals are forced to exit the market. The relevant benchmark is whether the increased input costs would lead to higher prices for consumers. Any efficiencies resulting from the merger may, however, lead the merged entity to reduce price, so that the overall likely impact on consumers is neutral or positive.*'[262]

(249) In its assessment, the Commission should examine whether the Merged Entity would have the ability and incentive to engage in an input foreclosure strategy, as well as whether this would result in a significant detrimental effect on competition downstream. The guidelines further indicate that ability, incentive and effect on the market are closely intertwined and therefore often examined together.[263]

(250) Input foreclosure can take several forms, including full foreclosure where access to the Merged Entity's supplies is restricted, or partial foreclosure where prices of those supplies are increased (or more generally also, where the conditions of supply as rendered less favourable than they would have been in absence of the concentration).[264]

(251) For the Merged Entity to have the ability to engage in input foreclosure, the foreclosed product is required to be an important input (for instance when it represents a significant source of product differentiation for the downstream product), and the vertically integrated firm must have a significant degree of market

[262] Non Horizontal Merger Guidelines, paragraph 31.
[263] Non Horizontal Merger Guidelines, paragraph 32.
[264] Non Horizontal Merger Guidelines, paragraph 33.

power in the upstream market.[265] A further requirement of the finding of ability is that the Merged Entity would be able to negatively affect the overall availability of inputs for the downstream market (for instance when remaining upstream suppliers are less preferred alternatives).[266] Finally, the Commission is to consider on the basis of the information available to it, whether there are counter-strategies that rival firms would be likely to deploy, in order to be less reliant on the input concerned.[267]

(252) The Merged Entity ought to be incentivised to engage in input foreclosure if such strategy is profitable. This depends on the trade-off between losses arising from restricting input sales and gains obtained upstream and downstream through diverted sales.[268]

(253) In order to constitute a significant impediment to effective competition, the input foreclosure strategy has to be found to lead to increased prices in the downstream market.[269] This can be the result of an increase in the cost of downstream rivals,[270] or by raising barriers to entry to potential competitors.[271]

(254) Further, the effect on competition needs to be assessed in light of efficiencies substantiated by the merging parties.[272]

(255) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the Merged Entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.[273]

(256) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the Merged Entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[274]

(257) As regards ability, customer foreclosure may take various forms. For instance, the Merged Entity may decide to source all of its required goods or services from its upstream division and, as a result, may stop purchasing from its upstream competitors. It may also reduce its purchases from upstream rivals, or purchase from those rivals on less favourable terms than it would have done absent the merger.[275]

(258) When considering whether the Merged Entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for the upstream rivals

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265 Non Horizontal Merger Guidelines, paragraphs 34-35.
266 Non Horizontal Merger Guidelines, paragraph 36.
267 Non Horizontal Merger Guidelines, paragraph 38.
268 Non Horizontal Merger Guidelines, paragraphs 40-46.
269 Non Horizontal Merger Guidelines, paragraph 47.
270 Non Horizontal Merger Guidelines, paragraph 48.
271 Non Horizontal Merger Guidelines, paragraph
272 Non Horizontal Merger Guidelines, paragraph 52.
273 Non Horizontal Merger Guidelines, paragraph 58.
274 Non Horizontal Merger Guidelines, paragraph 59.
275 Non Horizontal Merger Guidelines, paragraph 60.

(actual or potential) to sell their output. For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market.[276]

(259) Customer foreclosure can lead to higher input prices in particular if there are significant economies of scale or scope in the input market or when demand is characterised by network effects.[277] In the presence of economies of scale or scope, customer foreclosure may also render entry upstream by potential entrants unattractive by significantly reducing the revenue prospects of potential entrants. When customer foreclosure effectively results in entry deterrence, input prices may remain at a higher level than otherwise would have been the case, thereby raising the cost of input supply to downstream competitors of the merged firm.[278]

(260) As regards incentives, the incentive to foreclose depends on the degree to which it is profitable. The Merged Entity faces a trade-off between the possible costs associated with not procuring products from upstream rivals and the possible gains from doing so, for instance, because it allows the Merged Entity to raise price in the upstream or downstream markets.[279] The incentive to engage in customer foreclosure further depends on the extent to which the upstream division of the Merged Entity can benefit from possibly higher price levels in the upstream market arising as a result of upstream rivals being foreclosed.[280]

(261) In relation to impact on the market and consumers welfare, foreclosing rivals in the upstream market may have an adverse impact in the downstream market and harm consumers. By denying competitive access to a significant customer base for the foreclosed rivals' (upstream) products, the merger may reduce their ability to compete in the foreseeable future. As a result, rivals downstream are likely to be put at a competitive disadvantage, for example in the form of raised input costs. In turn, this may allow the Merged Entity to profitably raise prices or reduce the overall output on the downstream market.[281]

(262) It is only when a sufficiently large fraction of upstream output is affected by the revenue decreases resulting from the vertical merger that the merger may significantly impede effective competition on the upstream market. If there remain a number of upstream competitors that are not affected, competition from those firms may be sufficient to prevent prices from rising in the upstream market and consequently, in the downstream market. Sufficient competition from these non-foreclosed upstream firms requires that they do not face barriers to expansion e.g. through capacity constraints or product differentiation.[282]

(263) Further, the effect on competition needs to be assessed in light of efficiencies substantiated by the merging parties.[283]

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276 Non Horizontal Merger Guidelines, paragraph 61.
277 Non Horizontal Merger Guidelines, paragraph 62.
278 Non Horizontal Merger Guidelines, paragraph 64.
279 Non Horizontal Merger Guidelines, paragraph 68.
280 Non Horizontal Merger Guidelines, paragraph 70.
281 Non Horizontal Merger Guidelines, paragraph 72.
282 Non Horizontal Merger Guidelines, paragraph 74.
283 Non Horizontal Merger Guidelines, paragraph 77.

7.3. Economic modelling applied to determine the likely horizontal and non-horizontal (non-coordinated) effects of the Transaction

(264) In order to gauge the likelihood and significance of the competitive effects summarily described in Section 7.1, the Commission has conducted a quantitative analysis of the Merged Entity's likely ability and incentive to raise price (or otherwise harm the competitive process).[284]

(265) The Notifying Party has submitted an economic analysis which focuses on explaining that the Merged Entity will have no incentive to engage in total input foreclosure (e.g., a complete refusal to supply of frames and lenses to third-party retailers).[285] The Commission agrees that it is possible that such an extreme form of anti-competitive foreclosure may not be in the interest of EssilorLuxottica, given that EssilorLuxottica does rely on the extensive network of independent opticians for distributing its lenses, frames and sunglasses to consumers. Yet, even in the absence of an incentive for a general refusal to supply, the Commission's concern is that the Merged Entity could raise the price of its supplies to retailers following the appreciable increase of market power resulting from the increase of its retail presence with the acquisition of the largest retailer in the EEA, as well as in several EEA countries[286], while being already the largest manufacturer of optical products.[287] The Transaction indeed concerns the acquisition of the largest retail chain in Europe the largest supplier of optical products, with a dominant market share in lenses and by far most important market position in frames and sunglasses.

(266) Against this background, the Commission's quantitative economic analysis assessed the ability and incentives of the Merged Entity to raise prices in the various markets in which it will operate (both upstream and downstream), in relation to:[288]

(a) horizontal effects at the downstream retail level;

(b) vertical effects at the downstream retail level;

(c) vertical effects in the supply of frames and sunglasses at upstream input level and downstream retail level.

(267) In order to assess these theories of harm from a quantitative perspective, the Commission has measured the 'upward pricing pressure' that could arise from the Transaction.[289] Specifically, the Commission has employed the 'gross upward

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284 The Commission's economic modelling has focused on the first three effects described in Section 7.1 (horizontal effects downstream, vertical effects downstream, frames and sunglasses vertical effects upstream and downstream). The fourth effect (lenses vertical effects upstream) is assessed in Section 10.

285 Form CO, Annex HVE 7.2.

286 Austria, Belgium, Czech Republic, Estonia, Finland, Hungary, Italy, Luxembourg, Norway, Poland, Portugal.

287 Here, and elsewhere, the term 'raise prices' should be understood to encompass other ways of harming competition, short of a full refusal to supply (e.g., limited or delayed access to Luxottica's latest models).

288 The Commission's economic modelling has focused on the first three effects described in Section 7.1 (horizontal effects downstream, vertical effects downstream, frames and sunglasses vertical effects upstream and downstream). The fourth effect (lenses vertical effects upstream) is assessed in Section 10.

289 E.g., see C. Shapiro (2010), 'The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years', *Antitrust Law Journal*, 77, 701-759.

pricing pressure indices (GUPPIs) which identify likely anticompetitive effects in horizontal and non-horizontal mergers.[290] GUPPI analyses are standard economic tools to gauge the price-increasing effects in merger control. The Commission has routinely employed GUPPI analysis in horizontal mergers to quantify likely competitive effects.[291]

(268) In the case at hand, the Commission has conducted various forms of GUPPI analysis in order to assess the first three of the potential effects noted above and described in more detail in recitals (223) to (228). More specifically, the Commission has investigated the following forms of upward pricing pressure which may result in price increases at the downstream or upstream level:

- **GUPPI**: Horizontal price pressure (downstream) on the retail prices of GrandVision and EssilorLuxottica, caused by the horizontal overlap between GrandVision and EssilorLuxottica's retail activities.
- **vGUPPId**: Vertical price pressure (downstream) on the retail prices of GrandVision, caused by GrandVision's desire to soften competition against EssilorLuxottica's frames and lenses that are sold through other retailers.[292]
- **vGUPPIu**: Vertical price pressure (upstream) on the wholesale prices of EssilorLuxottica (for frames and lenses), caused by EssilorLuxottica's desire to raise the costs of GrandVision's retail rivals.[293]
- **vGUPPIr**: Vertical price pressure (downstream) on the retail prices of rival retailers, caused by the pass-through of the Merged Entity's upstream price pressure (vGUPPIu) into retail prices. [294]

(269) In carrying out these tests, the Commission notes that horizontal and vertical incentives to raise price complement each other. For the assessment of potential

290 E.g., see S. Moresi (2010), 'The Use of Upward Price Pressure Indices in Merger Analysis', *Antitrust Source*, February 2010, 1-12 (defining the GUPPI for horizontal mergers) and S. Mores and C. Salop (2013), 'vGUPPI: Scoring Unilateral Pricing Incentives in Vertical Mergers', *Antitrust Law Journal*, 79(1), 187–214 (defining GUPPIs for non-horizontal mergers).

291 E.g., see Case COMP/M.6497 *Hutchison 3G Austria/Orange Austria*, Commission Decision, [2013] OJ C224/12, Case COMP/M.6992, *Hutchison 3G Ireland/Telefónica Ireland*, Commission Decision, [2014] OJ C264/6, Case COMP/M.7018 *Telefónica Deutschland/E-Plus*, Commission Decision, [2015] OJ C086/7, Case COMP/M.7419 *TeliaSonera/Telenor/JV*, Commission Decision, [2015] OJ C 316/01, Case COMP/M.7758, *Hutchison 3G Italy/Wind/JV*, Commission Decision, [2015] OJ C 391/05, Case COMP/M.7612 *Hutchison 3G UK/Telefónica UK*, Commission Decision, [2016] OJ C 357/08.

292 The vGUPPId is in particular relevant for the Commission's assessment of the Transaction's vertical effects at the downstream retail level. As outlined in paragraph (228) above, EssilorLuxottica's high upstream share and importance as a wholesaler means that the Transaction has a similar effect to GrandVision acquiring a cross-shareholding in a large proportion of its downstream competitors – its incentive to compete aggressively at retail level is dampened.

293 The vGUPPIu is in particular relevant for the Commission's assessment of vertical effects in the supply of frames and sunglasses at upstream input level and downstream retail level. As outlined in paragraph (227) above, EssilorLuxottica has the ability and incentive through its upstream position to impede its rivals ability to compete with GrandVision downstream. The vGUPPIu evidences its incentive to increase prices in this regard.

294 The vGUPPIr is in particular relevant for the Commission's assessment of vertical effects in the supply of frames and sunglasses at upstream input level and downstream retail level. In relation to input foreclosure, the vGUPPIu evidences downstream competitors' incentive to pass-through EssilorLuxottica's wholesale price increases by way of higher retail prices, resulting in those rival retailers being less price competitive and in higher prices for consumers.

price increases at the retail level, the Commission has therefore analyzed horizontal and non-horizontal effects in an integrated framework. Such an assessment of mutually reinforcing horizontal and non-horizontal effects follow the principles enshrined in paragraph 36 of the Horizontal Merger Guidelines and in paragraph 18 of the Non-Horizontal Merger Guidelines.[295] The Commission's vGUPPId analysis incorporates both the vertical effect downstream (GrandVision taking into account EssilorLuxottica's wholesale profits at other retailers) and the horizontal effect downstream (GrandVision taking into account EssilorLuxottica's retail profits at owned stores).

(270) The Commission notes that the three effects of the Transaction captured by the GUPPI, vGUPPId and vGUPPIu identified above are in place simultaneously and are not only cumulative but also compound (i.e., intensify) each other. That is, the sum of these three effects is an underestimation of the harm of the Transaction because the estimates for each of these effects does not take into account the fact that the other effects are in place as well.[296] For instance:

- The vGUPPId estimates take into account the effect of the internalisation of the sales lost by GrandVision to rival retailers (and to EssilorLuxottica, in countries with a horizontal overlap), but do not take into account the fact that an additional reason why GrandVision will increase prices is the fact that the rival retailers become post-Transaction a weaker constraint due to input foreclosure (as outlined in section 8.2.2 below and evidenced in particular by the vGUPPIu/vGUPPIr);
- Similarly, the vGUPPIu estimates take into account the effect of the internalisation of the sales lost at rival retailers to GrandVision, but do not take into account the fact that an additional incentive for EssilorLuxottica to increase wholesale prices to rival retailers (and for rival retailers to increase their price) is the fact that GrandVision becomes post-Transaction a weaker constraint on its rivals due to the vGUPPId effect (as well as the horizontal GUPPI effect).

(271) Therefore, while the Commission estimates and assesses each of these elements separately below, it must be borne in mind that they cumulatively have an even more significant impact than the sum of the individual effects.

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295 See references to Paragraphs 26 and 36 of the Horizontal Merger Guidelines in Footnote 228 above, and Non Horizontal merger Guidelines, para 18. '*Non coordinated effects may principally arise when non-horizontal mergers give rise to foreclosure. In this document, the term 'foreclosure' will be used to describe any instance where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. As a result of such foreclosure, the merging companies — and, possibly, some of its competitors as well — may be able to profitably increase the prices charged to consumers*'.

296 The Commission notes that its view that prices will increase at GrandVision because of the internalisation of the diverted sales to the rival retailers (the vGUPPId effect) and, at the same time, prices will increase for rival retailers as a result of the input foreclosure generated by the internalisation of the sales diverted to GrandVision (the vGUPPIu/vGUPPIr effect) are fully consistent and, moreover, mutually reinforcing each other, despite the fact that these diversions 'operate in opposite directions'. The same applies to a standard horizontal merger, where merging party A increases prices as a result of the internalisation of the loss of customers to merging party B and, at the same time, merging party B increases prices as a result of the internalisation of the loss of customers to merging party A. In fact, as explained above, the two effects (vGUPPId and vGUPPIu/vGUPPIr effect) compound each other.

(272) Moreover**,** due to the nature of GUPPI analysis, the quantitative results only reflect the direct price-increasing incentives caused by the Transaction. Since price increases by rivals provide sellers with an incentive to raise their own prices in response (as competitive pressure is relaxed), the ultimate market price increase may be substantially larger. By construction, GUPPI analysis does not capture such 'second round' or 'feedback' effects. Also in this regard, the Commission's quantitative analysis is therefore likely to understate the Merged Entity's true incentives to raise price.

(273) Besides considering potential upward pricing pressure caused by the Transaction, the Commission has also considered potential downward pricing pressure due to the elimination of double marginalisation (EDM).[297] While results for EDM are stated separately, the Commission has derived them within the framework of an integrated vGUPPId analysis, which incorporates both anticompetitive and procompetitive effects.

(274) Throughout its analysis the Commission's also considers the effects of national strategies (i.e., potential price increases applied throughout a given country). This approach is likely to yield conservative results because it ignores the possibility of selective and more impactful local foreclosure strategies targeted at specific local overlaps.

(275) The Commission's analysis takes the existence of retail outlets as fixed factors. Again, this may underestimate the Merged Entity's true foreclosure incentives. In particular, it focuses on raising rivals' cost strategies that are immediately profitable. Especially in the context of a severe economic crisis, however, raising rivals' costs strategies may also be implemented with the aim (or effect) of harming the viability of competing retail stores.

(276) Finally, when considering anti-competitive price increases in the spirit of 'raising rivals' costs', the Commission notes that foreclosure must not necessarily be limited to price-based foreclosure. Instead, such foreclosure incentives may (at least partially) play out through non-price restrictions, such as limitations of product lines. In this context, therefore, references to 'price pressure' indices should be understood as a shorthand for 'anti-competitive pressure' (including the possibility of non-price restrictions harming consumer welfare).

8. GENERAL FINDINGS OF THE COMPETITIVE ASSESSMENT

8.1. Market structure and market shares in the wholesale supply of lenses, frames and sunglasses and in the retail sales of optical products

8.1.1. Introduction

(277) This introductory section summarises the Notifying Party's estimates for the Parties' and their competitors' market shares and is structured as follows. *Section 8.1.2* describes the Notifying Party's estimates of market shares in the (upstream) wholesale supply of lenses, frames and sunglasses at EEA and national levels. *Section 8.1.3* describes the Notifying Party's estimates of market shares in the

[297] Non-Horizontal Merger Guidelines, paragraph 13.

(downstream) optical retail market at EEA, national and local levels,[298] in particular explaining the limitations of the proxies submitted by the Notifying Party to estimate market shares at the local level. Finally, *Section 8.1.4* explains the Commission's reasons for focusing its assessment of the (downstream) optical retail market at the national level.

8.1.2. Market shares in the wholesale supply of lenses, frames and sunglasses

(278) The Notifying Party has submitted market shares for the wholesale supply of lenses, frames and sunglasses at the national and EEA levels, for 2016, 2017 and 2018. Furthermore, the Notifying Party has submitted, where possible, the said market shares segmented by sales to chains and independents, sales of branded and unbranded products, as well as sales of frames or sunglasses above and below […] EUR retail price.

(279) For lenses, the Notifying Party has relied on its own data collected in the regular course of its business for the past 20 years relating to both volumes and revenues of lenses sales at the wholesale level. These figures include details of the sales by corrective lens type for 23 EEA countries (referred to as 'Infomarché data'). For countries not covered by Infomarché data,[299] the Parties relied on their estimates to provide shares and market sizes.

(280) For frames and sunglasses, the Notifying Party has relied on several data sources to estimate their market shares due to the lack of comprehensive data for all EEA countries. The Notifying Party used data from the market research company Euromonitor which provides market shares by value based on retail sales data for nine EEA countries (France, Germany, Italy, Netherlands, Poland, Romania, Spain, Sweden and the UK). The Notifying Party also used their own sales data to check the accuracy of Euromonitor's estimates of their own sales. For the remaining EEA countries, the Notifying Party used their own estimates of market sizes and shares in value.

(281) For the further segmentations of frames and sunglasses (above […] EUR in retail price, branded/unbranded products, sales to chains/independents) the Notifying Party has relied on data from third Parties (GfK) as well as their own estimations, building on overall market size estimates. These market shares do not exhibit significant differences from the overall market shares although EssilorLuxottica appears to be less present in optical chains than in independent opticians.

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[298] As explained in Section 6, local level refers to a catchment area of typically 5-10 kilometres of a given store.

[299] […].

Table 2: Wholesale market shares of EssilorLuxottica[300]

[vertically affected markets where EssilorLuxottica's upstream market share is 30% or above are indicated in **bold**]

	EssilorLuxottica wholesale market shares									
Country	Lenses	Lenses – (chains only) *(Where provided)*	Frames	Frames (>70EUR retail price) *(Where provided)*	Frames (Branded) *(Where provided)*	Frames – (chains only) *(Where provided)*	Sunglasses	Sunglasses (>70EUR retail price) *(Where provided)*	Sunglasses (Branded) *(Where provided)*	Sunglasses – (chains only) *(Where provided)*
EEA	***[40-50]%***	[20-30]%	[20-30]%				***[40-50]%***			
Austria	[10-20]%	[5-10]%	[10-20]%			[5-10]%	***[40-50]%***			[10-20]%
Belgium	[20-30]%	[5-10]%	[20-30]%			[30-40]%	[20-30]%			[30-40]%
Bulgaria	***[30-40]%***	[20-30]%	[10-20]%			[10-20]%	[20-30]%			[70-80]%
Croatia	***[40-50]%***	[40-50]%	[10-20]%			[70-80]%	***[40-50]%***			178%
Cyprus	[0-5]%		[5-10]%				[5-10]%			
Czech Republic	***[40-50]%***	[40-50]%	[10-20]%			[5-10]%	[10-20]%			[5-10]%
Denmark	[20-30]%	[20-30]%	[5-10]%			[10-20]%	***[30-40]%***			[40-50]%
Estonia	[20-30]%		[10-20]%				[5-10]%			
Finland	[10-20]%	[5-10]%	[10-20]%			[10-20]%	***[30-40]%***			[20-30]%
France	***[70-80]%***	[10-20]%	[20-30]%	[20-30]%	[30-40]%	[10-20]%	***[40-50]%***	***[40-50]%***	[40-50]%	[50-60]%
Germany	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[20-30]%	***[30-40]%***	***[30-40]%***	[40-50]%	[50-60]%
Greece	[20-30]%		***[30-40]%***				***[40-50]%***			
Hungary	***[30-40]%***	[0-5]%	[10-20]%			[50-60]%	[20-30]%			[60-70]%

300 Some market shares presented in this table exceed 100%. According to the Notifying Party this is due to data limitations.

	EssilorLuxottica wholesale market shares									
Country	Lenses	Lenses – (chains only) *(Where provided)*	Frames	Frames (>70EUR retail price) *(Where provided)*	Frames (Branded) *(Where provided)*	Frames – (chains only) *(Where provided)*	Sunglasses	Sunglasses (>70EUR retail price) *(Where provided)*	Sunglasses (Branded) *(Where provided)*	Sunglasses – (chains only) *(Where provided)*
Iceland	[10-20]%		[5-10]%				***[60-70]%***			
Ireland	***[40-50]%***		[10-20]%			[5-10]%	***[30-40]%***			[5-10]%
Italy	***[30-40]%***	[20-30]%	***[40-50]%***	***[40-50]%***	[40-50]%	[60-70]%	***[60-70]%***	***[60-70]%***	[60-70]%	191%
Latvia	***[30-40]%***		[5-10]%				[5-10]%			
Liechtenstein	***[50-60]%***		[5-10]%				***[40-50]%***			
Lithuania	[20-30]%		***[30-40]%***				[20-30]%			
Luxembourg	[20-30]%		[20-30]%				[20-30]%			
Malta	[0-5]%		[10-20]%				[10-20]%			
Netherlands	[20-30]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	***[30-40]%***	***[50-60]%***	[40-50]%	[20-30]%
Norway	***[30-40]%***	[30-40]%	[10-20]%			[10-20]%	***[30-40]%***			[20-30]%
Poland	***[50-60]%***	[20-30]%	[10-20]%	***[30-40]%***		[70-80]%	[10-20]%	[20-30]%		[60-70]%
Portugal	***[50-60]%***	[40-50]%	[20-30]%			[90-100]%	***[50-60]%***			250%
Romania	***[40-50]%***	[40-50]%	***[40-50]%***	***[40-50]%***		[70-80]%	[20-30]%	***[40-50]%***		114%
Slovakia	***[50-60]%***	[30-40]%	[10-20]%			[10-20]%	[20-30]%			[10-20]%
Slovenia	***[30-40]%***	[30-40]%	[5-10]%			[5-10]%	***[40-50]%***			215%
Spain	***[40-50]%***	[50-60]%	[20-30]%	***[30-40]%***	[30-40]%	[40-50]%	***[30-40]%***	***[50-60]%***	[30-40]%	[50-60]%
Sweden	[20-30]%	[20-30]%	[5-10]%	[5-10]%		[5-10]%	***[30-40]%***	[20-30]%		[10-20]%
United Kingdom	***[50-60]%***	[40-50]%	[20-30]%	***[30-40]%***	[30-40]%	[10-20]%	***[50-60]%***	***[50-60]%***	[60-70]%	[20-30]%

(282) Upstream market shares of the Notifying Party are at 30% or above for either frames, sunglasses or lenses, in Austria, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK, as well as in the EEA as a whole as regards sunglasses. The Transaction therefore gives rise to affected markets in all these potential geographic markets.

8.1.3. Market structure and market shares in the optical retail market at EEA and national level

(283) The Notifying Party has submitted retail market shares based on its own sales data, those of GrandVision, as well as third-party estimates at national and EEA level. In order to estimate the total market size of optical retail the Notifying Party has relied on Euromonitor data. This data includes sales of the following products: prescription frames, prescription lenses, sunglasses, readers, contact lenses and contact lens solutions.[301] The estimates reflect sales made through all 'brick-and-mortar' channels, including sunglasses specialist shops, boutiques and department stores.[302] While the Notifying Party has also provided estimates that include online sales, the Commission has focused its analysis on 'brick-and-mortar' sales only, in light of the Commission's findings in section 6.1.2 above.

(284) The Notifying Party's estimates for the Parties' market shares at EEA and national level in the optical retail market are as follows:

Table 3: Optical retail market shares – EEA-wide and national level - 2018[303]

	Retail market shares		
Country	GrandVision	EssilorLuxottica	Combined
EEA	[10-20]%	[0-5]%	[10-20]%
Austria	[10-20]%	[0-5]%	[10-20]%
Belgium	[30-40]%	[0-5]%	[30-40]%

301 Further, for the Parties' sales the data also includes sales of related optical products and services, such as eye examinations and accessories, though this is included from the estimates for the size of the total market and their competitors' sales - Notifying Party's response to RFI 11, question 1.

302 Notifying Party's response to RFI 11, question 1. The market shares presented in this Table are based on data and sources used by the Parties in their ordinary course of business and so appear to be the most reliable basis for estimating market shares at national level. This data nevertheless also includes turnover from sunglass specialists. When assessing the Transaction at national level and for the purpose of its quantitative analyses on prescription frames the Commission will exclude the Parties' sunglass specialist banners from the relevant market in line with the market definition in section 7, however, these market shares are presented here for convenience as the most accurate available estimates.

303 The market shares presented in this table are the Notifying Party's estimates in Form CO, Annex 7.2, Optical Retail Market Shares, Optical brick-and-mortar. As such, they include the Parties' sunglass specialist banners. Pursuant to the Notifying Party's arguments raised in the Reply to the SO, the Commission adjusted its quantitative analysis to exclude the relevant sunglass specialist banners, as detailed in the Letter of Facts, with the effect of marginally reducing the Parties' combined market shares in a number of countries. In the subsequent analysis, in particular for the horizontal assessment for Italy and the UK, the Commission will present the amended market share estimates which exclude sunglass specialist retailers, in line with its product market definition.

	Retail market shares		
Country	GrandVision	EssilorLuxottica	Combined
Bulgaria	[0-5]%	[0-5]%	[0-5]%
Croatia	[0-5]%	[0-5]%	[0-5]%
Cyprus	[5-10]%	[0-5]%	[5-10]%
Czech Republic	[20-30]%	[0-5]%	[20-30]%
Denmark	[10-20]%	[0-5]%	[10-20]%
Estonia	[20-30]%	[0-5]%	[20-30]%
Finland	[30-40]%	[0-5]%	[30-40]%
France	[10-20]%	[0-5]%	[10-20]%
Germany	[10-20]%	[0-5]%	[10-20]%
Greece	[0-5]%	[0-5]%	[0-5]%
Hungary	[40-50]%	[0-5]%	[40-50]%
Iceland	[0-5]%	[0-5]%	[0-5]%
Ireland	[5-10]%	[5-10]%	[10-20]%
Italy	[5-10]%	[5-10]%	[10-20]%
Latvia	[0-5]%	[0-5]%	[0-5]%
Liechtenstein	[0-5]%	[0-5]%	[0-5]%
Lithuania	[0-5]%	[0-5]%	[0-5]%
Luxembourg	[20-30]%	[0-5]%	[20-30]%
Malta	[5-10]%	[0-5]%	[5-10]%
Netherlands	[20-30]%	[0-5]%	[20-30]%
Norway	[30-40]%	[0-5]%	[30-40]%
Poland	[10-20]%	[0-5]%	[10-20]%
Portugal	[10-20]%	[0-5]%	[20-30]%
Romania	[0-5]%	[0-5]%	[0-5]%
Slovakia	[5-10]%	[0-5]%	[5-10]%
Slovenia	[0-5]%	[0-5]%	[0-5]%
Spain	[5-10]%	[0-5]%	[5-10]%
Sweden	[10-20]%	[0-5]%	[10-20]%
United Kingdom	[10-20]%	[5-10]%	[10-20]%

(285) The Parties' shares in the optical retail market in the EEA post-Transaction will amount to [10-20]%, with an increment of [0-5]%. At national level, for the Member States where both Parties are present in retail activities, combined market shares range from [5-10]% (Spain) to [30-40]% (Finland). There are horizontally affected markets in Belgium ([30-40]% combined, with an increment of [0-5]%), Finland ([30-40]%, with a [0-5]% increment), the Netherlands ([20-30]%, with a [0-5]% increment) and Portugal ([20-30]%, with a [0-5]% increment). In those Member States, the Transaction results in a small increment from EssilorLuxottica, which is due only to its presence with sunglass specialist stores. Unlike GrandVision, EssilorLuxottica is not present in those countries through optical specialist retail chains (i.e. that sell prescription lenses with frames or sunglasses). The Parties however overlap throughout the UK and Italy, where they are both active with optical specialist retail chains.[304]

(286) As explained in section 6.2.2, the Commission considers that the relevant geographic market for optical retail is likely to be local (i.e. a catchment area of typically not more than 10 kilometres around a given store). National market shares may therefore mask the existence of local markets in which the Parties' overlaps give rise to significant increases in market power deriving from their combined retail presence in those areas.

8.1.4. Market structure and market shares in the optical retail market at local and sub-national level

(287) The Notifying Party has not been able to provide market share estimates based on the value or volume of sales at the local level (i.e. a catchment area of typically not more than 10 kilometres around each of the Parties' stores). The Notifying Party explains: '*[t]he Parties do not have access to competitors' sales and therefore cannot provide market shares at the local level'*.[305]

(288) Instead, the Notifying Party has submitted different proxies for local market shares. In particular, it submitted estimates of the Parties' market shares in two types of sub-national areas (NUTS3 and LAU), as well as an analysis of the number of retailers present in local catchment areas around the Parties' stores (a 'fascia count analysis'). Each of these proxies for market share estimates at the local level are described below. They each have limitations, as outlined below; however, in the absence of more accurate market share estimates at the level of the relevant geographic market (i.e. local catchment areas of typically 10 kilometres or less around a given store), the Commission has assessed the Parties' presence based on these metrics.

304 Notwithstanding the horizontally affected retail market at national level in these countries, the Commission considers that the Transaction does not result in the removal of an important competitive force in the optical retail market in Belgium, Finland, the Netherlands or Portugal. Finally, in each of these countries, there are other large optical retail chains active that are closer competitors to GrandVision than EssilorLuxottica is, in view of their all-round positioning (Hans Anders in Belgium and the Netherlands, Silmaasema in Finland and Optivisao in Portugal).

305 Notifying Party's response to RFI 1, question 15.

8.1.4.1. Market shares at sub-national levels: NUTS3 regions

(289) The Notifying Party submitted market shares calculated at the level of NUTS3 regions for all affected EEA countries.[306] The Notifying Party used Eurostat data on population and GDP at this geo-economical level in order to compute the total market size. Sales of the Parties were then attributed to these areas and divided by the estimated market size in order to obtain market shares in the retail market for GrandVision and the Notifying Party at NUTS3 level.[307]

(290) The Notifying Party's estimates of the number of Parties' combined market shares reaching certain thresholds at NUTS3 level are set out in Table 4 below. The Notifying Party has only provided such estimates for those Member States in which there is an overlap between the Parties (i.e. where both Parties have a brick-and-mortar presence at retail level).

Table 4 – Optical retail market share estimates at NUTS3 level (adjusted for GDP) – number of NUTS3 areas with no overlap, number with <25% combined market share in the NUTS3 area, etc[308]

Estimated combined share	No overlap	<25%	25-50%	50-75%	≥75%
Austria	32	1	1	0	0
Belgium	42	0	1	0	0
Denmark	10	1	0	0	0
Finland	17	0	1	0	0
France	52	42	3	0	0
Germany	307	28	4	1	0
Ireland	2	4	0	0	0
Italy	28	64	11	0	0
Netherlands	31	3	5	1	0
Portugal	14	7	4	0	0
Spain	16	26	0	0	0
United Kingdom	98	50	15	4	0
Total (number)	**649**	**226**	**45**	**6**	**0**
Total (%)	**70%**	**24%**	**5%**	**1%**	**0%**

306 NUTS3 refers to a geo-economical classification by region used by Eurostat which provides demographic information at this level, information that is then used by the Parties to derive estimates of local market shares.

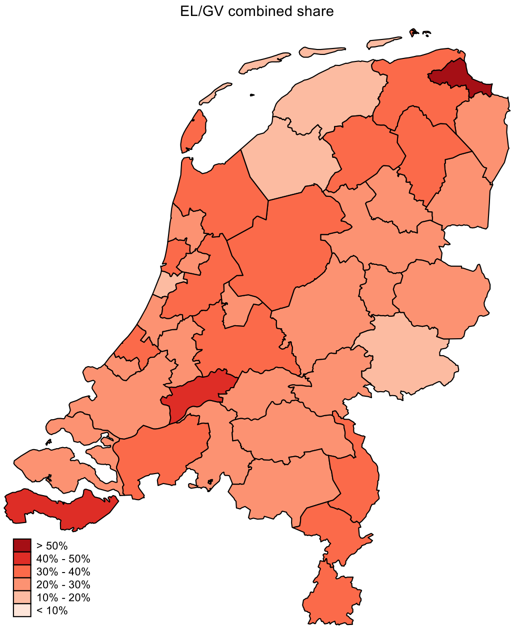
307 The Notifying Party has first computed an average spend on eyewear by inhabitant using national market sizes from national market shares. Local market shares based on population merely multiply this metric by the local population at NUTS3 level to estimate local market size. Local market shares based on GDP introduce an element of differentiation, assuming the spend on eyewear is proportional to GDP, i.e. customers spend more on eyewear in regions with higher GDP. The Notifying Party was unable to produce local shares of its competitors due to the lack of public information on local sales.

308 Form CO, Annex RFI 2 Q 15. For the avoidance of doubt, these estimates also include some sunglass specialist retailers.

(291) These estimates show that assessing market shares at national level likely understates the Parties' market position, as the national market shares do not reveal the extent to which the Transaction results in concentration at a sub-national level. This is particularly relevant as the Commission considers the relevant geographic market to be local.

(292) Illustratively, in the Netherlands the Notifying Party reports a combined national market share of the Parties of [20-30]%, with a [0-5]% increment. Yet the figure below shows that that combined share can go up to 40-50% in some NUTS3 areas, with non-negligible increments (5-10%) in some of these areas.

Figure 9: Market share estimates (combined) of optical retail in NUTS3 areas based on population - Netherlands, 2018



(293) More specifically, these NUTS3 market share estimates reveal a particular concentration at local level in Italy and the UK. Although the Parties' combined market shares at national level are [10-20]% in Italy and [10-20]% in the UK, there are 11 NUTS3 areas in Italy and 15 NUTS3 areas in the UK in which the Parties' combined share exceeds [20-30]%.

(294) The Commission considers that the Notifying Party's market share estimates based on NUTS3 areas are useful to illustrate the fact that national market shares mask concentration at a narrower geographic level, and that there are some local areas (i.e. the catchment area of less than typically 10 kilometres of a given store) in which the Parties market shares may be higher than at national level. However, a NUTS3 area includes multiple local markets and so does not accurately identify the Parties' market shares at local level or the specific local geographic markets (i.e. catchment areas) in which the Transaction results in affected markets.

8.1.4.2. Market shares at sub-national levels: LAU level

(295) The Notifying Party has submitted market shares estimates at the LAU level, i.e. at a smaller geographical level. [309] The Notifying Party submits these shares are not reliable as their estimates often exceed 100% and customers often purchase optical products across LAU zones. [310]

(296) The Commission observes that in around 20% of all LAU areas for which the Notifying Party has submitted estimates, the Parties' combined estimates exceed 100%. This points to methodological and data limitations in the Notifying Party's estimates.

(297) In light of the above, and without prejudice to the extent to which LAU-level shares can be a useful proxy for market shares at a local level, for the purposes of this decision, the Commission agrees that the Notifying Party's estimates of market shares at LAU level are not a reliable proxy of market shares at local level (i.e. the catchment area of less than typically 10 kilometres of a given store).

8.1.4.3. Market share proxy at local level: catchment area fascia count

(298) The Notifying Party has submitted fascia count analyses for vertically affected (national) markets and those Member States in which the Parties' market shares at national level exceed 20%.[311] Fascia count analyses are typically used in retail mergers to assess local competitive interactions; after establishing catchment areas, i.e. areas from which the majority of customers of a store come from, the number of alternative retailers to that particular store is counted.

(299) The Notifying Party's fascia count analyses consists in assessing, within the catchment area of a given store, the number of optical retail competitors that are present. The purpose of this analysis is to determine, from the perspective of a typical consumer, the number of alternative competing stores in which this consumer may purchase optical products within the local market and in particular the extent to which the Transaction reduces choice within that area.

(300) The Notifying Party conducted this analysis for the Member States in which the Transaction gives rise to a 'non-trivial' horizontal overlap, defined by the Notifying Party as countries with a 'brick-and-mortar' increment of more than 1%[312], as well as for a number of additional, vertically affected countries on the basis of their upstream market shares.[313] For these, the Notifying Party has drawn catchment areas around each of the Parties' stores.

(a) Initially, the Notifying Party applied catchment areas depending on the size of the municipality in which the store is located: for large metropolises,

309 LAU corresponds, in Eurostat classification, to local administrative units, i.e. municipalities.

310 Form CO, Annex RFI 2, Q15, Appendix A. For the avoidance of doubt, these estimates also include some sunglass specialist retailers.

311 RBB paper 'Local analyses of the optical retail market', Form CO Annex HVE 7.1. and response to RFI 20.

312 Italy, Ireland, the UK, Portugal and Spain.

313 Austria, Belgium, Denmark, Finland, France, Netherlands, Germany and Hungary.

catchment areas are 2.5km in diameter; for large cities, 5km; for medium and small cities and rural areas, 7.5km.[314]

(b) At the Commission's request, the Notifying Party provided a new submission, in which it calculated catchment areas by identifying the geographic area that generates 80% of the sales of the centroid store, based on an analysis of the Parties' customer address database.[315]

(301) The Notifying Party conducted a fascia count analysis on both bases described above. It concludes from this analysis that, on either basis, the Transaction gives rise to hardly any areas in which the number of available options (fascia) for a consumer are reduced from 5 to 4 or less. Accordingly, the Notifying Party considers that the Transaction is unlikely to raise horizontal concerns in optical retail across the EEA, even if assessed at the local level.

(302) As outlined in section 6.2.2 , as a general proposition, the Commission considers that optical retail stores compete for customers in a local catchment area of typically 10 kilometres or less. However, this may vary between stores, as some stores attract customers from further away (whether by virtue of the characteristics of the store, e.g. size, or of the geographic area e.g. city centre vs rural). As such, the Commission considers that the Notifying Party's store-by-store calculation of the catchment areas that generate 80% of the sales of each store represents the best available estimate for the local area within which each store competes for customers, and is the best estimate of the size of the relevant local geographic market for each store.

(303) As outlined in section 8.1.4.3 below, the Commission considers that the local catchment area data shows that the Parties overlap in a large number of local areas. In Italy, the Parties overlap in [over 300] local areas centred around GrandVision's stores and [over 300] around EssilorLuxottica stores. In the UK, the Parties overlap in [over 150] catchment areas centred around GrandVision's stores and [over 150] around EssilorLuxottica's stores.[316] To illustrate, in the UK, in around [90-100]% of catchment areas drawn around EssilorLuxottica's stores there is at least one GrandVision store present. [317] This finding confirms that the national market shares do not adequately capture the extent to which the Parties compete at local level.

(304) However, the Commission considers that there are certain key limitations in relation to the Notifying Party's fascia count analysis described above such it does not accurately reflect the Parties' market position at local level.

(305) First, the fascia count does not take into account the highly differentiated nature of the optical retail industry. As outlined in section (116) above, there are significant differences between optical retail chains and independent retailers, and sunglass specialist stores are also differentiated from retailers of prescription eyewear.

314 The Notifying Party selected these ranges in light of an analysis it had conducted previously in the context of the UK Competition and Market Authority's investigation of the proposed acquisition of Tesco Opticians by Vision Express (i.e. GrandVision), Case ME/6696/17.

315 Response to RFI 20, question 3.

316 Commission computation based on Notifying Party's data submitted in response to RFI 20. For the avoidance of doubt, these estimates also include some sunglass specialist retailers.

317 Commission computation based on Notifying Party's data submitted in response to RFI 20. For the avoidance of doubt, these estimates also include some sunglass specialist retailers.

Moreover, brand plays a key choice in determining consumers' choice of eyewear and their choice of store. Accordingly, in such a differentiated market, market shares and in particular fascia count may not be an accurate representation of the Parties' market position.

(306) Second, the fascia count analysis does not consider the size of the store as a critical factor and fails to take into account the sales of the stores within the catchment area, which understates the Parties' significance. For example, in Italy, the market is highly fragmented, with smaller independent retailers making up more than half of the market at national level. However, the Parties represent the first and second largest retail chains active throughout the country, often with multiple stores present within the same city or local catchment area, and often with large stores that are located in prime commercial areas. Nevertheless, the Parties' stores are treated the same as an independent for the fascia count.

(307) The impact of this is clear when comparing the value of EssilorLuxottica frames or sunglasses procured by different stores in a catchment area (this figure is used in the absence of accurate total sales/procurement figures for competitors). In Milan, a Salmoiraghi & Viganò store procured nearly EUR […] of frames from EssilorLuxottica and around EUR […] of EssilorLuxottica sunglasses.[318] In contrast, an independent retailer 0.1 kilometre away from it procured just EUR […] of frames from EssilorLuxottica and EUR […] of EssilorLuxottica sunglasses.[319] These figures show that in this particular example, the sales of the Salmoiraghi & Viganò store are many times higher than those of the independent, however, both stores are treated as 1 fascia for the fascia count. Indeed, it appears that the Parties' stores typically generate higher sales than the average store in Italy (a country where independents account for more than 60% of the market). Based on a comparison of the Notifying Party's market size estimates with the total number of stores in Italy, it appears that the average optical retail store (excluding the Parties' stores) generates annual turnover of approximately EUR […]. In contrast, the average GrandVision store generated annual turnover of EUR […] and EssilorLuxottica stores generated on average EUR […].[320] Though the extent to which the Parties' stores are larger or smaller than average will vary within different local areas, this indicates that in general fascia counts in local areas are likely to understate the Parties' market share by value.

(308) Third, the fascia count analysis does not account for the fact that optical retail chains may be present in a given local area with several stores. Rather, it counts the number of competitors active in a given area. This means that, in some cases, a fascia count fails to reflect concentration within an area. Illustratively, in the UK, in a particular local area there are a total of 16 fascia present (i.e. there are 16 different optical retailers active with stores in the area).[321] However, some of these optical retailers – in particular the Parties – are retail chains with multiple stores in this area. Therefore, from this fascia count it is not possible to observe important elements to

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318 Response to RFI 20. Relates to store ID EL_IT_328.

319 Response to RFI 20. Relates to store ID COMP_IT_18802.

320 Comparison of brick-and-mortar optical retail turnover estimates in Form CO Annex 7.2 with store numbers in Table 17 of Form CO Annex 7.1.10. The Parties' stores and turnover have been removed from the total market size.

321 Response to RFI 20. Relates to store ID GB131727. The fascia are: […].

assess the structure of the markets, such as the fact that the Parties together operate [30-40]% of optical retail stores (by store count) in the local area.[322]

(309) Therefore, the fascia count analysis submitted by the Notifying Party may be used as a proxy for the Parties' local presence, the geographic distribution of their stores, and the extent of overlaps between the Parties, in the absence of more reliable data. However, the Commission finds that the fascia count analysis does not enable it to accurately calculate market shares or assess the Parties' market power at local level (and is likely to understate the Parties' combined market shares at local level).

8.1.5. National scope of the Commission's assessment at (downstream) retail level

(310) As explained in section 6.2.2, the relevant geographic market for the (downstream) supply of optical retail is local, i.e. within a catchment area of 10 kilometres or less. The Notifying Party submits that the Commission should conduct its assessment of the relevant markets at local level.[323]

(311) However, as outlined in section 6.2.2, both Parties operate optical retail chains that are active at national level in a large number of Member States and there are certain parameters of competition which are influenced by national factors, particularly for chains with a large retail presence in a country and have strategic targets at that level. For chains, competition on these parameters at national level also impacts the competitive conditions within the local catchment areas in which they are present within a country.

(312) The Commission considers that, in view of the above when assessing the Transaction, which consists in the merger of optical retail chains both present with a large number of stores within a given country (i.e. with a broad national presence), it is appropriate to also consider the market structure and parameters of competition at national level. This is the case even if these parameters are ultimately determined at, and impact competitive dynamics at, local level (i.e. depending on which optical retail chains and independents are present in a given local catchment area). These factors are the following.

(313) First, optical retail chains typically determine their commercial strategy at national level. This includes, in particular, their prices and promotions, marketing campaigns and procurement strategy.[324] Moreover, chains often benchmark themselves against other retail chains at this national level (more so than against independent opticians).[325] There is nevertheless also a local element to these matters such as the fact that, for example, chains' marketing campaigns can also be local and some chains determine their product portfolios at local level.[326] However, this shows the importance of also having regard to competitive dynamics at national level in the optical retail market. This is illustrated by the fact that in approximately [80-90]% of local areas where one Party is present, the other Party is also present.[327]

322 […].
323 Notifying Party's Response to the SO, paragraphs 85-88 and 174-190.
324 See section 6 and section 9.4.3.2 and 9.5.3.2.
325 See section 9.4.3.2 and 9.5.3.2.
326 See section 6.
327 Paragraph 1049 of the SO.

(314) Second, the positioning of a particular optical retail chain does not in general vary within a country. The Parties' optical retail banners have the same positioning in all of the local areas in which they are present in a given country, as this positioning is determined at national level.[328] The same is typically true of other optical retail chains.[329] Therefore, while the specific set of competitors present in a local area may vary, for the assessment of closeness of competition between the Parties it is appropriate to consider their (and other retail chains') positioning at national level.

(315) In this regard, the Commission recalls that it may, in some cases, be appropriate to assess a grouping of relevant markets together. For instance, in Case M.7932 *Dow/DuPont*, the Commission took this approach where the relevant product market definition resulted in a very segmented market: '*from a practical point of view, it is impossible to, in all instances, break down the crop protection industry into all relevant antitrust markets which would number just in Europe tens of thousands. Therefore, the Commission decided, in order to be in a position to conduct a meaningful assessment of the Transaction, to in where appropriate and necessary also group crop/pest combinations into market groupings*'.[330]

(316) In light of the above, when assessing the optical retail market, the Commission will also take account of the market structure at national level. In particular, as regards Italy, as explained in section 9.4 below, the Parties are both optical retail chains active at national level and their pricing strategy does not typically vary within the country (i.e. at the level of the local catchment areas within which they are active). Accordingly, their pricing decisions are made at the national level and so the impact of the Transaction can be expected to occur across the country in the local areas in which they are present.

8.2. Competitive assessment – Quantitative analysis of the horizontal and vertical effects

(317) In the following section the Commission presents the results of its quantitative analysis of the horizontal and vertical effects. The qualitative analysis of the effects as well as the conclusions on SIEC are presented in section 9.

8.2.1. GUPPI for EssilorLuxottica retailers

(318) The Commission has analysed the incentives of the Merged Entity to increase the retail prices of EssilorLuxottica's own retail stores due to the horizontal overlap with GrandVision using a GUPPI framework, as explained in section 7.3 and Annex I. Based on this analysis, the Commission considers that the Merged Entity would be incentivised to raise retail prices of prescription frames[331] at EssilorLuxottica's stores in Italy.

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328 See, for example Form CO, Annex 7.1.10 and 7.1.12.

329 Questionnaire 2 to optical retail chains, question 1.1.2, in which, when asked to describe their business model and positioning, none of the retail chains that responded suggested that their positioning varied at local or sub-national level.

330 Case M.7932 *Dow/DuPont*, Annex 3, Section 3.2.2, paragraph 50, on page 778.

331 Prescription frames refer to the bundle of frames and prescription lenses.

(319) The GUPPI analysis for EssilorLuxottica's own retailers measures the (horizontal) upward price pressure on EssilorLuxottica's retail prices caused by the downstream overlap with the GrandVision stores.[332]

(320) In its retail price pressure analysis, the Commission has separately analysed EssilorLuxottica's incentive to raise the retail prices of prescription frames and for sunglasses at its outlets across the various brands offered there. The Commission therefore considers a general price-increasing strategy, rather than a targeted anticompetitive strategy focused specifically on particular brands.

(321) As explained in Annex I, the main drivers of the Merged Entity's incentive to increase retail prices at EssilorLuxottica's retail stores Post-Transaction are the retail margins (a proxy for market power at the retail level[333]) and the diversion ratios (a proxy for closeness of competition[334]).

(322) The GUPPI at EssilorLuxottica stores can be interpreted as the equivalent of an increase in EssilorLuxottica costs, expressed as a percentage of price. Therefore, a GUPPI of 5% represents an upward pricing pressure for EssilorLuxottica that is equivalent to an increase in EssilorLuxottica cost of 5%. In order to compute the potential retail price increases following this cost increase the Commission has conservatively taken a cost pass-though rate of 75%, meaning a GUPPI of 5% is equivalent to an incentive for EssilorLuxottica to increase prices by 3.75%.

(323) Using the formula and inputs set out in Annex I, the Commission finds that post-Transaction the Merged Entity would have incentives to raise the price of prescription frames at EssilorLuxottica stores by 4.4% in Italy (see Figure 10).[335]

(324) As regards sunglasses, the Commission finds that post-Transaction the Merged Entity would have incentives to significantly raise the price of prescription frames at EssilorLuxottica stores in a number of countries. However, these increases would be offset (or more than offset) by price decreases at GrandVision stores (see Figure 11 and discussion in Section 8.2.2**).**

8.2.2. vGUPPId for GrandVision

(325) The Commission has analysed the incentives to increase the retail prices of GrandVision within a vGUPPI framework, as explained in section 7.3 and Annex I.

(326) Based on this analysis, the Commission considers that the Merged Entity would be incentivised to raise retail prices at GrandVision stores, for a number of EEA countries. In particular, the Commission finds the Merged Entity would have an incentive to significantly raise retail prices of prescription frames at GrandVision stores in Italy and France (see Figure 10).

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332 The corresponding upward price pressure for GrandVision retailers is incorporated as a component in the vGUPPId analysis in Section 8.2.2 below to allow an integrated analysis accounting for both the horizontal and vertical price pressure affecting GrandVision's pricing post-Transation.

333 The higher the economic margins at the retail level, the higher the market power of the suppliers in the market.

334 The higher the amount of customers expected to switch between GrandVision and EssilorLuxottica pre-Transaction, the higher the effect of the elimination of horizontal competition between the Parties.

335 While the analysis suggests similar incentives to increase prices significantly at EssilorLuxottica stores in the UK, the Commission considers these to be negligible in light of the limited retail market share of EssilorLuxottica in this country.

(327) The Commission has calculated an integrated vGUPPId model which reflects the combined benefits of raising retail prices imputable to both (i) horizontal overlaps as well as (ii) vertical links with rival retailers. The Commission has also taken into account potential effects resulting from the elimination of double marginalisation which may decrease incentives to raise retail prices.[336]

(328) In the following recitals, the Commission outlines the reasons underlying these incentives, as well as the results of this vGUPPId modelling.

(329) In general, consumers faced with a retail price increase at GrandVision stores may switch to rival retailers. Pre-Transaction, margins associated with current customers switching away would be entirely lost to GrandVision. The Transaction changes this as some customers may move (i) to a retail store of EssilorLuxottica or (ii) to a rival store supplied by EssilorLuxottica, which would then recoup part of the loss by the extra wholesale revenues. Therefore, in both situations, the margin lost on shifting customers would be partially or entirely recouped. In the first situation, retail margin will be earned fully recovering the loss of retail margin at GrandVision shops.[337] In the second situation, only wholesale margins will be earned if the customers would buy EssilorLuxottica products in a rival retailer. However, in a third scenario, some of these customers switching away from GrandVision stores may also switch to a rival retailer that does not sell EssilorLuxottica products and hence buy non-EssilorLuxottica products. In this latter scenario the Merged Entity would not recoup any lost margins.

(330) Moreover, the incentives to raise retail prices depend on the actual possibility that a customer switching to a rival retailer will purchase EssilorLuxottica products, and this has been believed to depend on the share of the offering of EssilorLuxottica products at the concerned opticians' stores ('share of wallet'). Countries in which EssilorLuxottica has large wholesale shares are therefore more likely to show larger incentives to raise retail prices.

(331) A customer faced with a price increase may however decide not to purchase or to purchase outside the concerned market, e.g. online. This effect is measured by the diversion ratio to the outside good, which measures the probability that a customer elects not to purchase the good following a price increase, or purchases outside the analysed product market. For the purpose of analysing incentives in increasing prescription frames retail prices, the Commission considers the diversion ratio to the outside good to be 5%, as it assumes that very few customers faced with a retail price increase would elect not to buy a pair of prescription frames since such a product is de facto a medical device and, as such, an essential item for final consumers. Moreover, in order to strengthen the results of the vGUPPId / GUPPI analysis the Commission increases the ratios of diversion to an outside good to 10%.

(332) As explained above, for a full analysis of the pricing incentives after the Transaction the Commission has also analysed the potential benefit of vertical integration stemming from the elimination of double marginalisation.[338] Vertically integrated

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[336] Non-Horizontal Merger Guidelines, paragraph 13

[337] In case the customer buys EssilorLuxottica products at EssilorLuxottica retail stores the wholesale margin will also be recouped. The fact that customers may buy products other than EssilorLuxottica at EssilorLuxottica stores is taken into accoung via the share of wallet.

[338] Paragraph 55 of NHMG.

firms may have an incentive to decrease retail prices post-integration. This effect depends on the share of wallet of EssilorLuxottica at GrandVision stores. At present GrandVision relies very moderately on EssilorLuxottica for its procurement of ophthalmic lenses and only to some extent for frames. However, GrandVision relies extensively on EssilorLuxottica for its procurement of sunglasses. [339]

(333) Using the formula and inputs set out in Annex I, the Commission computed the vGUPPId for prescription frames.[340] The vGUPPId shows the cost pressure to the retailer. It can be interpreted as the equivalent of an increase in GrandVision costs, expressed as a percentage of price. Therefore, a vGUPPId of 10% represents an upward pricing pressure for GrandVision that is equivalent to an increase in GrandVision cost representing 10% of prices. In order to compute the potential retail price increases following this cost increase the Commission has conservatively taken a cost pass-through rate of 75%, meaning a vGUPPId of 10% is equivalent to an incentive for GrandVision to increase prices by 7.5%.[341]

(334) The Commission, therefore, presents the results of the vGUPPId analysis in terms of final incentives to raise retail prices at GrandVision, in effect multiplying the vGUPPId results by the level of pass-through at retail level. These results are presented in Figure 10 for frames and Figure 11 for sunglasses.

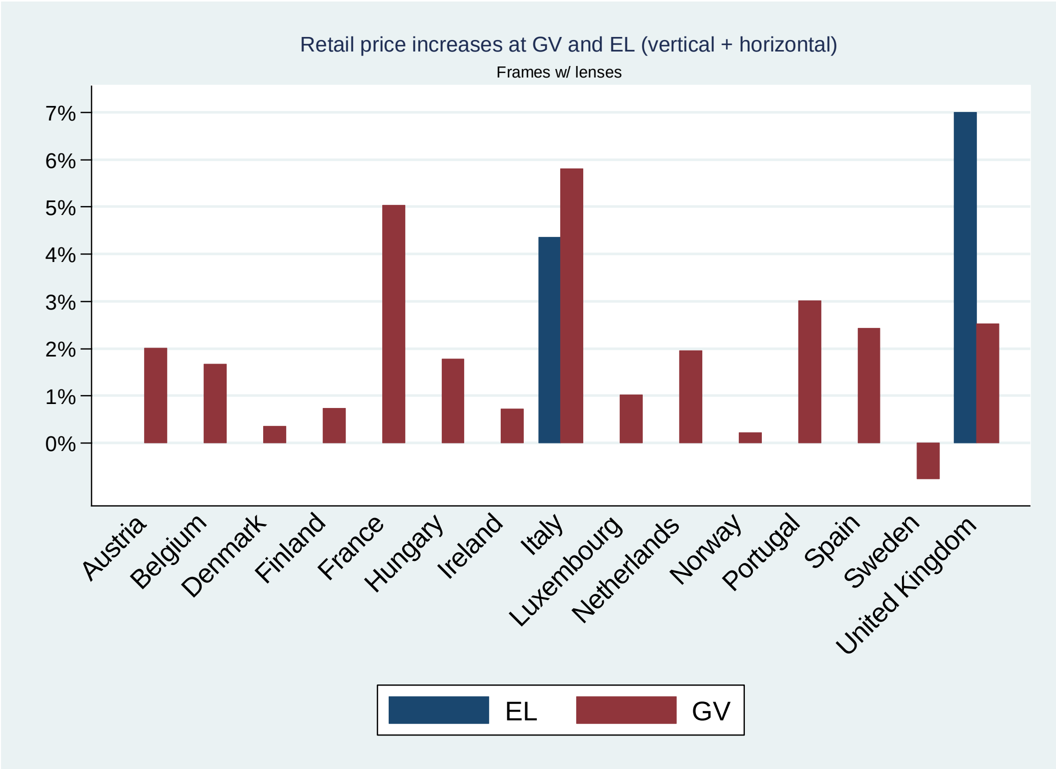
(335) The Commission finds that the analysis shows that post-Transaction the Merged Entity would have incentives to raise the price of prescription frames at GrandVision stores that are quantified at 6% in Italy. The Commission also finds seemingly significant effects in France (for GrandVision stores). However, as explained in section 9.3.4, the Commission has found these incentives are unlikely to materialise due to large lenses price differences between GrandVision and rival retailers (see recital (835)).

[339] At the EEA level, EssilorLuxottica accounts for […]% of GrandVision's revenues for frames, […]% for sunglasses, […]% for lenses.

[340] Prescription frames refer to the bundle of frames and prescription lenses.

[341] The pass-through rate taken in this exercise is lower than the pass-through rate estimated by opticians in reply to the simplified questionnaire and is therefore conservative.

Figure 10: Retail price increases following from the vGUPPId analysis on prescription frames

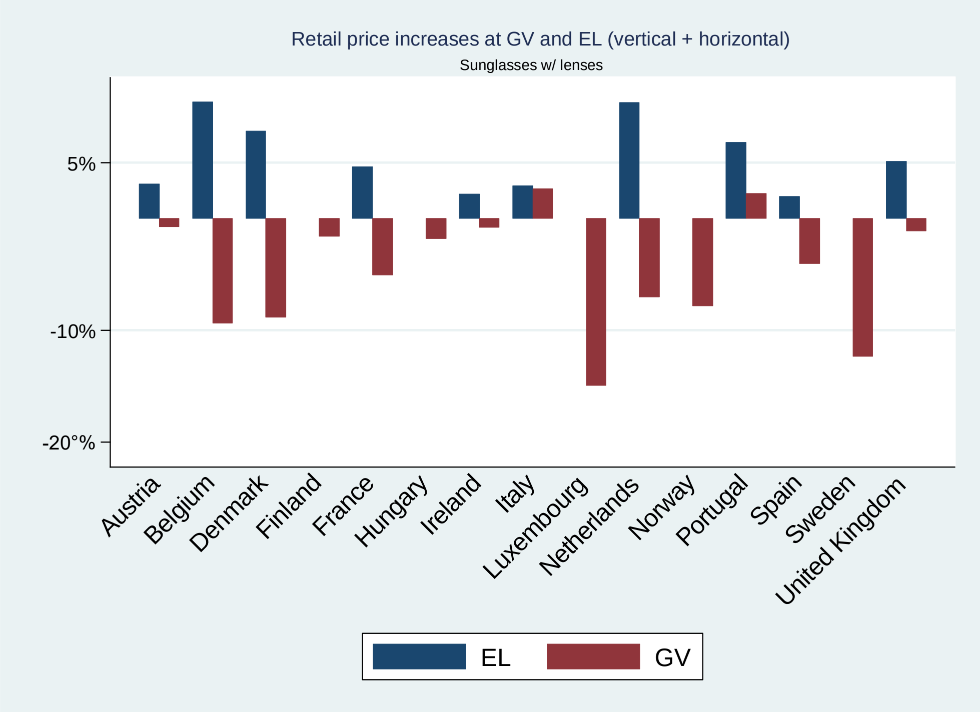


Source: Commission's analysis

(336) As explained in paragraph (332) above, GrandVision relies extensively on EssilorLuxottica for its procurement of sunglasses. The analysis of incentives resulting from the vGUPPId analysis for GrandVision retailers for sunglasses is therefore dominated by the elimination of double-marginalisation effect; in most EEA countries, GrandVision is shown to have an incentive to decrease sunglasses prices following the Transaction, or to increase prices in a very limited way in Italy. Although price increases at EssilorLuxottica stores appear more significant, for instance in Belgium or the Netherlands, the retail market share of EssilorLuxottica is not significant in these countries.[342]

342 Below [0-5]% in Belgium, below [0-5]% in Denmark, slightly above [0-5]% in the Netherlands. Moreover, EssilorLuxottica retail stores in these countries are sunglass specialists.

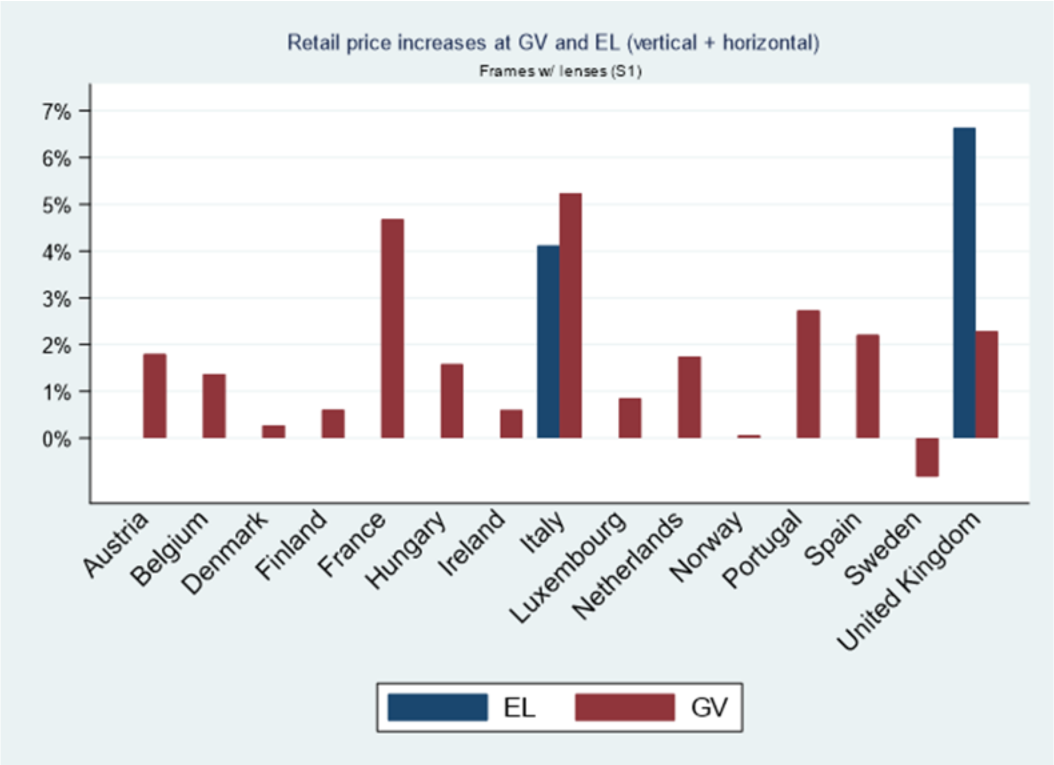
Figure 11: Retail price increases following from the vGUPPId analysis on sunglasses



(337) As explained in recital (331) above, the Commission has tested the robustness of these results with a sensitivity analysis, increasing the diversion ratio to the outside good. The figure below present the results of such sensitivity analyses for frames.[343] The incentives to increase prices of prescription frames remain substantial (5.4% in Italy).

343 The Commission has similarly tested the robustness of its analysis for sunglasses. The results of this sensitivity analysis confirm the results presented above inFigure 11

Figure 12: Retail price increases following from the vGUPPId analysis on prescription frames (sensitivity)



Source: Commission's analysis

8.2.3. *vGUPPIu for rival retailers*

(338) The Commission reviews the incentives to increase wholesale prices of the Merged Entity within the vGUPPI framework, as explained in section 7.3 and Annex I. In order to assess these incentives the Commission has calculated the critical intra-brand diversion ratio necessary to make a 10% upstream price increase profitable, for prescription frames and sunglasses, relying on the vGUPPIu framework.

(339) Based on the vGUPPIu analysis, the Commission considers the Merged Entity would have an incentive to engage in a partial input foreclosure strategy by significantly raising the wholesale prices of prescription frames to rival retailers in all countries analysed.[344]

(340) As explained in Annex I, the incentive for EssilorLuxottica to raise the wholesale prices of frames and sunglasses depend on the extent to which customers switch to another store when faced with a retail price of EssilorLuxottica products (intra-brand diversion) rather than buying another product at the same store (inter-brand diversion), and whether they switch to a store of the Parties or a rival retailer if they do switch away. However, these diversions are not directly observable nor easily measurable. Consequently, the Commission presents the results of its analysis of the incentives to raise wholesale prices in terms of critical intrabrand diversion ratios.

344 The Commission has assumed a e high level of pass-through to translate vGUPPIu results into potential price increases (75%); indicated by evidence gathered by the Commission in its in-depth investigation and Parties' arguments in the reply to the SO.

These are the minimum levels of switching necessary in order to generate a certain vGUPPIu.

(341) The vGUPPIu shows the final incentive to raise prices, in percentage terms, at the wholesale level. It can be interpreted as the equivalent of an increase in EssilorLuxottica costs, expressed as a percentage of price. Therefore, a vGUPPIu of 10% represents an upward pricing pressure for EssilorLuxottica that is equivalent to an increase in EssilorLuxottica cost representing 10% of prices. In order to compute the potential retail price increases following this cost increase the Commission has conservatively taken a wholesale cost pass-though rate of 75%, meaning a vGUPPIu of 10%% is equivalent to an incentive for EssilorLuxottica to increase wholesale prices by 7.5%.

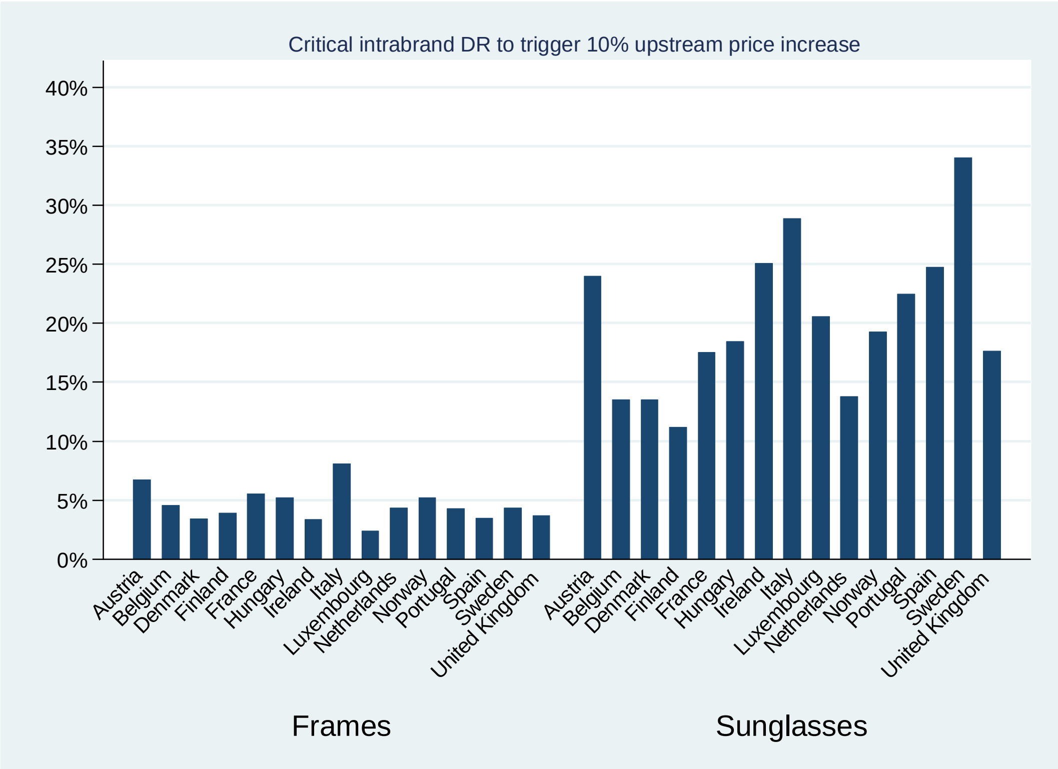
(342) Figure 13 presents the critical intra-brand diversion ratio that would need to be met for EssilorLuxottica to profitably increase its wholesale prices by 10%, for both frames and sunglasses. These critical diversion ratio are derived from the vGUPPIu modelling, as explained in detail in Annex 1.[345] For instance, for frames in Belgium, if less than 5% of EssilorLuxottica customers at rival retailers would switch to a GrandVision or an EssilorLuxottica store following a price increase then the Merged Entity would have an incentive to raise wholesale prices by 10%.[346]

(343) Overall, Figure 13 shows that only a very small share of buyers of EssilorLuxottica frames at rival retailers need to switch to EssilorLuxottica or GrandVision stores to generate significant incentives for the Parties to implement a partial input foreclosure strategy.

345 As explained in Annex 1, these critical diversion ratios are inversely related to retail margins at GrandVision and GrandVision market shares, i.e. the greater the margins and the greater the retail market shares the lower this diversion ratio will have to be for the strategy to be profitable.

346 As explained in Annex 1 and paragraphs above, this switching is intrabrand, i.e. it concerns customers switching away from rival retailers which then purchase EssilorLuxottica products at GrandVision or EssilorLuxottica stores.

Figure 13: Presentation of the critical intra-brand diversion ratios derived from the vGUPPIu analysis, for frames and sunglasses



Source: Commission's analysis

(344) The Commission notes that critical diversion ratios are significantly lower for frames than for sunglasses. For instance, in Belgium, almost three times as many customers would need to switch stores following a price increase in sunglasses for the Merged Entity to implement profitably this price increase, compared to frames. Input foreclosure incentives are further discussed, on a country specific basis, in section9.

(345) The Non-Horizontal Merger Guidelines state that it is not necessary to show competitors' exit from the market for consumer harm to materialise in case of input foreclosure. There is harm to consumers if increased input costs lead to an increase in prices for consumers.[347] The Commission has therefore analysed the potential retail price increase resulting from an input foreclosure strategy.

(346) The vGUPPI framework enables to derive retail price increases following input price increases, depending on the level of pass-through of opticians of input cost changes. The short questionnaire sent by the Commission asked opticians how they would change retail prices of EssilorLuxottica products following wholesale price increase. A large majority responded that they would entirely pass-on input cost increases of EssilorLuxottica products, with some respondents indicating they would pass-on more than 100% of the cost increase. The Commission has nevertheless

347 See paragraph 31 of NHMG

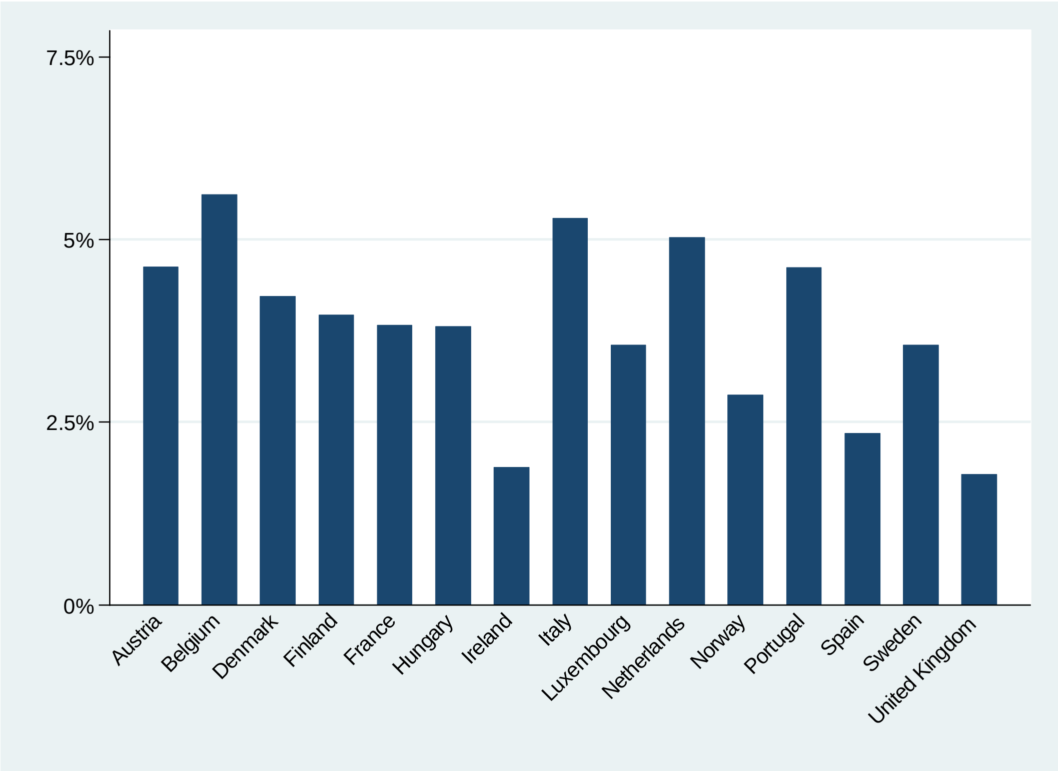
conservatively taken a retail cost pass-though rate of 75%, meaning a vGUPPIr of 10% is equivalent to an incentive for rival retailers to increase prices by 7.5%

(347) Notwithstanding the fact that potential price increases resulting from an input foreclosure strategy may significantly exceed 10% as critical diversion ratios are very low (see recitals (342) and (343) above), the Commission has computed potential retail price increases resulting from a 10% input costs increase.

(348) The following graphs presents these results for frames, i.e. shows the retail price increase that would result from EssilorLuxottica raising the wholesale price of their frames by 10%. As explained in recital (344) above, effects of an input foreclosure strategy are more plausible for frames.

(349) The results are conservative since wholesale price increases may be higher. Nevertheless, they show that a 10% price increase at the wholesale level would translate into a material price increase at the retail level; in most countries the retail price increase would exceed 2.5%, following a 10% wholesale price increase of EssilorLuxottica frames. This analysis also shows retail effects of a 10% wholesale price increases are the most significant in Belgium, Italy and the Netherlands, in which these effects could exceed 5%.

Figure 14: Retail price increase following a 10% upstream price increase, frames



Source: Commission's analysis

8.2.4. Vertical arithmetic analysis

(350) The Notifying Party has conducted a vertical arithmetic analysis in order to assess the Merged Entity's incentives to engage in a total input foreclosure strategy. This analysis compares the losses in terms of wholesale margins from sales to rival retailers with the gains in terms of additional retail margins from customers that

divert from the rival retailers to the Merged Entity's own stores. On this basis, the Parties provided the critical churn rate ('CCR'), that is, the minimum amount of customers that would need to churn from rival retailers in order to render the foreclosure strategy profitable for the Merged Entity.

(351) In the Notifying Party's initial economic submission of this analysis,[348] it considered a foreclosure scenario where only a certain fraction of the Merged Entity's rival retailers would be totally foreclosed. As a result of this, only a small part of customers that churn away from those rival retailers would be recaptured by the Merged Entity's own stores, while other non-foreclosed rival retailers that are not foreclosed would capture the remainder of customers, proportionally to the *average* share of doors of these non-foreclosed rivals at the national level. The Commission considers that the scenario (only a subset of competitors are foreclosed) and assumptions (diversions proportional to the *average* share of doors at the national level) used by the Notifying Party are not correct and underestimate the likelihood that a total foreclosure strategy would be profitable.

(352) In particular, the Commission considers that if diversions are assumed to be proportional to the *average* share of doors at the national level, the Merged Entity would not have an incentive to foreclose certain rival retailers and not others. This is because in this case the customers leaving the foreclosed retailers would not entirely switch to the Merged Entity but some of them would switch to non-foreclosed rivals. This is a sub-optimal strategy for the Merged Entity because, by foreclosing all rivals, it can ensure that all switching customers move to EssilorLuxottica or GrandVision stores.

(353) The analysis presented by the Notifying Party is flawed because it assumes that, even if the Merged Entity decides to foreclose a subset (say, 20%) of rivals, diversion to the Merged Entity would be proportional to the average share of doors at local level. This does not make economic sense, because, if the Merged Entity decided to foreclose only selected rivals, it would clearly select the rival retailers 'located next door'. In this case, the relevant diversion to the Merged Entity would not be proportional to the *average* share of doors of the Merged Entity at national level but would rather be close to 100% (as all customers leaving the foreclosed rival would move to the store of the Merged Entity next door).

(354) For these reasons, the Commission has requested the Notifying Party to perform this analysis for the scenario where all rivals in a country are foreclosed, which is the relevant benchmark to assess total input foreclosure.[349] The results of the vertical arithmetic analysis for this scenario where all rivals in a country are foreclosed are set out below.

(355) The Commission notes that the model used by the Notifying Party does not take into account the effect that the input foreclosure strategy would have on retail margins. In particular, considering the finding of the Commission that the Transaction would result in the Merged Entity having incentives to significantly raise prices on the wholesale and retail markets of frames in several countries (see section 8.2 for a general description of quantitative results and section 9 for assessments at country

348 Form CO annex HVE 7.2.
349 Non-Horizontal Merger Guidelines, paragraph 33.

level), the input foreclosure strategy would therefore lead to reduced competition at the retail level for these products, and as such incentivise the Merged Entity to increase its retail margins. This means that the amount of customers that would need to switch to render this profitable is even lower than as calculated by the Notifying Party as the CCR.

(356) The Commission further remarks that the CCR's presented below would ostensibly apply equally to the local areas within a country. Differentiating factors between countries are the upstream and wholesale margins on lenses and eyewear products, which are assumed by the Notifying Party to be equal within a country.

(357) Table 5 below presents the results of the CCR calculated by the Notifying Party.

Table 5 – Critical churn rate for total input foreclosure[350]

[…]

(358) The Commission finds that the computed CCR is low for frames in all countries as well as in the EEA overall which means only a relatively small number of customers need to switch following total input foreclosure for the strategy to be profitable for the Merged Entity. For instance, the Merged Entity would find a total foreclosure of frames in Italy to be profitable if more than [10-20]% of customers were to switch away from rival foreclosed retailers. In sections 8.2.1 - 8.2.3, and the country-specific assessments in section 9, the Commission finds incentives for the Merged Entity to engage in partial input foreclosure, resulting in a deterioration of competitive conditions in the wholesale and retail markets for frames. On the basis of the figures above, and the Commission's findings on the extent to which EssilorLuxottica would be exposed to retaliation (section 8.3.3), moreover, it seems that even a total input foreclosure strategy cannot be excluded for frames. The switching required to render such a strategy profitable (the critical churn rate) would however be significantly higher than for partial input foreclosure (as calculated under the vGUPPIu framework in the preceding section).

(359) On the basis of the CCR computed by the Notifying Party, a total input foreclosure strategy is significantly less likely to be profitable for sunglasses. This can be explained by the fact that for any customers that divert for frames, the Merged Entity would also obtain the margins for the lenses that go with the frames. While some sunglasses also are sold with prescription lenses, this is significantly less common.

(360) As explained in recital (265) the Commission considers that the Merged Entity is more likely to be able to run a partial input foreclosure strategy than a total input foreclosure strategy. The Commission's analysis of vertical effects has therefore focused on the former (see section 8.2 for a general description of quantitative results and section 9 for assessments at country level). However, the Commission notes that on the basis of the Parties' vertical arithmetic analysis a total input foreclosure strategy may be profitable in some countries for frames. In its reply to the SO, the Notifying Party disputed the Commission's analysis of its modelling of total input foreclosure. In particular, the Notifying Party considered that it was implausible that all EssilorLuxottica customers could be targeted and the Commission's assessment of retaliation was flawed, […].

350 Response to RFI 32, table 4.

(361) In any event, the Commission's clearance of partial input foreclosure also clears potential concerns for total input foreclosure, as the test for the latter is similar in this case. Both assessments rely on reaching a certain threshold of customer switching following input foreclosure, but thresholds to find incentives for total foreclosure are higher than for partial foreclosure.[351]

8.3. Competitive assessment – qualitative analysis of vertical non-coordinated effects: input foreclosure branded eyewear (frames and sunglasses)

8.3.1. Introduction

(362) EssilorLuxottica is by far the largest supplier of eyewear in the EEA, and is considered to have a very strong and broad portfolio of products, including brands that are in high demand, such as Ray-Ban and Oakley.

(363) Retailers, both independent opticians and those belonging to a retail chain, have expressed concerns that, following the Transaction, they would face deteriorated commercial conditions and therefore lose customers to the Merged Entity's stores.

(364) Already today, EssilorLuxottica reserves certain models of its eyewear for certain retail channels and for its own stores.

(365) Against this background, in the section that follows, the Commission sets out its assessment of the ability and the incentives resulting from the Transaction for the Merged Entity to engage in strategies to deteriorate the commercial conditions of rival retailers, in order to attract customers to its own stores, and the effects thereof on the markets concerned.

8.3.1.1. The Notifying Party's views

Frames and sunglasses (eyewear)

(366) The Notifying Party submits that the Merged Entity would not have the ability to foreclose competitors in the retail market for the supply of prescription frames or sunglasses, on the basis of the following factors:

(a) EssilorLuxottica would not have market power as regards its position as a supplier of frames or sunglasses.

(b) Licensors account for approximately […] of Luxottica's sales of prescription frames and […] of its sales of sunglasses in the EEA, and would oppose a foreclosure strategy. Such licensors would counter any policy which would reduce their overall sales, since they obtain royalties […]. This implies that licensors would not benefit from any recouped sales at own stores in the form of retail margins on these products and the lenses that would go with them. In this regard, certain brand owners had explained during the proceedings of M.8394 Essilor/Luxottica that they would not be willing to accept tying and bundling strategies. The Notifying Party does not consider the acquisition of GrandVision's retail presence to significantly affect brand owners' negotiation position, […].

[351] These considerations hold as far as static effects are concerned.

(c) Brands are not the most important factor in driving consumer choice as the service provided by the optician is more important and limits customer switching. In that regard, customers are typically return customers.

(d) EssilorLuxottica's portfolio is not must-have, only 'desirable'.

(e) Many optical retailers operate without sourcing eyewear from EssilorLuxottica as there are alternative suppliers Opticians can easily switch to alternative suppliers and/or start selling their own private label. Retail chains are sophisticated customers and account for a significant share of demand for prescription frames. Any optician can replace EssilorLuxottica brands with competitors' brands. Other competitors can also offer a broad brand portfolio.

(f) The Commission in its decision of M.8394 found that Luxottica's margins did not appear to be substantially higher than those of its main competitors and that its market power would therefore not be much stronger than that of its rivals.

(g) There is no differentiation at sub-national level on EssilorLuxottica's ability to foreclose. A substantial proportion of Luxottica customers in the EEA ([…] in terms of sales) procure their eyewear products nationally (or more widely) and would therefore be immune to a localised input foreclosure strategy. This applies to independent retailers part of a buying group, retailers who buy products as a distributor, and online retailers. As a result, such rival opticians would be able to capture diverted demand from foreclosed stores.

(h) Local foreclosure is not realistic, and the Notifying Party's supply agreements, stock replenishment systems and customer segmentation does not allow this. Luxottica's stock replenishment system STARS is unlikely to allow the Merged Entity to target an input foreclosure strategy for specific product and geographic areas. […].

(367) The Notifying Party submits that the Merged Entity would not even have any incentive to foreclose as regards prescription frames or sunglasses, on the basis of the following factors:

(a) The Merged Entity would not have the market power to be able to divert customers to own stores, and, referring to the Commission's decision in M.8394 Essilor/Luxottica, a significant amount of retailers do not consider that Luxottica products are important to the extent that they would generate customer traffic.

(b) The Merged Entity's retail network would be too small and the Merged Entity would not be able to expand this network rapidly. The Merged Entity would operate approximately 6 000 stores post-Transaction, compared to a market of 76 000 doors in the EEA. EssilorLuxottica sells 18 million eyewear units through more than […] rival doors in the EEA, accounting for more than […]% of its eyewear sales. It would not be feasible for the Merged Entity to cover the sales made by […] rival stores with its network of […] doors. Across the past three years, GrandVision's retail network has increased by […] stores per year in the EEA.

(c) The Merged Entity would face retaliation if it were to engage in an input foreclosure strategy. If it were to engage in the foreclosure to rival retailers of a single product, then these retailers could retaliate by switching supplier for the remainder of products currently sourced from EssilorLuxottica. The volume of Essilor lenses is very substantial for some retailers, compared to the volume of Luxottica eyewear sourced.

(d) GrandVision is not large when comparing to its retail competitors. It is not an all-round player but a mass-market chain focusing on low to mid-range products.

(e) EssilorLuxottica's past retail acquisitions are a good case example to show that it would not engage in input foreclosure once it acquires GrandVision's retail presence. EssilorLuxottica's policy is to offer the same price list applicable in the Eurozone. Even in jurisdictions where EssilorLuxottica has a sizable retail presence, such as in the US, South America, or Australia, it ostensibly still serves its wholesale customers to the best of its ability.

(f) As set out in its economic paper in response to the Commission's article 6(1)(c) decision, the Notifying Party submits that the level of customer churn would likely be moderate. First, referring to the Commission's decision in case M.8394 Essilor/Luxottica, customer service plays a key role, and customer loyalty would therefore reduce the expected level of churn. […] (as shown in Figure 15 below), suggesting that rival retailers would therefore be expected to retain a large proportion of their customers. Second, the density of the Merged Entity's retail network limits the amount of customers that would churn, as it would be more difficult to attract customers to own stores […].

Figure 15 – Loyalty analysis submitted by the Notifying Party[352]

[…]

(368) The Notifying Party has submitted an economic paper on its economic assessment of vertical theories of harm in Europe at the national level.[353] In this paper, the Notifying Party uses a vertical arithmetic analysis to calculate the 'critical churn rate' that would be required in order to render an input foreclosure strategy profitable in the event that 5, 10, 25 or 50% of doors selling EssilorLuxottica eyewear were to be foreclosed with supply of either sunglasses or eyewear (sunglasses + frames). The paper concludes that that rate would be particularly high for such a strategy to be successful, namely between […]% of customers that would need to switch away from foreclosed retailers for the foreclosure of sunglasses, and […]% for eyewear overall in the EEA. The Notifying Party submits that it would therefore be highly unlikely that there would be an incentive to foreclose. […]. The reasons for this would be that (i) the Parties' retail presence being moderate or low, and (ii) the margin […]. In its response to the Commission's 6(1)(c) decision, the Notifying Party submitted an economic paper setting out that also at local level, critical churn rates are high […] for most local areas and thereby concludes that input foreclosure at the local level is unlikely to materialise post-Transaction.

352 Notifying Party's Economic response to the 6(1)(c) decision, figure 1.

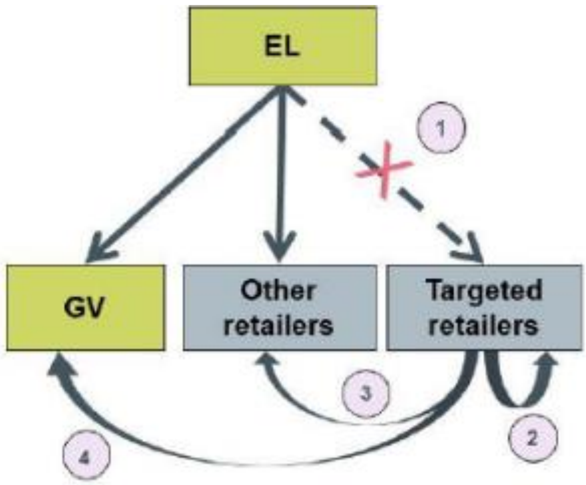
353 RBB paper 'Economic assessment of vertical theories of harm in Europe', Form CO Annex HVE 7.2.

(369) Figure 16 below is provided as a background to the full foreclosure theory of harm discussed by the Notifying Party. That is based on the hypothesis that the wholesale of Luxottica's eyewear currently is sold for […] to its own retail channels, for […] to GrandVision's retail outlets, and […] to other opticians that purchase Luxottica's eyewear. The theory suggests that Luxottica could fully foreclose a share of opticians who currently purchase its eyewear for the entirety of its product portfolio. As a result, a fraction of eyewear purchasing consumers (the 'churn rate') would switch away from these foreclosed opticians. Depending on the retail presence of the Merged Entity (considered at EEA and national level), a fraction of these diverted customers would then switch to the Merged Entity's outlets while others would switch to outlets of rivals. This is illustrated in Figure 16 below.

Figure 16 - Retail distribution of Luxottica eyewear in Europe[354]

[…]

Figure 17 – Stylised input foreclosure assumed in the Notifying Party's assessment of potential theory of harm[355]



(370) The paper furthermore acknowledges that it would be possible for even a partial input foreclosure strategy to be profitable, in cases where total input foreclosure is not, although the paper does not provide a detailed analysis for this as a result of the current Transaction. Instead, the paper only focuses on the reasons for which a total input foreclosure strategy would not be profitable (moderate retail presence, scope for input substitution […]) and concludes that the same reasons would be equally applicable to a scenario of partial input foreclosure. In the economic response to the Commission's 6(1)(c) decision, the Notifying Party submits a more detailed assessment of the scenario of partial input foreclosure:

(a) EssilorLuxottica's past practice would be inconsistent with **partial** input foreclosure. In Italy, the UK and the USA, […].

354 Form CO, Annex HVE 7.2, figure 3.
355 Form CO, Annex HVE 7.2, figure 4.

(b) The degree of customers that would switch is likely to be moderate.

(c) The market for retail of optical products would be dynamic and characterised by low entry and expansion barriers.

(371) Finally, the Notifying Party submits that the foreclosed retailers may retaliate to this strategy by reducing their purchases of EssilorLuxottica's lenses and/or frames, thereby further reducing the profitability of an input foreclosure strategy for sunglasses and/or frames.

(372) The Notifying Party further concludes that an input foreclosure strategy as regards prescription frames or sunglasses would not have anticompetitive effects, on the basis of the following factors:

(a) A vast part of rival retails do not stock EssilorLuxottica eyewear and would not be affected.

(b) Foreclosed retailers would unlikely exit the market, as only a proportion of their inputs are sourced from EssilorLuxottica.

(c) Retail markets are fragmented, entry is common and easy. As a result, even if retailers were foreclosed, more retailers would enter to offset the effects of any foreclosure.

(d) Opticians can rely on very high retail margins for lenses to absorb potential price increases in eyewear.

(e) When faced with price increases at independent opticians, consumers already have the option to switch today, as retail chains are according to the Commission's findings cheaper than independent opticians.

(f) There are no barriers in the wholesale markets for frames and sunglasses, there have been recent entrants.

(g) Partial input foreclosure could not result in anti-competitive effects. […].

Table 6 – Luxottica revenue of frames accounted for by licensed brand[356]

[…]

Table 7 – Luxottica revenue of sunglasses accounted for by licensed brand[357]

[…]

Figure 18 – Percentage of opticians without Luxottica frames and sunglasses products[358]

[…]

356 Form CO pages 335-336.
357 Form CO pages 337-338.
358 Form CO, page 334.

Prescription frames

(373) The Notifying Party submits that the Merged Entity would also not have the ability to foreclose as regards prescription frames:

(a) The findings in M.8394 Essilor/Luxottica would ostensibly support the conclusion that Luxottica would not have the ability to foreclose in the present case.

(b) Market shares would be modest both at EEA level and on a national basis. EssilorLuxottica would face fierce competition.

(c) Even EssilorLuxottica's strongest brand has no 'must have' status. First, a substantial proportion of optical retailers across the EEA do not stock Luxottica products, as shown in Figure 18, indicating that retailers can and do operate without stocking Luxottica brands. Second, the lack of 'must have' status for Luxottica brands would be demonstrated by the Commission's decision in M.8394 Essilor/Luxottica where it concluded that Luxottica's position in frames would not allow it to foreclose competitors in lenses. Third, EssilorLuxottica's brand trackers, the result of a survey on a panel of what could be considered the Ray-Ban customer target,[359] indicate that Ray-Ban was the first choice consideration in prescription frames […] of respondents in 2016.

Sunglasses

(374) The Notifying Party in addition submits the following that the Merged Entity would not have the ability to foreclose as regards sunglasses:

(a) The market for sunglasses would be highly dynamic and characterised by the presence of a number of strong global players and hundreds of smaller players. There would be a very large amount of alternative brands to the Notifying Party's brands to which rival retailers could switch.

(b) EssilorLuxottica's sunglasses are not a must-have for retailers. First, about [40-50]% of opticians in the EEA operate without stocking Ray-Ban products. Second, the Commission's decision in M.8394 Essilor/Luxottica indicated that there are suggestions that Luxottica would not be a crucial trading partner for eye-care professionals, and that the strength of Luxottica's brands would not be such as to allow it to leverage its position in excess of its market share.

(c) Sunglasses are not an important input for opticians. Sunglasses represent a small part of an opticians business, which therefore limits EssilorLuxottica's bargaining power vis-à-vis opticians, and could therefore not substantially affect an optician's competitiveness as regards products other than sunglasses.

(375) The Notifying Party furthermore submits that an input foreclosure strategy as regards sunglasses would not have anticompetitive effects, because sunglasses are more fashion-driven products, not considered as core products, with lower retail margins than on ophthalmic lenses, and therefore it would be unlikely that a foreclosure strategy would significantly affect retailers.

359 Respondents […].

8.3.2. The Commission's views: ability to foreclose

(376) The Commission considers that both frames and sunglasses constitute an important input for opticians, as these represent a significant source of product differentiation for the retailer as there is high brand visibility to end-consumers.[360] In the sections below, the Commission assesses whether the Merged Entity has a significant degree of market power, whether it would have the ability to negatively affect the overall availability of inputs for opticians, and whether opticians would have counter-strategies available to reduce their reliance on EssilorLuxottica.

8.3.2.1. Relevant considerations in past practice and differences with current proceeding

(377) The Commission finds that the Notifying Party's observations concerning past decisional practice do not exclude EssilorLuxottica's ability to engage in input foreclosure. In the first place – as a general principle, the findings of the Commission concern individual cases and do not bind the Commission. In the second place, the reliance on such precedent is misplaced.

(378) In M.8394 Essilor/Luxottica, the Commission found that Luxottica had a certain degree of market power in the wholesale market for sunglasses,[361] and that there were indications that this could also be the case for frames.[362] However, it concluded that this market power was insufficient to allow it to foreclose lens competitors.[363;364] The Commission's decision also stated that the strength of Luxottica's brands would not allow it to successfully leverage its position beyond its market position in the EEA.[365] The Commission in this regard notes that it did not conclude in M.8934 Essilor/Luxottica that EssilorLuxottica would not have significant market power. Significant market power does not automatically correspond to the ability to foreclose, but is a prerequisite for it. In the precedent case, leaving aside whether or not the Notifying Party had significant market power, the Commission found that its market power was not enough to support the ability to engage in the conglomerate theory of harm in that proceeding.

(379) With, respect to the Notifying Party claims that in its previous Essilor/Luxottica concentration assessment the Commission would have established that it does not have significant market power vis-à-vis opticians, the Commission also points out that the assessment of vertical effects of the current proceedings concerns the ability to foreclose eyewear (frames or sunglasses) in order to (i) reduce the competitiveness of opticians and (ii) to divert sales from competing opticians to the Merged Entity's own stores.

(380) This is different from the assessment of the ability in the previous case whereby the assessment concerned the ability for the combined undertaking of Essilor and Luxottica to convince a large enough amount of optical retailers to purchase Essilor's lenses. In particular, in the previous case, the Commission found that

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360 NHMG, paragraph 34.
361 M.8394 Essilor/Luxottica, recital 420.
362 M.8394 Essilor/Luxottica, recital 436.
363 M.8394 Essilor/Luxottica, recital 426 (sunglasses) and recital 435 (frames).
364 The finding of a 'certain degree' of market power does not exclude that Luxottica had significant market power. The Commission did not have to conclude on that matter as there were indicators that the merged entity would not be able to foreclose lens suppliers.
365 M.8394 Essilor/Luxottica, recital 429 (sunglasses) and recital 445 (frames).

Luxottica had a certain degree of market power. The Commission assessed whether this market power would allow it to induce retailers that purchase its eyewear into buying a bundle of this eyewear along with Essilor's lenses, to the extent that rival lens suppliers would no longer have access to a substantial part of the relevant markets (and therefore significantly lose scale) for ophthalmic lenses, and as a result be foreclosed. The differences with the current proceedings and their implications are set out in the recitals below.

(381) First, while the previous case looked into the effects on the markets for lenses, the current case concerns the impact on the markets for eyewear upstream and the market for retail sale of optical products downstream. Even more, the previous case concerned an assessment of conglomerate effects on upstream rivals (those that supply optical retailers), while the assessment in the current case concerns vertical effects on rival retailers and their customers.

(382) Second, in order to foreclose lens producers to the extent that these would face a reduction in their competitiveness, it was essential for the theory of harm in the previous case that Luxottica would be able to leverage its strength on a large amount of opticians as the Commission had to show that the lens suppliers' competitiveness would be impacted. This does not apply to the current case. In particular, it is not required that a large amount of opticians would accept such bundle of eyewear and lenses, as was the assessment of the previous case, in order to establish whether the Merged Entity would have the ability to foreclose rival opticians with eyewear in order to divert customers of those foreclosed rival opticians to own stores, which is the assessment of the current case.

(383) Third, for the purposes of the current proceedings, it is essential to take into account the differentiation that the wholesale and retail markets are characterised by (as set out in section 6.1), namely in terms of products offered on the market and customer preferences. These preferences influence the extent to which customers of rival retailers would be driven to switch stores and may depend on the particular segment of the market concerned. In M.8394 this differentiation was less important for the foreclosure strategy analysed, which relied on convincing opticians to increase their procurement of Essilor lenses, an undifferentiated product, by deteriorating supply conditions of frames, a differentiated product. In the current proceedings the potential input foreclosure strategy has a direct impact on customer behaviour; they may switch stores directly as a result of input foreclosure of frames. Therefore the Commission considers metrics beyond market shares are more relevant to its assessment in this case than in the previous case.

(384) Fourth, despite the fact that both cases are of non-horizontal nature, there are strong differences between this case and M.8394 Essilor/Luxottica in the nature of degree of market power which is necessary to find non-horizontal concerns. In Essilor/Luxottica, the Commission found that, while Luxottica had a certain degree of market power, this was not sufficient for it to leverage this to force retailers into also purchasing Essilor's lenses. In particular, the market investigation found that

45% of retailers considered Luxottica's brands to be important to generate customer traffic.[366]

(385) In this case, partial input foreclosure would mean that the Merged Entity would have enough market power to influence sourcing conditions for retailers, instead of incentivising these retailers to source more Essilor lenses. This would enable the Merged Entity to drive such customers to its own retailers for these products, which is a different standard than the one required to increase traffic in a given retailer's store. While it is true that market power in the decision in M.8394 Essilor/Luxottica was considered insufficient to incentivise opticians to source bundles from EssilorLuxottica, the decision did not consider whether it was sufficient to incentivise final consumers to switch to GrandVision stores which would have cheaper EssilorLuxottica products, which is the key issue in the assessment of success of input foreclosure in the current proceedings. In the previous case, moreover, the benefits of foreclosure for the Merged Entity would have been to obtain the wholesale margin in lenses, while in the current case the Merged Entity would obtain the retail margin in frames, lenses or sunglasses. As the latter is significantly higher than the former, the required amount of customers willing to switch is significantly lower compared to the previous case.

(386) In this regard, the Notifying Party submitted that it would be more difficult to induce end-customers to switch away from their preferred optician, than to require opticians to switch between wholesale lens suppliers, as lens products have limited brand recognition. However, the Commission notes that this does not take into account the amount of switching that is required for each theory of harm to result in anticompetitive effects, in particular because it was required for the previous case that a very large number of opticians switched in order to sufficiently affect the scale of lens rivals, while the quantitative analysis set out in section 8.2 shows that limited switching of consumers is required in order for the theory of harm in the current proceedings to result in anticompetitive effects. A more relevant comparison in that regard would be between the degree of market power needed to increase eyewear prices by 5-10% and the degree of market power needed to ensure that a sufficient amount of opticians change their lens offering to Essilor exclusively to the extent that the scale of lens rivals is sufficiently negatively affected.

(387) Fifth, the Commission found in the previous case that only a minority of surveyed opticians considered Luxottica's brands important to generate customer traffic. This was a part of the basis for the conclusion in the previous case that this would not be sufficient to foreclose lens competitors. While not a majority, in the previous case, a substantial share of opticians (40% of independent opticians and 50% of retail chains) considered Luxottica's brands generate customer traffic.[367] Therefore, the

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366 In M.8394 Essilor/Luxottica, the Commission found market power not to be sufficient to force retailers in purchasing Essilor's lenses, but it did find that Luxottica had a certain degree of market power (recitals 420–425). In particular, it found that around 40-50% of retailers in the EEA (retailers that were customers of Luxottica at that time, i.e. retailers that sold Luxottica products in their stores, were contacted) considered Luxottica's brands to be important to generate customer traffic (recital 428).

