



EUROPEAN COMMISSION
DG Competition

Case M.8394 – ESSILOR / LUXOTTICA

(Only the English text is authentic)

MERGER PROCEDURE REGULATION (EC) 139/2004

Article 8 (1) Regulation (EC) 139/2004

Date: 01/03/2018

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EUROPEAN
COMMISSION

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COMMISSION DECISION

of 1.3.2018

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

(Case M.8394 – ESSILOR / LUXOTTICA)

[Text with EEA relevance]

(Only the English version is authentic)

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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 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(1) thereof,

Having regard to the Commission's Decision of 26 September 2017 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

Whereas:

1. INTRODUCTION

- (1) On 22 August 2017, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertakings Essilor International (Compagnie Générale d'Optique) S.A. ("Essilor"), based in France, and Luxottica Group S.p.A. ("Luxottica"), based in Italy, enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation ("the Transaction"). Essilor and Luxottica are collectively referred to as "the Parties". The company resulting from the merger is referred to as "the Merged Entity".

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 ("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.

² OJ C200. , p....

³ OJ C200. , p....

2. THE PARTIES

2.1. Essilor

- (2) Essilor is a publicly-listed company headquartered in France. It is mainly active in the manufacture and wholesale distribution of ophthalmic lenses ("lenses"). It has 32 plants (eight of which are in Europe), 490 prescription laboratories and edging facilities (51 of which are in Europe), and five research and development centres worldwide. Its flagship lens brands are Varilux, Crizal, Transitions, Eyezen, and Xperio.
- (3) Essilor also manufactures optical instruments, machines and consumables for eye-care professionals and lens manufacturers. It is active in ophthalmic instruments and machines at the worldwide level through Satisloh, a firm in which it acquired an 80% stake in 2008, and only through its instruments division for commercial glazing machines ('table-top edgers').
- (4) Essilor is also active to a lesser extent in the manufacture and sale of eyewear and in online retail sales. Additionally, Essilor sells small quantities of contact lenses to retailers in some EEA Member States⁴.
- (5) In the EEA, Essilor's revenues generated through ophthalmic lenses and optical instruments account for [80-90]% of its turnover, while sunglasses and reading glasses account for [10-20]% and machines account for [0-5]%⁵.
- (6) Essilor is active through a broad number of entities belonging to the same group. Those entities include Essilor, BBGR, ILT Danyang, Novacel, Shamir, Korea, LTL, Mega, Hupp&Rubrach, Nouk, Wanxinn MontRoyal, Athlone, Infield, Optika, Omega, HOC, JZO, Nexo and Signet.

2.2. Luxottica

- (7) Luxottica designs, manufactures and distributes eyewear, that is to say prescription frames and sunglasses. Product design and manufacturing take place in 12 plants worldwide (six in Europe, three in China, one in the United States, one in Brazil and one in India).
- (8) Luxottica's portfolio includes proprietary brands such as Ray-Ban, Oakley, Vogue Eyewear, Persol, Oliver Peoples, and Alain Mikli, as well as more than 15 licensed brands including Giorgio Armani, Burberry, Bulgari, Chanel, Coach, Dolce&Gabbana, Prada, Ralph Lauren, Tiffany & Co., Valentino and Versace. Luxottica's global distribution network covers over 150 countries. Further details on Luxottica's manufacturing and distribution of eyewear are set out in Section 6.2.1.2.
- (9) Luxottica's activities in the wholesale of eyewear are complemented by a retail network of approximately 8 000 stores with a strong focus in the United States. Luxottica's more limited retail presence in Europe concerns mostly Salmoiraghi & Viganò⁶ in Italy, David Clulow in the United Kingdom and Sunglass Hut worldwide.

⁴ Essilor does not manufacture contact lenses but resells these products to accommodate certain retailers. Form CO, Sections 1-6 and Introduction to Section 7, paragraph 137.

⁵ Presentation to the European Commission submitted by the Parties during meeting of 21 February 2017, slide 5.

⁶ In December 2016, Luxottica acquired 63.2% of Salmoiraghi & Viganò, an Italian optical retailer, of which it previously owned 36.8% (change from joint to sole control).

- (10) Luxottica also has some limited activities in the wholesale of lenses, including through its recently opened production facility in Sedico, Italy.
- (11) Luxottica is currently controlled by Delfin s.à.r.l. (“Delfin”), a Luxembourg-based holding company which holds 62.549% of Luxottica's share capital⁷.

3. THE CONCENTRATION

- (12) The Transaction concerns the full merger of Essilor and Luxottica. On 15 January 2017, Luxottica’s controlling shareholder, Delfin, and Essilor entered into a Combination Agreement in order to “*effect a strategic combination of Essilor's and Luxottica's businesses, with a view to creating a global company in the optical industry*”.⁸
- (13) The Transaction will be implemented in three consecutive steps⁹:
 - (a) First, Delfin will contribute its entire stake in Luxottica to Essilor in return for newly-issued Essilor shares at a fixed exchange ratio of 0.461 Essilor shares for 1 Luxottica share.
 - (b) Second, Essilor will launch a mandatory public exchange offer to acquire all of Luxottica’s remaining issued and outstanding shares at the same exchange ratio and with a view to delisting Luxottica’s shares.
 - (c) Third, Essilor will become a pure holding company with the new name “EssilorLuxottica” (HoldCo) via a hive-down of Essilor's operating activities into a wholly-owned company, New Essilor.
- (14) As a result of the Transaction, HoldCo will control two subsidiaries: (i) Luxottica and (ii) New Essilor. Post-Transaction, HoldCo will own 100% of New Essilor and between 62% and 100% of Luxottica, depending on whether the minority shareholders in Luxottica choose to accept Essilor’s public exchange offer or not.
- (15) Pursuant to the Combination Agreement, HoldCo will establish a common economic management, as it will combine Essilor’s and Luxottica’s current board members and will consolidate their accounts. Post-Transaction, revenues, profits, losses, liability, and other risks will ultimately be managed at central level by HoldCo. In addition, the Parties will post-Transaction generally share revenues, profits, losses, and liability and other risks.¹⁰
- (16) It follows that the Transaction is a concentration within the meaning of Article 3(1)(a) of the Merger Regulation.

4. UNION DIMENSION

- (17) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹¹ [Essilor: EUR 7 115 million;

⁷ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 33 and following.

⁸ Form CO, Annex CO 3.1, Combination Agreement between Essilor International and Delfin S.à r.l., page 4.

⁹ Form CO, Section 1-6 and Introduction to Section 7, paragraph 43.

¹⁰ Form CO, Section 1-6 and Introduction to Section 7, paragraph 36.

¹¹ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

Luxottica: EUR 9 085 million]. Each of them has a Union-wide turnover in excess of EUR 250 million [Essilor: [...]; Luxottica: [...]], but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

5. PROCEDURE

- (18) On 26 September 2017, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation ("the Article 6(1)(c) decision"). On 7 October 2017, the Parties submitted their response to the Article 6(1)(c) decision (the "Response to the Article 6(1)(c) Decision").
- (19) On 17 October 2017, the Parties requested an extension of the legal deadline by 10 working days pursuant to the first sentence of the second subparagraph of Article 10(3) of the Merger Regulation.
- (20) On 19 October 2017, the Commission adopted a decision pursuant to Article 11(3) requiring Essilor to supply information responding to the Commission's request for information dated 11 October 2017.
- (21) On 31 October 2017, the Commission adopted a decision pursuant to Article 10(4) and Article 11(3) of the Merger Regulation requiring Luxottica to supply documents responding to a Commission's request for information dated 9 October 2017 and suspending the merger review time-limit due to the failure of Luxottica to provide the requested documents within the original time limit set by the Commission. This suspension lasted from 25 October 2017 until 7 November 2017 when the requested documents were provided.
- (22) On 18 December 2017, Essilor informed the Commission that it had inadvertently excluded a number of documents from its response to the Commission's request for information dated 3 October 2017 ("RFI 15"). On 19 December 2017, Essilor submitted to the Commission the documents responsive to RFI 15 that had been excluded from its previous submission. On 21 December 2017, the Commission, with the agreement of the Parties, extended the time limit of the proceedings by 10 working days pursuant to Article 10(3) of the Merger Regulation, in order to allow it to assess whether RFI 15 had been answered fully and satisfactorily.
- (23) For its assessment of the Transaction, the Commission has made use of the available means of investigation pursuant to Article 11 of the Merger Regulation and undertaken the main investigative steps set out in recitals (24) to (30):
- (24) Extensive questionnaires were sent to numerous categories of market participants, including opticians - independent eye care professionals, optical retail chains and buying groups- ; opticians' associations; competing manufacturers of lenses, frames, sunglasses and ophthalmic machines; and brand licensors.
- (25) An additional shorter and simpler questionnaire was sent to almost all of Luxottica's opticians customer base in the EEA, namely around 42,000 opticians. The Commission's analysis is based on the replies of more than 3,366 opticians to this

questionnaire, 80% of which are independent opticians and the remaining 20% operate stores as part of optical retail chains.¹²

- (26) The Commission conducted numerous phone interviews with market participants, including independent eye care professionals, optical retail chains, buying groups, opticians' associations, insurance bodies and lens and eyewear manufacturers, and held meetings with a number of companies active in lenses and eyewear manufacturing and optical retail.
- (27) During the market investigation, the Commission received complaints from a number of market participants highlighting potential adverse effects of the Transaction on competition in different markets in the optical value chain. The Commission followed-up on those complaints with phone calls and meetings referred to in recital (26) as well as by way of written requests for information.
- (28) The Commission analysed a substantial number of internal documents originating from Essilor and Luxottica. Additionally, the Commission collected and reviewed the internal documents of competitors active in lenses and eyewear manufacturing and in optical retail concerning their strategic discussions on the impact of the Transaction on their business and planned reactions.
- (29) The Commission reviewed the supply contracts entered into by both Essilor and Luxottica with their respective main customers in the EEA.
- (30) The Commission collected and assessed economic data from the Parties and their main lenses and eyewear competitors to analyse the impact of scale effects in their activities, in order to verify the market share estimates submitted by the Parties and to assess the margin levels in the industry.
- (31) The Advisory Committee discussed a draft of this Decision on 19 February 2018 and issued a favourable opinion.

6. THE PRODUCTS CONCERNED AND THE OPTICAL VALUE CHAIN

6.1. Ophthalmic lenses

- (32) Ophthalmic lenses are medical devices enabling people to correct visual impairments that have usually been diagnosed by a specialised health care professional, that is to say an optometrist or ophthalmologist. The most frequent conditions that can be corrected with ophthalmic lenses include astigmatism, hyperopia, myopia and presbyopia¹³.
- (33) Ophthalmic lenses can be manufactured from either glass or plastic and are made according to two main correction designs: single-vision and multifocal¹⁴. 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

¹² The Commission received around 4,000 replies to this short questionnaire. Some replies were dropped from the Commission's analysis as they were outside the scope of the analysis (for instance answers by respondents who were not in charge of the store) while others were dropped due to inconsistencies in their replies.

¹³ Form CO, Sections 1-6 and Introduction to Section 7, paragraphs 96 to 100.

¹⁴ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 106.

of the lens surface.¹⁵ 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 focals¹⁶.

- (34) 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). Essilor is not active in the manufacturing of those materials, which it generally sources directly from chemical companies and glass manufacturers¹⁷.
- (35) The raw material is then cast in manufacturing plants. This casting can be done in two ways:
 - (a) The raw materials can be directly cast in the form of finished ophthalmic lenses with the final optical power already implemented. They 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 laboratory¹⁸.
 - (b) The raw material can be cast in the form of a "hockey puck" as a semi-finished product. This semi-finished product is usually referred to as "ophthalmic substrate". It needs to be subsequently surfaced and treated in a prescription laboratory in order to implement the optical power and transform it into finished single-vision or multifocal products¹⁹. Once cast, semi-finished ophthalmic lenses are treated in prescription laboratories for processing including (i) surfacing, (ii) coating and/or tinting, and (iii) sometimes glazing²⁰.
- (36) 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.²¹
- (37) Coating consists of incorporating additional treatments to ensure the transparency and durability of the lens. Those treatments may include the application of (i) anti-scratch, anti-reflective, anti-smudge, anti-dust, anti-UV, and blue-light coating; (ii) photochromic dye, which makes the lens turn darker when exposed to sunlight; and (iii) tinting. While some of those coatings are almost always applied (for instance anti-scratch), others are optional²².
- (38) Finally, glazing is the final step of the process. It consists of 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 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 opticians; or (iii) in a prescription laboratory of a lens manufacturer.²³

¹⁵ Form CO, Sections 1-6 and Introduction to Section 7, paragraphs 104 and 105.

¹⁶ Ibid.

¹⁷ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 110.

¹⁸ Ibid.

¹⁹ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 112.

²⁰ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 113.

²¹ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 113.

²² Ibid.

²³ Ibid.

6.1.1. *Product portfolios of the Parties*

6.1.1.1. Essilor

- (39) Essilor's ophthalmic lens operations in the EEA are carried out through different networks. The Essilor (or "Blue") Network comprises all Essilor-named corporate entities that distribute Essilor-branded products, while the BBGR (or "Red") Network comprises all entities that distribute BBGR-branded products. A third network comprises all other Essilor entities, such as Shamir (EEA), Signet Armorlite (EEA), Novacel (France) and LTL (Italy), which, unlike the Blue and Red networks, are not managed as a single unit.
- (40) Essilor supplies two types of finished ophthalmic lenses to retailers: finished stock lenses that are mass-produced at manufacturing plants predominantly located in Asia, and finished made-to-order lenses²⁴ that are converted from ophthalmic substrate in its prescription laboratories.
- (41) **Finished stock lenses sold to retailers.** Essilor produces almost all of its stock lenses for the EEA market in Asia. Essilor's stock lenses are marketed in the EEA under Essilor's own brands, as well as under private labels and white labels. Of its finished single-vision stock lenses intended for sale in the EEA Essilor produces more than [90-100]% outside the EEA.
- (42) Essilor also purchases finished single-vision stock lenses from third-party suppliers: about [...] pieces were purchased from third parties in 2016, of which [...] pieces were intended for the EEA market.
- (43) Finished lenses are supplied to wholesalers, optical retailers, and to end consumers via online retailing.
- (44) **Finished made-to-order lenses.** Essilor's prescription laboratories surface ophthalmic substrate, and coat, tint, and glaze lenses. In the EEA, Essilor operates [...] of those laboratories, which are located in Belgium, the Czech Republic, France, Germany, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, and the UK. Of its finished single-vision and progressive made-to-order lenses intended for sale in the EEA Essilor produces [40-50]% and [40-50]% respectively outside the EEA.
- (45) Essilor offers a broad range of finished lenses in all correction designs. Its premium brands, which represent less than [20-30]% of Essilor's overall volumes sold in the EEA, include the following:
- (46) **Varilux** was developed in 1959 as the first progressive lens designed to correct presbyopia, and is one of Essilor's most recognised brands. Essilor continues to market different types of progressive lenses under the Varilux brand, such as the Varilux X Series, which was launched in 2017.
- (47) **Crizal** lenses protect against glare, scratches, smudge, dust, water, as well as harmful light. Essilor markets a range of lenses under the Crizal brand, such as Crizal Sapphire UV and Crizal Prevencia.
- (48) **Transitions** lenses are photochromic lenses, which darken when exposed to certain types of light, most commonly UV light, and return to a clear state when no such light is present. Photochromic lenses can be used for any corrective design and are compatible with treatments including anti-reflective, anti-scratch, and anti-fog.

²⁴ Such lenses are also referred to as "RX lenses" by Essilor.

Essilor acquired Transitions in 2013 and markets a range of products under the brand, including Transitions Signature and Transitions Vantage.

- (49) **Eyezen** lenses, which were launched in 2015, are designed to provide relief from eye strain caused by the blue-violet light emitted by digital screens. Eyezen lenses incorporate the Eyezen Focus technology, which helps adapt visual correction to the viewing distances of each digital device, and a light filtering technology which offers protection from blue-violet light.
- (50) **Xperio** lenses are polarised prescription sun lenses that offer higher definition and elimination of glare and distortion, as well as maximum UV protection.
- (51) Essilor's communication strategy focuses on three core brands, namely Varilux, Transitions and Crizal, while Eyezen is also advertised in some selected markets. The advertising channels in which Essilor invests in the EEA are television, digital, press, outdoor, and radio.
- (52) Essilor targets its marketing campaigns for ophthalmic lens products mainly at opticians/optical retailers and end-consumers. In certain countries it also targets healthcare providers, for instance in France, where refraction tests are carried out only by ophthalmologists, and in Portugal for historical reasons.

6.1.1.2. Luxottica

- (53) Luxottica operates a small number of centralised prescription laboratories in China and the US, [...].
- (54) The Foothill Ranch laboratory in the US manufactures finished Oakley-branded prescription lenses that are mounted on prescription frames and sunglasses at the plant and shipped as "complete jobs" to retailers around the world, including in the EEA. [...].
- (55) In the EEA, Luxottica has recently launched a similar project with Ray-Ban: since February 2017 it has been commercialising complete Ray-Ban products, combining certain Ray-Ban frames with Ray-Ban branded prescription lenses. The purpose of this offer is to provide Ray-Ban customers with the same experience as Ray-Ban plano (without vision correction) sunglasses in terms of look and design (including the brand logo on the lens), and, where applicable, tinting (for sun prescription). Through this project Luxottica aims to offer an integrated product and a better brand service, providing for a consumer demand to have the same logo on lenses as on sunglasses and prescription frames.
- (56) To this end, Luxottica has invested in a prescription laboratory in its European logistic hub in Sedico (Italy), creating an integrated logistics and production hub for lenses and frames for Europe. It has just started commercial activities, [...].

6.2. Frames and sunglasses

- (57) Eyewear consists of sunglasses and optical frames. 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.²⁵

- (58) 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 sports 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 brand licensing agreements. Eyewear brand licensing is characterised by long-term partnerships with an average length of around seven years and usually on a global basis²⁶.

6.2.1. *Product portfolios of the Parties*

6.2.1.1. Essilor

- (59) In Europe, Essilor has limited activities in the wholesale distribution of mainly low-to mid-priced prescription frames and non-prescription sunglasses, notably through the UK subsidiary FGX Europe Ltd. (“FGX Europe”). FGX Europe has two subsidiaries in the EEA, namely the UK company Fabris Lane Ltd (“Fabris Lane”) and the Italian company Polinelli S.r.l. In the EEA, Essilor's sales of prescription frames in 2016 amounted to EUR [...] and sales of sunglasses amounted to EUR [...]. FGX Europe and its subsidiaries sell sunglasses, prescription frames, and readers²⁷ under proprietary brands such as Foster Grant, Freedom Polarised, Gargoyles, Haven, Magnivision and Corinne McCormack, and licensed brands such as Accessorize, American Freshman, Body Glove, Dockers, Disney, French Connection, Hello Kitty, Hook, Ironman and Karen Millen.
- (60) FGX Europe, Fabris Lane, and Polinelli do not manufacture sunglasses and prescription frames, nor do they assemble those products themselves. They merely select the products, which are then outsourced to suppliers mostly located in China.
- (61) In 2013, Essilor acquired Chinese company Xiamen Yarui Optical, and its Bolon, Molsion, and Prosun brands. The plant for the production of Bolon and Molsion sunglasses and prescription frames is the only one in the Essilor group active in the manufacturing of sunglasses and prescription frames (on average [...] pieces, [80-90]% of which are sunglasses). Essilor recently launched Bolon sunglasses and prescription frames in the EEA, reaching overall revenues of EUR [...] in 2016.
- (62) In 2014, Essilor acquired US-based company Costa, specialised in the wholesale distribution of sport sunglasses. Costa has recently started to sell its products in the EEA, achieving sales of EUR [...] in 2016.
- (63) Essilor also has two subsidiaries operating prescription laboratories, namely Essilor Portugal - Sociedade Industrial De Optica, Lda (“Essilor Portugal”), based in Rio De Mouro, Portugal, and De Ceunynck & Co. (“De Ceunynck”), based in Aartselaar, Belgium, [...]. Sales of prescription frames by those companies amounted to slightly more than EUR [...] in 2016.

²⁵ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 216.

²⁶ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 221-224.

²⁷ Reading glasses, also referred to as “readers”, are uncorrected glasses used to enhance a person’s reading ability.

6.2.1.2. Luxottica

- (64) Luxottica is the market leader in the design, manufacture and distribution of fashion, luxury, sports and performance eyewear with high technical and stylistic quality in the EEA. Sales of Luxottica prescription frames and sunglasses totalled EUR [...] and EUR [...] respectively in the EEA in 2016.
- (65) Among its core strengths is a strong brand portfolio which includes well-known proprietary brands such as Ray-Ban, Oakley, Vogue Eyewear, Persol, Oliver Peoples, Alain Mikli and Arnette as well as prestigious brands from licensors including Giorgio Armani, Burberry, Bulgari, Chanel, Dolce&Gabbana, Michael Kors, Prada, Ralph Lauren, Tiffany & Co., Versace and Valentino.
- (66) Because of customers' relative low awareness of the identity of the frame manufacturer, the switching of a licensor can cause a material shift in sales from one manufacturer to another. As a result, licensors' moves represent a key risk in the industry, as they are significant drivers of performance. Examples of brands that Luxottica lost in the last 10 years include Fox, Stella McCartney, Anne Klein, Salvatore Ferragamo, and Adrienne Vittadini. Examples of brands that Luxottica gained from eyewear competitors in the last 10 years include Polo Ralph Lauren, Dolce & Gabbana, Ferragamo, Armani, Michael Kors and Valentino.
- (67) One of the group's strengths is the vertically integrated business model built over the years, covering the entire value chain from design and product development to manufacturing and distribution.
- (68) **Manufacturing.** Luxottica's manufacturing activities take place in Italy, China, the US, India, and Brazil.
- (69) At the EEA level, Luxottica has six manufacturing facilities, all based in Italy, where the products referred to in Table 1 are designed, developed and manufactured:

Table 1 Overview of Luxottica's EEA Manufacturing Facilities' Activities²⁸

Plant	Activity
Agordo	[...]
Sedico	[...]
Pederobba	[...]
Lauriano	[...]
Rovereto	[...]
Cencenighe	[...]

Source: Luxottica

- (70) [...].
- (71) Like all main manufacturers, Luxottica produces sunglasses in their entirety (that is to say both the frame and the shaded plano lenses), and procures only certain components from specialised suppliers [...].
- (72) **Wholesale distribution.** Sedico is Luxottica's only distribution centre in the EEA. [...].

²⁸

Form CO, Sections 7 and 8 Chapter 3 – Wholesale Supply of Eyewear (Sunglasses and Frames), par. 3.

- (73) National subsidiaries are responsible for wholesale distribution in Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Sweden and the UK. [...].

6.3. Ophthalmic machines and consumables

- (74) Ophthalmic machines are used to manufacture ophthalmic lenses. A number of machines are necessary to transform ophthalmic substrate into finished ophthalmic lenses²⁹ and 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 opticians and optical retail chains with the use of table-top edgers.³⁰
- (75) Consumables are the products that are used with ophthalmic machines and each type of consumable is used for a given category of machine.

6.3.1. Essilor's activities

- (76) Essilor is active in ophthalmic machines at a global level through Satisloh, a firm in which it acquired an 80% stake in 2008 and, to a lesser extent for table-top edgers only, through its Instruments division. Essilor designs, manufactures, and sells surfacing machines, coating machines and glazing machines for prescription laboratories, opticians, and optical retail. Moreover, Essilor distributes a wide array of consumables, which are used in ophthalmic machines. Essilor only manufactures polishing pads, while it purchases the other consumables from various third-party producers.

6.4. Contact lenses

- (77) Contact lenses are thin lenses placed directly on the surface of the eye to aid visual impairments such as astigmatism, hyperopia / hypermetropia, myopia, and presbyopia. Around 140 million people worldwide use contact lenses in addition to or instead of traditional ophthalmic lenses³¹. Contact lenses, being virtually invisible, may be worn for aesthetic reasons as well as for contact sports. They can also be paired with plano (non-corrective) sunglasses. Contact lenses also provide a wider field of vision and are less affected by rain or condensation³².

6.5. Optical retail

6.5.1. Description of optical retail distribution

- (78) Luxottica and Essilor sell their ophthalmic lenses, table-top edgers, frames and sunglasses to eye-care professionals which operate optical retail shops. Additionally, they also sell sunglasses to non-optical retailers, such as department and fashion stores, and Essilor also sells ophthalmic machines to other lens producers. The Parties themselves also have limited activities in optical retail in the EEA.
- (79) Optical retail, operated as brick-and-mortar shops or online shops, can be broken down into at least two different distribution channels: (i) independent opticians and (ii) optician retail chains. Independent opticians are individual shops run by qualified

²⁹ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 164.

³⁰ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 164.

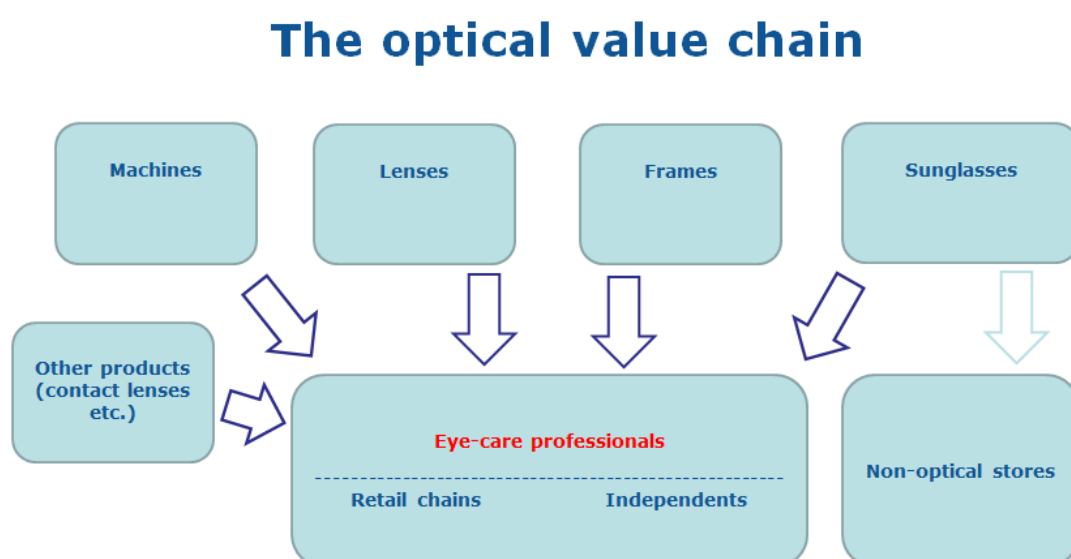
³¹ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 103.

³² Form CO, Sections 1-6 and Introduction to Section 7, paragraph 137.

opticians which often have in-house glazing capabilities to edge and mount ophthalmic lenses to the frames chosen. Independent eye-care professionals are sometimes members of buying groups to centralise the sourcing of prescription lenses, frames and other products. Retail chains, whether or not they include owned or franchised stores, comprise several stores operating under the same banner with a centralised commercial, sourcing and marketing policy. They usually operate centralised glazing facilities and some also produce their own ophthalmic lenses.

- (80) Eye-care professionals procure lenses and frames separately, which are then mounted into a complete pair of spectacles at the demand of final customers. The purchasing costs, revenues and profits that eye-care professionals generate with the products on average vary significantly.
- (a) Ophthalmic lenses represent around [30-40]% of eye-care professionals' purchasing costs whereas frames account for [40-50]%, sunglasses for [10-20]% and contact lenses and other products account for [10-20]%³³.
 - (b) Ophthalmic lenses represent around [50-60]% of eye-care professionals' sales revenues whereas frames account for [20-30]%, sunglasses for [10-20]% and contact lenses and other products account for [5-10]%³⁴.
- (81) The Parties have not submitted data on the general profitability levels of eye-care professionals in the EEA. However, a study for France indicates that the average eye-care professionals would generate a net profit of 7% on the retail price of a final pair of spectacles³⁵, as illustrated in Figure 1.

Figure 1 – Simplified optical value chain



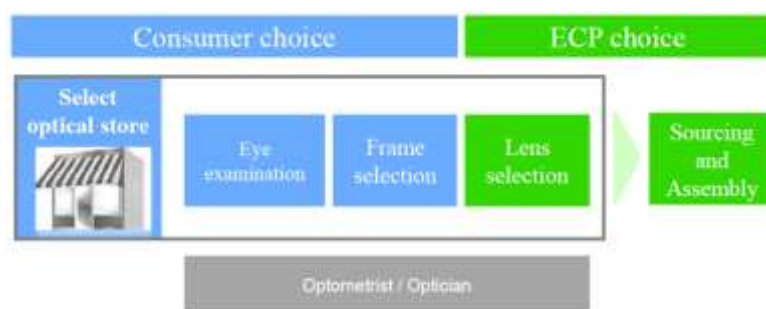
³³ Form CO, Sections 7 and 8 Chapter 4 – Retail of Optical, Table 4.8. Data for the top 5 EEA countries France, Germany, Italy, Spain and the UK. Note, however, that data differs between different EEA countries.

³⁴ Form CO, Sections 7 and 8 Chapter 4 – Retail of Optical, Table 4.7. Data for the top 5 EEA countries France, Germany, Italy, Spain and the UK. Note, however, that data differs between different EEA countries.

³⁵ UFC – Que choisir, “Distribution de l’optique. Examen à la loupe d’un marché juteux“, April 2013, page 20.

- (82) According to the Parties, the choice of ophthalmic lenses is typically driven by eye-care professionals³⁶. Consumers generally tend to focus their choice on frames and rely on eye-care professionals' advice for lenses, as illustrated in Figure 2. After the customer has selected the frame, the optician may present one or more lens options, usually presented in terms of price point or technical specifications (for instance thickness, weight and scratch-resistance). Consumers appear to rarely ask for, or even be aware of, specific lens brands. There are however exceptions, such as those involving progressive ophthalmic lenses with Essilor's Varilux brand being very well known in certain EEA countries such as France and Portugal³⁷.

Figure 2 Role of eye-care professionals in products selection³⁸



6.5.2. *Brick-and-mortar vs online distribution in optical retail*

- (83) In the EEA, lenses, prescription frames, contact lenses, and sunglasses are sold through brick-and-mortar and online stores.
- **Brick-and-mortar** stores are sales outlets that have a physical presence on the high street where sellers have face-to-face contact with customers. Customers also have direct contact with the product they are buying so that they can try different sizes/models.
 - **Online** stores are e-commerce websites where customers can directly buy goods or services on the internet, without having to physically move to a specific location to buy a product.
- (84) The online optical retail market is expected to double in value globally by 2020. According to Essilor's internal estimates, the market was worth around EUR [...] in the EEA in 2014 and is expected to reach nearly EUR [...] in 2020. The online optical retail market in the EEA is considered as a fast-growing distribution channel, with sales showing growth year after year, especially in countries such as Germany, the Netherlands, and the United Kingdom.
- (85) However, brick and mortar stores remain the most common channel for overall eyewear sales. According to industry reports this is mainly because opticians are still viewed as playing an important role in advising on eye healthcare, and because consumers have a need to try on eyeglasses prior to purchase. In most jurisdictions in the EEA, opticians (either opticians or optometrists) also offer eye tests, which cannot be done online.

³⁶ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 97.

³⁷ Form CO, Sections 1-6 and Introduction to Section 7, paragraph 131.

³⁸ Essilor's internal document [...].

- (86) Online sales of eyewear are essentially limited to readers, sunglasses, and contact lenses, whilst online sales of prescription frames and ophthalmic lenses remain very marginal.
- (87) Contact lenses are suitable for online sale as there is no need to try them on, and buying contact lenses online is a quick and easy process once a customer knows their prescription. Online sales of contact lenses are growing and currently represent about 15-20% of total contact lens sales in EEA countries. However, even in countries where online sales of contact lenses are not negligible, customers typically buy their first contact lenses in a store in the presence of an eye-care professional who provides vision care guidance.
- (88) Online sales of plano branded sunglasses over the internet are also growing, which industry reports put down to the following factors: online retail companies offer up-to-date collections; branded sunglass models are tried on in stores and purchased when cheaper online; and products are sometimes offered at large discounts as these are unsold models procured in large volumes.
- (89) Online sales of frames and prescription lenses remain very marginal. Eyeglasses have an aesthetic aspect and customers generally prefer to try on prescription frames before buying them. In addition, for certain types of lenses requiring personal adaptation for the end-customer, online sales are not favoured by customers.

6.5.3. *Optical retail activities of the Parties*

6.5.3.1. Essilor

- (90) Essilor is not active in brick-and-mortar retail sale of prescriptions lenses, prescription frames, contact lenses, sunglasses, and readers, with the only minor exceptions of two Kodak points in the UK and in Germany, which are dedicated to Kodak lenses and account for infinitesimal sales in the UK and German markets.
- (91) Essilor has developed its online retail activity in the EEA in recent years by acquiring Coastal in 2014, and Vision Direct and MyOptique Group in 2016. Essilor currently owns the following websites for online sales of multi-brand eyewear products, and in particular contact lenses, as illustrated in Table 2:

Essilor Online Retail Channels in the EEA	
Online Retail	
Lensway	[...]
Vision Direct	[...]
MyOptique Group (Glasses Direct, Lenson, Sunglasses Shop, Eyewearbrands, Netzoptiker, and Lensbest)	[...]
EyeBuyDirect	[...]

- (92) [...].

6.5.3.2. Luxottica

- (93) Luxottica owns a large retail network of nearly 8 000 stores worldwide (including franchised stores), the vast majority of which are however located outside the EEA.

At the worldwide level, Luxottica's retail networks include LensCrafters, Pearle Vision³⁹, OPSM, GMO, Sears Optical, Glasses.com, Laubman & Pank Optometrists, ILORI, Target Optical, Rayban.com, Oakley.com, and Sunglass Hut. In the EEA, Luxottica's retail network mainly consists of Sunglass Hut, a network specialised in sunglasses, and two optical retail chains in the UK and Italy.⁴⁰

- (94) In the UK, Luxottica operates David Clulow Opticians, a premium optical retailer, which it acquired in 2008. David Clulow's targeted marketing emphasises service, quality, and fashion. In addition to operating optical stores, David Clulow manages a number of designer sunglass concessions in upmarket department stores in the UK and Ireland. As of December 31, 2016, David Clulow operated 41 optical locations, [...].
- (95) In Italy, Luxottica operates Salmoiraghi & Viganò ("S&V"), which it acquired towards the end of 2016. S&V is an Italian premium optical retail brand, with approximately 431 stores, including S&V operated stores, S&V franchised stores, and Vistasi points of sales, which is S&V's "low cost" brand, operating both optical stores and optical concessions inside department stores.
- (96) As regards e-commerce, Luxottica has presence with the Sunglass Hut online business, only present in the UK, which sells Luxottica and third-party sunglasses; Ray-Ban.com; and Oakley.com.

7. RELEVANT MARKETS

- (97) The Transaction would lead to:
 - (a) Horizontal overlaps between the Parties' activities in:
 - i the wholesale of ophthalmic lenses
 - ii the wholesale of frames
 - iii the wholesale of sunglasses
 - iv the optical retail distribution
 - (b) Vertical links between:
 - i the supply by Essilor of ophthalmic substrate as raw material and Luxottica's lenses production,
 - ii the supply of Essilor of ophthalmic machines and consumables and Luxottica's lenses production,
 - iii the supply by Essilor of raw material for the production of eyewear and Luxottica's eyewear activities,
 - iv the supply by Essilor of lenses and Luxottica's retail activities
 - v the supply by Luxottica of frames and sunglasses and Essilor's retail activities.

³⁹ Pearle Vision is based in the US. The Pearle chain of opticians in Europe is now part of Grandvision.

⁴⁰ Luxottica runs also Sunglass Hut points-of-sale in department stores such as Galeries Lafayette, Harrods and Ka De We. These department store points-of-sale do not source lenses and are therefore not affected by the merger.

- (c) Conglomerate links between the Parties' activities in sales to optical retail stores of:
 - i ophthalmic lenses,
 - ii eyewear (frames and sunglasses),
 - iii ophthalmic machines, in particular table-top edgers, and
 - iv contact lenses.

(98) After discussing the relevant market definitions (Sections 7.1 and 7.2), this Decision will set out the framework for the competitive assessment (Section 8), followed by a presentation of market shares (Section 9) and the competitive assessment of the horizontal overlaps (Section 10), vertical links (Section 11) and conglomerate links (Section 12) that would be created by the Transaction.

7.1. Product market definitions

7.1.1. Wholesale supply of ophthalmic substrate

(99) The Commission takes the view that, in line with its previous findings⁴¹ and in line with the Parties' submissions, the market for ophthalmic lenses is separated from the market for ophthalmic substrate. In previous cases, the Commission distinguished between (a) sales of finished lenses to opticians/retailers for resale to the end consumer, and –further upstream– (b) sales of ophthalmic substrate to prescription laboratories⁴², which will process the substrate into lenses before supplying them to opticians. The Commission found that there is no demand-side substitutability between (a) and (b) since the products are found on different levels of the optical value chain and are used by different customer groups for different purposes. Furthermore, the Commission found that there is no supply-side substitutability since different equipment is required to produce ophthalmic substrate and ophthalmic lenses.

7.1.2. Wholesale supply of ophthalmic lenses

7.1.2.1. The Commission's past practice

(100) In a previous case⁴³, while leaving open the precise product market definition, the Commission carried out its competitive assessment on several sub-segments of the market for ophthalmic lenses. The Commission considered that the market for ophthalmic lenses can be sub-segmented by material (plastic and glass) and by the type of corrective design (single-vision, bi-/multifocal or progressive) in light of differences in prices, consumer preferences and specific customer needs.

(101) As regards the sub-segmentation of the market of finished ophthalmic lenses by distribution channel, in a previous decision⁴⁴, the Commission assessed the sales of finished lenses to independent opticians and retail chains as one market.

7.1.2.2. The Parties' views

(102) The Parties submit that it is appropriate to identify separate relevant markets for ophthalmic substrate and finished ophthalmic lenses, but do not consider that any

⁴¹ Case COMP/M.3670, *Zeiss/EQT/Sola JV*, Commission decision of March 3, 2005, paragraph 8.

⁴² Prescription laboratories can be independent, or operated by retail chains or lens manufacturers.

⁴³ Case COMP/M.3670, *Zeiss/EQT/Sola JV*, Commission decision of March 3, 2005, paras. 7-9.

⁴⁴ Case COMP/M.3670, *Zeiss/EQT/Sola JV*, Commission decision of March 3, 2005, para 8.

further sub-segmentation for the wholesale of ophthalmic lenses is appropriate, that is to say (i) by material (plastic and glass), (ii) by optical design, single-vision and multifocal that can be further sub-segmented between bi-/trifocal and progressive, and (iii) between sales to independent opticians and to optical retail chains.

- (103) As regards the sub-segmentation of the market for finished ophthalmic lenses by material (namely glass or plastic), the Parties submit that consumers now have a strong preference for plastic lenses (Essilor's sales of glass lenses in the EEA are negligible, totalling approximately [0-5]% of its overall sales) and most suppliers of plastic lenses also supply glass lenses suggests that the two materials are substitutable from both a demand and a supply side perspective.⁴⁵
- (104) As regards the sub-segmentation of the market for finished ophthalmic lenses by optical design (that is to say single-vision and multifocal that can be further sub-segmented between bi-/trifocal and progressive), the Parties consider that from a supply-side most lens manufacturer supply a full range of lens correction types and that from that perspective there is some supply-side substitutability. From a demand-side perspective, and though the Parties admit that single-vision and multifocal lenses do not fulfil the same purpose, the Parties submit that single-vision lenses are to some extent substitutable with multifocal lenses, given that a person with presbyopia can either take off the single-vision glasses when looking at distant objects or wear a different pair of glasses for distance. Thus, the Parties submit that the level of demand-side substitutability thus depends on consumer preferences, that is to say some prefer to aid presbyopia with single-vision glasses for reasons such as cost or aesthetic, etc. The Parties consider that demand-side substitutability is even greater between bi-trifocals and progressive lenses even if it varies between EEA Member States. In any case, 90% of the multifocal lenses sold in Europe are progressive lenses because they are viewed by consumers more aesthetic and comfortable.⁴⁶
- (105) As regards a sub-segmentation of the market for finished ophthalmic lenses by distribution channel (that is to say by (i) sales to optical retail chains and (ii) sales to independent opticians), the Parties consider that from a demand-side perspective, there is no material difference between the needs of optical retail chains and independent opticians. From a supply-side perspective (i) all lenses supplies can and do supply to both optical retails chains and independent opticians, (ii) the products supplied to both distribution channels are effectively the same, and (iii) supplying both does not require materially different infrastructure as the same logistics, customer service or sale efforts can be used to that end. Furthermore, except from optical retail chains providing only unbranded products, the end-consumer will have access to broadly the same products and services.

