

# Anticipated acquisition by Vision Express (UK) Limited of Tesco Opticians

## Decision on relevant merger situation and substantial lessening of competition

**ME/6696/17**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 28 September 2017. Full text of the decision published on 20 October 2017.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

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## SUMMARY

1. Vision Express (UK) Limited (**Vision Express**) has agreed to acquire 209 Tesco Opticians outlets located within Tesco stores in the UK and Ireland (**Tesco Opticians**) (the **Merger**). Vision Express and Tesco Opticians are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of optical services and products. The CMA assessed the impact of the Merger in the retail market for the provision of optical services and products in bricks-and-mortar outlets (including supermarket opticians, optical retail chains and independent opticians) in local areas in the UK.
4. The CMA assessed the extent to which different types of fascia (independents, optical retail chains and supermarkets) compete with one another. It found that all typically offered eye tests, a range of glasses and contact lenses, but with some differentiation in terms of product offering. In general, supermarkets tended to offer cheaper frames and lenses, whereas optical retail chains offer a range from cheap to luxury and independents tended to offer more towards the luxury end but sometimes offered cheaper products or a full range (although there is more variation among independents than optical retail chains, latter usually providing a more standard offering).
5. Whilst the Parties are not each other's closest competitors, the CMA found that they do compete with each other, albeit that other opticians may be closer competitors at the national level and, where present, at the local level.
6. The CMA therefore decided that it was appropriate to include all three categories of competitor in the relevant competitor set and to look more closely at the specific offer of the relevant independents in potentially problematic local areas.

7. The Merger involves the acquisition by Vision Express of 206 Tesco Opticians stores in the UK.<sup>1</sup> The CMA did not identify any competition concerns at national level. However, the Parties overlap in particular areas of the UK that could raise local competition concerns. To identify those areas where the Merger could raise competition concerns, the CMA used the drive time of the customers at the 80<sup>th</sup> percentile for each of the Parties' stores to define individual catchment areas and applied a fascia-count filter. Where the Merger would lead to a reduction in the number of competitors from 5 to 4 or less within any individual catchment area, the CMA conducted a more detailed analysis of competitive conditions in the specific local area. On the basis of this methodology, in eight local areas, four or fewer fascia would remain after the Merger.
8. The CMA was able to dismiss concerns in five of these areas on the basis that there were sufficient competitive constraints. For the remaining three areas (Barrow-in-Furness, Helston and Ryde), the CMA found that the Merger would result in a reduction in the number of competing fascia from 4 to 3, within the 80% catchment area of the relevant Vision Express store, and that the remaining retailers (along with those located outside the catchment area) would not be sufficient to constrain the Parties post-Merger.
9. In light of its analysis, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the retail supply of optical products and services in these three local areas. The CMA also concluded that entry and expansion into these markets would not be timely, likely and sufficient to mitigate the potential anticompetitive effects of the Merger.
10. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 5 October 2017 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

## ASSESSMENT

### Parties

11. Vision Express operates high street optical retail stores in the UK and Ireland. Vision Express has 389 stores and employs over 4,000 people. The turnover

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<sup>1</sup> As a result of the Merger, Vision Express will acquire a total of 209 Tesco Opticians' stores: 206 stores located in the UK and 3 in Ireland.

of Vision Express in the financial year ended 31 December 2015 was approximately £254.5 million.

12. Tesco Opticians is Tesco's optical retail business which is carried on in the UK and Ireland by Tesco Stores Ltd and Tesco Ireland Ltd. Tesco Opticians outlets exist in 206 stores in the UK and 3 stores in Ireland. The turnover of Tesco Opticians in the financial year ended 25 February 2017 was £[X] million worldwide and approximately £[X] million in the UK.<sup>2</sup>

## Transaction

13. The Merger involves the acquisition by Vision Express of the Tesco Opticians outlets located within Tesco stores in the UK and Ireland, pursuant to an Asset Purchase Agreement entered into by the Parties on 19 April 2017.

## Procedure

14. The Merger was considered at a Case Review Meeting.<sup>3</sup>

## Jurisdiction

15. As a result of the Merger, the enterprises of Vision Express and Tesco Opticians will cease to be distinct.
16. The UK turnover of Tesco Opticians exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
17. The CMA 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.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 3 August 2017 and the statutory 40 working day deadline for a decision is therefore 28 September 2017.

## Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (the counterfactual). For anticipated mergers at Phase 1, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger.

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<sup>2</sup> The remaining £[X] was attributable to Tesco Opticians' turnover in Ireland.

<sup>3</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of those conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>4</sup>

20. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Background

21. The Parties are both solely active at the retail level of the optical sector. Bricks-and-mortar optician stores provide eye tests and dispense prescription ophthalmic lenses and spectacle frames, as well as contact lenses, non-prescription sunglasses, and eye care products to customers.
22. Bricks-and-mortar optician stores are staffed by: (i) optometrists, who perform eye tests and prescribe spectacles and contact lenses, fit spectacles and contact lenses, and diagnose eye diseases; (ii) dispensing opticians, who advise on, fit and supply spectacles and contact lenses; and (iii) other optical assistants. Some products, in particular, contact lenses and non-prescription products, are also sold through other channels, such as pharmacies or online.
23. According to a market report, sales of retail opticians' products and services were worth around £3.1 billion in 2016 and are expected to grow by 17% between 2016 and 2021 to reach £3.6 billion.<sup>5</sup>

## Frame of reference

24. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important

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<sup>4</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>5</sup> Mintel, "Optical Goods Retailing UK", February 2017, page 10.

than others. The CMA will take these factors into account in its competitive assessment.<sup>6</sup>

25. The Parties overlap in the retail supply of optical products and services in bricks-and-mortar stores in the UK (and Ireland).

### ***Product scope***

26. The Parties submitted that the approach to product scope adopted by the OFT in the Boots/D&A decision would also be appropriate in this case.<sup>7</sup> In that decision, the frame of reference adopted by the OFT was the retail market for the provision of optical services and products in bricks-and-mortar opticians.
27. The Parties submitted that, since the Boots/D&A decision, the UK retail optical sector is broadly unchanged, aside from (i) a 14% growth in the overall UK optical sector since 2009; (ii) the strengthened position of Specsavers (whose share of the UK optical market has grown from 21.9% in 2007 to 38.7% in 2016); (iii) the consolidated position of Boots Opticians brought about by the 2009 transaction; and (iv) some growth in the online channel.
28. As a starting point, the CMA took the frame of reference established in the Boots/D&A decision and considered whether it should be narrowed further (i) on the basis of individual products or product categories, as opposed to comprising the overall retail proposition; or (ii) on the basis of store size or distribution channel.

