

Anticipated acquisition by Essilor International (Compagnie Generale D'Optique) S.A. of Signet Armorlite Inc.

ME/3992/09

The OFT's decision on reference under section 33(1) given on 11 March 2009.
Full text of decision published 31 March 2009.

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

PARTIES

1. **Essilor International (Compagnie Generale d'Optique) S.A. (Essilor)** is a French company listed on Euronext. It is the parent and holding company for the Essilor Group of companies, whose main activities are the manufacture and supply of finished glass and plastic ophthalmic lenses to opticians worldwide. Essilor also supplies ophthalmic substrate¹ to independent laboratories and integrated opticians for shaping and additional processing. In the UK a subsidiary, Essilor Limited, sells a range of branded ophthalmic lenses; another, BBGR, sells non-branded private label lenses to opticians; while two further subsidiaries, Sinclair and United, are lens wholesalers. Essilor also supplies safety lenses to [].
2. **Signet Armorlite Inc. (Signet)** is a privately owned company based in the USA. Its main activities are the manufacture and supply of finished glass and plastic ophthalmic lenses to opticians worldwide (although glass ophthalmic lenses are not supplied to the UK), and the supply of ophthalmic substrate to independent laboratories and integrated opticians for shaping and additional processing. While Signet also supplies glass and

¹ Ophthalmic substrate is a semi finished plastic ophthalmic lens. Substrate requires further laboratory processing before the lens can be sold to the end consumer.

plastic safety lenses and plastic safety glasses, these are not supplied to customers in the UK.

3. Signet controls the licence rights to Kodak Lens Vision Centres (KLVC) which are operated by opticians through individually arranged agreements with Signet. Through these centres it sells its own and Kodak branded lenses in the UK. Signet owns the right to use the Kodak brand until [].
4. In 2007, approximately [] of Signet's worldwide group turnover was generated in the UK.

TRANSACTION

5. Essilor, through its wholly-owned subsidiary, EOA Holding Co. Inc. has agreed to acquire all the shares of Signet. The transaction has been notified in Brazil, Germany, Spain and the United States, and, to date, cleared by Germany and Spain. The transaction was announced on 15 January 2009 and the administrative deadline for a decision is 12 March 2009.

JURISDICTION

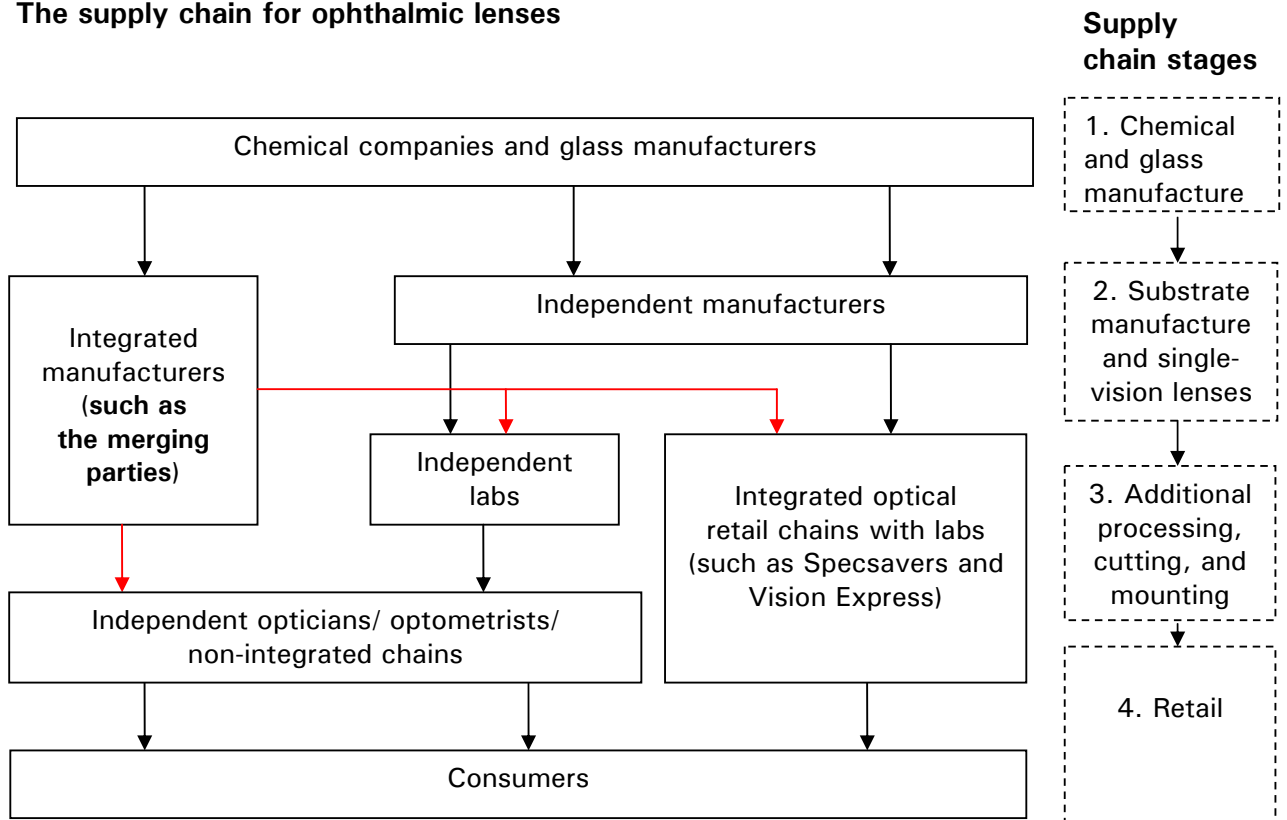
6. As a result of this transaction Essilor and Signet will cease to be distinct. The parties overlap in the supply of ophthalmic substrate and finished plastic ophthalmic lenses in the UK and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