7.1.2.3. The Commission's assessment

- (106) The Commission considers that the relevant market is the market for the wholesale of finished ophthalmic lenses (including both clear and tinted lenses for reasons of supply-side substitutability).
- (107) As regards the sub-segmentation of that market by material (plastic and glass), plastic lenses represent more than 90% of the lens sales in each of the EEA countries

⁴⁵ Form CO, Section 6, paragraph 146.

⁴⁶ Form CO, Section 6, paragraph 148.

(and more than 98% in many EEA countries) with the exception of Romania where glass finished lenses represent 27% of sales.⁴⁷ As explained further in recital (210)(a), there are no indications that the market position of Essilor would differ to any significant extent between those two different market segments. Therefore, it can be left open whether plastic and glass lenses fall in the same product market since that distinction would not have any impact on the outcome of the competitive assessment carried out by the Commission in this Decision.

- (108) As regards the sub-segmentation of the market for finished ophthalmic lenses by optical design, a slight majority of optical retailers⁴⁸ answering to the market investigation consider that single-vision and multi-focal finished ophthalmic lenses are not substitutable in terms of their product characteristics, price, intended use and consumer preferences. The large majority of lens manufacturers⁴⁹ also consider that both are not substitutable from a supply-side perspective in light of the high costs and risks to be incurred for switching between selling single-vision and selling multifocal lenses in the EEA at short notice. Nevertheless, this distinction can be left open as it would not have any impact on the competitive assessment.
- (109) As regards the distinction between distribution channels (independent opticians/ retail chains), the Commission has in the past found with respect to fast-moving consumer goods that the difference between two distribution channels *"resides in the fact that the conditions of competition differ significantly on the two markets, as a consequence of which producers have to adapt their commercial and entrepreneurial policies to the different requirements of the two sales markets"*⁵⁰. When the Commission has identified separate markets for different channels of distribution, it has based such decisions on factors including the existence of distinct sales forces⁵¹, different product offerings⁵², price differences⁵³, different distribution methods⁵⁴ and different packaging^{55, 56}.
- (110) The market investigation confirmed that the vast majority of lens manufacturers offer different wholesale prices to retail chains and to independent opticians because of the quantity and type of products (that is to say branded, unbranded, private label) the

⁴⁷ Annex RFI 1, Q26.

⁴⁸ Questionnaire to customers in English, French, German, Italian, Spanish, Portuguese and Romanian, question 9.

⁴⁹ Questionnaire to competitors in lenses, question 10 and 11.

⁵⁰ Case COMP/M.12- *Varta Bosch*, Commission decision of July 13, 1991, para 13.

⁵¹ Case COMP/M.2665- *Johnson Professional Holdings DiverseyLever*, Commission decision of March 4, 2002, paras. 8-16.

⁵² Case COMP/M.6813- *McCain Foods Group Lutosa Business*, Commission decision of May 29, 2013, paras. 15-17.

⁵³ Case COMP/M.5411- *Johnson&Johnson Consumer France Vania Laboratories Polive*, Commission decision of February 18, 2009, paras. 12-13.

⁵⁴ Case COMP/M.5046-*Friesland Foods Campina*, Commission decision of February 17, 2008, paragraphs 199-206.

⁵⁵ Case COMP/M.5046-*Friesland Foods Campina*, Commission decision of February 17, 2008, paragraphs 1016-1017.

⁵⁶ In the Post Office/TPG/SPPL case, the Commission identified separate relevant markets according to the type of customers mainly because one group of customers required more services, in addition to being able to negotiate lower prices, Case COMP/M.1915- *The Post Office TPG SPPL*, Commission decision of March 13, 2001, paragraph.35. Similarly, in the HP/Compaq case, the Commission differentiated between the two distribution channels because the different customers groups were characterized by "different purchasing patterns, product requirements and use of their equipment", Case COMP/M.2609- *HP Compaq*, Commission decision of January 31, 2002, paragraph 13.'

two customer groups buy.⁵⁷ In addition, the majority of lenses manufacturers offer different delivery conditions and services to both customer groups⁵⁸ and sometimes have different positions in sales to retail chains and independents⁵⁹. The Commission will, however, leave this distinction open as it would not have any impact on the competitive assessment.

- (111) Considering that the production process of ophthalmic lenses that are used for sunglasses is the same as for the ophthalmic lenses that are used for frames with an additional step of tinting, the wholesale market for finished lenses includes both the prescription lenses for frames and those for sunglasses.
- (112) In conclusion, for the purpose of this Decision, the Commission will carry out its competitive assessment with reference to the market for the wholesale of finished ophthalmic lenses as a whole but will leave open the possibility that the market should be further segmented, as mentioned below, because, in any narrower segmentation, the competitive assessment indicates that the horizontal overlaps would be small and the vertical and conglomerate links would not lead to foreclosure of competitors:
- i by material (glass or plastic);
 - ii between (i) single-vision and (ii) multifocal and, within multifocal, bi-/trifocal and progressive ophthalmic lenses;
 - iii between sales to optical retail chains and sales to independent opticians.

7.1.3. *Wholesale supply of frames*

7.1.3.1. The Commission's past practice

- (113) In past cases⁶⁰, the Commission has assessed the wholesale market for frames separately from the retail distribution levels without making any further segmentation based on different categories of frames.

7.1.3.2. The Parties' views

- (114) The Parties submit that the wholesale market of frames and the wholesale market of sunglasses are separate product markets and that any further sub-segmentation is not appropriate.
- (115) As regards a sub-segmentation of the prescription frames markets by wholesale or retail price, the Parties submit that such a sub-segmentation is not meaningful since, even within brands, there is a wide variety of models that cover relatively broad price ranges since retail optical stores typically purchase a wide variety of models and styles. The Parties also submit that there is no clear and obvious break point on the basis of which one could delineate two or more separate product markets. [...] threshold seems arbitrary since it is not possible to identify an objective cut-off price valid for all manufacturers. In addition, there is a price continuum across all products from the demand-side (namely optical retail shops).
- (116) As regards a sub-segmentation into branded and unbranded frames, the Parties submit that all products belong to the same market and that a sub-segmentation is not

⁵⁷ Questionnaire to competitors in lenses (Q3), question 16.1.

⁵⁸ Questionnaire to competitors in lenses (Q3), question 16.2 and 16.3.

⁵⁹ Questionnaire to competitors in lenses (Q3), question 18.

⁶⁰ Case COMP/M.5693, Hal Holding Safilo group, Commission decision of December 11, 2009, para 7.

appropriate. They explain that switching from the manufacturing of a branded to an unbranded product could be made instantly and without any meaningful costs (and vice versa). From the supply-side again, offering branded or unbranded products is a business decision, which at most requires an adjustment of the distribution and marketing organisation. The Parties consider that there is not necessarily a difference in quality between branded and unbranded frames and that there is not always a difference in price, for example unbranded products may be traded in a higher-price range (for example EUR 99-150) and, vice-versa, branded products may be marketed in a lower price range (for example EUR 10-25). There is also no difference considering the sale channels of these products, since opticians normally sell both branded and unbranded frames. The only difference lies in the marketing and advertising costs, which are linked to the expectations of the brand licensors and other interests, regardless of the quality of the product itself. Not all brands require massive investment in marketing and low-end brands are not comparable from that perspective to higher-end brands.

- (117) As regards the sub-segmentation by type of customer, that is to say (i) sales to retail chains and (ii) sales to independent opticians, the Parties emphasise that this difference is not based on meaningful elements. From the supply-side, the product sold to the two distribution channels is the same, the same distribution network can be used and the same services are offered. Suppliers who mainly focus on independent opticians can easily switch to retail chains without having to make a significant investment depending on the overall capacity of the supplier. From the demand-side, the only meaningful difference lies in the volume purchased, which allows retail chains to extract better economic terms. However, independent opticians can mitigate this difference and obtain similar economic conditions by belonging to a buying group and thus enhancing their bargaining power. This does not justify a separate market definition as it simply reflects the economies that can be achieved by purchasing higher volumes. There are no other clear differences in the purchase patterns, services and products supplied.

7.1.3.3. The Commissions' assessment

- (118) The Commission takes the view that, in line with its previous findings and in line with the Parties' submissions, the market for the wholesale of frames is separate from the market for the wholesale of sunglasses. There is no demand-side substitutability between the products since opticians will have to meet the demand of the final customer who either requires clear or tinted spectacles. Furthermore, brands play a larger role in sunglasses than in frames. While there may be a degree of supply-side substitutability, the suppliers' respective positions in frames and sunglasses do tend to diverge with different suppliers having different strengths in either frames or sunglasses, also in line with their product or brand portfolio.
- (119) As regards the sub-segmentation of the wholesale market for optical frames by price point, the Commission notes that [...]. Taking this segmentation as a starting point, the Commission has asked about the substitutability between those categories of frames in the market investigation. The vast majority of the frames and sunglasses manufacturers answering to the market investigation consider that the eyewear sold to final consumers in a lower price bracket (between [...]) and in a higher price bracket (above [...]) are not substitutable because of the different production processes, marketing strategies and customer preferences. The responding manufacturers mainly compete in the segment of eyewear above [...] and consider that they cannot enter the lower price bracket at short notice without incurring

significant additional risks and costs.⁶¹ The Commission will, however, leave this distinction open as it does not have any impact on the competitive assessment.

- (120) As regards the sub-segmentation of the wholesale market for optical frames between branded and unbranded products, the clear majority of the respondents to the market investigation consider that the two types of products are not substitutable.⁶² The vast majority of the eyewear manufacturers answering the market investigation consider that branded and unbranded frames or sunglasses are not substitutable in terms of product characteristics, price, intended use and consumer preferences. In addition, the relative majority of the responding eyewear manufacturers focus mainly on the branded eyewear and cannot easily and at short notice reposition themselves and sell unbranded frames or sunglasses without incurring significant additional costs or risks.⁶³ The Commission will, however, leave this distinction open as it does not have any impact on the competitive assessment.
- (121) As regards the sub-segmentation of the wholesale market for optical frames by distribution channel (retail chains or independent opticians), on the one hand the majority of the responding eyewear producers claim that they offer similar prices to the two distribution channels⁶⁴ and around one third of the respondents claim that they offer similar delivery conditions⁶⁵ and services⁶⁶ to both optical retail chains and independent opticians. On the other hand, several respondents referred to differences in delivery conditions and the market positions of the frames suppliers differ to a certain extent between sales to retail chains and sales to independent opticians. The Commission will, however, leave this distinction open as it does not have any impact on the competitive assessment.
- (122) In conclusion, for the purpose of this Decision, the Commission will thus carry out its competitive assessment on the market for the wholesale of frames and leave open whether it should be further segmented, as mentioned below, because in any narrower segmentation, the competitive assessment indicates that the horizontal overlaps would be small and the vertical and conglomerate links would not lead to the foreclosure of competitors:
- i by price point (above and below [...]);
 - ii between branded and unbranded frames;
 - iii between sales to optical retail chains and sales to independent opticians.

7.1.4. Wholesale supply of sunglasses

7.1.4.1. The Commission's past practice

- (123) In past cases⁶⁷, the Commission has assessed the wholesale market for sunglasses separately from the retail distribution levels without making any further segmentation based on different categories of sunglasses.

⁶¹ Questionnaire Q4, questions 12, 13 and 14. Questionnaire Q1, question 42. Questionnaire Q2, question 15.

⁶² Questionnaire Q8, question 28.

⁶³ Questionnaire Q4, question, questions 14, 19, 20, 21, 23.

⁶⁴ Questionnaire Q4, question 25.1.

⁶⁵ Questionnaire Q4, question 25.2.

⁶⁶ Questionnaire Q4, question 25.3.

⁶⁷ Case COMP/M.5693, Hal Holding Safilo group, Commission decision of December 11, 2009, para 7.

- (124) In addition, some national competition authorities have analysed the wholesale supply of sunglasses. The UK competition authority concluded in *Luxottica/Oakley*⁶⁸ and *FGX Europe*⁶⁹ Limited/Framed Vision Limited that sunglasses formed separate wholesale and retail supply markets. In *Luxottica/Oakley*, the UK competition authority left open whether the wholesale market should be further sub-segmented based on price (for example premium sunglasses), style (for example fashion-oriented vs sport-performance sunglasses), branding (that is to say branded vs non-branded sunglasses) and consumer positioning (for example luxury, fashion, classic or sport sunglasses).⁷⁰ In *FGX Europe*, the UK competition authority has assessed the wholesale market for sunglasses as a whole without further sub-segmentation. The Italian competition authority concluded in *Luxottica/Salmoiraghi&Vigano*⁷¹ and *Luxottica/Bausch & Lomb*⁷² that sunglasses formed a separate wholesale and retail supply market without further sub-segmentations.

7.1.4.2. The Parties' views

- (125) In relation to the wholesale supply of sunglasses, the Parties consider that no further sub-segmentation is appropriate and put forward arguments similar to those described in recitals (114) to (117) in relation to the wholesale supply of frames.

7.1.4.3. The Commissions' assessment

- (126) For the purpose of this decision and for the reasons set out in recitals (118) to (121) in relation to the wholesale supply of frames, the Commission leaves open whether the wholesale market for sunglasses should be further sub-segmented by (i) price point, between (ii) branded and unbranded sunglasses or by (iii) distribution channel, as such segmentations do not have any impact on the competitive assessment.
- (127) In conclusion, for the purpose of this decision, the Commission will thus carry out its competitive assessment on the market for the wholesale of sunglasses and leave open whether it should be further segmented because in any narrower segmentation, the competitive assessment indicates that that the horizontal overlaps would be small and the vertical and conglomerate links would not lead to foreclosure of competitors:
- i by price point (above and below [...]);
 - ii between branded and unbranded sunglasses;
 - iii between sales to optical retail chains and sales to independent opticians.

7.1.5. *Ophthalmic machines and consumables*

7.1.5.1. The Commissions' past practice

- (128) The Commission has never assessed the ophthalmic machines sector in a detailed manner. The Commission only referred once to the market for optical coating

⁶⁸ See, case *Luxottica/Oakley*, OFT decision of October 12, 2007, para 7.

⁶⁹ See, case ME/4814/10, *FGX Europe Limited/Framed Vision Limited*, OFT decision of February 17, 2011, para 9 and 10.

⁷⁰ See, case *Luxottica/Oakley*, OFT decision of October 12, 2007, paras 11, 12, 13 and 51.

⁷¹ See C11851, *Luxottica Group Salmoiraghi&Vigano Holding, Salmoiraghi & Vigano*, Italian Competition Authority Decision N. 24143 of December 19, 2012.

⁷² See Case C3533, *Luxottica Bausch & Lomb*, Italian Competition Authority Decision N. 7275 of June 9, 1999.

machines which were considered to fall into a separate product market without further sub-segmentation.⁷³

- (129) At the national level, the Spanish competition authority (“CNMC”) assessed and defined in a merger case the market for ophthalmic machines according to their function within the manufacturing and sale process of lenses, thereby considering (i) surfacing machines; (ii) coating machines as well as (iii) industrial glazing machines and (iv) table-top edgers.⁷⁴ The Spanish authority has left open the exact definition of the market for sale of consumables and assessed the transactions concerned in the categories corresponding to the types of products the merging parties distributed in Spain.

7.1.5.2. The Parties' views

- (130) The Parties consider that the Transaction should be assessed in the markets for the manufacture and sale of (i) surfacing machines, (ii) coating machines, (iii) industrial glazing machines and (iv) table-top edgers. They generally submit that the exact market definitions for machines may be left open however.
- (131) The Parties consider that consumables for machines constitute one single market given the large variety of existing consumables and the relative ease with which suppliers may manufacture and distribute all types of consumables.

7.1.5.3. The Commission's assessment

- (132) For the purpose of this Decision, the Commission leaves open whether the market of ophthalmic machines should be further split between (i) surfacing machines, (ii) coating machines and (iii) industrial glazing machines and (iv) table-top edgers considering that the transaction does not raise competition concerns on any of these alternative markets.
- (133) The large majority of ophthalmic machine manufacturers⁷⁵ and of their customers⁷⁶ that have replied to the Commission’s market investigation agree with a distinction of markets according to the main categories of ophthalmic machines, which correspond to the three main steps of this manufacturing process required to turn a substrate into a lens in a laboratory environment, namely (i) surfacing (ii) coating and (iii) glazing. Glazing machines can be subdivided into i) industrial edging machines and ii) table-top edgers. One customer considers that industrial edging machines are on a different market than the table-top edgers because of the different customer base, characteristics and prices. The industrial glazing machines have a higher capacity, are more expensive and are sold to large distributors and retail chains whereas the table-top edgers machines are sold to optical stores.
- (134) For the purpose of this decision, the Commission leaves open the definition of the relevant product market of consumables considering that the transaction hardly affects this market as Luxottica’s purchases of such materials are minimal.

⁷³ Case COMP/M.3670, *Zeiss/EQT/Sola JV*, Commission decision of March 3, 2005, paragraph 12.

⁷⁴ Case C-0094/08, *Essilor International/Satisloh Holding*, Spanish Competition Authority Decision of October 8, 2008; and Case C-0131/09, *Essilor International/Signet Armorlite*, Spanish Competition Authority Decision of February 11, 2009.

⁷⁵ Questionnaire to competitors in ophthalmic machines (Q5), question 5.

⁷⁶ Questionnaire to customers in ophthalmic machines (Q5bis), question 5.

7.1.6. *Optical retail*

7.1.6.1. The Commission's past practice

- (135) In past cases⁷⁷, 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.
- (136) At the national level, the Italian competition authority⁷⁸ defined the retail market for optical products without further segmentation. The UK competition authority⁷⁹ while leaving open the precise definition of the relevant product market in retail distribution of frames and sunglasses considered that a distinction between the different retail distribution channels is possible.

7.1.6.2. The Parties' views

- (137) The Parties submit that the relevant product market for retail distribution of optical products should be broadly defined and include all retail sales for eye protection (sunglasses and blue light readers) and eye correction (prescription frames and lenses, readers and contact lenses), as well other optical related products and services (such as cleansing liquids).
- (138) The Parties further submit that the market should not be segmented by distribution channel between brick-and-mortar and online retail. The Parties submit 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. In addition, the Parties consider that in view of their marginal presence on the retail market, it is unnecessary to further sub-segment the retail market.

7.1.6.3. The Commissions' assessment

- (139) For the purpose of this Decision, the Commission will carry out its competitive assessment on the optical retail market and will leave open whether that market should be further segmented between (i) brick and mortar and (ii) online sales, because such a segmentation does not have any impact on the competitive assessment.

7.1.7. *Contact lenses*

7.1.7.1. The Commission's past practice

- (140) The Commission has recently analysed contact lenses markets as a product market separated from ophthalmic lenses. Furthermore, the Commission considered that a potential distinction could be made between hard and soft contact lenses, both from a demand-side perspective due to differences in comfort or intolerance to soft contact lenses and from a supply-side perspective due to the use of different raw materials. The precise market delineation was however left open in that respect⁸⁰.

⁷⁷ Case COMP/M.5693, *Hal Holding/Safilo Group*, Commission decision of December 11, 2009, para 7.

⁷⁸ Case C11851, *Luxottica Group-Salmoiraghi & Vigamo Holding Salmoiraghi & Vigano*.

⁷⁹ Case ME/3242/07, *Luxottica Oakley*, paras 14 and 15.

⁸⁰ Case M.8237 – *Johnson & Johnson/Abbott Medical Optics*, Commission decision of 21 February 2017, paragraph 19.

7.1.7.2. The Commissions' assessment

- (141) Contact lenses are alternative solutions to ophthalmic lenses for correcting visual impairments, similar to refractive (laser) eye surgery, and therefore do not fall in the same relevant product market as ophthalmic lenses. First, from the demand-side perspective, there is only a limited degree of substitutability between contact lenses and ophthalmic lenses. While both resolve visual impairments, such as myopia, hyperopia and presbyopia, there are significant differences between contact lenses and ophthalmic lenses in terms of 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.
- (142) 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.

7.2. Geographic market definitions

7.2.1. Wholesale supply of ophthalmic substrate

7.2.1.1. The Commission's past practice

- (143) In a previous case, the Commission found that the market for supply of ophthalmic substrate was characterised by a low level of transportation costs and the multinational presence of all major competitors. Moreover, local presence was not a prerequisite to compete on that market. While the precise geographic market definition for the supply of ophthalmic substrate was ultimately left open, the Commission assessed the competitive effects of the transaction for ophthalmic substrate at both the worldwide and EEA-wide level.⁸¹

7.2.1.2. The Parties' views

- (144) The Parties agree that the geographic market for ophthalmic substrate is likely to be at least EEA-wide in scope considering that from a supply-side perspective the producers of ophthalmic lenses have relocated their production facilities to Asia and are outsourcing their requirements to low-cost countries in Asia and from a demand side perspective, large prescription laboratories purchase the ophthalmic substrate directly from producers in Asia.

7.2.1.3. The Commission's assessment

- (145) In line with its previous decisional practice, the Commission considers for the purposes of this decision that the market for ophthalmic substrate is EEA-wide or wider in scope.

⁸¹ Case COMP/M.3670, Zeiss/EQT/Sola JV, Commission decision of March 3, 2005, paragraph 14.

7.2.2. *Wholesale supply of ophthalmic lenses*

7.2.2.1. The Commission's past practice

- (146) In a past case⁸², the Commission considered that the geographic market for ophthalmic lenses was national in scope considering the focus of opticians on domestic sources of supply because they value local sales and services.
- (147) The UK competition authority assessed the competitive effects of a merger in the area of ophthalmic lenses at the national level (UK) but left open the precise geographic market definition.⁸³

7.2.2.2. The Parties' views

- (148) The Parties submit that the market for the wholesale supply of ophthalmic lenses is EEA-wide or at least national. They point to (i) the use by lens manufacturers of their central locations in the EEA to serve customers in different countries; (ii) the presence of non-local players at optical fairs; (iii) the existence of large clients with worldwide- or at least European wide- supply strategy (at least for finished single-vision lenses); and (iv) the fact that some chains or buying groups create a unique European-wide catalogue for their members or affiliated shops.⁸⁴ In addition, the Parties developed these arguments⁸⁵ and submitted that the retail chains negotiate with lens suppliers for the supply of their shops in the EEA and not only at national level. For example, Essilor supplies [...]. In addition, buying groups started to organise themselves at European level to exchange best practices, such as the cooperation of the French ATOL, the Spanish CIOSA and the Italian Vision Group with the European forum, Ineurop platform. Therefore, the Parties consider that the wholesale of finished lenses is widening beyond a purely national dimension to an EEA-wide dimension.

7.2.2.3. The Commission's assessment

- (149) The results of the market investigation give indications that the market for finished lenses is national in geographic scope. First, as regards the basic demand characteristics, there are national preferences and different brand awareness across the countries in the EEA and the lens producers need to have a local presence in order to have a market presence. The large majority of the customers responding to the market investigation consider the local presence in terms of distribution and local sales forces of lens producers as an important factor when choosing the supplier.⁸⁶ All competitors except one lens competitor answering the market investigation consider that it is important to have a local presence (at least local sales staff) at the national level in order to sell ophthalmic lenses because opticians value local sales and services. Depending on the country, the lens producers have either a direct distribution presence at national level (for example locating the warehouses at national level) or indirectly they use existing third-party distribution channels in order to ensure short term delivery services and the availability of stocks.⁸⁷ Second,

⁸² Case COMP/M.3670, Zeiss/EQT/Sola JV, Commission decision of March 3, 2005, para 13.

⁸³ Case ME/4732/10, Essilor/Shamir, OFT decision of December 20, 2010, para 26.

⁸⁴ Form CO, paragraph 152.

⁸⁵ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017 paragraphs 67-68.

⁸⁶ Questionnaire to customers- Q8a (EN), Q8b (FR), Q8c (ES), Q8d (IT), Q8e (PT), Q8f (DE), Q8g (RO) – question 11.

⁸⁷ Questionnaire to competitors in lenses- (Q3), question 22, question 22.2.

as regards the current geographic pattern of lens purchases of retail chains, the market investigation revealed that the large majority of the respondent optical retail chains negotiate and conclude contracts with suppliers of lenses on a national basis and only a minority on an EEA-wide level.⁸⁸ This has been confirmed by the large majority of lens producers responding to the market investigation.⁸⁹ Furthermore, the market positions of the lens suppliers differ considerably between countries indicating that conditions of competition differ between Member States. Finally, as ophthalmic lenses are medical devices, they are subject to various regulations and reimbursement schemes which can and do vary across Member States.

- (150) For the purpose of this Decision and for the wholesale supply of ophthalmic lenses, the Commission will assess the effects of the transaction at national level considering that (i) Essilor and the main lens producers have a local presence in the EEA Member States in order to deliver quickly the lenses and to provide sales services to opticians; that (ii) the major lens competitors develop national strategies depending on the reimbursement and insurance policies that differ across countries and that (iii) the structure of the lens market is mainly dominated by independent opticians or local chains that purchase lenses at national level. This is also confirmed by the market investigation and is in line with past practice of the Commission⁹⁰.
- (151) The Commission acknowledges that there are pure importers of lenses from Asia with no local presence at the national level within the EEA but their market significance remains limited. In addition, the large retail optical chains that purchase the lenses at EEA-wide level represent only a small fraction of the total lenses purchased by the other optical stores at national level.
- (152) Therefore, the Commission will assess the effects of the Transaction on the market for the wholesale supply of ophthalmic lenses at national level.

7.2.3. *Wholesale supply of frames*

7.2.3.1. The Commission's past practice

- (153) In a previous decision, the Commission considered that the market for the wholesale supply of frames can be supra-national or EEA-wide and ultimately left the precise market definition open.⁹¹
- (154) Similarly the UK⁹² and Italian⁹³ competition authorities considered that the market for the wholesale supply of frames can be at least EEA-wide in scope and left the precise market definition open.

7.2.3.2. The Parties' views

- (155) The Parties submit that the geographic market for the wholesale supply of frames is at least EEA-wide considering the high level of imports in the EEA from the rest of the world (especially from Asia), the centralised logistics and distribution

⁸⁸ Questionnaire to customers – retail chains (Q1), question 12.

⁸⁹ Questionnaire to competitors in lenses – (Q3), question 19.

⁹⁰ Case COMP/M.3670, *Zeiss/EQT/Sola JV*, Commission decision of March 3, 2005, para 13.

⁹¹ Case COMP/M.5693, *Hal Holding/Safilo Group*, Commission decision of December 11, 2009, paras. 8 and 9.

⁹² Case *Luxottica/Oakley*, OFT decision of October 12, 2007, paras 16-18.

⁹³ C11851, *Luxottica Group Salmoiraghi & Vigano Holding, Salmoiraghi & Vigano*, Italian Competition Authority Decision N. 24143 of December 19, 2012.

organisation of Luxottica and other major competitors, low transport costs and the broadly homogeneous prices throughout the EEA countries.

7.2.3.3. The Commission's assessment

- (156) The market investigation gives indications that the geographic market for the wholesale supply of frames is national in scope. First, as regards the basic demand characteristics, there are national preferences and different levels of brand awareness across countries in the EEA⁹⁴ and the frames producers need to have a local presence in order to supply their products.⁹⁵ Second, as regards the current geographic pattern of frames purchases by retail chains, the market investigation revealed that the large majority of the respondent optical retail chains⁹⁶ and a relative majority of eyewear producers⁹⁷ negotiate and conclude contracts with frames and sunglasses suppliers on a national basis and only a minority on an EEA-wide level.
- (157) There are, however, also indications that the geographic market for the wholesale supply of frames is EEA wide. The Commission acknowledges that Luxottica and its competitors have their manufacturing facilities located mainly outside the EEA and supply the 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. Brand license agreements are generally granted on EEA-wide or a worldwide basis by each licensor to a single supplier. [...].
- (158) For the purpose of this decision, the Commission will assess the effects of the Transaction on the wholesale supply of frames at both national and EEA level and leaves open the precise definition of the geographic market, as under any alternative market definition, the Transaction would not significantly impede effective competition in the internal market or a substantial part of it.

7.2.4. Wholesale supply of sunglasses

7.2.4.1. The Commission's past practice

- (159) In a previous decision, the Commission considered that market for the wholesale supply of sunglasses can be supra-national or EEA-wide and ultimately left the precise market definition open.⁹⁸
- (160) Similarly the UK⁹⁹ and Italian¹⁰⁰ competition authorities considered that the market for the wholesale supply of sunglasses can be at least EEA-wide in scope and left the precise market definition open.

⁹⁴ The majority of retail chains responding to the market investigation consider that there consumer preferences and brand awareness for frames and sunglasses vary significantly across countries, Questionnaire to customers-retail chains Q1, question 44.

⁹⁵ The majority of the customers responding to the market investigation consider the local presence of frames and sunglasses producers in terms of local sales force as an important factor when choosing their supplier, Questionnaire to customers- Q8a (EN), Q8b (FR), Q8c (ES), Q8d (IT), Q8e (PT), Q8f (DE), Q8g (RO) – questions 30 and 31.

⁹⁶ Questionnaire Q(1), question 43.

⁹⁷ Questionnaire Q (4), question 28.

⁹⁸ Case COMP/M.5693, *Hal Holding/Safilo Group*, Commission decision of December 11, 2009, paras. 8 and 9.

⁹⁹ Case *Luxottica/Oakley*, OFT decision of October 12, 2007, paras 16-18.

¹⁰⁰ C11851, *Luxottica Group Salmoiraghi & Vigano Holding, Salmoiraghi & Vigano*, Italian Competition Authority Decision N. 24143 of December 19, 2012.

7.2.4.2. The Parties' views

- (161) Similarly to the considerations outlined in recital (155) in relation to frames, the Parties submit that the market for the wholesale supply of sunglasses is at least EEA wide and possibly worldwide in scope.

7.2.4.3. The Commission's assessment

- (162) For the same reasons as explained in Section 7.2.3.3 in relation to frames, the Commission will assess the effects of the Transaction on the market for the wholesale supply of sunglasses at both national and EEA level, leaving open the precise definition of the geographic market, as under any alternative market definition, the Transaction would not significantly impede effective competition in the internal market or a substantial part of it.

7.2.5. *Ophthalmic machines and consumables*

7.2.5.1. The Commission's past practice

- (163) In a previous case, the Commission found that the market for optical coating machines was worldwide in scope as the manufacturers of these machines serve their customers on a worldwide basis from a single plant.¹⁰¹
- (164) Likewise, the Spanish competition authority considered that the markets for the manufacture and sale of ophthalmic machines were worldwide in scope.¹⁰² However, the Spanish competition authority also carried out its assessment of the market for table-top edgers at the national level because those are intended for opticians and optical retail shops.
- (165) As regards the geographic market for consumables, the Spanish competition authority left the precise definition open and assessed the transactions at hand in its precedents at national, EEA and global level.¹⁰³ In a subsequent case involving Essilor/Signet, the Spanish authority considered that the market for consumables was worldwide in scope.

7.2.5.2. The Parties' views

- (166) As regards the geographic market of ophthalmic machines, the Parties consider that it should be defined at worldwide level. Several arguments are put forward by the Parties. First, the suppliers of these machines and prescription laboratories often enter into global supply agreements and do not require any local presence to deliver the machines. After-sale services are not necessarily procured by laboratories from their original suppliers as they instead resort to their own service centres or to third-party providers. Second, all major suppliers of ophthalmic machines are active in multiple countries and sell cross-countries. Third, transportation costs are not significant compared to the price of the machines. Fourth, exports from the EEA account for a significant share of the total sales of ophthalmic machines at worldwide level.

¹⁰¹ Case COMP/M.3670, *Zeiss/EQT/Sola JV*, Commission decision of March 3, 2005, paragraph 15.

¹⁰² Case C-0094/08, *Essilor International/Satisloh Holding*, CNMC decision of October 8, 2008, page 11-12; Case C-0131/09, *Essilor International/Signet Armorlite Inc.*, CNMC decision of February 11, 2009.

¹⁰³ Case C-0094/08, *Essilor International/ Satisloh Holding*.

- (167) Considering that similar considerations apply to table-top edgers, the Parties submit that the geographic market of those machines is also worldwide. However, the Parties acknowledge that those machines are sometimes sold to retailers and the retail markets are national in scope. Nevertheless, the table-top edgers can also be sold to prescription laboratories that are not located in every country. Manufacturers of table-top edgers are situated worldwide and do not have manufacturing facilities in every country that they serve.
- (168) As regards the optical consumables, the Parties submit that the relevant geographic market is worldwide in scope for similar reasons as set out in recital (166).

7.2.5.3. The Commission's assessment

- (169) The market investigation gives indications that the geographic scope of ophthalmic machines is worldwide considering that these machines are shipped worldwide from few production sites located within and outside the EEA with low transport costs.¹⁰⁴
- (170) For the purpose of this Decision, the Commission will consider the market for ophthalmic machines and table-top edgers at least EEA-wide considering that from a demand side the needs are similar regardless of the location of the customer within the EEA and from a supply side the manufacturers are situated globally and ship the machines from their production locations with low transport costs. However, the Commission will leave open the precise market delineation as under the alternative plausible market definitions the Transaction would not significantly impede effective competition in the internal market or a substantial part of it.
- (171) As regards consumables and for the same reasons as those set out in recital (170) for ophthalmic machines, the Commission will consider the geographic market to be at least EEA-wide in scope, if not worldwide.

7.2.6. *Optical retail*

7.2.6.1. The Commission's past practice

- (172) In a previous case, the Commission considered the geographic market for the retail of prescription frames and sunglasses to be national or wider because of the existence in each country of optical franchises and chains which results in a substantial national wide uniformity but left ultimately the market definition open.¹⁰⁵

7.2.6.2. The Parties' views

- (173) The Parties submit that the geographic market of ophthalmic products aimed to correct (lenses, frames and contact lenses) or to protect the eyes (sunglasses) as well as of the optical related products (for example cleansing liquids) is at least national.
- (174) In eyewear retail, the parties agree that the different reimbursement and insurance policies at national level and the national regulations of opticians/optometrists profession lead to the conclusion that the optical retail should be defined at national level.

¹⁰⁴ Questionnaire to competitors in ophthalmic machines (Q5), question 6 and questionnaire to customers in ophthalmic machines (Q5bis), question 6.

¹⁰⁵ Case COMP/M.5693, Hal Holding/Safilo Group, Commission decision of December 11, 2009, para 11.

7.2.6.3. The Commission's assessment

- (175) For the purpose of this Decision, the Commission will assess 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 has indicated that optical retailers tend to operate at national level and that those that have an international presence tend to operate under retail brands that vary among countries. In addition, the Commission has found no indications that a significant number of retail customers purchase their optical goods across borders. This is mainly because of the need for return visits to the optical retailer and the requirement to comply with procedures for the reimbursement of optical costs in the customer's country.

7.2.7. *Contact lenses*

- (176) The Commission has recently 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. The precise market delineation was however left open¹⁰⁶.
- (177) For the purposes of this Decision, the Commission will consider the contact lenses markets 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 conglomerate and vertical links are minimal under both alternative market definitions.

8. **FRAMEWORK FOR THE COMPETITIVE ASSESSMENT**

- (178) Article 2 of the Merger Regulation provides that the Commission has to appraise concentrations within the scope of the Merger Regulation with a view to establishing whether or not they are compatible with the internal market. For that purpose, the Commission must assess, pursuant to Article 2(2) and (3), whether or not a concentration would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the common market or a substantial part of it.
- (179) The Commission's assessment of this Transaction focuses on (i) horizontal non-coordinated effects due to the elimination of actual and potential competition, (ii) vertical effects due to the creation or of vertical links between the Parties as well as (iii) conglomerate non-coordinated effects due to the combination of complementary products of the Parties. The framework for the Commission's assessment is set out in Sections 8.1, 8.2 and 8.3 respectively.

8.1. **Horizontal non-coordinated effects**

- (180) The Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")¹⁰⁷ distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may

¹⁰⁶ Case M.8237 – Johnson & Johnson/Abbott Medical Optics, Commission decision of 21 February 2017, paragraph 22.

¹⁰⁷ OJ C 31, 5.2.2004, p. 5.

significantly impede effective competition, namely non-coordinated and coordinated effects.

- (181) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger¹⁰⁸.
- (182) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant 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 if 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 those factors need to be present to make significant non-coordinated effects likely and this is not an exhaustive list¹⁰⁹.
- (183) Furthermore, in accordance with the Horizontal Merger Guidelines, a merger with a potential competitor can have horizontal anti-competitive effects in two situations: (i) where the potential competitor constrains the behaviour of firms active in the market, notably when the potential competitor possesses assets that could easily be used to enter the market without incurring significant sunk costs or (ii) where the merging partner is very likely to incur the necessary sunk costs to enter the market in a relatively short period of time after which it would constrain the behaviour of firms currently active in the market.¹¹⁰
- (184) For the merger to have significant anti-competitive effects, two basic conditions must be fulfilled. First, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow to become an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission reach such a conclusion. Second, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.¹¹¹

8.2. Vertical non-coordinated effects

- (185) Vertical mergers involve companies operating at different levels of the same supply chain. For instance, a vertical merger occurs when a manufacturer of a certain product merges with one of its distributors.
- (186) Pursuant to the Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the “Non-Horizontal Merger Guidelines”)¹¹², vertical mergers do not entail the loss

¹⁰⁸ Horizontal Merger Guidelines, paragraph 24.

¹⁰⁹ Horizontal Merger Guidelines, paragraph 26.

¹¹⁰ Horizontal Merger Guidelines, paragraph 59.

¹¹¹ Horizontal Merger Guidelines, paragraph 60.

¹¹² OJ C 265, 18.10.2008, p. 6.

of direct competition between merging firms in the same relevant market and provide scope for efficiencies.

- (187) However, there are circumstances in which vertical mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure¹¹³.
- (188) 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 base¹¹⁴.
- (189) Pursuant to the Non-Horizontal Merger Guidelines, 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 merger¹¹⁵.
- (190) For input foreclosure to be a concern, the Merged Entity should have a significant degree of market power in the upstream market. Only when the Merged Entity has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market¹¹⁶.
- (191) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and 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 which in turn, may raise 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 allow the Merged Entity profitably to establish higher prices on the downstream market¹¹⁷.
- (192) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground¹¹⁸.

8.3. Conglomerate non-coordinated effects

- (193) Conglomerate mergers consist of mergers between companies that are active in closely related markets, for instance suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use¹¹⁹.

¹¹³ Non-Horizontal Merger Guidelines, para 18.

¹¹⁴ Non-Horizontal Merger Guidelines, para 30.

¹¹⁵ Non-Horizontal Merger Guidelines, para 31.

¹¹⁶ Non-Horizontal Merger Guidelines, para 35.

¹¹⁷ Non-Horizontal Merger Guidelines, para 58.

¹¹⁸ Non-Horizontal Merger Guidelines, para 61.

¹¹⁹ Non-Horizontal Merger Guidelines, paragraph 91.

- (194) Pursuant to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to any competition problems.¹²⁰ However, foreclosure effects may arise when the combination of products in related markets may confer on the Merged Entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices¹²¹.
- (195) The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the Merged Entity and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good)¹²².
- (196) Within bundling practices, a distinction is also made between pure bundling and mixed bundling. In the case of pure bundling the products are only sold jointly in fixed proportions. With mixed bundling the products are also available separately, but the sum of the stand-alone prices is higher than the bundled price¹²³.
- (197) Tying can take place on a technical or contractual basis. For instance, technical tying occurs when the tying product is designed in such a way that it only works with the tied product (and not with the alternatives offered by competitors).
- (198) While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the Merged Entity allowing it to increase prices or deteriorate supply conditions in other ways¹²⁴.
- (199) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals¹²⁵, second, whether it would have the economic incentive to do so¹²⁶ and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers¹²⁷. In practice, these factors are often examined together as they are closely intertwined.

