



## ***Public Competition Assessment***

*18 January 2011*

### ***Luxottica Retail Australia Pty Limited - proposed acquisition of Optifashion Australia Pty Limited***

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#### **Introduction**

1. On 17 November 2010, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of Optifashion Australia Pty Ltd (**Optifashion**) by Luxottica Retail Australia Pty Ltd (**Luxottica**) (**proposed acquisition**). The ACCC decided not to oppose the proposed acquisition after the competition concerns it identified were addressed by the exclusion of Optifashion's retail optical dispensing outlets located in Karratha, Northam, Kwinana and Bunbury in Western Australia from the proposed acquisition. The ACCC considered that the proposed acquisition, when considered in light of the exclusion of the abovementioned stores, would be unlikely to have the effect of substantially lessening competition in any relevant market in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision, subject to confidentiality considerations.

#### **Public Competition Assessment**

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is opposed;
  - a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because Luxottica's proposed acquisition of Optifashion is considered to raise issues of interest to the public.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to the circumstances where the ACCC's assessment of the competitive conditions in particular markets is changing, or likely to change.
6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC's decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

## **The parties**

### **The acquirer: Luxottica Retail Australia Pty Ltd**

8. Luxottica is part of the Luxottica Group SpA, an Italian headquartered retail and wholesale distributor of spectacles and sunglasses.
9. Luxottica operates in Australia through retail optical dispensing stores trading under the brand names of *OPSM*, *Laubman & Pank* and *Budget Eyewear*, as well as the retail sunglass brands *Sunglass Hut*, *Bright Eyes* and *Oakley*. The Luxottica retail network consists of approximately 489 optical dispensing retail outlets and around 356 sunglass retail outlets nationally.
10. Luxottica also supplies a range of prescription frames and sunglasses on a wholesale basis to its retail stores and other retailers in Australia. Its portfolio of prescription frames and sunglass brands include those manufactured and supplied by Luxottica on behalf of various international designers (under licensing agreements), as well as brands wholly owned by Luxottica. Brands licensed to Luxottica include *Chanel*, *Versace*, *Versus*, *Ferragamo*, *Bvlgari*, *Dolce & Gabbana*, *Burberry*, *Ralph Lauren*, *Prada* and *Tiffany & Co* amongst others. Brands which are owned by Luxottica include *Ray Ban*, *Oakley*, *Vogue*, *Persol*, *Arnette*, *Killer Loop* and *Revo*.
11. Luxottica's optical dispensing outlets in Australia exclusively source lens processing and associated laboratory services from Eyebiz Laboratories Pty Ltd (**Eyebiz**) which is owned by a joint venture between Luxottica and Essilor

International SA (**Essilor**). Eyebiz supplies lens processing services to rival retailers on a national basis, in addition to Luxottica's retail network.

### **The target: Optifashion Australia Pty Ltd**

12. Optifashion is a wholly-owned subsidiary of HAL Holding N.V (**HAL**). HAL is an international investment company based in the Netherlands.
13. Optifashion operates in Australia through retail optical dispensing stores trading under the brand names of *Just Spectacles*, *AV Simon Optometry*, *Eyedontist Optometry* and *Oxford Eyes*, as well as the retail sunglass brand *Solstice Sunglass Boutique*. Optifashion consists of 56 optical dispensing retail outlets as well as seven specialist sunglass retail outlets nationally. The majority of Optifashion's retail outlets are located in Western Australia (approximately 40 outlets), but it also has a limited number of outlets in South Australia, New South Wales and Queensland.

### **The proposed transaction**

14. Luxottica proposed to acquire 100% of the shares in Optifashion from HAL.
15. In response to competition concerns which were identified during the ACCC's market inquiries process, Luxottica and Optifashion agreed to exclude the acquisition of four optical dispensing retail outlets trading under the *Just Spectacles* brand name from the proposed acquisition. Those outlets are located in Karratha, Kwinana, Northam and Bunbury in Western Australia.