BACKGROUND

Ophthalmic lens supply chain and types of lenses

7. The diagram below shows the supply chain from the supply of chemicals for the substrate to the consumer purchase. The parties compete at stages two and three of the supply chain.

The supply chain for ophthalmic lenses



8. **Stage 1** – concerns the production of the chemicals required to make ophthalmic lenses – plastic monomer and glass.
9. **Stage 2** – The production of the ophthalmic substrate involves the processing of the liquid monomer for plastic lenses. Substrate is made by two types of firm: independent manufacturers that do not complete any further lens processing; and integrated manufacturers, such as the parties, who complete additional processing of the lens.
10. Both independent manufacturers and integrated manufacturers sell substrate to independent laboratories and to large optical retail chains that have their own laboratories. Integrated manufacturers also complete the final stage of processing to create lenses ready for sale to consumers, and therefore compete with some of their downstream customers.
11. **Stage 3** – Integrated manufacturers, independent laboratories, and large optical retail chains with in-house laboratories finish the substrate through shaping and additional processes to enable it to target the vision defects of the final consumer. Integrated manufacturers and independent laboratories sell finished prescription lenses to independent opticians and non integrated

chains. A finished lens will be designed to correct various vision defects and may also have specialist coatings such as a tint, or anti-scratch coatings. The three main categories of lens are:

- **Single vision**, which have the same optical correction over the entire lens and require minimal additional processing
- **Bi/tri-focal**, which have two or three different vision corrections over the surface of the lens, and
- **Progressive** (also known as vari-focals), which provide more than one vision correction over the surface of the lens. The main difference between bi/tri-focals and progressives is that there is no discernable line on the plane of the lens where the lens changes from near to distant focus. Because of the complexity of the technology and the manufacturing process, progressives are typically more expensive than single or bi/tri-focal lenses.

12. **Stage 4** – Finished lenses are then shaped to fit and mounted on the selected spectacle frame chosen by the consumer. Fitting and mounting may be completed by the laboratory.

MARKET DEFINITION

13. The parties overlap in the supply of ophthalmic substrate and finished plastic ophthalmic lenses in the UK.

Product scope

14. The parties have submitted that the appropriate market definition should be i) the market for the supply of plastic ophthalmic substrate to independent laboratories and integrated optical retail chains and ii) the market for the supply to independent opticians / optometrists and non-integrated chains of all types of finished ophthalmic lenses. This broadly follows the European Commission's (EC) decision in the Zeiss/ EQT/Sola JV in 2005,² which considered the manufacture of ophthalmic substrate and finished plastic ophthalmic lenses. While for the purposes of that decision the precise definition of the product market was left open, the EC's market

² *Comp /M.3670 – Zeiss / EQT / Sola JV 2005*

investigation broadly supported a market definition that segmented the manufacture of ophthalmic lenses by material (either plastic or glass) and by the type of corrective design (single vision, bi/tri-focal, progressive). However, the EC also noted that there was some evidence of supply-side substitutability between glass and plastic lenses, and between suppliers of all types of corrective designs.

