

Anticipated acquisition by EssilorLuxottica S.A. of Lenstec Optical Group Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6937/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 October 2021. Full text of the decision published on 12 November 2021.

Please note that [X] indicates 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.

SUMMARY

1. On 23 April 2021, EssilorLuxottica S.A. (**Essilor**) agreed to acquire the entire issued share capital of Lenstec Optical Group Limited (**Lenstec**) (the **Merger**). A 20% shareholding of Lenstec is already held by Shamir UK Limited (**Shamir**), a subsidiary of Essilor. Essilor and Lenstec are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Essilor and Lenstec is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, the CMA 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.
3. The Parties overlap in the supply of finished ophthalmic glass and plastic lenses of all correction designs (**finished ophthalmic lenses**) in the UK. The CMA has therefore assessed the impact of the Merger in the supply of finished ophthalmic lenses in the UK.

Counterfactual

4. The CMA considers that Essilor (through Shamir) exercises material influence over Lenstec pre-Merger. While there is some evidence of Essilor and Lenstec competing against each other, the Parties do not compete with each other as strongly as they likely would in the absence of the material influence.
5. Further, based on the evidence assessed, the CMA considers that, absent the Merger, there is a realistic prospect that Lenstec would have been sold to an alternative third party which does not raise significant competition concerns. This would result in a situation where Essilor's material influence over Lenstec is removed and where Lenstec and Essilor compete independently of one another. The CMA considers this scenario to be the counterfactual where Essilor and Lenstec (under alternative ownership) would exert the strongest competitive constraint on each other and therefore against which the impact of the Merger should be assessed.

Horizontal unilateral effects in the supply of finished ophthalmic lenses in the UK

6. The CMA investigated whether the Merger could lead to horizontal unilateral effects in the supply of finished ophthalmic lenses in the UK. Unilateral effects can arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.

Shares of supply

7. The evidence assessed indicates that Essilor already has some degree of market power and that it is the largest supplier of finished ophthalmic lenses in the UK, with a share of supply of [40-50]% by value in 2020. Lenstec's UK share of supply was [5-10]% for the same time period. The CMA therefore considers that the Parties have a high combined share of supply by value and that the increment arising as a result of the Merger is small (albeit appreciable). The CMA considers that, because there is some degree of differentiation in this market, the shares of supply should be considered alongside evidence on the closeness of competition between the Parties and the competitive constraints from alternative suppliers remaining post-Merger.

Closeness of competition

8. The CMA considers that the Parties have different commercial focuses, with Lenstec's position in the market primarily as a glazer limiting the extent to which it poses a competitive constraint on Essilor, a vertically integrated supplier. Customer submissions broadly support the view that the Parties are not close competitors, with a number of customers not considering the Parties as close competitors and the majority of Lenstec's customers not considering Essilor as a viable option and *vice versa*. Also, the internal documents do not appear to suggest that Essilor views Lenstec as a particularly close competitor or a competitive threat, albeit they suggest that Essilor views Lenstec as a competitor as well as a customer.
9. The CMA therefore believes that on balance, the Parties are not particularly close competitors in relation to the supply of finished ophthalmic lenses in the UK.

Competitive constraints

10. The CMA believes that this is a fairly concentrated market, with only a few strong competitors (Hoya UK Limited (**Hoya**) and Carl Zeiss Vision (**Zeiss**)), a moderate competitor (Rodenstock GmbH (**Rodenstock**)) and a number of small independent laboratories with relatively low shares of the market.
11. Hoya, Zeiss and Rodenstock are all large international vertically integrated suppliers that compete for both independent opticians and large optical retail chains. These suppliers compete against both Essilor and Lenstec. This is reflected in the Parties' internal documents and the views of customers.
12. The CMA notes the asymmetric nature of constraint with regard to competition from independent laboratories. These suppliers compete more closely to supply independent opticians rather than larger optical retail chains primarily due to their lack of scale and capacity to serve large optical retail chains or supermarket opticians. The CMA therefore considers that independent laboratories would exert a moderate constraint on the Merged Entity at least in relation to independent opticians.

Conclusion

13. Despite Essilor's existing market power and the Parties' relatively high share of supply, the CMA has found that the Parties are not particularly close competitors in relation to the supply of finished ophthalmic lenses in the UK. In addition, there are a number of vertically integrated players active in the market such as Hoya, Zeiss and Rodenstock and also a number of independent suppliers, including Millmead Optical Group (**Millmead**), Norville 20/20 Ltd (**Norville**), Dunelm Optical Co Ltd (**Dunlem**), Optimum Coatings (**Optimum**), and others remaining in the market. Together, the CMA

considers that all these alternative players will continue to exert a strong competitive constraint on the Merged Entity.

14. As such, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of finished ophthalmic lenses in the UK.

Decision

15. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

16. Essilor is a vertically integrated multinational corporation active in all phases of ophthalmic (corrective) lens development; the design, manufacture and distribution of eyewear; and the retail of optical products.¹
17. In the UK, Essilor is engaged in the supply of ophthalmic lenses through its subsidiaries Essilor Limited, BBGR Limited, EMNUK Limited, and Shamir.² Essilor also operates at the optical retail level of the market in the UK through:
 - (a) the Vision Express and David Clulow retail networks;
 - (b) Sunglass Hut (a sunglass specialist chain); and
 - (c) an online retail presence through the Vision Direct, Lenstore, MyOptique Group (UK), Sunglass Hut, Ray-Ban, Oakley, Oliver Peoples, Vogue, Persol and Brille web stores.³
18. The worldwide turnover of Essilor in 2020 was £12.4 billion, of which £[~~12.4~~] million was generated in the UK.⁴

¹ Final Merger Notice submitted to the CMA on 13 August 2021 (**FMN**), paragraph 19. Essilor also supplies a relatively small amount of ophthalmic substrate to independent laboratories (including Lenstec) and integrated opticians, for shaping and additional processing (FMN, paragraph 20).

² Essilor Limited, BBGR Limited and EMNUK Limited are wholly-owned subsidiaries of Essilor. Essilor also has a 50/50 joint venture in Japan with Nikon Corporation, called Nikon Essilor Co. Ltd, active in the UK through its wholly-owned subsidiary, Nikon Optical UK Limited (**Nikon UK**), Nikon UK supplies Nikon branded ophthalmic lenses to customers in the UK. The Parties submitted that Nikon UK operates independently of Essilor in the UK. However, on a conservative basis, the CMA has considered Nikon UK as a part of Essilor for its competitive assessment.

³ FMN, paragraph 26. The CMA notes that Essilor also sells ophthalmic consumables and optometric instruments, but the sales of these are very small totalling £[~~12.4~~]m in 2020. The CMA understands that Lenstec is not active in the sale of ophthalmic consumables and ophthalmic instruments (FMN, Annex LA1 (tab Q4, s109)).

⁴ FMN, paragraph 38.

19. Lenstec is a privately owned independent ophthalmic lens supplier in the UK. Lenstec operates three ophthalmic lens laboratories and is owned and managed by its founders Nigel Castle and Gerard Donovan. Lenstec's main activities include glazing lenses (bought from third parties, predominantly Essilor), mounting them in frames and supplying them to opticians in the UK.⁵ Lenstec is also engaged in some lens surfacing and supplies 'all-in-one' frames and lenses to some independent optical retailers.⁶ The turnover of Lenstec in 2020 was £21.6 million in the UK (and worldwide).⁷

Transaction

20. On 23 April 2021, the Parties entered into a Sale and Purchase Agreement pursuant to which Essilor, via a non-trading subsidiary Trifle Holdings Limited, has agreed to acquire the entire issued share capital of Lenstec. A 20% shareholding of Lenstec is already held by Shamir, an entity in which Essilor exercises control.⁸

Rationale

Essilor's rationale

21. Essilor submitted that the rationale for the Merger is for Essilor to capitalise on Lenstec's strong heritage in the UK and expertise in the efficient value-orientated management of complex supply chain operations, especially for customers in the private care sector and high volume customers such as supermarkets.⁹ Essilor expects the Merger to result in synergies in the short term ([REDACTED])¹⁰ and in the long term ([REDACTED]).¹¹

⁵ The CMA considered whether the proposed Merger may lead to the foreclosure of rival lens manufacturers as a result of the Merged Entity ceasing to purchase, glaze and mount semi-finished lenses (substrate) from them. Given that (i) a very large proportion of Lenstec's semi-finished lens (substrate) purchases are currently sourced from Essilor (approximately [80-90]%), (ii) sales by competing manufacturers to Lenstec are small, with the largest supplier [REDACTED], and (iii) a number of competitors have submitted that this route to market is of limited importance, the CMA considered that it is unlikely that a strategy of foreclosure would have an effect on competition between lens manufacturers and therefore it is not considered further in this Decision.

⁶ FMN, paragraphs 28 and 29. Lenstec also receives and processes frames as part of its supply of lenses to [REDACTED], but these frames are sourced and purchased by [REDACTED].

⁷ FMN, paragraph 39.

⁸ Shamir is a 50/50 joint venture between Essilor and Kibbutz Shamir A.C.S (Israel). The Parties submitted that Essilor exercises sole control in Shamir, which is a subsidiary of Shamir Optical Industry Ltd (FMN, paragraph 7). The Office of Fair Trading (OFT) found that Essilor acquired sole control in Shamir Optical Industry Ltd (the parent company of Shamir) in OFT's review of anticipated acquisition by *Essilor International S.A. of Shamir Optical Industry Limited*, 2011 (ME/4732/10). This is also stated in the latest accounts filed by Shamir at Companies House: [application-pdf](#). Shamir acquired 15% of the issued share capital in Lenstec pursuant to a Sale and Purchase Agreement dated 5 April 2016. Shamir subsequently acquired a further 5% of the issued share capital in Lenstec pursuant to a separate Sale and Purchase Agreement dated 21 December 2017 (FMN, footnote 4).

⁹ FMN, paragraph 10.

¹⁰ FMN, paragraph 258.

¹¹ FMN, paragraph 259.

Lenstec's rationale

22. Lenstec submitted that its rationale for the Merger is that [X] actively working on a succession plan to give long term security to its customers, employees and supply chain [X].¹²
23. Further, merging with Essilor would grant Lenstec access to a range of products and services currently not economically viable to offer its customers. Lenstec will also be able to expand its capabilities and capacities to position it to grow.¹³
24. The Parties' internal documents are generally in line with the rationale stated above.