9. MARKET SHARES

- (200) The markets that would be affected by the Transaction are primarily the markets for the wholesale of lenses, frames and sunglasses. Section 9.1 will present the Parties' market shares in those markets by explaining the methodology used. Section 9.2 will present a market share overview for the above markets and for ophthalmic machines, optical retail and contact lenses.

¹²⁰ Non-Horizontal Merger Guidelines, paragraph 92.

¹²¹ Non-Horizontal Merger Guidelines, paragraph 93.

¹²² Non-Horizontal Merger Guidelines, paragraph 97.

¹²³ Non-Horizontal Merger Guidelines, paragraph 96.

¹²⁴ Non-Horizontal Merger Guidelines, paragraph 93.

¹²⁵ Non-Horizontal Merger Guidelines, paragraphs 95 to 104.

¹²⁶ Non-Horizontal Merger Guidelines, paragraphs 105 to 110.

¹²⁷ Non-Horizontal Merger Guidelines, paragraphs 111 to 118.

9.1. Market share methodology

- (201) The Parties submitted market shares for lenses, frames and sunglasses at both the EEA and national level, for 2014, 2015 and 2016. The Parties have relied on the following methodologies.
- (202) For lenses, the Parties have relied on data collected by Essilor in the regular course of business [...] ¹²⁸, [...].
- (203) For frames and sunglasses, the Parties relied on several data sources to estimate their market shares due to the lack of comprehensive data for all EEA countries. The Parties used data from the market research company Euromonitor which provides market shares by value based on retail sales data for nine EEA countries. The Parties also used their own sales data to check the accuracy of Euromonitor's estimates of their own sales. ¹²⁹ For the remaining EEA countries, the Parties used their own estimates of market sizes and shares in value and volume. Due to the lack of available data on volume sales of frames and sunglasses in the EEA, the Parties have used indirect methods to estimate volume market shares such as estimating the total volumes of frames sold from the available volume market sizes for lenses.
- (204) In this Decision, the Commission has used both value and volume market shares in its assessment of the lens markets while it has primarily used value market shares in its assessment of the more differentiated, frames and sunglasses markets ¹³⁰.
- (205) The Commission has assessed the validity of the market shares provided by the Parties against other sources of data such as GfK as well as against data provided by competitors in the course of the market investigation. The Commission has not found evidence that the data submitted by the Parties misrepresent actual market shares to a significant extent.

9.2. Market share overview

9.2.1. Wholesale supply of ophthalmic lenses, frames and sunglasses

- (206) Table 3 illustrates the combined Essilor's market shares in markets for lenses and Luxottica's market shares in markets for frames and sunglasses separately per national markets as well as at the EEA level in 2016, in value. The lenses market shares are presented for all categories of lenses as well as for the sub-segments single-vision lenses, progressive lenses and multifocal lenses. The frames and sunglasses market shares are each presented for all products as well as for the sub-segment including only products that are sold at a retail price of more than [...].
- (207) The market shares for the segment of frames and sunglasses sold at a price above [...] are only available for nine EEA countries ([...]). For [...], market shares for products sold at a price above [...] are directly available from market researcher GfK. For those four remaining EEA countries, available data from Euromonitor has enabled the Parties to estimate the proportion of revenue generated by each brand,

¹²⁸ [...].

¹²⁹ The Parties note that Euromonitor provides sell-out values (i.e., at the retail level) while the data they have at their disposal concerns sell-in (i.e., at the wholesale level) values. Comparing Euromonitor values to their own sales yields an implied mark-up at the retail level, which the Parties have found to be consistent with what they would expect (between [...] for frames and [...] for sunglasses for most countries), implying Euromonitor estimates seem to be robust.

¹³⁰ Commission Notice on the definition of relevant market for the purposes of Community competition law ("Market Definitions Notice"), OJ C372, 9.12.1997, p.5, paragraph 55.

and therefore each company, in such products sold at a retail price above [...], and to calculate market shares for Luxottica as well as its competitors in each segment. Those nine EEA countries account for more than [80-90]% of revenues achieved by frames and sunglasses companies in frames and sunglasses.

- (208) For the other Member States, which account for [10-20]% of the revenues achieved in frames and sunglasses, neither Euromonitor nor GfK data are available so market shares for products sold at a retail price above [...] cannot be estimated. However, as the assessment of market power of Luxottica at national level carried out in Section 12.2 relies on multiple factors beyond market shares and as any leveraging of potential market power in a sub-segment of the overall frames and sunglasses markets could only have effects on lenses sales in that market segment and not on the entire lenses market, as explained in recital (442), such a limitation on the availability of data does not significantly alter the competitive assessment.

Table 3 Combined market shares in ophthalmic lenses and eyewear (in value)¹³¹

Country	Ophthalmic Lenses ¹³²				Frames ¹³³		Sunglasses ¹³⁴	
	All	Single	Progressive	Multifocal	All	Above [...]	All	Above [...]
Austria	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[...]	[30-40]%	[...]
Belgium / Luxembourg	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[10-20]% [...]	[...]	[20-30]% [...]	[...]
Bulgaria	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[5-10]%	[...]	[20-30]%	[...]
Croatia	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[10-20]%	[...]	[40-50]%	[...]
Cyprus	[20-30]%	[50-60]%	[0-5]%	[0-5]%	[5-10]%	[...]	[10-20]%	[...]
Czech Republic	[50-60]%	[40-50]%	[40-50]%	[50-60]%	[10-20]%	[...]	[10-20]%	[...]
Denmark	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[...]	[20-30]%	[...]
Estonia	[20-30]%	[20-30]%	[50-60]%	[20-30]%	[10-20]%	[...]	[5-10]%	[...]
Finland	[20-30]%	[30-40]%	[10-20]%	[10-20]%	[10-20]%	[...]	[20-30]%	[...]
France	[70-80]%	[70-80]%	[70-80]%	[70-80]%	[20-30]%	[20-30]%	[50-60]%	[50-60]%
Germany	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[5-10]%	[5-10]%	[30-40]%	[30-40]%
Greece	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[30-40]%	[...]	[50-60]%	[...]
Hungary	[30-40]%	[20-30]%	[70-80]%	[70-80]%	[10-20]%	[...]	[20-30]%	[...]
Iceland	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[5-10]%	[...]	[50-60]%	[...]
Ireland	[40-50]%	[20-30]%	[50-60]%	[40-50]%	[10-20]%	[...]	[30-40]%	[...]
Italy	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[60-70]%	[60-70]%
Latvia	[40-50]%	[40-50]%	[40-50]%	[50-60]%	[5-10]%	[...]	[5-10]%	[...]

¹³¹ Form CO, annex CO 7.1.2.

¹³² Combined market shares of Essilor and Luxottica are reported here, with no significant difference with Essilor only market shares.

¹³³ Combined market shares of Luxottica and Essilor are reported here, with no significant difference with Luxottica only market shares.

¹³⁴ Combined market shares of Luxottica and Essilor are reported here, with no significant difference with Luxottica only market shares with the exception of Poland where Essilor has a [10-20]% market share in all sunglasses and the UK where Essilor has a [5-10]% market share in all sunglasses.

	Ophthalmic Lenses ¹³²				Frames ¹³³		Sunglasses ¹³⁴	
Country	All	Single	Progressive	Multifocal	All	Above [...]	All	Above [...]
Liechtenstein	[60-70]%	[60-70]%	[60-70]%	[60-70]%	[10-20]%	[...]	[30-40]%	[...]
Lithuania	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[20-30]%	[...]	[20-30]%	[...]
Luxembourg	[...]	[...]	[...]	[...]	[20-30]%	[...]	[30-40]%	[...]
Malta	[...]	[...]	[...]	[...]	[10-20]%	[...]	[10-20]%	[...]
Netherlands	[40-50]%	[30-40]%	[40-50]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%
Norway	[50-60]%	[60-70]%	[20-30]%	[30-40]%	[10-20]%	[...]	[20-30]%	[...]
Poland	[60-70]%	[50-60]%	[60-70]%	[60-70]%	[10-20]%	[30-40]%	[20-30]%	[20-30]%
Portugal	[50-60]%	[30-40]%	[60-70]%	[60-70]%	[20-30]%	[...]	[50-60]%	[...]
Romania	[50-60]%	[30-40]%	[70-80]%	[70-80]%	[30-40]%	[40-50]%	[20-30]%	[40-50]%
Slovakia	[50-60]%	[30-40]%	[50-60]%	[50-60]%	[10-20]%	[...]	[10-20]%	[...]
Slovenia	[40-50]%	[30-40]%	[50-60]%	[50-60]%	[5-10]%	[...]	[30-40]%	[...]
Spain	[50-60]%	[40-50]%	[50-60]%	[50-60]%	[20-30]%	[20-30]%	[40-50]%	[60-70]%
Sweden	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%
United Kingdom	[40-50]%	[50-60]%	[40-50]%	[40-50]%	[10-20]%	[30-40]%	[50-60]%	[50-60]%
EEA	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[10-20]%	[...]	[40-50]%	[...]
Market Value (EUR)	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: Annex P I RFI 12 Q 1, submitted as reply to RFI 13

(209) Table 4 illustrates the 2016 combined the Parties 'best estimates of Essilor's market shares in markets for lenses and Luxottica's market shares in markets for frames and sunglasses per national markets as well as their market shares at the EEA level in 2016 in volume. The lenses market shares are presented for all categories of lenses as well as for its sub-segments single-vision lenses, progressive lenses and multifocal lenses. The frames and sunglasses market shares are presented for all products together.

Table 4 Combined Market shares in lenses and eyewear (in volume)

	Ophthalmic Lenses ¹³⁵				Frames ¹³⁶	Sunglasses ¹³⁷
Country	All	Single	Progressive	Multifocal	All	All
Austria	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[5-10]%	[10-20]%
Belgium / Luxembourg	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Bulgaria	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[0-5]%	[30-40]%

¹³⁵ Combined market shares of Essilor and Luxottica are reported here, with no significant difference with Essilor only market shares.

¹³⁶ Combined market shares of Luxottica and Essilor are reported here, with no significant difference with Luxottica only market shares.

¹³⁷ Combined market shares of Luxottica and Essilor are reported here, with no significant difference with Luxottica only market shares.

	Ophthalmic Lenses ¹³⁵				Frames ¹³⁶	Sunglasses ¹³⁷
Country	All	Single	Progressive	Multifocal	All	All
Croatia	[30-40]%	[40-50]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%
Cyprus	[50-60]%	[60-70]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%
Czech Republic	[50-60]%	[60-70]%	[20-30]%	[20-30]%	[0-5]%	[5-10]%
Denmark	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%
Estonia	[40-50]%	[50-60]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%
Finland	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[5-10]%
France	[60-70]%	[60-70]%	[70-80]%	[70-80]%	[10-20]%	[30-40]%
Germany	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[5-10]%	[10-20]%
Greece	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[10-20]%	[20-30]%
Hungary	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[5-10]%	[5-10]%
Iceland	[40-50]%	[50-60]%	[20-30]%	[20-30]%	[5-10]%	[90-100]%
Ireland	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[0-5]%	[5-10]%
Italy	[40-50]%	[40-50]%	[30-40]%	[30-40]%	[20-30]%	[70-80]%
Latvia	[...]	[...]	[...]	[...]	[...]	[5-10]%
Liechtenstein	[...]	[...]	[...]	[...]	[...]	[10-20]%
Lithuania	[...]	[...]	[...]	[...]	[...]	[5-10]%
Luxembourg	[...]	[...]	[...]	[...]	[...]	[30-40]%
Malta	[...]	[...]	[...]	[...]	[...]	[20-30]%
Netherlands	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%
Norway	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%
Poland	[40-50]%	[40-50]%	[50-60]%	[60-70]%	[5-10]%	[30-40]%
Portugal	[40-50]%	[30-40]%	[70-80]%	[60-70]%	[10-20]%	[20-30]%
Romania	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
Slovakia	[40-50]%	[40-50]%	[40-50]%	[50-60]%	[5-10]%	[20-30]%
Slovenia	[70-80]%	[70-80]%	[50-60]%	[40-50]%	[10-20]%	[60-70]%
Spain	[50-60]%	[40-50]%	[50-60]%	[50-60]%	[10-20]%	[10-20]%
Sweden	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[20-30]%
United Kingdom	[50-60]%	[60-70]%	[30-40]%	[30-40]%	[0-5]%	[50-60]%
EEA ¹³⁸	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[10-20]%	[20-30]%

Source: Annex RFI 5 Q 42 for frames and sunglasses / Annex P I RFI 12 Q 1, submitted as reply to RFI 13 for lenses

(210) As regards potential additional sub-segments of the market for the wholesale supply of ophthalmic lenses:

(a) The Commission has assessed the potential segmentation based on the distinction between glass and plastic lenses. However, in most countries of the EEA, glass lenses represent less than [5-10]% of the overall demand and

¹³⁸ The EEA market shares presented on this line concern the EEA excluding countries for which volume shares were not available, i.e. Latvia, Liechtenstein, Lithuania and Malta for lenses and frames.

therefore that potential distinction would have no impact on the competitive assessment since the market shares would generally not change. In Austria, Germany and Romania, where glass lenses account for a higher share of demand (in 2016: [5-10]% in Austria, [5-10]% in Germany, [20-30]% for Romania)¹³⁹, Essilor's market shares in volume¹⁴⁰ for glass lenses are lower than overall lenses market shares.

(b) The Commission has also assessed¹⁴¹ a potential distinction based on distribution channel (retail chains¹⁴²/independent opticians/buying groups).¹⁴³

- Essilor's presence and market share in retail chains is significantly lower than the overall market shares without that segmentation ([30-40]% market share in the EEA) and hence this segmentation does not entail significant changes for the competitive assessment of this Transaction. This is true in most of the EEA countries with some limited exceptions ([...]).
- Essilor's share in independent stores is roughly comparable to its overall share ([40-50]% in independent stores and [40-50]% overall in the EEA). In general its "independents" share is slightly higher than the overall shares in [...] and slightly lower in [...].
- Essilor's market share in relation to buying groups (associations of opticians which purchase lenses on a centralised basis to secure the best possible commercial terms for lenses) is significantly higher ([60-70]% in the EEA). [...]. Essilor's market share with buying groups in the EEA, excluding [...], is [40-50]%, hence in line with its overall presence. [...].

(211) As regards potential additional sub-segments of the markets for the wholesale supply of frames and sunglasses:

(a) The Parties have provided market shares in relation to branded/unbranded frames and sunglasses at the EEA level and for six Member States (France, Germany, Italy, Netherlands, Spain and the UK).¹⁴⁴ At EEA level, Luxottica holds higher shares in relation to branded frames than in the overall frames market ([30-40]% vs [10-20]%) and the same is true for branded sunglasses ([50-60]% vs [40-50]%). At the national level, those branded market shares for frames or sunglasses are overall comparable to the market shares of Luxottica

¹³⁹ See Annex RFI 1 Q 26.

¹⁴⁰ Market shares with a segmentation between glass and plastic lenses are only available in volume.

¹⁴¹ The market shares by retail channel are calculated based on the volume and value breakdown by sales to (i) independent retailers, (ii) buying groups, (iii) chains, and (iv) internet retailers, as provided in [...], and Essilor actual sales. Essilor actual sales are assigned to each retail channel using the channel mix [...]. For those Member States not covered [...], or Member States for which the Essilor country managers indicated that the channel split estimates were incorrect, the Essilor country managers were requested to complete the [...] template relevant to this exercise (See Form CO, annex 7.1.1, footnote 54)

¹⁴² The parties have submitted these market shares relying on the definition of distribution channels retained by Essilor in the ordinary course of business: a retail chain is a company owning/franchising several stores operating under a same banner with a centralized commercial, sourcing and marketing policy. The number of stores required to be part of a retail chain is generally based on local conditions and circumstances, see Annex RFI 5 Q43-1.

¹⁴³ See Annex RFI 5 Q19-1.

¹⁴⁴ See Annex RFI 6 Q19.

in relation to frames or sunglasses priced above [...], which thus represent a suitable proxy for Luxottica's share in branded or unbranded eyewear.

- (b) The Parties have also provided market shares with a distinction across distribution channels. There is no clear pattern as to whether Luxottica is stronger in retail chains or in independent stores as its relative market position in those distribution channels varies from country to country (no data were available for buying groups).¹⁴⁵

- (212) It appears therefore that Luxottica holds higher shares in certain market segments due to product differentiation in the market and the positioning of its products in branded or high-end eyewear. In its assessment of conglomerate effects in Section 12, the Commission will therefore assess also whether and to which extent Luxottica would have significant market power in these narrower market segments.

9.2.2. *Ophthalmic machines*

- (213) Table 5 illustrates Essilor's market shares in the EEA-wide and global markets for ophthalmic machines and consumables.

Table 5 Essilor's market shares in ophthalmic machines in 2016

Geographic scope	Surfacing machines	Coating machines	Industrial Glazing machines	Table-top Edgers	Related consumables
EEA ¹⁴⁶	[40-50]%	[40-50]%	[0-5]%	[40-50]% ¹⁴⁷	[30-40]%
Worldwide ¹⁴⁸	[40-50]%	[40-50]%	[5-10]%	[20-30]%	[30-40]%

9.2.3. *Optical retail*

- (214) Table 6 illustrates the Parties' market shares for optical retail in 2016 in the national markets where one of the Parties is active.¹⁴⁹

Table 6 The Parties' market shares in optical retail in 2016

Member States	Essilor	Luxottica	Combined
Italy	[0-5]%	[5-10]%	[5-10]%
UK	[0-5]%	[5-10]%	[5-10]%
France	[0-5]%	[0-5]%	[0-5]%
Germany	[0-5]%	[0-5]%	[0-5]%
Netherlands	[0-5]%	[0-5]%	[0-5]%
Spain	[0-5]%	[0-5]%	[0-5]%
Sweden	[0-5]%	[0-5]%	[0-5]%

¹⁴⁵ See Form CO, Annex RFI 5 43.2.

¹⁴⁶ See PII RFI 42.

¹⁴⁷ Annex P I RFI 11 Q 1.

¹⁴⁸ Form CO, Sections 7-8, Chapter 2.

¹⁴⁹ See Annex RFI 6 Q 31.

9.2.4. *Contact lenses*

- (215) Table 7 shows Essilor's market shares for contact lenses sold to retailers in 2016 per national markets where Essilor is active (there is no overlap with Luxottica).

Table 7 Essilor's market shares in contact lenses in 2016

Member States	Essilor
UK	[0-5]%
France	[0-5]%
Germany	[0-5]%
Netherlands	[5-10]%
Spain	[0-5]%
Sweden	[0-5]%

10. ASSESSMENT OF HORIZONTAL NON-COORDINATED EFFECTS

- (216) The Transaction leads to horizontal overlaps in the wholesale supply of ophthalmic lenses (assessed in Section 10.1), of frames (Section 10.2) and of sunglasses (Section 10.3), in optical retail (Section 10.4) and in the acquisition of brand licenses (Section 10.5).

10.1. Wholesale supply of ophthalmic lenses

- (217) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the markets for the wholesale supply of ophthalmic lenses in the EEA.
- (218) In particular, for the reasons explained in recitals (219) to (255), the Commission considers that, despite Luxottica's recent entry into the ophthalmic lenses markets in Europe, its current and planned activities in the wholesale supply of ophthalmic lenses would be insufficient to allow it to exert a strong competitive constraint on Essilor as an existing or potential competitor.

10.1.1. General assessment at national level

- (219) The Commission considers that there are indications that the laboratory at Sedico producing finished lenses, notably Ray-Ban branded lenses, represents an important attempt by Luxottica to move into the national ophthalmic lenses markets in the EEA. However, it concludes that Luxottica's current and planned activities in ophthalmic lenses would be insufficient to allow it to exert a strong competitive constraint on Essilor as an existing or potential competitor in the national markets for the wholesale of ophthalmic lenses in the EEA.
- (220) The market shares by lens prescription design of Essilor, Luxottica (separately and combined), and their main competitors in the EEA are displayed for illustrative purposes in Table 8.

Table 8 EEA Market Shares for Ophthalmic Lenses in 2016 in value¹⁵⁰

Manufacturer	Total Lenses		Single Focus		Progressive		Multi-focus	
	Value (EUR Millions)	Value (%)	Value (EUR Millions)	Value (%)	Value (EUR Millions)	Value (%)	Value (EUR Millions)	Value (%)
Essilor Group	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]
Luxottica	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Combined	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]
Hoya	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]
Carl Zeiss Vision	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]
Rodenstock	[...]	[5-10]	[...]	[5-10]	[...]	[5-10]	[...]	[5-10]
PRATS	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
INDO	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Mailshop	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Others	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]
Total	[...]	100.0	[...]	100.0	[...]	100.0	[...]	100.0

(221) The market shares of Essilor, Luxottica and their competitors in those national markets where Luxottica currently sells ophthalmic lenses are displayed in Table 9.

Table 9 National Market Shares for Finished Lenses in 2016 in value¹⁵¹

Country	Lenses								
	Essilor	Lux.	Comb.	HHI Δ	Hoya	Zeiss	Rodenstock	Other 1	Other 2
Austria	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[10-20]	[10-20]	[20-30]	[...]
Belgium / Luxembourg	[20-30]	[0-5]	[20-30]	[...]	[20-30]	[5-10]	[5-10]	[0-5]	[30-40]*
Czech Republic	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[5-10]	[10-20]	[5-10]	[...]
Denmark	[10-20]	[0-5]	[10-20]	[...]	[10-20]	[10-20]	[20-30]	[20-30]	[10-20]
Estonia	[20-30]	[0-5]	[20-30]	[...]	[20-30]	[5-10]	[...]	[5-10]	[30-40]*
Finland	[20-30]	[0-5]	[20-30]	[...]	[40-50]	[0-5]	[20-30]	[5-10]	[0-5]
France	[70-80]	[0-5]	[70-80]	[...]	[10-20]	[5-10]	[0-5]	[0-5]	[...]
Germany	[30-40]	[0-5]	[30-40]	[...]	[10-20]	[20-30]	[10-20]	[0-5]	[0-5]
Hungary	[30-40]	[0-5]	[30-40]	[...]	[40-50]	[5-10]	[...]	[5-10]	[0-5]
Iceland	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[10-20]	[20-30]	[20-30]	[...]
Ireland	[30-40]	[0-5]	[40-50]	[...]	[0-5]	[10-20]	[...]	[0-5]	[0-5]
Italy	[30-40]	[0-5]	[30-40]	[...]	[10-20]	[10-20]	[5-10]	[10-20]	[...]

¹⁵⁰ Annex P I RFI 12 Q1, submitted as reply to RFI 13.

¹⁵¹ Annex P I RFI 12 Q1, submitted as reply to RFI 13.

	Lenses								
Country	Essilor	Lux.	Comb.	HHI Δ	Hoya	Zeiss	Rodenstock	Other 1	Other 2
Liechtenstein	[60-70]	[0-5]	[60-70]	[...]	[10-20]	[10-20]	[...]	[5-10]	[0-5]
Lithuania	[30-40]	[0-5]	[30-40]	[...]	[5-10]	[...]	[0-5]	[5-10]	[5-10]
Netherlands	[40-50]	[0-5]	[40-50]	[...]	[30-40]	[5-10]	[10-20]	[5-10]*	[...]
Norway	[50-60]	[0-5]	[50-60]	[...]	[5-10]	[0-5]	[20-30]	[10-20]	[0-5]
Poland	[60-70]	[0-5]	[60-70]	[...]	[10-20]	[0-5]	[0-5]	[5-10]	[5-10]*
Portugal	[50-60]	[0-5]	[50-60]	[...]	[5-10]	[10-20]	[0-5]	[10-20]	[...]
Slovakia	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[5-10]	[5-10]	[5-10]	[0-5]
Spain	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[0-5]	[...]	[10-20]	[10-20]
Sweden	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[0-5]	[10-20]	[40-50]*	[...]
United Kingdom	[40-50]	[0-5]	[40-50]	[...]	[10-20]	[10-20]	[0-5]	[0-5]	[20-30]

*These market shares refer to the residual category comprising 'all other' suppliers.

- (222) When looking at a sub-segmentation by prescription design, market shares for Essilor are largely the same as the overall figure for lenses ([40-50]% EEA), while they tend to be slightly higher for progressive ([40-50]% EEA) and multifocal lenses ([40-50]% EEA) and slightly lower for single-focus lenses ([40-50]% EEA).¹⁵² Shares for Luxottica are also mostly the same as the overall lens figure ([0-5]% EEA), with a slight rise for single-focus ([0-5]% EEA) and a slight drop for progressive ([0-5]% EEA) and multifocal lenses ([0-5]% EEA). As a result, combined market shares by prescription design do not differ much from the overall lens figure ([40-50]% EEA), with the highest combined share achieved in progressive lenses ([40-50]% EEA). In most national markets the sub-segmentation differences in Essilor and Luxottica shares are in line with those at EEA level.
- (223) When considering a sub-segmentation by sales channel, Essilor's market share is higher with independents and buying groups and lower with chains, as set out in recital (210)(b). Most national markets show similar sub-segmentation differences in Essilor shares to those at EEA level. As set out in recital (211), the Commission has found that there is no clear pattern as to whether Luxottica is stronger in retail chains or in independent stores across the EEA (no data were available for buying groups).

10.1.1.1. The Parties' view

- (224) The Parties submit that there is almost no horizontal overlap in the Parties' activities in ophthalmic lenses. They state that Luxottica cannot be considered to be exercising any significant competitive constraint on Essilor in ophthalmic lenses.
- (225) First, the Parties submit that Luxottica only very recently developed a lens activity in the EEA, and thus has a negligible market share.

¹⁵² Annex PI RFI 12 Q1, submitted as reply to RFI 13.

- (226) Second, they submit that Luxottica's sales of ophthalmic lenses to third parties are limited to ophthalmic lenses that are sold together with Oakley or Ray-Ban frames as "complete jobs", which they consider to be niche products that in no way can satisfy eye-care professionals' general requirements for ophthalmic lenses. Therefore, they submit that Luxottica is not a credible competitor on the lens market, and that its business model is very different from Essilor's, which offers a very wide range of ophthalmic substrate and lens products according to an open business model.
- (227) Third, they contend that, even considering Luxottica's captive sales, the capacity of Luxottica's Sedico laboratory is [...] ophthalmic jobs a year, and that its maximum capacity is not expected to exceed [...] jobs in the long term, which is around [0-5]% of the total EEA market. Assuming that (i) the market for lenses would not grow, and (ii) all Sedico lenses would be sold to customers switching the corresponding volumes from Essilor, this would represent a potential sales loss of around [0-5]% of Essilor's current sales in the EEA.
- (228) Fourth, they submit that Luxottica's internal documents confirm that its presence in ophthalmic lenses would remain [...] in the EEA post-Transaction and that the only country where Luxottica's share would be slightly more significant is [...]. They state that [...].
- (229) Fifth, they consider that the Merged Entity would continue to face (i) strong competition from a number of established lens suppliers, such as Hoya, Zeiss, and Rodenstock, (ii) strong countervailing buyer power from retailers, and (iii) potential new entrants, including the OCAM care networks in France.
- (230) Sixth, they consider that the Merged Entity's market share on finished ophthalmic lenses largely overstates its market power, on the basis that it does not take into account (i) captive sales made within integrated retail groups that own prescription laboratories or (ii) the possibility for currently non-integrated retailers to vertically integrate into lens production.

10.1.1.2. The Commission's assessment

- (231) Pursuant to the Horizontal Merger Guidelines, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger in most cases. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. It may, in particular, take account of the likely entry or exit of firms absent the merger.¹⁵³
- (232) Luxottica is now competing with Essilor in the sale of lenses in several countries in the EEA as set out in Table 9 and may also expand its offer of lenses and thus compete with Essilor on a larger scale and in more EEA countries in the future. However, the Commission concludes that Luxottica's current and planned activities in ophthalmic lenses would be insufficient to allow it to exert a strong competitive constraint on Essilor as an existing or potential competitor. The arguments set out in recitals (233) to (240) apply to each of the national lens markets in the EEA.

¹⁵³ Horizontal Merger Guidelines, paragraph 9.

- (233) On the one hand, internal documents of Essilor indicate that Luxottica's entry into ophthalmic lenses in the EEA is a significant development and show Essilor's concerns over Luxottica's entry into ophthalmic lenses:
- (a) An Essilor document [...].¹⁵⁴
 - (b) [...]¹⁵⁵, [...].
 - (c) An Essilor document analysing the Luxottica lens offer [...].¹⁵⁶
- (234) On the other hand, as set out in recitals (235) to (240), Luxottica's own sales targets, market feedback reporting quality, price and portfolio issues, and internal documents do not indicate that Luxottica [...].
- (235) First, Luxottica's current activities are very limited and the market share increments due to Luxottica's activities in the national markets are very low at less than [0-5]% in all EEA countries except for Norway ([0-5]%), as indicated in Table 9. Accordingly, the HHI delta are equally low and reach at most [...] across national markets as well as [...] in Norway and [...] in the UK.
- (236) Second, regarding future growth, Luxottica's business plan estimates that it could sell approximately [...] jobs in 2018 and around [...] jobs in 2021.¹⁵⁷ The projected figure for 2018 would account for about [0-5]% of lens volumes in the EEA while the 2021 forecast would make up around [0-5]% lens volumes in the EEA (conservatively calculated on the basis of 2016 volumes which were [...] lenses). Actual sales figures show that in the first week of December 2017 a total of [...] jobs had been ordered worldwide from Sedico in the year up to date¹⁵⁸, with no signs of a significant growth in sales being registered over the year.
- (237) Third, Luxottica currently has [...].¹⁵⁹
- (238) Fourth, the Essilor document on the Luxottica lens offer referred to in recital (233)(c) [...].¹⁶⁰ Furthermore, and as set out in recital (233)(b), Essilor expected its maximum possible loss of lens sales to Luxottica to be limited to only [0-5]% of Essilor's current sales in the EEA.
- (239) Fifth, the market investigation showed that the vast majority of market respondents do not see Luxottica as a meaningful player in ophthalmic lenses in the coming years¹⁶¹:
- (a) Retail chains cite the weakness of Luxottica's current offer. A German retailer states: "*Currently Luxottica has no strong market position in the lens market. We expect this position to increase slightly - however, Luxottica today lacks the broad lens product portfolio, skilled sales network and training concepts for prescription lenses.*"¹⁶²

¹⁵⁴ Essilor's internal document [...].

¹⁵⁵ Essilor's internal document [...].

¹⁵⁶ Essilor's internal document [...].

¹⁵⁷ Luxottica's internal document [...].

¹⁵⁸ Luxottica's response [...].

¹⁵⁹ Reply to RFI 41, question 1.

¹⁶⁰ Essilor's internal document [...].

¹⁶¹ Questionnaire to customers – retail chains (Q1), question 35; Questionnaire to competitors (Q3), question 44.

¹⁶² Questionnaire to customers – retail chains (Q1), question 35.

- (b) Most respondents also do not expect Luxottica to achieve significant growth in the lens sector in the future. A Portuguese retailer explained: *"Their lens numbers are marginal compared to their global sales revenue. They would have many, many difficulties growing these numbers without the merger."*¹⁶³
 - (c) A Spanish retailer described Luxottica's lens offer as follows: *"It is very small, and it has not reputation. We don't expect a huge growth for Luxottica in the lens sector for the future."*¹⁶⁴
 - (d) Lens competitors pointed out that the numbers of Ray-Ban ophthalmic lenses sold are still very modest and that the prices charged are high. A competitor stated that *"It is early to judge this, but so far we get market Feedback that they still have some Quality issues with the lenses. As such the roll out goes slowly. So currently the lens market Position is weak, but we assume that it will increase when the Startup Problems are solved. For sure the Merger with Essilor will solve all this Problems for them at once."*¹⁶⁵
 - (e) According to another competitor, *"Due to very high price, more above the market, we do not see big strength of this company in Poland right now."*¹⁶⁶
- (240) Sixth, rivals Hoya, Zeiss and Rodenstock each appear to be in a better position to exert competitive pressure on Essilor on the lens markets than the position that Luxottica would have gained in the foreseeable future, as indicated by the stronger market shares those competitors have (see Table 9) and their long-standing experience and expertise in the lens markets. Those rivals will continue to compete on the markets. This is complemented by local lens competitors in a number of EEA countries and by competition from Asian suppliers for lower-value products.

10.1.2. Assessment of the national [...] and [...] markets in particular

- (241) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the wholesale of lenses in [...] and [...] in particular.
- (242) The Commission considers that Luxottica's sales of lenses produced at Sedico may focus on [...] in particular. Internal documents confirmed that [...] would be the only EEA country where Luxottica's entry into lenses could have some significance [...]. [...] ¹⁶⁷. [...] ¹⁶⁸
- (243) [...] ¹⁶⁹

10.1.2.1. The Parties' views

- (244) The Parties submit that the only country where Luxottica's share would be slightly more significant is [...].¹⁷⁰ However, the Parties contend that, according to Essilor's estimates, even in [...] Luxottica's market share would remain limited to [0-5]%.¹⁷¹

¹⁶³ Questionnaire to customers – retail chains (Q1), question 35.

¹⁶⁴ Questionnaire to customers – retail chains (Q1), question 35.

¹⁶⁵ Questionnaire to competitors (Q3), question 44.

¹⁶⁶ Questionnaire to competitors (Q3), question 44.

¹⁶⁷ Essilor's internal document [...].

¹⁶⁸ Essilor's internal document [...].

¹⁶⁹ Form CO, Sections 7 and 8 Chapter 5 – Vertical and Conglomerate Effects, footnote 413.

¹⁷⁰ Luxottica's internal document [...].

¹⁷¹ Essilor's internal document [...].

10.1.2.2. The Commission's assessment

[Country 1]

- (245) The Commission concludes that Luxottica's current and planned activities in ophthalmic lenses in [...] would be insufficient to allow it to exert a strong competitive constraint on Essilor as an existing or potential competitor.
- (246) First, post-Transaction Luxottica would add a very limited increment of [0-5]% to Essilor's market share of [30-40]% in lenses overall in [...]. When considering sub-segments by lens design, post-Transaction Luxottica's share would rise slightly to [0-5]% for single-focus and would drop to [0-5]% for both progressive and multifocal lenses.
- (247) Second, Essilor's analysis of Luxottica's lens offer in [...] shows that realistically Luxottica could reach sales of [...] lenses by 2018, which would amount to an overall [0-5]% market share in [...]. This would be split between [...] clear lenses based on a [20-30]% success rate (i.e. [...] Luxottica frame customers would purchase Luxottica lenses) and [...] Sun Rx lenses based on a [50-60]% success rate. This forecast also assumes that Luxottica would roll out the Rx project across its three main proprietary brands Ray-Ban, Persol, and Oakley.¹⁷² [...].¹⁷³
- (248) Third, Essilor expects the sun lens market segment in [...] to grow significantly in the next years, which could make it attractive for different competitors to actively compete for the additional sales volumes. Essilor estimates that [...].¹⁷⁴
- (249) Fourth, the Merged Entity would continue to face competition from other lens suppliers whose current market shares significantly exceed Luxottica's current and projected market shares, namely Hoya ([10-20]%), Zeiss ([10-20]%) and Rodenstock ([5-10]%) who have long-standing experience and expertise in the lens markets in the EEA and in particular in [...].
- (250) Fifth, a majority of [...] respondents to the market investigation expect the lens market in [...] to remain relatively stable in the next few years, with few changes in market shares among the main providers.¹⁷⁵ [...] respondents did not cite Luxottica as a lens supplier active in [...], or as a lens supplier that could meet their requirements.¹⁷⁶

[Country 2]

- (251) The Commission concludes that Luxottica's current and planned activities in ophthalmic lenses in [...] would be insufficient to allow it to exert a strong competitive constraint on Essilor as an existing or potential competitor.
- (252) First, post-Transaction Luxottica would add a very limited increment of [0-5]% to Essilor's market share of [40-50]% in lenses overall in [...]. When considering sub-segments by design, post-Transaction Luxottica's share would rise slightly to [0-5]% for single-focus and would drop to [0-5]% for both progressive and multifocal lenses.

¹⁷² Essilor's internal document [...].

¹⁷³ Reply to RFI 41, question

¹⁷⁴ Essilor's internal document [...].

¹⁷⁵ Replies to Questions 18 and 35 of Q1 - Questionnaire to customers.

¹⁷⁶ Replies to Questions 12 and 13 of Questionnaire Q8d- Questionario agli acquirenti.

- (253) Second, the Commission's investigation has indicated that the bulk of these sales are captive supplies to [...].
- (254) Third, the Commission has not found any evidence of Essilor carrying out a risk assessment of Luxottica's lens offer in [...]. If the risk analysis on the [...] market referred to in recital (247) was carried out along the same lines for the [...] market, the potential market share that Luxottica could realistically gain would be significantly lower than [0-5]%. Taking into account Luxottica's considerably lower market shares in frames (about half smaller) and sunglasses (about a third smaller) in [...] and the substantially larger overall size of the [...] ophthalmic lens market (almost double) compared to [...], the market share Luxottica could achieve in [...] would be less than [0-5]%. In addition, this risk analysis assumes a roll-out across the Ray-Ban, Persol and Oakley brands, [...].¹⁷⁷
- (255) Fourth, the Merged Entity would continue to face competition from other lens suppliers whose current market shares significantly exceed Luxottica's current and projected market shares, namely Hoya ([10-20]%), Zeiss ([10-20]%) and Rodenstock ([0-5]%) who have long-standing experience and expertise in the lens markets in the EEA.

10.2. Wholesale supply of frames

- (256) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in markets for the wholesale supply of prescription frames in the EEA, including considering certain national segments.
- (257) The Commission considers that despite Essilor's recent launch of new frames brands such as Bolon in Europe, its current and planned activities in prescription frames would be insufficient to allow it to exert a strong competitive constraint on Luxottica as an existing or potential competitor.

10.2.1. Assessment at EEA Level

- (258) The Commission considers that Essilor would bring a low market share increment to the combination in the overall frames market at EEA level, as shown in Table 10. Although there are indications that Essilor had been upgrading its offer of prescription frames through the launch of new brands in the EEA, the Commission concludes that Essilor's current and planned activities in prescription frames would be insufficient to allow it to exert a significant competitive constraint on Luxottica as an existing or potential competitor.

¹⁷⁷ Reply to RFI 41, question 1.

Table 10 EEA market shares for Prescription Frames in 2016¹⁷⁸

Company	2016	
	Value (EUR millions)	Value (%)
Luxottica	[...]	[10-20]%
Essilor	[...]	[0-5]% [...]
Combined	[...]	[10-20]%
Safilo	[...]	[10-20]%
Fielmann AG	[...]	[5-10]%
DeRigo	[...]	[0-5]%
Rodenstock	[...]	[0-5]%
Eschenbach	[...]	[0-5]%
Grand Vision	[...]	[0-5]%
Others	[...]	[50-60]%
Total	[...]	100%

10.2.1.1. The Parties' view

- (259) The Parties submit that the Transaction would not give rise to any meaningful horizontal effect in the frames markets for the following reasons.
- (260) First, they consider that Essilor is not a credible competitor for Luxottica in frames in the EEA on the grounds that its presence is negligible in frames, with market shares at the EEA level of less than [0-5]%.
- (261) Second, they submit that the increase in the level of concentration of the market (HHI delta) is minimal, and well below the HHI delta 150 indicated in paragraph 20 of the Horizontal Merger Guidelines to presume the lack of competitive concerns.
- (262) Third, they submit that Essilor is not a potential competitor for Luxottica in frames in the EEA. In particular, they contend that Essilor's Bolon brand cannot be considered a close competitor to Ray-Ban in Europe, and state that Essilor does not see Bolon as a competitor of Ray-Ban in Europe, but as a product to be positioned at the price range immediately below Ray-Ban.

10.2.1.2. The Commission's assessment

- (263) As already set out in recital (231), pursuant to the Horizontal Merger Guidelines, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger in most cases. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. It may, in particular, take account of the likely entry or exit of firms absent the merger.¹⁷⁹
- (264) Essilor has recently been developing and implementing a strategy aimed at growing its position in frames and sunglasses, including in the EEA. However, the Commission concludes that Essilor's current and planned activities in frames would

¹⁷⁸ Annex P I RFI 12 Q1, submitted as reply to RFI 13.

¹⁷⁹ Horizontal Merger Guidelines, par. 9.

be insufficient to allow it to exert a strong competitive constraint on Luxottica as an existing or potential competitor.