367 In M.8394 Essilor/Luxottica, the Commission found market power not to be sufficient to force retailers in purchasing Essilor's lenses, but it did find that Luxottica had a certain degree of market power (recitals 420–425). In particular, it found that around 40-50% of retailers in the EEA (retailers that were customers of Luxottica at that time, i.e. retailers that sold Luxottica products in their stores, were contacted) considered Luxottica's brands to be important to generate customer traffic (recital 428).

Commission considers for the purposes of the current proceedings that it is likely that EssilorLuxottica's eyewear brands are able to attract a certain amount of customers to opticians, and to its own stores in particular in the event that rival opticians would no longer be able offer these (or offer these at deteriorated commercial conditions).

(388) Sixth, a finding of ability cannot be made in the abstract, but is interlinked to the specific theory of harm that is investigated and interconnected with the other elements of the assessment. In particular, the concept of ability to operate a mixed bundling strategy (i.e. a conglomerate concern) discussed in the previous case cannot be confused with the concept of ability to foreclose competitors in the context of an input foreclosure theory of harm. Likewise, the existence of market power to launch such a strategy cannot be made in the abstract, but it is concretely linked to the strategy that the Merged Entity may enact in a given market.

8.3.2.2. EssilorLuxottica's market shares of the wholesale of frames and sunglasses are high

(389) EssilorLuxottica has high market shares in the wholesale markets for frames and sunglasses. At the EEA level, the Notifying Party has a [40-50]% market share in the wholesale supply of sunglasses and [20-30]% in the wholesale supply of frames.

(390) As shown in section 8.1, these market shares are higher in certain countries in the EEA.[368] In addition, market shares are higher also for branded products and products priced about […] EUR. However, the Notifying Party was not able to provide market shares for all countries and or segments on this basis.

(391) Furthermore, as noted in section 6.1.1.2 on the analysis of the relevant product market, there is a significant amount of differentiation in the wholesale and retail markets for frames and sunglasses, with a large multitude of brands positioned differently along the value-luxury spectrum, as well as regarding the classification into a particular style (e.g. lifestyle, sports, fashion, …). Due to the broad differentiation in products offered on the market and customer preferences, and the large amount of possible classifications, it is not possible to delineate the exact relevant product market segments beyond the overall wholesale markets for frames and sunglasses. Nonetheless, as noted in section 6.1.1, there are limitations with respect to switching by consumers. This is also supported by the results of the market investigation whereby responses from a very large amount of optical retailers has indicated that their customers would switch stores in the event of a worsening of the price and/or availability of EssilorLuxottica's frames or sunglasses at all stores competing with the Merged Entity (as described in section 8.3.2.7). The Notifying Party in particular is strong in branded products and its most-sold brand Ray-Ban is considered the strongest brand in the industry with no contenders being close (see section 8.3.2.4).

(392) The Commission from this perspective notes that EssilorLuxottica has a significant position in the market.

(393) The finding about the relevance of market differentiations is corroborated by the quote referred to of a retailer active in Belgium and the Netherlands as quoted in

[368] Market shares in the wholesale market for lenses are highest in France ([70-80]%). Market shares in the wholesale market for frames and sunglasses are highest in Italy ([40-50]% for frames, [60-70]% for sunglasses).

recital (391). The quote supports the finding that EssilorLuxottica's products are similarly relevant for a supplier of branded products in countries with somehow different wholesale market shares. The market share of EssilorLuxottica in frames and sunglasses namely differ between Belgium ([20-30]% in frames and [20-30]% in sunglasses) and the Netherlands ([10-20]% in frames and [30-40]% in sunglasses), while EssilorLuxottica's sunglasses and frames seem to be similarly relevant for this retailer in both countries.

(394) This understanding is furthermore supported by Figure 27, which shows that Ray-Ban in the Notifying Party's brand tracker for frames in Germany […]. However, the penetration rate of Ray-Ban is […]. The importance of penetration rates is also mentioned by an optical retailer:

(395) '*The Company identified that coverage is an important indicator of market power, namely the amount of stores in the market that carry the Ray-Ban brand. The Company explained that the very high proportion of stores that carry Ray-Ban in-store shows that the brand has an importance that goes beyond mere sales. A large number of stores want to carry the Ray-Ban brand because it drives additional traffic and having such a key brand available improves the image of the store with consumers*.'[369]

(396) Therefore, the Commission finds that market shares should be looked at together with penetration rates, as done in the individual country assessments in section 9.

(397) As noted in recital (391), EssilorLuxottica's frames and sunglasses products are also important to generate customer traffic. Therefore, the Commission further considers that their importance, and therefore EssilorLuxottica's market power in frames and sunglasses, is not fully reflected by their market shares.

(398) Again, as also indicated in recital (577), the Commission finds that EssilorLuxottica's commercial policy is designed to protect its brand equity. As a result, the Commission considers that the existence of such a commercial strategy would further support the finding that market shares alone do not fully capture the extent to which its products enjoy market power. The market test indicates that retailers are restricted in promoting its products in certain ways, which has an impact on their ability to increase sales, e.g. through promotional campaigns.

(399) A retail chain explains this by the following statements.[370] In particular, it explains that it is not able to expand sales of EssilorLuxottica's product Ray-Ban, due to limitations imposed by EssilorLuxottica upon this retailer. The retailer understands that this strategy is for EssilorLuxottica to avoid that its Ray-Ban brand would become a commoditised mass-market product.

(a) 'Secondly, the Company explained that EssilorLuxottica's wholesale market shares also depend on the strategy it implements with the retailers it works with. If a retailer is limited in the type of promotions it can do, then this means that EssilorLuxottica's wholesale market share will not be as high as it could otherwise be. The Company explained that […]'

369 Doc ID3348.

370 Doc ID3348.

(b) *'The Company considers this a key point. EssilorLuxottica could grow its wholesale market share significantly by allowing retailers to actively advertise and promote without any limitation […] the fact that they sell Ray-Ban products in store. However, EssilorLuxottica has made a conscious choice (until now) to restrict retailers to do this, to preserve the brand image of Ray-Ban as an aspirational brand that commands a premium. Allowing promotions would increase sales of Ray-Ban, and so EssilorLuxottica's market share, but it would also risk turning Ray-Ban into a commoditised mass-market product and devalue the brand. EssilorLuxottica is therefore prioritising brand value over the market share it could easily capture.'*

(400) The Commission further considers that the influence by EssilorLuxottica on retailers' freedom to offer promotions on its brands (recital (577)) has been referred to in the market investigation:

(401) *'The marketing rules are very strict. We do not market any price reduction and it's ok - BUT we often see Synoptik having campaigns with price reduction[…]';*[371] *'Luxottica is a clear market leader in eyewear. They are able to set rules e.g. how to promote their products. As the brands are of high importance to customers and thereby to the retailers, they have a strong negotiation power'.*[372]

(402) The Merged Entity's market position also has to be assessed in light of the overall market structure, where, for branded products in particular, only a few sizable alternative suppliers are active. Indeed, the market structure is characterised in several countries as oligopolistic, where EssilorLuxottica in combination with the second, third and fourth largest supplier occupy more than half of the market.[373] For some countries, no breakdown per individual supplier was provided by the Notifying Party.

(403) Therefore, as noted in the Non-Horizontal Merger Guidelines paragraph 38, a decision of the Merged Entity to restrict access to inputs reduces the competitive pressure exercised also on the remaining input suppliers.

8.3.2.3. EssilorLuxottica's selection of brands is large, it is more difficult to serve customers equally without sourcing from EssilorLuxottica

(404) In this section, the Commission sets out that it considers that brands are important for opticians' businesses, and that EssilorLuxottica has a strong and large portfolio of brands of frames and sunglasses.

(405) In the first place, the Commission considers that brands are important for opticians' businesses. This conclusion is supported by the following considerations.

(406) First, it appears that for successful brands such as Ray-Ban, […].[374] This shows that eyewear suppliers of successful brands enjoy market power as they can […]. This

371 Q11 to optical retailers, question 43.

372 Q12 to optical retail chains, question 46.

373 Form CO, annex CO 7.2.

374 Response to 6(1)(c), paragraph 337.

seems to be the case for sunglasses, as shown in the Tables below. As regards frames, […].[375] In particular, […]. In addition, for sunglasses specifically, […].

Table 8 – Wholesale and retail margins for Luxottica and Ray-Ban products - frames[376]

[…]

Table 9 - Wholesale and retail margins for Luxottica and Ray-Ban products - sunglasses[377]

[…]

(407) This is in contrast to the […]. For this product, the Commission in its decision of M.8394 Essilor/Luxottica found, inter alia, that lenses are a relatively commoditised product and that opticians are able to switch suppliers, facilitated by the fact that there is low brand awareness of lens products among end consumers.[378] Here, […]. For instance, […].[379]

(408) In that regard, the […] margins realised by EssilorLuxottica on the wholesale of frames is also indicative of the importance of brands and therefore the extent to which these give rise to market power. For instance, […].[380] That substantiates the manifestation of EssilorLuxottica's market power.

(409) Furthermore, the extent that competing suppliers of frames or sunglasses would enjoy similar margins[381] has to be seen in light of its position in the market as the largest supplier. If, ostensibly, there would be no difference in market power in a given market, an economic actor acting as a supplier on that market would be able to enjoy additional sales compared to its rivals by accepting to sell its products at lower margins. In the current case however, it seems that while EssilorLuxottica is the largest supplier in the EEA and in most countries within the EEA,[382] […].[383] This is therefore indicative of its market power.

(410) Also, this has to be seen in view of the broadness of EssilorLuxottica's portfolio of products (as discussed in recitals (389) ff.) Because of the broadness of its portfolio, it seems to be a supplier that is difficult to avoid (considering also the needs of most opticians to offer a broad portfolio of products on their shelves), as indicated by EssilorLuxottica's ability to extract […].

(411) Moreover, even if rival suppliers of eyewear were supposedly found to also enjoy market power, such finding would not inhibit a finding of market power enjoyed by the Merged Entity. Multiple firms are able to enjoy market power in the same

375 […].
376 Response to RFI 11, table 38.1.
377 Response to RFI 11, table 38.2.
378 M.8394 Essilor/Luxottica, paragraphs 693, 698-700.
379 Response to RFI 1, annexes Q9 and Q10.
380 Annex RFI 17 Q 1.1. […].
381 As indicated in M.8394 Essilor/Luxottica, paragraph 430 ff, Luxottica enjoyed margins that appeared not to be substantially higher than those of its main competitors.
382 Apart from in Denmark, Finland, Germany, Iceland, Norway and Sweden, as indicated by the data provided by the Notifying Party in the Form CO annex 7.2, where there is a larger supplier than EssilorLuxottica in the markets for frames.
383 M.8394 Essilor/Luxottica, paragraph 430 ff.

market, and, as noted by the quantitative analysis in section 8.2., the required amount of market power needed to divert consumers of frames to own stores in particular would be low in order for an input foreclosure strategy to be profitable to the Merged Entity and for this to result in deteriorated conditions on the respective wholesale and retail markets.

(412) Second, the Commission cannot exclude that brands may be of particular importance for certain customer segments. Feedback from the market investigation for instance indicated that this would be the case in particular for young customers: '*Many customers (in particular young customers) are increasingly likely to have determined which brand they will buy prior to visiting an optical retail store, and they will switch stores to find the brand they have in mind.*'.[384]

(413) Third, in the market investigation of the proceedings in case M.8394 Essilor/Luxottica, it was found that a majority of responding market participants did not consider sunglasses brands to be essential or very important to attract customers to their stores. Service offered to customers was considered more important. Still, availability of sunglasses brands was considered essential by 14.5% of independent opticians and 18% of retail chains, and considered to be very important by 32% of independent opticians and 33% of retail chains. Availability of brands of frames was considered essential by 13% of independent opticians and 15% of retail chains, while 31% of independent opticians and retail chains considered it to be very important to attract customers.[385]

(414) The main theory of harm in that case concerned the ability of EssilorLuxottica to foreclose lens suppliers on the basis of Luxottica's strength in eyewear. In order to foreclose other lens suppliers, EssilorLuxottica would have to have been able to foreclose a significant number of opticians. The credibility of a 'threat' to force opticians to buy a bundle was also dependent on the extent to which Luxottica was essential (or a must-have) for these retailers. This does not apply in the theory of harm of the current case. The ability in the current case is not dependent on the extent to which Luxottica's eyewear are a must-have for retailers, but rather is dependent on whether a certain amount of consumers would switch stores when no longer finding Luxottica eyewear at rival retailers.

(415) In this regard, the findings of the market investigation in the proceedings of case M.8394 Essilor/Luxottica, as mentioned in recital (384), indicate that brands are able to generate customer traffic for, although not a majority of customers, still a substantial amount of customers.

(416) Fourth, in the market investigation of the current proceedings, the Commission also asked retailers to what extent specific brands are important to attract customers. In this regard, retailers indicated that specific brands for frames and for sunglasses are very important to essential to attract customers to a shop and make a purchase, even more so than price.

(417) The Commission takes note that other factors are also seen as very important to essential (such as in-store appearance or customer service), but understands that

384 Questionnaire Q12 to optical retail chains, question 53.
385 M.8394 Essilor/Luxottica, paragraphes 428b and 444c.

these factors are complementary and cannot replace the availability of brands for customers specifically seeking specific brands.[386]

(418) The Commission has further asked market participants to score such parameters in terms of importance for their customers to choose a particular optician on a scale of 1 (least important) to 5 (most important). While 'service' or 'assistance from the optician in choosing frames' is indeed rated higher than 'availability of particular models', the difference in the rating is not that large. For frames, independent opticians rate service as 3.97 and assistance from the optician in choosing frames as 4.22 compared to availability of particular models as 4.12. Retail chains rate service as 4.18 and assistance as 4.09, compared to availability of particular models as 3.95.[387] For sunglasses, independent opticians rate assistance as 3.56 compared to 4.52 for particular models of frames. Retail chains rate assistance as 3.14 compared to 4.52 for particular models.[388] Therefore, the Commission considers that the existence of other factors driving customers to choose a particular optician do not significantly obstruct particular models (or brands) to do so as well.

(419) In the second place, the Commission finds that EssilorLuxottica has the widest and strongest portfolio among its competitors. Concerns from market participants arise from the extent to which brands drive a certain amount of customers to stores, combined with the strength and importance of EssilorLuxottica's eyewear portfolio. While as indicated in the preceding recital, the Commission indeed finds that brands to a certain extent are able to drive customers, the market investigation also points out that EssilorLuxottica operates strong brands and that other eyewear suppliers are less preferred alternatives. This conclusion is also supported by the following considerations.

(420) First, feedback from the market investigation indicated that EssilorLuxottica's eyewear portfolio is rated as significantly stronger (i.e. 'desirable') and broader than competitors, by both independent opticians and chains.[389] In terms of strength, very strong feedback was received that EssilorLuxottica's eyewear portfolio is by far the strongest (i.e. 'most desirable').[390] Also, the market investigation provided strong feedback that Luxottica's eyewear portfolio is by far the broadest.[391]

(421) Second, the Commission also asked to what extent it would be difficult to serve consumers equally when rival retails would no longer have access to

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386 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 25 and Questionnaire to optical retail chains – Q2 – question 26.

387 Questionnaire Q11 to independent optical retailers, question 53 and Q12 to optical retail chains, question 54.

388 Questionnaire Q11 to independent optical retailers, question 60 and Q12 to optical retail chains, question 61.

389 The Notifying Party claims that the market investigation showed that its brand portfolio is 'only desirable', and therefore not 'must-have', thereby seeming to implicitly suggest that this is the outcome of classifying its brand portfolio along these categories. However, this was not the design of the market investigation, which namely asked market participants about eyewear suppliers in terms of desirability of their brand portfolio, where it was rated by far the strongest. This does therefore not draw conclusions as to whether the Notifying Party's brand portfolio is 'only desirable' and 'not must-have'.

390 Questionnaire Q11 to independent opticians, question 41, and questionnaire Q12 to optical retail chains, question 43.

391 Questionnaire Q11 to independent opticians, question 42, and questionnaire Q12 to optical retail chains, question 44.

EssilorLuxottica's portfolio. In this regard, opticians indicate that they would struggle/not be able to serve customers equally when replacing EssilorLuxottica with (a combination of) different eyewear suppliers. Several retail chains submitted not being able to serve customers equally when replacing EssilorLuxottica with a combination of different eyewear suppliers. The main reasons for this appear to be the fact that EssilorLuxottica would have very strong brands. For sunglasses, it is indicated that these are considered a fashion item, for which there is a category of customers that would particularly choose Ray-Ban. In addition, Luxottica's portfolio would attract customers to stores.[392] One retail chain indicated that Ray-Ban is also used as part of promotional offers (e.g. 3 for 1), whereby therefore it is a more important brand that represented by its direct revenue or margins. The Commission notes in this regard that the feedback from retail chains indicates that Ray-Ban is important for their business and that not having access to it would be detrimental to their business.[393]

(422) The finding that it would be more difficult for retailers to serve customers equally when no longer having access to EssilorLuxottica's portfolio is furthermore also corroborated by the statement made by the next largest retail chain in Belgium and the Netherlands besides GrandVision as quoted in recital (412).

(423) This is also voiced by independent opticians. A vast majority of independent opticians indicated that they would struggle to serve customers equally. In this regard, on the explanatory follow up question, when referring to EssilorLuxottica's brand strength, market participants refer both to Ray-Ban and EssilorLuxottica brands more broadly. Against this background, the Commission considers that the following statement would further confirm the importance of EssilorLuxottica as a supplier of frames and sunglasses, due to its strong and broad portfolio.

'Luxottica owns a large number of world-renowned brands, recognized as fashion and trend brands. With the customers fully aware of the trends, some brands are unavoidable, without jeopardizing the organization's sales.'; 'Because Luxottica have big and well knowned brands, that if they are exclusive to their stores it would be devastating to the rest of the optical stores. People search their brands.'; 'Uniqueness of the brands which are in the Luxottica portfolio.';'all shop is ray ban'; 'The customer wants the brand Ray Ban! We have to list the brand even if they have high requirements for volume. some shops are delisted. The marketing rules are very strict. We do not market any pricereduction and it's ok - BUT we often see Synoptik having campaigns with pricereduction. Uneven competition!!'; 'Einige Marken von Luxottico haben eine Marktbekanntheit die nicht zu ersetzen ist: ray ban, Armani, oakley'; 'Het portfolio van Luxottica is zo uitgebreid dat ons bedrijf niet buiten Luxottica kan. Er zijn wel andere toeleveranciers, maar zelfs een combinatie daarvan is niet in staat om geheel buiten Luxottica te kunnen.'; 'Customers often look for specific Luxottica brands'; 'Luxottica è proprietaria di brand molto attraenti per il cliente finale. Se il cliente desidera un brand famoso è necessario includere Luxottica nella offerta del proprio negozio. Se un cliente non è legato / affezionato ad uno specifico brand, altri fornitori possono soddisfare le sue

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392 This is in line with the findings of the Commission's decision in M.8394 Essilor/Luxottica, where 45% of respondents to the market investigation considered Luxottica brands to be important because they generate customer traffic, recital 428 (a).

393 Questionnaire to retail chains Q12, question 45.

richieste.'; 'Door Luxottica wordt een breed assortiment met hoge kwaliteit aangeboden, met sterke merken die door de consument worden gewenst.'; 'Luxottica führt die bekanntesten Marken'; 'The Luxottica brands are dominating by far'; 'Certain class of customers are greedy to brands'; 'Yes, I could, with a lot of limitations compared to the most famous brands requested by a lot of people (persol, ryban, oakley).'; 'Because they have brands of great relevance to the public'; 'Luxxotica own a lot of the desirable brands which would we could not substitute'; 'Mainly because of Ray-Ban brand.'; 'Les RAY BAN représentent à elles seules plus de 50 % des lunettes de soleil vendues dans le monde... Luxottica a de très loin toutes les plus belles marques et celles qui ont la plus forte notoriété.'; 'LUXXOTICA TIENE MARCAS MUY SOLICITADAS POR NUESTROS CLIENTES'; 'Luxottica Frames are the best quality and models. I can not replace so many luxottica brands'; 'It's hard to find a replacing for Ray-Ban, Oakley and Channel'; 'We would hardly be able to replace some of Luxottica´s brands - i.e. Ray Ban, Oakley. These are some of most - known brands and customers often require them; they are however also very inventive and of good quality + not too expensive - for now.'; 'Luxottica have brands that are very recognized in our country, like RAY BAN. They take advantage all these years of local sellers to upstading their brands and now they want to sell it to our customers by themselves, it's wrong in so many levels'; 'Because Luxottica hold brands with high demand'; 'we would not be able especially because of Ray Ban which is by far the most important brand in the whole eyewear business. Ray Ban and Oakley are most of the time the only brands in eyewear people on the street know!'.[394]

(424) The strength of EssilorLuxottica's portfolio of frames and sunglasses, in particular for branded products, as well as the ability for its frames and its sunglasses products to attract customers to stores, are also corroborated by the following statements of the next largest retail chain in Belgium and the Netherlands besides GrandVision:[395]

(a) 'Two of the most popular brands sold by [Company name], Ray-Ban and Vogue, are both from EssilorLuxottica and they account for around [45-65%] of [Company]s sales of sunglasses, [45-65%] of which is accounted for by Ray-Ban. It is in particular this brand that [Company] considers essential to its operations, not just in the segment of sunglasses, but for the business of its [Company banner] and [Company banner] chains overall. […] Table 4 presents the sales of frames by [Company], split up by brand. The relevance of EssilorkLuxottica frames for [Company] is similar to that at the national level for Belgium and the Netherlands, and for the EEA overall (see Table 1). Two of the most popular brands of frames, Ray-Ban and Vogue, are both from EssilorLuxottica and together with other EssilorLuxottica brands account for [10-20%] of [Company]'s sales of frames. Given that branded frames only account for [business secret] of total sales of frames, EssilorLuxottica brands account for a much higher share of [Company]'s sales of branded frames ([20-40%]).'

394 Q11 to optical retailers, question 43.

395 Doc ID3023.

(b) *However, the value of EssilorLuxottica's brands of frames and sunglasses for [Company] goes beyond the revenue and margin that [Company] makes on these products themselves: ● EssilorLuxottica brands of frames and sunglasses play an important role in generating traffic to [Company]'s physical stores, and their presence in these stores drives sales volumes; ● EssilorLuxottica brands of frames and sunglasses matter in promotions, in particular package deals. As explained in Section 3, [Company] offers various bundled sales campaigns, such as 2-for-1 or 3-for-1 promotions, which are an essential element of [Company]'s business model and commercial policy.*

(c) *Results for the Netherlands suggest that for sunglasses, close to [60-100%] of the sales currently generated by EssilorLuxottica brands would be lost if [Company] could no longer offer these brands. Results for frames suggest an expected share of around [60-100%] of the sales currently generated by EssilorLuxottica brands to be lost.*

(425) The strength of EssilorLuxottica's eyewear and its importance to attract customers to stores, is further corroborated by the following statements of a sizable optical retail chain whom the Notifying Party referred to as an example of retail customers being able to switch to other eyewear suppliers. The statement in particular shows the competing retailers' difficulties to satisfy demand when no longer sourcing frames and sunglasses from EssilorLuxottica (including Ray-Ban, i.e. its largest brand, but also its broad portfolio in general in terms of it catering to requirements of all types of customers), and that these attract customer traffic:

'[Company] would not be able to serve its customers equally when replacing the Luxottica's eyewear portfolio by a sourcing from a combination of different eyewear suppliers. Luxottica has a strong brand portfolio and 'must have' brands such as Ray-Ban. Ray-Ban is of paramount importance for optical resellers. It cannot be replaced by any other brand. Sunglasses are fashion items for a particular, but significant customer group. For these customers, brands are very important. Roughly [ ]% of [Company]'s sales (value) of sunglasses are of branded sunglasses, of which [ ]% are Ray-Bans. Ray-Ban is an essential brand to attract customers to stores and it causes direct and indirect turnover. [Company]has conducted a consumer survey which clearly indicated the paramount importance of the Ray-Ban brand ([Company]submitted the study to the Commission on 4 March 2020). [Company] displays the Ray-Ban brand at its entrances and shopping windows to attract customers. The brand strength of Ray-Ban for sunglasses means that it is also advantageous for an optical retail store to stock its frames. This is as consumers tend to recognize the brand and may consider it when purchasing frames. Additionally, Ray Ban frames are sold at a similar volume level as sunglasses. Many customers (in particular young customers) are increasingly likely to have determined which brand they will buy prior to visiting an optical retail store, and will switch stores to find the brand they have in mind. This is for instance the case for Ray-Ban, but also for other brands of the strong brand portfolio by Luxottica. [Company] would not be able to compete without Ray-Ban and Luxottica's strong brands.'[396] *Also: 'The most important brand in Luxottica's portfolio is Ray-Ban, which is simply essential as it is not substitutable at all. However, Luxottica has in*

[396] Questionnaire 12 to optical retail chains, question 45.

addition an unparalleled brand portfolio and it is iessential for an optical store to cater to the requirements of all types of customers and to offer a wide range of top brands. Thus, access to Luxottica's brand portfolio is crucial be able to appeal to all customers' tastes/requirements.'[397]

(426) Therefore, the Commission finds that EssilorLuxottica's portfolio is the strongest, and that remaining suppliers are seen as less preferred alternatives by optical retailers.

8.3.2.4. EssilorLuxottica owns leading brands with unparalleled brand awareness

(427) The market investigation pointed to the strength of EssilorLuxottica's position as a supplier of branded eyewear.

(428) Market studies have shown that its brand 'Ray-Ban' would be the strongest brand in the industry, strongly outperforming other brands. While no market studies were available for all the EEA countries, the different studies available at national level point to the strength of EssilorLuxottica's brands overall, that is, across countries. For the purposes of its assessment, the Commission considers that the findings about the strength of EssilorLuxottica's brands apply mutatis mutandis to the whole of the EEA, but in terms of this contributing to the ability to foreclose, also have to be looked at together with other factors such as market shares and penetration rates in a country by country assessment. This conclusion is also supported by the following considerations.

(429) First, this is also considered as such by the Notifying Party in the ordinary course of business, as shown for instance in Figure 19 below. This figure is an excerpt of one of Luxottica's 'brand trackers' where […].

Figure 19 – Ray-Ban brand tracker (Italy)[398]

[…]

Figure 20 – Ray-Ban brand tracker (Italy)[399]

[…]

(430) The Notifying Party submits that these brand trackers would not be representative, […]. However, the Commission notes in the first instance that […]. The second criteria appears to be that […], which the Commission understands to be very common in particularly in the segment of eyewear with a retail price point above EUR […]. The third criteria is that […], which the Commission finds to be an appropriate criterion to determine the relevant audience for these studies. In the second instance, the strength of Ray-Ban overall, thus beyond this particular target

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397 Questionnaire 12 to optical retail chains, question 72.3.1.

398 Slides 65-66, annex 5.4 EL to the Form CO. […].

399 Slides 67-68, annex 5.4 EL to the Form CO.

audience of the analysis in this brand tracker, is also corroborated by the other evidence in this section, such as the brand awareness study referred to in recital (394), the extent to which EssilorLuxottica brands generate customer traffic, as indicated in recital (395), feedback from the market investigation as to the extent EssilorLuxottica's brands determine the optician of choice for brand-conscious customers (recital (408)), the amount of customers that are considered to switch as per recital (409), feedback from a large retailer as per recital (410), as well as the finding of EssilorLuxottica's portfolio being the strongest as per section 8.3.2.4 and of EssilorLuxottica enjoying market power as per section 8.3.2.5.

(431) The retailer quoted in recital (410) also seems to indicate in particular that Ray-Ban would be a brand appealing to a wide audience: '*The Company notes that Ray-Ban is a very significant brand in the market. It is one of the few consumer brands in any industry that is embraced by all socio-economic grades in society – it appeals to all types of consumer'*.[400]

Figure 21 – Ray-Ban Brand Tracker: […][401]

[…]

(432) Furthermore, regarding sunglasses, the Notifying Party submits […]. However, the Commission finds, as shown in Figure 22, that Ray-Ban is […]. Furthermore, […].

Figure 22 – Likelihood to consider purchasing / competitor brands owned[402]

[…]

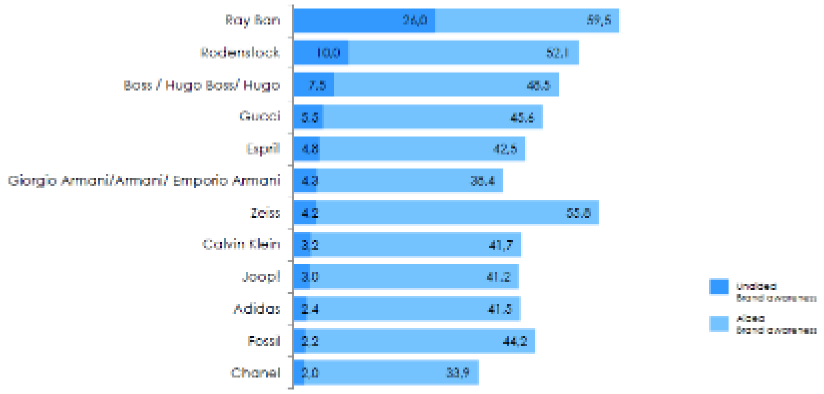
(433) Second, the Commission notes that the ability of a brand to generate customer traffic to an optician store in the sense that the absence of the brand would lead the customer to divert to a different store, is to a certain degree determined by the amount of unaided awareness of that brand. Unaided awareness is the extent to which customers know a brand, without being assisted for instance through marketing (or in case of a survey: without the surveyor asking whether the surveyed party is aware of the particular brand).

(434) In this regard, a competitor submitted a study conducted in Germany, Austria, Switzerland, Italy and Poland on aided and unaided brand awareness.[403] Ray-Ban is found to be the most spontaneously mentioned brand in all these countries, far ahead of other listed brands. For Italy in particular, the most of the other most mentioned brands are also brands that are operated by EssilorLuxottica (Armani, Dolce & Gabbana, Persol, Vogue).

400 Doc ID3348.
401 Response to the SO, figure 1.
402 Response to the SO, figure 5.
403 ID2660.

Brand awareness Germany

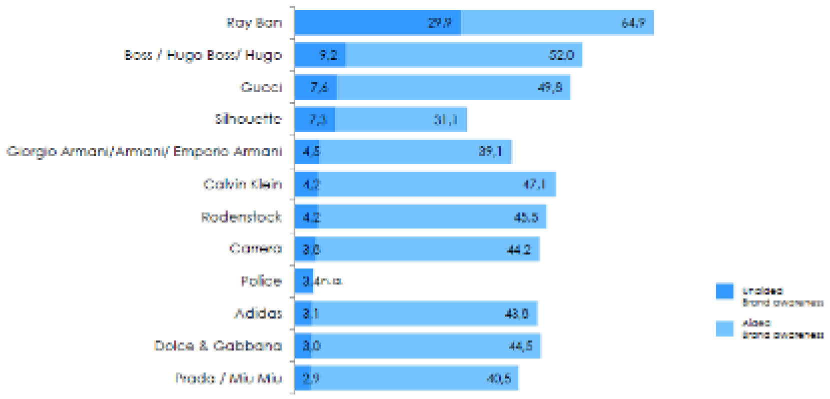
Top 12 best-known eyewear brands - in descending order of unaided awareness
Ø 2.4 brands are mentioned



Page 4 Eyewear brand awareness | Market research | November 2019 [redacted]

Brand awareness Austria

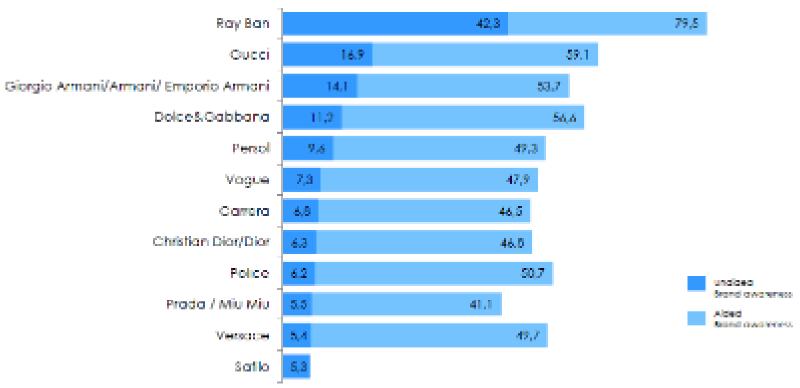
Top 12 best-known eyewear brands - in descending order of unaided awareness
Ø 2.6 brands are mentioned



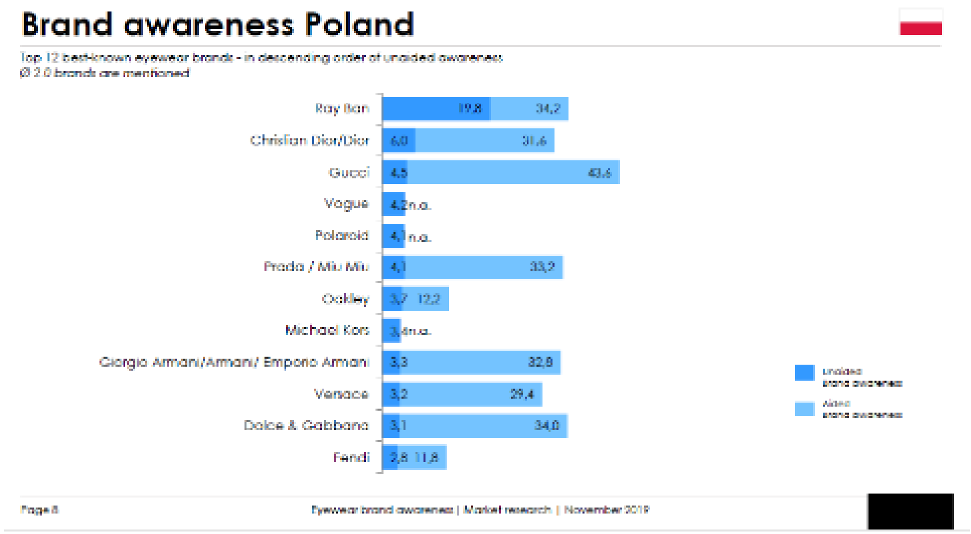
Page 5 Eyewear brand awareness | Market research | November 2019 [redacted]

Brand awareness Italy

Top 12 best-known eyewear brands - in descending order of unaided awareness
Ø 2.6 brands are mentioned



Page 7 Eyewear brand awareness | Market research | November 2019 [redacted]



(435) Third, EssilorLuxottica brands are considered important for retail chains as they generate customer traffic. In the proceedings of M.8394 Essilor/Luxottica, the Commission found in its market investigation that 45% of respondents to its survey considered Luxottica's sunglasses brands important for generating customer traffic (and this number was higher for chains (50%) than independent eyecare practitioners (40%)).[404] For frames, this amounted to a third of respondents (37% of chains, and 27% of independent opticians). In that case, it was relevant to consider the importance across all customers of lenses as the relevant theory of harm was whether the concentration between Essilor and Luxottica would allow their combined undertaking to obtain a substantial part of demand for ophthalmic lenses and to that end affect the competitiveness of other lens suppliers. In the current case, it is essential to assess the impact on the affected retail markets, which does not require a majority of optical retailers to be affected, as explained in section 8.3.2.1. Therefore, the Commission considers that the amount of retailers considering EssilorLuxottica's brands for frames and sunglasses to be important for generating customer traffic to be relatively high.

(436) Fourth, the Commission also investigated to what extent EssilorLuxottica's brands would be the first choice for consumers. In this regard, according to a market study represented in EssilorLuxottica's internal *brand tracker*, […].[405]

Figure 23 – Ray-Ban Brand Tracker: […][406]

[…]

(437) Fifth, these brand-trackers also indicate that […]. In Figure 24 below, the Notifying Party assesses the market and concludes that […]. In particular, the graph shows that Ray-Ban has the […]. Furthermore, of the countries in the EEA, […].

404 M.8394 Essilor/Luxottica, footnote 272.
405 Annexes 5.4.1 EL to the Form CO.
406 Annexes 5.4.1 EL to the Form CO.

Figure 24 - Ray-Ban Brand Tracker: […][407]

[…]

(438) Moreover, as shown in Figure 25, Ray-Ban is also considered by EssilorLuxottica internally as […]. A similar assessment was made for Ray-Ban […].

Figure 25 – Ray-Ban brand tracker (UK)[408]

[…]

(439) Figure 26 and Figure 27 show a similar finding […], namely that Ray-Ban is […]. For frames, the document however mentions that […].

Figure 26 – Ray-Ban brand tracker (Spain)[409]

[…]

Figure 27 – Ray-Ban brand tracker (Germany)[410]

[…]

(440) Sixth, The Commission also investigated to what extent EssilorLuxottica brands might be more important for certain segments of customers. In this regard, a large majority of respondents to the Commission's market investigation considers that EssilorLuxottica brands determine the optician of choice for most brand-conscious customers, for frames and even more for sunglasses.[411]

(441) Furthermore, the following statements of the next largest retail chain in Belgium and the Netherlands besides GrandVision further indicate that EssilorLuxottica owns leading brands with unparalleled brand awareness, and that 'Ray-Ban' is the strongest brand in eyewear.[412] The Commission considers that these statements not only prove the strength of Ray-Ban overall, as set out in this section, but also specifically in the Netherlands and Belgium, where the quoted retailer is mainly active.

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407 Annexes 5.4.1 EL to the Form CO.

408 Annexes 5.4.1 EL to the Form CO.

409 Annexes 5.4.1 EL to the Form CO.

410 Annexes 5.4.1 EL to the Form CO.

411 Questionnaire Q11 to independent opticians, questions 52 and 59 ; questionnaire Q12 to optical retail chains, questions 53 and 60.

412 Doc ID3348.

(a) *'The Company notes that Ray-Ban is a very significant brand in the market. It is one of the few consumer brands in any industry that is embraced by all socio-economic grades in society – it appeals to all types of consumer. Only a very few brands in retail marketing can do this. The Company explains that the Ray-Ban brand is as powerful for eyewear (both with respect to frames and sunglasses) as the Nike, Adidas and Puma brands combined for the overall (fashion) retail market.'*

(b) *'Moreover, Ray-Ban is an unusual brand in that its best-selling models are either the same or similar year-on-year. Its attraction is not driven by innovation. It is considered to be a classic, a 'timeless fashion' that consumers want and are prepared to pay a premium for.'*

(c) *'The Company explains that Ray-Ban built its reputation as a sunglasses brand, but its importance to consumers and brand recognition now also applies to frames. An example is of a consumer who comes into the Company's store either not knowing that the Company sells Ray-Ban frames or that Ray-Ban is also active in frames. In the Company's experience, these consumers are immediately attracted to the notion of buying frames with the Ray-Ban brand due to the strength of its brand. Acceptance of and the allure of the Ray-Ban brand is high in both frames and sunglasses.'*

(442) On the basis of the above, the Commission considers that EssilorLuxottica owns leading brands with unparalleled brand awareness.

8.3.2.5. EssilorLuxottica enjoys market power in the wholesale market for frames and sunglasses

(443) The Commission considers that on the basis of the strength and broadness of its brand portfolio, and the extent to which brands generate customer traffic, as set out in the preceding sections, it enjoys significant market power in the wholesale market for frames and sunglasses. This conclusion is supported by the following considerations.

(444) First, the second largest retail chain in the Netherlands in this regard submitted that following the introduction of Ray-Ban in its portfolio, its business model has evolved, originally being focused more on private-label products. It considers that it would not be easy to revert its business model, and that it would not be able to replace Ray-Ban eyewear without losing customers: '*The Company's business model has evolved. Before the introduction of Ray-Ban, a big part of the Company's sales consisted of private labels, but this has changed. The Company argues that it cannot simply 'turn back' if access to Luxottica brands is lost. [...] The Company considers that there are no alternative brands that could replace its offering of Ray-Ban eyewear. Ray-Ban is a key part of ensuring its 3 for 1 offering is attractive to consumers and a high proportion of its bundles contain Ray-Ban products. If it would no longer offer Ray-Ban, those customers would switch to other retailers – typically GrandVision's Pearle stores (which would continue to obtain EssilorLuxottica products) are often located only a few doors away from the Company's stores.*'[413]

413 Final non-confidential minutes of a call with an optical retail chain on 21 April 2020. Doc ID 2969

(445) Second, the Commission also finds that GrandVision, which is the largest retail chain in several EEA countries, seems to be dependent on EssilorLuxottica to some extent.

(446) In particular, Figure 28 shows GrandVision's internal 'supplier performance review' for its sunglasses business. […]. Furthermore, this again suggests that the Notifying Party is able to capture a larger part of the margins in the value chain at the wholesale level than its competitors.

(447) This finding is particularly appreciable in the context of GrandVision in fact being […], and thereby the most able to obtain discounts (at least volume rebates) and to exert any countervailing buying power.

Figure 28 – Supplier performance review (sunglasses)[414]

[…]

(448) This supplier performance analysis was not found for frames in GrandVision's internal documents provided to the Commission. Therefore, the Commission requested GrandVision to provide it with the same analysis but for frames, indicating volumes, net sales and margin by supplier of eyewear for all its banners. […]. Figure 29 and Figure 30 below are excerpts from this report, for GrandVision's banners in Italy. […]. However, the Commission does not draw any specific conclusions from these observations, given that (i) unlike the supplier performance review obtained for sunglasses, the current analysis was drafted in the context of the current merger review proceedings and may be subject to methodological flaws (ii) GrandVision is by far […] and therefore the most able to obtain discounts (at least through scale efficiencies) and its capabilities to exert any countervailing buying power (to the extent that such buying power were to exist) are significantly beyond the capabilities of other retailers to do so, given that the market consists of a large amount of single-store opticians and other retail chains being significantly smaller than GrandVision and (iii) […].

Figure 29 – Volumes, net sales and margins of GrandVision Italy by supplier of eyewear[415]

[…]

Figure 30– Volumes, net sales and margins of Corner Optique by supplier of eyewear[416]

[…]

(449) In particular, when looking at […], the Commission finds that […]. It considers Luxottica to be […]. Figure 31 below indicates […]. The document also shows where it considers the strength of EssilorLuxottica as regards eyewear lies, with particular respect to the fact that its brands (positioned in fashion, luxury, sports and performance) focus on brand equity and that […]:

[…]

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414 LL_00053301.pptx, ID1280-11816.
415 Response to RFI 28, annex Q4.
416 Response to RFI 28, annex Q4.

Figure 31 – GrandVision's internal assessment of EssilorLuxottica[417]

[…]

(450) Third, the Commission received feedback from respondents to the market investigation that there are retailers upon which the Notifying Party is able to exert its market power. In particular, while a majority of retail chains indicate that they apply the same wholesale to retail mark-up to EssilorLuxottica products as on other products, a significant amount also indicates that they apply a lower factor to EssilorLuxottica products. Qualitative evidence in this regard suggests that this is due to the Notifying Party capturing already a larger part of the margins at the wholesale level: '*The retail margins on Luxottica Essilor products are significantly lower than Private label or of other suppliers.*'[418] The market investigation is less clear on this matter for independent opticians where for some countries opticians tend to charge, for EssilorLuxottica products, a higher mark-up while for others they tend to charge a lower mark-up. [419]

(451) The Commission investigated this matter further with rival retailers. Subsequent feedback on this confirms that other opticians consider that EssilorLuxottica has market power, and that this is demonstrated in the negotiations with them and in the commercial terms of their agreements: '*Yes, with no doubt. The strategy of Luxottica has Always been to push the broad portfolio of the group with a local and national "blackmail" using key brands and collection : RayBan, CHANEL, Oakley to sell other additional lines*'; '*Minimum Number of Frames that have to be at stock; Only few Options on how to collaborate (STARS, Platinum or Platinum+) in our case; Change of Terms, when felt more advantageous by Luxottica*'; '*very limited to no ability to negotiate with them. 'the know that customers are asking for their brands and will come and buy anyway*'; '*There are no real negotiations regarding commercial terms with Luxottica. They just present their conditions and you have to take it or leave it.*'[420]

(452) On the basis of the above, the Commission considers that EssilorLuxottica enjoys significant market power in the wholesale supply of frames and sunglasses.

8.3.2.6. Return customers

(453) The Commission considers that the extent to which consumers typically visit the same optical retailer (i.e., are 'return customers') would not prevent the Merged Entity from diverting a significant number of customers from rival retailers to its own stores. This conclusion is supported by the following considerations.

(454) The Notifying Party in this regard argues that most customers of eyewear are return customers and would therefore stay with their optician of choice if they would not find EssilorLuxottica's eyewear brands. It submits that in Italy and the UK respectively [60-70]% and [60-70]% of customers are recurring customers, based on an analysis of the Notifying Party using data from a study conducted by a third party marketing research company.

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417 LL_00043533.pptx, ID001279-035199.

418 Questionnaire to optical retail chains – Q2 – question 16.

419 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 16.

420 Questionnaire Q11 to independent opticians, question 44, and questionnaire Q12 to optical retail chains, question 46.

Figure 32 – Loyalty analysis[421]

[…]

(455) The market investigation, however, shows partially different results. According to opticians, customers would typically go to the same optical store for frames as customer loyalty is moderate to high. For sunglasses however, the tendency for customers to return and customer loyalty are lower. However, for both frames and sunglasses, a majority of opticians consider that customers of branded eyewear would switch to another optician if Luxottica brands were no longer available or would become more expensive. In the light of these elements, the Commission considers that the extent to which customers would typically return to the same optical stores is less relevant in the event of partial or full input foreclosure.

(456) In particular, for frames, a majority of chains considered customer loyalty to optical retail stores to be high, while a majority of independent optical retailers considered this to be moderate.[422] Both optical retail chains and independent opticians consider that customers typically go to the same optical store for their periodical purchases of branded frames.[423] However, if certain brands of EssilorLuxottica would no longer be available (or be more expensive) at this optical retail store, then a slight majority considers that customers would no longer end up purchasing from the same optician. Some explain that younger customers in particular would be more likely to search more and shop around.[424]

(457) For sunglasses, only a very minor fraction of respondents considered customer loyalty to be high. Half of retail chains consider customer loyalty to be low and half of independent opticians considered this to be moderate.[425] While optical retail chains indicate that customers typically do not go to the same store for their purchase of branded sunglasses, independent opticians are more mixed on the matter and only a slight majority indicates that customers would typically not go to the same store.[426] Nonetheless, if certain brands of Luxottica would no longer be available (or be more expensive) at this optical retail store, then a majority considers that customers would no longer end up purchasing from the same optician.[427]

(458) Moreover, these analyses of return customers were done in a context pre-Transaction. Customer loyalty depends to some extent on pricing and availability of certain brands or models at a given retailer. The Transaction will affect both these parameters as explained above and therefore will affect the pre-existing (if any) customer loyalty.

(459) The Notifying Party submitted in the response to the SO, annexed RBB report on input foreclosure, figure 3 (referred to below in Figure 33), what the reasons are for return customers being loyal to optical retailers. In this regard, the Commission observes that among the reasons for being loyal […], which are factors that are

421 Response to 6(1)(c) annex RBB paper on input foreclosure, figure 1.
422 Questionnaire Q11 to independent opticians, question 56 and Q12 to optical retail chains, question 57.
423 Questionnaire Q11 to independent opticians, question 54 and Q12 to optical retail chains, question 55.
424 Questionnaire Q11 to independent opticians, question 55 and Q12 to optical retail chains, question 56.
425 Questionnaire Q11 to independent opticians, question 63 and Q12 to optical retail chains, question 64.
426 Questionnaire Q11 to independent opticians, question 61 and Q12 to optical retail chains, question 62.
427 Questionnaire Q11 to independent opticians, question 62.

affected by an input foreclosure strategy, and would therefore show that the amount of return customers pre-Transaction would not be representative for the amount of return customers in the event of an input foreclosure strategy.

Figure 33 - Response to the SO, RBB annex on input foreclosure, figure 3 and preceding paragraph.

[…]

(460) Therefore, the Commission considers that, to the extent that customers would typically return to their optician of choice, that would not hinder the ability of the Merged Entity to deteriorate commercial conditions at rival retailers in order to divert a certain amount of customers to its own retail outlets.

(461) Furthermore, in any event, the quantitative analysis shows that the required amount of customers to switch in order for an input foreclosure strategy to be profitable and detrimentally affect wholesale and retail market conditions is low, as set out in section 8.2.

8.3.2.7. Questionnaire to retailers: customers are expected to churn

(462) The conclusion according to which EssilorLuxottica already enjoys a significant market power on the retail market because of its strength in the wholesale national markets has been further corroborated by the simplified questionnaire that was sent out to EssilorLuxottica's customer base of independent opticians across the EEA, which indicated that, when faced with a worsening of the price and/or availability of EssilorLuxottica's frames or sunglasses at all stores competing with GrandVision and EssilorLuxottica's own outlets, a significant number of consumers would switch their purchases to stores of the Merged Entity.[428]

(463) In its Reply to the SO, the Notifying Party suggested the simplified questionnaire, and in particular questions 10 and 13 related to customer behaviour, suffer from methodological flaws and are likely to overstate customer switching following an increase in the wholesale price of frames or sunglasses.

(464) In that respect, the Commission notes that this simplified questionnaire was not intended to provide accurate estimates of potential customer switching. The results of this questionnaire are indeed not comparable to results obtained through a customer survey and are therefore not used as such, in particular in the Commission's quantitative analysis of input foreclosure incentives (see section 8.2). The Commission nevertheless notes that a significant share of independent opticians, in many EEA countries, expect customer switching to materialise following worsening conditions at upstream level.

(465) The Commission discusses the indications given by the results of the simplified questionnaire as to the likelihood of customer switches in country-specific sections below.

8.3.2.8. EssilorLuxottica is unlikely to face retribution from brand owners

(466) The Notifying Party has submitted that licensors account for […] of Luxottica's sales prescription frames and […] of its sales of sunglasses in the EEA, and would

[428] Simplified questionnaire to independent opticians, questions 10 and 13.

oppose a foreclosure strategy. These licensors would in particular oppose a policy which would reduce their overall sales, as they obtain royalties […]. Certain brand owners have explained during the proceedings of M.8394 Essilor/Luxottica that they would not be willing to accept tying and bundling strategies.[429]

(467) The Commission notes however that the ability of licensors to counter possible input foreclosure strategies is limited. This conclusion is supported by the following considerations.

(468) First, the amount of revenue accounted for by third-party brands is […], as shown in Table 6 and Table 7. For frames for instance, […] of EssilorLuxottica's turnover in 2018 stems from sales of third-party brands, while this was […] for sunglasses. This is also lower for individual countries, for instance for frames ([…]) and for sunglasses ([…]).

(469) Second, contracts between brand owners and eyewear manufacturers are global, and for both frames and sunglasses. A brand owner explains: '*It is particularly important for the licensee to have a global distribution capability. Products like eyewear and fragrances have specific and bespoke distribution channels and do not overlap that much with Ralph Lauren's core competencies. Having one global licensee gives the brand the opportunity to tap into those bespoke channels. This also avoids the complication of having to develop multiple collections with different licensees as well as dispersing the efforts of the company in areas which do not represent its core business.*'.[430] Therefore, if EssilorLuxottica would deploy an input foreclosure strategy in a single country or a selection of countries, and/or on a selection of products, then the impact on the overall sales for products of brand owners remains limited considering the worldwide scale of the contract.

(470) Third, the Commission, as concluded in section 8.3.2.13 and 8.3.3.8 and the respective country sections in chapter 9, finds that the Merged Entity would be able and incentivised to engage in an input foreclosure strategy, by supplying rival retailers at deteriorated commercial conditions. This can take the form of wholesale price increases or other deteriorated commercial conditions (such as exclusivity of models, delivery delays, …). As explained in section 8.2.3 and in the conclusions in the specific country sections in section 9, this partial input foreclosure strategy would be profitable in certain EEA countries and would therefore result in increased profits for licensors since they obtain royalties […]. This would make retribution from licensors unlikely.

(471) The Commission conducted numerous calls to further improve its understanding of the role of brand owners and their position and potential reaction to the transaction.

(472) Fourth, from these calls, the Commission understands that there are several other considerations for choosing a particular eyewear supplier as a licensee. Eyewear often constitutes only a fraction of a brand's offering (as these are often active in other market such as clothes and accessories). Therefore, it is key to protect the brand image. A brand owner explains: '*When selecting a manufacturer, the Company considers the following criteria: 1) ability to manufacture quality products, 2) ability to market the product, in line with the required quality of the*

[429] 432, 447

[430] Non-confidential minutes of a call with a brand owner on 10 March 2020 (ID 2207).

brand and effectively managing the distribution, 3) guarantee of royalties and investment of a part of profits in brand development, 4) overall reputation of the licensee. In particular, the Company notes that as the royalties constitute a relatively small contribution to the overall budget of the brand, it is the quality of both the product and in-store presentation that matters the most.'[431] The Commission understands that in this regard, other factors are more important to brand owners than the actual turnover realised on eyewear.

(473) Fifth, contracts are long: '*The current contractual arrangements between EssilorLuxottica and […] will last until […] […] […] considers that a 10-year contractual term is standard in relation to eyewear, but longer than in other product categories*.'[432]

(474) Sixth, switching would in any event take a long time and would not be without complications: '*The Company considers that switching licensee is not an easy process for a company such as [Company name]. This is because [Company name] as a sizeable eyewear business worldwide, and the move requires a 'sell off' period (in which the licensee sells its existing stock) while at the same time ensuring a smooth transition to the new licensee. It estimated that preparation for such a switch would take approximately a year, depending on the market, but noted that the new licensee can (and in the case of Luxottica) begin manufacturing/distributing immediately to ensure a smooth transition*.'[433]

(475) Overall, brand owners do not appear to be concerned about potential price increases: '*The fact that EssilorLuxottica has a wide reach at the wholesale level as well as a number of own stores it is particularly attractive for a player like [brand owner]. […] [brand owner] does not consider that it would be feasible for Luxottica to materially increase wholesale price without having a conversation with its brands, as this increase would impact positioning, which is an important factor in the licensing contracts. […] On balance, [brand owner] considers that it has broadly equal negotiating power with EssilorLuxottica […]. It does not expect this dynamic to be changed by the Acquisition*'[434] The Commission understands from this that the brand owner would benefit from the acquisition of a larger retail presence. While the brand owner also indicates that increasing a wholesale price would have to be assessed in conjunction with the product positioning, the Commission notes that to the extent that the foreclosure strategy would result in an increase of Luxottica wholesale prices as well as market-wide wholesale prices overall, this would not impact the relative positioning of the products of the brand owner vis a vis Luxottica products or other products on the market. This applies also to the following brand owner: '*When asked to consider how it would respond to EssilorLuxottica increasing its wholesale price to third parties or reducing availability/supply to third parties, the Company explained that it considers such a move would need to be explained to it and justified by Luxottica (as it would impact brand positioning of the products). Consequently, it was not particularly concerned by this potential risk.*'[435]

431 Non-confidential minutes of a call with a brand owner on 3 March 2020 (ID 2342).
432 Non-confidential minutes of a call with a brand owner on 10 March 2020 (ID 2207).
433 Non-confidential minutes of a call with a brand owner on 10 March 2020 (ID 2585).
434 Non-confidential minutes of a call with a brand owner on 10 March 2020 (ID 2207).
435 Non-confidential minutes of a call with a brand owner on 10 March 2020 (ID 2585).

(476) Another brand owner indicated not being concerned if Luxottica were to increase prices further explains: '*The Company was asked what its views were on/how it would respond to (i) an increase by Luxottica of the wholesale price of the Company's branded eyewear to non-Luxottica stores, or (ii) a reduction of sales to third party stores to instead favour Luxottica's own stores. In relation to both points, the Company noted that its main priority was maintaining brand image, the quality of the products and its profits. Provided that these were maintained, it did not have any concerns relating to these potential actions.*'[436]

(477) Furthermore, brand owners would benefit from additional opportunities to be listed at retail level. A brand owner which currently licenses its eyewear business to an eyewear manufacturer other than Luxottica indicates that when Luxottica acquired a retail presence in Italy, it had increased shelf space of own (and licensed) products and delisted a number of other brands: '*The Company understands the logic of the rationale behind the Transaction. It notes that in recent years, Salmoirghi & Vigano, which was acquired by Luxottica, has delisted a number of non-Luxottica brands, which resulted in a loss of turnover for the Company and other brands. As far as the Company can tell, this delist was not related to performance. The Company considers that Luxottica may take a similar action following the GrandVision acquisition to focus more on brands owned/manufactured by Luxottica.The Company's main concern is the dominant position created due to the transaction. In the Company's point of view this may have a 'monopolising' effect on the product assortment/offer in key locations and with retailers who are part of the group.*'[437]

(478) On the basis of the above, the Commission considers it unlikely that EssilorLuxottica would face retribution from brand licensors should it engage in an input foreclosure strategy.

8.3.2.9. EssilorLuxottica is able to differentiate its supply on a store-by-store basis

(479) On the basis of the sections above, the Commission finds that the Merged Entity would have the ability to engage in an input foreclosure strategy, at least on a national level. In the section that follows, the Commission sets out its findings which indicate that the Merged Entity in addition would have the ability to optimise its strategy by selectively foreclosing in certain areas, for instance where its retail position or demand for its products is even stronger or larger than on average at national level. While the evidence available to it does not allow it to delineate such local areas, the Commission considers that this finding further compounds the ability that was found to apply at national level, as set out in the sections above.

(480) The Notifying Party has submitted that a large amount of its customers source and/or negotiate on a national basis (as a retail chain or independent opticians through a buying group), as shown below in Figure 34 and Figure 35. Therefore, customers that are able to source nationally are able to bypass an input foreclosure strategy that would apply only at a local level, and thereby also attract customers from foreclosed retailers in competition with the retail outlets of the Merged Entity.

436 Non-confidential minutes of a call with a brand owner on 6 March 2020 (ID 2213).

437 Non-confidential minutes of a call with a brand owner on 17 March 2020 [ID 2465]

Figure 34 – Proportion of revenues by scope of price negotiation (frames)[438]

[…]

Figure 35 - Proportion of revenues by scope of price negotiation (sunglasses)[439]

[…]

(481) The Commission first notes that in most countries, customers that source on a national basis are […]. In Italy, […]. In any event, the Commission finds that even when customers source or negotiate nationally, EssilorLuxottica is able to foreclose at the local level. In particular, [CONFIDENTIAL: discretionary requirements in EssilorLuxottica's supply contracts]. This is illustrated in the recitals that follow.

(482) In this regard, the Commission reached out to retail chains, with the understanding that these are most likely to source nationally (compared to single-store opticians), in order to obtain an understanding of the extent to which they indeed source nationally, and in case they do, whether there are limitations for sourcing at the local level or for individual doors (that could thus be used by the Merged Entity to deploy local input foreclosure). The feedback in this regard indicates that several retail chains purchase store-by-store. Other retail chains either purchase centrally (which is mostly national), or a mix. However, respondents indicate that there are limitations for sourcing brands for individual stores, due to the distribution agreements in place limiting the locations in which certain products can be offered: '*Delivery of Prada in Heidelberg but not in Mühlacker, because of "brand strategy"*'; '*[Company name] notes that the draft selective distribution contracts contain […] requirements, such as […]. The draft contracts foresee that Luxottica, should the retailer not comply with the qualitative or quantitative criteria, has the right to […]. The draft contracts also foresee that Luxottica has the right for […]. […] [Company name] has no way to circumvent because the selective distribution contracts prohibit […]*; '*The eyewear industy tends to move to selective distibution in a higher pace than before. Still not to a large extent (like i.e. cosmetics) but the direction is rather clear since we for some brands are approached with ARA (Authorized Retail Agreements) and we also can see brand owners move their distribution to companies specialized on selective distribution (i.e. Thélios).*'[440]

(483) Independent opticians that expressed a view on this matter almost unanimously considered that the Notifying Party is able to introduce selective distribution or sourcing restrictions at local level. Customer feedback also indicated that it already does this.[441]

(484) Similar feedback was obtained from a buying group in Italy, submitting the following: '*Luxottica doesn't let [buying group] source the opticians directly through its logistic platform and decides in total autonomy the commercial conditions of each optician of the [buying group] network. Therefore Luxottica would be in the position to differentiate the prices. […] The eyewear suppliers do not provide clear explicit rules and policies about terms of selective distribution.*

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438 Response to RFI 11, figure 39.2
439 Response to RFI 11, figure 39.1
440 Questionnaire to optical retail chains Q12, question 47.
441 Questionnaire to independent opticians Q11, question 46.

Therefore the concession of a specific brand to an optician is the result of their evaluation of its positioning, commercial potentialities and local competitors. [buying group] is not involved in this decision process.'[442]

(485) The Commission obtained EssilorLuxottica's standard retailer agreement, called the Authorized Retail Agreement or 'ARA'. Figure 36 illustrates the main provisions of the ARA, […].

Figure 36 – Authorized Retailer agreement[443]

[…]

(486) Excerpts from the actual agreement are shown below in Figure 37 (highlighting added). These provisions show […].

Figure 37 - Authorized Retailer Agreement[444]

[…]

(487) The Notifying Party submits that a retailer is able to freely distribute the goods for which it has been authorised in any of its stores, under the condition that that particular store's positioning is consistent with the quality requirements set out in the ARA.[445] In this regard, the Commission notes that the contractual terms for specifying the quality requirements are widely left open and could thus be interpreted at the Notifying Party's discretion. The Notifying Party further submits that no ex-ante controls are currently in place to verify these quality requirements, except for the Chanel brand, for which a prior identification and audit is required and for which subsequent flows to different stores is prohibited. The Commission nonetheless considers that the absence of […] do not hinder the ability for the Notifying Party to restrict sourcing for individual retailer doors.

(488) Furthermore, the Commission understands that the limitations set out in the ARA do not currently (or at least until the recent past did not) apply to […]. However, as shown in internal documents, it has been […]. This is for instance shown in Figure 38, where in the executive summary of Luxottica's wholesale budget for 2018 it is indicated that […].

Figure 38 – Luxottica wholesale budget 2018[446]

[…]

(489) This is further illustrated in Figure 39, which are excerpts from internal Q&A's (marking added). The figure shows that Luxottica has […]. Customers cannot afford to refuse signing these if they want to sell Luxottica's eyewear brands.

Figure 39 – New authorized retailer agreement[447]

[…]

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442 Response to request for information to buying group (Italy), dated 3 March 2020. [ID1315]

443 P028-00029025.PPTX, ID1467-13433.

444 Form CO Annex SF 8.11.1 and country papers submitted by the Notifying Party (highlights added).

445 Response to RFI 27, question 4.

446 P008-00012829.PDF, ID1328-1239.

447 P028-00067441.DOC, ID1469-11102 (highlights added).

(490) […]s, as illustrated in Figure 40, which is GrandVision's analysis of the ARA. The Commission however considers that while this may potentially obstruct EssilorLuxottica's ability to foreclose on a local level, as GrandVision would be able to circumvent such strategy and thereby attract customers from foreclosed rival retailers, this is not applicable post-Transaction due to the acquired control over GrandVision.

Figure 40 – GrandVision's analysis of the authorized retailer agreement[448]

[…]

(491) The Notifying Party has further submitted in the response to the Commission's 6(1)(c) decision that there are retailers who buy Luxottica products through a distributor (and can therefore bypass any local differentiation strategy). However, the Parties have clarified in the response to RFI 18, question 6, that Luxottica estimates that approximately […] of its sunglasses and frames sold in the EEA are sold through third-party distributors, and the vast majority of these are in […]. The Commission therefore considers the extent through which Luxottica's products are sold through a distributor not to be relevant for the competitive assessment of input foreclosure, as its investigation does not show a significant impediment to effective competition in these specific Member States.

(492) The Notifying Party has further submitted in the response to the SO the following arguments:

(a) ARA's have objective standard terms and the same terms apply to all clients;

(b) The requirements referred to by the Commission in recitals (454) - (455) apply only to stores where one or several activities in addition to the sale of glasses and sunglasses are carried out;

(c) […]; and

(d) Retail chains price nationally, therefore rendering local input foreclosure not possible.

(493) In this regard, the Commission notes the following:

(a) First, it is not the differentiation between the supply agreements offered to different clients that allow EssilorLuxottica to differentiate its offering, but rather the criteria within these supply agreements that give discretion to EssilorLuxottica on how to interpret them as noted in recital (482) ff.. Second, even though the same terms apply to all of EssilorLuxottica's clients, this is only the case today, and as shown above, EssilorLuxottica has been able to require its customers to sign these retailer agreements and clients cannot afford not to sign them.

(b) These terms are found in the supply agreements of its optical retail customers. Furthermore, most optical retailers typically sell other products as well, such as contact lenses. This is also confirmed by the feedback from the market investigation, as quoted in recital (450), where optical retailers consider to be

448 LL_00038273.msg, ID1279-018477.

subject to unilateral decisions of EssilorLuxottica as to whether or not to supply certain products on a store-by-store basis.

(c) This is the situation today, which does not prevent the Merged Entity from […].

(d) This does not apply to partial input foreclosure in other forms, such as through exclusivity offering of models to own stores, delivery delays, etc.

8.3.2.10. Access to competitors' competitive information – STARS and Essibox

(494) The Commission finds that EssilorLuxottica as a supplier of frames and eyewear has access to confidential information concerning its retail competitors. In particular, it would have access to the information of the eyewear sourced by rival retailers from itself. EssilorLuxottica would have access to this information on a door-by-door basis, both for independent opticians, which mostly operate single-store outlets, as well as for retail chains, many of which use its STARS system, as set out below.

STARS

(495) Some market participants have raised the concern that Luxottica has an IT system in place at opticians' stores that allow it to obtain insight into individual stores' sourcing patterns of eyewear. This IT system is called 'STARS'. Retailers use this STARS platform to order eyewear products from EssilorLuxottica. Using this platform would provide them several benefits (including commercial advantages) for ordering the Notifying Party's products,[449] and switching to another system seems difficult for a majority of retail chains and for roughly half of independent opticians.[450] According to market participants, this IT platform currently collects important and potentially sensitive information. Some market participants have mentioned that the scope of the information collected by EssilorLuxottica in this manner can be very broad, and would even include individual customer preferences.[451] Most respondents however indicate that they do not submit information in relation to non-EssilorLuxottica products through this platform.[452]

(496) The Notifying Party describes the STARS system as follows: […][453] The Notifying Party further submits that STARS […].[454] Based on the information collected, STARS […].[455]

(497) In the first place, the Commission has looked at how many of Luxottica's customers use this system. Overall, this seems to be used […] by chains, and […] by independent opticians.

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449 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL), and Questionnaire to optical retail chains – Q2 – question 23.

450 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL), and Questionnaire to optical retail chains – Q2 – question 22.1.4.

451 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL), and Questionnaire to optical retail chains – Q2 – question 22.1.2.

452 Questionnaire to independent opticians – (DE, EN, FR, IT, NL, PL), and Questionnaire to optical retail chains – Q2 – question 22.1.3.

453 Response to the 6(1)(c), paragraph 315.

454 Response to RFI 11, question 15.

455 Response to RFI 11, question 16.

(498) Of Luxottica's customers, […] of stores belonging to chains and […] of independent ECPs in the EEA use STARS. In all countries, the amount of independent optician stores among Luxottica's customers using STARS is […], except for […]. In many EEA countries, the amount of retail chains among Luxottica's customers using STARS is […].[456]

(499) Customers using STARS are still able to source Luxottica products outside of the STARS system. Therefore, the fraction of STARS revenue compared to total eyewear revenue by Luxottica in some countries represents somewhat less than the fraction of amount of customers that use STARS compared to total Luxottica customers, for instance in Belgium, France, the Netherlands and the UK when looking at retail chains.

(500) This metric results in a higher share of revenue being represented by STARS in several other countries, as well as in the EEA overall (both for retail chains and independent optician stores). […].[457]

(501) Overall, […] of Luxottica's wholesale revenue in the EEA originates from sales through its STARS system, or […] for chains and […] for independent retailers.

(502) An overview per country is provided in Table 10 below.

Table 10 – Customer stores using STARS (by amount of doors and by revenue)[458]

[…]

(503) In the second place, the Commission further obtained information as to the data that EssilorLuxottica is able to obtain through STARS:[459]

(a) […];

(b) […].

(c) […].

(504) In the third place, the Commission found several indications in Luxottica's internal documents that […], as shown in Figure 41.

Figure 41 – […][460]

[…]

(505) In addition, as shown in Figure 42, STARS […].

Figure 42 – […][461]

[…]

(506) The Notifying Party in the Reply to the SO submitted that (i) […], (ii) […] and (iii) […]. In this regard, the Commission notes that (i) [CONFIDENTIAL: The Notifying Party has access to some sensitive information in local areas],

456 Response to RFI 32 annex Q6.
457 Response to RFI 32, question 7.
458 Response to RFI 32 annex Q7.
459 Response to RFI 11, question 15.
460 P005-00017611.PPTX, ID1484-7072.
461 P005-00007333.PPTX, ID001484-004728.

(ii) [CONFIDENTIAL: the Notifying Party could implement local foreclosure regarding product range], (iii) [CONFIDENTIAL: the Notifying Party could implement local foreclosure regarding pricing].

(507) Against the above findings, the Commission considers that EssilorLuxottica has insights as a retailer of eyewear into the purchase patterns (and therefore, customer demand) at local level. EssilorLuxottica is also able to obtain such insights from independent opticians, as these are mostly single-store customers, as well as for a large amount of retail chains, through the use of STARS. As a result, the Merged Entity could use this information to determine eyewear models that are most in demand in a particular area, and thereby differentiate its offering to rival retailers in that area (as set out in section 8.3.2.10) for instance by keeping such models for its own retail outlets only.

Essibox

(508) Furthermore, there is an indication from the market investigation that EssilorLuxottica has been offering edging machines to opticians at what are described as 'very fair prices' that come with a system called 'Essibox'. This system would be connected to the Notifying Party's network and give it insights into the volumes that are processed by opticians.[462]

(509) The Commission investigated whether Essilor's 'Essibox' can be used to obtain competitively sensitive information. Essibox includes a maintenance tool connected to the edging machine which generates data on the edging jobs accomplished on the instrument. In the Notifying Party's response to the Commission's 6(1)(c) decision however, the Notifying Party submits that […] out of […] retail outlets in the EEA would use Essibox.[463] Moreover, the Commission notes that, according to the Parties' submission, […]. As shown in Table 11 below, there is a […]. Furthermore, the information collected only relates to […], and does not indicate any information on the brand or identification of the lens supplier.[464] In addition, the Notifying Party submitted 6 examples (2 chains and 4 independent opticians) of opticians in the EEA that would use an edger of a different supplier than Essilor in conjunction with Essilor's edger.[465]

Table 11 – Essilor edgers connected[466]

[…]

(510) The Commission notes however that, for those opticians using this tool not in conjunction with any other edger from a different supplier, this still allows EssilorLuxottica to estimate […]. However, due to the ability for opticians to disconnect their edgers if this information was to be misused, […], the Commission at this stage does not consider the information obtained through the Essibox system to further aid its ability to engage in input foreclosure as envisaged in this chapter.

462 Non-confidential minutes of a call with a market participant dated 11 October 2019, ID1000.
463 Response to the 6(1)(c), paragraph 312.
464 Response to RFI 11, question 12.
465 Response to RFI 18, question 10.
466 Response to RFI 11, question 14, table 1.

8.3.2.11. EssilorLuxottica already differentiates its commercial policy today by customer segment

(511) The Commission finds that EssilorLuxottica already differentiates its commercial policy today by customer segment, further corroborating the Merged Entity's ability to differentiate its commercial policy in the countries where it has a substantial retail presence.

(512) In the first place, already today, EssilorLuxottica reserves certain models of its eyewear for certain retail channels and for its own stores. This is shown for instance in Figure 43 below.

Figure 43 – […][467]

[…]

(513) In the second place, Luxottica […]. The Commission infers from this that the Merged Entity would be able to take into account retail competition when strategically deciding what product assortment to grant competitors in any given region.

(514) In particular, Luxottica […]. This system is called the […]. It has been implementing […]. The update is called […].[468] Figure 44 below describes what criteria […].

Figure 44 – […][469]

[…]

(515) Depending on a retailer's ranking, it has […], as shown in the following two Figures.

Figure 45 - Distribution priority definition[470]

[…]

Figure 46 – […][471]

[…]

Figure 47 – […][472]

[…]

(516) In addition, […].[473]

(517) According the Notifying Party, the […]. One exception for this would be […].[474]

(518) Furthermore, […]. In particular, the Notifying Party explains that […].[475]

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467 P008-00025143.PDF, ID1493-18208.

468 Response to RFI 11 question 33, response to RFI 28 question 2.

469 Response to RFI 28 question 2, annex Q2.1.

470 ID001488-015289.

471 Response to RFI 28, question 2, annex q2.2.

472 Response to RFI 28, question 2, annex q2.2.

473 Response to RFI 28, question 2 (ii).

474 Response to RFI 28, question 2.

(519) In the third place, the Commission understands that the STARS system [...], as also shown in internal documents, such as for instance in Figure 48.

Figure 48 – STARS presentation support Luxottica days[476]

[…]

(520) Furthermore, […].[477] Users of STARS would also have access to […], as shown in Figure 49. Different STARS customers are furthermore presented […]. In particular, a large amount of product […].[478]

Figure 49 – […][479]

[…]

(521) On the basis of the above, the Commission considers that the Notifying Party is able to differentiate the commercial conditions to offer to different retailers, and would, also in light of the findings in sections 8.3.2 - 8.3.2.10 have the ability to offer inferior commercial conditions to rival retails in countries (or particular local areas) where the Merged Entity has a retail presence. While the differentiation applicable today relates mainly to […], the Commission considers that a similar differentiation would therefore be equally feasible in terms of pricing conditions.

(522) The Commission also looked as to whether Luxottica charged different prices to retailers that are located nearby its own stores, for the countries where its presence is the largest (Italy, UK, USA). However, generally it appears that prices charged to retailers near to Luxottica's own stores are not higher than those applied to retailers located further away. […]. The following Figures were provided by the Notifying Party in response to RFI 18 question 13.

Figure 50 – Prices of most sold SKU's by distance to nearest Luxottica store - Italy, frames (all customers)

[…]

Figure 51 – Prices of most sold SKU's by distance to nearest Luxottica store - Italy, sunglasses (all customers)

[…]

Figure 52 – Prices of most sold SKU's by distance to nearest Luxottica store - United Kingdom, frames (all customers)

[…]

Figure 53 – Prices of most sold SKU's by distance to nearest Luxottica store - United Kingdom, sunglasses (all customers)

[…]

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475 Response to RFI 28, question 2.
476 P008-00001876.PPTX, ID001492-013017.
477 Response to RFI 27, question 1.
478 Response to RFI 27, question 1.
479 P008-00027824.PPTX, ID001329-014914

Figure 54 – Prices of most sold SKU's by distance to nearest Luxottica store - USA, frames (all customers)

[…]

Figure 55 – Prices of most sold SKU's by distance to nearest Luxottica store - USA, sunglasses (all customers)

[…]

(523) Nonetheless, the Commission considers that wholesale pricing policy by EssilorLuxottica in these countries today would not necessarily reflect the ability and incentives of the Merged Entity to engage in local differentiation in terms of pricing. In particular, the retail presence of EssilorLuxottica in Italy and the UK is much smaller than what the retail presence of the Merged Entity would be. As regards the behaviour in the USA, the Commission is not able to draw conclusions due to potentially different dynamics of competition in that region, which the Commission has not investigated for the purposes of its assessment of the effects of the current transaction in the EEA.

(524) In any event, the Commission refers to its section on the relevant geographic market definition where it explains that it considers that the relevant geographic market for eyewear is national. In this regard, it notes that an absence of pricing differentiation at local level does not inhibit the Merged Entity's ability to do so at national level.

8.3.2.12. Counter-strategies

(525) For completeness, the Commission has considered the possibility that rival opticians could deploy counter-strategies to avoid losing customers to the stores of the Merged Entity.

(526) Based on the information available to it, the Commission considers it unlikely that opticians could avoid that a substantial amount of their customers would switch, given the strength of EssilorLuxottica's portfolio (as described in sections 8.3.2.3 - 8.3.2.5). This has also been confirmed by the market investigation where, on the basis of a survey sent to a very large amount of retailers, opticians consider that if they were faced with for instance a reduction in the availability of eyewear from EssilorLuxottica, a substantial amount of customers would switch to the Merged Entity's stores (as set out in section 8.3.2.7).

(527) In particular, retailers would pass-on a price increase, as set out in 8.2.3. As shown in Figure 29 - Figure 31 for GrandVision in particular, […]. In addition, the Merged Entity could deteriorate its commercial conditions to rival retailers in other ways than through increases in prices, for instance by excluding certain models or delay deliveries, which retailers are not able to absorb internally.

8.3.2.13. Ability - conclusion

(528) On the basis of sections 8.3.2.1 - 8.3.2.11 above, the Commission concludes that the Merged Entity will have a significant degree of market power in the wholesale markets for frames and sunglasses, to the extent that the Merged Entity's products are able to divert consumers away from rival opticians.

(529) On the basis of sections 8.3.2.2 - 8.3.2.4, the Commission considers that the Merged Entity is able to negatively affect the overall availability of frames and sunglasses

for rival opticians (for instance because other suppliers are seen as less preferred alternatives, as set out in section 8.3.2.3).

(530) On the basis of section 8.3.2.12, the Commission considers that counter-strategies deployed by rival opticians would not be able to restrict consumers switching stores to the Merged Entity's own stores and therefore would not be effective.

(531) Therefore, the Commission concludes that the Merged Entity would be able to engage in an input foreclosure strategy for frames and for sunglasses.

8.3.3. *The Commission's view: incentives to input foreclosure*

8.3.3.1. Relevant considerations in past practice and difference with current proceedings

(532) In the review of the Essilor/Luxottica concentration, the Commission considered a theory of harm whereby Luxottica's market power would be used to coerce retailers into purchasing more Essilor's lenses. The Commission concluded that EssilorLuxottica would have limited incentives to engage in tying practices.[480] In that framework, finding the incentives to foreclose entails weighting the likely gains of additional lens sales (benefit of the strategy) against the possible losses of lesser sales of sunglasses and/or frames (cost of the strategy), both at the wholesale level, whereby the proportions of these gains and losses are determined by the degree of market power enjoyed by Luxottica on these products. In the current proceedings however, the gains of the input foreclosure strategy are not only in the additional lens sales at the wholesale level, but also in the securing of additional retail profits on eyewear (sunglasses and/or frames) and lenses retail sales resulting from increased sales due to the input foreclosure strategy.

(533) As the retail margins of sunglasses and frames are overall significantly higher than the wholesale margins of lenses,[481] and as a retail margin is obtained also on the lenses to the extent that the eyewear is typically sold as prescription glasses,[482] it follows that the required degree of market power for an input foreclosure strategy to be profitable is lower, as a greater gain is realised for every customer that switches, and therefore a larger loss (of customers switching) can be afforded. The Commission accordingly considers that, following the Transaction, significant incentives are likely to exist for input foreclosure strategies to be put into effect by the Parties, in particular in Belgium, Italy and the Netherlands (see section 9).

8.3.3.2. Past practice does not exclude the incentives for the Merged Entity to engage in input foreclosure

(534) The Notifying Party submitted that in Italy, the UK and the USA, where Luxottica currently has a retail presence, there is no relation between price that Luxottica charges to customers and the distance to its own stores.

(535) However, the Commission understands that the Notifying Party prices eyewear […]. Similarly, the Commission's analysis as set out in this section finds incentives to engage in input foreclosure at the national level, indicating that there is not necessarily a need to differentiate on a local level.

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480 M.8394 Essilor/Luxottica, recital 454.

481 […] (see Annex RFI 2 Q4.2) […] (see Annex RFI 1 Q9).

482 This is the case for frames, but also for a fraction of sunglasses sold.

(536) In addition, Luxottica's presence in the UK and Italy today is significantly smaller (half in Italy, less than half in the UK) than that of the Merged Entity.

(537) Furthermore, the Commission points out that the Notifying Party reserves […], as shown in Figure 43.

(538) In the response to the SO, the Notifying Party submitted that its wholesale prices of frames and sunglasses in Italy did not increase after its retail acquisition of Salmoiraghi & Viganò (compared to the four largest EEA countries). It did however not perform an econometrical analysis.

(539) As regards the US, the Commission is not able to draw conclusions due to potentially different dynamics of competition in that region, which the Commission has not investigated for the purposes of its assessment of the effects of the current Transaction in the EEA.

8.3.3.3. EssilorLuxottica faces limited risk of customer loss that would result from input foreclosure on eyewear

(540) The Commission considers that there are limitations as to the Merged Entity's exposure to retaliation from foreclosed retailers, considering the importance of EssilorLuxottica as a supplier of frames and sunglasses as indicated in sections 8.3.2.2 - 8.3.2.5, but also due to its strength as a supplier of lenses.[483] The market investigation has indicated that retailers might have difficulties to switch, as for instance mentioned by a competitor active in the wholesale supply of lenses: '*These retailers may be reluctant to seek alternative suppliers and switch away from EL after the Transaction, either because they believe some of EL's products are must-have brands (e.g., Ray-Ban, Oakley) or because they are "locked in" under long-term contracts with EL*'[484] […].[485]

(541) Also, customers can only retaliate on lenses if they are sourcing from Essilor. In some countries/regions therefore not as applicable. And in addition, as set out in section 8.3.2.9, the Merged Entity is able to foreclose customers on a store-by-store basis, therefore foreclosing only those customers that do not (or only to a limited extent) source from Essilor (or limit the foreclosure to local areas where customers overall source only to a limited extent from Essilor).

(542) In any event, the Commission considers that it would not be a rational choice for rival opticians to switch supplies from Essilor to a different supplier, as this would not circumvent the input foreclosure strategy nor result in any other gains that would be specific for the situation of being foreclosed with eyewear from EssilorLuxottica.

(543) The Commission in that regard notes that various other reasons may exist for retailers currently sourcing Essilor lenses to switch suppliers. In particular, these retailers would post-Transaction be competing at the retail level with the Merged Entity who would simultaneously be their supplier of lenses. If EssilorLuxottica in its position as a supplier of lenses would be able to deteriorate the commercial conditions of these lenses (for instance, by delaying deliveries, or reducing

483 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 9 and Questionnaire to optical retail chains – Q2 – question 6.

484 Questionnaire Q3 to suppliers of lenses and eyewear.

485 Response to RFI 1, Q9.

innovation or quality), this would affect their competitiveness against the Merged Entity's position as a retailer. Considering that lenses are a far more commoditised product with only limited customer preference for specific brands, as set out in recital 663 ff. of the Commission's decision in the proceedings of M.8394, retailers are thus more freely able to switch suppliers of lenses, and there might thus be an incentive and ability to switch suppliers of lenses. However, this switching would therefore be a reaction that is unrelated to any possible strategy for the Merged Entity to engage in input foreclosure of eyewear. For this reason, the Commission considers that switching of lenses by retailers is not considered to be 'retaliation' as a result of such input foreclosure, and is therefore not to be taken into account in assessing the incentives of the Merged Entity to engage in such strategy.

(544) Similarly, the retaliation by customers that would have occurred following the announcement of the Transaction, as discussed further below, is not due to the Transaction at hand but rather due to EssilorLuxottica's intention to enter (or at least significantly expand, depending on the country) retail markets and therefore would as a supplier also become a competitor. As the Notifying Party announced the Transaction, opticians were made aware of its strategy to enter the retail market and may revise their position vis-à-vis EssilorLuxottica in this regard. However, even in absence of the current Transaction, the Notifying Party could pursue its expansion into retail markets, for instance by acquiring other retailers (as it has considered internally, as shown in Figure 56). Therefore, the Commission considers that this retaliation would not be merger specific.

Figure 56 – Notifying Party acquisition strategy[486]

[…]

(545) The notion that retailers would switch suppliers of lenses regardless of any strategy of input foreclosure is further also confirmed in EssilorLuxottica's internal documents. In particular, when assessing synergies of the Transaction, as shown in Figure 57. The first slide gives an overview of the synergies that are expected to be attained following the Transaction. For instance, the Notifying Party […]. On the second slide, […]. The third slide then considers negative synergies that follow from optical retailers switching their sourcing of lenses from Essilor to other eyewear suppliers. In this regard, […]. This would represent switching by […] of customers overall in the 'low case retaliation' scenario' to switching by […].

Figure 57 – Synergy document EssilorLuxottica[487]

[…]

486 DOC-000000108.pdf, Doc ID185-108.

487 Response to RFI 2, annex 13.1, A, Essilor, 'Project Mirror – Illustrative Net Synergies Assumptions v34'.

(546) This is also shown below in Figure 58 where the Notifying Party comments on estimations made by […] as to the transaction valuation, and in particular where it considers a potential loss in Essilor lenses. The first slide sets out an executive summary where it sets out its findings on its test of […]'s estimations. The second slide indicates that […]. Furthermore, the document indicates that it would […] (other countries mentioned are outside the EEA). Slide 3 and 4 are […]. Slide 5 […].

Figure 58 – Essilor's assessment of […] estimations on transaction[488]

[…]

(547) For the same reasons as set out in recitals (511) - (515), the Commission considers that it is not likely that retailers would switch their sourcing of eyewear as a result of input foreclosure by the Merged Entity, or as a result of the Transaction. This is further set out in the following recitals.

(548) Many retailers responding to the market investigation indicate that, should the Merged Entity engage in an input foreclosure strategy that would encompass foreclosing Ray-Ban, they would significantly reduce sourcing from Luxottica or would no longer source at all. However, based on clarifying comments by some of the respondents, it appears that for some of the respondents this would be because Ray-Ban simply represents most of those customers' sourcing from Luxottica.[489] This would thus only show that Ray-Ban simply constitutes a large part of Luxottica's sales of eyewear in the EEA.[490]

(549) More significantly, the Commission also asked in the market investigation how opticians would react to deteriorated commercial conditions. It seems that, if faced with deteriorated commercial conditions, a significant number of opticians would not be able to replace Luxottica without losing customers. This applies to both retail chains and independent opticians. Certain retail chains for instance have indicated:

'would probably need a couple of different brands to have something that comes near to replacement'; 'stronger collaboration with other suppliers; will make procurement more complex'; 'other brands from different suppliers; difficult to conintue competing (brand recognition Luxottica)'; 'must have, would try to secure a contract with good terms with Luxottica'; 'only a very limited number of customers would switch to other brands'; 'lose significant number of customers'.[491]

(550) Certain independent opticians have indicated:

'*if the prices on Ray Ban in Grand Vision is discounted we'll consider to terminate the agreement with short notice. But We will lose turnover! But we will not support a supplier which step on us.*'; '*Wij zullen dan moeten stoppen met zaken doen met Luxottica. Daartoe zijn wij in staat, maar dat zal zeker omzet kosten. Producten van andere toeleveranciers inkopen is dan de oplossing, maar die zijn vaak niet geheel,*

488 Form CO Annex 5.4.1 EL, Mirror.pdf.
489 Questionnaire Q11 to independent opticians, question 48, and questionnaire Q12 to optical retail chains, question 49.
490 Response to RFI 27 question 8, annex Q8.
491 Questionnaire Q12 to optical retail chains, question 50.

of soms totaal geen alternatieven voor producten van Luxottica.'; '*Of course the only solution would be to switch to alternative suppliers, but this would mean a loss of customers.*'; '*We would have to find alternative brands , This would not always be possible as LuxotticaLuxxotica have a huge portfolio of many of the desirable brands*'; '*Essilor Luxottica représente plus de 80% de nos achats.... et les magasin Grandvision se situent dans tous les centres commerciaux où nous nous trouvons... Ce serait catastrophique. Le mieux serait qu'ils nous rachètent...*'; '*we would try to switch for other companies brands but as luxottica has the most popular brands it would not be totally as successful or possible.*'[492]

(551) The above statements therefore show that in fact retailers would find it difficult or in some cases even unacceptable to renounce the supply of the most popular EssilorLuxottica brands.

(552) In addition, as indicated in section 8.3.2.3, Luxottica's portfolio is by far the widest and strongest. If it were to foreclose on part of its portfolio, it would still have a strong position with the remainder of its portfolio. In this regard, it would not be rational for retailers to no longer source these other products, as this would not circumvent the input foreclosure nor result in gains that would be specific for the situation of being foreclosed with a part of the portfolio of EssilorLuxottica's eyewear.

(553) On this basis, the Commission considers that retailers are most likely to keep on sourcing eyewear from EssilorLuxottica.

(554) In the response to the Commission's 6(1)(c) response, the Notifying Party submits that 'a great number of customers' have stopped or decreased their purchases after the announcement of the Transaction. […].[493]

<u>A. Eyewear</u>

(555) More specifically, on eyewear, the Notifying Party submits that […] would be a 'prominent example of effective retaliation'. […]. Table 12 below compares […] procurement in 2019 with 2018. Indeed, orders for the second semester of 2019 have decreased compared to 2018, but the orders for the first semester have similarly increased. When looking at full-year figures, net sales have only decreased by […]. Therefore, the Commission considers this inconclusive as to whether there has been a meaningful decrease in procurement from Luxottica as a matter of retaliation, or whether the observed fluctuations are due to a procurement timing difference. The Notifying Party claims that the Commission in this regard has disregarded the data submitted by in in response to RFI 16 Q21. However, the Commission considers that its findings are not affected by the data submitted in response to RFI 16 Q21.

Table 12 – […] orders, shipments and net sales (2018 vs 2019)[494]

[…]

(556) In the Reply to the SO, the Notifying Party further referred to Figure 59 below explaining that this figure would show a decrease in orders by […] over the long

492 Questionnaire Q11 to independent opticians, question 49.
493 Response to 6(1)(c) paragraph 9; response to RFI 11, question 35.
494 Response to RFI 11, annex 35.2.

term while simultaneously expanding its position in the optical retail market. In this regard, the Commission however notes that (i) markets are strongly differentiated, which means that some retailers might have more room for switching than others, (ii) this switching seems to have taken considerable amount of time and (iii) would not seem to be in reaction particularly to the risk of input foreclosure stemming from the current Transaction but as a result of a series of events over the years, and (iv) this retailer is only active to a limited extent in the countries where the Commission finds a significant impediment to effective competition.

Figure 59 – Evolution of […] orders[495]

[…]

B. Lenses:

(557) In response to the Commission's request for information, the Notifying Party provided an overview of customers that would have retaliated after the announcement of the Transaction by switching lens suppliers. This overview contained examples from […] customers, indicating a total impact of EUR […] annual turnover.[496] The Commission issued a further request for information for the Notifying Party to justify how it had identified that the lost businesses indicated in the overview would be related to the Transaction, and to also evidence this. In addition, this overview contained general categorisations of customers […].

(558) The Notifying Party resubmitted an overview in response to the Commission's request for information 27, question 9, indicating examples of customer retaliation on lenses, this time for a total impact of […] annual turnover. However, this still includes losses on general categorisations, […]. Taking into account only entries of identified customers, the impact would be reduced to […] per year. Yet, most of these instances are not documented and are simply referred to as 'personal contact' having identified whether these would be due to the Transaction. Looking at only those identified and where evidence has been submitted for, the impact reduced to […] per year. These are only […]. The Commission looks at the evidence provided for these customers and sets out its findings of this in the recitals that follow.

(559) The evidence submitted for […] does in fact not indicate that the discontinuation of lens supply would be due to the Transaction, and in any event also not to the retailer risking input foreclosure of eyewear, as shown in the following Figure.

Figure 60 – […] loss of business (lenses)[497]

[…]

(560) The Commission further points out that […], and does not source Luxottica eyewear, and therefore excludes that this would in fact be a result of retaliation against potential input foreclosure on eyewear.

(561) The Notifying Party submitted a presentation made by the president of […], during its annual meeting, of changing its policy to no longer source Essilor lenses. The

495 Response to the Statement of Objections, figure 4.
496 Response to RFI 11, annex 35.1.
497 Response to RFI 27, annex 9.6. Free translation provided by the Notifying Party: '*[…]*".

reason for this change would be that Essilor by acquiring GrandVision will become a competitor. Further submissions were made of individual opticians no longer sourcing Essilor lenses and indicating that this is due to the change in group policy.[498] The Commission however remarks that no reference is made to the risk of input foreclosure on eyewear.

(562) The Notifying Party submitted an internal note following a meeting with[…], indicating that the retailer would introduce the possibility for its stores to also source from Hoya. However, the note refers not only to the announcement of the Transaction but also to lack of service '*[...]* Furthermore, the note concludes that *[...]*.'[499] Therefore, the Commission considers this not to be a result of potential input foreclosure on eyewear but if anything, on current service issues regarding lenses and the extent to which that would be impacted by the Transaction.

(563) In sum, as set out above, the Commission considers that it is unlikely that customers being faced with possible input foreclosure on eyewear would as a result retaliate on lenses. That would not be as a rational choice. Moreover, retaliation occurring as a result of developments other than input foreclosure deployed by the Merged Entity's does not seem relevant for the assessment of the Notifying Party's incentives to engage in such strategy.

(564) Furthermore, as set out in the economic annex (Annex I) to the Decision, (i) it is unlikely that individual retailers will engage in retaliation with EssilorLuxottica for the benefit of all other retailers, (ii) the Commission's quantitative analysis accounts for reactions by retailers and final consumers in terms of switching to other frames brands or simply promoting or stocking less of EssilorLuxottica's frames and (iii) if retailers found it easy or convenient to threated to switch lens brands, they would have most likely already exercised this bargaining power pre-Transaction in order to lower the margins conceded to EssilorLuxottica.

(565) Therefore, the Commission considers that EssilorLuxottica faces limited risk of customer retaliation.

8.3.3.4. Large downstream presence through GrandVision + 'all-round' – large potential to recoup sales

(566) The Notifying Party argues that the Merged Entity's retail network would be too small to be able to capture demand from foreclosed stores. In this regard, it submitted that the Merged Entity would have a retail network of only 6 000 doors, compared to a total of 36 000 rival stores in the EEA served with Luxottica eyewear today. However the Commission notes that in specific countries, the Merged Entity's retail network is more widely represented than in the EEA overall, such as in Belgium, Estonia, Finland, Hungary, the Netherlands, Norway, and Portugal. Furthermore, as indicated in section 8.2, the Commission finds that not that many customers would need to switch in order to render an input foreclosure strategy profitable and in order for it to negatively affect the commercial conditions in wholesale and retail markets for eyewear. Therefore, it is not required that the Merged Entity's doors would have the capacity to serve all consumers that previously purchased Luxottica eyewear at rival retailers. In addition, there is room

498 Response to RFI 27 question 9.7.
499 Response to RFI 27, annex Q9.5.

at GrandVision to change the offering on its shelves currently dedicated to frames of other manufacturers, […].[500] Sunglasses in turn represent only a smaller fraction of products on display in optical retail stores, and could therefore still be exposed to a larger degree.

(567) The Notifying Party further argues that the Merged Entity's local share affects also the amount of customers that would be willing to switch stores (the 'churn rate') as customers would be less likely to travel and search substantially in order to find EssilorLuxottica's eyewear products in the event that only limited stores in an area would have them on offering.

(568) The Commission however finds that (i) the Merged Entity would have a substantial market share in several countries and even higher in many local (sub-national) areas, (ii) irrespective of market shares, retail stores are often located closely nearby, (iii) many customers first search offline, and other factors such as advertisement also play a role in attracting customers, (iv) retailers still estimate that a substantial amount of consumers would switch, (v) GrandVision is ideally positioned to capture diverting customers. This is set out in the following recitals.

(569) First, the Merged Entity would have a substantial market share in several countries, as indicated in section 8.1.

(570) Furthermore, as indicated in section 6.2, the relevant retail markets for the retail of frames and of sunglasses are local in scope. Figure 61 below shows that the Parties have a share of doors offering Luxottica products above or equal to [50-60]% in [over 250] local areas in Austria, Belgium, Finland, France, Italy, Netherlands, Norway, Portugal, Sweden and UK when measured at the LAU level. These represent [over 450] stores, out of which according to the Parties 'at least' [over 100] are franchise stores.[501]

Figure 61 – Parties' share of doors offering Luxottica products, at LAU level[502]

[…]

(571) Second, retail stores are often located nearby. Therefore, irrespective of market shares, customers would not have to travel far when not finding Luxottica products.

(572) Third, customers are attracted to optical stores also through other means than street visibility, for instance by advertisement.[503] In addition, a significant amount of customers first research online before purchase, as shown in Figure 62. Therefore, the Merged Entity would be able to attract customers beyond its market share, for instance by advertising to customers that its brands are available in own stores.[504]

500 Response to RFI 28, Q4.

501 Response to RFI 18, question 11.

502 Response to RFI 18, figure 11.1. This includes all GrandVision stores, irrespective of whether they sell Luxottica products.

503 Questionnaire Q11 to independent opticians, question 47, and questionnaire Q12 to optical retail chains, question 48.

504 This is different for rival opticians, who typically do not have ownership (and therefore less incentive) of the brands they sell, safe for private label products.

Figure 62 – Customers research online[505]

[…]

(573) Fourth, these findings of the Commission are furthermore supported by the data obtained from the questionnaire to retailers, in which retailers were asked how many customers would switch to stores of the Merged Entity when all rival retailers were faced with deteriorated commercial conditions.[506] Even if the retail network of the Merged Entity would be the only retailer that would not be foreclosed, retailers still estimate that a substantial amount of consumers would switch, as shown in section 8.3.2.7.

(574) Fifth, GrandVision is ideally positioned as an all-round player. Retail markets are differentiated. Retailers typically have a different focus in terms of supplying mass versus premium products.[507] GrandVision however is active in both mass and premium products, and more so than other retail chains. In this regard, the Commission considers that the GrandVision outlets are better capable to recoup diverted sales compared to those retailers who focus on either mass or premium (or even luxury) products.

(575) The Notifying Party submitted that the Commission should further take into account the sales made by non-optical retailers and online retailers, as the inclusion of these in the relevant market would significantly lower the Merged Entity's retail market shares and, thereby, also lower its ability to recoup sales. However, the Commission points out that, as indicated above in this section that (i) regardless of market share, retail stores are often located closely nearby, (ii) other factors such as advertisement also play a role in attracting customers, (iii) retailers still estimate that a substantial amount of consumers would switch, and (iv) GrandVision is ideally positioned to capture diverted sales. Furthermore, as set out in section 6, the Commission finds non-optical retail and online retail to constitute distinct markets, and switching to these channels would thus in any event be limited. Moreover, the Commission finds that not that many customers would need to switch to the Merged Entity's stores in order to render an input foreclosure strategy profitable and in order for it to negatively affect the commercial conditions in wholesale and retail markets of eyewear, as shown in section 8.2.

(576) Furthermore, the Notifying Party submitted that a theory of harm whereby consumers would switch away from independent opticians to the Merged Entity's stores is at odds with the understanding that these consumers can already go to retail chains as cheaper options on the market. The Commission however finds that this argument is only relevant for partial foreclosure in the form of price increases to rival retailers, and does not apply to a deterioration of commercial conditions more broadly (such as delivery delay, exclusivity of models for own outlets, etc).

(577) Finally, the Notifying Party submitted that GrandVision is not an all-rounder, but would be positioned in the low to mid-end of the market. The Commission in this regard points out that it also has banners positioned somewhat higher than this, for instance Eye Wish in the Netherlands, Grand Optical in Belgium. This is still a much

505 Form CO Annex 5.4 EL, Ray Ban brand tracker global.
506 Simplified Questionnaire to retailers, questions 10 and 13.
507 Questionnaire to optical retail chains – Q2 – question 1.1.2.

more all-round position than for instance the second largest chain in Europe, Specsavers, which as indicated in the country sections in chapter 9 is positioned as a value retailer.

8.3.3.5. vGUPPI

(578) The Commission performed the vGUPPI analysis in section 8.2 to quantify the costs and benefits for the Merged Entity to engage in input foreclosure. On this basis, it finds that the critical diversion ratios required for a partial foreclosure strategy to be profitable to the Merged Entity would be low, in particular for frames, in several countries. Such critical diversion ratios would be the lowest in Belgium, Italy, the Netherlands and Portugal. The findings for individual countries is set out in the country specific assessment in chapter 9.

8.3.3.6. Vertical arithmetic analysis

(579) The Commission considers that the Merged Entity may be incentivised to engage in partial input foreclosure in certain countries, on the basis of its findings in section 8.2. [508] It is also reasonably possible that the Merged Entity would be incentivised to engage in total input foreclosure of frames, namely a scenario whereby rival retailers would be denied the supply of EssilorLuxottica frames (or denied supply of certain important EssilorLuxottica brands or models). This is however less likely than the scenario of partial foreclosure. The conclusion follows from the vertical arithmetic analysis conducted by the Notifying Party and the evidence available regarding actual switching. This is discussed in detail in section 8.2.4.

8.3.3.7. Estimated actual churn rate

(580) As indicated in section 8.3.2.4, according to a market study represented in EssilorLuxottica's internal *brand tracker*, Ray-Ban is the first choice brand of sunglasses for […] and for frames for […] of customers at global level. This figure is higher for individual countries within the EEA ([…]). Ray-Ban constitutes […] of Luxottica's sales of frames and […] of sales of sunglasses to retailers in the EEA.[509]

(581) One group of customers that would switch are those that enter a store with a particular brand in mind, and that brand being a Luxottica brand. In this regard, the Parties submitted studies that would provide an indication of actual customers that would switch if they did not find a specific brand in an optical store. In a 2015 study called '*The in-store experience – the selection patterns that leads to choice and purchase*',[510] it is found for sunglasses that […]. The Commission understands from the Figure 63 below that […]. The study seems to make the conclusion that […].

(582) According to this study, the situation would be different for frames as […].

Figure 63 – Sunglass decision tree[511]

[…]

[508] See section 9 for a country-by-country analysis and section 8.3.3.8 for conclusions regarding incentives to engage in partial input foreclosure.

[509] Response to RFI 27, annex Q8.

[510] Response to RFI 18, annex 5.1.

[511] Response to RFI 18 annex 5.1.