Ophthalmic Substrate

15. The EC's decision also considered that the market for the manufacture of ophthalmic substrate and finished plastic ophthalmic lenses could be further divided by sales channel into sales of finished lenses to opticians and retailers, and sales of ophthalmic substrate to independent laboratories and integrated opticians for further shaping and processing. Ophthalmic substrate is used in the second stage in the supply chain, and is available both branded and generic, and can either be supplied with a specific correction design or as completely un-processed substrate.
16. The parties said that the term ophthalmic substrate meant semi-finished lenses and finished single vision lenses that required shaping (according to the desired corrective type) and additional processing. Third parties agreed with the parties' understanding of the term. Both parties manufacture semi-finished and single vision lenses at their facilities outside the UK. These are mainly supplied intra-group to their own laboratories for shaping and additional processing, as described above.
17. Ophthalmic substrate is supplied by both independent and integrated lens manufacturers. Generic ophthalmic substrate was regarded as a commodity product by the independent laboratories. Two third parties indicated that they were aware of at least eight to 12 major suppliers of plastic substrate.³ Substrate that carries the manufacturer's brand remains a branded product throughout the additional processing and finishing. Essilor, for example, submitted that all of its lenses were not available to independent laboratories in substrate form [], and [].
18. As regards lens type, there was general agreement among the independent laboratories contacted by the OFT that switching between suppliers of

³ Hoya, Shamir Optical, Nikon, Seiko-Pentax, Carl-Zeiss Vision, BBGR, Anglo- Italian, Younger Optical, Norville, Taylor Optical, International Lens Co. WLC, and Jai Kudo.

substrate for single-vision and bi/tri-focal lenses was possible for both branded and generic, but most believed that they would not be able to switch away from an optician's preferred brand of progressive lens. This suggests that brand is less of an issue, at least for, single-vision and bi/tri-focal lenses. For example, one independent laboratory, [] obtains no substrate from any branded substrate supplier and the OFT also received evidence of Signet losing an account to supply substrate, albeit a switch from one branded supplier to another.

19. For progressive lenses the choice of the independent laboratory between using a generic or branded substrate seems largely dictated by the retail optician, although one independent laboratory suggested that there was scope to try to influence opticians' choice of brand for progressive lenses and another said substitution was possible for 'budget' progressives. While lens manufacturers aim their marketing at both independent laboratories and opticians, the importance of the optician to the final lens choice is indicated by evidence from Essilor that showed that [].
20. This evidence suggests that there is some substitution between branded and generic substrate for single and bi/tri-focal lenses, although less so for progressives due to the importance of branding. It has not been necessary, however, to conclude on whether or not generic and branded lenses are part of the same market as competition concerns do not arise on either basis.

Finished Ophthalmic lenses

21. Finished ophthalmic lenses are prepared for the prescribed requirement of the end customer. Consequently, there is little scope for a customer or prescribing optician to deviate from the prescribed corrective design. Notwithstanding this limited demand side substitutability in terms of a customer's prescribed corrective design, the parties noted that the majority of lens manufacturers supplied lenses in all three corrective designs. Several third parties corroborated this. The overlap in corrective designs is because similar technology, materials and knowledge are required to manufacture all three lens designs. This would suggest that supply-side substitution by the lens manufacturer is feasible, which may indicate that all three corrective designs can be regarded as being in the same market, provided any such supply-side substitution is also profitable in response to a small but significant and non-transitory increase in the price of a

corrective design. Indeed, the OFT's market testing indicated that supply-side substitution was feasible.

