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Anticipated acquisition by Essilor International (Compagnie Générale d'Optique) SA of Horizon Optical Company Limited

ME/4258/09

The OFT's decision on reference under section 33(1) given on 5 November 2009. Full text of decision published 18 November 2009

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Essilor International (Compagnie Générale d'Optique) SA** (Essilor) is a French company listed on the Euronext Paris stock exchange. It is the parent and holding company for the Essilor Group of companies whose main activities are the manufacture and supply of finished glass and plastic ophthalmic lenses to opticians worldwide. Essilor also supplies ophthalmic substrate<sup>1</sup> to independent laboratories and optician chains.
2. In the UK Essilor supplies a range of ophthalmic lenses (both branded and unbranded) and substrate. In addition, Essilor has a 50/50 joint venture with the Nikon Corporation (Nikon Essilor Company Limited) which supplies Nikon branded ophthalmic lenses in the UK.
3. **Horizon Optical Company Limited** (Horizon) is a privately owned company registered in the UK, with its headquarters in Dunstable. Horizon is an independent prescription laboratory, supplying ophthalmic lenses to opticians in the UK. Its activities also include the supply and repair of spectacle frames. Horizon also has high quality glazing and mounting capabilities. In the year to December 2008, Horizon's UK turnover was approximately £3 million.

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<sup>1</sup> Ophthalmic substrate is a part-finished plastic ophthalmic lens. Substrate requires further laboratory processing before the lens can be sold to a consumer.

## TRANSACTION

4. By a share purchase agreement, which the parties signed on 25 September 2009, Essilor has agreed to acquire 95 per cent of the shares in Horizon for consideration of approximately [ ].
5. The parties notified the transaction to the Office of Fair Trading (OFT) by means of a Merger Notice under section 96 of the Enterprise Act 2002 on 28 September 2009. The extended statutory deadline for the OFT to decide whether to refer the merger to the Competition Commission (CC) expires on 9 November 2009.

## JURISDICTION

6. As a result of the proposed transaction Essilor and Horizon will cease to be distinct.
7. The parties both supply finished ophthalmic lenses to opticians and optometrists in the UK where together they account for around [30-40] per cent. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## BACKGROUND

8. The OFT decided not to refer to the CC two relevant mergers in the past year.<sup>2</sup> In view of these two recent decisions, the OFT has not sought to reassess the same issues in this case. Instead, where appropriate, the OFT relied on the analysis and evidence already collated.

### Ophthalmic lens supply chain and lens designs

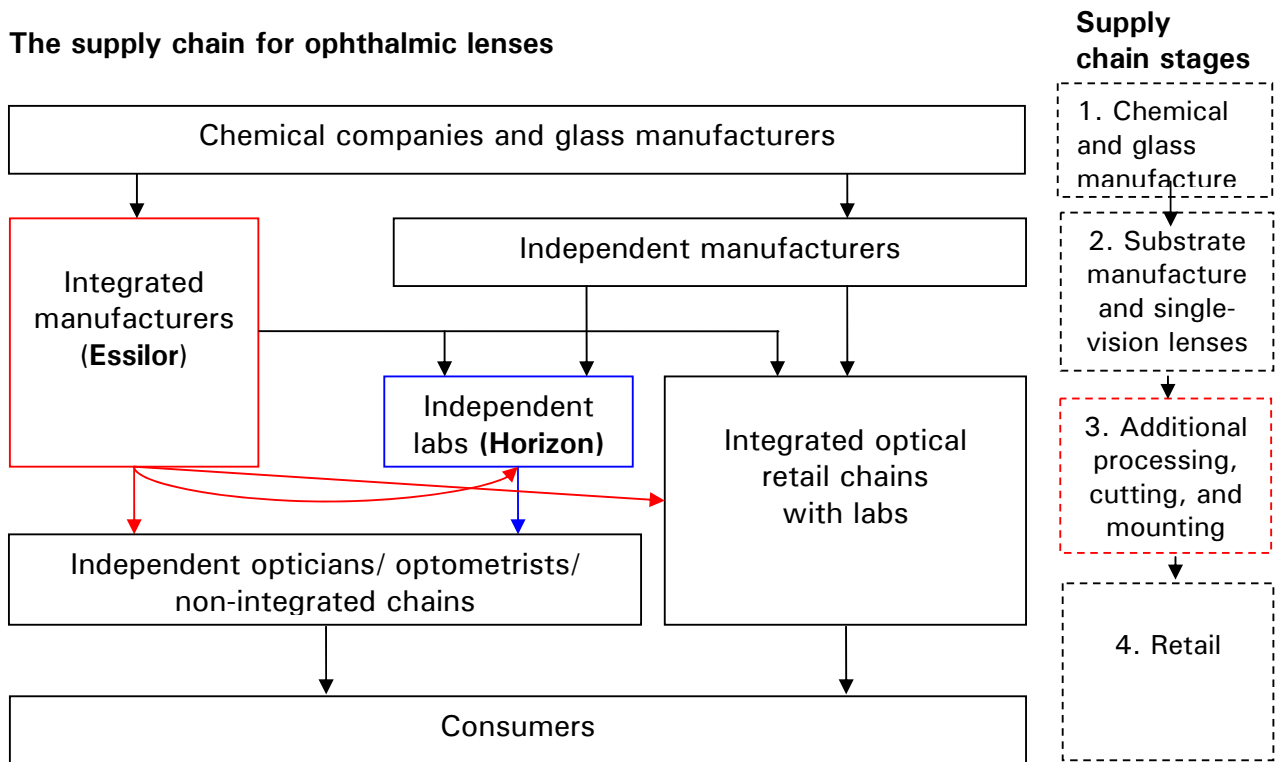
9. The supply chain, from supply of chemicals for substrate to consumer purchasing, is shown in the table diagram below. The diagram shows that the merging parties compete at stage 3 in the supply chain.<sup>3</sup>