(583) The study further mentions that[…]. The Commission however finds that respondents to this study were surveyed including in countries as China, Brazil and the US, and that this does not necessarily would be representative for forecasting the amount of customers in the EEA that would switch.

(584) The Notifying Party also submitted a study 'The Journey to Sunglasses – a focus on Sunglass Hut' from July 2019, which mainly focuses on the USA.[512] As shown on Figure 64 below, it would suggest that[…]. The Commission however points out that this would only be a lower bound for the exact amount of customers that want to purchase a specific brand. Customers may, for instance, be triggered by 'special occasion' or 'style' triggers to make a purchase, but in their actual purchase decision would consider a specific brand to meet their needs. In Figure 65 below for instance, […].

Figure 64 – Study 'the journey to sunglasses' – purchase triggers[513]

[…]

Figure 65 – Study 'the journey to sunglasses' – product driver importance[514]

[…]

(585) Most respondents to the Commission's market investigation consider that the customers of branded frames that have pre-determined a particular brand before having entered a store/received sales support are a minority (<50%), but still a significant amount (>25%) of customers.[515] This is much higher for sunglasses: half of chains and a majority of iECP consider this is more than 50% of such customers. Retailers for instance indicate: '*If a person wants a rayban or an Oakley, they are determined to buy a rayban or Oakley*'; '*people visit many stores looking for the particular sunglass they want. They know it is possible to find a particular frame in some shops but not in others.*'[516]

(586) In addition to customers that would have a specific brand in mind, the Commission considers that on top of these, there would be scope for additional customers that would switch to find EssilorLuxottica brands, even if 'a specific brand' would not necessarily be the most important purchase criterion, given the overall strength and broadness of EssilorLuxottica's portfolio, as discussed in section 8.3.2.3- 8.3.2.4.

(587) Overall, the Commission finds that the evidence obtained in the market investigation supports the estimations made by retailers as to how many customers would switch to the Merged Entity's stores, if rival retailers were faced deteriorated commercial conditions, as discussed in section 8.3.2.7.

512 Response to RFI 18, annex 5.2.
513 Response to RFI 18, annex 5.2.
514 Response to RFI 18, annex 5.2.
515 Questionnaire Q11 to independent opticians, question 51, and questionnaire Q12 to optical retail chains, question 52.
516 Questionnaire Q11 to independent opticians, question 58, and questionnaire Q12 to optical retail chains, question 59.

8.3.3.8. Incentives to input foreclosure - conclusion

(588) On the basis of the considerations set out in sections 8.3.3.1–8.3.3.7 and section 8.2 above, the Commission considers that the Merged Entity would likely have the incentive to engage in input foreclosure for frames in several countries in the EEA, in particular in Belgium, Italy and the Netherlands. Conclusions on potential significant impediment to effective competition are made in section 9 within country-specific sections.

8.3.4. *Commission's views: effects of input foreclosure*

8.3.4.1. The markets for eyewear are strongly differentiated, stronger effects of input foreclosure are possible for certain segments within the relevant product markets.

(589) As indicated in section 6.1, the wholesale and retail markets for eyewear (frames and sunglasses) are strongly differentiated along a number of parameters. While it is not possible to delineate the exact relevant product market definition beyond the overall wholesale markets for frames and sunglasses, there are limitations with respect to switching by consumers between different segments. This is for instance shown by the estimations from the Commission's questionnaire to retailers whereby these estimate that a significant amount of customers would switch stores in case of a worsening of price and/or availability of EssilorLuxottica eyewear (as described in section 8.3.2.7). In that regard, The Notifying Party is particularly is strong in branded products and its most-sold brand Ray-Ban is considered the strongest brand in the industry with no contenders being close (see section 8.3.2.4).

(590) Therefore, effects that are found on the overall wholesale and retail markets for frames are even more pronounced in individual segments of demand. In particular, customers that would purchase Ray-Ban would typically do not buy private label. Conversely, customers buying private label would typically not buy luxury brands. In this regard, we consider that effects would be most pronounced for customers that are brand sensitive and those that would typically buy brands that are positioned between the value and luxury segments.

8.3.4.2. Wholesale markets for frames and sunglasses

(591) In case of an input foreclosure strategy, retailers outside the Merged Entity's network would face deteriorated commercial conditions.

(592) For sunglasses in particular, the Notifying Party raised the argument that they do not constitute an important input for opticians, as they constitute on average less than 12% of sales achieved by opticians, as shown below in Table 13. However, the Commission notes that, nonetheless, sunglasses account for a significant source of product differentiation for the product eventually purchased by the consumer. Therefore, it considers the extent to which opticians' turnover is derived from sales of sunglasses not to preclude effects in the wholesale of sunglasses.

Table 13 – Sales achieved by opticians, by product in selected EEA countries[517]

Region/Country	Lenses	Frames	Sunglasses	Contact lenses	Readers
Netherlands	[40-50]%	[20-30]%	**[10-20]%**	[10-20]%	[0-5]%
Belgium	[40-50]%	[20-30]%	**[10-20]%**	[10-20]%	[0-5]%
Austria	[50-60]%	[20-30]%	**[10-20]%**	[5-10]%	[0-5]%
Denmark	[40-50]%	[20-30]%	**[5-10]%**	[10-20]%	[0-5]%
Finland	[40-50]%	[40-50]%	**[5-10]%**	[10-20]%	[0-5]%
France	[50-60]%	[20-30]%	**[5-10]%**	[5-10]%	[0-5]%
Hungary	[40-50]%	[20-30]%	**[10-20]%**	[5-10]%	/
Ireland	[30-40]%	[20-30]%	**[10-20]%**	[20-30]%	[0-5]%
Luxembourg	[50-60]%	[20-30]%	**[10-20]%**	[5-10]%	/
Norway	[50-60]%	[20-30]%	**[5-10]%**	[5-10]%	[0-5]%
Portugal	[50-60]%	[20-30]%	**[0-5]%**	[10-20]%	[0-5]%
Spain	[40-50]%	[10-20]%	**[30-40]%**	[10-20]%	[0-5]%
Sweden	[50-60]%	[20-30]%	**[5-10]%**	[10-20]%	[0-5]%
Italy	[40-50]%	[20-30]%	**[20-30]%**	[10-20]%	[0-5]%
UK	[40-50]%	[20-30]%	**[0-5]%**	[10-20]%	[0-5]%

Sources: EssilorLuxottica and GrandVision estimates

(593) EssilorLuxottica is seen by independent opticians as an essential or very important supplier in terms of generating profitability to their stores, much more than other frames or sunglasses suppliers.[518] Optical retail chains even indicate that they consider EssilorLuxottica's frames and sunglasses essential in terms of overall profits generated for their stores, while no other supplier is considered to be essential in this regard.[519] Furthermore, a large majority of respondents considers that EssilorLuxottica has a competitive advantage vis-à-vis other suppliers. When asked to explain, respondents often seem to indicate that this is due to its brand portfolio (including for instance Ray-Ban).[520]

(594) Retailers indicate that specific brands for frames and for sunglasses are very important to essential to attract customers to a shop and make a purchase, even more so than price. The Commission takes note that other factors are also seen as very important to essential (such as in-store appearance or customer service), but understands that these factors can be seen as complementary and cannot replace the availability of brands for customers specifically seeking specific brands.[521]

(595) This is particularly relevant as retailers consider that there are no other companies providing the same portfolio of brands offered by the Notifying Party.[522]

(596) In M.8394, the Commission found that many retailers would not stock Luxottica products, and consider other factors than the availability of brands to drive customers to their stores to make purchases. In this regard, the Commission does not consider that the input foreclosure strategy would threaten the viability of competing retailers as a whole. However, as EssilorLuxottica is considered to be the most important supplier of eyewear, due to the strength and broadness of its portfolio, its deployment of input foreclosure on frames would deteriorate the competitive conditions in the wholesale markets for frames. Furthermore, the extent to which a

517 Response to the Statement of Objections, table 2.

518 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – questions 9, 10 and 11.

519 Questionnaire to optical retail chains – Q2 – questions 6, 7 and 8.

520 Questionnaire to independent opticians and Questionnaire to optical retail chains – Q1 (DE, EN, FR, IT, NL, PL) and Q2 – question 21.

521 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 25 and Questionnaire to optical retail chains – Q2 – question 26.

522 Questionnaire to independent opticians – Q1(DE, EN, FR, IT, NL, PL) – question 15 and Questionnaire to optical retail chains – Q2 – question 14.

segment of retailers does not stock Luxottica products also has to be seen in light of the differentiation of the markets, as set out in Section 6.1.1. In addition, the amount of retailers that stock Luxottica products differs per country. Therefore, the Commission takes into account penetration rates in the country specific assessments in chapter 9.

(597) Furthermore, as also noted in chapter 9, the market structure of the wholesale markets of eyewear is characterised in several countries as oligopolistic, where EssilorLuxottica in combination with the second, third and fourth largest supplier occupy more than half of the market. Therefore, as noted in the NHMG, paragraph 38, a decision of the Merged Entity to restrict access to inputs reduces the competitive pressure exercised also on the remaining input suppliers.

8.3.4.3. Competitive constraint exercised by retail chains in optical retail markets

(598) The Commission finds that retail chains exert stronger competitive pressure on the optical retail markets as regards frames and sunglasses.

(599) First, as indicated in recital (573), independent opticians follow the Recommended Retail Price ('RRP') much more than retail chains.

(600) Second, retail chains seem to be under larger pressure to compete on prices because they do not enjoy the same customer loyalty as independent opticians and therefore price significantly below independent opticians in order to compete. A retail chain active in the Netherlands, Belgium, Germany and Sweden explains: '*Consumers visiting independent opticians typically have a bond with the optician, similarly as with their general practitioner. Independents therefore have a high level of consumer loyalty. […] Initially, consumers are often skeptical about whether a chain can offer the same quality product as an independent for a significantly lower price. However, once a consumer has made the switch to a retail chain, he/she typically has become aware that a similar offering is available at lower prices.*'[523]

(601) Third, this is also in line with the Notifying Party's considerations made in the ordinary course of business, as demonstrated below. Figure 66 indicates in the first excerpt the Notifying Party's intention to '*[…]*'. It has acquired […], as shown in the second excerpt. Figure 67 shows that in a SWOT analysis performed by the Notifying Party, it considered […].

Figure 66 - Optitrade and OLC Status presentation March 2018[524]

[…]

Figure 67 –[…][525]

[…]

(602) The Notifying Party submitted in this regard that, if retail chains were pricing lower, this would be because of their lower-end positioning and their customers being more

[523] Final non-confidential minutes of a call with an optical retail chain on 21 April 2020, Doc ID 2969.
[524] ESS-0037426.PPTX, Doc ID1286-13426.
[525] Essilor_Blue Intro.pdf, slide 9 (Doc ID29-7).

price sensitive. Chains would therefore be more likely absorb price increases. The Commission however notes that this does not apply to partial input foreclosure in the form of deteriorated commercial conditions beyond price (such as exclusivity of models for own stores, delivery delays, etc). As regards prices, the Commission considers that the average pass-through rate of 75% used in its economic modelling is appropriate (see Annex I to this Decision).

8.3.4.4. Retail markets for frames and sunglasses

(603) The Phase II market investigation has shown that the vast majority of independent opticians and optical retail chains would pass down a wholesale price increase of EssilorLuxottica's products almost in full to their final consumer.[526]

(604) In addition, independent opticians typically follow the recommended retail prices ('RRP') that are communicated to them by eyewear suppliers such as EssilorLuxottica. For about half of independent optical retailers responding to the market investigation, RRP is followed for 75-100% of sales of frames, and for a slight majority of respondents, RRP is also followed for 75-100% of sales of sunglasses.[527] This however seems to be less so for optical retail chains. For about half of chains responding to the market investigation, RRP is followed for 0-25% of sales of frames while a majority indicates that RRP is followed for 25-100% of sales for sunglasses.[528]

(605) A retail price increase as a response to a wholesale price increase would also have been the likely reaction by GrandVision, in the absence of the Transaction.[…].[529][…].

(606) […], as shown in the following Figure.

Figure 68 – Project Narvi[530]

[…]

(607) Such retail price increase would be in line with EssilorLuxottica's overall strategy of protecting its brand image, by avoiding that its products are used in competitive discounting and promotions. This is shown in Figure 69, which is an excerpt from a presentation by Luxottica on a strategic meeting in July 2017 on its relationship with GrandVision. The first excerpt shows […]. The second slides lists […].

Figure 69 – Luxottica strategic meeting July 2017[531]

[…]

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526 Simplified Questionnaire to retailers, questions 9 and 12.
527 Questionnaire Q11 to independent opticians, questions 39 and 40.
528 Questionnaire Q12 to optical retail chains, questions 41 and 42.
529 Response to RFI 22 question 1.
530 LL_00043533.pptx, ID001279-035199.
531 P028-00074165.PDF, ID1469-1305.

(608) This is also shown in Figure 70, which are two excerpts from an internal document where Luxottica[…]. It indicates that […].

Figure 70 – Luxottica commercial harmonization[532]

[…]

(609) In addition, Luxottica had also previously […], as indicated in recital 423 of the Commission's decision in M.8394 Essilor/Luxottica.

8.3.4.5. Optical retail markets regarding frames– more pronounced effects through impact on retail chains

(610) Moreover, the Commission finds that retail chains exert stronger competitive pressure on the optical retail markets as regards frames, and that these will be impacted even more by the strategy, thereby reducing their competitive constraint leading to higher price increases at the retail level, as set out in section 8.3.4.3.

(611) Considering that EssilorLuxottica brands are even more important for retail chains for generating customer traffic (see recital (403)), this implies that they would be impacted even more, and the impact on retail markets in turn would be higher.

(612) Retail chains are also the largest purchasers of EssilorLuxottica's eyewear products. This is shown in Table 14 and Table 15 below.

Table 14 - Average Luxottica sales of frames, per store[533]

[…]

Table 15 - Average Luxottica sales of sunglasses, per store[534]

[…]

8.3.4.6. Competitive information on rival retailers

(613) As set out in section 8.3.2.10, EssilorLuxottica has access to competitors' competitive information, through its position as a supplier of frames and eyewear, as well as through its IT systems STARS and Essibox in place at rival opticians. As set out in section 8.3.2.9, EssilorLuxottica is able to differentiate its supply by customer segments.

(614) On this basis, the Commission considers that EssilorLuxottica has insight as a retailer of eyewear and ophthalmic lenses into the purchase patterns of rival opticians. Through this insight, the Merged Entity is able to take into account retail competition when strategically deciding what product assortment to grant competitors in a given area.

532 ID001469-011102.

533 Response to RFI2 question 8, table 1.

534 Response to RFI2 question 8, table 2.

8.3.4.7. High barriers to entry and/or expansion

(615) Finally, the Transaction would result in higher barriers to entry, or barriers for competitors in frames and sunglasses to expand, as one of the largest customers in the retail industry, at which high economies of scale could potentially be achieved in distribution and logistics would be operated by a competitor. Similarly, the Transaction could result in higher barriers to entry, or barriers for retail competitors to expand, as their largest retail competitor would also be able to influence the conditions at which they can procure what appear to be the most important products.

(616) The Notifying Party considered in the response to the SO that there would be no entry barriers in the optical retail markets, and entry would therefore be able to discipline foreclosure strategies leading to price increases in retail. However, the Notifying Party did not substantiate this further, nor explain why entrants would be able to circumvent the Merged Entity's foreclosure strategy and in that regard increase competitive pressure in the wholesale markets for frames, or in the retail markets for these products given the importance and market power of EssilorLuxottica as a supplier to opticians, as set out in sections 8.3.2.3 - 8.3.2.5.

(617) Furthermore, the Notifying Party does not substantiate why entry would be likely, timely or sufficient in the event of a price increase of 5-10%.

8.3.4.8. Input foreclosure effects - conclusion

(618) On the basis of the considerations set out in 8.3.4.1 - 8.3.4.7 above, the Commission considers that the Transaction would lead to significant effects in the wholesale and retail markets for frames due to vertical non-coordinated effects, regarding input foreclosure of the wholesale of frames, and, following the Commission's findings set out in chapter 9 leading to a significant impediment to effective competition in several countries in the EEA (Belgium, Italy and the Netherlands).

9. COMPETITIVE ASSESSMENT OF THE EFFECTS OF THE CONCENTRATION BY COUNTRY: HORIZONTAL NON-COORDINATED EFFECTS IN RETAIL AND VERTICAL NON-COORDINATED EFFECTS AS REGARDS INPUT FORECLOSURE OF EYEWEAR

(619) In the sections that follow, the Commission sets out the competitive assessment of the Transaction by country as regards horizontal non-coordinated effects in retail and vertical non-coordinated effects as regards input foreclosure of eyewear (frames and sunglasses). Only countries where GrandVision has a meaningful retail presence and EssilorLuxottica has a significant wholesale presence are considered to fall within the scope of the assessment.

(620) Specifically, the scope of countries assessed by the Commission is based on the following criteria (on the basis of national market shares):

(a) Countries where the Merged Entity has a combined market share of equal to or above 35% in the wholesale markets for frames or sunglasses,[535] and

[535] The upstream and downstream selection criterion refers to frames and sunglasses because an input foreclosure theory of harm in relation to lenses is unlikely to raise concerns due to the reasons set out above at recitals (232) - (237).

(b) Countries where the Merged Entity has a combined market share of equal to or above 15% in the market of optical retail, in addition to having a combined market share of equal to or above 25% in the wholesale markets for frames or sunglasses.

(621) While the market share thresholds are below those considered under the Implementing Regulation as normally leading to horizontally or vertically affected markets, the Commission considers that a lower threshold is justified in this case for the markets being characterised by the above-mentioned criteria. As set out in section 6.2.2, the relevant markets for optical retail are local. While national market shares can be a first indication of the magnitude of market shares at local level, these could conceal the existence of relevant local markets where the market share would be higher than that at national level. Similarly, the wholesale markets for frames and sunglasses are strongly differentiated markets, as set out in section 6.1, and market shares at an overall level do not necessarily reflect certain segments where the Merged Entity has a stronger position than indicated by these market shares.

(622) The Notifying Party has raised that the Commission should take into account the market share thresholds set out in (i) the Implementing Regulation section 6.3 as regards affected markets, and (ii) the Non-Horizontal Merger Guidelines paragraph 25 as regards the market shares below which the Commission would be unlikely to find concerns of a vertical nature. The Notifying Party considers in that respect that the Commission should identify which local areas are affected.

(623) The Commission nonetheless finds that, on the basis of the below, it is justified to include the countries listed in recitals (630) to (632) in the scope of its competitive assessment.[536]

(624) First, the market share threshold set out in the Non-Horizontal Merger Guidelines paragraph 25 does not give rise to a legal presumption[537]. These thresholds have to be seen in light of the Non-Horizontal Merger Guidelines paragraph 24, explaining that market shares provide a '*first indication* of *market power'*. It however does not prevent the Commission from performing a competitive assessment in markets where the market shares are below these thresholds. Furthermore, the thresholds are not a basis to dispel concerns if, despite initial indications based on market shares, the totality of evidence available to the Commission as presented in the competitive assessment indicate that the Transaction would give rise to a significant impediment to effective competition in the internal market.

(625) Second, the Notifying Party was not able to provide a market share metric at the relevant local level (as defined in section 6.2). Therefore, the Commission uses the available market shares at national level as a proxy.

(626) Third, the Non-Horizontal Merger Guidelines in paragraph 26 specifically name significant cross-shareholdings as constituting a special circumstance for the assessment of non-horizontal theories of harm. As set out in recital (228), the Commission considers that this applies in the current case, due to EssilorLuxottica being a significant supplier at rival retailers.

536 Austria, Belgium, Denmark, Finland, France, Hungary, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the UK.

537 Non-Horizontal Merger Guidelines, para. 27.

(627) Fourth, the Commission considers that it is also justified to include the countries listed in recitals (630) to (632) in the scope of the areas of concern on the basis of the Notifying Party's market position upstream, that is, in the markets for the wholesale of frames and sunglasses. In first instance, because market shares are moderate to high in these markets. Second, because the Notifying Party's market penetration rates are high, as set out in the individual country sections below.

(628) Fifth, the Commission also considers that the market share threshold of 30% as indicated in the Non-Horizontal Merger Guidelines paragraph 25 would not be a reliable indicator for an absence concerns in the assessment of the current Transaction. Again, the Commission stresses that this threshold does not give rise to a legal presumption[538] and the Non-Horizontal Merger Guidelines in paragraph 26 consider that there are special circumstances under which the threshold of 30%, under which the Commission would be unlikely to find concerns in non-horizontal mergers, does not apply. In particular, the Commission finds that the markets for the wholesale of frames and of sunglasses are highly differentiated, and that market shares do not fully capture the extent to which the Notifying Party has market power, as set out in section 8.3.2.2.

(629) Therefore, the Commission finds that it is justified to include the countries listed in the following recitals in the scope of its competitive assessment, structured as follows:

(630) First, the Commission presents its analysis of countries in which potential vertical non-coordinated effects are the largest, as indicated by the Commission's quantitative analysis (see section 8.2.3), and optical retail market shares are among the largest, i.e. the Netherlands and Belgium (respectively [30-40] and [20-30]%).

(631) Second, the Commission analyses countries in which potential vertical non-coordinated effects cannot be excluded based on the general findings of section 8, i.e., Austria, Denmark, Finland, France, Hungary, Luxembourg, Norway, Portugal, Spain and Sweden.

(632) Finally, the Commission analyses countries in which potential non-coordinated vertical and horizontal effects cannot be excluded based on the general findings of section 8, i.e., countries in which both Parties have a non-negligible downstream presence in the optical retail market as well as a significant presence upstream in the wholesale supply of lenses, frames or sunglasses (Italy and the UK).

9.1. The Netherlands

9.1.1. *Introduction*

(633) The Notifying Party is the largest supplier of frames and sunglasses in the Netherlands, accounting for more than half of the wholesale of sunglasses that are priced above EUR […]. Its brand Ray-Ban has a high penetration rate with […] of Dutch shops offering its frames and […] its sunglasses.

(634) The Transaction would lead to the Notifying Party acquiring the largest retail chain in the Netherlands, accounting for almost a third of the market of optical retail. A

538 Non-Horizontal Merger Guidelines, para.27.

large part of the retail market is fragmented and operated by smaller retail chains and independent opticians, accounting for [40-50]% of the market overall.

(635) The Commission finds that this would lead to vertical effects upstream, whereby the Merged Entity would reduce the competitiveness of rival retailers by way of input foreclosure of eyewear products, thereby further softening competition on the optical retail markets. This is discussed in the sections that follow.

(636) As explained in section 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 71 – Optical retailers in the Netherlands[539]

[…]

9.1.2. *Vertical effects – input foreclosure*

(637) The Commission takes the view that the Transaction would significantly impede effective competition as a result of vertical effects of input foreclosure of frames in the Netherlands.

(638) The quantitative and qualitative evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames leading to vertical non-coordinated effects have been set out in sections 8.2 - 8.3. This is further specified below.

(639) As regards the **ability** to foreclose in the Netherlands, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would allow the Merged Entity to deteriorating the commercial conditions of the provision of its frames and sunglasses to rival retailers and thereby divert customers to its own retail outlets.

(640) First, EssilorLuxottica's market shares for the wholesale of eyewear are high and the market overall is concentrated.

(641) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [30-40]% and [10-20]% respectively. EssilorLuxottica is the market leader in the overall markets for sunglasses and for frames. The next largest suppliers of frames are Safilo ([10-20]%), Marcolin ([5-10]%) and Marchon ([5-10]%). Besides Safilo, competitors are thus significantly smaller than EssilorLuxottica.

(642) Similarly, for sunglasses, the next largest suppliers are Safilo ([20-30]%), Marchon ([10-20]%) and Kering ([0-5]%). Competitors are thus significantly smaller than EssilorLuxottica.

539 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

(643) In addition, the three largest suppliers of sunglasses have a combined market share of [60-70]%, and [40-50]% for frames. As noted by the Non-Horizontal Merger Guidelines paragraph 38, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. On the other hand, the effect is reinforced by the degree of concentration, which is high considering the high combined market share of the three largest suppliers for sunglasses and moderately high for frames. Therefore, the Commission considers that, overall, the market structure would allow eyewear competitors to themselves raise the input price they charge to optical retailers at least to some extent.

(644) However, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1. In this segment, the Merged Entity is the market leader with market shares amounting to [50-60]% and [20-30]% for sunglasses and frames respectively. EssilorLuxottica is the market leader in the segments of branded products and products of above EUR […].

(645) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica's eyewear with that of other suppliers.

(646) Furthermore, for frames over EUR […], the next largest suppliers are Safilo ([10-20]%), Marcolin ([10-20]%) and Marchon ([5-10]%). Other than Safilo, other competitors are thus significantly smaller than EssilorLuxottica. Almost a third of this segment is allocated by the Notifying Party to a further unspecified category of 'others'.

(647) Similarly, for sunglasses over EUR […], the next largest suppliers are Marchon ([10-20]%), Safilo ([10-20]%) and Kering ([5-10]%). All competitors are thus significantly smaller than EssilorLuxottica.

(648) In addition, the three largest suppliers of sunglasses over EUR […] have a combined market share of [80-90]%, and [50-60]% for frames.[540] As noted by the Non-Horizontal Merger Guidelines paragraph 38, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. On the other hand, the effect is reinforced by the degree of concentration, which is high considering the high combined market share of the three largest suppliers. Therefore, the Commission considers that, overall, the market

[540] Form CO Annexes CO 7.2.

structure would allow eyewear competitors to themselves raise the input price they charge to optical retailers at least to some extent.

(649) Second, the penetration rate of Ray-Ban in Dutch stores is significant. Ray-Ban is present in [70-80]% of the 2 200 stores as regards frames and [70-80]% of the stores as regards sunglasses.[541] As explained in section 8.3.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in the Netherlands are of the Ray-Ban brand ([60-70]% of sunglasses and [40-50]% of frames).[542]

(650) Third, 57% of Dutch respondents (29% of chains and 52% of independent retailers) to the Commission's market investigation in the proceedings of M.8394 *Essilor/Luxottica* considered one of Luxottica's sunglasses brands to be their first sunglasses brand, and 29% and 25% respectively for frames.[543]

(651) Fourth, as explained in paragraph (408), […].

(652) On the basis of these country-specific elements, as well as on the basis of the general considerations set out in section 8.3.2, the Commission considers that the Merged Entity would have the ability to engage in input foreclosure of frames and sunglasses.

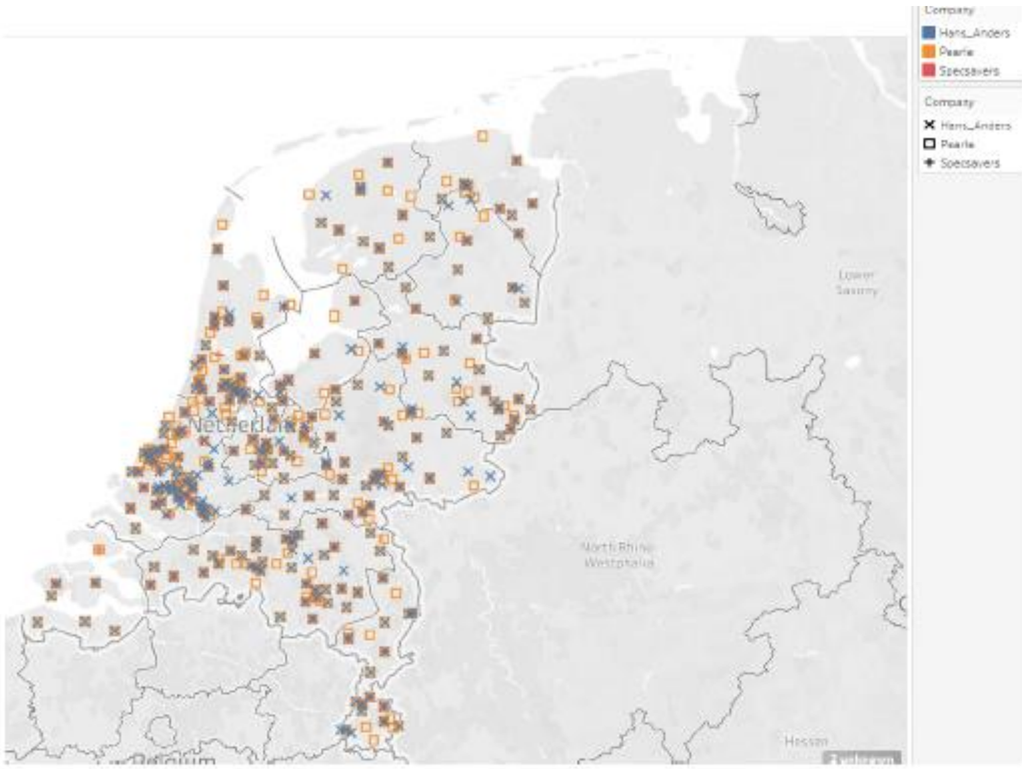
(653) As regards the **incentive** to foreclose rival retailers in the Netherlands, the Commission finds that the Merged Entity would have a large potential to recoup sales through its significant downstream presence as well as all-round positioning of GrandVision as a retailer. Furthermore, switching of customers to own retail outlets is highly profitable, in particular for frames, and therefore the Merged Entity's input foreclosure strategy would be profitable even if a significant amount of customers would not switch stores. This is confirmed for frames by the Commission's vGUPPI analysis as well as to some extent in the Notifying Party's vertical arithmetic analysis as set out in section 8.2.

(654) First, the Merged Entity would have a significant retail presence. It would be the largest retailer in the Netherlands, with a market share of [20-30]% (2018 data, brick-and-mortar). The second and third largest retailers would have significantly smaller shares compared to the Merged Entity. Hans Anders would have [10-20]% and Specsavers [10-20]%.

(655) Furthermore, retail stores in the Netherlands are often located closely to one another, thereby facilitating the diversion of customers to own stores as these would not have to travel very far in order to find EssilorLuxottica products. This is for instance shown by the distribution of Pearle stores (GrandVision banner) and the next largest retail chains (Hans Anders and Specsavers) in the Netherlands besides GrandVision, as per Figure 72.

541 M.8394 Essilor/Luxottica, rec. 598.
542 Response to RFI 27 annex Q8.
543 M.8394 Essilor/Luxottica, rec. 599.

Figure 72 – Distribution of GrandVision and Hans Anders stores[544]



Source: HAG based on periodic internal assessment performed mid-2019.

(656) In addition, GrandVision has an all-round positioning, providing it a large potential to recoup sales. In contrast, Specsavers and Hans Anders would be more focused on value-for-money products, and independent opticians would price significantly higher. A competitor explains: '*In the Netherlands, its main market, in terms of volume 75-80% of the market is served by retail chains. Independent opticians price significantly higher, by a factor of six to nine. It would require a lot of effort for chains to attract customers away from independent opticians, with the reward likely being more limited than if the same effort were invested in competing against chains. The Company constantly monitors other chains, and understands that these other chains do so as well. The exception would be GrandVision's Eye Wish and GrandOptical banners, which have a higher positioning in the value-luxury spectrum. They therefore have more scope to gain share from independents. The Company does not have a higher end retail chain like GrandVision.*'[545] A Dutch trade association also comments: '*Other major chains in the country are Hans Anders and Specsavers, but these are both smaller than GrandVision and focus on the lower end of the market. Accordingly, GrandVision represents the ideal target for EssilorLuxottica to place its high-end products.*'[546]

(657) Second, it is highly profitable for the Merged Entity to divert customers from rival retailers to its own stores. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore

544 Submission of 3 April 2020 by a retail chain. Doc ID3023

545 Final non-confidential minutes of a call with an optical retail chain on 21 April 2020. Doc ID2969.

546 Non-confidential minutes of a call with a trade association on 10 October 2019. Doc ID79.

would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain the wholesale margin for the eyewear purchased by that customer, but also gain the retail margin as well as the wholesale and retail margin on ophthalmic lenses (in particular for frames).[547]

(658) Third, independent retailers consider that a large fraction of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's frames.[548] This is furthermore also raised by the second largest retail chain in the Netherlands (emphasis added): '*EssilorLuxottica provides the inputs for a significant share of [retailer]'s total spectacles related turnover – including bundled sales with at least one EssilorLuxottica product – in affected countries. With Ray-Ban, EssilorLuxottica provides a brand that [retailer] clearly considers a must-have brand for sunglasses and a strong brand for frames. Alternative suppliers are not true substitutes, as a result of which the <u>vast majority of turnover related to sales of EssilorLuxottica brands (including bundled / complementary sales) would likely be lost if [retailer] lost access to these brands</u>. This would have a significant impact on [retailer]'s sales and profitability, and substantially weaken it as a competitor.*'[549]

(659) These elements are confirmed by the Commission's vGUPPI analysis (see section 8.2.3). This analysis shows that the minimum amount of customers that would have to switch from rival retailers to the Merged Entity's stores in order to render a 10% price increase to rival retailers profitable is very low, in particular for frames. For the Netherlands, this would be [0-5]% for frames. Also, this would be much lower than the amount of consumers that are expected by retailers to switch stores (see recital above). For sunglasses, this threshold would be much higher in order for this to be profitable ([10-20]%).

(660) Fourth, the vertical arithmetic analysis carried out by the Notifying Party, as described in section 8.2.4, indicates that in order for a full foreclosure strategy to be profitable, [60-70]% of consumers would have to switch for sunglasses and [10-20]% for frames. The Commission notes the results of the Parties' analysis of total input foreclosure may indicate incentives to run such a strategy. However, given the switching required to generate incentives for partial input foreclosure (see section 8.2) is much lower, the Commission does not analyse in detail total input foreclosure incentives in the Netherlands.

(661) On this basis, as well as on the basis of the considerations set out in section 8.3.3, the Commission considers that the Merged Entity would have the incentive to engage at least in partial input foreclosure of frames.

(662) As regards sunglasses, the evidence available to the Commission is less conclusive. On the one hand, as described in the preceding section, EssilorLuxottica is an

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[547] This applies also for sunglasses to the extent that these are purchased with prescription lenses although that is much less common than for frames.

[548] Simplified Questionnaire to retailers, question 10, responses from independent opticians. Respondents estimate 32% of customers would switch following a worsening of the price and/or availability of EssilorLuxottica's frames, as a result from deteriorated frames commercial conditions at wholesale level.

[549] Doc ID 3022.

important supplier in the wholesale market for the supply of sunglasses, and GrandVision would be instrumental to allow the Merged Entity to recoup a significant amount of diverted sales. On the other hand, the amount of customers that would be required to switch stores in order to render such input foreclosure strategy profitable is much higher for sunglasses than for frames, because the Merged Entity would benefit from the retail and wholesale margin on lenses from sales that are diverted to its own stores to a much smaller extent. Sunglasses are namely much less sold with prescription lenses. This is also confirmed by the Commission's quantitative analysis, as set out in section 8.2. Therefore, it is not clear whether, on balance, there is a significant likelihood that the Merged Entity's ability and incentive would be of the magnitude that corresponds to a significant impact on the wholesale market for sunglasses. However, the Commitments would in any event remove the Commission's potential finding of a significant impediment to effective competition. The divestiture of stores in the Netherlands sufficiently reduces the Merged Entity's incentive to engage in input foreclosure for frames, as described in section 12, and similarly reduces its incentive to engage in input foreclosure for sunglasses (which is smaller to begin with). Therefore, the Commission does not need to conclude as to whether the Merged Entity would have the incentives to engage in input foreclosure for sunglasses (or whether this would result in a significantly detrimental impact on the market to the magnitude of constituting a significant impediment to effective competition).

(663) As regards the **effects** of the Merged Entity's input foreclose strategy, the Commission considers that the Transaction would lead to deteriorated competitive conditions in the wholesale and retail markets for frames in the Netherlands.

(664) In the first place, as a result of the input foreclosure strategy, retailers outside the Merged Entity's network would face deteriorated commercial conditions. Considering EssilorLuxottica's importance as a supplier of frames, as well as the high penetration rates of its brand Ray-Ban, as set out in recitals (637) - (652), the Commission considers that the Transaction would lead to deteriorated competitive conditions in the wholesale market of frames in the Netherlands.

(665) The expected effects of the Transaction are confirmed by the quantitative analysis carried by the Commission, as set out in section 8.2.

(666) In the second place, the majority of independent opticians and optical retail chains responding to the market investigation indicated that they would pass on a wholesale price increase of EssilorLuxottica's products almost in full to their final customer.[550] Therefore, the Commission considers that these deteriorated commercial conditions would also translate to the optical retail market regarding frames.

(667) The effects in the retail market would be particularly pronounced due to reduced competitive constraints exerted by optical retail chains as a result of the Transaction.

(668) Retail chains constitute a significant part of the retail market in the Netherlands. The largest three retail chains in the Netherlands constitute [50-60]% of the optical retail market in the Netherlands.[551]

[550] Simplified Questionnaire to retailers, questions 9 and 12.

[551] Form CO Annexes CO 7.2. Data for competitors was not provided separately by product (frames, sunglasses).

(669) Specsavers would be mainly active in the private label segment, thereby only exercising a limited competitive constraint on the markets that would be most affected (i.e. of branded products, where EssilorLuxottica is active and the strongest supplier).

(670) Hans Anders' competitive constraint would be significantly impacted by the Transaction.

(671) In particular, Hans Anders would be significantly impacted by the input foreclosure strategy, in particular as EssilorLuxottica brands account for 10-20% of its sales of frames (or 20-40% of its sales of branded frames). This is indicated in Figure 73 and Figure 74 below. In addition, EssilorLuxottica's products would be important in terms of attracting customers to stores, even if these customers end up purchasing eyewear other than from EssilorLuxottica. Furthermore, EssilorLuxottica's brands would be very important in bundled sales, where customers would buy its eyewear in a combined promotional pack such as in 2-for-1 or 3-for-1 promotions.[552]

Figure 73 - Relevance of EssilorLuxottica sunglasses for Hans Anders Group in terms of gross revenue (2019) – shares of all sales and sales of branded sunglasses[553]

	Total		Netherlands		Belgium		Sweden	
**1000 EUR*	*All*	*Branded*	*All*	*Branded*	*All*	*Branded*	*All*	*Branded*
RAY-BAN (EssilorLux.)	[45-65%]	[45-65%]	[45-65%]	[45-65%]	[35-55%]	[35-55%]	[55-75%]	[60-80%]
Total EssilorLuxottica	[45-65%]	[45-65%]	[45-65%]	[45-65%]	[35-55%]	[35-55%]	[55-75%]	[60-80%]

Figure 74 - Relevance of EssilorLuxottica frames for Hans Anders Group in terms of gross revenue (2019) – shares of all sales and sales of branded frames[554]

	Total		Netherlands		Belgium		Sweden	
**1000 EUR*	*All*	*Branded*	*All*	*Branded*	*All*	*Branded*	*All*	*Branded*
RAY-BAN (EssilorLux.)	[5-15%]	[10-25%]	[5-15%]	[10-25%]	[5-15%]	[10-25%]	[5-15%]	[10-25%]
Total EssilorLuxottica	[10-20%]	[20-40%]	[10-20%]	[20-40%]	[10-20%]	[20-40%]	[10-20%]	[20-40%]

(672) As explained in recital (624), Hans Anders would be more focused on value-for-money products, and used to focus on private-label products, until it was supplied by EssilorLuxottica with Ray-Ban eyewear, and it considers that it would not be easy to revert its business model as it would not be able to replace EssilorLuxottica's eyewear without losing customers.[555]

552 Submission of 3 April 2020 by a retail chain, Doc ID3023 and submission of 3 July 2020 by a retail chain, Doc ID3369.

553 Doc ID3369.

554 Doc ID3369.

555 Non-confidential minutes of a call with an optical retail chain on 21 April 2020, Doc ID2969.

(673) Based on its own estimations, it considers that [60-100%][556] of its sales of Ray-Ban eyewear would be lost as customers would go elsewhere if this brand is not available in its outlets. Other EssilorLuxottica's brands could be replaced by brands not controlled by EssilorLuxottica, but only partially. Overall, for each sunglasses and frames, it considers that [60-100%][557] of sales from EssilorLuxottica's brands would not be able to be replaced. In addition, this would result in additional losses of complementary sales to these products, such as lenses and products that are sold in promotional bundles.

(674) In the event of total foreclosure, it would therefore lose sales, whereby the decrease in its profitability could lead to a closure of up to 10-20% of its outlets. In the event of partial foreclosure, it would be forced to raise its own retail prices.

(675) Fourth, as set out in section 8.3.4.3, the Commission considers that optical retail chains exert a stronger competitive constraint on the optical retail market regarding frames and sunglasses than independent opticians do. This also applies to the Netherlands. A major optical retail chain indicated that the average price charged by independent opticians would be 4 to 5 times higher than that of chains.[558]

(676) On the basis of the above, as well as on the basis of the considerations set out in section 8.3 and the quantitative analysis as set out in section 8.2, the Commission finds that the Transaction would significantly impede effective competition in the Netherlands, due to vertical effects stemming from input foreclosure, in particular on the wholesale and retail markets for frames.

(677) The Commission observes that in relation to the Netherlands, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [20-30]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.1.3. *Complaints by retailers*

(678) A large majority of independent opticians responding to the market investigation indicated that the Transaction would negatively affect their business, as well as the wholesale and retail markets for frames and sunglasses: '*Onze onderneming zal, als afnemer van de genoemde goederen (en nog extra op goederen als apparatuur en machines) van de groothandel van Essilor/Luxottica ten opzichte van Grandvision, minder in tel zijn. Het hemd is immers nader dan de rok. Het belang van onze winkels wordt op allerlei onderdelen, zoals de exclusiviteit op producten, leveringsvoorrang, nazorg aan producten, etc. ondergeschikt aan dat van Grandvision winkels. Onze onderneming zal daardoor in een oneigenlijke negatieve concurrentiepositie terecht komen. De fusie met Grandvision moet derhalve niet en nooit doorgaan!*'[559] This was also voiced by the Dutch opticians trade association:

556 Non-confidential range.
557 Non-confidential range.
558 Submission of 3 April 2020 by a retail chain. Doc ID3023.
559 Questionnaire Q1 to independent opticians (NL), questions 33, 34, 35 and 36.

'[t]*he end consumer will be worse-off because the competition to EssilorLuxottica will significantly reduce after the Acquisition, as the company will push out of the market opticians at the retail level easily. This will be achieved by raising prices for products supplied by EssilorLuxottica, i.e., by way of decreasing discounts or putting pressure on the margins which these opticians normally get.*'[560]

(679) As indicated in section 9.1.2 above, Hans Anders - the second largest retailer in the Netherlands, operating 210 stores, expressed concerns that it would be foreclosed from EssilorLuxottica's eyewear, and as a result face a reduction in its profitability and competitiveness, to the extent that it would have to close some of its shops and/or raise prices to consumers.

9.1.4. *Access to competitors' competitive information*

(680) The Commission considers that EssilorLuxottica has an insight as a retailer of eyewear into the purchase patterns of rival opticians. Through this insight, the Merged Entity is able to take into account retail competition when strategically deciding what product assortment to grant competitors in a given area.

(681) As set out in section 8.3.2.10, EssilorLuxottica has access to competitors' competitive information, through its position as a supplier of frames and eyewear, as well as through its IT systems STARS and Essibox in place at rival opticians.

(682) For the Netherlands in particular, the Merged Entity would have an insight in competitive information relating to its own sales of ophthalmic lenses, frames and sunglasses. Its wholesale market shares in these markets are [20-30]%, [10-20]% and [30-40]% respectively. However, when looking at supply to retail chains in particular, its market shares for the wholesale supply of ophthalmic frames is significantly higher, namely [40-50]%. This is particularly relevant given that retail chains exert a significantly stronger competitive constraint on retail markets than independent opticians do, as set out in section 8.3.4.3. As shown in Table 10, […] of doors operated by retail chains in the Netherlands that source EssilorLuxottica's eyewear use EssilorLuxottica's STARS system. Also, when looking at sunglasses of a price category above EUR […], the Merged Entity would have a market share of [50-60]%. The Merged Entity would therefore have access to a substantial part of information of rival opticians.

(683) Moreover, […],[561] […].[562]

(684) A Dutch trade association has expressed concerns on the conflict of interest that would arise from EssilorLuxottica's shareholding in Optitrade, considering that, following the Transaction, it would have an influence on negotiating commercial conditions with eyewear suppliers on behalf of the buying group's members, but also operate GrandVision, a major competitor to the members of the buying group. The association explains that EssilorLuxottica's shareholding provides it with the ability to influence the group's agenda and management. The buying group would provide information in relation to the market and negotiate commercial conditions with lens and eyewear suppliers. The association indicates that switching costs for a member to change a buying group are significant, due to the integration of the

560 Non-confidential minutes of a call with a trade association on 10 October 2019, Doc ID79.
561 […].
562 Form CO, Annex CO 7.1.11.

administration of opticians' stores with the IT systems of the buying group, which accommodate invoicing, payments and manage delivery data, among others.[563] Furthermore, the services provided by Optitrade would be more advanced than those of the second buying group in the Netherlands, and not being a member of a buying group would lead to less favourable commercial conditions, thus indicating further difficulties to switch: '*Optitrade is more advanced than the second buying group in the Netherlands (eg in terms of IT and transaction infrastructure). Therefore, other members of Optitrade are less likely to switch to this other buying group. Not only are there fewer services offered by the other buying group, switching is also difficult due to the linkage of customers ordering and accounting system to the Optitrade IT and transaction infrastructure. Independent opticians not part of such buying groups are not able to source from lens suppliers (such as EL) on the same terms, and would be less likely able to obtain comparable discounts.*'[564]

(685) As set out in section 8.3.2.9, EssilorLuxottica is able to differentiate its supply by customer segments.

(686) On this basis, the Commission considers that the Merged Entity is able to take into account retail competition when strategically deciding what product assortment to grant competitors in a given area.

9.1.5. *Overall conclusion (the Netherlands)*

(687) As set out in sections 8.2, 8.3 and 9.2.2, the Commission finds that the Transaction would likely cause significant anticompetitive effects in the Netherlands.

(688) Overall, based on the above, and in particular on (i) the assessment of market shares upstream and downstream, (ii) high margins at the wholesale level for frames, (iii) high penetration rates of EssilorLuxottica's frames and sunglasses at the downstream retail level, (iv) quantitative analysis showing significant negative effects on the downstream retail market in the event of a 10% upstream price increase in the wholesale supply of frames, (v) expected switching by a large fraction of customers to EssilorLuxottica's own stores in case of a degraded commercial conditions at rival stores, (vi) the finding of importance of EssilorLuxottica as a supplier, (vi) the expected pass-on to consumers, (vii) reduced constraint by downstream competitors, and (viii) the feedback from market participants in the investigation, the Commission finds that the Transaction would significantly impede effective competition in the Netherlands due to vertical effects stemming from input foreclosure, in particular on the wholesale and retail markets for frames in the Netherlands.

(689) In addition, for the reasons set out above, the Commission finds that that this significant impediment to effective competition would be reinforced by EssilorLuxottica's access to competitive information of competing retailers.

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563 Non-confidential minutes of a call with a trade association on 10 October 2019, Doc ID79.

564 Non-confidential minutes of a meeting with a trade association on 15 November 2019, Doc ID 1124.

9.2. **Belgium**

9.2.1. *Introduction*

(690) The Notifying Party is a large supplier of frames and sunglasses in Belgium. Its brand Ray-Ban has a high penetration rate with [60-70]% of Belgian shops offering its frames and [60-70]% its sunglasses.

(691) The Transaction would lead to the Notifying Party acquiring the largest retail chain in the Belgium, accounting for almost a third of the market of optical retail. More than half of the retail market is fragmented and operated by smaller retail chains and independent opticians.

(692) The Commission finds that this would lead to vertical effects upstream, whereby the Merged Entity would reduce the competitiveness of rival retailers by way of input foreclosure of eyewear products, thereby further softening competition on the optical retail market. This is discussed in the sections that follow.

(693) As explained in section 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 75 – Optical retailers in Belgium[565]

[…]

9.2.2. *Vertical effects – input foreclosure*

(694) The Commission takes the view that the Transaction would significantly impede effective competition as a result of vertical effects of input foreclosure in frames in Belgium.

(695) The quantitative and qualitative evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames leading to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3. This is further specified below.

(696) As regards the **ability** to foreclose in Belgium, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would allow it to deteriorate the commercial conditions of the provision of its frames and sunglasses to rival retailers and thereby divert customers to its own retail outlets.

(697) First, EssilorLuxottica's market shares for the wholesale of eyewear are high.

(698) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [20-30]% and [20-30]% respectively. However, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is

565 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1. The Notifying Party has not been able to provide market shares for this segment for eyewear priced above EUR […] in Belgium. However, considering that its market position is stronger within these segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Belgium, as also recognised by the Notifying Party.[566]

(699) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica's eyewear with that of other suppliers.

(700) Second, the penetration rate of Ray-Ban in Belgian stores is significant. Ray-Ban is present in [60-70]% of the 1 530 stores as regards frames and [60-70]% of the stores as regards sunglasses.[567] As explained in section 8.3.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in Belgium are of the Ray-Ban brand ([60-70]% of sunglasses and [30-40]% of frames).[568]

(701) Third, as explained in paragraph (408), […].

(702) On the basis of these country-specific elements, as well as on the basis of the general considerations set out in section 8.3.2, the Commission considers that the Merged Entity would have the ability to engage in input foreclosure of frames and sunglasses.

(703) As regards the **incentive** to foreclose rival retailers in Belgium, the Commission finds that the Merged Entity would have a large potential to recoup sales through its significant downstream presence as well as all-round positioning of GrandVision as a retailer. Furthermore, switching of customers to own retail outlets is highly profitable, in particular for frames, and therefore the Merged Entity's input foreclosure strategy would be profitable even if a significant amount of customers would not switch stores. This is confirmed for frames by the Commission's vGUPPI analysis as well as the Notifying Party's vertical arithmetic analysis as set out in section 8.2.

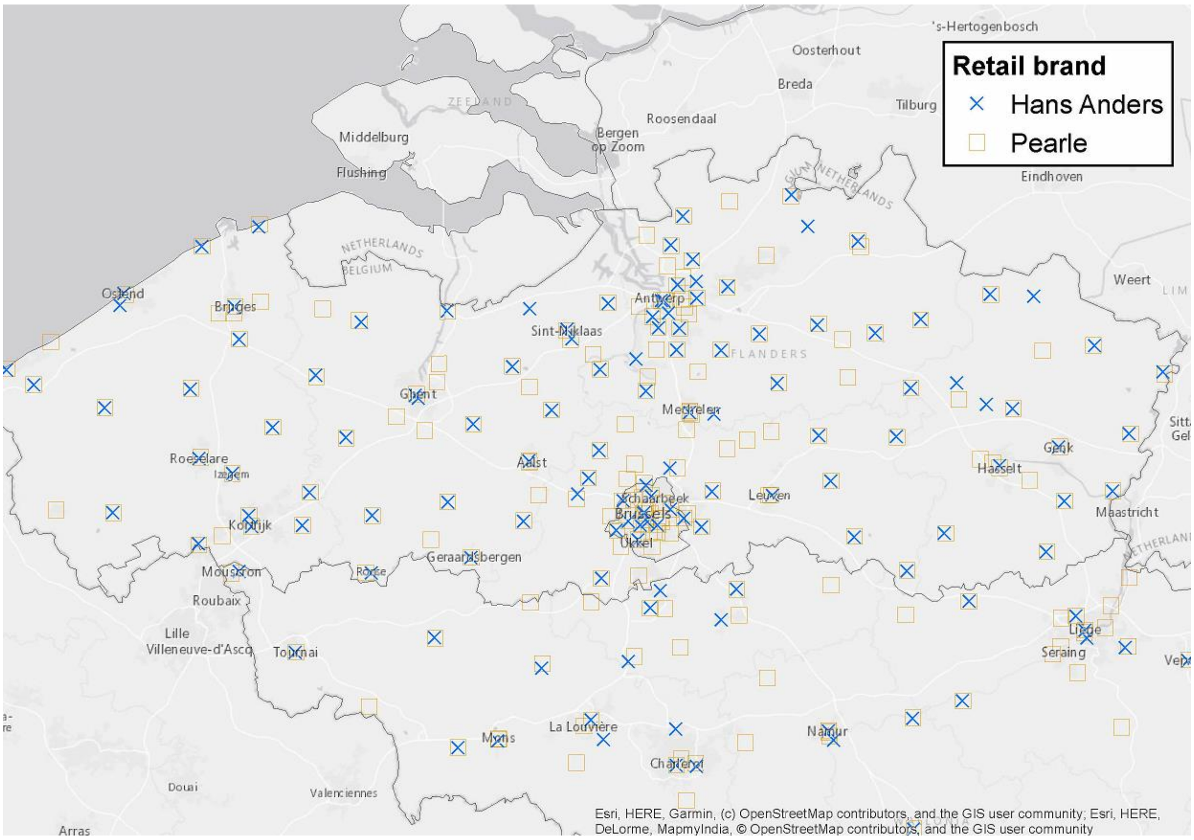
(704) First, the Merged Entity would have a significant retail presence. It would be the largest retailer in Belgium, with a market share of [30-40]% (2018 data, brick-and-mortar). The second and third largest retailers would have significantly smaller shares compared to the Merged Entity. Hans Anders would have [5-10]% and Afflelou group [0-5]%.

(705) Furthermore, retail stores in Belgium are often located closely to one another, thereby facilitating the diversion of customers to own stores as these would not have to travel very far in order to find EssilorLuxottica products. This is for instance

566 Response to RFI 1, annex Q1, page 14.
567 M.8394 Essilor/Luxottica, rec. 598.
568 Response to RFI 27 annex Q8.

shown by the distribution of GrandVision's banner Pearle and Hans Anders in Belgium, as per Figure 76.

Figure 76 – Distribution of GrandVision's Pearle and Hans Anders stores[569]



(706) In addition, GrandVision has an all-round positioning, providing it a large potential to recoup sales. In contrast, Hans Anders would be more focused on value-for-money products, and independent opticians typically price significantly higher.

(707) Second, it is highly profitable for the Merged Entity to divert customers from rival retailers to its own stores. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain the wholesale margin on the eyewear purchased by that customer, but also gain the retail margin as well as the wholesale and retail margin on ophthalmic lenses (in particular for frames).[570]

(708) Third, independent retailers consider that a large fraction of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on EssilorLuxottica's eyewear.[571] This is

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569 Doc ID3343.

570 This applies also for sunglasses to the extent that these are purchased with prescription lenses, although that is much less common.

571 Simplified Questionnaire to retailers, question 10, responses from independent opticians. Respondents estimate 32% of customers would switch following a worsening of the price and/or availability of

furthermore also raised by the second largest retail chain in Belgium (emphasis added): '*EssilorLuxottica provides the inputs for a significant share of [retailer]'s total spectacles related turnover – including bundled sales with at least one EssilorLuxottica product – in affected countries. With Ray-Ban, EssilorLuxottica provides a brand that [retailer] clearly considers a must-have brand for sunglasses and a strong brand for frames. Alternative suppliers are not true substitutes, as a result of which the <u>vast majority of turnover related to sales of EssilorLuxottica brands (including bundled / complementary sales) would likely be lost if [retailer] lost access to these brands</u>. This would have a significant impact on [retailer]'s sales and profitability, and substantially weaken it as a competitor.*'[572]

(709) These elements are confirmed by the Commission's vGUPPI analysis (see section 8.2.3). This analysis shows that the minimum amount of customers that would have to switch from rival retailers to the Merged Entity's stores in order to render a 10% price increase to rival retailers profitable is very low, in particular for frames. For Belgium, this would be [0-5]% for frames. Also, this would be much lower than the amount of consumers that are expected by retailers to switch stores (see recital above). For sunglasses, this threshold would be much higher in order for this to be profitable ([10-20]%).

(710) Fourth, the vertical arithmetic analysis carried out by the Notifying Party, as described in section 8.2.4 indicates that in order for a full foreclosure strategy to be profitable, [50-60]% of consumers would have to switch for sunglasses and [20-30]% for frames. The Commission notes the results of the Parties' analysis of total input foreclosure may indicate incentives to run such a strategy. However, given the switching required to generate incentives for partial input foreclosure (see section 8.2) are much lower the Commission does not analyse in detail total input foreclosure incentives.

(711) On this basis, as well as on the basis of the considerations set out in section 8.3.3, the Commission considers that the Merged Entity would have the incentive to engage at least in partial input foreclosure of frames.

(712) As regards sunglasses, the evidence available to the Commission is less conclusive. On the one hand, as described in the preceding section, EssilorLuxottica is an important supplier in the wholesale market for the supply of sunglasses, and GrandVision would be instrumental to allow the Merged Entity to recoup a significant amount of diverted sales. On the other hand, the amount of customers that would be required to switch stores in order to render such input foreclosure strategy profitable is much higher for sunglasses than for frames, because the Merged Entity would benefit from the retail and wholesale margin on lenses from sales that are diverted to its own stores to a much smaller extent. Sunglasses are namely much less sold with prescription lenses. This is also confirmed by the Commission's quantitative analysis, as set out in section 8.2. Therefore, it is not clear whether, on balance, there is a significant likelihood that the Merged Entity's ability and incentive would be of the magnitude that corresponds to a significant impact on the wholesale market for sunglasses. However, the Commitments would

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EssilorLuxottica's frames, as a result from deteriorated frames commercial conditions at wholesale level.

572 Doc ID3022.

in any event remove a potential finding of a significant impediment to effective competition. The divestiture of stores in Belgium sufficiently reduces the Merged Entity's incentive to engage in input foreclosure for frames, as described in section 12, and similarly reduces its incentive to engage in input foreclosure for sunglasses (which is smaller to begin with). Therefore, the Commission does not need to conclude as to whether the Merged Entity would have the incentives to engage in input foreclosure for sunglasses (or whether this would result in a significantly detrimental impact on the market to the magnitude of constituting a significant impediment to effective competition).

(713) As regards the **effects** of the Merged Entity's input foreclose strategy, the Commission considers that the Transaction would lead to deteriorated competitive conditions in the wholesale and retail markets for frames in Belgium.

(714) In the first place, as a result of the input foreclosure strategy, retailers outside the Merged Entity's network would face deteriorated commercial conditions. Considering EssilorLuxottica's importance as a supplier of frames, as well as the high penetration rates of its brand Ray-Ban, as set out in recitals (697) - (700), the Commission considers that the Transaction would lead to deteriorated competitive conditions in the wholesale market of frames in Belgium.

(715) The expected effects of the Transaction are confirmed by the quantitative analysis carried by the Commission as set out in section 8.2.

(716) In the second place, the majority of independent opticians and optical retail chains responding to the market investigation indicated that they would pass on a wholesale price increase of EssilorLuxottica's products almost in full to their final customer.[573] Therefore, the Commission considers that these deteriorated commercial conditions would also translate to the optical retail market regarding frames.

(717) The effects in the retail market would be particularly pronounced due to reduced competitive constraints exerted by optical retail chains as a result of the Transaction.

(718) Retail chains constitute a significant part of the optical retail market in Belgium. The largest three retail chains in Belgium constitute [40-50]% of the optical retail market in Belgium.[574]

(719) Hans Anders' competitive constraint would be significantly impacted by the Transaction.

(720) In particular, Hans Anders would be significantly impacted by the input foreclosure strategy, in particular as EssilorLuxottica brands account for 5-15% of its sales of frames (or 10-25% of its sales of branded frames) in Belgium. In addition, EssilorLuxottica's products would be important in terms of attracting customers to stores, even if these customers end up purchasing eyewear other than from EssilorLuxottica. Furthermore, EssilorLuxottica's brands would be very important in

[573] Simplified questionnaire to retailers, questions 9 and 12.

[574] Form CO Annexes CO 7.2. Data for competitors was not provided separately by product (frames, sunglasses).

bundled sales, where customers would buy its eyewear in a combined promotional pack such as in 2-for-1 or 3-for-1 promotions.[575]

(721) As explained in recital (622), Hans Anders would be more focused on value-for-money products, and used to focus on private-label products, until it was supplied by EssilorLuxottica with Ray-Ban eyewear, and it considers that it would not be easy to revert its business model as it would not be able to replace EssilorLuxottica's eyewear without losing customers.[576]

(722) It considers that alternative suppliers are not true substitutes for EssilorLuxottica's eyewear, and that therefore a vast majority of turnover related to EssilorLuxottica's brands would be lost if it were to be foreclosed. For Belgium in particular, based on its own estimations, it considers that [60-100%][577] of its sales of EssilorLuxottica's eyewear, both as regards sunglasses and frames, would be lost as customers would go elsewhere if this brand is not available in its outlets, as explained in section 9.1.2. As a result, this would lead to a closure of certain of its outlets in the event of total foreclosure, or a price increase in the event of partial foreclosure.[578]

(723) Third, as set out in section 8.3.4.3, the Commission considers that optical retail chains exert a stronger competitive constraint on retail market for frames and sunglasses than independent opticians do.

(724) On the basis of the above, as well as on the basis of the considerations set out in section 8.3 and the quantitative analysis as set out in section 8.2, the Commission finds that the Transaction would significantly impede effective competition in Belgium, due to vertical effects stemming from input foreclosure, in particular on the wholesale and retail markets for frames.

(725) The Commission observes that in relation to Belgium, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [20-30]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.2.3. *Complaints by retailers*

(726) A large majority of independent opticians responding to the market investigation indicated that the Transaction would negatively affect their business, as well as the wholesale and retail markets for frames and sunglasses: '*onafhankelijke opticiens die al jaren trouw bepaalde merken van deze groep volgen zullen niet meer aan bod komen voor de merken die zij verdelen. Ook zullen er bepaald reeksen van merken gemaakt worden die enkel voor hun winkels voorzien zullen worden en niet voor de onafhankelijke opticien wat maakt dat je veel minder sterk staat tov van hun.'; 'Utilisation des bases de données récoltées par Essilor pour favoriser Grand Vision.*

575 Submission of 3 April 2020 by a retail chain. Doc ID3023 and submission of 3 July 2020 by a retail chain, Doc ID 3369.
576 Non-confidential minutes of a call with an optical retail chain on 21 April 2020, Doc ID2169.
577 Non-confidential range.
578 Doc ID3369, Doc ID3342.

Nouveau produits Essilor et Luxottica disponible exclusivement chez Grand Vision. Marge bénéficiaire supplémentaire dégagée par Essilor Luxottica pour effectuer un marketing intense. Service de moins bonne qualité pour les opticiens indépendants que pour Grand Vision. Perte nette de clients pour nous.'[579]

(727) As indicated in section 9.1.2 above, Hans Anders, the second largest retailer in Belgium, operating 120 stores, expressed concerns that it would be foreclosed from EssilorLuxottica's eyewear, and as a result face a reduction in its profitability and competitiveness, to the extent that it would have to close some of its shops and/or raise prices to consumers.

9.2.4. *Access to competitors' competitive information*

(728) The Commission considers that EssilorLuxottica has an insight as a retailer of eyewear into the purchase patterns of rival opticians. Through this insight, the Merged Entity is able to take into account retail competition when strategically deciding what product assortment to grant competitors in a given area.

(729) As set out in section 8.3.2.10, EssilorLuxottica has access to competitors' competitive information, through its position as a supplier of frames and eyewear, as well as through its IT systems STARS and Essibox in place at rival opticians.

(730) For Belgium in particular, the Merged Entity would have an insight into competitive information relating to its own sales of ophthalmic lenses, frames and sunglasses. Its wholesale market shares in these markets are [30-40]%, [20-30]% and [20-30]% respectively. However, when looking at supply to retail chains in particular, its market shares for the wholesale supply of frames is significantly higher, namely [30-40]%. This is particularly relevant given that retail chains exert a significantly stronger competitive constraint on retail markets than independent opticians do, as set out in section 8.3.4.3. As shown in Table 10, […] of doors operated by retail chains in Belgium that source EssilorLuxottica's eyewear use EssilorLuxottica's STARS system. The Merged Entity would therefore have access to a substantial part of information of rival opticians.

(731) As set out in section 8.3.2.9, EssilorLuxottica is able to differentiate its supply by customer segments.

(732) On this basis, the Commission considers that the Merged Entity is able to take into account retail competition when strategically deciding what product assortment to grant competitors in a given area.

9.2.5. Overall conclusion in Belgium

(733) As set out in sections 8.2, 8.3 and 9.2.2, the Commission finds that the Transaction would likely cause significant anticompetitive effects in Belgium.

(734) Overall, based on the above, and in particular on (i) the assessment of market shares upstream and downstream, (ii) high margin levels at the wholesale level for frames, (iii) high penetration rates of EssilorLuxottica's frames and sunglasses at the downstream retail level, (iv) quantitative analysis showing significant negative effects on the downstream retail market in the event of a 10% upstream price increase in the wholesale supply of frames, (v) expected switching by a large

579 Questionnaire Q1 to independent opticians (Belgian respondents), questions 33, 34, 35 and 36.

fraction of customers to EssilorLuxottica's own stores in case of a degraded commercial conditions at rival stores, (vi) the finding of importance of EssilorLuxottica as a supplier, (vi) the expected pass-on to consumers, (vii) reduced constraint by downstream competitors, and (viii) the feedback from market participants in the investigation, the Commission finds that the Transaction would significantly impede effective competition in Belgium, due to vertical effects stemming from input foreclosure, in particular on the wholesale and retail market of frames in Belgium.

In addition, for the reasons set out above, the Commission finds that that this significant impediment to effective competition would be reinforced by EssilorLuxottica's access to competitive information of competing retailers.

9.3. Austria – Denmark – Finland – France – Hungary – Ireland – Luxembourg – Norway – Portugal – Spain - Sweden

9.3.1. *Austria*

9.3.1.1. Introduction

(735) The Notifying Party is an important supplier of frames and sunglasses in Austria. Its brand Ray-Ban has an important penetration rate, with [50-60]% of Austrian shops offering its frames and [50-60]% its sunglasses.

(736) The Transaction would lead to the Notifying Party acquiring the largest (in terms of value of sales) retail chain in Austria, accounting for around [10-20]% of the market of optical retail. More than a quarter of the retail market is fragmented and operated by independent opticians.

(737) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. This is discussed in the following sections.

(738) As explained in section 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the Member State. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 77 Optical retailers in Austria[580]

[…]

580 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

9.3.1.2. Vertical effects – input foreclosure

(739) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Austria.

(740) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives may lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3 and is further specified below.

(741) As regards the **ability** to foreclose in Austria, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it could allow it to deteriorate the commercial conditions of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(742) First, EssilorLuxottica's market shares for the wholesale of sunglasses are high, but more limited for frames.

(743) In the overall wholesale markets for sunglasses and frames, its market shares amount to [40-50]% and [10-20]% respectively.[581] In relation to sunglasses, EssilorLuxottica is significantly larger than its competitors. The next largest player is Safilo ([5-10]%), followed by Silhouette ([0-5]%) and Marchon ([0-5]%). 12% of the market is accounted for by various trade brands and the Notifying Party has allocated the remainder to 'others'. Likewise, for frames, the next largest competitor is Silhouette ([0-5]%) and Marchon ([0-5]%), followed by Safilo ([0-5]%). The remainder of the market is attributed to trade brands ([20-30]%) and others ([50-60]%).

(744) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's portfolio of eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(745) In addition, the three largest suppliers of sunglasses have a combined market share of [40-50]%, and [20-30]% for frames. As noted in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somehow limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers, in particular for frames. On balance, the Commission therefore considers that the market structure would not allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(746) Moreover, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in

[581] Form CO, Annex 7.2.

eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1. The Notifying Party has not been able to provide market shares for this segment in Austria. However, considering that its market position is stronger within these segments for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Austria, as also recognised by the Notifying Party.[582]

(747) Second, the penetration rate of Ray-Ban in Austrian stores is important. Ray-Ban is present in [50-60]% of the 1,100 stores as regards frames and [50-60]% of the stores as regards sunglasses.[583] As explained in section 8.3.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in Austria are of the Ray-Ban brand ([50-60]% of sunglasses and [30-40]% of frames).[584]

(748) On the basis of the above, the Commission considers the Merged Entity may have the ability to foreclose the wholesale supply of sunglasses and frames. The Commission's findings as regards incentives to foreclose, and the impact thereof on the market, are set out in the following recitals.

(749) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses, given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only gain the wholesale margin on the eyewear purchased by that customer, but also gain the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because they are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Austria in the Commission's quantitative analysis, as set out in section 8.2, which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(750) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(751) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated

582 Response to RFI 1, Annex Q1, page 14.
583 M.8394 Essilor/Luxottica, rec. 500.
584 Response to RFI 27, Annex Q8.

commercial conditions on EssilorLuxottica's frames offering.[585] One of Austrian independent opticians reports: '*Sollten die Bedingungen von EssilorLuxottica verschäft werden, die einen Einkauf von bestimmten Marken nicht mehr möglich macht, würde das zu einen massiven Umsatzverlust bedeuten. Diese Marken würden in eigenen Stores von EssilorLuxottica, um einen billigeren Preis angeboten werden, der für uns nicht mehr rentabel wäre. Auch wird dadurch die Qualität der Endprodukte leiden, die der Endkonsument spüren wird.*'[586]

(752) However, while the Merged Entity would have a non-negligible retail presence, its market share would not be very large ([10-20]% as per 2018 data, brick-and-mortar).[587] This would therefore somewhat reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for frames.

(753) Additionally, the Merged Entity's market shares in the wholesale supply of frames are also not particularly high. This would therefore also moderately limit the extent to which a given input foreclosure strategy pursued by the Merged Entity would affect the market for frames to a significant degree.

(754) On this basis, the Commission considers that the Merged Entity would not have the incentive to engage in input foreclosure of sunglasses. For frames, the Commission considers that, on balance, the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to an extent that would significantly impede competition in the wholesale markets for frames in Austria.

(755) The Commission observes that in relation to Austria, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [10-20]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.1.3. Overall conclusion (Austria)

(756) On the basis of the findings set out in section 9.3.1.2, the Commission finds that, on balance, and with particular regard to the Merged Entity's market shares in retail and as a wholesale supplier, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

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585 Simplified Questionnaire to retailers, question 10, responses from independent opticians. Respondents estimate 32% of customers would switch following deteriorated frames commercial conditions at wholesale level.

586 Questionnaire Q1 to independent opticians (Austrian respondents), question 25.1, Doc ID 2535.

587 Form CO, Annex 7.2.

9.3.2. *Denmark*

9.3.2.1. Introduction

(757) The Notifying Party is one of the largest suppliers of frames in Denmark and is by far the largest supplier of sunglasses in Denmark – more than three times as big as the second largest supplier.

(758) The Transaction would lead to the Notifying Party acquiring the second largest retail chain in Denmark. Together, the Parties would account for [10-20]% of the optical retail market. The largest player, Specsavers, focuses primarily on private label products and is therefore strongly differentiated with the Parties, which offer branded products in their stores.

(759) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. This is discussed in the following sections.

(760) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 78 – Optical retailers in Denmark[588]

[…]

9.3.2.2. Vertical effects – input foreclosure

(761) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure for frames and sunglasses in Denmark.

(762) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives may lead to vertical non-coordinated effects have been set out in sections 8.2 - 8.3 and is further specified below.

(763) As regards the **ability** to foreclose in Denmark, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would allow it to deteriorating the commercial conditions of the provision of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(764) First, EssilorLuxottica's market shares for the wholesale of sunglasses are moderately high but more limited for frames.

[588] For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

(765) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [30-40]% and [5-10]% respectively. EssilorLuxottica is more than three times as large as the next largest supplier of sunglasses (Kering, [10-20]%) and is the (joint) second largest supplier of frames after Scandinavian Eyewear ([10-20]%).

(766) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's portfolio of eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica's eyewear with that of other suppliers.

(767) For frames, the largest supplier is Scandinavian Eyes ([10-20]%), followed by EssilorLuxottica ([5-10]%) and Prodesign ([5-10]%). The remainder of the market is small ([0-5]% or less) or ascribed by the Notifying Party to an unspecified category of 'others'.

(768) For sunglasses, the next largest suppliers are Kering ([10-20]%), Marcolin ([5-10]%), Safilo ([5-10]%) and Scandinavian Eyes ([5-10]%)

(769) In addition, the three largest suppliers of sunglasses have a combined market share of [50-60]%, and [30-40]% for frames.[589] As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somehow limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. On balance, the Commission therefore considers that the market structure would not allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(770) Moreover, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important, given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6. The Notifying Party has not been able to provide market shares for this segment in Denmark. However, considering that its market position is stronger within this segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Denmark, as also recognised by the Notifying Party.[590]

(771) Second, the penetration rate of Ray-Ban in Danish stores is significant. Ray-Ban is present in [60-70]% of the 792 stores as regards frames and [60-70]% of the stores as regards sunglasses.[591] As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in

589 Form CO Annexes CO 7.2.
590 Response to RFI 1, annex Q1, page 14.
591 M.8394 Essilor/Luxottica, rec. 520.

Denmark are of the Ray-Ban brand ([70-80]% of sunglasses and [30-40]% of frames).[592]

(772) In line with this, an optical retail chain active in Denmark explained: '*the brands Ray-Ban and Oakley are very strong brands in the consumer markets and therefore are very hard to replace.*'[593] An independent optician in Denmark noted that '*Ray Ban is a must have.*'[594]

(773) On the basis of the above, the Commission considers the Merged Entity may have the ability to foreclose the wholesale supply of sunglasses and frames. The Commission's findings as regards incentives to foreclose, and the impact thereof on the market are set out in the following recitals.

(774) For frames, potential profits of diverting customers from rival retailers to its own stores are […]. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain the wholesale margin on the eyewear purchased by that customer, but also the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Denmark in the Commission's quantitative analysis as set out in section 8.2, which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(775) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(776) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's frames offering.[595] Indeed, a retailer noted: '*[c]ustomers asking for [a] product we can't source is leaving the shop. The customer bought perhaps other prodcuts so the loss is high… the whole business is lost and that's a lot of money*'.[596]

(777) However, while the Merged Entity would have a significant retail presence, its market share would not be very large ([10-20]% as per 2018 data, brick-and-mortar).[597] This would therefore somewhat reduce the extent to which it could

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592 Response to RFI 27 annex Q8.
593 Questionnaire 12, question 45
594 Questionnaire 11 to independent opticains, question 68.1.
595 Simplified Questionnaire to retailers, question 10, responses from independent opticians. Respondents estimate 22% of customers would switch following deteriorated frames commercial conditions at wholesale level.
596 Questionnaire 11 question 50.
597 Form CO, Annex 7.2.

recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for frames.

(778) Additionally, the Merged Entity's market share in the wholesale supply of frames is also not very high. This would therefore also limit the extent to which a given input foreclosure strategy pursued by the Merged Entity would affect the market for frames to a significant degree.

(779) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to an extent that would significantly impede effective competition in the wholesale markets for frames and sunglasses in Denmark.

(780) The Commission observes that in relation to Denmark, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [20-30]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.2.3. Overall conclusion (Denmark)

(781) On the basis of the findings set out in this section, the Commission finds that, on balance, and with particular regard to the Merged Entity's market shares in retail and as a wholesale supplier, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.3. *Finland*

9.3.3.1. Introduction

(782) The Notifying Party is a large supplier of frames and sunglasses in Finland. Its Ray-Ban brand has a high penetration rate with [70-80]% of Finnish shops offering its frames and [70-80]% its sunglasses.

(783) The Transaction would lead to the Notifying Party acquiring the largest retail chain in Finland, accounting for over a third of the market of optical retail. The Finnish optical retail market is characterised by the significant presence of chains, with independent opticians accounting for only 13% of the market.

(784) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. This is discussed in the following sections.

(785) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 79 – Retail market shares in Finland, 2018[598]

[…]

9.3.3.2. Vertical effects – input foreclosure

(786) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Finland.

(787) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives may lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3 and is further specified below.

(788) As regards the **ability** to foreclose in Finland, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would have the ability to deteriorate the commercial conditions of the provision of eyewear to rival retailers and thereby divert customers to its own retail outlets.

(789) First, EssilorLuxottica's market shares for the wholesale of sunglasses are moderately high but not particularly high for frames.

(790) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [30-40]% and [10-20]% respectively.

(791) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's portfolio of eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(792) Furthermore, for frames, EssilorLuxottica ([10-20]%) is the second largest supplier after Scandinavia Eyewear ([10-20]%), followed by are Prodesign ([5-10]%), Lindberg ([0-5]%) and Safilo ([0-5]%). Other competitors are thus significantly smaller than EssilorLuxottica. Almost [60-70]% of this segment is allocated by the Notifying Party to a further unspecified category of 'others'.

(793) Similarly, for sunglasses, the next largest suppliers after EssilorLuxottica ([30-40]%) are Scandinavian Eyewear ([5-10]%), Marcolin ([5-10]%), Safilo ([5-10]%) and Kering ([5-10]%). All competitors are thus significantly smaller than EssilorLuxottica.

(794) In addition, the three largest suppliers of sunglasses have a combined market share of [50-60]%, and [40-50]% for frames.[599] As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of

598 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

599 Form CO Annexes CO 7.2.

differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somehow limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. On balance, the Commission therefore considers that, overall, the market structure would not allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(795) Moreover, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important, given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1.1. The Notifying Party has not been able to provide market shares for this segment in Finland. However, considering that its market position is stronger within this segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Finland, as also recognised by the Notifying Party.[600]

(796) Second, despite these moderate market shares of EssilorLuxottica in frames and sunglasses, the penetration rate of Ray-Ban in Finnish stores is significant. Ray-Ban is present in [70-80]% of the 750 stores as regards frames and [70-80]% of the stores as regards sunglasses.[601] As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in Finland are of the Ray-Ban brand ([50-60]% of sunglasses and [30-40]% of frames).[602]

(797) On the basis of the above, the Commission considers the Merged Entity's may have the ability to foreclose the wholesale supply of sunglasses and frames. The Commission's findings as regards incentives to foreclose, and the impact thereof on the market are set out in the following recitals.

(798) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain the wholesale margin on the eyewear purchased by that customer, but also the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Finland in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion

600 Response to RFI 1, annex Q1, page 14.
601 M.8394 Essilor/Luxottica, rec. 528.
602 Response to RFI 27 annex Q8.

ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(799) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(800) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[603] This is furthermore also raised by a leading retail chain active in Finland (emphasis added): '*The strong positioning of some of the Luxottica brands for sure are important for customers who value brands.*'[604]

(801) The Commission finds that the Merged Entity's retail presence would be significant, with a market share of [30-40]%. It would generally enjoy an all-round positioning, including through its mid-low positioned brand Nissen, and mid-high positioned Instrumentarium. The Commission considers that this would support the amount of diverted sales that the Merged Entity would recoup if engaging in an input foreclosure strategy.

(802) However, the Merged Entity's importance as a wholesale supplier of frames seems to be rather moderate, as indicated by its market shares, which amount to [10-20]% in Finland, further supported by the very limited response rate to the Commission's simplified questionnaire to opticians in Finland. The Commission in this regard notes that the competitive landscape in Finland seems to differ from most of the other countries analysed in this chapter, in particular by the significant presence of other eyewear suppliers, such as market leader Scandinavian Eyewear or Prodesign.[605]

(803) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentive to significantly deteriorate its commercial conditions to an extent that would significantly impede effective competition in the wholesale market for frames.

(804) The Commission observes that in relation to Finland, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [10-20]%. In any event, for the reason outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

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603 Simplified Questionnaire to retailers, question 10, responses from independent opticians. Respondents estimate 32% of customers would switch following deteriorated frames commercial conditions at wholesale level.

604 Questionnaire to optical retail chains, Phase II, question 53.1.

605 Form CO, Annex 7.2.

9.3.3.3. Overall conclusion (Finland)

(805) On the basis of the findings set out in this section, the Commission finds that, on balance, and with particular regard to the market structure and the Merged Entity's position as a wholesale supplier, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.4. *France*

9.3.4.1. Introduction

(806) The Notifying Party is a large supplier of frames and sunglasses in France, with a market share of [20-30]% for frames and [40-50]% for sunglasses. Its Ray-Ban brand has a high penetration rate with [80-90]% of French shops offering its frames and [80-90]% its sunglasses.

(807) The Transaction would lead to the Notifying Party acquiring the second largest retail chain in France. The French optical retail market is characterised by a moderate presence of chains, which account for only [20-30]% of the market.

(808) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. The Commission also finds that the Transaction would not lead to a significant impediment to effective competition resulting from vertical effects downstream. This is discussed in the sections that follow.

(809) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 80 – Retail market shares in France, 2018[606]

[…]

9.3.4.2. Vertical effects – input foreclosure

(810) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in France.

(811) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to

[606] For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

which ability and incentives may lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3 and is further specified below.

(812) As regards the **ability** to foreclose in France, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would allow it to deteriorate the commercial conditions of the provision of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(813) First, EssilorLuxottica's market shares for the wholesale of sunglasses and frames are significant.

(814) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [40-50]% and [20-30]% respectively. EssilorLuxottica is a market leader in the overall markets for sunglasses and frames, as well as in the segments of branded products and products of above EUR 70.

(815) In the supply of sunglasses, EssilorLuxottica ([40-50]%) is significantly larger than its competitors, namely Safilo ([20-30]%) and Marchon ([5-10]%). In frames, likewise, EssilorLuxottica ([20-30]%) is significantly larger than the next largest suppliers, Safilo ([5-10]%) and Kering ([0-5]%).

(816) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of its competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica's eyewear with that of suppliers.

(817) In addition, the three largest suppliers of sunglasses have a combined market share of [70-80]%, and [30-40]% for frames. As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somehow limited by the degree of concentration, which is not particularly high for frames considering the high combined market share of the three largest suppliers. Therefore, the Commission considers that, overall, the market structure would not allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure, at least for frames.

(818) The Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced 'private label' products compared to branded products) is limited, as set out in section 6. In the segment of eyewear priced over EUR […] in France, the Notifying Party holds slightly higher shares, respectively [40-50]% in sunglasses and [20-30]% in frames. Also in these segments, EssilorLuxottica is the market leader.

(819) As indicated in section 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(820) Furthermore, for frames over EUR […], the next largest suppliers are Safilo ([5-10]%), Kering ([5-10]%) and De Rigo ([5-10]%). Other competitors are thus

significantly smaller than EssilorLuxottica. Almost half of this segment is allocated by the Notifying Party to a further unspecified category of 'others'

(821) Likewise, for sunglasses over EUR […], the next largest suppliers are Safilo ([20-30]%), Marchon ([5-10]%) and Kering ([5-10]%), so other competitors are significantly smaller than EssilorLuxottica.

(822) Second, the penetration rate of Ray-Ban in French stores is significant. Ray-Ban is present in [80-90]% of the 12809 optical French stores as regards frames and [80-90]% of the stores as regards sunglasses.[607] As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in France are of the Ray-Ban brand ([60-70]% of sunglasses and [30-40]% of frames).[608]

(823) On the basis of the above, the Commission considers the Merged Entity's may have the ability to foreclose the wholesale supply of sunglasses and frames. The Commission's findings as regards incentives to foreclose, and the impact thereof on the market, are set out in the following recitals.

(824) For frames in particular, it is highly profitable for the Merged Entity to divert customers from rival retailers to its own stores. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only gain the wholesale margin on the eyewear of the EssilorLuxottica brand purchased by that customer, but also gain the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for France in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(825) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(826) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[609] This is furthermore also raised by a leading retail chain active in France (emphasis added): '*We Believe ray-ban is a must have, and if you don't have it as an optician, you are in a position to lose many*

[607] M.8394 Essilor/Luxottica, rec. 528.

[608] Response to RFI 27 annex Q8.

[609] Simplified questionnaire to independent opticians, question 10, responses from independent opticians. Respondents estimate 31% of customers would switch following deteriorated frames commercial conditions at wholesale level.

clients.'[610] One independent optician added that the impact of the Transaction in that regard would be '*catastrophique, nous ne vendons presque que des produits Luxottica, c'est que les clients cherchent à acheter*'.[611]

(827) However, while the Merged Entity would have a significant retail presence, its market share would not be very large ([10-20]% as per 2018 data, brick-and-mortar).[612] This would therefore somewhat reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for sunglasses and also for frames.

(828) Moreover, two thirds of the Merged Entity's retail presence would stem from GrandVision's activities under its retail banner 'Générale d'Optique'. This banner […].[613] The Commission considers that this would significantly lower the amount of diverting customers the Merged Entity would be able to recapture to its own stores. In turn, this significantly reduces the profitability for the Merged Entity to engage in an input foreclosure strategy.

(829) On this basis, the Commission considers that, on balance, the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to an extent that would significantly impede the wholesale markets for frames and sunglasses.

9.3.4.3. Vertical effects downstream, in the optical retail market regarding for frames and lenses

(830) The Commission finds that, as a result of the concentration with EssilorLuxottica, an important as well as the largest supplier of eyewear in France, GrandVision's competitive constraint on the retail markets for eyewear could be reduced.

(831) In the first place, GrandVision exerts an important competitive constraint on the French market.

(832) First, it has a non-negligible market position in optical retail, representing a [10-20]% market share in optical brick-and-mortar shops in France (2018 data).

(833) Second, GrandVision would be incentivised to reduce its competitive constraint on the retail markets for eyewear.

(834) A supplier as a rational economical actor faces the following trade-off when setting prices. When increasing prices, it obtains gains in terms of additional turnover from the direct effect of the price increase, at the expense of reduced volumes depending on the extent to which its customers are able to switch to rivals. Conversely, reducing prices leads to a reduction of turnover due to direct price effects, compensated by additional volumes of customers that would as a reaction turn to its business for its purchases. An optimal price is set at the level whereby there are no net gains from further increasing or decreasing its price. When rival retailers would however in turn be supplied at the wholesale level by the same entity, the expense that the supplier faces where its customers switch to rivals is reduced, as it would

[610] Questionnaire to optical retail chains, Phase II, question 53.1.
[611] Questionnaire to optical retail chains, Phase II, question 72.4.
[612] Form CO, Annex 7.2.
[613] Response to RFI 35.

recapture part of the wholesale margin for those diverted sales. Therefore, its optimal price would increase. The same dynamic applies to other parameters of competition, and an increase in price can be substituted or combined with a decrease in quality. As a result, GrandVision would be incentivised to increase its pricing or more generally, to reduce its competitive constraint.

(835) On the other hand, the Commission also finds that it would be rather unlikely for end-customers to switch from low priced lenses sold at GrandVision stores in France (average price of EUR […]) to much more expensive Essilor lenses (EUR […]) sold at rival retailers. This behaviour underlines quantitative results presented in section 8.2.2, since potential incentives to raise prescription frames prices at GrandVision stores stem from the potential recoupment on the upstream EssilorLuxottica's margin for products sold at rival retailers, in particular the lenses margins given the very significant upstream market share for this product in France (see Table 2). Moreover, GrandVision's retail market share in France is not particularly high, which would therefore also limit the impact of a potential price increase of prescription frames at GrandVision stores on retail competition overall.

(836) On balance, the Commission considers that the Transaction would be more likely to not lead to a significant impediment to competition as regards vertical effects downstream.

(837) The Commission observes that in relation to France, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [70-80]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.4.4. Overall conclusion (France)

(838) On the basis of the findings set out in section 9.3.1.2, the Commission finds that, on balance, and with particular regard to the Merged Entity's market shares in retail, as well as in light of Parties' different market positioning, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream in France.

9.3.5. *Hungary*

9.3.5.1. Introduction

(839) The Notifying Party is the largest supplier of frames and sunglasses in Hungary. It is more than 1.5 times the size of the next largest supplier of frames and more than twice as large as the next largest supplier of sunglasses. Penetration rates are however very limited. The penetration rate of Ray-Ban in Hungarian stores is moderate. Ray-Ban is present in [20-30]% of stores as regards frames and [20-30]% of the stores as regards sunglasses. [614]

614 M.8394 Essilor/Luxottica, rec. 598.

(840) The Transaction would lead to the Notifying Party acquiring the largest retail chain in Hungary, accounting for almost half of the market of optical retail. There is only one other noteworthy chain active, with a market share of just [5-10]%. The remainder of the retail market is fragmented and operated by smaller retail chains and independent opticians, accounting for [40-50]% of the market overall.

(841) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects is unlikely. In Hungary, the Merged Entity appears to be unlikely to have the ability to foreclose its products, in particular because its penetration rates are very limited.

(842) As explained in section 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] and so the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 81 – Optical retailers in Hungary[615]

[…]

9.3.5.2. Vertical effects – input foreclosure

(843) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Hungary.

(844) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives may lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3 and is further specified below.

(845) As regards the **ability** to foreclose and the **effects** thereof in the respective markets in Hungary, the Commission finds that the Merged Entity has a significant market position upstream, but that this would not allow it to deteriorate the commercial conditions of the provision of its eyewear to rival retailers to the extent that this would significantly deteriorate commercial conditions on the market.

(846) EssilorLuxottica is the largest supplier of eyewear in Hungary and the market is fragmented.

(847) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [20-30]% and [10-20]% respectively. EssilorLuxottica is more than twice as large as the next largest supplier of sunglasses (Safilo, [10-20]%) and more than 1.5 times as large as the next larger of frames (Safilo, [10-20]%). The remainder of the market is fragmented between other players, with 49%.

615 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

(848) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(849) Furthermore, for frames, the next largest suppliers are Safilo ([10-20]%), De Rigo ([5-10]%), Marcolin ([0-5]%) and Rodenstock ([0-5]%). Other competitors are thus significantly smaller than EssilorLuxottica. Almost two thirds of this segment is allocated by the Notifying Party to a further unspecified category of ‘others’.

(850) Similarly, for sunglasses, the next largest suppliers are Safilo ([10-20]%), De Rigo ([5-10]%), Marcolin ([0-5]%) and Rodenstock ([0-5]%), with around half of the market attributed to an unspecified category of ‘others’. All competitors are thus significantly smaller than EssilorLuxottica.

(851) In addition, the three largest suppliers of sunglasses have a combined market share of [40-50]%, and [30-40]% for frames.[616] As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somewhat limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. Therefore, the Commission considers that, overall, the market structure would allow eyewear competitors to themselves raise the input price they charge to optical retailers at least to some extent.

(852) Moreover, the Commission considers that the Merged Entity’s position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1.1. The Notifying Party has not been able to provide market shares for this segment in Hungary. However, considering that its market position is stronger within these segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica’s share for this particular segment similarly applies to the segments in Hungary, as also recognised by the Notifying Party.[617]

(853) However, the penetration rate of Ray-Ban in Hungarian stores is very limited. Ray-Ban, EssilorLuxottica’s strongest brand, is present in [20-30]% of stores as regards frames and 23% of the stores as regards sunglasses.[618]

(854) Considering these penetration rates in conjunction with the position of the Merged Entity on the wholesale markets for frames and sunglasses as expressed by the market shares ([10-20]% and [20-30]% respectively), the Commission considers that the Merged Entity’s ability and incentives to engage in partial input foreclosure (if

616 Form CO Annexes CO 7.2.
617 Response to RFI 1, annex Q1, page 14.
618 M.8394 Essilor/Luxottica, rec. 598.

any), would be unlikely to significantly deteriorate commercial conditions on the markets for sunglasses and frames.

(855) The Commission observes that in relation to Hungary, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [30-40]%. In any event, for the reason outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.5.3. Overall conclusion (Hungary)

(856) On the basis of the findings set out in section 9.3.1.2, the Commission finds that, on balance, and with particular regard to the Merged Entity's market shares as a wholesale supplier of frames and sunglasses, as well as in light of the Merged Entity's limited penetration rates in Hungary, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.6. *Ireland*

9.3.6.1. Introduction

(857) The Notifying Party is one of the biggest suppliers of frames and sunglasses in Ireland.

(858) The Transaction would lead to the Notifying Party acquiring an optical retail chain in Ireland. Prior to the Transaction, EssilorLuxottica does not own an optical retail chain in Ireland (it operates the David Clulow banner in Ireland, but only operates sunglass specialist stores under this banner in Ireland). The largest optical retail chain in Ireland is Specsavers, and around two-thirds of the market is accounted for by smaller retail chains and independent opticians.

(859) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely in Ireland. The Commission finds that, while there are indications the Merged Entity might have the ability to engage in an input foreclosure strategy (it being unnecessary to reach a conclusion on this point), the Merged Entity would be unlikely to have the incentive to engage in an input foreclosure strategy, and the effects of any such strategy would in any event be limited. This is discussed in the following sections.

(860) As explained in section 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 82 – Optical retailers in Ireland[619]

[…]

9.3.6.2. Vertical effects – input foreclosure

(861) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure of frames and sunglasses in Ireland.

(862) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives may lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3. This is further specified below.

(863) As regards the ability to foreclose in Ireland, there are reasons to consider that the Merged Entity may have a significant market position upstream. However, there are also indications that its upstream position would in fact not be sufficient to allow it to deteriorate the commercial conditions of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(864) On the one hand, EssilorLuxottica's market shares for the wholesale of sunglasses is moderate ([30-40]%) and its share in frames is low ([10-20]%). Moreover, its main wholesale rivals are considerably smaller – it is almost four times as large as the next largest supplier of sunglasses (Safilo, [5-10]%) and frames (Safilo, [0-5]%). Competitors are thus significantly smaller than EssilorLuxottica.

(865) In addition, the three largest suppliers of sunglasses have a combined market share of [40-50]%, and [10-20]% for frames. As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) as it is the case here, because this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somewhat limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. Therefore, the Commission considers that, overall, the market structure would allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(866) In addition, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6. The Notifying Party has not been able to provide market shares for this segment in Ireland. However, considering that its market position is stronger

619 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relevant product market definition.

within these segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Ireland, as also recognised by the Notifying Party.[620]

(867) On the other hand, the Commission notes that in frames in particular the Merged Entity's market share is low ([10-20]%), and more generally the penetration rate of Ray-Ban in Irish stores is only moderate. Ray-Ban is present in [30-40]% of Irish stores as regards frames and sunglasses, which is significantly below the EEA average. As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's wholesale sales in Ireland are of the Ray-Ban brand ([60-70]% of sunglasses and [40-50]% of frames). The relatively moderate penetration of Ray-Ban in Irish stores may be due to the importance of private label sales in Ireland, as shown by the fact that the largest optical retail chain ([20-30]%) almost exclusively sells private label products.

(868) On this basis, as well as on the basis of the considerations set out in section 8.3.2, the Commission considers that there are indications that the Merged Entity may have the ability to engage in input foreclosure of eyewear (sunglasses in particular, in view of its market share and the limited shares of its rivals). However, it is not necessary to reach a conclusion on this ability for the purposes of this decision for the following reasons.

(869) With respect to **incentives** to foreclose and the **effects** in the respective markets in Ireland, the Commission finds that the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to rival retailers to an extent where it would have a significant impact on the wholesale markets for frames and sunglasses. This is set out below.

(870) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only gain the wholesale margin on the eyewear purchased by that customer, but also the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Ireland in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(871) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of

620 Response to RFI 1, annex Q1, page 14.

frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(872) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[621]

(873) However, the Merged Entity's retail presence in Ireland is small ([10-20]% as per 2018 data, brick-and-mortar).[622] In practice, its presence is even smaller once sunglass specialist stores are excluded from these estimates (given that the Parties' operate the only main sunglass specialist stores in Ireland). Moreover, the largest optical retail chain in Ireland is Specsavers, which almost exclusively sells private label products and so would not be affected by an input foreclosure of the Merged Entity (which would likely centre on its strong branded portfolio).These limited downstream shares would therefore reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for frames.

(874) Additionally, the Merged Entity's penetration rates are also moderate ([30-40]% for both frames and sunglasses). This would therefore also limit the extent to which a given input foreclosure strategy pursued by the Merged Entity would affect the wholesale market for frames or sunglasses to a significant degree.

(875) Finally, it should be borne in mind that the Merged Entity's market share in the supply of frames is low ([10-20]%) and modest in sunglasses ([30-40]%). This moderate upstream presence therefore means that while, in principle, a successful foreclosure strategy might benefit the Merged Entity, in practice, there is only a low likelihood of such a strategy succeeding for frames. This, together with the modest downstream position, suggests that the Merged Entity would be unlikely to find it profitable to engage in such a risky foreclosure attempt.

(876) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentive to significantly deteriorate its commercial conditions to an extent that would significantly impede effective competition in the wholesale market for frames.

(877) The Commission observes that in relation to Ireland, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [40-50]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

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621 Simplified Questionnaire to independent opticians, question 10, responses from independent opticians. Respondents estimate 31% of customers would switch following deteriorated frames commercial conditions at wholesale level.

622 Form CO, Annex 7.2.

9.3.6.3. Overall conclusion in Ireland

(878) On the basis of the findings set out in section 9.3.1.2, the Commission finds that, on balance, and with particular regard to the Merged Entity's low market shares in optical retail, low market share in the wholesale of frames and moderate share in sunglasses, as well as of the low penetration rates of EssilorLuxottica's products in Ireland, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.7. *Luxembourg*

9.3.7.1. Introduction

(879) The Notifying Party is by far the largest supplier of frames and sunglasses in Luxembourg.

(880) The Transaction would lead to the Notifying Party acquiring the largest retail chain in Luxembourg. Together, the Parties will account for [20-30]% of the optical retail market.

(881) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level. However, the Commission considers that this does not exclude the possibility that the impact of the Transaction would be more pronounced at local level or, as outlined in section 8.3.2.9 above, that the Merged Entity would have the ability to optimise its strategy by selectively foreclosing in certain areas, for instance where its retail position or demand for its products is even stronger or larger than on average at national level.

Figure 83 – Optical retailers in Luxembourg[623]

[…]

9.3.7.2. Vertical effects – input foreclosure

(882) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Luxembourg.

(883) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives would lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3 and is further specified below.

(884) As regards the **ability** to foreclose in Luxembourg, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would

623 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

have the ability to deteriorate the commercial conditions of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(885) First, EssilorLuxottica's market shares for the wholesale of sunglasses and frames are high.

(886) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [20-30]% and [20-30]% respectively.[624] EssilorLuxottica is the market leader in the overall markets for sunglasses and for frames. For both sunglasses and frames, there are no other large suppliers, which means that the rest of the market is fragmented and competitors are significantly smaller than EssilorLuxottica. However, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1. The Notifying Party has not been able to provide market shares for this segment for eyewear priced above EUR […] in Luxembourg. However, considering that its market position is stronger within this segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Luxembourg, as also recognised by the Notifying Party.[625]

(887) Second, the penetration rate of Ray-Ban in Luxembourg is significant. Ray-Ban is present in [60-70]% of [more than 1500] stores as regards frames and [60-70]% of the stores as regards sunglasses.[626] As explained in section 8.3.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in Luxembourg are of the Ray-Ban brand ([50-60]% of sunglasses and [20-30]% of frames).[627]

(888) Third, as indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(889) On the other hand, the Commission notes that the Merged Entity's importance as a supplier for frames and sunglasses is somewhat less than in other countries, as shown by the limited response rate (also in relative terms) to the Commission's market inquiry. This would therefore be likely to somewhat reduce the extent to which the Merged Entity would have market power in these products to the extent that this would be able to result in impeded competition in the wholesale markets for frames and sunglasses in Luxembourg.

(890) The Commission's findings as regards incentives to foreclose, and the impact thereof on the market, are set out in the following recitals.

(891) First, the Merged Entity would have a significant retail presence. It would be the only large in Luxembourg, with a market share of [20-30]% (2018 data, brick-and-

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624 Form CO Annexes CO 7.2.

625 Response to RFI 1, annex Q1, page 14.

626 M.8394 Essilor/Luxottica, rec. 504. Penetration rates refer to both Belgium and Luxembourg.

627 Response to RFI 27 annex Q8.

mortar). The Parties stores have a broad and attractive portfolio of branded products, as well as GrandVision selling some private label products.

(892) In addition, GrandVision has an all-round positioning, providing it a large potential to recoup sales. GrandVision is therefore well placed to win customers from a broad range of rivals.

(893) In particular for frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only gain the wholesale margin on the eyewear purchased by that customer, but also the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Luxembourg in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(894) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(895) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[628]

(896) However, even though a number of metrics for Luxembourg are comparable to Belgium and the Netherlands[629] the quantitative analysis in section 8.2.3 and in particular Figure 14 show that potential retail price effects of a 10% upstream price increase in frames would be much lower.

(897) Moreover, the very limited response rate to the Commission's simplified questionnaire to retailers in Luxembourg is to some extent indicative that opticians are not significantly concerned by the likelihood of such switching. Moreover, this limited response rate (in absolute but also in relative terms) makes the indications given by this questionnaire less reliable (section 8.3.2.7) and therefore the Commission's quantitative analysis for Luxembourg less reliable for the purpose of finding a significant impediment to competition.

(898) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to an extent

628 Simplified Questionnaire to independent opticians, question 10, responses from independent opticians. Respondents estimate 43% of customers would switch following deteriorated frames commercial conditions at wholesale level.

629 E.g. wholesale and retail market shares, penetration rates.

that would significantly impede effective competition in the wholesale markets for frames and sunglasses in Luxembourg.

(899) The Commission observes that in relation to Luxembourg, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [20-30]%. In any event, for the reason outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.7.3. Overall conclusion in Luxembourg

(900) On the basis of the findings set out in this section 9.3.7.2, the Commission finds that, on balance, and with particular regard to potential effects at the retail level of a partial input foreclosure in frames, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.8. *Norway*

9.3.8.1. Introduction

(901) The Notifying Party is a large supplier of frames and sunglasses in Norway. Its brand Ray-Ban is present in [60-70]% of optical stores in Norway as regards frames and [70-80]% as regards sunglasses.

(902) The Transaction would lead to the Notifying Party acquiring the largest retail chain in Norway accounting for almost a third of the market of optical retail. The second largest retail chain is Specsavers, which is about half as large as GrandVision.

(903) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. This is discussed in the following sections.

(904) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 84 – Optical retailers in Norway (2018)[630]

[…]

630 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

9.3.8.2. Vertical effects – input foreclosure

(905) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Norway.

(906) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which these would lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3. This is further specified below.

(907) As regards the **ability** to foreclose in Norway, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would have the ability to deteriorate the commercial conditions of the provision of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(908) First, EssilorLuxottica's market shares for the wholesale of sunglasses are moderately high but not particularly high for frames.