22. In this regard, []; this would tend to suggest that following a small increase in the price of bi/tri-focal lenses Signet may not have an incentive to switch away from supplying progressive lenses to supply bi/tri-focal lenses. If Signet were representative of the market, this may indicate that the manufacture of progressive lenses is unconstrained on the supply-side by the manufacture of bi/tri-focal lenses, and consequently is a separate market (given the apparent lack of demand-side substitutability). Equally but conversely, it may indicate that the manufacture of bi/tri-focal lenses is constrained on the supply-side by the manufacture of progressive lenses, and consequently that an iterative process of market definition beginning from bi/tri-focal lenses would include progressive lenses. Here, the parties provided data that indicated that for the past four years, while sales of bi/tri-focals have fallen by around three per cent per annum; sales of progressive lenses have increased by around seven per cent on average for the same period, which may suggest supply-side substitution from bi/tri-focal to progressive has been profitable.
23. Nevertheless, since neither market definition (that is, separate market definitions for each corrective design or one market for all three corrective designs) results in competition concerns it has not been necessary for the OFT to conclude on this point.

Plastic vs glass lenses

24. The parties suggested that the relevant market should be restricted to the supply of plastic ophthalmic lenses, as only Essilor supply glass ophthalmic lenses to the UK. The parties went further in indicating that glass and plastic ophthalmic lenses have a number of distinguishing features, which suggest that they are not substitutes for each other. For example, glass lenses are relatively cheap, heavy, less break resistant, and have a lower UV absorption rate. Further, sales of glass lenses are decreasing. On the other hand, plastic lenses are relatively more expensive, are much lighter, are more break resistant, and have a higher UV absorption rate. Further, sales of plastic lenses are increasing. Third parties agreed with the parties analysis, and it was suggested that sales of glass lenses only constituted one or two per cent of all lens sales. However, since most suppliers of plastic ophthalmic lenses also supply glass ophthalmic lenses this could be

regarded as indicating supply-side substitutability, although the OFT did not consider it necessary to conclude on this point as no competition concerns arise even on the narrow market definition (that is, plastic lenses only).

Other sight corrective options

25. Customers requiring prescription lenses have two other alternatives that may be open to them: contact lenses and laser corrective surgery. For the former, several third parties noted that there was limited demand side substitution between glasses and contact lenses and that contact lens wearers tended to have glasses as a back up. On the supply side, the machinery and technical knowledge to manufacture ophthalmic lenses for glasses is different to that required to manufacture contact lenses.
26. Corrective surgery can only be considered an acceptable alternative for a minority. It is much more expensive (costing between £500 and £850 per eye) than a pair of glasses, it may not restore 20/20 vision and is not appropriate for all vision defects. Third parties considered that laser eye surgery would not pose a major competitive threat to the sale of ophthalmic lenses.

Conclusion on product scope

27. In conclusion, while the OFT did not consider it necessary to conclude on product scope as no competition concerns arise on any basis, the OFT has assessed the merger on the basis of the supply of ophthalmic substrate (branded and generic), and, the supply of ophthalmic lenses, both plastic and glass, of all corrective designs.

Geographic scope

28. The EC, in its decision on Zeiss / EQT / Sola, suggested that the relevant geographic market for ophthalmic substrate would be at least EEA-wide in scope, and possibly worldwide. However, it left open the precise definition. The parties and third parties in this case also suggested that the geographic scope for ophthalmic substrate is wider than the UK. While noting the parties and third parties views, the OFT did not consider it necessary to conclude on the geographic scope as no competition concerns arise even on the narrow market definition (that is, UK). Therefore, for the purposes

of its review, the OFT has taken the geographic scope of the ophthalmic substrate market to be the UK.

29. With regard to finished plastic ophthalmic lenses the parties stated that opticians have a preference for local sales and service, leading to a domestic, UK market. However, one customer commented that as long as the lens supplier had a strong brand, it would be happy to buy from an international supplier. Another third party stated that, while lens suppliers often had offices in the UK, they typically manufactured the lenses abroad. Indeed, Essilor does not manufacture lenses in the UK, producing semi-finished lenses and single vision lenses at its 15 manufacturing facilities world wide, of which four are in Europe, and carries out the shaping and additional processing of its lenses at its prescription laboratories of which two are in the UK. Signet produces its semi-finished and finished single vision lenses in Mexico and then carries out shaping and additional processing at its prescription laboratories of which one is located in the UK.
30. In conclusion, the geographic scope of the finished lens market is likely to be at least UK wide. Although some third parties suggested the market may be wider and the parties' unfinished and single vision lenses are supplied intra-group from outside the UK, the OFT did not consider it necessary to conclude on the geographic scope as no competition concerns arise even on the narrow market definition (that is, UK). Therefore, for the purposes of its review, it has taken the geographic scope of the finished lens market to be the UK.