- (265) On the one hand, Essilor's internal documents indicate that Essilor's recent strategy to grow its position in frames in the EEA, in particular by launching new brands, is an important development for the company. Essilor's internal documents show that its growth in the frames and sunglasses markets is driven by the acquisition of brands that have been successful outside the EEA. In particular, Essilor acquired Chinese-based Bolon in 2013 and US-based Costa in 2014, which seem to target similar spaces to Luxottica's Ray-Ban and Oakley brands respectively in certain markets outside the EEA. [...].¹⁸⁰
- (a) A 2015 corporate strategy document lists [...].¹⁸¹, [...].¹⁸².
- (b) [...]. An Essilor document indicates that [...].¹⁸³ [...].¹⁸⁴
- (266) On the other hand, as set out in recitals (267) to (274), Essilor's own data [...] and internal document review do not indicate that Essilor could become a strong competitive force in frames in the EEA in the near future. The explanations in recitals (267) to (274) support this conclusion.
- (267) First, Essilor's current activities are very limited and the market share increment due to Essilor's activities in the national markets is very low at far less than [0-5]%. Accordingly, the HHI delta is equally low.
- (268) Second, Essilor projects sales of EUR [...] in Europe by 2020 with its Costa, Bolon and MJS brands, which represents only [0-5]% of the branded eyewear segment¹⁸⁵. This shows that the company's ambitions in the branded eyewear market in Europe are rather limited.
- (269) Third, the Commission's investigation has found Luxottica's and Essilor's brands to be distant competitors in prescription frames as Essilor's brands are all targeted at the entry-level or lower mid-range markets with Bolon being the only exception.
- (270) Fourth, in the high-end frames market Essilor faces the considerable challenge of not having any globally recognised brands. Bolon, the company's main brand in the higher end segment where branding is more important, is not distributed globally. The difficulties in launching an unknown brand in a premium segment are confirmed by Essilor documents: [...].¹⁸⁶, [...].¹⁸⁷. [...].¹⁸⁸. Bolon's commercial prospects in EEA markets for prescription frames therefore appear limited.
- (271) Fifth, Essilor internal documents highlight flaws [...].¹⁸⁹ [...].¹⁹⁰
- (272) Sixth, respondents to the market investigation indicated that Essilor's increased activity in the frames and sunglasses business in Europe is very recent. A majority

¹⁸⁰ Essilor's Excel sheet [...].

¹⁸¹ Essilor's internal [...].

¹⁸² Essilor's internal document [...].

¹⁸³ Essilor's internal document [...].

¹⁸⁴ Essilor's internal document [...].

¹⁸⁵ Essilor's internal document [...].

¹⁸⁶ Essilor's [...].

¹⁸⁷ Essilor's email [...].

¹⁸⁸ Essilor's Excel sheet [...].

¹⁸⁹ Essilor's internal document [...].

¹⁹⁰ Essilor's internal document [...].

believe its position is weak and will remain weak for the foreseeable future.¹⁹¹ None of the respondents to the market investigation cited Essilor as a frames supplier active in their country, or as a supplier that could meet their requirements.¹⁹² An Italian retailer submitted: *"We do not expect Essilor to reach a strong position in frames and sunglasses in the next five years."*¹⁹³

- (273) Seventh, Luxottica's internal documents do not suggest that the company was concerned about Essilor's entry into prescription frame markets in the EEA. [...].¹⁹⁴
- (274) Eighth, the Merged Entity would continue to face competition from other frames suppliers with market shares at EEA level higher than what Essilor would have achieved in the foreseeable future, namely Safilo ([10-20]%), Fielmann ([5-10]%) and De Rigo ([0-5]%), from whom a wide variety of brands are available, including in the mid-range to premium segments targeted by Luxottica.

10.2.2. Assessment at national level

- (275) The market shares of Essilor, Luxottica and their competitors in those national markets where Essilor currently sells prescription frames are displayed in Table 11.

Table 11 National Market Shares for Frames in 2016 in value¹⁹⁵

Country	Frames ¹⁹⁶								
	Lux.	Essilor	Comb.	HHI Δ	Safilo	DeRigo	Marco lin	Other 1	Other 2
Bulgaria	[5-10]%	[0-5]%	[5-10]%	[...]	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[80-90]%*
Cyprus	[0-5]%	[0-5]%	[5-10]%	[...]	[...]	[...]	[...]	[90-100]*	[...]
Czech Republic	[10-20]%	[0-5]%	[10-20]%	[...]	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Denmark	[5-10]%	[0-5]%	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[10-20]	[10-20]%
France	[20-30]%	[0-5]%	[20-30]%	[...]	[10-20]%	[5-10]%	[...]	[0-5]%	[0-5]%
Greece	[30-40]%	[0-5]%	[30-40]%	[...]	[5-10]%	[0-5]%	[...]	[0-5]%	[0-5]%
Ireland	[10-20]%	[0-5]%	[10-20]%	[...]	[...]	[...]	[...]	[80-90]%*	[...]
Romania	[30-40]%	[0-5]%	[30-40]%	[...]	[20-30]%	[5-10]%	[...]	[5-10]%	[5-10]%
Slovakia	[10-20]%	[0-5]%	[10-20]%	[...]	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Slovenia	[5-10]%	[0-5]%	[5-10]%	[...]	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[70-80]%*
United Kingdom	[10-20]%	[0-5]%	[10-20]%	[...]	[10-20]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%

*These market shares refer to the residual category comprising 'all other' suppliers.

- (276) The Commission notes that the Transaction would give rise to affected markets for frames in France, Greece and Romania, but with low increments coming from Essilor.

¹⁹¹ Replies to Questions 50 and 65 of questionnaire sent to customers Q1.

¹⁹² Replies to Questions 34 and 35 of questionnaire sent to customers Q8a.

¹⁹³ Reply to Question 65 of questionnaire sent to customers Q1.

¹⁹⁴ Luxottica's Ray-Ban and Oakley wave tracker reports since 2010 provided in reply to RFI 2 Question 4.

¹⁹⁵ Form CO, Annex CO 7.1.2; Annex P I RFI 12 Q 1, submitted as reply to RFI 13.

¹⁹⁶ In 2016 the Parties' activities in frames did not yet overlap in Spain, Portugal, Italy, the Netherlands and Belgium because Bolon was not launched until 2017.

- (277) The Commission considers that despite Essilor's recent launch of Bolon in France, the UK, Spain, Portugal, Italy, the Netherlands, Belgium, Greece and the Czech Republic, its current and planned activities in prescription frames would be insufficient to allow it to exert a strong competitive constraint on Luxottica as an existing or potential competitor.
- (278) First, in each of the overall frames markets at national level, Essilor's activities are currently very limited and the market share increments brought by Essilor are very low, at [0-5]% in Romania and at less than [0-5]% in all other EEA countries. Accordingly, the HHI deltas are equally low, at [...] in Romania and at less than [...] in all other EEA countries.
- (279) Second, the Commission's investigation has found Luxottica's and Essilor's brands to be distant competitors in prescription frames as Essilor's brands are all targeted at the entry-level or lower mid-range markets, with Bolon being the only exception. Available national market shares for prescription frames above [...] show that Essilor has no presence in those segments, where Luxottica's shares are almost consistently higher than in the overall frames markets.
- (280) Third, projected sales of frames for Essilor are also limited. [...] ¹⁹⁷, [...] ¹⁹⁸. The Bolon brand is largely unknown in Europe and faces the challenge of acquiring recognition among high-end customers. Its commercial prospects in EEA countries therefore appear limited.
- (281) Fourth, a majority of respondents to the market investigation believe Essilor's position in the frames and sunglasses business in Europe is weak and will remain weak for the foreseeable future, including in the EEA countries where Bolon was recently launched. ¹⁹⁹
- (a) An Italian retailer stated that *"Essilor is still very marginal in terms of frames/sunglasses sales. We don't expect them to grow a lot on Italian market in the next 5 years."* ²⁰⁰
- (b) A French retailer cites Essilor's launch of new brands in France: *"Essilor now proposes his brand Costa for sunglasses and Bolon Eyewear on French market. For the moment, their position is very weak."* ²⁰¹
- (282) Fifth, the Merged Entity would continue to face competition from other frames suppliers, including in France, Spain, the UK and Portugal, where Safilo has [10-20]%, [20-30]%, [10-20]% and [10-20]%, and De Rigo [0-5]%, [0-5]%, [10-20]% and [5-10]% market share respectively. Those eyewear producers offer a wide variety of brands, especially in the mid-range to premium segments targeted by Luxottica.

10.3. Wholesale supply of sunglasses

- (283) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in markets for sunglasses in the EEA, including considering certain national segments.

¹⁹⁷ Essilor's Excel sheet [...].

¹⁹⁸ Essilor's Excel sheet [...].

¹⁹⁹ Replies to Questions 50 and 65 of questionnaire sent to customers Q1.

²⁰⁰ Reply to Question 65 of questionnaire sent to customers Q1.

²⁰¹ Reply to Question 65 of questionnaire sent to customers Q1.

- (284) The Commission considers that despite Essilor's recent launch of new sunglass brands such as Costa and Bolon in Europe, its current and planned activities in sunglasses would be insufficient to allow it to exert a strong competitive constraint on Luxottica as an existing or potential competitor.

10.3.1. *Assessment at EEA Level*

- (285) The Commission considers that Essilor brings a low market share increment to the combination in the overall sunglasses market at EEA level, as shown in Table 12. Although there are indications that Essilor had been upgrading its offer of sunglasses through the launch of new brands in the EEA, the Commission concludes that Essilor's current and planned activities in sunglasses would be insufficient to allow it to exert competitive constraint on Luxottica as an existing or potential competitor.

Table 12 EEA Market Shares for Sunglasses in 2016²⁰²

Company	2016	
	Value (EUR millions)	Value (%)
Luxottica	[...]	[40-50]%
Essilor	[...]	[0-5]%
Combined	[...]	[40-50]%[...]
Safilo	[...]	[10-20]%
DeRigo	[...]	[0-5]%
Fielmann AG	[...]	[0-5]%
Vision Service Plan Global	[...]	[0-5]%
Marcolin	[...]	[0-5]%
Others	[...]	[30-40]%
Total	100%	100%

10.3.1.1. *The Parties' views*

- (286) The Parties submit that the Transaction would not give rise to any meaningful horizontal effect in the sunglasses markets for the reasons set out in recitals (287) to (291).
- (287) First, they contend that Essilor's presence is small in sunglasses with market shares at the EEA level of less than [0-5]%. [...].
- (288) Second, they contend that Essilor is neither a recent entrant nor an important innovator, nor a maverick in the sunglasses activity, and is not even tracked by analysts in the sunglass and frame markets, such as Euromonitor or GfK. Moreover, they submit that Essilor has no manufacturing or even design expertise in Europe as it outsources all of its production to Chinese suppliers.
- (289) Third, they submit that the sunglass market is highly dynamic with hundreds of players based in the EEA and a very high level of imports from abroad, especially China, and that entry is easy and frequent.

²⁰² Form CO, Sections 7 and 8 Chapter 3 – Wholesale Supply of Eyewear (Sunglasses and Frames), par. 25; Annex P I RFI 12 Q 1, submitted as reply to RFI 13.

- (290) Fourth, they contend that Luxottica's and Essilor's brands are very distant competitors, on the basis that they are marketed at different price points and through different distribution channels. [...].
- (291) Fifth, they state that Essilor's Bolon and Costa brands cannot be considered to be close competitors to Ray-Ban and Oakley respectively in Europe. They contend that Essilor does not consider Bolon to be a competitor of Ray-Ban but as a product to be positioned at a price range immediately below Ray-Ban. They contend that in 2016 a trivial number of Bolon sunglasses and prescription frames were sold in the EEA, with overall revenues of EUR [...]. They state that Oakley sunglasses are mostly marketed in competition with other rival sunglass brands for similar sporting applications, including Nike, Adidas, Ducati, Von Zipper, Spy and Electric. They state that Costa's sales were very limited in 2016 (less than EUR [...]), and have not reported a major increase in 2017.

10.3.1.2. The Commission's assessment

- (292) As already set out in recital (231), pursuant to the Horizontal Merger Guidelines, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger in most cases. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. It may, in particular, take account of the likely entry or exit of firms absent the merger.²⁰³
- (293) The Commission considers that Essilor brings a low market share increment to the combination in the overall sunglasses market at EEA level ([0-5]%) but that there are indications that Essilor has recently been extending and improving its existing offer in sunglasses in the EEA. However, it concludes that Essilor's current and planned activities in sunglasses would be insufficient to allow it to exert competitive constraint on Luxottica as an existing or potential competitor.
- (294) On the one hand, the Commission takes note of Essilor's internal documents indicating that Essilor's recent launch of new sunglass brands in the EEA is an important development for the company. [...]. In particular, Essilor acquired Chinese-based Bolon in 2013 and US-based Costa in 2014, which seem to target similar spaces to Luxottica's Ray-Ban and Oakley brands respectively in certain markets outside the EEA:
- (a) [...].²⁰⁴
 - (b) A July 2016 email from the Essilor President of Sun, Readers & Photochromics shows that the company was monitoring Luxottica's sales results in the Sun & Reader categories very closely, conducting competitive analysis of its rival's performance against its own business. The email concludes by stating: [...].²⁰⁵
 - (c) According to a 2016 Essilor document²⁰⁶ Bolon and Costa are two of three key brands identified for Essilor's Sun & Readers strategy for Europe. The third

²⁰³ Horizontal Merger Guidelines, par. 9.

²⁰⁴ Essilor's internal document [...].

²⁰⁵ Essilor's internal document [...].

²⁰⁶ Essilor's internal document [...].

brand, Foster Grant, is positioned at lower price points from most Luxottica brands.

(d) [...].²⁰⁷

(e) [...].²⁰⁸ [...].²⁰⁹ [...].²¹⁰

- (295) On the other hand, the Commission considers that Essilor's recent launches of sunglasses brands in the EEA are not significant enough to enable it to exert competitive constraint on Luxottica in the foreseeable future. As set out in recitals (296) to (303), Essilor's own assessment of the Costa brand citing design, quality and positioning issues, customer feedback and internal document review do not indicate that Essilor could become a credible competitive force in sunglasses in the near future. The reasons set out in recitals (296) to (303) support this conclusion.
- (296) First, Essilor's current activities are very limited and the market share increment due to Essilor's activities is very low at [0-5]%. Accordingly, the HHI delta is equally low at [...].
- (297) Second, Essilor projects sales of EUR [...] in Europe by 2020 with its Costa, Bolon and MJS brands, which represents only [0-5]% of the branded eyewear segment,²¹¹. This shows that the company's ambitions in the branded eyewear market in Europe are rather limited.
- (298) Third, the Commission's investigation has confirmed that Luxottica's and Essilor's brands are distant competitors, as their sunglasses are sold at very different price points. Essilor's sunglasses are typically positioned at entry-level or lower mid-range price points, with the brands Costa and Bolon as the only exceptions.
- (299) Fourth, as discussed in recital (270) in relation to frames, Essilor does not have any globally recognised sunglass brands as its two main brands in the higher end segment, Bolon and Costa, are not distributed globally. [...].²¹² As a result, future prospects of these recent launches appear limited. To illustrate this point, Bolon achieved modest EEA-wide sales (frames and sunglasses) of EUR [...] in 2017²¹³.
- (300) Fifth, in addition to the issues with the Bolon collection referred to in recital (271), an Essilor document indicates significant challenges regarding the launch of the Costa brand in Spain: [...].²¹⁴ Costa achieved modest EEA-wide sales (frames and sunglasses) of EUR [...] in 2017²¹⁵. Costa's and Bolon's commercial prospects in EEA markets for sunglasses therefore appear limited.
- (301) Sixth, respondents to the market investigation indicated that Essilor's activities in the frames and sunglasses business in Europe are very recent. A majority believes its position will remain weak in the foreseeable future.²¹⁶ None of the respondents to the

²⁰⁷ Essilor's internal document [...].

²⁰⁸ Essilor's internal document [...].

²⁰⁹ Essilor's internal document [...].

²¹⁰ Essilor's Excel sheets [...].

²¹¹ Essilor's internal document [...].

²¹² See for instance Essilor's email [...].

²¹³ Essilor's Excel sheet [...].

²¹⁴ [...].

²¹⁵ Essilor's Excel sheet [...].

²¹⁶ Reply to Questions 50 and 65 of questionnaire sent to customers Q1.

market investigation cited Essilor as a sunglass supplier active in their country, or as a supplier that could meet their requirements.²¹⁷

(a) A French retailer stated: *"This activity is quite new (COSTA has been launched in France in mid-2016, BOLON should arrive)."*²¹⁸

(b) A Portuguese retailer stated: *"In the absent of the merger, we think that Essilor will lose strength in the frames and sunglasses Portuguese market."*²¹⁹

(302) Seventh, Luxottica's internal documents do not suggest that the company was concerned about Essilor's entry into sunglass markets in the EEA. [...].²²⁰

(303) Eighth, the Merged Entity would continue to face competition from other sunglass suppliers at EEA level, namely Safilo ([10-20]%) and De Rigo ([0-5]%), from whom a wide variety of brands are available, including in the mid-range to premium segments targeted by Luxottica.

10.3.2. Assessment at national level

(304) The market shares of Essilor, Luxottica and their competitors in those national markets where Essilor currently sells sunglasses are illustrated in Table 13.

Table 13 National Market Shares for Sunglasses in 2016 in value²²¹

Country	Sunglasses								
	Lux. (%)	Essilor (%)	Comb. (%)	HHI Δ	Safilo (%)	DeRigo (%)	Marcolin (%)	Other 1 (%)	Other 2 (%)
Austria	[30-40]	[0-5]	[30-40]	[...]	[5-10]	[...]	[...]	[10-20]	[0-5]
Belgium	[20-30]	[0-5]	[20-30]	[...]	[...]	[...]	[...]	[70-80]	[...]
Bulgaria	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[5-10]	[0-5]	[0-5]	[50-60]*
Croatia	[40-50]	[0-5]	[40-50]	[...]	[10-20]	[10-20]	[0-5]	[0-5]	[20-30]*
Cyprus	[10-20]	[0-5]	[10-20]	[...]	[...]	[...]	[...]	[80-90]*	[...]
Czech Republic	[10-20]	[0-5]	[10-20]	[...]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Denmark	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[...]	[5-10]	[5-10]	[0-5]
Estonia	[5-10]	[0-5]	[5-10]	[...]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Finland	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[...]-	[5-10]	[5-10]	[0-5]
France	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[5-10]	[0-5]	[0-5]	[10-20]
Germany	[30-40]	[0-5]	[30-40]	[...]	[10-20]	[...]	[0-5]	[10-20]	[0-5]
Greece	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[10-20]	[...]	[5-10]	[0-5]

²¹⁷ Replies to Questions 34 and 35 of questionnaire sent to customers Q8a.

²¹⁸ Reply to Question 65 of questionnaire sent to customers Q1.

²¹⁹ Reply to Question 65 of questionnaire sent to customers Q1.

²²⁰ Luxottica's [...].

²²¹ Form CO, Annex CO 7.1.2; Annex P I RFI 12 Q 1, submitted as reply to RFI 13.

Country	Sunglasses								
	Lux. (%)	Essilor (%)	Comb. (%)	HHI Δ	Safilo (%)	DeRigo (%)	Marcolin (%)	Other 1 (%)	Other 2 (%)
Hungary	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[5-10]	[0-5]	[0-5]	[0-5]
Iceland	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[...]	[5-10]	[5-10]	[0-5]
Ireland	[20-30]	[0-5]	[30-40]	[...]	[...]	[...]	[...]	[60-70]*	[...]
Italy	[50-60]	[0-5]	[60-70]	[...]	[10-20]	[0-5]	[0-5]	[0-5]	[0-5]
Lithuania	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[5-10]	[0-5]	[0-5]	[0-5]
Malta	[10-20]	[0-5]	[10-20]	[...]	[...]	[...]	[...]	[80-90]*	[...]
Netherlands	[30-40]	[0-5]	[30-40]	[...]	[20-30]	[...]	[...]	[10-20]	[0-5]
Poland	[10-20]	[10-20]	[20-30]	[...]	[5-10]	[0-5]	[...]	[10-20]	[5-10]
Portugal	[50-60]	[0-5]	[50-60]	[...]	[10-20]	[5-10]	[...]	[0-5]	[0-5]
Romania	[20-30]	[0-5]	[20-30]	[...]	[10-20]	[0-5]	[...]	[5-10]	[0-5]
Slovakia	[10-20]	[0-5]	[10-20]	[...]	[5-10]	[0-5]	[0-5]	[0-5]	[0-5]
Spain	[40-50]	[0-5]	[40-50]	[...]	[5-10]	[5-10]	[0-5]	[0-5]	[0-5]
Sweden	[20-30]	[0-5]	[20-30]	[...]	[0-5]	-	[0-5]	[5-10]	[0-5]
United Kingdom	[40-50]	[5-10]	[50-60]	[...]	[10-20]	[0-5]	[0-5]	[0-5]	[0-5]

*These market shares refer to the residual category comprising 'all other' suppliers.

- (305) The Commission notes that the Transaction would give rise to affected markets for sunglasses in all EEA countries except Cyprus, the Czech Republic, Estonia, Latvia, Malta and Slovakia, with low increments coming from Essilor.
- (306) However, the Commission considers that despite Essilor's recent launch of Bolon and Costa, its current and planned activities in prescription frames would be insufficient to allow it to exert a strong competitive constraint on Luxottica as an existing or potential competitor.
- (307) First, in each of the overall sunglass markets at national level, Essilor's activities are currently very limited and the market share increments brought by Essilor are very low, at less than [0-5]% in all EEA countries [...]. Accordingly, the HHI delta are equally low and remain below [...]. In Ireland the Essilor increment amounts to [0-5]%, bringing the Parties' combined market share to [30-40]%. In Poland Essilor adds [10-20]% market share, taking the Parties' combined market share to [20-30]%. The Merged Entity would, however, continue to be challenged by competitors with non-negligible market shares, namely Silhouette ([10-20]%), Vision Service Plan ([5-10]%) and Safilo ([5-10]%). In the UK the Essilor increment is [5-10]%, resulting in a combined market share of [50-60]%. The Merged Entity would continue to face competition from players such as Safilo ([10-20]%) and De Rigo ([0-5]%).

- (308) Second, the Commission's investigation has found Luxottica's and Essilor's brands to be distant competitors in sunglasses. Whereas Luxottica's sunglasses are typically targeted at mid-range to premium markets, Essilor's sunglass brands are all positioned at entry-level or lower mid-range price points, except for the US-based brand Costa and the Chinese-based brand Bolon. Available national market shares for prescription sunglasses sold at retail prices above [...] show that Essilor has no presence above [0-5]% in those segments, where Luxottica's shares are consistently higher than in the overall sunglass markets.
- (309) Third, the commercial prospects of Bolon and Costa in the EEA appear limited as those brands are largely unknown in Europe and face the challenge of acquiring recognition among high-end customers. Internal Essilor documents show that Costa's and Bolon's limited sales are to some extent due to issues of suitability for the European market, brand positioning and pricing. [...] ²²² [...] ²²³.
- (310) Fourth, a majority of respondents to the market investigation believe Essilor's position in frames and sunglasses in Europe is weak and will remain weak in the foreseeable future, including in Ireland, Poland and the UK. ²²⁴

10.4. Optical retail

- (311) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in markets for optical retail in the EEA, in light of the low combined market shares, the limited horizontal overlap between the Parties' activities and the presence of strong competitors.
- (312) Some complainants have expressed concern that the Transaction would allow the Merged Entity to acquire retail groups in the EEA and thus increase its presence in the distribution market downstream, leading to potential foreclosure concerns. However, any such future acquisition would constitute a separate concentration from the Transaction assessed in this Decision. The Commission therefore considers that those concerns are not specific to the Transaction and that it would assess the competitive impact of those acquisitions if and when they occurred and if they fell within the jurisdiction of the Commission.

10.4.1. General assessment at national level

10.4.1.1. The Parties' views

- (313) The Parties submit that the horizontal overlaps between the Parties' activities are not material for the reasons set out in recitals (315) to (319).
- (314) First, they state that Essilor's retail activities relate only to online sales of primarily contact lenses, through Essilor's online retailers.
- (315) Second, they submit that Luxottica's retail activities, outside the countries where Luxottica operates optical retail chains, essentially consists of sales of sunglasses made through Sunglass Hut and the online activities of Ray-Ban.com and Oakley.com.

²²² Essilor's Excel sheet [...].

²²³ Essilor's Excel sheet [...].

²²⁴ Replies to Questions 50 and 65 of questionnaire sent to customers Q1.

- (316) Third, they contend that Essilor's market share is less than [5-10]% in all Member States in which it is active and that the market share increment derived from the Transaction would therefore be negligible.
- (317) Fourth, they state that in any case, the Parties' combined market share is well below [10-20]% in the overlapping geographic markets.
- (318) Fifth, they submit that this assessment would not be modified even if retail market shares were split by product type.

10.4.1.2. The Commission's assessment

- (319) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the retail markets for eyewear in any EEA country (except for Italy and the United Kingdom which will be assessed separately), due to the low combined market shares.
- (320) The Parties' combined market shares in retail of all eyewear do not exceed [0-5]% in any EEA country [...].²²⁵

10.4.2. Italy

10.4.2.1. The Parties' views

- (321) The Parties submit that the Transaction would not give rise to any competition concerns in the retail market for optical products in Italy for the reasons set out in recitals (323) to (325).
- (322) First, they contend that distribution channels in the optical retail market in Italy are extremely fragmented, as the market consists of approximately 10 000 optical shops with a very low population ratio *per* shop (around 6 000 people *per* shop). Optical retail is broken down into three different organisation forms:
 - (a) **Retail chains.** The total market shares of retail chains in value, in 2016, was estimated at approximately [20-30]% and is continuing to grow. The main reason for this increase of sales of optical retail chains is the growth in the sale of prescription lenses and sunglasses. The main retail chains in Italy, in addition to S&V, are the Avanzi/Optissimo/Solaris/Corner Optique and NAU chains. The former are part of the GrandVision Group, owned by Hal Group, which also controls Safilo. Following the acquisition of Optissimo/Corner Optique from Randazzo, Grand Vision has become the leading retail player in terms of value, with more than 400 stores in Italy. NAU is a fast-growing network of more than 100 directly operated or franchised stores, including in airports and train stations. Other smaller retail chains are Megavision and Lama Optical, with about 50 stores each in Italy.
 - (b) **Buying groups with banners.** These are important in Italy as they account for nearly 1 500 optical stores. Centri Ottici Selezionati ("COP") is a very homogenous group, with 557 stores carrying the Green Vision brand in 2016. Optocoop is a less homogenous group, with 411 outlets under the brand name Oxo in 2016. VisionOttica has pursued a strategy of growth over the years, taking the number of its points of sale to 260 in 2016. Lastly, in 2016 the new buying group with banner Ottitaly was created. It already totals 229 outlet members.

²²⁵ Annex to Parties' Reply to Question 31 of RFI6.

- (c) **Independent opticians.** The majority of optical retail outlets in Italy are still independent. Many are members of buying groups without a banner. The total number of independent opticians including those members of buying groups without banner was estimated at 7 555 in 2016.
- (323) Second, the Parties state that, despite being the second retail chain after GrandVision in Italy, S&V holds a small market share of approximately [5-10]%, and is subject to fierce competition from all the categories of retail distribution channels mentioned above.
- (324) Third, as regards the online channel, internet sales of prescription eyeglasses (frame plus lenses) in Italy are still extremely low and internet sales in the eyewear sector are mainly focused on contact lenses. It is estimated that only [0-5]% in value of all optical sales are made through the Internet.

10.4.2.2. The Commission's assessment

- (325) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the retail market for eyewear in Italy, due to the low combined market shares and the lack of close competition between the Parties.
- (326) In Italy post-Transaction Essilor would bring a very small market share increment of [0-5]% to the combination in the retail of all eyewear, where Luxottica has a limited market share of [5-10]%.²²⁶
- (327) Essilor's and Luxottica's market shares go down to less than [0-5]% and [5-10]% respectively when considering a retail market for prescription frames and lenses. In a retail market for sunglasses Essilor's and Luxottica's market shares are less than [0-5]% and [5-10]% respectively.²²⁷
- (328) The Commission's investigation has confirmed that Luxottica and Essilor are distant competitors in eyewear retail as Essilor focuses on online sales of contact lenses, while Luxottica specialises in brick-and-mortar retail of eyewear and online retail of sunglasses.
- (329) The Commission also notes that online sales of eyewear are modest, at [0-5]% in Italy in 2016, and that its commercial prospects appear limited. Consumers still prefer to try on frames for style and comfort and have an eye care professional fit those frames to their individual needs, for instance by measuring pupillary distance. This is particularly the case for the purchase of more expensive eyeglasses or for more complex prescriptions.

10.4.3. *United Kingdom*

10.4.3.1. The Parties' views

- (330) The Parties submit that the Transaction would not give rise to any competition concerns in the retail market for optical products in the United Kingdom for the reasons set out in recitals (332) to (336):

²²⁶ Annex to Parties' Reply to Question 31 of RFI6.

²²⁷ Annex to Parties' Reply to Question 31 of RFI6.

- (331) First, they state that the Parties' overlap (Luxottica's David Clulow and Sunglass Hut retail stores and online activities, with Essilor's online sales) gives rise to a combined market share well below [10-20].
- (332) Second, they submit that the optical retail sector in the United Kingdom is concentrated in three large chains: Specsavers, Boots, and Vision Express, which in 2016 respectively had 735, 636, and 381 stores (including franchises) and together accounted for the vast majority of the optical retail sales in the country. David Clulow's chain consists of only 41 stores, plus seven optical concessions in department stores. Luxottica also runs 138 sunglasses specialists in the United Kingdom. Post-Transaction, the Merged Entity would therefore remain a much smaller market player than the aforementioned retail chains, and would continue to fiercely compete on the retail market.
- (333) Third, they contend that the retail market for optical products and services is very differentiated in the UK. In addition to optical chains, supermarket chains, such as Tesco and Asda, have a consolidated position in the optical retail market, and also intend to further grow in this sector. According to a report by Mintel, a market research company, Tesco and Asda had a significant number of instore opticians in 2015: 206 and 135 respectively. They are both reported as having a higher market share in value than David Clulow in the optician channel.
- (334) Despite the pressure from large chains, a substantial amount of the market is still represented by independent and small chains (with less than five stores), which Mintel estimated at 4,500 in 2015.
- (335) Fourth, they state that even if the online market (that is to say the only channel where Essilor is present) is developing at a fast pace, sales remain low, with a small overall share estimated at about [0-5]% of the retail market in the United Kingdom by Mintel and about [5-10]% by market research company Strategy with Vision. Although there are many websites offering to sell prescription eyewear and optical products, these businesses remain relatively small. The competitive efforts of online retailers have so far focused on the sale of contact lenses. Accordingly, brick-and-mortar stores remain the major retail channel in the UK, and will likely remain so in the future.

10.4.3.2. The Commission's assessment

- (336) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the retail markets for eyewear in the United Kingdom, due to the low combined market shares, the lack of close competition between the Parties and the presence of three strong competitors.
- (337) First, in the United Kingdom Essilor brings a small market share increment of [0-5]% to the combination in the retail market for all eyewear, where Luxottica has a limited market share of [5-10]%.²²⁸ In addition, the combined entity would continue to be challenged by the three leading optical retailers in the United Kingdom, namely Specsavers ([30-40]% market share), Boots ([10-20]%), and Vision Express ([5-10]%), which combined make up [50-60]% of the eyewear retail market.²²⁹

²²⁸ Annex to Parties' Reply to Question 31 of RFI6.

²²⁹ Annex to Parties' Reply to Question 31 of RFI6.

- (338) Second, Essilor's and Luxottica's market shares go down to [0-5]% and [0-5]% respectively when considering a retail market for prescription frames and lenses. In a retail market for sunglasses Essilor's and Luxottica's market shares are [0-5]% and [20-30]% respectively.
- (339) Third, the Commission's investigation has confirmed that Luxottica and Essilor are distant competitors in eyewear retail as Essilor focuses on online sales of contact lenses, while Luxottica specialises in bricks-and-mortar retail of eyewear and online retail of sunglasses.
- (340) Fourth, as discussed with regard to Italy in Section 10.4.2, the Commission also notes that online sales of eyewear are modest, at [5-10]% in the UK in 2016, and that its commercial prospects appear limited as online retailing cannot fully substitute the role of optical goods stores. Consumers still prefer to try on frames in stores, in contrast to contact lenses, which are more suitable for online sale. Online retailers have therefore focused on the sale of contact lenses, and many mainstream chains such as Specsavers have entered this channel, as have a variety of other pure-play sellers, such as contactlenses.co.uk and feelgoodcontacts.com.

10.5. Brand licensing

- (341) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the award of brand licenses for frames and sunglasses worldwide.
- (342) A frames and sunglasses manufacturer has expressed concerns that the Merged Entity might attain unprecedented market power and defeat competitors in the award of brands licenses by appearing to the eyes of the brands licensors as the undisputed leader across the overall optical sector. According to this complainant, post-Transaction the Merged Entity might seek to acquire new brands currently licensed to their rivals with an aggressive behaviour consisting in high and off-market offer in order to beat any possible competitors.
- (343) Both Essilor and Luxottica are active in brand licensing as actual or potential acquirers of these licenses but they have quite different profiles. Luxottica's portfolio includes prestigious fashion and luxury Giorgio Armani, Burberry, Bulgari, Chanel, Coach, Dolce&Gabbana, Prada, Ralph Lauren, Tiffany & Co., Valentino and Versace. As set out in Section 6.2.1.1, Essilor's licensed brands do not have the same appeal and fame as Luxottica's.
- (344) The Commission notes that licensors' moves represent a key risk in the frames and sunglasses industry, as they are significant drivers of performance. Luxottica is exposed to such a risk: [...]. This shows that Luxottica has lost and may still lose licenses despite its leading position in frames and sunglasses. There is no reason why this situation would change after the Transaction with Essilor, which has a limited number of licensed fashion and luxury brands with limited brand appeal and with low market shares in the EEA as set out in Sections 10.2 and 10.3 and therefore brings minimal specific expertise or additional strength to Luxottica in this field.

11. ASSESSMENT OF VERTICAL NON-COORDINATED EFFECTS

- (345) The Transaction would give rise to a number of vertically affected markets. They relate in particular to:
- (a) the supply by Essilor of ophthalmic substrate as raw material and Luxottica's lenses production (Section 11.1),
 - (b) the supply by Essilor of surfacing, coating and glazing machines as well as consumables and Luxottica's lenses production (Section 11.2),
 - (c) the supply by Essilor of raw material for the production of eyewear and Luxottica's eyewear activities (Section 11.3),
 - (d) the supply by Essilor of lenses and Luxottica's retail activities (Section 11.4),
 - (e) the supply by Essilor of machines and Luxottica's retail activities (Section 11.5) and
 - (f) the supply by Luxottica of frames and sunglasses and Essilor's retail activities (Section 11.6).

11.1. Ophthalmic substrate and ophthalmic lenses

- (346) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's ophthalmic substrate activities and Luxottica's lenses activities.
- (347) As explained above in Sections 7.1.2.3 and 7.2.1.3, ophthalmic substrate is a distinct market for ophthalmic lenses and its geographic dimension is at least the EEA. Essilor sells ophthalmic substrate to independent lenses manufacturers ([...]) and to prescription laboratories integrated within retail chains ([...]).
- (348) Essilor manufactures ophthalmic substrate in a number of plants in Asia and Europe (four plants in France, two in Ireland and one in the UK). In 2016, Essilor achieved revenues of EUR [...] with sales of ophthalmic substrate. Essilor estimates that approximately EUR [...] of “revenue” (based on internal transfer prices) is generated by the internal sale of substrate to Essilor's prescription laboratories ([80-90]% of Essilor's substrate revenues). EUR [...] of sales of substrate ([10-20]% of substrate revenues) is generated with sales to third party customers.²³⁰ The main lenses manufacturers (Zeiss, Hoya, Rodenstock) are also active in the supply of ophthalmic substrate.
- (349) Essilor estimates its market share in ophthalmic substrate to be [30-40]% at EEA level and [30-40]% at worldwide level. Luxottica's presence in downstream markets for finished lenses is limited to its Sedico prescription laboratory described in Sections 6.1.1.2 and 10.1, with a share below [0-5]% at EEA level and an estimated market share of [0-5]% in 2018 at the national level (Italy).
- (350) The Commission concludes that there is no risk of input foreclosure for ophthalmic substrate since third party lens manufacturers have access to an array of ophthalmic substrate suppliers which represent nearly [70-80]% of supply at worldwide and EEA level. In addition, Essilor has no interest in degrading supply conditions to third party lenses manufacturers which represent a more significant part of ophthalmic substrate demand.

²³⁰ Form CO, paragraphs 7-9, page 137.

- (351) Likewise, there is no risk of customer foreclosure in the light of the very small market position of Luxottica in the downstream market for lenses in the EEA and worldwide. Ophthalmic substrate suppliers would continue to have access to a large and diversified number of outlets for their substrate post-Transaction.

11.2. Machines and ophthalmic lenses

- (352) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's ophthalmic machines activities and Luxottica's lenses activities.
- (353) As explained in Section 7.1.4.3, the market for ophthalmic machines can be further segmented between surfacing machines, coating machines, industrial glazing machines and table-top edgers.²³¹ Consumables for machines also constitute a distinct market. As explained above in Section 7.2.5.3, those markets for machines and consumables are at least EEA-wide in scope.
- (354) In the EEA, Essilor's largest customers for machines are (i) Essilor's own laboratories, which account for [...]; (ii) independent prescription laboratories; and (iii) optical retail chains ([...]), [...].
- (355) In the market for surfacing machines, Essilor mainly competes with alternative players such as Schneider, Leybold Optics, Coburn Technologies, and OptoTech. In the market for coating machines, Essilor mainly competes with Schneider, OptoTech, Coburn Technologies, Leybold Optics, and small players from Korea and Japan. In the field of glazing machines, Essilor mainly competes with MEI, Schneider, Nidek, Leybold Optics, Coburn Technologies, and Comes for industrial glazing machines, and with Schneider, Coburn Technologies, Comes, MEI, Topcon, Nidek, Briot-Weco, Huvitz, Indo Optical, Takubo, and numerous other suppliers for table-top edgers. Consumables are manufactured and/or distributed by most machine manufacturers.²³²
- (356) Essilor estimates its market shares in 2015-2016 in surfacing machines at [40-50]% (Schneider [30-40]%, Opto Tech [10-20]%), in coating machines at [30-40]% (Leybold [20-30]%, Schneider [0-5]%) and in consumables at [30-40]%. The market share for industrial glazing machines remain below [30-40]% at EEA level.
- (357) Luxottica's presence in downstream markets for finished lenses is limited to its Sedico prescription laboratory described above in Sections 6.1.1.2 and 10.1, with a share below [0-5]% at EEA level and an estimated market share of [0-5]% in 2018 at national level (Italy).
- (358) The Commission concludes that there would be no risk of input foreclosure for surfacing machines, coating machines, industrial glazing machines or consumables since third party lenses manufacturers have access to an array of machines suppliers which represent for each type of machine at least [50-60]% of supply at worldwide and EEA level. None of those machines suppliers is vertically integrated in lens production. In addition, Essilor has no interest to degrade supply conditions to third

²³¹ This section assesses vertical links between Essilor's sales of surfacing machines, coating machines, glazing machines and consumables and lenses 'production activities of Luxottica. Links between Essilor's sales of table top edgers and Luxottica's retail business will be analysed in Section 11.5.

²³² Form CO, paragraphs 10, page 210.

party lenses manufacturers which represent a more significant part of ophthalmic machines demand.

- (359) One complainant active in frames and sunglasses has voiced concerns in relation to Essilor's position in coating machines and the need to rely on Essilor in case of "*extraordinary maintenance*" of the machines' software, namely its operating system. However, the complainant has also acknowledged that these coating machines can be sourced from other firms so that, in case of an issue related to extraordinary maintenance, it should be feasible to replace Essilor's machines with alternative equipment.
- (360) Likewise, post-Transaction there would be no risk of customer foreclosure in the light of the very small market presence of Luxottica in the downstream market for lenses. Post Transaction, the ophthalmic machines suppliers would continue to have access to a large and diversified number of outlets for their machines.