(909) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [30-40]% and [10-20]% respectively and it is the market leader in the wholesale market for sunglasses. However, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1. The Notifying Party has not been able to provide market shares for this segment for eyewear priced above EUR […] in Norway. However, considering that its market position is stronger within these segment for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Norway, as also recognised by the Notifying Party.[631]

(910) Furthermore, for sunglasses, the next largest suppliers are Safilo ([10-20]%), Marcolin ([10-20]%) and Scandinavian Eyewear ([5-10]%). Other competitors are thus significantly smaller than EssilorLuxottica. More than a third of this market is allocated by the Notifying Party to a further unspecified category of 'others'.

(911) Second, the penetration rate of Ray-Ban in Norwegian stores is significant. Ray-Ban is present in [60-70]% of optical stores in Norway as regards frames and [70-80]% as regards sunglasses.[632] As explained in section 8.3.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in Norway are of the Ray-Ban brand ([40-50]% of sunglasses and [40-50]% of frames).[633]

(912) On the other hand, the Commission notes that the Merged Entity's market share in the wholesale supply for frames is also not very high. This would therefore somewhat reduce the extent to which the Merged Entity would have market power

631 Response to RFI 1, annex Q1, page 14.
632 M.8394 Essilor/Luxottica, rec. 598.
633 Response to RFI 27 annex Q8.

in frames. The Commission however leaves open whether the Merged Entity would have the ability to foreclose this product considering its findings as regards incentives to foreclose, and the impact thereof on the market, as set out in the following recitals.

(913) With respect to **incentives** to foreclose and the **effects** in the respective markets in Norway, the Commission finds that, for frames, the Merged Entity would be less likely to have the incentives to significantly deteriorate its commercial conditions to rival retailers to an extent where it would have a significant impact on the market, while for sunglasses, the Merged Entity would lack incentives to engage in input foreclosure. This is set out below.

(914) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain the wholesale margin on the eyewear purchased by that customer, but also gain the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Norway in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(915) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(916) The Commission finds that the Merged Entity's retail presence would be significant, with a market share of [30-40]%. It would generally enjoy an all-round positioning, including through its value brand Brilleland, and high-end retail chain Interoptik. The Commission considers that this would support the amount of diverted sales that the Merged Entity would recoup if engaging in an input foreclosure strategy.

(917) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[634]

(918) However, even though a number of metrics for Norway are comparable to Belgium and the Netherlands[635] the quantitative analysis in section 8.2.3 and in particular

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634 Simplified Questionnaire to independent opticians, question 10, responses from independent opticians. Respondents estimate 32% of customers would switch following deteriorated frames commercial conditions at wholesale level.

635 E.g. wholesale and retail market shares, penetration rates.

Figure 14 show that potential retail price effects of a 10% upstream price increase in frames would be much lower.

(919) Moreover, the very limited response rate to the Commission's simplified questionnaire to retailers in Norway is to some extent indicative that opticians are not significantly concerned by the likelihood of such switching. Moreover, this limited response rate (in absolute but also in relative terms) makes the indications given by this questionnaire less reliable (section 8.3.2.7) and therefore the Commission's quantitative analysis for Norway less reliable for the purpose of finding a significant impediment to competition.

(920) Finally, the Commission notes that the competitive landscape in Norway seems to differ from most of the other countries analysed in this chapter, in particular by the significant presence of other eyewear suppliers, such as a market leader Scandinavian Eyewear or Prodesign, which do not seem to have a significant presence in other EEA countries.[636] The market for the wholesale supply of frames is therefore more diversified than in other EEA countries.

(921) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentive to significantly deteriorate its commercial conditions to an extent that would significantly impede effective competition in the wholesale market for frames.

(922) The Commission observes that in relation to Norway, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [30-40]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.8.3. Overall conclusion in Norway

(923) On the basis of the findings set out in this section 9.3.8.2, the Commission finds that, on balance, and with particular regard to potential effects at the retail level of a partial input foreclosure in frames, as well as to the market structure and the Merged Entity's position as a wholesale supplier, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.9. *Portugal*

9.3.9.1. Introduction

(924) The Notifying Party is a large supplier of frames and sunglasses in Portugal. Its brand Ray-Ban is present in [40-50]% of optical stores in Portugal as regards both frames and sunglasses.

(925) The Transaction would lead to the Notifying Party acquiring the largest retail chain in Portugal, accounting for between a fifth and a third of the market of optical retail. The remainder of the retail market is fragmented and operated by smaller retail

636 Form CO, Annex 7.2.

chains and independent opticians. The second largest retail chain besides GrandVision is Well's, which is about five times smaller and positioned differently.

(926) The Commission finds that, on balance, this would more likely than not lead to an absence of a significant impediment to effective competition resulting from vertical effects upstream. The Commission finds that the Merged Entity's ability to engage in the foreclosure of frames is not as strong in Portugal, as indicated by the market shares and penetration rates of these products. Also, it would be less likely to have the incentives to significantly do so to an extent where it would have a significant impact on the market for frames and sunglasses. This is discussed in the sections that follow.

(927) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 85 – Optical retailers in Portugal (2018)[637]

[…]

9.3.9.2. Vertical effects – input foreclosure

(928) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Portugal.

(929) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives would lead to vertical non-coordinated effects have been set out in sections 8.2 -8.3. This is further specified below.

(930) As regards the **ability** to foreclose in Portugal, the Commission finds that while some factors indicate that the Merged Entity has a significant market position upstream, its ability to foreclose frames also seems to be somewhat limited due to market shares and penetration rates not being very high.

(931) First, EssilorLuxottica's market shares for the wholesale of sunglasses are high, although they are not very high for frames.

(932) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [50-60]% and [20-30]% respectively and it is the market leader. However, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set

637 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

out in section 6.1. The Notifying Party has not been able to provide market shares for this segment for eyewear priced above EUR […] in Portugal. However, considering that its market position is stronger within these segments for most countries for which data is available, the Commission considers it likely that the increase in EssilorLuxottica's share for this particular segment similarly applies to the segments in Portugal, as also recognised by the Notifying Party.[638]

(933) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(934) Furthermore, for frames, the next largest suppliers are Safilo ([10-20]%), De Rigo ([5-10]%) and Marcolin ([5-10]%). Other than Safilo, other competitors are thus significantly smaller than EssilorLuxottica. More than a third of this market is allocated by the Notifying Party to a further unspecified category of 'others'.

(935) Similarly, for sunglasses, the next largest suppliers are Safilo ([10-20]%), De Rigo ([5-10]%) and Marcolin ([5-10]%). All competitors are thus significantly smaller than EssilorLuxottica.

(936) Second, the Commission finds that the penetration rate of Ray-Ban in Portuguese stores is important but not as high as in other Member States. Ray-Ban is present in [40-50]% of [more than 2000] stores as regards both frames and sunglasses.[639]

(937) On the basis of the above, as well as on the basis of the considerations set out in section 8.3.2, the Commission considers that the Merged Entity may have the ability to engage in input foreclosure of frames and sunglasses, but that this ability is somewhat limited due to market shares and penetration rates not being very high for frames, and for sunglasses that penetration rates are not very high. The Commission leaves open whether the Merged Entity would be able to use its position in the wholesale markets for frames and sunglasses to engage in an input foreclosure strategy because, on balance, taking into account also the Merged Entity's incentives and the effects of this strategy on the markets concerned, the Commission finds that this would likely not result in a significant impediment to competition, as set out further below.

(938) With respect to **incentives** to foreclose and the **effects** in the respective markets in Portugal, the Commission finds that the Merged Entity would be less likely to have the incentives to significantly deteriorate its commercial conditions to rival retailers to an extent that it would have a significant impact on the wholesale markets for frames and sunglasses This is set out below.

(939) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain

638 Response to RFI 1, annex Q1, page 14.
639 M.8394 Essilor/Luxottica, rec. 598.

the wholesale margin on the eyewear purchased by that customer, but also gain the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Portugal in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(940) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(941) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[640] In this regard, several respondents to the Commission's market investigation indicated difficulties in serving customers equally when replacing Luxottica's portfolio with that of (a combination of) different suppliers: '*With the customers fully aware of the trends, some brands are unavoidable, without jeopardizing the organization's sales; Because Luxottica have big and well knowned brands, that if they are exclusive to their stores it would be devastating to the rest of the optical stores. People search their brands.;[…] it is a product that the consumer is looking for and that Luxottica does not give much room for negotiation.*'[641]

(942) This is furthermore also raised by the second largest retail chain in Portugal as regards sunglasses: '*In the case of sunglasses, the most sought brand is Ray-Ban (Luxottica brand). If [Retailer] stopped having that brand it would lose a high number of customers, since this brand represents more than [25-50%]% of [Retailer]'s sales in the sunglasses category.*'[642]

(943) However, while the Merged Entity would have a significant retail presence, its market share would not be very large ([20-30]% as per 2018 data, brick-and-mortar).[643] This would therefore somewhat reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for frames.

(944) Additionally, the Merged Entity's penetration rates of frames are also not very high. This would therefore also moderately limit the extent to which a given input foreclosure strategy pursued by the Merged Entity would affect the market for frames to a significant degree.

(945) On this basis, the Commission considers that, on balance, the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial

640 Simplified Questionnaire to retailers, questions 10, responses from independent opticians. Respondents estimate 35% of customers would switch following deteriorated frames commercial conditions at wholesale level.

641 Questionnaire Q11 to independent optical retailers (Portuguese respondents), question 43.

642 Questionnaire Q12 to optical retail chains (Portuguese respondents), question 45.

643 Form CO, Annex 7.2.

conditions to an extent that would significantly impede effective competition in the wholesale markets for frames and sunglasses in Portugal.

(946) The Commission observes that in relation to Portugal, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [50-60]%. In any event, for the reason outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.9.3. Overall conclusion in Portugal

(947) On the basis of the findings set out in this section 9.3.9.2, the Commission finds that, on balance, and with particular regard to limited retail market shares and in light of the Merged Entity's penetration rates in Portugal, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.3.10. *Spain*

9.3.10.1. Introduction

(948) The Notifying Party is one of the biggest suppliers of frames and sunglasses in Spain.

(949) The Transaction would lead to the Notifying Party acquiring a retail chain in Spain. Approximately half of the retail market in Spain is operated by retail chains. The other half is fragmented and operated by smaller retail chains and independent opticians.

(950) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. This is discussed in the following sections.

(951) As explained in section 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 86 – Optical retailers in Spain[644]

[…]

644 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

9.3.10.2. Vertical effects – input foreclosure

(952) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Spain.

(953) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives may lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3. This is further specified below.

(954) As regards the **ability** to foreclose in Spain, the Commission finds that, while the Merged Entity has a significant market position upstream, its ability to foreclose frames seems to be somewhat limited due to penetration rates not being very high.

(955) First, EssilorLuxottica's market shares for the wholesale of sunglasses and frames is significant.

(956) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [30-40]% and [20-30]% respectively. The next largest suppliers for frames are De Rigo ([10-20]%), Safilo ([10-20]%) and VSP Marchon ([10-20]%). The rest of the competitors are thus significantly smaller than EssilorLuxottica.

(957) Similarly, for sunglasses, the next largest suppliers are De Rigo ([5-10]%), Safilo ([0-5]%) and VSP (Marchon) ([0-5]%). Competitors are thus significantly smaller than EssilorLuxottica.

(958) In addition, the three largest suppliers of sunglasses have a combined market share of [40-50]%, and [50-60]% for frames. As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somewhat limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. Therefore, the Commission considers that, overall, the market structure would allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(959) Moreover, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1. In Spain, the Notifying Party's market share for this segment is [30-40]% for frames and [50-60]% for sunglasses.

(960) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(961) Furthermore, for frames over EUR […], the next largest suppliers are De Rigo ([10-20]%), Safilo ([10-20]%), VSP (Marchon) ([10-20]%) and Silhouette International ([10-20]%). Other competitors are thus significantly smaller than

EssilorLuxottica. [10-20]% of this segment is allocated by the Notifying Party to a further unspecified category of 'others'.

(962) Similarly, for sunglasses over EUR […], the next largest suppliers are VSP (Marchon) ([5-10]%), De Rigo ([5-10]%) and Safilo ([5-10]%). All competitors are thus significantly smaller than EssilorLuxottica.

(963) In addition, the three largest suppliers of sunglasses over EUR […] have a combined market share of [60-70]%, and [50-60]% for frames. As noted by paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somehow limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. On balance, the Commission therefore considers that, overall, the market structure would not allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(964) Second, the Commission finds that the penetration rate of Ray-Ban in Spanish stores is important but less high compared to other Member States. Ray-Ban is present in [40-50]% of Spanish stores as regards frames [40-50]% of the stores as regards sunglasses.[645] As explained in section 8.3.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's sales in Spain are of the Ray-Ban brand ([50-60]% of sunglasses and [30-40]% of frames).[646]

(965) On the basis of the above, the Commission considers the Merged Entity's may have the ability to foreclose the wholesale supply of sunglasses and frames. The Commission's findings as regards incentives to foreclose, and the impact thereof on the market, are set out in the following recitals.

(966) With respect to **incentives** to foreclose and the **effects** in the respective markets in Spain, the Commission finds that the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to rival retailers to an extent where it would have a significant impact on the wholesale markets for frames and sunglasses. This is set out below.

(967) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only gain the wholesale margin on the eyewear purchased by that customer, but also the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is

645 M.8394 Essilor/Luxottica, rec. 598.

646 Response to RFI 27 annex Q8.

much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Spain in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(968) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[647]

(969) However, while the Merged Entity would have a significant retail presence, its market share would not be very large ([20-30]% as per 2018 data, brick-and-mortar).[648] This would therefore somewhat reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for frames.

(970) Additionally, the Merged Entity's penetration rates are also not very high. This would therefore also moderately limit the extent to which a given input foreclosure strategy pursued by the Merged Entity would affect the wholesale market for frames to a significant degree.

(971) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentive to significantly deteriorate its commercial conditions to an extent that would significantly impede effective competition in the wholesale market for frames.

(972) The Commission observes that in relation to Spain, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [40-50]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.10.3. Overall conclusion in Spain

(973) On the basis of the findings set out in section 9.3.1.2, the Commission finds that, on balance, and with particular regard to the Merged Entity's market shares in retail, and in light of the Merged Entity's penetration rates in Spain, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

[647] Simplified questionnaire to independent opticians, question 10. Respondents estimate 33% of customers would switch following deteriorated frames commercial conditions at wholesale level.

[648] Form CO, Annex 7.2.

9.3.11. *Sweden*

9.3.11.1. Introduction

(974) The Notifying Party is a large supplier of frames and sunglasses in Sweden. Its Ray-Ban brand has a high penetration rate with [60-70]% of Swedish shops offering its frames and [60-70]% its sunglasses.

(975) The Transaction would lead to the Notifying Party acquiring the third largest retail chain in Sweden, accounting for almost a fifth of the market of optical retail. The Swedish optical retail market is characterised by the significant presence of chains, with independent opticians accounting for only 5% of the market.

(976) The Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely. While the Commission finds that the Merged Entity would have the ability to engage in the foreclosure of frames and sunglasses, incentives to do so appear limited. This is discussed in the following sections.

(977) As explained in sections 8.3.2.9, the Commission conducts its assessment of input foreclosure at national level. This is because (upstream) […]. Accordingly, […] the impact of the Transaction can be expected to be felt across the country. In light of this, the Commission assesses EssilorLuxottica's ability and incentive to engage in input foreclosure practices at national level, as well as its average impact at national level.

Figure 87 – Retail market shares in Sweden, 2018[649]

[…]

9.3.11.2. Vertical effects – input foreclosure

(978) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical effects of input foreclosure in frames and sunglasses in Sweden.

(979) The evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure of frames and the extent to which ability and incentives would lead to vertical non-coordinated effects have been set out in the sections 8.2 - 8.3.

(980) As regards the **ability** to foreclose in Sweden, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would have the ability to deteriorate the commercial conditions of the provision of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(981) First, EssilorLuxottica's market shares for the wholesale of sunglasses are sizeable but are low for frames.

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649 For the avoidance of doubt, this Figure shows market share estimates for brick-and-mortar optical retailers (and includes some revenue from sunglass specialists). Similarly, the market share figures presented in this Section are on the same basis. However, for the avoidance of doubt, for the purposes of assessing the Merged Entity's incentives, sunglass specialist stores have been excluded in line with the relvant product market definition.

(982) In the overall wholesale markets for sunglasses and for frames, its market share amounts to [30-40]% and [5-10]% respectively.

(983) As indicated in sections 8.3.2.3 - 8.3.2.4, EssilorLuxottica's eyewear is considered significantly stronger and broader than that of competitors, and retailers consider it difficult to serve consumers equally when having to replace EssilorLuxottica eyewear with that of other suppliers.

(984) Furthermore, for frames, EssilorLuxottica ([5-10]%) is preceded by Marchon ([20-30]%), Marcolin ([5-10]%) and EGO Eyewear ([5-10]%), and followed by Silhouette International ([5-10]%). There are many other competitors which are significantly smaller than EssilorLuxottica. Almost half of this segment is allocated by the Notifying Party to a further unspecified category of 'others'.

(985) For sunglasses, the next largest suppliers after EssilorLuxottica ([30-40]%) are Safilo ([10-20]%), Marcolin ([10-20]%), Kering ([0-5]%) and Boardriders ([0-5]%). All competitors are thus significantly smaller than EssilorLuxottica.

(986) In addition, the three largest suppliers of sunglasses have a combined market share of [50-60]%, and [40-50]% for frames.[650] As set out in paragraph 38 of the Non-Horizontal Merger Guidelines, a decision of the Merged Entity to restrict access to inputs may reduce the competitive pressure exercised also on the remaining input suppliers. This effect is weakened by the degree of product differentiation between EssilorLuxottica and other eyewear suppliers (due to the high degree of differentiation in eyewear products) on the one hand, as this reduces the extent to which customers switch suppliers even in absence of a restriction in access to inputs. Moreover, the effect is somewhat limited by the degree of concentration, which is not particularly high considering the combined market share of the three largest suppliers. On balance, the Commission considers that, overall, the market structure would not allow eyewear competitors to themselves raise the input price following a potential partial input foreclosure.

(987) However, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] is particularly important given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1.1. The market shares for this segment in Sweden amount to [20-30]% for sunglasses and [5-10]% for frames. However, the Commission considers it likely that the increase in EssilorLuxottica's share of the retail market would also translate to an upstream increase vis-à-vis this segment in Sweden post-Transaction.

(988) Second, despite these moderate market shares of EssilorLuxottica in frames and sunglasses, the penetration rate of Ray-Ban in Swedish stores is significant. Ray-Ban is present in [60-70]% of [between 1000 and 1500] stores as regards frames and [60-70]% of the stores as regards sunglasses.[651] As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of

650 Form CO Annexes CO 7.2.
651 M.8394 Essilor/Luxottica, rec. 652.

EssilorLuxottica's sales in Sweden are of the Ray-Ban brand ([70-80]% of sunglasses and [30-40]% of frames).[652]

(989) On the basis of the above, the Commission considers the Merged Entity's may have the ability to foreclose the wholesale supply of sunglasses and frames. The Commission's findings as regards incentives to foreclose, and the impact thereof on the market, are set out in the following recitals.

(990) For frames, potential profits of diverting customers from rival retailers to its own stores are higher than for sunglasses given the substantial margin earned by opticians on lenses in the prescription frames bundle. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only maintain the wholesale margin on the eyewear purchased by that customer, but also the retail margin as well as the wholesale and retail margin on ophthalmic lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity. This is also confirmed for Sweden in the Commission's quantitative analysis as set out in section 8.2., which indicates that critical intrabrand diversion ratios necessary to make a 10% upstream price increase profitable are much higher for sunglasses than for frames.

(991) Consequently, the Commission analyses in the following recitals incentives of the Merged Entity to implement a partial input foreclosure in the wholesale supply of frames, considering that if incentives cannot be established for this product there would not be incentives for sunglasses either.

(992) Independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[653] This is furthermore also raised by a leading retail chain in Sweden (emphasis added): '*The <u>strong positioning of some of the Luxottica brands for sure are important for customers who value brands</u>.*'[654]

(993) However, while the Merged Entity would have a significant retail presence, its market share would not be very large ([10-20]% as per 2018 data, brick-and-mortar).[655] This would therefore somewhat reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for frames.

(994) Additionally, the Merged Entity's market shares in the wholesale supply of frames is also rather limited ([5-10]%). This would therefore also limit the extent to which a given input foreclosure strategy pursued by the Merged Entity would affect the market for frames to a significant degree.

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652 Response to RFI 27 annex Q8.

653 Simplified questionnaire to independent opticians, question 10, responses from independent opticians. Respondents estimate 28% of customers would switch following deteriorated frames commercial conditions at wholesale level.

654 Questionnaire to optical retail chains, Phase II, question 53.1.

655 Form CO, Annex 7.2.

(995) On this basis, the Commission considers that the Merged Entity would be unlikely to have the incentive to significantly deteriorate its commercial conditions to an extent that would significantly impede effective competition in the wholesale market for frames.

(996) The Commission observes that in relation to Sweden, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [20-30]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.3.11.3. Overall conclusion (Sweden)

(997) On the basis of the findings set out in section 9.3.1.2, the Commission finds that, on balance, and with particular regard to the Merged Entity's market shares in retail and as a wholesale supplier, the Transaction would be unlikely to lead to a significant impediment to effective competition resulting from vertical effects upstream.

9.4. Italy

9.4.1. Introduction

(998) GrandVision and EssilorLuxottica are, respectively, the first and second largest optical retailers in Italy. For the following reasons, the Commission considers that the Transaction would give rise to a significant impediment to effective competition in the retail market for optical products in Italy.[656] This section first provides an overview of the competitive landscape in Italy and the Parties' market shares at national level and local/sub-national level (9.4.2). It then sets out the Commission's assessment of the Transaction's horizontal non-coordinated effects in the optical retail market in Italy (9.4.3), its vertical non-coordinated effects in the form of the likely foreclosure of inputs (frames and sunglasses) to optical retailers in Italy (9.4.4), as well as the combined impact[657] in the optical retail market in Italy of the Transaction's aforementioned horizontal non-coordinated effects and vertical non-coordinated effects, which are mutually reinforcing and in combination significant (9.4.5). In sum, the Commission considers that the Transaction would result in a significant impediment to effective competition in the Italian optical retail market on each of these three grounds (separately, i.e. horizontal non-coordinated effects, vertical non-coordinated effects, cumulative impact of horizontal and vertical effects).

[656] For completeness, as explained in Section (116), the Commission has conducted its assessment on the basis that independent opticians and optical retail chains form part of one relevant product market for the retail of optical products. The Commission's conclusions also apply if independent opticians were not considered part of the relevant product market.

[657] As explained in more detail in Sections 7.1 and 7.3, paragraph 36 of the Horizontal Merger Guidelines envisage that a Transaction may significantly impede effective competition as a result of mutually reinforcing horizontal and non-horizontal effects of a Transaction.

9.4.2. Competitive landscape in Italy to the effect of assessing the Transaction

9.4.2.1. National overview

(999) The optical retail market in Italy is highly fragmented, with independent opticians accounting for the majority of the market. There are only three nation-wide retail chains – EssilorLuxottica, GrandVision and NAU! – as well as several networks of independent opticians. Table 16 below sets out the Notifying Party's estimates of the Parties' and their largest competitors' market shares in Italy.

Table 16 – Italy optical retail market shares, 2018[658]

Competitor	Revenue (EUR, m)	Share
EssilorLuxottica	[…]	[5-10]%
GrandVision	[…]	[5-10]%
Combined	*[…]*	*[10-20]%*
GreenVision*	[…]	[5-10]%
OXO*	[…]	[0-5]%
Vision Ottica*	[…]	[0-5]%
NAU!	[…]	[0-5]%
Fielmann	[…]	[0-5]%
Regional chains	[…]	[5-10]%
Independents	[…]	[60-70]%

** denotes a network of independent opticians, as described below*

(1000) The main players active in the Italian optical retail market can be summarised as follows:

(a) GrandVision is active in Italy through its GrandVision and Corner Optique banners, both retail chains with a mass-market positioning[659] and [around 400] stores in total.

658 Form CO, Annex 7.2, Optical Retail Shares, Optical brick-and-mortar. For the avoidance of doubt, the market shares presented include the Parties' revenue also from sunglass specialist stores. However, even if the Parties' revenue from their sunglass specialist banners is removed from these estimates, the Parties' combined market shares would continue to be [5-10]% each. Therfore, for simplicity, the market share and revenue figures presented in this section will be the same as presented in the estimates in this Table.

659 The positioning of the Parties' banners as 'mass-market', 'high-end' and 'sunglass specialists' is explained further in Section 9.4.3.2 below.

(b) EssilorLuxottica is active in Italy through Salmoiraghi & Viganò, a high-end retail chain with [less than 300] stores and VistaSì, a mass-market retail chain with [more than 100] stores.

(c) GreenVision is the banner of Consorzio Ottico Italiano, a network of approximately 600 independent opticians operating under the GreenVision banner. Active since 1992, the Consorzio Ottico Italiano is an Italian cooperative enterprise[660] and optical retail chain with a structured banner strategy.[661] As part of this banner structure, Consorzio Ottico Italiano centralises purchases for its members/affiliates and provides sell-out support including advertising through media.[662]

(d) OXO is a combination of local cooperatives that operates a network of over […] independent opticians, active since 1993. […].[663]

(e) Vision Ottica is the banner used by a network of over 300 independent opticians located throughout the Italian territory.[664]

(f) NAU! is the largest retail chain after the Parties (in the strict sense, rather than a network of independent opticians). It operates [more than 100] stores across Italy, accounting for approximately [0-5]% of the Italian market. NAU! is a monobrand retailer, meaning that it exclusively sells its own affordable but fashion-oriented private label frames and sunglasses.[665]

(g) Fielmann is the third largest optical retail chain in Europe. It opened its first store in Italy in 2016 and has grown to approximately [less than 100] stores, amounting to approximately [0-5]% of the Italian market. Fielmann sells a selection of branded and private label eyewear in Italy.

(h) There are a number of regional chains active throughout the country. These generally do not have more than 50 shops and include Megavision ([no more than 50] shops), Lama Optical ([no more than 50] shops), Spaccio Occhiali Vision ([no more than 50] shops) and others with fewer stores.

(i) Independent opticians are active throughout Italy and make up the majority of the market. The size and positioning of an independent optician varies, but they typically have a mid- to high-end positioning and are considered to offer a high quality of service to customers.[666] A large proportion of independent opticians (some 65%) are members of buying groups to seek to obtain better commercial conditions from suppliers than if they were to procure individually.[667]

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660 Source: www.greenvision.it/coi.
661 Form CO, Annex CO 7.1.10 (Italy).
662 Form CO, Annex CO 7.1.10 (Italy).
663 Form CO, Annex CO 7.1.10 (Italy).
664 Source: www.visionottica.it.
665 Form CO, paragraph 319 of Section 6.
666 See section 6 above. Questionnaire 11 to independent retailers, question 27.
667 Form CO, Annex 7.1.10 (Italy), page 5.

9.4.2.2. The Parties' presence in optical retail at local/NUTS3 level[668]

(1001) As outlined in section 8.1.1 above, the Notifying Party has not been able to provide established market share data or estimates on the basis of the value or volume of sales at the local level (i.e. a catchment area of typically not more than 10 kilometres around each of the Parties' stores). Instead, the Notifying Party has submitted two main proxies for local market shares – market share estimates at the NUTS3 level and a fascia count analysis at the local level.[669]

(1002) In the first place, the Notifying Party has submitted market shares calculated at the level of NUTS3 regions for Italy. The Notifying Party used Eurostat data on population and GDP at this geographical level in order to compute the total market size. Sales of the Parties were then attributed to these areas and divided by estimated market size in order to obtain local shares in the retail market for GrandVision and the Notifying Party.[670] The Notifying Party submits that these NUTS3 estimates indicate the Transaction is unlikely to raise horizontal competition concerns in Italy at the local level, as in all NUTS3 areas where the Parties overlap their combined market shares are [30-40]% or less.[671]

(1003) Since the Commission considers the relevant geographic markets are likely to be narrower than national (i.e. local catchment areas of typically not more than 10 kilometres around a store, see section 6.2), it has taken these NUTS3 market shares into account in relation to the Parties' position at local level (in the absence of reliable market share estimates at local level). Nevertheless, as explained above, from the supply-side, certain key parameters of competition are determined at national level. Therefore, the retail market share of the Parties should be viewed in the light of the Parties' position at national level as described below.

(1004) The Figure below shows that EssilorLuxottica and GrandVision overlap to a significant degree in a large number of NUTS3 areas in Italy.[672]

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668 NUTS3 refers to a regional classification used by Eurostat which provides demographic information at this level, information that is then used by the Parties to derive estimates of local market shares.

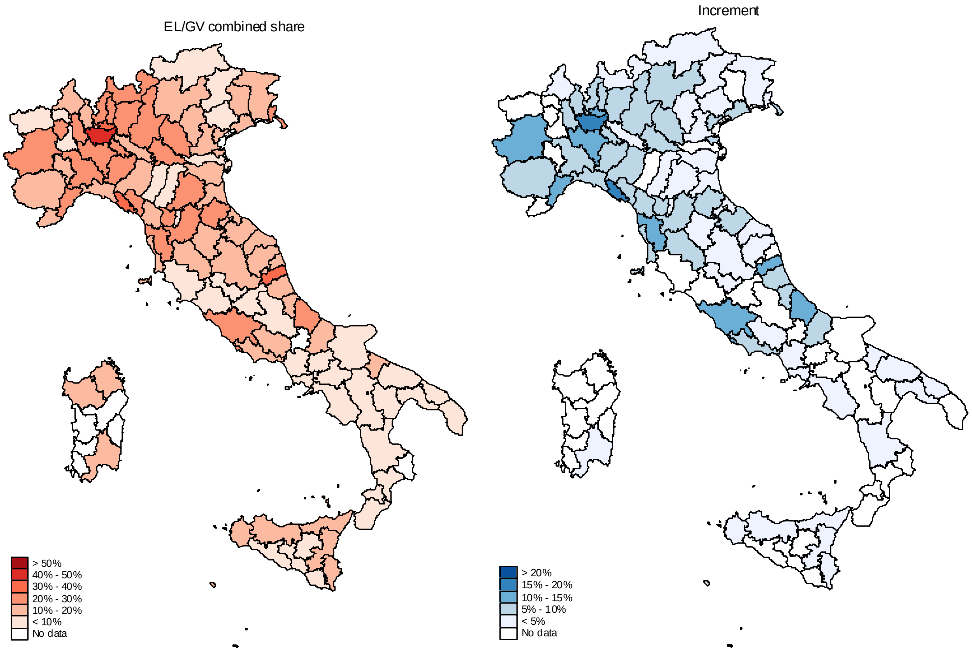
669 The methodology for each of these is described in more detail in section 8.1.1 above. For completeness, the Notifying Party has also submitted estimates of market shares at the LAU level, however, these are not considered accurate for the reasons set out in section 8.1.1 and so will not be separately assessed in relation to Italy.

670 The Notifying Party has first computed an average spend on eyewear by inhabitant using national market sizes from national market shares. Local market shares based on population merely multiply this metric by the local population at NUTS3 level to estimate local market size. Local market shares based on GDP introduce an element of differentiation, assuming the spend on eyewear is proportional to GDP, i.e. customers spend more on eyewear in regions with higher GDP. The Notifying Party was unable to produce local shares of its competitors due to the lack of public information on local sales.

671 Response to the SO, paragraphs 180-185 and Economic Response to the SO section 2.2.

672 Local areas presented in the following graph correspond to NUTS3 geographical areas. These administrative units do not correspond to catchment areas (computed on the basis of customers' addresses, see paragraphs below) but to fixed geographical delineations used by Eurostat. Nevertheless, the Commission considers these graphical representations illustrate local overlaps of the Parties.

Figure 88: Market share estimates (Parties combined and increment) of optical retail in NUTS3 areas based on population – Italy, 2018[673]



(1005) In particular, NUTS3 areas with larger increments are located in the North and North-West of the country. By way of example, both Milan and Rome have an increment above [10-20]% ([10-20]% and [10-20]% respectively), with a combined share post-Transaction of [40-50]%, based on population. When computing the same market shares using GDP-based figures, Milan appears to have an increment of [5-10]% with a combined market share of [20-30]%, whereas Rome appears to have an increment of [10-20]% with a combined market share of [20-30]%. In each case, these market shares are higher than the Parties' combined market share at national level in Italy ([10-20]%) and indicate concentration at the local level (albeit being imperfect proxies for the relevant local geographic markets).

(1006) In the second place, the Notifying Party submitted a fascia count analysis based on local catchment areas around each Party's stores. These local catchment areas were calculated by identifying the area that generates 80% of the sales of the relevant store (by customer address).[674] The Notifying Party submits that this indicates the Transaction is unlikely to raise horizontal competition concerns at local level, as at least five or more alternative fascia will remain in all catchment areas around the Parties' stores post-Transaction.[675]

(1007) This data confirms that there are a very high number of local areas in which the Parties overlap in Italy. For example, there are [more than 300] catchment areas around EssilorLuxottica stores in which at least one GrandVision store is present. In

673 Commission's computation on data submitted by Notifying Party in response to RFI 2, question 15, annex 15.1.

674 Response to RFI 20 received on 30 April 2020. Further described in section 8.1.1.

675 Response to the SO, paragraphs 177-179 and Economic Response to the SO section 2.2.

[80-90]% of cases, in the catchment area around a Party's store the other Party has at least one store present.[676]

9.4.2.3. The Parties' presence in optical retail at national level

(1008) The Merged Entity's market shares in the market for the retail of optical products in Italy will amount to [10-20]% post-Transaction, with an increment of [5-10]%. The Notifying Party's estimates of the Parties' and their competitors' market shares in the market for optical retail are set out in the Table above.

(1009) However, the Commission considers that to the effect of the competitive analysis of the Transaction, the national market shares only provide a first indication of the Parties' combined market power. There are a number of reasons to consider that the Parties' market shares at national level understate their importance in the local markets in Italy (i.e. within a catchment area of typically not more than 10 kilometres of a given store).

(1010) In differentiated markets, such as the optical retail market, the national market shares are less reliable as indicators of whether the merging entities are important competitive constraints in the relevant market.[677] As explained above, the optical retail market in Italy is a highly differentiated market for various reasons. In particular, there are varying degrees of differentiation between different types of optical retailer (retail chains, independents and sunglass-specialist stores), branded and unbranded products as well as price points.

(1011) Moreover, GrandVision is the Number 1 retailer of optical products, as well as the largest optical chain in the EEA. Furthermore, EssilorLuxottica is the Number 2 retailer of optical products in Italy. As outlined above, the Parties are the only two multi-brand chains active with a significant presence in Italy – each Party's market share is about eight times larger than the next largest chain (in the strict sense, i.e. NAU!).

(1012) The Italian market is highly fragmented – the majority of the competitive landscape in Italy is accounted for independent opticians. As explained below, independent opticians exercise less of a competitive constraint on the Parties than other chains do, and have a smaller influence on the competitive process.

(1013) The retail market share estimates should also be read in conjunction with the fact that most retail competitors source their eyewear from EssilorLuxottica. In this differentiated market where brand plays a key part in determining consumer preferences, EssilorLuxottica's market shares in the upstream wholesale markets for frames, sunglasses and lenses are substantial – [40-50]%, [60-70]% and [20-30]% respectively - and this, in a sense, would strengthen the combined market share of the Parties at the retail level.

(1014) In addition, EssilorLuxottica is already vertically integrated in Italy. It has a strong upstream presence as a supplier of eyewear and lenses as well as being the second largest optical retailer in Italy. Acquiring GrandVision, the largest retailer, is likely to change EssilorLuxottica's incentives as a wholesaler as well as a retailer, as outlined below.

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676 Commission's computation on the Notifying Party's response to RFI 20.

677 HMG paragraph 27 and 28.

9.4.2.4. Conclusion on the competitive landscape in Italy to the effect of assessing the Transaction

(1015) As explained in section 8.1.1., the Commission focuses its assessment of the impact of the Transaction at national level. This is because the Parties are both optical retail chains active at national level and […] and so the impact of the Transaction can on average be expected to be felt across Italy. Notwithstanding the fact that this may change with the Transaction and effects of national strategies may be more pronounced at the local level, the Commission hence assesses the impact of the Transaction at national level. The Commission takes account of variations in the conditions of competition at the level of local catchment areas where appropriate in the competitive assessment (for instance in relation to closeness of competition, as outlined below).

9.4.3. Horizontal non-coordinated effects

9.4.3.1. Overview of the Notifying Party's arguments

(1016) The Notifying Party submits that the Transaction does not give rise to any horizontal non-coordinated effects in relation to the retail of optical products in Italy for the following reasons:

(a) The Notifying Party outlines that the Parties' combined shares are relatively modest in Italy and that the Transaction does not give rise to a concentration of market power at local level.

(b) Further, the Notifying Party argues that EssilorLuxottica and GrandVision are not close competitors to each other in light of differences in relation to their positioning and product/brand offering.[678] In particular, EssilorLuxottica submits that prices charged by its stores are [comparison of pricing strategy] and that, therefore, its position in the market is close to that of independent opticians rather than that of a chain.

(c) Finally, the Notifying Party argues that barriers to entry in the optical retail market are low.

(1017) In light of the above, the Notifying Party submits that the Transaction does not give rise to any horizontal non-coordinated effects in relation to the retail of optical products in Italy.[679]

9.4.3.2. Overview of the Commission's assessment

(1018) Based on the results of the market investigation and the evidence available, the Commission considers that the Transaction will give rise to a significant impediment to effective competition in relation to the optical retail market in Italy due to horizontal non-coordinated effects. This is because the Transaction would eliminate the important competitive constraints that the Parties had exerted on each other, and because it would reduce competitive pressure on the remaining competitors. This impact is clear also from the Parties' incentive to increase prices post-Transaction. The Commission's concerns are not diminished by the Parties' arguments since these are not supported by the market investigation's findings.

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678 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 12.

679 Form CO, Section 8, Paragraph 50.

(1019) In particular, the Commission finds that the Transaction would give rise to the elimination of an important competitive constraint and reduce competitive pressure on rivals for the following reasons:

(a) Although the Parties' market shares at national level are modest, the Italian market is highly fragmented. Post-Transaction, the Merged Entity will be by far the largest optical retailer in Italy – almost three times as large as the second largest player. See *section 9.4.4* above.

(b) EssilorLuxottica and GrandVision are particularly close competitors in Italy and represent the strongest competitive constraint on each other in the market. See *section 'closeness of competition'* below.

(c) GrandVision is an important competitive force in Italy and so is a significant source of competitive pressure on the market overall. See *section 'important competitive force'* below.

(d) There are significant barriers to entry and expansion in Italy. See *section 'barriers to entry'* below.

(e) The Transaction would lead to an incentive for the Parties to increase prices in their retail stores, as well as an incentive for rivals to increase prices in their retail stores. The Commission's quantification of the incentive of each of EssilorLuxottica, GrandVision and their rivals is set out in *section 'incentives'* below.

9.4.3.3. Closeness of competition

<u>Notifying Party's arguments</u>

(1020) The Notifying Party submits that EssilorLuxottica and GrandVision are not particularly close competitors in the optical retail market in Italy, in particular for the following reasons.

(1021) First, the Notifying Party submits that GrandVision's competitive strength comes from its positioning as a mass market retailer, whereas EssilorLuxottica's banners are focused in the premium segment.[680] It submits that the Parties' positioning, product mix and pricing are different and that only a small part of EssilorLuxottica's retail operations in Italy (VistaSì) focuses on the mass market segment where GrandVision's banners are active.[681]

(1022) Second, the Notifying Party does not consider that the fact the Parties both operate optical retail chains is relevant for the finding of closeness of competition.[682]

(1023) Third, the Notifying Party submits that the Parties are not close competitors at local level, arguing that such an analysis would need to be done individually for each local area within which the Parties are active. It submits that in [80-90]% of cases in Italy, the Parties are not each other's closest optical retail rival geographically.[683]

680 Response to the SO, paragraph 197
681 Response to the SO, paragraphs 219-231 and Reply to the 6.1.c. Decision, Section 4.2.
682 Response to the SO, paragraphs 203-208.
683 Response to the SO, paragraphs 209-218

(1024) Fourth, the Notifying Party submits that the fact that GrandVision monitors EssilorLuxottica's retail operations in Italy is not an indication that they are particularly close competitors.[684]

The Commission's assessment: Introduction

(1025) Based on the results of the market investigation and on the evidence available to it, the Commission finds that GrandVision's retail banners are particularly close competitors to EssilorLuxottica's retail banners.

(1026) Overall, the Parties operate the first and second largest retail chains active in Italy. More specifically, EssilorLuxottica's VistaSì competes particularly closely with GrandVision and Corner Optique, and the Parties sunglass-specialist banners also compete closely. EssilorLuxottica's primary banner, Salmoiraghi & Viganò, has a slightly different positioning but is nonetheless a close competitor with GrandVision's banners.

(1027) As will be explained below, there are several parameters of competition that are relevant for the assessment of closeness of competition between the Parties. This includes the fact that the Parties operate retail chains, their geographic focus, positioning and how they consider each other in the ordinary course of business.

(1028) The Commission focuses its assessment of the closeness of competition between the Parties at national level, while taking account of local-level differences where appropriate. This is because the Parties are both optical retail chains active at national level, their positioning and procurement or pricing strategies do not typically vary within Italy, and the Parties themselves assess competition and benchmark at national level, as described below. Local-level aspects are taken into account in particular in the assessment of the extent to which the Parties are close competitors geographically.

The Commission's assessment: Retail chains compete more closely with each other than with independent opticians

(1029) EssilorLuxottica and GrandVision operate the two largest retail chains in Italy, a country where there are few chains and the market is made up primarily of independent retailers. The Commission finds that major chains, such as the Parties, compete more closely against each other than against independent opticians.

(1030) As a general observation, the Commission notes that there are some overarching similarities between optical retail chains that differentiate them from independent retailers. These are described in detail in section 6.1.2 above. In particular, independent opticians are typically seen as offering a high level of service, whereas chains generally compete fiercely on price and other commercial offers to customers. Indeed, an optical retail chain explains in relation to Italy that '*[t]he characteristics of the consumers going to those kinds of stores [i.e. large chains] are very different from the others. Typically, the consumers going to independent stores are not as price sensitive as the others.*'[685]

(1031) The results of the market investigation indicate that major retail chains are closer competitors to each other in Italy than they are to independent opticians. In

684 Response to the SO, paragraphs 240-245.

685 Non-Confidential Minutes of a call with an optical retail chain dated 26.11.2019 [Doc ID: 1178]

particular, as explained below, this is because chains determine their commercial strategy at national level, benchmark against each other and are more likely to lose customers to each other than to an independent. As the Parties are the two largest chains, this is one factor to consider that they are close competitors and is further corroborated by the following elements

(1032) First, optical retail chains determine their commercial strategy, including pricing, marketing and procurement, at national level. On the other hand, independents' activities are limited to a local area.

(1033) In that regard, the investigation confirmed that retail chains determine their pricing strategy at national level and that generally a chain's commercial policy is the same throughout a country.[686] For instance, the Notifying Party explains: '*[...]*'.[687] Similarly, it appears that EssilorLuxottica […].[688] This has implications on which competitors a chain benchmarks itself against, as explained further below.

(1034) This difference in strategy is also reflected in the geographic scope of marketing campaigns. Whereas independents typically only run campaigns at local level, the investigation indicated that chains run national marketing campaigns, as well as local ones.[689]

(1035) Second, retail chains generally have a centralised procurement strategy, which means they can procure eyewear at better prices than independents due to the large volume of orders. Wholesalers of frames, sunglasses and lenses confirmed that they charge different prices to retail chains and independents (once discounts and rebates, particularly volume rebates, are taken into account).[690] Accordingly, wholesalers confirmed that retail chains generally receive better wholesale prices than independents or buying groups and suppliers have indicated that working with retail chains is attractive because they '*have the advantage that a new product can efficiently be introduced in several hundred stores*'.[691] This similarity in their costs base contributes to retail chains' ability to offer more attractive prices/promotions and to compete intensely against each other.

(1036) Third, retail chains monitor the strategy of other retail chains and benchmark against them in their ordinary course of business.

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686 Questionnaire 12 to optical retail chains, question 22. Non-confidential Minutes of a call with a retailer on 21 April 2020, paragraphs 19-20. [Doc ID 2969]

687 Notifying Party's response to RFI 11 question 9. This is supported in its internal documents - see for example GrandVision's internal document annexed to RFI 11 question 9, *Italy Marketing Extract from Sept GVC*, slides 15-20.

688 See EssilorLuxottica internal document annexed to the Form CO as Annex 5.4.1, *Pricing policy v1.5*, paragraph 5.2 which states: '*Local price overwriting at sale order level are forbidden and not authorized*'.

689 Questionnaire 11 to independent opticians, question 35 and Questionnaire 12 to optical retail chains, question 36.

690 Questionnaire 3 to suppliers of lenses and eyewear, question 4.

691 Questionnaire 3 to suppliers of lenses and eyewear, question 25 and non-Confidential Minutes of a call with a brand licensor 17 March 2020. [Doc ID 2465]

(1037) In particular, the investigation confirmed that retail chains in Italy take the prices of other chains into account when deciding their own pricing strategy for the same or similar products.[692]

(1038) This is reflected in the Parties' internal documents, which show that even in a market as fragmented as Italy, retail chains closely monitor the strategy of other chains and benchmark against them. Illustratively, the Figure below shows how GrandVision focuses on the actions of […] in Italy, which it notes are all expanding (whereas the market share of independent opticians is shrinking).

Figure 89 – GrandVision's focus on retail chains' competitive actions[693]

[…]

(1039) Likewise, the Figure below illustrates how, rather than focusing on independent opticians, GrandVision closely monitors actions by retail chains such as […] when assessing key developments by its 'competition' in Italy and drawing implications from them.

Figure 90 – GrandVision monitoring and drawing conclusions from rival chains' actions[694]

[…]

(1040) The fact that optical retail chains focus more on competition from other chains than on independents is also reflected in feedback received as part of the market investigation. Many chains considered that they do compete equally with other chains and independent opticians, but around a third of retail chain respondents considered that they compete mainly with other chains. In contrast, no respondents said that they compete to a greater extent with independents.[695]

(1041) Fourth, customers of chains are more likely to switch their purchases to another chain than to an independent, although optical retail chains make up less than half of the market. This shows that retail chains are closer competitors to each other than they are to independent opticians – they win more customers from each other than their market shares would explain.

(1042) The investigation confirmed that retail chains generally consider that the majority of their customers would be more likely to switch to another retail chain than to an independent, though a considerable number did note that customers could be equally happy with either. Conversely, independent opticians consider their customers would be more likely to go to another independent.[696]

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692 Response to a request for information to retail chains in Italy dated 15 May 2020, question 1. [Doc ID 3015] See also Non-confidential Minutes of a call with a retailer on 21 April 2020, paragraph 31. [Doc ID 2969]

693 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *09 – Introduction Italy*, slide 2.

694 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *201712_Budget_Budget Powerpoint Italy*, slide 17.

695 Questionnaire 2 to optical retail chains, question 30 – '*the Company constantly monitors other chains, and understand that these other chains do so as well*'.

696 Questionnaire 12 to optical retail chains, question 27. C.f. Questionnaire 11 to independents, question 11.

(1043) This is supported by analysis submitted by the Notifying Party, prepared based on data collected in the ordinary course of business. The Figure below shows that […].

Figure 91 – IPSOS Churn analysis – wins and losses by retail chains in Italy and the UK[697]

[…]

(1044) At the Commission's request, the Notifying Party conducted a churn rate analysis of wins and losses from GrandVision and Salmoiraghi & Viganò's stores in Italy. This analysis led to the same conclusion – even though the Italian market is led by independents, the Parties' retail chains lose customers more often to other retail chains than to independents.[698]

(1045) An optical retail chain explains that this phenomenon is likely due to customers' perceptions of the business models of independent opticians compared with retail chains. It notes that: '*Once a customer has switched to retail chains, it is because they have been convinced to adopt this model and try to obtain similar products at lower prices. That is why customers who buy from retail chains will typically go to another retail chain when they switch. There is very little switching or going back from chains to independent opticians. The business model of retail chains is much more similar to that of other retail chains than to the business proposition of independent opticians, who typically sell at higher prices.*'[699]

(1046) Accordingly, the Commission considers that optical retail chains in Italy generally compete more closely with other chains than they do with independent opticians.

The Commission's assessment: The Parties are close competitors at the level of the local catchment areas

(1047) At local level (i.e. within the local catchment area of typically not more than 10 kilometres around their stores), EssilorLuxottica and GrandVision's banners overlap considerably and are typically present in similar areas. This geographic proximity of their retail stores in the local geographic market is another reason to consider that the Parties are close competitors.[700]

(1048) First, the Parties' stores are typically present in similar commercial areas, in particular high traffic areas such as shopping centres and high streets. For example, there are [40-50] shopping centres across Italy in which both of the Parties stores are present. In [10-20] of these, the Parties' banners are the only optical stores present within the shopping centre.[701] This is illustrated in the Figure below, […].

Figure 92 – GrandVision focus on important target areas to assess growth potential[702]

[…]

697 RBB paper, Economic Response to the 6(1)c Decision – Horizontal Effects in Optical Retail.

698 Response to RFI 11, Figures 27.1 and 27.2.

699 Non-confidential Minutes of a call with a retailer on 21 April 2020, paragraph 37. [Doc ID 2969]

700 See footnote 32 of the Horizontal Merger Guidelines: '*Products may be differentiated in various ways. There may, for example, be differentiation in terms of geographic location, based on branch or stores location; location matters for retail distribution, banks, travel agencies, or petrol stations.*'

701 Notifying Party's response to RFI 11 Question 8.

702 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *09 – Introduction Italy*, slide 17.

(1049) Second, based on the data submitted by the Notifying Party, the Parties' stores locally overlap very frequently in their respective catchment areas, i.e. the area that generates 80% of the sales of each individual store.[703] In Italy, approximately [70-80]% of EssilorLuxottica's stores have at least one GrandVision store in their catchment area. Similarly, [80-90]% of GrandVision stores have at least one EssilorLuxottica store in their catchment area.[704] In both cases, Greenvision is present slightly more often, however, it must be borne in mind that in these areas, the Parties often have multiple stores (compared with just one or two from Greenvision) and so their geographic overlap is not only substantial in the number of areas in which they are present but in the extent of their presence in those areas. Moreover, the Parties also overlap frequently and to a considerable degree at a wider NUTS3 level, as described and illustrated above.

(1050) In line with the above, across Italy, there are more GrandVision's stores present within the local catchment areas of EssilorLuxottica's stores than any other competing chain and EssilorLuxottica's stores appear more frequently in GrandVision's catchment areas than any other optical chain. [705] Often, this is because the Parties have multiple stores present in each other's local catchment areas. This indicates that, on average, in the local markets (i.e. catchment areas) within which the Parties are present, they compete more intensely with each other than with any other optical retail chain.

(1051) Third, the Parties' stores are, on average, geographically closer to each other than to the average chain. In the local catchment areas of GrandVision's stores in Italy, the distance to EssilorLuxottica's stores is on average approximately [5-10] kilometres. In contrast, the distance between GrandVision's stores and the average chain (i.e. Greenvision, OXO, Vision Ottica, NAU! and Fielmann but excluding EssilorLuxottica) in these areas is approximately [5-10] kilometres and the distance to the average independent is [5-10] kilometres. The same is true in the catchment areas of EssilorLuxottica's stores – GrandVision stores are located approximately [5-10] kilometres away on average, whereas the average chain is located approximately [5-10] kilometres away and the average independent is [5-10] kilometres away.[706] This shows that within the local catchment areas in which they

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703 As explained in section 8.1.1, the Commission considers that the relevant geographic market for (downstream) optical retail market is local, i.e. a catchment area of typically not more than 10 kilometres around a given store. However, the size of this local catchment area may vary store-by-store based on various factors outlined above. Therefore, for the purposes of this Section and for the reasons outlined in section 8.1.1, the Commission's assessment of local catchment areas is based on the data submitted by the Notifying Party in which it has calculated store-by-store the catchment area that generates 80% of the sales of a given store (in response to RFI 20).

704 Commission's computation on the Notifying Party's response to RFI 20, and updates provided in Economic Response to the Statement of Objections - Horizontal Overlap, Section 3.2.2 and associated Output files.

705 EssilorLuxottica stores appear [2,500-3,000] times in within the catchment areas of GrandVision Stores, compared with [2,000-3,000] GreenVision stores, [1,000-1,500] OXO stores and less than [500-1000] stores for each of VisionOttica, NAU! and Fielmann. Commission's computation on the Notifying Party's response to RFI 20. For the avoidance of doubt, this includes sunglass specialist stores as well as specialist optical retailers.

706 Commission's computation on the Notifying Party's response to RFI 20 using the 'General optician dataset' data source and the Parties' own locations. For the avoidance of doubt, this includes sunglass specialist stores as well as specialist optical retailers.

are present, the Parties are on average located closer to each other than to optical retail chains or the average independent, because the Parties typically target similar areas (see above). Taken holistically with all of the other evidence, this means that they are on average each other's closest competitors from a geographical perspective within these local areas.

(1052) In sum, when assessing geographical closeness from a local perspective (i.e. within local catchment areas of typically not more than 10 kilometres), the above shows that the Parties are typically each other's closest competitor within local areas in Italy. This is because, at this local level, the Parties are typically present in similar commercial areas, the Parties are on average present more frequently in each other's local catchment areas (and so compete more intensely) than any other optical retail chain and they are on average located closer to each other than to optical retail chains or the average independent.

(1053) Likewise, when assessing geographical closeness from a national perspective, the above shows that the Parties are each other's closest competitors. This is in particular because the Parties overlap very frequently across the country (in local areas and NUTS3 areas) and in aggregate, the Parties are present more frequently in each other's local area than any other competitor.

The Commission's assessment: Positioning, product mix and pricing

(1054) EssilorLuxottica and GrandVision operate a number of banners in Italy. As explained below, EssilorLuxottica's VistaSì banner is a close competitor to GrandVision's banners due to their positioning. This closeness in positioning is also evidenced by the product mix and pricing of these banners.

(1055) On the other hand, EssilorLuxottica's Salmoiraghi & Viganò is somewhat differentiated from GrandVision based on its positioning as a high-end optical retailer (though, regardless of its positioning, there are other reasons to consider Salmoiraghi & Viganò competes closely with GrandVision, as explained below and in the other sub-sections of this section 9.4.3.3).

(1056) The positioning of each of the Parties' optical retail banners in Italy is summarised in Table 17 below.[707] The extent to which these banners are close competitors due to their positioning, product range and pricing is assessed below separately for banner types.

Table 17 – Positioning of the Parties' optical retail banners - Italy

Positioning	EssilorLuxottica banner(s)	GrandVision banner(s)
Mass-market (mid-low)	VistaSì	GrandVision Corner Optique
Premium / high-end	Salmoiraghi & Viganò	-

[707] For completeness, EssilorLuxottica also has Sunglass Hut, Ray-Ban, Oliver Peoples and Oakley store in Italy and GrandVision has Solaris stores in Italy. These stores are sunglass specialists and so are not included within this Table.

Mass market banners

(1057) First, the market investigation confirmed that the Parties operate a number of mass-market banners in Italy, namely VistaSì, GrandVision and Corner Optique:

(a) As regards VistaSì, the Notifying Party explains that '*VistaSì is the 'low cost' brand of S&V*'.[708] This is supported by EssilorLuxottica's internal documents, which describe VistaSì as providing a balance between quality and price.[709] Moreover, respondents to the investigation categorised VistaSì as a mid-low end retailer when asked to consider its positioning based on price/quality.[710]

(b) The Notifying Party describes GrandVision as having a '*mass-market positioning (mid-low), with affordable products driven by promotional campaigns*'.[711] This is reflected in GrandVision's internal documents, as illustrated in Figure 93 below. Moreover, respondents to the investigation categorised VistaSì as a mid-low end retailer when asked to consider its positioning based on price/quality.[712]

Figure 93 – GrandVision positioning in Italy[713]

[…]

(1058) The Notifying Party describes Corner Optique as having '*a low market positioning… Pricing is based on convenient price points and heavily promotion driven*'.[714] This is reflected in GrandVision's internal documents, as illustrated in Figure 94 below. Moreover, respondents to the investigation categorised Corner Optique as a mid-range retailer when asked to consider its positioning based on price/quality.[715]

Figure 94 – Corner Optique positioning in Italy[716]

[…]

(1059) The investigation confirmed that these mass-market banners are close to each other in their market positioning. Independent opticians and retail chains were asked to score competitors based on price competitiveness, attractiveness of their portfolio, the level of service/assistance provided to customers and location advantage of their stores. On all of these metrics, the average scores given to VistaSì and Corner

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708 Form CO, paragraph 7 of Section 7 in Chapter 4 on page 254.

709 See for example EssilorLuxottica's internal document annexed to the Form CO as Annex RFI 2 Q16, *mkt s&v – Posizionamento e Piano Commle 09.03.2017*, slide 2: '*VistaSì Retail – Primo riferimento nel rapport qualita/prezzo per l'acquisto dell'occhiale da vista e da sole e prima scelta per convenienza delle lenti a contatto.*'

710 Questionnaire 11 to independent opticians, question 28 and Questionnaire 12 to optical retail chains, question 31.

711 Form CO, Annex CO 7.1.10 (Italy), page 18.

712 Questionnaire 11 to independent opticians, question 28 and Questionnaire 12 to optical retail chains, question 31.

713 GrandVision internal document annexed to the Form CO as Annex PN RFI 2 Q 14.1 - Budgets, *201712_Budget_Budget Powerpoint Italy*, slide 22.

714 Form CO, Annex CO 7.1.10 (Italy), page 19.

715 Questionnaire 11 to independent opticians, question 28 and Questionnaire 12 to optical retail chains, question 31.

716 GrandVision internal document annexed to the Form CO as Annex PN RFI 2 Q 14.1 - Budgets, *201712_Budget_Budget Powerpoint Italy*, slide 46.

Optique are almost identical, indicating that they are particular close competitors. In addition, GrandVision also received relatively similar scores to these two banners.[717]

(1060) Second, the closeness between the positioning of VistaSì, GrandVision and Corner Optique is reflected by the fact that these offer similar product mixes.

(1061) The majority of these banners' sales of frames come from the same set of branded/unbranded products. For VistaSì, sales of […][718] account for […]% of its sales of frames in Italy. For GrandVision, these products account for […]% of its sales of frames. For Corner Optique, sales of […] and private label frames represent […]% of its sales. This is illustrated in Figure 95 below.

Figure 95 – Product mix of VistaSì, GrandVision and Corner Optique in Italy - Frames[719]

[…]

(1062) Similarly, as regards sunglasses, the majority of these banners' sales come from the same set of products. For all three banners, […] is the best-selling brand of sunglasses. For VistaSì and GrandVision, […] are also important brands. All three banners sell a modest proportion ([…]%) of […].[720] This is illustrated in Figure 96 below.

Figure 96 – Product mix of VistaSì, GrandVision and Corner Optique in Italy - Sunglasses[721]

[…]

(1063) Third, the closeness in positioning between VistaSì, GrandVision and Corner Optique is reflected by their […], as acknowledged by the Notifying Party.[722] As illustrated in Figure 97 below, these three banners have […] in Italy.

Figure 97 – Average price of Parties' banners in Italy (all products)[723]

[…]

(1064) VistaSì, GrandVision and Corner Optique […]. Figure 98 illustrates this by excluding private/white label products from this average price analysis.

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717 Questionnaire 11 to independent opticians, question 27 and Questionnaire 12 to optical retail chains, question 30.1.

718 In this context, private/white label frames include VistaSì-branded frames, as well as GrandVision's sales of exclusive brands.

719 Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

720 In this context, private/white label frames include VistaSì or Sunglass Hut-branded sunglasses, as well as GrandVision's sales of exclusive brands.

721 Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

722 Response to RFI 30 Part A, Question 1.a, page 2: '*[comparison of pricing strategies]*.'

723 Response to RFI 30 Part A, Question 1.a, Figure 1.

Figure 98 – Average price of branded products in the Parties' banners in Italy (excluding private and white label products) [724]

[…]

(1065) Fourth, the market investigation confirmed that VistaSì is considered a close competitor to each of GrandVision and Corner Optique. Overall, when asked to consider whether the Parties are close competitors on various metrics, independents and chains indicated that in Italy, EssilorLuxottica's banners and GrandVision's banners are close competitors as regards the breadth and attractiveness of their portfolio and their pricing.[725] More specifically, when asked about these three banners in particular, the majority of respondents who expressed a view considered that VistaSì competes closely or very closely with GrandVision and that it also competes closely or very closely with Corner Optique.[726]

(1066) Therefore, the Parties' mass-market banners (namely VistaSì, GrandVision and Corner Optique) are close competitors as regards their positioning, product mix and pricing.

Premium/high-end banners

(1067) Salmoiraghi & Viganò is EssilorLuxottica's high-end banner and so has a somewhat different positioning from GrandVision's banners in Italy. While there are similarities between the product mix of Salmoiraghi & Viganò and GrandVision's banners and GrandVision also sells premium products, [comparison of pricing strategies].

(1068) First, the Notifying Party describes Salmoiraghi & Viganò as '*an Italian premium optical retail brand*'.[727] It explains that this banner is positioned '*in the mid/high-end segment of the optical retail market, aiming to reach the more high-spending customers*'.[728]

(1069) Second, there are some similarities in the product mix of Salmoiraghi & Viganò, GrandVision and Corner Optique, despite their different positioning. As regards frames, Ray-Ban is an important brand for all three banners and GrandVision/Corner Optique also sell several of Salmoiraghi & Viganò's best-selling brands, as illustrated in Figure 99 below.

Figure 99 – Product mix of Salmoiraghi & Viganò, GrandVision and Corner Optique in Italy - Frames[729]

[…]

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724 Response to RFI 30 Part A, Question 1.a, Figure 2.

725 Questionnaire 11 to independent retailers, question 30 and Questionnaire 12 to optical retail chains, question 33.

726 Simplified Questionnaire to EssilorLuxottica's EEA customer base, question 14 (continued).

727 Luxottica Annual Report for 2018, page 29. Available at: http://www.luxottica.com/sites/luxottica.com/files/luxottica_group_relazione_finanziaria_annuale_2018_eng_20190410.pdf

728 Paragraph 277 of the Notifying Party's response to the European Commisison's decision pursuant to Article 6(1)(c) of the EUMR in Case M.9569 *EssilorLuxottica/GrandVision*.

729 Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

(1070) Likewise, as regards sunglasses, Ray-Ban is […] for all three banners and several of Salmoiraghi & Viganò's best-selling brands are also among the best-selling brands of GrandVision, as illustrated in Figure 100 below.

Figure 100 – Product mix of Salmoiraghi & Viganò, GrandVision and Corner Optique in Italy - Sunglasses[730]

[…]

(1071) Third, there are [comparison of pricing strategies] between the average prices applied by Salmoiraghi & Viganò and GrandVision's banners, which reflects their different positioning.

(1072) As illustrated above, Salmoiraghi & Viganò, as a premium optical retailer, charges significantly higher prices than GrandVision's banners. More specifically,

(a) Salmoiraghi & Viganò's average prices for frames (EUR […]) are […] of GrandVision (EUR […]) or Corner Optique (EUR […]);

(b) Likewise, for sunglasses, Salmoiraghi & Viganò's average prices (EUR […]) are […] that of GrandVision (EUR […]) of Corner Optique (EUR […]); and

(c) For lenses, Salmoiraghi & Viganò's average prices are around […] than GrandVision's prices ([…] for GrandVision).[731]

(1073) The Notifying Party explains that it considers this is because '*while the Parties do sell some of the same brands, we understand that the models of those brands sold by GrandVision tend to be of lower quality than the models sold by EssilorLuxottica*'.[732]

(1074) Therefore, the Commission considers that Salmoiraghi & Viganò is positioned somewhat differently from GrandVision's optical retail banners. While there are some similarities in their product mix, this is reflected in […].

<u>The Commission's assessment: Competitive interaction between the Parties' banners</u>

(1075) The competitive interactions between EssilorLuxottica and GrandVision in Italy show that they are close competitors to each other. The Parties' internal documents evidence that GrandVision considers EssilorLuxottica to be an important competitive constraint on it. This is clear from how it describes and assesses EssilorLuxottica in the ordinary course of business as well as data showing that there is […].

(1076) First, the Parties' internal documents show that […]. When assessing the overall competitive landscape in Italy, GrandVision monitors […] and the threat […]. As

730 Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

731 If private label sales are excluded, Salmoiraghi & Viganò's prices for frames and sunglasses remain around […] than GrandVision's banners. GrandVision's branded lenses are on average more expensive ([…], compared with […] for Salmoiraghi & Viganò's). However, GrandVision only sells a very limited amount of branded lenses in Italy – only […]% of its sales in Italy are of private label lenses (by value – Notifying Party's response to RFI 1 Question 60.

732 RBB paper, Economic Response to the 6(1)(c) Decision – Horizontal Effects in Optical Retail, page 18.

shown in Figure 101, Figure 102 and Figure 103 below, when assessing the 'competitor landscape', 'competition' or 'challenges' in Italy, GrandVision […].

Figure 101 – […] - competitor landscape[733]

[…]

Figure 102 – GrandVision assesses […] first - competition[734]

[…]

Figure 103– […] - challenges[735]

[…]

(1077) Second, at banner level, the Parties' internal documents show that the Parties compete closely. As illustrated in Figure 104 below, GrandVision notes when assessing the brand performance of GrandVision […].

Figure 104 – GrandVision view on Salmoiraghi & Viganò[736]

[…]

(1078) […].

Figure 105 – GrandVision […][737]

[…]

(1079) Third, customer traffic (switching) data analysed by GrandVision in its ordinary course of business shows that GrandVision loses customers more often to Salmoiraghi & Viganò, and wins more customers from it, than to/from any other competitor.

(1080) This is illustrated by Figure 106 below, which shows in particular that:

- GrandVision's banners[738] lose a significant amount of customers to Salmoiraghi & Viganò – between [10-20]% and [40-50]% depending on the banner.
- Salmoiraghi & Viganò also loses a significant amount of customers to GrandVision's banners – [30-40]%.[739]

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733 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *09 – Introduction Italy*, slide 2.

734 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *201712_Budget_Budget Powerpoint Italy*, slide 17.

735 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *09 – Introduction Italy*, slide 10.

736 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *17093998_GrandVision GBM_Italy_FY2018_v1.0*, slide 6.

737 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *09 – Introduction Italy*, slide 17.

738 GrandVision's banners in the below Figure are GrandVision, Avanzi and Optissimo-Randazzo. Avanzi and Optissimo-Randanzo are owned by GrandVision and have in recent years been rebranded to form part of the GrandVision banner (i.e. 'GrandVision by Avanzi' and 'GrandVision by Optissimo').

- In contrast, GrandVision has a market share of [5-10]% in the retail of optical products in Italy and EssilorLuxottica's market share is also [5-10]%.
- This means that both GrandVision and EssilorLuxottica lose to each other much more frequently than their market shares would suggest. Specifically, these figures show that that (i) Salmoiraghi & Viganò loses around four times more customers to GrandVision than is justified by GrandVision's market share, and (ii) GrandVision loses between 2.5 and 6 times more customers to Salmoiraghi & Viganò than is justified by Salmoiraghi & Viganò's market share. The number of customers the Parties lose to each other is thus very material and multiple times higher than the number of customers they lose to any other rival.
- Accordingly, GrandVision's internal analysis in the ordinary course of business shows that it competes particularly closely with EssilorLuxottica's banners in Italy.

Figure 106 – GrandVision customer traffic analysis[740]

[…]

(1081) Fourth, the market investigation confirmed that independent opticians and optical retail chains consider the Parties' banners to be close competitors to each other. Overall, when asked to consider whether the Parties are close competitors on various metrics, independents and chains indicated that in in Italy EssilorLuxottica's banners and GrandVision's banners are close competitors as regards the breadth and attractiveness of their portfolio and their pricing.[741]

(1082) More specifically, the results show that VistaSì is considered a close competitor to each of GrandVision and Corner Optique. When asked about these three banners in particular, more respondents considered that VistaSì competes closely or very closely with GrandVision and Corner Optique than thought that it does not compete closely with them.[742]

(1083) Likewise, Salmoiraghi & Viganò is considered to compete closely with GrandVision in particular, but also with Corner Optique. Almost three times as many respondents thought that Salmoiraghi & Viganò competes closely or very closely with GrandVision as those that thought it did not compete closely or at all; and more respondents thought that Salmoiraghi & Viganò competes closely or very closely with Corner Optique than thought that it does not compete closely with them.

The Commission's assessment: Conclusion on closeness of competition between the Parties

(1084) In light of the above, the Commission finds that GrandVision's retail banners are particularly close competitors to EssilorLuxottica's retail banners. This is essentially

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739 [20-30]% of customers who switch away from Salmoiraghi & Viganò go to Avanzi, [5-10]% to GrandVision and [0-5]% to Optissimo Randazzo.

740 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *17093998_GrandVision GBM_Italy_FY2018_v1.0*, slide 36.

741 Questionnaire 11 to independent retailers, question 30 and Questionnaire 12 to optical retail chains, question 33.

742 Simplified Questionnaire to EssilorLuxottica's EEA customer base question 14 (continued).

because the Parties operate the two largest optical retail chains active throughout the country and are geographically close competitors at local level. Moreover, several of the banners have a similar positioning and the Parties' competitive interactions and internal documents reveal that they compete closely.

(1085) In particular, from EssilorLuxottica's perspective, the current closest competitors to its VistaSì banner in Italy are GrandVision and Corner Optique. Similarly, from GrandVision's perspective, the current closest competitor to its GrandVision and Corner Optique banners is VistaSì. Finally, Salmoiraghi & Viganò has a more premium positioning, but it is nonetheless a close competitor with the more mass-market GrandVision and Corner Optique, as explained above.

9.4.3.4. GrandVision is an important competitive force in the Italian optical retail market (downstream)

Notifying Party's arguments

(1086) The Notifying Party submits that GrandVision is not an important competitive force in the Italian optical retail market, in particular for the following reasons.

(1087) First, the Notifying Party acknowledges that GrandVision is the largest optical retailer in the EEA, but notes that this is due to its presence in a large number of EEA countries, rather than due to it necessarily having strength at national or local level.[743]

(1088) Second, the Notifying Party highlights that GrandVision's market share has remained stable at around [5-10]% in Italy between 2016 and 2018, which in its view means that GrandVision is not capable of significantly altering the competitive dynamics in the optical retail market in Italy.[744]

(1089) Third, the Notifying Party considers that GrandVision's pricing strategy is not a benchmark or particularly important for other retail chains.[745]

(1090) Fourth, the Notifying Party submits that GrandVision's mass market positioning does not necessarily confer upon it any particular competitive force, as there are other similar retailers in Italy.[746]

The Commission's assessment: Introduction

(1091) The Phase II investigation confirmed that GrandVision is an important competitive force in the Italian optical retail market. GrandVision's critical mass in the EEA, as well as in Italy, means that it represents a prominent competitor at downstream level, as well as a unique and key account for optical suppliers upstream.

(1092) In light of this, and together with the fragmented nature of the Italian optical retail landscape, GrandVision represents a competitive force well above its nominal market share at national level, such that its commercial actions (such as its pricing policy) are capable of significantly altering the competitive dynamics on the market.

(1093) The Commission focuses its assessment of GrandVision as an important competitive force at national level. This is because GrandVision is active nationally […]. Other

743 Response to the SO, paragraph 287.
744 Response to the SO, paragraphs 288 and 291.
745 Response to the SO, paragraph 295-299.
746 Response to the SO, paragraph 300.

optical retail chains benchmark against […]. Therefore, while the precise set of competing optical retailers may vary between local areas, GrandVision's importance as a competitive force applies to all of the local areas within which it is present.

The Commission's assessment: GrandVision's position in Italy and the EEA

(1094) Firstly, GrandVision is the largest player in Italy active in optical retail. GrandVision operates over 400 stores throughout the territory of the country and represents one of the few nationwide optical chains in Italy.[747] This is complemented by the overall context that GrandVision is the largest retailer of optical products in the EEA and operates over 7,000 stores worldwide.[748]

(1095) This is particularly relevant in a retail competitive landscape as fragmented as the Italian one, where [60-70]% of the overall optical retail market in the country is represented by independent retailers.[749] As outlined further below, this peculiarity of the Italian competitive landscape means that very few players, if any, have an influence that is comparable to that of GrandVision.

(1096) To complement this picture, the Phase II market investigation showed how GrandVision enjoys a significant location advantage throughout the Italian territory, which, coupled with its quantitative presence, represents a significant qualitative advantage. Both optical chains and independent retailers rank GrandVision very high in terms of location advantage in Italy.[750]

The Commission's assessment: GrandVision's procurement strategy and size mean that it can negotiate the most advantageous commercial conditions in the market

(1097) Secondly, due to its unique size and footprint, GrandVision represents a key account for major suppliers of lenses and eyewear, including EssilorLuxottica. This translates into a significant sourcing advantage […].

(1098) In Italy, GrandVision sells […] of Luxottica's […] best-selling frames […] frames it sells. Similarly, it sells all of Luxottica's […] sunglasses and receives […].[751] This is further illustrated in Table 18 below for Luxottica's […] frames and sunglasses.

Table 18 – Wholesale price for Luxottica's top 5 frames and sunglasses – Italy[752]

[…][753]

(1099) Additionally, suppliers of eyewear products confirmed that, in Italy, GrandVision […].[754] One supplier stated that *'as regards to Italy and UK, […].'*[755]

747 Form CO, Annex CO 7.1.10 (Italy).
748 Form CO, Paragraph 37.
749 Form CO, Annex CO 7.1.10 (Italy).
750 Questionnaire to optical retail chains, Phase II, question 30.4. Questionnaire to independent opticians, Phase II, question 27.4.
751 Commission computation based on Notifying Party's response to RFI 11 Question 6.1.
752 Commission computation based on Notifying Party's response to RFI 11 question 6.1. For the top […] buyers, the average price reflects the mean of the top […] buyers (including […]), without weighing by volume of purchases. For independents, the average price reflects the mean.
753 […]
754 Phase II RFI to wholesale suppliers, Questionnaire 13, question 3.4. ID 3128
755 Phase II RFI to wholesale suppliers, Questionnaire 13, question 3.6. ID 3128

(1100) The Notifying Party submits that buying groups allow *'opticians to benefit from better conditions and to maintain a significant degree of independence in their buying decisions.'*[756] However, the results of the market investigation point in a different direction, as the majority of eyewear suppliers stated that optical chains get better prices and commercial conditions than independents.[757] As a result of these preferential financial and commercial conditions, […]. Therefore, GrandVision represents an important competitive force on the entirety of the Italian optical retail market. As a direct consequence of the Transaction, this important source of competitive pressure on competing retailers in Italy would be lost.[758]

(1101) Moreover, the Notifying Party has explained that: '[a]*s far as GrandVision is concerned, pricing discounts, campaigns and commercial strategies are determined […]*'.[759] The Commission understands that a decision by GrandVision to increase its prices, offer a promotion, introduce a new product or otherwise change its commercial strategy could impact all 400 of its stores throughout Italy, and potentially even multiple stores within close proximity of each other. In contrast, a decision by an independent retailer will impact one or at most a handful of stores. As a result, despite only having an [5-10]% market share, the importance of a market-strategy decision by GrandVision in the Italian optical retail market is far more significant than a decision made by any independent optician, even though independent opticians together account for 62% of the market. This finding is the result of a context where GrandVision is the largest optical retail chain active in Italy, has a wider footprint than other retail chains in Italy […]. GrandVision thus stands out as having a greater impact on the Italian market than independents or rival retail chains.

<u>The Commission's assessment: GrandVision represents a fundamental benchmark for other chains in the Italian optical retail market</u>

(1102) Thirdly, unlike independent opticians, prices of retail chains' are typically set at national level and chains benchmark their prices against each other. Against this competitive landscape, the role of GrandVision is particularly important given that it is the largest optical retailer in Italy.

(1103) As outlined in greater details above, the Phase II market investigation confirms that the vast majority of optical chains decide and set their retail price at national level.[760]

(1104) Additionally, the Phase II market investigation shows that retail chains benchmark against each other's price and that GrandVision occupies a prominent place in this competitive landscape.[761] In light of GrandVision's size and footprint, its pricing strategy appears to be particular significant for other retail chains, as well as closely monitored.

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756 Form CO, Annex CO 7.1.10 (Italy).

757 Questionnaire to wholesale suppliers, Phase I, questionnaire 3, question 18.

758 For completeness, the Commission notes that for the purposes of demonstrating that it is an important competitive force it is not necessary to prove that an undertaking has rapidly gained market share or has potential to do so in future (absent the Transaction). This was also shown in Case M.877 *Boeing/McDonnell Douglas*, referred to in footnote 53 of the Horizontal Merger Guidelines.

759 Response to RFI 11 question 9.

760 Questionnaire to optical retail chains, Phase II, questionnaire 3, question 22.

761 See above regarding between EssilorLuxottica and GrandVision, as well as non-confidential response to request for information to optical retail chains, 15 May 2020, question 1. [id 2966]

(1105) EssilorLuxottica's own internal documents clearly outline the importance of these dynamics from a supplier's perspective.

Figure 107 – Essilor focus on […] – 1[762]

[…]

Figure 108 – Essilor focus on […] – 2[763]

[…]

(1106) The Phase II market investigation shows that optical chains are less likely to follow RRP, as for the majority of respondents only 0-25% of sales of eyewear follow RRP.[764] […].[765] As a result of these price dynamics, optical chains compete against each other by offering discounts and bundles.[766]

(1107) In contrast, independent opticians are not in a position to obtain the same wholesale price and to offer the same commercial conditions to their customers as chains. As EssilorLuxottica's internal documents show, in Italy and throughout the EEA, fierce competition from retail chains mean that independents are coming under pressure and losing share.[767]

Figure 109 – Decreasing market shares of independent ECPs as a threat[768]

[…]

(1108) Finally, the Phase II market investigation confirms that the vast majority independent opticians follow RRP on almost all occasions.[769] A buying group stated that *'we do not set the recommended retail price as we are a buying group, many suppliers do and the shops follow it.'*[770]An Italian independent optician confirmed that *'we follow the RRP strictly. Discounts are given to single customers only.'*[771]

(1109) Indeed, one optical supplier summarised the difference (in general) between independents and retail chains as follows: '*independent opticians tend to compete more on quality, brands and service levels than retail chains, which tend to compete more on price*'. [772]

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762 RFI 10 reply on behalf of Essilor - ListUSB_Part 05 of 05 - ESS-0112614_EuropeKAoverview Sept 2017 v1.

763 RFI 10 reply on behalf of Essilor - ListUSB_Part 05 of 05 - ESS-0112614_EuropeKAoverview Sept 2017 v1.

764 Questionnaire to optical retail chains, Phase II, question 41.

765 Annex to RFI 32, question 4.1.

766 A retail chain stated that *'offering promotions is key to its business concept. In the geographical markets in which it is active, it 'leads' on volume and promotions. Its concept of 3-for-1 bundles is now sometimes copied by competitors.'* Minutes of a call with an optical retail chain, 21 April 2020.

767 GrandVision internal document annexed to the Form CO as Annex 5.4.1, *09 – Introduction Italy*, slide 2, as outlined in Paragraph 21 above.

768 First Draft Form CO - dir_list - 03A_Essilor Blue Intro - Essilor_Blue Intro.pdf, slide 9 (Doc ID29-7). Form CO Annexes OL 7.3.

769 Short questionnaire to independent opticians, questions 8 and 11.

770 Questionnaire to independent opticians, Phase II, question 38.

771 Questionnaire to independent opticians, Phase II, question 38.

772 Questionnaire 3 to eyewear suppliers, question 15.2.4.

Conclusion of the Commission's assessment regarding GrandVision being an important competitive force

(1110) As a result of these dynamics, the Commission finds that GrandVision represents an important competitive force in the Italian optical retail market (vis-à-vis chains in particular, which represent a third of the Italian market). GrandVision's importance as a competitive force appears much more significant than what its [5-10]% market share would suggest and the Commission considers that it is capable of significantly altering the competitive dynamics in the optical retail market in Italy. This derives from the following reasons:

(a) First, it is the largest optical retailer active in Italy as a nationwide player.

(b) Second, the most part of the Italian retail market is fragmented and operated by independent opticians.

(c) Third, GrandVision […].

(d) Fourth, in light of the above, GrandVision's pricing strategy is particularly important for other optical retail chains, which take GrandVision's strategy into account.

(e) Fifth, in Italy, optical retail chains generally exert a stronger competitive pressure on the retail market than independent opticians do (given that chains compete fiercely on price whereas independents typically follow RRP).

(f) Finally, as outlined above, GrandVision is positioned as a mass market retailer able to appeal to the preferences of all consumers, with a broad portfolio of both private label and branded products at different price points. Therefore, it exerts a competitive pressure widely along the spectrum of value vs luxury offering due to its all-encompassing product offering.

9.4.3.5. Barriers to entry and to expansion

The Notifying Party's views

(1111) The Notifying Party submits that the optical retail market is dynamic, competitive and prone to new entrants.[773] In particular, the Notifying Party alleges that a viable optical retail shop could be set up quickly and with a limited start-up capital. This would be, in particular, because *'the only barriers to entry into the retail market exist on a national basis and are related to local regulations'*.[774]

(1112) The Notifying Party also submits that the optical retail market is consistently growing, therefore allowing room for the entrance of additional players, and that the online segment is assuming an increasingly greater role, together with traditional brick-and-mortar retail establishments.

(1113) A detailed account of the Notifying Party's arguments vis-à-vis barriers to entry and expansion in Italy is outlined below.

(1114) Firstly, the Notifying Party submits that optical retail markets are attractive markets that do not require substantial start-up costs to enter or expand. In particular, the Notifying Party submits that the market for frames in Italy is expected to grow by

[773] Form CO, Sections 7-8, Chapter 4, Paragraph 106.
[774] Form CO, Sections 7-8, Chapter 4, Paragraph 111.

3.8% annually in the 2020-2023 period. For lenses, the expected growth rate is 2.8% for Italy. For sunglasses, the expected growth rate is 5.7%.[775] As a consequence of these figures, the Notifying Party submits that the optical industry is prone to disruption and new entrants with innovative business models are entering the market in various countries across the EEA.

(1115) Secondly, the Notifying party submits that market saturation is not a barrier to entry. The fact that there are as many as 9,000 optical stores present in Italy suggests that retailers have not faced significant market barriers when entering the market.[776] Additionally, the Notifying Party submits that, even in highly saturated markets, growth can be achieved through new product improvements, through business model improvements, by taking existing market share from competitors, or through a rise in overall customer demand.[777]

(1116) In order to support this point, the Notifying Party underlined that, in Italy, a number of optical stores opened over the past years, namely – among others – NAU! ([more than 50] store openings in Italy in five years), independents ([more than 500] new stores in five years) and Fielmann (entered the Italian market in 2015).[778]

(1117) Thirdly, the Notifying Party submits that customer loyalty is not a barrier to entry, as shown by the continuous entry in the market.[779]

(1118) Fourthly, the Notifying Party submits that there is no lack of qualified personnel in the optical retail market. In particular, the Notifying Party submits that, in Italy, optometrists cannot carry out an eye exam and would need to be qualified as opticians as well. It is, therefore, mandatory to have certified opticians in stores, but not optometrists. The Notifying Party has prepared estimates of the number of opticians that complete their training in Italy each year and on that basis considers that there are sufficient opticians to serve demand in the Italian optical retail market each year.[780]

(1119) Fifthly, the Notifying Party submits that access to EssilorLuxottica's brand portfolio is not a barrier to entry. This is because its portfolio is not essential or must-have for retailers to compete on the market. It illustrates this by reference to Specsavers in the UK, which competes successfully without access to EssilorLuxottica's portfolio, and to the fact that GrandVision focuses on mass market, private label products, implying that access to EssilorLuxottica's portfolio should not be necessary to compete with GrandVision.[781]

The Commission's assessment: Introduction

(1120) Based on the results of the market investigation and on the evidence available to it, the Commission finds on that barriers to entry and to expansion are substantial in Italy, for the reasons set out below.

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775 EssilorLuxottica's response to the SO, Paragraph 319, quoting figures from Statista.
776 EssilorLuxottica's response to the SO, Paragraph 326.
777 EssilorLuxottica's response to the SO, Paragraph 327.
778 Reply to 6(1)(c) Decision, Paragraphs 80-81.
779 EssilorLuxottica's response to the SO, Paragraph 340.
780 EssilorLuxottica's response to the SO, Paragraphs 348 and 349.
781 EssilorLuxottica's response to the SO, Paragraph 357.

(1121) The Commission focuses its assessment of barriers to entry at national level. This is because certain barriers are present nationally, for example high consumer loyalty and the need for a strong portfolio of brands to compete. The market investigation indicated that other barriers, such as the fact that the optical retail market is highly saturated and the fact that it is challenging to find a sufficient number of qualified staff, are also present nationally, though they may vary at local level. The Commission has nonetheless conducted its assessment at national level, firstly, as certain key parameters of competition are determined nationally and, secondly, as the Notifying Party has not submitted reliable market share estimates at local level enabling the accurate identification of the local areas within which the specific barriers are to be assessed.

The Commission's assessment: The optical retail market is already highly saturated

(1122) Firstly, the Phase II market investigation shows that the optical retail market is, in fact, highly saturated.[782] Both chains and independent opticians agree with the fact that there is currently little room for additional optical outlets in the retail market.[783] A chain clearly explained that *'the market is already saturated and new start-ups need a long time to achieve profitability. It is much easier to purchase an independent store.'*[784] All of the independent retailers in Italy that responded to the market investigation confirmed that, in the area in which they operate, the optical retail market is highly or moderately saturated.[785] An internal document of the Parties shows how the optical market in Italy is saturated, with 9,685 optical stores present in the country and an average of 6,401 inhabitants per optical store.[786]

(1123) Further evidence of a saturation in the optical market in Italy and, more generally, in the EEA, is represented by the fact that the Parties, as well as other players, have expanded in the retail market by way of acquisitions rather than by organic growth. The Phase II market investigation confirmed this view and underlined that *'opening of new stores is difficult due to the time its take to build up the costumer database and costumer relations. The lower prices from the bigger chain on branded goods also impacting the price competitiveness to a smaller new store. Lower rebate and discount to smaller stores makes is extra tough. Purchase of independent stores with an costumer- database is better but also requirement more capital to acquire.'*[787]

(1124) Both optical retail chains and independent opticians concur that 'street visibility' is the most important factor through which customers choose a particular store in a given area.[788] In light of this factor, the saturation of the market is indeed made more severe by the fact that bigger and more established players, especially chains, tend to

782 Questionnaire to optical retail chains, Phase II, question 69.
783 Questionnaire to optical retail chains, Phase II, question 67 and Questionnaire to independent opticians, Phase II, question 67.
784 Questionnaire to optical retail chains, Phase II, question 67.
785 Questionnaire to independent opticians, Q11, question 67.
786 Form CO Annex 5.4.1 GV 09 - Introduction Italy
787 Questionnaire to optical retail chains, Phase II, question 67.
788 Questionnaire to optical retail chains, Phase II, question 47. Questionnaire to independent opticians, Phase II, question 48.

occupy premium locations in high streets and shopping centres due to their higher budget dedicated to rents and advertising.[789]

(1125) The Commission considers that this represents a challenging hurdle that new, independent entrants would need to overcome in order to establish a viable retail activity. This has been confirmed by the results of the Phase II market investigation. An optical retail chain admitted this point by underlining that *'the location is a very important factor and it is usually difficult to find good, not yet occupied locations'*.[790]

<u>The Commission's assessment: The optical retail market is characterised by high customer loyalty</u>

(1126) Secondly, as confirmed by the results of the Phase II market investigation, the optical retail market is characterised by a high level of customer loyalty, therefore making it extremely challenging for new entrants to create and expand a viable customer base.[791]

(1127) The majority of market participants, whether chains or independents, rate the degree of customer loyalty in the optical retail market as high, or at the very least moderate.[792] This represents not only a major hurdle to enter the optical retail market, but also a substantial start-up cost which a perspective retailer would not be in a position to absorb for a number of years. An optical chain confirmed that *'A high proportion of our customers return to our stores. As many customers regard the sight test and subsequent purchase of spectacles as a healthcare purchase, there tends to be a high degree of loyalty within the market.'*[793]

(1128) The Parties' own internal documents confirm this. […].

Figure 110 – Customer loyalty within GrandVision[794]

[…]

<u>The Commission's assessment: The optical retail market requires highly skilled personnel</u>

(1129) Thirdly, the Phase II market investigation has shown that opening an optical retail store requires qualified and trained personnel, which is currently in short supply and not readily available.

(1130) Federottica, the Italian Association of Opticians and Optometrists, explained that *'Italy has a population of approximately 60 million people and a number of*

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789 Minutes of a call with a retailer [ID 90], 10 October 2019: *'Pearle stores used to be located mainly in shopping centres because they have a high budget for advertising and among other heavy advertising retailers from other industries increases the overall turnover of these centres. Bigger shopping centres, allow a second or third optician to open a store, whereas in the smaller ones Pearle would be the only one. Fielmann from Germany is also a big player in Austria, but it focuses generally on bigger cities and bigger shopping centres.'*

790 Questionnaire to optical retail chains, Phase II, question 67.

791 EU Survey, question 15.

792 Questionnaire to optical retail chains, Phase II, questions 57 and 64. Questionnaire to independent opticians, Phase II, questions 56 and 63.

793 Questionnaire to optical retail chains, Phase II, questions 57.

794 Form CO 5.4.1. GV - IPSOS GBM (global Brand Monitor) Italy FY 2018.

approximately 11 000 optical shops. The number of Opticians and Optometrist in total is approximately 16 000 people. The persons wearing glasses and/or contact lenses represent 50% of the population. It can be easily understood by these numbers that the competition in this field is very high. This notwithstanding, we can say that the percentage of Opticians and Optometrists unemployed is close to zero.'[795]

(1131) Optical retail chains stated that finding personnel represents one of the main difficulties when opening a new optical store.[796] A retail chain clearly outlined this point by stating, *'it is very difficult to find qualified personnel. The labour market is empty […] and the new academically qualified opticians […] are strongly demanded from companies in the medical or optical industry, where working conditions and earning opportunities are perceived more attractive.'*[797]

(1132) This issue can become overwhelming for small, independent opticians, the vast majority of whom said that it is either very difficult or difficult to find staff.[798] As one market participant outlined *'In our area of influence it is difficult to find personnel at the level of opticians and optometrists. In our area there are no training schools. Training courses are in large cities, far from our area of influence.'*[799]

The Commission's assessment: The importance of a strong brand portfolio to compete

(1133) Fourthly, the Phase II market investigation shows that, in order to compete with the Parties, a strong brand portfolio is essential, or at least very important in order to build and maintain a viable customer base.[800] An optical retail chain mentioned that *'Luxottica has an unparalleled brand portfolio and it is essential for an optical store to cater to the requirements of all types of customers and to offer a wide range of top brands. Thus, access to Luxottica's brand portfolio is crucial be able to appeal to all customers' tastes/requirements.'*[801] Further, an independent optician reiterated the point that *'the EssilorLuxottica Brands have a big pull on certain consumers and these products being available help you to attract or retain these consumers.'*[802] This is explained further in Section 8.3.

(1134) Additionally, customer-driving brands like […]. Accordingly, it appears challenging for a new entrant to secure supply of these vital brands.[803]

(1135) Federottica, the Italian Association of Opticians and Optometrists, confirmed that 'in principle, the number of frame suppliers as well as lens manufacturers is huge. But, of course, being Essilor the number one lens manufacturer and Luxottica the number

795 Submission of the Italian Association of Opticians and Optometrists, 2 March 2020, Paragraph 5. [1096]
796 Questionnaire to optical retail chains, Phase II, questions 57.
797 Questionnaire to optical retail chains, Phase II, questions 57.
798 Questionnaire to independent opticians, Phase II, question 66
799 Questionnaire to independent opticians, Phase II, question 66.1.
800 Questionnaire to optical retail chains, Phase II, question 72. Questionnaire to independent opticians, Phase II, question 70.
801 Questionnaire to optical retail chains, Phase II, question 72.2.1.
802 Questionnaire to optical retail chains, Phase II, question 70.2.1.
803 Questionnaire to optical retail chains, Phase II, question 46. Questionnaire to independent opticians, Phase II, question 44.

one frame manufacturer, especially in the case of an entrant, it's almost a must the dealing with these companies. People would come in a new shop asking for their brands which are heavily advertised on the Media.'[804]

(1136) Optical retail chains quoted numerous cases of commercial behaviours that exemplify EssilorLuxottica's importance as a supplier vis-à-vis its customers.[805] In particular, an optical chain quoted as particularly problematic the *'[…].'*[806]

(1137) For independent optician committing to […] represents an even more serious hurdle to open an optical store and to build up a customer base. An independent retailer explained that *'[…]'*[807]An Italian independent raised the same point '*[…]*'.[808] Therefore, if a new store wishes to sell these customer-driving brands, it must accept […] (which many independent opticians consider burdensome)[809], and so is incentivised to focus on selling these brands to ensure its investment in these volumes is recouped.

(1138) This is closely interlinked with the fact that, as pointed out by the outcome of the Phase II market investigation, both chains and independents view EssilorLuxottica's portfolio of brands as either essential or, at the very least, important in order to compete.[810]

<u>Conclusion on the Commission's assessment as to the existence of significant barriers to entry and expansion in the market for the retail supply of optical products</u>

(1139) The Commission finds that the Phase II market investigation has clearly and unequivocally evidenced the existence of significant barriers to entry in the optical retail sector which, coupled with EssilorLuxottica's strong market power in the relevant upstream markets, can and do in practice represent obstacles to set up new optical stores or to expand an existing customer base.

(1140) These barriers impact the business of well-established optical retail chains and represent very significant challenges for independent retailers, both existing and prospective.

9.4.3.6. Commission's quantification of the impact of the Transaction on the Parties' and their rivals' incentives to raise retail prices

(1141) The Commission's assessment of the impact of the horizontal loss of competition on the Parties' and their rivals' incentives to raise prices is set out below. The Commission assesses how the horizontal loss of competition leads to incentives:

(a) for EssilorLuxottica to raise its retail prices in its stores,

(b) for GrandVision to raise its retail prices in its stores (an incentive which is amplified due to the fact that some sales lost by GrandVision at retail level

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804 Submission of the Italian Association of Opticians and Optometrists, 2 March 2020, Paragraph 4. [ID 1095]

805 Questionnaire to optical retail chains, Phase II, question 46.

806 Questionnaire to optical retail chains, Phase II, question 46.

807 Questionnaire to independent opticians, Phase II, question 44.

808 Questionnaire to independent opticians, Phase II, question 44.

809 Questionnaire 12 to independent opticians, question 44.

810 Questionnaire to optical retail chains, Phase II, question 70. Questionnaire to independent opticians, Phase II, question 72.

will translate into additional margins for EssilorLuxottica upstream through EssilorLuxottica's wholesale supply to rival retailers), and

(c) for rival retailers to follow-on and raise their own retail price due to the reduction in competitive pressure in the retail market.

EssilorLuxottica's incentive to raise retail price due to horizontal loss of competition

(1142) The Transaction entails that EssilorLuxottica will have a greater incentive to increase its retail prices due to the reduced competitive pressure they face from GrandVision.

(1143) As explained in detail in section 8.2.1, the Commission has analysed the incentives of the Merged Entity to increase the retail prices in EssilorLuxottica's stores using a GUPPI framework. The Commission finds that in Italy, the Transaction results in an incentive to raise the price of prescription frames at EssilorLuxottica's stores by [0-5]%, and incentive to raise the price of sunglasses by [0-5]%. This reinforces the fact that the Transaction means an important competitive constraint on EssilorLuxottica is eliminated.[811]

GrandVision's incentive to raise retail prices due to horizontal loss of competition and upstream recapture

(1144) The Transaction means that the Merged Entity will have an even greater incentive to raise retail prices in GrandVision's stores. This is firstly due to the reduced competitive pressure GrandVision will face from EssilorLuxottica and secondly due to upstream recapture, as described below.[812] This upstream recapture amplifies the impact of the purely horizontal loss of competition between the Parties.

(1145) First, prior to the Transaction, if GrandVision increases the retail prices for the eyewear products sold in its stores in Italy, any customers that do not continue to purchase in GrandVision's store are lost to rivals.[813] These customers are lost entirely and lead to lower profits for GrandVision.

(1146) Post-Transaction, an increase in price at GrandVision's stores will have three main results. Customers will either: (i) continue to purchase the same or different products at GrandVision's stores, (ii) switch to an EssilorLuxottica's store, or (iii) switch to a rival retailer. Those customers who switch to a rival retailer may buy EssilorLuxottica's products at that rival store. Therefore, a proportion of the retail-level margin lost by GrandVision will be recaptured by EssilorLuxottica through increased sales of its (high-profit) frames, lenses and sunglasses at wholesale level. This is particularly true regarding spectacles (i.e. frames plus lenses) given that […] compared with other retailers in Italy.[814] As a result, the losses suffered by

811 Vertical effects presented in section 8.2 are pre-Transaction already internalised at EssilorLuxottica stores. For EssilorLuxottica retail stores the Transation merely has a horizontal effect, while for GrandVision stores the effect is both horizontal and vertical as presented in Annex 1.

812 The impact of these two effects is assessed in an integrated framework as presented in section 7.1 and 8.2.

813 The Commission notes that while EssilorLuxottica is already active at the wholesale level and therefore already takes into account this effect in its retail pricing, the addition of GrandVision's wide retail presence would change pricing rational of the newly integrated entity. The Commission therefore assesses the change of pricing incentives due to the Transaction.

814 In Italy, […]% of lenses sold in GrandVision are EssilorLuxottica's lenses, whereas EssilorLuxottica has a market share of [30-40]% in the wholesale of lenses in Italy.

GrandVision from increasing its prices are dampened, so it has an incentive to raise retail prices compared to the situation pre-Transaction.[815]

(1147) Second, the Commission's economic modelling evidences this conclusion. The Commission has conducted a vertical gross upwards pricing pressure indices ('vGUPPI') analysis that models the effect of the Transaction in this regard, taking into account effects (i)-(iii) above. This is described in more detail in the Economic Annex.

(1148) The vGUPPId, which looks at the downstream effects of the Transaction, shows that post-Transaction it is profitable for GrandVision to raise the retail price of the spectacles (i.e. frames + lenses) sold in its stores in Italy by 5.8%. As regards sunglasses, GrandVision would have a limited incentive to raise its prices by 2.7% in Italy.[816] The Commission's results from the vGUPPId are set out in more detail in the Economic Annex.

(1149) The Commission therefore considers that, following the Transaction, GrandVision would have a marked incentive to raise prices for spectacles and sunglasses in its retail stores in Italy.

Rivals' incentive to raise retail price due to follow-on

(1150) As outlined above, EssilorLuxottica and GrandVision have will likely have incentives to increase their retail prices post-Transaction. The Parties are the first and second largest optical retailers in Italy by a considerable margin and GrandVision represents an important competitive force on the market as a whole. Therefore, in response to the Parties' higher prices, a price increase can also be expected from rivals as a result of the follow-on effect indicated in the Horizontal Merger Guidelines: '*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices*'.[817]

9.4.3.7. Conclusion regarding horizontal non-coordinated effects in Italy

(1151) Regarding the likely horizontal non-coordinate effects of the Transaction, the Commission finds that the Parties are close competitors, that GrandVision represents an important competitive force and that barriers to entry and expansion are substantial in the retail market for optical products in Italy. The Commission finds that, post-Transaction, the Parties would have an incentive to increase their prices at their retail stores and that rivals can be expected to do so too due to the weakened competitive pressure on them. As explained above, while the extent of the incentive for the Parties and their rivals to increase prices may vary at local level, optical retail chains currently make pricing decisions at national level. The national assessment carried out by the Commission reflects an average effect across all local areas and

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815 If GrandVision were to increase its purchases of EssilorLuxottica's product post-Transaction the results may change, as the Merged Entity may have a somewhat lower incentive to increase prices due to the elimination of double marginalisation (indeed, in some countries and for some products, the analysis shows that the Merged Entity would have an incentive to decrease price).

816 In this scenario, sunglasses correspond to both sunglasses sold with and without prescription lenses, i.e. the price increase referenced concerns both sunglasses prices and lenses prices when they are sold with sunglasses.

817 Paragraph 24 of the Horizontal Merger Guidelines.

shows the Transaction results in the elimination of an important competitive constraint in the optical retail market in Italy.

(1152) In light of the above considerations and of the evidence available to it, the Commission finds that the Transaction would give rise to a significant impediment to effective competition in Italy in the retail supply market for optical products due to horizontal non-coordinated effects, by eliminating the important competitive constraints that the Parties exert on each other and reducing the competitive pressure on the remaining competitors after the Transaction.

9.4.4. Vertical non-coordinated effects in relation to the wholesale of frames or sunglasses in Italy (upstream) and the retail of optical products in Italy (downstream)

9.4.4.1. The Notifying Party's views

(1153) The Notifying Party submits that the Transaction does not give rise to any vertical non-coordinated effects, in particular regarding input foreclosure of the wholesale of frames and sunglasses in Italy. Its arguments are set out in more detail in Section 8.3.1, and can be summarised as follows:

(a) The Notifying Party submits that the Merged Entity would not have the ability to foreclose competitors in the retail market for the supply of prescription frames or sunglasses in Italy due to the absence of market power, the structure of the relevant markets and the lack of any 'must have' status.[818]

(b) The Notifying Party also submits that the Merged Entity would not even have any incentive to foreclose as regards prescription frames or sunglasses in Italy due to the fact that its total sales of eyewear would fall drastically.[819]

(c) The Notifying Party concludes that an input foreclosure strategy as regards prescription frames or sunglasses would not have anticompetitive effects in Italy because a vast part of rival retailers do not stock EssilorLuxottica's eyewear and would therefore not be affected by the strategy. Additionally, the Notifying Party alleges that even retailers that purchase EssilorLuxottica's eyewear are unlikely to exit the market as a result of a foreclosure attempt, as only a proportion of their inputs are sourced from EssilorLuxottica.[820]

(1154) In light of the above, the Notifying Party submits that the Transaction does not give rise to any vertical non-coordinated effects, in particular regarding input foreclosure of the wholesale of frames and sunglasses Italy.