HORIZONTAL ISSUES

Market shares

Ophthalmic Substrate

31. Substrate is purchased by independent laboratories and integrated opticians with laboratories. Many manufacturers produce ophthalmic substrate for internal use, only selling a proportion to the independent laboratories and integrated opticians referred to above. The parties were unable to identify any public sources for estimates of market size for this product, so provided an estimate of their combined market share, excluding any intra group shares (captive sales), based on an estimated market size of some

[]. On this basis, the parties' combined share of ophthalmic substrate to third parties is estimated at [15-25] per cent, increment [5-10] per cent. It should be noted that the only lenses that Essilor sells in substrate form are its 'Liberty' range of lenses, [].

32. From information provided by the parties, the OFT also calculated both third parties and the merged parties' share including 'captive sales'; that is, sales of substrate by an integrated manufacturer to itself, rather than sales by that manufacturer to either an independent laboratory or an integrated optician. The resulting combined share for the parties is around [35-45] per cent with an increment of some [5-10] per cent.
33. Third parties stated that it was important to source substrate from many suppliers in order to obtain the best price. One third party independent laboratory had switched between Essilor and Signet, indicating that they may be considered to be alternatives; however, another commented that that Essilor and Signet had their own individual brand strengths.
34. An integrated retailer with its own laboratory confirmed that it would switch supplier for generic substrate following a price increase, but considered the number of branded suppliers to be more limited, including only Essilor, Seiko, Signet and Carl Zeiss. It was unclear why this third party did not include other strongly branded suppliers such as Hoya whose lenses are, according to other third parties, of comparable quality. However, even in the limited set above (excluding Hoya), post merger there would be a choice of at least three branded suppliers.
35. In conclusion, while the merger will result in a reduction in the number of firms supplying ophthalmic substrate, the increment to the parties' combined share is relatively modest at around [5-10] per cent (even where 'captive' sales are included) and it will continue to face competition from a number of remaining suppliers, both branded and generic.

Finished Ophthalmic lenses

36. The parties provided estimated market shares for all three types of plastic corrective lens as well as a combined market share. In order to estimate their share of the finished lens market the parties divided their turnover for

each of the three lens type by the industry turnover for each lens type.⁴ Therefore, the parties' estimated combined market shares for plastic lenses are as follows:

- Single Vision: [25-35] per cent (increment [less than 5] per cent)
- Bi/tri-focal: [15-25] per cent (increment [less than 5] per cent), and
- Progressive: [35-45] per cent (increment [less than 5] per cent).

The parties combined market share for all corrective plastic lens types is estimated at [30-40] percent (increment [less than 5] per cent).⁵

37. Two competitors submitted an alternative market share by value for the merged entity of [40-50] per cent (increment [5-10] per cent). Both based their estimations on the Strategy with Vision (SwV) report referred to above. The parties have submitted that the divergence between the two estimated market shares is mainly due to the limited output and sales data for Signet that was available to SwV at the time of the last round of research, since Signet had not submitted data. For this reason, the OFT takes the view in this case that it is more appropriate to take the parties' own estimation of Signet's current turnover in the UK market rather than the estimate in the SwV report.
38. Third parties had diverging views as to whether Essilor and Signet were particularly close competitors. In terms of the constraint placed by Signet on Essilor, [] argued that Essilor and Signet offered products that are significantly different in quality, with Signet offering products of a standard quality and Essilor offering premium quality products. This view appears to be borne out by the pricing data submitted by the parties which showed that, in the lens types where the parties currently overlap, Essilor is generally more expensive than Signet.⁶ In addition, the rationale for the merger, in part, is that the Kodak brand, which is considered to be a mid-

⁴ The parties obtained the industry turnover for each of the three lens types from a 'Strategy with Vision' research report *International Market Model 2006/7- Strategy with Vision - September 2007*.