11.3. Raw material for eyewear and eyewear

- (361) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's sales of raw materials for frames and sunglasses on the one hand and Luxottica's sunglasses and frames activities on the other hand.

11.3.1. Sun plano lenses and sunglasses

- (362) Essilor manufactures and sells sun plano lenses. It either entirely manufactures them or sources clear lenses and then tints them. Essilor sells to not only its subsidiaries, but also to sunglass manufacturers (for example Safilo or Kering), integrated lens manufacturers (for example Carl Zeiss), as well as independent branded manufacturers. This activity creates potential vertical links between Essilor as a supplier of raw materials for sunglasses and Luxottica's downstream activities as a wholesale provider of sunglasses.
- (363) However, Essilor's related sales are very small (in 2016, EUR [...] worldwide, which is less than [0-5]% of Essilor's turnover, of which EUR [...] in the EEA).²³³ Moreover Luxottica manufactures sunglasses in their entirety (both the frame and the shaded plano lenses), and procures only certain components from specialized suppliers (glass lenses for specific models of sunglasses), including Essilor.²³⁴ [...].²³⁵ Essilor's sales include sun plano lenses sold to Luxottica for less than EUR [...] in the EEA (Italy), which is minimal.²³⁶ No potential foreclosure concerns should therefore arise from this vertical link.
- (364) A sub-category of plano lenses relates to specific tinted lenses called NXT lenses. The specifications of these lenses, which give them a transmission curve creating a contrast enhancement effect, make them suitable to be mounted [...] sun spectacles and ski goggles sold under a sport performance brand marketed by one of Luxottica's sunglasses competitors.²³⁷ According to claims received during the market

²³³ According to one complainant, the Merged Entity would also be able post-Transaction to offer regular sunglasses with Luxottica solar frames and Essilor solar lenses at a higher price. However, this risk is limited because Essilor is hardly active in plano sun lenses.

²³⁴ Form CO, page 89, paragraph 234.

²³⁵ Form CO, page 247, paragraph 13.

²³⁶ *Ibid.*

²³⁷ This brand is hardly sold in Europe but mostly in North America.

investigation, post-Transaction Essilor could use its monopolistic position in the production of NXT lenses to advantage Luxottica to the detriment of other competing companies in the downstream market of sunglasses, by limiting supplies or increasing prices. Despite efforts to diversify suppliers, it appears that there would be no readily available alternatives to Essilor for this important input according to the claims received.

(365) [...].²³⁸

(366) [...].

(367) [...].

(368) [...].²³⁹

11.4. Lenses and retail activities

(369) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's ophthalmic lenses activities and Luxottica's retail activities.

(370) As explained in Section 10.1, upstream, Essilor supplies finished ophthalmic lenses to a range of downstream optical retailers across the EEA. Downstream, as explained in Section 10.4, Luxottica operates a brick-and-mortar optical retailing business, mainly limited to Italy (Salmoiraghi & Viganò) and the UK (David Clulow), and Essilor operates a small online retail business in selected Member States. Those vertical relationships give rise to vertically affected markets between Essilor's lenses activities and Luxottica's retail business in Italy and the UK.

(371) Lenses manufacturers have expressed concerns in relation to customer foreclosure as a result of this new vertical link. In particular, they have explained that the Merged Entity would have both the ability and incentive to exclusively (or at least primarily) sell Essilor lenses to the Merged Entity's retailers, thereby excluding rival ophthalmic lens suppliers.²⁴⁰ This would result in foreclosure of rival ophthalmic

²³⁸ See response to PII RFI 34 15 December 2017, paragraphs 6-3 and 7-1.

²³⁹ The Commission has also received concerns in relation to access to wet-block acetate, a component which is used to produce frames and sunglasses. This wet-block acetate is primarily sourced by Luxottica and other sunglasses and frames players from two independent third parties, Mazzuchelli and Laes. According to the claims received, the Merged Entity with its increased bargaining power towards upstream suppliers stemming from its increased purchase volumes, will most likely source from these two third parties, which will most likely sell most or all their capacity to the Merged Entity, thus leaving other eyewear manufacturers with no alternative suppliers. However, as of today Luxottica's sourcing from both suppliers represent between [20-30] and [30-40]% of Mazzuchelli's capacity and between [30-40] and [30-40]% of Laes' capacity (depending on years). As explained above in Sections 10.3 and 10.4, the addition of Essilor to Luxottica's wholesale frames or sunglasses activities in the EEA is minimal and therefore unlikely to dry out Mazzuchelli and Laes' capacities to the extent that they would not be in a position to supply alternative frames and sunglasses manufacturers with wet-bloc acetate. There is therefore no risk of foreclosure in relation to access to inputs.

The complainant has also raised a similar concern in relation to polarizing glass, a component for sunglasses which is primarily sourced by Luxottica [...]. The complainant could not confirm, however, that polarizing glass was in fact an important input in its eyewear activities and acknowledged that there were other "top" suppliers of polarizing glass. Furthermore, the minimal addition due to Essilor's activities in the wholesale of frames and sunglasses in the EEA also exclude any risk of foreclosure in relation to polarizing glass.

²⁴⁰ Lenses manufacturers have also expressed concerns regarding risks of customer foreclosure outside the EEA, notably the US, Brazil and China, where Luxottica's retail activities are more significant. However, those areas fall outside the Commission's jurisdiction.

lens suppliers. According to the complainants, foreclosure of demand from the Merged Entity's retailers would leave ophthalmic lens suppliers a significantly smaller contestable portion of demand from optical retailers (that is to say only demand from third party retailers) to compete for on each of the relevant national ophthalmic lens markets.

11.4.1. Italy

- (372) The Commission concludes that the Transaction would be unlikely to significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's ophthalmic lenses activities and Luxottica's retail business in Italy.
- (373) As explained above in Section 9.2.1, Essilor has a market share of [30-40]% in the overall market for ophthalmic lenses in Italy, which is lower than the EEA average. Those shares are higher for multifocal lenses ([40-50]%) and lower for single vision lenses ([30-40]%). Essilor faces competition in Italy from large international suppliers such as Hoya ([10-20]%), Carl Zeiss Vision ([10-20]%) and Rodenstock ([5-10]%). Data communicated by the Parties show that Essilor's share in Italy has decreased by more than [5-10] percentage points in the last three years ([40-50]% share in 2014).
- (374) As a result, Essilor holds a sizable position in Italy but other rivals are present that constrain Essilor. Therefore the risk of input foreclosure would be limited because if the Merged Entity were to cease supplying or degrade supply conditions to third party retailers, those retailers could simply switch to those alternative suppliers. No Italian retailers have expressed concerns in relation to input foreclosure during the market investigation.²⁴¹
- (375) Downstream, Luxottica operates a retail network of stores under the name Salmoiraghi & Viganò ("S&V"). As explained in Section 10.4.2.2, S&V holds a small market share of [5-10]%, and is subject to fierce competition from all the categories of retail distribution channels. This limits the risk of input foreclosure because Essilor has no interest in degrading supply conditions to third party retailers which represent a more significant part of ophthalmic lenses demand while it would be unlikely to recoup lost profits upstream through increased profits downstream.
- (376) In relation to customer foreclosure, the combination of Luxottica's brick and mortar retail business and Essilor's online activities in Italy holds a share between [5-10] and [5-10]%. If the Merged Entity were to cease purchasing finished ophthalmic lenses from other lens suppliers, those rival lenses suppliers would be largely unaffected due to the limited size of the Merged Entity's retail business. There is therefore no risk of customer foreclosure.

11.4.2. United Kingdom

- (377) The Commission concludes that the Transaction would be unlikely to significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's ophthalmic lenses activities and Luxottica's retail business in the United Kingdom.
- (378) As explained in Section 9.2.1, Essilor has a market share of [40-50]% in the overall market for ophthalmic lenses in the United Kingdom, which is slightly lower than its EEA average. Those shares are lower for multifocal lenses ([40-50]%) and higher for

²⁴¹ See replies to Q1 - questionnaire to customers, question 76.

single vision lenses ([50-60]%). Essilor faces competition in the in the United Kingdom from large international suppliers such as Hoya ([10-20]%), Carl Zeiss Vision ([10-20]%) and Rodenstock ([0-5]%) and more local players such as Norville ([0-5]%). Data communicated by the Parties show that Essilor's share remained stable in the last three years ([40-50]% market share in 2014, [40-50]% in 2015, [40-50]% in 2016).

- (379) As a result, Essilor holds a sizable position in the UK but other rivals are present that constrain Essilor. Therefore the risk of input foreclosure would be limited because if the Merged Entity were to cease supplying or degrade supply conditions to third party retailers, those retailers could simply switch to those alternative suppliers. No UK retailers have expressed concerns in relation to input foreclosure during the market investigation.²⁴²
- (380) Downstream, Luxottica operates brick-and-mortar retail stores under the name David Clulow. As explained in Section 10.4.3.2, David Clulow holds a small market share of approximately [5-10]%, and is subject to fierce competition from all the categories of retail distribution channels, including large optical chains, such as Boots, Vision Express and Specsavers. This limits the risk of input foreclosure because Essilor has no interest to degrade supply conditions to third party retailers which represent a more significant part of ophthalmic lenses demand while it would be unlikely to recoup lost profits upstream through increased profits downstream.
- (381) In relation to customer foreclosure, the combination of Luxottica's brick-and-mortar retail business and Essilor's online activities in the United Kingdom holds a share slightly above [5-10]%. If the Merged Entity were to cease purchasing finished ophthalmic lenses from other lenses suppliers, those rival lenses suppliers would be largely unaffected due to the limited size of the Merged Entity's retail business. In this respect, it should be noted that in the UK, [...]. There is therefore no risk of customer foreclosure.

11.5. Machines and retail activities

- (382) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of vertical non-coordinated effects between Essilor's ophthalmic machines activities, in particular in table-top edgers, and Luxottica's retail activities.
- (383) Essilor supplies table-top edgers to optical retailers in the EEA with a market share of [40-50]% at EEA level. Luxottica's stores do not purchase table-top edgers from Essilor in the EEA, although they do so [...].²⁴³
- (384) Essilor is facing competition from tabletop edgers suppliers Nidek ([20-30]%), Briot Weco ([10-20]%) and Huvitz ([10-20]%).
- (385) Essilor holds a sizable position in table-top edgers but other rivals are present that constrain Essilor. Therefore the risk of input foreclosure would be limited because if the Merged Entity were to cease supplying or degrade supply conditions to third party retailers, those retailers could simply switch to those alternative suppliers.
- (386) In relation to customer foreclosure, Luxottica is only present in retail in Italy where it holds a share between [5-10]% and [5-10]% and in the UK where its share is

²⁴² See replies to Q1 - questionnaire to customers, question 76.

²⁴³ Form CO, page 225.

[5-10]% as explained above in Section 11.5. If the Merged Entity were to cease purchasing table top edgers from alternative suppliers, those rivals would be largely unaffected due to the limited size of the Merged Entity's retail business. There is therefore no risk of customer foreclosure.

11.6. Frames and sunglasses and retail activities

- (387) The Commission takes the view that the Transaction will not significantly impede effective competition as a result of vertical non-coordinated effects between Luxottica's frames and sunglasses activities and Essilor's retail activities in the EEA.
- (388) As explained in Sections 10.2 and 10.3, upstream, Luxottica is the market leader for the supply of frames and sunglasses to downstream optical retailers across the EEA, including online suppliers. Downstream, as explained in Section 10.4, Essilor currently owns websites for online sales of multi-brand eyewear products, since the acquisition of Coastal in 2014, and Vision Direct and MyOptique Group in 2016. Those vertical relationships give rise to vertically-affected markets between Luxottica's activities in wholesale supply of frames or sunglasses and Essilor's online retail business in the following countries where Luxottica's share in frames or sunglasses, or both, is above [30-40] %: [...], Germany, UK, Ireland and France.
- (389) However, these vertical relationships would be unlikely to lead to any input or customer foreclosure post-Transaction. This is because, in relation to optical frames, Essilor's share of distribution through those websites is either immaterial ([0-5] % in Sweden, [0-5] % in the UK) or non-existent (all the other member States).²⁴⁴ In relation to sunglasses, Essilor's share of distribution is either immaterial ([0-5] % in France and the Netherlands, [0-5] % in Germany) or particularly small ([0-5] % in the UK and Sweden). Therefore no foreclosure effects are expected.

12. ASSESSMENT OF CONGLOMERATE NON-COORDINATED EFFECTS

- (390) The Transaction leads to conglomerate links between the Parties' wholesale of frames and sunglasses lenses, table-top edgers and contact lenses since the Parties sell those products to the same customer base in the EEA, namely to optical retailers, as set out in Figure 1 above.
- (391) The Commission's assessment of conglomerate non-coordinated effects focusses on:
- (a) the potential leveraging of Luxottica's position in frames and sunglasses to foreclose competitors in lenses (at the EEA level, see Section 12.2, and at the national level, see Section 12.3),
 - (b) the potential leveraging of Essilor's position in lenses to foreclose competitors in frames and sunglasses (across national markets in the EEA, see Section 12.4, and at the national level, see Section 12.5),
 - (c) the leveraging of Essilor's position in ophthalmic machines to foreclose competitors in eyewear (see Section 12.6), and
 - (d) the leveraging of Luxottica's position in eyewear to foreclose competitors in contact lenses or ophthalmic machines (see Section 12.7).

²⁴⁴ See Annex 6 RFI 31.

- (392) Pursuant to the Non-Horizontal Merger Guidelines, the main potential concern stemming from conglomerate mergers is that the Merged Entity could have the ability and incentive to leverage its strong market position from one market to the other by means of tying, bundling or other exclusionary practices.²⁴⁵
- (a) In order to be able to foreclose competitors, the Merged Entity must have a significant degree of market power, which does not necessarily amount to dominance.²⁴⁶
 - (b) For the Merged Entity to have incentives to foreclose competitors, the foreclosure strategy must be profitable.²⁴⁷
 - (c) In order to have a significant detrimental effect on competition, the foreclosure strategy must lead to a reduction in rivals' ability or incentive to compete.²⁴⁸
- (393) Overall, the Commission concludes that the Transaction would not significantly impede effective competition as a result of conglomerate non-coordinated effects.

12.1. Complaints received

- (394) In the course of its investigation, the Commission has received complaints from market participants about the Transaction's alleged conglomerate non-coordinated effects.
- (395) First, some of Essilor's competitors in the wholesale of ophthalmic lenses as well as some optical retailers raised concerns about the potential leveraging of Luxottica's position in frames and sunglasses to foreclose competitors in lenses.
- (396) In the first place, the complainants identify different leverage strategies that the Merged Entity could adopt. They refer mainly to tying²⁴⁹, where the Merged Entity would make its sales of Luxottica sunglasses or frames, or both, conditional on the customer also purchasing Essilor lenses, and to commercial bundling, where the Merged Entity would offer a bundle of Luxottica sunglasses or frames, or both, on the one hand and Essilor lenses on the other hand at a cheaper price than when the products are purchased individually.
- (397) In the second place, the complainants claim that the Merged Entity would have the ability to engage in such practices since the customer base for frames, sunglasses and lenses is identical and the products are complementary. Moreover, according to the complainants, the Merged Entity would enjoy a significant degree of market power in sunglasses and frames due to its high market shares and the outstanding strength of Luxottica's eyewear brands. The complainants claim, in particular, that Ray-Ban is a must-have brand for opticians. Furthermore, according to the complainants, opticians could easily be convinced to switch their lens purchases to Essilor since they would have strong incentives to buy lenses and frames from a single source to

²⁴⁵ Non-Horizontal Merger Guidelines, paragraph 93.

²⁴⁶ Non-Horizontal Merger Guidelines, paragraph 99.

²⁴⁷ Non-Horizontal Merger Guidelines, paragraph 105.

²⁴⁸ Non-Horizontal Merger Guidelines, paragraph 111.

²⁴⁹ One complainant specifically refers to forced listing as a potential form of tying. Another complainant also refers to potential risks of technical tying if the merged entity designs a lens fitting which would be IP-protected. The Commission has however not found any evidence of future plans indicating that the Parties intend to engage in such development strategy. Furthermore, the general arguments set out in sections 12.2.1.2, 12.2.2.2 and 12.2.3 as regards tying apply in equal measure to technical tying and commercial tying.

benefit from faster and more reliable service and from discounts²⁵⁰ (the latter in the case of mixed bundling).²⁵¹ Moreover, end consumers have little awareness of the lens manufacturers so that opticians can implement a switch to Essilor lenses without facing opposition from consumers.

- (398) In the third place, the complainants claim that a foreclosure strategy would be profitable for the Merged Entity. In particular, the Merged Entity would not risk losing significant volumes of sunglasses or frames sales. According to the complainants, this is because few opticians would reject tied or bundled offers and switch to alternative suppliers due to the must-have nature of Luxottica's branded eyewear products.
- (399) In the fourth place, complainants, both competitors and customers, claim that a foreclosure strategy by the Merged Entity would lead to a significant reduction in sales volumes of the competing lens suppliers in the EEA, which would in turn lead to a reduction of their ability and incentive to compete. While the complainants did not explain in much further detail how the competitiveness of rival lenses suppliers would specifically be impaired, they did point to economies of scale in lens manufacturing and distribution. They claim that by selling lower volumes of lenses, the competitors' profitability and ultimately their competitiveness would be harmed, which may lead to their exit from the market. According to the complainants, this would lead to less choice and increased prices in lenses for end consumers, at least in the long run.
- (400) Second, the Commission has also received complaints, albeit from fewer market participants, about the potential leveraging of Essilor's position in lenses to foreclose competitors in frames and sunglasses.
- (401) In the first place, the potential foreclosure strategies identified by complainants are tying and bundling, similar to those described in recital (396).
- (402) In the second place, the complainants submit that the Merged Entity would be able to successfully implement such strategies since Essilor has strong market power in the wholesale of lenses, in particular in certain EEA member states such as France, as indicated by its high market shares.
- (403) In the third place, the complainants submit that tying or bundling would foreclose access by competitors in frames and sunglasses to optical retailers, ultimately leading to less choice and higher prices for end consumers.

²⁵⁰ According to the complainants, the discounts can take various forms, such as reduced prices per lens purchase, end-of-year payments if certain targets are reached or lump sum payments if customers plan to switch to an alternative supplier. They can also take the form of non-price incentives, such as advantages in stock management or in the supply process.

²⁵¹ According to one complainant, this faster and more reliable service would stem from the fact that Essilor would have access to the frame data base of Luxottica and could stock the frames at the labs where the finished glasses are produced. The complainant therefore mainly argues that the Parties will be able to offer an improved service after the Transaction. Such claim does not raise competition concerns because improvements in service through the merger do not constitute a significant impediment to effective competition. The same complainant further claims that no third party rival in lenses or in frames and sunglasses would be able to match this competitive offer because they do not own must-have brands. The results of the Commission's investigation do not support that claim, as will be explained in Section 12.2.1, in particular recitals (434) and (448).

- (404) Third, the Commission has also received a complaint mentioning the potential risk of leveraging Essilor's position in table-top edgers to foreclose competitors in sunglasses and frames. The concern primarily relates to the possibility of the Merged Entity offering commercial bundles of table-top edgers and lenses on the one hand with frames and sunglasses on the other hand. According to the complaint, Essilor has strong market power in the sale of table-top edgers in the EEA which may allow it to influence the opticians' choice of sunglasses and frames manufacturer.
- (405) Fourth, the Commission has also received concerns about the potential leveraging of Luxottica's position in eyewear to foreclose competitors in other products sold to optical retailers, such as contact lenses and table-top edgers. In particular, one contact lenses supplier has expressed the concern that the Merged Entity could leverage its strength in lenses and eyewear markets to foreclose competitors in the contact lenses market, by providing a "one stop shop" bundle that could not be matched by rivals, simply because they would not have all components of the bundle. Similar concerns were mentioned by rivals of Essilor in the supply of table-top edgers to opticians.
- (406) 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 conglomerate non-coordinated effects for the reasons set out in Sections 12.2 to 12.7.

12.2. Leveraging of Luxottica's position in eyewear at the EEA level to foreclose competitors in lenses

- (407) The Commission takes the view that the Transaction would not significantly impede effective competition in the national markets for the wholesale supply of ophthalmic lenses as a result of conglomerate non-coordinated effects deriving from the leveraging of Luxottica's position in the wholesale supply of frames or sunglasses in the EEA.
- (408) In particular, for the reasons explained in this section (Section 12.2), the Commission concludes that the Merged Entity would not be able and would not be incentivised to leverage its position in frames or sunglasses at the EEA level by linking sales of those products to sales of lenses to an extent that would cause foreclosure of competing lenses suppliers by reducing their ability or incentives to compete. The evidence collected by the Commission during the second phase investigation strongly suggests that competitive harm would be unlikely to arise from leveraging Luxottica's strong position in eyewear into the lens markets. In sum and as further explained in Sections 12.2.1, 12.2.2, and 12.2.3:
- (a) Despite the low market share of [10-20]% of the Merged Entity in frames and following complaints about Luxottica's allegedly strong market position in frames, the Commission has carefully assessed whether Luxottica's market share might underestimate its actual degree of market power. However, the evidence collected during the Commission's second phase investigation has not confirmed this assertion. In particular, the available evidence is not consistent with the assertion that Luxottica's strongest brands have a "must have" status for opticians. This conclusion is supported both by the fact that Luxottica's market penetration in frames is in fact limited and by the feedback received from a large number of individual opticians.

- (b) In relation to sunglasses, where the Merged Entity holds a market share of [40-50]%, the evidence collected during the Commission's second phase investigation has not confirmed that the Merged Entity would hold a degree of market power which would be sufficient to foreclose lens competitors. In particular, the available evidence shows that Luxottica's strongest brands in sunglasses do not have a "must have" status for many opticians. This conclusion is supported both by the fact that Luxottica's market penetration in sunglasses is in fact limited and by the feedback received from a large number of individual opticians. Furthermore, it is unlikely that the Merged Entity would be able to exploit any market power in sunglasses – which are mostly sold with plano lenses without visual correction and which account for a minor part of opticians' revenues – to foreclose competitors in the ophthalmic lenses markets.
 - (c) As regards incentives, there is no conclusive evidence either of past competitive harm caused by the Parties through leveraging, or of plans of anti-competitive foreclosure going forward. The Commission notes, in particular, that Luxottica has possessed a high market share in sunglasses already pre-Transaction, without this having led to the foreclosure of rivals in neighbouring markets, in particular the frames markets. Furthermore, past practice and future plans were limited to offering “complete offers” of frames/sunglasses with the required pair of lenses and the expected success rates for such models are moderate.
 - (d) As regards potential effects on competition, even in the unlikely event of attempted foreclosure, the market investigation has not yielded evidence suggesting that a loss in market share would hamper lens' rivals' ability to exert competitive pressure on Essilor. Specifically, lens rivals' claims that an alleged foreclosure strategy might marginalise their own operations due to the limited scale were not confirmed by the Commission's investigation. The available data on scale efficiencies does not in fact suggest that suppliers with smaller market shares (or markets with smaller output) suffer from a lack of scale economies, as explained in Section 12.2.3.2. Moreover, according to the Commission's quantitative analysis, any hypothetical market share loss would in any event be relatively modest. The Commission therefore rejects the claim that assumed foreclosure strategies would be likely to marginalise rivals to the detriment of effective competition.
- (409) The Commission's assessment in this Section (Section 12.2.1.) will focus on bundling and tying strategies in line with the Commission's Non-Horizontal Merger Guidelines. In theory, conglomerate mergers may sometimes increase the merged entity's bargaining power towards customers (in this case, opticians). However, as noted in paragraph 104 of the Non-Horizontal Guidelines, "*The fact that the merged entity will have a broad range or portfolio of products does not, as such, raise competition concerns*". Instead, such increased bargaining power may arise if the merger permits leveraging market power from one firm's strong products into the products of the other firm, which is enforced via joint negotiation over the extended range of products. Such a bargaining strategy is essentially a bundling or tying strategy, which is discussed in Section 12.2. Moreover, increased bargaining power on account of a conglomerate merger may sometimes arise if there is some residual substitutability between the product ranges of the merging parties (even if in the form of potential rather than actual competition or via supply-side substitutability). If that

is the case, the merged entity's bargaining power may increase post-merger since the merger would render the available range of alternatives less effective for customers' bargaining position. As discussed in Section 10, however, such horizontal effects are highly implausible in the present case. Finally, in the course of its in-depth investigation the Commission has also not obtained any other evidence suggesting potential anticompetitive effects due to an increased range or portfolio of products of the Merged Entity post-Transaction.

12.2.1. *Ability to foreclose*

12.2.1.1. The Parties' views

- (410) The Parties submit that the Merged Entity would not have the ability to foreclose rivals by leveraging Luxottica's position in prescription frames and sunglasses into ophthalmic lenses in a manner that would have a significant detrimental effect on competition, for example by engaging in tying, pure bundling, mixed bundling, or other exclusionary practice, for the following reasons.
- (411) First, the Parties consider that Luxottica does not have market power in prescription frames, be it EEA-wide or national, in particular because of its limited share at EEA level ([10-20]%) and at national level (ranging from [5-10]%-[30-40]%, with the exception of Italy where Luxottica's market share for frames is [40-50]%).
- (412) Second, while they acknowledge that Luxottica has a well-established position in sunglasses in the EEA, the Parties submit that Luxottica does not have a significant degree of market power concerning those products²⁵². The Parties submit also that Luxottica's market share in sunglasses varies significantly among the different EEA countries, and is above [40-50]% only in certain national markets including Croatia, France, Greece, Iceland, Italy, Portugal, Slovenia, Spain and the United Kingdom²⁵³.
- (413) Third, the Parties submit that Ray-Ban is not a "must have" brand because a substantial proportion of retailers across the EEA do not stock Ray-Ban products²⁵⁴ and because the Ray-Ban brand has a moderate market share in the EEA (accounting for [5-10]% of frames and [20-30]% of sunglasses²⁵⁵).²⁵⁶
- (414) Fourth, Luxottica faces competition from several players (Safilo, Marchon, Marcolin, De Rigo and others), all of whom are active across the EEA. The Parties submit that these competitors have a very wide brand portfolio and would have sufficient resources to constrain the Merged Entity and react to its behaviour. The Parties also refer to the presence of retailers such as Fielmann and GrandVision who have their

²⁵² Form CO, Sections 7-8 chapter 5 – Vertical and Conglomerate Effects, paragraph 118.

²⁵³ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, paragraph 118.

²⁵⁴ Form CO, Sections 7-8 chapter 5 – Vertical and conglomerate effects, paragraphs 94 to 96 and 119 to 120.

²⁵⁵ Annex P II RFI 33 submitted in response to RFI 33 of 11 December 2017.

²⁵⁶ The Parties have in addition submitted the results of an online survey they had carried out to assess the importance of the Ray-Ban brand in particular. The Parties had not informed the Commission about the survey before submitting its results and had not shared with the Commission its questionnaire or its scope. Such contacts with the Commission would have in effect obliged the Parties to submit the results irrespective of whether they confirmed the Parties' prior submissions or whether they did not. Due to this bias in the set-up of the survey and due to the lack of transparency, and in the light of the fact that the results of the Commission's own investigative steps confirm many of the points raised by the Parties in any event, the Commission will not discuss the results of the online survey submitted by the Parties in this Decision.

own frames and sunglasses brands; to the recent entry of luxury groups Kering and LVMH who have taken direct control of the distribution of their own eyewear brands and to a high number of smaller qualified competitors.²⁵⁷

- (415) Fifth, customers' multi-sourcing practices and low entry barriers for sunglasses suppliers would in any event prevent the Merged Entity from having any significant market power.²⁵⁸
- (416) Sixth, licensors of brands used for eyewear would oppose any policy of making the purchase of frames or sunglasses conditional on the purchase of ophthalmic lenses, since such a strategy would result in a significant reduction in sales and therefore of royalties granted to these licensors, which are generally calculated as a fixed percentage (between [0-5]% and [10-20]%) of the total turnover Luxottica generates from the brand.²⁵⁹
- (417) Seventh, according to the Parties, retail chains enjoy a significant degree of countervailing buyer power because they account for a significant share of the demand for prescription frames and sunglasses. The Parties argue that some of those retail chains sell strong private label eyewear and would not welcome a pure bundling/tying strategy that would prevent them from increasing their own products' sales. More generally, the Parties submit that all opticians can easily switch to alternative suppliers or start selling their own private label eyewear if threatened by aggressive strategies by their suppliers.²⁶⁰
- (418) Eighth, the Parties claim that the leveraging power of Luxottica vis-à-vis the opticians would be limited post-Transaction because sunglasses only account for a limited share of the turnover and profits of the opticians²⁶¹.

12.2.1.2. The Commission's assessment

Ability to foreclose using sunglasses

- (419) The Commission considers that, for the reasons set out in recitals (426) to (434) Luxottica's market power in relation to sunglasses would be insufficient to allow it to foreclose the Merged Entity's competitors in the lenses markets.
- (420) On the one hand, a number of factors indicate that Luxottica has a certain degree of market power in the wholesale of sunglasses in the EEA in line with what has been submitted by the complainants (see recital (397) above).
- (421) First, Luxottica's market shares in sunglasses are high. At EEA level, Luxottica has a market share of [40-50]% in value, as set out in Table 12. Nevertheless, there remain a large number of alternative suppliers, namely Luxottica's strongest competitor Safilo, but also many additional smaller suppliers which have been operating

²⁵⁷ Form CO, Sections 7-8 chapter 5 – Vertical and Conglomerate Effects, paragraphs 93 and 118 and Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, paragraph 122.

²⁵⁸ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, paragraphs 120 to 126.

²⁵⁹ Form CO, Sections 7-8 chapter 5 – Vertical and conglomerate effects, paragraphs 97 to 102 and 121 to 120

²⁶⁰ Form CO, Sections 7-8 chapter 5 – Vertical and conglomerate effects, paragraphs 103 and 127.

²⁶¹ Form CO, Sections 7-8 chapter 5 – Vertical and conglomerate effects, paragraphs 123 to 125. Annex P II DR 1 of the Parties' response to the Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017.

successfully in the EEA in recent years. In addition, while Ray Ban is the strongest sunglasses brand in the EEA with significant distance to the next competing brand, it holds a market share of [20-30]% in sunglasses in the EEA which does not indicate as such the dominant position of the Ray-Ban brand.

- (422) Second, Luxottica's market share in branded sunglasses is high, having a [50-60]% share in value in the EEA, as set out in recital (211) (the market shares in branded sunglasses are comparable to the market shares in a segment of frames sold at a retail price of more than [...] as set out in recital (211)). However, any leveraging of potential market power in a sub-segment of the overall sunglasses market could only have effects on the portion of lenses sold together with sunglasses of that particular sub-segment and not on all lenses. For instance, leveraging Luxottica's potential market power in branded sunglasses could only have an effect on sales combining lenses and branded corrective sunglasses and not on the whole lens market, leaving the remaining considerable customer base accessible for the lens rivals. That is because the Commission has found that any potential bundling strategies would not go beyond offering complete pairs of spectacles, as set out in further detail in Section 12.2.2. Therefore, narrowing down the assessment to specific sub-segments of the sunglasses market would not alter the Commission's conclusion that any foreclosure effects would in any event be limited as lens suppliers sell lenses for the whole spectrum of frames and sunglasses.
- (423) Third, it appears that Luxottica has been able in the past to unilaterally and profitably implement price increases in relation to sunglasses, particularly Ray-Ban.²⁶² [...] ²⁶³. [...] ²⁶⁴ [...].
- (424) Fourth, there are indications that Luxottica has in the past used its strong position in sunglasses to promote the growth of its frames sales²⁶⁵. There is however insufficient evidence to conclude that such a strategy has led to foreclosure of frames competitors. Furthermore, Luxottica's market shares in frames at [10-20]% remains far below its market share in sunglasses at [40-50]% (similarly for Ray-Ban with a [20-30]% market share in sunglasses but a [5-10]% market share in frames), indicating that any potential strategy of increasing Luxottica's frames sales has had limited results.
- (425) Fifth, Luxottica's customer base is very fragmented as the optical retail sector in Europe features a very high number of opticians (around 80 000 in the EEA with for instance 12 500 in France, 10 000 in Spain and 9 600 in Italy). In many countries, large retail chains represent a small portion of the market and the retail structure mainly consists of independent eye-care professionals. This is the case in Italy (90% of opticians are independent), in Spain (88%) or in Romania (91%)²⁶⁶. There are however some countries such as Germany or the UK where large retail chains (Fielmann, Specsavers, Boots, Vision Express) account for a significant share of the

²⁶² A complainant indicated that Luxottica had reduced the discounts to retailers but had informed the complainant that it could get back part of such discounts if they complied to "marketing guidelines", which aimed at obtaining maximal exposure in the shops for Luxottica's brands.

²⁶³ [...].

²⁶⁴ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, paragraph 166.

²⁶⁵ Luxottica's internal documents refer to [...].

²⁶⁶ Annex RFII Q47 "Overview of the retail landscape in most member States".

retail markets²⁶⁷ and others, such as France, where the majority of independent opticians are grouped under large buying groups which source frames in a centralised manner and seek to secure the best possible commercial terms for their purchases.²⁶⁸

- (426) Despite the considerations set out in recitals (420) to (425), however, Luxottica's market power in sunglasses in the EEA appears to be insufficient to allow it to foreclose lenses competitors. As set out in recitals (427) to (434), the penetration rates, the customer feedback, the revenue split of the opticians and relative margin levels of sunglasses suppliers do not indicate that the Merged Entity would have the ability to successfully leverage its position in sunglasses to the benefit of lens sales to a sufficiently large extent. The following elements support this conclusion:
- (427) First, a substantial proportion of optical retailers across the EEA do not stock Luxottica products in general or Ray Ban sunglasses in particular. [40-50]% of optical stores in the EEA do not carry any of Luxottica's brands²⁶⁹. Moreover, [40-50]% of optical stores in the EEA do not carry Ray Ban sunglasses²⁷⁰.
- (428) Second, to assess the importance that opticians attach to Luxottica's brands, and in particular to Ray-Ban, the Commission sent a questionnaire to almost all of Luxottica's opticians customer base across the EEA. Replies from 3,366 replies from Luxottica customers were analysed. Circa 80% of those respondents are independent opticians and the remaining 20% operate optical stores as part of chains. The objective of that questionnaire was to assess whether Luxottica's importance was larger than indicated by its EEA market share in sunglasses. In spite of the fact that the respondents to the questionnaire above were only Luxottica's customers, who are much more likely to consider Luxottica's brands as important for their business than the [40-50]% of EEA opticians that do not carry Luxottica's brands, the results do not indicate that Luxottica would enjoy a higher degree of market power than what its [40-50]% market share in the EEA would suggest, thus indicating that Luxottica, although a sizable supplier, would not be considered to be a crucial trading partner by eye-care professionals:
- (a) A significant share of respondents to the questionnaire, although considering Ray-Ban and Luxottica brands in general as essential in sunglasses, do not consider Ray-Ban and Luxottica sunglasses brands to drive traffic to their stores, or that the unavailability of Ray-Ban would drive customers out of the store. Less than 40% of respondents consider Ray-Ban to be an important sunglasses brand because it generates customer traffic to the shop²⁷¹ and around 45% of respondents consider Luxottica brands in general to be important because they generate customer traffic²⁷².
- (b) Respondents do not consider the availability of sunglasses brands (in general, not only Luxottica's) to be an essential or very important factor to attract

²⁶⁷ See below Section 12-3.

²⁶⁸ See below Section 12-3.

²⁶⁹ Reply to RFI 30.

²⁷⁰ Reply to RFI 30.

²⁷¹ This figure gives the same weight to independent eye-care professionals and retail chains. In fact, 48% of retail chains and 37% of independent eye-care professionals consider Ray-Ban sunglasses brand important because it generates customer traffic.

²⁷² This figure gives the same weight to independent eye-care professionals and retail chains. In fact, 40% of independent eye-care professionals and 50% of retail chains consider Luxottica brands to be important because they generate customer traffic.

customers to their store. Asked to assess nine factors from essential to non-important according to their ability to attract customers to the store and induce them to make purchases²⁷³, two thirds of respondents consider the service they provide (before and after sales) as the essential factor in generating customer traffic²⁷⁴. Availability of sunglasses brands is considered an essential factor by only 14.5% of independent eye-care professionals respondents and 18% of retail chain respondents, and a very important factor by 32% of independent eye-care professionals respondents and 33% of retail chain respondents. This means that a majority of independent eye-care professionals and optical retail chains consider service to be more important than the availability of sunglasses brands and price of lenses to be similarly important to availability of sunglasses brands.

- (c) In particular, respondents, especially chains, consider the price of lenses to be similarly important as the availability of sunglasses brands to attract customers to the store and induce them to make purchases²⁷⁵.
 - (d) Asked to assess the impact of losing access to Luxottica's sunglasses brands on the profitability of eyewear, lenses and other products sales, roughly 45% of respondents expected losing profits in lenses²⁷⁶. Taking into consideration Luxottica's penetration rate in the EEA, that is to say the proportion of optical retailers across the EEA that stock Luxottica products, this figure decreases to [20-30]% of opticians (significantly below Luxottica's market share in sunglasses in the EEA, [40-50]%). This indicates that the majority of optical retailers do not consider Luxottica's sunglasses brands induce consumers to purchase lenses.
- (429) The Commission infers from the results outlined in recital (428) that the strength of Luxottica's brands in sunglasses, and in particular of Ray-Ban, is not such as to allow Luxottica to successfully leverage its position in excess of its current market position in the EEA. In addition, the responses to the questionnaire sent out to customers of Luxottica also showed that opticians are similarly sensitive to the price of lenses as to the portfolio of sunglasses brands available to them.²⁷⁷ This also makes leveraging the Merged Entity's position in sunglasses to foreclose competitors in lenses more difficult.
- (430) Third, while Luxottica achieves [...] in its business, its margins do not appear to be substantially higher than those of its main competitors according to publicly

²⁷³ The factors to be assessed were: (i) price of frames; (ii) availability of specific brands of frames; (iii) price of lenses; (iv) availability of specific brands of lenses; (v) price of sunglasses; (vi) availability of specific brands of sunglasses; (vii) storefront appearance; (viii) instore appearance; (ix) quality of instore customer service (pre and post sale).

²⁷⁴ Instore appearance was the second factor considered essential and the one which scored higher as a very important factor.

²⁷⁵ 11% of independent eye-care professionals and 17% of retail chains consider price of lenses to be an essential factor, while 30% of independent eye-care professionals and 38% of retail chains view it as a very important factor.

²⁷⁶ This figure gives the same weight to independent eye-care professionals and retail chains. In fact, 43% of independent eye-care professionals and 47% of retail chains are concerned with losing profits in lenses if they lose access to Luxottica's sunglasses brands.

²⁷⁷ See replies to the question "*Please indicate the importance of the following factors based on their ability to attract customers into your store(s) and purchase products*".

available data. Luxottica reported EEA wholesale gross margin at [...] %²⁷⁸ while Marcolin's is [...] %. At the worldwide level, Luxottica's gross wholesale margin is [...] %²⁷⁹ whereas Safilo's is [...] %. Finally, Luxottica's overall gross profit – including retail activities – in the EEA is [...] %²⁸⁰, and De Rigo's is not significantly different at [...] %²⁸¹. This indicates that Luxottica's market power towards eye-care professionals is not much stronger than its rivals', [...].