9.4.4.2. The Commission's assessment

(1155) Based on the results of the market investigation and the evidence available, the Commission finds that the Transaction will result in vertical effects of input foreclosure in frames in Italy for the reasons explained in the following sections. The Commission concerns are not diminished by the Parties' arguments since these are not supported by the market investigation's findings.

(1156) As explained in sections 8.3.2.9 and 9.4.2, the Commission conducts its assessment of input foreclosure at national level. On this basis, the Commission finds that the

818 Form CO, Sections 7 and 8, Chapter 5, Paragraphs 1131-171
819 Form CO, Sections 7 and 8, Chapter 5, Paragraph 113-171.
820 Form CO, Sections 7 and 8, Chapter 5, Paragraphs 164 and 165.

Merged Entity would have the ability to engage in such input foreclosure strategy at least on a national level. In addition, for the reasons outlined above the Commission considers that this does not exclude the possibility that the Merged Entity would have the ability to optimise its strategy by selectively foreclosing in certain areas, for instance where its retail position or demand for its products is even stronger or larger than on average at national level.

(1157) The quantitative and qualitative evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure (frames and sunglasses) leading to vertical non-coordinated effects have been set out in sections 8.2 – 8.3. This is further specified below for Italy.

(1158) As regards the **ability** to foreclose in Italy, the Commission finds that the Merged Entity has a significant market position upstream to the extent that it would allow it to deteriorate the commercial conditions of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(1159) First, EssilorLuxottica's wholesale market shares for eyewear are high and the wholesale market is overall concentrated.

(1160) In the overall wholesale markets for sunglasses and for frames, its market share in Italy amounts to [60-70]% and [40-50]% respectively. Moreover, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] should be taken in particular account given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced private label products compared to branded products) is limited, as set out in section 6.1.1. In this segment, the Merged Entity's is also the market leader with market shares amounting to [60-70]% and [40-50]% respectively.

(1161) In addition, the three largest suppliers of sunglasses over EUR […] in Italy have a combined market share of [20-30]%, and their combined share is [20-30]% also for frames.[821] Therefore, as noted by the Non-Horizontal Merger Guidelines, paragraph 38, a decision of the Merged Entity to restrict access to inputs reduces the competitive pressure exercised also on the remaining input suppliers.

(1162) Second, the penetration rate of Ray-Ban in Italian stores is significant. Ray-Ban is present in [70-80]% of [more than 9000] stores as regards frames and sunglasses.[822] As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's wholesale sales in Italy are of the Ray-Ban brand ([50-60]% of sunglasses and [30-40]% of frames).[823]

(1163) Third, 74% of the Italian retail chain respondents and 63% of independent opticians' respondents to the Commission's market investigation in the proceedings of M.8394 *Essilor/Luxottica* considered one of Luxottica's sunglasses brands as the first sunglasses brand. In relation to frames, the majority of respondents considered Ray-

[821] Form CO Annexes CO 7.2.
[822] M.8394 Essilor/Luxottica, rec. 568.
[823] Response to RFI 27 annex Q8.

Ban among the top three frames brands and 4 out of 10 respondents considered Ray-Ban as their most important frames brand. [824]

(1164) Fourth, independent retailers consider that 32% of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[825] This is furthermore also raised by a major retail chain active in Italy (emphasis added): *'Luxottica has an unparalleled brand portfolio (with Ray-Ban, which is simply not substitutable at all) and it is essential for an optical store to cater to the requirements of all types of customers and to offer a wide range of top brands. Thus, access to Luxottica's brand portfolio is crucial be able to appeal to all customers' tastes/requirements. Brand orientated consumers would therefore switch the optical shop if they did not find the Luxottica brand they are looking for.'*[826]

(1165) Against this background and on the basis of the considerations set out in section 8.3.2, the Commission considers that the Merged Entity would have the ability to engage in input foreclosure of frames and sunglasses.

(1166) As regards the **incentive** to foreclose competing retailers post-Transaction in Italy, the Commission finds that the Merged Entity would have a large potential to recoup sales through its significant downstream presence as well as GrandVision's mass-market positioning that seeks to appeal to all types of consumers. Furthermore, switching of customers to the Merged Entity's own retail outlets is highly profitable, and therefore the Merged Entity's input foreclosure strategy would be profitable even if a significant amount of customers would not switch stores. This is confirmed by the Commission's vGUPPI analysis and even by the Notifying Party's vertical arithmetic analysis.

(1167) First, the Merged Entity would have a significant retail presence. It would be the largest retailer in Italy, with a market share of [10-20]% at national level (2018 data, brick-and-mortar). The second and third largest nationwide retailers would have significantly smaller shares compared to the Merged Entity. Green Vision would have [5-10]% and OXO [0-5]%.

(1168) Furthermore, retail stores in Italy are often located close to one another, thereby facilitating the diversion of customers to the Merged Entity's own stores as these would not have to travel very far in order to find EssilorLuxottica products. This is illustrated by an internal document of the Parties, which shows how the optical market in Italy is saturated, with […] optical stores present in the country and an average of […] inhabitants per optical store.[827] This is supported by the fact that in Italy, GrandVision stores typically attract customers from […] kilometres away, and that there are often a number of rival stores within these catchment areas from whom customers could divert.[828]

(1169) In addition, GrandVision has a mass-market positioning that seeks to appeal to all consumers, providing it a large potential to recoup sales. In contrast, independent

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824 M.8394 Essilor/Luxottica, rec. 569.

825 Simplified Questionnaire to retailers, question 10, responses from independent opticians.

826 Questionnaire to optical retail chains, Phase II, question 53.1.

827 Form CO – 5.4.1 GV - Introduction Italy

828 Notifying Party's response to RFI 20, and RFI 29 Q3.

opticians, which form the vast majority of the Italian optical retail market, would price significantly higher. An Italian independent retailer explains: '*avec une telle couverture et maitrise du marché EssilorLuxottica n'aura plus besoin de Groupements d'opticiens indépendants et cherchera à imposer ses propres règles.*'[829]

(1170) Second, the potential profits from diverting customers of frames from rival retailers to its own stores are higher than for sunglasses, given the substantial margin earned by opticians on lenses in the prescription frames bundle. For frames, for every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only keep the wholesale margin on the eyewear and lenses purchased by that customer, but also gain the retail margin relating to those eyewear and lenses.

(1171) Third, these findings are confirmed by the Commission's vGUPPI analysis. This analysis shows that the minimum amount of customers that would have to switch from rival retailers to the Merged Entity's stores in order to render a 10% price increase to rival retailers profitable is very low, for frames in particular. For Italy, this would be 8% for frames, which would be much lower than the amount of consumers that are expected to switch, as indicated in recital (1163). For sunglasses, the minimum amount of customers that would need to switch to render a 10% price increase profitable is somewhat higher, at 29%, which is also lower than the amount of consumers expected to switch.

(1172) Fourth, the vertical arithmetic analysis carried out by the Notifying Party, as described in section 8.3.6, indicates that in order for a full foreclosure strategy to be profitable in Italy, [50-60]% of consumers would have to switch for sunglasses and [10-20]% for frames. The Commission considers that this threshold is moderately low for frames and that it is therefore possible for the Merged Entity to also find full foreclosure of this product to be profitable.[830]

(1173) On this basis, as well as on the basis of the considerations set out in section 8.3.3, the Commission considers that the Merged Entity would have the incentive to engage in input foreclosure of frames. As regards sunglasses, there are also indications that the Merged Entity may have an incentive to engage in input foreclosure, albeit that it would be somewhat lower than for frames. However, it is not necessary to reach a conclusion as regards sunglasses specifically, because in any event even, if there were such an incentive, the Commitments described in Section 12 would reduce this incentive to the extent of removing any (potential) significant impediment to effective competition in relation to sunglasses.

(1174) As regards the **effects** of the Merged Entity's input foreclose strategy, the Commission considers that the Transaction would lead to deteriorated competitive conditions in the wholesale and retail markets for eyewear in Italy, in particular as regards frames.

829 Questionnaire to indepndent opticians, Phase II, question 72.1.

830 For frames, this threshold would be below the estimations by retailers, as indicated above.

(1175) In the first place, as a result of the input foreclosure strategy, retailers outside the Merged Entity's network would face deteriorated commercial conditions. Considering EssilorLuxottica's importance as a supplier of frames and sunglasses, as well as the high penetration rates of its brand Ray-Ban, as set out in recitals (1158) onwards, the Commission considers that the Transaction would lead to deteriorated competitive conditions in the wholesale markets for frames and sunglasses in Italy.

(1176) The expected effects of the Transaction are confirmed by the quantitative analysis carried by the Commission (see section 8.2).

(1177) In the second place, the majority of independent opticians and optical retail chains responding to the market investigation indicated that they would pass on a wholesale price increase of EssilorLuxottica's products almost in full to their final customer.[831] Therefore, the Commission considers that these deteriorated commercial conditions would also translate to the optical retail market regarding frames and sunglasses.

(1178) This effect in the retail market would be particularly pronounced due to the reduction in competitive pressure felt in the optical retail market resulting from the purely horizontal loss of competition between the Parties and the incentive for GrandVision to increase its retail prices, as explained above. In combination, these effects have a profound impact on the downstream optical retail market.

(1179) The Italian Association of Opticians and Optometrists confirms that it would be challenging to run an optical retail activity with a business model independent of EssilorLuxottica's eyewear without losing customers: *'in principle, the number of frame suppliers as well as lens manufacturers is huge. But, of course, being Essilor the number one lens manufacturer and Luxottica the number one frame manufacturer, especially in the case of an entrant, it's almost a must the dealing with these companies. People would come in a new shop asking for their brands which are heavily advertised on the Media. A new shop would then have the obligation to subscribe a contract with them that may tighten strongly its activity to them.'*[832]

(1180) Indeed, this negative impact is evident from the concerns raised by market participants during the market investigation. The majority of independent opticians responding to the market investigation indicated that the Transaction would negatively affect their business, as well as the wholesale and retail markets for frames and sunglasses. One retailer in Italy explained further: '*Sur le marché italien la combinaison des enseignes Grand Vision avec les enseignes Salmoiraghi & Vigano mais aussi avec les opticiens STARS, confère à EssilorLuxottica une position dominante de fait en termes de notoriété, de location, de positionnement (ils arrivent à couvrir tous les segments de marché), d'intégration retail physique et web, de service sur les produits phares et demain sur l'intégration des offres verres et montures. L'impact sur notre société sera très négatif. Avec une telle couverture et maitrise du marché EssilorLuxottica n'aura plus besoin de Groupements d'opticiens indépendants et cherchera a imposer ses propres règles.*'[833]

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831 Simplified Questionnaire to retailers, questions 9 and 12.

832 Submission of the Italian Association of Opticians and Optometrists, 2/03/2020. [ID 1095]

833 Questionnaire Q11 to independent opticians, Phase II, question 72.1.

9.4.4.3. Conclusions on the vertical non-coordinated effects in relation to the wholesale of frames or sunglasses in Italy (upstream) and the retail of optical products in Italy (downstream)

(1181) On the basis of the above findings, as well as of the considerations set out in section 8.3 and the quantitative analysis as set out in section 8.2, the Commission considers that the Transaction would significantly impede effective competition in Italy, due to its vertical effects in the form of input foreclosure strategies, in relation to the wholesale supply market for frames in Italy (upstream). As regards sunglasses, there are also indications that Transaction would significantly impede effective competition in Italy due to its vertical effects in the form of input foreclosure, however, it is not necessary to reach a conclusion as regards sunglasses specifically, because in any event even if there were such a significant impediment from the Transaction as notified, the Commitments described in Section 12 would have the effect of removing this (potential) significant impediment in relation to sunglasses.

(1182) The Commission observes that in relation to Italy, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [30-40]%. However, for the reasons outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.4.5. Cumulative impact of horizontal and vertical non-coordinated effects in Italy

(1183) In addition to the foregoing, the Commission has investigated whether the Transaction would give rise to a significant impediment to effective competition in the Italian market for the retail sale of optical products due to the cumulative impact of the aforementioned horizontal non-coordinated effects and vertical non-coordinated effects.[834]

(1184) The Commission focuses its assessment of the impact of the Transaction at national level. This is for the reasons explained in section 9.4.2 above.

(1185) The Commission notes that the horizontal and vertical non-coordinated effects of the Transaction identified above are in place simultaneously and are not only independent but also reinforce (i.e., intensify) each other leading to cumulative effects. More specifically, the Transaction would result in the elimination of an important competitive constraint in Italy as a result of the following interlinked effects:

(a) the horizontal effect of the loss of retail competition between EssilorLuxottica and GrandVision (as detailed in section 9.4.3);

(b) this effect is amplified by EssilorLuxottica's strong upstream position, which means that EssilorLuxottica can recapture a proportion of sales lost at retail

[834] As explained in more detail in Sections 7.1 and 7.3, paragraph 36 of the Horizontal Merger Guidelines envisage that a Transaction may significantly impede effective competition as a result of mutually reinforcing horizontal and non-horizontal effects of a Transaction.

level through increased sales of its frames, lenses and sunglasses in rival retailers' stores (as detailed in section 9.4.3);

(c) rival retailers would also have an incentive to increase their prices due to the reduced competitive constraint from the Parties (including GrandVision, which pre-Transaction was an important competitive force) (as detailed in section 9.4.3); and

(d) this effect is reinforced as EssilorLuxottica will have an ability and incentive to increase the wholesale price it charges to its retail competitors, who will face higher costs, and are likely to pass this on to consumers (as detailed in section 9.4.5).[835]

(1186) As a result, the Commission concludes that considering horizontal non-coordinated effects and vertical non-coordinated effects in isolation would lead to an underestimation of the likely harm resulting from the Transaction. Moreover, as explained in section 7.3, the Commission's economic quantification of the Parties' incentive to increase prices as a result of the Transaction also lead to conclude that such incentives are underestimated, as the estimates do not take into account the fact that the other vertical effects are in place as well.

(1187) For the above reasons, the Commission finds that the Transaction would give rise to a significant impediment to effective competition in the Italian market for the retail sale of optical products due to the cumulative impact of the aforementioned horizontal non-coordinated effects and vertical non-coordinated effects. Even if, quod non, taken individually the horizontal non-coordinated effects on the retail market for the supply of optical products in Italy and the vertical non-coordinated effects in the form of the implementation of input foreclosure strategies regarding frames in Italy were found to be non-significant, taken together, these effects would cumulatively have a significant impact on the optical retail market in Italy and would lead to higher prices for consumers.

(1188) On that basis, as a result of its mutually reinforcing horizontal and vertical effects, the Commission therefore considers that the Transaction would result in an additional and autonomous significant impediment to effective competition in the optical retail market in Italy due to the cumulative impact of the aforementioned horizontal non-coordinated effects and vertical non-coordinated effects.

9.5. The UK

9.5.1. Introduction

(1189) GrandVision and EssilorLuxottica are, respectively, the third and fourth largest optical retailers in the UK (to the extent that sunglass specialists are excluded,

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835 The Commission notes that its claim that prices will increase at GrandVision because of the internalisation of the diverted sales to the rival retailers (the vGUPPId effect) and, at the same time, prices will increase for rival retailers as a result of the input foreclosure generated by the internalisation of the sales diverted to GrandVision (the vGUPPIu/vGUPPIr effect) are fully consistent and, moreover, mutually reinforcing each other, despite the fact that these diversions 'operate in opposite directions'. The same applies to a standard horizontal merger, where merging party A increases prices as a result of the internalisation of the loss of customers to merging party B and, at the same time, merging party B increases prices as a result of the internalisation of the loss of customers to merging party A. In fact, as explained above, the two effects (vGUPPId and vGUPPIu/vGUPPIr effect) compound each other.

EssilorLuxottica would be the fifth). For the following reasons, the Commission considers that the Transaction would not give rise to a significant impediment to effective competition in the market for the retail of optical products in the UK.[836] This Section first provides an overview of the competitive landscape in the UK and the Parties' market shares at national level and local/sub-national level (9.5.2). It then sets out the Commission's assessment of the Transaction's horizontal non-coordinated effects in the optical retail market in the UK (9.5.3), its vertical non-coordinated effects in the form of the likely foreclosure of inputs (frames and sunglasses) to optical retailers in the UK (9.5.4), as well as the combined impact[837] in the optical retail market in the UK of the Transaction's aforementioned horizontal non-coordinated effects and vertical non-coordinated effects, which are mutually reinforcing and in combination significant (9.5.5). In sum, the Commission considers that the Transaction would not result in a significant impediment to effective competition in the UK optical retail market on any of these three grounds (separately, i.e. horizontal non-coordinated effects, vertical non-coordinated effects, cumulative impact of horizontal and vertical effects).

9.5.2. *Competitive landscape in the UK to the effect of assessing the Transaction*

9.5.2.1. National overview

(1190) The optical retail market in the UK is led by specialised optical retail chains which together account for almost 80% of the market. The Table below set out the Notifying Party's estimates of the Parties' and their largest competitors' market shares in the UK in the optical retail market.

Table 19 – UK optical retail market shares, 2018[838]

Competitor	Revenue (EUR, m)	Share
EssilorLuxottica	[…]	[0-5]%
GrandVision	[…]	[10-20]%
Combined	[…]	*[10-20]%*
Specsavers	[…]	[40-50]%
Boots Opticians	[…]	[10-20]%
Asda Opticians	[…]	[0-5]%
Optical Express	[…]	[0-5]%
Other small chains	[…]	[0-5]%
Independents	[…]	[20-30]%

(1191) However, it should be noted that the above estimates include turnover from the Parties' sunglass specialist banners. Unlike in Italy, where the Parties' market shares

836 For completeness, as explained in Section 7, the Commission has conducted its assessment on the basis that independent opticians and optical retailer chains form part of one relevant product market for the retail of optical products. The Commission's conclusions also apply if independent opticians were not considered part of the relevant product market.

837 As explained in more detail in Sections 7.1 and 7.3, paragraph 36 of the Horizontal Merger Guidelines envisage that a Transaction may significantly impede effective competition as a result of mutually reinforcing horizontal and non-horizontal effects of a Transaction.

838 Form CO, Annex 7.2, Optical Retail Shares, Optical brick-and-mortar.

remain virtually unchanged after the removal of these sunglass specialist banners, in the UK the Parties' shares do change considerably. Accordingly, Table 20 below sets out the Parties' market share estimates adjusted to remove their revenues from sunglass specialist banners.

Table 20 – UK optical retail market shares excluding sunglass specialists, 2018[839]

Competitor	Revenue (EUR, m)	Share
EssilorLuxottica	[…]	[0-5]%
GrandVision	[…]	[10-20]%
Combined	[…]	*[10-20]%*
Specsavers	[…]	[40-50]%
Boots Opticians	[…]	[10-20]%
Asda Opticians	[…]	[0-5]%
Optical Express	[…]	[0-5]%
Other small chains	[…]	[0-5]%
Independents	[…]	[20-30]%

(1192) The main players active in the UK optical retail market can be summarised as follows:

- GrandVision is active in the UK through its Vision Express banner, a retail chain with [more than 500] stores and a mass-market positioning. In 2017, GrandVision acquired Tesco Opticians, a chain of optical retail concessions within the stores of Tesco, a major grocery chain. These stores have since been rebranded to operate under the Vision Express banner.
- EssilorLuxottica is active in the UK through David Clulow, a high-end optical retail chain with [more than 100] stores. For completeness, it also operates a sunglass specialist store, Sunglass Hut, with [more than 50] stores, many of which are concessions in department stores.
- Specsavers is the largest optical retail chain in the UK, with [more than 750] stores throughout the country. Specsavers sells some branded frames and sunglasses, but it focuses on primarily private label eyewear. The Notifying Party explains that '*its product offering includes a significant range of frames under the Specsavers branding or brand names created in house*'. Specsavers

839 Form CO, Annex 7.2, Optical Retail Shares, Optical brick-and-mortar, adjusted to remove the Parties' revenues from their sunglass specialist banners.

also operates some stores within the retail space of Sainsbury's, a supermarket chain.[840]

- Boots Opticians is the optical retail arm of Boots, a pharmacy retail chain. There are [more than 600] Boots Opticians stores in the UK, selling a range of branded and private label eyewear.
- Asda Opticians are optical retail concessions present within Asda supermarkets. Asda Opticians holds a market share of approximately [0-5]% in the UK with its [more than 100] stores.
- Optical Express is an optical retail chain active in the UK with [more than 50] stores, with a market share of approximately [0-5]%.
- Independent opticians are active throughout the UK. They make up a relatively modest proportion of the market – 21%. The size and positioning of an independent optician varies, but they typically have a mid- to high-end positioning and are considered to offer a high quality of service to customers.[841]

9.5.2.2. The Parties' presence in optical retail at local and NUTS3 level[842]

(1193) As outlined in section 8.1.1 above, the Notifying Party has not been able to provide market share estimates on the basis of the value or volume of sales at the local level (i.e. a catchment area of typically not more than 10 kilometres around each of the Parties' stores). Instead, the Notifying Party has submitted two main proxies for local market shares – market share estimates at the NUTS3 level and a fascia count analysis at the local level.[843]

(1194) In the first place, the Notifying Party has submitted local market shares calculated at the level of NUTS3 regions for the UK. The Notifying Party used Eurostat data on population and GDP at this geographical level in order to compute the total market size. Sales of the Parties were then attributed to these areas and divided by estimated market size in order to obtain local shares in the retail market for GrandVision and the Notifying Party.[844]

(1195) Since the Commission considers the relevant geographic markets are likely to be narrower than national (i.e. local catchment areas of typically not more than 10

840 Form CO, Annex 7.1.16 – UK and Ireland, page 27.

841 See section 7 above. Questionnaire 11 to independent retailers, question 30 and Questionnaire 12 to optical chains, question 33.

842 NUTS3 refers to a socio-economical classification used by Eurostat which provides demographic information at the smallest possible regional level for specific statistical diagnoses. That classification is used by the Parties to derive estimates of local market shares.

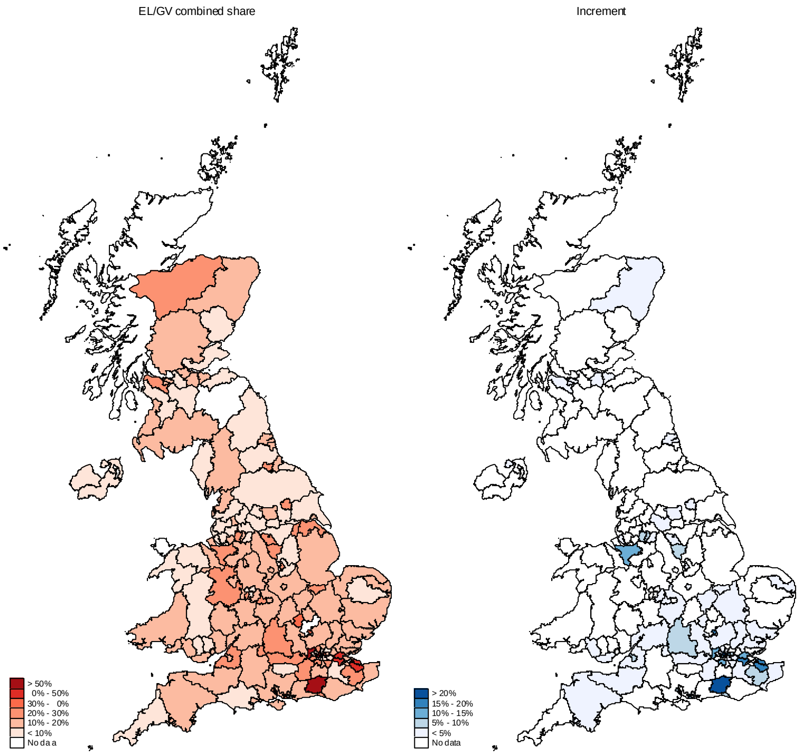
843 The methodology for each of these is described in more detail in section 8.1.1 above. For completeness, the Notifying Party has also submitted estimates of market shares at the LAU level, however, these are not considered accurate for the reasons set out in section 8.1.1 and so will not be separately assessed in relation to the UK.

844 The Notifying Party has first computed an average spend on eyewear by inhabitant using national market sizes from national market shares. Local market shares based on population merely multiply this metric by the local population at NUTS3 level to estimate local market size. Local market shares based on GDP introduce an element of differentiation, assuming the spend on eyewear is proportional to GDP, i.e. customers spend more on eyewear in regions with higher GDP. The Notifying Party was unable to produce local shares of its competitors due to the lack of public information on local sales.

kilometres around a store, see section 6), it has preliminarily relied on these NUTS3 market shares to assess the Parties' strength at local level (in the absence of reliable market share estimates at local level). Nevertheless, as explained above, from the supply-side certain key parameters of competition are determined at national level. Therefore, the retail market share of the Parties should be viewed in the light of the Parties' position at national level as described below.

(1196) Figure 111 shows that EssilorLuxottica and GrandVision have significant combined market shares in a large number of NUTS3 areas in the UK.

Figure 111: Market share estimates (Parties combined and increment) of optical retail in NUTS3 areas based on population – UK, 2018[845]



(1197) In particular, NUTS3 areas with larger increments are located in the London and the South-East of the country. By way of example, West Sussex (South) shows a large increment for population-based market shares ([20-30]%), with a combined share of [60-70]%. When computing the same market shares using GDP-based figures, the increment remains large (20-30%), with a combined share of [50-60]%. In each case, these market shares are higher than the Parties' combined market share at national level in the UK ([10-20]%) and indicate concentration at the local level (albeit being imperfect proxies for the relevant local geographic markets). It should, however, be

845 Local areas presented in the following graph correspond to NUTS3 geographical areas. These administrative units do not correspond to catchment areas (computed on the basis of customers' addresses, see paragraphs below) but to fixed geographical delineations used by Eurostat. Nevertheless, the Commission considers these graphical representations illustrate local overlaps of the Parties. Commission's computation on data submitted by Notifying Party in response to RFI 2, question 15, annex 15.1.

borne in mind that these indications might be somewhat overstated as they also include EssilorLuxottica's sunglass specialist stores (Sunglass Hut).

(1198) In the second place, the Notifying Party submitted a fascia count analysis based on local the catchment area around each Party's stores. These local catchment areas were calculated by identifying the area that generates 80% of the sales of the relevant store (by customer address).[846]

(1199) This data confirms that there are a very high number of such local areas in which the Parties overlap in the UK. In [90-100]% of the catchment areas around an EssilorLuxottica store, GrandVision has […] present. This finding repeats in the entire UK territory where EssilorLuxottica is present.[847]

9.5.2.3. The Parties' presence in optical retail at national level

(1200) The Merged Entity's market shares in the market for the retail of optical products in the UK will amount to [10-20]% post-Transaction, with an increment of [0-5]%. The Notifying Party's estimates of the Parties' and their competitors market shares in the market for optical retail (excluding sunglass specialists) are set out above.

(1201) The Commission considers that to the effect of the competitive analysis of the Transaction, the national market shares only provide a first indication of the Parties' combined market power. There are a number of reasons to consider that the Parties' market shares at national level understate their actual importance at local level (i.e. within a catchment area of typically not more than 10 kilometres of a given store), and that this translates into a higher market power uniformly enjoyed by the Parties in the entire UK market.

(1202) In differentiated markets, such as the optical retail market, the national market shares are less reliable as indicators of whether the merging entities are important competitive constraints in the relevant market.[848] As explained in section 6 above, the optical retail market in the UK is a highly differentiated market for various reasons. In particular, there are varying degrees of differentiation between different types of optical retailer (retail chains, independents, sunglass specialists), branded and unbranded products as well as price points.

(1203) This is particularly significant in the UK, in light of the fact that the largest retail chain in the UK, Specsavers, primarily focuses on private label products and does not sell any EssilorLuxottica frames or sunglasses. The Parties' banners on the other hand have a very attractive portfolio of branded products and, in particular EssilorLuxottica brands of frames and sunglasses which are highly attractive to consumers, as explained below. Post-merger, the Parties will remain the third largest optical retailer in the UK with a wide national footprint, which is differentiated from the largest player.

(1204) The retail market share estimates should also be read in conjunction with the fact that most of the other retail competitors source their eyewear from EssilorLuxottica. In this differentiated market where brand plays a key part in determining consumer preferences, EssilorLuxottica's market shares in the upstream wholesale markets for

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846 Response to RFI 20 received on 30 April 2020. Further described in section 8.1.1.

847 Commission's computation on the Notifying Party's response to RFI 20.

848 HMG paragraph 27 and 28.

frames, sunglasses and lenses are substantial – [20-30]%, [50-60]% and [50-60]% respectively - and this, in a sense, would strengthen the combined market share of the Parties at the retail level.

(1205) In addition, EssilorLuxottica is already vertically integrated in the UK. It has a strong upstream presence as a supplier of eyewear and lenses as well as being a major optical retailer in the UK. Acquiring GrandVision will transform EssilorLuxottica into the second largest retailer in the UK and is likely to change EssilorLuxottica's incentives as a wholesaler as well as a retailer, as outlined below.

(1206) Notwithstanding the above, the Commission finds that the overlap from the Transaction is negligible for the following reasons. While GrandVision has a broad national presence, EssilorLuxottica's David Clulow banner (its only true optical retail banner, given that its other chains are sunglass specialists) is much smaller. David Clulow's revenues are only EUR […] out of a total market of EUR 3 439 million, giving it a market share of approximately [0-5]%. It operates [0-50] optical retail stores in the country.[849] There are several competitors that are similar in size or larger, such as Specsavers ([40-50]%, [more than 800] stores), Boots Opticians ([10-20]%, [more than 600] stores), Asda Opticians ([0-5]%, [more than 100] stores), Optical Express ([0-5]%, [more than 50] stores), Scrivens ([0-5]%, [more than 150] stores[850]) and Leighton Opticians ([0-5]%, around [0-50] stores[851]). Unlike many of these players with a true national presence across all of the UK (Specsavers, Boots Opticians, Asda and Optical Express), David Clulow's presence is much more limited – its [0-50] stores are predominantly in London and southern England; it only has one store north of Cambridge.[852] This is illustrated by the fact that David Clulow stores are only present in only around [20-30]% of catchment areas around GrandVision's stores, compared with Specsavers and Boots which are present in [80-90]% of catchment areas around GrandVision's stores.[853] Accordingly, the Commission considers that the increment from the Transaction is very limited.

9.5.2.4. Conclusion on the competitive landscape in the UK to the effect of assessing the Transaction

(1207) As explained in section 6.1.4 above, the Commission considers that the relevant geographic market for the retail of optical products is local, i.e. the catchment area of typically not more than 10 kilometres around a given store. However, as detailed in section 8.1.1 above, both of the Parties operate optical retail chains that are active at national level and for chains and certain parameters of competition are influenced by national factors. For chains, competition on parameters at national level also impacts the competitive conditions within the local catchment areas in which they are present within a country. In particular, the pricing strategy of optical retail chains currently does not typically vary within the UK (i.e. at the level of the local catchment areas within which they are active). Accordingly, their pricing decisions are made at the national level and so the impact of the Transaction can on average be expected to be

849 It also operates [more than 60] David Clulow Sunglass stores, which are sunglass specialists and so should be excluded, in line with the product market definition conclusions detailed above.

850 https://scrivens.com/about-us/our-history/

851 https://www.leightons.co.uk/branch-finder

852 Form CO, Section 7-8, Chapter 4, paragraph 6 and https://www.davidclulow.com/store-finder/

853 Economic Response to the Statement of Objections – Horizontal Overlap, Section 3.3.2 and associated Output files.

felt across the UK. Therefore, the Commission assesses the impact of the Transaction at national level, taking account of local variations where appropriate in the competitive assessment (for instance in relation to closeness of competition, as outlined below).

9.5.3. Horizontal non-coordinated effects

9.5.3.1. Overview of the Notifying Party's arguments

(1208) The Notifying Party submits that the Transaction does not give rise to any horizontal non-coordinated effects in relation to the retail of optical products in the UK for the following reasons:

(a) the Notifying Party outlines that the Parties' combined market shares are modest in the UK at national level and that the Transaction does not give rise to a concentration of market power at local level. The Notifying Party also submits that EssilorLuxottica's sunglass specialist banners should not be taken into account in the analysis in view of the Commission's conclusion that sunglass specialists should be considered to be a separate product market from the brick-and-mortar retail of optical products in optical stores.[854]

(b) the Notifying Party argues that EssilorLuxottica and GrandVision are not close competitors but complementary to each other in light of differences in relation to their positioning and product/brand offering.[855] In particular, EssilorLuxottica submits that […] and that, therefore, its position in the market is close to that of independent opticians rather than that of a chain.

(c) Finally, the Notifying Party argues that barriers to entry in the optical retail market are low.

(1209) In light of the above, the Notifying Party submits that the Transaction does not give rise to any horizontal non-coordinated effects in relation to the retail of optical products in the UK.[856]

9.5.3.2. Overview of the Commission's assessment

(1210) Based on the results of the market investigation and the evidence available, the Commission considers that the Transaction will not give rise to a significant impediment to effective competition in relation to the optical retail market in the UK due to horizontal non-coordinated effects. This is because the Transaction would not eliminate an important competitive constraint in the market, for the reasons described below.

(1211) In particular, the Commission finds that the Transaction would not give rise to the elimination of an important competitive constraint and reduce competitive pressure on rivals for the following reasons:

(a) The Parties' market shares at national level are modest in the optical retail market (excluding sunglass specialists) in the UK and there will remain two players larger than the Merged Entity post-Transaction. See *Section 9.4.4* above.

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854 Notifying Party's Reply to the SO, paragraphs 75-77, paragraph 274.

855 Form CO, Sections 1-6 and Introduction to Section 7, paragraph 12.

856 Form CO, Section 8, Paragraph 50.

(b) EssilorLuxottica and GrandVision may be close competitors in that Vision Express represents the strongest competitive constraint on David Clulow in the market, however, David Clulow's presence is very small ([0-5]%) and is focused only on one particular segment of the market (high end branded products). See *section 'closeness of competition'* below.

(c) GrandVision may be to some extent an important competitive force in the UK and so is a significant source of competitive pressure on the market overall. See *section 'important competitive force'* below.

(1212) In light of the very limited increment from the Transaction, in particular, the Commission's conclusion is not impacted by the indications in the market investigation that there are significant barriers to entry and expansion in the UK. See *section 'barriers to entry'* below.

(1213) The Commission's quantification of the incentive on each of EssilorLuxottica, GrandVision and their rivals is set out in *section 'incentive'* below.

9.5.3.3. Closeness of competition

Notifying Party's arguments

(1214) The Notifying Party submits that EssilorLuxottica and GrandVision are not particularly close competitors in the optical retail market in the UK, in particular for the following reasons.

(1215) First, the Notifying Party submits that GrandVision's competitive strength comes from its positioning as a mass market retailer, whereas EssilorLuxottica's banners are focused in the premium segment.[857] It submits that the Parties' positioning, product mix and pricing is different, given that Vision Express is focused on the private label segment whereas David Clulow does not sell private label products.[858]

(1216) Second, the Notifying Party does not consider that the fact the Parties both operate optical retail chains is relevant for the finding of closeness of competition.[859]

(1217) Third, the Notifying Party submits that the Parties are not close competitors at local level, arguing that such an analysis would need to be done individually for each local area within which the Parties are active. It submits that, in the vast majority of cases in the UK, the Parties are not each other's closest optical retail rival geographically.[860]

(1218) Fourth, the Notifying Party submits that the fact that GrandVision monitors EssilorLuxottica's retail operations in Italy is not an indication that they are particularly close competitors.[861]

The Commission's assessment: Introduction

(1219) Based on the results of the market investigation and on the evidence available to it, the Commission finds that GrandVision's retail banner may be a close competitor to EssilorLuxottica's David Clulow banner in the UK.

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857 Response to the SO, paragraph 266-272

858 Response to the SO, paragraphs 266.

859 Response to the SO, paragraphs 248-254.

860 Response to the SO, paragraphs 255-261.

861 Response to the SO, paragraphs 276-282.

(1220) Overall, the Parties operate the third and fifth largest retail chains active in the UK. More specifically, GrandVision's Vision Express banner competes closely with EssilorLuxottica's David Clulow banner.

(1221) As will be explained below, there are several parameters of competition that are relevant for the assessment of closeness of competition between the Parties. This includes the fact that the Parties operate retail chains, their geographic focus, positioning, and how they consider each other in the ordinary course of business.

(1222) The Commission focuses its assessment of the closeness of competition between the Parties at national level, while taking account of local-level differences where appropriate. This is because the Parties are both optical retail chains active in a large number of catchment areas across the country (especially GrandVision), [...], and the Parties themselves assess competition and benchmark at national level, as described below. Local-level aspects are taken into account in particular in the assessment of the extent to which the Parties are close competitors geographically.

The Commission's assessment: Retail chains compete more closely with each other than with independent opticians

(1223) The UK optical market is, predominantly made up of optical retail chains, which represent almost 80% of the market. GrandVision and EssilorLuxottica operate the third and fifth largest retail chains in the UK, respectively. The Commission's finding is that major chains, such as the Parties, compete more closely against each other than against independent opticians.

(1224) As a general observation, the Commission notes that there are some overarching similarities between optical retail chains that differentiate them from independent retailers. These are described in detail in section 6 above. In particular, independent opticians are typically seen as offering a high level of service, whereas chains generally compete fiercely on price and other commercial offers to customers. Indeed, an optical retail chain explains in relation to the UK that '*Independent opticians offer, on average, a more limited choice of products to consumers. Consumers also tend to go to independent opticians if they seek high-end, branded optical products.*'[862]

(1225) The results of the market investigation indicate that major retail chains are closer competitors to each other in the UK than they are to independent opticians. In particular, as explained below, this is because chains determine their commercial strategy at national level, benchmark against each other and are more likely to lose customers to each other than to an independent. As the Parties are two major retail chains, this is one factor to consider that they are close competitors. This conclusion is supported by a number of findings.

(1226) First, optical retail chains determine their commercial strategy, including pricing, marketing and procurement, at national level. On the other hand, independents' activities are limited to a local area.

(1227) In that regard, the investigation confirmed that retail chains determine their pricing strategy at national level and that generally a chain's commercial policy is the same

862 Non-Confidential Minutes of a call with an optical retail chain dated 26.1.2020 [id 1178]

throughout a country.[863] For instance, the Notifying Party explains: '*[...]*'.[864] Similarly, it appears that EssilorLuxottica does not […].[865] This has implications on which competitors a chain benchmarks itself against, as explained further below.

(1228) This difference in strategy is also reflected in the geographic scope of marketing campaigns. Whereas independents typically only run campaigns at local level, the investigation indicated that chains run national marketing campaigns, as well as local ones.[866] As a result, the national marketing budget for retail chains can be very material. For instance, in 2018, Vision Express spent approximately £[…], whereas Boots spent £[…] and Specsavers spent £[…]. Together, these three retailers accounted for approximately […]% of optical goods advertising spend in the UK (which is more than would be explained by their combined [70-80]% market share).[867]

(1229) Second, retail chains generally have a centralised procurement strategy that means they can procure eyewear at better prices than independents due to the large volume of orders. Wholesalers of frames, sunglasses and lenses confirmed that they charge different prices to retail chains and independents (once discounts and rebates, particularly volume rebates, are taken into account).[868] Accordingly, wholesalers confirmed that retail chains generally receive better wholesale prices than independents or buying groups and suppliers have indicated that working with retail chains is attractive because they '*have the advantage that a new product can efficiently be introduced in several hundred stores*'.[869] This similarity in their costs base contributes to retail chains' ability to offer more attractive prices/promotions and to compete intensely against each other.

(1230) Third, retail chains monitor the strategy of other retail chains and benchmark against them in their ordinary course of business.

(1231) In particular, the investigation confirmed that retail chains in the UK take the prices and promotions of other chains into account when deciding their own pricing strategy for the same or similar products.[870]

(1232) This is reflected in the Parties' internal documents, which show that retail chains in the UK closely monitor the strategy of other chains and benchmark against them.

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863 Questionnaire 12 to optical retail chains, question 22. Non-confidential Minutes of a call with a retailer on 21 April 2020, paragraphs 19-20. [Doc ID 2969]

864 Notifying Party's response to RFI 11 question 9. This is supported in its internal documents - see for example […].

865 See EssilorLuxottica internal document annexed to the Form CO as Annex 5.4.1, *Pricing policy v1.5*, paragraph 5.2 which states: '*Local price overwriting at sale order level are forbidden and not authorized*'.

866 Questionnaire 11 to independent opticians, question 35 and Questionnaire 12 to optical retail chains, question 36.

867 Internal document submitted in response to RFI 10, *Mintel market report*. [Doc ID RFI 10 reply (full) - RFI#10_Part31 of 74_PROD010-VOL0009 - RFI and not LPP - G02-CAS - P010-00162786_Optical Goods Retailing - UK - February 2019 (4)]

868 Questionnaire 3 to suppliers of lenses and eyewear, question 4.

869 Questionnaire 3 to suppliers of lenses and eyewear, question 25 and Non-Confidential Minutes of a call with a brand licensor 17 March 2020 ID 2465

870 Response to a request for information to retail chains in the UK dated 14 May 2020, questions 1 and 4. [Doc ID 3015] See also Non-confidential Minutes of a call with a retailer on 21 April 2020, paragraph 31. [Doc ID 2969]

Illustratively, the Figures below shows how GrandVision assesses its brand by focusing on how it is perceived compared to other retail chains such as […].

Figure 112 – GrandVision focus on brand positioning compared with retail chains[871]

[…]

Figure 113 – GrandVision focus on brand recognition compared with retail chains[872]

[…]

(1233) Moreover, the Figure below illustrates that GrandVision takes the outcomes of its monitoring of other retail chains into account when deciding its own commercial strategy in the UK (i.e. '*to compete against […]…*').

Figure 114 – GrandVision strategy taking account of other retail chains[873]

[…]

(1234) Similarly, GrandVision monitors other optical retail chains' prices and promotions in the UK and benchmarks its own prices and promotions against them. This is illustrated in the Figure below.

Figure 115 – GrandVision comparing own promotions against other retail chains[874]

[…]

(1235) The fact that optical retail chains focus more on competition from other chains than on independents is also reflected in feedback received as part of the market investigation. Many chains considered that they do compete in the same way with other chains and independent opticians, but around a third of retail chain respondents considered that they compete mainly with other chains. In contrast, no respondents said that they compete to a greater extent with independents.[875]

(1236) Fourth, chains are more likely to win customers from or lose customers to another chain than from/to an independent.

(1237) The investigation confirmed that retail chains generally consider that the majority of their customers would be more likely to switch to another retail chain than to an independent (though a considerable number did note that customers could be equally happy with either). Conversely, independent opticians consider their customers would be more likely to go to another independent.[876]

(1238) This is supported by analysis submitted by the Notifying Party, prepared based on data collected in the ordinary course of business. The Figure below shows […].

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[871] GrandVision internal document annexed to the Form CO as Annex 5.4.1, *UK GVC presentation August 2017 VE*, slide 60.

[872] […].

[873] GrandVision internal document annexed to the Form CO as Annex 5.4.1, *UK GVC presentation January 2017 VE*, slide 35.

[874] […].

[875] Questionnaire 2 to optical retail chains, question 30 – '*the Company constantly monitors other chains, and understand that these other chains do so as well*'.

[876] Questionnaire 12 to optical retail chains, question 27. C.f. Questionnaire 11 to independents, question 11.

Figure 116 – IPSOS Churn analysis – wins and losses by retail chains in Italy and the UK[877]

[…]

(1239) At the Commission's request, the Notifying Party conducted a churn rate analysis of wins and losses from GrandVision and EssilorLuxottica's stores in the UK. This analysis led to the same conclusion – retail chains win and lose customers more often from/to other retail chains than from/to independents.[878]

(1240) An optical retail chain explains that this phenomenon is likely due to customers' perceptions of the business models of independent opticians compared with retail chains. It notes that:

'Once a customer has switched to retail chains, it is because they have been convinced to adopt this model and try to obtain similar products at lower prices. That is why customers who buy from retail chains will typically go to another retail chain when they switch. There is very little switching or going back from chains to independent opticians. The business model of retail chains is much more similar to that of other retail chains than to the business proposition of independent opticians, who typically sell at higher prices.'[879]

(1241) Accordingly the Commission considers that optical retail chains in the UK generally compete more closely with other chains than they do with independent opticians.

The Parties are not particularly close competitors at the level of local catchment areas

(1242) At local level (i.e. within the local catchment area of typically not more than 10 kilometres around their stores), EssilorLuxottica and GrandVision's banners are typically present in similar areas. However, as explained below, they only overlap to a fairly limited extent and cannot be considered particularly close competitors on a geographic basis.[880]

(1243) First, the Parties' stores are typically present in similar commercial areas, in particular high traffic areas such as shopping centres and high streets. For example, there are [20-30] shopping centres across the UK in which both of the Parties stores are present.[881] It must nevertheless be acknowledged that the same is true for the largest optical retail chains that compete with the Parties, which are also often present in high traffic areas.[882]

(1244) Second, based on the data submitted by the Notifying Party, the Parties' stores overlap only to a moderate extent in their local catchment areas, i.e. the area that generates 80% of the sales of each individual store.[883] All David Clulow optical

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877 RBB paper, Economic Response to the 6(1)c Decision – Horizontal Effects in Optical Retail

878 Response to RFI 11, Figures 27.1 and 27.2.

879 Non-confidential Minutes of a call with a retailer on 21 April 2020, paragraph 37. [Doc ID 2969]

880 See footnote 32 of the Horizontal Merger Guidelines: '*Products may be differentiated in various ways. There may, for example, be differentiation in terms of geographic location, based on branch or stores location; location matters for retail distribution, banks, travel agencies, or petrol stations.*'

881 Notifying Party's reply to RFI 11 Question 8.

882 Notifying Party's reply to RFI 20.

883 As explained in section 8.1.1, the Commission considers that the relevant geographic market for (downstream) optical retail market is local, i.e. a catchment area of typically not more than 10

stores have at least one Vision Express store in their catchment area. However, Specsavers and Boots are also active in all cases, and in the catchment areas around David Clulow other rivals are often present: Optical Express ([90-100]%), Asda ([80-90]%), Scrivens ([70-80]%).[884] Conversely, David Clulow is not often present in the catchment areas of Vision Express – it only appears in [20-30]% of catchment areas. This contrasts with Specsavers and Boots which appear much more often ([80-90]%).[885] The lower frequency of David Clulow stores in these areas is explained by the fact that there are comparatively few David Clulow optical stores in the UK ([40-50]) and they are mostly in London and the south of the UK.

(1245) Third, the average distance between the Parties' stores and those of their competitors does not indicate a particular degree of closeness across the country. On the one hand, EssilorLuxottica's stores are, on average, slightly geographically closer to GrandVision's stores than to the average chain. In the catchment areas of GrandVision's stores in the UK the distance to EssilorLuxottica stores is on average approximately [0-5] kilometres. In contrast, the distance between GrandVision's stores and the average chain (i.e. Specsavers, Boots, Asda and Optical Express and other small chains but excluding EssilorLuxottica) in these areas is approximately [0-5] kilometres and the distance to the average independent is [5-10] kilometres. On the other hand, GrandVision stores are typically slightly further from EssilorLuxottica's stores ([5-10] kilometres on average) than the average chain ([5-10] kilometres).[886] This shows that within the local catchment areas in which they are present, the Parties are on average not located substantially closer to each other than to optical retail chains or the average independent.

(1246) In sum, when assessing geographical closeness from a local perspective (i.e. within local catchment areas of typically not more than 10 kilometres), the evidence suggests the Parties are not substantially closer competitors to each other than with third parties.

(1247) Likewise, when assessing geographical closeness from a national perspective, the Parties do overlap in a number of areas, but do not appear to be particularly close competitors.

The Commission's assessment: Positioning, product mix and pricing

(1248) EssilorLuxottica and GrandVision operate two optical retail banners in the UK (as well as one sunglass specialist, Sunglass Hut). As explained below, GrandVision's Vision Express banner seeks to appeal to all consumer segments, whereas EssilorLuxottica's David Clulow has a narrower focus on premium branded

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kilometres around a given store. However, the size of this local catchment area may vary store-by-store based on various factors outlined above. Therefore, for the purposes of this Section and for the reasons outlined in section 8.1.1, the Commission's assessment of local catchment areas is based on the data submitted by the Notifying Party in which it has calculated store-by-store the catchment area that generates 80% of the sales of a given store (in response to RFI 20).

884 Economic Response to the Statement of Objections – Horizontal Overlap – Section 3.3.2 and associated Output files.

885 Economic Response to the Statement of Objections – Horizontal Overlap – Section 3.3.2 and associated Output files.

886 Commission's computation on the Notifying Party's response to RFI 20, using the General Optician dataset and Parties' stores locations as data source. For the avoidance of doubt, these estimates include both optical retail stores and sunglass specialist stores.

eyewear. In this narrower segment, the Parties' banners compete closely with each other.

(1249) The positioning of each of the Parties' banners in the UK is summarised in the Table below.[887] The extent to which these banners are close competitors due to their positioning, product range and pricing is assessed below.

Table 21 – Positioning of the Parties' retail banners – United Kingdom

Positioning	EssilorLuxottica banner(s)	GrandVision banner(s)
Mass-market (mid-low)	-	Vision Express
Premium / high-end	David Clulow	- *[but Vision Express also active in this segment]*

Vision Express overall

(1250) The market investigation confirmed that Vision Express is a mass-market banner that seeks to appeal to all consumer segments by having a broad portfolio of products.

(1251) The majority of independent opticians and optical retail chains categorised Vision Express as having a mid-range positioning.[888] One independent explained that GrandVision has '*a wide assortment [of] both branded and generic products*'.[889] When asked to score optical retailers based on a number of factors, independent opticians and chains considered that, after EssilorLuxottica's banners, Vision Express has the most attractive product portfolio of all the optical retail chains active nationwide (i.e. more so than Specsavers, Boots, Asda and Optical Express).[890]

David Clulow and premium segment

(1252) EssilorLuxottica's David Clulow is a more premium banner focused on the higher end of the market. Accordingly, it has a different product mix from Vision Express and higher average price points. Vision Express also sells premium products and the investigation indicates that of the major optical chains in the UK Vision Express is the competitor that competes most closely with David Clulow in this premium segment. Nevertheless, this is only a narrow segment of the market in the UK, which has a strong focus on private label sales and where the majority of the market is comprised of mass market retailers (Specsavers, Boots, Asda, Vision Express).

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887 For completeness, EssilorLuxottica also has three Ray-Ban stores, three Oliver Peoples store, one Oakley and one Kodak store in the UK. These stores are sunglass specialists with a focus on selling sunglasses of the particular brand they represent. In view of this, and the small number of these stores, these banners are not assessed separately for the purposes of this Statement of Objections.

888 Questionnaire 11 to independent opticians, question 31 and Questionnaire 12 to optical retail chains, question 34.

889 Questionnaire 11 to independent opticians, question 25.

890 Questionnaire 11 to independent opticians, question 30 and Questionnaire 12 to optical retail chains, question 33.

(1253) First, the market investigation confirmed that David Clulow is positioned as a premium retailer of optical products in the UK. Independent opticians and retail chains considered that David Clulow is a high-end retailer, with the most attractive portfolio of all of the optical retail chains active nationwide; they also considered that its prices are the least competitive of these optical retail chains.[891]

(1254) This is supported by EssilorLuxottica's internal documents. Its annual report describes David Clulow as '*a premium optical retailer in the UK and Ireland. The brand emphasizes service, quality and fashion*' and the banner is also considered this way in its ordinary course of business, as illustrated by the Figure below.

Figure 117: EssilorLuxottica's view on […][892]

[…]

(1255) Second, the market investigation shows that David Clulow and Vision Express have differences in their product mix in their stores, but also that Vision Express has a strong branded offering and that its portfolio does also extend to premium products.

(1256) As outlined above, Vision Express sells a wide range of branded and private label products. This is clear from its product mix, which shows that […]% of its sales of frames are of branded products and […]% of its sales of sunglasses are branded. While Vision Express does sell a significant proportion of private label products, it nonetheless carries a very broad range of eyewear brands to appeal to consumers of all tastes, as shown in the two Figures below regarding frames and sunglasses, respectively.

Figure 118 – Product mix of Vision Express in the UK - Frames[893]

[…]

Figure 119 – Product mix of Vision Express in the UK - Sunglasses[894]

[…]

(1257) On the other hand, David Clulow […]. When comparing the brand portfolios sold by David Clulow and Vision Express (i.e. excluding sales of private label), the Figure below clearly shows that Vision Express sells a number of the same frames brands that are also important brands for David Clulow, including […] and others.

Figure 120 – Comparison of brands sold by David Clulow and Vision Express - Frames[895]

[…]

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[891] Questionnaire 11 to independent opticians, questions 30 and 31 and Questionnaire 12 to optical retail chains, questions 33 and 34.

[892] EssilorLuxottica internal document provided in response to RFI 10, *David Clulow Opticians Marketing Plan 2019*, slide 6. Document ID 1486-2020.

[893] Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

[894] Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

[895] Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

(1258) The same is true in relation to sunglasses, as shown in the Figure below. Though David Clulow is positioned as a more premium banner, Vision Express also sells a number of the key brands sold by David Clulow, including […].

Figure 121 – Comparison of brands sold by David Clulow and Vision Express - Sunglasses[896]

[…]

(1259) This shows that while Vision Express targets a wider audience, it does also carry the same products as David Clulow. This is particularly significant given that most other national retail chains primarily focus on private label eyewear and have weaker product portfolios than the Parties.

(1260) In this regard, the Notifying Party estimates that for Specsavers, Boots and Asda only 25-50% of their sales are of branded eyewear.[897] Indeed, Specsavers has confirmed that it does not procure any branded frames from EssilorLuxottica's portfolio, which includes a number of the best-selling brands for Vision Express and David Clulow mentioned above.[898] Accordingly, the market investigation confirmed that David Clulow has the most attractive product portfolio of all national optical retail chains in the UK and that it is closely followed by Vision Express in second place.[899]

(1261) Therefore, it is apparent from Vision Express' positioning and product mix that it seeks to appeal to all consumers, including consumers wishing to purchase high-end eyewear, and that it does so more than the other national retail chains.

(1262) Third, David Clulow and Vision Express' average overall prices are different, reflecting the fact that David Clulow focuses on premium eyewear whereas Vision Express sells value-focused products as well as high end ones. However, the market investigation was mixed and also provided indications that Vision Express and David Clulow may be close competitors in terms of price positioning (at least, as regards more premium products).

(1263) Figure 122 illustrates the Notifying Party's estimates of the average prices of the Parties' banners and of typical rivals in the UK. It shows that […].

Figure 122 – Average price of Parties' banners in the UK (all products)[900]

[…]

(1264) David Clulow's average prices are […] than Vision Express' prices when private label sales are excluded and only sales of branded products are compared, as shown in the Figure below.

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896 Commission computation based on figures provided by the Notifying Party in response to RFI 30 Part A Question 3.

897 Notifying Party's response to RFI 11 question 28.

898 Non-Confidential Minutes of a call with an optical retailer on 27 January 2020, paragraph 8. [2795]

899 Questionnaire 11 to independent opticians, question 30 and Questionnaire 12 to optical retail chains, question 33.

900 Notifying Party's response to RFI 11, Question 29, Figure 29.2

Figure 123 – Average price of branded products in the Parties' banners in the UK (excluding private and white label products) [901]

[…]

(1265) However, in contradiction with these estimates, GrandVision's internal documents suggest that Vision Express is a closer competitor to David Clulow as regards pricing than any other significant player in the UK. In particular, the first Figure below shows that […].

Figure 124 – GrandVision analysis – prices consumers expected to pay and actually paid in UK optical chains[902]

[…]

Figure 125 – GrandVision analysis – consumer perception of Vision Express […][903]

[…]

(1266) In line with the fact that Vision Express targets the premium segment more than the other national optical retail chains, there are similarities between the typical customer of Vision Express and David Clulow. A market intelligence report explains that '*Vision Express captures an affluent group of shoppers and it has a strong appeal to male customers aged 25-44*.' On the other hand, it notes that '*David Clulow captures a higher share of men, affluent consumers and the 25-34s*.' This is reflected by the fact that for both of these banners their typical consumer is within the high-earner category (£50,000 or over). This contrasts with, for example, Specsavers which appears to focus more clearly on the mass-market. Its consumers most often earned £15,500 - £24,999 and Specsavers '*is regard highly amongst a broad demographic…young shoppers like the Specsavers online proposition and see the retailer as stylish and trustworthy, older shoppers regard the brand as reliable and offering good value for money*.'[904]

(1267) Finally, the market investigation confirmed that Vision Express and David Clulow are perceived as close competitors. The majority of independent opticians that expressed a view considered that David Clulow and Vision Express are very close competitors to each other, whereas only 18% thought that they are distant competitors or do not compete.[905] Likewise, when asked to consider whether the Parties are close competitors on various metrics, independents and chains indicated that in the UK EssilorLuxottica's banners and GrandVision's banners are close competitors as regards the breadth and attractiveness of their portfolio and their pricing.[906]

901 Notifying Party's response to RFI 11, Question 29, Figure 29.4

902 Form CO, Annex RFI 2 Q14.1, *Vision Express Brand Tracker W25 – FINAL PRESENTED – Aug 2017*, slide 32.

903 Form CO, Annex RFI 2 Q14.1, *Vision Express Brand Tracker W26 - FINAL - Nov 2017*, slide 54.

904 Internal document submitted in response to RFI 10, *Mintel market report, p 49-51*. [Doc ID RFI 10 reply (full) - RFI#10_Part31 of 74_PROD010-VOL0009 - RFI and not LPP - G02-CAS - P010-00162786_Optical Goods Retailing - UK - February 2019 (4)]

905 Simplified Questionnaire, question 14 (continued).

906 Questionnaire 11 to independent retailers, question 34 and Questionnaire 12 to optical retail chains, question 32.

(1268) These elements must, however, be balanced against the fact that Vision Express' core focus is on mass market products. Its product range is much broader, as is its target market, than that of David Clulow. In this respect, Vision Express' closest competitors are more likely to be retail chains such as Asda, Boots, Optical Express (or possibly even Specsavers, as regards the private label segment). This is also illustrated by the fact that David Clulow was not identified as a close competitor to Vision Express during the Competition and Markets Authority's recent review of the *Vision Express/Tesco* transaction.[907]

(1269) In conclusion, while Vision Express seeks to appeal to a wide range of consumer tastes […], as is reflected by its pricing and average consumer compared with other optical retail chains. As a result, there are indications that David Clulow and Vision Express may compete closely for the retail of premium eyewear in the UK. However, it must be borne in mind that Vision Express has a much broader positioning, and that the market has a much broader focus, and thus when assessing their overall positioning David Clulow is not a particularly close competitor to Vision Express.

<u>The Commission's assessment: Competitive interaction between the Parties' banners</u>

(1270) The Parties' competitive interactions show that GrandVision's Vision Express is a close competitor to EssilorLuxottica's David Clulow in the premium segment (as described above), though given its broader positioning as a mass-market banner Vision Express […]. David Clulow does not appear to be a close competitor to Vision Express. Accordingly, the Commission finds that David Clulow is only a limited competitive constraint on the (much larger) Vision Express banner, though there is evidence to show that Vision Express may constrain David Clulow.

(1271) Firstly, […].

(1272) However, Vision Express does occasionally monitor […] in its ordinary course of business. For example, Vision Express commissioned a market research company to conduct a 'competitor review' of pricing and promotion marketing of certain major retailers in the UK. […].

Figure 126– Vision Express market research including […][908]

[…]

(1273) Similarly, the Figure below is an extract of Vision Express' marketing plan. In this document, Vision Express includes a 'competitor review' section, in which it assess actions by […] in particular, and then goes on to consider […]'s promotions as part of the wider competitive landscape.

Figure 127 – Vision Express monitoring […]'s promotions[909]

[…]

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907 Reply to the Statement of Objections, paragraph 261. Case ME/6696/17, Anticipated acquisition by Vision Express (United Kingdom) Limited of Tesco Opticians, CMA decision of 20 October 2017

908 Notifying Party's response to RFI 10, *Competitor Review - Frames, Sunglasses and Lenses – Pricing & Promotion Monitoring – October 2017*, slide 2. Document ID: 1405-23 fileList_20200304 - Price & Promotion Monitoring Oct 2017 – Final

909 Form CO Annex 2 RFI 2 Q 14.1, *October Exec Marketing & Category Management Update (2017 marketing plan)*, slide 25. Document ID: 172-662.

(1274) […].

(1275) Secondly, the Parties' internal documents show that David Clulow considers Vision Express […]. This is illustrated by the following Figure. This Figure shows that […], which wins the most customers away from it. In particular, of those consumers who have in the past bought eyewear from David Clulow, […]% of them most recently switched to […] for their purchase.

Figure 128 – David Clulow loses most to […][910]

[…]

(1276) Therefore, it appears from the Parties' internal documents that while […].

<u>The Commission's assessment: Conclusion on closeness of competition between the Parties</u>

(1277) In light of the above, the Commission finds that there are some reasons to consider that, from EssilorLuxottica's perspective, Vision Express is a close competitor to its David Clulow banner in the UK. This is because the Parties operate the major optical retail chains active throughout the country and, in the premium eyewear segment that David Clulow targets, Vision Express appears to also be an important player.

(1278) On the other hand, the Commission finds that from GrandVision's perspective David Clulow is not a particularly close competitor to Vision Express overall, given that Vision Express has a much wider mass-market positioning and seeks to appeal to all consumer preferences whereas David Clulow only competes on a narrow segment of premium eyewear. Moreover, on the whole, the Parties do not appear to be particularly close competitors from a geographical perspective.

(1279) Overall, it must be recalled that Vision Express is a significantly larger player than David Clulow. While David Clulow sees some level of competitive threat from Vision Express, the opposite is not true. Rather, Vision Express is most constrained by the major chains operating nationally in the country (Specsavers, Boots Opticians, Asda, Optical Express). There is little to indicate that David Clulow is an important competitive force or a strong constraint on these larger players. Given the low combined market share of the Parties, this is a key finding to show that the Transaction is unlikely to give rise to a significant impediment to effective competition from horizontal non coordinated effects.

9.5.3.4. GrandVision is unlikely to be an important competitive force in the UK optical retail market

<u>The Notifying Party's view</u>

(1280) The Notifying Party argues that the SO overstates GrandVision's importance in the UK.

(1281) Firstly, as a general remark, the Notifying Party argues that the reason why GrandVision is the largest retailer of optical products in the EEA is because it

[910] Notifying Party's response to RFI 10, *David Clulow Brand Tracker Results – Wave 3 – January 2019,* slide 31. Document ID: 1508-1024 RFI 10 reply (full) - RFI#10_Part31 of 74_PROD010-VOL0009 - RFI and not LPP - G02-CAS - P010-00162967_David Clulow Brand Tracker Wave 3 1801.

operates in almost all EEA countries. This does not mean that GrandVision is equally strong in each country, at the national and the local level.[911]

(1282) The Notifying Party argues that, if GrandVision were a particularly important competitive force in the UK, GrandVision would have won more customers from rivals, and, therefore, increase its market share over time. However, GrandVision's market share has increased by just [0-5] percentage points in the UK in the three-year period from 2016 to 2018.[912] The Notifying party attributes this increment to the acquisition of Tesco Opticians rather than due to organic growth.

(1283) Secondly, the Notifying Party argues that the Transaction may lead to an elimination of double mark-ups, which would effectively further reduce the costs that GrandVision incurs for EssilorLuxottica products, therefore decreasing prices and increasing competition in the market.[913]

(1284) Thirdly, the Notifying Party notes that GrandVision is only the third player in the UK and together with a number of large retail chains take up the largest part of the market whereas independent opticians are marginal.[914]

(1285) Fourthly, the Notifying Party denies that GrandVision has a sourcing advantage due to […]. In the Notifying Party's view, differences in wholesale prices are not relevant, considering the high margins typically generated by optical retailers.[915]

(1286) Fifthly, the Notifying Party submits that there is fierce competition between retail chains and, therefore, GrandVision cannot enjoy a competitive force above its nominal market share.[916] In light of this, the Notifying Party concludes that GrandVision does not represent a competitive constraint in the UK optical retail market more than its market share suggests.

<u>The Commission's assessment: Introduction</u>

(1287) The Commission finds that GrandVision is not an important competitive force in the UK optical retail market. While GrandVision is a significant player in the EEA as a whole, in the UK it is only the third largest optical retailer in a market that has a number of other major optical retail chains that suppliers can turn to (unlike Italy). There is some suggestion that GrandVision […]. However, the UK market is heavily driven by optical retail chains who compete fiercely on price. In the face of two larger competitors, the Commission finds there is limited evidence to show that GrandVision constitutes an important competitive force in the UK. These points are assessed in more detail below.

(1288) The Commission focuses its assessment of GrandVision as an important competitive force at national level. This is because GrandVision is active nationally […].

<u>The Commission's assessment: GrandVision's position in the UK and the EEA</u>

(1289) GrandVision is the third largest player in the UK active in the optical retail market through its Vision Express banner, as well as being the only truly pan-European

911 EssilorLuxottica's response to the SO, Paragraph 287.
912 EssilorLuxottica's response to the SO, Paragraph 288.
913 Reply to 6(1)(c) Decision, Paragraph 90.
914 EssilorLuxottica's response to the SO, Paragraph 302.
915 EssilorLuxottica's response to the SO, Paragraph 306.
916 EssilorLuxottica's response to the SO, Paragraph 309.

retailer. GrandVision operates over [500] stores throughout the territory of the country and represents one of the most prominent nationwide optical chains in the UK.[917] This is complemented by the overall context that GrandVision is the largest retailer of optical products in the EEA and operates over [6500-7000] stores worldwide.[918]

(1290) Most of GrandVision's sales of frames in the UK are […] and it is strongly differentiated from the largest player in the UK, Specsavers, which primarily sells […]. Indeed, Specsavers does not procure […], [919] […].[920] Accordingly, the market investigation confirmed that Vision Express and David Clulow have the most attractive product portfolios of all national optical retail chains in the UK.[921] Vision Express is also seen as being active in attractive locations in the UK.[922]

<u>The Commission's assessment: GrandVision procurement strategy and size mean that it can negotiate advantageous commercial conditions in the market</u>

(1291) Secondly, due to its unique size and footprint, GrandVision represents a key account for major suppliers of lenses and eyewear, […]. This translates into a […].

(1292) Illustratively, in the UK GrandVision sells […] of Luxottica's 50 best-selling frames and […]. As regards sunglasses, GrandVision sells […] of Luxottica's top 50 best-selling sunglasses and […].[923] […].[924] […].

Table 22 – Wholesale price for Luxottica's top 5 frames and sunglasses - UK[925]

[…]

(1293) Additionally, suppliers of eyewear products confirmed that, in the UK, GrandVision is offered wholesale prices which are […] than those enjoyed by other retail chains and independent opticians.[926] One supplier stated that:

'as regards to Italy and UK, we grant to Grand Vision […] than those granted on average to the other Italian and UK customers (see the table below). Specifically, as far as the year 2019 is concerned, we granted to Grand Vision […] than those granted to our UK and Italian customers.'[927]

(1294) The Notifying Party submits that buying groups allow *'opticians to benefit from better conditions and to maintain a significant degree of independence in their buying decisions.'*[928] However, the results of the market investigation point in a

917 Form CO, Annex CO 7.1.16 (UK and Ireland).
918 Form CO, Paragraph 37.
919 Non-Confidential Minutes of a call with an optical retailer on 27 January 2020, paragraph 8. [2795]
920 See section 8.3 on input foreclosure section.
921 Questionnaire 11 to independent opticians, question 30 and Questionnaire 12 to optical retail chains, question 33.
922 Questionnaire to optical retail chains, Phase II, question 33.4. Questionnaire to independent opticians, Phase II, question 30.4.
923 Commission computation based on Notifying Party's response to RFI 11 Question 6.1.
924 […].
925 […].
926 Phase II RFI to wholesale suppliers, question 3.4.
927 Phase II RFI to wholesale suppliers, question 3.6. [ID 3128]
928 Form CO, Annex CO 7.1.10 (Italy).

different direction, as the majority of eyewear suppliers stated that optical chains get better prices and commercial conditions than independents.[929] […].

The Commission's assessment: Limited evidence to show that GrandVision is an important competitive force beyond its market share

(1295) Thirdly, optical retail chains in the UK set their prices at national level and benchmark against each other. [930] However, in this respect, GrandVision appears to be one among a number of major retail chains, and does not appear to significantly stand out from the competition. This is clear from the internal documents referred to above (see Closeness section, relating to positioning), in which GrandVision compares itself against rivals such as […] and strives to compete with them. Conversely, there was limited evidence to suggest that these chains or independents consider Vision Express as being a more significant competitor than its market share would suggest. The only evidence in this direction was that one major UK retail chain confirmed it gives significantly more weight to Vision Express' prices (compared with those of other retail chains) when deciding its own pricing strategy.[931] However, this statement appears to be more a reflection of the fact that GrandVision competes quite closely with the retailer in question (in light of geographic spread and positioning).[932] The market investigation did not provide compelling evidence to show that GrandVision's pricing and competitive actions carry significantly more weight than would be justified by its market share as the third largest optical retail chain.

The Commission's assessment: Conclusion regarding important competitive force

(1296) As a result of these dynamics, on balance, the Commission finds that GrandVision is unlikely to represent an important competitive force in the UK. While GrandVision is the third largest retailer, there is fierce competition between optical retail chains and its impact on competition appears to be broadly proportionate to its market share and position as one of the top three optical retailers.

9.5.3.5. Barriers to entry and expansion

The Notifying Party's views

(1297) The Notifying Party submits that the optical retail market is dynamic, competitive and prone to new entrants.[933] In particular, the Notifying Party alleges that a viable optical retail shop could be set up quickly and with limited start-up capital. This would be, in particular, because *'the only barriers to entry into the retail market exist on a national basis and are related to local regulations'*.[934]

(1298) The Notifying Party also submits that the optical retail market is consistently growing, therefore allowing room for the entrance of additional players, and that the

929 Questionnaire to wholesale suppliers, Phase I, question 18.
930 Questionnaire to optical retail chains, Phase II, question 22. See non-confidential response to request for information to optical retail chains, 13 May 2020, question 1.
931 Request for information to optical retail chains, 13 May 2020, question 2.
932 This can also be seen from the clarification given by the retailer that the extent to which GrandVision's pricing and promotional strategy are seen as a significant threat depends on various matters, such as location, pricing, product quality, service level, etc.
933 Form CO, Sections 7-8, Chapter 4, Paragraph 106.
934 Form CO, Sections 7-8, Chapter 4, Paragraph 111.

online segment is assuming an increasingly greater role, together with traditional brick-and-mortar retail establishments.

(1299) A detailed account of the Notifying Party's arguments vis-à-vis barriers to entry and expansion in the UK is outlined below.

(1300) Firstly, the Notifying Party submits that optical retail markets are attractive markets that do not require substantial start-up costs to enter or expand. In particular, the Notifying Party submits that the market for frames in the UK is expected to grow by 6.4% annually in the 2020-2023 period. For lenses, the expected growth rate is 6% for the UK. For sunglasses, the expected growth rate is 1.7%.[935] As a consequence of these figures, the Notifying Party submits that the optical industry is prone to disruption and new entrants with innovative business models are entering the market in various countries across the EEA.

(1301) Secondly, the Notifying Party submits that market saturation is not a barrier to entry. The fact that there are as many as 7,000 optical stores present in the UK suggests that retailers have not faced significant market barriers when entering the market.[936] Additionally, the Notifying Party submits that, even in highly saturated markets, growth can be achieved through new product improvements, through business model improvements, by taking existing market share from competitors, or through a rise in overall customer demand.[937]

(1302) In order to support this point, the Notifying Party underlined that, in the UK, a number of optical stores opened over the past years, namely – among others – new Specsavers stores (expanding further in the UK) and Hakim (doubled its store number in the UK in just two years).[938] In addition, the Notifying Party mentioned the entry into the market of certain mono-brand retailers that develop their own fashionable brand, for instance, Ace & Tate in the UK.[939]

(1303) Thirdly, the Notifying Party submits that customer loyalty is not a barrier to entry, as shown by the continuous entry in the market.[940]

(1304) Fourthly, the Notifying Party submits that there is no lack of qualified personnel in the optical retail market. In particular, the Notifying Party submits that, in the UK, stores generally require an optometrist to be present to do an eye test. The Notifying Party states that, throughout the country, there are approximately 10 schools that can train certified optometrists. Moreover, when there is a need to fill a gap in the store, a retailer can call-in a freelance optometrist, who can be hired for the day through certain specialised agencies in the UK (Locum agencies) which provide medical personnel.[941]

(1305) Fifthly, the Notifying Party submits that access to EssilorLuxottica's brand portfolio is not a barrier to entry. This is because its portfolio is not essential or must-have for retailers to compete on the market. It illustrates this by reference to Specsavers in the

935 EssilorLuxottica's response to the SO, Paragraph 319, quoting figures from Statista.
936 EssilorLuxottica's response to the SO, Paragraph 326.
937 EssilorLuxottica's response to the SO, Paragraph 327.
938 Reply to 6(1)(c) Decision, Paragraphs 80-81.
939 Reply to 6(1)(c) Decision, Paragraph 82.
940 EssilorLuxottica's response to the SO, Paragraph 340.
941 EssilorLuxottica's response to the SO, Paragraph 348.

UK, which competes successfully without access to EssilorLuxottica's portfolio, and to the fact that GrandVision focuses on mass market, private label products, implying that access to EssilorLuxottica's portfolio should not be necessary to compete with GrandVision.[942]

The Commission's assessment: Introduction

(1306) Based on the results of the market investigation and on the evidence available to it, the Commission finds that barriers to entry and to expansion are substantial in the UK, for the reasons set out below.

(1307) The Commission focuses its assessment of barriers to entry at national level. This is because certain barriers are present nationally, for example high consumer loyalty and the need for a strong portfolio of brands to compete. The market investigation indicated that other barriers, such as the fact that the optical retail market is highly saturated and the fact that it is challenging to find a sufficient number of qualified staff, are also present nationally, though they may vary at local level. The Commission has nonetheless conducted its assessment at national level, firstly, as certain key parameters of competition are determined nationally and, secondly, as the Notifying Party has not submitted reliable market share estimates at local level enabling the accurate identification of the local areas within which the specific barriers are to be assessed.

The Commission's assessment: The optical retail market is already highly saturated

(1308) Firstly, the Phase II market investigation shows that the optical retail market is, in fact, highly saturated.[943] Both chains and independent opticians agree with the fact that there is currently little room for additional optical outfits in the retail market.[944] A chain clearly explained that *'the market is already saturated and new start-ups need a long time to achieve profitability. It is much easier to purchase an independent store.'*[945] All of the independent retailers in the UK that responded to the market investigation confirmed that in the area in which they operate the optical retail market is highly or moderately saturated.[946] An industry report shows how the optical market in the UK is concentrated and the three main retail players are Vision Express, Specsavers and Boots. The report notes that the UK market appears to be so saturated that Specsavers would cannibalise its sales in local areas if it opened any additional stores.[947]

(1309) Further evidence of the saturation in the optical market in the UK and, more generally, in the EEA, is represented by the fact that the Parties, as well as other players, have expanded in the optical retail market by way of acquisitions rather than by organic growth. The Phase II market investigation confirmed this view and underlined that *'opening of new stores is difficult due to the time it takes to build up*

942 EssilorLuxottica's response to the SO, Paragraph 357.
943 Questionnaire to optical retail chains, Phase II, question 69.
944 Questionnaire to optical retail chains, Phase II, question 67 and Questionnaire to independent opticians, Phase II, question 67.
945 Questionnaire to optical retail chains, Phase II, question 67.
946 Questionnaire to independent opticians, Q11, question 67.
947 Internal document submitted in response to RFI 10, *Mintel market report*. [Doc ID RFI 10 reply (full) - RFI#10_Part31 of 74_PROD010-VOL0009 - RFI and not LPP - G02-CAS - P010-00162786_Optical Goods Retailing - UK - February 2019 (4)]

the costumer database and costumer relations. […] Purchase of independent stores with an costumer- database is better but also requirement more capital to acquire.'[948]

(1310) Both optical retail chains and independent opticians concur that 'street visibility' is the most important factor through which customers choose a particular store in a given area.[949] In light of this factor, the saturation of the market is indeed made more severe by the fact that bigger and more established players, especially chains, tend to occupy premium locations, for example in high streets and shopping centres. Indeed, the investigation confirmed that the national retail chains in the UK tend to have a location advantage over independent players.[950]

(1311) The Commission considers that this represents a challenging hurdle which new, independent entrants would need to overcome in order to establish a viable retail activity. This has been confirmed by the results of the Phase II market investigation.

<u>The Commission's assessment: The optical retail market is characterised by high customer loyalty</u>

(1312) Secondly, as confirmed by the results of the Phase II market investigation, the optical retail market is characterised by a high level of customer loyalty, therefore making it extremely challenging for new entrants to create and expand a strong customer base.[951]

(1313) The majority of market participants, whether chains or independents, rate the degree of customer loyalty in the optical retail market as high, or at the very least moderate.[952] This represents not only a major hurdle to enter the optical retail market, but also a substantial start-up cost which a perspective retailer would not be in a position to absorb for a number of years. An optical chain confirmed that *'A high proportion of our customers return to our stores. As many customers regard the sight test and subsequent purchase of spectacles as a healthcare purchase, there tends to be a high degree of loyalty within the market.'*[953]

(1314) The Parties' own internal documents confirm this. It appears from studies commissioned by GrandVision that in the UK the […] of consumers (approximately […] of customers) purchased their glasses from the same retailer twice in a row, suggesting there is a vast degree of loyalty in the market.[954]

Figure 129 – Customer loyalty in the UK

[…]

948 Questionnaire to optical retail chains, Phase II, question 67.

949 Questionnaire to optical retail chains, Phase II, question 47. Questionnaire to independent opticians, Phase II, question 48.

950 Questionnaire to optical retail chains, Phase II, question 33. Questionnaire to independent opticians, Phase II, question 30.

951 Simplified Questionnaire , question 15.

952 Questionnaire to optical retail chains, Phase II , questions 57 and 64. Questionnaire to independent opticians, Phase II , questions 56 and 63.

953 Questionnaire to optical retail chains, Phase II , questions 57.

954 RFI 10 reply (full) - RFI#10_Part31 of 74_PROD010-VOL0009 - RFI and not LPP - G02-CAS - P010-00162967_David Clulow Brand Tracker Wave 3 1801.

The Commission's assessment: The optical retail market requires highly skilled personnel

(1315) Thirdly, the Phase II market investigation has shown that opening an optical retail store requires qualified and trained personnel, which is currently in short supply and not readily available.

(1316) Optical retail chains stated that finding personnel represents one of the main difficulties when opening a new optical store.[955] This is a recognised problem in some parts of the UK, and can apply to dispensing opticians, as well as optometrists. A survey conducted in 2018 by the Association of Optometrists[956] found that:

(a) only 10% of respondents to the survey who were business owners/managers found it easy to recruit newly qualified optometrists, while 42% found it difficult;

(b) there are strong regional variations – in some regions of England more than 60% of business owners/managers found it difficult to recruit; and

(c) it is particularly difficult to recruit in rural and geographically remote areas.

(1317) This issue can become overwhelming for small, independent opticians, the vast majority of whom said that it is either very difficult or difficult to find staff.[957] As one market participant outlined *'In our area of influence it is difficult to find personnel at the level of opticians and optometrists. In our area there are no training schools. Training courses are in large cities, far from our area of influence.'*[958]

The Commission's assessment: Importance of a strong brand portfolio to compete

(1318) Fourthly, the Phase II market investigation shows that, in order to compete with the Parties, a strong brand portfolio is essential, or at least very important in order to build and maintain a viable customer base.[959] An optical retail chain mentioned that *'Luxottica has an unparalleled brand portfolio and it is essential for an optical store to cater to the requirements of all types of customers and to offer a wide range of top brands. Thus, access to Luxottica's brand portfolio is crucial be able to appeal to all customers' tastes/requirements.'*[960] Further, an independent optician reiterated the point that *'the EssilorLuxottica Brands have a big pull on certain consumers and these products being available help you to attract or retain these consumers.'*[961] This is explained further in section 8.3 above.

(1319) The UK Association of Optometrists confirmed that their *'members' experience is that EssilorLuxottica supplies many of the leading brands that are popular with the public, and already imposes restrictions on supply of its products to optical stores, including high minimum stock level requirements, and criteria relating to the geography and demographics of store locations. Although alternative suppliers are*

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955 Questionnaire to optical retail chains, Phase II , questions 57.
956 See https://www.aop.org.uk/career-development/optometrists-futures.
957 Questionnaire to independent opticians, Phase II , question 66
958 Questionnaire to independent opticians, Phase II , question 66.1.
959 Questionnaire to optical retail chains, Phase II , question 72. Questionnaire to independent opticians, Phase II , question 70.
960 Questionnaire to optical retail chains, Phase II , question 72.2.1.
961 Questionnaire to optical retail chains, Phase II , question 70.2.1.

available, these restrictions can cause problems for both new and existing optical stores, who may be unable to offer many of the most popular brands of eyewear.'[962]

(1320) Additionally, unlike the largest retail player in the UK (Specsavers) which focuses on private label sales, Vision Express primarily sells branded products and has a strong branded portfolio.

(1321) Accordingly, respondents to the Phase II market investigation, both chains[963] and independents,[964] explain that - in order to compete effectively with Vision Express - there are *'must have'* brands. Equally, both chains[965] and independents[966] believe that access to EssilorLuxottica's portfolio or brands is either important or essential. A UK retailer confirmed that *'the EssilorLuxottica brands have a big pull on certain consumers and these products being available help you to attract or retain these customers'*.[967]

(1322) Further, customer-driving brands like Ray-Ban and Oakley […]. Accordingly, it appears challenging for a new entrant to secure supply of these vital brands.[968]

(1323) Optical retail chains quoted numerous cases of commercial behaviours which exemplify EssilorLuxottica's importance as a supplier vis-à-vis its customers.[969]

(1324) For independent opticians, committing to […] represents an even more serious hurdle to open an optical store and to build up a customer base. An independent optician in the UK explained that '*[…]*.'[970] Therefore, if a new store wishes to sell these customer-driving brands, it must accept […] (which many independent opticians consider burdensome)[971], and so is incentivised to focus on selling these brands […].

(1325) This is closely interlinked with the fact that, as pointed out by the outcome of the Phase II market investigation, both chains and independents view EssilorLuxottica's portfolio of brands as either essential or, at the very least, important in order to compete.[972]

The Commission's assessment: Conclusion on barriers to entry and expansion

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962 Submission of the Association of Optometrists, 02/03.2020. [id 1354]

963 Majority of chains consider there are *'must have'* brands required to open a store that competes effectively with GrandVision (75%). Of those that said yes, 86% thought these include EssilorLuxottica brands. Questionnaire to optical retail chains, Phase II , question 71.

964 Majority of independents think there are *'must have'* brands required to compete effectively with GrandVision (67%). Of those that said yes, 88% thought these include EssilorLuxottica brands. Questionnaire to independent opticians, Phase II , questions 69-69.

965 Most chains consider it important or essential to stock at least some EssilorLuxottica lenses, frames and sunglasses to compete with GrandVision. Questionnaire to optical retail chains, Phase II , questions 72.1 – 72.2.

966 Most independents consider it essential or important to stock at least some EssilorLuxottica lense, frames and sunglasses to compete with GrandVision. Questionnaire to independent opticians, Phase II , questions 70.3 – 70.3.

967 Questionnaire to independent opticians, Phase II , question 70.1.

968 Questionnaire to optical retail chains, Phase II , question 46. Questionnaire to independent opticians, Phase II , question 44.

969 Questionnaire to optical retail chains, Phase II , question 46.

970 Questionnaire to independent opticians, Phase II , question 44

971 Questionnaire 12 to independent opticians, question 44.

972 Questionnaire to optical retail chains, Phase II , question 70. Questionnaire to independent opticians, Phase II , question 72.

(1326) The Commission finds that there are significant barriers to entry in the optical retail sector in the UK which, coupled with EssilorLuxottica's strong market power in the relevant upstream markets, can and do in practice represent obstacles to set up new optical stores or to expand an existing customer base.

(1327) These barriers impact the business of well-established optical retail chains and represent very significant challenges for independent retailers, both existing and prospective.

9.5.3.6. Commission's quantification of the impact of the Transaction on the Parties' and their rivals' incentives to raise retail prices

(1328) The Commission's assessment of the impact of the horizontal loss of competition on the Parties' and their rivals' incentives to raise prices is set out below. The Commission assesses how the horizontal loss of competition leads to incentives:

(a) for EssilorLuxottica to raise its retail prices in its stores,

(b) for GrandVision to raise its retail prices in its stores (an incentive which is amplified due to the fact that some sales lost by GrandVision at retail level will translate into additional margins for EssilorLuxottica upstream through EssilorLuxottica's wholesale supply to rival retailers), and

(c) for rival retailers to follow-on and raise their own retail price due to the reduction in competitive pressure in the retail market.

<u>EssilorLuxottica's incentive to raise retail price due to horizontal loss of competition</u>

(1329) The Transaction means that EssilorLuxottica and GrandVision will have a somewhat higher incentive to increase their retail prices due to the reduced competitive pressure they face from each other, as set out below. Overall, however, this must be considered holistically together with the other qualitative elements of the assessment detailed above.

(1330) As explained in detail in section 8.2.1, the Commission has analysed the incentives of the Merged Entity to increase the retail prices in EssilorLuxottica's stores using a GUPPI framework. The Commission finds that in the UK the Transaction results in an incentive to raise the price of prescription frames at EssilorLuxottica stores by 7%. This increase seems somewhat limited in light of the fact that EssilorLuxottica only operates [40-50] optical stores in the UK and has a limited geographic footprint. [973]

<u>GrandVision's incentive to raise retail price due to horizontal loss of competition and upstream recapture</u>

(1331) The Transaction means that the Merged Entity will have some level of incentive to raise retail prices in GrandVision's stores. This is firstly due to the reduced competitive pressure GrandVision will face from EssilorLuxottica and secondly due

973 Vertical effects presented in section 8.2 are pre-Transaction already internalised at EssilorLuxottica stores. For EssilorLuxottica retail stores the Transation merely has a horizontal effect, while for GrandVision stores the effect is both horizontal and vertical as presented in Annex 1.

to upstream recapture, as described below.[974] This upstream recapture could act to amplify the impact of the purely horizontal loss of competition between the Parties.

(1332) First, prior to the Transaction, if GrandVision would have increased the retail prices for the eyewear products sold in its stores in the UK, any customers that do not continue to purchase in GrandVision's stores would have been lost to rival retailers.[975] Such customers would have been lost entirely, leading to lower profits for GrandVision.

(1333) Post-Transaction, an increase in price at GrandVision's stores will have three possible results. Customers will either: (i) continue to purchase the same or different products at GrandVision's stores, (ii) switch to an EssilorLuxottica store, or (iii) switch to a rival retailer. Those customers who switch to a rival retailer may buy EssilorLuxottica products at that rival store. Therefore, a proportion of the retail-level margin lost by GrandVision will be recaptured by EssilorLuxottica through increased sales of its (high-profit) frames, lenses and sunglasses at wholesale level. This is particularly true regarding spectacles (i.e. frames plus lenses) given that […].[976] […].[977]

(1334) Second, the Commission's economic modelling supports this conclusion. The Commission has conducted a vertical gross upwards pricing pressure indices ('vGUPPI') analysis that models the effect of the Transaction in this regard, taking into account effects (i)-(iii) above. This is described in more detail in the Economic Annex.

(1335) The vGUPPId, which looks at the downstream effects of the Transaction, shows that post-Transaction it will be profitable for GrandVision to raise the retail price of the spectacles (i.e. frames + lenses) sold in its stores in the UK by 2.5%. This analysis' results are set out in more detail in the Economic Annex. Again, this incentive seems somewhat limited.

(1336) The Commission's view is therefore that GrandVision would have an increased incentive to raise prices for spectacles in its retail stores in the UK post-Transaction, but that this incentive is somewhat limited.

Rivals' incentive to raise retail price due to follow-on

(1337) As outlined above, EssilorLuxottica and GrandVision will likely have some level of incentive to increase their retail prices to a limited degree post-Transaction. The Parties are together the third largest optical retailer in the UK and are strongly differentiated from the largest one (Specsavers), in particular because GrandVision

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974 The impact of these two effects is assessed in an integrated framework as presented in section 7.1 and 8.2.

975 The Commission notes that while EssilorLuxottica is already active at the wholesale level and therefore already takes into account this effect in its retail pricing, the addition of GrandVision's wide retail presence would change pricing rational of the newly integrated entity. The Commission therefore assesses the change of pricing incentives due to the Transaction.

976 In the UK, […]% of lenses sold in GrandVision are EssilorLuxottica lenses, whereas EssilorLuxottica has a market share of [50-60]% in the wholesale of lenses in the UK.

977 If GrandVision were to increase its purchases of EssilorLuxottica product post-Transaction the results may change, as the Merged Entity may have a somewhat lower incentive to increase prices due to the elimination of double marginalisation (indeed, in some countries and for some products, the analysis shows that the Merged Entity would have an incentive to decrease price).

has an all-encompassing offer and so exerts competitive pressure across the market. Therefore, in response to the Parties' higher prices, a price increase can also be expected from rivals as a result of the follow-on effect indicated in the Horizontal Merger Guidelines: '*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices*'.[978] However, for the same reasons as outlined above, it is likely that the increase in question would be limited.

9.5.3.7. Conclusion regarding horizontal non-coordinated effects in the UK

(1338) Regarding the likely horizontal non-coordinated effects in the UK, the Commission finds that the Parties are not particularly close competitors and that the Transaction only results in a very small horizontal overlap. This is in particular due to EssilorLuxottica's small optical retail footprint of just [40-50] stores, primarily in London and the south of the UK, which account for a market share of only [0-5]% (compared with several substantially stronger competitors). While the Commission considers that, post-Transaction, the Parties would have an incentive to increase their prices at their retail stores and that rivals can be expected to do so too due to the weakened competitive pressure on them, the extent of this incentive (and the resulting increase) is fairly limited and must be seen in light of the small horizontal overlap. Thus, the Commission considers that the Transaction does not result in the elimination of an important competitive constraint in the optical retail market in the UK.

(1339) In light of the above and the evidence available to it, the Commission finds that the Transaction would not give rise to a significant impediment to effective competition in the UK for the retail of optical products due to horizontal non-coordinated effects, because the Parties only exert a limited competitive constraint on each other pre-Transaction.

9.5.4. Vertical non-coordinated effects in relation to the wholesale of frames or sunglasses in the UK (upstream) and the retail of optical products in the UK (downstream)

9.5.4.1. The Notifying Party's views

(1340) The Notifying Party submits that the Transaction does not give rise to any vertical non-coordinated effects, for the reasons set out in more detail in Section 8.3 above. In particular, regarding input foreclosure of the wholesale of frames and sunglasses in the UK:

(a) The Notifying Party submits that the Merged Entity would not have the ability to foreclose competitors in the retail market for the supply of prescription frames or sunglasses in the UK due to the absence of market power, the structure of the relevant markets and the lack of any 'must have' status.[979]

(b) The Notifying Party also submits that the Merged Entity would not even have any incentive to foreclose as regards prescription frames or sunglasses in the UK due to the fact that its total sales of eyewear would fall drastically.[980]

978 Paragraph 24 of the Horizontal Merger Guidelines.
979 Form CO, Sections 7 and 8, Chapter 5, Paragraphs 113 - 171
980 Form CO, Sections 7 and 8, Chapter 5, Paragraph 113 - 171.

(c) The Notifying Party concludes that an input foreclosure strategy as regards prescription frames or sunglasses would not have anticompetitive effects in the UK because a vast part of rival retailers do not stock EssilorLuxottica eyewear and would therefore not be affected by the strategy. Additionally, the Notifying Party alleges that even retailers that purchase EssilorLuxottica eyewear are unlikely to exit the market as a result of a foreclosure attempt, as only a proportion of their inputs are sourced from EssilorLuxottica.[981]

(1341) In light of the above, the Notifying Party submits that the Transaction does not give rise to any vertical non-coordinated effects, in particular regarding input foreclosure of the wholesale of frames and sunglasses the UK.

9.5.4.2. The Commission's assessment

(1342) Based on the results of the market investigation and the evidence available, the Commission finds that, on balance, a significant impediment to effective competition resulting from vertical effects upstream is unlikely in the UK. The Commission finds that, while there are indications the Merged Entity might have the ability to engage in an input foreclosure strategy (it being unnecessary to reach a conclusion on this point), the Merged Entity would be unlikely to have the incentive to engage in an input foreclosure strategy, and the effects of any such strategy would in any event be limited. This is discussed in the following sections.

(1343) As explained in sections 8.3 and 9.5.2, the Commission conducts its assessment of input foreclosure at national level. The Commission finds that the Merged Entity would not have the incentive to engage in an input foreclosure strategy and that, even if it did pursue such a strategy, the impact of an attempted input foreclosure is unlikely to be significant. In light of this lack of incentive and impact, while there are reasons to consider that the Merged Entity may have the ability to engage in an input foreclosure strategy, it is not necessary to reach a conclusion on this point for the purposes of this decision.

(1344) The quantitative and qualitative evidence supporting the Commission's assessment of the Merged Entity's ability and incentives to engage in input foreclosure (frames and sunglasses) leading to vertical non-coordinated effects have been explained in sections 8.2 – 8.3. This is further specified below for the UK.

(1345) As regards the **ability** to foreclose in the UK, there are reasons to consider that the Merged Entity may have a significant market position upstream. However, there are also indications that its upstream position would in fact not be sufficient to allow it to deteriorate the commercial conditions of its eyewear to rival retailers and thereby divert customers to its own retail outlets.

(1346) On the one hand, EssilorLuxottica's market shares for the wholesale of eyewear are high for sunglasses and moderate for frames, and the market overall is concentrated.

(1347) In the overall wholesale markets for sunglasses, its market share in the UK amounts to [50-60]%. For frames, its market share in the UK is more moderate, at [20-30]%. For both sunglasses and frames, the Merged Entity's rivals are comparatively quite small – its largest competitors are Marchon and De Rigo, each with market shares of [5-10]% in the wholesale supply of frames or sunglasses. A large part of the

[981] Form CO, Sections 7 and 8, Chapter 5, Paragraphs 164 and 165.

wholesale market is attributed to private label suppliers ([20-30]% for sunglasses, [30-40]% for frames), whose offering is strongly differentiated from that of EssilorLuxottica, which has a strong offering of premium branded products, as described in Section 8.3.2 above.

(1348) Moreover, the Commission considers that the Merged Entity's position in eyewear priced above EUR […] should be taken in particular account given the high differentiation in eyewear products, whereby competition between different segments (for instance lower priced 'private label' products compared to branded products) is limited, as set out in section 6.1. In this segment, the Merged Entity is also the market leader with market shares amounting to [50-60]% and [30-40]% respectively.

(1349) In addition, the three largest suppliers of sunglasses over EUR […] in the UK only have a combined market share of [20-30]%, and their combined share is [20-30]% for frames.[982] Therefore, as noted by the NHMG paragraph 38, a decision of the Merged Entity to restrict access to inputs reduces the competitive pressure exercised also on the remaining input suppliers.

(1350) Likewise, the Phase II market investigation confirmed this point, as both chains and independents view EssilorLuxottica's portfolio of brands as either essential or, at the very least, important in order to compete.[983]

(1351) On the other hand, it must be acknowledged that in frames in particular the Merged Entity's market share is moderate ([20-30]%), and more generally the penetration rate of Ray-Ban in the UK stores is only moderate. Ray-Ban is present in [30-40]% of the [7000-7500] stores as regards frames and sunglasses, which is significantly below the EEA average.[984] As explained in section 8.2.4, brands are important and able to attract customers, while Ray-Ban is by far the strongest brand on the market. In this regard, the Commission notes that a large amount of EssilorLuxottica's wholesale sales in the UK are of the Ray-Ban brand ([50-60]% of sunglasses and [30-40]% of frames).[985] The relatively moderate penetration of Ray-Ban in UK stores may be due to the importance of private label sales in the UK, as shown by the large position of Specsavers ([40-50]%), which almost exclusively sells private label products.

(1352) On this basis, as well as on the basis of the considerations set out in section 8.3.2, the Commission considers that there are indications that the Merged Entity may have the ability to engage in input foreclosure of eyewear (sunglasses in particular). However, it is not necessary to reach a conclusion on this ability for the purposes of this decision for the following reasons.

(1353) As regards the **incentive** to foreclose in the UK, the Commission finds that the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to rival retailers on the markets for frames and sunglasses. The reasons for this are as follows.

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982 Form CO Annexes CO 7.2.

983 Questionnaire to optical retail chains, Phase II , question 70. Questionnaire to independent opticians, Phase II , question 72.

984 M.8394 Essilor/Luxottica, rec. 641.

985 Response to RFI 27 annex Q8.

(1354) First, the Merged Entity would have only a modest presence, as described in section 9.5.2 above. It will be the third largest retailer in the UK, with a market share of [10-20]% at national level (2018 data, brick-and-mortar, excluding sunglass specialists). Importantly, it remains constrained by a number of optical chains in the market as well as the largest player, Specsavers, which only sells a limited proportion of branded eyewear and so would not be affected by any input foreclosure strategy. The Merged Entity's modest downstream position would therefore somewhat reduce the extent to which it could recoup sales that are diverted from rival retailers to its own stores, and thereby somewhat reducing incentives to engage in a foreclosure strategy for sunglasses and also for frames.

(1355) Second, for frames, in principle, it would be highly profitable for the Merged Entity to divert customers from rival retailers to its own stores. For every customer that it would lose at rival retailers, which are customers that would instead stay with that rival retailer and furthermore would source eyewear from a different eyewear supplier, EssilorLuxottica would lose the wholesale margin on that eyewear. For every customer that it would gain at own retail outlets however, it would not only keep the wholesale margin on the eyewear and lenses purchased by that customer, but also gain the retail margin relating to those eyewear and lenses. This is much less so for sunglasses, because these are purchased with prescription lenses only to a limited extent. Much higher switching for sunglasses would therefore have to occur in order to render a foreclosure strategy for this product profitable to the Merged Entity.

(1356) Third, independent retailers consider that a large proportion of customers of frames would switch to a retail outlet of the Merged Entity if they were faced with deteriorated commercial conditions on Luxottica's eyewear.[986]

(1357) However, the Merged Entity's market shares in the wholesale supply of frames are rather moderate ([20-30]%). It is constrained by rivals such as Marchon, De Rigo and Safilo. In addition, the UK market has a strong focus on private label frames (as illustrated by the success of Specsavers, and the large share of the upstream market that is held by various private label-specific suppliers ([30-40]% according to the Notifying Party's estimates)). Moreover, the penetration of Ray-Ban in the UK is only moderate – it is present in [30-40]% of optical retail stores in the UK. This moderate upstream presence therefore means that while, in principle, a successful foreclosure strategy might benefit the Merged Entity, in practice, there is only a low likelihood of such a strategy succeeding for frames. This, together with the modest downstream position, suggests that the Merged Entity would be unlikely to find it profitable to engage in such a risky foreclosure attempt.

(1358) On this basis, on balance, the Commission considers that the Merged Entity would be unlikely to have the incentives to significantly deteriorate its commercial conditions to an extent that would significantly impede competition in the wholesale markets for frames (or sunglasses) in the UK.

(1359) As regards the **impact** of a foreclosure strategy in the UK, as noted above, the penetration of Ray-Ban in the UK is only moderate (in […]% of stores in the UK),

986 Simplified Questionnaire to independent opticians, question 10, responses from independent opticians. Respondents estimate 28% of customers would switch following deteriorated frames commercial conditions at wholesale level.

and is significantly lower than the average penetration rate in the EEA. [Limited supply to a large proportion of the market]. In contrast, across the EEA as a whole approximately [50-60]% of independent retailers do carry EssilorLuxottica's frames or sunglasses.[987] This may reflect the fact that the UK market has a greater focus on private label products. The fact that EssilorLuxottica's premium brands are somewhat less prevalent in UK stores (together with its limited downstream presence and its moderate upstream market share in the supply of frames in particular) would limit the extent to which an input foreclosure strategy would affect downstream rivals to a significant degree in the UK.

9.5.4.3. Conclusions on the vertical non-coordinated effects in relation to the wholesale of frames or sunglasses in the UK (upstream) and the retail of optical products in the UK (downstream)

(1360) On the basis of the above findings, and with particular regard to the Merged Entity's low market shares in retail, low market share in frames in the UK, and the significant importance of private label sales in the UK (whereas the Merged Entity's upstream portfolio instead focuses on branded products) as well as on the basis of the considerations set out in section 8.3 and the quantitative analysis as set out in section 8.2, the Commission considers that the Transaction would be unlikely to give rise to a significantly impede effective competition in the UK, due to vertical effects in the form of input foreclosure strategies, in relation to the wholesale of frames or sunglasses in the UK (upstream) and the retail of optical products in the UK (downstream).

(1361) The Commission observes that in relation to the UK, EssilorLuxottica's upstream market share in the wholesale supply of lenses would be [50-60]%. However, for the reason outlined at recitals (233) - (237) above, the Commission finds that the Transaction would be unlikely to lead to a significant impediment to effective competition arising from input foreclosure also in relation to this product. This conclusion is without prejudice to the fact the Commission has accounted the impact of the joint sale of lenses in its analysis of input foreclosure for frames and sunglasses.

9.5.5. Cumulative impact of horizontal and vertical non-coordinated effects in the UK

(1362) The Commission considers that the Transaction would not give rise to a significant impediment to effective competition in the UK market for the retail sale of optical products notwithstanding a possible cumulative impact of the aforementioned horizontal non-coordinated effects and vertical non-coordinated effects arising from the Transaction.[988]

(1363) The Commission focuses its assessment of the impact of the Transaction at national level. This is for the reasons explained in Sections 8.1 and 9.5.3 above.

(1364) The Commission notes that the horizontal and vertical non-coordinated effects of the Transaction identified above are in place simultaneously and are not only cumulative but also reinforce (i.e., intensify) each other. More specifically, the Transaction

[987] Form CO, Annex RFI 1 Q58.