⁵ Although the OFT has decided that it is not necessary to conclude on whether plastic and glass are in separate markets, the parties were only able to provide market shares in respect of plastic lenses. However, this does not change the analysis because there is no overlap in the UK in respect of glass lenses and, plastic lenses represent some 99 per cent of the market for all ophthalmic lenses.

⁶ On average, the price difference between Essilor lenses and Kodak/Signet lenses are: Single-vision – [] per cent; bi/tri-focal – between [] per cent; and for progressives – [] per cent.

range lens, will complement Essilor's existing portfolio of products: Eco – value products, Essilor – premium products and Nikon⁷ - luxury.

39. The two large lens retailers that responded to the OFT's questions had differing views as to whether Essilor and Signet were close competitors. One, [] did not consider the parties to be close substitutes whilst another, [] did.⁸

Concentration

40. Both the SwV market research report and Mintel⁹ identify the leading firms in the UK lens market to be: BBGR, Essilor Limited, Nikon Optical UK, Norville, Rodenstock, Seiko-Pentax, Signet, and Carl Zeiss. The SwV report also included Hoya amongst the leading firms in the market with a share of nine per cent by value (significantly more than Signet).
41. BBGR is a wholly owned subsidiary of Essilor and Nikon is a 50/50 joint venture between Essilor and Nikon Corp. The parties have suggested that Essilor Limited operates independently of Nikon, and while this appears to be demonstrated in their internal documents, for the purpose of this analysis, the market shares in paragraph 36 above include all Essilor's subsidiary companies as well as Essilor and Nikons' market shares. On this basis, the proposed merger results in the number of significant firms in the market (including Hoya) decreasing from seven to six.
42. One lens retailer, [] had a slightly smaller list of firms that it considered capable of offering lenses substitutable for lenses produced by the merging parties: Hoya, Rodenstock, Seiko, and Carl Zeiss. Whilst aware of other manufacturers supplying lenses in the UK,¹⁰ [] considered that only these manufacturers currently supply reputable brands of sufficient range and satisfactory quality to meet its needs. Nevertheless, [] raised no concerns about the merger and it commented that, following an increase in prices,

⁷ Nikon Optical UK is a 50/50 joint venture between Essilor and Nikon Corp.

⁸ [] purchased lenses from both Essilor and Signet and considered that they were in competition to supply similar products to industry and were therefore close competitors. [] has no current dealings with Signet and did not consider them close competitors. While Kodak was a strong brand it only represented a small part of Signet's portfolio, which in the main was not comparable to Essilors.

⁹ Optical Goods and Eyecare, Market Intelligence, May 2008

¹⁰ For example: Jai Kudo, Shamir, and, WLC.

there would be four alternative suppliers available to meet its lens requirements post-merger.

43. Third parties have commented that opticians will generally require between two to three lens suppliers to achieve the required range of lenses. In addition, it has also been suggested that some 80 per cent of orders will go to the optician's main supplier.

Lens buyer's switching behaviour

44. One third party, [] an independent laboratory, commented that opticians do not like switching from a proven design and particularly from one of the market leaders. This view was confirmed by another third party who commented that often opticians will develop a relationship with their lens supplier and that price can be less important than this relationship. This latter point was disputed by [] who said that price and, to a lesser extent, range were important to eye care providers.
45. This inertia by opticians, if it exists, already occurs pre merger and the merger is unlikely change this behaviour. In particular, opticians may be reluctant to switch away from Essilor progressive lenses because Essilor was an innovator for this type of lens and its *Varilux* brand of progressives is considered synonymous with the progressive corrective lens type.
46. Nonetheless, switching has occurred. Essilor's internal documents suggest that in the last year it has lost at least one account to [] on the basis of price, while in 2007 it won the accounts of []. Two lens retailers further indicated that they had also switched supplier, albeit not from Essilor. Essilor's own research found that the factor most likely to encourage switching by opticians is [], and the next most likely reasons for switching were [].

Portfolio effects

47. The parties consider that Essilor, Kodak, and Nikon are significantly different in quality. Therefore, the acquisition of a medium range lens supplier may provide Essilor with a portfolio of products that are 'must haves' for opticians, potentially creating the ability to full line force by the merged entity. However, the OFT's market investigation did not suggest that eye care providers consider it imperative that they stock Signet/Kodak

lenses. On this basis, the OFT did consider that the merger raised portfolio concerns.