Procedure

25. The Merger was considered at a Case Review Meeting.¹⁴

Jurisdiction

26. The CMA believes that the Merger (as described in paragraph 20) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.¹⁵
27. Each of Essilor and Lenstec is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
28. As mentioned in paragraph 57 and Table 1 below, the Parties overlap in the supply of finished ophthalmic lenses in the UK, with a combined share of supply in 2020 of [40-50]% (with an increment of [5-10]%) by value and [20-30]% (with an increment of [0-5]%) by volume. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
29. 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.
30. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 16 August 2021 and the statutory 40 working day deadline for a decision is therefore 12 October 2021.

¹² FMN, paragraph 16. Lenstec submitted that [X], was also looking for this long-term security as Lenstec is a key partner in the supply chain.

¹³ FMN, paragraph 17.

¹⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), December 2020, part 5.

¹⁵ Section 33(1)(a) of the Act.

Counterfactual

31. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).¹⁶ In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹⁷ In Phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios where there is a realistic prospect of each of those scenarios, it will choose the one where the merger firms exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.¹⁸
32. The CMA has considered the following in relation to the appropriate counterfactual in this case:
- (a) Prevailing conditions of competition: Whether Essilor already holds material influence in Lenstec through Shamir, and the extent to which this material influence impacts competition between the Parties in the prevailing conditions of competition; and
 - (b) More competitive counterfactual: Whether there is a realistic prospect of an alternative counterfactual, which is more competitive than the prevailing conditions of competition, through Lenstec either being acquired by [X] or by another third party that does not raise competition concerns, which would remove Essilor's existing shareholding in Lenstec and thus increase competition between the Parties.

Prevailing conditions of competition and material influence

33. In relation to material influence, the CMA has considered whether Essilor already holds material influence in Lenstec through Shamir and if so, whether therefore the Parties may not compete fully as independent competitors in the prevailing conditions of competition.
34. As mentioned in paragraph 20, Shamir (an entity in which Essilor has legal control) currently holds a 20% stake in Lenstec. Under the terms of the shareholders' agreement between Shamir, Lenstec, Nigel Castle and Gerard Donovan, Shamir has (i) the right to appoint [X] Shamir director to the

¹⁶ [Merger Assessment Guidelines](#) (CMA 129), 18 March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

¹⁷ [Merger Assessment Guidelines](#), paragraph 3.2.

¹⁸ [Merger Assessment Guidelines](#), paragraph 3.12.

Lenstec board ([REDACTED]);¹⁹ (ii) veto rights over certain matters, one of which is [REDACTED];²⁰ and (iii) a Right of First Refusal (**ROFR**), by which Shamir has a right to match any offers made for the purchase of Lenstec by any third party.²¹ In circumstances where Shamir does not exercise its ROFR, [REDACTED] may require Shamir to sell and transfer all of its shares to the proposed third party (the **Drag Along Option**).²²

35. The CMA considers that any Shamir director is likely to be particularly influential, in light of Essilor's position and expertise in the sector for the supply of ophthalmic lenses²³ and the significant business relationship between Lenstec and Shamir/Essilor. In particular, Essilor's UK businesses account for approximately [80-90]% of Lenstec's substrate²⁴ purchases by value and volume, the shareholders of Lenstec have agreed to give members of the Shamir Group the first opportunity to provide products and services on competitive business terms to Lenstec,²⁵ and Lenstec's business plan prioritised business with Shamir and Essilor.²⁶
36. This is further enhanced by Shamir/Essilor being the obvious route to exit for the current owners [REDACTED] and actively working upon a succession plan (as mentioned in paragraph 22 above), on account of the ROFR.²⁷

¹⁹ For so long as Shamir holds any shares (shareholders' agreement between Lenstec, Shamir, Gerard Donovan and Nigel Castle, FMN, Annex AA007, Clause 3.1). Under the Articles of Association, board decisions are made by [REDACTED]. Lenstec has confirmed that Shamir has not exercised its right to appoint a director on its board to date (FMN, footnote 5).

²⁰ FMN, Annex AA007, Clause 5. Under this clause, certain matters require approval of shareholders holding [REDACTED], which in effect gives Shamir the ability to veto such matters. Other matters over which Shamir has a veto by virtue of this include *inter alia* [REDACTED].

²¹ FMN, Annex AA007, Clause 8.2.1.

²² FMN, Annex AA007, Clause 8.3. 'In the event that Nigel and Gerard, jointly, wish to Transfer on an arm's length basis all their Shares to any Third Party (the "Proposed Buyer") in accordance with this Agreement, and provided that Shamir [REDACTED] may require Shamir to sell and transfer all its Shares ("Called Shares") to the Proposed Buyer, in accordance with the terms of this clause 8.3 (the "Drag Along Option")'.

²³ See Final Report in *anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo*, 2019 ([Amazon/Deliveroo](#)), where it was noted that "Amazon has significant direct operational experience in areas that are highly likely to be relevant to Deliveroo's business" (*Amazon/Deliveroo*, paragraphs 4.47 – 4.48). The CMA notes that, in that case Amazon was considered to have more in-depth knowledge and relevant expertise than Deliveroo's other shareholders, whereas the current owners of Lenstec are also experienced in the industry. However, the CMA considers a finding that an acquirer's specific expertise may affect the weight its views are given by other shareholders or management does not depend on finding that the other shareholders have no relevant expertise (*Amazon/Deliveroo*, paragraph 4.48 and *British Sky Broadcasting Group plc v Competition Commission (Cases 1095/4/8/08 and 1096/4/8/08)* [2008] CAT 25, paragraph 138, referencing *BskyB/ITV* (2007), paragraph 3.59). In addition, the CMA notes the comparative size of Essilor as compared to Lenstec in this regard.

²⁴ FMN, footnote 106. When the raw materials for lenses are cast in manufacturing plants into semi-finished products, they are referred to as ophthalmic substrate. See also FMN, paragraph 114: Essilor 'considers ophthalmic substrate to include semi-finished lenses that require additional shaping, according to the desired correction type, and/or processing and finished single-vision lenses (stock lenses)'.

²⁵ FMN, Annex AA007, Clause 6.2.

²⁶ [REDACTED].

²⁷ See *Amazon/Deliveroo*, where the CMA considered Amazon's status as a strategic investor and potential route to exit for Deliveroo's venture capital investors was likely to increase the weight its views carried with Deliveroo's management and other investors and, as such, contribute to its ability materially to influence Deliveroo's policy (*Amazon/Deliveroo*, paragraph 4.37).

37. Similarly, while the CMA considers the veto rights Shamir has through its shareholding are the sort of rights often accorded to minority shareholders, Shamir is nevertheless likely to have influence at shareholder level beyond what its formal rights would suggest for the same reasons as set out at paragraphs 35-36 above.
38. The CMA has also considered whether Essilor's ability to exercise material influence impacts the level of competition which exists between the Parties in the prevailing conditions of competition.
39. The CMA notes that, to date, Shamir has not appointed a director on the board of Lenstec.²⁸ Nevertheless, the CMA notes that the Parties have a close business relationship at least in part due to Shamir's shareholding, and there are various factors to suggest that Shamir is likely to be an influential shareholder in practice as both Essilor and Shamir play a leading role in supplying Lenstec and working with them on joint bids for contracts, as discussed in paragraph 35 and below.
40. The CMA notes that, in relation to some customers, Shamir and Lenstec have conducted their business to some extent jointly. For instance:
 - (a) Lenstec's contract with [REDACTED];²⁹
 - (b) the Parties submitted that Shamir representatives have attended and provided product support and training [REDACTED];³⁰ and
 - (c) Shamir and Lenstec submitted a joint bid for the most recent [REDACTED] contract.³¹

Conclusion on material influence

41. On the basis of the evidence set out above, the CMA considers that Essilor (through Shamir) holds the ability to exercise material influence over Lenstec pre-Merger. Further, the CMA believes there is evidence that such material influence is being exercised in various ways.³² As such, while there is some evidence of Essilor and Lenstec competing against each other (explored further in the section on Closeness of competition below), the CMA considers that the Parties do not compete with each other as strongly as they likely

²⁸ The Parties submitted that Shamir has never nominated or appointed a director to the board of Lenstec and the strategic direction of the business has ultimately been determined by Nigel Castle and Gerard Donovan. FMN, footnote 5.

²⁹ Slide 18 of the Parties' presentation to the CMA at the Issues Meeting on 22 September 2021 (**IM Slides**); FMN Annex LD002, Clause 19.2.

³⁰ Slide 18, IM Slides.

³¹ See paragraph 103 below.

³² See examples in paragraph 40.

would in the absence of Shamir's shareholding in Lenstec. Therefore, the prevailing conditions of competition reflect the existence and exercise by Essilor (through Shamir) of material influence over Lenstec.

More competitive realistic counterfactual

42. In Phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios where each of those scenarios is a realistic prospect, it will choose the one where the merger firms exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.³³
43. The CMA will not have as its counterfactual a sale of the target firm to a purchaser that is likely to result in a referral for an in-depth Phase 2 investigation, given the uncertainty over whether such an acquisition would, ultimately, be cleared or subject to subsequent remedial action.³⁴ As such, the CMA has only considered the situation where Lenstec might have been acquired by an alternative purchaser which would not have raised significant competition concerns.
44. The Parties have submitted that Lenstec's directors, [REDACTED] were actively working upon a succession plan to give long term security to its customers, employees, and the supply chain.³⁵ As noted above in paragraph 34, in circumstances where Shamir does not exercise its ROFR, the Drag Along Option can be exercised – [REDACTED] – and therefore any such sale to a third party would remove Essilor's material influence.
45. Lenstec has submitted that, since 2019, it has considered the following options for the sale of Lenstec:
 - (a) [REDACTED]. This option was rejected as [REDACTED], and Lenstec felt this plan would be [REDACTED].³⁶
 - (b) A merger with [REDACTED]. [REDACTED].³⁷

³³ [Merger Assessment Guidelines](#), paragraph 3.12.

³⁴ [Merger Assessment Guidelines](#), paragraph 3.11.

³⁵ FMN, paragraph 16.

³⁶ Paragraph 7.2 of Lenstec's Response to the fourth RFI dated 26 August 2021 (**Lenstec RFI4 Response**).

³⁷ Lenstec RFI4 Response, paragraphs 9.1 – 9.4.