[988] As explained in more detail in Sections 7.1 and 7.3, paragraph 36 of the Horizontal Merger Guidelines envisage that a Transaction may significantly impede effective competition as a result of mutually reinforcing horizontal and non-horizontal effects of a Transaction.

could, in principle, result in the elimination of an important competitive constraint in the UK as a result of the following interlinked effects:

(a) the horizontal effect of the reduction in retail competition between EssilorLuxottica and GrandVision (as outlined in detail in section 9.5.3.2);

(b) this effect would be amplified by EssilorLuxottica's strong upstream position, which means that EssilorLuxottica can recapture a proportion of sales lost at retail level through increased sales of its frames, lenses and sunglasses in rival retailers' stores (as outlined in detail in section 9.5.3.2 above in the section regarding incentives);

(c) rival retailers will also have an incentive to increase their prices due to the reduced competitive constraint from the Parties (as outlined in detail in section 9.5.3.2 in the section regarding incentives); and

(d) this effect would be reinforced if EssilorLuxottica had an ability and incentive to increase the wholesale price it charges to its retail competitors, who will face higher costs, and are likely to pass this on to consumers (as outlined in detail in section 9.5.4 above). [989]

(1365) However, the Commission notes that the horizontal impact of the Transaction appears limited (in light of EssilorLuxottica's small market share in particular and the fact that the Parties are overall not particularly close competitors) and an input foreclosure strategy appears unlikely given the Merged Entity would lack the incentive to engage in such a strategy and, even if it did, an attempted input foreclosure strategy is unlikely to have a significant impact on retail competitors. In light of this, and based on the evidence available to it, the Commission finds that these effects would not give rise to a significant impediment to effective competition in the UK from a combination of horizontal and vertical effects.

10. COMPETITIVE ASSESSMENT – VERTICAL NON COORDINATED EFFECTS: CUSTOMER FORECLOSURE IN LENSES

(1366) The Transaction leads to vertical links between EssilorLuxottica's upstream market presence in lenses and GrandVision's downstream activities in retail distribution of optical products in various Member States. In particular, the Commission has assessed whether the Merged Entity would be able to foreclose access to a sufficient customer base in order to reduce lenses competitors' ability or incentive to compete. In the present case, assuming the Parties would be able to foreclose access to a sufficient customer base for their lenses rivals, such a behaviour could increase rivals' economies of scale or cost of supply and such increases could be passed on to optical retailers and ultimately to final consumers.

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[989] The Commission notes that its claim that prices will increase at GrandVision because of the internalisation of the diverted sales to the rival retailers (the vGUPPId effect) and, at the same time, prices will increase for rival retailers as a result of the input foreclosure generated by the internalisation of the sales diverted to GrandVision (the vGUPPIu/vGUPPIr effect) are fully consistent and, moreover, mutually reinforcing each other, despite the fact that these diversions 'operate in opposite directions'. The same applies to a standard horizontal merger, where merging party A increases prices as a result of the internalisation of the loss of customers to merging party B and, at the same time, merging party B increases prices as a result of the internalisation of the loss of customers to merging party A. In fact, as explained above, the two effects (vGUPPId and vGUPPIu/vGUPPIr effect) compound each other.

(1367) The Commission will first assess ability and incentives to foreclose customer base at the EEA level since this is the level where GrandVision negotiates its framework agreement with lenses suppliers before the agreement is implemented by the national subsidiaries of GrandVision. The Commission will then assess the possible impact of customer foreclosure in the EEA as a whole, before turning to an assessment of the various national affected markets.

10.1. Assessment of customer foreclosure at EEA level

10.1.1. Complaints received

(1368) In the course of its investigation, the Commission has received complaints from market participants about the Transaction's alleged customer foreclosure effects as regards lenses. In particular, some of EssilorLuxottica's competitors in lenses have explained that GrandVision's purchases of lenses in the EEA are particularly significant and that GrandVision plays a crucial role as an outlet for these alternative lenses players in the EEA market, given its very high demand for lenses.

(1369) Competitors have explained in the course of the market investigation that the lenses market is particularly concentrated in the EEA and only a small number of upstream suppliers can cater to GrandVision's needs.

(1370) Because GrandVision is the largest retail chain in the EEA, lenses suppliers have stated that there are no retail chains that could compensate for the complete loss of GrandVision as a customer, or a considerable reduction of their purchases. Similarly to GrandVision, retail chains that source lenses have long-term framework agreements with lenses suppliers and opportunities to win large volumes from another retail chain remain therefore scarce. Some other retail chains such as Specsavers are vertically integrated as regards RX lenses and do not purchase from traditional lenses manufacturers such as EssilorLuxottica, Hoya or Rodenstock.

(1371) In that regard, lenses manufacturers have also stated that an additional supply to independent opticians could not compensate for the decline or complete loss of GrandVision as an outlet for alternative lenses manufacturers.

(1372) Additionally, complainants put forward that these potential volume shifts would have a negative impact on these competitors' costs and thus competitiveness. In particular, lenses suppliers state that their production costs would increase due to a decrease in capacity utilisation rates. The loss of scale efficiencies as regards production would lead to a significant increase of per unit costs due to a reduced coverage of fixed costs, and a reduction of input purchases would weaken lenses suppliers in their bargaining negotiations with suppliers of inputs for the production of lenses.

(1373) In relation to distribution costs, in countries where GrandVision accounts for an important share of demand, variable distribution costs of continuously supplying these markets would also increase, due to the difference in distribution and logistic costs of supplying chains and independents.[990] Finally, one lenses supplier explicitly states that customer foreclosure would lead it to immediately exit the lenses markets in countries where GrandVision is its only customer.[991]

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[990] Non-confidential minutes of a call with a lens supplier, 14 November 2019, ID 921.

[991] Questionnaire to suppliers of lenses and eyewear – Q3 – question 32.1, ID 2541.

(1374) The Commission has investigated those concerns in depth and has come to the conclusion that the Transaction would not significantly impede effective competition due to customer foreclosure in lenses in the EEA for the reasons set out in Sections 10.1.2 to 10.1.4.

10.1.2. Ability

10.1.2.1. Factual elements regarding GrandVision‘s lenses supply in the EEA

GrandVision is a large lenses customer in the EEA

(1375) The Commission considers that the possibility for the Merged Entity to pursue a customer foreclosure strategy depends on whether GrandVision's retail network downstream decides to shift significant input purchases to its upstream lens supplier (EssilorLuxottica) that would result in the loss of supplies by other competing lenses suppliers downstream and would cause a restriction of their ability or incentive to compete on the merits. The Commission considers that the Merged Entity's ability to engage in customer foreclosure depends in the first place on the significance of its downstream business as a buyer of lenses purchased from its upstream competitors.

(1376) GrandVision is the n°1 retailer in the EEA with a turnover of roughly EUR 3 500 million and more than 5 000 stores. In terms of turnover, it is almost twice as large as Specsavers, the second largest retailer in the EEA, which owns slightly more than 2 000 stores and three times as large as Fielmann, the third largest retailer in the EEA, with 800 stores.

(1377) The Notifying Party has estimated the overall volume of lenses supplied in the EEA at […] pieces in 2018. EssilorLuxottica accounts for [40-50]% of these volumes or […] pieces. The second largest supplier is Hoya with […] pieces ([10-20]%), followed by Carl Zeiss Vision with […] pieces ([10-20]%), Rodenstock with […] pieces ([5-10]%), Prats and Indo with [0-5]% each and a series of smaller suppliers with less than [0-5]% of the EEA lenses market.[992]

(1378) Based on such market shares, the Commission considers that the supply of lenses in the EEA is significantly concentrated. EssilorLuxottica shared this view in an internal document in which it explained that […][993] This statement related to the worldwide market but it is applicable in the EEA because Essilor has pursued an acquisition strategy through the purchase of independent lenses laboratories in the EEA as well.

(1379) Within the EEA, in the majority of the cases GrandVision purchases finished lenses (i.e. lenses that have been manufactured, surfaced and coated) from its main suppliers […]. In some countries, GrandVision also buys moderate amounts of finished lenses, mainly specialities (e.g., mirrored lenses, curved lenses) and out-of-range lenses (unusual prescriptions), from lenses wholesalers or independent prescription laboratories.[994] All the lenses sourced by GrandVision are either so-called Rx lenses (lenses made to order and delivered to GrandVision regional centres or directly to stores for edging, mounting, and final customer pick-up) or stock

992 Form CO, annex CO 7.2.
993 Form CO, annex 5.4.1, '*US IECP consolidation, Storyline*'.
994 Form CO, paragraph 124.

lenses (lenses that are already stocked by GrandVision and delivered to store for final customer pick-up).[995]

(1380) The Notifying Party has provided the volume of lenses sourced by GrandVision in the EEA for the years 2016 to 2018 (Rx and stock).[996] The table below shows the volume of purchases from the various suppliers in 2018.[997]

Table 23: 2018 purchases of lenses by GrandVision in volumes

[…]

Source : annex RFI 16 Q3

(1381) In 2018, GrandVision sourced […] of lenses in the EEA, which represent […]% of the overall lenses sales in volume. This volume of purchases is consistent with its overall downstream retail market share at EEA level ([…]%). However, Table 23 shows that whereas EssilorLuxottica is a major supplier of lenses in the EEA, it is not a key supplier to GrandVision, […]. These volumes would only represent […]% of the lenses sales of EssilorLuxottica in Europe. Conversely, GrandVision sources almost […]% of its lenses needs from Hoya, approximately […] pieces. Rodenstock accounts for […]% of GrandVision’s lenses needs. Thanks to its pan-European market presence and positioning as a value for money retailer, GrandVision has managed to develop a lens supply chain that is diversified and to maintain a low exposure to EssilorLuxottica’s lenses.

(1382) According to market share data provided in recital (1377), Hoya supplied overall […] lenses in 2018 in the EEA and therefore supplies to GrandVision represented […]% of their overall lenses supplies. Rodenstock supplied overall […] lenses in 2018 in the EEA and therefore supplies to GrandVision represented […]% of their overall lenses supplies.

<u>GrandVision has entered into new contracts with lenses suppliers in early 2020.</u>

(1383) In the EEA, GrandVision sells branded and private label frames, lenses and contact lenses, which are produced by third party suppliers. With these suppliers, GrandVision usually enters [Purchasing strategies for lenses].[998] [999] [1000] [1001]

(1384) [Purchasing strategies for lenses].[1002] [1003] [1004]

(1385) [Purchasing strategies for lenses].[1005] [1006]

(1386) [Purchasing strategies for lenses].[1007]

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995 Form CO, paragraph 127 and 134.
996 Annex RFI 16, Q3.
997 The evolution since 2016 shows […].
998 Form CO, paragraph 117.
999 [Purchasing strategies for lenses].
1000 Form CO, paragraph 118.
1001 See reply by EssilorLuxottica to RFI 16, Q5.
1002 [Purchasing strategies for lenses].
1003 MSA of 15 December 2016, article 1.9, annex RFI 16 Q1.
1004 Annex RFI 16, Q3
1005 MSA of 24 March 2017, appendix 9, annex RFI 16 Q1.
1006 Annex RFI 16, Q3.

(1387) [Purchasing strategies for lenses].[1008]

(1388) [Purchasing strategies for lenses][1009] [1010] [1011]

(1389) [Purchasing strategies for lenses].[1012]

(1390) [Purchasing strategies for lenses].

(1391) [Purchasing strategies for lenses].[1013] [1014] [1015] [1016] [1017]

(1392) [Purchasing strategies for lenses].[1018]

(1393) [Purchasing strategies for lenses].[1019] [1020] [1021] [1022]

(1394) [Purchasing strategies for lenses].[1023]

(1395) [Purchasing strategies for lenses].

(1396) [Purchasing strategies for lenses].

(1397) [Purchasing strategies for lenses].[1024] [1025]

10.1.2.2. The Notifying Party's view

(1398) The Notifying Party puts forward that the Commission wrongfully considers that the agreements signed following the tenders launched by GrandVision in 2019 would result in the sourcing of lenses being gradually switched to EssilorLuxottica until […]. According to the Notifying Party, this conclusion is based on a misinterpretation of the facts, and in particular the 2019 tenders, as well as on pure assumptions ignoring GrandVision's past tenders and not supported by any evidence. The Commission does not take into account the most important facts which are that (i) GrandVision actually renewed Hoya and Rodenstock respectively for […] and […] years granting them very significant supply volumes and (ii) that Hoya and Rodenstock did not always have the most competitive offers.[1026]

1007 Reply to RFI 19 GV, page 1.
1008 Reply to RFI 19 GV, page 1.
1009 HMC stands for '*hard multi coated*'. These are types of lenses that prevent reflection on the lens thanks to several layers of coatings.
1010 See reply by EssilorLuxottica to RFI n° 19, footnote 6.
1011 Reply to RFI 19 GV, page 3.
1012 Reply to RFI 19 GV, page 3.
1013 Annex RFI 31 Q4, LOE Hoya signed.
1014 Annex RFI 31 Q4, point 1
1015 Annex RFI 31 Q4, point 2.
1016 Annex RFI 31 Q4, point 2.
1017 Annex RFI 31 Q4, point 4.
1018 Annex RFI 31 Q4, point 4
1019 Annex RFI 16, Q1, Rodenstock LOE 2020, point 1
1020 Annex RFI 16, Q1, Rodenstock LOE 2020, point 2.
1021 Annex RFI 16, Q1, Rodenstock LOE 2020, point 8.
1022 Annex RFI 16, Q1, Rodenstock LOE 2020, point 4.
1023 Reply to RFI 19 GV, page 5.
1024 Annex RFI 19 Q1.26
1025 Reply to RFI 19 GV, page 4.
1026 Reply to the Statement of Objections, paragraphs 500 and 501.

(1399) As regards stock lenses, the Notifying Party submit that GrandVision in the end committed […], but if Hoya had maintained its offer, things would have been different and GrandVision would most probably have […].[1027]

(1400) The Notifying Party submits that Hoya and Rodenstock were the ones driving the volumes down, not GrandVision and that during the negotiations preceding the new agreements, […].[1028]

(1401) A tender process always implies a risk for suppliers not to be selected and to potentially lose the bid, as it was the case for […] who lost the tender in 2010 but was selected in 2013 or even […] that continues to strive despite losing previous GrandVision tenders. The Notifying Party submits that […] do not have a vested right to be selected forever by GrandVision and knew that the very aim of launching tenders on a […] basis is to always select the most competitive offers.[1029]

(1402) In addition, the Notifying Party states that no firm conclusions can possibly be drawn from the potential volume commitments of […].[1030]

(1403) Additionally, the Notifying Party […]. The Notifying Party submits in that regard that the Transaction does not provide […]. This is in particular the case given that the Notifying Party […].[1031]

(1404) The Notifying Party argues[1032] that the Commission previously found limited evidence of economies of scale in the upstream lenses market in the decision assessing the merger between Essilor and Luxottica and that therefore customer foreclosure reducing the volumes of lenses sold by Hoya and Rodenstock would have limited, if any, impact on the cost-competitiveness of these players.[1033]

(1405) In that respect, according to the Notifying Party, the Commission outlines clearly in Essilor/Luxottica that its assessment was three-fold: the Commission analysed (i) the magnitude of the reduction in sales that lens competitors could face, (ii) the existence of economies of scale in the lens markets in the EEA, and (iii) the concrete volume shifts. Therefore, the conclusion that there were only limited economies of scale in the wholesale lenses market stands in general, and not in the specific case of the Essilor/Luxottica merger.[1034]

10.1.2.3. The Commission assessment

The Commission assessment: GrandVision is an important customer for alternative lenses suppliers but it does not hold a sufficient degree of market power on the downstream market

(1406) The Non-Horizontal Merger Guidelines state that, for a Merged Entity to have the ability to engage in customer foreclosure, '*it must be the case that the vertical*

1027 Reply to the Statement of Objections, paragraph 505.
1028 Reply to the Statement of Objections, paragraphs 508 and 510.
1029 Reply to the Statement of Objections, paragraph 517.
1030 Reply to the Statement of Objections, paragraph 521.
1031 Reply to the Statement of Objections, paragraph 528.
1032 EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, paragraph 2.1.5
1033 M.8394 Essilor-Luxottica, recitals 485-487
1034 Reply to the Statement of Objections, paragraph 548.

merger involves a company which is an important customer with a significant degree of market power in the downstream market'.[1035]

(1407) As mentioned above in recitals (1334) and (1342), GrandVision account for a very significant proportion of those manufacturers' sales of lenses in the EEA ([…]% of lenses sales to GrandVision for Hoya and […]% of lenses sale to GrandVision for Rodenstock). GrandVision is therefore an important customer for these lenses suppliers.

(1408) The Commission agrees with the Notifying Party that GrandVision selected Hoya and Rodenstock, following the tender process, thereby granting them significant supply volumes of lenses until […] and […] respectively. […].

(1409) However, the Commission also […]. In relation to […], the contractual minimum volumes of RX lenses are planned to […] until […] and […] between […] and […]. They also remain stable as regards stock lenses ([…]) although they are not subject to minimal volume commitments.

(1410) Moreover, as mentioned above in recital (1381), should GrandVision cease sourcing from these rival lenses suppliers, the loss would account for a very significant proportion of those manufacturers' sales of lenses in the EEA ([…]). After […] for […] and […] for […], these suppliers could lose all their sales to GrandVision, which is not contested by the Notifying Party. GrandVision is therefore an important customer for […].

(1411) However, the Parties' combined market share at the EEA level ([10-20]%) does not suggest that the Merged Entity would have market power in the downstream market, based on the product market for retail sales of optical products in optical stores as defined in Section 6.1.2.

(1412) In that regard, following the Transaction, there will remain a large customer base available for lenses suppliers in the EEA. Hoya and Rodenstock will have [80-90]% of the market to turn to in order to fill the void that would be created by the Transaction. This would leave a number of alternative customers for Hoya and Rodenstock to turn to should they lose all their supplies to GrandVision.

The Commission assessment: Previous tenders show that lenses suppliers are able to compete without GrandVision

(1413) In order to illustrate the relevance of GrandVision as a customer, the Notifying Party provided GrandVision's historical lens purchases since 2007. In particular, the Figure below shows the split of GrandVision's lens suppliers for each procurement period.[1036]

Figure 130 : GrandVision lens suppliers per procurement period (source RBB – The Notifying Party)

[…]

[1035] Non-Horizontal Merger Guidelines, paragraph 61.
[1036] EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, Section 2.1.3.

(1414) The above figure shows that GrandVision purchased a significant share of its lenses from Zeiss up to […]. In particular, GrandVision purchased approximately […]% of its lens requirements from Zeiss in 2007, which dropped to […]% in 2011. In […] GrandVision effectively stopped purchasing from Zeiss and currently purchases minimal volumes from Zeiss. This, however, did not seem to have affected Zeiss' market share as it has consistently accounted for [10-20]% to [10-20]% of lens sales in the EEA throughout this period.

(1415) Similarly, GrandVision purchased approximately […]% of its lenses requirements from Essilor in 2007 and 2011. This share has then gradually dropped down to […]% in 2019. This has not prevented Essilor from consistently remaining the leading lens supplier in the EEA with a share of almost [40-50]% in 2019.

(1416) The Commission considers that these historical lens purchases need however to be treated with caution, notably as the perimeter of GrandVision has increased through acquisitions since 2007, notably Pearle Europe in 2011 and Tesco Opticians in 2017, and the loss of GrandVision could be more harmful now that it was ten years ago. Nevertheless, these data show that lenses competitors can succeed in the market without GrandVision as a customer or after having lost GrandVision as a customer.

<u>The Commission assessment: Hoya and Rodenstock could switch to alternative retail chains or independent opticians</u>

(1417) As explained above in recital (1412), there will remain a large customer base available for lenses suppliers in the EEA, accounting overall for [80-90]% of the EEA lenses market.

(1418) Moreover, lenses suppliers do not have to find these customers overnight. In case GrandVision indeed implements an internal sourcing strategy, it could only be gradual as (i) EssilorLuxottica needs from [0-5] to [5-10] years to build the necessary capacity, and (ii) Hoya and Rodenstock's purchase agreements provide for […] until, respectively, […] and […]. Both these parameters would leave some time for Hoya and Rodenstock to find alternative outlets. This means that a significant customer base would likely be available now and in the future, when the agreements terminate and that Hoya and Rodenstock would have three to five years (until the termination of the agreements and the finalization of EssilorLuxottica's capacity expansion) to find alternative customers. One lenses supplier indicated in the market investigation that a long preparation phase was indeed necessary: '*[i]n general for GrandVision suppliers the change in a customer would require a long ramp up phase of several years in order to prepare the increase of production volumes towards anticipated demand and specific customers' requirements*'. [1037]

(1419) The Commission understands that Hoya and Rodenstock have already implemented the initial steps of this strategy in order to win back some customers of EssilorLuxottica with a view to partially compensating for the expected loss of GrandVision. This strategy is targeted at both main categories of customers, chains or key accounts and independent opticians.

(1420) In relation to chains or key accounts, Hoya submitted that the gradual winding down of the relationship would allow Hoya to focus on filling the void over a longer

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1037 Questionnaire to suppliers of lenses and eyewear – Q3 – question 14.1.1, ID 2541 period, although Hoya also claims the loss of volume cannot be made up by any other player in the market.[1038] The Commission also understands that Rodenstock is approaching European key accounts in order to explore with these accounts further supply opportunities. Such a strategy can be easily implemented given that retail chains regularly (every three to five years) launch tenders for their lenses supply, as shown by the example of GrandVision mentioned in recital (1413).

(1421) In relation to independent opticians, these efforts are more targeted on marketing, advertising and promotional services for current EssilorLuxottica's customers. This has been explained by Hoya '*Hoya provides a number of services and support to independent opticians, which it does not provide to retail chains. This includes marketing support, education campaigns, sales representatives, customer service, etc. Indeed, most of Hoya's marketing efforts and investments go towards independent opticians, rather than retail chains'.*[1039]

(1422) Moreover, despite EssilorLuxottica's large presence in independent stores, it appears that there are limited switching costs for independent opticians in lenses. In the first place, the Commission has not found evidence that independent opticians would be reluctant to switch lenses suppliers because they would be offered ophthalmic instruments/machines through financing agreements on a long term basis.[1040] Moreover, as shown by the example of Hoya in recital (1392), support to independent opticians as regards marketing and customer service (notably through computer interface) are rather the norm in the market and are not specific to EssilorLuxottica. By way of illustration, the Notifying Party claimed that following an outage which affected EssilorLuxottica's interface in the United Kingdom for only 10 hours, EssilorLuxottica estimates that it lost GBP […] worth of orders.[1041]

(1423) Hoya and Rodenstock's lenses sales show that they have been successful in serving independent opticians in the past. According to data submitted by the Notifying Party, Rodenstock achieved turnover in lenses of EUR 155 million to independent opticians in the EEA in 2018, which is significantly higher than the value of purchases from GrandVision to Rodenstock (EUR […]) for the same period. Similarly, Hoya achieved a turnover of EUR […] with independent opticians in the EEA in 2018, which is significantly higher than the value of purchases from GrandVision to Hoya (EUR […]) over the same period.[1042] This confirms that, when required, Hoya and Rodenstock are able to structure their commercial efforts to distribute their products via independent opticians.

<u>The Commission assessment: Economies of scale are limited in the upstream lenses markets</u>

(1424) The Non-Horizontal Merger Guidelines state that, for the Merged Entity to be able to increase input prices, the cost competitiveness of upstream lenses manufacturers needs to be affected, in particular through a negative impact on economies of scale '*Customer foreclosure can lead to higher input prices in particular if there are significant economies of scale or scope in the input market or when demand is*

1038 Non-confidential response to a request for information to Hoya dated 27 march 2020, ID 3131.
1039 Questionnaire to suppliers of lenses and eyewear – Q3 – question 17, ID 2541
1040 Reply to the Statement of Objections, paragraph 538. See questionnaire for independent opticians – Q1.
1041 Reply to the Statement of Objections, paragraph 541.
1042 Form CO, annex 7.1. Annex RFI 16 Q3

characterised by network effects. It is mainly in such circumstances that the ability to compete of upstream rivals, be they actual or potential, can be impaired.'[1043]

(1425) In particular, '*For instance, customer foreclosure can lead to higher input prices when existing upstream rivals operate at or close to their minimum efficient scale. To the extent that customer foreclosure and the corresponding loss of output for the upstream rivals increases their variable costs of production, this may result in an upward pressure on the prices they charge to their customers operating in the downstream market.*'[1044]

(1426) In the present case, the Commission finds that the production and distribution processes of lenses are not characterised by significant economies of scale.

(1427) Lenses production is centralised in large factories mostly located in Asia and therefore any potential effects of foreclosure strategies implemented by the Merged Entity in the EEA or in any of the individual EEA Member States on lenses manufacturers' scale would not be significant in the light of the fact that lenses competitors operate globally.

(1428) Distribution costs do not vary specifically according to volumes (as it would be the case if there were significant economies of scale at distribution level), as the customer base includes a large number of small opticians. These small customers require that lenses are delivered directly to their stores and such a requirement increases delivery costs significantly.[1045]

(1429) In that regard, the Notifying Party has provided a comparison between the sale volume of Essilor in lenses in EEA Member States and its margins. This comparison shows, in line with the findings in Essilor/Luxottica, that there is no correlation between both variables in the sense that Essilor does not achieve particularly high margins where volumes are the most significant (for example […] and […]).[1046] This lack of correlation demonstrates that profitability at the national level does not increase in line with an increase in volumes sold in each country and as such is not indicative of the presence of economies of scale at distribution level.

(1430) These findings are consistent with those made in M. 8394 Essilor/Luxottica regarding limited evidence of economies of scale in the lenses markets, in production and distribution.[1047]

<u>The Commission assessment: Conclusion on ability to foreclose wholesale suppliers</u>

(1431) In the light of the above, and in particular the fact that GrandVision does not have a sufficient degree of market power in the retail downstream markets, the fact that previous tenders show that lenses suppliers are able to compete even if GrandVision is not or no longer their customer, the possibility for these lenses suppliers to switch to alternative retail chains and independent opticians and the limited evidence of economies of scale achieved in production and distribution of lenses, the

[1043] Non Horizontal Merger Guidelines, paragraph 62.
[1044] Non Horizontal Merger Guidelines, paragraph 63.
[1045] Minutes of a call with Zeiss, 8 October 2019
[1046] EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, Section 2.1.5. See also reply to the Statement of Objections, paragraphs 545-549.
[1047] M.8394 EssilorLuxottica, paragraph 486.

Commission takes the view that the Merged Entity does not have the ability to engage into customer foreclosure for lenses post-Transaction.

10.1.3. Incentives

10.1.3.1. The Notifying party's view

(1432) The Notifying Party explains that in the context of customer foreclosure, it is important to distinguish between the pro-competitive aim of increasing the level of self-supply and any intention to engage in anti-competitive customer foreclosure. Although the mechanism through which these effects take place may indeed be the same, their impact on competition is the opposite.

(1433) In particular, according to the Notifying Party, increasing the level of self-supply cannot in and of itself be considered evidence of an incentive to engage in anti-competitive foreclosure. This is because in most cases an increase in the level of self-supply is likely to be associated with more efficiencies (for example, in the form of the 'elimination of double mark-ups'), which implies that any such increase should, in most cases, be promoted – rather than prohibited – by competition authorities. According to the Notifying Party, the importance of such efficiencies, and in particular the 'elimination of double mark-ups' is also recognised by the Non-Horizontal Merger Guidelines.[1048]

(1434) In light of the above, the Notifying Party does not contest that the Merged Entity has an incentive to increase its sales of EssilorLuxottica lenses through GrandVision. This evidence, however, does not imply that the Merged Entity intends to do so to negatively affect the competitiveness of upstream rivals in the market. As such, according to the Notifying Party, the evidence available cannot be sufficient to conclude that an incentive to engage in anti-competitive foreclosure exists.[1049]

10.1.3.2. The Commission assessment

(1435) The Commission's investigation has shown that the Merged Entity has incentives to increase self-supply of lenses within the Merged Entity, and potentially to engage in customer foreclosure of lenses rivals.

(1436) The Commission agrees with the Notifying Party that the Merged Entity has an incentive to increase its sales of EssilorLuxottica lenses through GrandVision. The Commission understands in particular that EssilorLuxottica plans to use GrandVision to maximise sales of its own products and notably lenses. From the internal documents that the Commission has reviewed, […].

(1437) In an internal document prepared for EssilorLuxottica by consultant […], as shown below.[1050]

Figure 131: […]

[…]

Source : Form CO, Annexes CO 5.4.1.22, , 'Project Odyssey', 7 February 2019, slide 53.

1048 EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, Section 2.1.5.

1049 EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, Section 2.1.5.

1050 Form CO, Annexes CO 5.4.1.22, , 'Project Odyssey', 7 February 2019, slide 53.

(1438) Such an increased penetration in GrandVision's stores is intended to yield […] synergies for the Merged Entity, as assumed in the same document.

Figure 132: Synergies generated by increased penetration

[…]

Source, Form CO, Annexes CO 5.4.1.22, , 'Project Odyssey', 7 February 2019, slide 53

(1439) The Notifying Party has claimed that […]. As a result, according to the Notifying Party, this document cannot be interpreted as representative of the Notifying Party's intention, analysis or strategy.[1051] However, the […] synergies stemming from this increased penetration of EssilorLuxottica lenses in GrandVision stores are also described and estimated in a valuation document prepared by […].[1052]

Figure 133: Synergies assumptions generated by increased penetration of EssilorLuxottica's lenses in GrandVision stores

[…]

Source, Project Mirror, Valuation report supporting the fairness opinion, M.9569 - Annexes RFI 2 Q 13-1, slide 57

(1440) These estimates of increased penetration of EssilorLuxottica's lenses in GrandVision's stores were endorsed in an internal document prepared by the Notifying Party.[1053]

(1441) In the same document prepared by […], an assessment was also carried out of the level of revenues synergies assuming a certain level of retaliation by retailers because of EssilorLuxottica entering the retail territory in countries where they have no retail presence so far. EssilorLuxottica expects in particular that […].[1054]

Figure 134: Net synergies generated through the Transaction

[…]

Source, Project Mirror, Valuation report supporting the fairness opinion, M.9569 - Annexes RFI 2 Q 13-1, slide 58

(1442) The Notifying party has explained that according to the internal document mentioned in recital (1440), […]. As regards synergies, the Notifying Party estimated that they would be of approximately […] euros, while a […] was considered '*broadly acceptable*', rather than the […] euros mentioned in the […]. As regards retaliation, the Notifying Party estimates that they would amount to approximately […] euros. Most importantly, the Notifying Party considered that in any case synergies and retaliation would cancel each other out.[1055]

1051 See reply to the 6-1 c) decision, paragraph 223. Reply to the Statement of Objections, paragraph 553.

1052 Project Mirror, Valuation report supporting the fairness opinion, M.9569 - Annexes RFI 2 Q 13-1, slide 57.

1053 201907 Bod Appendix book v39, slide 54, Form CO, annex 5-4-1.

1054 Project Mirror, Valuation report supporting the fairness opinion, M.9569 – Form CO, Annexes RFI 2 Q 13-1, slide 58.

1055 Reply to the Statement of Objections, paragraph 557.

(1443) In any case, the Commission's market investigation has not yielded any evidence of such a 'retaliation'. The Notifying Party has explained that it has recently lost one of its historical customers in […] which is at the same time its main customer in […], the […] ([…] stores in […]), as well as […], which is one of the largest chains in […]. According to the Notifying Party, […], […], has dropped its lens purchase and a further decline of […] volume is expected. The Notifying Party has also mentioned the loss of […], a large retail chain in […] and of some […] stores in […].

(1444) First, the Notifying Party has not brought evidence that would show that these customers would have been completely or partially lost as a result of a retaliation strategy. Moreover, some of these customers have not confirmed that they dropped their lenses purchases from EssilorLuxottica. […] has in particular explained, '*Progressive lenses from different suppliers differ from each other on a technical level as regards the design of the surface structure. Therefore, customers, being used to a specific type of lenses from a given supplier will want to stay with the same brand when replacing them since it requires a significant level of readjustment for the consumer to adapt his/her eyes to the design of the surface structure of the progressive lenses from a different supplier (…). It is therefore important to have (at the very least) high-value progressive lenses from Essilor in stock*'.[1056] In addition, the Notifying Party has not quantified the volume of lenses that would have been switched as a result of retaliation.

(1445) In any case, the Commission understand that this 'retaliation' is likely to take place because EssilorLuxottica is entering the retail market in countries where it was not previously present (that is outside of Italy and the United Kingdom), independently of whether EssilorLuxottica increases or not its lenses penetration in GrandVision stores. As explained by EssilorLuxottica in an internal document '*[…]*'.[1057]

(1446) There is, however, a potential situation in which EssilorLuxottica has expressed concerns of a strong risk of retaliation potential. In an internal document, EssilorLuxottica has explained that if it introduces significant volumes of Varilux-branded lenses in GrandVision stores strong retaliation is expected from other retail chains relying on Varilux '*[…]***.**[1058] [1059]

(1447) […].[1060]

(1448) Moreover, the Commission considers it is unlikely that final customers value upstream lenses manufacturers' products to such an extent that they would stop buying at GrandVision if it forecloses, partially or fully, upstream competitors and therefore offers fewer products of these competitors. This is because, as explained in M.8394 Essilor/Luxottica,[1061] lenses are a far more commoditised product with only limited customer preference for specific brands (with the exception of some EssilorLuxottica brands in some member States such as France). In contrast with

1056 Questionnaire to optical retail chains (Q12), Q72-1-1, ID 2546.
1057 Form CO, annex 5.4.1, *Essilor – Schiphol view, 1 July 2019*, slide 4.
1058 Emphasisd added by EssilorLuxottica.
1059 Urgent decision and communication to customers to minimize retaliation risk in Europe post GV announcement dated October 2019, ID 002188 - 000137.
1060 Urgent decision and communication to customers to minimize retaliation risk in Europe post GV announcement dated October 2019. ID 002188 – 000137.
1061 M.8394 Essilor-Luxottica, recital 663.

frames and sunglasses, lenses are a product for which customer awareness is very limited. Therefore, self-supply as regards lenses is more likely to be profitable and it cannot be expected that final consumers would switch stores if lenses from Hoya or Rodenstock were not available in GrandVision stores.

(1449) In any case, the Notifying Party has confirmed […] [1062] [1063]

(1450) The Commission notes in that regard that, in general, an increase in the level of self-supply could be associated with more efficiencies through for example the elimination of double marginalisation, although the Notifying Party has not provided any substantiated efficiency claim related to such elimination of double marginalization.

(1451) The Commission therefore considers that the Merged Entity has an incentive of engaging in self-supply as regards lenses and to reduce its purchases of lenses upstream from rival lenses manufacturers. In that regard, the Commission observes that it has been concluded in recital (1431) that EssilorLuxottica does not have the ability to engage into customer foreclosure post-Transaction. Consequently, the Commission takes the view that there might be an incentive to engage in customer foreclosure in lenses through increase in self-supply but there is no proven ability to engage in such as strategy.

10.1.4. Impact on competition

10.1.4.1. The Notifying Party's view

(1452) The Notifying Party claims that the vast majority of frames and sunglasses purchased by GrandVision are from large, global companies with significant margins. These companies could therefore be expected to withstand a transitory drop in sales, or indeed price their eyewear more aggressively to maintain sales levels in the downstream market, without undergoing severe financial difficulties. As such, should they be foreclosed from a given EEA country, they could swiftly re-enter into the country in question if the Merged Entity attempted to raise prices post-foreclosure.[1064]

(1453) The Notifying Party also considers that, even under the assumption that a moderate increase in EssilorLuxottica's penetration of GrandVision's stores was to affect the competitiveness of upstream lenses manufacturers, increasing the level of self-supply and most notably an increase in volumes over which double mark-ups are eliminated, would act to reduce market prices and therefore be pro-competitive.

10.1.4.2. The Commission's assessment

(1454) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure strategies may result in a significant reduction of sales prospects faced by lenses rivals in the market. By denying access to a significant customer base, the merger may reduce their ability to compete in the near future. As a result, rivals downstream are likely to be put at a competitive disadvantage for example in the form of raised input

[1062] EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, Section 2.2.

[1063] Reply to the Statement of Objections, paragraph 561.

[1064] EssilorLuxottica/GrandVision: Economic response to the 6(1)(c) decision - Customer foreclosure, paragraph 3.3.

costs.[1065] According to complaints received by the Commission, the reduction in rivals' ability and incentive to compete after the Transaction would derive from decreased economies of scale.

(1455) According to the Non-Horizontal Merger Guidelines, it is only when a sufficiently large fraction of upstream output is affected by the revenue decreases resulting from the vertical merger that the merger may significantly impede effective competition on the upstream market. If there remain a number of upstream competitors that are not affected, competition from those firms may be sufficient to prevent prices from rising in the upstream market and, consequently, in the downstream market.[1066] The effect on competition must be assessed in the light of countervailing factors such as the presence of countervailing buyer power or the likelihood that entry would maintain effective competition in the upstream or downstream markets.[1067]

(1456) Based on its in-depth investigation, the Commission considers that a potential increase of self-supply of lenses by the Merged Entity would be unlikely to lead to foreclosure of rival lenses manufacturers to the requisite standard set out in the Non-Horizontal Merger Guidelines.

(1457) In the first place, Hoya and Rodenstock, which would be primarily affected by such a reduction of sales to GrandVision in the EEA, are large and diversified companies which are active worldwide in the supply of lenses. As regards Hoya, its lenses revenues outside of the EEA are significantly higher than the lenses revenues they achieve within the EEA. Rodenstock is also present worldwide in lenses production and sales.

(1458) In the second place, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieves a market share of [10-20]% at EEA level and a number of smaller players, which together represent an overall EEA share of [10-20]% of the upstream lenses market.

(1459) In the third place, the Commission found limited evidence of economies of scale in the production of lenses for the EEA and in the distribution of lenses in the EEA, as explained above in recitals (1426) to (1430).

(1460) In that regard, the Commission considers that the risk that the potential volume shifts from Hoya and Rodenstock to EssilorLuxottica would have a negative impact on these competitors' production and distribution costs and thus their competitiveness, as argued by the complainants, has not been confirmed by the market investigation. As regards production costs, the link between a decrease in capacity utilisation of plants serving both the EEA and non-EEA markets and a potential impact on lenses prices in the EEA appears too remote. In relation to distribution, and even if logistic costs are likely to increase if supplies are more directed towards independent opticians than retail chains such as GrandVision, Hoya and Rodenstock are already significantly active in serving independent opticians in the EEA as explained above

[1065] Non-Horizontal merger Guidelines, paragraph 72.
[1066] Non-Horizontal merger Guidelines, paragraph 74.
[1067] Non-Horizontal merger Guidelines, paragraph 76.

in recital (1423) and should be able to increase supply to these customers without incurring important additional costs.

(1461) In light of the considerations set out in recitals (1454) to (1460), the Commission concludes that any potential customer foreclosure strategy of the Merged Entity in the EEA markets for the wholesale supply of lenses would be unlikely to have significant detrimental effects on consumers in the downstream retail markets within the EEA.

10.2. Assessment of customer foreclosure at national level

(1462) The Commission concludes that the Merged Entity would not be able to reduce the customer base for alternative lenses manufacturers at the national level to an extent that would cause foreclosure of competing lenses suppliers by reducing their ability or incentives to compete.

(1463) As regards ability to foreclose, in addition to country specific-factors that will be discussed in Sections 10.2.1 to 10.2.12, some of the conclusions reached at EEA level in Section 10.1.2 apply mutatis mutandis at the national level in each of the EEA countries. This relates in particular to the fact that previous tenders show that lenses suppliers are able to compete even if GrandVision is not or no longer their customer, the possibility for these lenses suppliers to switch to alternative retail chains and independent opticians and the limited evidence of economies of scale achieved in production and distribution of lenses.

(1464) In relation to incentives to foreclose, the same conclusions reached at EEA level apply mutatis mutandis at the national level. In particular, the Commission considers that the Merged Entity has an incentive to engage in self-supply as regards lenses and to reduce its purchases of lenses upstream from rival lenses manufacturers, at least in the countries where GrandVision is already present and it might potentially have incentives to engage in that strategy, although it does not have proven ability to do so.

(1465) Similarly, with regard to the overall effects, the arguments outlined in Section 10.1.4 also apply mutatis mutandis for the assessment of customer foreclosure at the national level. In particular, the arguments regarding economies of scale also apply to the national assessment, since the production of lenses is mostly done at a global level. Furthermore, the Commission has not found a particular link between the level of profitability of lens manufacturers and the volumes of lenses sold, either at the EEA level or per EEA country, indicating that there are limited economies of scale, including in distribution at the national level.

(1466) In view of the considerations set out in recitals (1463) to (1465), the Commission will focus the national assessment of the customer foreclosure effects on whether GrandVision has market power in the downstream retail markets, for the ability to foreclose, and the presence of alternative lenses suppliers at the national level, for the overall effects.[1068]

1068 The retail markets in Austria, Bulgaria,Croatia, Cyprus, Denmark, Estonia, Germany Grecee, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Romania, Slovenia and Sweden are not affected by the transaction as regards vertical links for lenses.

10.2.1. Belgium

(1467) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Belgium.

(1468) As regards the ability to foreclose, the Merged Entity holds a combined market share of [30-40]% in the retail market in Belgium. This level of market share is significant but is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market, in particular in a context where suppliers will continue to be able to sell to major retailers such as Hans Anders, Afflelou, Krys and others. This level of market share should moreover be reduced to around [20-30]% as a result of the implementation of commitments entered into by the Merged Entity, as explained in Section 12.

(1469) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1470) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses markets as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieves a market share of [5-10]% in Belgium and a number of smaller players, which together represent an overall value share of [60-70]% of the upstream lenses market in Belgium.

10.2.2. Czech Republic

(1471) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in the Czech Republic.

(1472) As regards the ability to foreclose, the Merged Entity holds a combined market share of [20-30]% in the retail market in the Czech Republic. This level of market share is moderate and indeed lower than the level that would give rise to an affected market. It indicates that the Merged Entity is unlikely to have a significant degree of market power in the downstream market. Indeed, suppliers will continue to be able to turn to a number of retail rivals, such as Fokus Optik, Eiffel Optik, as well as a large number of independent retailers (which account for more than half of the market).

(1473) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1474) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Vision Ease and Zeiss, which achieve a market share of respectively [10-20]% and [5-10]% in the Czech Republic and a number of smaller players, which together represent an overall share of [10-20]% of the upstream lenses market in the Czech Republic.

10.2.3. Finland

(1475) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Finland.

(1476) As regards the ability to foreclose, the Merged Entity holds a combined market share of [30-40]% in the retail market in Finland. This level of market share is significant but is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Indeed, if the Merged Entity were to cease purchasing lenses from third party suppliers, those rival lens suppliers would continue to be able to sell to a number of alternative optical retail chains in Finland, including Silmäasema ([20-30]%), Fenno ([5-10]%) and Synsam ([5-10]%) as well as to a large number of independent optical retailers.

(1477) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieves a market share of [0-5]% in Finland and a number of smaller players, which together represent an overall value share of [0-5]% of the upstream lenses market in Finland.

(1478) Furthermore, alternative lenses manufacturers could also target independent retailers and buying groups, which represent [30-40]% of the lenses market in Finland and are currently, notably for independents, primarily supplied by EssilorLuxottica.

10.2.4. France

(1479) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in France.

(1480) As regards the ability to foreclose, the Merged Entity holds a combined market share of [10-20]% in the retail market in France. This level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. GrandVision is the third largest optical retailer with an overall turnover of EUR […], following the second largest optical retailer Optic 2000 (EUR […]) and behind the market leader Krys Group (EUR […]).

(1481) While Krys is a buying group already producing internally 50% of its lenses needs, which leaves reduced space for traditional lenses suppliers and Optic 2000 is an historical partner of EssilorLuxottica, there remains a number of large chains such as Alain Afflelou, Optical Center or Acuitis, which could constitute sizeable outlets for rival lenses manufacturers.

(1482) Moreover, in France, independent opticians and buying groups represent a significant share of purchases of lenses, respectively [30-40]% and [50-60]%. These retailers are […] supplied by EssilorLuxottica and not all alternative lenses suppliers seem to have targeted their marketing efforts towards these retailers. While Zeiss for example achieves […]% of its lenses sales in France to independent and buying groups ([…]% to independents and […]% to buying groups), Hoya sells only […]% of its lenses to independent and buying groups and Rodenstock only […]% to independents (but […]% for buying groups). Hence independent opticians and buying groups in France constitute a pool of potential customers that could compensate for the loss of GrandVision.[1069]

(1483) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1484) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieves a market share of [10-20]% in France and a number of smaller players, which together represent an overall value share of [5-10]% of the upstream lenses market in France.

(1485) During the market investigation, respondents mentioned that EssilorLuxottica is a particularly strong player in France. EssilorLuxottica holds a share of lenses of [60-70]% in volume and [70-80]% in value. This share remains stable in the last three years and is even higher in progressive lenses ([70-80]% in volume and [70-80]% in value).[1070]

(1486) The French wholesale lenses market is particularly concentrated. Hoya is a distant second, with a market share of [10-20]% in volume and [5-10]% in value followed by Carl Zeiss with [10-20]% and [10-20]% in value, Rodenstock ([0-5]% in volume and in value) as well as others ([5-10]% in volume, [0-5]% in value).[1071] Moreover, EssilorLuxottica's key lenses brands Transitions and Varilux have a particularly strong brand recognition with retailers in France[1072] as confirmed by competitors during the market investigation[1073].

(1487) Competitors in lenses have explained that as a result of this market structure they are already struggling to compete with EssilorLuxottica in France, and the loss of GrandVision as a major customer would make competition on the merits even more challenging.[1074] These difficulties to compete are strengthened by barriers to expansion connected with specific features of the French market, and in particular the reimbursement schemes carried out by 'organismes complémentaires d'assurance maladie or 'OCAMs', with which more than 94% of the French population have a private insurance contract. OCAMs use the services of Third-Party Administrators ('TPAs') which organise eye care networks implementing OCAMs policies with respect to eye care products. The five major TPAs are Santéclair, Carte Blanche, Itelis, Sévéane, and Kalixia. These TPAs would significantly influence the competitive position of lenses suppliers with quantitative and non-quantitative criteria, which create barriers to entry and or expansion in France.

1069 Form CO, annex 7.2.
1070 Form CO, annex 7.2.
1071 Form CO annex 7.2
1072 M.8394 EssilorLuxottica, recitals 82, 686, 744 and fn 403.
1073 Hoya explained that '*EL's flagship lens brands Varilux, Crizal, Eyezen, Xperio and Transitions have strong brand recognition with retailers. This is especially true for Transitions and Varilux in some key markets, most notably France (the largest lens market in the EEA*)'. Questionnaire to suppliers of lenses and eyewear – Q3 – question 21.1, ID 2541.
1074 Questionnaire to suppliers of lenses and eyewear – Q3 – question 13, ID 2541

(1488) According to complainants, these existing regulatory frameworks limit or constrains the development of alternative lenses suppliers to EssilorLuxottica, which is presumed to hold a dominant position in the French lenses markets. As such they are favourable to the incumbent supplier and any alternative competitor whose ability to compete would be reduced by customer foreclosure would find it harder to recover its full competitive potential.

(1489) The Commission notes however that these alleged barriers to entry and expansion on the lenses markets in France are not merger specific as they appear linked to the specificities of the French reimbursement schemes and pre-existed the Transaction. Furthermore, Hoya and Rodenstock have been selected by various TPAs in their 2019 tenders. By way of illustration, both Hoya and Seiko entities have been referenced by Itelis, Sévéane and Kalixia, while Rodenstock is referenced by both Sévéane and Kalixia, the latter being the largest eye care network with 18 million affiliated customers.[1075]

(1490) As regards Santeclair, it required suppliers to be referenced in at least five buying groups with a national scope. Santeclair's criterion being related to buying groups, it appears that the loss of GrandVision would not impact Hoya and Rodenstock's competitiveness in Santeclair's tenders but rather that this competitiveness would depend on performance in sales to buying groups, which represent half of purchases of lenses in France.[1076]

(1491) As such, while these specific features could make re-entry in the French market more difficult (in case alternative lenses suppliers would face a reduction of their ability to compete through customer foreclosure and would be forced to leave the market), they have no specific influence on the ability to foreclose. In particular, alternative lens suppliers would still have [80-90]% of the market to turn to, and notably a large number of independent and buying groups in order to fill the void that would be created by the Transaction.

10.2.5. Hungary

(1492) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects in Hungary.

(1493) As regards the ability to foreclose, the Merged Entity holds a combined market share of [40-50]% in the retail market in Hungary. This level of market share is significant but must also be read in light of the other characteristics of the market when assessing whether the Merged Entity would have a significant degree of market power in the downstream market. In particular, if the Merged Entity were to cease purchasing lenses from third party suppliers, those rival lenses suppliers would continue to have a number of alternative customers to supply to in Hungary, including retail chain Optic World, the second largest player. Moreover, a very substantial part of the Hungarian market (almost half) is made up of independent optical retailers. These retailers are often part of buying groups. There are three buying groups active in Hungary, namely Első Magyar Optikus Zrt ('EMO'), Optik Plus Kft. ('Optik Plus'), and Opticnet Hungary Egyesülés ('Opticnet'), which act to

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1075 Reply to the Statement of Objections, paragraph 578.
1076 Reply to the Statement of Objections, paragraph 578.

efficiently regroup the procurement needs of these smaller independent retailers and as such constitute straightforward alternative outlets for lenses suppliers.[1077]

(1494) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1495) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss and Noptiker, which achieves a market share of respectively [10-20]% and [5-10]% in Hungary and a number of smaller players, which together represent an overall value share of 3% of the upstream lenses market in Hungary.

10.2.6. Ireland

(1496) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Ireland.

(1497) As regards the ability to foreclose, the Merged Entity holds a combined market share of 11% in the retail market in Ireland. This level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. In particular, rival suppliers will continue to be able to supply Specsavers, the largest player in Ireland ([20-30]%), as well as a large number of independent retailers that account for two thirds of the market.

(1498) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1499) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss and RightStyle, which achieve a market share of respectively [5-10]% and [0-5]% in Ireland and a number of smaller players, which together represent an overall value share of [50-60]% of the upstream lenses market in Ireland.

10.2.7. Norway

(1500) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Norway.

(1501) As regards the ability to foreclose, the Merged Entity holds a combined market share of [30-40]% in the retail market in Norway. This level of market share is significant but is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Indeed, rival lenses suppliers will continue to be able to supply a number of alternative optical retail chains in Norway,

1077 Form CO, annex CO 7.1.9, Hungary.

including Synsam ([10-20]%), Krogh Optikk AS ([5-10]%) as well as C-Optikk ([10-20]%), and Alliance ([5-10]%).[1078]

(1502) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1503) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieve a market share of [0-5]% in Norway and a number of smaller players, which together represent an overall value share of [20-30]% of the upstream lenses market in Norway.

10.2.8. Poland

(1504) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Poland.

(1505) As regards the ability to foreclose, the Merged Entity holds a combined market share of [10-20]% in the retail market in Poland. This level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. A number of downstream rivals remain for upstream lens suppliers to sell to, such as Fielmann, Paris Optique, Lynx, VisionOptyk, Dr Marchewka, Twoje soczewki, as well as a large number of independent opticians representing around 70% of the market.

(1506) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1507) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Szajna and Zeiss, which achieve a market share of [10-20]% and [0-5]% in Poland respectively and a number of smaller players, which together represent an overall value share of [20-30]% of the upstream lenses market in Poland.

10.2.9. Portugal

(1508) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Portugal.

(1509) As regards the ability to foreclose, the Merged Entity holds a combined market share of [20-30]% in the retail market in Portugal. This level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Rivals will continue to be able to sell to the remaining [70-80]% of the market, which includes large chains (Optivisao, Opticalia, Instituto

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1078 Form CO, annex CO 7.1.12, the Nordics.

Optico, Conselheiros de Visao, CECOP, Well's, Opticenter, and several others), as well as to a number of independent retailers.

(1510) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1511) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieves a market share of [10-20]% in Portugal and a number of smaller players, which together represent an overall value share of [20-30]% of the upstream lenses market in Portugal.

10.2.10. Slovakia

(1512) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Slovakia.

(1513) As regards the ability to foreclose, the Merged Entity holds a combined market share of 7% in the retail market in Slovakia. This low level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Rivals will continue to be able to sell to chains larger than the Merged Entity such as Fokus Optik ([20-30]%) and Eiffel Optic ([10-20]%), as well as other smaller chains such as Mania, and a number of independent retailers.

(1514) As regards incentives to foreclose, as explained in recital (1427), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1515) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss, which achieves a market share of [5-10]% in Slovakia and a number of smaller players, which together represent an overall value share of [10-20]% of the upstream lenses market in Slovakia.

10.2.11. Spain

(1516) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in Spain.

(1517) As regards the ability to foreclose, the Merged Entity holds a combined market share of [5-10]% in the retail market in Spain. This low level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Indeed, rival suppliers will continue to be able to sell to players larger than the Merged Entity such as Multiopticas ([10-20]%) and Opticalia ([10-20]%), as well as other chains such as Afflelou and Federopticos, as well as independent opticians

(1518) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1519) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Prats, Indo and Zeiss, which achieves a market share of respectively [10-20]%, [10-20]% and [5-10]% in Spain and a number of smaller players, which together represent an overall value share of [0-5]% of the upstream lenses market in Spain.

10.2.12. United Kingdom

(1520) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for lenses in the United Kingdom.

(1521) As regards the ability to foreclose, the Merged Entity holds a combined market share of [10-20]% in the retail market in the United Kingdom. This level of market share is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Rival suppliers of lenses will continue to be able to sell to major optical retail chains such as Specsavers ([40-50]%), Boots Opticians ([10-20]%), Asda ([0-5]%) and Optical Express ([0-5]%), as well as other smaller chains and independent retailers.

(1522) As regards incentives to foreclose, as explained in recital (1464), the same conclusions and arguments reached at EEA level apply mutatis mutandis at the national level.

(1523) As regards overall effects, a number of upstream rivals do not sell significant amounts (or at all) to GrandVision and, therefore, they would continue to operate and compete in the lenses market as they currently do regardless of any strategy adopted by the Merged Entity. This includes in particular Zeiss and Norville, which achieves a market share of respectively [5-10]% and [0-5]% in the United Kingdom and a number of smaller players, which together represent an overall value share of [0-5]% of the upstream lenses market in the United Kingdom.

11. COMPETITIVE ASSESSMENT IN OTHER AREAS WITH HORIZONTALLY OR VERTICALLY AFFECTED MARKETS

11.1. Readers - Vertical non-coordinated effects with respect to readers (customer foreclosure)

(1524) EssilorLuxottica is active in the (upstream) wholesale supply of readers to optical retailers in the EEA. EssilorLuxottica's market share in this market is less than 30% in the EEA and in all EEA contracting parties. Conversely, GrandVision is active in the (downstream) retail market for the supply of optical retail products (including readers) in brick-and-mortar stores in a number of countries across the EEA.

(1525) At the EEA level, the Merged Entity's combined brick-and-mortar market share in the (downstream) retail of optical products would be [10-20]%. At national level, the Merged Entity's combined market share exceeds 30% in a number of EEA countries: Belgium ([30-40]%), Finland ([30-40]%), Hungary ([40-50]%) and Norway ([30-40]%). Nevertheless, the Commission considers that, even with respect to the abovementioned national retail markets, the Merged Entity is unlikely to have the ability or incentive to engage in a customer foreclosure strategy, and that any such strategy would be unlikely to succeed, for the following reasons.

(1526) As regards the Merged Entity's **ability** to engage in customer foreclosure, firstly, while the Merged Entity's market share in the market for the retail of optical products in optical stores may exceed 30% in Belgium, Finland, Hungary and Norway, their market shares in the downstream retail of readers (specifically) does not. In particular, the Notifying Party's estimate for the Parties' retail market shares split by product shows that at the EEA level the Parties' market share in the downstream retail of readers is just [0-5]%. Furthermore, at the national level, the Parties' market share in the downstream retail of readers is less than [10-20]% in all countries in the EEA.

(1527) Secondly, readers are sold in a wide variety of stores, including non-optical stores such as pharmacies and supermarkets that sell a higher proportion of private-label readers. Moreover, readers are also sold online by specialty and general retailers (e.g. Amazon). This further reinforces the conclusion that the Merged Entity represents only a small proportion of demand for readers in the EEA and in the affected Member States and that rival wholesalers will continue to have a sufficient number of customers to sell to.

(1528) Thirdly, strong upstream competitors of EssilorLuxottica remain in the market. The main wholesalers are IOI Industrie Ottiche Italiane Srl, Filtral, Sogema, Lexxoo, as well as other European companies, including major players of the eyewear industry, such as Fielmann, Safilo, or de Rigo.

(1529) The Commission finds that the Merged Entity would lack the ability to foreclose rival wholesale suppliers of readers (upstream) by attempting to leverage its position in the supply of readers (downstream).

(1530) As regards the Merged Entity's **incentive** to engage in a customer foreclosure strategy, GrandVision's retail sales of readers represent only EUR […] out of a total market size of around EUR 873 million. Readers only make up a very small part of GrandVision's revenues (only […]%). While it cannot be excluded that the Merged Entity would post-Transaction seek to vertically integrate its supplies of readers should this prove more efficient from a commercial perspective, it is unlikely that the Merged Entity would attempt to do so with the objective of engaging in a customer foreclosure strategy if seen in combination with lack of ability to do so and that the strategy would not have any significant impact.

(1531) As regards the **likely effects** of a customer foreclosure strategy, readers represent a very small part of GrandVision's business. Only […]% of GrandVision's revenues come from readers in the EEA and, similarly, at national level readers are a very small source of revenue for GrandVision. Moreover, its purchases of readers in the EEA account for less than [0-5]% of the total EEA wholesale market of readers.[1079] Accordingly, GrandVision represents a very low proportion of demand for readers in the EEA, and wholesale suppliers of readers will continue to have a large number of customers they can sell to. Moreover, these suppliers are active in various EEA Member States and can readily sell into any Member States as norms and specifications are set at EEA level and transportation costs are low.[1080] Therefore,

[1079] Form CO, paragraph 366.
[1080] Form CO, paragraph 362, 367,

the Commission finds that rival wholesale suppliers of readers are unlikely to be significantly impacted by any attempted customer foreclosure strategy.

(1532) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of readers and the (downstream) retail of readers in the EEA.

11.2. Contact lenses - Vertical non-coordinated effects (customer foreclosure)

(1533) Upstream, EssilorLuxottica does not manufacture contact lenses and only has a limited presence as a wholesale supplier of contact lenses at EEA level, with a market share of [5-10]% or below. At national level, EssilorLuxottica's market share is [5-10]% or less in all EEA Member States where it is active, except in the Netherlands, where it holds a [5-10]% share.[1081]

(1534) Downstream, GrandVision and EssilorLuxottica are active in the retail supply of contact lenses in their brick-and-mortar optical retail stores (as well as online, which is assessed separately in Section 11.5 below). At EEA level, the Parties' combined market shares are modest in the sale in brick-and mortar-stores of contact lenses ([10-20]%) and of optical products overall ([10-20]%). The Parties' combined downstream market share is less than 30% in the majority of EEA countries. In the countries where the Transaction gives rise to an increment at downstream level from GrandVision, the Parties' combined downstream market share in the retail of contact lenses in brick-and-mortar stores is [30-40]% or more only in Luxembourg, the Netherlands and Sweden. For completeness, the risk of customer foreclosure in Belgium will also be assessed, as the Parties' combined market share in the supply of optical products overall exceeds 30%.

(1535) A third party approached the Commission to express concerns regarding a possible customer foreclosure strategy based on contact lenses.[1082] It explained that GrandVision has a large brick-and-mortar retail presence in the EEA and that it was concerned about the possible loss of GrandVision as a customer post-Transaction. However, it noted that '*[a]lthough it is difficult to estimate the concrete consequences of the Transaction, the Company does not believe that it may drive it out of the market*'. In this respect it is noted that GrandVision only accounts for a relatively modest proportion of the company's sales of contact lenses to retailers in the EEA.[1083]

(1536) Each of the vertically affected national markets are assessed in turn below. However, it is first useful to recall certain factors that individually apply to some countries.

(1537) First, in the individual countries in which it has a market presence, EssilorLuxottica is hardly active in the wholesale supply of contact lenses. Its market shares are low in all Member States where it is active (0-5%, except for the Netherlands where it is

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1081 Form CO, paragraph 192-195 and Response to RFI 1 Q38. For completeness, almost all of EssilorLuxottica's contact lens sales are of soft contact lenses (more than […]%); the Notifying Party submits its market shares on a segmentation for soft contact lenses would be almost identical to its overall contact lens market share. Its presence in hard contact lenses is negligible in the EEA and most EEA countries. Accordingly, this potential segmentation is not considered further as it does not impact the assessment in the present case.

1082 Non-Confidential Minutes of a call with a Competitor dated 14.01.2020.

1083 Ibid., paragraph 14.

5-10%) as well as in the EEA. Its market position upstream is therefore modest. Attempting to meet GrandVision's demand at EEA level would likely require significant additional investments and expansion.

(1538) Second, at EEA level, the Merged Entity's downstream market share in the sale of contact lenses in brick-and-mortar stores is relatively modest ([10-20]%). This is reflected in the fact that GrandVision only represents a relatively modest proportion of purchases in the EEA from the complainant mentioned above. Suppliers of contact lenses upstream are major international players active across the EEA (such as Johnson & Johnson, CooperVision, Alcon, Bausch&Lomb) and have a large number of customers they can turn to across the EEA, including major optical retail chains and independent opticians.

(1539) Third, the online market is expanding rapidly. As explained in the *Essilor/Luxottica* decision: '*Across the EEA online purchasing is growing, because contact lenses are particularly suitable for online purchase (for example, there is no need to try them on, and once a customer knows his/her prescription, buying contact lenses online is very quick). Suppliers willing to sell contact lenses have therefore more routes to reach the final consumer compared to ophthalmic lenses where the mediation of the optician is needed.*'[1084] Also in the online channel, however, the Parties represent a relatively modest proportion of demand (as shown by their combined market share of approximately [10-20]% in the online supply of optical products).

(1540) In Belgium, the Parties' market share upstream is very limited (0-5%). Downstream, the Parties' combined market share in the brick-and-mortar retail of contact lenses is [20-30]% (it is [30-40]% in the brick-and-mortar retail of all optical products). The Parties are constrained by major brick-and-mortar rivals downstream such as Hans Anders, Afflelou, Krys and a large number of smaller independent opticians. A large number of online retailers will also continue to sell contact lenses in Belgium (the Parties only account for an [10-20]% market share in the online retail of optical products in Belgium). The online segment is continuing to grow rapidly, in particular for contact lenses. Therefore, post-Transaction, it appears unlikely that the Merged Entity would have the ability or incentive to engage in a successful customer foreclosure strategy, especially given that competing wholesale contact lens suppliers will continue to be able to supply a large number of physical and online retailers in Belgium. Moreover, even if the Merged Entity were to attempt a customer foreclosure strategy, rival wholesalers will thus continue to have a sufficient (and growing) customer base of optical retailers to whom they can sell, so the impact of such a strategy would be unlikely to be significant.

(1541) In Luxembourg, the Parties' market share upstream is very limited (0-5%). Downstream, the Parties' combined market share in the brick-and-mortar retail of contact lenses is [30-40]% (it is [20-30]% in the brick-and-mortar retail of all optical products). The Parties are constrained by major brick-and-mortar rivals downstream such as Fielmann and Optical Center and a large number of smaller independent opticians. In addition, a large number of online retailers will also continue to sell contact lenses in Luxembourg (the Parties only account for a [5-10]% market share in the online retail of optical products in Luxembourg). The online segment is continuing to grow rapidly, in particular for contact lenses. Therefore, post-

1084 Case M.8394 *Essilor/Luxottica*, paragraph 780.

Transaction, it appears unlikely that the Merged Entity would have the ability or incentive to engage in a successful customer foreclosure strategy, especially given that competing wholesale contact lens suppliers will continue to be able to supply a large number of physical and online retailers in Luxembourg. Moreover, even if the Merged Entity were to attempt a customer foreclosure strategy, rival wholesalers will thus continue to have a sufficient (and growing) customer base of optical retailers to whom they can sell, so the impact of such a strategy would be unlikely to be significant.

(1542) In the Netherlands, the Parties' market share upstream is small (5-10%). Downstream, the Parties' combined market share in the brick-and-mortar retail of contact lenses is [30-40]% (it is [20-30]% in the brick-and-mortar retail of all optical products). The Parties are constrained by major brick-and-mortar rivals downstream such as Hans Anders, Specsavers, Ace & Tate and a large number of smaller independent opticians. There are also a large number of online retailers of contact lenses in the Netherlands. The online segment is continuing to grow rapidly, in particular for contact lenses. Therefore, post-Transaction, it appears unlikely that the Merged Entity would have the ability or incentive to engage in a successful customer foreclosure strategy, especially given that competing wholesale contact lens suppliers will continue to be able to supply a large number of physical and online retailers in the Netherlands. Moreover, even if the Merged Entity were to attempt a customer foreclosure strategy, rival wholesalers will thus continue to have a sufficient (and growing) customer base of optical retailers to whom they can sell, so the impact of such a strategy would be unlikely to be significant.

(1543) In Sweden, the Parties' market share upstream is very limited (0-5%). Downstream, the Parties' combined market share in the brick-and-mortar retail of contact lenses is estimated at [40-50]%. However, the Parties' estimate that their downstream share is only [10-20]% in the brick-and-mortar retail of all optical products. The Parties are constrained by major brick-and-mortar rivals downstream such as Synsam (which is twice as large as the Parties in optical brick-and-mortar in Sweden), Specsavers, Synologen, Klarsynt, Smarteyes and Hans Anders, as well as a large number of smaller independent opticians. There are also a large number of online retailers of contact lenses in Sweden. The online segment is continuing to grow rapidly, in particular for contact lenses. Therefore, post-Transaction, it appears unlikely that the Merged Entity would have the ability or incentive to engage in a successful customer foreclosure strategy, especially given that competing wholesale contact lens suppliers will continue to be able to supply a large number of physical and online retailers in Sweden. Even if the Merged Entity were to attempt a customer foreclosure strategy, rival wholesalers will thus continue to have a sufficient (and growing) customer base of optical retailers to whom they can sell, so the impact of such a strategy would be unlikely to be significant.

11.3. Eyewear - Vertical non-coordinated effects (customer foreclosure)

(1544) The Transaction leads to vertical links between EssilorLuxottica's upstream market presence in eyewear (frames and sunglasses) and GrandVision's downstream activities in retail distribution of optical products in various Member States. In particular, the Commission has assessed whether the Merged Entity would be able to foreclose access to a sufficient customer base in order to reduce frames and sunglasses competitors' ability or incentive to compete. In the present case, assuming the Parties would be able to foreclose access to a sufficient customer base for their lenses rivals, such a behaviour could increase rivals' cost of supply and undermine their economies of scale. These increased costs could be passed on to optical retailers and ultimately to final consumers.

(1545) The Commission will first assess ability and incentives to foreclose customer base at the EEA level. The Commission will then assess the possible impact of customer foreclosure in the EEA as a whole, before turning to an assessment of the various national affected markets.

11.3.1. Assessment of customer foreclosure for eyewear at EEA level

(1546) The Commission considers that the possibility for the Merged Entity to pursue a customer foreclosure strategy depends whether GrandVision's retail network downstream decides to shift significant input purchases to its upstream frames and sunglasses supplier (EssilorLuxottica) that would result in the loss of supplies of by other competing lenses suppliers downstream and would cause a restriction of their ability or incentive to compete on the merits. The Commission considers that the Merged Entity's ability to engage in customer foreclosure depends in the first place on the significance of its downstream business as a buyer of frames and sunglasses purchased from its upstream competitors.

(1547) As regards ability to foreclose, the Parties' combined retail market share at the EEA level ([10-20]%) does not suggest that the Merged Entity would have market power in the downstream market. In that regard, following the Transaction, there will remain a large customer base available for frames and sunglasses in the EEA, which will have [80-90]% of the market to turn to in order to fill the void that could be created by the Transaction. This would leave a number of alternative customers for alternative frames and glasses suppliers to turn to should they lose all their supplies to GrandVision.

(1548) In relation to supply of frames to GrandVision in the EEA, the graph below shows the names of suppliers of frames to GrandVision between 2016 and 2019 and the percentage of supplies.

Figure 135 : GrandVision frames suppliers in the EEA

[…]

(1549) As regards frames, this graph shows that a large fraction of GrandVision's purchases (between […] and […]%) consist of private label products. GrandVision's share of supply of branded and unbranded frames would further reduce the customer base that the Merged Entity would be able to foreclose, given that the Notifying Party itself does not offer private label frames. In that regard, the share of private label sales is to a large degree determined by retail banners' positioning in the value-luxury spectrum, and this positioning cannot be dramatically changed in the short term or without incurring sunk costs. For branded products, EssilorLuxottica already accounts for a percentage GrandVision's frame purchases that is close to […]. Other suppliers of branded frames run therefore a risk to be foreclosed for […] of GrandVision's frames purchases ([…]%). If the Merged Entity were to cease purchasing frames from other branded frames suppliers, those rival frames suppliers would be largely unaffected due to the i) the limited size of the Merged Entity's retail business at EEA level and ii) the fact that currently these branded frames suppliers account for only a minor part of GrandVision's already limited purchases of frames in the EEA.

(1550) In relation to supply of sunglasses to GrandVision in the EEA, the graph below shows the list of suppliers of sunglasses to GrandVision between 2016 and 2019 and the percentage of supplies.

Figure 136 : GrandVision sunglasses suppliers in the EEA

[…]

(1551) […]. However, EssilorLuxottica […]. Other branded sunglasses suppliers represent between […] and […]% of GrandVision's purchases. If the Merged Entity were to cease purchasing sunglasses from other branded frames suppliers, those rival sunglasses suppliers would be largely unaffected due to the i) the limited size of the Merged Entity's retail business at EEA level and ii) the fact that currently these branded sunglasses suppliers account for only a minor part of GrandVision's already limited purchases of sunglasses in the EEA.

(1552) In the light of the above, the Commission considers that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for eyewear (frames and sunglasses) in the EEA.

11.3.2. Assessment of customer foreclosure for eyewear at national level[1085]

(1553) The Transaction would give rise to a vertically affected market given that the Merged Entity's downstream market share in optical retail would exceed 30% in the following Member States: Austria, Belgium, Finland, Hungary, Norway. The market is very close to being affected in the Netherlands too ([20-30]%).[1086] Each of these Member States is assessed in turn.

(1554) In **Belgium** the market is affected because the Merged Entity holds a combined market share of [30-40]% in the retail market. This level of market share is significant but is not in itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market, in particular in a context where suppliers will continue to be able to sell to major retailers such as Hans Anders, Afflelou, Krys and others. In any event, this downstream market share will moreover be reduced to [20-30]% as a result of the implementation of commitments entered into by the Merged Entity, as explained in Section 12. Thus it appears unlikely that the Merged Entity would have the ability to engage in a customer foreclosure strategy and, equally, even if it did attempt such a strategy it is unlikely to have a significant impact on its upstream rivals.

1085 The retail markets in Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Romania, Slovakia and Slovenia are not affected by the Transaction as regards vertical links for eyewear.

1086 For completeness, the Merged Entity's upstream market share would exceed 30% in certain other Member States but in each of them its downstream market share falls below 30%, namely: Austria ([10-20]%), Denmark ([10-20]% downstream), France ([10-20]%), Germany ([10-20]%), Greece ([0-5]%), Ireland ([10-20]%), Italy ([10-20]%, or [10-20]% following the divestiture pursuant to the Commitments), Portugal ([20-30]%), Spain ([5-10]%), Sweden ([10-20]%) and the UK ([10-20]%). In these countries, a large number of rival retailers will remain for suppliers to sell to. In view of the limited downstream market share, and thus the limited proportion of purchases that the Merged Entity represents in these Member States, they are not assessed further from the perspective of customer foreclosure.

(1555) Therefore, in light of the above and the evidence available to it, the Commission concludes that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for eyewear in Belgium.

(1556) In **Finland,** as regards the retail market, the Merged Entity holds a combined market share of [30-40]% in Finland. This level of market share is significant but is not of itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Indeed, if the Merged Entity were to cease purchasing sunglasses from other branded sunglasses suppliers, those rival sunglasses suppliers would be largely unaffected due to a large number of alternative optical retail chains sourcing branded sunglasses in Finland, including Silmäasema ([20-30]%), Fenno ([5-10]%) and Synsam ([5-10]%).[1087] Thus it appears unlikely that the Merged Entity would have the ability to engage in a customer foreclosure strategy and, equally, even if it did attempt such a strategy it is unlikely to have a significant impact on its upstream rivals.

(1557) Therefore, in light of the above and the evidence available to it, the Commission concludes that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for eyewear in Finland.

(1558) In **Hungary**, the market is affected because the Merged Entity holds a combined market share of [40-50]% in the retail market. This level of market share is significant but must also be read in light of the other characteristics of the market when assessing whether the Merged Entity would have a significant degree of market power in the downstream market. In particular, if the Merged Entity were to cease purchasing sunglasses from other branded frames and sunglasses suppliers, those rival frames and sunglasses suppliers would be largely unaffected due to the availability of alternatives in Hungary, including retail chain Optic World, which focuses mostly on high-end branded products (including therefore branded frames and suppliers).[1088] Moreover, a very substantial part of the Hungarian market (almost half) is made up of independent optical retailers. These retailers are often part of buying groups. There are three buying groups active in Hungary, namely Első Magyar Optikus Zrt ('EMO'), Optik Plus Kft. ('Optik Plus'), and Opticnet Hungary Egyesülés ('Opticnet'), which act to efficiently regroup the procurement needs of these smaller independent retailers and as such constitute straightforward alternative outlets for branded eyewear suppliers.[1089] Thus it appears that upstream suppliers will continue to have a sufficient number of retailers to sell to. It is therefore unlikely that the Merged Entity would have the ability to engage in a customer foreclosure strategy and, equally, even if it did attempt such a strategy it is unlikely to have a significant impact on its upstream rivals.

(1559) Therefore, in light of the above and the evidence available to it, the Commission concludes that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for eyewear in Hungary.

(1560) In **the Netherlands**, as regards the retail market, the Merged Entity holds a combined market share of [20-30]% in the Netherlands. This level of downstream market share is modest for a customer foreclosure strategy and indeed falls below

1087 Form CO, annex CO 7.1.12, the Nordics
1088 Form CO, annex CO 7.1.9, Hungary.
1089 Form CO, annex CO 7.1.9, Hungary.

the level that would give rise to a vertically affected market. This level of market share in the downstream retail market will be further reduced to around [20-30]% as a result of the implementation of commitments entered into by the Merged Entity, as explained in Section 12. Moreover, upstream rivals will continue to be able to sell to a number of major downstream retailers such as Hans Anders, Specsavers, as well as a large number of independent opticians (which represent almost half of the market). Thus it appears unlikely that the Merged Entity would have the ability to engage in a customer foreclosure strategy and, equally, even if it did attempt such a strategy it is unlikely to have a significant impact on its upstream rivals.

(1561) Therefore, in light of the above and the evidence available to it, the Commission concludes that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for eyewear in the Netherlands.

(1562) In **Norway,** as regards the retail market, the Merged Entity holds a combined market share of [30-40]% in Norway. This level of downstream market share is significant but is not in itself sufficient for the Merged Entity to have a significant degree of market power in the downstream market. Indeed, even if the Merged Entity were to cease purchasing sunglasses from other branded sunglasses suppliers, those rival sunglasses suppliers would be largely unaffected due to a large number of alternative optical retail chains sourcing branded sunglasses in Norway, including Synsam ([10-20]%) which has a low share of private label and a medium/high-end proposition, and Krogh Optikk AS ([5-10]%) which has a low share of private label and a high-end position. Post-Transaction, these competitors as well as other sizeable players, such as C-Optikk ([10-20]%), and Alliance ([5-10]%) would constitute alternative outlets for branded eyewear suppliers.[1090] Thus it appears unlikely that the Merged Entity would have the ability to engage in a customer foreclosure strategy and, equally, even if it did attempt such a strategy it is unlikely to have a significant impact on its upstream rivals.

(1563) Therefore, in light of the above and the evidence available to it, the Commission concludes that the Transaction would not significantly impede effective competition as a result of customer foreclosure effects for eyewear in Norway.

11.4. Ophthalmic machines – Vertical non-coordinated effects (input foreclosure and customer foreclosure)

(1564) The Commission assesses the vertical effects with respect to ophthalmic machines, and in particular for table-top edgers. Coating machines are only sold to prescription laboratories, and no vertical relationship therefore exists. Industrial glazing and surfacing machines are also mainly sold to prescription laboratories, and in addition also to retailers that operate edging and mounting facilities.[1091] The Notifying

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1090 Form CO, annex CO 7.1.12, the Nordics

1091 The Notifying Party is a manufacturer of surfacing machines (in its […]) and glazing machines (in its […]), which are then supplied to prescription laboratories only. GrandVision procures glazing machines for its use in […] facilities only (its […] and […]), whereas EssilorLuxottica only sells these machines to […] (Form CO, paragraph 9 on page 189). In any event, EssilorLuxottica's upstream share is only [5-10]% at EEA level and GrandVision only represents a negligible proportion of demand for these products (using it only in […] stores, compared with a large number of substantially larger prescription laboratories). Accordingly, this vertical link is not assessed further in this Decision.

Party's market shares and GrandVision's purchases in optometric instruments are very limited.

11.4.1. Table-top edgers

11.4.1.1. Input foreclosure

(1565) The Notifying Party is a supplier of table-top edgers for optical retailers, with clients including retail chains such as Fielmann and Specsavers.[1092] The Merged Entity would therefore become a supplier to rival retailers. In what follows, the Commission sets out its assignment as to vertical effects stemming from potential input foreclosure of table-top edgers to rival opticians and the extent to which this would potentially result in a reduced competitiveness of such retailers.

(1566) The Notifying Party's market share in table-top edgers is not very high on an EEA or worldwide basis ([10-20]% in the EEA and [20-30]% worldwide).[1093] On a national level, its market share would exceed 30% in Ireland ([70-80]%), Latvia ([40-50]%), the Netherlands ([30-40]%) and Sweden ([30-40]%). While market shares are very high in Ireland, there appears to be very little demand in Ireland (only […] units sold).[1094] Furthermore, the Merged Entity's retail market shares in Ireland would be limited to [5-10]% (and [10-20]% when including sunglass specialists, which the Commission however understands do typically not use table-top edgers). This therefore, to some extent, reduces the incentives for the Merged Entity to engage in input foreclosure, as it would have to forego supplying a very large part of the market represented by rival retailers, and consequently incur significant losses from the sale of table-top edgers, in order to (as set out below) only minimally be able to impact these competitors by doing so. In Latvia, the Merged Entity has no retail presence and therefore no incentive to engage in input foreclosure. The Parties' upstream market shares are modest in the Netherlands and Sweden, and a number of competing suppliers will remain.

(1567) There are numerous alternative suppliers, such as Schneider, Coburn Technologies, Comes, MEI, Topcon, Nidek, Briot-Weco, Huvitz, Indo Optical, Tabuko and others.[1095] These suppliers typically sell in a multitude of countries and ship from central production facilities. EssilorLuxottica for instance has […] individual plants throughout the world, […]. This is usually the same for its competitors.[1096] Also, opticians are to some extent also able to trim glasses also remotely through centralised edgers in prescription laboratories.[1097] Furthermore, opticians do not have strong brand preferences and seem to be able to easily switch suppliers.[1098;1099]

(1568) Furthermore, table-top edgers last a long time (ten years).[1100] As the Merged Entity would not be able to affect the installed base drastically due to rival retailers

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1092 Form CO, page 189.
1093 Form CO, page 119.
1094 Annex RFI 1 Q39.
1095 Form CO, page 194.
1096 Form CO, page 197.
1097 Form CO, page 204.
1098 Form CO, page 205.
1099 M.8394 Essilor/Luxottica, recital 776.
1100 Form CO, page 195.

purchasing edgers not very often, this significantly impedes its ability to engage in input foreclosure.

(1569) Moreover, table-top edgers do not represent a material cost factor for retailers,[1101] and are therefore unlikely to be passed on to retail prices. EssilorLuxottica's sales at worldwide level for instance amount to less than EUR […] per year.[1102]

(1570) On the basis of the above, the Commission does not consider it likely that the Transaction would result in a significant impediment to effective competition.

11.4.1.2. Customer foreclosure

(1571) The Commission finds that the Transaction would not significantly impede competition in the internal market as regards vertical non-coordinated effects stemming from customer foreclosure of table-top edgers.

(1572) As stated in recital (1546), the NHMG set out that for customer foreclosure to lead to consumer harm, the relevant benchmark is whether the Merged Entity would be able to foreclose access to a sufficient customer base in order to reduce competitors' ability or incentive to compete. In turn, this leads to higher input costs for the rivals, and therefore to higher prices for consumers. In case of the Transaction, this would be manifested if the Merged Entity would be able and incentivised to foreclose competing suppliers of table-top edgers to its retail network, and thereby affect these suppliers' economies of scale or cost of supply, with these being passed on to optical retailers as a result.

(1573) At the global and EEA level, the Merged Entity would have a retail market share of [20-30]% and [10-20]% respectively. While this is significant, it is also not very high. This would thus limit somewhat the size of the customer base that the Merged Entity would be able to foreclose at these levels. In most countries in the EEA, the Merged Entity's retail share would be below 30%. Countries where the market share would be above 30% are Belgium ([30-40]%), Finland ([30-40]%), Hungary ([40-50]%), and Norway [30-40]%. Apart from in Belgium, where the Notifying Party has a [20-30]% market share in the supply of table-top edgers, its market shares are low in these countries (Finland [0-5]%, Hungary [10-20]% and Norway [10-20]%). Even if the Merged Entity would going-forward solely purchase its own table-top edgers, and if the current market share with other retailers would be maintained, a large part of the market would remain accessible for competing suppliers of table-top edgers. The Commission in this respect considers that this would therefore to some extent limit the impact of a customer foreclosure strategy would have on the competitiveness of rival suppliers of this product. In addition, suppliers of ophthalmic machines have a global or international footprint, which would further somewhat limit the impact of a customer foreclosure strategy conducted at the national level.

(1574) Furthermore, the Merged Entity's market shares in the supply of table-top edgers are also not very high at the worldwide and EEA level (namely, [20-30]% and [10-20]% respectively).[1103]

1101 Form CO, page 300.
1102 Form CO, page 352. In comparison, the retail market in the EEA amounts to EUR 25 billion per year.
1103 Form CO, page 119.

(1575) Therefore, on balance, the Commission considers that the Transaction is not likely to result in a significant impediment to effective competition in the internal market.

11.5. Online retail of optical products – horizontal non-coordinated effects or vertical non-coordinated effects (input or customer foreclosure)

11.5.1. Horizontal non-coordinated effects in online retail of optical products

(1576) Both EssilorLuxottica and GrandVision are active in the retail market for the online supply of optical products in a number of countries across the EEA.

(1577) As indicated in Table 24 below, at national level, the Transaction does not give rise to an affected market in the vast majority of Member States, in particular because of GrandVision's limited presence or lack of any presence. At national level, the Transaction gives rise to horizontally affected markets in Finland, Germany, the Netherlands, Norway, and the UK.

Table 24 – Notifying Party's market share estimates at national level[1104]

	GrandVision	EssilorLuxottica	Combined
EEA	[0-5]%	[10-20]%	[10-20]%
Austria	-	[10-20]%	[10-20]%
Belgium	[0-5]%	[10-20]%	[10-20]%
Czech Republic	-	[0-5]%	[0-5]%
Denmark	-	[5-10]%	[5-10]%
Finland	[30-40]%	[50-60]%	[80-90]%
France	[0-5]%	[0-5]%	[0-5]%
Germany	[0-5]%	[20-30]%	[20-30]%
Hungary	-	[0-5]%	[0-5]%
Ireland	-	[20-30]%	[20-30]%
Italy	[0-5]%	[0-5]%	[0-5]%
Luxembourg	-	[5-10]%	[5-10]%
Malta	-	[10-20]%	[10-20]%
Netherlands	[5-10]%	[10-20]%	[20-30]%
Norway	[0-5]%	[80-90]%	[80-90]%
Poland	[0-5]%	[0-5]%	[0-5]%
Portugal	[0-5]%	[0-5]%	[0-5]%
Slovakia	-	[0-5]%	[0-5]%
Spain	-	[5-10]%	[5-10]%
Sweden	-	[30-40]%	[30-40]%
UK	[5-10]%	[10-20]%	[20-30]%

(1578) Each of the horizontally affected national markets will be assessed below. However, it is first useful to recall certain main factors that individually apply to each of these countries.

[1104] Notifying Party's response to RFI 36. Only those countries in which GrandVision has an online or brick-and-mortar presence are included in this Table.

(1579) First, in relation to its market share estimates, the Notifying Party emphasises that ‘the optical online segment is particularly opaque and difficult to track. As a result, these figures are not reliable and should be interpreted with extreme caution’.[1105] In particular, the Parties explain that the market sizes are likely to be underestimated and therefore overstate the Parties’ combined shares, because the national-level online market size estimates: (i) are challenging to track and estimate with precision, (ii) do not fully take into account cross-border sales from foreign websites, (iii) may not take into account sales from recently launched websites.[1106] That these market share estimates likely overstate the Parties’ position is also illustrated by the fact that, when requested to provide a breakdown of market share estimates for major competitors in the horizontally affected optical retail markets, the Parties identified major players and provided market share estimates for them that would add to a market size greater than 100%.[1107] Accordingly, the above figures are likely overestimates and should be treated with caution.

(1580) Second, at EEA level, the Parties’ market shares remain modest – EssilorLuxottica has a market share of [10-20]% whereas GrandVision’s market share is only [0-5]%. This is important to note because, despite the national scope of the market, expansion by online optical retailers into neighbouring Member States appears relatively easy (with the principal hurdle being building a consumer-facing brand).[1108] Online optical retailers established in an EEA Member State are not prevented from distance selling prescription optical products to consumers in another Member State.[1109] Accordingly, even in those markets where the Parties’ market shares appear high, they are likely to face constraints from online retailers established in neighbouring countries.

(1581) Third, the online optical retail market is relatively nascent and is expanding quickly.[1110] In particular, it has grown very fast for the sale of contact lenses, which are products that consumers have to buy on a recurring basis with the same specifications; though the online market is growing for other optical products too. The greater adoption of online purchases by consumers is evidenced by the new entry both of ‘pure’ online optical retailers, and of established brick-and-mortar retailers increasingly growing their online presence.[1111] Indeed, some market players have indicated that ‘*[t]he Covid-19 pandemic has further accelerated this process*’.[1112] Thus notwithstanding the Parties’ possible high market share estimates at national level in some Member States, competition is dynamic in these growing markets.

1105 Notifying Party’s response to Question 1 of RFI 36.
1106 Notifying Party’s response to RFI 36, Appendix A (Methodology).
1107 Notifying Party’s response to Question 2 of RFI 36.
1108 See section 6.2.3 on geographic market definition of the online optical retail market above.
1109 Notifying Party’s response to RFI 36, Form CO paragraph 386. See further Judgment of the Court of Justice of December 2, 2010, Case C-108/09, *Ker-Optika* and Press release, European Commission website, available at: http://europa.eu/rapid/press-release_IP-08-1354_en htm.
1110 Questionnaire to suppliers of lenses and eyewear – Q3 – question 29.
1111 Notifying Party’s response to Question 2 of RFI 36.
1112 Response to question 86 of Questionnaire R4 to optical retail chains. Also supported by the Notifying Party’s response to RFI 36 Question 4.

(1582) Fourth, major online platforms are a significant threat to the Parties' online optical retail businesses. […].[1113] The pressure from online platforms is a tangible and real one – in Germany, Amazon has begun selling contact lenses online in recent years and has grown to an estimated market share of up to 20%, taking share from other established online optical retailers.[1114] Likewise, suppliers of lenses and eyewear appear to view online platforms such as Amazon and eBay as credible and important online distribution channels.[1115] Thus, the threat of online platforms that already sell into a given country expanding into the optical retail sector (a trend that has already begun with significant implications in the German market, for example) should be taken into account.

11.5.1.1. Finland

(1583) In Finland, the Notifying Party estimates that EssilorLuxottica has a market share of [50-60]% and the increment from GrandVision is significant ([30-40]%). However, there are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from horizontal non-coordinated effects.

(1584) First, the Notifying Party indicates that it has likely underestimated the size of the overall market and thus the estimates for the Parties' shares are overestimated. The Notifying Party's methodology for estimating the Parties' market share appears to have been to estimate the total size of the market and compare the Parties' turnover figures with this estimate. However, it is clear that it has underestimated the total market size because, in addition, the Notifying Party has provided its best estimates of the market shares of the Parties' main competitors which (when added to the Parties' share) result in a market with market shares exceeding 100%. In particular, the Notifying Party estimates that Mister Spex has a market share of 20-30%, Synsam and Specsavers together account for 20-30%, and that there are further significant players in the online optical retail market in Finland such as Silmäasema, Favoptic and Alensa.[1116] Further, the market share estimates do not include deliveries to Finland from online retailers based in other countries. In this vein, the Notifying Party explains that Amazon entering neighbouring Sweden (which it has now done) may have an impact on the online market in Finland.[1117] As such, the Parties' combined market share appears heavily overestimated and is likely considerably lower.

(1585) Second, the Parties are not particularly close competitors. EssilorLuxottica is primarily active via its pure online 'Lensway' banner.[1118] In Finland, Lensway mainly sells contact lenses and spectacles under its own brand and has a value driven mid-low positioning. In contrast, GrandVision is active via its 'Instrumentarium' banner, which is primarily a brick-and-mortar optical retail chain which has developed an online retail offering to complement its physical network.[1119] Like its

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1113 […].

1114 Notifying Party's response to RFI 36.

1115 Notfifying Party's response to RFI 10, 'Luxottica MAP steering', Doc Id:1492-7107 - Ref: 2020/026825; 'Luxottica – Amazon EU' Doc Id:1512-14660 - Ref: 2020/026825

1116 Notifying Party's response to RFI 36 Question 2.

1117 Notifying Party's response to RFI 36 Question 2.

1118 Accounting for […]% of its sales in Finland. See Notifying Party's reply to RFI 36.

1119 See Notifying Party's reply to RFI 36.

brick-and-mortar stores, Instrumentarium sells spectacles, sunglasses and contact lenses online, and carries a strong portfolio major brands such as Boss, Gucci, Oakley, Ralph Lauren and Ray-Ban.[1120] This reflects the mid-high end positioning of Instrumentarium. Accordingly, the Parties' do not appear to be particularly close competitors due to their very different positioning, business model, product focus and brand focus.

(1586) Third, the Parties are constrained by significant online optical retail competitors in Finland, in particular Mister Spex (a pure online player active in various EEA countries, with a market share in Finland of 20-30%), Silmäasema (a major optical retail chain in Finland with a brick-and-mortar market share of [20-30]% and a growing online presence), Specsavers and Synsam (which together account for 20-30%), Favoptic and Alensa. […].[1121]

(1587) Fourth, as explained above in relation to the EEA, the online optical retail market in Finland remains dynamic – new entry is possible, in particular by established players in neighbouring countries as optical retailers based outside Finland are not prevented from selling prescription products into it.[1122] Likewise, online platforms such as Amazon are a threat. While the Notifying Party's market share estimates do not take into account Amazon's entry into neighbouring Sweden, the Notifying Party explains that this may have an impact on the online market in Finland.[1123]

(1588) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for online retail of optical products in Finland.

11.5.1.2. Germany

(1589) In Germany, the Notifying Party estimates that EssilorLuxottica has a market share of [20-30]% and the increment from GrandVision is very limited ([0-5]%). There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from horizontal non-coordinated effects.

(1590) First, for the same reasons as outlined in Section 11.5.1 above, the Notifying Party indicates that it has likely underestimated the size of the overall market, and therefore the Parties' combined market shares are likely even smaller than the estimated [20-30]%,[1124] putting into question whether there is an affected market in Germany at all.

(1591) Second, the increment from GrandVision is small – around […] in a market for online retail of optical products in Germany that the Parties conservatively estimate at EUR 215 million.

(1592) Third, the Parties are not particularly close competitors. GrandVision's primary online retail banner, 'Lenstore', is a pure online retailer and only sells contact lenses

1120 https://www.instru fi/silmalasit

1121 Documents annexed to the Form CO as Annex RFI 2 Q14.1, '201712_Budget_Budget Powerpoint Finland Estonia', slide 105. See, in a similar vein, Annex RFI 2 Q14.1, '201812_Budget_Budget Powerpoint Finland &Estonia', slide 91.

1122 Notifying Party's response to RFI 36 Question 2.

1123 Notifying Party's response to RFI 36 Question 2.

1124 Notifying Party's response to RFI 36 Question 2.

in Germany.[1125] In contrast, EssilorLuxottica is active with two banners: Brille24, which focuses on spectacles, and Lensbest, which sells spectacles, sunglasses and contact lenses. GrandVision's internal documents illustrate that the main pure online retailer in Germany that it monitors and assesses in the ordinary course of business is […].[1126]

(1593) Fourth, the Parties are constrained by significant online optical retail competitors in Germany, in particular Mister Spex (a pure online player active in various EEA countries), Brillen.de, Brillenbutler, Brillenplatz and Myspex. […].[1127] Moreover, Amazon is a notable online optical retailer in Germany with an estimated share of 10-20%, as are Linsenplatz (5-15%) and Linsensuppe.de, Materna and Alensa each with market shares of 0-10%.[1128] Similarly, traditional brick-and-mortar retailers such as the market leader Fielmann are expanding online and introducing new solutions with a view to '*redefining the online sale of glasses*'.[1129] The threat from traditional brick-and-mortar players is recognised by GrandVision in its internal documents, which note that '*[…]*', in particular noting the […].[1130]

(1594) Fourth, the online optical retail market in Germany remains dynamic – new entry is possible, in particular by established players in neighbouring countries as optical retailers based outside Germany are not prevented from selling prescription products into it.[1131] This is illustrated by the Czech online banners Materna and Alensa, which respectively achieved online sales of contact lenses of EUR […] and EUR […] in Germany ([…]).[1132] New entry by major online retailers active in other areas is also possible and can have a significant impact on the market. This is particularly well illustrated in Germany, where Amazon has begun selling contact lenses (as well as selling non-prescription sunglasses) and has grown to a market share of 10-20%.[1133]

(1595) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for online retail of optical products in Germany.

11.5.1.3. The Netherlands

(1596) In the Netherlands, the Notifying Party estimates that EssilorLuxottica has a market share of [10-20]% and the increment from GrandVision is modest ([5-10]%). There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from horizontal non-coordinated effects.

1125 Notifying Party's response to RFI 36 Question 2.

1126 Documents annexed to the Form CO as Annex RFI 2 Q14.1, '201812_Budget_Budget Powerpoint Germany & Austria', slides 48, and 51. See also Annex RFI 2 Q14.1, '201912_Budget_Budget Powerpoint Germany & Austria', slides 29, 48 and 51.

1127 Documents annexed to the Form CO as Annex RFI 2 Q14.1, '201812_Budget_Budget Powerpoint Germany & Austria', slide 48.

1128 Notifying Party's response to RFI 36 Question 2.

1129 See Fielmann Annual Report 2019, https://www.fielmann.eu/downloads/fielmann_annual_report_2019.pdf page 23.

1130 Documents annexed to the Form CO as Annex RFI 2 Q14.1, '201812_Budget_Budget Powerpoint Germany & Austria', slide 48.

1131 Notifying Party's response to RFI 36 Question 2.

1132 Notifying Party's response to RFI 36 Question 4.

1133 Notifying Party's response to RFI 36 Question 2.

(1597) First, for the same reasons as outlined in Section 11.5.1 above, the Notifying Party indicates that it has likely underestimated the size of the overall market, and therefore the Parties' combined market shares are likely even smaller than the estimated [20-30]%.[1134]

(1598) Second, the Parties are not particularly close competitors. GrandVision's primary online retail banner, 'Charlie Temple', is a pure online retailer and only sells spectacles and (prescription and non-prescription) sunglasses in the Netherlands.[1135] GrandVision is also active online to a more limited extent with its Pearle and EyeWish banners, which have online stores to complement their primarily brick-and-mortar offerings.[1136] In contrast, EssilorLuxottica is active mainly with Vision Direct, a pure online retailer which exclusively sells contact lenses in the Netherlands. Accordingly, the Parties' main banners do not sell the same products.

(1599) Third, the Parties are constrained by significant online optical retail competitors in the Netherlands, in particular Ace & Tate (a brick-and-mortar player with a strong online presence in the Netherlands, its home country, with estimated market shares of 0-15%), Polette (0-15%), Specsavers (0-10%), Hans Anders (0-10%), Mister Spex (0-10%) and Edel-Optics, as well as contact lens specialists such as Alensa, 123lens, Toplensen and lensonline.nl. […].[1137] [1138]

(1600) Fourth, the online optical retail market in the Netherlands remains dynamic – new entry is possible, in particular by established players in neighbouring countries as optical retailers based outside the Netherlands are not prevented from selling prescription products into it.[1139]

(1601) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for online retail of optical products in the Netherlands.

11.5.1.4. Norway

(1602) In Norway, the Notifying Party estimates that EssilorLuxottica has a market share of [80-90]% and the increment from GrandVision is negligible ([0-5]%). There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from horizontal non-coordinated effects.

(1603) First, the Notifying Party indicates that it has likely underestimated the size of the overall market. This is illustrated by the fact that it further estimates that its largest rivals have a combined market share of around 50% (as described below), as well as further share likely being attributable to smaller players.[1140] Further, as noted in Section 11.5.1, the market share estimates do not include sales to Norway from online retailers based in other countries. As such, the Parties' combined market share appears heavily overestimated and is likely considerably lower.

1134 Notifying Party's response to RFI 36 Question 2.
1135 Notifying Party's response to RFI 36 Question 2.
1136 Notifying Party's response to RFI 36 Question 2. The Notifying Party's estimates show that Charlie Temple represent around […]% of its online optical sales in the Netherlands.
1137 Documents annexed to the Form CO as Annex RFI 2 Q14.1, '201912_Budget_Budget Powerpoint Netherlands & Belgium', slide 28
1138 Ibid. slide 30.
1139 Notifying Party's response to RFI 36 Question 2.
1140 Notifying Party's response to RFI 36 Question 2.

(1604) Second, the increment from GrandVision's 'Brilleland' banner is very small, representing a market share of approximately [0-5]%. Brilleland is principally a brick-and-mortar retailer and only entered the online optical retail market in Norway in November 2018. Its sales are limited and growth has been relatively modest – EUR […] in 2019 and EUR […] in 2019). As such, it appears to be a very small player in comparison with other rivals (for example, EssilorLuxottica's online banners generated revenue of EUR […] in 2018) and the market investigation has not brought to light any factors that suggest it is a recent entrant that is expected to exert significant competitive pressure on the market in the future. Therefore, the Transaction is unlikely to bring about an appreciable change in the structure of the market.

(1605) Third, the Parties are constrained significant online optical retail competitors in Norway, in particular Lensit.no (a Norway-focused pure online contact lens retailer, with a market share of 30-40%), Specsavers (one of the largest brick-and-mortar retailers with an online market share of 5-10%), as well as Synsam and Extraoptical (a market share of 0-10%).

(1606) Fourth, the online optical retail market in Norway remains dynamic – new entry is possible, in particular by established players in neighbouring countries as optical retailers based outside Norway are not prevented from selling prescription products into it.[1141]

(1607) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for online retail of optical products in Norway.

11.5.1.5. The UK

(1608) In the UK, the Notifying Party estimates that EssilorLuxottica has a market share of [10-20]% and the increment from GrandVision is modest ([5-10]%). There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from horizontal non-coordinated effects.

(1609) First, for the same reasons as outlined in Section 11.5.1 above, the Notifying Party indicates that it has likely underestimated the size of the overall market, and therefore the Parties' combined market shares are likely even smaller than the estimated [20-30]%.[1142]

(1610) Second, the Parties are constrained by significant online optical retail competitors in the UK. This includes the largest brick-and-mortar retailer, Specsavers, which GrandVision's internal documents suggest has the most visited website of any optical retailer in the UK[1143], and Boots Opticians, the second largest brick-and-mortar player with the second most-visited website, as well as Asda Opticians and Optical Express. In addition, a large number of pure online retailers are active in the UK both for contact lenses (such as Feelgoodcontacts.com, Contactlenses.co.uk, Alensa) and for spectacles and prescription sunglasses (Direct Sight, Select Specs and Mister Spex).

[1141] Notifying Party's response to RFI 36 Question 2.
[1142] Notifying Party's response to RFI 36 Question 2.
[1143] Documents annexed to the Form CO as Annex 5.4.1.GV 'Brand Monitor - UK (2018 full)', slide 65.

(1611) Third, the online optical retail market in the UK remains dynamic and is expected to grow.[1144] New entry is possible, in particular by established players in neighbouring countries as optical retailers based outside the UK are not prevented from selling prescription products into it.[1145]

(1612) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for online retail of optical products in the UK.

11.5.2. Vertical non-coordinated effects in online retail of optical products: input foreclosure

(1613) Both EssilorLuxottica and GrandVision are active in the retail market for the online supply of optical products in a number of countries across the EEA. EssilorLuxottica is also active in the wholesale supply of frames, sunglasses, lenses and, to a more limited degree, contact lenses to online retailers in the EEA.

(1614) In light of these links and EssilorLuxottica's upstream market share, there are vertically affected markets at national level, and namely in: Finland (sunglasses), Germany (sunglasses), Netherlands (sunglasses), Norway (sunglasses and lenses), and the UK (sunglasses and lenses).[1146]

(1615) Each of the vertically affected national markets will be assessed in turn. However, it is first useful to recall certain main factors that apply to each of these countries.

(1616) First, as explained in Section 11.5.1 above, the Notifying Party's estimates of the Parties' market shares in the online retail of optical products at national level are likely overestimated and should be treated with caution.

(1617) Second, as explained in Section 11.5.1 above, expansion by an online optical retailer from one Member State to another does not appear particularly challenging, with the principal hurdle being building up consumer awareness of the brand. Online optical retailers established in an EEA Member State are not prevented from distance selling prescription optical products to consumers in another Member State. Thus online optical retailers based elsewhere in the EEA can be a constraint on the Merged Entity in a given Member State (it should be recalled that the Parties' combined market share at EEA level is only [10-20]%). In this context, it appears unlikely that the Merged Entity would have the incentive to engage in a targeted national-level foreclosure strategy in the online optical retail market, or that such a strategy would enable the Merged Entity to increase its prices in the downstream market.