Conclusion

48. The evidence that the OFT received provides a somewhat mixed picture. Third party comments and internal documents suggest that opticians are loyal to lens suppliers but there is also some evidence of switching motivated by price, and lens and service quality. Evidence suggests that there has been switching away from Signet to Carl Zeiss, and Essilor submitted that [].
49. Completion of the merger under consideration would result in a smaller number of firms in the ophthalmic lens market. However, competitive constraints remain, with at least five firms with prominent brands continuing to compete against the merged entity including Carl Zeiss, which third parties rank at number two in the market.

BARRIERS TO ENTRY AND EXPANSION

50. The parties suggest that new entry is most likely to come from firms engaged in lens and substrate supply in other geographic markets. They note that Shamir Optical Industry Limited entered the UK market in 2005. The parties' estimate that Shamir has obtained a two to three per cent market share and broke even after around three years.
51. WLC and Jai Kudo entered the market in the late 1990s, by focusing on the sale of budget single-vision lenses. Having developed their reputations, both firms began offering more advanced correction designs, including bi/tri-focal, and sophisticated lens services, such as coating and tinting.
52. Most industry parties agreed that *de novo* entry at the quality, branded lens end of the substrate and finished lenses markets would be difficult. As noted above, innovation and reputation are important factors in successful entry to both markets. And so, whilst the parties suggest that entry could potentially come from firms already supplying lenses outside the EU, it is not clear whether any potential entrants have brands acceptable to opticians in the UK.

53. The parties estimated that the cost of developing a lens manufacturing and processing facility fell between £300,000 and £1.4 million. The lower estimate is based on second-hand or manually-operated machinery being employed, while the higher estimate would include more sophisticated, fully-automated equipment. Obviously, a lab could be set up with any combination of manually-operated or fully-automated machinery.
54. Essilor's internal documents indicate that its sales and marketing budget for 2009 is comparable with its budgets in 2007 and 2008, []. The budget indicates that there is a non-trivial cost associated with developing relationships with buyers and maintaining brand reputation.
55. Consequently, while the capital costs of setting up a laboratory facility do not appear prohibitive, there are significant ongoing costs associated with marketing, branding and reputation. Entry to replace the competitive constraint currently posed by Signet therefore may not occur. However, it has not been necessary to conclude on barriers to entry and expansion as no realistic prospect of a substantial lessening of competition arises in either market.

BUYER POWER

56. One industry association, [] advised that, whilst individual opticians do not have buyer power, they may join buying groups such as the National Eyecare Group.¹¹ Buying groups allow opticians to receive quantity discounts and they also provide sales and marketing support.
57. The two retailers, [] and three independent laboratories¹² considered that they had buyer power because of the volumes that they purchase. Mintel figures supplied by the parties suggest that around half of the finished lens market is made up of five major opticians. It is therefore likely that these firms will also have some buyer power. However, because this merger does not give rise to a realistic prospect of a substantial lessening of competition, it has not been necessary to conclude on this.

¹¹ www.nationaleyecare.co.uk/

¹² []

VERTICAL ISSUES

Kodak Lens Vision Centre (KLVC) Agreements

58. As a result of this merger, Essilor gains a further element of vertical integration at the retail level via Signet's KLVCs. Currently, to set up a KLVC, Signet targets high potential opticians already reaching a minimum sales level. The KLVC outlets are uniformly branded and the agreement requires the franchisee to []. Opticians running a KLVC agree to meet the following obligations: []¹³. As long as the above target is met, the KLVC may purchase its remaining lenses from any lens supplier. The average duration of a KLVC contract is between two and three years. Opticians therefore have scope to leave the scheme within a reasonable period of time, if they feel that the terms of the agreement are prohibitive.
59. The KLVC is prohibited from actively marketing competing lens brands, ostensibly to avoid confusing consumers, and is granted 'territorial' exclusivity. However, competing non-KLVC opticians in the same territory as a KLVC can continue to buy Signet/Kodak lenses, through independent laboratories.
60. The benefits of KLVC branding to eye care providers are the use of the Kodak brand which is likely to be recognised by consumers and the uniform branding/design of the store, which gives the impression that it is part of a chain. However, the parties' internal documents suggest that there has been limited response from competing retailers to the opening of KLVCs.

