EUROPEAN COMMISSION
DG Competition

Case M.9569 - ESSILORLUXOTTICA / GRANDVISION

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Decision on the implementation of the commitments -
Purchaser approval
Date: 30/3/2022

EUROPEAN COMMISSION

Brussels, 30.3.2022
C(2022) 2139 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

EssilorLuxottica S.A.
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94220 Charenton-le-Pont
France

Dear Sir or Madam,

Subject: **Case M.9569 - EssilorLuxottica/GrandVision**
Approval of ORIG as purchaser of the BENE Business following your letter of 30 December 2021 and the Trustee's opinion of 8 February and 9 March 2022.

1. Facts and procedure

(1) By decision of 23 March 2021 (the '**Clearance Decision**') pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1] (the '**Merger Regulation**') and Article 57 of the EEA Agreement, the Commission declared the operation by which the undertaking EssilorLuxottica S.A. ('**EssilorLuxottica**' or the '**Notifying Party**') acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of GrandVision N.V. ('**GrandVision**') (the '**Transaction**') compatible with the internal market and the EEA Agreement, subject to full compliance with the conditions and obligations annexed to the Clearance Decision (the '**Commitments**'). The Transaction was closed on 1 July 2021, so references to 'EssilorLuxottica' shall be taken to refer to the merged entity.

1 L 24, 29.1.2004, p. 1-22.

(2) In particular, the Commitments provide that EssilorLuxottica divest certain businesses as described in the Schedule of the Commitments, namely:

(a) in Italy, a total of 174 stores, which includes the whole of EssilorLuxottica's VistaSi chain together with 72 stores from the "GrandVision by" chain (the '**IT Business**'). The VistaSi brand will be transferred, whereas the "GrandVision by" brand will not and so the purchaser will be granted a temporary licence while it rebrands these stores to a name of its choice;

(b) in Belgium, a total of 35 stores, which includes the whole of the GrandOptical chain, but without the brand name (the '**BE Business**'). The purchaser will be granted a temporary licence while it rebrands these stores to a name of its choice; and

(c) in the Netherlands, a total of 142 stores, which represents the majority of the EyeWish chain, together with the brand name (the '**NL Business**'). EssilorLuxottica will retain some stores from this chain but will be required to rebrand them under a different name.

(3) The Commitments require that the BE Business and the NL Business be divested together to one purchaser, and are together referred to as the '**BENE Business**'. The IT Business may be sold either together with the BENE Business to the same purchaser or separately to a different purchaser.

(4) The Commitments also contain additional safeguards to ensure the smooth transfer of these three businesses, including the provision of transitional supplies and services to the purchaser(s).

(5) This decision relates to the approval of a Purchaser of the BENE Business.[2]

(6) By reasoned proposal of 30 December 2021 (the '**Reasoned Proposal**'), EssilorLuxottica proposed ORIG BENE B.V ("ORIG") for approval by the Commission as purchaser of the BENE Business (only) and submitted the proposed Sale and Purchase Agreement and related agreements (together, the '**Proposed Agreements**') for approval.

(7) On 20 January 2022, a call was held between the Commission, ORIG and Advolis SAS (the '**Trustee**') in which ORIG presented its credentials as purchaser of the BENE Business and its expectations regarding the future development of and business plan for the BENE Business.

(8) On 8 February 2022, the Trustee submitted an assessment of the suitability of ORIG as purchaser of the BENE Business and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Clearance Decision (the '**Reasoned Opinion**'). In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the BENE Business would be sold in a manner consistent with the Commitments.

(9) On 17 February 2022, the Commission sent to the Trustee a list of questions following the submission of the Reasoned Opinion, notably regarding independence