1144 Internal document submitted in response to RFI 10, *Mintel market report*. [Doc ID RFI 10 reply (full) - RFI#10_Part31 of 74_PROD010-VOL0009 - RFI and not LPP - G02-CAS - P010-00162786_Optical Goods Retailing - UK - February 2019 (4)].

1145 Notifying Party's response to RFI 36 Question 2.

1146 For completeness, there are also vertically affected markets in France (sunglasses and lenses), Italy (frames, sunglasses, lenses), Poland (lenses) and Portugal (sunglasses and lenses). However, in each of these Member States the Parties' combined market share in the downstream online optical retail market is [0-5]% or less, with a number of strong rivals remaining active on the market. The increment from GrandVision in the online optical retail market is small: only [0-5]% in France, [0-5]% in Italy, [0-5]% in Poland and [0-5]% in Portugal. Given the very low combined downstream market share and limited increment, it is unlikely that the Transaction would significantly affect the Merged Entity's ability or incentive to engage in an input foreclosure strategy, or the likely impact of such a strategy on competitors. Therefore, the risk of input foreclosure in these Member States are not assessed further in this Section.

(1618) Third, as explained in Section 11.5.1 above, while some online optical retailers are ‘pure’ online players, there are a number of traditional brick-and-mortar players that have successfully developed a significant online offering (such as Specsavers, Ace & Tate, Polette, Silmäasema, Synsam, Hans Anders or Boots Opticians). In relation to predominantly brick-and-mortar optical retail chains, which can be major players in particular countries, a foreclosure strategy targeting online activities may be challenging to implement without also putting at risk the relationship in the brick-and-mortar segment. The brick-and-mortar channel remains much more significant in the EEA; online sales of optical products only represent around 6% of overall sales of optical products in the EEA according to the Notifying Party.[1147]

(1619) Fourth, while EssilorLuxottica may have significant market shares in some Member States in the supply of sunglasses, frames and/or lenses, it is contact lenses which are the most purchased prescription optical product by consumers online. The Notifying Party submits that the […] majority (>[…]%) of GrandVision’s online retail sales in the EEA relates to contact lenses.[1148] Similarly, it notes that the online retail segment is still ‘essentially focused on contact lenses’.[1149] This suggests that spectacles and prescription sunglasses are generally less important as a source of revenue for retailers active in the online optical retail market. In contrast, EssilorLuxottica does not manufacture contact lenses, and its supplies of contact lenses are very limited (corresponding only to a market share of [5-10]% or less in a handful of EEA countries).

11.5.2.1. Finland (sunglasses)

(1620) In Finland, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [50-60]% and the increment from GrandVision is significant ([30-40]%). Upstream, EssilorLuxottica’s market share in the supply of sunglasses is [30-40]%.[1150] It is not active in the wholesale supply of contact lenses in Finland.[1151] There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1621) First, at the wholesale level, the Merged Entity has a relatively modest share ([30-40]%) and is constrained by a number of other major sunglasses suppliers in Finland such as Scandinavian Eyewear, Marcolin, Safilo and Kering. Online optical retail rivals will therefore continue to have a number of supply options.

1147 Form CO, paragraph 75. Even for contact lenses, the optical product that is most commonly bought online, the Notifying Party submits that only 16% of total contact lens sales in the EEA are made online.

1148 Notifying Party’s response to RFI 36, Question 4.

1149 Form CO, paragraph 158.

1150 The wholesale estimates presented are the Notifying Party’s estimates for the overall (brick-and-mortar) supply of these products. The Notifying Party explained that the estimates it has provided for the online wholesale supply of these products are unreliable; indeed, this is clear from the fact that the Notifying Party estimates EssilorLuxottica’s has a 0% share of the market in the wholesale of frames to online retailers in Finland, despite selling them to Instrumentarium at the very least. In other countries, EssilorLuxottica’s market share is estimated at well over 100%. In view of this, it appears that the Notifying Party’s estimates for wholesale supply to a combined online and brick-and-mortar market is a more accurate proxy and will be used for this analysis.

1151 Notifying Party’s response to RFI 36 and Form CO, Annex RFI 1 Q38.

(1622) Second, as explained in detail in Section 11.5.1 above, the Parties' combined market shares in the online optical retail market appear heavily overestimated and are likely to be considerably lower given the presence of a number of significant rivals.

(1623) Third, while GrandVision's Instrumentarium banner sells spectacles, sunglasses and contact lenses online, the Notifying Party submits that it mainly sells contact lenses and contact lens care products. Similarly, EssilorLuxottica's online banners predominantly sell contact lenses online in Finland.[1152] Therefore an input foreclosure strategy focused on sunglasses in the online segment in Finland would require EssilorLuxottica to risk its wholesale profits from retail rivals (who may have more of a focus on sunglasses), for the benefit of its downstream operations for which sunglasses do not represent part of their core strategy. It would appear risky for EssilorLuxottica to engage in an input foreclosure strategy, in particular as the online market is dynamic and growing in Finland (at an estimated rate of 9-10% per year over 2017-2019) and a strategy of reducing supplies or raising prices would risk allowing its wholesale competitors to benefit from this expansion to a greater extent than EssilorLuxottica.

(1624) Fourth, as explained above, online optical retailers based outside of Finland are well placed to expand and sell to consumers in Finland. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices.[1153] Therefore, a strategy of seeking to foreclose online retailers in Finland with a view to ultimately increasing prices at retail level may be frustrated by consumers refusing to pay increased prices at the Merged Entity's online stores and instead turning to easily accessible online retailers based outside of the country who deliver to it.

(1625) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of sunglasses in Finland and the (downstream) online retail of optical products in Finland.

11.5.2.2. Germany (sunglasses)

(1626) In Germany, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [20-30]% and the increment from GrandVision is small ([0-5]%). Upstream, EssilorLuxottica's market share in the supply of sunglasses is [30-40]%.[1154] There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1627) First, at the wholesale level, the Merged Entity has a relatively modest share ([30-40]%) and will continue to be constrained by a number of other major

1152 Notifying Party's response to RFI 36, question 2.

1153 Notifying Party's response to RFI 36, question 4.

1154 The wholesale estimates presented are the Notifying Party's estimates for the overall (brick-and-mortar) supply of these products. The Notifying Party explained that the estimates it has provided for the online wholesale supply of these products are unreliable; indeed, this is clear from the fact that the Notifying Party estimates EssilorLuxottica's has a 0% share of the market in the wholesale of frames to online retailers in Finland, despite selling them to Instrumentarium at the very least. In other countries, EssilorLuxottica's market share is estimated at well over 100%. In view of this, it appears that the Notifying Party's estimates for wholesale supply to a combined online and brick-and-mortar market is a more accurate proxy and will be used for this analysis.

sunglasses suppliers in Germany such as Safilo, Marchon, Marcolin and others. Online optical retail rivals will therefore continue to have a number of supply options.

(1628) Second, as explained in detail in Section 11.5.1 above, the Parties' combined market shares in the online optical retail market appear heavily overestimated and are likely to be considerably lower given the presence of a number of significant rivals.

(1629) Third, the increment from GrandVision is small – around […] in a market for online retail of optical products in Germany that the Parties conservatively estimate at EUR 215 million. The Transaction is thus unlikely to impact the Merged Entity's ability or incentive to engage in an input foreclosure strategy.

(1630) Fourth, GrandVision's primary online retail banner in Germany is Lenstore (generating […]% of its online revenue in the country in 2018), which is only active in the supply of contact lenses. In light of this, it is unlikely that the Transaction would impact the Merged Entity's incentive to engage in an input foreclosure strategy relating to sunglasses.

(1631) Fifth, as explained above, online optical retailers based outside of Germany are well placed to expand and sell to consumers in Germany. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices.[1155] Therefore, a strategy of seeking to foreclose online retailers in Germany with a view to ultimately increasing prices at retail level may be frustrated by consumers refusing to pay increased prices at the Merged Entity's online stores and instead turning to easily accessible online retailers based outside of the country who deliver to it.

(1632) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of sunglasses in Germany and the (downstream) online retail of optical products in Germany.

11.5.2.3. Netherlands (sunglasses)

(1633) In the Netherlands, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [10-20]% and the increment from GrandVision is modest ([5-10]%). Upstream, EssilorLuxottica's market share in the supply of sunglasses is [30-40]%.[1156] There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1634) First, at the wholesale level, the Merged Entity has a relatively modest market share and is constrained by a number of other major sunglasses suppliers in the

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1155 Notifying Party's response to RFI 36, question 4.

1156 The wholesale estimates presented are the Notifying Party's estimates for the overall (brick-and-mortar) supply of these products. The Notifying Party explained that the estimates it has provided for the online wholesale supply of these products are unreliable; indeed, this is clear from the fact that the Notifying Party estimates EssilorLuxottica's has a 0% share of the market in the wholesale of frames to online retailers in Finland, despite selling them to Instrumentarium at the very least. In other countries, EssilorLuxottica's market share is estimated at well over 100%. In view of this, it appears that the Notifying Party's estimates for wholesale supply to a combined online and brick-and-mortar market is a more accurate proxy and will be used for this analysis.

Netherlands such as Safilo, Marchon, Kering and others, including private label suppliers. Online optical retail rivals will therefore continue to have a number of supply options.

(1635) Second, for the same reasons as outlined in Section 11.5.1 above, the Notifying Party indicates that it has likely underestimated the size of the overall market, and therefore the Parties' combined market shares are likely even smaller than the estimated [20-30]%.[1157]

(1636) Third, in the Netherlands, the sale of private label products is a particularly significant part of the online optical market. This is clear from the fact Ace & Tate, Polette and Specsavers are three of the largest online optical retailers in the Netherlands, and they all (almost) exclusively sell private label products. In contrast, as explained in Section 8.3.2.3-8.3.2.4 above, EssilorLuxottica's wholesale supply of sunglasses is heavily focused on branded sunglasses. Accordingly, an input foreclosure strategy by the Merged Entity is unlikely to have any impact on three of the largest online retailers of optical products in the Netherlands.

(1637) Fourth, as explained above, online optical retailers based outside of the Netherlands are well placed to expand and sell to consumers in the Netherlands. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices.[1158] Therefore, a strategy of seeking to foreclose online retailers in the Netherlands with a view to ultimately increasing prices at retail level may be frustrated by consumers refusing to pay increased prices at the Merged Entity's online stores and instead turning to easily accessible online retailers based outside of the country who deliver to it.

(1638) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of sunglasses in the Netherlands and the (downstream) online retail of optical products in the Netherlands.

11.5.2.4. Norway (sunglasses and lenses)

(1639) In Norway, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [80-90]% and the increment from GrandVision is negligible ([0-5]%). Upstream, EssilorLuxottica's market share in the supply of sunglasses is [30-40]% and its market share in the supply of lenses is [30-40]%.[1159] There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

1157 Notifying Party's response to RFI 36 Question 2.

1158 Notifying Party's response to RFI 36, question 4.

1159 The wholesale estimates presented are the Notifying Party's estimates for the overall (brick-and-mortar) supply of these products. The Notifying Party explained that the estimates it has provided for the online wholesale supply of these products are unreliable; indeed, this is clear from the fact that the Notifying Party estimates EssilorLuxottica's has a 0% share of the market in the wholesale of frames to online retailers in Finland, despite selling them to Instrumentarium at the very least. In other countries, EssilorLuxottica's market share is estimated at well over 100%. In view of this, it appears that the Notifying Party's estimates for wholesale supply to a combined online and brick-and-mortar market is a more accurate proxy and will be used for this analysis.

(1640) First, at the wholesale level, the Merged Entity's market shares are relatively modest ([30-40]%) and it is constrained by a number of other major sunglasses and lens suppliers in Norway such as Scandinavian Eyes, Safilo, Marcolin, Kering, Rodenstock, Hoya, Carl Zeiss and others. Online optical retail rivals will therefore continue to have a number of supply options.

(1641) Second, for the same reasons as outlined in Section 11.5.1 above, the Notifying Party indicates that it has likely significantly underestimated the size of the overall market, and therefore the Parties' combined market shares are likely lower than estimated.[1160]

(1642) Third, the increment from GrandVision's 'Brilleland' banner is very small, representing a market share of approximately [0-5]%. In view of this, the Transaction is unlikely to impact the Merged Entity's ability or incentive to engage in an input foreclosure strategy.

(1643) Fourth, as explained above, online optical retailers based outside of Norway are well placed to expand and sell to consumers in Norway. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices.[1161] Therefore, a strategy of seeking to foreclose online retailers in Norway with a view to ultimately increasing prices at retail level may be frustrated by consumers refusing to pay increased prices at the Merged Entity's online stores and instead turning to easily accessible online retailers based outside of the country who deliver to it.

(1644) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of sunglasses in Norway and the (downstream) online retail of optical products in Norway.

11.5.2.5. The UK (sunglasses and lenses)

(1645) In the UK, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [10-20]% and the increment from GrandVision is modest ([5-10]%). Upstream, EssilorLuxottica's market share in the supply of sunglasses is [50-60]% and its market share in the supply of lenses is [50-60]%.[1162] There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1646) First, at the wholesale level, the Merged Entity is constrained by a number of other sunglasses suppliers in the UK such as major Safilo, Marchon, De Rigo and others, including private label suppliers. Online optical retail rivals will therefore continue to have a number of supply options.

1160 Notifying Party's response to RFI 36 Question 2.

1161 Notifying Party's response to RFI 36, question 4.

1162 The wholesale estimates presented are the Notifying Party's estimates for the overall (brick-and-mortar) supply of these products. The Notifying Party explained that the estimates it has provided for the online wholesale supply of these products are unreliable; indeed, this is clear from the fact that the Notifying Party estimates EssilorLuxottica's has a 0% share of the market in the wholesale of frames to online retailers in Finland, despite selling them to Instrumentarium at the very least. In other countries, EssilorLuxottica's market share is estimated at well over 100%. In view of this, it appears that the Notifying Party's estimates for wholesale supply to a combined online and brick-and-mortar market is a more accurate proxy and will be used for this analysis.

(1647) Second, for the same reasons as out lined in Section 11.5.1 above, the Notifying Party indicates that it has likely underestimated the size of the overall market, and therefore the Parties' combined market shares are likely even smaller than the estimated [20-30]%.[1163]

(1648) Third, GrandVision's primary online retail banner in the UK is Lenstore (generating more than […]% of its online revenue in the country in 2018), which is only active in the supply of contact lenses. In light of this, it is unlikely that an input foreclosure strategy focused on sunglasses or ophthalmic lenses would be profitable.

(1649) Fourth, in the UK, the sale of private label products is a particularly significant part of the optical market. This is clear from the fact that the largest optical retailer by far (Specsavers, with a brick-and-mortar market share of over 40% and a strong online presence) almost exclusively sells private label products. Other major retailers, such as Boots Opticians and Asda Opticians also sell significant volumes of private label products. In contrast, as explained in Section 8.3.2.3 - 8.3.2.4 above, EssilorLuxottica's wholesale supply of sunglasses is heavily focused on branded sunglasses. Accordingly, an input foreclosure strategy by the Merged Entity centred on sunglasses is unlikely to have any significant impact on the largest online retailers of optical products in the UK.

(1650) Fifth, as explained above, online optical retailers based outside of the UK are well placed to expand and sell to consumers in the UK. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices.[1164] Therefore, a strategy of seeking to foreclose online retailers in the UK with a view to ultimately increasing prices at retail level may be frustrated by consumers refusing to pay increased prices at the Merged Entity's online stores and instead turning to easily accessible online retailers based outside of the country who deliver to it.

(1651) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of sunglasses in the UK and the (downstream) online retail of optical products in the UK.

11.5.3. Vertical non-coordinated effects in online retail of optical products: customer foreclosure

(1652) Both EssilorLuxottica and GrandVision are active in the retail market for the online supply of optical products in a number of countries across the EEA. EssilorLuxottica is also active in the wholesale supply of frames, sunglasses, lenses and, to a more limited degree, contact lenses to online retailers in the EEA.

(1653) As indicated in Table Table 24 above, at national level, there are only two Member States in which the increment from GrandVision results in the Parties having a downstream share of [30-40]% or more: Finland and Norway.

(1654) Each of the vertically affected national markets will be assessed in turn. However, it is first useful to recall certain main factors that apply to each of these countries.

1163 Notifying Party's response to RFI 36 Question 2.
1164 Notifying Party's response to RFI 36, question 4.

(1655) First, as explained in Section 11.5.1 above, the Notifying Party's estimates of the Parties' market shares in the online retail of optical products at national level are likely overestimates and should be treated with caution.

(1656) Second, consumers seeking to buy spectacles, prescription sunglasses or contact lenses can turn to both online and brick-and-mortar optical retailers. The online optical retail market is comparatively small – the Notifying Party estimates that the online retail channel represents approximately 6% of optical sales in the EEA.[1165] This means that online optical retailers (including the Parties) represent only a small proportion of overall demand for the supply of frames, lenses, sunglasses and contact lenses. Therefore, the Parties are unlikely to have the ability to engage in a successful customer foreclosure strategy through their online optical retail banners.

(1657) Third, as explained in Section 11.5.1 above, the online optical retail market is relatively nascent and is expanding quickly. New entrants include 'pure' online optical retailers, traditional brick-and-mortar players and online platforms. In this expanding market with new entry, it is likely that the impact of a foreclosure strategy would be limited, given that rival suppliers will continue to have new and growing downstream competitors to sell to.

11.5.3.1. Finland

(1658) In Finland, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [50-60]% and the increment from GrandVision is significant ([30-40]%). Upstream, EssilorLuxottica's market share in the supply of frames, sunglasses and lenses are [10-20]%, [30-40]% and [10-20]%.[1166] It is not active in the wholesale supply of contact lenses in Finland.[1167] However, there are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from customer foreclosure.

(1659) First, as explained in detail in Section 11.5.1 above, the Parties' combined market shares in the online optical retail market appear heavily overestimated and are likely to be considerably lower given the presence of a number of significant rivals.

(1660) Second, wholesale suppliers will have a number of significant downstream rivals they can continue to turn to, even if the Merged Entity were to implement a customer foreclosure strategy. This includes Mister Spex (a pure online player active in various EEA countries with a market share of 20-30%), Silmäasema (a major optical retail chain in Finland with a brick-and-mortar market share of [20-30]% and a growing online presence), Specsavers and Synsam (which together have a share of 20-30%, Favoptic and Alensa. Likewise, as explained above, Amazon may be a potential customer given its recent entry into neighbouring Sweden.

(1661) Third, the Parties' online optical retail activities are likely to represent a small proportion of overall demand for frames, sunglasses and contact lenses in Finland. This is clear from the fact that the Parties' turnover in the online market is only EUR

1165 Form CO, paragraph 75. Even for contact lenses, the optical product that is most commonly bought online, the Notifying Party submits that only 16% of total contact lens sales in the EEA are made online.

1166 The wholesale estimates presented are the Notifying Party's estimates for the overall (brick-and-mortar) supply of these products, for the reasons explained in footnote 1162.

1167 Notifying Party's response to RFI 36 and Form CO, Annex RFI 1 Q38.

[…], whereas rival suppliers will continue to be able to sell to brick-and-mortar optical retailers too (as well as online players). Brick-and-mortar competitors alone generate turnover of around EUR 213 million in Finland.[1168]

(1662) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of frames, lenses, sunglasses and contact lenses in Finland and the (downstream) online retail of optical products in Finland.

11.5.3.2. Norway

(1663) In Norway, the Notifying Party estimates that EssilorLuxottica has a downstream optical retail market share of [80-90]% and the increment from GrandVision is negligible ([0-5]%). Upstream, EssilorLuxottica's market share in the supply of frames, sunglasses and lenses are [10-20]%, [30-40]% and [30-40]%.[1169] It is not active in the wholesale supply of contact lenses in Norway.[1170] However, there are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from customer foreclosure.

(1664) First, as explained in detail in Section 11.5.1 above, the Parties' combined market shares in the online optical retail market appear heavily overestimated and are likely to be considerably lower given the presence of a number of significant rivals.

(1665) Second, the increment from GrandVision in the online optical retail market is negligible ([…]%). As such, the Transaction is unlikely to impact EssilorLuxottica's ability or incentive to engage in a customer foreclosure strategy in relation to frames, lenses, sunglasses or contact lenses in the online optical retail market.

(1666) Third, wholesale suppliers will have a number of significant downstream rivals they can continue to turn to, even if the Merged Entity were to implement a customer foreclosure strategy. This includes Lensit.no (a Norway-focused pure online contact lens retailer, with a market share of 30-40%), Specsavers (one of the largest brick-and-mortar retailers with an online market share of 5-10%), as well as Synsam and Extraoptical (a market share of 0-10%).

(1667) Fourth, the Parties' online optical retail activities are likely to represent a small proportion of overall demand for frames, sunglasses and contact lenses in Norway. This is clear from the fact that the Parties' turnover in the online market is only EUR […], whereas rival suppliers will continue to be able to sell to brick-and-mortar optical retailers too (as well as online players). Brick-and-mortar competitors alone generate turnover of around EUR 304 million in Norway.

(1668) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of frames, lenses, sunglasses and contact lenses in Norway and the (downstream) online retail of optical products in Norway.

1168 Notifying Party's market share estimates for the supply of optical products in brick-and-mortar stores.

1169 The wholesale estimates presented are the Notifying Party's estimates for the overall (brick-and-mortar) supply of these products, for the reasons explained in footnote 1162.

1170 Form CO, Annex RFI 1 Q38.

11.6. Sales of non-prescription sunglasses in non-optical stores - horizontal non-coordinated effects or vertical non-coordinated effects (input or customer foreclosure)

11.6.1. Horizontal non-coordinated effects in retail of non-prescription sunglasses in specialist and non-optical stores

(1669) Both EssilorLuxottica and GrandVision are active in the retail market for the supply of non-prescription sunglasses in specialist and non-optical stores in a number of countries across the EEA.

(1670) As indicated in the Table below, at national level, the Transaction does not give rise to an affected market in the vast majority of Member States. At national level, the Transaction gives rise to horizontally affected markets in Italy, Malta, the Netherlands, Portugal and Spain.

Table 25 – Notifying Party's market share estimates at national level[1171]

	GrandVision	EssilorLuxottica	Combined
EEA	[0-5]%	[10-20]%	[20-30]%
Austria		[5-10]%	
Belgium		[0-5]%	
Czech		[0-5]%	
Denmark		[10-20]%	
Finland		[5-10]%	
France	[5-10]%	[5-10]%	[10-20]%
Germany		[10-20]%	
Hungary			
Ireland		[70-80]%	
Italy	[10-20]%	[10-20]%	[20-30]%
Luxembourg		[0-5]%	
Malta	[30-40]%	[0-5]%	[30-40]%
Netherlands	[5-10]%	[30-40]%	[40-50]%
Norway		[10-20]%	
Poland		[0-5]%	
Portugal	[0-5]%	[30-40]%	[30-40]%
Slovakia		[0-5]%	
Spain	[0-5]%	[20-30]%	[20-30]%
Sweden		[5-10]%	
UK		[40-50]%	

(1671) For the reasons outlined below, the Commission finds that the Transaction would not significantly impede competition in the internal market as regards horizontal non-coordinated effects in retail of non-prescription sunglasses in non-optical stores both for reasons pertaining to the general competitive dynamic of this segment and for country-specific factors.

1171 Notifying Party's response to RFI 36.

(1672) At the EEA level, the Merged Entity would have a market share of [20-30]% of the retail of sunglasses in sunglass specialist outlets and non-optical stores. Additionally, in most countries in the EEA, the Merged Entity's retail share would be below 20%. The Merged Entity's retail share would be larger than 20% in Italy ([20-30]%), Malta ([30-40]%), the Netherlands ([40-50]%), Portugal ([30-40]%) and Spain ([20-30]%).

(1673) Regardless of the sizeable combined market shares in these countries, it should be borne in mind that, from the perspective of a consumer wishing to purchase non-prescription sunglasses, optical stores on one hand, and non-optical stores and specialists on the other can be alternatives. Accordingly, while sunglass specialists do not act as a significant constraint on optical retailers (in the supply of prescription products), for non-prescription sunglasses the Parties' sunglass specialist stores are constrained to an extent by rivals' optical stores. In each of the above countries, therefore, it is relevant to recall that the Parties face a number of large optical rivals in each of these Member States.

(1674) Each of the horizontally affected national markets will be assessed in turn. However, it is first useful to recall certain factors that apply to each of these countries.

(1675) More generally, the Commission considers that the overall features of the retail of sunglasses in specialist and non-optical stores would limit the effects of the Transaction on this segment. In particular:

(1676) Firstly, non-prescription sunglasses are a fashion item, which can be purchased in various different types of store, including optical stores, non-optical sunglass specialists, department stores, sports outlets, fashion boutiques, travel stores and online. Accordingly, the Parties' non-optical sunglass specialists face constraints from a range of different competitors, including high street retailers with a strong attraction to consumers. Some of these competitors also carry a broader range of products than just eyewear, meaning that (unlike the Parties' specialists banners) they can attract consumers who specifically wish to procure sunglasses as well as consumers who intended to purchase something else but also buy sunglasses as an impulse purchase.

(1677) Secondly, online stores can ship their sunglasses everywhere in EEA without the need for (i) a physical presence where the customer is based and (ii) any license or government permit to be obtained beforehand.[1172]

(1678) Thirdly, the online channel, in particular during the ongoing pandemic, is growing also due to the lower medical and regulatory barriers to the sale of non-prescription sunglasses.

(1679) Fourthly, the market has lower barriers to entry than its prescription counterpart since (i) no specific license/regulatory requirement is needed to sell non-prescription sunglasses, (ii) start-up cost are lower, specifically for online stores and (iii) there is a wide array of brands of sunglasses competing on price that can be bought by new entrants at lower costs.

[1172] For instance, EssilorLuxottica's Sunglass-Shop.com – even if it does not have an Italian webpage – is able to sell products in Italy (https://www.sunglasses-shop.co.uk/).

11.6.1.1. Italy

(1680) In Italy, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [20-30]%. However, due to the characteristics of the market, the Transaction would not significantly impede competition in the internal market as regards horizontal non-coordinated effects in retail of non-prescription sunglasses in non-optical stores:

(1681) Firstly, the non-optical retail market in Italy the market is very fragmented and highly differentiated. The Parties' competitors include - among others - department stores, sports outlets, fashion stores and luxury boutiques. Major competitors include La Rinascente (a department store with [0-10] large stores in Italy), Cisalfa (a sports outlet with [140-150] stores in Italy), as well as major fashion retailers such as Zara, Burberry, Armani, etc.

(1682) Secondly, as regards the Parties' brick-and-mortar stores, while Sunglass Hut stores in Italy are mainly located in airports and fashion outlets, Solaris is mainly active in high-streets and in COIN department stores.

(1683) Thirdly, in relation to online non-optical retailers, only EssilorLuxottica is active with the Sunglasses-shop.com webstore that […]. This means the Parties face strong competition in the online segment from players such as Zalando.

(1684) Fourthly, competitors continue to emerge and enter the non-optical retail segment. For example, both JD Sports and Snipes recently entered the segment, offering sunglasses alongside sneakers and other fashion products.

(1685) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for non-prescription sunglasses in non-optical stores in Italy.

11.6.1.2. Malta

(1686) In Malta, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [30-40]%. However, due to the characteristics of the market, the Transaction would not significantly impede competition in the internal market as regards horizontal non-coordinated effects in retail of non-prescription sunglasses in non-optical stores:

(1687) Firstly, the Transaction only brings about an increment in Malta of less than [0-5]%, as EssilorLuxottica is a very small player in the Maltese optical retail market with sales of less than […] in 2018.

(1688) Secondly EssilorLuxottica and GrandVision are heavily differentiated, as EssilorLuxottica is active in the online segment of the optical retail market, whereas GrandVision is only in the traditional brick-and-mortar segment.

(1689) Thirdly, there is a wide array of sunglass specialist and non-optical retailers – both traditional brick-and-mortar outlets and online retailers – who compete with the Merged Entity in Malta.[1173]

[1173] Response to RFI 36, Question 7(b).

(1690) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for non-prescription sunglasses in non-optical stores in Malta.

11.6.1.3. The Netherlands

(1691) In the Netherlands, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [40-50]%. However, due to the characteristics of the market, the Transaction would not significantly impede competition in the internal market as regards horizontal non-coordinated effects in retail of non-prescription sunglasses in non-optical stores:

(1692) Firstly, the Transaction brings about an increment of [5-10]%. However, this increment overestimates the strength of GrandVision in relation to this segment in the Netherlands, as its presence in the non-optical and specialist retail of sunglasses is purely of an online nature. As a result, GrandVision has a relatively low visibility in the competitive environment in the country and, as outlined below in greater detail faces, strong competition from other online players.

(1693) Secondly, as mentioned above, the market positioning of the Parties is heavily differentiated, as only EssilorLuxottica is active in the brick-and-mortar segment through [10-20] stores under the Sunglass Hut and Ray-Ban banners, whereas GrandVision has solely an online presence through zonnebrillen.com.[1174]

(1694) Thirdly, the main brick-and-mortar players are department stores and sport outlets. The latter in particular have a very diverse offer with many private label brands. Major competitors include Bever (a sports outlet chain with approximately [40-50] stores), Mantel (a sports outlet with [5-10] stores), De Bijenkorf (a chain of premium department stores with [5-10] stores), Decathlon (a sports outlet with [20-30] stores), as well as major fashion retailers such as Zara, H&M, Bulgari, Armani, etc.

(1695) Fourthly, a number of strong online players constrain the Parties online. These include Bol.com (a large online market place that is particularly popular in the Netherlands), Brandfield (an online webstore that sells fashion accessories including sunglasses), Zalando (an online fashion website), Yoox (an online fashion website) and Amazon.

(1696) Fifthly, the online segment is booming and many new players have entered the market. This includes key international players benefitting from substantial economies of scale like Bol.com, Brandfield and Zalando.[1175] Moreover, this segment will gain an increasingly important role in light of the current Covid pandemic.

(1697) Although the Commission acknowledges that the Merged Entity's combined market share amounts to [40-50]%, it also notes that this figure overestimates the Notifying Party's strength in this segment, as sunglass specialists are also constrained by optical retailers, which also sell non-prescription sunglasses. Accordingly, in light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective

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1174 Response to RFI 36, Question 7(c).

1175 Response to RFI 36, Question 7(c).

competition in the market for non-prescription sunglasses in non-optical stores in the Netherlands.

11.6.1.4. Portugal

(1698) In Portugal, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [30-40]%. However, due to the characteristics of the market, the Transaction would not significantly impede competition in the internal market as regards horizontal non-coordinated effects in retail of non-prescription sunglasses in non-optical stores:

(1699) Firstly, the Transaction only brings about an increment in Portugal of [0-5]%.

(1700) Secondly, in Portugal the increment brought by GrandVision is of only [5-10] stores in the brick-and-mortar segment. In the online segment, the only active webstore of the Parties is Sunglasses-shop.com, which directly competes with larger players such as Amazon and Yoox.

(1701) Thirdly, as regards brick-and-mortar stores, there are at least two other sunglass specialists larger than Solaris, i.e. Chilli Beans and Hawkers, which have successfully enlarged their footprints in Portugal in the latest years.

(1702) Fourthly, the competitive landscape in Portugal is fast-moving. In the last years, two large chains of sunglass specialists have opened in Portugal: Chilli Beans and Hawkers. Additionally, sunglasses in Portugal are sold through various other channels. The main competitors of the Parties are department stores (such as El Corte Ingles), fashion boutiques and sport stores.

(1703) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for non-prescription sunglasses in non-optical stores in Portugal.

11.6.1.5. Spain

(1704) In Spain, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [20-30]%. However, due to the characteristics of the market, the Transaction would not significantly impede competition in the internal market as regards horizontal non-coordinated effects in retail of non-prescription sunglasses in non-optical stores:

(1705) Firstly, the Transaction only brings about a negligible increment in Spain of [0-5]%.

(1706) Secondly, there is a wide array of sunglass specialist and non-optical retailers – both traditional brick-and-mortar outfits and online retailers – who compete with the Merged Entity in Spain.[1176] Major competitors include Hawkers (a mid-positioned chain with approximately [50-60] stores across the country, with particular emphasis on tourist locations), Roberto Martin (a chain with approximately [20-30] stores in the south of the country), El Corte Ingles (a chain of premium department stores with [100-110] stores), as well as major fashion retailers such as Armani, Michael Kors, Prada etc.

[1176] Response to RFI 36, Question 7(b).

(1707) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition in the market for non-prescription sunglasses in non-optical stores in Spain.

11.6.2. Vertical non-coordinated effects in retail of non-prescription sunglasses in specialist and non-optical stores: input foreclosure

(1708) Both EssilorLuxottica and GrandVision are active in the retail market for non-prescription sunglasses in non-optical stores in a number of countries across the EEA. EssilorLuxottica is also active in the wholesale supply of non-prescription sunglasses to specialist and non-optical retailers in the EEA.

(1709) In light of these links and EssilorLuxottica's upstream market share in the wholesale of sunglasses, there are vertically affected markets at national level in: France, Italy, the Netherlands, Portugal and Spain.

(1710) Each of the vertically affected national markets will be assessed in turn. However, it is first useful to recall certain general factors that apply to each of these countries.

11.6.2.1. General factors applicable to all affected markets

Ability

(1711) Firstly, the brick-and-mortar footprint of GrandVision's non-optical stores in the EEA is small and not comparable to the one of its optical shops. Indeed, the total number of Solaris stand-alone shops in Southern Europe is [80-90] (out of which only [30-40] in Italy, [5-10] in Portugal).[1177] This compares to thousands of department stores, sports outlets, sunglass specialist kiosks, boutiques, travel/tourist stores and others that sell non-prescription sunglasses. The scale and density of the Merged Entity's non-optical retail network represents a potential limitation to an input foreclosure strategy, as the extent to which customers will switch away to find

(1712) Secondly, many of non-optical EssilorLuxottica's retail competitors are large companies, mostly selling a wide range of products. These include department stores or sport outlets (i) that have significant bargaining power vis-à-vis EssilorLuxottica and (ii) for which sunglasses are only one of the many products they sell. As a consequence, they can switch wholesalers and brands at reasonable cost. Moreover, online players tend to be very price sensitive and would immediately turn to alternative suppliers if faced with a price increase or a degradation of services.

(1713) Thirdly, a significant share of EssilorLuxottica's non-optical wholesale customers are the fashion boutiques of the brands licensed to Luxottica. EssilorLuxottica would not have the ability to foreclose these boutiques, as the commercial conditions these boutiques receive are regulated by the license contracts.[1178]

Incentive

(1714) Fourthly, the increment in the Transaction is small as GrandVision operates only [80-90] Solaris stand-alone shops across Southern Europe (out of which only [30-40] in Italy, [5-10] in Portugal and [0-5] in the Netherlands). This is also reflected by the market shares submitted, which show that the increment resulting

[1177] Notifying Party's response to RFI 36.
[1178] Notifying Party's response to RFI 36.

from the Transaction in this segment is only [0-5]% in the EEA, [10-20]% in Italy, [5-10]% in the Netherlands and [0-5]% in Portugal.[1179]

(1715) Fifthly, on average the number of competitors and of competitors' brands as regards sunglasses sold in non-optical shops is larger since the offering includes many more sport brands and private label sunglasses that cannot be found in an optical shop. Customers are therefore more likely to switch to an alternative (non-EssilorLuxottica) pair of sunglasses, therefore reducing the likelihood that the Merged Entity would be able to recapture sufficient diverted sales for a partial input foreclosure strategy to be profitable.[1180]

Effects

(1716) Firstly, for most of the non-optical customers, sunglasses represent only a part of their overall revenues as they sell many other products. This means that an input foreclosure strategy would be unlikely to foreclose these competitors.

(1717) Secondly, there are lower barriers for the entry of new players in the downstream non-optical retail segment, as sunglasses do not require any license to be sold and can thus be easily added to the offer of department store or general marketplaces at no cost other than the one of sunglasses themselves.

(1718) Thirdly, non-optical retailers can be active in multiple countries (as is already the case for many of these, such as Amazon, Prada, Versace, Michael Kors, Decathlon, El Corte Ingles, Zalando and Yoox, etc.).[1181] These competitors would be less vulnerable to a national input foreclosure strategy, due to their larger buyer power from being important customers in multiple countries.

11.6.2.2. France

(1719) In France, the Notifying Party estimates that EssilorLuxottica has a downstream retail market share for the sale non-prescription sunglasses in specialist and non-optical stores of [5-10]% and the increment from GrandVision is [5-10]%. Upstream, EssilorLuxottica's market share in the supply of sunglasses is [40-50]%. There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1720) Firstly, at the wholesale level, the Merged Entity is constrained by a number of other sunglasses suppliers in France such as Marcolin, Safilo and Kering.

(1721) Secondly, as explained above, online optical retailers based outside of France are well placed to expand and sell to consumers in France. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices.[1182] Therefore, a strategy of seeking to foreclose specialist and non-optical retailers in France with a view to ultimately increasing prices at retail level may be frustrated by consumers turning to online retailers based outside of the country who deliver to it.

1179 Notifying Party's response to RFI 36.
1180 Notifying Party's response to RFI 36.
1181 Notifying Party's response to RFI 36.
1182 Notifying Party's response to RFI 36, question 4.

(1722) Thirdly, EssilorLuxottica would – post-Transaction – be constrained by other wholesalers of sunglasses in France, e.g., Safilo, Marchon, Kering and De Rigo (together enjoying a market share of [40-50]% in France).[1183]

(1723) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of non-prescription sunglasses in France and the (downstream) retail of non-prescription sunglasses in specialist and non-optical stores in France.

11.6.2.3. Italy

(1724) In Italy, the Notifying Party estimates that EssilorLuxottica has a downstream retail market share for the sale non-prescription sunglasses in specialist and non-optical stores of [10-20]% and the increment from GrandVision is [10-20]%. Upstream, EssilorLuxottica's market share in the supply of sunglasses is [60-70]%. There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1725) Firstly, GrandVision operates only [30-40] Solaris stand-alone shops in Italy.[1184] The limited scale and density of the Merged Entity's non-optical retail network is a limitation to an input foreclosure strategy.

(1726) Secondly, most of non-optical EssilorLuxottica's retail competitors are very large companies such as department stores or sport outlets, some of them selling private label products, for which sunglasses are only one of the many products they sell and, thus, can switch wholesalers and brands relatively easily (e.g., Rinascente, Cisalfa, Sportler, Zara and various fashion brands).

(1727) Thirdly, a share of EssilorLuxottica's non-optical wholesale customers are the fashion boutiques of the brands licensed to Luxottica. EssilorLuxottica would not have the ability to foreclose these boutiques, as the commercial conditions these boutiques receive are regulated by the license contracts. This is important, because in the case of sunglasses, licensed brands account for […] of Luxottica's revenues.[1185]

(1728) Fourthly, EssilorLuxottica would – post-Transaction – be constrained by other wholesalers of sunglasses in Italy, e.g., Kering, Safilo, Marchon and Marcolin (together enjoying a market share of [30-40]% in Italy). [1186]

(1729) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of non-prescription sunglasses in Italy and the (downstream) retail of non-prescription sunglasses in specialist and non-optical stores in Italy.

11.6.2.4. The Netherlands

(1730) In the Netherlands, the Notifying Party estimates that EssilorLuxottica has a downstream retail market share for the sale non-prescription sunglasses in specialist

[1183] Form CO, Annex CO 7.2, Wholesale Frames, Sunglasses and Lenses.
[1184] Notifying Party's response to RFI 36, question 9b.
[1185] Notifying Party's response to RFI 36.
[1186] Form CO, Annex CO 7.2, Wholesale Frames, Sunglasses and Lenses.

and non-optical stores of [30-40]% and the increment from GrandVision is [5-10]%. Upstream, EssilorLuxottica's market share in the supply of sunglasses is [30-40]%. There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1731) Firstly, the wholesale of sunglasses to non-optical retailers is very limited in the Netherlands and represent a minimum part of its activities. The main non-optical customers of Luxottica in the Netherlands are […].[1187] This competitive landscape represents a limitation to an input foreclosure strategy, as (i) EssilorLuxottica would not have the ability to foreclose some of these boutiques […] and (ii) large online platforms like Bol.com that sell a wide variety of products are likely to have some degree of buyer power.

(1732) Secondly, at the wholesale level, the Merged Entity is constrained by a number of other sunglasses suppliers in the Netherlands such as Safilo, Marchon, Kering and others, including private label suppliers.

(1733) Thirdly, in the Netherlands, the sale of private label products is a particularly significant part of the optical market. This is clear from the fact Ace & Tate, Polette and Specsavers are three of the largest optical retailers in the Netherlands, and they all (almost) exclusively sell private label products. In contrast, as explained in Section 8.3.2.3 - 8.3.2.4 above, EssilorLuxottica's wholesale supply of sunglasses is heavily focused on branded sunglasses.

(1734) Fourthly, online optical retailers based outside of the Netherlands are well placed to expand and sell to consumers in the Netherlands. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices. Therefore, a strategy of seeking to foreclose online retailers of non-prescription sunglasses in the Netherlands with a view to ultimately increasing prices at retail level may be frustrated by consumers turning to online retailers based outside of the country who deliver to it.

(1735) Fifthly, EssilorLuxottica would – post-Transaction – be constrained by other wholesalers of sunglasses in the Netherlands, e.g., Safilo, Marchon and Kering (together enjoying a share of [30-40]% in the Netherlands), as well as wholesalers of private label sunglasses (together enjoying a market share of [10-20]% in the Netherlands). [1188]

(1736) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of non-prescription sunglasses in the Netherlands and the (downstream) retail of non-prescription sunglasses in specialist and non-optical stores in the Netherlands.

11.6.2.5. Portugal

(1737) In Portugal, the Notifying Party estimates that EssilorLuxottica has a downstream retail market share for the sale non-prescription sunglasses in specialist and non-optical stores of [30-40]% and the increment from GrandVision is [0-5]%. Upstream, EssilorLuxottica's market share in the supply of sunglasses is [50-60]%.

1187 Notifying Party's response to RFI 36, Question 9a.
1188 Form CO, Annex CO 7.2, Wholesale Frames, Sunglasses and Lenses.

There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1738) Firstly, as stated above, the Transaction will bring an increment from GrandVision of merely [0-5]%. Furthermore, the total number of Solaris stand-alone shops in Portugal is [5-10]. This limited increment unlikely to affect the Merged Entity's ability and the incentive to engage in an input foreclosure strategy in Portugal.

(1739) Secondly, online optical retailers based outside of Portugal are well placed to expand and sell to consumers in Portugal. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices. Therefore, a strategy of seeking to foreclose online retailers of non-prescription sunglasses in Portugal with a view to ultimately increasing prices at retail level may be frustrated by consumers turning to online retailers based outside of the country who deliver to it.

(1740) Thirdly, EssilorLuxottica would – post-Transaction – be constrained by other wholesalers of sunglasses in Portugal, e.g., Safilo, De Rigo, Marcolin and DMDI (together enjoying a share of [30-40]% in Portugal).[1189] In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of non-prescription sunglasses in Portugal and the (downstream) retail of non-prescription sunglasses in specialist and non-optical stores in Portugal.

11.6.2.6. Spain

(1741) In Spain, the Notifying Party estimates that EssilorLuxottica has a downstream retail market share for the sale non-prescription sunglasses in specialist and non-optical stores of [20-30]% and the increment from GrandVision is [0-5]%. Upstream, EssilorLuxottica's market share in the supply of sunglasses is [30-40]%. There are good reasons to consider that the Transaction is not likely to give rise to a significant impediment to effective competition from input foreclosure.

(1742) Firstly, as stated above, the Transaction will have an increment from GrandVision of merely [0-5]%. Furthermore, the total number of Solaris stand-alone shops in Spain is [0-5].[1190] This limited increment is unlikely to affect the Merged Entity's ability and the incentive to engage in an input foreclosure strategy in Spain.

(1743) Secondly, online optical retailers based outside of Spain are well placed to expand and sell to consumers in Spain. Moreover, as the Notifying Party explains, the online retail market is price driven; consumers are likely to compare offerings and prices. Therefore, a strategy of seeking to foreclose online retailers of non-prescription sunglasses in Spain with a view to ultimately increasing prices at retail level may be frustrated by consumers turning to online retailers based outside of the country who deliver to it.

(1744) Thirdly, EssilorLuxottica would – post-Transaction – be constrained by other wholesalers of sunglasses in Spain, e.g., Marchon, De Rigo, Safilo and Marcolin

1189 Form CO, Annex CO 7.2, Wholesale Frames, Sunglasses and Lenses.
1190 Form CO, Annex CO 7.1.15 (Spain).

(together enjoying a share of [10-20]% in Spain), as well as other smaller players (together enjoying a share of [40-50]% in Spain). [1191]

(1745) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from input foreclosure in relation to (upstream) wholesale of non-prescription sunglasses in Spain and the (downstream) retail of non-prescription sunglasses in specialist and non-optical stores in Spain.

11.6.3. Vertical non-coordinated effects in retail of non-prescription sunglasses in specialist and non-optical retail: customer foreclosure

(1746) Both EssilorLuxottica and GrandVision are active in the retail market for the supply of non-prescription sunglasses in specialist and non-optical retail in a number of countries across the EEA. EssilorLuxottica is also active in the wholesale supply non-prescription sunglasses to specialist and non-optical retailers in the EEA.

(1747) The Commission finds that the Transaction would not, for the reasons outlined below, significantly impede competition in the internal market as regards vertical non-coordinated effects stemming from customer foreclosure in relation to (upstream) wholesale of non-prescription sunglasses and the (downstream) retail of non-prescription sunglasses in non-optical stores.

(1748) As stated in recital (1546), the Non-Horizontal Merger Guidelines set out that for customer foreclosure to lead to consumer harm, the relevant benchmark is whether the Merged Entity would be able to foreclose access to a sufficient customer base in order to reduce competitors' ability or incentive to compete. In turn, this leads to higher input costs for the rivals, and therefore to higher prices for consumers. In case of the Transaction, this would be manifested if the Merged Entity would be able and incentivised to foreclose competing suppliers of non-prescription sunglasses to its retail network, and thereby affecting these suppliers' economies of scale or cost of supply, with these being passed on to optical retailers as a result.

(1749) At the EEA level, the Merged Entity would have a market share of [20-30]% of the retail of sunglasses in sunglass specialist outlets and non-optical stores. This is not sufficiently high to justify – read in combination with the particular characteristics of this segment – a customer foreclosure strategy. In most countries in the EEA, the Merged Entity's retail share would be below 30%. The Merged Entity's retail share of non-prescription sunglasses would only exceed 30%, and so give rise to a vertically affected downstream market, in Malta ([30-40]%), the Netherlands ([40-50]%) and Portugal ([30-40]%). Regardless of the sizeable combined market shares in these countries, the Commission considers that these high figures in the specialist segment should be read in the broader context of the sale of non-prescription sunglasses, where non-optical stores and specialists represent a small fraction of the overall procurement market. Accordingly, the impact of a customer foreclosure strategy on the competitiveness of rival suppliers of this product would be limited both in light of the overall features of such a market and, more specifically, on the basis of the competitive landscape in these countries.

[1191] Form CO, Annex CO 7.2, Wholesale Frames, Sunglasses and Lenses.

(1750) More generally, the Commission considers that the overall features of the retail of sunglasses in specialist and non-optical stores would, to some extent, limit the impact of a customer foreclosure strategy. In particular:

(1751) Firstly, as mentioned above, not only the Merged Entity's market share of non-prescription sunglasses in non-optical stores remains modest throughout the EEA ([20-30]%), but the increment is also small ([0-5]%). As a consequence, the Parties' overall [20-30]% represent a small proportion of demand which is unlikely to have a significant impact on the ability or incentive of the Merged Entity to foreclose competing suppliers of non-prescription sunglasses to its retail network.

(1752) Secondly, customers can purchase non-prescription sunglasses in non-sunglass specialist stores including optical stores. More importantly, sunglass specialist and non-optical stores represent a low percentage of the overall procurement of sunglasses. Notably, the Parties' market share estimates imply that the Parties' sunglass specialists only account for [10-20]% of all sales of sunglasses by retailers in the EEA. Therefore, the Parties' represent a low proportion of downstream demand and any attempted foreclosure strategy is unlikely to have a significant impact on the competitiveness of suppliers upstream.

11.6.3.1. Malta

(1753) In Malta, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [30-40]%. EssilorLuxottica's market share in the supply of sunglasses is [10-20]%. However, due to the characteristics of the market, the Commission considers that the impact of a customer foreclosure strategy would be limited:

(1754) Firstly, the Transaction only brings about an increment in Malta of less than [0-5]%. Accordingly, the Transaction is unlikely to affect the Merged Entity's ability or incentive to engage in a customer foreclosure strategy.

(1755) Secondly, there is a wide array of sunglass specialist and non-optical retailers – both traditional brick-and-mortar outfits and online retailers – who compete with the Merged Entity in Malta and who rival suppliers will be able to turn to.[1192]

(1756) Thirdly, customers can purchase non-prescription sunglasses in non-sunglass specialist stores including optical stores. Therefore, sunglass specialist and non-optical stores represent a low percentage of the overall procurement of sunglasses. Notably, the Parties' market share estimates imply that the Parties' sales of sunglasses in non-optical stores (conservatively) represents around [20-30]% of all sales of sunglasses in Malta. Therefore, the Parties represent a low share of downstream demand and any attempted foreclosure strategy is unlikely to have a significant impact on the competitiveness of suppliers upstream.

(1757) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of non-prescription sunglasses and the (downstream) retail of non-prescription sunglasses in non-optical stores in Malta.

[1192] Response to RFI 36, Question 7(b).

11.6.3.2. The Netherlands

(1758) In the Netherlands, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [40-50]%. EssilorLuxottica's market share in the wholesale supply of sunglasses is [30-40]% in the Netherlands. However, due to the characteristics of the market, the Commission considers that the impact of a customer foreclosure strategy would be limited:

(1759) Firstly, this figure read alone appears to be somewhat misleading, as only EssilorLuxottica is active in the brick-and-mortar segment through only about [10-20] stores under the Sunglass Hut and Ray-Ban banners, whereas GrandVision has solely an online presence through zonnebrillen.com.[1193] This limited footprint means that any foreclosure strategy is likely to have a small impact on the competitiveness of suppliers upstream.

(1760) Secondly, the main brick-and-mortar players are department stores and sport outlets. The latter in particular have a very diverse offer with many private label brands, therefore allowing existing and new suppliers to have a potentially viable customer base.

(1761) Thirdly, the online segment is vibrant in the Netherlands and many players have entered the market covering both the high and low end of the sunglass market, for instance Amazon, Bol.com (large online marketplace that sell thousands of models of sunglasses both of mainstream brands and very cheap private labels) and Zalando.

(1762) Fourthly, customers can purchase non-prescription sunglasses in non-sunglass specialist stores including optical stores. Therefore, sunglass specialist and non-optical stores represent a low percentage of the overall procurement of sunglasses. Notably, the Parties' market share estimates imply that the Parties' sales of sunglasses in non-optical stores represents around [20-30]% of all sales of sunglasses in Malta. Therefore, the Parties represent a low share of downstream demand and any attempted foreclosure strategy is unlikely to have a significant impact on the competitiveness of suppliers upstream.

(1763) Although the Commission acknowledges that the Merged Entity's downstream market share amounts to [40-50]% and the upstream share to [30-40]%, it also notes that sunglass specialist and non-optical stores represent a fraction of the overall procurement of sunglasses. As a result, the Parties' share of downstream demand is not likely to impact the competitiveness of the alternative suppliers of non-prescription sunglasses. Accordingly, in light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of non-prescription sunglasses and the (downstream) retail of non-prescription sunglasses in non-optical stores in the Netherlands.

11.6.3.3. Portugal

(1764) In Portugal, the Merged Entity's combined market share in the retail of sunglasses in specialist and non-optical stores amounts to [30-40]%. EssilorLuxottica's market share in the supply of sunglasses is [50-60]% in Portugal. However, due to the

1193 Response to RFI 36, Question 7(c).

characteristics of the market, the Commission considers that the impact of a customer foreclosure strategy would be limited:

(1765) Firstly, the Transaction only brings about an increment in Portugal of [0-5]%. Accordingly, and due to the fact that the increment brought by GrandVision is of only [5-10] stores, the Transaction is unlikely to affected the Merged Entity's ability or incentive to engage in a customer foreclosure strategy.

(1766) Secondly, the competitive landscape in Portugal is rather dynamic and the Parties' footprint appears to have a number of challengers. As regards brick-and-mortar stores, there are at least two other sunglass specialists larger than Solaris, i.e. Chilli Beans and Hawkers. As regards the online non-optical retailers, only EssilorLuxottica is active with the Sunglasses-shop.com webstore that […]. Moreover, it does not have a Portuguese version of the website nor the possibility to translate the webpages in Portuguese. Other large online large marketplaces as Amazon or specialised retailers such as Oculosdesol.pt. This means that any foreclosure strategy is likely to have a small impact on the competitiveness of suppliers upstream because they will continue to have downstream retailers to sell to.

(1767) Thirdly, the competitive landscape in Portugal is fast-moving. In the last years, two large chains of sunglass specialist have opened in Portugal: Chilli Beans and Hawkers. Additionally, sunglasses in Portugal are sold through various other channels. The main competitors of the Parties are department stores (such as El Corte Ingles), fashion boutiques and sport stores. Once again, this shows how the Parties' market share is unlikely to have a significant impact on their ability or incentive to foreclose competing suppliers of non-prescription sunglasses to its retail network.

(1768) Fourthly, customers can purchase non-prescription sunglasses in non-sunglass specialist stores including optical stores. Therefore, sunglass specialist and non-optical stores represent a low percentage of the overall procurement of sunglasses. Notably, the Parties' market share estimates imply that the Parties' sales of sunglasses in non-optical stores represents around [30-40]% of all sales of sunglasses in Malta. Therefore, the Parties represent a moderate share of downstream demand and any attempted foreclosure strategy is unlikely to have a significant impact on the competitiveness of suppliers upstream.

(1769) In light of the above and the evidence available to it, the Commission considers that the Transaction is unlikely to give rise to a significant impediment to effective competition from customer foreclosure in relation to (upstream) wholesale of non-prescription sunglasses and the (downstream) retail of non-prescription sunglasses in non-optical stores in Portugal.

12. COMMITMENTS

12.1. Introduction

(1770) In order to address the competition concerns identified by the Commission in Sections 9.1, 9.2 and 9.4, on 8 February 2021, the Notifying Party submitted a first set of commitments (the 'Initial Commitments') pursuant to Article 8(2) of the Merger Regulation. The Commission launched a market test of the Initial Commitments on 9 February 2021 (the 'Initial Market Test').

(1771) Based on the results of the Initial Market Test, the Commission provided the Notifying Party with its assessment of the Initial Commitments on 16 February 2021.

(1772) Following the feedback from the Commission and in order to address the identified shortcomings of the Initial Commitments, the Notifying Party submitted a second set of commitments on 22 February 2021 (the 'Second Commitments').

(1773) Following the feedback from the Commission and in order to address the identified shortcomings of the Second Commitments, notably in relation to implementation risks, the Notifying Party submitted a final set of commitments on 1 March 2021 (the 'Final Commitments').

(1774) The Final Commitments are attached as Annex 2 and form an integral part of this Decision.

12.2. General principles for the assessment of commitments

(1775) When a concentration raises competition concerns, the merging parties may seek to modify the concentration in order to resolve those competition concerns and thereby obtain clearance for the merger.[1194]

(1776) Under the Merger Regulation, the Commission must show that a concentration would significantly impede effective competition in the internal market, or in a substantial part of it. It is then for the notifying party/parties to the concentration to propose appropriate commitments.[1195] The Commission only has the power to accept commitments that are capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment to effective competition in all relevant markets in which competition concerns were identified.[1196]

(1777) The commitments must eliminate the competition concerns entirely and must be comprehensive and effective in all respects. The commitments must also be proportionate to the competition concerns identified.[1197] Furthermore, the commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.[1198]

(1778) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including inter alia the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the

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1194 Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the 'Remedies Notice'), OJ C 267, , 22.10.2008, p.1, paragraph 5.

1195 Remedies Notice, paragraph 6.

1196 Remedies Notice, paragraph 9.

1197 Recital 30 of the Merger Regulation. The General Court set out the requirements of proportionality as follows: '*the principle of proportionality requires measures adopted by Community institutions not to exceed the limits of what is appropriate and necessary in order to attain the objectives pursued; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued*' (Case T-177/04 easyJet v Commission [2006] ECR II-1931, paragraph 133).

1198 Remedies Notice, paragraphs 9, 10, 11, 63 and 64.

competition concerns arise, including the position of the parties and other participants on the market.[1199]

(1779) In order for the commitments to comply with those principles, commitments must be capable of being implemented effectively within a short period of time.[1200] However, where the parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted.[1201]

(1780) Regarding the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.[1202] Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments, such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects.[1203]

(1781) It is against that background that the Commission analysed the various proposed commitments in this case.

12.3. The Initial Commitments

12.3.1. Summary of the Initial Commitments

(1782) The Initial Commitments consisted of three components (the 'Initial Divestment Businesses'), related to the three countries: Belgium, Italy and the Netherlands.

(1783) In Belgium, the Parties offered to divest the entirety of its GrandOptical banner, which amounted to 35 stores (the '**Initial Belgium Divestment Business'**). Under the Initial Commitments, the 'GrandOptical' brand name would not transfer to the purchaser and the latter would be granted a licence of […], during which it could rebrand the stores. In addition, EssilorLuxottica committed not to use the GrandOptical brand name in Belgium for a period of […] following the expiry of the licensing period ('black-out period').

(1784) In Italy, the Parties offered to divest two full retail chains (EssilorLuxottica's VistaSì banner and GrandVision's Corner Optique banner), as well as a number of GrandVision stores (the '**Initial Italy Divestment Business**'). This amounted to a total of 239 stores, 143 of which would be 'stores-in-stores' or 'corner stores', i.e. corner points of sale located inside third-party retailers such as supermarkets. Under the Initial Commitments, the VistaSì and Corner Optique brand names would transfer to the purchaser. The 'GrandVision by' brand name would not be transferred, rather the purchaser would be granted a licence of the brand name for […], during which it could rebrand the stores. Moreover, during this rebranding period and for the same duration as the licence, the Parties committed not to open any new 'GrandVision by' stores within 1 kilometre of the divested GrandVision stores.

1199 Remedies Notice, paragraph 12.
1200 Remedies Notice, paragraph 9.
1201 Remedies Notice, paragraphs 13, 14 and 61 et seq.
1202 Case T-177/04 easyJet v Commission [2006] ECR II-1913, paragraph 197.
1203 Remedies Notice, paragraph 19.

(1785) In the Netherlands, the Parties proposed to divest 125 stores under the Pearle banner (the '**Initial Netherlands Divestment Business**'). These stores represented most of GrandVision's 'owned' (as opposed to franchise) outlets under this banner. Under the Initial Commitments, the 'Pearle' brand name would not be transferred, rather the purchaser would be granted a licence of the brand name for […], during which it could rebrand the stores. During this rebranding period and for the same duration as the licence, the Notifying Party committed not to open any new Pearle stores within 1 kilometre of the divested Pearle stores.

(1786) Moreover, under the Initial Commitments, each of the Initial Divestment Businesses would include the necessary personnel (both dedicated personnel and a management structure), customer records, purchase orders, current stock and tangible and intangible assets. In addition, the Initial Divestment Businesses would be supported by transitional arrangements, at the purchaser's option. In particular:

(a) The Initial Commitments provided for a transitional supply agreement for […], whereby EssilorLuxottica would supply to the Initial Divestment Businesses eyewear (frames and sunglasses), ophthalmic lenses, contact lenses and/or other products sold by the stores of the Initial Divestment Businesses. […].

(b) The Initial Commitments also provided for transitional services for […], whereby EssilorLuxottica would provide, […], assistance with in particular: […].

(1787) Under the Initial Commitments, the Parties proposed to divest the businesses by either: (i) selling them to one purchaser as one package including the Initial Italy, Belgium and Netherlands Divestment Businesses together, or (ii) selling them to two different purchasers as two separate packages, one including only the Initial Italy Divestment Business, and the other the Initial Belgium and Netherlands Divestment Businesses.

(1788) In addition to the standard purchaser criteria (requiring independence from the Parties; proven expertise in the relevant field; incentives to maintain and develop the Divestment Business; and a lack of *prima facie* competition concerns), the Initial Commitments also included an additional purchaser criterion, i.e. the purchaser of the Initial Belgium and Netherlands Divestment Businesses should be '*able to conduct a rebranding exercise in the retail sector*'.

12.3.2. The Notifying Party's view

(1789) In the Form RM submitted together with the Initial Commitments (the 'Initial Form RM'), the Notifying Party stated that the Initial Commitments would allow to address any identified competition concerns in Belgium, Italy and the Netherlands. Moreover, according to the Notifying Party, these commitments were comprehensive and effective, as well as capable of being implemented effectively within a short period of time.

(1790) As for addressing any competition concerns, the Notifying Party submitted that the Initial Commitments would, in the three countries in question, '*create an additional retail competitor with a solid presence or strengthen the position of an existing* *one*'.[1204] The Initial Divestment Businesses would continue to operate locally and compete on the retail level with the Parties.

(1791) In addition, the Notifying Party submitted that the Initial Commitments would address the Commission's input foreclosure concerns by substantially reducing the retail footprint of the Parties in Italy, Belgium and the Netherlands and thus weakening the incentive for the Merged Entity to foreclose third-party retailers.[1205]

(1792) In the same vein, the Notifying Party noted that under the Initial Commitments the horizontal overlap in Italy brought about by the Transaction would be reduced by around [0-5] percentage points (from a combined market share of [10-20]% down to a combined market share of less than [10-20]%).[1206] Thus, it considers that any horizontal competition concerns would be eliminated.

(1793) As for the Initial Commitments being comprehensive and effective, the Notifying Party stated that the purchaser(s) of the Initial Divestment Businesses would acquire all necessary means, e.g. assets, contracts and staff, required to compete effectively in the market on a lasting basis and hence exert an effective competitive constraint on the Parties.[1207]

(1794) Finally, as for the Initial Commitments' capability of being implemented effectively within a short period of time, the Notifying Party submitted that the implementation would be straightforward as all of the Initial Divestment Businesses would be disposed as going concern.[1208] Effective and immediate implementation would be further facilitated thanks to contractual arrangements for a transitional period, available at the purchaser(s)' request.

12.3.3. Commission's assessment of the Initial Commitments

12.3.3.1. General aspects of the Initial Commitments

(1795) As explained in the Remedies Notice,[1209] '[…] *commitments which are structural in nature, such as the commitment to sell a business unit, are, as a rule, preferable from the point of view of the Merger Regulation's objective, in as much as such commitments prevent, durably, the competition concerns which would be raised by the merger as notified, and do not, moreover, require medium or long-term monitoring measures'*.

(1796) The Initial Commitments were structural in nature: they entailed a divestment of part of the Parties' retail operations in Belgium, Italy and the Netherlands, consisting of large number of optical stores and/or optical banners. As for the removal of competition concerns, thanks to a reduction of the Parties' downstream market shares, the Initial Commitments would in principle reduce the retail footprint of the Parties, thus lessening the incentives for the Merged Entity to engage in a foreclosure strategy.

1204 Form RM submitted by the Notyfing Party on 8 February 2021, para. 24, p.11.
1205 Form RM submitted by the Notyfing Party on 8 February 2021, para. 43, p.16.
1206 Form RM submitted by the Notyfing Party on 8 February 2021, para. 28, p.12.
1207 Form RM submitted by the Notyfing Party on 8 February 2021, para. 44, p.16
1208 Form RM submitted by the Notyfing Party on 8 February 2021, para. 45, p.16
1209 Remedies Notice, paragraph 15.

(1797) The Commission sought feedback from the market participants. The results of the Initial Market Test were largely negative, because the majority of the respondents raised issues on the viability of the Initial Divestment Businesses as well as their suitability to remove the identified competition concerns.[1210]

12.3.3.2. Feedback of market participants on the Initial Italy Divestment Business

(1798) Overall, the replies of the respondents to the Initial Market Test were largely negative.[1211] In particular, none of the retail chains responding to the Commission's Initial Market Test considered the Initial Italy Divestment Business to be a viable business for a suitable purchaser.[1212]

(1799) As regards the Initial Italy Divestment Business, respondents to the market test highlighted the shortcomings due particularly to the fact that a large share of the stores consisted of stores-in-stores. These were broadly considered as assets of an inferior competitive value when compared to standalone shops, with respondents questioning their profitability and capacity to effectively compete with the banners retained by the Parties.

Scope, viability and competitiveness

(1800) With regard to profitability of the Initial Italy Divestment Business, several respondents pointed out that stores-in-stores did not benefit from customer loyalty (important in the optical retail business, which is characterised in general by high customer retention)[1213] and had a lower positioning (focusing mainly on private label products) with a low average spend and low gross margins.[1214] Certain independent retailers also mentioned relatively high costs of operating stores-in-stores, resulting from the concession fees.[1215] In addition, several respondents mentioned viability risks related to the need to transfer lease contracts,[1216] which '*puts purchaser's business continuity in the hands of supermarkets*'.[1217] Moreover, the wording of the Initial Commitments requiring the Parties to use 'best efforts' to obtain the landlords' and supermarket owners' consent to transfer the leases and concession agreements was not considered to grant sufficient protection to a purchaser of the Initial Italy Divestment Business.[1218]

(1801) As regards adequacy to address concerns in Italy, none of the optical retail chains or independent opticians active in Italy considered the Parties' Initial Commitments to be suitable and sufficient to remove competition concerns resulting from the

1210 Questionnaire R4 to optical retail chains sent on 9 February 2021; Questionnaires R1, R2 and R3 to independent opticians active in Belgium, Italy and the Netherlands sent on 9 February 2021.

1211 Questionnaire R4 to optical retail chains sent on 9 February 2021.

1212 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.9.

1213 Non-confidential minutes of a call with a market participant of 12 February 2021.

1214 Non-confidential minutes of a call with a market participant of 10 February 2021; Non-confidential minutes of a call with a market participant of 12 February 2021

1215 Questionnaire R1 to independent opticians in Italy sent on 9 February 2021, Q.19.1.

1216 Non-confidential minutes of a call with a market participant of 10 February 2021; Non-confidential minutes of a call with a market participant of 11 February 2021.

1217 Non-confidential minutes of a call with a market participant of 11 February 2021.

1218 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.24.

elimination of competition between the retail networks of EssilorLuxottica and GrandVision in Italy.[1219]

(1802) Moreover, all but one optical retail chain considered these commitments neither suitable nor sufficient to reduce the extent to which the Parties could have the ability and incentive to deteriorate the commercial conditions offered to rival retailers in Italy after the Transaction.[1220] One respondent stated '*that the divestment business would not be in a position to effectively compete with the retained banners of Parties and hence competition concerns would not be removed*',[1221] while another one reported that '[t]*he proposal will not affect in quality and quantity the competitive situation in the Italian market. The divestments concern […].*'[1222]

Intellectual property rights and transitional arrangements

(1803) The majority of responding retail chains considered that the duration of the licence for the 'GrandVision by' brand was insufficient,[1223] and identified that important re-branding costs would have to be borne by the purchaser.[1224] Moreover, the Parties' commitment not to open stores under the 'GrandVision by' name during the licence period within 1 kilometre of 'GrandVision by' stores sold as part of the Initial Italy Divestment Business was considered insufficient by respondents to the market test, both in terms of duration and geographical scope.[1225]

(1804) When asked about other necessary safeguards in order to ensure an adequate transfer of the Italian stores, certain respondents stressed the importance of transferring the customer database to the purchaser and prohibiting the Parties from using the data base to contact customers of the divested stores.[1226]

Transitional support

(1805) As regards the Transitional Supply Agreement foreseen by the Initial Commitments, the responding chains held mixed views regarding sufficiency of its duration and scope.[1227] In particular, with viability of the divestment business depending on the management of the supply chain relations after the expiry of the Transitional Supply Agreement, which is vital considering the strong upstream position of the Parties, the duration of the Transitional Supply Agreement was considered insufficient.[1228]

Purchaser requirements, marketability and potential purchasers

(1806) The results of the Initial Market Test were inconclusive as to whether the purchaser needed to be an established optical chain in Italy[1229] or have an established retail

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1219 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.7; Questionnaire R1 to independent opticians active in Italy sent on 9 February 2021, Q.7.
1220 Questionnaire to optical retail chains sent on 9 February 2021, Q.8.
1221 Non-confidential minutes of a call with a market participant of 12 February 2021.
1222 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.8.2.
1223 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.11.
1224 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.13.
1225 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.15.
1226 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.16.
1227 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.18.
1228 Non-confidential minutes of a call with a market participant, 11 February 2021
1229 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.26; Questionnaire R1 to independent opticians active in Italy sent on 9 February 2021, Q.23.

brand in Italy.[1230] Yet, almost all respondents considered that the purchaser had to have an ability to conduct a rebranding exercise in the retail sector.[1231]

(1807) As for attractiveness, none of responding optical retail chains found the Initial Italy Divestment Business to be sufficiently attractive to appeal to a suitable purchaser.[1232] In the same vein, all but one retail chain reported no particular interest in acquiring the Initial Italy Divestment Business.[1233]

12.3.3.3. Feedback of market participants on the Initial Netherlands Divestment Business.

Scope, viability and competitiveness

(1808) The majority of respondents to the Initial Market Test found the number of divested stores to be insufficient for a purchaser to be able to establish an effective competing retail chain in the Netherlands.[1234]

(1809) The large majority of respondents to the Initial Market Test also considered that the proposed divestiture was neither suitable nor sufficient to reduce the Merged Entity's ability and incentives to foreclose competitors in the Netherlands.[1235]

(1810) Many market participants were particularly critical about the fact that the remedy would be a carve out from an existing chain with a rebranding obligation on the purchaser carrying significant risks.[1236] In particular, the Parties would retain an important number of Pearle stores that would be run, during the re-branding period, under the same banner as the divested stores. Moreover, the purchaser would be required to re-brand the divested shops while the Parties would continue to run other points of sale under the same banner. For example, one respondent explained '[d]*ue to the high degree of branded loyalty a high percentage of customers of the divestment business will remain with the retained stores (considering in particular the proximity of stores in the densely populated Netherlands)*'.[1237] Another major chain noted that this scenario '*will lead to substantial customer losses*'[1238] for the divestment business. This risk was considered to undermine both the viability and competitiveness of the Initial Netherlands Divestment Business.

(1811) All but one of the responding retail chains considered the Initial Netherlands Divestment Business as not viable, precisely because the remedy taker would have to carry out a rebranding of some Pearle stores, while the Parties retained a certain number of stores of the same banner.[1239] One responded, for instance, stated that '[t]*he main issue with the Netherlands Divestment Business is not related to the number of stores, but the characteristics of those stores and the fact that*

[1230] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.27; Questionnaire R1 to independent opticians active in Italy sent on 9 February 2021, Q.24.

[1231] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.28; Questionnaire R1 to independent opticians active in Italy sent on 9 February 2021, Q.25.

[1232] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.30.

[1233] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.31

[1234] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.58; Questionnaire R3 to independent opticians active in the Netherlands sent on 9 February 2021, Q.3.

[1235] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.61.

[1236] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.60.1, 62.1.

[1237] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q62.1.

[1238] Questionnaire R4 to optical retail chains sent on 9 Februray 2021, Q.60.1.

[1239] Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.62.

GrandVision will remain active in the Netherlands in parallel with (i) the strong Pearle brand (> 60 years) with a full covering national network of 215 stores and (ii) the Eye Wish brand with a full covering national network of 257 stores'.[1240]

(1812) Another optical retail chain stated that '[i[*t would be "messy" to have two stores competing under the same name and in this kind of situation it is very easy (for example in an advertising compaign) for the Licensor to destroy goodwill*'.[1241] In fact, with regard to the need to rebrand the divested stores, all but one responding retail chains found it impossible to rebrand an optical retail store/chain while maintaining the loyalty of the store/chain's existing customers.[1242]

(1813) In the same vein, another respondent added that '*the concept proposed by the parties to split the Pearle activities is not a workable solution*' and that '*the transfer of only a limited part of an existing retail chain while the brand and the majority of stores remains with the sellers/their franchisees entails a very significant risk that EssilorLuxottica/GrandVision respectively their franchisees would divert customers from the Pearle stores sold to the purchaser*'.[1243]

(1814) Importantly, safeguards proposed under the Initial Commitments, e.g. the licencing agreement ([…]) or the Parties' commitment not to open new stores within […] from divested stores for the duration of the licence, were not considered to provide a purchaser with sufficient protection by a majority of respondents.[1244]

(1815) Overall, all responding optical retail chains considered that the retention of an important number of Pearle stores by the Parties would inhibit a purchaser in successfully operating the Initial Netherlands Divestment Business both before and after the completion of re-branding.[1245]

(1816) As for the adequacy to remove competition concerns in the Netherlands, the carve-out nature of the Initial Netherlands Divestment Business was also negatively received by the market participants. In fact, all but one responding retail chain and the majority of independent opticians found the Initial Commitments to be neither suitable nor sufficient to reduce the extent to which the Parties could have the ability and incentive to deteriorate the commercial conditions offered to rival retailers in the Netherlands after the Transaction.[1246]

Purchaser requirements, marketability and potential purchasers

(1817) As for the purchaser requirements, the majority of responding retail chains and independent opticians did not consider it necessary for the purchaser to be already active as an optical retailer in the Netherlands.[1247] Certain respondents pointed nevertheless to the necessity of having an optical retail activity in the EEA, with, in particular the importance of having '*central operations such as procurement and*

1240 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.58.1.

1241 Non-confidential minutes of a call with a market participant of 11 February 2021.

1242 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.63.

1243 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.58.1.

1244 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.68.1.

1245 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.64, 67.

1246 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.61; Questionnaire to independent opticians active in the Netherlands sent on 9 February 2021, Q.6;

1247 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.78.1.; Questionnaire R3 to independent opticians active in the Netherlands sent on 9 February 2021, Q.20.1;

marketing already present in nearby markets'.[1248] In addition, all but one optical retail chain considered it necessary for the purchaser to have an actual capacity to conduct a rebranding exercise in the retail sector.[1249]

(1818) As for attractiveness, none of optical retail chains considered the Initial Netherlands Divestment Business to be sufficiently attractive to appeal to a suitable purchaser.[1250] One of the respondents stated explicitly that '[a]*s long as more than 50% of the existing Pearle chain and the brand Pearle itself remain with EssilorLuxottica/GrandVision the Netherlands Divestment Business will not be considered a suitable solution to the market in the Netherlands by any third party*.'[1251] In the same vein, only one respondent declared an interest in acquiring the Initial Netherlands Business, however merely stating its general interest in '*growing the international footprint'*.[1252]

<u>Other comments raised by the respondents to the Initial Market Test</u>

(1819) Certain respondents also mentioned other shortcomings of the Initial Commitments regarding the Netherlands, which were similar to those already identified as regards the Initial Commitments for Italy, notably in relation to the insufficient protection for a purchaser resulting from an allegedly weak 'best efforts' clause to secure landlords' consent to transfer lease and concession agreements[1253] as well as an insufficient duration of the Transitional Supply Agreement.[1254]

12.3.3.4. Feedback of market participants on the Initial Belgium Divestment Business.

<u>Scope, viability and competitiveness</u>

(1820) As for the results of the Initial Market Test, the respondents held mixed views on the scope of the Initial Belgium Divestment Business.

(1821) On the one hand, the majority of responding optical retail chains considered the number of divested stores to be insufficient for the Initial Belgium Divestment Business to be, in the hands of a suitable purchaser, an effective competing optical retail chain in Belgium.[1255]

(1822) Several respondents pointed to viability risks relating to the re-branding exercise, while others appreciated the provided safeguards stating that the '*GrandOptical name will not continue to be carried on in parallel, which will make the rebranding less confusing for the consumer and will help limiting customer loss*'.[1256] One respondent further added that '*[i]t is crucial to provide the new owner with (i) safeguards that support viability of the divested business (scope of transitionary support and length of the transition period*).'[1257] With regard to the latter, the majority of the responding chains considered that the duration of the Transitional

1248 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.78.1.;
1249 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.80.
1250 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.82.
1251 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.82.1.
1252 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.82.1.
1253 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.75.
1254 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.71.1.
1255 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.33.
1256 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.33,36.
1257 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.36.2.

Supply Agreement offered under the Initial Commitments was insufficient for the purchaser to effectively establish its own procurement operations and set up the Initial Belgium Divestment Business as an effective competitor.[1258]

(1823) On the other hand, one respondent considered that the divested stores '*appear to be good stores in good locations*',[1259] with several market participants welcoming the inclusion in the package of the entire optical retail chain.[1260]

(1824) Market participants also identified risks related to the rebranding of the chain, because of the fact some of them are run by independent store managers.[1261] One of the respondents explained that '*[a]s such, GrandOptical is an established brand and the […] stores correspond to the market standards. However, given that […] stores are run by franchisees there is a significant risk whether all of these […] stores would remain with the purchaser*'.[1262]

(1825) In this regard, the responding retail chains expressed doubts that a suitable purchaser would be able to achieve assignment and renewal of lease or franchise (/independent store manager) agreements.[1263] In addition, the commitment to use their 'best efforts' to obtain the landlords' and franchisees' consents to transfer the leases and concessions was not considered to grant sufficient protection to a purchaser. In fact, certain respondents found '*little value'* in such commitment as, due to its '*weak wording'* it '*would not assure that the negative effects of the concentration would be alleviated'*.[1264]

Purchaser requirements, marketability and potential purchasers

(1826) While the majority of responding retail chains did not consider it necessary for the purchaser to already be active as an optical retailer in Belgium, an optical retail activity as well as having a consumer brand in the EEA were considered necessary.[1265] The ability to conduct a rebranding exercise in the retail sector was also found necessary during the Initial Market Test.[1266]

(1827) Overall, the majority of the responding retail chains did not consider the Belgium Investment Business to be sufficiently attractive to appeal to a suitable purchaser and hence did not declare any interest in acquiring it.[1267]

12.3.3.5. The Commission's assessment of the Initial commitments.

(1828) Upon review of the Initial Commitments and in the light of the market test, the Commission found the commitments to be in principle suitable to address the identified competition concerns in Italy, Belgium and the Netherlands in view of their structural nature and overall impact on the structure of the market, but considered that the selection of assets, the lack of adequate safeguards on the

1258 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.44.1.
1259 Non-confidential minutes of a call with a market participant of 12 February 2021.
1260 Non-confidential minutes of a call with a market participant of 11 February 2021; Non-confidential minutes of a call with a market participant of 12 February 2021.
1261 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.36.
1262 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.36.
1263 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.47.
1264 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.48
1265 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.51-52.
1266 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.54.
1267 Questionnaire R4 to optical retail chains sent on 9 February 2021, Q.55-56.

competitiveness and viability of the package and significant implementation risks made them unsuited to avoid that the Transaction would result in a significant impediment to effective competition.

(1829) As regards the structural impact on the market, the Commission found the structural nature of the remedy to be suited to allow a competitor to operate retail chains in all three markets of concern, reducing the share held by the Parties and consequently its incentives to foreclose competitors in view of the reduced recoupment of downstream sales.

(1830) More specifically, with regard to the scope of the Initial Italy Divestment Business, the package consisted of complete and self-standing businesses, i.e. two retail chains together with their banners. The proposed reduction of the combined market share of the Merged Entity from [10-20]% to [10-20]% could, *prima facie*, be considered sufficient to eliminate the horizontal competition concerns stemming from the combination of the retail activities of the Parties provided it achieves the aim of creating a credible competitor at national level.

(1831) As for the scope of the Initial Netherlands Divestment Business, the package included an important number of stores, corresponding to around [5-10]% of the Parties' downstream market share.[1268] This would have led to a significant reduction of the Parties' downstream share held post-Transaction, as it would have reduced the Merged Entity's optical retail market share to [20-30]% in the Netherlands, and the divestment would have represented a turnover of EUR […] in the Netherlands.

(1832) As for the scope of the Initial Belgium Divestment Business, the Commission found that it consisted of an entire and standalone retail chain, corresponding to around [0-5]% of the Parties' market share in the retail market.[1269] Moreover, despite the exclusion from the package of the brand name, some safeguards, e.g. the black-out clause, were established to protect the viability of the Initial Belgium Divestment Business, in line with comments received from market test respondents.

(1833) Despite these structural changes to the Transaction, the Commission found its actual scope, as resulting from the choice of assets and absence of adequate safeguards, was insufficient to address concerns particularly for Italy and the Netherlands.

(1834) As regards Italy, the Commission found that the stores-in-stores included in the Initial Italy Divestment Business, in line with the responses of market participants, constituted too large a share of the divestment business for it to be a lasting and viable competitor in the market. In particular, while respondents identified these assets as a possible complement, they constituted […]% of the Initial Italy Divestment Business, which was at odds with the fact that stores-in-stores only represent only […]% of the combined EssilorLuxottica and GrandVision retail business in Italy. Stores-in-stores entail a higher risk, as (i) stores-in-stores have lower average turnover and EBITDA than regular stores, therefore making it more challenging to attract prospective purchasers,[1270] (ii) stores-in-stores have '*high costs because of the fees to the main retailer [i.e. supermarket]*',[1271] (iii) the existence of

1268 Initial Form RM, para.22.
1269 Initial Form RM, paragraph 22
1270 Questionnaire R4 to optical retail chains, sent on 9 February 2021, Q4.
1271 Questionnaire R1 to independent opticians in Italy, sent on 9 February 2021, Q19.

these stores depends on a concession granted by a supermarkets – renewal is not guaranteed and so it puts '*business continuity in the hands of supermarkets*',[1272] meaning that material risk to the ongoing existence and viability of the divestment business is concentrated in the hands of a few supermarket chains, (iv) customer loyalty to stores-in-stores is weak, as they offer predominantly private label products in the low-price segment and they '*do not have a real autonomous attraction for the consumer*', who mainly only visits stores-in-stores as they are located in a supermarket they are otherwise going to,[1273] and (v) given stores-in-stores primarily focus on private label and low price products, they do not carry many of the premium brands (such as Ray-Ban) that a foreclosure strategy would likely focus on and, according to some respondents, such stores '*would not meet EssilorLuxottica's own quality requirements under their distribution system*' to be qualified to sell these premium brands.[1274] All these factors made them overall assets of an inferior competitive value when compared to standalone shops, with risks on their profitability and suitability to constrain the banners retained by the Parties and capture sales potentially affected by a foreclosure strategy.

(1835) The Commission also found important viability risks with the circumstances of the rebranding of GrandVision stores. The addition of these stores to balance the divestiture both from a geographic viewpoint and so as to expand the scope of traditional stores, was put at risk by the insufficient safeguards foreseen for its rebranding.

(1836) While according to the Initial Commitments two optical retail brands (Corner Optique and VistaSì) would be transferred to a purchaser, the latter would be obliged to re-brand the divested 'GrandVision by' shops. The territorial restrictions being very narrow, and not accounting for the differentiation between urban and rural areas, would create significant risk that the rebranding effort would see a loss of competitiveness of the divestment business due to the presence of existing GrandVision by (and Salmoiraghi & Viganò) stores of the Parties. Moreover, while the purchaser would be acquiring the VistaSì and Corner Optique brands in Italy, which could be used to rebrand the GrandVision by stores, VistaSì is predominantly and Corner Optique is entirely focused on stores-in-stores and so carries a different positioning from the GrandVision By stores. Therefore, the purchaser would have had to face the costs and risks of a rebranding.

(1837) Similarly, the carve-out nature of the Initial Netherlands Divestment business, with the obligation on the purchaser to re-brand divested shops while the Parties would continue to run other points of sale under the same banner, was considered by the Commission to undermine both its viability and competitiveness, for the reasons outlined above.

(1838) In conclusion, based on the responses to the Initial Market Test and the Commission's assessment, the Commission found that the Initial Commitments would not prevent a significant impediment to effective competition particularly in Italy and the Netherlands. Neither the Initial Italy Divestment Business, constituted

[1272] Non-confidential minutes of a call with a market participant, 11 February 2021.
[1273] Questionnaire R1 to independent opticians in Italy, sent on 9 February 2021, Q3 and Q19 and Questionnaire R4 to optical retail chains, sent on 9 February 2021, Q32.
[1274] Questionnaire R4 to optical retail chains, sent on 9 February 2021, Q3 and 32.

primarily of stores-in-stores, nor the Initial Netherlands Divestment Business, designed as a carve-out, could be considered viable. In addition, the relevant Initial Commitments were considered insufficient to fully address the competition concerns identified with regard to these countries.

(1839) As regards Belgium, the Commission considered that the divestment of an entire retail chain in the Initial Commitments could be adequate to address competition concerns identified in that country. In particular, the aforementioned reduction by [0-5] percentage points of the Parties' market share downstream was considered by the Commission to be sufficient to significantly limit the incentives for the Merged Entity to engage in input foreclosure. As the result of the divestment, the downstream market shares would be brought well below the 30% threshold set by the Non-Horizontal Guidelines, equalling the Parties' shares in numerous national retail markets for which no concerns were raised. As regards the rebranding process of the Belgium Divestment Business, the exclusive licence followed by a black-out period should allow the licensee to transfer the customers from the licensed brand to its own brand in order to create a viable competitor, without the licensed brand being permanently divested, as stated by the Remedies Notice.[1275]

(1840) Beside the issues relating to scope, carve out of the businesses, and rebranding of the stores, the Commission found that other provisions of the commitments raised viability and implementation risks, in line with feedback of market participants:

(a) As for the Initial Belgium Divestment Business, while in terms of scope the Commitments could be considered as sufficient, they still entailed some significant implementation risks that required to be addressed, notably in relation to the risk that independent store managers might object to the transfer.

(b) While EssilorLuxottica would commit not to use the GrandOptical banner in Belgium for a given period, some respondents considered that there was a risk that if it re-entered with the GrandOptical banner independent store managers/franchisees may switch back to being a GrandOptical franchisee.

(c) Overall, the treatment of the webstores linked to the Divestment Business was unclear, i.e. whether or not it would transfer. To the extent that the webstores would not transfer along with the Divestment Business, those customers who typically buy online (in particular contact lens customers who renew their order online) might be lost.

(d) Overall, the transitional supply agreement for EssilorLuxottica to supply eyewear and lenses […] was not adequate for any purchasers to effectively establish its own procurement operations and set up as an effective competitor.

(e) Overall, the Initial Divestment Business lacked protections from the Merged Entity to ensure that EssilorLuxottica would not undermine the viability of the divestment business by deliberately targeting and soliciting its existing customers via the customer database.

(1841) For the above reasons, the Commission found the proposed Commitments overall insufficient to address the outstanding competition concerns.

[1275] Paragraphs 39 and 40.

12.4. The Second Commitments

(1842) As indicated above, to address the shortcomings of the Initial Commitments identified both by the Commission and the respondents to the Initial Market Test, the Notifying Party submitted an amended set of commitments on 22 February 2021 (the 'Second Commitments'), modifying the Initial Divestment Businesses (the 'Second Divestment Businesses'). On the same day, the Commission launched another market test (the 'Second Market Test').

12.4.1. Summary of the Second Commitments

(1843) In Italy, the Notifying Party proposed to divest the whole of the VistaSì retail chain (102 stores) and a total of 72 GrandVision stores (together, 174 stores constituting the '**Second Italy Divestment Business**'). The turnover of GrandVision's stores being divested was to be the same turnover as the Corner Optique business', now removed from the package.

(1844) As for the intellectual property rights, under the Second Commitments, the 'VistaSì' brand name would transfer to the Purchaser. In addition, the Purchaser would be able to choose between: (i) […] rebrand the 72 GrandVision stores to the 'VistaSì' brand before completion of the divestment deal at EssilorLuxottica's cost, or (ii) being granted a licence to use the 'GrandVision' brand for up to […] months (renewable for a further […] months), during which the GrandVision stores were to be rebranded by the purchaser with a brand of its choice (including VistaSì which was being transferred). If option (ii) was chosen, the Parties committed not to open new stores under the 'GrandVision by' banner within […].

(1845) In addition, the VistaSì website (which does not have a webstore), was to be included in the Second Italy Divestment Business and transferred to a purchaser.

(1846) In the Netherlands, the Parties offered to divest a total of 142 Eye Wish stores, together with the Eye Wish brand (the '**Second Netherlands Divestment Business**). The proposal included 81 Eye Wish 'owned' stores and all 61 Eye Wish franchised stores in the Netherlands.

(1847) The Second Netherlands Divestment Business also included the Eye Wish online business (i.e. webstore). […].

(1848) Under the Second Commitments, the Parties were to keep 111 Eye Wish stores, which they would rebrand to a different banner within […] months (renewable once for the same duration) with a temporary licence from the purchaser to use the Eye Wish brand during the rebranding period. During that time, the purchaser would be prohibited from opening new stores under the Eye Wish banner within […].

(1849) In Belgium, the size and nature of the proposal was unchanged, but the Parties proposed to include in the Initial Divestment Business a licence to use the www.GrandOptical.be website, exclusively for the purpose of accessing customers and performing sales in Belgium for the duration of the GrandOptical brand licence ([…] months, renewable for a further […] months) (the '**Second Belgium Divestment Business'**).

(1850) When compared to the Initial Commitments, the Second Commitments also included some general amendments. In particular, EssilorLuxottica proposed to use 'best efforts' to obtain consent for the transfer of relevant customers' medical records. At the same time, EssilorLuxottica committed to refrain from using any of such records for the purpose of carrying out its business activities (e.g. sending marketing communications to customers of the Second Divestment Businesses).

(1851) As for re-acquisition, the Parties committed not to re-franchise any stores in the Second Divestment Businesses or enter into an independent store manager (in Belgium) agreement for any of the divested stores. They also committed not to solicit the opticians transferred with the Second Divestment Businesses for two years after the closing of the sale of the Second Divestment Businesses.

(1852) Finally, the Second Commitments extended the duration of the proposed Transitional Supply Agreement […] months, renewable for […] at the purchaser's request.

12.4.2. The Notifying Party's view

(1853) In the Second Form RM, submitted together with the Second Commitments (the 'Second Form RM'), the Notifying Party stated that the Second Commitments would allow to address the identified shortcomings of the Initial Commitments, with particularly important improvements offered with regard to the Initial Italy and Netherlands Divestment Businesses.

(1854) As for Italy, the Notifying Party submitted that the divestment of one already existing and standalone chain as well as 72 'GrandVision by' stores, […], would further strengthen the viability of the Second Italy Divestment Business throughout the entire divestment process, since:

(a) the personnel of all divested stores, regardless of their former banner, would have a similar understanding of the industry;

(b) the same products would be available for sale in all the 174 divested stores; and

(c) the location of the 72 'GrandVision by' stores, […] of which being located in the south of Italy, would ensure a wide geographic coverage.[1276]

(1855) As for the Netherlands, the Parties emphasised the strengthened viability of the Second Netherlands Divestment Business, transformed under the Second Commitments into a reverse carve-out through the inclusion of the Eye Wish brand in the package.[1277] This means that the purchaser would receive the Eye Wish banner as it is currently, together with the brand, and the obligation to rebrand (and associated risks) falls on the Merged Entity. Moreover, […].

(1856) Unlike the Initial Commitments, the Parties did not include an upfront buyer provision in the Second Commitments. […].[1278]

12.4.3. Assessment of the Second Commitments

12.4.3.1. The Second Italy Divestment Business

(1857) Upon review of the commitments concerned with the Second Italy Divestment Business, the Commission took note that it consisted in more standalone stores in lieu of stores-in-stores. Overall, the proportion of stores-in-stores was reduced from

[1276] Second Form RM, para.16.
[1277] Second Form RM, paras 32 ff.
[1278] E-mail of the Notifying Party of 20 February 2021, 11:41.

around […]% to around […]%, with no negative impact on the overall turnover of the package. Moreover, the inclusion of a larger number of 'GrandVision by' stores improved the general positioning of the Second Italy Divestment Business, with GrandVision by' stores considered more […] and, importantly, competitive with the Merged Entity's retained business than […] stores-in-stores by market participants. Thus, the Commission considered that this amendment, in principle, improved both the viability and competitiveness of the Second Italy Divestment Business.

(1858) The Commission welcomed the improvements to the Second Italy Divestment Business and the majority of respondents to the Commission's Second Market Test recognised that these were a significant step forward[1279]. However, scepticism was cast as to the likelihood for the Notifying Party to find a suitable purchaser for the Second Italy Divestment Business.

(1859) Firstly, the majority of respondents to the Commission's Second Market Test expressed the view that purchaser criteria would be needed to ensure the success of the divestment operation in Italy.[1280] In particular, key factors should include to '*be a significant optical retailer, with brand recognition in Italy, and advanced supply chain capabilities and expertise*' [1281] and '*retail experience in Italy and knowledge of the local market*'. [1282] These criteria would be necessary because the purchaser would have to potentially rebrand a large number of 'GrandVision by' stores in Italy in a limited timeframe and operate them to compete directly against the Parties in Italy. On the other hand, they could also narrow the number of suitable prospective purchasers for the Italy Divestment Business.

(1860) Secondly, it emerged from the Commission's Second Market Test that it would represent a hurdle for any purchasers to successfully acquire the Second Italy Divestment Business due to the fact that the GrandVision network would be split between two purchasers. An optical retail chain clearly expressed this concern by stating that '*la Société remarque qu'en ce qui concerne l'offre sur le marché italien un certain nombre de magasins de GrandVision seront vendus, tandis que d'autres seront retenus par le vendeur. Ce découpage du réseau lui semble très complexe et difficile en termes de coordination, en particulier s'il existe dans la même ville des magasins cédés et d'autres retenus, ce qui risque de créer la confusion chez le consommateur.*'[1283] Further, it was also noted how challenging it would be for a perspective purchaser to absorb the Second Italy Divestment Business into an existing optical going concern, *'les importants efforts nécessaires (en particulier en termes de délai) afin de regrouper l'activité de tous les magasins sous une seule entité exploitante si le rachat doit être opéré point de vente par point de vente.'*[1284]

(1861) Thirdly, the outcome of the Commission's Second Market Test signalled that a share deal should be preferred, as the structure of an asset deal (and the consents required

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1279 Non-confidential minutes of a call with a market participant of 23 February 2021; Non-confidential minutes of a call with a market participant of 23 February 2021; Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.1.2. Q.4.1.

1280 Questionnaire R5 sent to optical retail chains on 22 February 2021, Q.8.

1281 Questionnaire R5 sent to optical retail chains on 22 February 2021, Q.8.

1282 Questionnaire R5 sent to optical retail chains on 22 February 2021, Q.8 .

1283 Non-confidential minutes of a call with a market participant of 24 February 2021.

1284 Non-confidential minutes of a call with a market participant of 24 February 2021.

to transfer assets, contracts and customer records)[1285] would be too complicated and burdensome to incentivise a prospective purchaser. In particular, while analysing the specificities of the Second Italy Divestment Business, one optical retail chain stated that a share sale should be preferred because *'the basis of the divestment business is highly dependent on approvals for lease, customer, and labour agreements (with customer approvals being particularly tough). It also stressed that the best efforts provision does not provide comfort for the purchaser and is not a solution'.*[1286]

(1862) At the same time, despite the reservations expressed above, a number of respondents to the Second Market Test declared their potential interest in acquiring the Second Italy Divestment Business, provided that the structural aspects outlined above would be addressed.[1287] For instance, a respondent welcomed the fact that the Second Italy Divestment Business is *'more interesting than the former one'*, however, it maintained *'questions on the profitability of [VistaSì].'*[1288]

12.4.3.2. The Second Netherlands Divestment Business

(1863) Upon review of the Second Netherlands Divestment Business the Commission took note that it included a more established high-end banner and a transfer of the brand name to the purchaser. *Prima facie*, the Commission considered that these amendments could ensure improved viability and competitiveness of the Second Netherlands Divestment Business, which, as a stronger standalone business, would be able to efficiently compete with the Parties, which, in turn, removes the identified competition concerns.

(1864) The amendments to the Initial Divestment Business were broadly welcomed by the majority of respondents to the Commission's Second Market Test.[1289] In particular, the inclusion of the banner was considered '*a positive point*' and '*an improvement compared to the 1st proposal*'.[1290] However, the majority of respondents still did not consider the Netherlands Divestment Business to be viable[1291] or sufficient to resolve the identified competition concerns.[1292]

(1865) Additionally, the outcome of the Commission's Second Market Test signalled that a share deal should be preferred, as the structure of an asset deal would be too complicated and burdensome to incentivise a prospective purchaser. In particular, while analysing the specificities of the Second Netherlands Divestment Business, one optical retail chain stated that a share sale should be preferred because *'an asset deal structure is not a feasible solution to create a competitive and viable divestment business [...] (i.e. by including all trademarks, online presence and internal*

1285 The Notifying Party provided further information in relation to consents in the event of a share deal in the Form RM and the response to RFI 43.
1286 Non-confidential minutes of a call with a market participant of 24 February 2021.
1287 Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.3.1.
1288 Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.3.1.1.
1289 Non-confidential minutes of a call with a market participant of 23 February 2021; Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.4.2.
1290 Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.1.2.
1291 Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.1.2.
1292 Questionnaire R5 to optical retail chains sent on 22 February 2021, Q. 2.2.

distribution), allowing viability and avoiding related implementation risks (i.e. approvals/consents).'.[1293]

(1866) At the same time, despite the reservations expressed above, a number of respondents to the Second Market Test declared their potential interest in acquiring the Second Netherlands Divestment Business, provided that the structural aspects outlined above would be addressed.[1294] For instance, a respondent stated that its interests would depend *'on the nature of existing contract, it may be possible and interesting for a landlord to not grant consent for the transfer of leases (for those contracts where the conditions are good, or in cases where the landlord was locked in and has other plans for the property).'*[1295]

12.4.3.3. The Second Belgium Divestment Business

(1867) Upon review of the Second Belgium Divestment Business, the Commission took note that it was expanded to include a licence to use the www.GrandOptical.be website, allowing the purchaser to access customers and perform sales in Belgium for the duration of the GrandOptical brand licence ([…]).

(1868) However, the outcome of the Commission's Second Market Test signalled that a share deal should be preferred, as the structure of an asset deal would be too complicated and burdensome (given the consents required to transfer assets, contracts and customer records)[1296] to incentivise a prospective purchaser. In particular, while analysing the specificities of the Second Belgium Divestment Business, one optical retail chain stated that a share sale should be preferred because *'an asset deal structure is not a feasible solution to create a competitive and viable divestment business […] (i.e. by including all trademarks, online presence and internal distribution), allowing viability and avoiding related implementation risks (i.e. approvals/consents).'.*[1297]

(1869) At the same time, despite the reservations expressed above, a number of respondents to the Second Market Test declared their potential interest in acquiring the Second Belgium Divestment Business, provided that the structural aspects outlined above would be addressed.[1298]

12.4.3.4. Additional safeguards offered together with the Second Commitments

(1870) In addition to country-specific amendments described in the section above, the Second Commitments largely addressed to the Initial Market Test respondents' call for additional safeguards to protect both the Second Divestment Businesses and the purchaser.

(1871) Firstly, the Parties' committed to use best efforts to obtain consent for the transfer of customers' medical records and refrain from using such records for carrying out its business activities, e.g., sending marketing communications to customers of the Second Divestment Business. The prohibition from re-franchising any stores

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[1293] Non-confidential minutes of a call with a market participant of 24 February 2021.
[1294] Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.3.2.
[1295] Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.7.2.1.
[1296] The Notifying Party provided further information in relation to consents in the event of a share deal in the final Form RM and the response to RFI 43.
[1297] Non-confidential minutes of a call with a market participant of 24 February 2021.
[1298] Questionnaire R5 to optical retail chains sent on 22 February 2021, Q.3.3.

included in the Second Divestment Businesses and re-entering into an independent store manager agreement for any such stores was also considered a positive development. Overall, the Commission found that all of these amendments significantly strengthen the viability of the Second Divestment Businesses.

(1872) Secondly, the Commission considered that the extension of the duration of the Transitional Supply Agreement for up to […] months (followed by an additional […] months […]) would provide a purchaser with additional protection, allowing the purchaser to establish an effective and competitive business.

(1873) Upon review of the additional safeguards, the Commission considered nonetheless that, regardless of these improvements, and in light of the significant implementation risks outlined by the responses to the Second Market Test and the Commission's assessment, the second Commitments would carry significant implementation risks, and that additional safeguards were therefore required.

12.4.3.5. Conclusion on the Second Commitments

(1874) Based on the responses to the Second Market Test and its assessment, the Commission found that the Second Commitments, although addressing several of the shortcomings identified by the Commission following the Initial Market Test, was still unsuitable to clear all the outstanding competition concerns, due to the significant implementation risks described above, and the uncertainty that the complex deal structure and risks involved could generate insufficient interest in the Italy divestment business and as a result for the overall proposed divestiture remedies.

12.5. The Final Commitments

12.5.1. Description of the Final Commitments

(1875) In order to address the implementation risks identified by the Commission following the Second Market Test, the Notifying Party submitted a further amended remedy package on 1 March 2021.

(1876) The Final Commitments modified the Second Commitments on two points:

(a) The Parties committed to incorporate the Italy Divestment Business and the Belgium/Netherlands Divestment Business respectively in one or several legal entities prior to Closing of the transfer of the Divestment Businesses to the Purchaser. The Parties confirmed that this amendment is in order to transfer the asset deal into a share deal to ensure a smooth transfer of all third party rights,[1299] with the aim of eliminating the risks and burdens that an asset sale would carry as identified by the market test as outlined above. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee will exercise the Parties' rights as shareholder in the legal entity or entities that constitute the Divestment Business with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or

[1299] Email from the Parties dated 26 February 2021 at 10:04PM. See further the final Form RM submitted by the Parties and the response to RFI 43.

non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as a member of the boards or shall cause such members of the boards to resign.[1300]

(b) In relation to the […] Divestment Business, the Parties have agreed to include a crown jewel remedy pursuant to paragraph 45 of the Remedies Notice. If the […] Divestment Business cannot be sold by the end of the Trustee Divestiture Period, EssilorLuxottica shall divest, […].