- (431) Fourth, sunglasses generally represent a small part of opticians' business. On average, lenses represent around [50-60] % of eye-care professionals' revenues in the EEA whereas sunglasses represent [10-20] %²⁸². It is therefore unlikely that optical retailers would imperil the majority of their revenues, generated by lenses, by purchasing more lenses from the Merged Entity than they would consider optimal in reaction to a leveraging strategy that concerns a minority of their revenues.
- (432) Fifth, the Merged Entity would need to ensure that brand licensors would not oppose potential tying and bundling practices involving the respective brands of the Merged Entity, also taking into account also the long-term relationship with the licensors. [20-30] % of Luxottica's revenues in sunglasses are achieved with licensed brands. The licensors would need to be assured that they would be as well off as they would have been absent such practices, including any potential negative effect on their brand equity. The Merged Entity would need to find a contractual mechanism to ensure that [...] in the event of sales losses in the sunglasses markets as without a foreclosure strategy, given that the licence agreements usually provide [...]. In any event, however, certain brand owners have explained during the market investigation that tying and bundling strategies concerning frames and sunglasses involving their brand may be unacceptable²⁸³.
- (433) Sixth, sunglasses and lenses are not complementary products for the majority of sunglasses sold by opticians in the EEA. Sunglasses and lenses form part of the portfolio of products sold to optical retailers but they are mostly not combined to produce the final spectacles for the consumers. Prescription lenses combined with sunglasses represent less than [10-20] % of the total lens volumes sold in the EEA as estimated by Essilor and thus represent significantly smaller volumes in the EEA than prescription lenses combined with frames. This is firstly because, while almost all prescription frames are sold with prescription lenses, only a small portion of sunglasses are paired with prescription lenses. Secondly, volumes of sunglasses sold in the EEA are significantly smaller than volumes of frames sold as apparent from the market size in value as set out in Table 3 (EUR [...] for frames and EUR [...] for sunglasses in the EEA in 2016). As the Commission has found that any potential bundling strategies would not go beyond offering one-to-one complete pairs of spectacles, as set out in further detail in Section 12.2.2, the limited complementarity of sunglasses and lenses makes it unlikely that the Merged Entity would have the

²⁷⁸ Response to P II RFI 35 submitted on 19 December 2017.

²⁷⁹ Response to P II RFI 35 submitted on 19 December 2017.

²⁸⁰ Response to P II RFI 35 submitted on 19 December 2017.

²⁸¹ Annex P II DR 1, Section 2.3.3 of the Parties' response to the Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017. Response to P II RFI 35 submitted on 19 December 2017.

²⁸² Form CO, paragraph 123. Essilor's estimates across the main five EEA countries as corroborated by GfK study presented mid-March 2017 Annex RFI 5 Q16.

²⁸³ Q6 – Questionnaire to licensors – Frames and sunglasses, Q 42.

ability to foreclose competitors in the whole lens markets by using its market power in sunglasses.

- (434) Seventh, sunglasses and lenses competitors may combine their products to compete with a potential tied or bundled offer from the Merged Entity.²⁸⁴ Essilor itself considered in the past developing joint offers with eyewear manufacturers such as Safilo or Marchon (including a combined offer for sunglasses with vision correction lenses), either through an acquisition of an eyewear manufacturer or based on contractual cooperation.²⁸⁵ This indicates that similar cooperation is possible for the Merged Entity's rivals.

Ability to foreclose using frames

- (435) For the reasons set out in recitals (440) to (448), the Commission considers that Luxottica's market power in relation to frames would be insufficient to allow it to foreclose the Merged Entity's competitors in the lenses markets.
- (436) On the one hand, there are certain, albeit limited, indications that could point to the existence of a certain degree of market power for Luxottica in the wholesale of frames in the EEA, in line with what has been submitted by the complainants (see recital (397) above).
- (437) First, as explained in recital (423), [...].
- (438) Second, Ray Ban is the strongest frames brand in the EEA. Nevertheless, its market share is low at [5-10]%²⁸⁶.
- (439) Third the European optical retail markets are highly fragmented, particularly in some countries. In other countries, however, such as Germany, France and the UK, large retail chains and buying groups play a strong role as explained in recital (425).
- (440) On the other hand, however, Luxottica's market power appears to be limited and in any event insufficient to allow it to foreclose competing suppliers of lenses following the Transaction.
- (441) First, Luxottica's market share in value in the wholesale of frames in the EEA as presented in Table 3 is moderate at [10-20]% and does not as such indicate a significant degree of market power.
- (442) Second, Luxottica's market share in value of [30-40]% in the sub-segment of branded frames in the EEA (which the Commission considers to be comparable to the market share in a segment of frames sold at a retail price above [...] for the reasons presented in recital (211)), does not as such indicate a significant degree of market power. Furthermore, and as already set out with respect to sunglasses in recital (422), any leveraging of potential market power in a sub-segment of the overall frames market could only have effects on the portion of lenses sold together with frames of that particular market segment and not on all lenses. For instance, leveraging Luxottica's potential market power in branded frames could only have an effect on sales of lenses to be incorporated in branded frames and not on the whole lens market, leaving the remaining considerable customer base accessible for the lens rivals. That is because the Commission has found that any potential bundling

²⁸⁴ Non-Horizontal Merger Guidelines, paragraph 103.

²⁸⁵ Essilor internal document, [...].

²⁸⁶ Annex P II RFI 33 submitted in response to RFI 33 of 11 December 2017.

strategies would not go beyond offering complete pairs of spectacles (consisting of a frame and a pair of lenses), as set out in further detail in Section 12.2.2. Therefore, narrowing down the assessment to specific sub-segments of the frames market would not alter the Commission's conclusion that any foreclosure effects would in any event be limited as lens suppliers sell lenses for the whole spectrum of frames.

- (443) Third, a substantial proportion of optical retailers across the EEA do not stock Luxottica products in general or Ray Ban frames in particular. [40-50]% of opticians in the EEA do not carry any of Luxottica's brands in their stores²⁸⁷. Moreover, [40-50]% of opticians in the EEA do not carry Ray Ban frames²⁸⁸.
- (444) Fourth, the Commission's investigation shows that Luxottica's limited market shares in frames indicate its lack of ability to create anti-competitive foreclosure in the lens markets. The responses to the Commission's questionnaire described in recital (428) show that the vast majority of Luxottica's customers do not identify Ray-Ban as a "must have" brand in frames, nor consider Luxottica frames brands to drive traffic to their stores. The results of the questionnaire sent to Luxottica's customers show that:
- (a) Less than 40% of respondents list Ray-Ban as the most important frames brand for their business²⁸⁹ and only around a third of respondents consider Ray-Ban an important brand because it generates customer traffic to the shop²⁹⁰.
 - (b) Less than half of respondents list any of Luxottica's brands as the most important frames brand for their business²⁹¹, although Luxottica is considered the most important supplier of frames²⁹². Less than 40% of respondents consider Luxottica brands to be important because they generate customer traffic²⁹³.
 - (c) When asked to assess availability of frames brands together with 8 other factors for their ability to attract customers to the store²⁹⁴, only 13% of independent eye-care professionals respondents and 15% of retail chains view availability of frames brands as an essential factor and only 31% of independent eye-care professionals respondents or retail chains consider it a very important factor.

²⁸⁷ Reply to RFI 30.

²⁸⁸ Reply to RFI 30.

²⁸⁹ This figure gives the same weight to independent eye-care professionals and retail chains. In fact, 32% of independent eye-care professionals and 45 % of retail chains list Ray-Ban as their first brand in frames.

²⁹⁰ This figure gives the same weight to independent eye-care professionals and retail chains. In fact, 37% of retail chains and 27% of independent eye-care professionals consider Ray-Ban frames brand important because it generates customer traffic.

²⁹¹ This figure gives the same weight to independent eye-care professionals and retail chains. In fact, 43% of independent eye-care professionals and 55% of retail chains consider Luxottica brands as their first brand for frames.

²⁹² 18% of independent eye-care professionals and 21% of retail chains consider Luxottica to be an essential supplier of frames, while 30% of independent eye-care professionals and 37% of retail chains consider Luxottica to be a very important supplier of frames.

²⁹³ This figure gives the same weight to eye-care professionals and retail chains. In fact, 33% of eye-care professionals and 44% of retail chains consider Luxottica frames brands important because they generate customer traffic.

²⁹⁴ See recital (428) above.

- (d) Availability of frames brands also scored similarly to prices of lenses as factor to attract customers to the store, and even lower among chains²⁹⁵.
 - (e) Asked to assess the impact of losing access to Luxottica's frames brands on the profitability of eyewear, lenses and other products sales, roughly 45% of respondents expected losing profits in lenses²⁹⁶. Taking into consideration Luxottica's penetration rates in the EEA, that is to say the proportion of optical retailers across the EEA that stock Luxottica products, this figure decreases to 27%. This indicates that the vast majority of optical retailers do not consider Luxottica's frames brands capable of inducing consumers to purchase lenses.
- (445) Taking into account also that the respondents to the Commission's questionnaire referred to in recital (444) were exclusively Luxottica customers – who are a subset of customers who are knowledgeable about Luxottica brands and therefore much more likely to consider Luxottica's brands as important for their business than the [40-50]% of EEA opticians that do not carry Luxottica's brands – the Commission infers from the results outlined in recital (444) that the strength of Luxottica's brands in frames, and in particular of Ray-Ban, is not such to allow Luxottica to leverage successfully its position. In addition, the questionnaire also showed that opticians are equally, if not slightly more sensitive to the price of lenses than to the portfolio of frames brands available to them. This also makes leveraging the Merged Entity's position in frames to foreclose competitors in lenses more difficult.
- (446) Fifth, as exposed in recital (430) Luxottica's margins do not appear to be substantially higher than those of its main competitors.
- (447) Sixth, as set out in recital (432), brand licensors may either oppose potential tying and bundling practices by the Merged Entity or such practices would require new contractual mechanisms to make sure that the brand licensors are as well off as they would have been absent such practices. Licensed brands are important in frames since [40-50]% of Luxottica's revenues in frames are achieved with licensed brands. Certain brand owners have explained during the market investigation that they would not be willing to accept tying and bundling strategies concerning frames and sunglasses involving their brand.²⁹⁷
- (448) Seventh, frames and lenses competitors may combine their products to compete with a potential bundled offer from the Merged Entity.²⁹⁸ As set out in recital (434), Essilor itself considered in the past developing joint offers with eyewear manufacturers, including a combined offer for frames with lenses²⁹⁹ This indicates that similar cooperation would be possible for the Merged Entity's rivals.

12.2.2. *Incentives to foreclose*

12.2.2.1. The Parties' views

- (449) The Parties submit that the Merged Entity would not have the incentive to foreclose rivals by leveraging Luxottica's position in eyewear into ophthalmic lenses in a

²⁹⁵ Ibid.

²⁹⁶ This figure gives the same weight to eye-care professionals and retail chains. In fact, 42% eye-care professionals and 48% of retail chains are concerned with losing profits in lenses if they lose access to Luxottica's frames brands.

²⁹⁷ Q6 – Questionnaire to licensors – Frames and sunglasses, Q 42.

²⁹⁸ Non-Horizontal Merger Guidelines, paragraph 103.

²⁹⁹ Essilor internal document, [...].

manner that could have a significant detrimental effect on competition, for example by engaging in tying, pure bundling, mixed bundling, or other exclusionary practice, for the following reasons.

- (450) First, according to the Parties, if the Merged Entity were to attempt a foreclosure strategy by making the purchase of eyewear (sunglasses or frames) conditional on the purchase of ophthalmic lenses, its total sales of prescription frames would certainly fall, and probably fall significantly, [...].³⁰⁰
- (451) Second, the Parties also submit a comparison of margins per unit for frames and ophthalmic lenses to show that incentives to engage in this strategy are very unlikely. According to the Parties, a tying or bundling strategy from frames to ophthalmic lenses would sacrifice higher margin sales for an increase in sales of a lower margin product.³⁰¹
- (452) Third, in terms of past behaviour, the Parties submit that [...].³⁰² [...].³⁰³
- (453) Finally, the Parties argue that the Merged Entity would be deterred from engaging in tying or bundling practices by the prospect of potentially breaching Article 102 of the TFEU. In particular, the Parties argue that the Commission should, particularly as regards tying, examine the financial incentives and compare the benefits of engaging in illegal tying, versus the relevant risks, financial or otherwise, involved in such practices.³⁰⁴

12.2.2.2. The Commission's assessment

- (454) The Commission considers that a distinction should be made between the Merged Entity being incentivised to engage in tying practices, which appear to be limited, and being incentivised to engage in mixed bundling practices, which are more likely.

*Incentives to engage in tying*³⁰⁵

- (455) For the reasons developed in recitals (456) to (460), the Commission considers that the Merged Entity would not be incentivised to engage in tying practices by using its position in frames or sunglasses, or both, to induce opticians to buy more Essilor lenses. Such tying practices would require opticians to purchase a certain amount of Essilor lenses (either less, equal to or more than required to combine with the purchased Luxottica frames and/or sunglasses) in order to be able to purchase Luxottica frames and/or sunglasses.
- (456) First, Luxottica has resorted to the tying of different products in a very limited way in the past. The Commission has in particular assessed [...].³⁰⁶ During the market

³⁰⁰ Form CO, Sections 7-8 chapter 5 – Vertical and Conglomerate Effects, paragraphs 106-109 and 130-131.

³⁰¹ Form CO, Sections 7-8 chapter 5 – Vertical and Conglomerate Effects, paragraphs 110-111.

³⁰² Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, paragraph 236.

³⁰³ Form CO, Sections 7-8 chapter 5 – Vertical and Conglomerate Effects, paragraphs 126.

³⁰⁴ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, paragraph 270.

³⁰⁵ The arguments set out in paragraphs (456) to (460) apply in equal measure to the incentives of the merged entity to engage in pure bundling due to the similarity between tying and pure bundling strategies.

investigation, the Commission has not uncovered any other policy by Luxottica linking the sale of frames and sunglasses and requiring minimum purchase quantities. As regards Luxottica's policy in relation to sales of eyewear and lenses, there are no indications that Luxottica was tying the sales of these products in the past or had plans to do so in the future.

- (457) Second, the fact that Luxottica has not resorted to tying to any significant extent in the past is further confirmed by an analysis of the transaction data of Luxottica. This analysis demonstrates that there is a wide range of ratios between the amounts spent by each optician on Luxottica sunglasses and frames in the EEA. This suggests that opticians do not purchase sunglasses and frames of Luxottica in specific ratios. This is illustrated in Figure 3 which shows all customers of Luxottica in 2016 in the EEA as well as in France, the Netherlands and Spain that purchase sunglasses and that are ranked according to how much they spend on frames relative to their expenditure on sunglasses. Overall, Luxottica data does not indicate that Luxottica sells sunglasses and frames to retailers in a specific ratio.³⁰⁷ The fact that the spending ratios on frames compared to sunglasses varies so significantly is an indicator that Luxottica has not been tying sunglasses and frames.

Figure 3 [...]³⁰⁸

[...]

- (458) Third, in terms of future plans, there are no indications in the internal documents of the Parties that would show that they envisage practices of tying sales of frames or sunglasses with lenses post-Transaction.
- (459) Fourth, a significant number of customers responding to the market investigation have indicated that they would reject any tying practices from the Merged Entity and that this would encourage them to seek alternative suppliers. Although some of the opticians submitted that they would likely be forced to accept purchasing the tied products, a majority of responding customers, among retail chains and independent retailers, mentioned that they would try to find alternative suppliers and reduce their purchases from Essilor and Luxottica, should tying practices be implemented.³⁰⁹ The market investigation has shown that opticians are professionals that value their independence and seek to preserve their role and influence in the choice of lenses by the final consumer. Those results indicate that a potential tying strategy would likely result in a significant loss of sales for the Merged Entity, hence reducing its incentives to pursue such a strategy. The reluctance of optical retailers to accept tied

³⁰⁶ The Parties have explained that in the Member States covered by GfK (France, Germany, the UK, Italy and Spain), an average optician sells [...] frames per year. They have no data for other Member States. See Annex P II DR 1.

³⁰⁷ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, annex PII DR1, page 33.

³⁰⁸ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, annex PII DR1, page 33.

³⁰⁹ Questionnaire Q1, question 77. Questionnaire Q2, questions 33-1 and 33-2. For example an independent Portuguese optician has indicated that "We would certainly be against that kind of politics and we would have to rethink our contracts. It's probable that we would decrease our Essilor lenses' consumption". A German retail chain submitted that "We would need to consider this very carefully but I think our decision would be to not buy from ESS and LUX anymore".

offers is reflected in Essilor's internal documents. With respect to [...], Essilor notes that: [...].³¹⁰

- (460) Sixth, any commercial practice resulting in tying frames or sunglasses, or both, on the one hand and lenses on the other hand would have to take into account that variable cost margins are much higher for frames and for sunglasses than for lenses. Luxottica's variable cost margins for frames and sunglasses in the EEA (EUR [...] and EUR [...] for frames and sunglasses respectively) are between [...] times higher than Essilor's variable cost margins on lenses in the EEA (EUR [...]).³¹¹ Such an imbalance in margins means that the Merged Entity would need to sell at least [...] additional pairs of lenses to compensate for the loss of a pair of prescription frames and [...] additional pairs of lenses to compensate for the loss of a pair of sunglasses, all things being equal. In other words, any refusal of the tied offer by an optician (resulting in loss of revenue from that optician) would require the Merged Entity to sell more lenses per pair of frames or sunglasses to opticians who would accept it, otherwise the tying strategy would not be profitable. Therefore, the Merged Entity would be likely to incur significant losses if it were to engage in tying practices, especially since (i) a large number of customers are expected to switch away from Luxottica because they would not accept a deterioration of their commercial conditions, as set out in recital (471) and (ii) the majority of customers do not consider Luxottica's brands to be indispensable in their offer, as set out in the assessment of Luxottica's ability to foreclose in recitals (427) to (429) and recitals (443) to (445).

Incentives to engage in mixed bundling

- (461) The Commission considers that the Merged Entity would not have incentives to offer (i) bundles that would include more lenses than required for the purchased frames or sunglasses³¹² or (ii) bundles across the sun/clear categories such as bundles that would include sunglasses and clear lenses.
- (462) First, the Commission's investigation has shown that there is no evidence of such past practices in this regard. As set out in recital (466), [...].³¹³ Thus, none of the past bundles required customers to purchase more lenses than required for the purchased sunglasses or frames.
- (463) Second, the [...]. As set out in recitals (467) to (469), plans of the Parties were limited to [...].
- (464) Third, as set out in Section 12.2.1.2, the Commission has concluded that Luxottica does not enjoy market power beyond what its markets shares indicate and, as set out in recitals (459) and (471) that there is a risk that the Merged Entity would lose sales of frames and sunglasses if it tried to influence opticians' choice of lens supplier through tying or bundling.

³¹⁰ Essilor internal document, [...].

³¹¹ Response to Commission 6(1)(c) decision of 26 September 2017, submitted on 7 October 2017, annex PII DR1, page 285.

³¹² For instance by proposing bundles of frames and more lenses than needed to be assembled with frames (for example 100 frames and 400 lenses).

³¹³ Similarly, according to a complainant, Luxottica has refused to finance marketing activities of opticians if Ray-Ban frames were sold together with lenses other than Ray-Ban prescription lenses.

- (465) On the other hand, for the reasons developed in recitals (466) to (471), the Commission considers that the Merged Entity might be incentivised to engage in mixed bundling practices post-Transaction by offering one pair of eyewear and the corresponding one pair of lenses jointly as “complete jobs” (or “complete offers”) at a cheaper price than if the eyewear and the lenses were purchased separately (such as a complete job of one pair of frames with a pair of clear lenses or a complete job of one pair of sunglasses with a pair of tinted lenses with vision correction). [...].
- (466) First, in terms of past practice, both Essilor and Luxottica have engaged in mixed bundling of eyewear and lenses in the past, albeit at a small scale:
- (a) Essilor [...] with a frame brand called [...], the primary goal of which was to offer complete jobs, while frames were also available separately, as in all mixed bundling strategies.³¹⁴
 - (b) Essilor's subsidiary BBGR has been engaged since 2011 in the supply of complete jobs with [...]. On behalf of [...], BBGR manages the whole supply chain of all frames supplied to [...] (procurement and storage) up to the point of dispatching finished goods (lenses glazed and mounted into spectacles) from BBGR sites to [...] retailers. BBGR is therefore procuring and assembling the products for [...] but also bundling its lenses products with third parties frames. These arrangements apply to all frames purchased by [...].
 - (c) Other bundled offers proposed by Essilor include [...] ³¹⁵ [...] ³¹⁶
 - (d) Luxottica [...].³¹⁷
- (467) Second, Essilor had plans to increase its complete offer of lenses and eyewear in the future absent the Transaction. [...] ³¹⁸. [...].
- (468) Third, Essilor’s internal documents show that Essilor [...] ³¹⁹, [...] ³²⁰ [...] ³²¹.
- (469) Fourth, Essilor identifies a general trend towards bundled offers of frames and lenses in the market: [...] ³²², [...] ³²³.

³¹⁴ Form CO, footnote 471.

³¹⁵ Essilor's email [...].

³¹⁶ Essilor's email [...].

³¹⁷ Parties' response to the Commission's request for information RFI 5, Annex 30 and RFI 27 of 25 October 2017, question 1.

³¹⁸ Essilor's internal document [...].

³¹⁹ Essilor's internal document [...].

³²⁰ Essilor's internal document [...].

³²¹ Essilor's internal document [...].

³²² Essilor's internal document [...].

³²³ Essilor's email [...].

- (470) Fifth, despite the fact that the Merged Entity would be incentivised to offer complete offers of eyewear and lenses in the future, internal analyses of both Essilor and Luxottica indicate that the success rate of complete offers, that is to say the percentage of existing customers that would agree to purchase the complete offers and therefore the percentage of new business won, was expected to [...] % of existing customers at most (while not assuming that the bundled offers would lead to sales growth in the sale of eyewear).
- (a) When Essilor assessed Luxottica's strategy to offer complete offers of eyewear and lenses in Europe, it referred to [...].³²⁴ Those success rates are linked to the degree of freedom Luxottica would have granted to opticians to choose between a bundled offer and a separate offer and the level of additional services offered by Luxottica: [...].³²⁵
- (b) [...].³²⁶
- (471) Seventh, such limited success rates are also reflected by replies of customers in the Commission's market investigation. A significant number of customers responding to the market investigation have indicated that they would reject any mixed bundles and that this would encourage them to seek alternative suppliers. Although some of the opticians submitted that they would likely accept purchasing the bundle, a significant number mentioned that they would try to find alternative suppliers and reduce their purchases from Essilor and Luxottica, should mixed bundling practices be implemented.³²⁷ One of the reasons is that opticians are attached to having a wide portfolio of frames at different price ranges, as this allows them to optimise their sales by "mixing and matching" expensive lenses with more affordable frames or vice versa. Moreover, many opticians consider that the essence of their job is making sure that the final consumer gets fitted with lenses that are most responsive to his/her tastes and needs (which depend on the frame chosen), and assembling the lenses to the frame. If they receive complete jobs that are already mounted, they would be deprived of this possibility of mixing and matching lenses and frames according to their relative price positioning and would have less of a role in advising the final consumer on the type of frame that is best suited to the lenses they need.³²⁸

12.2.3. Overall effects of mixed bundling and tying strategies

12.2.3.1. The Parties' views

- (472) The Parties submit that if the Merged Entity were to leverage Luxottica's position in prescription frames or sunglasses, or both, into ophthalmic lenses by engaging in tying, pure bundling, mixed bundling, or other exclusionary practice, this would not

³²⁴ See for the lower figures for instance, Essilor internal document, [...].

³²⁵ Essilor internal document, [...].

³²⁶ Essilor internal document, [...].

³²⁷ Questionnaire to customers – retail chains (Q1), question 78. Questionnaire to customers – independent opticians (Q1), question 33-3.

³²⁸ Questionnaire to customers Q8a, question 60 and Questionnaire to customers Q1, question 77. As explained by a UK customer "I already predominantly use Essilor for my lenses so not a concern I have. It is possible that they may work a system like that but I consider it unlikely in the UK as it would upset their customer base a lot" As explained by a French customer. "We do not want a supplier of complete frame + lenses to enter our stores. This is our competency in the optician shop to propose the best suitable mix".

have a detrimental effect on competition, for the reasons set out in recitals (473) to (475).

- (473) First, according to the Parties, the market for ophthalmic lenses is highly competitive, and characterised by the presence of a number of strong and resourceful global players, including Hoya, Carl Zeiss, and Rodenstock, that already account for a significant share of the market. The Parties consider that it is unlikely that any hypothetical mixed bundling strategy pursued by the Merged Entity would force any of those players to exit the market or lose their ability to compete.
- (474) Second and similarly, the Parties submit that rival lens manufacturers enjoy significant gross margins and would be willing to sacrifice part of them to incentivise retailers not to purchase the Merged Entity's bundle and switch to a different combination of lenses and frames.
- (475) Third, lens competitors could respond by implementing counter-strategies, including proposing similar ties or bundles on their own or through partnerships with other suppliers.

12.2.3.2. The Commission's assessment

- (476) Pursuant to the Non-Horizontal Merger Guidelines, bundling or tying strategies may result in a significant reduction of sales prospects faced by single-component rivals in the market. While the reduction in sales of competitors is not a problem in and of itself, it may lead to a reduction in the rivals' ability or incentive to compete if the reduction is significant enough, which depends on the characteristics of the industry under consideration. This may allow the Merged Entity to subsequently acquire or maintain market power.³²⁹ 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.³³⁰
- (477) On the basis of its in-depth investigation, the Commission considers that a potential mixed bundling or tying strategy concerning Luxottica's frames or sunglasses, or both, on the one hand and Essilor's lenses on the other hand would be unlikely to lead to foreclosure of rival lens manufacturers to the requisite standard of the Non-Horizontal Merger Guidelines.
- (478) To assess the effects of potential conglomerate strategies, the Commission has (i) analysed the magnitude of the reduction in sales that lens competitors could face following complete offers of eyewear and lenses by the Merged Entity, (ii) analysed the existence of economies of scale in the lens markets in the EEA and (iii) conducted an exercise analysing the concrete volume shifts that could result from a mixed bundling or tying strategy leveraging on Luxottica's position in frames and sunglasses and its effect on the rivals' competitiveness in terms of economies of scale.³³¹

³²⁹ Non-Horizontal Merger Guidelines, paragraphs 111.

³³⁰ Some complainants also mentioned that the addressable market for potential entrants in the lens markets would shrink which could limit potential entrants' ability and incentive to enter the market. The Commission has not found evidence of specific planned market entries. However, the arguments set out in this Section regarding the limited volume shift to the Parties imply that the reduction in the addressable market for potential entrants would be equally limited.

³³¹ In reaction to a complaint received, the Commission has also assessed whether Essilor's price levels are generally higher than that of its rivals which, according to the complainant, would thus lead to price

- (479) First, the Commission finds that the magnitude of the potential reduction in sales by the lens competitors is likely to be limited.
- (480) In the first place, the potential mixed bundling strategies that would primarily rely on leveraging Luxottica's position in eyewear would generally be limited by the amount of eyewear sold by Luxottica. This is because, as set out in recitals (462) to (471), potential conglomerate strategies of the Merged Entity (if any) would likely take the form of complete offers of pairs of eyewear and the corresponding lenses. The success of such offers is limited by the current volumes of frames and sunglasses sold by Luxottica³³² paired with prescription lenses as the Merged Entity can only use its leverage to sell complete pairs on those. Potential gains of conglomerate strategies would therefore accrue to the lenses produced by Essilor which would be paired with Luxottica frames and sunglasses in higher proportion than pre-Transaction, leading to a decrease in sales for other lens manufacturers.
- (481) In the second place, Luxottica products are not sold in all optical stores in the EEA, as outlined in recitals (427) and (443), as a large share ([40-50]%) of optical retailers in the EEA do not carry Luxottica brands. Those optical retailers would not, in any event, be vulnerable to a mixed bundling or tying strategy of the Merged Entity post-Transaction. As a consequence, the lens demand of those retailers would remain accessible for the lens competitors in the same way as pre-Transaction.
- (482) In the third place, Luxottica currently holds moderate market shares in volume in frames and sunglasses EEA-wide (around [10-20]% in frames and [20-30]% in sunglasses) and in most EEA countries, as outlined in Table 4. As a result, the scope of potential foreclosure would not be significant in most EEA countries, leaving a significant share of the lens market accessible to lens manufacturers who compete with Essilor.
- (483) In the fourth place, ophthalmic lenses paired with sunglasses account for a small proportion of the lenses sold in the EEA – less than [10-20]%. Therefore, the reduction in sales by lens manufacturers caused by leveraging of sunglasses would be likely to be limited even if Luxottica's market share by volume is high in certain Member States such as Italy.
- (484) In the fifth place, the Commission has found that, should mixed bundling or tying strategies be implemented, not all such bundled offers would be sold to Luxottica customers successfully as some optical retailers may still prefer alternative lens offers instead. As outlined in recital (470), even when Essilor assessed the potential losses it would suffer due to the introduction of complete offers for the most

increases for those customers that would be induced to switch to Essilor lenses as a result of tying or bundling practices. The Commission's investigation did not confirm that Essilor's prices are generally higher than the prices of its rivals for similar products. As described in Section 6.1.1.1, Essilor operates different networks with a different business focus, including both branded lenses and cheaper private label lenses. Furthermore, some customers explained that while Essilor's branded products are more expensive than their rivals', Essilor's private label products are similarly priced as their rivals'. See Questionnaire to customers – retail chains (Q1), question 32; see also questionnaire to lens competitors (Q3), question 39.

³³² The Commission's investigation has not resulted in indications that the sales of frames and/or sunglasses by the Merged Entity would increase to any significant extent due to the Transaction as set out in Section 12.4, 12.5 and 12.6. The Commission also does not have sufficient evidence to conclude that Luxottica's shares of frames and/or sunglasses would increase significantly in the EEA in the next years.

successful brand Ray-Ban, the worst case scenario envisaged consisted of at most a [...] % loss of Essilor lenses paired with Ray-Ban.³³³

- (485) Second, 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.
- (486) In the first place, lenses ultimately sold in the EEA by Essilor and its main competitors are to a significant extent manufactured outside the EEA in facilities serving worldwide customers, including for made-to-order lenses fitted to individual customers.³³⁴ This implies that potential economies of scale in the production of lenses would be realised at a global level and potential effects of conglomerate strategies implemented by the Merged Entity in the EEA or in any of the individual EEA member states on lens manufacturers' scale would not be significant given the main lens competitors' global scope of operations.
- (487) In the second place, 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.
- (a) Economies of scale in the production of lenses would be shown if profitability increased in line with an increase in volumes sold at the EEA level³³⁵, as production of an additional lens would be less costly than the production of the previous unit. Such a relationship is not generally obvious from the data received from the lens manufacturers. The Commission considers that this lack of a clear link between volumes sold and profitability at the EEA level questions the existence of economies of scale in the production of lenses for the EEA.³³⁶
- (b) Contrary to the production of lenses, distribution is typically managed at the national level. Economies of scale in the distribution of lenses would then be shown if profitability at the national level increased in line with an increase in volumes sold in each country, since the distribution of each additional lens would be less costly. As apparent for Essilor from Figure 4, such a relationship does not generally show from the data received from the lens manufacturers. The lack of clear link between volumes sold and profitability in each EEA country questions the existence of economies of scale in the distribution of lenses.

Figure 4 [...]³³⁷

[...]

- (488) Third, the effect of a moderate reduction in sales is likely to be equally limited for the competitiveness of the lens competitors given the limited economies of scale.
- (489) The Commission conducted an exercise analysing the concrete potential volume shifts as a result of a mixed bundling or tying strategy leveraging on Luxottica's

³³³ Essilor's internal document [...].

³³⁴ See the Parties' reply to RFI 18 and minutes of the October 3, 2017 call with Hoya.

³³⁵ As explained in paragraph (486) production of lenses for the EEA is mostly done at the global level, therefore economies of scale for the production of lenses for the EEA should be assessed at the EEA level as volumes sold in the entire EEA would affect production costs of lens competitors.

³³⁶ This finding applies equally to potential economies of scale in the purchasing of raw materials, consumables and equipment.

³³⁷ Each dot represents an EEA country; [...].

position in frames and sunglasses. To assess those potential volume shifts, the Commission assumed that pre-Transaction Luxottica frames and sunglasses are paired with Essilor lenses in proportion to Essilor's volume share in a given EEA country. In this analysis, Luxottica's frames and sunglasses would post-Transaction be paired in higher proportion with Essilor lenses compared to the pre-Transaction situation as a result of mixed bundled or tied offers.³³⁸ Correspondingly, volumes of lenses gained by the Merged Entity would be lost by rivals of Essilor. In its exercise the Commission has assumed that those losses would be proportional to the current volume market shares of rival lens manufacturers.

- (490) The results of this analysis show that the decrease in scale by the main rivals of Essilor would be insufficient to justify concerns that this decreased scale may hamper their competitiveness. Considering the scenario in which the pairing of Luxottica frames and sunglasses with Essilor prescription lenses would increase by [...] % post-Transaction³³⁹, Essilor could gain an additional [0-5] % volume market share in the EEA (its share would increase from [40-50] % to [50-60] %)³⁴⁰ and major competitors would at most lose [0-5] % in volume market share in the EEA. At the national level under the same scenario, Essilor could gain at most an additional [5-10] % volume share in Italy while major competitors would at most lose a [0-5] % volume market share in Italy³⁴¹. Due to the limited evidence of economies of scale at the EEA and the national level as set out in recitals (485) to (487), such decreases in volume appear unlikely to affect competitors' ability to compete, either to continue exerting competitive pressure on the Merged Entity or to counteract a potential increase in price. Potential additional decreases in volumes due to internal sourcing of Essilor lenses by Luxottica's retail activities in the EEA (see Section 11.4) post-Transaction would not change the Commission's assessment of effects on competing lens manufacturers since the concerned additional volumes are low, taking into account that Luxottica was already purchasing all of its lens requirements for its UK retail operations internally pre-Transaction.
- (491) In light of the considerations set out in recitals (476) to (490), the Commission concludes that any potential tying or mixed bundling strategy of the Merged Entity in the EEA markets for the wholesale supply of frames and sunglasses would be unlikely to have significant detrimental effects on competition in any of the national markets for the wholesale supply of lenses within the EEA.

³³⁸ The Commission assessed three potential scenarios, looking at the overall market for frames/sunglasses and the one for prescription lenses (without further sub-segmentation): (i) an increase by 50% of pairing of Luxottica frames/sunglasses with Essilor prescription lenses post-merger (ii) a 75% increase and (iii) a 100% increase, meaning all Luxottica's requirements in prescription lenses in the EEA would be covered by Essilor. As explained in paragraph 473 when assessing the potential success rate of Luxottica's Ray-Ban lenses offers Essilor considered the worst case scenario to be a [...] % loss of its volumes sold with Ray-Ban frames/sunglasses sold with prescription lenses. A 100% increase in pairing is considered very unrealistic by the Commission; however, even under this "worst case scenario", the Commission considers potential mixed bundling strategies would be unlikely to lead to foreclosure of lens competitors.

³³⁹ A [...] % success rate was considered in Essilor's internal document as the best possible result [...] (see para (470)).

³⁴⁰ Latvia, Liechtenstein, Lithuania and Malta not included in the analysis due to the lack of data on volumes of lenses sold (see Table 4).

³⁴¹ This analysis excludes Estonia due to the unreliability of the volume market shares of Luxottica in sunglasses and frames provided by the Parties for Estonia.

12.3. Leveraging of Luxottica's position in frames and sunglasses at the national level to foreclose competitors in lenses

- (492) The Commission takes the view that the Transaction would not significantly impede effective competition in markets for ophthalmic lenses in the EEA as a result of conglomerate non-coordinated effects due to the leveraging of Luxottica's position at the national level in frames and sunglasses.
- (493) The Commission concludes that the Merged Entity would not be able and would not be incentivised to leverage its position in frames and sunglasses at the national level by linking its sales to those of lenses to an extent that would cause foreclosure of competing lenses suppliers by reducing their ability or incentives to compete.
- (494) For the reasons set out in recitals (498) to (660), the Commission considers that Luxottica's market power in relation to frames and sunglasses at national level would be insufficient to allow it to foreclose the Merged Entity's competitors in the lenses markets. In addition to the country-specific factors discussed in Sections 12.3.1 to 12.3.29, some of the conclusions reached at EEA level apply *mutatis mutandis* at the national level in each of the EEA countries. In particular, as explained in more detail in Section 12.2.1.2, the Merged Entity would not have the ability to foreclose lens competitors because (i) sunglasses represent a small part of opticians' business and are less important than the sale of lenses, (ii) because sunglasses and lenses are not complementary products for the majority of the sunglasses sold by opticians, (iii) because higher market shares in certain sub-segments of the frames and sunglasses markets would be unlikely to allow the Merged Entity to foreclose competitors across the entire lenses markets, and (v) because eyewear and lenses competitors could combine their products to compete with a potential tied or bundled offer from the Merged Entity.
- (495) As regards incentives to foreclose, the same conclusions reached at EEA level apply *mutatis mutandis* at the national level. In particular, for the reasons explained in Section 12.2.2, the Commission considers that the Merged Entity would not be incentivised to engage in tying practices at the national level within the EEA. By contrast, for the reasons explained in Section 12.2.2 the Commission takes the view that the Merged Entity may be incentivised to engage in mixed bundling practices consisting of "complete offers" at national level within the EEA.
- (496) Similarly, with regard to the overall effects, the arguments outlined in Section 12.2.3 also apply *mutatis mutandis* for the assessment of conglomerate non-coordinated effects at the national level. In particular, the arguments outlined in recitals (479) to (490) regarding economies of scale also apply to the national assessment, since production of lenses is mostly done at a global level. Furthermore, and as set out in recital (487), 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. This indicates that limited volume shifts at the national level (or in a group of EEA countries), such as those described in recital (490) are unlikely to impact the lens competitors' ability and incentives to compete in the respective EEA country or respective group of EEA countries.
- (497) In view of the considerations set out in recitals (494) to (496), the Commission will focus the national assessment of the conglomerate effects – insofar as the elements are country-specific and in addition to the elements set out in recital (494) – on whether Luxottica has sufficient market power in relation to frames and sunglasses at

national level to allow it to foreclose the Merged Entity's competitors in the lenses markets.

12.3.1. *Austria*

- (498) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Austria.
- (499) As regards the ability to foreclose, in Austria, Luxottica has a market share of [10-20]% as regards frames and [30-40]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor on the other hand has a market share of [20-30]% as regards lenses overall, with no significant differences between single vision and progressive/multifocal lenses.
- (500) The penetration rate of Ray-Ban in Austria is consistent with the moderate market shares of Luxottica in frames and sunglasses as illustrated in Table 2. Ray-Ban is present in [50-60]% of the 1,100 stores as regards frames and [50-60]% of the stores as regards sunglasses. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Austria would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (501) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.2. *Belgium*

- (502) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Belgium.
- (503) As regards the ability to foreclose, in Belgium, Luxottica has a market share of [10-20]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [20-30]% as regards lenses overall, with no significant differences between single vision and progressive/multifocal lenses.
- (504) The penetration rate of Ray-Ban is consistent with the moderate market shares of Luxottica in frames and sunglasses as mentioned in Table 3. Ray-Ban is present in [60-70]% of the 1,530 stores as regards frames and [60-70]% of the stores as regards sunglasses, which is slightly above the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Belgium/Luxembourg would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (505) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.3. *Croatia*

- (506) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Croatia.
- (507) As regards the ability to foreclose, in Croatia, Luxottica has a market share of [10-20]% as regards frames and [40-50]% as regards sunglasses. The Parties have

not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [40-50]% as regards lenses overall, with no significant differences between single vision and progressive/multifocal lenses.

- (508) The penetration rate of Ray-Ban is consistent with the moderate market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in only [30-40]% of the 495 stores as regards frames, which is substantially below the EEA average and in [60-70]% of the stores as regards sunglasses, which is slightly above the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Croatia would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (509) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.4. Cyprus

- (510) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Cyprus.
- (511) As regards the ability to foreclose, in Cyprus, Luxottica has a market share of [0-5]% as regards frames and [10-20]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [20-30]% as regards lenses overall, with a higher presence on the market for single vision lenses ([50-60]% market shares) and a very low presence on the market for progressive/multifocal lenses (around [0-5]% market shares).
- (512) The penetration rate of Ray-Ban is consistent with the moderate market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [50-60]% of the 150 stores as regards frames, which is slightly below the EEA average and in [60-70]% of the stores as regards sunglasses, which is slightly above the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Cyprus would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (513) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.5. Czech Republic

- (514) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in the Czech Republic.
- (515) As regards the ability to foreclose, in the Czech Republic, Luxottica has a market share of [10-20]% as regards frames and [10-20]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [50-60]% as regards lenses overall, with a stronger position in bifocal lenses ([80-90]%) than in progressive or multifocal lenses (respectively [40-50]% and [50-60]%) and single-vision lenses ([40-50]%).