2 On 18 February 2022, the Commission approved Vision Group as a purchaser of the IT Business.

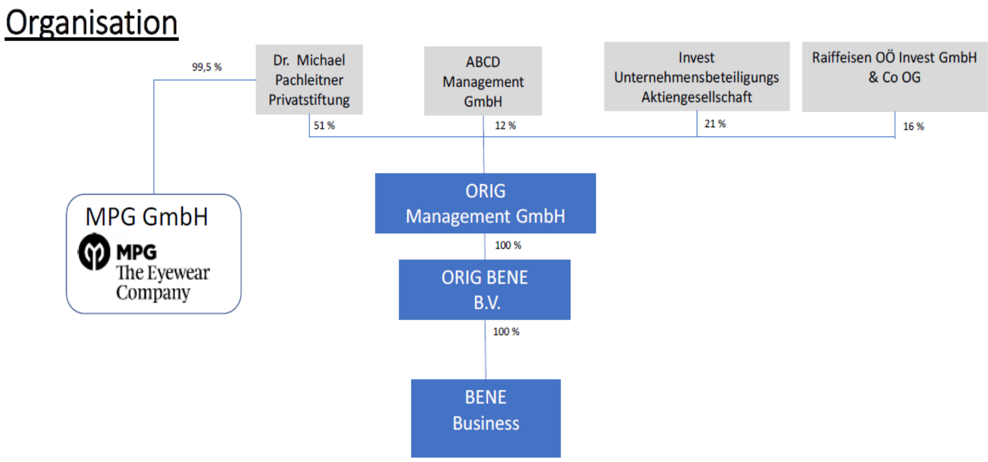
of ORIG vis-à-vis EssilorLuxottica, incentives, experience in rebranding, product mix and Transaction documents. The Trustee provided its replies on 9 March 2022.

2. ASSESSMENT OF THE PROPOSAL

2.1. The Purchaser

(10) The Purchaser of the BENE Divestment Business is a recently created entity named ORIG BENE B.V ("ORIG"), a company established in the Netherlands in December 2021. This company has been established by Dr. Michael Pachleitner Privatstiftung, which owns 51% of ORIG and then restructured in December 2021 as a joint venture with Raiffeisen Invest Private Equity Group (through Invest Unternehmensbeteiligungs AG ("Invest AG"), which owns 49% of ORIG. Later Invest AG will sell 16% of its shares of ORIG to Raiffeisen OÖ Invest GmbH & Co OG, another entity of Raiffeisen Invest Private Equity and 12% to ABCD Management GmbH, an entity owned by the management of the BENE Business. The structure of control of ORIG and of the BENE Divestment Business will then appear as follows in Figure 1.

Figure 1: Structure of control of the BENE Divestment Business



(11) As shown above in Figure 1, Dr. Michael Pachleitner Privatstiftung (51%) also controls MPG GmbH (99.5% of the shares). MPG GmbH ("MPG") is a vertically integrated optics company established in Graz (Austria) and operates more than 100 stores in Denmark and Germany. MPG's activities can be divided into three areas: Design and B2B sales of sunglasses, frames and reading glasses under a variety of brands, including licensed ones such as Red Bull and Daniel Hechter; production and sales of lenses; optical retailing, under the Hallmann banner, in Denmark and Germany.

2.2. Purchaser criteria set out in the Commitments

(12) According to paragraph 22 of the Commitments, in order to be approved by the Commission, the purchaser(s) must fulfil the purchaser criteria set out in

paragraph 20 of the Commitments and the Divestment Businesses[3] must be sold in a manner consistent with the Commitments.

(13) As set out in paragraph 18 of the Commitments, the purchaser(s) of the divestment businesses must fulfil the following criteria (the “Purchaser Requirements”):

(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 EssilorLuxottica 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.

(d) in addition, the Purchaser of the BENE Business shall be able to conduct a rebranding exercise in the retail sector.

2.3. Independence from the Parties

(14) The Notifying Party submits that ORIG is independent from and unconnected to EssilorLuxottica. The Notifying Party argues that (i) ORIG and EssilorLuxottica (and their affiliated shareholders) do not have any shareholding in each other (or their affiliated shareholders), (ii) there are no cross-directorships between ORIG and EssilorLuxottica or their affiliated undertakings, (iii) the commercial relationships between ORIG and EssilorLuxottica are on arm’s length terms, and (iv) the divestment will not create any link or connection between ORIG or EssilorLuxottica such as to impair their independence.[4]

(15) In its reasoned opinion, the Trustee agrees that ORIG is independent from EssilorLuxottica given that ORIG (including its shareholders) has no direct or indirect capital interest in EssilorLuxottica and EssilorLuxottica has no direct or indirect capital interest in ORIG (or any of its shareholders). Further, EssilorLuxottica and ORIG do not share any board member.[5]

(16) MPG, controlled by the same shareholder as ORIG, is also a customer of EssilorLuxottica in Denmark and Germany. MPG’s purchases of frames and sunglasses are at arm’s length and in the ordinary course of business, with no preferential treatment granted by EssilorLuxottica to MPG. EssilorLuxottica has no

3 Capitalised terms in the purchaser criteria have the meaning defined in the Commitments.

4 EssilorLuxottica’s Reasoned Proposal, pages 2-3.

5 Trustee’s Reasoned Opinion, section 5.1.

influence over its commercial strategy. There is no reason to consider that MPG's independence from EssilorLuxottica would be impaired.[6]

(17) Based on the above, the Commission considers that ORIG is independent of and unconnected to EssilorLuxottica and, therefore, the Purchaser Requirement set out in paragraph 20(a) of the Commitments is met.