### **ACCC review timeline**

16. The following table outlines the timeline of key events in this matter.

<b>Date</b>	<b>Event</b>
16-Aug-2010	ACCC commenced review under the Merger Review Process Guidelines (July 2006).
02-Sep-2010	ACCC requested further information from Luxottica. ACCC timeline suspended.
06-Sep-2010	Closing date for submissions from interested parties.
10-Sep-2010	ACCC received further information from Luxottica. ACCC timeline recommenced.
16-Sep-2010	ACCC requested further information from Luxottica. ACCC timeline suspended at the request of Luxottica.
21-Sep-2010	Former proposed date for announcement of ACCC's findings of 14 October 2010, delayed to allow for provision of further information by Luxottica.
20-Oct-2010	ACCC received a partial response to the information requested from Luxottica issued on 16 September 2010. ACCC requested further information from the merger parties.
27-Oct-2010	ACCC received the balance of the information requested from Luxottica issued on 16 September 2010. ACCC requested further information from Luxottica.

29-Oct-2010	ACCC received further information from the merger parties in response to the request for information issued on 20 October 2010.
02-Nov-2010	ACCC received further information from Luxottica in response to the request for information issued on 27 October 2010. ACCC timeline recommenced.
17-Nov-2010	ACCC announced that it would not oppose the proposed acquisition, after the ACCC's competition concerns were addressed by the exclusion of the target's optical dispensing outlets located in Karratha, Northam, Kwinana and Bunbury from the proposed acquisition.

## Market inquiries

17. The ACCC conducted market inquiries with a range of industry participants, including competing retailers, wholesale suppliers, industry bodies and other interested parties.

## Industry background

### Retail supply of optical dispensing services in Australia

18. An optometrist examines eyes and related structures to determine vision problems, diagnose sight defects and prescribe or dispense spectacles and contact lenses. An optical dispenser operates a retail outlet for the sale of prescription spectacles, contact lenses, sunglasses and other optical products. The provision of optical dispensing services involves the interpretation and dispensing of prescriptions for spectacles and contact lenses, as well as the taking of facial measurements, and the fitting and sale of spectacles.
19. In terms of the retail suppliers of optical dispensing services in Australia:
  - there were an estimated 2,000-3,000 optical dispensing retail outlets operating in Australia in the 2009-10 financial year;
  - the largest retail supplier of optical dispensing services in Australia by number of outlets is Luxottica. It currently operates 489 optical dispensing outlets nationally— which would increase to 541 post-acquisition;
  - Optifashion is a small to medium sized supplier nationally, with 56 optical dispensing retail outlets;
  - the second largest retailer in Australia by number of outlets is *Specsavers Pty Ltd (Specsavers)*. *Specsavers* entered the Australian market in January 2008. Since that time, it has grown to a network of over 200 retail stores nationally;
  - there are a number of small to medium-sized optical dispensing retail chains operating nationally including *The Optical Superstore* (approx. 64 outlets), *Big W Vision* (approx. 29 outlets), *Blink Optical* (approx. 27), *1001 Optical* (approx. 28) and *Paris Miki Optical* (approx. 16); and
  - independent optometrists and optical dispensers may be members of one of two large independent optical dispensing buying groups, *ProVision* and

*Eyecare Plus*, which nationally have around 370 and 160 independent members respectively. These buying groups provide a range of wholesale procurement, marketing and advertising support for independent optometry member stores;

- there are at least a further 1,000 independent optometrists operating nationally which are not affiliated with any particular buying group or retail chain.

### **Retail supply of sunglasses in Australia**

20. The retail supply of sunglasses in Australia can be divided into two distinct segments:

- *low value, low-end, generic products* – these products are typically un-branded products which are largely sold at service stations, markets, pharmacies and variety stores. Market inquiries indicate that this segment may represent the majority of sunglasses sold in Australia by volume but a relatively small percentage of sales by revenue; and
- *quality products, global brands* – these products include designer branded products in the mid to premium price range and are typically sold by specialist sunglass retailers, department stores, non-specialist sunglass retailers, optometrists and optical dispensing retail outlets. Market inquiries indicated that quality branded sunglasses is likely to represent the majority of sunglasses sold in Australia by revenue.