12.5.2. Assessment of the Final Commitments

(1877) Upon review of the Final Commitments, on the basis of its assessment, the Commission considers that the Final Commitments are sufficient to remove the outstanding concerns in terms of the implementation risks identified in the Second Commitments.

(1878) As regards the incorporation of the Italy and Belgium/Netherlands Divestment Businesses respectively in or several entities prior to closing, these procedures will ensure that all the assets which are necessary to the Divestment Businesses are incorporated into legal entities which would be transferred to the Purchaser(s). Likewise, as explained in recitals (1876), these incorporations will guarantee that the need to obtain customer's consent for the transfer of customer's records, including personal data and medical records of customers, would be eliminated such that a smooth transfer will take place.[1301] Such an obligation to require individual approval of the transfer of the medical records have been identified as particularly burdensome in the Second Commitments by respondents to the market test and singled out as a major implementation risk.

(1879) Similarly the Purchaser would not have to seek individual consents of landlords for the transfer of the lease of the divested stores as the lease agreements would remain signed between the landlords and the newly-incorporated legal entities and would transfer with the divestment of these legal entities.

(1880) Moreover, as an additional protection, even if consents were required, the Parties have committed to use their best efforts to obtain any necessary consents from landlords and supermarket owners to transfer the lease and concession agreements to the Purchaser. If such consent is denied, the Merged Entity shall find an alternative equivalent solution to ensure the Divestment Business transferred is of the size, quality and overall geographic balance foreseen in these Commitments (for the avoidance of doubt, including the option of transferring an alternative, equivalent store to the Purchaser), such proposal to be approved by the Monitoring Trustee.

(1881) Further, the Notifying Party confirmed that a share deal would eliminate the need to obtain customer's consent for the transfer of customer records, including personal data and special categories of personal data such as data related to health, because in a share deal the legal entity acting as controller (i.e. the person which, alone or jointly with others, determines the purposes and means of the processing of personal data) of the customer's Personal Data (the 'Controller') remains the same (there will

[1300] Final Commitments, paragraph 11.

[1301] Email from the Parties dated 26 February 2021 at 10:04PM. See further the final Form RM submitted by the Parties and the response to RFI 43.

only be a change in the control of the Controller); this means that there would not be a transfer of Personal Data to a new controller. But this conclusion applies so long as there is no change in the Controller legal entity (name/contact details), and if the data processing activities to be performed by the Controller after the deal remain identical to those performed by the same Controller before the deal, including in relation to recipients of the Personal Data (e.g., with no extension of access to the new shareholder of the Controller). The Controller is not required to provide notice to its customers about changes to its shareholders under the GDPR.[1302]

(1882) The exercise of the Parties' rights as shareholder in the legal entity or entities that constitute the Divestment Business which shall be determined on a stand-alone basis, by the Monitoring Trustee as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments, will guarantee that these legal entities will be managed in their best individual interest during the interim period before they are divested to a suitable purchaser. Such an independent management process should prevent any degradation of the viability and competitiveness of the Divestment Businesses during the interim period and foster the interest of potential purchasers for the Divestment Businesses.

(1883) As regards […], however, the Commission considers that an additional safeguard was necessary in order to definitively eliminate the implementation risks. […].

(1884) The Parties have therefore agreed to a 'crown jewel' commitment as described above in recital (1876), which should constitute a guarantee if the Parties do not manage to sell the […] Divestment Business to a suitable purchaser within a very short time period.[1303] As explained above in recital (1876), […].

(1885) The Alternative […] Business fulfils all the criteria of a crown jewel commitment pursuant to paragraph 45 of the Remedies Notice. In the first place, it is at least as good as the Initial […] Divestment Business since […].

(1886) In the second place, the potential implementation of the crown jewel commitments should not give rise to any uncertainties as […].

(1887) In the third place, […].

(1888) Finally, the criteria and the timetable under which the crown jewel commitments would apply are clearly set out in the Commitments and the timetable for the divestment of the Alternative […] Business is sufficiently short ([…]).

(1889) In the light of these elements, the Commission considers that the Alternative […] Business constitute a crown jewel commitments which are a safeguard to eliminate any significant impediment to effective competition in […] should the Parties ultimately not be able to sell the […] Divestment Business to a suitable purchaser. In this situation, the Commission considers that the Alternative […] Business, in the light of its characteristics, should be swiftly divested to a suitable purchaser. It therefore guarantees that the competition concerns in […] will be eliminated either through the sale of the original […] Divestment Business or through the sale of the Alternative […] Business.

1302 The Notifying Party's response to Commission's Request for Information 43.

1303 […].

12.6. Conclusion

(1890) For the reasons outlined in above, the Commission considers that the Final Commitments are suitable to remove entirely the significant impediment to effective competition to which the Transaction would otherwise have given rise and that, therefore, the Final Commitments render the concentration brought about by the Transaction compatible with the internal market and the EEA Agreement.

(1891) The Commission therefore finds that, following modification in accordance with the Final Commitments, the concentration brought about by the Transaction would not significantly impede effective competition in the internal market or within the territory covered by the EEA Agreement, or in a substantial part of either of them.

13. CONDITIONS AND OBLIGATIONS

(1892) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(1893) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(1894) In accordance with the basic distinction described in Recital (1892) as regards conditions and obligations, this Decision should be made conditional on the full compliance by the notifying party with the Section B, Schedule A and Schedule C (as well as annexes and exhibits mentioned therein) of the commitments submitted by the Notifying Party on 01.03.2021 and all other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the commitments is attached as an Annex 2 to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration whereby EssilorLuxottica S.A. acquires sole control of GrandVision N.V. within the meaning of Article 3(1)(b) of the Merger Regulation is hereby declared compatible with the internal market and the functioning of the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B, Schedule A and Schedule C (as well as annexes and exhibits mentioned therein) of Annex 2 to this Decision.

Article 3

EssilorLuxottica shall comply with the obligations set out in Sections A, C (including Schedule B), D, E and F (as well as annexes and exhibits mentioned therein) of Annex 2 to this Decision.

Article 4

This Decision is addressed to:

EssilorLuxottica S.A.
147, rue de Paris
94220 Charenton-le-Pont
France

Done at Brussels, 23.3.2021

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

ANNEX I

ECONOMIC UNDERPINNINGS OF THE COMMISSION'S GUPPI ANALYSIS

1. INTRODUCTION

(1) This technical annex to the Decision contains the following:

(a) The derivation of the formulas used in the Commission's analysis of pricing pressure caused by the Transaction (Section 2);

(b) The Commission's assessment of the arguments raised by the Notifying Party in relation to the Commission's analysis of pricing pressure presented in the Statement of Objections (Section 3);

(c) The Commission's revised price pressure analysis, following the Response to the Statement of Objections.

2. DERIVATION OF THE GUPPI FORMULAS

(2) This Section derives the formulas used in the Commission's analysis of upward pricing pressure caused by the Transaction. The Commission has considered both the *horizontal price pressure* caused by retail overlaps between EssilorLuxottica and GrandVision ("the Parties") and the *vertical price pressure* caused by the reliance of EssilorLuxottica's upstream competitors on GrandVision and the reliance of GrandVision's downstream competitors on EssilorLuxottica.

(3) As is customary in price pressure analysis, the Commission has measured horizontal price pressure through the GUPPI ("gross upward pricing pressure index") whereas it has measured vertical price pressure through vGUPPIs ("vertical GUPPIs").[1] Specifically, the Commission has investigated the following forms of upward pricing pressure:

- **GUPPI** (horizontal, downstream): Upward price pressure on the retail prices of GrandVision and EssilorLuxottica, caused by the overlap between GrandVision and EssilorLuxottica's downstream activities.
- **vGUPPId** (vertical, downstream): Upward price pressure on the retail prices of GrandVision, caused by GrandVision's desire to soften competition against EssilorLuxottica's frames and lens sales through other retailers.
- **vGUPPIu** (vertical, upstream): Upward price pressure on the wholesale prices of EssilorLuxottica (for frames and lenses), caused by EssilorLuxottica's incentive to raise the costs of GrandVision's retail rivals.
- **vGUPPIr** (vertical, downstream) Upward price pressure on the retail prices of rival retailers, caused by the pass-through of the Merged Entity's upstream price pressure (vGUPPIu) into retail prices.

[1] E.g., see S. Moresi (2010), "The Use of Upward Price Pressure Indices in Merger Analysis", *Antitrust Source*, February 2010, 1-12 (defining the GUPPI) and S. Mores and C. Salop (2013), "vGUPPI: Scoring Unilateral Pricing Incentives in Vertical Mergers", *Antitrust Law Journal*, 79(1), 187–214 (defining vGUPPIs).

(4) Horizontal and vertical incentives to raise price complement each other. Where technically feasible, the Commission has therefore analyzed horizontal and non-horizontal effects in an integrated framework. In particular, the Commission's vGUPPId analysis incorporates both the vertical effect (GrandVision taking into account EssilorLuxottica's wholesale profits at other retailers) and the horizontal effect (GrandVision taking into account EssilorLuxottica's retail profits at owned stores).

(5) Besides considering potential upward pricing pressure caused by the Transaction, the Commission has also considered potential downward pricing pressure due to the elimination of double marginalization ("EDM"). While results for potential EDM are stated separately, the Commission has derived them within the framework of an integrated vGUPPId analysis, thus incorporating both the potential for anticompetitive and procompetitive effects.

(6) Throughout, the Commission's analysis considers national strategies (i.e., potential price increases applied throughout different local geographies). This approach is likely to be conservative, as it ignores the possibility of a selective local foreclosure strategy targeted at specific local overlaps generating higher-than-average incentive to increase prices.

(7) Moreover, GUPPI analyses take retail outlets as given. That is, they ignore the possibility that foreclosure of rival stores may render their operation unprofitable. Again, this may underestimate the Merged Entity's true foreclosure incentives. Rising rivals' costs strategies may indeed be implemented with the aim or effect of harming the viability of competing retail stores. In that case both the incentive to foreclose and the anticompetitive effect would be higher.

(8) By the nature of GUPPI/vGUPPI analyses, the quantitative results stated in this Decision only reflect the direct price-increasing incentives caused by the Transaction (so-called "first round" effects). In reality, price increases by some firms in the market typically provide other firms with an incentive to raise their own prices in response, as competitive pressure has been relaxed. As a result, the final equilibrium market price increases are appreciably larger than the initial "first round" effects may suggest. By construction, GUPPI/vGUPPI analyses do not capture such "second round" or "feedback" effects. Also in this regard, the Commission's quantitative analysis understates the Merged Entity's true incentives to raise price.

(9) Finally, when considering anti-competitive price increases in the spirit of "raising rivals' costs", the Commission notes that foreclosure must not necessarily be limited to price-based foreclosure, which is the focus of vGUPPI analyses. Instead, foreclosure incentives may sometimes (at least partially) play out through non-price restrictions, such as limiting the product lines provided to competitors. When this Annex refers to incentives for "price pressure" in what follows, this should be understood as a shorthand for "anti-competitive pressure" (which in reality may be implemented through a combination of price and non-price restrictions harming consumers).

2.1. The GUPPI for EssilorLuxottica retailers

(10) The GUPPI analysis for EssilorLuxottica's own retailers measures the (horizontal) upward price pressure on EssilorLuxottica's retail prices caused by the downstream overlap with GrandVision stores. The corresponding upwards price pressure for GrandVision retailers is incorporated as a component in the vGUPPId analysis in Section 2.2 below to allow an integrated analysis of horizontal and vertical price pressure.[2]

(11) In its retail price pressure analysis, the Commission analyses EssilorLuxottica's incentive to raise the retail prices at its outlets across the various brands offered there. The Commission therefore considers a general price-increasing strategy, rather than a targeted anticompetitive strategy focused specifically on particular brands.

(12) In general, the horizontal GUPPI for some firm 1 that merges with firm 2 is given by $DR_{1\to2}(P_2 - C_2)/P_1$, where $DR_{1\to2}$ is the diversion ratio from firm 1 to firm 2, P_1 and P_2 are the prices of firms 1 and 2, and C_2 is the marginal cost of firm 2.[3] The horizontal GUPPI for EssilorLuxottica retailers is therefore given by:

$$GUPPI_{EL} = DR_{EL\to GV}\frac{P_{GV} - C_{GV}}{P_{EL}}$$

(13) In this formula, $DR_{EL\to GV}$ denotes the diversion ratio from EssilorLuxottica retailers to GrandVision stores. P_{GV} and P_{EL} denote the average retail price for a pair of glasses (frame plus lenses) at GrandVision and EssilorLuxottica stores, respectively. Finally, C_{GV} denotes the marginal costs of a pair of glasses for GrandVision stores. This marginal cost is composed of the wholesale price of a frame and two lenses, plus the incremental cost of selling an additional pair of glasses (if any).[4]

(14) In the absence of concrete diversion data, $DR_{EL\to GV}$ can be approximated via market shares. Specifically, let S_{EL} and S_{GV} denote the (unit) retail market shares of EssilorLuxottica and GrandVision, respectively. When diversion is proportional to market shares, it is given by $DR_{EL\to GV} = (1 - DR_{R\to0})S_{GV}/(1 - S_{EL})$, where $DR_{R\to0}$ denotes retail diversion towards the outside good (non-consumption, if any). $1 - DR_{R\to0}$ therefore denotes the recapture ratio of lost sales that stay in the market.[5] One thus obtains:

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2 Note that GrandVision stores are subject to both horizontal and vertical price pressure. Indeed, GrandVision will take into account the impact of its pricing both on Essilor Luxottica's retail operation (a horizontal effect) and on EssilorLuxottica's wholesale operation (a vertical effect). EssilorLuxottica's stores are instead only subject to horizontal price pressure, as GrandVision is not active in the upstream wholesale markets.

3 E.g., see Moresi (2010), supra note 1.

4 Given the significant difference in retail margins between GrandVision and EssilorLuxottica's stores, instead of using the retail margin of GrandVision, the Commission used the average between the retail margin of GrandVision and EssilorLuxottica stores. This assumption is further discussed in Section 2.5.

5 For simplicity, it is assumed that $DR_{R\to0}$ is identical for all firms. The Commission notes that a large proportion of purchases of prescription eyeglasses is made based on medical need rather than optionality. Moreover, consumers often receive partial or full reimbursement for eyewear. Aggregate demand for eyeglasses is therefore typically considered to be highly inelastic. For this reason, the Commission's base case scenario assumes that $DR_{R\to0} = 0$.

$$GUPPI_{EL} = (1 - DR_{R\rightarrow 0})\frac{S_{GV}}{1 - S_{EL}}\frac{P_{GV} - C_{GV}}{P_{EL}}$$

(15) This formula measures the negative externality (in terms of foregone profits) that selling incremental pairs of glasses at EssilorLuxottica stores imposes on GrandVision retailers. Post-merger, this "cost of competing" can be internalised by the Merged Entity through a price increase aimed at softening competition between the Merged Entity's stores. The price-increasing horizontal effect of the Transaction for EssilorLuxottica retailers therefore corresponds to a sales tax of the size of $GUPPI_{EL}$ being imposed on purchases at EssilorLuxottica stores.[6]

2.2. The vGUPPId for GrandVision retailers

(16) The vGUPPId analysis measures the pricing incentives for GrandVision's retail outlets. As in the previous section, the Commission analyses the incentive of GrandVision to change retail prices across brands. The Commission therefore considers the potential for a general price-increasing strategy, rather than a tailored anticompetitive strategy focused solely on particular brands. The Commission's quantitative results thus capture an average across brands, which may play out differentially across individual brands in practice. This approach is conservative in the sense that it may camouflage tailored price increases targeted against specific rivals. E.g., an incentive to keep average prices unchanged may entail that prices for rival brands increase, whereas prices for own brands decrease. Averaging such differential price effects across brands is intended to capture the overall (net) effect on consumers.

(17) The Transaction may cause an incentive for GrandVision to change prices for three reasons. First, GrandVision competes against EssilorLuxottica's sales of lenses and frames at third-party retailers (a vertical effect). This effect is driven by the fact that GrandVision offers only a relatively small proportion of EssilorLuxottica products pre-merger (particularly in the case of lenses). From the perspective of EssilorLuxottica, GrandVision is therefore primarily a competitor who helps rivals to compete against them. The vGUPPId captures the notion that EssilorLuxottica's takeover of GrandVision may eliminate a downstream price competitor who constrains overall industry profits.

(18) Second, GrandVision also directly competes against EssilorLuxottica's own retailers (a horizontal effect). This price-increasing effect is also incorporated in the Commission's vGUPPId analysis. Finally, the Transaction may potentially also cause some price-decreasing incentives for GrandVision through EDM. Specifically, GrandVision may have such countervailing incentives, as in the future retail sales of EssilorLuxottica products will create incremental profits for GrandVision's merger partner.

(19) The vGUPPId can therefore be decomposed into three parts. First, the vGUPPId1 measures the anti-competitive vertical effect of GrandVision recapturing lost sales via EssilorLuxottica's upstream business at competing retailers. Second, the GUPPI measures the anti-competitive horizontal effect of GrandVision recapturing lost sales

[6] As noted in the introduction, GUPPIs are conservative estimates of the effective cost imposed by a merger. In particular, GUPPIs do not take into account feedback effects (i.e., the propensity of firms to react to rival price increases by raising their own prices in response).

at EssilorLuxottica retail outlets. Third, EDM measures the pro-competitive vertical effect of GrandVision internalising the benefit of EssilorLuxottica sales at its own outlets. It is therefore subtracted from the two anti-competitive effects:

$$vGUPPId = vGUPPId1 + GUPPI - EDM$$

(20) Generally, the vGUPPId1 for some downstream firm D merging with upstream firm U is given by $DR_{D\to U}(W_U - C_U)/P_D$, where $DR_{D\to U}$ is the vertical diversion ratio from firm D to firm U (i.e., the proportion of switching customers that left D following a price increase who switch to purchase U's product at a rival retailer).[7] W_U, C_U, and P_D denote the wholesale price of U towards rivals of D, the marginal cost of U and the retail price of D, respectively.

(21) In the present case, upstream recapture of lost GrandVision sales can occur either at EssilorLuxottica retail stores or at rival retail stores.[8] Such wholesale recapture occurs both via Essilor and Luxottica sales. The vGUPPId1 for GrandVision is therefore given by:

$$\begin{aligned} vGUPPId1_{GV} = DR_{GV\to EL}\left(S_E^{EL}\frac{W_E - C_E}{P_{GV}} + S_L^{EL}\frac{W_L - C_L}{P_{GV}}\right) \\ + DR_{GV\to RR}\left(S_E^{RR}\frac{W_E - C_E}{P_{GV}} + S_L^{RR}\frac{W_L - C_L}{P_{GV}}\right) \end{aligned}$$

(22) In this formula, $DR_{GV\to EL}$ denotes the diversion ratio from GrandVision to EssilorLuxottica's retail outlets (if any). S_E^{EL} denotes Essilor's (unit) share of lens sales at EssilorLuxottica retailers. S_L^{EL} denotes Luxottica's (unit) share of frame sales at EssilorLuxottica retailers.[9] W_E and W_L denote the wholesale prices of Essilor (for a pair of lenses) and Luxottica (for a frame), respectively. Similarly, C_E and C_L denote the marginal costs upstream of Essilor and Luxottica, respectively. Finally, S_E^{RR} and S_L^{RR} denote Essilor's (unit) lens share and Luxottica's (unit) frame share at rival retailers.

(23) As in the case of the horizontal GUPPI, retail diversion ratios can be approximated based on market shares. Specifically, let S_{RR} denote the (unit) retail market share of rival retailers in aggregate. When diversion is proportional to market shares, the respective diversion ratios are therefore given by $DR_{GV\to EL} = (1 - DR_{R\to 0})S_{EL}/(1 - S_{GV})$ and $DR_{GV\to RR} = (1 - DR_{R\to 0})S_{RR}/(1 - S_{GV})$. One thus obtains:

7 See Moresi and Salop (2013), supra note 1.

8 Note that at EssilorLuxottica's own retail outlets, recapture occurs not only by capturing EssilorLuxottica's wholesale margin, but also by capturing the retail margin. The latter effect is comprised in GrandVision's GUPPI, which is analyzed further below in this section.

9 Note that using Essilor and Luxottica's respective share of sales at retail outlets as weights implicitly assumes that diversion is proportional to these retail shares.

$$vGUPPId1_{GV} = (1 - DR_{R\to 0})\frac{S_{EL}}{1 - S_{GV}}\left(S_E^{EL}\frac{W_E - C_E}{P_{GV}} + S_L^{EL}\frac{W_L - C_L}{P_{GV}}\right) + (1 - DR_{R\to 0})\frac{S_{RR}}{1 - S_{GV}}\left(S_E^{RR}\frac{W_E - C_E}{P_{GV}} + S_L^{RR}\frac{W_L - C_L}{P_{GV}}\right)$$

(24) This formula measures the negative externality (in terms of foregone profits) that selling incremental pairs of eyewear at GrandVision stores imposes on Essilor and Luxottica's wholesale business at other retailers (both own and rival). Post-merger, this cost of competing will be internalised by the Merged Entity through a corresponding price increase aimed at softening this competition. The price-increasing vertical effect of the Transaction for GrandVision therefore corresponds to a sales tax of the size of $vGUPPId1_{GV}$ being imposed on purchases at GrandVision stores.

(25) Next, the Commission turns to the horizontal GUPPI component of the vGUPPId. As already noted in the previous section, the GUPPI for some firm 1 that merges with firm 2 is given by $DR_{1\to 2}(P_2 - C_2)/P_1$. The horizontal GUPPI for GrandVision retailers is therefore given by: [10]

$$GUPPI_{GV} = DR_{GV\to EL}\frac{P_{EL} - C_{EL}}{P_{GV}}$$

(26) Approximating the diversion ratio by market shares, as before, this can be restated as:

$$GUPPI_{GV} = (1 - DR_{R\to 0})\frac{S_{EL}}{1 - S_{GV}}\frac{P_{EL} - C_{EL}}{P_{GV}}$$

(27) This formula measures the negative externality (in terms of foregone profits) that selling incremental pairs of eyewear at GrandVision stores imposes on EssilorLuxottica's retail profits. Post-merger, this cost of competing will be internalised by the Merged Entity through a corresponding price increase aimed at softening this competition. As a result, the price-increasing horizontal effect of the Transaction for GrandVision corresponds to an additional sales tax of the size of $vGUPPId1_{GV}$ being imposed on purchases at GrandVision stores.

(28) Finally, EDM is generally given by $(W_{UD} - C_U)/P_D$, where W_{UD} denotes the wholesale price of merging firm U toward merging firm D.[11] Noting that only a certain proportion of GrandVision's sales are Essilor or Luxottica sales, the EDM of GrandVision in the present case is therefore given by:

$$EDM_{GV} = S_E^{GV}\frac{W_E - C_E}{P_{GV}} + S_L^{GV}\frac{W_L - C_L}{P_{GV}}$$

10 Given […], the Commission used the average between the retail margin of GrandVision and EssilorLuxottica stores. This assumption is further discussed in Section 2.5.

11 See Moresi and Salop (2013), supra note 1.

(29) In this formula, S_E^{GV} denotes Essilor's share of lens sales at GrandVision retailers, whereas S_L^{GV} denotes Luxottica's share of frame sales at GrandVision retailers.

(30) This formula measures the positive externality (in terms of additional profits) that selling incremental pairs of glasses at GrandVision retailers imposes on Essilor and Luxottica's wholesale operation. Post-merger, this benefit of competing may potentially be internalised by the Merged Entity through a price decrease aimed at increasing sales. As a result, the potential for a price-reducing vertical effect of the Transaction on GrandVision corresponds to a subsidy of the size of EDM_{GV} being granted on purchases at GrandVision stores.

(31) The Commission notes that the sales shares of Essilor and Luxottica at GrandVision stores may increase following the merger as the Merged Entity replaces rival brands with own brands in its retail offering. On the one hand, such a shift in product offering would increase the scope for pro-competitive EDM. On the other hand, GrandVision had an incentive to provide an unbiased product assortment pre-merger, as it was not vertically integrated. Skewing GrandVision's offering to favor EssilorLuxottica products would therefore create a non-price distortion for consumers (and possibly amount to customer foreclosure). Moreover, increasing EssilorLuxottica content at GrandVision stores would increase anti-competitive merger effects elsewhere (e.g., it would increase the incentive of the Merged Entity to raise prices at EssilorLuxottica's own stores). For these reasons, it would be wrong to simply *presume* that a larger proportion of EssilorLuxottica products at GrandVision is beneficial for competition due to an increase EDM. The Notifying Party has not raised any efficiency defense in this regard and instead argues that it has no ability or incentive to engage in customer foreclosure. The Commission has therefore based its current calculation of the theoretical potential for EDM on the pre-merger sales shares provided by the merging parties.

(32) Adding the various components derived above, the overall vGUPPId of GrandVision is then given by $vGUPPId_{GV} = vGUPPId1_{GV} + GUPPI_{GV} - EDM_{GV}$. After some rearranging, we therefore have:

$$\begin{aligned} vGUPPId_{GV} = {} & \frac{DR_{GV\to EL}}{P_{GV}}\left[S_E^{EL}(W_E - C_E) + S_L^{EL}(W_L - C_L) + P_{EL} - C_{EL}\right] \\ & + \frac{DR_{GV\to RR}}{P_{GV}}\left[S_E^{RR}(W_E - C_E) + S_L^{RR}(W_L - C_L)\right] - S_E^{GV}\frac{W_E - C_E}{P_{GV}} \\ & - S_L^{GV}\frac{W_L - C_L}{P_{GV}} \end{aligned}$$

(33) When diversion ratios can be approximated by market shares, this is equivalent to:

$$vGUPPId_{GV} = \frac{1 - DR_{R\to 0}}{(1 - S_{GV})P_{GV}} [S_{EL}(S_E^{EL}(W_E - C_E) + S_L^{EL}(W_L - C_L) + P_{EL} - C_{EL}) + S_{RR}(S_E^{RR}(W_E - C_E) + S_L^{RR}(W_L - C_L))] - S_E^{GV}\frac{W_E - C_E}{P_{GV}} - S_L^{GV}\frac{W_L - C_L}{P_{GV}}$$

(34) This formula measures the net externality exerted by GrandVision's sales on the profits of EssilorLuxottica. The term can be positive or negative, depending on whether price-increasing or price-decreasing incentives are stronger, in which case the merger either acts as a tax or as a subsidy of size $vGUPPId_{GV}$ on retail purchases at GrandVision stores.

2.3. The vGUPPIu for Luxottica frames

(35) The vGUPPIu measures the upward pricing pressure for EssilorLuxottica's lens and frames sales towards rival retailers. Such price pressure derives from an incentive to raise rivals' costs through partial input foreclosure. Such an incentive to raise wholesale prices may exist, since post-merger upstream sales lost by EssilorLuxottica following a price increase can partially be recaptured at GrandVision's retail stores.

(36) For the purposes of such an input foreclosure strategy, the Commission has focused attention on wholesale price increases of Luxottica frames. On the other hand, the Commission has not attempted to quantify incentives to raise prices of Essilor frames for rival retailers. This is due to the fact that final consumers rarely choose optical retailers on the basis of the lens brands they offer. Competition between lens manufacturers is therefore to a much larger extent driven by the choice of opticians than consumers. It would therefore be very difficult for the Merged Entity to leverage its market power in the lens market to steer customers toward GrandVision outlets.

(37) In the case of frames, by contrast, final consumers do make active choices about the type of eyewear they want to wear. Their choice of frame is not predominantly driven by the recommendation of opticians, but primarily by personal selection (including as a result of brand preferences). As confirmed in the market investigation, Luxottica brands such as Ray Ban play a particularly important role for driving traffic to retail stores, as Luxottica has been able to build significant brand capital. For this reason, a foreclosure strategy that leverages the Merged Entity's appreciable market power for frames would be likely to induce (some) customers to switch retailer.[12]

(38) In order to analyze the incentives for a partial input foreclosure strategy, it is important to define the scope of such a strategy. In principle, Luxottica could target either all rival retailers or merely a subset of them. In what follows, the Commission investigates the possibility of Luxottica deteriorating the purchasing conditions of retail rivals generally ("general foreclosure") instead of limiting attention to

[12] Note that switching may not only divert sales from rivals to GrandVision, but also to EssilorLuxottica's own retailers. However, this is not merger-specific diversion, since EssilorLuxottica was already taking this diversion into account before the Transaction.

foreclosure against specific retail rivals only ("targeted foreclosure"). After such general foreclosure, a wholesale price increase for Luxottica frames is imposed on all rival retailers, which may ultimately result in higher retail prices (or reduced availability) of Luxottica frames at those retailers.

(39) In general, the vGUPPIu for some upstream firm U merging with downstream firm D is given by $DR_{U\to D}(P_D - C_D)/W_R$, where $DR_{U\to D}$ denotes the vertical diversion ratio from firm U to firm D (i.e., the proportion of switching customers that leave affected rivals towards D following a price increase of U's inputs).[13] C_D here denotes the marginal cost of firm D and W_R denotes the wholesale price of firm U towards rivals of D. Accordingly, the vGUPPIu for Luxottica frames can be stated as follows:

$$vGUPPIu_L = DR^L_{RR\to GV}\frac{P^{GV}_L - C^{GV}_L + P^{GV}_{lens} - C^{GV}_{lens}}{W_L}$$

(40) In this formula, $DR^L_{RR\to GV}$ denotes the diversion ratio of switching customers from rival retailers toward GrandVision following a price increase of Luxottica frames. P^{GV}_L and C^{GV}_L denote the retail price of Luxottica frames at GrandVision and their respective incremental cost for GrandVision. P^{GV}_{lens} and C^{GV}_{lens} denote the retail price of the associated pair of lenses and their incremental cost for GrandVision.

(41) For the determination of $DR^L_{RR\to GV}$, it is important to realise that wholesale price increases of Luxottica frames can lead to different forms of substitution at retail level, after higher prices have been partly or fully passed-through to final consumers. First, an increase in the retail price of Luxottica frames can lead to *intra-brand (between-store) switching*: As a result of the price increase, some customers of the affected retailers may switch to purchase Luxottica frames from a store that is not subject to foreclosure (in particular, the Merged Entity's own retail outlets). Alternatively, however, higher prices of Luxottica frames may also lead to *inter-brand (within-store) switching*: In response to price increases of Luxottica frames at rival retailers, some switching customers may switch within-store and purchase a different brand of frames at their retailer.[14] Finally, higher prices for Luxottica frames at rival retailers could potentially also lead some consumers to forego purchasing eyeglasses altogether (substitution towards the outside good).

(42) Due to the distinction between intra-brand competition and inter-brand competition, $DR^L_{RR\to GV}$ is *not* the ordinary retail diversion ratio $DR_{RR\to GV}$ from rival retailers to GrandVision. This is because $DR_{RR\to GV}$ does not account for within-store (inter-brand) switching, but only accounts for between-store (intra-brand) switching (including switching to the outside good, if any). More specifically, $DR_{RR\to GV}$ reflects customers' switching to GrandVision when the retail prices of *all* frame brands at rival retailers are increased, whereas $DR^L_{RR\to GV}$ reflects diversion to GrandVision after a

13 See Moresi and Salop (2013), supra note 1.

14 In principle, such inter-brand switching could not only be caused by retailers increasing retail prices for Luxottica frames, but may also be caused by retailers devoting less shelf space to Luxottica frames (i.e., offering a lower number of SKUs). As noted in the introduction, the Commission's analysis of upward pricing pressure should be understood as a shorthand for anti-competitive pressure more generally—irrespective of whether such anti-competitive pressure is ultimately implemented through price or non-price means.

price increase in Luxottica frames only. We therefore have $DR^{L}_{RR\to GV} < DR_{RR\to GV}$. Put differently, foreclosure leads to imperfect diversion toward GrandVision, since the Merged Entity can only control the wholesale prices of Luxottica. Customers therefore have the option of switching frame within-store to avoid foreclosure.

(43) Accordingly, $DR^{L}_{RR\to GV}$ can be described as follows:

$$DR^{L}_{RR\to GV} = (1 - DR^{RR}_{L\to RF})DR_{RR\to GV} = \delta DR_{RR\to GV}$$

(44) In this formula, $DR^{RR}_{L\to RF}$ denotes the *within-store diversion* from Luxottica frames to rival frames at foreclosed retailers (inter-brand switchers). This is the proportion of switchers who switches brand but not store. Conversely, $1 - DR^{RR}_{L\to RF} \coloneqq \delta$ is the *between-store diversion* of switching customers who leave the foreclosed retailers (intra-brand switchers, including switchers to the outside good). This is the proportion of switchers who switches store but not brand. Of the latter group, the proportion $DR_{RR\to GV}$ (the normal diversion ratio from rival retailers to GrandVision) are diverted to GrandVision, where some of the lost profits of Luxottica can then be recaptured by the Merged Entity.[15]

(45) As previously, $DR_{RR\to GV}$ can be approximated by market shares. Specifically, we have $DR_{RR\to GV} = (1 - DR_{R\to 0})S_{GV}/(1 - S_{RR})$, where S_{RR} denotes the market share of rival retailers in aggregate. We can therefore write:

$$vGUPPIu_{L} = \delta(1 - DR_{R\to 0})\frac{S_{GV}}{1 - S_{RR}}\frac{P^{GV}_{L} - C^{GV}_{L} + P^{GV}_{lens} - C^{GV}_{lens}}{W_{L}}$$

(46) The above formula measures the negative externality (in terms of foregone profits) that selling incremental frames to rival stores imposes on GrandVision's retail profits. Post-merger, this cost of competing will be internalised by the Merged Entity through a price increase targeted at rival retailers. As a result, the price-increasing effect of the Transaction on Luxottica corresponds to a sales tax of the size of $vGUPPIu_{L}$ being imposed on frame purchases of rival retailers that source Luxottica frames.

(47) The above equation can be solved for δ to derive a "critical rate" of intra-brand switching to obtain a vGUPPIu of some pre-determined size. This critical rate is given by:

$$\delta \geq \frac{vGUPPIu_{L}}{1 - DR_{R\to 0}}\frac{1 - S_{RR}}{S_{GV}}\frac{W_{L}}{P^{GV}_{L} - C^{GV}_{L} + P^{GV}_{lens} - C^{GV}_{lens}}$$

15 This analysis corresponds to what is denoted „input substitution" in the original vGUPPI paper (which is built around a manufacturing supply chain rather than a retail supply chain). More specifically, accounting for the possibility of inter-brand substitution is the retail equivalent of accounting for input substitution in case of a manufacturing supply chain.

(48) This critical rate of between-store diversion can then be compared to estimates of δ.[16]

2.4. The vGUPPIr for rival retailers

(49) Next, the Commission considers the vGUPPIr, which measures the upward pricing pressure that Luxottica's price increases on lenses (vGUPPIu) causes for rival retailers. The vGUPPIr is therefore the translation of upstream price pressure of Luxottica into the downstream retail market.

(50) Generally, the vGUPPIr for rivals of some downstream firm D merging with upstream firm U is given by $vGUPPIu \cdot PTR_U W_R / P_R$.[17] P_R here denotes the retail price of rivals of the Merged Entity. PTR_U denotes the cost pass-through rate of the upstream merging firm. Accordingly, the vGUPPIr for rival retailers in the present case can be stated as follows:

$$vGUPPIr_L = vGUPPIu_L \cdot PTR_L \frac{W_L}{P_L^{RR}}$$

$$= PTR_L \delta (1 - DR_{R\to 0}) \frac{S_{GV}}{1 - S_{RR}} \frac{P_L^{GV} - C_L^{GV} + P_{lens}^{GV} - C_{lens}^{GV}}{P_L^{RR}}$$

(51) In this expression, $PTR_L = \partial W_L / \partial C_L$ denotes the pass-through rate of Luxottica's cost into its wholesale prices.

(52) This formula measures the effective cost increase experienced by rival retailers following Luxottica's wholesale price increases. As a result of this cost increase, the input foreclosure effect of the Transaction on rival retailers corresponds to a sales tax of the size of $vGUPPIu_L$ being imposed on the frame purchases of rival retailers.

(53) As in the case of the vGUPPIu, this expression can be solved for δ to establish a critical threshold level of intra-brand diversion. This critical rate is given by:

$$\delta \geq \frac{vGUPPIr_{RR}}{PTR_L(1 - DR_{R\to 0})} \frac{1 - S_{RR}}{S_{GV}} \frac{P_L^{RR}}{P_L^{GV} - C_L^{GV} + P_{lens}^{GV} - C_{lens}^{GV}}$$

(54) As in the case of the vGUPPIu, this critical rate of between-store diversion can then be compared with an estimate of δ.

2.5. Calibration of the inputs

(55) In this Section the Commission presents the main inputs used to calibrate the vGUPPI formulas presented above.

[16] Critical rates are below 10% for almost all countries analysed for a vGUPPIu of 10% for a strategy concerning frames. Please refer to section 8.2 of Decision for results.

[17] See Moresi and Salop (2013), supra note 1.

(56) As regards the retail diversion ratios, the Commission has assumed that these are proportional to the market shares at the retail level. Specifically, the Commission has used brick-and-mortar retail revenue shares (that is, revenue shares without considering sales made online) as provided by the Parties.[18]

(57) As regards the share of wallet of EssilorLuxottica's own products at EssilorLuxottica and GrandVision stores the Commission used data submitted by the Parties regarding the wholesale revenue share accounted for by EssilorLuxottica's own products at EssilorLuxottica and GrandVision stores.[19] To estimate the share of wallet of EssilorLuxottica's own products at rival retailers, the Commission has used wholesale revenue shares as submitted by the Parties, subtracting from those shares the wholesale revenues associated with GrandVision (in order to obtain shares at retailers other than GrandVision).[20]

(58) As regards the retail and wholesale margins, the Commission has used variable costs margins at the wholesale level and direct margins at the retail level.[21] These are the best approximation available for the margins governing the pricing incentives at the wholesale and retail level.

(59) As regards the pass-through rate, in the SO the Commission assumed it to be equal to 100% upstream and downstream.

(60) In the Response to the SO, the Notifying Party noted that:[22]

(a) the 100% pass through of 100% assumed for the vGUPPId at GrandVision is too high for what is effectively a firm-specific (opportunity) cost increase;

(b) the 100% pass-through rates at retail level for the rivals of GrandVision is too high;

(c) The 100% pass-through assumed at the wholesale level is too high.

(61) The Commission considers that in general it is reasonable to expect that the cost pass-through is not low at the retail level. When markets are competitive, prices are mostly determined by firms' cost levels. In that case, pass-through is close to (or equal to) one. In markets with appreciable market power, pass-through can be above or below one, depending on the shape of demand (in particular, whether demand is log-concave or log-convex).[23] Some common demand functions (such as linear demand) exhibit pass-through rates below one. Others (such as almost ideal demand or isoelastic demand) exhibit pass-through rates above one. Yet others (such as logit demand) exhibit pass-through rates above or below one, depending on the context. In all cases, pass-through of a market-wide cost increase converges to one as supply becomes more competitive. In this case, each retailer (both GrandVision and rivals) is subject to an actual or notional cost increase after the Transaction (GrandVision due to the

18 Annex RFI 2 Q7

19 Annex RFI 2 Q4.1 / Q4.2

20 Annex RFI 2 Q7. EssilorLuxottica revenues with GrandVision were removed from overall EssilorLuxottica wholesale revenues and GrandVision sales were removed from the overall wholesale market size. This treatment was not applied to lenses share of wallet since GrandVision accounts for a negligible share of sales of EssilorLuxottica in this market.

21 Respectively Annex RFI 2 Q4.1 / Q4.2 (retail direct margin) and Annex RFI 17 Q1.1 (variable costs margins).

22 See Section 4.1 of the RBB report "Quantitative analyses of incentives" dated 19 June 2020 (annexed to the Response to the SO).

23 E.g., see E. Glen Weyl and Michael Fabinger (2013), "Pass-through as an economic tool: principles of incidence under imperfect competition", *Journal of Political Economy*, 121(3), 528-583.

horizontal and vertical effects downstream and the rival retailers due to the fact that they are all simultaneously foreclosed). In a context in which all retailers know that costs are increasing also for their rivals an assumption of a pass-through rate of one seems a natural assumption and reasonable benchmark in the absence of more specific information.

(62) In the case of eyewear retailing, the Notifying Party's own sales data indicates […]. As shown in Figure 1, EssilorLuxottica's […].[24] Indeed, the pricing strategy reflected in Figure 1 suggests […]. Such pricing rules are common for retailers that have to handle a large number of SKUs, as it allows reducing the complexity of individualised price optimization. When such rules are applied (explicitly or implicitly), retail prices increase over-proportionally with wholesale prices, as firms aim to maintain their percentage mark-up. If anything, the Notifying Party's own pricing evidence […].

Figure 1: […]

[…]

(63) Indeed, the evidence from the Commission's short questionnaire to optical retailers suggests that the large majority of the respondents reported (for both frames and sunglasses) […].[25]

(64) Overall, in order to show the robustness of its result to considerably lower levels of pass-through rate, in this Decision the Commission adopts a considerably lower pass-through rate of 75%, both upstream and downstream.

3. ASSESSMENT OF THE ARGUMENTS RAISED BY THE NOTIFYING PARTY IN THE RESPONSE TO THE SO

3.1. Arguments relating to the horizontal effects of the Transaction (overlaps in Italy and UK)[26]

(65) The Notifying Party criticises the Commission's analysis of the horizontal overlaps between GrandVision and EssilorLuxottica in Italy and the United Kingdom by arguing that (i) the Parties are not close competitors, (ii) GrandVision is not an important competitive force, and (iii) barriers to entry and expansion in the market are low.

(66) First, the Commission notes that this Decision does not present any SIEC arising from horizontal overlaps in isolation. The Commission's concern relate to the fact that in certain countries there is a likely input foreclosure effect which is not counterbalanced by efficiencies at GrandVision. In this respect, the effect of any horizontal effects at the retail level is only an ingredient into a more comprehensive theory of harm.

24 This analysis is based on Annex RFI 11 Q 6.1 - Luxottica - Top 50 SKU. It compares the recommended retail price with the average wholesale price to independents for the top 50 SKUs of EssilorLuxottica for frames, for all EEA countries in which EssilorLuxottica is active.

25 Short questionnaire, q9 and 12

26 See RBB report "Horizontal overlap" dated 19 June 2020 (annexed to the Response to the SO).

(67) Second, the Commission notes that in its GUPPI analysis it assumes that GrandVision and EssilorLuxottica are as important and as close as their respective market shares suggest. Therefore, the Commission's GUPPI analysis does not assume any particular importance or closeness for the Parties beyond what is suggested by market shares.

3.2. Arguments relating to input foreclosure (vGUPPIu and vGUPPIr)[27]

3.2.1. Ability to foreclose

(68) **First**, the Notifying Party claims that finding a "significant" degree of market power contradicts the Essilor/Luxottica decision. In the Notifying Party's view, in Essilor/Luxottica, the Commission's theory of harm revolved around whether Luxottica's position in frames or sunglasses could allow the merged entity to push customers (via tying or bundling practices) to purchase further Essilor lenses. With the current Transaction, an input foreclosure theory of harm would again involve the Merged Entity using Luxottica's position in frames or sunglasses, now to affect rival retailers' competitiveness downstream. It is only possible to conclude that ability to foreclose exists in the present case if the Commission is able to show that its findings in Essilor/Luxottica no longer apply.

(69) In the first place, the Commission notes that, contrary to what is stated by the Notifying Party, the theory of harm in Essilor/Luxottica did not merely revolve around inducing opticians to *purchase further Essilor lenses*, but revolved around inducing a high number of opticians to purchase a very high share of their lenses requirement from Essilor, to the extent that the scale (and hence competitiveness) of rival lens manufacturers would be impaired. This required Luxottica to be able to induce opticians to purchase an amount of Essilor lenses that far exceed the amount of Luxottica frames sold (i.e. to induce opticians to not only sell Luxottica frames exclusively with Essilor lenses but also to sell the majority of the rivals' frames with Essilor lenses).

(70) In the second place, the Commission notes that therefore the difference between the present case and Essilor/Luxottica is not the degree of market power upstream but rather the amount of market power that is necessary for the foreclosure strategy to be likely. In the Commission's view, the amount of market power needed for increasing prices of frames by 10% is considerably lower compared to the market power needed to induce opticians to purchase exclusively or almost exclusively Essilor lenses (i.e. not only for pairing with Luxottica frames). In Essilor/Luxottica, the Commission concluded that Luxottica did not have the requisite amount of market power because in order to change the scale of rival lenses manufacturers by a sufficient amount as Luxottica would have needed to require opticians not only to put Essilor lenses on each Luxottica frame sold, but (in view of the limited volume share of Luxottica in frames) would also need to require the optician to put Essilor lenses on other frames. The Commission concluded that Luxottica's market power was not sufficient to induce a vast amount of opticians to change their share of wallet to Essilor-only.

(71) **Second**, the Notifying Party claims that switching in optical retail would likely be significantly lower than in wholesale lenses. Intuitively, requiring opticians to switch between wholesale lens suppliers, whose products have limited brand recognition (as established by the Commission in Essilor/Luxottica), would seem more

27 See RBB report "Input foreclosure" dated 19 June 2020 (annexed to the Response to the SO).

straightforward than inducing end-customers to switch away from their preferred optician.

(72) In the first place, the Commission notes that indeed, it is not disputed that for final consumers switching lenses is most likely easier than switching away from their favourite frames brand, for which preferences tend to be stronger. However, as explained above, the correct comparison is between the amount of market power needed to increase frames prices by 10% (which only requires that a minimum amount of customers are willing to switch to GrandVision or EssilorLuxottica's own stores) and the amount of market power needed to ensure that a sufficient amount of opticians change their entire lens offering to Essilor-only so that the scale of lenses rivals is sufficiently negatively affected. In the Commission's view, for the former strategy considerably less market power is necessary.

(73) In the second place, the Commission notes that the Notifying Party is incorrect in writing the Commission's is taking an unconventional view of ability when it claims that the degree of ability depends on the type of foreclosure a company aims at carrying out. In the Commission's view the ability to foreclose does depend very significantly on the type of foreclosure strategy being attempted, and in particular on the complexity of such strategies. Increasing wholesale prices of a strong portfolio of brands in a differentiated market (frames) is very likely easier to implement than convincing opticians to permanently switch their sourcing strategy for lenses to "Essilor-only".

(74) **Third**, the Notifying Party contests the SO's finding that EssilorLuxottica has significant market power upstream[28] for both frames and sunglasses. Especially for frames, the Notifying Party points the Commission to the allegedly low share that EssilorLuxottica in the upstream market.[29]

(75) In relation to this argument brought by the Notifying Party, the Commission notes that in a very differentiated product market such as the market for frames and sunglasses, a low share is not necessarily indicative of low market power and inability to raise wholesale prices by 10% in case of a change in incentives post-Transaction. The Commission considers that evidence on large profit margins upstream is a strong indication that a firm can have significant market power (as market power is the ability to extract value from consumers over and above a firm's own costs) despite a low market share. The fact that these margins are not eroded by competition is a strong indication that the other alternative options in the market are not considered by all share of consumers as strong substitutes.

(76) Figure 2 and Figure 3 below show that […][30] […].

Figure 2 – […]

[…]

28 See paragraph 359 of the SO.

29 See for instance paragraph 362 of the Response to the SO, where the Notifying Party points to the fact that for frames EssilorLuxottica's market shares in the wholesale segment are far below the "safe harbours" indicated in the Implementing Regulation and the Non-Horizontal Merger Guidelines.

30 See paragraph 359 of the SO.

Figure 3 – […]

[…]

(77) In Annex 1 to the Response to the Letter of Facts, the Notifying Party notes that a finding that EssilorLuxottica has significant market power despite its low shares directly contradicts the Commission's conclusion in Essilor/Luxottica that:

(a) *"Luxottica does not enjoy market power beyond what its market shares indicate";* [31]

(b) *"while Luxottica […], its margins do not appear to be substantially higher than those of its main competitors…this indicates that Luxottica's market power towards eye-care professionals is not much stronger than its rivals".*[32]

(78) The Commission considers that the above statements in Essilor/Luxottica should be better qualified and put into context.

(79) As regards the first quote, the Commission notes that the foreclosure strategy in Essilor/Luxottica consisted in inducing all or most opticians to sell exclusively Essilor lenses (so that the scale of Essilor's lenses rivals would be impaired). This required Luxottica to be able to not only induce opticians to pair its frames with Essilor lenses after the transaction, but also to induce opticians to pair Essilor lenses with the frames of all rival frames suppliers. The Commission concluded that Luxottica would be incentivised and able to bundle Essilor frames with its own frames but would not have sufficient market power to also induce opticians to do the same with the other frames they sold. In that sense, the market power of Luxottica was consider to be "*proportional to market shares*".

(80) The above is clear from the reference to the Commission's conclusion that *"the Merged Entity would not have incentives to offer [...] bundles that would include more lenses than required for the purchased [Luxottica] frames or sunglasses".* [33]

(81) As regards the second sentence, the Commission notes it simply states that margins are high not only for Luxottica but also for other frames rivals. In very differentiated product markets with heterogeneous tastes amongst consumers, it is not infrequent that several suppliers can have market power over consumers with strong brand preferences. The fact that Luxottica's market power did not seem to stand out from rivals in one respect (margins) was taken as an element supporting the view that Luxottica would not have the exceptional market power needed to reach an ability to influence opticians to the extent required for the foreclosure strategy to be successful.

(82) In Annex 1 to the Response to the Letter of Facts, the Notifying Party also notes that even in a differentiated market, a "significant market power" cannot be found if market shares are low. The Notifying Party considers that since rival suppliers are included in the relevant market, they exert a meaningful competitive constraint upon EssilorLuxottica. As such, according to the Notifying Party, a low market share for

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31 See Essilor/Luxottica decision, recital 464.

32 See Essilor/Luxottica decision, recital 430.

33 See Essilor/Luxottica decision, recital 461.

the Merged Entity means that a wide range of competitive suppliers are constraining it, hence its market power is limited.

(83) In this respect, the Commission notes that a firm's margins are negatively related to the elasticity of demand for the firm's own demand. Therefore, a firm with gross margins well in excess of […] does likely have a low elasticity of demand. If this were not the case (i.e. if rivals did exert strong competitive pressure on the firm) the firm's price would be closer to costs and gross margins would be more limited.

3.2.2. Incentives to foreclose

(84) **First**, the Notifying Party claims that the SO's GUPPI analyses are inconsistent with evidence on past practices.

(85) In the first place, the Notifying Party claims that in countries where EssilorLuxottica already has a retail presence it does not charge higher prices to rival opticians located closer to its own stores than to those located further away.[34]

(86) In this respect, the Commission considers that this is perfectly compatible with the evidence suggesting that many variables of competition (including prices) are set at the national level.

(87) The Commission also notes that the retail presence of EssilorLuxottica pre-Transaction is significantly smaller than the retail presence it would acquire with the present Transaction. Therefore, evidence from prior smaller retail acquisitions should not be used as a proxy for the present Transaction.

(88) In the second place, the Notifying Party claims that prices have not increased in Italy (compared to a number of comparator countries) after the acquisition of Salmoiraghi & Viganò.

(89) The Commission notes that at the time of the full acquisition of Salmoiraghi & Viganò, EssilorLuxottica […]. Therefore, the full acquisition of Salmoiraghi de facto amounted to no more than a [5-10]% retail position.[35] The Commission considers that adding a [5-10]% retail share to a [0-5]% share stake is not a good proxy for the impact of the Transaction. For instance, in Italy the Transaction adds an [5-10]% share to an existing [5-10]% share, with a horizontal overlap, which was not the case for the Salmoiraghi acquisition (which consisted in the purchase of additional shares of the same retailer). Similarly, adding a [5-10]% retail share to a [0-5]% share is not a good proxy for the acquisition of a circa [30-40]% share, as is the case for Belgium and the Netherlands.

(90) **Second**, the Notifying Party claims that the SO's assessment overstates the extent of customer churn in the event of an increase in the price of frames or sunglasses.

(91) The Notifying Party claims that:

(a) The SO incorrectly dismisses evidence of retail customers being loyal to their opticians. It notes that GrandVision's Global Brand Monitor studies show that approximately two-thirds of customers are loyal to their opticians (in that they are recurring). In the Notifying Party's views, this suggest that, should the Parties engage in input foreclosure, opticians can be expected to retain a very large proportion of their customers. Specifically, in Italy and the United

[34] See the Parties' response to RFI 18, Question 13

[35] […].

Kingdom, customer experience (24-26%) and store location (24-33%) are reasons for remaining loyal for as many respondents as pricing (26-30%) and availability (15-21%).

(b) The Parties' limited retail footprint also reduces expected churn. It claims that the density of the Merged Entity's retail network is an important limitation to an input foreclosure strategy, as it reduces the extent to which the Parties can realistically expect to attract customers from rival stores.

(c) The evidence from the Commission's short questionnaire to opticians should be discarded because (i) the relevant question is leading[36] and (ii) the intra-brand diversion ratios from Commission's questionnaire present a number of inconsistencies. In particular, the diversion ratios are the same across countries despite the Parties' retail presence being very different across them – countries in which the Parties have a much smaller retail presence should display much lower ratios. Moreover, the diversion ratios found for frames are very similar to those of sunglasses – however, the extent to which customers divert away for frames should be much lower, given that Luxottica's market position on the former is much weaker.

(92) In the first place, the Commission notes that the amount of switching to GrandVision and EssilorLuxottica stores that is required to make input foreclosure profitable is very small for frames (see Section 8.2.3 of the Decision). Therefore, it is not necessary for the Merged Entity to own a particularly dense network of stores in order to generate the minimum necessary switching. The Commission notes in this context that the profitability of the input foreclosure strategy does not only come from the extra sales earned at GrandVision and EssilorLuxottica stores from the switching customers but also from the higher margins on the infra-marginal consumers that continue to buy EssilorLuxottica's frames at rival retailers at the new higher prices.

(93) In the second place, the Commission considers that the high margins of EssilorLuxottica in frames suggest that there is high consumer loyalty to Luxottica's brands – enough to suggest that an appreciable number of people is willing to give up their current retailer for their favourite frame brand.

(94) In the third place, the Commission notes that the number of optical retailers in a country is generally high. In most of the countries analysed, stores are within reasonable reach for customers. Furthermore, the Commission reiterates that the necessary switching for foreclosure to be profitable in frames is very limited, hence it is not necessary that the Parties stores be in close proximity for each potential customer.

(95) In the fourth place, the Commission notes the Notifying Party has not presented any evidence (from surveys or otherwise) supporting the view that the intra-brand diversion ratios would be lower than the critical thresholds calculated by the Commission. To the contrary, the very same survey quoted by the Notifying Party in the Response to the SO[37] suggests that for 26-30% of customers prices are the reason for loyalty. The Commission considers that a fair share of these customers would switch retailer if the very factor behind their loyalty (prices) were to deteriorate following input foreclosure.

[36] See Annex 3 of the Response to the SO (Dhar Declaration on Survey Critiques).

[37] Economic response to the SO – Input foreclosure, Figure 3

(96) In the fifth place, the evidence on the upstream margins of EssilorLuxottica presented in paragraph (76) suggests that there is significant customer loyalty to EssilorLuxottica's brands of frames and hence a share of the current customers would be willing to move to GrandVision in the event of a price increase at retailers that are rivals of EssilorLuxottica and GrandVision.

(97) In the sixth place, the Commission considers the criticism expressed by the Notifying Party regarding the short questionnaire sent to independent opticians overstates the extent to which the Commission's analysis relies upon these results for the purpose of computing the incentives to foreclose rivals. This short questionnaire is in no way different from the typical exercise carried out in market investigations. It discloses the fact the information is requested by the Commission as in any market investigation routinely used as qualitative evidence by the Commission. Its interpretation does not differ from the Commission's practice in that respect. While it is correct the Commission uses estimates of expected switching following upstream price increases of frames and sunglasses, critical diversion ratios sufficient to provide the Parties with incentives to increase wholesale prices are particularly low and estimates provided by respondents to the short questionnaire reinforce rather than provide the conclusion on the existence of incentives to raise rivals' costs (see (92)).

(98) **Third**, the Notifying Party claims that the SO dismisses the importance of retaliation by optical retailers, who would likely threaten to buy less Essilor lenses in the event of a price increase.[38]

(99) In the first place, the Commission considers that given Luxottica's market power, it is unlikely that any individual retailer will start (let alone succeed) in such a fight with EssilorLuxottica, for the benefit of all other retailers.

(100) In the second place, the Commission considers that its quantitative analysis does account for reactions by retailers and final consumers in terms of switching to other frames brands (in the case of final consumers) or simply promoting or stocking less EssilorLuxottica's frames.

(101) In the third place, if retailers found it easy or convenient to threaten to switch lenses brands, they would have most likely already exercised this bargaining power pre-Transaction in order to lower the margins conceded to EssilorLuxottica.

3.2.3. *Effects*

(102) **First**, the Notifying Party claims that the clear majority of rival retailers (approximately 80%) would not be affected by the input foreclosure. A substantial proportion of optical retailers (44% across the EEA) do not stock EssilorLuxottica frames or sunglasses. And even among those retailers that do purchase from EssilorLuxottica, many of them do not consider it an important input. As found by the Commission in Essilor/Luxottica, only a minority of Luxottica's customers consider its brands important because they generate customer traffic.

(103) As regards the share of retailers not stocking EssilorLuxottica's products, the Commission notes that the figures quoted by the Notifying Party are an average across the EEA. The countries for which the Commission maintains concerns in this Decision

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38 See section 5.2 of the RBB report "Quantitative analyses of incentives" dated 19 June 2020 (annexed to the Response to the SO).

are indeed among those where the penetration of Luxottica is high. For instance, in Italy the penetration of EssilorLuxottica is [70-80]%.[39]

(104) As regards the share of retailers who, according to the EssilorLuxottica decision, would not consider the EssilorLuxottica brands as important, the Commission notes that the Commission's questionnaire from which this information is taken did not ask retailers whether the Luxottica brands were *important in themselves* (e.g. because they are hard to replace with other brands). The questionnaire asked retailers whether they considered EssilorLuxottica's brands important *to generate traffic*. In that instance the Commission was trying to assess whether the EssilorLuxottica brands are not just important due to the sales they generate, but also whether they are important to generate traffic at the store and sales of other brands.

(105) In Annex 1 of the Response to the Letter of Facts the Notifying Party also notes that the alleged price increases at the wholesale level would only be applicable to approximately […]% of the sales of opticians in Belgium, France and the Netherlands, and […]% in Italy.

(106) In this respect, the Commission notes that the share of opticians' overall sales (including frames, sunglasses, lenses, contact lenses, etc.) accounted for by the Notifying Party's frames is irrelevant. In a merger raising the wholesale price of carbonated soft drinks to supermarkets, the argument that the value of carbonated soft drinks is a small as a percentage of the typical buyer's overall bill is irrelevant (assuming carbonated soft drinks is a relevant product market).

(107) **Second**, the Notifying Party claims in its quantitative analysis extra efficiencies compared to what would be expected based on the situation pre-Transaction. While the Commission has assumed in its analysis that the elimination of double marginalisation on lenses at GrandVision is based on the amount of Essilor lenses sold pre-Transaction by GrandVision, the Notifying Party's economists assume that the amount of Essilor lenses sold at GrandVision will considerably increase to match a share of portfolio equal to the market average.

(108) The Commission considers that these additional efficiencies claimed by the Notifying Party's economic advisers should not be included into the analysis of the price effects of the Transaction.

(109) In the first place, the Notifying Party did not raise a reasoned efficiency defence but simply assume such efficiencies in their quantitative analysis. Therefore, this claim cannot be verified. To the contrary, in the Reply to the SO, the Notifying Party criticises the reliability of internal documents mentioning increases in the sales of Essilor lenses at GrandVision. The Notifying Party explained that these documents were prepared by third party strategy consultants and they *"clearly state that no internal data was used to prepare them and as such do not reflect EssilorLuxottica's views"*.[40]

(110) In the second place, the Notifying Party's estimation of the claimed efficiencies is excessive because the Notifying Party does not account for the fact that Essilor lenses are considerably more expensive than GrandVision's current main lenses offering[41],

[39] With Ray-Ban frames, the most important brand of the Notifying Party. M.8394 Essilor/Luxottica, rec. 568.

[40] See paragraphs 552-553 of the Response to the SO.

[41] See Annex RFI 2 Q 4.2 of the Notifyi ng Party's response to RFI 2.

which does partially or fully offset the price reduction from the elimination of double marginalisation.

(111) **Third,** in the Annex 1 to the Response to the Letter of Facts, the Notifying Party claims that the analysis presented by the Commission overstates price increases at rival retailers by reporting its results in terms of frames only instead of *frames plus lenses*.

(112) The Commission agrees that the retail price effects following a 10% price increase upstream for *frames only* would be more limited if expressed as a percentage of *frames plus lenses*. However, the Commission considers that a certain price increase for *frames* at rival retailers (due to input foreclosure) should be expressed as a proportion of the current price of the corresponding product, namely *frames only*.

3.3. Arguments relating to the vGUPPId[42]

(113) The Notifying Party claims that the SO heavily overstates the horizontal and vertical effects downstream on GrandVision's and EssilorLuxottica's retail prices. The SO lumps together incentives for EssilorLuxottica (EL) products and non-EssilorLuxottica (non-EL) products. A separate GUPPI analysis for each of these product groups shows that while GrandVision would have an incentive to decrease prices for EL products, it may have an incentive to increase prices for non-EL products. If the customer were to switch away from the non-EL product (and move to an EL product), it would switch to EL in-store rather than to EL at a rival store. This should be expected to benefit consumers, as the Merged Entity would be replacing its non-EL products with its own (substitutable) EL ones, allowing for an elimination of double mark-ups to apply to a wider base of volumes.

(114) In the first place, the Commission indeed takes a "unified approach" and estimates together the price pressure for EssilorLuxottica brands and for non-EssilorLuxottica's brands. To the extent that, as correctly stated by the Notifying Party, prices are expected to increase more for non-EssilorLuxottica brands and less (or even decrease) for EssilorLuxottica brands, the Commission analysis already captures the weighted average effect of the two.

(115) In the second place, the Commission notes that even in the presence of price decreases (due to elimination of double marginalisation) on EssilorLuxottica brands, the Notifying Party cannot ignore the price increases for the non-EssilorLuxottica brands (which represent the vast majority of sales at GrandVision). Customers of non-EssilorLuxottica frames are actually harmed in two ways. The few ones who switch to EL frames are harmed because they are induced to buy an option that was not their preferred one simply because their preferred option is now more expensive. The majority of customers instead will continue to buy non-EssilorLuxottica frames at a higher price.

42 See RBB report "Quantitative analyses of incentives" dated 19 June 2020 (annexed to the Response to the SO).

3.4. Arguments relating to the Commission's vGUPPI modelling in general[43]

(116) **First,** the Notifying Party claims that the GUPPI analyses do not have the probative value required to reach a firm conclusion on the scope for price increases. It claims that the Hutchison judgment recognises that GUPPI tests were designed as first screens for discarding competition concerns rather than as tools for making reliable forecasts about price increases.

(117) The Commission notes that the use of vGUPPI analysis in this case is not intended to produce a precise quantification of price effects. Instead, the vGUPPI analysis is a measure that intends to provide support to the qualitative evidence indicating whether incentives to increase prices are present and, if so, whether they are likely to be significant. In particular, taking the vGUPPI analysis complements the qualitative evidence available on:

(a) Whether the Merged Entity would have the ability to raise rivals' costs;

(b) Whether such a strategy of raising rivals' cost would be likely to be profitable, based on how much diversion to the Merged Entity's own stores would be necessary;

(c) Whether there are countervailing efficiencies at GrandVision stores that are capable of offsetting any input foreclosure concerns.

(118) **Second**, the Notifying Party claims that the GUPPI analysis of the Commission does not account for important dynamic elements of competition such as entry, expansion and repositioning, nor do they account for cost efficiencies.

(119) The Commission acknowledges that in some cases, anticompetitive incentives to raise prices may over time be compensated by countervailing factors. However, in the current case, the Notifying Party has not pointed to any convincing evidence suggesting that such countervailing factors may arise and that such alleged countervailing factors would fulfil the criteria set out in the Guidelines. Therefore, the Notifying Party's claims are vague and mere speculation, whereas the Commission's case rests on a concrete and direct competition concern.

(120) As regards future entry, as explained in the Commission's Horizontal Merger Guidelines, such alleged countervailing effects must be timely, likely and sufficient to overcome an identified competition problem. The Notifying Party has not brought any concrete evidence that merger-specific entry would occur, i.e. that there are potential entrants that do not find entry profitable absent the Transaction but would likely enter (with sufficient scale to offset the price effects) due to the price increases expected from the Transaction.

(121) As regards efficiencies, the Commission has taken these into account in its analysis[44], so the Notifying Party's argument is void.

43 See RBB report "Quantitative analyses of incentives" dated 19 June 2020 (annexed to the Response to the SO).

44 See for instance paragraph (5) and (104)-(108).

4. REVISED QUANTITATIVE ANALYSIS

(122) After the Response to the SO, the Commission has revised the results of its quantitative analysis in order to take into account a number of observations raised by the Notifying Party in relation to the quantitative analysis presented in the SO.

(123) Specifically, following the Response to the SO, the Commission has made the following adjustments to its baseline analysis:

(a) Corrected the double-counting of upstream margins at EssilorLuxottica's own stores;[45]

(b) Corrected the margin data for lenses used in the UK for EssilorLuxottica retail stores, where the Commission had interpreted the data provided by the Notifying Party as being in terms of single lenses as opposed to pairs;[46]

(c) Out of market diversion. Assumed to be 5% for frames and 10% for sunglasses, as opposed to 0% for frames and 10% for sunglasses;[47]

(d) Corrected market shares to exclude sunglasses specialists by removing Solaris and Sunglass Hut sales from the total market size and the Parties' sales in brick-and-mortar retail shares used to compute diversion ratios in GUPPIs pertaining to prescription frames;

(e) Margins. For the GUPPI of GrandVision and of EssilorLuxottica's own stores in the United Kingdom and Italy, the Commission has based its calculations on the average of the margins of the two to account for the price differentials between typical prescription frames and sunglasses respectively sold in these stores;[48]

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45 M.9569 - EL_GV - Economic response to the SO - Quantitative analyses, Annex A.1.3.

46 *Ibid.*

47 The Commission considers that diversion to the outside good (that is, options outside the relevant market) would be much more limited for frames and lenses than for sunglasses because for frames the main alternatives are brick and mortar opticians and consumers purchase frames and lenses mostly at brick and mortar retailers and are unlikely to switch to online purchases. Nevertheless, to be conservative, the Commission has introduced an allowance of 5% to reflect some potential reduction in consumption in for frames and lenses after a price increase.

48 In the reply to the SO (M.9569 - EL_GV - Economic response to the SO - Quantitative analyses) the Notifying Party notes "diverting customers are likely to generate absolute margins that are similar to what they would generate if no diversion had taken place". The Commission disagrees that the consumers switching from one store to another would necessarily not increase or decrease their spending when switching to another store. The amount consumers are likely to spend at the new store depends on the options available at the new store. Moreover, while the Notifying Party notes that the average prices differ significantly between GrandVision and EssilorLuxottica's own stores, the customers switching from GrandVision to EssilorLuxottica are likely not the average ones. They are likely to be consumers who purchased more than average at GrandVision and who would spend less than average at the EssilorLuxottica store. Similarly, the consumers leaving EssilorLuxottica's stores for GrandVision are likely to be the ones that used to spend less than average at EssilorLuxottica and who would spend more than average at GrandVision. In order to better reflect this dynamic, the Commission has decided that for Italy and the UK the margins relevant for the GUPPI analysis would be the average between GrandVision and EssilorLuxottica.

(f) Pass-on. Assumed to be 75% upstream and 75% downstream, as opposed to the SO's assumption of 100% upstream and downstream;[49]

(g) Accounted for franchisees, that is, the fact that in countries such as the UK a share of the GrandVision retailers are franchisees from whom GrandVision received a certain share of the profits raised;

(h) Added the share of sunglasses sold with RX for countries on which additional data was provided by the Notifying Party with the Response to the SO;

(i) In the vGUPPIu calculations, the Commission has used only the margins relative to Luxottica's frames/sunglasses (as opposed to the average margin on all frames/sunglasses);

(j) Corrected for the fact that the critical thresholds for switching indicated in the SO was calculated based on a 10% vGUPPIr rather than a 10% price increase upstream (see Figure 11-12 of the SO). The latter is consistent with the question asked in the survey.

(124) The Commission considers that the above modifications to the analysis carried out in the SO would support the objections therewith expressed in the Decision.[50]

(125) The results of this updated analysis are presented in Section 8.2 of the Decision.

5. GLOSSARY

General formulas:

C_2: Marginal cost of firm 2

C_D: Marginal cost of firm D

C_U: Marginal cost of firm U

$DR_{1\to2}$: Diversion ratio from firm 1 to firm 2

$DR_{D\to U}$: Vertical diversion ratio from firm D to firm U

$DR_{U\to D}$: Vertical diversion ratio from firm U to firm D

EDM: Elimination of double marginalization

$GUPPI$: Gross upwards pricing pressure index

P_1: Price of firm 1

P_2: Price of firm 2

P_D: Retail price of firm D

49 The Commission maintains that the pass-through rates in retail markets are very likely to be 100% or even more as assumed in the SO (and as confirmed by the replies to Q 9 and 12 of the Commission's short questionnaire to optical retailers). Nevertheless, to show that the Commission's results are robust to the Notifying Party's criticism, in the Decision the Commission presents revised results based on a significantly lower (75%) pass-through rate upstream and downstream.

50 See section 9 of the Decision.

P_R: Retail price of retail rivals of Merged Entity

PTR_U: cost pass-through rate of the upstream merging firm

$vGUPPI$: Vertical gross upwards pricing pressure index

$vGUPPId$: (Net) downstream vertical gross upwards pricing pressure index

$vGUPPId1$: (Gross) downstream vertical gross upwards pricing pressure index

$vGUPPIr$: Rival vertical gross upwards pricing pressure index

$vGUPPIu$: Upstream vertical gross upwards pricing pressure index

W_R: Wholesale price of firm U towards retail rivals of the Merged Entity

W_U: Wholesale price of firm U towards retail rivals of the Merged Entity

W_{UD}: Wholesale price of firm U towards D

Case-specific formulas:

δ: Proportion of intra-brand (between-store) switchers

C_E: Essilor's marginal cost for two lenses

C_L: Luxottica's marginal cost for a frame

C_L^{GV}: GrandVision's retail marginal cost for Luxottica frames

C_{lens}^{GV}: GrandVision's retail marginal cost for a pair of lenses

C_{EL}: EssilorLuxottica's retail marginal cost for a frame and two lenses

C_{GV}: GrandVision's retail marginal cost for a frame and two lenses

$DR_{EL\to GV}$: Retail diversion ratio from EssilorLuxottica retailers to GrandVision retailers

$DR_{GV\to EL}$: Retail diversion ratio from GrandVision retailers to EssilorLuxottica retailers

$DR_{RR\to GV}$: Retail diversion ratio from rival retailers to GrandVision retailers

$DR_{RR\to GV}^{L}$: Retail diversion ratio from rival retailers to GrandVision retailers after price increase of Luxottica frames at rival retailers

$DR_{L\to RF}^{RR}$ Retail diversion ratio from Luxottica frames to rival frames at rival retailers after a retail price increase of Luxottica frames

$DR_{R\to 0}$: diversion ratio from retailers towards the outside good (non-consumption)

EDM_{GV}: Elimination of double marginalization at GrandVision retailers

$GUPPI_{EL}$: Horizontal gross upwards pricing pressure of EssilorLuxottica retailers

$GUPPI_{GV}$: Horizontal gross upwards pricing pressure of GrandVision retailers

P_{EL}: Retail price of EssilorLuxottica retailers for a frame and two lenses

P_{GV}: Retail price of GrandVision retailers for a frame and two lenses

P_L^i: Retail price of Luxottica frames at rival retailer i

P_{lens}^{i}: Retail price of the average pair of lenses at rival retailer i

P_{L}^{GV}: Retail price of Luxottica frames at GrandVision

P_{L}^{RR}: Retail price of Luxottica frames at rival retailers

P_{lens}^{GV}: Retail price of a pair of lenses at GrandVision

PTR_{L}: Pass-through rate of Luxottica's cost into Luxottica's wholesale prices

PTR_{L}^{RR}: Pass-through rate of rival retailers for wholesale price increases of Luxottica frames into retail prices for Luxottica frames

S_{EL}: EssilorLuxottica's (unit) retail market share

S_{GV}: GrandVision's (unit) retail market share

S_{RR}: Rival retailers (unit) retail market share

S_{E}^{RR}: Essilor's (unit) share of lens sales at rival retailers

S_{L}^{RR}: Luxottica's (unit) share of frame sales at rival retailers

S_{E}^{EL}: Essilor's (unit) share of lens sales at EssilorLuxottica retailers

S_{L}^{EL}: Luxottica's (unit) share of frame sales at EssilorLuxottica retailers

S_{E}^{GV}: Essilor's (unit) share of lens sales at GrandVision retailers

S_{L}^{GV}: Luxottica's (unit) share of frame sales at GrandVision retailers

$vGUPPId_{GV}$: (Net) vertical gross upward pricing pressure for GrandVision retailers

$vGUPPId1_{GV}$: (Gross) vertical gross upward pricing pressure for GrandVision retailers

$vGUPPIr_{L}$: Downstream vertical gross upward pricing pressure for Luxottica frames at rival retailers

$vGUPPIu_{L}$: Upstream vertical gross upward pricing pressure for Luxottica frames at rival retailers

W_{E}: Wholesale price of Essilor for two lenses

W_{L}: Wholesale price of Luxottica for a frame

W_{L}^{RR}: Wholesale price of Luxottica for a frame toward rival retailers

Case M.9569 – *ESSILORLUXOTTICA/ GRANDVISION*

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), EssilorLuxottica S.A. ("**EssilorLuxottica**" or the "**Notifying Party**") and GrandVision N.V. ("**GrandVision**") as regards the obligations laid down in Section C and paras 36, 37, 41, and 43 (as well as Schedule B) hereby enter into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition by EssilorLuxottica of sole control over GrandVision (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 5 (a), (b) and (c) and described more in detail in Schedule A.

BENE Business: the business, to be incorporated in one or more legal entities prior to Closing, including the EyeWish banner, the Retail Stores BE, the Retail Stores NL, and all assets, contracts and Personnel that contribute to its current operation as described more in detail in the Schedule A.

Central Personnel: all Personnel, including dedicated and shared Personnel, that perform functions at central level for the Divestment Business, as specified in the Schedule A.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of […] from the approval of the Purchaser and the terms of sale by the Commission.

Combined Entity: entity resulting from the Concentration.

Completion: completion of the Concentration.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses (including the IT Business and the BENE Business), as defined in Section B and in the Schedule A which the Notifying Party commits to divest.

Divestment Commitment: commitment described under Section B.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by EssilorLuxottica and who has/have received from EssilorLuxottica the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

EssilorLuxottica: EssilorLuxottica S.A., with its registered office at 147, rue de Paris 94220 Charenton-le-Pont, France.

First Divestiture Period: the period of […] from the Effective Date.

GrandVision: GrandVision N.V., with its registered office at The Base, Tower C, 6th Floor, Evert van de Beekstraat 1-80, 1118 CL Schiphol, The Netherlands.

Hold Separate Manager(s): the person(s) appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

IT Business: the business, to be incorporated in one or more legal entities prior to Closing, including the VistaSì banner and the Retail Stores IT and all assets, contracts and Personnel that contribute to its current operation as described more in detail in the Schedule A.

Key Personnel: all Personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule A, including the Hold Separate Manager(s).

Merchandise: eyewear, ophthalmic lenses, contact lenses, and/or any other optical products sold in the Retail Stores IT, the Retail Stores NL and the Retail Stores BE at Closing.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by EssilorLuxottica, and who has/have the duty to monitor EssilorLuxottica's and, where applicable, GrandVision's compliance with the conditions and the obligations attached to the Decision.

NL Retained Stores: the [more than 100] own EyeWish stores that EssilorLuxottica will retain from the stores currently operated in the Netherlands under the banner EyeWish, including all assets, contracts and staff that are exclusively or predominantly used for their operations or otherwise strictly indispensable to ensure their operation.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business and shared personnel as listed in the Schedule A.

Purchaser(s): the entity approved by the Commission as acquirer of the Divestment Business as a whole, or the entities approved by the Commission as acquirers, respectively, of the BENE Business and the IT Business, in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 20 of these Commitments that the Purchaser(s) must fulfil in order to be approved by the Commission.

Retail Stores BE: all 35 GrandOptical retail stores in Belgium, currently operated under the banner GrandOptical, as listed in Annex 1.

Retail Stores IT: (A) all 102 VistaSì stores in Italy (including the website) out of which: (i) 48 stores are part of the business unit "VistaSì Retail" which operates optical stores and (ii) 54 are corner points of sale currently operated by VistaSì business unit inside third-party supermarket retailers (shop-in-shops); and (B) 72 "GrandVision by" stores, as listed in Annex 1.

Retail Stores NL: All 61 EyeWish franchise stores, and 81 own EyeWish stores currently operated in the Netherlands under the banner EyeWish (which exclude the NL Retained Stores) as listed in Annex 1.

Retained Business: the GrandVision's and EssilorLuxottica's businesses in Italy, Belgium and the Netherlands (including stores, assets, contracts and personnel) that are being retained by GrandVision and by EssilorLuxottica and that therefore exclude the Divestment Business.

Schedule A: the schedule to these Commitments describing more in detail the Divestment Business.

Store Personnel: all dedicated Personnel employed by the Divestment Business at store level, including staff seconded to the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee, as the case may be.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

B. THE COMMITMENTS TO DIVEST AND THE DIVESTMENT BUSINESS

2. In order to maintain effective competition, EssilorLuxottica commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to the Purchaser(s) and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 22 of these Commitments. To carry out the divestiture, EssilorLuxottica commits to find Purchaser(s) and to enter into final binding sale and purchase agreement(s) for the sale of either (a) the Divestment Business as a whole (i.e., including the BENE Business and the IT Business), or (b) the BENE Business and the IT Business separately, within the First Divestiture Period. If EssilorLuxottica has not entered into such agreement(s) at the end of the First Divestiture Period, EssilorLuxottica shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 34 in the Trustee Divestiture Period.

3. EssilorLuxottica shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, EssilorLuxottica or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed Purchaser(s) and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 22; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser(s) takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, EssilorLuxottica shall, for a period of […] after Closing, not acquire, whether directly or indirectly (including, for the avoidance of doubt, through franchising or Independent Store Manager agreements), the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from EssilorLuxottica showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 48 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

<u>Structure and definition of the Divestment Business</u>

5. The Divestment Business consists of the IT Business (including the Retail Stores IT) and the BENE Business (including the Retail Stores BE and the Retail Stores NL). The legal and functional structure of the Divestment Business as operated to date is described in the Schedule A. The Divestment Business, described in more detail in the Schedule A, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   (a) all tangible and intangible assets (unless expressly excluded);
   (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
   (c) all contracts, leases, commitments and customer orders of the Divestment Business;
   (d) all customer, credit and other records of the Divestment Business; and
   (e) the Personnel.

6. In addition, the Divestment Business includes the benefit, for a transitional period starting from Closing and on terms and conditions as specified below and in the Schedule A:

   (i) a transitional service agreement of a duration […], under which EssilorLuxottica, GrandVision or their Affiliated Undertakings supply services to the Divestment Business, […], as detailed in the Schedule A, unless otherwise agreed with the Purchaser(s);

   (ii) transitional supply agreements of Merchandise of a duration of up to […], […], as specified in <u>**Exhibit A**</u>. Upon the Purchaser's reasoned request, and subject to the Monitoring Trustee positive advice, the transitional supply agreement can be renewed for […];

   (iii) […].

7. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant unit providing the product and service operations.

C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business, as further specified in **Schedule B**. In particular, the Parties undertake:

   (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

   (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses that the Parties are retaining, and to ensure that unless explicitly permitted under these Commitments and described in **Schedule B**: (i) management and staff of the business(es) retained by the Parties have no involvement in the commercial functions of the Divestment Business; (ii) the Key Personnel and Store Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.

10. Until Closing, the Parties shall, as specified in **Schedule B**: (a) assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Parties are retaining; (b) immediately after the adoption of the Decision, appoint two Hold Separate Managers, one for each of the IT Business and BENE Business. The

Hold Separate Managers, who shall be part of the Key Personnel,[1] shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Managers shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Managers shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Managers.

11. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Parties' rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

12. The Parties shall, unless explicitly permitted under these Commitments and as described in **Schedule B**, implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained before the Effective Date will be eliminated and not be used. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which is required by law.

Non-solicitation clause

13. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel and the opticians transferred with the Divestment Business for a period of […] after Closing.

Black-out clause and commitment to rebrand

14. EssilorLuxottica undertakes not to use the GrandOptical banner in Belgium for a period of […].

15. At the Purchaser's option, EssilorLuxottica will undertake to rebrand under the VistaSì banner, […] before Closing, the 72 "GrandVision by" stores included in the Retail Stores IT. Alternatively, the Purchaser will undertake to rebrand the 72 "GrandVision by" stores included in the Retail Stores IT within […] from Closing. The Parties shall grant the Purchaser of the IT Business a […] phase-out

[1] The appointment of the Hold Separate Managers will be performed as detailed in Confidential Schedule B.

license to use the "GrandVision by" banner along with a commitment not to open new optical stores under the "GrandVision by" banner within […] km in urban areas and […] km in rural areas from the 72 "GrandVision by" stores included in the Retail Stores IT during the license period. The license duration may be extended by up to further […] months upon the Purchaser's reasoned request. The extension of such phase-out licence will be subject to the positive advice of the Monitoring Trustee.

16. In addition, EssilorLuxottica undertakes to rebrand the NL Retained Stores within […] from Closing, it being understood that EssilorLuxottica will be able to negotiate with the Purchaser of the BENE Business a […] phase-out license to use the EyeWish banner along with a commitment not to open new optical stores under the EyeWish banner within […] km in urban areas and […] km in rural areas from the NL Retained Stores during the license period. The license duration may be extended by up to further […] months upon the EssilorLuxottica's reasoned request. The extension of such phase-out licence will be subject to the positive advice of the Monitoring Trustee.

<u>Due diligence</u>

17. In order to enable potential Purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential Purchasers sufficient information as regards the Divestment Business; and
(b) provide to potential Purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

<u>Reporting</u>

18. EssilorLuxottica shall submit written reports in English on potential Purchasers of the Divestment Business and developments in the negotiations with such potential Purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). EssilorLuxottica shall submit a list of all potential Purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential Purchasers within five days of their receipt.

19. EssilorLuxottica shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential Purchasers.

D. THE PURCHASER(S)

20. In order to be approved by the Commission, the Purchaser(s) must fulfil the following criteria:

(a) the Purchaser(s) shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
(b) the Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Combined Entity and other competitors;

(c) the acquisition of the Divestment Business by the Purchaser(s) must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

21. In addition, the Purchaser of the BENE Business shall be able to conduct a rebranding exercise in the retail sector.

22. The final binding sale and purchase agreement(s) (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When EssilorLuxottica has reached (an) agreement(s) with (a) Purchaser(s), it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. EssilorLuxottica must be able to demonstrate to the Commission that the Purchaser(s) fulfil(s) the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the Purchaser(s) fulfil(s) the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser(s).

E. TRUSTEE

I. Appointment procedure

23. EssilorLuxottica shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. EssilorLuxottica commits not to close the Concentration before the appointment of a Monitoring Trustee.

24. If EssilorLuxottica has not entered into (a) binding sale and purchase agreement(s) regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected the Purchaser(s) proposed by EssilorLuxottica at that time or thereafter, EssilorLuxottica shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

25. The Trustee shall:

(i) at the time of appointment, be independent of the Parties and its/their Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

26. The Trustee shall be remunerated by EssilorLuxottica in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a

Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by EssilorLuxottica

27. No later than two weeks after the Effective Date, EssilorLuxottica shall submit the name or names of one or more natural or legal persons whom EssilorLuxottica proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, EssilorLuxottica shall submit a list of one or more persons whom EssilorLuxottica proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 25 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
    (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

28. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, EssilorLuxottica shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, EssilorLuxottica shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by EssilorLuxottica

29. If all the proposed Trustees are rejected, EssilorLuxottica shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 23 and 28 of these Commitments.

Trustee nominated by the Commission

30. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom EssilorLuxottica shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

31. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or EssilorLuxottica, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

32. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Managers, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties, and
- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow EssilorLuxottica to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;

(iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential Purchaser(s) as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential Purchaser(s) receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
(b) potential Purchaser(s) are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential Purchaser(s), in relation to the Commitments;
(vi) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential Purchaser(s);
(vii) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
(viii) within one week after receipt of the documented proposal referred to in paragraph 22 of these Commitments, submit to the Commission, sending EssilorLuxottica a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed Purchaser(s) and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed Purchaser(s);
(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

33. If the Monitoring and Divestiture Trustee are not the same persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

34. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to Purchaser(s), provided that the Commission has approved both the Purchaser(s) and the final binding sale and purchase agreement(s) (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 20 and 22 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement(s) (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of EssilorLuxottica, subject to EssilorLuxottica's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

35. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to EssilorLuxottica.

III. <u>Duties and obligations of the Parties</u>

36. The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' and Affiliated Undertaking's or of the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

37. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at central level. EssilorLuxottica shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential Purchaser(s), in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential Purchaser(s) in the due diligence procedure. EssilorLuxottica shall inform the Monitoring Trustee on possible Purchaser(s), submit lists of potential Purchaser(s) at each stage of the selection process, including the offers made by potential Purchaser(s) at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

38. EssilorLuxottica shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, EssilorLuxottica shall cause the documents required for effecting the sale and the Closing to be duly executed.

39. EssilorLuxottica shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to EssilorLuxottica for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

40. At the expense of EssilorLuxottica, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to EssilorLuxottica's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should EssilorLuxottica refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard EssilorLuxottica. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 39 of these Commitments shall apply *mutatis mutandis*. In

the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served EssilorLuxottica during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

41. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
42. EssilorLuxottica agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential Purchaser(s), of the identity and the tasks of the Monitoring Trustee.
43. For a period of ten (10) years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

44. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and EssilorLuxottica, require EssilorLuxottica to replace the Trustee; or
(b) EssilorLuxottica may, with the prior approval of the Commission, replace the Trustee.

45. If the Trustee is removed according to paragraph 44 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 23-30 of these Commitments.

46. Unless removed according to paragraph 44 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

F. THE REVIEW CLAUSE

47. The Commission may extend the time periods foreseen in the Commitments in response to a request from EssilorLuxottica or, in appropriate cases, on its own initiative. Where EssilorLuxottica requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall EssilorLuxottica be entitled to request an extension within the last month of any period.

48. The Commission may further, in response to a reasoned request from EssilorLuxottica showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to EssilorLuxottica. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

G. ENTRY INTO FORCE

49. The Commitments shall take effect upon the date of adoption of the Decision.

Duly authorised for and on behalf of EssilorLuxottica:

[Signed] [Signed]

Duly authorised for and on behalf of GrandVision:

SCHEDULE A

1. In accordance with paragraph 5 of these Commitments, the Divestment Business consists of the IT Business (including the Retail Stores IT and the VistaSì banner), and the BENE Business (including the Retail Stores BE, the Retail Stores NL, and the EyeWish banner).

2. Each of the IT Business and the BENE Business may be sold to different Purchasers provided each Purchaser satisfies the Purchaser criteria.

3. The Divestment Business includes, but is not limited to:

   (a) all tangible assets as detailed in **Annex 1 (list of retail stores) and Annex 2 (other tangible assets)**;

   - **Annex 1** contains a list of the Retail Stores IT, Retail Stores BE, and Retail Stores NL.
   - **Annex 2** summarizes the type and value of tangible assets of the Retail Stores IT, Retail Stores NL and the Retail Stores BE and contains the list of tangible assets (and their value) allocated per store.

   (b) all intangible assets, unless expressly excluded, as detailed in **Annex 3**, which is composed of:

   - **Annex 3.1** summarizes the type and value of intangible assets of the Retail Stores IT, Retail Stores NL and Retail Stores BE and contains the list of intangible assets (and their value) allocated per store.
   - **Annex 3.2 (trademarks and logos of the IT Business)** that lists and describes: (a) the VistaSì trademarks and logos to be divested along with the Retail Stores IT, (b) lists the trademarks and logos of the Retail Stores IT that will be retained by the Combined Entity but will be licensed to the Purchaser according to letter *i) infra,* and (c) the trademark and logos of the Retail Stores IT that will be retained by the Combined Entity and not be licensed to the Purchaser.
   - **Annex 3.3 (trademarks and logos of the BENE Business)** that lists and describes: (a) the EyeWish trademarks and logos to be divested along with the Retail Stores NL, (b) GrandVision's trademarks and logos in the Netherlands and Belgium that will be retained by the Combined Entity but will be licensed to the Purchaser according to letter *i) infra,* and (c) GrandVision's trademark and logos in Netherlands and Belgium that will be retained by the Combined Entity and not licensed to the Purchaser.

   […].

   (c) all licences, permits and authorisations issued by any governmental organization for the benefit of the Divestment Business;

(d) all contracts, leases and commitments of the Divestment Business, are detailed in **Annex 4**, which is composed of:

- **Annex 4.1** (**agreements that are related only to the Divested Stores**);
- **Annex 4.2 (example of an ISM agreement)** provides an example of Independent Store Managers ("ISM") agreement;
- **Annex 4.3 (expiry date of the ISM contracts)** provides an overview of the expiry date of each of the […] ISM agreements that are part of the Retail Stores BE;
- **Annex 4.4 (example of an EyeWish franchise agreement)** provides an example of an EyeWish franchise agreement; and
- **Annex 4.5 (expiry date of the EyeWish franchise agreements)** provides an overview of the expiry date of each of the EyeWish franchise agreements that are part of the Retail Stores NL.

In this respect, EssilorLuxottica shall use its best efforts to obtain the consent from landlords and the owners of the supermarkets to transfer the lease agreements to the Purchaser(s) prior to Closing, where needed. If such consent is denied, EssilorLuxottica shall find an alternative equivalent solution to ensure the Divestment Business transferred is of the size, quality and overall geographic balance foreseen in these Commitments (for the avoidance of doubt, including the option of transferring an alternative, equivalent store to the Purchaser), such proposal to be approved by the Monitoring Trustee.

(e) customer records (including eyecare medical records), purchase orders, credit and other records related to the Divestment Business. As regards medical records, to the extent necessary EssilorLuxottica will make its best efforts to obtain the required consent to their transfer to the Purchaser at Closing. It is understood that, where the customer records related to the Retail Stores BE, Retail Stores NL or Retail Stores IT cannot be transferred to the Purchaser, EssilorLuxottica shall destroy any copy thereof that will remain in the possession of the Retained Business. In any event, EssilorLuxottica will refrain from using customer records (including eyecare medical records), purchase orders, credit and other records related to the Divestment Business for the purpose of carrying out its business activities (in particular, and without limitation, EssilorLuxottica shall not use these customer records to send marketing communications to customers of the Divestment Business);

(f) in line with applicable employment laws and other relevant legislation, the Personnel and Key Personnel necessary to operate and ensure the viability of the Divestment Business, as specified in **Annex 5 (Personnel and Key Personnel related to the Divestment Business)**. **Annex 5** is composed of:

- **Annex 5.1 (list of Store Personnel related to the Divestment Business)** that lists the store staff of the IT Business and of the BENE Business necessary to maintain the viability and competitiveness of the BENE Business and the IT Business, respectively.[2]

- **Annex 5.2 (Divested Central Personnel and corresponding structure chart)** that contains a structure chart and describes the Central Personnel, including […], including the individual identification of the Key Personnel necessary to maintain the viability and competitiveness of the BENE Business and the IT Business, respectively.

(g) transitional agreement(s) for the supply of Merchandise […] after Closing necessary for the Purchaser(s) to build up its (their) own supply chain capacity, […], as specified in **Exhibit A**. […].

(h) transitional agreement(s) for the provision […] of services, for a period of up to […] after Closing, that the Purchaser(s) may require during a start-up phase, which may comprise: […].

(i) agreement to grant, for a phase-out period starting from Closing of up to […], a […] phase-out license for the Purchaser(s) of the Divestment Business to apply the relevant trademarks in the sale of eyewear, ophthalmic lenses, contact lenses, and/or other relevant products. […].

4. The Divestment Business shall not include, as detailed in **Annex 6** to the Commitments:

- **Confidential Annex 6.1 (list of NL Retained Stores)** that lists the […] EyeWish owned stores retained by EssilorLuxottica in the Netherlands;
- **Confidential Annex 6.2 (Retained Central Personnel in the Netherlands and in Belgium)** that describes the Central Personnel that will be retained by EssilorLuxottica.
- **Confidential Annex 6.3 (list of supply agreements and general services agreements (maintenance, security, etc.) of the Divestment Business)** contains the list of agreement benefitting the Divestment Business that will not be transferred but will be object of the transitional agreements. In particular, it contains: (i) the list of supply and general services agreements that benefits the VistaSì Stores, (ii) the list of global supply and general services agreements that benefit the Retail Stores IT owned by GrandVision, Retail Stores BE and Retail Stores NL, and (iii) the list of country-specific administrative and ancillary eyecare product and services agreements that

[2] This headcount does not take into account the staff of the […] stores that are managed by ISMs and that are included in the Retail Stores BE.

benefit the Retail Stores IT owned by GrandVision, Retail Stores BE and Retails Stores NL.[3]

5. The Divestment Business shall not include any of the following stores:

   a. All Salmoiraghi & Viganò points of sale in Italy, including those operated under the banners "Ray-Ban", "Persol", "Oakley" and "Oliver People";
   b. All GrandVision stores in Italy except for the Retail Stores IT;
   c. All CornerOptique stores in Italy;
   d. All Solaris stores in Italy;
   e. All Pearle points of sale in Belgium;
   f. All Pearle points of sale in the Netherlands;
   g. [more than 100] EyeWish owned points of sale in the Netherlands;
   h. All Sunglass Hut point of sales in Italy, Belgium and the Netherlands;
   i. All Oakley and Ray-Ban points of sale in the Netherlands; and
   j. All webstores in Italy, Belgium, the Netherlands. [4]

6. If there is any asset or personnel which is not covered in items 3(a) to 3(i) above, but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to the Purchaser(s).

[Confidential Annexes to the Commitments]

[3] **Annex 6.3** notably specifies, for each of the Retail Stores IT, Retail Stores BE and Retail Stores NL (i) which are the top suppliers of (each of) frames, sunglasses, ophthalmic lenses, contact lenses, […] of purchases by value, (ii) the volume, value and % (by each metric) of purchases of the relevant product that is attributable to each supplier (Annex RFI 37 Q.11), (iii) the duration of the current supply contract, and (iv) any legal, contractual or other barriers that would prevent the Combined Entity from providing the relevant product to the Retail Stores NL, Retail Stores BE Retail Stores IT […].

[4] […].

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EXHIBIT A TO THE COMMITMENTS

Terms of transitional agreement for the supply of Merchandise, […].

For a transitional period of up to […] from Closing:

(i) […].

(ii) […].[1]

(iii) […].

(iv) […].

(v) […].

[1] […].

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Confidential Schedule B to the Commitments

1. This Schedule B forms part of the Commitments and further specifies the commitments undertaken:

   a. by EssilorLuxottica with respect to all 102 stores in Italy operated by the VistaSì business unit (including the banner, the website and all assets, contracts and Personnel that contribute to its current operation as described more in detail in Schedule A, "**EssilorLuxottica Divestment Business**");

   b. by GrandVision with respect to 72 GrandVision By stores in Italy (the "**GrandVision IT Business**"), and (ii) the BENE Business (together the "**GrandVision Divestment Business**").

2. Definitions in the Commitments also apply to this Schedule.

3. The obligations GrandVision and EssilorLuxottica commit to implementing pursuant to the Commitments encompass:

   a. **Appointing a Hold Separate Manager ("HSM") for the BENE Business ("BENE HSM"), and a HSM for the IT Business ("IT HSM").**

   Pursuant to Section C of the Commitments, the Parties will appoint an HSM for the BENE Business and an HSM for the IT Business. The HSMs will manage under the supervision of the Monitoring Trustee, respectively the BENE Business and the IT Business in compliance with Section C of the Commitments. […].

   In Belgium and the Netherlands, GrandVision commits to appointing an HSM upon the Effective Date. In Italy, the Parties will jointly appoint an HSM upon the Effective Date.

   b. **Holding separate the Key Personnel**

   In Belgium and the Netherlands, the Key Personnel of the BENE Business (as listed in Annex 5.2) includes […].

   In Italy:

   (i) The Key Personnel of the GrandVision IT Business (as listed in Annex 5.2) includes, […];

   (ii) the Key Personnel of the EssilorLuxottica Divestment Business (as listed in Annex 5.2) includes […].

   c. **Holding separate the non-Key Personnel**

   Non-Key Personnel includes all Store Personnel and Non-Key Central Personnel. More precisely:

   (i) All Store Personnel […].

   (ii) **Non-Key Personnel that is part of Central Personnel**. […].

   - […].
   - […].

- […].
- […].

d. **Ring-Fencing obligations**.

GrandVision and EssilorLuxottica individually commit to implement ring-fencing mechanisms for the operation of the GrandVision Divestment Business and of the EssilorLuxottica Divestment Business, respectively, in compliance with Section C of the Commitments. To this end, GrandVision and EssilorLuxottica shall set up specific and separated information flows for managerial purposes between, on the one hand, the GrandVision Divestment Business and the GrandVision Retained Business and, on the other hand, the EssilorLuxottica Divestment Business and the EssilorLuxottica Retained Business. The ring-fencing mechanisms to be implemented by GrandVision and EssilorLuxottica are subject to any modifications that the BENE HSM or IT HSM might request, in consultation with the Monitoring Trustee. Absent any objections from the Monitoring Trustee, GrandVision and EssilorLuxottica commit to amending the ring-fencing mechanisms accordingly.

(i) As regards the information necessary to run the day-to-day business such as customer data used to run promotional campaigns or inventory levels used for replenishment purposes ("**Operational Information**"), with the exception of supply chain/replenishment and distribution systems which are part of a fully automated central system based on Point of Sale information, GrandVision and EssilorLuxottica individually commit to setting up barriers to ensure that access to information that is specific to the Divestment Business and can be segregated is limited to individuals who are dedicated to the Divestment Business. As far as shared functions are concerned, GrandVision and EssilorLuxottica individually commit that Operational Information shall only be obtained or kept to the extent it is reasonably necessary for the operation of the Divestment Business, subject to the signature of a non-disclosure agreement described above at point 3(c)(ii). As regards the Netherlands and Italy, if the BENE HSM or the IT HSM decide to leverage on centrally organised marketing campaigns launched by the GrandVision Retained Business as described above in point 3(a), GrandVision commits to implementing ring-fencing measures to the effect that a limited number of designated individuals within the GrandVision Retained Business, bound by non-disclosure agreements, will have access to Operational Information pertaining to GrandVision Divestment Business, under the supervision of the Monitoring Trustee.

(ii) As regards the strategic performance information used by the management to monitor the performance of stores, a banner or the business as a whole, and which is used for managerial decision making, i.e. steering the business, typically distributed through daily, weekly and monthly reporting flows, with access rights depending on the position of an individual in the hierarchy ("**Managerial Information**"), GrandVision (in relation to GrandVision Divestment Business) and EssilorLuxottica (in relation to EssilorLuxottica Divestment Business) individually commit to implementing ring-fencing measures to the effect that such information will be limited to individuals who are dedicated to the BENE Business or to the IT Business respectively, with access rights to be defined depending on the function of the individuals concerned and will only be shared with the Retained Business on a need-to-know basis and on an aggregate "total divestment business" (country) level and solely by the BENE HSM or the IT HSM, as applicable.

(iii) Until Completion, the IT HSM will keep Operational and Managerial Information: (a) relating to the GrandVision IT Business confidential vis-à-vis the Personnel and Key Personnel attached to the EssilorLuxottica Divestment Business; (b) relating to the EssilorLuxottica Divestment Business confidential vis-à-vis the Personnel and Key Personnel attached to the GrandVision IT Business.

Case M.9569 – *ESSILORLUXOTTICA/ GRANDVISION*

SUPPLEMENTARY COMMITMENTS TO THE EUROPEAN COMMISSION

CONFIDENTIAL SCHEDULE C TO THE COMMITMENTS

The following confidential commitments (the "**Supplementary Commitments**" or "**Schedule C**") supplement and form integral part of the commitments submitted today to the European Commission in Case M.9569 – ***ESSILORLUXOTTICA / GRANDVISION*** (the "**Commitments**"), and in particular should be read in conjunction with and as integral part of paragraph 3 of the Commitments.

1. Definitions and capitalised terms in the Commitments shall apply.

2. If the […] Business cannot be sold by the end of the Trustee Divestiture Period, EssilorLuxottica shall divest, within an additional period of […], […] (the "**Alternative […] Business**"). The sale of the Alternative […] Business shall be implemented in accordance with the general and procedural provisions under the Commitments, including the non-reacquisition clause in paragraph 4 of the Commitments.

3. The Alternative […] Business includes all assets and staff that contribute to its current operation or are necessary to ensure its viability and competitiveness, in accordance with paragraph 5 of the Commitments, subject to the following: […].

4. EssilorLuxottica will hold the Alternative […] Business separate […] and will preserve its viability, marketability and competitiveness. The general provisions of Section C of the Commitments will be applicable, after Completion, to the extent compatible with the strict confidential nature of these Supplementary Commitments. EssilorLuxottica will discuss in good faith with the Monitoring Trustee the best way to achieve such a result. This obligation will apply until either (i) the Commission's approval of the Purchaser of the […] Business or (ii) the Closing of the sale of Alternative […] Business.

5. For the avoidance of doubt, the functions of the Monitoring Trustee and of the Divestiture Trustee, as set out in the Commitments, shall apply to these Supplementary Commitments.

6. These Supplementary Commitments shall take effect upon the date of adoption of the Decision.

Duly authorised for and on behalf of EssilorLuxottica:

(Signed)	(Signed)
[Name and role]	[Name and role]