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<sup>2</sup> OFT decision on the anticipated acquisition by Essilor International (Compagnie Générale d'Optique) SA of Signet Armorlite Inc, 11 March 2009 (Essilor/Signet). OFT decision on the anticipated acquisition by Essilor International (Compagnie Générale d'Optique) SA of Wholesale Lens Corporation Limited, 27 July 2009 (Essilor/WLC).

<sup>3</sup> For more details on the different stages of the supply chain of ophthalmic lenses and lens design see OFT decision on the anticipated acquisition by [Essilor International \(Compagnie Générale d'Optique\) SA of Signet Armorlite Inc](#), 11 March 2009 (Essilor/Signet).

## The supply chain for ophthalmic lenses



## MARKET DEFINITION

- The parties overlap in the supply of finished ophthalmic lenses, the provision of glazing and mounting services and the supply of lens frames to opticians in the UK. Each of these is considered below.

### Product scope

#### Ophthalmic lenses

- Ophthalmic lenses may be produced from glass or plastic into three broad types of corrective design; single, bi-trifocal and varifocal also known as progressive. In Essilor/Signet and in Essilor/WLC the OFT did not find it necessary to conclude on the exact product scope since competition concerns did not arise on any reasonable product definition.
- In this case, as in the previous ones, the parties submitted that it is not necessary for the OFT to conclude on the exact product scope since competition concerns do not arise on any definition. However, for completeness, they provided data on a variety of bases to the OFT including by material (plastic or glass) and by corrective design.
- The OFT has considered this information and, again, taken the view that it is not necessary to conclude on the product market definition since competition concerns do not arise even on the narrow basis of assessing

the market for ophthalmic lenses based on each lens material (plastic or glass) by specific corrective design.

### **Glazing and Mounting services**

14. Unlike the target firms in the other ophthalmic lens cases, Horizon is an independent laboratory providing finished and mounted lenses to retail opticians. The OFT has considered whether the lens mounting and glazing process should be considered separately to the supply of ophthalmic lenses. Based on the evidence submitted to the OFT, provision of these services is often part of the production of finished lenses, and producers of finished lenses that are not currently mounting and glazing them could quickly and cheaply switch to doing so, given the incentive. This suggests that lens mounting and glazing should not be considered separately from the supply of ophthalmic lenses. Furthermore, even on the cautious basis of considering them separately, the parties estimated that Horizon's share of UK glazing and mounting is around only [0-5] per cent, with the parties having a combined share of around [10-20] per cent. On this basis, the OFT is of the view that no competition concerns would arise even if these services were considered separately.

### **Lens frames**

15. There is an overlap between the parties in the supply of lens frames. In Luxottica/Oakley<sup>4</sup> the OFT considered whether the manufacture and wholesale of sunglasses frames and frames for prescription ophthalmic lenses were in the same market. The OFT did not conclude on market definition in that case because in none of the permutations did the merger raise any concerns.
16. With regard to this transaction, based on evidence submitted to the OFT, Essilor supplies a relatively small number of frames through United and Sinclair, and Horizon sold a relatively small number of lenses complete with frames. Essilor sold approximately [ ] frames with a combined value of around [ ] in 2008. Horizon sold approximately [ ] frames for a value of approximately [ ] in 2008. A market research report<sup>5</sup> provided by the parties estimates that around 12.7m frames were sold in the UK in 2008, putting the parties' share of supply at less than one per cent. On this basis, the OFT concludes that there are no concerns in relation to the supply of lens frames. Moreover, no third parties raised concerns in relation to the supply of frames in the UK. Therefore, lens frames will not be considered further in this decision.