Partial foreclosure of lenses

61. The OFT considered whether, as a result of the merger, Essilor would have the ability and incentive to foreclose rival opticians to Signet's KLVCs by raising the cost to them of substrate and lenses (partial foreclosure) or by refusing to supply them with substrate and lenses (total foreclosure). The OFT considers that the parties could only have the ability to do this were the merger to create or strengthen horizontal market power in substrate or lenses. From the preceding discussion, it is clear that the OFT does not consider that there is a realistic prospect of this.

¹³ [].

62. Further, and in any event, Essilor does not appear to have the incentive to foreclose rival opticians even if it had the ability to do so, given KLVCs constitute only a very small proportion of the retail ophthalmic lens market - some 250 outlets out of a total market of some 8,000. Therefore even if, post-merger, Essilor worsened the terms of supply of Signet's Kodak lenses to independent laboratories and non-KLVC opticians, there would be a number of alternative mid-range lenses available to opticians and KLVCs would seemingly not win sufficient business from rival opticians foreclosed by Essilor to make such a strategy pay (not least given Signet's profit margins on substrate, and single vision and progressive lenses are comparable, meaning that it does not appear likely that the profit sacrificed by Essilor from selling less substrate and fewer lenses would be outweighed by the profit gained on any increased sales of KLVC lenses).
63. In addition, using KLVCs as the exclusive outlet for Kodak lens sales would severely limit the reach of Signet's Kodak lenses since the KLVCs currently only represent some three per cent of all possible optician outlets.

THIRD PARTY VIEWS

64. Third party views have been discussed above where appropriate. In general they were mixed with some representatives of each group contacted expressing some concern.
65. The independent laboratories that responded to the OFT's questionnaire were equally split as to whether the merger created competition issues. Those that considered that it would create issues were largely concerned about the ability of the merged entity to foreclose on the supply of its substrate and finished lenses to the laboratories, about reductions in the choice of supplier and about increases in price. As mentioned above, other independent laboratories pointed to between 8 and 12 other suppliers of generic substrate available to independent laboratories. As well as, a (albeit more limited) number of branded suppliers, including Carl Zeiss, Seiko Pentax and Hoya.
66. Just two large optical retailers responded to the OFT's questionnaire and, again, their views were split with one considering that its buyer power might be affected, and with the other doubting whether the merger would

impact upon its buyer power. In any case, post merger these firms would continue to have at least four other lens manufacturers to purchase from.

67. Competitor's views were also mixed. Competitors thought that integrated optical chains such as Boots, Dolland & Aitchinson, Optical Express and Vision Express had buyer power, and while lens buyers were, on the whole, brand loyal, competitors considered that switching would occur if prices rose. As noted above, some concerns were expressed at estimated market shares based on the SwV report - which estimated the parties combined market share as some [40-50] per cent (increment [5-10] per cent) – but the OFT believes it more appropriate to take the parties own figures for this overlap.

ASSESSMENT

68. The parties overlap in the ophthalmic substrate and finished plastic ophthalmic lens markets.
69. In the supply of ophthalmic substrate, the merger results in Essilor having a market share of around [35-45] per cent, increment some [5-10] per cent for both sales to third parties and intra group sales. While the merger may result in a reduction in the number of potential suppliers for independent laboratories, third parties were able to identify a number of alternatives, and the increment is a relatively modest [5-10] per cent, therefore the OFT does not consider there to be a realistic prospect of a substantial lessening of competition. This assessment does not alter if 'captive' sales are also taken into account, or if branded and generic substrate are considered separately.
70. In the supply of finished lenses, Essilor is the market leader with a market share of some [30-40] per cent, with a strong reputation for quality and innovation. However, the increment provided by the merger is less than [5] per cent and ultimately increases Essilor's market share to [30-40] per cent. In addition, at least five strongly branded competitors would continue to be active post-merger as well as the unbranded lenses produced by independent laboratories from generic substrate. This assessment does not alter if plastic lenses or individual corrective designs are considered separately.

71. Consequently, taking into account all of the evidence it has received, 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

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