2.4. Financial resources, proven expertise and incentive to maintain and develop the BENE Business as a viable and active competitor

2.4.1. Financial resources

(18) The Notifying Party submits that ORIG has sufficient financial resources to ensure that the BENE Business will be a viable and active competitor. The Notifying Party submits that ORIG will (a) finance approximately 50% of the purchase price through an acquisition financing by a consortium of two renowned Austrian banks, Raiffeisenlandesbank Oberösterreich and Raiffeisen-Landesbank Steiermark and (b) raise approximately 50% of the purchase price through equity contributions. Further, according to the Notifying Party, Invest AG intends to support ORIG on a long-term basis, as its Statutes allow.[7]

(19) In its reasoned opinion, the Trustee agrees that ORIG has the requisite financial resources to maintain and develop the BENE Business as a viable and active competitor. The Trustee submits that ORIG will finance the BENE Business acquisition and the transaction costs with a mix of equity and debt.

(20) The Trustee has also reviewed MPG's financial accounts. These accounts show that the company has managed to consistently increase its revenues from 2017 to 2020 (+12.5%), including in 2020 (EUR 112 million) despite the Covid-crisis. […].[8] These results are positive and show that MPG has managed to grow recently in spite of the challenging environment.

(21) The Commission shares the Trustee's view. Thanks to support from its shareholders, ORIG will have ample financial buffer to implement its integration plan, fund its growth and service its debt. Its sister company MPG has expanded aggressively but appears to keep debt in control thanks to good revenue and profitability indicators.

(22) Considering the resources available to ORIG, the Commission considers that, as well as having sufficient financial resources to complete the acquisition of the BENE Business, it also has sufficient financial resources to maintain and develop the BENE Business as a viable and active competitive force following the acquisition.

(23) Based on the above, the Commission considers that ORIG has sufficient resources to complete the transaction and to maintain and develop the BENE Business as a viable and active competitive force.

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6 […].

7 EssilorLuxottica's Reasoned Proposal, pages 3-4.

8 Trustee's Reasoned Opinion, section 2.2.

2.4.2. Proven expertise

(24) The Notifying Party submits that ORIG can benefit from the proven expertise in the optical retail market of Dr Michael Pachleitner Privatstiftung, which owns MPG. MPG has been active in the optical retail market since 2016 and owns and operates Optik Hallmann GmbH, a retail chain currently comprising more than 100 stores. In addition, MPG is one of the main players in Austria and Germany in the wholesale market for lenses. Therefore, EssilorLuxottica submits that ORIG/MPG has the necessary expertise to maintain and develop the BENE Business as a viable and active competitive force.[9]

(25) In its reasoned opinion, the Trustee agrees that ORIG has the requisite proven expertise to maintain and develop the BENE Business as a viable and active competitor. It notes that MPG has a long history in the optical industry as a lens producer, frame designer and optical retailer.[10] Regarding the latter aspect, it explains that MPG has worked to expand rapidly Optik Hallmann from 30 stores in 2016 to around 120 today and that management expects it to continue to grow.[11]

(26) The Commission shares the Trustee's opinion. MPG, the sister company of ORIG, is already running a sizeable optical retail chain in neighbouring countries. Dr Michael Pachleitner Privatstiftung, which owns MPG and will jointly own ORIG, thus has significant industrial experience that will benefit ORIG. They will in addition be able to rely on the BENE management team to strengthen their knowledge of the Belgian and Dutch markets and adjust their decisions for the future of the BENE Business.

(27) Based on the above, the Commission considers that ORIG has the required proven expertise to maintain and develop the BENE Business as a viable and active competitive force.

2.4.3. Incentive

(28) The Notifying Party submits that ORIG has the incentive to maintain and develop the BENE Business as a viable and active competitor, The Notifying Party notes in that regard that the strategic geographic focus of MPG, its sister company, is the northern central European region and the BENE Business is crucial in this sense due to the spread of stores across Belgium and the Netherlands.[12]

(29) In its reasoned opinion, the Trustee agrees that ORIG has the requisite incentive.[13] The Trustee notes that MPG, its sister company, clearly expressed ambition to grow by opening new stores in Germany and diversify into other European countries. This growth strategy materialized with EUR 9.3 million capital expenditure in 2019, including EUR 4.5 million for the acquisition of fifteen new stores. The proposed acquisition would be a strong fit with MPG current strategy of retail expansion.