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<sup>4</sup> OFT decision on the anticipated acquisition by Luxottica Group S.p.A. of Oakley Inc., 12 October 2007 (Luxottica/Oakley).

<sup>5</sup> The market research report was by Strategy with Vision ('SwV'), a market research firm specialising in the ophthalmic market.

## **Geographic scope**

17. The parties pointed out that in previous cases the OFT had taken the UK as the appropriate approach, but acknowledged that the market might be wider than the UK. In this case, one third party suggested that sales of lenses to independent opticians required a local presence. The OFT noted that the same third party did not have a lab in the UK, but rather produced lenses in Germany. In addition, evidence provided to the OFT revealed that whilst independent opticians favour the high levels of customer service associated with a local presence, switching is dependent on price and customer requirements rather than a function of geographic proximity of the lab to the optician's retail outlet.
18. Therefore, in this case the OFT sees no reason to change its previous approach and has examined the merger on the basis of the UK, as it did in Essilor/Signet and Essilor/WLC.

## **Conclusion on market definition**

19. While the OFT has not needed to conclude on the precise scope of the relevant market in this case given that, even taking a conservative approach, the proposed merger does not raise competition concerns it has considered the impact of the proposed merger on the supply of:
  - finished plastic lenses irrespective of corrective design in the UK
  - finished plastic lenses by specific corrective design (single-vision, bi-trifocal, progressive) in the UK
  - finished glass lenses irrespective of corrective design in the UK, and
  - finished glass lenses by specific corrective design (single-vision, bi-trifocal, progressive) in the UK.

## **HORIZONTAL ISSUES**

### **Finished plastic lenses**

20. Market share estimates for the parties are presented in table 1 on the basis of all plastic lenses and on the basis of further delineation by corrective design.<sup>6</sup>

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<sup>6</sup> The parties obtained figures for the industry turnover for each of the three lens designs from the 2008/9 market research report by Strategy with Vision.

**Table 1: Per cent market shares for corrective designs and combined, 2008 (plastic)**

	Single-vision		Bi-trifocal		Progressive		Total	
	Vol	Val	Vol	Val	Vol	Val	Vol	Val
Essilor <sup>7</sup>	[30-40]	[30-40]	[10-20]	[10-20]	[30-40]	[30-40]	[30-40]	[30-40]
Horizon	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
<b>Combined</b>	<b>[30-40]</b>	<b>[30-40]</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[30-40]</b>	<b>[40-50]</b>	<b>[30-40]</b>	<b>[30-40]</b>
Others	[60-70]	[60-70]	[80-90]	[80-90]	[60-70]	[50-60]	[60-70]	[60-70]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

21. For plastic ophthalmic lenses the parties' combined share by value ranges from [10-20] per cent for bi-trifocal and [30-40] per cent for single-vision lenses to [40-50] per cent for progressive lenses.<sup>8</sup> The increment for the plastic single and the bi-trifocal lenses is around [0-5] per cent whereas for progressive lenses it is less than [0-5] per cent. Furthermore, for all plastic ophthalmic lenses irrespective of corrective design, the parties' combined share arising from the proposed merger is [30-40] per cent (by value) with an increment of [0-5] per cent.
22. The parties' combined market shares by volume range from [10-20] per cent with an increment of [0-5] per cent for bi-trifocal and [30-40] per cent with an increment of less than one per cent for progressive lenses to [30-40] per cent with an increment of [0-5] per cent for single-vision glass lenses. For all plastic lenses, the parties' combined market share by volume is [30-40] per cent with an increment of [0-5] per cent.
23. The parties argued that the impact of the merger is minimal in all segments considering the small increments. The Strategy with Vision ('SwV') report and Mintel report,<sup>9</sup> provided that at least these five branded competitors - Hoya, Rodenstock, Carl Zeiss, Norville and Seiko - will remain with market shares of between [0-5] per cent and [10-20] per cent.
24. Furthermore, in terms of independent laboratories, the 'SwV' report lists 76 independent laboratories in the UK, with six completing a similar number of

<sup>7</sup> These share include: BBGR, Essilor, Signet, Sinclair, and United.

<sup>8</sup> The parties obtained figures for the industry turnover for each of the three lens designs from the 2008/9 market research report by Strategy with Vision.