(516) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in only [10-20]% of the 1,570 stores as regards frames and [10-20]% of the stores as regards sunglasses, which is substantially below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in the Czech Republic would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

(517) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.6. Denmark

(518) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Denmark.

(519) As regards the ability to foreclose, in Denmark, Luxottica has a market share of [5-10]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [10-20]% as regards lenses overall, with no significant differences between single vision and progressive/multifocal lenses.

(520) Despite these modest market shares, Ray-Ban is present in [60-70]% of the 792 optical stores in Denmark as regards frames and [60-70]% of the stores as regards sunglasses, which is above EEA average. These overall high penetration rates, combined with the modest market shares of Luxottica in Denmark, indicate that despite their wide availability in Danish stores, Luxottica's brands have [...]. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Denmark would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

(521) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at national level.

12.3.7. Estonia

(522) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Estonia.

(523) As regards the ability to foreclose, in Estonia, Luxottica has a market share of [10-20]% as regards frames and [5-10]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [20-30]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [50-60]% and [20-30]%) and a lower share in single-vision lenses ([20-30]%).

(524) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [20-30]% of the 430 stores as regards frames and [20-30]% of the stores as regards sunglasses, which is way below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in

Estonia would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

- (525) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.8. Finland

- (526) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Finland.
- (527) As regards the ability to foreclose, in Finland, Luxottica has a market share of [10-20]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [20-30]% as regards lenses overall, with a stronger position in single lenses ([20-30]%) than in progressive and multifocal lenses ([10-20]% for both).
- (528) Despite these modest market shares, Ray-Ban is present in [70-80]% of the 750 optical stores in Finland as regards frames and [70-80]% of the stores as regards sunglasses, which is above EEA average. These overall high penetration rates, combined with the modest market shares of Luxottica in Finland, indicate that despite their wide availability in Finnish stores, Luxottica's brands have [...] rather poor performance in Finland. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Finland would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (529) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.9. France

- (530) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in France.
- (531) As regards the ability to foreclose, in France, Luxottica has a market share of [20-30]% as regards frames and [50-60]% as regards sunglasses. As regards frames and sunglasses sold at a retail price above [...], Luxottica has a market share of [20-30]% in frames and [50-60]% in sunglasses. That level of market shares is indicative of a limited degree of market power in relation to frames and a higher degree of market power in relation to sunglasses.
- (532) Essilor has a market share of [70-80]% as regards lenses overall, with no significant differences between single-vision lenses ([70-80]%), multifocal lenses ([70-80]%) and progressive lenses ([70-80]%).
- (533) Despite the relatively modest market shares of Luxottica in frames, the penetration rate of Ray-Ban in French stores is quite significant for both sunglasses and frames. Ray-Ban is present in [80-90]% of the 12,375 stores as regards frames and [80-90]% of the stores as regards sunglasses, which is significantly above the EEA average and represent the highest penetration rate of Ray-Ban products in the EEA.
- (534) Although Luxottica has a significant market share in sunglasses and penetration rates of Ray-Ban are similarly high in frames and sunglasses, the responses to the

Commission's investigation show that the majority of Luxottica's French customers do not consider the availability of sunglasses or frames brands to be an essential or very important factor to attract customers to their store³⁴². In general those French eye-care professionals do not identify Ray-Ban as a “must have” brand, nor do they consider to be Luxottica sunglasses or frames brands that drive traffic to their stores.

- (535) The availability of sunglasses or frames brands (in general, not only Luxottica's) is not viewed by Luxottica's French customers as a paramount factor to attract customers to their store. Asked to assess nine factors³⁴³ from essential to non-important according to their ability to attract customers and induce them to make purchases, French optical retail chains rank service as the number one factor (92% of them view service as very important or essential), followed by in-store appearance (63%), price of lenses (59%), price of frames (50%) and finally availability of specific sunglasses brands (48%) and availability of specific frames brands (48%). French independent opticians rank service as the number one factor (89% view service as very important or essential), followed by in-store appearance (56%), store front appearance (46%), availability of specific sunglasses brands (45%), price of lenses (43%) and availability of specific frames brands (40%).³⁴⁴
- (536) Among respondents who consider brands an important factor, 59% of French retail chains list a Luxottica brand as their first choice of branded frames (Ray-Ban for 49% of them). As regards sunglasses, figures are respectively 70% and 68%. For independent French opticians, 40% of these eye-care professionals list one Luxottica brands as their first choice of brands in frames (Ray-Ban for 27% of them). As regards sunglasses, the figures are 59% and 53% respectively.³⁴⁵
- (537) Those figures indicate that a majority of French independent opticians consider other suppliers and brands as alternatives to Luxottica's products for frames. Given that all the respondents to this questionnaire are Luxottica's customers and the French optical retail sector is primarily composed of independent opticians, one can infer that the strength of Luxottica brands, and in particular of Ray-Ban, is not such to allow Luxottica to leverage successfully its position in frames. Figures presented in recital (536) show that the market power of Luxottica is not superior to what its market share suggests.
- (538) In addition, the responses to questionnaire also showed that opticians are slightly more sensitive to the price of lenses than to the portfolio of sunglasses or frames brands available to them.³⁴⁶ This also makes leveraging one's position in sunglasses to foreclose competitors in lenses more difficult.
- (539) As mentioned above in recital (431), sunglasses generally represent a small part of opticians' business ([10-20]% on average in the EEA). In France, this figure is even lower ([5-10]%)³⁴⁷. It is therefore unlikely that optical retailers would put at risk the

³⁴² The Commission sent a questionnaire to almost Luxottica's entire optician customer base across the EEA. See paragraph (428).

³⁴³ These figures report feedback from French independent eye-care professionals and retail chains to the questionnaire described in paragraph (428).

³⁴⁴ Ibidem.

³⁴⁵ Ibidem.

³⁴⁶ Ibidem.

³⁴⁷ Form CO, Table 4.7, page 294.

majority of their revenues, generated by lenses, by purchasing more lenses from the Merged Entity than they would consider optimal.

- (540) Although the retail structure in France is quite fragmented with roughly 13,000 opticians³⁴⁸, large retail chains such as Alain Afflelou (727 shops), Grand Vision/Grand Optical (798 shops) and Optical center (475 shops) are also present. The majority of independent opticians are gathered in large buying groups which source frames and lenses in a centralised manner and seek to secure the best possible commercial terms for their purchases (however they do not select assortment which is the primary responsibility of the optician). They either operate under a common banner such as Krys (1,350 stores) or Optic 2000 (1,400 stores) or under their own banner such as CDO (1,900 stores) or ALL (1,700 stores).
- (541) Some of those buying groups have their own private label product range. One of them (Krys, 1,350 stores, [10-20]% market share in retail in France) has its own lenses production facility and supplies its members with finished lenses processed in its prescription laboratory. This makes any attempt to foreclosure unlikely to succeed in relation to Krys, as Krys can easily have recourse to this alternative. Krys has explained during the investigation that *"through adoption of a diversification strategy dependence from the Parties can be reduced. Indeed, Krys has proven that it can manufacture 50% of the value of lenses independently from Essilor. Similarly, for Luxottica, Krys has proved that it could lower their market share in its stores"*.³⁴⁹
- (542) Moreover, as explained below in recital (747) in France, health optional insurance bodies (organismes complémentaires d'assurance maladie or "OCAMs") are subscribed to by approximately 94% of the French population. OCAM manage care networks, to which retailers may be affiliated either on a voluntary basis or after being selected by the network (mostly further to a bidding process). These networks negotiate prices of lenses through requests for proposal by which they select lenses suppliers (generally for at least three years) and "reference" some of these suppliers' products. Retail opticians belonging to such OCAM networks which choose their lens suppliers from the "referenced" list commit not to resell the lens above a certain price.³⁵⁰
- (543) Although those networks do not, in theory, exert a direct influence on price of frames, recent studies have shown that prices of frames are in general 9 to 10% lower for opticians belonging to these networks.³⁵¹ For example, opticians belonging to the Seveane network (3,500 eye-care professionals³⁵²) sign a contract through which they commit to grant the final consumer a 15% discount on the retail price of the frame. This commitment shows that the OCAM networks have managed to partly regulate prices of frames in France.
- (544) On the basis of the considerations set out in recitals (524) to (536), the Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in France would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

³⁴⁸ Form CO, annex RFI 1 Q47.

³⁴⁹ Non-confidential version of minutes of a conference call with Krys, 7 July 2017.

³⁵⁰ Consequently, final customers covered by OCAMs belonging to the network are reimbursed more.

³⁵¹ See *"Les réseaux de soins. Rapport établi par l'Inspection Général des Affaires Sociales"*, paragraphs 16 and 174 available at <http://www.igas.gouv.fr/IMG/pdf/2016-107R.pdf>.

³⁵² There are 7 main networks and eye-care professionals may and in general do belong to several of them.

- (545) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at national level.

12.3.10. Germany

- (546) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Germany.
- (547) As regards the ability to foreclose, Luxottica has a market share of [5-10]% as regards frames and [30-40]% as regards sunglasses. Those values are slightly higher when considering sunglasses and frames sold at a retail price above [...], with market shares of [5-10]% for frames and [30-40]% for sunglasses. Essilor has a market share of [30-40]% as regards lenses overall, with no significant differences between single vision and progressive/multifocal lenses.
- (548) Ray-Ban is present in [50-60]% of the 11,700 optical stores in Germany for both frames and sunglasses products, which is slightly below the EEA average penetration rate of this brand. Ray-Ban, after Fielmann, is the [...] strongest sunglasses brand in Germany holding market shares of [10-20]% (in value).³⁵³ The following competing brand with largest share is Fossil, a Safilo brand, which accounts for [5-10]%³⁵⁴ of the market. However, as regards frames, Ray-Ban is the [...] ranked brand in Germany with only [0-5]% market shares (in value) compared to Fielmann which is the strongest frames brand with [30-40]% market shares.
- (549) Less than one third of independent opticians in Germany and around 45% of German retail chains that replied to the questionnaire sent to Luxottica's customer base (see recital (428) above) consider Ray-Ban (frames or sunglasses) to be the most important brand for their business because it generates customer traffic and high sales. The large majority of respondents consider the service they provide (before and after sales) the essential factor in generating customer traffic and only 15% of independent opticians and 10% of retail chains considered the availability of sunglasses brands an essential factor. Around 60% of the respondent independent opticians and 40% of the respondent retail chains consider that not having access to Luxottica products (frames and sunglasses) in the future would not change the profits they generate from the sale of lenses.
- (550) The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Germany would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (551) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.11. Greece

- (552) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Greece.

³⁵³ Annex P II RFI 33 submitted in response to RFI 33 of 11 December 2017.

³⁵⁴ Annex P II RFI 33 submitted in response to RFI 33 of 11 December 2017.

- (553) As regards the ability to foreclose, in Greece, Luxottica has a market share of [30-40]% as regards frames and [50-60]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [5-10]% as regards lenses overall, with a slightly stronger position in single-vision lenses ([5-10]% market shares) and a lower share in progressive and multifocal lenses (respectively [0-5]% and [0-5]%).
- (554) The penetration rate of Ray-Ban is [40-50]% of the 2,000 stores as regards frames and [40-50]% of the stores as regards sunglasses, which is below the EEA average. More than half of opticians in Greece therefore do not carry Ray-Ban products, this suggesting that it is not a must-have product for Greek opticians. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Greece would be insufficient to allow it to foreclose the Merged Entity's competitors in the lenses markets in line with the reasoning set out in Section 12.2.1.
- (555) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.12. Hungary

- (556) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Hungary.
- (557) As regards the ability to foreclose, in Hungary, Luxottica has a market share of [10-20]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [30-40]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [70-80]% and [70-80]%) and a lower share in single-vision lenses ([20-30]%).
- (558) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as mentioned in Table 3. Ray-Ban is present in [20-30]% of the 1,000 stores as regards frames and [20-30]% of the stores as regards sunglasses, which is largely below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Hungary would be insufficient to allow it to foreclose the Merged Entity's competitors in. lenses markets in line with the reasoning set out in Section 12.2.1.
- (559) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at national level.

12.3.13. Ireland

- (560) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Ireland.
- (561) As regards the ability to foreclose, in Ireland, Luxottica has a market share of [10-20]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [30-40]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [50-60]% and [40-50]%) and a lower share in single-vision lenses ([20-30]%).

- (562) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [30-40]% of the 7,370 stores as regards frames and [30-40]% of the stores as regards sunglasses, which is far below the EEA average.³⁵⁵ The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Ireland would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (563) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.14. Italy

- (564) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Italy.
- (565) As regards the ability to foreclose, the Commission has found indications that Luxottica holds a relevant degree of market power in Italy in particular in relation to sunglasses. Nevertheless, the Commission concludes that Luxottica's position in frames or in sunglasses would be insufficient to enable the Merged Entity to foreclose its competitors in the lenses markets in Italy.
- (566) On the one hand, Luxottica holds high market shares in its home country, particularly in sunglasses at [60-70]%, whereas in frames its market share amounts to [40-50]%. These values are slightly higher when considering sunglasses and frames sold at a retail price above [...], with market shares of [60-70]% and [40-50]% respectively.
- (567) Conversely, Essilor has in Italy a lower market share ([30-40]%) than in other EEA countries. Essilor is stronger in progressive lenses ([40-50]%) than in single vision lenses ([30-40]%). Besides the main international lenses competitors, there are a number of independent local laboratories present³⁵⁶.
- (568) The penetration rate of Ray-Ban shows that the brand is present in slightly more than [70-80]% of the 9,600 optical stores in Italy³⁵⁷. This is the case for both frames and sunglasses products.
- (569) 74% of the Italian retail chain respondents and 63% of independent opticians' respondents to the Commission's questionnaire consider one of Luxottica's sunglasses brands as the first sunglasses brand. However, in relation to frames the responses to the questionnaire show that just slightly more than half of the respondents consider Ray Ban among the top three frames brands and only around 4 out of 10 respondents retain that Ray-Ban is the most important frames brand.
- (570) Although Luxottica has a significant market share in sunglasses and a lower, albeit sizable, market share in frames and penetration rates of Ray-Ban are similarly high in frames and sunglasses, the responses to the Commission's investigation show that the availability of sunglasses or frames brands is not considered by Luxottica's Italian optician customers to be the essential factor to attract customers to their stores.

³⁵⁵ The number of stores and penetration rates presented concern both Ireland and the United Kingdom as they were provided jointly to the Commission.

³⁵⁶ Essilor document: [...]. Independent laboratories: Italent, DAI, Optovista, Divel, Romanottica and others.

³⁵⁷ See reply to RFI 30.

Opticians refer in the first place to the level of service as the essential factor enhancing their ability to attract customers and induce them to make purchases (54% and 69% of the respondent retail chains and independent opticians respectively). Other factors follow then, instore appearance (considered essential by 31% and 26% of respondents), storefront appearance (26% and 20%), and finally availability of specific sunglasses brands is considered the essential factor only by 9% of the chains and 12% of the independent opticians responding to the Commission's questionnaire.

- (571) In addition, sunglasses generally represent a relatively small part of opticians' business in Italy at [20-30]% which is considerably lower than the proportion represented by lens sales ([40-50]%)³⁵⁸. It is therefore unlikely that optical retailers would put at risk the majority of their revenues, generated by lenses, by purchasing more lenses from the Merged Entity than they would consider optimal.
- (572) Luxottica's customer base in Italy is very fragmented. There are only three nation-wide retail chains, Grandvision, Salmoiraghi & Vigano and Nau! accounting for around 900 stores. However, the vast majority of independent opticians are grouped under large buying groups which source frames and lenses in a centralised manner and seek to secure the best possible commercial terms for their purchases³⁵⁹ Around 6800 of independent optical stores are members of buying groups.³⁶⁰
- (573) Furthermore, the responses to the questionnaire also showed that opticians are slightly more sensitive to the price of lenses than to the portfolio of sunglasses brands available to them.³⁶¹ This also makes leveraging one's position in sunglasses to foreclose competitors in lenses more difficult.
- (574) On the basis of the considerations set out in recitals (565) to (573), the Commission concludes that Luxottica's market power in relation to frames or sunglasses in Italy would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (575) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.15. Latvia

- (576) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Latvia.
- (577) As regards the ability to foreclose, in Latvia, Luxottica has a market share of [5-10]% as regards frames and [5-10]% as regards sunglasses. The Parties have not

³⁵⁸ Response to Phase II Request for Information 38 of 18 December 2017 submitted on 20 December 2017.

³⁵⁹ However they do not select assortment which is the primary responsibility of the optician. This means that the optician has the power to decide on the brands and products sourced and penetration rates in optical retail are representative of choice of individual opticians and are not the result of buying groups' purchasing policy.

³⁶⁰ Form CO, Annex RFI 1 Q 47. The 6 biggest buying groups are: Vision Group, COI, NetCity, Oxa Italia, Ottici Associati Italiani, Cecop. CECOP's distribution platform, ECP, has been owned by Essilor since January 2016. Essilor does not control the buying group, only the distribution platform. The Commission has no indications that the ownership by Essilor of the logistics platform had any impact on the buying group's lenses purchasing decisions.

³⁶¹ See paragraph (428).

been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [40-50]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [40-50]% and [50-60]%) and a lower share in single-vision lenses ([40-50]%).

- (578) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as mentioned in Table 3. Ray-Ban is present in [30-40]% of the 450 stores as regards frames and [30-40]% of the stores as regards sunglasses, which is largely below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Latvia would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (579) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.16. Liechtenstein

- (580) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Liechtenstein.
- (581) As regards the ability to foreclose, in Liechtenstein Luxottica has a market share of [10-20]% as regards frames and [30-40]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [60-70]% in Liechtenstein as regards lenses overall, with no significant differences between single vision and progressive/multifocal lenses.
- (582) The penetration rate of Ray-Ban in Liechtenstein is consistent with the market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [20-30]% of the 7 stores as regards frames and sunglasses. The Commission concludes that Luxottica's market power in relation to frames or sunglasses in Liechtenstein would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (583) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.17. Lithuania

- (584) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Lithuania.
- (585) As regards the ability to foreclose, in Lithuania, Luxottica has a market share of [20-30]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [30-40]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [40-50]% and [40-50]%) and a lower share in single-vision lenses ([30-40]%).
- (586) The penetration rate of Ray-Ban is consistent with the moderate market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [30-40]% of the 420 stores as regards frames and [30+-40]% of the stores as regards sunglasses, which is far below the EEA average. The Commission therefore

concludes that Luxottica's market power in relation to frames or sunglasses in Lithuania would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

- (587) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at national level.

12.3.18. Luxembourg

- (588) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Luxembourg.
- (589) As regards the ability to foreclose, in Luxembourg, Luxottica has a market share of [20-30]% as regards frames and [30-40]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...].
- (590) The penetration rate of Ray-Ban is consistent with the moderate market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [60-70]% of the 1,530 stores as regards frames and [60-70]% of the stores as regards sunglasses, which is slightly above the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Luxembourg would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (591) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.19. Malta

- (592) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Malta.
- (593) As regards the ability to foreclose, in Malta, Luxottica has a market share of [10-20]% as regards frames and [10-20]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. As regards Essilor's market shares on lenses, the Parties estimate that Essilor has around [30-40]% market shares (in value). The tool used by the parties to estimate the market shares at the national level ([...]) does not provide data on Malta. Therefore, considering that Essilor does not directly sell lenses in Malta and is using a wholesale distributor, the parties calculated the market shares on the basis of the following assumptions: Essilor estimates that it sells approximately [60-70]% of all the lenses purchased by the local distributor in 2016 that in turn sells approximately half of the lenses in Malta³⁶².
- (594) Ray-Ban is present in [40-50]% of the 60 optical stores as regards frames and sunglasses, below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Malta would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

³⁶²

Annex CO 7.1.1.

- (595) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.20. Netherlands

- (596) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in the Netherlands.
- (597) As regards the ability to foreclose in the Netherlands, Luxottica has a market share of [10-20]% as regards frames and [30-40]% as regards sunglasses. As regards frames and sunglasses sold at a retail price above [...], Luxottica has a market share of [20-30]% in frames and [40-50]% in sunglasses. Essilor has a market share of [40-50]% as regards lenses overall with a stronger position in progressive and multifocal lenses (respectively [40-50]% and [40-50]%) and a lower share in single-vision lenses ([30-40]%).³⁶³
- (598) Despite these moderate market shares of Luxottica in frames and sunglasses, the penetration rate of Ray-Ban in Dutch stores is quite 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, which is significantly above the EEA average.
- (599) In line with those findings, [50-60]% of the Dutch respondents (either retail chains or independent opticians) to the Commission's questionnaire consider one of Luxottica's sunglasses brands to be their first sunglasses brand,³⁶⁴ In relation to frames, the figures are however much lower (respectively [20-30]% and [20-30]%) and only [10-20]% of either retail chains or independent opticians respondents consider Ray-Ban to be their most important frames brands. The responses to the Commission's questionnaire also show that whereas Dutch opticians give relevance to the availability to sunglasses brands for the success of their business, several other factors are considered more important such as the level of service offered by the eye care professional and the appearance of the store.³⁶⁵
- (600) The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in the Netherlands would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (601) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.21. Norway

- (602) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Norway.

³⁶³ Essilor also owns the distribution platform of Optitrade, a Dutch buying group. Essilor does not control the buying group, only the distribution platform. The Commission has no indications that the ownership by Essilor of the logistics platform had any impact on the buying group's lenses purchasing decisions.

³⁶⁴ Ray-Ban is considered as the first sunglasses brand by 29% of chains and 52% of independent opticians among Dutch respondents.

³⁶⁵ For independent opticians, service is considered essential by 60% of respondents, instore appearance by 22% while availability of specific frames brands is essential for 19% of respondents.

- (603) As regards the ability to foreclose, in Norway, Luxottica has a market share of [10-20]% as regards frames and [20-30]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [50-60]% as regards lenses overall, with a stronger position in single-vision lenses ([60-70]%) and a lower share in progressive and multifocal lenses (respectively [20-30]% and [20-30]%).
- (604) Despite those moderate market shares of Luxottica in frames and sunglasses, the penetration rate of Ray-Ban in Norwegian stores is significant. Ray-Ban is present in [60-70]% of the 750 stores as regards frames and [70-80]% of the stores as regards sunglasses, which is above the EEA average. Those overall high penetration rates, combined with the modest market shares of Luxottica in Norway, indicate that despite their wide availability in Norwegian stores, Luxottica's brands have performed rather poorly in Norway.
- (605) The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Norway would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (606) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.22. Poland

- (607) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Poland.
- (608) As regards the ability to foreclose, in Poland, Luxottica has a market share of [10-20]% as regards frames and [10-20]% as regards sunglasses. As regards frames and sunglasses sold at a retail price above [...], Luxottica has a market share of [30-40]% in frames and [20-30]%
- (609) Essilor has a market share of [60-70]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [60-70]% and [60-70]%) and a lower share in single-vision lenses ([50-60]%).
- (610) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as illustrated in Table 3. Ray-Ban is present in [20-30]% of the 4,820 stores as regards frames and [20-30]% of the stores as regards sunglasses, which is largely below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Poland would be insufficient to allow it to foreclose the Merged entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (611) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.23. Portugal

- (612) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Portugal.
- (613) As regards the ability to foreclose, Luxottica has a market share of [50-60]% in sunglasses and [20-30]% in frames. However, sunglasses only represent (on average)

[0-5]% of the opticians business in Portugal, while frames represent [20-30]%³⁶⁶. Ray-Ban is present in [40-50]% of the 2370 optical stores as regards both frames and sunglasses, which is below the EEA's average penetration rate (ca. [50-60]%).

- (614) Although Luxottica has a significant market share in sunglasses and penetration rates of Ray-Ban are similarly high for sunglasses and frames, the responses to the Commission's investigation show that the majority of the Portuguese respondents (that are Luxottica's customers) does not consider Luxottica brands (including Ray-Ban) important because they generate traffic. In fact, the vast majority do not consider that availability of sunglasses or frames brands (in general, not only Luxottica's) to be an essential or very important factor to attract customers to their store.
- (615) Among Portuguese respondents, 89% of retail chains and 80% of independent eye-care professionals list one of Luxottica brands as their first choice in sunglasses brands (Ray-Ban is the first choice for 89% of retail chains and 74% of independent eye-care professionals). However, among these respondents, 48% of retail chains and 34% of independent eye-care professionals consider Luxottica's sunglasses brand portfolio important because it generates traffic (similarly 45% of retail chains and 32% of independent eye-care professionals consider Ray-Ban to be an important brand because it generates customer traffic). As regards frames brands, 59% of retail chains and 60% of independent eye-care professionals list one of Luxottica brands as their first choice in brands (Ray-Ban is the first choice for 51% of retail chains and 49% of independent eye-care professionals). However, among these respondents, 46% of retail chains and 45% of independent eye-care professionals consider Luxottica's brands portfolio important because it generates traffic (39% of retail chains and 41% of independent eye-care professionals consider Ray-Ban important because it generates traffic),
- (616) Asked to assess nine factors from essential to non-important according to their ability to attract customers and induce them to make purchases, the vast majority of Portuguese respondents considered service to be the essential factor (64% of independent eye-care professionals and 79% of retail chains). Availability of sunglasses brands was considered essential by 30% of independent eye-care professionals and 25% of retail chains. Availability of frame brands was considered essential by 26% of independent eye-care professionals and 13% of retail chains. Price of lenses scored higher than availability of both sunglasses and frames brands within the retail chains (26% of retail chains respondents considered price of lenses as essential to attract customers).
- (617) Essilor has a market share of [50-60]% as regards lenses overall, and almost [10-20] percentage points higher as regards progressive/multifocal lenses. Essilor enjoys a strong awareness among ophthalmologists and the end-consumer, mainly due to its brand Varilux. However, Essilor's margins in Portugal [...]%) are lower than the EEA's average ([...]%), suggesting that its market power might be inferior to what its market shares indicate.
- (618) On the basis of the considerations set out in recitals (613) to (617), the Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses

³⁶⁶

See reply to RFI 38.

in Portugal would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.

- (619) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.24. Romania

- (620) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Romania.
- (621) As regards the ability to foreclose, Luxottica has a market share of [30-40]% in frames and [20-30]% in sunglasses. Luxottica's presence on the market of frames and sunglasses sold at a retail price above [...] is higher, with market shares of [40-50]% for frames and [40-50]% for sunglasses.
- (622) The penetration rate of Ray-Ban is low compared to Luxottica's market shares. Ray-Ban is present in only [10-20]% of the 1400 optical stores as regards frames and in only [5-10]% of the stores as regards sunglasses, which is, however, significantly below the EEA's average. Nevertheless, Ray-Ban sunglasses has the highest sunglasses share on the Romanian market, with [5-10]% sales share followed by Nike with [5-10]% and Safilo with [5-10]%. As regards frames Ray-Ban brand is the [...] ranked brand sold on the Romanian market with [0-5]% market share.
- (623) Despite higher market shares in Romania compared to other EEA countries, the strength of Luxottica's brands, and in particular Ray-Ban, is not such to allow Luxottica to successfully leverage its position on the Romanian market. First, less than a third of the Romanian optical stores (independent opticians and chains) that replied to the questionnaire consider Ray-Ban as the most important brand for their business because it generates customer traffic and high sales. Second, the large majority of respondents consider the service they provide (before and after sales) to be the essential factor in generating customer traffic and the availability of frames brands is considered an essential factor by only 7% of the independent opticians respondents (and none of the retail chains). Third, more than 60% of the respondents consider that not having access to Luxottica products in the future would not change the profits they generate from the sale of lenses.
- (624) Regarding lenses, Essilor has a market share of [50-60]% in overall lenses, [30-40]% for single vision lenses and around [70-80]% market shares for progressive/multifocal lenses. Hoya is the second ranked lens manufacturer with [10-20]% market shares (in value) followed by Carl Zeiss Vision with [10-20]% market share. Essilor sells mainly to independent opticians (around [80-90]% of the lenses sold in Romania are supplied to independent eye-care professionals).
- (625) On the basis of the considerations set out in recitals (621) to (624), the Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Romania would be insufficient to allow it to foreclose the Merged Entity's competitors in the lenses market in line with the reasoning set out in Section 12.2.1.
- (626) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.25. Slovakia

- (627) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Slovakia.
- (628) As regards the ability to foreclose, in Slovakia, Luxottica has a market share of [10-20]% as regards frames and [10-20]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [50-60]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [50-60]% and [50-60]%) and a lower share in single-vision lenses ([30-40]%).
- (629) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames and sunglasses as illustrated in Table 1. Ray-Ban is present in [30-40]% of the 650 stores as regards frames and [30-40]% of the stores as regards sunglasses, which is largely below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Slovakia would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (630) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.26. Slovenia

- (631) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Slovenia.
- (632) As regards the ability to foreclose, in Slovenia, Luxottica has a market share of [5-10]% as regards frames and [30-40]% as regards sunglasses. The Parties have not been able to provide data as regards frames and sunglasses sold at a retail price above [...]. Essilor has a market share of [40-50]% as regards lenses overall, with a stronger position in progressive and multifocal lenses (respectively [50-60]% and [50-60]%) and a lower share in single-vision lenses ([30-40]%).
- (633) The penetration rate of Ray-Ban is consistent with the low market shares of Luxottica in frames as illustrated in Table 3. Ray-Ban is present in [20-30]% of the 295 stores as regards frames and [20-30]% of the stores as regards sunglasses, which is largely below the EEA average. The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Slovenia would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (634) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.27. Spain

- (635) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Spain.
- (636) As regards the ability to foreclose, in Spain, Luxottica holds a market share of [20-30]% for frames and [40-50]% for sunglasses. As regards frames and sunglasses sold at a retail price above [...], Luxottica has a market share of [20-30]% in frames and [60-70]% in sunglasses. That level of market shares is indicative of a limited

degree of market power in relation to frames and a higher degree of market power in relation to sunglasses.

- (637) In Spain, Essilor holds a [50-60]% market share, ahead of Hoya and national competitors Prats and Indo (at around [10-20]% each). Opticians refer to intense investment in marketing campaigns addressed to final customers and opticians to explain the success of Essilor's brands.³⁶⁷
- (638) The penetration rates of Luxottica's flagship brand, Ray-Ban, are lower than in other Southern European countries like Italy and France. Ray-Ban is present in less than half of the Spanish optical stores. In particular, Ray-Ban frames are found in [40-50]% of Spanish stores whereas Ray-Ban sunglasses reach [40-50]% of the optical retail doors in the country³⁶⁸.
- (639) Moreover, sunglasses generally represent a relatively small part of opticians' business at [30-40]% which is lower than the importance of lens sales at [40-50]%.³⁶⁹ It is therefore unlikely that optical retailers would put at risk the majority of their revenues, generated by lenses, by purchasing more lenses from the Merged Entity than they would consider optimal.
- (640) The Ray-Ban brand holds a discrete market share in the Spanish frames market, at [5-10]% and behind competing brands Safilo and Silhouette, which are ahead of Ray-Ban at [10-20]% and [5-10]% respectively³⁷⁰. Ray Ban is however the strongest sunglasses brand in Spain with significant distance to the next competing brand with a market share of [30-40]%.³⁷¹
- (641) The availability of sunglasses or frames brands (in general, not only Luxottica's) is not viewed by Luxottica's Spanish customers as a critical factor in attracting customers to their store. Asked to assess nine factors from essential to non-important according to their ability to attract customers and induce them to make purchases, Spanish optical retail chains rank service as the number one factor (91% of them view service as very important or essential), followed by instore appearance (64%), availability of specific sunglasses brands (54%), storefront appearance (57%), price of sunglasses (53%), and price of lenses (51%).
- (642) Spanish independent opticians rank service as the number one factor (90% view service as very important or essential), followed by instore appearance (66%), store front appearance (58%), price of lenses (49%), availability of specific sunglasses brands (45%), price of sunglasses (45%) and finally availability of specific frames brands (39%).
- (643) Although Luxottica has a high market share in sunglasses, the responses to the Commission's investigation show that the majority of Luxottica's Spanish customers do not consider that availability of sunglasses or frames brands to be an essential or very important factor to attract customers to their store. In general these Spanish eye-

³⁶⁷ Responses to Questionnaire 1, Q31 and Questionnaire 8, Q 18.1.

³⁶⁸ See reply to RFI 30.

³⁶⁹ Response to Phase II Request for Information 38 of 18 December 2017 submitted on 20 December 2017.

³⁷⁰ Annex P II RFI 33 submitted in response to RFI 33 of 11 December 2017.

³⁷¹ Annex P II RFI 33 submitted in response to RFI 33 of 11 December 2017.

care professionals do not identify Ray-Ban as a “must have” brand in frames, nor do they consider Luxottica sunglasses or frames brands to drive traffic to their stores.³⁷²

- (644) In relation to frames, 45% of Spanish retail chains list one of Luxottica's brands as their first choice of brands in frames (Ray-Ban for 39% of them). For independent opticians the figure is lower, as only 41% of them consider one of Luxottica's brands as the most important one (Ray-Ban for 32% of them).
- (645) In relation to sunglasses, among Spanish optical retail chains, 64% consider one of Luxottica's brands as the most important sunglasses brand (Ray-Ban for 59% of them). For Spanish independent opticians again, these numbers are lower. For 55% of them, Luxottica brands are their first choice for sunglasses (Ray-Ban in particular for 50%).
- (646) Those figures indicate that Spanish opticians consider other suppliers and brands as alternatives to Luxottica's products for both frames and sunglasses. Given that all the respondents to this questionnaire are Luxottica's customers, one can infer that the strength of Luxottica brands, and in particular of Ray-Ban, is not such to allow Luxottica to successfully leverage its position.
- (647) Although the optical retail structure in Spain is quite fragmented with around 10,000 optical stores, large retail chains such as Alain Afflelou (310 shops), General Óptica (270 shops), Visionlab (160 shops) and Optica 2000 (106 shops)³⁷³ are also present. Many of the independent opticians³⁷⁴ active in the country are grouped under 12 large buying groups which source frames and lenses in a centralised manner and seek to secure the best possible commercial terms for their purchases. These groups include Multiópticas (643 shops), Cione (1,188 shops), Cecop (896 shops)³⁷⁵ and Opticalia (600 shops)³⁷⁶.
- (648) On the basis of the considerations set out in recitals (636) to (647), the Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Spain would be insufficient to allow it to foreclose the Merged Entity's competitors in the lenses market in line with the reasoning set out in Section 12.2.1.
- (649) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.28. Sweden

- (650) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Sweden
- (651) As regards the ability to foreclose, in Sweden, Luxottica has a market share of [10-20]% as regards frames and [20-30]% as regards sunglasses. As regards frames and sunglasses sold at a retail price above [...], Luxottica has a market share of [10-20]% in frames and [30-40]% in sunglasses. Essilor has a market share of [20-30]% as regards lenses overall, with a stronger position in single-vision lenses

³⁷² Luxottica is considered to generate traffic in store by 48% of retail chains and 38% of independent opticians in sunglasses, 36% and 29% in frames.

³⁷³ Form CO, Annex RFI 1 Q 47.

³⁷⁴ Around 3,404 independent stores.

³⁷⁵ See footnote 360.

³⁷⁶ Form CO, Annex RFI 1 Q 47.

([40-50]%) and a lower share in progressive and multifocal lenses (respectively [10-20]% and [10-20]%).

- (652) Despite these moderate market shares of Luxottica in frames and sunglasses, the penetration rate of Ray-Ban in Swedish stores is significant. Ray-Ban is present in [60-70]% of the 1,000 stores as regards frames and [60-70]% of the stores as regards sunglasses, which is above the EEA average. Those overall high penetration rates, combined with the modest market shares of Luxottica in Sweden, indicate that despite their wide availability in Swedish stores, Luxottica's brands [...].
- (653) In light of the modest market shares of Luxottica, the Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in Sweden would be insufficient to allow it to foreclose the Merged Entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (654) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.3.29. United Kingdom

- (655) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in the UK.
- (656) As regards the ability to foreclose, in the UK, Luxottica has a market share of [10-20]% as regards frames and [40-50]% as regards sunglasses³⁷⁷. As regards frames and sunglasses sold at a retail price above [...], Luxottica has a market share of [30-40]% in frames and [50-60]% in sunglasses. Essilor has a market share of [40-50]% as regards lenses overall, with a stronger position in single-vision lenses ([50-60]%) and a lower share in progressive and multifocal lenses (respectively [40-50]% and [40-50]%).
- (657) The penetration rate of Ray-Ban is consistent with the moderate market shares of Luxottica in frames. Ray-Ban is present in [30-40]% of the 7 371 stores as regards frames and [30-40]% of the stores as regards sunglasses, which is significantly below the EEA average.³⁷⁸
- (658) The UK optical retail market is considered by the Parties as "*very competitive*". In particular, in one of its internal documents, Essilor explains that [...].³⁷⁹ This has been confirmed by respondents to the market investigation who have explained that, in relation to frames and sunglasses, that "*there are a significant number (>10) of small-medium sized manufacturers supplying the UK who predominantly offer designer branded product more specific and appealing to the UK market but also provide own label product.*" and "*competition is intense within price brackets, e.g. entry designer, fashion designer and premium designer as there is a significant level of choice for retailers and suppliers are keen to secure distribution space*".³⁸⁰

³⁷⁷ Combined with Essilor's sunglasses activities in the UK, the market share of the Merged Entity reaches [50-60]% in sunglasses.

³⁷⁸ The number of stores and penetration rates presented concern both Ireland and the United Kingdom as they were provided jointly to the Commission.

³⁷⁹ See Essilor's internal document [...].

³⁸⁰ Replies to Questions 49 and 50 of questionnaire sent to customers Q1.

- (659) The Commission therefore concludes that Luxottica's market power in relation to frames or sunglasses in the UK would be insufficient to allow it to foreclose the Merged entity's competitors in lenses markets in line with the reasoning set out in Section 12.2.1.
- (660) As regards incentives to foreclose and the overall effects, as explained in recitals (495) and (496), the same conclusions and arguments reached at EEA level apply *mutatis mutandis* at the national level.

12.4. Leveraging of Essilor's position in ophthalmic lenses across national markets in the EEA to foreclose competitors in eyewear

- (661) The Commission takes the view that the Transaction would not significantly impede effective competition in markets for frames or sunglasses across national markets in the EEA as a result of conglomerate non-coordinated effects due to the leveraging of Essilor's position in lenses at the EEA level.
- (662) The Commission concludes that post-Transaction the Merged Entity would not be able and would not be incentivised to leverage its position in lenses at the EEA level by linking its sales to those of frames or sunglasses to an extent that would cause foreclosure of competing frames and sunglasses suppliers by reducing their ability or incentives to compete.
- (663) In sum, competitive harm through leverage from the lens market into the eyewear market would be unlikely in the current case. While Essilor's lens market shares are high in certain markets, lenses are a far more commoditised product with only limited customer preference for specific brands. This is also reflected by the profit margins that companies earn in the two markets, which are considerably smaller for lenses than for eyewear (thus indicating an appreciably larger degree of pricing power in eyewear). Against the background of limited customer preferences for specific lens brands and strong customer preferences for specific eyewear brands, it is unlikely that the Parties could use their position in lenses to impose or incentivise frames or sunglasses, or both, sales on customers via a leveraging strategy. Any such attempt would be opposed by customers, who would be willing and able to switch to a competing lens supplier in order to avoid being pushed into purchasing Luxottica frames against their own better judgment.

12.4.1. Ability to foreclose

12.4.1.1. The Parties' views

- (664) The Parties contend that the Merged Entity would not have the ability to leverage its position in ophthalmic lenses for the following reasons.
- (665) First, they submit that the Merged Entity would not have market power in ophthalmic lenses as there are a number of credible alternatives. They state that in a number of Member States, the Parties' market shares alone are enough to discard any market power in lenses.
- (666) In some other EEA countries, where the Merged Entity's market share in lenses exceeds [40-50]%, Essilor's high market shares do not enable it to benefit from higher margins on its products. In those Member States, such as France, Spain, Portugal and Poland, there are a number of credible alternative competitors, who exercise significant competitive pressure on Essilor.