9 EssilorLuxottica's Reasoned Proposal, page 4.
10 Trustee's Reasoned Opinion, section 5.2.3.
11 Trustee's Reasoned Opinion, section 1.2.
12 EssilorLuxottica's Reasoned Proposal, page 4.
13 Trustee's Reasoned Opinion, sections 2.2 and 5.2.3.

(30) The Commission has reviewed ORIG's business plan for the proposed acquisition. In Belgium, ORIG intends to rebrand Grand Optical into the EyeWish brand within twelve months after Closing.[14]

(31) In terms of market positioning, ORIG does not intend to change the positioning of EyeWish in the Netherlands and Grand Optical (rebranded into EyeWish) in Belgium.[15]

(32) ORIG does not expect to make any significant change to the product mix or price points in the first 12-18 months after acquisition.[16] It is MPG's expectation that in the medium term they will be able to achieve a certain degree of convergence between product mix in Belgium and Netherlands on the one hand and in Germany on the other hand as they are confident that their current offering (Davidoff, Daniel Hechter, Red Bull, etc.) will be successful in Benelux.[17]

(33) Finally, as regards opening of new stores, ORIG intends to develop the acquired business, which will include the opening of new stores. This is in particular clear in the Netherlands where the Divestment Business does not include all the EyeWish stores (i.e. some will be retained and rebranded by GrandVision). In Belgium, ORIG considers there is room for growth, particularly in the light of the fact […].[18]

(34) Based on the above, the Commission considers that ORIG has the incentive to maintain and develop the BENE Divestment Business as a viable and active competitor.

2.4.4. Conclusion on financial resources, proven expertise and incentive

(35) In light of the foregoing, the Commission considers that ORIG has the required financial resources, proven expertise and incentive to maintain and develop the BENE Business as a viable and active competitive force and, therefore, the Purchaser Requirement set out in paragraph 20(b) of the Commitments is met.

2.5. Absence of prima facie[19] competition problems

(36) The Notifying Party submits that the acquisition of the BENE Business by ORIG does not raise any competition concerns, on the basis that: (i) ORIG and its affiliated undertakings (including Invest AG) are not active in the optical retail market either in Belgium nor in the Netherlands (ii) MPG is active in the wholesale market for lenses in Austria and Germany but its acquisition of the BENE Business will not raise competition concerns due to limited market shares held by MPG upstream and the modest position of the BENE Business upstream, and the presence of a number of competitors both in the wholesale market for lenses and in the optical retail

[14] Trustee's Reasoned Opinion, section 3.

[15] Trustee's Reasoned Opinion, section 3.

[16] Trustee's Reasoned Opinion, section 3.

[17] Trustee's reply to the request for information dated 17 February 2022, question 2b).

[18] Trustee's reply to the request for information dated 17 February 2022, question 3.

[19] Prima facie is the standard of analysis set out in paragraph 104 of the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1). Under this standard, the Commission analyses whether the proposed purchaser threatens to create competition problems in the light of the information available to the Commission in the purchaser approval process. It does not prejudge the competition assessment of the competent competition authority under applicable merger control rules.

market and (iii) ORIG will not need to obtain any approvals from the relevant antitrust authorities for the acquisition of the BENE Business, and consequently there is no risk that regulatory approvals will delay the implementation of the Commitments.[20]

(37) In its reasoned opinion, the Trustee agrees that the proposed divestment would not give rise to any prima facie competition problems or a risk that the implementation of the Commitments would be delayed.[21]

(38) The Commission notes there is no horizontal overlap between ORIG/MPG and the BENE as MPG is not active in the optical retail market in Belgium or the Netherlands. As regards wholesale supply of optical lenses, these markets are national in scope[22] and MPG is only active in Austria and Germany. Therefore there is no vertical link created by the acquisition of the BENE Divestment Business by ORIG.

(39) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the BENE Business by ORIG by a competent competition authority under applicable merger control rules.