<sup>9</sup> Optical Goods and Eyecare, Market Intelligence, May 2008

jobs per day<sup>10</sup> as Horizon. Based on the evidence provided by the merging parties, the OFT concluded that, of the lenses produced by independent laboratories based in the UK, Horizon sold around [5-10] per cent by volume and [5-10] per cent by value.

25. A number of third parties raised concerns that Essilor would be in a position of market power were the transaction to go ahead. However these third parties did not substantiate their claims. Furthermore, customers were less concerned by the merger and several customers noted that they would switch following a price increase by Essilor.
26. Finally, the OFT examined the closeness of competition between the merging parties. Based on evidence provided to the OFT, Essilor is an integrated supplier of ophthalmic lenses, with lens manufacturing facilities and prescription laboratories, in which it also has lens cutting and mounting equipment. Conversely, Horizon is an independent laboratory which purchases part finished lenses from several lens manufacturers<sup>11</sup> and then shapes those lenses according to opticians' requirements. Horizon also glazes and mounts lenses on behalf of opticians and, in limited instances, will glaze and mount lenses acquired by the optician from other suppliers, such as lens manufacturers.
27. Due in part to these differences, third parties stated that independent laboratories such as Horizon provide a higher level of customer service and a wider range of lens brands than integrated suppliers of ophthalmic lenses. Furthermore, a number of third parties contacted by the OFT indicated that opticians value the customer service provided by independent laboratories. Furthermore, based on evidence provided by the parties, Horizon is not among the [ ] competitors mentioned in Essilor's comparative pricing analysis. Finally, based on data provided by the parties, the OFT concluded that the price differences between Horizon and Essilor lenses are not insignificant, indicating that the parties are not competing closely with each other. For example, Horizon's average price is [ ] than Essilor's, but for progressive lenses Horizon's price is [ ] than Essilor's.
28. Therefore, based on the evidence submitted to the OFT, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in the supply of finished plastic lenses of any corrective design in the UK.

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<sup>10</sup> Jobs per day are an industry standard measure of a lab's output.

<sup>11</sup> Horizon sells lenses manufactured by Carl Zeiss, Essilor (Essilor, Nikon, and Signet) and Seiko.

## Finished glass lenses

29. Market share estimates for the parties are presented in the table below on the basis of glass lenses and on the basis of further delineation by corrective design.<sup>12</sup>

**Table 2: Per cent market shares for corrective designs and combined, 2008 (glass)**

	Single-vision		Bi-trifocal		Progressive		Total	
	Vol	Val	Vol	Val	Vol	Val	Vol	Val
Essilor <sup>13</sup>	[20-30]	[40-50]	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[20-30]
Horizon	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
<b>Combined</b>	<b>[20-30]</b>	<b>[50-60]</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[10-20]</b>	<b>[20-30]</b>	<b>[20-30]</b>	<b>[30-40]</b>
Others	[70-80]	[40-50]	[80-90]	[80-90]	[80-90]	[70-80]	[70-80]	[60-70]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

30. Post-merger the parties will account for around [20-30] per cent of sales of all glass lenses by volume and [30-40] per cent by value<sup>14</sup> with an increment of less than [0-5] per cent and of [0-5] per cent respectively.<sup>15</sup>
31. In the single vision segment the parties would have a combined share of supply of around [20-30] per cent by volume and [40-50] per cent by value with an increment of less than [0-5] per cent and of [0-5] per cent respectively. In terms of total value, this market segment is worth approximately £0.57m per annum.
32. In respect of bi-trifocal glass lenses the combined share will be [10-20] per cent by volume and [10-20] per cent by value with an increment of [0-5] per cent and of [0-5] per cent respectively. In addition, for progressive glass lenses the merging parties' market share will be [10-20] per cent by

<sup>12</sup> Again the figure for the industry turnover was obtained from a research report by Strategy with Vision, a market research firm specialising in the ophthalmic market.

<sup>13</sup> These share include: BBGR, Essilor, Signet, Sinclair, United, and WLC.

<sup>14</sup> Note, given the small size of the glass segment, no market data is available on total industry volume/value. Total market size estimates are therefore based on SwV market research, but competitor sales shares are not available.

<sup>15</sup> Again the figure for the industry turnover for was obtained from a research report by Strategy with Vision, a market research firm specialising in the ophthalmic market.



volume and [20-30] per cent by value with an increment of less than [0-5] per cent and of [0-5] per cent respectively.