### ***The overall retail proposition of bricks-and-mortar opticians***

29. The Parties submitted that competition between opticians can be assessed at the level of the overall retail proposition of an optician's store. In the Parties' view, it is not necessary to consider competition for individual products and services because all bricks-and-mortar opticians broadly offer the same full range of optical services and products to their customers. Customers will often buy a 'basket' of goods and services from the same optician, for example an eye test and spectacles or an eye test, contact lenses and contact lens solution.
30. Consistent with the approach adopted by the OFT in Boots/D&A, the CMA noted that the importance of a retail proposition as a whole, as compared to the individual products and services that it comprises, will depend, in large

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<sup>6</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>7</sup> OFT decision of 1 May 2009, ME/4014/09, [Proposed joint venture between Alliance Boots Limited and Dollond & Aitchison Limited](#), (the **Boots/D&A decision**).

part, on consumers' perceptions and habits.<sup>8</sup> The importance of the retail proposition as a whole is typically likely to be greater in situations where the consumer sees the outlet as a 'retail destination' in itself, actively purchasing a 'basket' of goods across a range of categories in that outlet.

31. The CMA found some differentiation among certain products (or product categories) that could be considered separately to other parts of an optician's offering. For example, some third parties, the Parties' internal documents and market reports indicated that contact lenses, related products, and sunglasses tend (as opposed to spectacles) to be bought more frequently through other channels (ie online or other stores).
32. However, the CMA also found that bricks-and-mortar opticians all have a similar mix of products and services based on eye tests, glasses, contact lenses and sunglasses.<sup>9</sup> Third parties' responses to the CMA's market testing and the Parties' internal documents show that the focus of bricks-and-mortar opticians is on frames, lenses and related services (eg eye tests). For example, most sales in the Parties' stores appear to be attributable to lenses and frames (eg for Tesco Opticians circa [70-80]% of sales were for lenses and frames, with [10-20]% being for eye tests).
33. Moreover, there is evidence suggesting that a consumer will purchase a basket of goods or services across the range available in retail opticians. A market report states that 22% of purchasers of prescription eyewear bought two or more products in the last 12 months.<sup>10</sup>
34. On the basis of the evidence described above, the CMA considered, consistent with the Boots/D&A decision, that it is appropriate to consider the different retail optical services as part of a single retail offer.

*Effective competitor set – optical retail chains, supermarkets and independent opticians*

35. The Parties submitted, in particular, that independent opticians, supermarket opticians and optical retail chains form part of the same effective competitor set.

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<sup>8</sup> Boots/D&A decision, paragraph 132.

<sup>9</sup> Mintel, "Optical Goods Retailing UK", February 2016, page 18.

<sup>10</sup> Mintel, "Optical Goods Retailing UK", February 2017, page 69.

36. The Parties also submitted that there is additional competition for a sub-set of opticians' products and services from other retailers such as supermarkets, pharmacies and online retailers.
37. As a starting point, the CMA considered which providers of retail optician services provided an effective competitive constraint on the Parties. The CMA found that the product and service offering across all types of optician business is similar in particular because:
- All opticians need to fulfil the same set of basic requirements in order to practise as a retail optician. As a result, they offer the same services (ie eye tests, lenses, spectacles and contact lenses), a comparable product range (all opticians offer ophthalmic and contact lenses from a variety of suppliers, as well as a variety of frames) and operate within similar outlets (opticians generally operate from similar-sized and similar-looking outlets, although there may be some differences in store ambience);
  - all opticians need to be registered in order to carry out the functions described above; and
  - all opticians must comply with the same set of criteria in order to secure an NHS contract.
38. Given these similarities in product and service offering, the CMA considered that, as a starting point, the bricks-and-mortar opticians, comprised an appropriate effective competitor set.

#### *Supermarket opticians and optical retail chains*

39. In the Boots/D&A decision, the OFT left open the issue of whether supermarket opticians should be included within the same effective competitor set as optical retail chains, on the basis that supermarket opticians accounted for only around 2% of the overall retail optician market and that their inclusion would not have materially affected the competitive assessment in that case.
40. The CMA notes that the position of supermarket opticians has grown materially since 2009, and that such outlets now account for around 6% of the overall retail optician market.<sup>11</sup>
41. The evidence available to the CMA also indicates that supermarkets and optical retail chains impose a material competitive constraint on each other.

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<sup>11</sup> Mintel, "Optical Goods Retailing UK", February 2017, page 13.



For example, the Parties' internal documents, which show that both Parties [monitor supermarkets, independent opticians and optical retail chains].

42. The available evidence shows that supermarkets offer a comparable retail offer to other bricks-and-mortar opticians. For example, one market report states that some supermarkets such as Tesco and Asda had entered into the optical market by employing qualified opticians capable of conducting eye examinations and are becoming significant players in the market.<sup>12</sup>
43. The available evidence also shows that supermarket opticians tend to have a particular focus on low prices. On this basis, supermarket chains are likely to constrain high-street opticians from the lower end of the price/quality spectrum, with high-street opticians constraining supermarket chains from the upper end.
44. Moreover, most optical retail chains that responded to the CMA's market testing indicated that they consider optical supermarkets as competitors (and vice versa for supermarket opticians).
45. In light of the evidence described above, the CMA concluded that both supermarkets and optical retail chains should be considered part of the same effective competitor set. However, in the competitive assessment below, the CMA has been mindful of the differentiation between opticians including the evidence suggesting that competitors of the same type tend to pose the strongest competitive constraints on each other (for the reasons described in paragraphs 79 to 90).

#### *Independent opticians*

46. In the Boots/D&A decision, the OFT considered that independent opticians should be considered part of the same effective competitor set, along with larger multiples and smaller and regional chains.
47. The CMA considered that the product frame of reference includes all types of retail optician businesses, including independent opticians, for the reasons described in paragraph 37.
48. The Parties' internal documents described in paragraph 41 also include [X]. Vision Express also provided [X].
49. However, some third parties told the CMA that independents could not be considered as effective competitors to the Parties because they do not have

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<sup>12</sup> Mintel, "Optical Goods Retailing UK", February 2017, pages 10 and 61.

the scale necessary to compete with larger multiples, in particular in relation to pricing. This is broadly consistent with evidence from some of the Parties' internal documents, which indicate that [X].

50. Another internal document and a market report indicated that the independent sector has lost some share, on a national basis, in recent years but continues to account for a significant proportion of the overall market.<sup>13</sup>
51. Most multiples that responded to the CMA's market testing considered they compete with independents. They submitted that independent opticians tend to offer a high-quality service at a higher price point, but are able to compete as effectively as multiples because of their ability to offer a personalised service and develop long-lasting customer relationships. In the multiples' opinion, the competitive importance of each type of optician can depend on individual consumer preferences.
52. The CMA considered that independent opticians provide some competitive constraint on the larger 'multiples' (ie supermarket opticians and optical retail chains), including the Parties, but do not generally compete as closely with the multiples as the multiples do with each other, particularly in regard to pricing. Industry reports indicate that the constraints that independent opticians pose on the Parties tend to differ from the constraints posed by other multiples (ie supermarket opticians and optical retail chains). In particular, the available evidence indicated that independent opticians commonly compete more on quality, service and by establishing long-lasting relationships with their customers, rather than on pricing.<sup>14</sup>
53. The CMA also found that the nature of the constraint provided by an independent optician can vary between different stores. In this regard, the CMA found that some independent opticians appear to target the higher end of the market by offering more exclusive designer and lens manufacturer brands or equipment for examinations, whilst others target the mid-market or appear to pursue a 'budget' strategy. Accordingly, the constraint posed by independent opticians may differ within different local areas.
54. In light of the available evidence, the CMA concluded that independent opticians should be considered part of the same effective competitor set, together with supermarket and optical retail chain opticians, for the purposes of the CMA's initial filtering (ie to screen out non-problematic overlap areas). Given the varying nature of the competitive constraint provided by

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<sup>13</sup> Mintel, "Optical Goods Retailing UK", February 2017, page 61.

<sup>14</sup> Mintel, "Optical Goods Retailing UK", February 2017, pages 71 and 75. Mintel, "Optical Goods Retailing UK", February 2016, pages 19, 49, and 56 to 58.

independent opticians, the CMA has considered the specific nature of the constraint provided by an independent optician within its competitive assessment where that retailer forms part of a relatively limited number of competitors in a given local area (ie for areas in which initial filtering does not exclude competition concerns).

#### *Internet providers*

55. Internet-based providers are unable to offer certain services (eg eye examinations) and ophthalmic lenses and spectacle frames, which require examination by, or the attention of, an optometrist or a sales person. According to a market report, 78% of those who wear glasses or contact lenses agree that it is important to have new glasses fitted professionally by an optician.<sup>15</sup>
56. The CMA acknowledged that internet suppliers represent a potential additional constraint in relation to some products, such as follow-on contact lens purchases. However, the CMA did not receive any evidence that substantiated how such services might constrain the overall retail proposition of bricks-and-mortar opticians within the relevant frame of reference.<sup>16</sup> Moreover, the evidence available indicates that competitive presence of internet providers is relatively limited, with their combined share of retail optical sales amounting to only around 3.5%. The CMA therefore considers that the extent of any constraint provided by such retailers is likely to be limited.

#### *Conclusion on product scope*

57. For the reasons set out above, the CMA has considered the impact of the Merger in the retail supply of optical services and products in bricks-and-mortar opticians (including optical retail chains, supermarket and independent opticians).

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<sup>15</sup> Mintel, "Optical Goods Retailing UK", February 2017, page 23.

<sup>16</sup> Both Parties sell optical products online. However, the Parties submitted that they would have a low combined share in this channel with a very low increment from Tesco Opticians.

## ***Geographic scope***

### ***Parties' views***

58. The Parties submitted that competition in the retail supply of optical products and services occurs locally since customers choose which optician to visit based on the options available in their local area.
59. The Parties noted that – unlike retail markets where customers make frequent purchases – customers typically visit opticians on average only approximately once every two and a half years. The Parties submitted that the value of purchases per visit is relatively high compared to other retail markets, which may therefore justify higher travel costs. In the Parties' view, this could result in potentially wider catchment areas over which opticians compete for customers than in some retail markets.
60. The Parties initially proposed a local competitive assessment based on the average straight-line distance of the customer at the 80th percentile across their entire estates. For Vision Express this average is [10-15] km and for Tesco Opticians it is [5-10] km. The Parties provided a local analysis based on a [10-15] km radius and a 6 km radius, as a sensitivity check, around the Parties' sites.
61. The Parties also submitted that the Merger has a national dimension, since many elements of their offerings are set centrally and apply to all locations, albeit reflecting an aggregation of demand and other competition characteristics locally.

### ***CMA assessment***

62. The CMA's starting point in retail mergers is that customers shop in local retail stores and that there will be material local competition in one or more aspects of the retail offer.<sup>17</sup> In seeking to identify the area over which competition takes place, the CMA will attempt to ascertain a store's catchment area (this being the area from which most of its customers are drawn). Catchment areas provide useful information on how far customers are willing to travel to visit a store.<sup>18</sup>
63. The CMA used analysis of catchment areas to identify areas where the Parties' stores overlap. Stores are likely to be alternatives for some

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<sup>17</sup> [Retail mergers commentary](#) (CMA62), paragraph 1.6.

<sup>18</sup> [Retail mergers commentary](#) (CMA62), paragraph 2.1; [Merger Assessment Guidelines](#), paragraph 5.2.25.

customers, and therefore competitors, if their catchment areas overlap. If the Parties' catchment areas overlap, then further analysis will be required to determine whether a substantial lessening of competition (**SLC**) may arise.<sup>19</sup>

64. The CMA usually centres catchment areas on the stores of the target and, separately, on the stores of the acquirer.<sup>20</sup>
65. In the Boots/D&A decision, the OFT adopted initial catchment areas of 1 mile around each of the merging parties' opticians and, for areas where both parties were present and there were fewer than three competing opticians, then considered the individual local catchment areas.<sup>21</sup> The OFT also considered catchment areas of 6km, which represented the approximate estate average catchment areas.<sup>22</sup>
66. In this case, the Parties hold addresses of their customers and were therefore also able to provide store-specific 80% catchment areas.
67. The CMA considered that the distance customers are willing to travel will depend, to some extent, on local characteristics, such as the road layout and congestion (which affect driving times), as well as population density (ie where more people live there would be more opticians and therefore this could affect travel time to the nearest optician). The CMA noted, in this regard, that there are material differences between the individual catchment areas of the Parties' stores (when calculated on the basis of the customer at the 80th percentile). This is also consistent with responses from third parties suggesting that catchment areas vary between different areas, and in particular tend to be smaller in more urban areas.
68. The CMA noted that there were material differences between the individual catchment areas of the Parties' stores (eg a range between [5-30] minutes for Tesco Opticians stores and a range of [5-30] minutes for Vision Express stores). The Parties did not provide any evidence to indicate that these differences were related to observable factors (such as whether the stores were in an urban or rural area). The CMA therefore believed, given the material differences between individual catchment areas, that local catchment

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<sup>19</sup> [Retail mergers commentary](#) (CMA62), paragraph 2.2.

<sup>20</sup> [Retail mergers commentary](#) (CMA62), section 2.

<sup>21</sup> These individual catchment areas were based on [65-75]% of customers for the stores concerned. The OFT noted that its catchment areas were based on [65-75]% rather than 80% of customers due to the data available from the parties in that case. In all cases, the individual local catchment areas were greater than 1 mile. This approach was partially driven by data availability.

<sup>22</sup> This was based on [65-75]% of customers due to data availability (see previous footnote).

areas should be based on customers' driving time for the local store concerned.

69. Accordingly, for the reasons described above, the CMA used the drive time of the customer at the 80<sup>th</sup> percentile of each of the Parties' stores to define individual catchment areas (the **80% catchment area**) for the local competitive assessment below.
70. The CMA notes that there is a national as well as a local dimension of this Merger. Both Parties operate stores in all four countries of the UK and some elements of the Parties' offerings are uniform across all stores, although others vary locally. Where this is the case, the CMA may assess the aggregate change in competitive conditions across all of the Parties' stores and whether there are other aspects of competition unrelated to local competition (for example a loss of dynamic competition associated with the Parties expanding to new locations).<sup>23</sup> To assess the effect of a merger on the centrally set uniform retail offer, the CMA looks at evidence on closeness of competition between the Parties and other retailers and the extent of local overlap.<sup>24</sup>
71. In this case, the CMA did not identify concerns associated with a loss of competition at a national level. The CMA found that a number of substantial national chains would remain following the Merger and that the Parties are not a particularly significant constraint on each other at the national level. Moreover, as described in further detail below, potential competition concerns at the local level only arose in a limited number of local areas (eg the Merger leads to a reduction in the number of competitors from 5 to 4 or less within eight local areas, which is a small fraction of the total number of areas in which the Parties' stores overlap). Accordingly, the CMA did not believe concerns could arise in relation to the aggregation of the change in local competitive conditions. The detailed competitive assessment therefore focusses on local overlaps.

### *Conclusion on geographic scope*

72. For the reasons set out above, and consistent with the approach in the Boots/D&A decision, the CMA has considered the impact of the Merger primarily at a local level. For the purposes of the local competitive assessment, the CMA has used the drive time of the customer at the 80<sup>th</sup> percentile of each of the Parties' stores to define individual catchment areas.

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<sup>23</sup> [Retail mergers commentary](#) (CMA62), paragraphs 1.9 to 1.22.

<sup>24</sup> [Retail mergers commentary](#) (CMA62), paragraph 1.17.

73. Consistent with established practice, the CMA's analysis is not carried out through a mechanistic assessment of catchment areas. In particular, in assessing whether the Merger has resulted, or may be expected to result, in a substantial lessening of competition, the CMA has also taken into account the constraint provided by retailers located outside local catchment areas to the extent relevant.<sup>25</sup>

#### *Conclusion on frame of reference*

74. For the reasons set out above, the CMA has considered the impact of the Merger in the retail supply of optical services and products in bricks-and-mortar opticians (including optical retail chains, supermarkets and independent opticians) at a local level.

## **Competitive assessment**

### ***Horizontal unilateral effects***

75. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the retail supply of optical services and products in bricks-and-mortar opticians. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>26</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.
76. In merger investigations involving a large number of local overlaps it is common practice for the CMA to use a filtering methodology to screen out overlap areas where there is no realistic prospect of competition concerns. This allows the CMA to focus on the remaining overlap areas, which are each analysed in more detail in an assessment that is informed by an understanding of the nature of competition.<sup>27</sup>
77. As explained in more detailed below, in the present case, the CMA identified [that the vast majority of Vision Express stores and Tesco Opticians stores had at least one of the other party in its catchment area]. The CMA then applied a primary filter to identify areas that may give rise to prima facie competition concerns. The CMA believes that there is no realistic prospect of

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<sup>25</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>26</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>27</sup> [Retail mergers commentary](#) (CMA62), paragraph 3.2.

an SLC in local areas in which 5 or more opticians remain active after the Merger, and has therefore not conducted a detailed competitive analysis in relation to such areas.

78. To provide the proper context for its analysis of specific local areas, the CMA first sets out certain evidence relevant to the dynamics of competition within the provision of optical services and products in bricks-and-mortar opticians in general. This includes evidence relating to the overall closeness of competition between the Parties, the extent of the constraint that may be posed by other types of supplier, and the importance of geographic proximity.<sup>28</sup>

### *Closeness of competition*

79. The Parties submitted that, although both supply optical products and services in bricks-and-mortar stores, they are not close competitors because of their differentiated offerings in relation to range of products offered, consumer perceptions and marketing strategies.
80. The Parties submitted that they have different business strategies which are focused on different types of customers. Vision Express [X]. By contrast, Tesco Opticians [X].
81. The Parties also submitted that consumer attitudes surveys consistently identify Vision Express as a [X] and [X], whereas Tesco Opticians is identified as a [X] and [X].
82. The Parties submitted that other rivals, such as Specsavers, are closer competitors to each of the Parties than the Parties are to each other.
83. The Parties also submitted that the lack of close competition between the Parties is corroborated by [X].
84. The Parties also noted that the internal documents provided to the CMA include references to a wide range of competitors and that [X].
85. The CMA noted that optical retail chains and supermarket opticians both offer a full range of optical services to their customers. In particular, both types of outlet are staffed by an optometrist or a qualified optician and offer a comprehensive choice of optical products, including eye tests, lenses, spectacles, contact lenses and sunglasses (as well as other products and services in some cases). There is therefore a high degree of similarity in the

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<sup>28</sup> The CMA notes that these factors may not be relevant within all local areas (eg where certain multiples are not present).



Parties' core product and service offering, even if there are some differences in their respective business strategies.

86. The CMA considered that only very limited weight could be placed on the [X].
87. The CMA also noted that the [X] is not consistent with other evidence indicating a material degree of competitive interaction between the Parties. For example, a Vision Express analysis of customer switching indicates that Tesco Opticians gains about [5-10]% of customers that Vision Express loses at the national level.<sup>29</sup> As the share of Vision Express customers gained by Tesco Opticians is significantly higher than Tesco Opticians' share of supply (based on number of stores) at the national level ([0-5]%), this switching analysis suggests that Tesco Opticians is likely to be a material constraint on Vision Express in local areas in which both are present.
88. As concerns the Parties' internal documents, the CMA notes that these are generally consistent with a degree of competitive interaction between the Parties. While some internal documents submitted by the Parties showed that each monitors the product and service offering of the other, the documents also show that other competitors, [X], tend to be monitored more closely.
89. As indicated in paragraph 44, most optical retail chains that responded to the CMA's market test indicated that they consider optical supermarkets as competitors (and vice versa for supermarket opticians).
90. The CMA therefore concluded that there are some differences in the Parties' service offerings but they do compete to a material degree, albeit that other opticians may compete more closely at national level and, where present, at local level.

#### *Alternative suppliers*

91. The Parties named several significant competitors operating on the market for optical products and services, including, Specsavers, Boots Opticians, Optical Express, Scrivens, Asda, as well as independents.
92. As stated in paragraphs 37 and 38, the CMA considered that supermarket opticians, optical retail chains and independent opticians all have a similar product and service proposition.
93. However, as indicated in paragraphs 52 to 54, the available evidence suggests that independent opticians do not generally compete as closely on

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<sup>29</sup> A lost customer means a Vision Express customer visiting another optician following their last visit to Vision Express' store.

price with the multiples (ie optical retail chains and supermarkets) as the multiples do with each other. Similarly, the CMA noted that supermarket chain opticians are more likely to be each other's closest competitors where present in the same local area (as indicated in paragraph 45).

94. The CMA also considered other evidence indicating a material degree of competitive interaction between the Parties and other retail optical suppliers. For example, a Vision Express analysis of customer switching indicates that Specsavers captures a particularly high proportion of Vision Express' lost customers ([X]), followed by Boots Opticians ([X]). By contrast, the share of Vision Express customers gained by independent opticians ([X]) is significantly lower than would be suggested by the number of stores at the national level ([X]).
95. As noted in paragraphs 41 and 48, internal documents showed that the Parties [monitor supermarkets, independent opticians and optical retail chains].
96. The CMA received mixed evidence from third parties about the closeness of competition between alternative suppliers. Most third parties who replied to the CMA's market test considered that multiples and independent opticians all compete within the retail market for optical products and services. In their view, all opticians need to provide the same suite of services and the competitive importance of each of them depends on the preference of the consumers.
97. However, the CMA also received some responses from competitors stating that independents could not be considered as effective competitors of multiples (including both optical retail chains and supermarkets) due to the differences in terms of prices and level of service.<sup>30</sup>

### *Conclusion*

98. Based on the evidence set out above, the CMA considered that all opticians compete with each other to a material degree. However, it appears likely that competitors of the same type typically pose the strongest competitive constraints on each other. That is, supermarket chain opticians (eg Asda, Tesco Opticians) are each other's closest competitors on a national level and,

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<sup>30</sup> As indicated in paragraphs 46 to 54, the CMA considered that independent opticians provide some competitive constraint on the larger multiples, but do not generally compete as closely with the multiples as the multiples compete with each other, particularly in regard to pricing. The CMA concluded that independents should be considered part of the same effective competitor set, together with supermarket and optical retail chains, for the purposes of the CMA's initial filtering. However, where independents form part of a relatively limited number of competitors in a given local area, the CMA has taken into account the closeness of competition between specific independent opticians and the Parties in the local competitive assessment.

where present, locally. Similarly, optical retail chains (eg Boots Opticians, Specsavers) tend to be each other's closest competitors.

### *Importance of proximity*

99. The Parties submitted that competition amongst opticians is relatively broad in scope and that consumers would typically consider options beyond those located in town centre 'clusters.' This was on the basis that optician purchases only take place on average every two and half years, with appointments typically being booked in advance, meaning, in the Parties' view, that customers are willing to travel to opticians from further afield.
100. The Parties submitted that convenience for customers encompasses more than geographical proximity and that it also refers to locations with easy access, long opening hours and free car parking would also be attractive to customers (even if located slightly further away).
101. The Parties also submitted that a convenient location was only one of several factors that drive customer decision-making and that the Parties' internal documents show [REDACTED].
102. The CMA found that convenient location is a key factor for customers when choosing an optician. Notwithstanding the variety of factors relevant to customer decision-making that are mentioned in the Parties' internal documents, the CMA considers that internal documents consistently identify store proximity as one of the main drivers in choosing an optician.
103. This is also consistent with third parties' responses. All multiples that replied to the CMA's market testing indicated that proximity is one of the main drivers of customer choice.
104. In light of the evidence described above, the CMA has taken the location (including the relative proximity) of opticians' stores in individual areas into account within the local competitive assessment below.

### *Local analysis*

105. As noted in paragraph 72, the CMA analysed the Merger on a local basis, taking into account the drive time of the customers at the 80<sup>th</sup> percentile of each of the Parties' stores to define individual catchment areas. An overlap was identified if a Tesco Opticians store was situated within Vision Express' catchment area and vice versa.

106. The application of these catchment areas resulted in the identification [that the vast majority of Vision Express stores and Tesco Opticians stores had at least one of the other party in its catchment area].
107. The CMA applied a filter based on a fascia-count to these overlap areas. The CMA found that the Merger would lead to a reduction in the number of competitors from 5 to 4 or less within eight local areas: Barrow-in-Furness, Helston, Ryde, West Byfleet, Braintree, Edinburgh (Costorphine), Whitstable and Worthing.
108. The Parties indicated that there were some differences between the filtering results of the CMA's analysis and their own analysis, and that certain areas did not fail the CMA's primary filter in the Parties' own analysis. The Parties submitted that this could be the result of different software packages returning different results, probably due to the use of different road network data and different speed settings in the CMA's calculation of drive times from the settings used by the Parties in the calculation of catchment areas.
109. The CMA's analysis is not carried out through a mechanistic assessment of catchment areas. Accordingly, the CMA will also typically conduct a more detailed analysis of (at least some) local areas that narrowly pass any primary filter, in particular to ensure that the primary filter provides an appropriate approach to competitive assessment. The CMA noted that the differences between the CMA's analysis and the Parties' own analysis were minor (and therefore that the local areas at issue would have been subject to in-depth analysis whether or not they passed the primary filter).
110. Moreover, as the CMA has conducted a more detailed analysis of all these eight local areas, carrying out an assessment of competition that includes any competitors outside the catchment area used for the purposes of the primary filter, the CMA considered that these discrepancies did not affect the conclusions of the competitive assessment for each of the relevant local areas.
111. The CMA conducted a more detailed local analysis of the local areas caught by the filters to determine the magnitude of the competition concerns. The CMA considered the presence of any mitigating factors which could eliminate the prima facie concerns identified and enable the CMA to conclude that the Merger will not give rise to a realistic prospect of an SLC in that local area.
112. In its more detailed local analysis, the CMA took the following evidence into account, where available:
  - the strength, number, proximity and closeness of competitors as described in paragraphs 79 to 104;

- the geographic proximity of the Parties' stores in each local area; and
- geographic features presented on maps (roads, town centres etc.) which may impact on competitive dynamics in the local area.

113. Having carried out this detailed analysis of the local areas, the CMA found that the Merger will not result in a realistic prospect of an SLC in five of the eight local areas mentioned above, on the basis that sufficient constraints from alternative opticians will remain post-Merger. These areas are: Braintree, Edinburgh (Costorphine), Worthing, Whitstable and West Byfleet. The CMA found that the Parties' stores are not each other closest competitors and the remaining competitors in these areas will exert a sufficient constraint on the Parties post-Merger. In particular:

- In Braintree, there are two multiples (Specsavers and Boot Opticians) as well as an independent optician within the site-specific catchment area of the Vision Express store. No third party raised any competition concerns as regards this area.
- In Edinburgh (Costorphine), there are two multiples (Specsavers and Boot Opticians) and an independent optician within the site-specific catchment area of the Vision Express store. No third party raised any competition concerns as regards this area.
- In Worthing, there are two multiples (Asda and Boot Opticians) as well as a regional chain within the site-specific catchment area of the Vision Express store. No third party raised any competition concerns as regards this area.
- In Whitstable, there is one multiple (Specsavers), a regional chain and an independent optician within the site-specific catchment area of the Vision Express store.
- In West Byfleet, there is one multiple (Asda) and one regional chain within the site-specific catchment areas of the Vision Express store. The CMA noted that the Tesco Opticians store is on the periphery of the West Byfleet commercial area (at 2.3 km from the Vision Express store). There are good transportation links between West Byfleet and Woking and therefore a consumer going to the Tesco Opticians store could equally easily travel to Woking, where two further multiples (Specsavers and Boots Opticians) and two independents are located. The fact that customers in West Byfleet consider opticians located in Woking to be a viable alternative is also evidenced by the fact that [X]. No third party raised any concerns as regards this area.

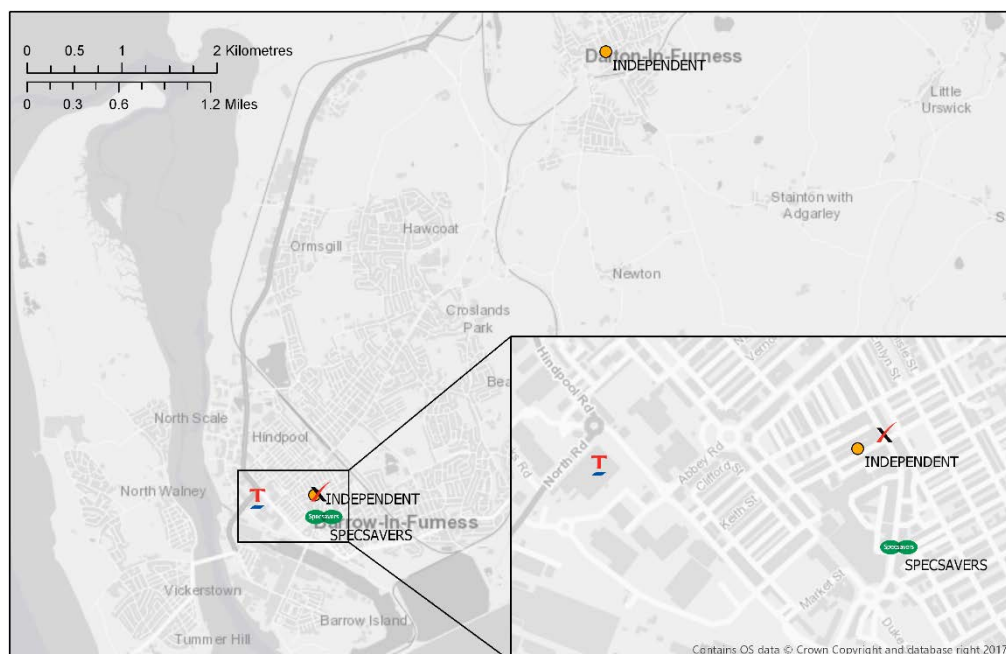
114. The CMA's more detailed analysis of the local areas identified material concerns in three of these eight local areas. These areas are:

- (a) Barrow-in-Furness;
- (b) Helston; and
- (c) Ryde.

### *Barrow-in-Furness*

115. In Barrow-in-Furness,<sup>31</sup> Vision Express, Specsavers and an independent (Richard Haynes) are located in the town centre, whereas Tesco Opticians is located just outside the town centre (2 minutes drive time or 1.3 km away from the Vision Express store). There is also an independent optician (Vera Wilton Optometrists) in the nearby town of Dalton-in-Furness. See Figure 1 below.
116. Tesco Opticians, Richard Haynes and Specsavers are within the 80% catchment area of Vision Express in Barrow-in-Furness. Vera Wilton Optometrists is a significant distance from both the Vision Express and the Tesco Opticians' stores (approximately 12 minutes drive time / 6 km away from the Vision Express store and 13 minutes drive time/ 6.4 km away from the Tesco Opticians store).

**Figure 1 – Barrow-in-Furness**



<sup>31</sup> Cumbria, North West England.

117. The Parties submitted that competition concerns would not arise within this local area in particular because:

- (a) [X] Vision Express' most significant competitive interactions are with Specsavers and independent opticians rather than with Tesco Opticians;
- (b) the Parties will continue to face strong competition from Specsavers and Richard Haynes, in terms of both the proximity of these outlets and the product and service offering that they provide; and
- (c) the Parties will also be constrained by Vera Wilton Optometrists, which is within the catchment area of both Parties' stores on the basis of the 80% catchment area and the estate-wide catchment.<sup>32</sup> The Parties noted that the Vera Wilton store is within easy reach of a large proportion of the Parties' customers; more than [30-40]% of Tesco Optician customers and [20-30]% of Vision Express customers are closer to the Vera Wilton store than the Tesco Opticians or Vision Express store that they respectively visit.

118. The CMA noted, however, that:

- (a) as indicated in paragraphs 99 to 104, proximity is one of the main factors considered by consumers when choosing an optician and the Parties are located near to each other (with a distance of 0.6 km or a drive time of about 2 minutes between them). The CMA also noted that there would remain only two competitors (Specsavers and Richard Haynes) within similar proximity post-Merger;
- (b) only very limited weight could be placed on [internal party data].<sup>33</sup> By contrast, the majority of the evidence available to the CMA suggests that the Parties' stores do compete where both are present at the local level (and therefore that the Parties do constrain each other within Barrow-in-Furness at present);
- (c) one of the competitors that will remain within the same local area as the Parties – the independent Richard Haynes ([X]) – is unlikely to be as close a competitor to the Parties, particularly on price, as another multiple store would be (for the reasons explained in paragraphs 46 to 54 above);

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<sup>32</sup> The estate-wide catchment means the catchment that encompasses 80% of customers for the Parties' estate on average (ie [10-15] km for Vision Express and [5-10] km for Tesco Opticians).

<sup>33</sup> [X]

(d) the available evidence does not establish that the Parties will be constrained by Vera Wilton Optometrists post-Merger. The Vera Wilton store is significantly further away to the Parties' stores than they are to each other.<sup>34</sup> The CMA considered that the additional evidence submitted by the Parties in relation to customer locations does not provide any significant additional insight into customers' willingness to travel, or of the constraints faced by the Parties' stores.<sup>35</sup> In addition, Vera Wilton (which according to its website has a strong focus on product quality and personalised service) is unlikely to be as close a competitor to the Parties, particularly on price, as another multiple store would be (for the reasons explained in paragraphs 46 to 54 above).

119. On the basis of the evidence set out above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in the retail supply of optical services and products in bricks-and-mortar opticians in Barrow-in-Furness.

#### *Helston*

120. In the local area of Helston,<sup>36</sup> Vision Express, Specsavers and the independent (Raison Opticians) are all located in the town centre, whereas Tesco Opticians store is just located outside the town centre (2-3 minutes drive time or 1.2km away from the Vision Express store). See Figure 2 below.

#### **Figure 2 - Helston**

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<sup>34</sup> Vera Wilton Optometrists is 6 km or a drive time of 12 minutes from the Vision Express store, and a distance of 6.4 km or a drive time of 13 minutes from the Tesco Opticians store.

<sup>35</sup> The CMA noted in this regard that its approach to defining catchment areas (based on the drive time of the customer at the 80<sup>th</sup> percentile) already reflects that a proportion of the Parties' customer base may be located further from the Parties' stores than the majority of their customers.

<sup>36</sup> Cornwall, England.





121. The Parties submitted that competition concerns would not arise within this local area in particular because:

- (a) [X] Vision Express' most significant competitive interactions are with Specsavers and independent opticians rather than with Tesco Opticians;
- (b) the Parties will continue to face strong competition from Specsavers and Raison Opticians, in terms of both the proximity of these outlets and the product and service offering that they provide; and
- (c) the Parties will also be constrained by other opticians, such as Boots and Specsavers in Camborne, and Histed & Roberts in Penryn, which are within the 80% catchment area of Vision Express store, and two additional independent opticians in Falmouth and Redruth, which are within the 80% catchment area of Tesco Opticians store. The Parties noted that these opticians are within easy reach of a large proportion of the Parties' customers; [30-40]% of Tesco Opticians customers and [10-20]% of Vision Express customers are closer to an optician outside Helston than the Tesco Opticians or Vision Express store that they respectively visit.

122. The CMA noted, however, that:

- (a) as indicated in paragraphs 99 to 104, proximity is one of the main factors considered by consumers when choosing an optician and the Parties are located close to each other (with a distance of 0.71 km or a drive time of 1.9 minutes between them). The CMA also noted that there would remain only two competitors (Specsavers and Raison Opticians) within similar proximity post-Merger;

- (b) only very limited weight could be placed on [internal party data].<sup>37</sup> By contrast, the majority of the evidence available to the CMA suggests that the Parties' stores do compete where both are present at the local level (and therefore that the Parties do constrain each other within Helston at present);
- (c) one of the competitors that will remain within the same local area as the Parties – the independent Raison Opticians – is unlikely to be as close a competitor to the Parties, particularly on price, as another multiple store would be (for the reasons explained in paragraphs 46 to 54 above);
- (d) the available evidence does not establish that the Parties will be constrained by the other opticians located in the nearby towns of Camborne, Penryn, Falmouth and Redruth post-Merger, in particular because:
- (i) these stores are significantly further away to the Parties' stores than they are to each other:
- Histed & Robert Opticians store is significantly more distant to the Parties' stores (eg with a distance of 16.4 km or 19 minutes drive time of the Vision Express store and 15.8 km or 17 minutes drive time from the Tesco Opticians store, approximately).
  - Boots Opticians store in Camborne is significantly more distant to the Parties' stores (eg with a distance of 14.9 km or 18 minutes drive time of the Vision Express store and 16.3 km or 21 minutes drive time of the Tesco Opticians store, approximately).
  - Alexander Miller store and For Eyes store are significantly more distant to the Parties' stores (eg with a distance of 20.1 km or 22 minutes drive time of the Vision Express store and 19.4 km or 21 minutes drive time of the Tesco Opticians store, approximately). Also, the CMA noted that For Eyes is a dispensing optician that does not carry out eye tests, and therefore, it cannot be considered as a competitor fascia for the purposes of the CMA's competitive assessment.
  - The independent opticians Redruth Optical Centre and The Bond Street Optician are significantly more distant to the Parties' stores (eg with a distance of 16.7 km or 22 minutes drive time of the Vision

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<sup>37</sup> [X].

Express store and 16 km or 21 minutes drive time of the Tesco Opticians store, approximately).

- (ii) the additional evidence submitted by the Parties in relation to customer locations does not provide any significant additional insight into customers' willingness to travel, or of the constraints faced by the Parties' stores;<sup>38</sup> and
- (iii) the independents located in these nearby towns are unlikely to be as close a competitor to the Parties, particularly on price, as another multiple store would be (for the reasons explained in paragraphs 46 to 54 above).

123. On the basis of the evidence set out above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in the retail supply of optical services and products in bricks-and-mortar opticians in Helston.

#### *Ryde*

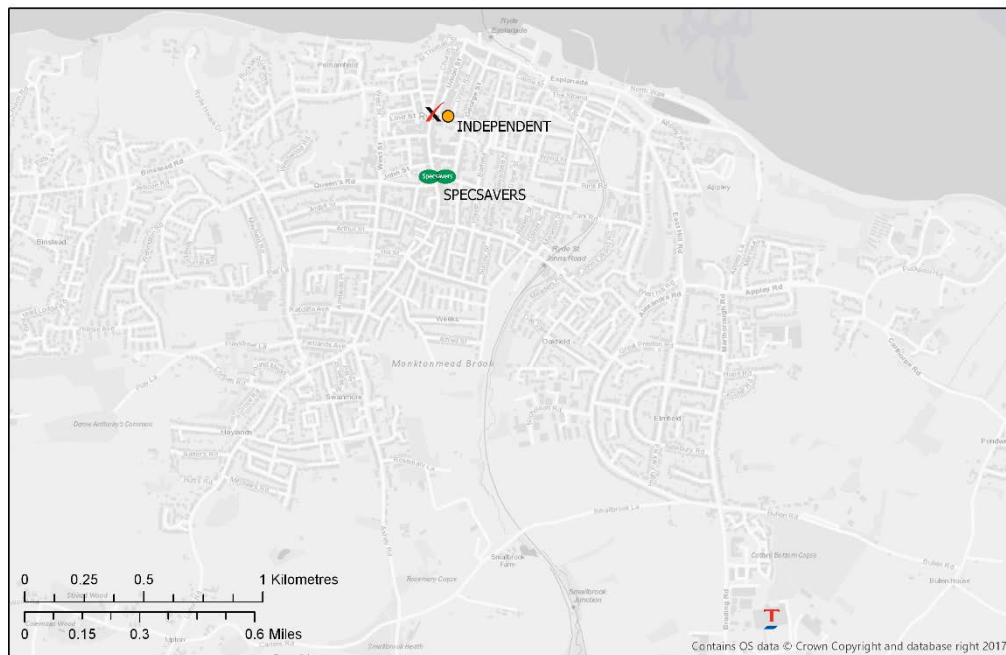
124. In the local area of Ryde,<sup>39</sup> Vision Express, Specsavers and an independent optician (The Medical Eye Centre) are all located in the town centre, whereas Tesco Opticians is located just outside the town centre (8.5 minutes drive time or 3.5 km away from the Vision Express store). See Figure 3 below.
125. Tesco Opticians, The Medical Eye Centre and Specsavers are within the 80% catchment area of Vision Express in Ryde. Other opticians located in Newport are a significant distance from both the Vision Express and the Tesco Opticians' stores (approximately 19 minutes drive time / 12.3 km away from the Vision Express store and 22 minutes drive time/ 14.7 km away from the Tesco Opticians store).

#### **Figure 3 – Ryde (Isle of Wight)**

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<sup>38</sup> The CMA noted in this regard that its approach to defining catchment areas (based on the drive time of the customer at the 80<sup>th</sup> percentile) already reflects that a proportion of the Parties' customer base may be located further from the Parties' stores than the majority of their customers.

<sup>39</sup> Isle of Wight, England.



126. The Parties submitted that competition concerns would not arise within this local area in particular because:
- (a) [X] Vision Express' most significant competitive interactions are with Specsavers and independent opticians rather than with Tesco Opticians;
  - (b) the Parties will continue to face strong competition from Specsavers and The Medical Eye Centre, in terms of both the proximity of these outlets and the product and service offering that they provide; and
  - (c) the Parties will also be constrained by opticians located in Newport. The Parties noted that the majority of people living in Ryde shop for durable items in the commercial centre of Newport, and that the opticians' stores in Newport are within easy reach of a large proportion of the Parties' customers; more than [50-60]% of Tesco Optician customers and [20-30]% of Vision Express customers are closer to an optician outside Ryde than the Tesco Opticians or Vision Express store that they respectively visit. The Parties also submitted that a visit to the Tesco Opticians in Ryde would likely necessitate a car journey or using public transport, so that customers going to the Tesco Opticians store could equally consider travelling to Newport.
127. The CMA noted, however, that:
- (a) as indicated in paragraphs 99 to 104, proximity is one of the main factors considered by consumers when choosing an optician. The CMA considered that Tesco Opticians store in Ryde (at 2.7 km from Vision Express store) is significantly nearer to the Vision Express store in the

centre of Ryde than the opticians in Newport (about 11.7 km from the Vision Express store in Ryde);<sup>40</sup>

- (b) only very limited weight could be placed on [internal party data].<sup>41</sup> By contrast, the majority of the evidence available to the CMA suggests that the Parties' stores do compete where both are present at the local level (and therefore suggests that the Parties do constrain each other within Ryde at present);
- (c) one of the competitors that will remain within the same local area as the Parties – the independent The Medical Eye Centre – is unlikely to be as close a competitor to the Parties, particularly on price, as another multiple store would be (for the reasons explained in paragraphs 46 to 54 above);
- (d) the available evidence does not establish that the Parties will be constrained by the opticians located in Newport post-Merger. These opticians stores are outside Vision Express' catchment area and significantly more distant to the Parties' stores (eg with a distance of 12.3 km or a drive time of 19 minutes from the Vision Express store, and a distance of 14.7 km or a drive time of 22 minutes from the Tesco Opticians store). The CMA considered that the additional evidence submitted by the Parties in relation to customer locations does not provide any significant additional insight into customers' willingness to travel, or of the constraints faced by the Parties' stores.<sup>42</sup>

128. On the basis of the evidence set out above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in the retail supply of optical services and products in bricks-and-mortar opticians in Ryde.

### *Conclusion on horizontal unilateral effects*

129. As set out above, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the retail supply of optical products and services in bricks-and-mortar stores in the three local areas listed in paragraph 114.

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<sup>40</sup> The CMA considered that this is also the case for the opticians located in Sandown. Tesco Opticians store in Ryde is significantly nearer to the Vision Express store in Ryde than the opticians in Sandown (about 11.4km from the Vision Express store in Ryde).

<sup>41</sup> [X].

<sup>42</sup> The CMA noted in this regard that its approach to defining catchment areas (based on the drive time of the customer at the 80<sup>th</sup> percentile) already reflects that a proportion of the Parties' customer base may be located further from the Parties' stores than the majority of their customers.

## **Barriers to entry and expansion**

130. Entry or expansion of existing firms can mitigate the initial effect of a merger on competition, and in some cases, may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>43</sup>
131. The Parties submitted that there are no material barriers to entry or expansion for opticians' stores. The Parties submitted that the main items new entrants typically require are suitable premises, an NHS contract (if they wish to offer NHS services) and suitable qualified staff. They noted that outlets are capable of being opened with a relatively short time frame.
132. The Parties noted that local advertising opportunities are readily available and cheap, so new entrants would not have to allow for a large marketing budget.
133. [Based on the evidence received, the CMA found that there are not imminent openings of stores in the local areas identified in paragraph 114].
134. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of a substantial lessening of competition as a result of the Merger.

## **Third party views**

135. The CMA contacted competitors and suppliers of the Parties. Some of them raised concerns regarding a reduction of competition and consumer choice between retail opticians at a local level. The CMA also received an anonymous complaint from an independent competitor.
136. No other third parties raised concerns about the Merger.
137. Third party comments have been taken into account where appropriate in the competitive assessment above.

## **Decision**

138. In light of the above assessment, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the

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<sup>43</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

creation of that situation may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

139. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised<sup>44</sup> whilst the CMA is considering whether to accept undertakings<sup>45</sup> instead of making such a reference. The Parties have until 5 October 2017<sup>46</sup> to offer an undertaking to the CMA.<sup>47</sup> The CMA will refer the Merger for a phase 2 investigation<sup>48</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>49</sup> by 12 October 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Adam Land**  
**Senior Director, RBFA**  
**Competition and Markets Authority**  
**28 September 2017**

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<sup>44</sup> Section 33(3)(b) of the Act.

<sup>45</sup> Section 73 of the Act.

<sup>46</sup> Section 73A(1) of the Act.

<sup>47</sup> Section 73(2) of the Act.

<sup>48</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>49</sup> Section 73A(2) of the Act.