- (c) [REDACTED].³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰ Hoya has also submitted to the CMA that an acquisition by Hoya of Lenstec is the most likely counterfactual, noting that [REDACTED].⁴¹
- (d) Lenstec also had preliminary discussions in [REDACTED] with [REDACTED].⁴² These discussions ceased when discussions commenced with [REDACTED].⁴³
- (e) Lenstec also submitted that, if conversations with [REDACTED] and [REDACTED] had not been ongoing, its directors would have [REDACTED]. [REDACTED].⁴⁴

46. In light of the above, the CMA considers that, absent the Merger, there is a realistic prospect that Lenstec would have been sold to an alternative third party, whether [REDACTED] or an alternative acquirer. The CMA understands that all of the options discussed in paragraphs 45(a) - 45(e) above envisage the acquisition of the entire shareholding of Lenstec, ie including the 20% shareholding of Shamir and any associated rights.⁴⁵ [REDACTED], the CMA considers there is a realistic prospect that a sale to at least one alternative acquirer would have proceeded [REDACTED].⁴⁶ The sale to an alternative purchaser would therefore mean that the ability of Essilor to exercise material influence over Lenstec would be removed. While there is a realistic prospect that an alternative purchaser may have also been a competitor already active in the sector, the CMA will not have as its counterfactual a sale of the target firm to a purchaser that is likely to result in a referral for an in-depth Phase 2 investigation.⁴⁷ Given there are various different options Lenstec would have considered absent the Merger, the CMA considers there is a realistic prospect that Lenstec would have been sold to an alternative third party that did not raise significant competition concerns.

³⁸ FMN, Annex LA2.02.

³⁹ FMN, paragraph 67.

⁴⁰ FMN, paragraph 65 and Annex 009. The email chain includes an explanation from Nigel Castle that 'It is an offer that I wish to accept in relation to my own shareholding, and having discussed it with Gez, he has expressed a wish to accept in relation to his shareholding too'.

⁴¹ Note of call with [REDACTED].

⁴² This was after Lenstec approached both Rodenstock and Hoya (via its subsidiary Seiko) to let them know that Lenstec would be open to discussions regarding an acquisition of Lenstec, after both parties had previously (and informally) expressed interest in having discussions about acquiring Lenstec (Lenstec's response to the fourth section 109 notice dated 20 August 2021 (**Fourth Lenstec S109 Response**)).

⁴³ Lenstec's Response to the first RFI dated 9 June 2021 (**Lenstec RFI1 Response**), paragraph 1.1.

⁴⁴ Lenstec RFI 4 Response, paragraphs 8.1 – 8.6.

⁴⁵ The CMA notes that for any alternative sale scenario of the complete shareholding of Lenstec, the Drag Along Option would have to be exercised, [REDACTED]. FMN, Annex AA007, Clause 8.3.

⁴⁶ Considering (i) that Lenstec itself submitted that, if Essilor had not exercised its ROFR, the sale to [REDACTED] would have been likely to proceed and (ii) the various alternative acquirers which Lenstec could have considered if a sale to [REDACTED] did not proceed, as set out in paragraph 45(d) and (e). The CMA considers it is unlikely that [REDACTED].

⁴⁷ [Merger Assessment Guidelines](#), paragraph 3.11.

Conclusion on the appropriate counterfactual

47. On the basis of the above, the CMA is of the view that there is the realistic prospect of a counterfactual whereby Lenstec is acquired by another third party which does not raise significant competition concerns, resulting in a situation where Essilor no longer has material influence over Lenstec and where Lenstec and Essilor compete independently of one another. The CMA considers that this counterfactual is the one where Essilor and Lenstec (under alternative ownership) would exert the strongest competitive constraint on each other and against which the impact of the Merger should be assessed.⁴⁸

Background

48. The Parties are active in the manufacture and sale of ophthalmic lenses. Ophthalmic lenses are medical devices which correct visual impairments. Consumers purchase ophthalmic lenses based on a prescription issued by an optometrist or ophthalmologist.⁴⁹
49. The vast majority of ophthalmic lenses are made of plastic (99.7%) with a small proportion made of glass (0.03%).⁵⁰ Ophthalmic lenses have three main correction designs, which address different vision defects:
- (a) **Single vision lenses** have the same optical correction over the entire surface of the lens, and therefore correct vision in a particular range of vision (myopia or hyperopia).⁵¹
 - (b) **Multifocal lenses** provide two or more different vision corrections in different areas of the lens surface.⁵² **Bi-trifocal lenses** provide two or three different vision corrections across the lens surface and have a visible line between different corrections.⁵³
 - (c) **Progressive lenses** also provide different vision corrections across the lens surface but the change in correction is graduated across the lens surface so that there is no visible line between different corrections.⁵⁴ These lenses can be chosen by a person with myopia or hyperopia if they do not wish to take off their glasses to focus on objects which they could

⁴⁸ Consistent with [Merger Assessment Guidelines](#), paragraph 3.12.

⁴⁹ FMN, paragraph 68.

⁵⁰ FMN, Annex A029, tab '2019_Materials & Coatings'; FMN, Annex A083, page 43.

⁵¹ FMN, paragraph 74(a).

⁵² FMN, paragraph 74(b).

⁵³ The lower part of bifocal lenses is used for near vision and the upper part of the lens is used for distant vision. Trifocals have a third correction in the middle of the lens for intermediate vision.

⁵⁴ FMN, paragraph 74 (c).

see without glasses, or by a person with presbyopia in order to correct near and distance vision with the same pair of glasses.⁵⁵

50. Based on the Parties' estimates, in 2019 single vision lenses made up 31.7% of the value of sales of ophthalmic lenses in the UK, bi-trifocal lenses made up 5.4% and progressive lenses made up 62.9%.⁵⁶ In terms of volume, single vision lenses made up 71.2%, bi-trifocal lenses made up 6.4%, and progressive lenses made up 22.4%.⁵⁷

Lens industry supply chain

51. The supply chain of ophthalmic lenses to end-consumers can be divided into four main stages:
- (a) **Raw materials manufacture:** This involves the manufacture of the raw materials for the manufacture of glass and plastic lenses. These are produced by chemical companies and glass manufacturers. Neither of the Parties is active at this stage of the process.⁵⁸
 - (b) **Lens manufacture:**⁵⁹ The raw materials are then cast into ophthalmic substrate (semi-finished lenses). This can be done either by independent manufacturers, which only undertake lens manufacture and supply ophthalmic substrate to other companies for shaping and processing; or integrated manufacturers which also undertake lens shaping and processing. Essilor is one such integrated manufacturer.
 - (c) **Lens shaping and processing:**⁶⁰ These services take place in prescription laboratories. This can be done by lens manufacturers; independent laboratories which only shape and process the lens after purchasing substrate from a lens manufacturer (Lenstec is one such independent laboratory); or optical retailers with laboratory facilities. The activities undertaken at this level include:
 - (i) *surfacing*, which is the shaping of semi-finished lenses into finished lenses through the introduction of the optical power element of the lens;

⁵⁵ FMN, paragraphs 74(b) and (c).

⁵⁶ FMN, Annex A083, page 30.

⁵⁷ FMN, Annex A083, page 41.

⁵⁸ FMN, paragraph 75(a).

⁵⁹ FMN, paragraph 75(b).

⁶⁰ FMN, paragraph 75(c).

- (ii) *coating and/or tinting*; which is the addition of certain coatings and dyes to ensure the transparency and durability of the lens; and
 - (iii) *glazing*; which is the process by which finished lenses are cut to the shape of the frame and mounted onto the frame.
- (d) **Retail:** Retailers (usually opticians) sell finished lenses which have been mounted in frames, as ready-to-wear spectacles, to end-consumers.⁶¹

Optical Retail

52. Brick-and-mortar optical retail⁶² can be categorised into at least two types: (i) retail chains, which generally comprise of several stores operating under the same banner with a centralised commercial and sourcing policy and (ii) independent opticians, which tend to be individual shops run by opticians. Essilor is present at this level of the supply chain where it operates retail chains such as Vision Express.
53. Many opticians tend to operate multiple supply strategies, with almost all of the retail chains and the majority of independent opticians that responded to the CMA's merger investigation purchasing from multiple suppliers. Of the respondents that indicated why they purchased from multiple suppliers, some stated that this was to offer a full range of lenses⁶³ with one stating that they did so as a contingency in case their main supplier had supply issues.⁶⁴
54. Most retail chains that responded to the CMA's merger investigation rely on a competitive tender process to appoint finished lens suppliers, while some retail chains (including the largest retail chain Specsavers) purchase semi-finished lenses and use their own laboratories to carry out lens shaping and processing.⁶⁵ Some independent opticians indicated that they chose suppliers based on individual negotiations with suppliers that they know through recommendations or industry knowledge.⁶⁶

⁶¹ FMN, paragraph 75(d). As mentioned in paragraph 17, Essilor is a vertically intergrated supplier which also operates at the retail level in the UK through Vision Express, David Clulow, Sunglass Hut as well as online retail.

⁶² Online sales of ophthalmic lenses are very small in the UK, with the main online retailers being MyOptique Group Limited and Vision Direct (owned by Essilor) (FMN, paragraph 79).

⁶³ Questionnaire responses by [X]. [X] noted that they only purchase from Essilor 'where we have no credible alternative'. [X] stated that 'we have only occasionally used other suppliers if a service is not offered by our preferred choice'.

⁶⁴ Questionnaire response by [X]. [X] stated that 'a choice of lenses and can choose which lens to suggest to the customers' and that they have an agreement with [X] to act as a contingency supplier if there are any issues with the service provided by [X].

⁶⁵ FMN, paragraph 78.

⁶⁶ Questionnaire responses by [X].

Frame of reference

55. Market definition is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.⁶⁷ It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.⁶⁸
56. While market definition can be an important part of the overall merger assessment process, the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, captures the competitive dynamics more fully than formal market definition.⁶⁹ There may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market definition (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within the relevant market).⁷⁰

Product scope

57. The Parties overlap in the supply of finished ophthalmic lenses to opticians. Essilor is engaged in the manufacture and supply of finished ophthalmic lenses to opticians worldwide. Lenstec's main activities include glazing lenses, mounting them in frames and supplying them to opticians in the UK.⁷¹
58. In line with the Parties' submissions and previous findings by the European Commission (**EC**), the CMA considers that the market for ophthalmic lenses is separate from the market for ophthalmic substrate.⁷²

⁶⁷ [Merger Assessment Guidelines](#), paragraph 9.1.

⁶⁸ [Merger Assessment Guidelines](#), paragraph 9.2.

⁶⁹ [Merger Assessment Guidelines](#), paragraph 9.2.

⁷⁰ [Merger Assessment Guidelines](#), paragraph 9.5.

⁷¹ The Parties also overlap in the supply of sunglasses and frames. However, given the limited nature of their overlaps (Lenstec's sales of sunglasses in the UK accounted for less than £[§] in the last financial year, being less than [§] % of Lenstec's total turnover. FMN, paragraph 94) and the lack of third party concerns, they are not considered further in this Decision.

⁷² [M.3670 EQT Group / Carl Zeiss / Sola](#) (2005); [M.8394 Essilor/ Luxottica](#) (2018). The EC has distinguished between the (a) sales of finished lenses to opticians/retailers for resale to the end consumer, and (b) sales of ophthalmic substrate to prescription laboratories. The EC found that there is no demand-side substitutability between (a) and (b) since the products are found on different levels of the optical value chain and are used by different customer groups for different purposes. Furthermore, the EC found that there is no supply-side substitutability since different equipment is required to produce ophthalmic substrate and ophthalmic lenses.

59. The CMA has considered whether it is appropriate to further segment the market for the supply of ophthalmic lenses by correction design and material (ie plastic, glass).

Correction design

60. The Parties submitted that the relevant product frame of reference should include lenses of all three corrective designs (ie single vision, bi-trifocal, and progressive) as:
- (a) there is significant supply-side substitutability with most major competitors supplying a full range of lens correction types;
 - (b) there is some degree of demand-side substitutability by the end-consumer.⁷³
61. The OFT did not conclude on this point in *Essilor International/Signet Armorlite*, but did note that there is limited demand side substitutability in terms of an end-consumer's prescribed corrective design, and supply-side substitutability is feasible because similar inputs are required to manufacture all three lens designs.⁷⁴ In *Essilor International/Wholesale Lens Corporation*, the OFT noted that the main suppliers of ophthalmic lenses supply a wide range of lenses by corrective design 'which suggests a wide product definition'.⁷⁵
62. The Parties' competitors stated that they supply the full range of corrective designs, and direct customers (ie opticians rather than end-consumers) purchase lenses of all correction types with the mix of correction design purchases depending on the demands of their end-consumers.⁷⁶
63. Given the high degree of supply-side substitution, and notwithstanding the lesser degree of demand-side substitution by end-consumers, the CMA believes that the appropriate product frame of reference includes all types of correction design, ie single-vision, bi-trifocal and progressive lenses.⁷⁷ However, any differences in the competitive constraints in relation to different

⁷³ For example, single-vision lenses are to an extent substitutable with multifocal lenses as consumers with presbyopia (an eye condition where, as part of the ageing process, the eye's lens becomes less elastic Potentially affecting both near and distance vision) can correct their condition with single-vision lenses by taking off their glasses when looking at a distant object or by changing their glasses. Moreover, bi-trifocal lenses can be substituted with progressive lenses and *vice versa*, since both lenses respond to the requirements of consumers with presbyopia. (FMN, paragraph 98(b)).

⁷⁴ *Anticipated acquisition by Essilor International S.A. of Signet Armorlite Inc*, 2009 ([ME/3992/09](#)).

⁷⁵ *Anticipated acquisition by Essilor International S.A. of Wholesale Lens Corporation Limited*, 2009 ([ME/4154/09](#)).

⁷⁶ Questionnaire responses by competitors [§] and customers [§].

⁷⁷ While the CMA typically pays particular regard to demand-side substitution, it will also consider supply-side substitution in appropriate cases ([Merger Assessment Guidelines](#), paragraph 9.6).

types of lenses have been addressed in the competitive assessment. In addition, on a conservative basis, the CMA has also considered the shares of supply for single-vision, bi-trifocal and progressive lenses separately in its competitive assessment below.

Material

64. The Parties submitted that as customers on the whole have a strong and growing preference for plastic lenses (with the value of glass lenses representing only an estimated 0.3% of all lenses in the UK),⁷⁸ and that most major competitors supply both plastic and glass lenses, there is significant supply-side and demand-side substitutability between the two materials.
65. No third parties have submitted that the end-consumers have a preference between the material of the lens, and data submitted by the Parties suggests that there has been a long-term increase in the demand for plastic lenses. Most competitors responding to the CMA's investigation supply both types of lenses.
66. The CMA therefore considers that both finished plastic and glass lenses fall into the same relevant product frame of reference. The CMA has assessed differences based on material, as relevant, in the competitive assessment.

Conclusion on product scope

67. For the reasons set out above, the CMA has considered the impact of the Merger on the supply of finished ophthalmic glass and plastic lenses of all correction designs (**finished ophthalmic lenses**). The CMA has considered any segmentations in this market, as relevant, in the competitive assessment.

Geographic scope

68. The Parties submitted that the geographic scope is likely to be Europe-wide, as EEA opticians are increasingly sourcing finished lenses from laboratories outside the EEA, and suppliers are increasingly centralising their processing facilities to serve the whole of Europe.⁷⁹

⁷⁸ Based on the Strategy with Vision WLFD Study, 2020 (FMN, Annex 031).

⁷⁹ FMN, paragraph 102.

69. The EC⁸⁰ and OFT⁸¹ have previously assessed similar transactions on the basis of national markets, citing (amongst other reasons) that the major lens supply competitors had a national presence in order to quickly deliver lenses and to provide sales services to opticians; major lens supply competitors developed national strategies; and the retail market was mainly dominated by national level chains and local independent opticians.
70. Although some large integrated suppliers use a mixture of UK-based and overseas-based manufacturing methods to supply UK customers,⁸² a number of competitors stated that having a UK presence is important, for example because their customers would not be able to export their frames to their non-UK glazing facilities,⁸³ and that their customers value having their products produced in the UK.⁸⁴ Some competitors also stated that their customers are unwilling to import lenses due to the administrative burden.⁸⁵
71. Only a small number of customers that responded to the CMA's merger investigation currently import from non-UK suppliers.⁸⁶
72. Essilor's internal documents indicate that different countries have different levels of growth, or decline, in lens sales;⁸⁷ that the UK market is different from other European markets;⁸⁸ and that Essilor has considered using different strategies in different European countries.⁸⁹
73. For the reasons set out above, the CMA has considered that a UK-wide geographic frame of reference is appropriate for its assessment. The CMA has taken into account any relevant competitive constraints from outside the UK in the competitive assessment.

⁸⁰ M.8394 *Essilor/ Luxottica* (2018), paragraphs 146 – 152.

⁸¹ *Anticipated acquisition by Essilor International S.A. of Signet Armorlite Inc*, 2009 (ME/3992/09), paragraphs 28 – 30, *anticipated acquisition by Essilor International S.A. of Wholesale Lens Corporation Limited*, 2009 (ME/4154/09), paragraphs 13 and 14, and *anticipated acquisition by Essilor International S.A. of Horizon Optical Company Limited*, 2009 (ME/4258/09), paragraphs 17 and 18.

⁸² Notes of call with [REDACTED]. [REDACTED] stated that its UK manufacturers supply primarily independent opticians, and its overseas manufacturers supply the major chains (eg Vision Express) and online providers. [REDACTED] stated that all of its lenses are produced outside the UK and imported, but that it does glazing locally.

⁸³ Questionnaire response by [REDACTED].

⁸⁴ Questionnaire response by [REDACTED].

⁸⁵ Note of call with [REDACTED]; note of call with [REDACTED].

⁸⁶ Questionnaire responses by [REDACTED].

⁸⁷ FMN, Annex A0288.

⁸⁸ For example, FMN, Annex A0290 discusses how the UK is the most consolidated optical retail market in the world, with 80%+ of optical retail value controlled by retailers with central purchasing.

⁸⁹ FMN, Annex A0367.

Conclusion on frame of reference

74. For the reasons set out above, the CMA has considered the impact of the Merger on the supply of finished ophthalmic lenses in the UK.

Competitive assessment

Horizontal unilateral effects in relation to the supply of finished ophthalmic lenses in the UK

75. 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 to degrade quality on its own and without needing to coordinate with its rivals.⁹⁰ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in relation to the supply of finished ophthalmic lenses in the UK.
76. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in relation to the supply of finished ophthalmic lenses in the UK, the CMA considered:
- (a) the market structure, including shares of supply;
 - (b) closeness of competition between the Parties; and
 - (c) competitive constraints from alternative suppliers.

Market structure and shares of supply

77. The Parties submitted estimates of the shares of supply of all finished lenses in the UK by volume and value, which the CMA supplemented with information from third parties, as shown in Table 1.

90

Table 1: Estimated UK shares of supply (2020) (all glass and plastic lenses)

<i>Competitor</i>	<i>Turnover (£)</i>	<i>Estimated Share of UK Supply By Value (%)</i>	<i>Volume (units)</i>	<i>Estimated Share of UK Supply By Volume (%)</i>
Essilor	[X]	[40-50]%	[X]	[20 – 30]%
Lenstec	[X]	[5-10]%	[X]	[0 - 5]%
Parties Combined	[X]	[40-50]%	[X]	[20 – 30]%
Zeiss	[X]	[10 – 20]%	[X]	[20 – 30]%
Hoya*	[X]	[10 – 20]%	[X]	[10 – 20]%
Rodenstock	[X]	[5 – 10]%	[X]	[0 - 5]%
Millmead	[X]	[0 - 5]%	[X]	[0 - 5]%
Caledonian (Caledonian)	Optical [X]	[0 – 5]%	[X]	[0 - 5]%
Jai Kudo	[X]	[0 - 5]%	[X]	[0 - 5]%
Norville	[X]	[0 - 5]%	[X]	[0 - 5]%
Others (including PKP Optics, and Waterside Laboratories (Waterside))	[X]	[10 – 20]%	[X]	[20-30]%
Total	[X]	100%	[X]	100%

*Hoya's revenues and volumes also include Seiko's revenues, as Seiko is part of the wider Hoya corporate group.

Source: CMA's calculations based on revenue and volume estimates shared by the Parties and competitor respondents to the CMA's merger investigation.

78. Table 1 shows that across both glass and plastic lenses of all correction types, the Parties had a combined market share by value of [40-50]% ([20-30]% by volume) with an increment of [5-10]% ([0-5]% by volume) in the UK in 2020. The next largest competitors are Zeiss with [10 – 20]% ([20 – 30]% by volume), Hoya with [10 – 20]% ([10 – 20]% by volume), and Rodenstock with [5 - 10]% ([0 - 5]% by volume) followed by a number of competitors each with a market share of [0 - 5]% ([0 - 5]% by volume) or less. These estimates remain consistent when considering a number of sensitivities, and when considering the shares of supply segmented by correction type.⁹¹
79. The CMA believes that, in line with the Parties' submission, the supply of finished lenses in the UK is differentiated, with differences in price, quality and

⁹¹ The Parties estimated combined shares of supply by value segmented into single-vision lenses ([40-50]% with an increment of [5-10]%), bi-trifocal lenses ([50-60]% with an increment of [10-20]%), and progressive lenses ([40-50]% with an increment of [5-10]%), and their competitor's shares of supply, were broadly in line with those presented in Table 1. The CMA considered the Parties' share of supply excluding Essilor's sales to David Clulow, which as noted in paragraph 17 is a subsidiary of Essilor. When eliminating Essilor's self-supply, its shares of supply by value in the overall market (ie for all all correction designs) decrease from [40-50]% to [40-50]%. The CMA also considered the effect of Essilor's acquisition of GrandVision, and in particular its subsidiary Vision Express, on the estimated shares of supply. The Parties submitted that, prior to the acquisition, VisionExpress conducted its glazing services using its own in-house facilities. Therefore, the CMA believes that there will be no change in the shares of supply of finished lenses as a result of the acquisition.

service.⁹² Customer responses have indicated that they consider a number of factors beyond just price when purchasing lenses, primarily including turnaround time (ie the time between an optician's order and the product being supplied), the range of lenses available, the ease of purchase, and the relationship with the supplier's management were important to customers.⁹³ Consistent with this, competitors have indicated that players active in this market have different strengths and weaknesses, including differences in price, quality, turnaround time, range, and service. When competition occurs over multiple parameters, firms can choose to place their products at different points on the price/quality spectrum, which will affect how closely they compete with each other.

80. The CMA has therefore put most weight on the shares of supply by value, as these capture some of the differentiation between companies in terms of correction design, lens material, and other measures of quality. For instance, if one firm is mainly focused on simpler or lower quality lenses, it is likely that it would have a higher share in volume terms than value terms and this higher share in volumes would not necessarily reflect the competitive constraint it places on competitors. Additionally, the CMA notes that the value based shares are more consistent with the Parties' estimates of market shares in their internal documents.⁹⁴
81. The CMA considers that the Parties have a high combined share of supply by value and that the increment arising as a result of the Merger is small (albeit appreciable).
82. Where one merger firm has a strong position in the market, even small increments in market power may give rise to competition concerns.⁹⁵ Evidence collected during the CMA's merger investigation suggests that Essilor has some degree of market power. In particular:

⁹² Parties' Response to the Issues Letter, 24 September 2021, (**IL Response**) paragraph 6.4.

⁹³ The Parties have indicated that the parameters of competition include price and the range of lenses offered. (FMN, paragraphs 179, 187). They further submitted that Essilor also competes with large, integrated suppliers such as Hoya and Zeiss on factors such as offering innovative lenses and quality. (FMN, paragraphs 157, 163). Some customers indicated that geographic distance was important to them, some noted their preference for a supplier that is able to glaze and mount lenses manufactured by a range of suppliers, and some retail chains noted that they consider innovation to be important. (Questionnaire responses by [X]; note of call with [X]). The relative importance of these factors varied across customers.

⁹⁴ For example, FMN, Annex A007 estimates that Essilor has share of supply of [40-50]%, followed by Hoya with [10-20]%, Zeiss with [5-10]%, Rodenstock with [5-10]%, and other companies with [20-30]%. It is also broadly consistent with FMN, Annex A029, an estimate by the third party Strategy With Vision, which estimates that Essilor has a share of supply of [30-40]%, Lenstec with [5-10]%, Hoya with [10-20]%, Zeiss with [5-10]%, and Rodenstock with [0-5]%.

⁹⁵ [Merger Assessment Guidelines](#), paragraph 4.12(a).

- (a) a number of competitors and customers that responded to the CMA's merger investigation consider that Essilor has market power in the UK, with the Merger strengthening its existing market power;⁹⁶
 - (b) Essilor's share of supply by value appears to have been consistently high and stable between 2016 and 2019;⁹⁷ and
 - (c) as discussed in the section on Competitive constraints, the evidence suggests that large retail chains require suppliers with more capacity and, as such, integrated manufacturers are closer competitors to each other than independent laboratories to supply these customers. Therefore Essilor, as one of only a small number of large integrated manufacturers active in the UK, faces less competition for these customers.
83. The CMA considers that because there is some degree of differentiation in this market, the shares of supply should be considered alongside evidence on the closeness of competition between the Parties and the competitive constraints from alternative suppliers remaining post-Merger.⁹⁸

Closeness of competition

84. As discussed in paragraph 79, the CMA considers that there is some degree of differentiation in this market. In differentiated markets, horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes. The more closely the merger firms compete, the greater the likelihood of unilateral effects because the merged entity will recapture a more significant share of the sales lost in response to a price increase (or another worsening in the offering), making the price rise more profitable. The merger firms need not be each other's closest competitors for unilateral effects to arise. It is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger.⁹⁹
85. The CMA assessed the closeness of competition between the Parties on the basis of the following:
- (a) comparison of the Parties' respective propositions;

⁹⁶ Questionnaire responses by competitors [§] and customers [§].

⁹⁷ A report indicates that between 2016 and 2019, Essilor's share of supply by value was between 43% and 39%. Based on the Strategy with Vision WLF D Study, 2020 (FMN, Annex 031).

⁹⁸ See [Merger Assessment Guidelines](#), paragraph 4.14.

⁹⁹ [Merger Assessment Guidelines](#), paragraph 4.8.

- (b) scale of customer overlap between the Parties;
- (c) third party views on closeness of competition;
- (d) analysis of tender data; and
- (e) evidence from internal documents.

Comparisons of the Parties' respective propositions

86. The Parties submitted that Lenstec and Essilor are not close competitors as they have a different commercial focus with Essilor being active along the entire supply chain, whilst Lenstec focuses mainly on glazing, only surfaces a relatively small share of its lenses¹⁰⁰ and does not have its own coating facility.¹⁰¹ Further, the Parties submitted that they offer different services to opticians and have different commercial strategies.¹⁰²
87. The Parties submitted that Lenstec has a stronger focus on multifocal (ie bi-trifocal and progressive) lenses¹⁰³ and Essilor sells more single-vision lenses.¹⁰⁴
88. The Parties submitted that they are also differentiated in terms of the price and quality of the lenses that they sell, with Lenstec mainly selling inexpensive lenses, whereas Essilor mostly sells premium lenses.¹⁰⁵ In support of this, the Parties submitted an analysis of the average price charged by each Lenstec and Essilor, which showed Essilor's prices for bi-trifocal and progressive lenses are significantly higher than Lenstec's, though its average prices for single-vision lenses are slightly lower than for those sold by Lenstec. A further piece of pricing analysis submitted by the Parties showed that these differences are greater when comparing the average price of Essilor's various subsidiaries to Lenstec's average price.¹⁰⁶

¹⁰⁰ [10-20] – [10-20]% by volume and [5-10]% by value. FMN, Annex 032, slide 9.

¹⁰¹ FMN, Annex 032, slide 9. The majority of Lenstec's inputs are being purchased from Essilor.

¹⁰² The Parties submitted that Lenstec offers a dedicated service to customers with a 'personal touch', focussing on customers less likely to consider a global manufacturer; that Essilor competes aggressively in offering innovative lenses, while Lenstec has limited innovation and no formal investment in research and development (R&D); and there have been no cases where Essilor has amended its commercial strategy to respond to changes in Lenstec's commercial offerings (FMN, Annex 032, slides 10 and 11, FMN, paragraphs 155(a)(iii) and 159).

¹⁰³ [40-50]% of Lenstec's volume sales compared to [20-30]% for Essilor. FMN, Annex 032, slides 5 and 12.

¹⁰⁴ [50-60]% for Lenstec and [70-80]% for Essilor. FMN, Annex 032, slides 5 and 12. These differences are reduced if the product mix is analysed in value terms.

¹⁰⁵ FMN, paragraph 156b and Annex LB003.

¹⁰⁶ The Parties submitted an analysis that compared the average selling price for each Essilor entity against Lenstec's average price, split by correction type. This showed that when considering the Essilor entities with an average price within [10-20]% of Lenstec's average price, [5-10]% of Essilor's progressive sales, [30-40]% of Essilor's single-vision sales, and [10-20]% of Essilor's bi-trifocal lens sales were within this range. The Parties stated that this suggests that, despite Essilor's size in the market as a whole, only a small share of Essilor entities are in effect competing against Lenstec. Annex IL2, slides 5 – 8.

89. According to the available evidence, the CMA believes that the Parties have somewhat different commercial propositions. Both Parties are active in the supply of finished ophthalmic glass and plastic lenses of all correction designs to opticians. However, the CMA notes that Essilor is a vertically integrated company, which operates both upstream and downstream of Lenstec (ie in the manufacture of lenses upstream, and in the retail sale of lenses downstream), whereas Lenstec is an independent laboratory only active in the lense shaping and processing stage of the supply chain. As such the services that Lenstec offers to its customers are more limited than those offered by Essilor. Third parties that responded to the CMA's merger investigation have also confirmed that there are some differences in the Parties' offerings, with Lenstec's primarily active as a glazer and having a different service offering as compared to vertically integrated manufacturers.
90. The CMA has also received evidence showing that the Parties' customer propositions are different. In this regard, some third parties mentioned that some elements of Lenstec's offer vary from those of vertically integrated suppliers as Lenstec is able to glaze and mount lenses manufactured by a range of other lens suppliers.¹⁰⁷
91. The CMA has received some evidence from third parties that suggests limited switching between the Parties, which could be due to differences in their commercial and customer propositions. In this regard, despite customers generally indicating that switching between suppliers would occur in response to a price rise,¹⁰⁸ only a small minority of the customers that responded to the CMA's merger investigation would consider switching between the Parties. The majority of Lenstec's customers stated they would not consider Essilor to be a viable option, citing its poor customer service and long lead time as a result of its large size, its limited range, and high prices as reasons. One Essilor customer stated that they would not consider Lenstec to be an option, primarily because of its small scale and therefore its inability to meet their needs, with this customer only considering other integrated manufacturers as viable alternatives.
92. With respect to the Parties' pricing analysis and how this could affect the degree to which they compete with one another, the CMA notes that the analysis only reflects on price. In differentiated product markets¹⁰⁹ products

¹⁰⁷ Note of call with [X]; note of call with [X]. Questionnaire response by [X].

¹⁰⁸ The majority of customers who responded to the CMA's investigation stated that they would switch suppliers if the Merged Entity increased its prices. There was a mixed response on the time and investment required to make such a switch with smaller independent players suggesting that this could happen in a matter of weeks with an investment of roughly GBP 1,000 and larger retail chains saying it could take approximately 12 months with a much higher investment. [X] said approximately GBP 1 million.

¹⁰⁹ Such as this one for the reasons mentioned in paragraph 79 above.

with significantly different prices may still be close substitutes to each other, as customers choose a supplier based on a number of factors, and not just price, when making purchasing decisions. As mentioned in paragraph 79 above, this has been confirmed by the CMA's market testing, as customers of the Parties indicated that they consider a number of factors when selecting a supplier, such as price, turnaround time, the range of lenses available, the ease of purchase in terms of administrative effort, and the relationship with the supplier's management.¹¹⁰ The CMA therefore considers that any comparison of products based purely on price may not fully capture the degree to which two products may be substitutes in the eyes of the customer, as customers may put more weight on factors other than prices when making purchasing decisions.¹¹¹

93. As mentioned in paragraph 87, the Parties submitted that they have different focusses in types of lenses, ie Lenstec has a stronger focus on multifocal (bi-trifocal and progressive) lenses and Essilor sells more single-vision lenses. However, neither the Parties nor any third parties have stated that either of the Parties have specific capabilities or competitive advantages in certain correction types and both supply across the full range of lens types. The CMA therefore considers that while there may be some degree of differentiation in focusing on individual lens types, both Parties compete to supply opticians across the full spectrum of lenses.
94. On the basis of the evidence above, the CMA has placed limited weight on the Parties' pricing analysis and the comparison of the Parties' focuses in terms of correction types. However, overall, the CMA considers that there are differences in the Parties' commercial focus, with Essilor being a vertically integrated supplier and Lenstec's position in the market primarily as a glazing laboratory that glazes and mounts lenses manufactured by a range of suppliers.

Scale of customer overlap between the Parties

95. The Parties submitted that an analysis of Essilor's Customer Relationship Management (**CRM**) data suggests that the Parties are not close competitors, as a small proportion of the opticians served by Essilor have Lenstec listed as

¹¹⁰ The relative importance of these factors varies across customers; for example, customers with a low-cost offering consider price to be the most important factor with range being less important.

¹¹¹ The CMA also considers that the Parties' comparison of average prices does not capture the full range of overlapping products that the Parties offer at different price points. The Parties acknowledged that there will be substantial variation in Lenstec's prices based on the needs and size of the consumer and that this applies to Essilor entities as well.

another lens supplier.¹¹² However, the Parties noted a number of caveats with this analysis.¹¹³

96. The CMA is minded to not place significant weight on the Parties' CRM analysis due to the caveats identified in relation to this data,¹¹⁴ and because it does not capture competition between suppliers for customers who only purchase from one supplier.
97. The Parties also submitted an analysis of the number of overlapping customers, which suggested that the vast majority of the Parties' customers either do not purchase from the other Party or only purchase insignificant amounts from it.¹¹⁵ The Parties submitted that, if a customer buys significantly from one Party but only negligible amounts from the other Party, this could be an indication that the Parties do not compete directly for that customer in a material respect.¹¹⁶ In this regard, the Parties submitted that [X] of Lenstec's sales are to [X] and [X], which are accounts where Essilor has no presence and has never bid to supply, demonstrating that the Parties are not close competitors.¹¹⁷
98. The CMA has also not placed significant weight on the Parties' analysis of customer overlaps, primarily because it is not clear whether customers who multi-source do so for the same requirements, as some customers have stated that they do so to purchase differentiated products from each of their suppliers. This analysis also does not capture any competition for customers who purchase from only one supplier. Therefore, the lack of customer overlap between the Parties does not preclude a closeness of competition between the Parties.

¹¹² The Parties submit that only [0-5] – [5-10]% of the opticians served by Essilor also have Lenstec listed as a main or secondary finished lens supplier, which is fewer than would be suggested by Lenstec's market share of [5-10] – [10-20]%. Further, only [X]% of Essilor's glazing customers list Lenstec as an additional/secondary glazing supplier. However, Essilor only identified [X] opticians for which Essilor is either the main or secondary glazing laboratory, and therefore submitted that the results of this analysis should be interpreted with care. FMN, Annex 032, slides 13 – 21.

¹¹³ For instance (i) the CRM data has been populated by the Essilor Ltd subsidiary only; (ii) customers may have multiple suppliers for a variety of reasons, including multi-sourcing for the same requirements, in which case the suppliers would be offering comparable products and therefore be in direct competition with each other; and (iii) the data only tracks the top two suppliers of the customer (and not third or fourth suppliers), and if Lenstec had a tendency to fill these slots, the analysis could understate their presence, noting that where Lenstec is the third or fourth supplier, it is unlikely to offer lenses directly substitutable with the main suppliers' and more likely to white label/low-end branded. (FMN, Annex 032, slides 14 – 16). The Parties submitted that these caveats are not sufficient to justify dismissing the analysis altogether, and noted that opticians themselves adopt a particular position in the market and therefore the scope for differentiation at the optician level is moderate; that Essilor makes commercial use of its CRM, and that it illuminates sales opportunities; and that the results of each piece of analysis is internally consistent. (IL Response, paragraph 6.14)

¹¹⁴ Particularly, it is unclear whether customers who multi-source do so for the same requirements. The CMA notes that some customers stated that they do so to purchase differentiated products from each of their suppliers, which would suggest that looking at current suppliers may speak to complementarity rather than substitutability.

¹¹⁵ Annex IL2, slides 11 – 14.

¹¹⁶ FMN, Annex 032, slides 22 – 25.

¹¹⁷ IL Response, paragraph 6.2(A).

99. In addition, the CMA believes that, although Essilor has not recently bid for the supply to [X] and [X], it is a credible potential supplier to both of these customers. Essilor explained that the primary reason that it has not bid for the [X] contract is because it has not been invited to, but stated that it would put together a meaningful bid if it had the opportunity to do so.¹¹⁸ [X] currently purchases Essilor lenses through Lenstec, indicating that its lenses are a viable option for [X]. Further, [X] stated that it considers Essilor and Lenstec to be close competitors, and did not completely discount Essilor as a potential supplier, albeit it did express reservations about Essilor not being an easy company to deal with.¹¹⁹ In addition, the CMA notes that it is assessing the Merger against a more competitive counterfactual where Lenstec is independent of Essilor, and as such in those circumstances there may be an increased possibility that Essilor would choose to compete for these contracts against Lenstec, to the extent the reason for Essilor not recently competing for such supply is due to its shareholding in Lenstec. However, the CMA notes that this would not necessarily mean that Essilor would have been able to solicit business from [X], and [X] told the CMA that it is not concerned about competition in the market as there are other competitors that compete well.¹²⁰

Third party views on closeness of competition

100. Third party evidence on closeness between the Parties was mixed. The customers that stated that the Parties are not close competitors submitted that this was because Lenstec had a smaller capacity as compared to Essilor, and that they had different service offerings, as Lenstec's position as an independent laboratory means that it glazes and mounts lenses manufactured by a range of suppliers, while Essilor just offered their own brand. The customers that stated that the Parties are close competitors primarily submitted that they operate at the same level of the supply chain and offer competing products. The CMA notes that these two factors are not specific to a comparison between Lenstec and Essilor rather than any other players active at the same level of the supply chain.

101. Almost all the competitors that responded to the CMA's merger investigation indicated that Essilor and Lenstec are competitors to each other, with a small proportion which indicated that they are close competitors. Some competitors also stated that they do not consider the Parties to be competitors, as they consider the relationship between the Parties to be primarily a vertical one.¹²¹

¹¹⁸ Parties' oral representations at the Issues Meeting attended by the Parties and the CMA on 22 September 2021.

¹¹⁹ [X].

¹²⁰ [X].

¹²¹ Questionnaire responses by [X].

The CMA considers that the more competitive counterfactual should not materially impact this as, whether Lenstec becomes part of an alternative integrated supplier or is acquired by a different type of acquirer, the business of Lenstec which is contributed to that acquirer would still have a different commercial focus to Essilor.

Analysis of tender data

102. The CMA also collected information on three recent tenders run by retail chains in which the Parties participated, with the Parties participating in only one common tender. These retail chains indicated that the main competitors for these tenders were integrated manufacturers, including Essilor, Hoya, Zeiss, and (to a smaller extent) Rodenstock, and that independent laboratories were not viable suppliers as they lacked the required capacity to service their needs.
103. The CMA notes that Shamir and Lenstec made a joint bid for one tender ([REDACTED]). The CMA considers that this may have been less likely to have occurred in the counterfactual as, if Lenstec were acquired by a vertically integrated supplier, there would likely be no change in the number of competitors for the [REDACTED] tender as Lenstec would be unlikely to have needed to partner with another supplier if it was owned by an integrated supplier. If acquired by an independent player, Lenstec [REDACTED] and would still have needed to partner with an integrated supplier. This partner could either be an alternative integrated supplier other than Shamir or could be Shamir, even in the absence of its stake in Lenstec. In any event, the CMA notes that Lenstec's bid for the [REDACTED] tender [REDACTED].¹²² Given these factors, and that this was an isolated example of Lenstec and Shamir submitting a joint bid, the CMA does not consider this materially impacts its assessment of the tender data or closeness of competition between the Parties.
104. Given the limited number of tenders on which the CMA has information the CMA has not placed significant weight on the tender data when assessing closeness of competition between the Parties. However, on the basis of the different commercial focuses of Lenstec and Essilor, the availability of other credible suppliers (in particular other vertically integrated suppliers), and the importance of capacity for these tenders [REDACTED], the CMA considers that the Parties are not particularly close competitors in relation to these tenders.

¹²² [REDACTED].

Internal documents

105. Essilor's internal documents do not frequently mention competitors in the supply of ophthalmic lenses by name. Some of Essilor's internal documents suggest that it views Lenstec as a competitor, however this is often alongside other competitors such as Hoya and Zeiss, which are mentioned more often.¹²³ For example:
- (a) A monthly report notes that [REDACTED].¹²⁴
 - (b) In the context of its sales to [REDACTED], an internal document from Essilor notes that [REDACTED].¹²⁵
 - (c) Lenstec is identified as a competitor supplying to [REDACTED] while analysing the impact of [REDACTED].¹²⁶
106. Lenstec has provided a very limited number of internal documents, none of which specifically identify Essilor as a competitor. The CMA considers that this reflects the limited production and exchange of internal documents within Lenstec¹²⁷ rather than suggesting Lenstec does not consider Essilor to be a competitor.¹²⁸
107. On the whole, Essilor's internal documents suggest it views Lenstec as a competitor, but do not indicate that Essilor considers Lenstec to be a particularly close competitor. Further, other competitors such as Hoya and Zeiss have been mentioned more often in Essilor's internal documents than Lenstec.

Conclusion on closeness of competition

108. As discussed in paragraph 89, the CMA considers that the Parties have different commercial focuses, with Lenstec's position in the market primarily as a glazer limiting the extent to which it poses a competitive constraint on Essilor, a vertically integrated supplier. Customer submissions broadly support the view that the Parties are not particularly close competitors, with a

¹²³ See paragraphs 121 and 127.

¹²⁴ FMN, Annex 075.

¹²⁵ FMN, Annex A0359.

¹²⁶ First Essilor S109 Response, Annex 23. GrandVision is a Dutch-headquartered company active at the optical retail level of the sector with operations in a number of countries including the UK (through the Vision Express and Lenstore banners) (FMN, paragraph 33).

¹²⁷ Fourth Lenstec S109 Response, paragraph 3.8. FMN, paragraph 61. Lenstec submitted that it does not prepare its own documents or reports assessing [REDACTED]. Instead, [REDACTED]

¹²⁸ See [Merger Assessment Guidelines](#), paragraph 2.29(d) which explains "An absence of internal documents pointing to, for example, competitive interactions between the merger firms may not be probative if the merger firms do not normally generate documents in the ordinary course of business or where merger firms have document retention policies whereby documents are regularly deleted."

number of customers not considering the Parties as close competitors and the majority of Lenstec's customers not considering Essilor as a viable option and *vice versa*. In addition, while the Parties (in particular Lenstec) do not appear to routinely track competitors in their internal documents, on balance Essilor's internal documents do not suggest that Essilor views Lenstec as a particularly close competitor or competitive threat, albeit they do suggest Essilor views Lenstec as a competitor as well as a customer.

109. The CMA therefore believes that, on balance, the Parties are not particularly close competitors in relation to the supply of finished ophthalmic lenses in the UK.
110. The CMA notes that it is assessing the Merger against a counterfactual where Lenstec is acquired by another third party that does not raise significant competition concerns. The future of Lenstec in that counterfactual is largely dependent on which alternative purchaser would acquire it and what its business plans would be. However, the CMA considers that, whether Lenstec becomes part of an alternative integrated supplier or is acquired by a different type of acquirer, the business of Lenstec which is contributed to that acquirer would still have a different commercial focus to Essilor. As such, the CMA does not consider this is likely to materially change the competitive dynamics in the market.

Competitive constraints

111. The CMA has assessed below the strength of the competitive constraint that would be exerted by other market participants on the Merged Entity.

Parties' submissions

112. The Parties submitted that Essilor competes most closely with other large global integrated lens manufacturers including Hoya, Zeiss, and Rodenstock;¹²⁹ and that Lenstec competes most closely with other independent laboratories in the UK, including Inspecs, Waterside, Caledonian, Optimum, Norville, PKP Optics, Dunelm, and JS Optical.¹³⁰
113. The Parties submitted that there are a number of examples of Essilor, Hoya, Zeiss and Rodenstock responding to each other's competitive strategies, evidencing the constraint each of these entities provides on Essilor:

¹²⁹ FMN, paragraph 157.

¹³⁰ FMN, paragraph 161 and IL Response .

- (a) in two instances Essilor introduced or conducted testing on new coatings for their lenses, at least in part as a competitive alternative to Zeiss' and Hoya's coatings;¹³¹
 - (b) Hoya recently launched a marketing campaign similar to Essilor's marketing position;¹³² and
 - (c) Essilor sells lenses for myopia control progression which compete with Hoya's Miyosmart and Zeiss' Miyovision products, and Essilor's Transitions lens technology closely competes with Rodenstock's Colormatic technology.¹³³
114. Essilor submitted that it considers Rodenstock to be a relatively close competitor, as it competes closely with Essilor in offering innovative lenses¹³⁴ and to supply Lenstec, and it has been recently added as an approved supplier by the Hakim Group. Rodenstock is likely to play an even more significant role going forward, as Rodenstock has been purchased by Apax Funds, has achieved growth through 2020, and has given clear focus to allocating resources to grow its UK business. There are also examples where Rodenstock has taken accounts from Essilor, and *vice versa*.¹³⁵
115. In relation to independent laboratories, the Parties submitted that Lenstec is one of many independent laboratories with a number of competitors including Millmead, Norville, Optimum and Dunelm, all of whom supply customers throughout the UK and glaze and mount lenses manufactured by a range of suppliers, with Norville and Optimum offering additional services to those of Lenstec in the form of in-house lens coating capabilities.¹³⁶ Further, Norville, Optimum and Dunelm are particularly aggressive national independent laboratories that Lenstec competes against on a frequent basis.¹³⁷

CMA's assessment

116. The CMA has considered the competitive constraint exerted by other players active in the market where the Parties operate.¹³⁸ The CMA has considered

¹³¹ FMN, Paragraph 158(a) and (b).

¹³² FMN, paragraph 158(d).

¹³³ FMN, paragraph 158(c) and (e).

¹³⁴ Including the launch in 2020 of new biometric progressive lenses, and the launch in 2016 of new driving spectacles (FMN, paragraph 167 (c)).

¹³⁵ IL Response, paragraphs 4.6 – 4.13.

¹³⁶ IL Response, paragraphs 2.2 and 5.4.

¹³⁷ IL Response, paragraph 5.5.

¹³⁸ The CMA notes that the principal vertically integrated European suppliers are already present in the UK, and therefore the sale of Lenstec to a third party is unlikely to materially change the structure of and competitive dynamics in the market. As such, the CMA considers the evidence relating to competitors in the prevailing conditions of competition is equally relevant to its assessment of the Merger under the more competitive counterfactual.

first the constraint from vertically integrated suppliers (Hoya, Zeiss and Rodenstock),¹³⁹ given that these providers had the largest share of supply of all lenses in the UK in 2020 (see Table 1), they have a similar commercial focus to that of the Merged Entity, they were frequently identified by third parties as an alternative to the Parties, and were frequently mentioned in Essilor's internal documents. The CMA has also considered whether other independent laboratories (including those not located in the UK) may provide a constraint on the Merged Entity.¹⁴⁰

Hoya

117. Hoya is an integrated manufacturer that supplies lenses to all types of customers, including retail chains and independent opticians. Hoya stated that the key distinction between Essilor and Hoya is that Hoya [REDACTED], while Essilor [REDACTED].¹⁴¹
118. Based on the shares of supply estimated in Table 1, the CMA notes that Hoya had a [10-20]% share of supply by value in the UK market for glass and plastic lenses across all three correction types in 2020, and a market share of between [5-10]% and [10-20]% across the three correction types individually.
119. Of the retail chains that responded to the CMA's merger investigation, all apart from one stated that they: (i) currently purchase some lenses from Hoya; (ii) have purchased lenses from Hoya in the past; or (iii) would consider purchasing lenses from Hoya in the future. Of the independent opticians that responded to the CMA's investigation, although a minority indicated that they would consider using Hoya in the future, this was a still greater proportion than those who would consider using Lenstec.
120. Hoya stated that Lenstec's scale makes it larger than other independent laboratories in the market. Hoya submitted that based on this, it competes [REDACTED] with Lenstec for both independent opticians and retail chains and that Lenstec has local manufacturing and marketing capabilities.¹⁴² Hoya also submitted that it competes [REDACTED] with Essilor for both independent opticians and retail chains on various factors such as [REDACTED].¹⁴³

¹³⁹ Jai Kudo was listed as a vertically integrated competitor by Essilor, however given its small share of supply and that it was not mentioned by any third parties as an alternative to the Parties the CMA has not considered it in detail.

¹⁴⁰ The CMA notes that while it has seen evidence of expansion plans by some suppliers such as [REDACTED], the estimated shares of supply for most suppliers have been broadly stable over the last five years, indicating that there is not much dynamism in this market. As such, the CMA has focussed on the current state of the market in its assessment.

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

121. Essilor’s internal documents that discuss competitors mention Hoya significantly more often than Lenstec.¹⁴⁴ For example:
- (a) internal documents from Essilor note that [REDACTED] include Hoya’s [REDACTED] position and product launch;¹⁴⁵ [REDACTED];¹⁴⁶ and one internal document notes ‘Hoya [REDACTED]’;¹⁴⁷
 - (b) an Essilor competitor insight includes [REDACTED] by Zeiss and Hoya;¹⁴⁸ and another notes [REDACTED];¹⁴⁹
 - (c) one internal document states that [REDACTED] introduced Hoya and Rodenstock [REDACTED] due to [REDACTED];¹⁵⁰ one states ‘[REDACTED]’;¹⁵¹ another states ‘[REDACTED]’;¹⁵² and
 - (d) Essilor notes competing with Hoya for [REDACTED]¹⁵³ and another internal document tracks launch of Hoya’s products, [REDACTED].¹⁵⁴
122. On the basis of the above, the CMA considers that Hoya would exert a strong competitive constraint on the Merged Entity.

Zeiss

123. Zeiss is an integrated manufacturer that supplies lenses of all three correction types to a range of customers, including retail chains and independent opticians.¹⁵⁵
124. Based on the shares of supply estimates in Table 1, Zeiss had a [10-20]% share of supply by value in the UK market for glass and plastic lenses across all three correction types in 2020, and a market share of between [5-10]% and [20-30]% across the three correction types individually.
125. Of the retail chains that responded to the CMA’s merger investigation, all apart from one stated that they would consider purchasing their lenses from Zeiss but all noted that Zeiss offered high priced lenses and that they would

¹⁴⁴ As mentioned above in paragraph 106, Lenstec has provided a very limited number of internal documents. The CMA considers that this reflects the limited production and exchange of internal documents within Lenstec rather than suggesting Lenstec’s lack of consideration of competitive constraints from alternate suppliers. However, given the lack of internal documents from Lenstec, this section presents the analysis of Essilor’s internal documents.

¹⁴⁵ FMN, Annex 038.

¹⁴⁶ FMN, Annex 064.

¹⁴⁷ FMN, Annex 049.

¹⁴⁸ FMN, Annex 081, slide 5.

¹⁴⁹ FMN, Annex 045, page 2.

¹⁵⁰ FMN, Annex 037, page 5.

¹⁵¹ FMN, Annex 052, page 1.

¹⁵² FMN, Annex 040, page 1.

¹⁵³ Second Essilor S109 Response, Annex A0194, page 1.

¹⁵⁴ Second Essilor S109 Response, Annex A0170, page 3.

¹⁵⁵ [REDACTED].

consider Zeiss if it was able to offer competitive pricing. Of the independent opticians that responded to the CMA's investigation, half indicated that they would consider using Zeiss in the future.

126. [REDACTED].¹⁵⁶
127. Zeiss has been recorded as a competitor in a number of Essilor's internal documents significantly more often than Lenstec. For example:
- (a) one internal document notes how Zeiss is [REDACTED];¹⁵⁷
 - (b) Zeiss has been recorded in [REDACTED],¹⁵⁸ with one noting [REDACTED];¹⁵⁹
 - (c) internal documents noted how Zeiss' advertising [REDACTED]¹⁶⁰ [REDACTED].¹⁶¹ Another document notes [REDACTED].¹⁶²
 - (d) Zeiss is [REDACTED]¹⁶³ and one internal document notes [REDACTED].¹⁶⁴
128. On the basis of the above, the CMA considers that Zeiss would exert a strong competitive constraint on the Merged Entity.

Rodenstock

129. Rodenstock is a global integrated manufacturer that supplies lenses of all three correction types. It serves a range of customers, [REDACTED], as Rodenstock submitted [REDACTED].¹⁶⁵
130. Based on the shares of supply estimates in Table 1, Rodenstock had a [5-10]% share of supply by value in the UK market for glass and plastic lenses across all three correction types in 2020, and a market share between [0-5]% and [5-10]% across the three correction types individually.
131. Of the independent opticians that responded to the CMA's merger investigation, none indicated that they would consider using Rodenstock in the future, and some specified this was due to management problems,¹⁶⁶ lack

¹⁵⁶ [REDACTED].

¹⁵⁷ FMN, Annex 037, page 5.

¹⁵⁸ FMN, Annex 049, Annex 051 and Annex 053.

¹⁵⁹ FMN, Annex 051, page 2.

¹⁶⁰ FMN, Annex 058, Annex 059, Annex 060, Annex 091.

¹⁶¹ First Essilor S109 Response, Annex 017, page 1.

¹⁶² Second Essilor S109 Response, Annex A0115, page 4.

¹⁶³ First Essilor S109 Response, Annex 21 and FMN, Annex 81.

¹⁶⁴ Second Essilor S109 Response, Annex A0194, page 1.

¹⁶⁵ [REDACTED].

¹⁶⁶ The Parties submitted that as a result of a recent change in management, Rodenstock's perceived management problems have been alleviated and that Rodenstock would pose a greater competitive constraint for supplying independent opticians going forward.

of range, and its uncompetitive price. One retail chain¹⁶⁷ currently purchases from Rodenstock (in conjunction with other suppliers such as Lenstec), and one stated that they would consider using Rodenstock.¹⁶⁸

132. [REDACTED].¹⁶⁹

133. Rodenstock was mentioned in some of Essilor's documents as a competitor. One internal Essilor document records Rodenstock [REDACTED];¹⁷⁰ and another records Rodenstock's [REDACTED].¹⁷¹

134. On the basis of the above, the CMA considers that Rodenstock would exert a moderate competitive constraint on the Merged Entity.

Independent laboratories

135. The Parties submitted that independent labs do compete with the large integrated lens manufacturers to supply finished ophthalmic lenses to optical retailers, but noted that they compete most closely with each other.¹⁷² They submitted that Lenstec is one of many independent labs with a number of important competitors that supply customers throughout the UK, and glaze and mount lenses manufactured by a range of suppliers including:

(a) Millmead, which has an estimated share of supply by value of [0 - 5]%, [REDACTED], and which the Parties state [REDACTED];

(b) Norville, which has an estimated share of supply by value of [0 - 5]%. The Parties submitted that customers have switched between Norville and [REDACTED], including in the past year.¹⁷³

(c) Optimum, which the Parties submitted is undertaking a major investment programme; and

(d) Dunelm, which the Parties submitted has a strong international presence, exclusively supply the UK and Ireland with the Leica Eyecare brand, [REDACTED].

¹⁶⁷ Note of call with [REDACTED].

¹⁶⁸ Questionnaire response by [REDACTED].

¹⁶⁹ [REDACTED].

¹⁷⁰ FMN, Annex 037, page 5.

¹⁷¹ FMN, Annex 091, page 6.

¹⁷² IL Response, paragraph 5.1.

¹⁷³ IL Response, paragraph 5.6(d).

136. Further, some other independent laboratories have also indicated that they are in the process of expansion¹⁷⁴ or that they could expand production easily.¹⁷⁵
137. Third-parties broadly supported the Parties' submissions, with most of the independent laboratories that responded to the CMA's merger investigation¹⁷⁶ stating that they compete most strongly with other independent laboratories. However, a number also noted that they compete with integrated lens manufacturers, including Essilor.
138. Independent laboratories such as JS Optical, Waterside Labs, Norville, and Inspecs have been included as possible credible suppliers by a number of the independent opticians that responded to the CMA's merger investigation. The CMA has also seen evidence of Norville expanding in the market. Norville has informed the CMA that it plans to [REDACTED]. [REDACTED]. Norville expects significant efficiency improvements including [REDACTED]. Norville shall target supplying [REDACTED].¹⁷⁷ However, no retail chains stated that they would consider an independent laboratory, primarily due to their lack of scale and capacity.¹⁷⁸
139. On the basis of the above, the CMA notes the asymmetric nature of constraint with regard to competition from independent laboratories. These suppliers compete more closely to supply independent opticians rather than larger optical retail chains primarily due to their lack of scale and capacity to serve large optical retail chains or supermarket opticians. The CMA therefore considers that independent laboratories would exert a moderate constraint on the Merged Entity at least in relation to independent opticians.

Importing lenses and self-supplying laboratory services

140. Most customers did not consider importing lenses as an option, mainly because non-UK laboratories did not have the required skill or flexibility, and some said because of the desire to reduce environmental emissions.
141. Some retail chains (including the largest retail chain Specsavers) currently use their own laboratories to carry out lens shaping and processing.¹⁷⁹ However, most respondents who do not currently operate their own laboratory would not consider operating one, due the significant capital investment

¹⁷⁴ Questionnaire response by [REDACTED].

¹⁷⁵ Questionnaire response by [REDACTED].

¹⁷⁶ Questionnaire responses by [REDACTED].

¹⁷⁷ [REDACTED].

¹⁷⁸ Optical retail chains who responded to the CMA's merger investigation and used tenders to source their lenses needs submitted that they have rejected independent laboratories due to their small size and lack of capacity to meet their needs.

¹⁷⁹ FMN, paragraph 78.

involved and the need for skilled and experienced staff. An optician stated that when it did run its own lab, it did not prove time and cost effective and it was more competitive to purchase finished lenses.¹⁸⁰

142. On the basis of the above, the CMA considers that the Merged Entity would not be constrained by imports and self-supply.

Conclusion on competitive constraints

143. In light of the evidence summarised above, the CMA believes that there are a number of vertically integrated players active in the market such as Hoya, Zeiss and Rodenstock, which the CMA considers present a strong or moderate constraint on the Merged Entity. There are also a number of independent suppliers, including Millmead, Norville, Dunelm, Optimum, and others, which would exert a moderate constraint on the Merged Entity, at least in relation to independent opticians. Together, the CMA considers that all these competitors will continue to exert a strong competitive constraint on the Merged Entity. The CMA does not consider there would be any material difference between the constraints from these competitors under the prevailing conditions of competition and in the more competitive counterfactual.

Conclusion on horizontal unilateral effects

144. For the reasons set out above, the CMA believes that Essilor already has some degree of market power and that the Merger results in a small (albeit appreciable) increment to Essilor's existing relatively high share of supply. However, as set out in paragraphs 108 and 109, the CMA has found that the Parties are not particularly close competitors in relation to the supply of finished ophthalmic lenses in the UK. Further, as discussed in paragraph 143, the CMA considers that, on balance, there are sufficient remaining competitors to impose in aggregate a strong competitive constraint on the Merged Entity.
145. The CMA has assessed the Merger against a counterfactual where Essilor's material influence over Lenstec is removed and where Lenstec and Essilor compete independently of one another. The CMA has considered whether there are any relevant differences between the prevailing conditions of competition and the more competitive counterfactual throughout the assessment. Overall the CMA does not consider the more competitive

¹⁸⁰ Questionnaire response by [REDACTED].

counterfactual to have had a material impact on its assessment for the reasons explained as relevant throughout the assessment.

146. As such, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of finished ophthalmic lenses in the UK.

Barriers to entry and expansion

147. 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 SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Decision

148. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
149. The Merger will therefore **not be referred** under section 33(1) of the Act.

Joel Bamford
Senior Director, Mergers
Competition and Markets Authority
12 October 2021

ⁱ Rodenstock stated that it competes most closely with [REDACTED] and would compete with Lenstec in a limited number of customers: ie: [REDACTED] and to a lesser extent, Lenstec compete as [REDACTED] to Rodenstock current [REDACTED].

ⁱⁱ Hoya stated that the key distinction between Essilor and Hoya is that Hoya [REDACTED], while Essilor [REDACTED].