33. Based on evidence submitted to the OFT, the market for finished glass lenses is estimated to be worth around £2.5m per annum and, according to the parties, is a fast declining sector with sales falling to around [ ] units in 2008 from around [ ] in 2006. In particular, the parties argued that the glass lens market is not the focus of their activities given its small and diminishing size, and that the merger will not create a particularly strong glass lens supplier. In Essilor/WLC this argument was supported by [ ].
34. In addition, the parties argued that, with regards to their combined market share for the supply of single-vision glass lenses being [40-50] per cent (by value), four of the parties' branded competitors will still remain in the glass lens market: Hoya, Rodenstock, Carl Zeiss and Norville, as well as a number of other glass lens suppliers, including Jai Kudo and Shamir. Furthermore, the parties argued that the sales of glass lenses in the UK represent approximately only one per cent of total UK sales of ophthalmic lenses.
35. Finally no third parties' raised particular concerns with regard to the glass lenses market.
36. Therefore, based on the evidence submitted to the OFT, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in the supply of glass lenses of any corrective design in the UK.

#### **Barriers to entry and expansion**

37. The OFT has not found it necessary to conclude on barriers to entry and expansion in this case since the outcome of its competitive assessment is not dependant on it.

#### **Buyer power**

38. In view of the fact that the merger does not give rise to a realistic prospect of a substantial lessening of competition in competition concerns, the OFT has not found it necessary to conclude on the issue of buyer power.

#### **VERTICAL ISSUES**

39. Given the small increment, and that no third parties raised merger specific concerns in relation to obtaining lenses post-merger, there is a low probability of any such issues arising from the present transaction.

## THIRD PARTY VIEWS

40. The OFT received comments and views from a number of third parties, including competitors and customers. These are referred to above as appropriate but the OFT notes that the majority of third parties did not raise any concerns regarding the merger. Two third parties focused on Essilor continuing to increase its market share recently through a number of small acquisitions.<sup>16</sup> The OFT acknowledges that whether a merger results in a substantial lessening of competition will, in part, depend upon the parties' combined share of supply and the increment arising from the merger. Where the share of one of the parties is already large then even a small increment could give rise to a lessening of competition that is, or may be, substantial. The OFT has considered this merger on that basis but concluded that the increment to Essilor's existing share of supply resulting from this merger does not raise concerns.
41. Two third parties commented that post-merger Essilor will have the ability and the incentive to foreclose independent laboratories by increasing prices or refusing to supply them with Essilor lenses. However, the OFT has examined these views and concluded that they were not merger specific. If Essilor wished to refuse to supply then it is already in a position to do so, this merger does not make this any more/or less likely. In any event, what matters in reaching an adverse finding on such a foreclosure theory of harm is that it may have an anticompetitive effect in the market and not merely that the merged firm has the (non-merger-specific) ability and incentive to foreclose. The OFT received no evidence of any such anticompetitive foreclosure.

## ASSESSMENT

42. The parties overlap in the supply of plastic and glass ophthalmic lenses. In addition they overlap in the supply of glazing and mounting services and in the supply of lens frames in the UK.
43. As the combined market share of the merging parties for the supply of lens frames in the UK is less than one per cent and their combined market share for the supply of glazing and mounting services is [10-20] per cent with an increment of around [0-5] per cent, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in these product markets in the UK.

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<sup>16</sup> OFT decision on the anticipated acquisition by Essilor International (Compagnie Générale d'Optique) SA of Signet Armolite Inc, 11 March 2009 (Essilor/Signet). OFT decision on the anticipated acquisition by Essilor International (Compagnie Générale d'Optique) SA of Wholesale Lens Corporation Limited, 27 July 2009 (Essilor/WLC).

44. Ophthalmic lenses can be considered as a single product market or segmented according to the material from which they are made (plastic or glass) and by corrective design (single-vision, bi-trifocal and progressive). The OFT examined the merger on the latter (narrowest) basis, and has not found any competition concerns on any measure. The increments on all possible measures are low and, on the evidence available to it, the OFT has found that Horizon has not been an especially close competitor to Essilor and that a number of alternative manufacturers of ophthalmic lenses and independent laboratories are active in the UK.
45. The majority of third parties did not raise any concerns regarding the merger. Two third parties commented that the merged parties will have the ability and incentive to foreclose rival independent laboratories. However, the OFT concluded that these concerns were not merger specific given the very modest increase in Essilor's existing share of supply.
46. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

47. This merger will therefore **not be referred to** the Competition Commission under section 33(1) of the Act.

## **ENDNOTE**

48. The parties informed the OFT that the acquisition of Signet Armorlite Inc. by Essilor has not yet been completed, as the transaction has not yet received regulatory approval from other jurisdictions. However, the OFT believes that it remains appropriate (on a cautious basis) to take account of Signet's sales within Essilor's share of supply given that it is more than speculative at this point that the Signet acquisition will proceed.