2.6. Ability to conduct a rebranding exercise in the retail sector

(40) The Notifying Party submits that, in accordance with paragraph 21 of the Commitments, ORIG has all the required resources and capabilities, and it is ready to conduct a rebranding exercise in the retail sector.[23]

(41) In its reasoned opinion, the Trustee agrees that MPG, the sister company of ORIG, has the requisite experience in rebranding. Notably, due to its current expansion in Germany and frequent acquisition of new stores, MPG has experience with the local rebranding of stores and will be able to share it with ORIG.[24]

(42) The Commission shares the Trustee's opinion. In 2016, MPG acquired Optik Hallmann, a retail network created in 1998 by Andreas Hallmann and present in Germany and Denmark.[25] MPG carried a complete repositioning and brand refreshment for the 30 stores originally acquired from Andreas Hallmann. Later MPG acquired ca 70 stores, which have been/are currently being rebranded. MPG's current plan is to have the rebranding fully finished by March 2023. MPG has experience of rebranding chains: Optik Fisher at Bayreuth in 2019 was MPG's latest acquisition of a chain - the nine stores were rebranded within 2-3 months.[26]

(43) In light of the foregoing, the Commission considers that ORIG is able to conduct a rebranding in the retail sector and, therefore, the Purchaser Requirement set out in paragraph 21 of the Commitments is met.

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20 EssilorLuxottica's Reasoned Proposal, page 5.
21 Trustee's Reasoned Opinion, section 5.3.1.
22 Clearance decision, paragraph 151.
23 EssilorLuxottica's Reasoned Proposal, page 6.
24 Trustee's Reasoned Opinion, section 5.4.
25 Trustee's Reasoned Opinion, section 1.2.
26 Trustee's reply to the request for information dated 17 February 2022, question 4a) and 4b).

2.7. Conclusion on the Purchaser Requirements

(44) On the basis of the above considerations and the information provided by EssilorLuxottica, and taking into account the reasoned opinion submitted by the Trustee, the Commission concludes that ORIG meets the Purchaser Requirements set out in paragraphs 20 and 21 of the Commitments in relation to the BENE Business.

3. ASSESSMENT OF THE PROPOSED AGREEMENTS

(45) The Proposed Agreements consist of a sale and purchase agreement, ("SPA") which was executed on 23 December 2021, as well as:

i) a transitional brand license agreement […];

ii) a transitional service agreement ("TSA") […];

iii) transitional merchandise agreements: […].

(46) The Notifying Party submits that the Proposed Agreements are consistent with the terms of the Commitments. Furthermore, EssilorLuxottica confirmed on 22 March 2022 that EssilorLuxottica and GrandVision will provide the Purchaser of the BENE Business upon Closing with all the interior and technical drawings they have (including, for example, the shop floor plan and window, the POS furniture and the sales furniture, etc.) regarding the concept of EyeWish stores. Moreover, EssilorLuxottica confirmed that services, as regards the maintenance and repairs of all the transferred EyeWish stores, are covered by the Transitional Service Agreement and that EssilorLuxottica is available to (i) provide the Purchaser of the BENE Business with the contact details of the indicated suppliers and to (ii) help establishing contacts between them and the Purchaser. This confirmation was provided at the request of the Hold Separate Manager of the BENE Business.

(47) The Trustee has reviewed and provided an assessment of the Proposed Agreements, and concluded that all agreements fulfil the requirements of the Commitments and that the BENE Business is being sold in a manner consistent with the Commitments. The Trustee noted that the merchandise supply agreement with EssilorLuxottica is appended to the SPA as a term sheet. However the terms are consistent with the Commitments in particular in terms of duration and pricing and the Trustee will ensure that the long form is put in place as per the terms of the term sheet in due time.[27]

(48) The Commission has reviewed the Trustee's assessment. The Commission considers, in line with the Trustee's assessment, that the Proposed Agreements adequately reflect EssilorLuxottica's obligations under the Commitments.

(49) Based on the above, taking into account the Trustee's reasoned opinion and the other information available to it, the Commission concludes that the BENE Business is being sold in a manner consistent with the Commitments.

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27 Trustee's reply to the request for information dated 17 February 2022, question 5.

4. CONCLUSION

(50) On the basis of the above assessment, the Commission approves ORIG as a suitable purchaser of the BENE Business.

(51) On the basis of the Proposed Agreements, the Commission further concludes that the BENE Business is being sold in a manner consistent with the Commitments.

(52) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that EssilorLuxottica has complied with its Commitments.

(53) This decision is based on paragraphs 20, 21 and 22 of the Commitments.

For the Commission

(Signed)
Olivier GUERSENT
Director-General