- (667) They emphasise that in all EEA countries, one-fifth to two-thirds of lenses sold are low-price unbranded lenses, which drive down prices of branded lenses and ensure that major lens manufacturers such as Essilor ultimately have little pricing power.
- (668) Second, they contend that the market for lenses is a dynamic environment, where entry occurs regularly and companies' market positions can quickly change overtime. They state that market entry is easy and has happened in many countries, such as Spain, Portugal, Germany and Austria in recent years.
- (669) Moreover, competitors with lower cost structures, including competitors from Asia, are able to supply EEA Member States and market entry by players from other areas of the eyewear sector also occurs.
- (670) In addition, the existence of many small players in the market further demonstrates that scale is not needed to successfully operate as a frame supplier. Market entry is also facilitated because of easy access to digital surfacing technology.
- (671) They submit that companies' market positions can quickly change overtime. Although opticians may have a preference for a given brand, they are able to source finished ophthalmic lenses from a range of suppliers in Europe.
- (672) Opticians typically multi-source, and are able to switch significant amounts of volume from one supplier to another, depending on the commercial terms and conditions they are offered. Recent examples of switching in various EEA countries show that customers are ready to switch to alternative providers of lenses, even when they have a history of purchasing from Essilor.
- (673) Third, they submit that clients have strong countervailing power. Retail chains as well as buying groups or marketing groups are large and sophisticated customers and account for a significant share of the demand for ophthalmic lenses.
- (674) Customers can easily switch to alternative lens manufacturers because of the lack of brand awareness for lenses at final consumer level. As a result, if eye-care professionals were charged a higher price for Essilor's lenses, they would simply turn to competitors and the replacement rate would be high.
- (675) Additionally, in some countries such as France and the UK, the choice of lens suppliers may be influenced by health insurance policies, and whether reimbursement is available for that supplier, rather than brand awareness.
- (676) Fourth, they submit that there are no or limited economies of scale in ophthalmic lenses and prescription frames for the following reasons.
- (677) While lens manufacturing equipment providing for different output capacities is available, significantly increasing lens manufacturing output typically requires the creation of new production lines.
- (678) The capital expenditure to build a greenfield prescription laboratory is not very significant, while increasing capacity in a given prescription laboratory entails an increased level of complexity in relation to multiple different designs, materials and coatings.
- (679) More than scale, key drivers of production costs are the type and level of sophistication of the products on which an individual prescription laboratory focuses.
- (680) Fifth, [...].

- (681) Sixth, they submit that even in France, where Essilor estimates it has a high market share in lenses ([70-80]% by value and [60-70]% by volume in 2016), Essilor has no market power nor the ability to set prices freely because of the strong influence exerted by OCAM networks. OCAM networks increasingly impose maximum retail prices to their optician members for the lenses these opticians sell to final consumers who have taken out complementary insurance from these OCAMs. This, in turn, weighs on the price that opticians are ultimately willing to pay to lens suppliers.

12.4.1.2. The Commission's assessment

- (682) The Commission concludes that Essilor currently does not have sufficient market power across national markets in the EEA to allow it to foreclose the Merged Entity's competitors in the frames and sunglasses markets post-Transaction.
- (683) On the one hand, the Commission considers that there are a number of factors indicating that Essilor has a certain degree of market power with regard to lens markets.
- (684) First, Essilor holds high market shares in lenses. At EEA level, Essilor has a market share of [40-50]% in lenses overall. As will be explained in the national analysis of Section 12.5, Essilor's market shares for lenses overall are above [50-60]% in nine Member States, the highest share being [70-80]% in France.
- (685) Second, the overall ophthalmic lenses markets are concentrated and other rivals are smaller than Essilor in terms of market share and market presence.
- (686) Third, respondents to the market investigation have identified several factors that explain the strong share of Essilor, notably the quality of its products, the reliable and dense distribution networks it has established, and its relatively strong brands (Varilux, particularly in France).³⁸¹
- (687) On the other hand, Essilor's market power appears to be insufficient to allow it to foreclose eyewear competitors. As set out in recitals (690) to (702), the customer feedback and the results of the document review do not indicate that Essilor could successfully leverage its position in lenses for the benefits of eyewear sales to a sufficiently large extent.
- (688) This conclusion holds true even when considering higher market shares held by Essilor in specific lenses segments such as multifocal or progressive lenses, in some Member States, as shown in Table 2. Any leveraging of potential market power in a sub-segment of the overall lenses market could only have effects on the portion of frames or sunglasses sold together with lenses of that particular sub-segment and not on all frames or all sunglasses. For instance, leveraging Essilor's potential market power in progressive lenses could only have an effect on sales combining frames or sunglasses and progressive lenses and not on the whole lens market, leaving the remaining considerable customer base accessible for the lens rivals. That is because the Commission has found that any potential bundling strategies would not go beyond offering complete pairs of spectacles, as set out in detail in Section 12.2.2. Therefore, narrowing down the assessment to specific sub-segments of the lenses market would not alter the Commission's conclusion that any foreclosure effects would in any event be limited as frames and sunglasses suppliers sell frames for the whole spectrum of lenses.

³⁸¹ Questionnaire to customers – retail chains (Q1), question 31.1.

- (689) The following elements support this conclusion:
- (690) First, in the EEA Essilor faces competition from major global players such as Hoya, Carl Zeiss and Rodenstock. The market investigation showed that these lens suppliers are by and large viewed as significant competitors to Essilor.
- (691) A retailer indicated that Zeiss and Essilor pursued similar quality-based strategies³⁸², while another mentioned that Essilor and Hoya have similar offers on the market.³⁸³
- (692) One competitor agreed that it is difficult for lens manufacturers to strongly differentiate themselves from others³⁸⁴, while another argued that Rodenstock and Zeiss were considered to be quality and innovation leaders.³⁸⁵
- (693) Second, lenses are a relatively commoditised product, in particular as regards stock and single-vision lenses.
- (694) Third, the cost of entry into the supply of made-to-order ophthalmic lenses seems modest. In response to the question how much investment it would take for a supplier of single vision lenses to start selling multifocal lenses, a lens competitor replied as follows: *"Launching basic, small size (500 lenses per day), fully equipped Rx lab that would be able to produce multifocal lenses is calculated minimum at level of 3-4 million Euros."*³⁸⁶
- (695) Fourth, low-cost manufacturers from Asia have entered the EEA market and have established a certain presence. The market investigation confirmed this, with one eye-care professional stating that there is a lot of production in Korea, China, and Japan³⁸⁷ and another reporting that he buys lenses from pure importers and that Asian suppliers are good providers.³⁸⁸ Others stated that Chinese suppliers are competing with European manufacturers.³⁸⁹ The growing importance of Asian players is also borne out by Essilor's internal documents, [...] ³⁹⁰ [...] ³⁹¹.
- (696) Fifth, in some EEA countries³⁹² most of the demand for lenses originates from large chains or from independents organised in buying and/or marketing groups. Retail chains such as Grand Vision, Fielmann in Germany, or Afflelou in France as well as buying groups or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers or integrate vertically in lenses production as already achieved by Fielmann and Krys. This is largely borne out by Essilor's internal documents. [...] ³⁹³ [...] ³⁹⁴.
- (697) Sixth, the fact that Essilor's margins are relatively low ([...] % on average in the EEA) and not higher in the countries where it has high market shares indicates that

³⁸² Q1 - Questionnaire to customers – Retail chains Q 6 and 17.

³⁸³ Q2 - Questionnaire to customers – Independent ECPs Q 9.

³⁸⁴ Minutes from meeting with Zeiss, May 15, 2017.

³⁸⁵ Q3 - Questionnaire to competitors – Lenses Q 38.1.

³⁸⁶ Q3 - Questionnaire to competitors – Lenses Q 12.

³⁸⁷ Q2 - Questionnaire to customers – Independent ECPs Q 18.1.

³⁸⁸ Q1 - Questionnaire to customers Q 17.1.

³⁸⁹ Q1 - Questionnaire to customers – Independent ECPs Q 9.1, Q1 - Questionnaire to customers Q 17.1.

³⁹⁰ Essilor's internal document [...].

³⁹¹ Essilor's internal document [...].

³⁹² EEA Countries where Essilor does at least [50-60] % of its sales with retail chains or buying groups are [...].

³⁹³ Essilor's internal document [...].

³⁹⁴ Essilor's internal document [...].

the company does not wield pricing power. If Essilor had market power in the EEA countries where its market shares are high, its margins would be higher.

- (698) Seventh, the Commission's investigation has confirmed that opticians are able to switch from one supplier to another. Opticians may prefer a certain brand, but are prepared to switch to alternative 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.³⁹⁵ About one in two respondents among independent opticians replied that they had considered changing their main lens supplier in the last five years.³⁹⁶ An Italian independent optician stated: *"It is very easy to change supplier given the high number offered by the market"*.³⁹⁷
- (699) Switching is also facilitated by the fact that brand awareness of lens products among end consumers is low and that very few have a particular preference for one brand over others. This was borne out by the Commission's investigation. An internal document tracking Essilor's brands in the main European markets of France, the UK, Germany, Spain and Italy states: "[...]"³⁹⁸ Another Essilor document [...]"³⁹⁹
- (700) A lens competitor cited a recent example of switching away from one lens supplier to others which had hardly met with any resistance from customers: *"For instance, the flooding of Hoya's main plant in Thailand (which generated significant disruptions to Hoya's supply) led many customers to change to other competitors, Zeiss being one of the benefiting parties. The rate of dissatisfaction amongst customers who switched was nearly inexistent."*⁴⁰⁰
- (701) Many retailers also qualified the lens market in their respective countries as highly competitive environments with several suppliers vying for their custom.⁴⁰¹ A French retailer stated: *"There is an important competition on the French market: Essilor is the leader but Zeiss Vision Care is quite aggressive, as well as Hoya."* A German retailer explained: *"The main suppliers which are suitable for our business model are Essilor, Hoya and Rodenstock. Competition is very intense and differentiation very difficult from a consumer point of view."* According to an Italian retailer *"The competition between the producers is strong with a stable market share for the local labs."*
- (702) Eighth, in contrast to lenses, final consumers do have personal preferences for certain frames over others. A 2012 Ipsos Marketing report found that 62% of surveyed consumers across France, Germany and the USA relied on their own taste and opinion to choose their frames.⁴⁰² As a result, optical stores tend to carry a wide range of frames that appeals to a wide variety of tastes and budgets. Even though opticians can have some influence on the final consumer's choice of frame, the consumer will in all likelihood look elsewhere if they feel that the choice is limited and that the optician is unable to propose a frame suited to their individual taste.

³⁹⁵ Q1 - Questionnaire to customers Q 34.

³⁹⁶ Q2 - Questionnaire to customers – Independent ECPs Q 10.

³⁹⁷ Q2 - Questionnaire to customers – Independent ECPs Q 10.2.

³⁹⁸ Essilor's internal document [...].

³⁹⁹ Essilor's internal document [...].

⁴⁰⁰ Non-confidential minutes of a call with a competitor - 6 October 2017.

⁴⁰¹ Q1 - Questionnaire to customers Q 17.

⁴⁰² "Consumer eyeglasses expectations and shopping experience", Ipsos Marketing, p. 32, provided as Annex RFI 5 Q 20.

12.4.2. Incentives to foreclose

12.4.2.1. The Parties' views

- (703) The Parties submit that the Merged Entity would not have any incentives to leverage its position in ophthalmic lenses for the following reasons.
- (704) First, they submit that tying/bundling would result in huge sales loss on the following grounds.
- (705) The vast majority of Essilor lenses are currently sold with other frames than Luxottica's. Should the optician try to impose a frame on a final consumer that is not suited to his or her individual taste, that consumer will in all likelihood walk away and purchase from another optician.
- (706) Competitors would be able to replicate, or respond to, a tying/pure bundling strategy. Therefore, should the Merged Entity be able to implement a tying/pure bundling strategy, competitors would immediately replicate such a strategy and remove the competitive advantage that the Merged Entity could try to draw from it. Similarly, frame producers could react to any attempted tying or pure bundling strategy by lowering their own prices, making their product more attractive and/or by partnering with lens manufacturers to replicate the tying or pure bundling.
- (707) Essilor does not tie/do pure bundling of lenses with frames (or sunglasses). Essilor has small sales of sunglasses and even smaller sales of prescription frames to its subsidiary FGX Europe. Yet, Essilor never tried to impose a tying of its lenses with frames or sunglasses. The same is true of other lens manufacturers in the industry which sell both lenses and frames, which further demonstrates that there is no incentive in the industry to do so.
- (708) Second, they submit that the Merged Entity would not be incentivised to do mixed bundling on the following grounds.
- (709) The Parties consider that a foreclosure strategy based on mixed bundling of ophthalmic lenses and prescription frames would result in significant revenue losses. As frames and lenses are complementary products, the short-run pricing incentives can be expected to change as a result of the Transaction. However, a strategy to engage in mixed bundling of frames and lenses to reflect this change in incentives would be, the parties submit, a pro- competitive response to the outcome of the Transaction, ultimately leading to lower prices and better services for opticians and, ultimately, final consumers.
- (710) According to the parties, it is very unlikely that any incentive to bundle lenses and frames would impact competing suppliers of frames to the extent that they would be forced to exit the market or lose their ability to compete on the market, for the following reasons:
- (711) Mixed bundling would entail substantial costs. Rival frame manufacturers would be willing to sacrifice part of their gross margins to incentivise retailers not to comply with the bundling strategy and switch to a different combination of frames and lenses. This would make, according to the Parties, any foreclosure strategy both less effective and more likely to entail significant profit sacrifice.
- (712) Competitors are present at worldwide level and would therefore be able to enter the market even if foreclosed in the short term. The market for prescription frames is highly competitive, with a number of strong and resourceful global players, including

Safilo, Marcolin, De Rigo, Rodenstock, and Kering Eyewear. Therefore the Parties submit that it is unlikely that any hypothetical mixed bundling strategy pursued by the Merged Entity would force any of these players to exit the market or lose their ability to compete.

- (713) The parties also put forward that opticians are able to resist a mixed bundling strategy. In the current situation, where opticians do not propose any discounts resulting from mixed bundling, their margins are already much higher than margins at the lens supplier level (in France for example, Essilor's margins on lenses are around [...] % of the lens retail price, whereas opticians' margins are around [...] %). Therefore, the discount that lens suppliers would be able to offer as a result of mixed bundling would represent only a small amount of the total margin which opticians make out of lens sales.
- (714) Third, they submit that Essilor has not engaged in mixed bundling of lenses with frames or sunglasses in the past. Essilor offers frames and sunglasses in the EEA market, with small related sales. Should mixed bundling be a profitable strategy, Essilor would have put this strategy in place to try to push its sales of frames/sunglasses with opticians.

12.4.2.2. The Commission's assessment

- (715) The Commission considers that a distinction should be made between the incentives of the Merged Entity to engage in tying practices, which appear to be little, and incentives to engage in mixed bundling practices, which are more likely.
- (716) On the one hand, in terms of past behaviour the Commission has found instances of Essilor bundling its lens offer with other products, [...] and with regard to complete offers of frames [...].
- (717) On the other hand, the Commission considers that the Merged Entity's incentives to use mixed bundling practices would be insufficient to allow it to foreclose eyewear competitors.
- (718) First, a foreclosure strategy would have a negative trade-off between gains and losses for the following reasons. In the first place, final consumers do not have strong brand preferences for ophthalmic lenses, which means that opticians can easily switch away from Essilor's lenses in response to any bundled offer.⁴⁰³ In the second place, a strategy consisting in tying or mixed bundling Essilor's lenses with frames or sunglasses would result in quite a substantial churn rate because both final consumers and opticians would oppose such strategy.
- (719) Many respondents to the market investigation indicated that they would resist bundling strategies by the Merged Entity. Asked what would be their most likely reaction if the Merged Entity sold joint offers of its frames and sunglasses together with its lenses at a cheaper price than when purchased individually, a Dutch retailer said: *"If they would pursue this strategy in the independent market for sure our members would move away to buy at other suppliers. This would be not accepted."* A French retailer stated: *"[...] we believe our own branded products, and our exclusive frames & sunglasses typically target lower purchases prices for franchisees, and can*

⁴⁰³ There are some Member States where Essilor brand Varilux enjoys strong awareness among final consumers and ophthalmologists and, as a result, enjoys some level of brand preference among opticians. Such preferences are discussed and assessed further in Section 12-5.

replace such offers." A Portuguese retailer replied "*I would not be happy with that deal...Opticians want to be free to buy from whatever supplier of frames/lens they choose from*".⁴⁰⁴ Therefore the Commission does not share the complainants' views that opticians could easily be convinced to switch their lens purchases to Essilor since they would have strong incentives to buy lenses and frames from a single source.⁴⁰⁵ This conclusion regarding customer switching applies regardless of the allegedly low degree of awareness of end consumers towards lenses, as argued by the complainants.

- (720) Second, regardless of the exact churn rate in a mixed bundling scenario, any foreclosure strategy would result in substantial loss of sales for the Merged Entity.
- (721) In a bundling scenario, competitors could be able to replicate the combined entity's bundled offer in a timely manner, either on their own, as Silhouette, Rodenstock, and Maui Jim already do, or through partnerships with third parties.
- (722) In any event, even if foreclosed at the EEA or the national level, most frame and sunglass competitors would be able to re-enter the market quite rapidly, since they are present at the worldwide level.
- (723) Therefore, a strategy of leveraging from lenses to eyewear would most likely result in losses outweighing any potential gains should the combined entity engage in mixed bundling.

12.4.3. Overall effects of mixed bundling and tying strategies

12.4.3.1. The Parties' views

- (724) The Parties submit that mixed bundling and tying strategies would not result in anticompetitive effects.
- (725) First, they state that a foreclosure strategy consisting of tying or pure bundling of Essilor lenses and Luxottica prescription frames would be highly unprofitable and would lead to the combined entity losing significant revenues without foreclosing competitors.
- (726) Second, they submit that if the Merged Entity were to propose mixed bundling to opticians, this would translate into additional rebates that would have a beneficial effect on opticians as they would see their purchasing costs decrease.
- (727) Third, they contend that the Parties would not be able to foreclose competitors through mixed bundling for all the reasons mentioned above.
- (728) Fourth, they state that the following other factors, set out in recitals (729) to (731), further demonstrate the implausibility of any competitive issues arising from hypothetical tying or bundling behaviour:
- (729) The Parties submit that tying, pure bundling or mixed bundling would not marginalise competitors, as rival suppliers would be able to implement various

⁴⁰⁴ Q1 - Questionnaire to customers Q 78.

⁴⁰⁵ The Commission does not therefore share the view expressed by one complainant that the Transaction would lead to a sort of "knock-on effect" whereby the more opticians buy from Essilor, the less it makes sense, in terms of volume rebates, to purchase from other suppliers. This would imply that an originally small volume shift (through one-on-one bundle for example) would develop inevitably into a large volume shift. However, the switching behaviour of opticians and the lack of preference for lenses brands show that this knock-down effect is unlikely to occur.

counter-strategies, including price reductions, and similar ties/bundles by teaming up with other suppliers.

- (730) According to the Parties, a strategy of anticompetitive foreclosure would not result in rivals' foreclosure of a significant proportion of the tied/bundled market. Indeed, the Transaction will not impact the market strongly as a whole, as there are a number of alternative offers to the Merged Entity on the market.
- (731) Further, even if exit could be predicted, rival suppliers of ophthalmic lenses could easily enter or expand into an EEA country.

12.4.3.2. The Commission's assessment

- (732) The Commission considers that a mixed bundling strategy or a tying strategy concerning Luxottica's frames and Essilor's lenses appears to be unlikely to lead to foreclosure effects to the requisite standard of the Non-Horizontal Merger Guidelines with regard to frame and sunglass manufacturers, for the following reasons.
- (733) Essilor' products are not sold in all optical stores in the EEA. Optical retailers who do not carry Essilor brands would not, in any event, be susceptible to a mixed bundling or tying strategy and will continue to be able to source from other eyewear manufacturers post-Transaction.
- (734) In any case, competitors would not be foreclosed as most have a global or international footprint and no competitor of Luxottica has ever been foreclosed from any market in the EEA.
- (735) Further, eye-care professionals and final consumers would resist tying/mixed bundling. Final consumers have no preference for Essilor's lenses over other suppliers' lenses and more than [80-90]% purchase Essilor lenses with non-Luxottica frames.

12.5. Leveraging of Essilor's position in ophthalmic lenses to foreclose competitors in eyewear at the national level

- (736) The Commission takes the view that the Transaction would not significantly impede effective competition in markets for frames or sunglasses in the EEA as a result of conglomerate non-coordinated effects due to the leveraging of Essilor's position in lenses at the national level.
- (737) The Commission concludes that the Merged Entity would not be able and would not be incentivised to leverage its position in lenses at the national level by linking its sales to those of frames or sunglasses to an extent that would cause foreclosure of competing frames and sunglasses suppliers by reducing their ability or incentives to compete.
- (738) As regards the ability to foreclose, as explained in Section 12.4.1, in the EEA Essilor faces competition from major global players such as Hoya, Carl Zeiss and Rodenstock. Furthermore, the cost of entry into the supply of ophthalmic lenses is low, while low-cost Asian manufacturers have entered the EEA market. In addition, the fact that Essilor has relatively low margins and that its margins are not higher in the countries where it has high market shares indicates that the company does not wield pricing power. That assessment applies to the analysis of all EEA markets at the national level.
- (739) In terms of market share, Essilor's EEA share for finished lenses was [40-50]% by value in 2016 in the EEA, and has not changed significantly over the last three years.

Essilor's share of sales exceeds that EEA percentage in nine countries, namely (i) the Czech Republic ([50-60]%), (ii) France ([70-80]%), (iii) Liechtenstein ([60-70]%), (iv) Norway ([50-60]%), (v) Poland ([60-70]%), (vi) Portugal ([50-60]%), (vii) Romania ([50-60]%), (viii) Slovakia ([50-60]%), and (ix) Spain ([50-60]%). The Commission will focus its national assessment on those nine countries in Sections 12.5.1 to 12.5.9.

- (740) As regards incentives to foreclose, as explained in Section 12.4.2, the Commission considers that the Merged Entity does not be incentivised to engage in tying practices but does have incentives to engage in mixed bundling practices from lenses into eyewear in the EEA. However, a foreclosure strategy would have a negative trade-off between gains and losses and would result in a quite substantial churn rate because both final consumers and opticians would oppose such strategy. Therefore, as explained above in Section 12.4.3, such bundling practices should not lower competitors' ability to compete and to continue exerting competitive pressure on the Merged Entity. This assessment applies to the analysis of all EEA markets at the national level.

12.5.1. Czech Republic

- (741) Essilor has a market share of [50-60]% for lenses overall in the Czech Republic. It faces competition from other players with non-negligible market shares, namely Hoya ([10-20]%), Rodenstock ([10-20]%), Zeiss ([5-10]%) and Cvice ([5-10]%). Cvice is a supplier of finished ophthalmic lenses active in the Czech Republic since 2012. As a recent market entrant, it quickly managed to capture a share of the Czech market for ophthalmic lenses. Essilor's position is lower in single-vision ([40-50]%), multifocal ([50-60]%) and progressive lenses ([40-50]%).
- (742) As discussed in recital (696), retail chains and buying or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers. In the Czech Republic buying groups and retail chains represent a total of [40-50]% ([20-30]% and [10-20]% respectively) of overall lens purchases by value.⁴⁰⁶
- (743) On the basis of recitals (741) and (742), the Commission concludes that Essilor's market power in relation to lenses in the Czech Republic would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in the Czech Republic.

12.5.2. France

- (744) Essilor has a market share of [70-80]% for lenses overall in France. It faces competition from other players with non-negligible market shares, namely Hoya ([10-20]%), Zeiss ([5-10]%). Essilor enjoys strong awareness among ophthalmologists and end consumers, especially with its brand Varilux.
- (745) As discussed in recital (696), retail chains and buying or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers or integrate vertically in lenses production. In France buying groups

⁴⁰⁶ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

and retail chains represent a total of [60-70]% ([40-50]% and [20-30]% respectively) of overall lens purchases by value.⁴⁰⁷ Large retail chains such as Alain Afflelou (727 stores), Grand Vision/Grand Optical (798 stores) and Optical Center (475 stores) operate in France, while the majority of independent opticians are grouped under large buying groups such as Krys (1,350 stores), Optic 2000 (1,400 stores), CDO (1,900 stores) and ALL (1,700 stores).

- (746) For example, Krys has its own lens production facility and supplies its members with finished lenses from its prescription laboratory. This makes foreclosure attempts with regard to Krys unlikely to succeed, as Krys can easily turn to this alternative. During the investigation Krys stated that *"through adoption of a diversification strategy dependence from the Parties can be reduced. Indeed, Krys has proven that it can manufacture 50% of the value of lenses independently from Essilor. Similarly, for Luxottica, Krys has proven that it could lower their market share in its stores"*.⁴⁰⁸
- (747) Furthermore, insurance schemes, which may be public or private, exert a clear influence on lens prices in France. This is essentially done through the OCAM care networks (as explained in more detail in Section 12.3.9), which select lens suppliers on the basis of bidding processes. The main OCAM care networks in France are Kalivia, Santéclair, Carte Blanche, Itelis, Sévéane, and Optistya. Such OCAMs, to which approximately 94% of the French population are signed up, represent more than half of lens sales in France. Recent studies have shown that the OCAM networks have, to some extent, managed to regulate prices in the optical sector in France.
- (748) On the basis of recitals (744) to (747), the Commission concludes that Essilor's market power in relation to lenses in France would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in France.

12.5.3. Liechtenstein

- (749) Essilor has a market share of [60-70]% for lenses overall in Liechtenstein. It faces competition from other players with non-negligible market shares, namely Zeiss ([10-20]%), Hoya ([10-20]%) and Optiswiss ([5-10]%). Optiswiss is an independent prescription laboratory, based in Basel, Switzerland, which develops, manufactures, and distributes high-tech stock and finished ophthalmic lenses. Essilor's position is very similar in single-vision ([60-70]%), multifocal ([60-70]%) and progressive lenses ([60-70]%). In neighbouring Austria buying groups and retail chains such as Fielmann represent a total of [60-70]% ([10-20]% and [50-60]% respectively) of overall lens purchases by value.⁴⁰⁹
- (750) On the basis of recital (731), the Commission concludes that Essilor's market power in relation to lenses in Liechtenstein would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes

⁴⁰⁷ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

⁴⁰⁸ Non-confidential version of minutes of a conference call with Krys, 7 July 2017.

⁴⁰⁹ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO. The Commission's investigation did not reveal any separate data on market channel splits in Liechtenstein.

the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Liechtenstein.

12.5.4. Norway

- (751) Essilor has a market share of [50-60]% for lenses overall in Norway. It faces competition from other players with non-negligible market shares, namely Rodenstock ([20-30]%), Di & Others ([10-20]%) and Hoya ([5-10]%). Essilor's position is stronger in single-vision lenses ([60-70]%) and less so in progressive and multifocal lenses (respectively [20-30]% and [20-30]%).
- (752) As discussed in recital (696), retail chains and buying or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers. In Norway buying groups and retail chains represent a total of [90-100]% ([30-40]% and [60-70]% respectively) of overall lens purchases by value.⁴¹⁰
- (753) On the basis of recitals (751) and (752), the Commission concludes that Essilor's market power in relation to lenses in Norway would be insufficient to allow it to foreclose the Merged entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Norway.

12.5.5. Poland

- (754) Essilor has a market share of [60-70]% for lenses overall in Poland. It faces competition from other players with non-negligible market shares, namely Hoya ([10-20]%) and Szajna ([5-10]%). Szajna is a Polish independent prescription laboratory that focuses on the manufacturing and distribution of ophthalmic lenses. Essilor's position is stronger in progressive ([60-70]%) and multifocal ([60-70]%) lenses but less so in single-vision lenses ([50-60]%).
- (755) As discussed in recital (696), retail chains and buying or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers or integrate vertically in lens production. In Poland large retail chains, such as Fielmann⁴¹¹ and Vision Express⁴¹², are present, representing [10-20]% of overall lens purchases by value,⁴¹³ which suggests a certain level of countervailing buyer power.
- (756) On the basis of recitals (754) and (755), the Commission concludes that Essilor's market power in relation to lenses in Poland would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Poland.

12.5.6. Portugal

- (757) Essilor has a market share of [50-60]% for lenses overall in Portugal. It faces competition from other players with non-negligible market shares, namely

⁴¹⁰ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

⁴¹¹ See the Fielmann Poland website at <https://www.fielmann.pl>.

⁴¹² See the Vision Express Poland website at <https://www.visionexpress.pl>.

⁴¹³ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

Zeiss ([10-20]%) and Hoya ([5-10]%). Essilor's position is almost [10-20] percentage points higher as regards progressive/multifocal lenses. Essilor enjoys strong awareness among ophthalmologists and end consumers, especially with its brand Varilux. However, Essilor's margins in Portugal ([...])% are lower than the EEA's average ([...])%, suggesting that its market power might be not as strong as its market shares seems to indicate.

- (758) As discussed in recital (696), retail chains and buying or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers. In Portugal buying groups and retail chains represent a total of [40-50]% ([30-40]% and [10-20]% respectively) of overall lens purchases by value.⁴¹⁴
- (759) On the basis of recitals (757) and (758), the Commission concludes that Essilor's market power in relation to lenses in Portugal would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Portugal.

12.5.7. Romania

- (760) Essilor has a market share of [50-60]% for lenses overall in Romania. It faces competition from other players with non-negligible market shares, namely Hoya ([10-20]%), Rodenstock ([0-5]%) and Interoptik ([5-10]%). Interoptik is a Romanian independent prescription laboratory and distributor, specialising in the manufacture and distribution of ophthalmic lenses, prescription frames and contact lenses. Essilor's position is stronger in progressive ([70-80]%) and multifocal ([70-80]%) lenses but considerably less so in single-vision lenses ([30-40]%).
- (761) Essilor's margins in Romania ([...])% are slightly above the EEA's average ([...])%, but still relatively low suggesting that its market power might be not as strong as its market shares seems to indicate. Essilor's apparent market power is further mitigated by the fact that the majority of customers source ophthalmic lenses from two or more lens suppliers and could therefore easily switch their demand from one supplier to another.⁴¹⁵ In addition, even if the retail chains represent only [20-30]% of the overall lens purchases at value, one important retailer on the Romanian market ([...]) chooses its suppliers through a tender process.
- (762) On the basis of recitals (760) and (761), the Commission concludes that Essilor's market power in relation to lenses in Romania would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Romania.

12.5.8. Slovakia

- (763) Essilor has a market share of [50-60]% for lenses overall in Slovakia. It faces competition from other players with non-negligible market shares, namely Hoya ([10-20]%), Rodenstock ([5-10]%) and Sagitta ([5-10]%). Sagitta is a Slovakian distributor and supplier of finished ophthalmic lenses, active in Slovakia

⁴¹⁴ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

⁴¹⁵ Form CO, Annex OL 7.15, Overview of the market for ophthalmic lenses in Romania.

and the Czech Republic. The company also engages in the distribution of branded prescription frames and sunglasses. Essilor's position is stronger in progressive ([50-60]%) and multifocal ([50-60]%) le but significantly less so in single-vision lenses ([30-40]%).

- (764) As discussed in recital (696), retail chains and buying or marketing groups are large customers who exercise significant buyer power, and could oppose any tied/bundled offer and choose to source their ophthalmic lenses from other suppliers. In Slovakia large retail chains, such as Fokus Optika⁴¹⁶ and Optika Mania,⁴¹⁷ are present, representing 32% of overall lens purchases by value. These retail chains have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers.⁴¹⁸
- (765) On the basis of recitals (766) and (767), the Commission concludes that Essilor's market power in relation to lenses in Slovakia would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction will not significantly impede effective competition as a result of conglomerate effects in Slovakia.

12.5.9. *Spain*

- (766) Essilor has a market share of [50-60]% for lenses overall in Spain. It faces competition from other players with non-negligible market shares, namely Hoya ([10-20]%), Prats ([10-20]%) and Indo ([10-20]%).]Essilor's position is slightly stronger in progressive ([50-60%]) and multifocal ([50-60]%) lenses but considerably less so in single-vision lenses ([40-50]%).
- (767) As discussed in recital (696), retail chains and buying or marketing groups are large customers who have the possibility to diversify their sourcing of ophthalmic lenses to other suppliers. In Spain buying groups and retail chains represent a total of 49% (29% and 20% respectively) of overall lens purchases by value⁴¹⁹.
- (768) On the basis of recitals (766) and (767), the Commission concludes that Essilor's market power in relation to lenses in Spain would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets. The Commission therefore takes the view that the Transaction would not significantly impede effective competition as a result of conglomerate effects in Spain.

⁴¹⁶ See the Fokus Optika website at <https://fokusoptika.sk>.

⁴¹⁷ See the Optika Mania website at <http://www.maniashop.sk>.

⁴¹⁸ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

⁴¹⁹ "Market Channel Splits in the EEA in 2016 (by Value)" based on [...] Essilor estimates, Table 1.11 of the Form CO.

12.6. Leveraging of Essilor's position in ophthalmic machines to foreclose competitors in eyewear

- (769) The Commission takes the view that the Transaction would not significantly impede effective competition in markets for frames or sunglasses across national markets in the EEA as a result of conglomerate non-coordinated effects due to the leveraging of Essilor's position in optical machines sold to eye-care professionals at the EEA level. The Commission concludes that the Merged Entity would not be able and would not be incentivised to leverage its position in optical machines at the EEA level by linking its sales to those of frames or sunglasses to an extent that would cause foreclosure of competing frames and sunglasses suppliers by reducing their ability or incentives to compete.
- (770) As explained in Section 12.1, the Commission has also received a complaint mentioning the potential risk of leveraging Essilor's position in table-top edgers to foreclose competitors in sunglasses and frames. The concern primarily relates to the possibility that the Merged Entity would offer commercial bundles of table-top edgers and lenses on the one hand with frames and sunglasses on the other hand.
- (771) Essilor sells only one type of machines to eye-care professionals, namely table-top edgers. Its market share in relation to table top edgers in the EEA is [40-50]%. This shows that European opticians have access to an array of table top edgers suppliers which represent for table top edgers at least [50-60]% of supply at EEA level.
- (772) Moreover, a large part of the demand for table to edgers originates from large chains or from independents organised in buying and/or marketing groups. Retail chains such as Grand Vision, Fielmann in Germany, or Afflelou in France as well as buying groups or marketing groups are large customers who have the possibility to diversify their sourcing of table top edgers. Competition from imports is increasing, as it is estimated that [30-40]% of EEA demand for table top edgers is covered by imports from outside the EEA.
- (773) Essilor also faces fierce competition, notably in Asia but also in Europe, from edgers with electronic command, that allow opticians to trim their glasses remotely through centralised edgers in laboratories.⁴²⁰
- (774) On the basis of the considerations set out in recitals (769) to (773), the Commission concludes that Essilor's market power in relation to table top edgers in the EEA would be insufficient to allow it to foreclose the Merged Entity's competitors in eyewear markets.
- (775) As regards incentives, as explained in recital 684 the Commission has found instances in the past of Essilor bundling its lens offer with other products, [...]. The Commission has not found any evidence of Essilor tying its lens offer with ophthalmic machines. The Commission has found no indications that any lenses manufacturers were foreclosed as a result of these bundling practices.
- (776) As regards the likelihood of success of a mixed bundling strategy pairing optical machines, opticians do not have strong brand preferences for ophthalmic machines, (as shown by the moderate market share of Essilor and the growing significance of imports) which means that opticians can easily switch away from Essilor's machines in response to any bundled offer. In the second place, a strategy consisting in

⁴²⁰ Form CO, page 228.

bundling Essilor's machines with frames or sunglasses would result in quite a substantial churn rate because both opticians would oppose such strategy, as they could do with lenses. For instance, in the case of mixed bundling, opticians could decline all or part of the rebate offer, turn to another supplier, and continue to operate with the same high level of margin.

- (777) As regards the overall effect and similar to leveraging from lenses into eyewear; the Commission considers that frames and sunglasses competitors would not be foreclosed as most of them have a global or international footprint and no competitor of Luxottica has ever been foreclosed from any market in the EEA. Tying of offers is unlikely and as eye-care professionals could refuse all or part of the rebate offer, it is unlikely that the effect on competition, if any, would be material.

12.7. Leveraging of Luxottica's position in eyewear to foreclose competitors in contact lenses or ophthalmic machines

- (778) The Commission takes the view that the Transaction would not significantly impede effective competition in markets for other products sold to eye-care professionals across the EEA or across national markets in the EEA as a result of conglomerate non-coordinated effects due to the leveraging of Luxottica's position in eyewear sold to eye-care professionals at the EEA or national level.
- (779) As explained above in Section 12.1, the Commission has also received a complaint from one contact lenses supplier who has expressed concern that the Merged Entity could leverage its strength in lenses and eyewear markets to foreclose competitors in the contact lenses market, by providing a "one stop shop" bundle that could not be matched by rivals, simply because they would not have all components of the bundle. Similar concerns were mentioned by rivals of Essilor in the supply of table-top edgers to opticians.
- (780) First, the Commission concludes that the Transaction would not significantly impede effective competition in the contact lenses markets in the EEA. Apart from lenses and eyewear, retailers also purchase and resell contact lenses to final consumers. Contact lenses represent on average [5-10]% of eye-care professionals' turnover⁴²¹. 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.
- (781) However, Essilor is hardly active in the wholesale supply of contact lenses. Its market share is below [5-10]% in all Member States where it is active, except in the Netherlands (where it holds a [5-10]% share). Its market position in contact lenses is therefore modest. Moreover, Essilor does not manufacture these contact lenses and [...].⁴²² Essilor does not mention contact lenses in its internal documents, which would tend to show that this is not an area in which Essilor is investing human and financial resources.

⁴²¹ Form CO, page 297.

⁴²² Form CO, page 65, paragraph 137.

- (782) No optician has submitted during the market investigation that they would consider Essilor to be a contact lenses supplier or expressed concerns regarding the bundling of lenses and eyewear with contact lenses.
- (783) Even if customers were willing to source lenses, eyewear products and contact lenses from a single supplier, it is unlikely that contact lenses suppliers would be foreclosed from access to markets considering the limited relevance of Essilor in contact lenses supply and the existence of alternative routes to markets.
- (784) Second, the Commission concludes that the Transaction would not significantly impede effective competition in the table-top edger markets in the EEA through foreclosure of rival table top edgers suppliers.
- (785) As regards the ability to foreclose table top edgers suppliers, such a strategy would rely on the market position of Luxottica in frames and sunglasses brought about by the merger (since Essilor is already active in lenses). As explained in Sections 12.2 and 12.3, Luxottica does not hold a sufficient degree of market power in frames and sunglasses to foreclose rivals lenses suppliers in EEA as a whole and in national markets. The same holds true for table top edgers suppliers, considering moreover the lack of complementarity between frames and sunglasses on the one hand and table-top edgers on the other hand.
- (786) As regards incentives, as explained in recital 699 the Commission has found instances in the past of Essilor bundling its lens offer with other products, [...]. The Commission has not found any evidence of Essilor tying its lens offer with ophthalmic machines. As Essilor has not in the past engaged into tying practices of table top edgers and lenses, it is not expected that they would tie frames and sunglasses on the one hand and table-top edgers and lenses on the other hand.
- (787) The Merged Entity could still bundle its lens and table top edgers offer with frames and sunglasses. However, a foreclosure strategy would have a negative trade-off between gains and losses for the following reasons. In the first place, opticians do not have strong brand preferences for table top edgers, as evidenced by the market shares of Essilor at EEA level ([40-50]%) and the presence of sizable competitors. This means that opticians can easily switch away from Essilor's table top edgers in response to any bundled offer. In the second place, a strategy consisting in mixed bundling Essilor's table top edgers with frames or sunglasses would result in quite a substantial churn rate because opticians would, as for lenses, oppose such strategy.
- (788) As regards effect on the market, competitors in table top edger's would not be foreclosed as most of them have a global or international footprint and no competitor of Essilor in table top edgers has ever been foreclosed from any market in the EEA.

13. CONCLUSION

- (789) The Commission concludes that the Transaction would not significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, due to horizontal, vertical or conglomerate non-coordinated effects in the different markets in the optical value chain.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Essilor International (Compagnie Générale d'Optique) S.A. and Luxottica Group S.p.A. enter into a full merger within the meaning of Article 3(1)(a) of Council Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Essilor International (Compagnie Générale d'Optique) S.A.
147, rue de Paris
94220 Charenton-le-Pont
France

Luxottica Group S.p.A.
Piazzale Cadorna 3
20123 Milan
Italy

Done at Brussels, 1.3.2018

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission