

Proposed joint venture between Alliance Boots Limited and Dollond & Aitchison Limited in relation to their respective optical businesses

ME/4014/09

The OFT's decision on reference under section 33(1) given on 1 May 2009. Full text of decision published 19 May 2009.

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

## **PARTIES**

1. **Alliance Boots Limited** (AB) is primarily active in the wholesaling and retailing of pharmaceutical products and the retailing of health and beauty products in the UK. Its activities in the retail opticians sector are through its subsidiary company **Boots Opticians Limited** (Boots), which has 286 outlets in the UK, operated both as in-store outlets within Boots Health and Beauty premises and as standalone outlets.
2. **Dollond & Aitchison Limited** (D&A) is a national chain with 400 outlets in the UK. It is owned by an Italian manufacturer De Rigo S.p.a. (De Rigo), which is active in the design, manufacture and marketing of eyewear, distributing its products in 80 countries worldwide.<sup>1</sup> D&A's reported UK turnover for its last financial year was £168.6 million.

## **TRANSACTION**

3. The optical businesses of AB and D&A (the parties) will be placed into a holding company, AD Holdco Limited (AD Holdco). AB and D&A will

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<sup>1</sup> D&A is the holding company for three wholly owned subsidiaries: D&A Professional Services Ltd, which provides professional eye care services, D&A Eyewear Ltd, which is responsible for the provision of frames, lenses and accessories, and D&A Contact Lenses Ltd, which is responsible for D&A's contact lens business.

(indirectly) have a [55-65] per cent and [35-45] per cent shareholding respectively in AD Holdco. Pursuant to a shareholders agreement, AB will have the power ultimately to determine the budget and business plan in the event of disagreement. Therefore, for the purposes of section 26 of the Enterprise Act 2002 (the Act), AB will acquire de jure control of AD Holdco and D&A will acquire material influence.

4. The parties' rationale for the merger is to bring together AB's brand awareness as a source of healthcare products and De Rigo's eyewear design and manufacturing capabilities.
5. The merger was notified by the parties on 28 January 2009 and the administrative deadline for a decision was 8 April 2009.

## **JURISDICTION**

6. As a result of this transaction AB and D&A will each cease to be distinct from the optical business contributed to AD Holdco by the other. Pursuant to section 28(1)(a) of the Act, given that the parent companies of AD Holdco (AB and D&A) remain under the same ownership and control after the merger, the relevant turnover is calculated by taking the total value of all the enterprises ceasing to be distinct (that is the parent entities and the optical businesses contributed to the JV) and deducting the turnover of the parents (which remain under the same ownership and control after the merger).<sup>2</sup> The combined UK turnover of the contributed optical businesses exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

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<sup>2</sup> See in this respect paragraph 3.31 of the OFT's Draft *Mergers - jurisdictional and procedural guidance - Draft guidance consultation document* March 2008 which will, when finalized shortly, supersede the interpretation set out in paragraph 1.17 of the OFT's Guidance note on the calculation of turnover for the purposes of Part 3 of the Enterprise Act 2002 (July 2003).

## MARKET DEFINITION

### Background

8. The parties have submitted that there are some 7,250 optician stores in the UK, with some 11,100 optometrists and 5,309 dispensing opticians.<sup>3</sup> Sales of retail opticians' services, including sight tests, eye wear, contact lenses and eye care products and solutions, are worth around £2.7 billion, which has grown by 22 per cent since 2003 and is expected to grow by further 13 per cent in the next five years.<sup>4</sup> Demand is expected to have grown, however, by just 2 per cent in 2008 as a result of generally flat demand and a downward pressure on prices due to intensifying competition.<sup>5</sup>
9. The parties overlap in the retail supply of spectacles, contact lenses, sight tests, contact lens solutions and sunglasses. In addition, D&A's parent company, De Rigo, is active as a designer and manufacturer of frames for spectacles and sunglasses. Both parties also provide retailing space and certain ancillary support services to other companies offering hearing aid services.<sup>6</sup>

### Product scope

10. The parties provide retail opticians services through bricks and mortar outlets. These services range from the provision of sight tests and eye health advice and fitting of spectacles and contact lenses which require the assistance of a professional, to more standard products such as contact lens solutions and eye care products which can be easily purchased from a supermarket, pharmacy or over the internet. These services have distinct supply chains but are provided collectively by the parties and other bricks and mortar retail opticians. Figure 1 below sets out the breakdown in sales by product category (spectacles, contact lenses, sight tests, etc.).

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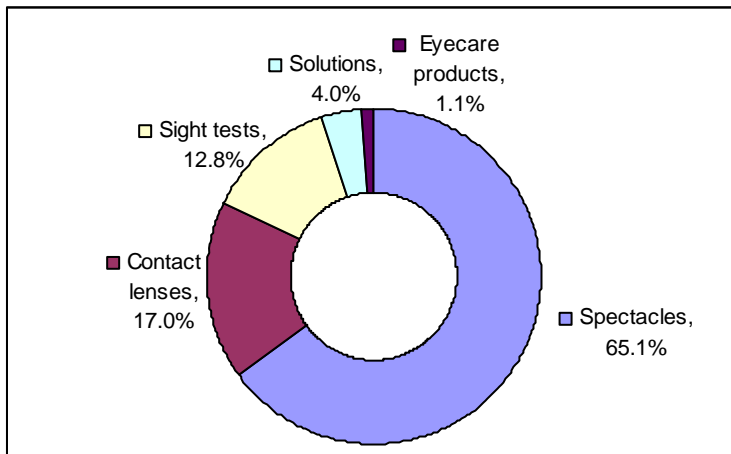
<sup>3</sup> Optometrists examine eyes, test sight and prescribe spectacles or contact lenses. They can also fit spectacles and contact lenses, give advice on visual problems and detect any ocular disease or abnormality. Dispensing Opticians advise on, fit and supply the spectacles.

<sup>4</sup> "Optical Goods and Eyecare, Market Intelligence, May 2008", Mintel, (the Mintel Report, May 2008), p 31.

<sup>5</sup> The Mintel Report, May 2008, p 9.

<sup>6</sup> David Ormerod Hearingcare operates 154 hearing care centres within Boots Opticians premises. The Hearing Company offers hearing services in D&A branches. Neither AB or D&A has any ownership interests in either of these hearing care companies.

**Figure 1: Market segmentation by product sales in 2007**



Source: Mintel Reports, February 2008 (p 7) and May 2008 (p 31)

11. Laser eye surgery is a permanent alternative to corrective vision aids such as spectacles and contact lenses (and therefore potentially represents a threat to the market for retail opticians' services). Although it is becoming more common place, with one chain, Optical Express, recently starting to offer this service in addition to its more usual optical service, laser eye surgery remains limited with only 2 per cent of the population having chosen to undergo the procedure as opposed to the 60 per cent of the population that continues to wear spectacles.
12. The OFT has not considered previously the product scope for retail opticians in the UK. However, the OFT has considered in some previous retail mergers<sup>7</sup> whether it is appropriate to assess the degree of competitive constraint at the level of the overall retail proposition or on the basis of product categories or individual products.
13. It is important for the OFT not only to consider the degree of competition within individual product categories (for example sight tests, spectacles sales) but also to consider that stores may compete to provide an overall retail proposition to consumers across these categories (for example in the way that supermarkets compete to provide an overall grocery retailing proposition to shoppers, in addition to competing within individual grocery

<sup>7</sup> OFT decision of 6 December 2005 on the anticipated acquisition by HMV Group plc of Ottaker's plc; OFT decision of 23 March 2005 on the anticipated acquisition by Somerfield plc of 114 Safeway stores from WM Morrison Supermarkets plc.; OFT decision of 15 April 2008 on the completed acquisition by Home Retail Group plc of 27 leasehold properties from Focus (DIY) Ltd; The OFT decision of 20 March 2009 on the completed acquisition by NBTY Europe Limited of Julian Graves Limited.

product lines). The importance of the retail proposition as a whole will depend in part on consumers' perceptions and habits and will be greater in situations where the consumer sees the outlet as a 'retail destination' in itself, actively purchasing a basket of goods in the outlet across a range of categories. Conversely, in circumstances where consumers travel to stores in order to purchase a single specific product, it is less likely that the retail proposition as a whole will be as important.

14. With regard to retail opticians, the OFT's investigation indicated that all bricks and mortar providers offer a full range of optical services to their customers. Moreover, there is some evidence suggesting that a consumer will purchase a 'basket' of goods across the categories of products and services available in retail opticians. In particular, we note that some 62 per cent of customers will purchase their spectacles where they have their eyes tested.<sup>8</sup> The OFT, therefore, considers that, in this case it is appropriate to consider the different retail optical services as part of one retail offer.

#### **Effective competitor set**

15. The OFT has in some previous retail mergers<sup>9</sup> considered whether there are separate markets on the basis of store size or distribution channels. In the case of retail opticians, all bricks and mortar providers will generally offer a full range of services and products to their customers based on the professional services of similarly qualified staff. However, the OFT notes that small independent operators do not have the same scale as large multiples which could have a negative impact on their ability to compete. This issue is discussed in paragraphs 17 to 27 below.
16. In addition to traditional opticians' businesses such as retail opticians' chains and independent local opticians' outlets, optical services are also available from supermarkets and companies selling on the internet. The OFT therefore analysed whether these two distribution channels posed a competitive constraint on the parties. See paragraphs 28 to 30 below.

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<sup>8</sup> The Mintel Report, May 2008, p 73. Conversely, only 8 per cent of customers purchase their contact lenses where they have their eyes tested.

<sup>9</sup> See footnote 7.

## Independent local opticians

17. The OFT considered which providers of retail opticians services provided an effective competitive constraint on the parties, in particular whether independent local opticians compete effectively with multiples.
18. At the outset, it is worth observing that there is no clear definition of what constitutes an 'independent local optician' or a 'multiple'. We note that the most quoted independent industry research company, Mintel, specifically names the five largest multiples, Specsavers, D&A, Vision Express, Boots and Optical Express in its market share calculations. All other optician businesses are aggregated within categories such as 'others' (see table 1 below on national market shares by value), or 'other groups' and 'independents' (see table 2 below on national market shares by number of outlets). The category 'others' refers to sales by all opticians outside of the five large multiples. The category 'other groups' refers to retail opticians with ten retail outlets or more (including opticians operated by supermarkets Asda and Tesco), while the category 'independents' refers to retail opticians with less than ten retail outlets.
19. Defining 'multiples' as only the five largest chains seems overly restrictive as it disregards a large number of smaller national or regional chains, many of whom are growing. However, it is also necessary to take account of different business conditions faced by stand-alone operators or small, locally-based chains. 68 per cent of all retail optician outlets<sup>10</sup> are operated as solo operations or as part of small chains of less than ten outlets (see table 2), and as such could be perceived to be facing different business conditions than the larger multiples.
20. Second, we note that any cut-off point for what is to be considered as a 'multiple' or 'independent optician' is by definition arbitrary. Accordingly, regardless of the particular categorisations used by Mintel, the OFT has analysed the similarity of retail offering across the broad categories of retail optician businesses – that is, the large multiples, smaller national and regional chains, and independent locally-based businesses. The OFT found that the product and service offering across all types of optician business is very similar on the basis of the following:

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<sup>10</sup> We found no equivalent market share figure for these smaller operators according to total value of sales, although based on table 1 the relative strength of 'independents' will be lower on the basis of the value of sales than it is on the basis of outlet numbers.

- All opticians need to fulfil the same set of basic requirements in order to practise as a retail optician. As a result, they offer the same services (that is, the provision of sight tests and the supply and fitting of spectacles and contact lenses), comparable product range (all opticians in general offer ophthalmic and contact lenses from a variety of suppliers and, in relation to the former, in a variety of frames) and operate within very similar outlets (opticians generally operate from similar sized and similar looking outlets).
  - All opticians need to be registered in order to practise and carry out the functions described above (see footnote 3).<sup>11</sup>
  - All opticians must comply with the same set of criteria in order to secure an NHS contract.<sup>12</sup>
21. This situation differs from the OFT's experience with some other retail markets, such as sports retailing, where some operators offer a wide variety of sports equipment for a variety of sports disciplines, while others may focus on certain types of equipment or certain disciplines. Similarly, in grocery retailing, the OFT has historically found considerable differences in the size of outlets (varying from convenience stores to large grocery stores) and the width of range (with differences, for instance, between medium-sized grocery stores offering a full range of grocery products and discounters offering only a part of that range).
22. Given this similarity in product and service offering, the OFT's starting position in this case was to consider that the market consists of all types of retail optician businesses, and that it would not be appropriate to divide the market according to broad and potentially arbitrarily defined categories of retail business. However, a third party, [ ] argued that stand-alone operators could not be considered as effective competitors mainly because they did not have the scale necessary to compete with large multiples.

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<sup>11</sup> Licences to Practise are being introduced in 2009 as a result of the Government White Paper - *Trust, Assurance and Safety - The Regulation of Health Professionals in the 21<sup>st</sup> Century* ("Trust, Assurance and Safety", published in February 2007. These licences will permit the holder to carry out the functions appropriate to their qualifications, described at footnote 3 above.

<http://www.opticianonline.net/Articles/2009/03/23/23042/Revalidation+a+licence+to+practise.html>

<sup>12</sup> See paragraph 56.

According to this third party, scale was particularly important to obtain large discounts from upstream suppliers, better rental conditions and large marketing budget. [ ].

23. In response to this argument, the parties provided a substantial body of evidence purporting to show that independent operators do constitute a significant competitive constraint on them. In particular, the parties provided evidence showing that they continuously monitor the product and service offering from independent operators, and provided examples of cases where they have undertaken local initiatives to respond to the competitive constraint coming from the independents. More specifically, the parties provided evidence showing the following:
- a. Both parties carry out regular detailed market research which analyses competitive conditions in optician retailing. This research includes detailed reference to and monitoring of independent opticians.
  - b. The market research of both parties showed that customers consider a variety of criteria when they choose their retail optician. Price was only one of these criteria and not the most important – other criteria included product/service quality, staff helpfulness and attitude, trust and expertise.
  - c. The market research of one party, Boots, found that independent local opticians outperformed all multiples – including the parties - on all tracked criteria, including price.<sup>13</sup> According to this research, only one multiple, Specsavers, outperformed local independent opticians on price.
  - d. D&A provided a number of examples of marketing initiatives that it had undertaken at a local level in response to competition from independent operators.<sup>14</sup> Similarly, Boots provided examples of local entry analysis that had been undertaken by prospective franchisees, which included an appraisal of independent local opticians and smaller chains that were

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<sup>13</sup> This research is carried out on behalf of the merging party, Boots, by an independent research company, Holden Pearmain, on a monthly basis. It tracks customer satisfaction with the following aspects of the retail offer: (i) price, (ii) product quality, (iii) staff helpfulness, (iv) staff attitude, (v) trust and (vi) expertise.

<sup>14</sup> D&A provided examples of marketing initiatives that it had implemented in response to the threat from local independent opticians to sales in its stores located in the following areas: Walsall, Stretford, Knutsford, Rugeley and Kenilworth.

present in the local area.<sup>15</sup> These examples show that the parties monitor competition at a local level, including the performance of independent opticians, on different aspects of the retail offer. More importantly, some of the examples show that the parties have taken specific actions at a local level in response to activity by independent opticians. For example, Boots developed a local 'action plan' in Victoria Centre, Nottingham, by way of a specific response to competition from a local independent optician. In the OFT's view, this type of evidence is particularly probative of effective competition.

- e. In 2008, one of the parties, Boots, rolled out a project, "Fabled Service", aimed specifically at improving customer service in Scotland. Given that Boots' research showed that only independent local opticians outperformed it on customer service, Boots argued that this project was a direct response to competition from the independent opticians.
24. We further note that a third party, [ ], also a large multiple, also carries out similar market research to that carried out by the parties and also monitors the performance of the local independent opticians.
  25. Finally, despite making efforts to contact a large number of independent opticians, the OFT received only a very small number of views from the independents. In addition, what little evidence it received was somewhat mixed. On the one hand, some independent opticians considered that they were competing very strongly with multiples. On the other hand, others stated that they could not compete with multiples on prices, although some suggested that they tended instead to differentiate their retail offer focusing on a high service, high quality offering. In the OFT's view, such product differentiation is consistent with competition in the same product market and is particularly likely in markets where suppliers compete over a range of parameters.
  26. With respect to the evidence that the numbers of independents were decreasing at a fast rate, the OFT found that the numbers of outlets operated by independent local opticians and smaller chains had indeed fallen. The numbers of independents as a proportion of all outlets have

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<sup>15</sup> Boots provided examples of entry analysis in Hanley in Stoke on Trent, Newark and the Victoria Centre, Nottingham.

decreased by 3.4 percentage points between 2003 and 2007 (see table 2). The industry research, Mintel Report, attributes the fall in numbers to retirement and absorption of small independent outlets by medium sized groups. We did not find any evidence to support the view that the numbers of independent local opticians are falling as a result of the competition from the multiples.

27. In the light of the evidence above, we concluded that independent opticians currently provide a significant competitive constraint on the larger multiples, including the parties, and therefore should be considered, along with the smaller national and regional chains, part of the same effective competitor set.

#### Supermarkets

28. Asda and Tesco entered the optician's market in 2003 by establishing optician outlets in some of its stores. Asda currently operates 81 in-store outlets and Tesco 114 outlets.<sup>16</sup> Both companies are expanding the numbers of their opticians' outlets further.
29. Supermarkets offer a separate opticians outlet within their retail premises which appear to provide a comparable retail offer to more traditional bricks and mortar opticians with a particular focus on low prices. However, it has not been necessary to conclude on whether these supermarkets should be considered part of the effective competitor set as they currently account for only 2 per cent of the retail opticians' market and, as such, their inclusion would not make a material difference to the OFT's conclusions in this case.

#### Internet providers

30. Internet opticians' services providers are unable to offer sight tests and contact lens and spectacle fittings, which require examination by or attention of an optometrist or a sales person. Their business model is based on heavy discounting as compared to bricks and mortar retailers in products such as spectacles and contact lenses. Internet providers are likely to compete with bricks and mortar providers on follow-on contact

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<sup>16</sup> ASDA – 81 in-store optical outlets [www.asda-contactlenses.co.uk/optical\\_store\\_finder.jsp](http://www.asda-contactlenses.co.uk/optical_store_finder.jsp)  
Tesco – 114 in-store optical outlets [www.tescoopticians.com/finder.aspx](http://www.tescoopticians.com/finder.aspx)

lens purchases which do not require specialist fitting. However, it has not been necessary to conclude on whether internet providers should be considered part of the effective competitor set as they currently account for only 1 per cent of the retail opticians' market and, as such, their inclusion would not make a material difference to the OFT's conclusions in this case.

## **Geographic Scope**

### National dimension

31. The parties submit that the relevant geographic market is national since there are a number of large players which make strategic decisions at a national level and that local independent opticians typically base their pricing on the national pricing decisions taken by Specsavers, which is described by the parties as well as by other multiples and independent industry reports as the market leader and, as a result of its aggressive pricing strategy, the principal price-setter.

### Local dimension

32. The parties submitted that, if the OFT assessed the merger on a local market basis, the appropriate isochrone would be a six kilometre radius from the parties' outlets. This isochrone is used by Boots in its decisions on opening new stores. Its internal data shows that [65-75] per cent of its customers travel on average approximately six kilometres to visit a Boots Opticians outlet. Data from D&A showing that [70-80] per cent of its customers travelled an average of six kilometres to visit a D&A store also supported this view.
33. The parties argued against the use of a one mile isochrone, which the OFT has used in previous mergers in the retail sector,<sup>17</sup> given the evidence provided to the OFT (already referred to above) indicating that customers were prepared to travel significantly further than one mile to purchase optical products and services.

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<sup>17</sup> See in particular, the OFT decision of 26 February 2006 on the acquisition by Boots of Unichem concerning the retail pharmacy market.

34. However, a third party, [ ], argued that the OFT should consider outlets within a two to three mile (3.2 to 4.8 kilometre) radius around the outlets. This party also suggested that in London and major urban areas a smaller radius of one mile (1.6 kilometres) should be considered.
35. Notwithstanding the parties' arguments that pricing decisions are made at the national level, the geographic ambit of optical retailing from the demand-side is clearly local as consumers carry out their shopping locally. Moreover, as indicated by the internal research undertaken by the parties, customers are concerned not just with price but also other non-price aspects of the retail opticians' offer, such as quality, expertise and helpfulness of staff. Consequently, the OFT's starting assumption for geographic market definition in retail goods and services markets has therefore been—and continues to be, absent compelling evidence to the contrary—that there will be material local competition across each relevant local area to attract and retain customers, even if not on every parameter of PQRS.<sup>18</sup> In addition, in this case, the parties provided evidence indicating that they do react to competitors at the local level, thereby reinforcing the OFT's starting assumption of local – as well as national – competition.
36. The OFT therefore considered the extent of the appropriate local catchment areas. In practice customers will not always visit the optician local to their home address, but may choose to visit an optician near to where they work. This may skew the average distance travelled and widen the local isochrone. The parties' data did show some discrepancies between the average distances travelled for different types of area, in particular certain local and regional economic centres showed higher travelling distances for some of the parties' customers which might suggest that customers were commuting.
37. The OFT therefore took a very cautious approach by considering the overlaps within a narrow geographical market of one mile on a case by case basis. Where, on this narrow basis, the merger would lead to a fascia reduction from four to three, or fewer, competitors, the OFT then went on to analyse the individual area to find a radius within which [65-75] per cent of customers live. Given that the distances where [65-75] per cent of customers live will vary according to the local area, no precise definition of

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<sup>18</sup> See Completed acquisition by Home Retail Group plc of 27 leasehold properties from Focus (DIY) Ltd, OFT decision 15 April 2008 (Homebase/Focus).

an appropriate local isochrone has been attempted. It is important to note that the OFT's standard approach to date in previous retail cases has been to analyse the local area within which 80 per cent of sales have been generated by the merging parties. The OFT has not altered this approach. However, the parties carried out their own local competitive analysis on the basis of a [65-75] per cent isochrone. Since such an approach is more conservative than the OFT's standard approach, and since such an analysis did not raise competitive concerns, the OFT did not find it necessary to deviate from the parties' approach in this case.

## HORIZONTAL ISSUES

38. The parties overlap in the retail market for the provision of optical services and products in brick and mortar opticians.

### Unilateral Effects

#### National analysis

39. On the national basis, there are five companies with a non-negligible share of sales of retail optical services and goods: Specsavers, D&A, Vision Express, Boots Opticians and Optical Express. Together, they account for approximately half of all sales. See table 1 below.

**Table 1: Retailers' national market shares by value – 2002-2007 difference**

<b>Retailer</b>	<b>2002%</b> %	<b>2007</b> %	<b>Change 2002-7</b> %
Specsavers	22.0	21.9	-0.1
D&A	9.2	8.5	-0.7
Boots Opticians	10.3	7.1	-3.2
Vision Express	9.8	9.4	-0.4
Optical Express	3.1	4.3	+ 1.2
Other	45.6	48.9	+ 3.3
Total	100	100	-

Source: Mintel Report, February 2008 (p 107)

40. The proportion of the category "other" which includes smaller national and regional chains, supermarkets and independent local opticians has increased since 2002 by 7 per cent. With the exception of Optical Express, the shares of the large retailers have diminished. The parties in particular

have lost ground with Boots Opticians losing almost a third of its share of sales.

41. Industry experts suggest that supermarkets Asda and Tesco together have about 2 per cent of the market by value, while internet businesses have between them 1 per cent of the sale of spectacles.<sup>19</sup> The impact of online operators is considered to be greater in the contact lens business,<sup>20</sup> although estimates of the market share were not available.
42. When analysed by the number of outlets, a significant majority (68 per cent) of optician outlets are run by independent operators. The five large retailers only account for 22 per cent of all outlets. See table 2 below.

**Table 2: Retailers' national market shares by outlets – 2003-2007 difference**

Retailer	2003 %	2007 %	change 2002-7 %
Specsavers	5.9	7.7	+1.8
D&A	4.9	5.3	+0.4
Boots Opticians	4.0	4.0	0.0
Vision Express	2.6	2.8	+0.2
Optical Express	2.2	2.8	+0.6
Other groups*	9.2	9.8	+0.6
Independents**	71.2	67.8	-3.4
Total	100	100	-

\*"Other groups" category includes Scrivens, Batemans, Clulow and others with 10 stores or more.

\*\*"Independents" category includes one store operators, small chains with up to 10 outlets and opticians who work from their own home.

Source: Mintel Report, February 2008 (p 109)

43. Since 2003, most of the large retailers have increased the number of outlets, Specsavers most significantly of all. Boots Opticians has been the only exception, reducing the number of its outlets by about 5 per cent. Smaller national and regional chains<sup>21</sup> have also continued to expand. However, there has been an overall reduction (3.4 per cent) in the number of independently operated outlets.

<sup>19</sup> *Op. cit.*, p 131.

<sup>20</sup> *Op. cit.*, p 132

<sup>21</sup> National chains: Scrivens (139 outlets), Rayner (136 outlets), Batemans, now owned by Vision Express, (79 outlets) and Optica Clulow (43 outlets and 5 joint venture stores). Regional chains: Leightons (36 outlets), Black & Lizars (25 outlets), Conlons Opticians (18 outlets), Haine & Smith (18 outlets), Alders Opticians (15 stores), Owl Optical (13 stores), Martyn Kemp (10

44. On the basis of the value of sales within the opticians' market in the UK, the parties will have a combined share of 16 per cent, increment 7 per cent.<sup>22</sup> Their share by number of outlets will be considerably smaller (9 per cent). Given the presence of a number of smaller national and regional chains (some of whom are of similar size to the large multiples) as well as the significant number of smaller independent optician businesses, and in the absence of any third party concerns, the OFT does not consider that the transaction raises competition concerns at the national level.

### Local market analysis

45. The parties overlap in 320 areas on the basis of a six kilometre radius and 194 areas on the basis of a one mile radius (that is, 1.6 kilometre radius).<sup>23</sup> On the basis of a six kilometre radius, the parties have not identified any areas where the transaction would lead to a reduction of competitors, including local independent opticians, from four to three or fewer. On the basis of the one mile radius, the parties have identified four areas where the transaction would lead to a reduction of competitors, including local independent opticians, from four to three. These areas are [Banstead, Dartford, Hornchurch and West Thurrock (Lakeside Shopping Centre)].
46. As noted earlier, the OFT's approach to date has been to analyse the local area within which 80 per cent of sales have been generated. On that basis, a one mile radius is likely to be too conservative as, in most cases, 80 per cent of customers live further than a one mile from the outlet. We note, however, the argument presented by a third party, [ ], that within London and major urban areas, a one mile radius is likely to be an appropriate isochrone given the nature of customer shopping (relying more on commuters' trade) and less willingness to travel long distances.

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stores), Robert Frith (9 outlets), Colin Lee (7 outlets), 20-20 (one off optical superstore in London).

<sup>22</sup> This market share is based on a total market that includes Tesco and Asda, and internet providers. However, excluding the supermarkets and internet providers from this calculation will not materially affect the parties' share (and therefore the OFT's conclusions) given the limited sales currently made by the supermarkets and internet providers.

<sup>23</sup> We note that even though the number of overlap areas is larger on the basis of a 6 km radius than on the basis of a 1 mile radius, the 6 km radius does not produce a larger number of problematic local areas. This is because of the relative high density of the spread of opticians' outlets across the UK. This high density will mean that while the number of overlap areas will increase with the widening of the local radii, the total number of competitors within these wider radii will also increase. In this case, a local analysis based on a smaller radius is therefore likely to be more conservative than an analysis based on a wider radius.

47. We analysed in-depth the four overlap areas where, based on a one mile radius, the number of competitors would decrease from four to three following the merger. All four areas are in the Greater London area. Further information was requested from the parties to enable the OFT to understand where the trade is generated in these areas and, as a result, it was satisfied that post-merger, customers would be left with more than four fascia in each of these areas.<sup>24</sup>
48. The same third party, [ ], suggested a two to three mile radius (that is, 3.2 to 4.8 kilometre radius) was appropriate in areas other than London and major urban areas. On that basis, this party identified 96 areas on the basis of a two mile radius where the merger would lead to a reduction of competitors from four to three or fewer but only when independent competitors are excluded.<sup>25</sup> The third party did not identify any local markets where the merger would lead to a reduction of competitors from four to three or fewer when independent competitors were included.<sup>26</sup> Given our conclusion that independent local opticians should be part of the effective competitor set, we do not believe that the proposed transaction will raise competition concerns at the local level, whether viewed on the basis of a one or two mile or six kilometre radius.

### **Coordinated effects**

49. The OFT does not expect the merger to result in the creation or strengthening of coordinated effects at the national or local level. The OFT received no evidence during its investigation of existing coordination in the market place. When analysed on a national market basis, the remaining competitors will remain relatively asymmetric in terms of size. Post merger, Specsavers would still be the market leader with 22 per cent of the market by value; the parties will have 16 per cent of the market by value post

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<sup>24</sup> In the four areas filtered out on the basis of a one mile isochrone, the OFT asked the parties to provide information on the maximum travelled distance for [65-75] per cent of the customers (as explained in paragraph 37 above this was a more conservative measure than our usual 80 per cent benchmark). We then asked the parties to draw a new isochrone based on that distance in each area and provide us with information about competing stores within this new isochrone. Finally, we note that in all four areas, the parties' stores were located very close to each other such that any re-centring analysis would not have made any difference to our conclusions.

<sup>25</sup> This third party generated these overlap areas on the basis of a 2 mile radius centred on its own outlets.

<sup>26</sup> The third party provided evidence that when independent competitors were included there were only 21 locations where the merger would result in there being five or fewer store.

merger, and Vision Express 9 per cent. In addition, there is a large fringe of independent operators and smaller national and regional chains.

50. When analysed at a local level, the numbers of competitors were, in general, very large, including large national chains and smaller national and regional chains (as well as a myriad of local independent operators whose identity varied from area to area). Again, the fragmented nature of the market and the large number of competitors would make coordination on the local basis difficult both pre-merger and post-merger.
51. Finally, any possible coordination will be further hampered by the fact that the suppliers of retail opticians' services do not compete solely on price. Customers also value the services and the quality of the products and services offered.

### **Barriers to Entry**

52. The parties argued that barriers to entry into the retail opticians market were low and that new opticians' outlets are capable of being opened within a relatively short time frame. According to the parties, premises often become available on high streets and suitably qualified staff can be recruited from competitors or as graduates. Entry was particularly easy for franchisees as franchisors can reduce barriers to entry by assisting with choosing and refurbishing a store, providing equipment and training staff.
53. By contrast, one third party, [ ], argued that several factors constitute barriers to entry into the opticians market. It mentioned two key barriers. First, it suggested that recruitment of professionally qualified staff was difficult. It argued that some staff were often unwilling to work on Sundays and in the evenings; that given the location of universities providing optometrist training, some areas of the country suffer from a chronic lack of optometrists; and [ ].
54. Second, the third party also suggested that regulatory requirements limited the numbers of NHS contracts which in turn represented a serious barrier to business, since it is not possible to carry out NHS sight tests and dispense to NHS patients in a private opticians practice without having a contract with the local Primary Care Trust or Health Board. Such contracts will only be issued if the store or practice meets certain criteria which include minimum opening hours, qualifications, record keeping, etc. The

third party argued that, given that 70 per cent of all sight tests are NHS sight tests, it would be 'very difficult (if not impossible)' to remain profitable without an NHS contract.

55. With respect to the recruitment of staff, the OFT had no means of verifying the parties and third party's claims, but note that the Mintel reports provide evidence that some opticians (smaller chains, supermarkets and Specsavers in particular) have continued to increase the numbers of their outlets over the past couple of years, which suggests that recruitment has been possible.
56. With respect to the legal requirements placed on retail opticians, the OFT contacted health officials in England, Wales, Scotland and Northern Ireland and they all confirmed that obtaining the NHS contract is straightforward and that exclusions relate to issues such as previous disqualification from practising, previous conviction for criminal offences leading to more than six months served in prison and other serious circumstances such as having being declared bankrupt. Primary Care Trusts also require that the owner of the opticians' outlet recruit staff that are appropriately qualified, that is, that the staff carrying out the sight tests are qualified to do so. More importantly, the OFT was informed that there are no limits on the numbers of NHS contracts that can be granted in an area.
57. However, the OFT has not needed to conclude on barriers to entry in this case given that competition concerns are not considered to arise.

## **VERTICAL ISSUES**

58. A third party, [ ], also raised a number of potential vertical issues allegedly arising from the merger's effect on three markets; the supply of frames, the supply of ophthalmic lenses and the supply of hearing aid services. These are discussed below.

### **Supply of frames**

59. The third party argued that the merger will potentially lead to a foreclosure in the market for the supply of frames. This is because post-merger, De Rigo which owns D&A will be able to foreclose a key channel of distribution for other frame manufacturers. It considered that this

foreclosure effect would be compounded if De Rigo had reciprocal supply agreements with Luxottica (the market leader in the supply of frames) whereby Luxottica would have preferential access to the Boots Opticians estate.

60. Both parties are currently supplied by a large number of frame suppliers including De Rigo and Luxottica. De Rigo also supplies Vision Express and a number of other small retail chains and independent opticians.
61. The parties explained that the merged entity will have a [ ] year non-exclusive agreement with De Rigo for the supply of spectacle frames which corresponds to [10-20] per cent of the parties' total requirement for frames. The parties further explained that the agreement had a minimum purchasing requirement of [ ] frames out of an estimated total annual requirement of [ ] frames which is [10-20] per cent of the merged entity's total annual requirement.
62. The parties also explained that De Rigo is also a supplier to Luxottica's UK retail business, Sunglass Hut, and that Luxottica is the supplier for the Spanish De Rigo chain, General Optica S.A.
63. According to Mintel, De Rigo has a market share of frames of 3 per cent or, according to the parties, below 10 per cent. In either case, the market share is too low to create competition concerns in the event that De Rigo refused to supply other opticians with its range of frames. Similarly, the combined market share of the parties in the opticians' market is only 16 per cent which is unlikely to lead to foreclosure in the event that the merged entity refused to sell any other frames than De Rigo's.

### **Supply of ophthalmic lenses**

64. The third party argued that the merger will potentially lead to a foreclosure in the market for the supply of ophthalmic lenses. This is because post-merger the merged entity may choose only one of its current suppliers, in particular [ ], and thereby foreclosing access to an important distribution channel to the other suppliers.
65. [ ]

66. With 16 per cent of the total sales of the retail opticians' services, the parties are an important customer for the ophthalmic lenses suppliers. However, this share of total sales is not high enough to confer the market power necessary to foreclose the retail market to any one ophthalmic lens supplier.

### **Supply of hearing aid services**

67. A third party argued that the merger would have an impact on the supply of hearing aid services, since, it argued, Boots Opticians has a vertical arrangement with David Ormerod Hearingcare (DOH) and D&A has a contractual relationship with another optician, Scrivens, to provide it with hearing aid services through The Hearing Company (THC).
68. This issue was put to the parties who explained that neither provided hearing aid services. Their involvement in the hearing aid sector was limited to providing retail space and certain ancillary support services to DOH in the case of Boots Opticians and THC in the case of D&A.
69. The parties noted that Specsavers is also active in the hearing aid business and has the largest share of supply of hearing aids at 18 per cent based on British Hearing Aid Manufacturers Association's estimates.
70. Given the convincing rebuttals by the parties to the third party's concerns, the OFT does not believe that vertical issues will arise following the merger in any of the market segments put forward by this third party or any other markets in the supply chain.

### **THIRD PARTY COMMENTS**

71. The OFT contacted a number of the larger chains competing with the parties. Only [ ] came back with a response, and its concerns that the merger would lead to a significant lessening of competition have been discussed in detail above. Despite making considerable efforts to contact a large number of independent opticians, the OFT received only a small number of views from them, which have also been discussed above.
72. The OFT received a response from [ ].

## ASSESSMENT

73. The parties overlap in the retail market for the provision of optical services in bricks and mortar opticians.
74. Prior to considering the impact of the merger at the national and local level, the OFT considered who should be included in the effective competitor set. One third party argued that independent opticians should not be considered as effective competitors to the parties because they did not have the scale necessary to compete with large multiples. According to this third party, scale was particularly important to obtain large discounts from upstream suppliers, better rental conditions and large marketing budget. The third party further argued that the fast decreasing numbers of independent local opticians was evidence that they were unable to compete with the multiples.
75. However, the parties provided a substantial body of evidence clearly demonstrating that the independent opticians do provide an effective constraint on the parties. This evidence included internally commissioned market research reports that included detailed analysis on the independents, and examples of the parties monitoring and, on some occasions, reacting to independents in specific local areas.
76. At a national level, and in the absence of any third party concerns, the OFT considered that the parties' combined share of the optician's market in the UK was not high enough (16 per cent, increment 7 per cent) to raise competition concerns, in particular given the number of remaining players (both large multiples, smaller national and regional players as well as independent operators).
77. The OFT also considered the impact of the merger at the local level given its starting assumption in retail markets that competition occurs at a local level (on the basis that consumer demand for retail products and services is locally-driven) and in light of evidence provided by the parties indicating that they monitor and react to local competition.
78. The parties overlap in 320 areas on the basis of an isochrone with a six kilometre radius and 194 on the basis of an isochrone with a one mile radius (that is, 1.6 kilometre radius). Under the narrower isochrone, there were only four areas where the merger would lead to a reduction of

competitors, including independents, from four to three. These areas were Banstead, Dartford, Hornchurch and West Thurrock (Lakeside Shopping Centre). For each of these areas the OFT asked the parties for the distance that [65-75] per cent of their customers travel for sight tests and the purchase of optician's products. This information indicated that these local markets were all wider than one mile, on such wider basis none of the above locations gave rise to an expectation of a significant lessening of competition because post merger none would have less than four optician outlets in the parties' catchment area.

79. The OFT has considered carefully the concerns raised by third parties about the effect of the merger both on local markets as well as potential vertical issues around the supplier of frames, ophthalmic lenses and hearing aid services. But, based on the parties' responses on these points the OFT is comfortable that no such issues arise as a result of the merger.
80. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

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