21. Luxottica and Optifashion's retail supply of sunglasses occurs primarily within the mid to premium sunglass segment. The vast majority of sunglasses supplied in Australia are manufactured by overseas suppliers and imported.

22. In terms of the retail suppliers of mid to premium priced sunglasses in Australia:

- market inquiries indicated that there are thousands of retail outlets supplying mid to premium priced sunglasses nationally. The majority of these stores are non-specialist sunglass retailers which compete with specialist sunglass retailers to a limited degree;
- Luxottica is the largest specialist sunglass retailer by number of outlets with around 356 specialist sunglass retail outlets operated nationally, which would increase to 363 post-acquisition;
- Optifashion, through its specialist sunglass retail chain *Solstice Sunglass Boutique* is a small supplier in the national context, with only seven specialist sunglass retail outlets nationally. Optifashion also supplies a limited amount of mid to premium priced sunglasses through its optical dispensing retail network;
- there are a number of small to medium sized specialist sunglass retail chains operating nationally including *Sunglass Spectacular* (ten outlets), *Florentine Eyewear* (ten outlets), *Shades* (seven outlets), *SX Solar Express* (six outlets) and *Sunglass Junction* (three outlets); and

- department stores including David Jones may also supply mid to premium priced sunglasses.

## **Wholesale supply of prescription frames, sunglasses and lens processing services**

### *Prescription frames and sunglasses*

23. Market inquiries indicated that there are around 150 to 200 wholesale suppliers of prescription frames and sunglasses in Australia, supplying in excess of 1,000 different brands. The vast majority of sunglasses and prescription frames sold in Australia are imported and distributed on a national basis.
24. Wholesale suppliers of prescription frames and sunglasses in Australia include large international wholesalers and distributors (such as *Safilo* and *Marchon*), Australian-based wholesalers, independent manufacturers and parallel importers (including licensed products).
25. Mid to premium priced designer brands associated with a fashion label are usually manufactured under a licence agreement between the fashion label and a prescription frame and/or sunglass manufacturer.

### *Lens processing services*

26. Optical dispensing retail outlets require the services of a lens processing laboratory in order to supply complete spectacles to their customers. Lens processing laboratories acquire lenses from manufacturers and process them by grinding, finishing and fitting them into prescription frames to supply as complete spectacles to retail stores.
27. There are a number of wholesale suppliers of ophthalmic lenses and lens processing services to retail stores nationally, including *Essilor*, *Carl Zeiss Vision Pty Ltd* (**Carl Zeiss**) and *Hoya Lens Australia Pt Limited* (**Hoya**). Luxottica and Specsavers are both vertically integrated into the supply of lens processing services.

## **Areas of overlap and market definition**

28. The operations of Luxottica and Optifashion overlap in relation to the retail supply of optical dispensing services and the retail supply of mid to premium priced sunglasses in various locations in Western Australia, South Australia, New South Wales and Queensland.
29. Due to the vertically integrated nature of Luxottica, the ACCC also considered the effect of the proposed acquisition on the wholesale supply of prescription frames, the wholesale supply of mid to premium priced sunglasses and the wholesale supply of lens processing services in Australia.

## **Market definition**

30. The ACCC considered the proposed acquisition in the context of the following markets:
- local markets for the retail supply of optical dispensing services (in various locations in Western Australia, South Australia, New South Wales and Queensland);
  - local markets for the retail supply of mid to premium priced sunglasses (in various locations in Western Australia);
  - a national market for the wholesale supply of prescription frames;
  - a national market for the wholesale supply of mid to premium priced sunglasses; and
  - a national market for the wholesale supply of lens processing services.
31. The ACCC identified local markets for the retail supply of optical dispensing services and the retail supply of mid to premium priced sunglasses, given that customers' purchasing decisions are made on this basis. Market inquiries indicated that retail chain stores also appeared to have some discretion to respond to competition and promotions on a local basis.
32. However, the ACCC considered that there is also likely to be a national dimension to competition in the retail supply of optical dispensing services and mid to premium priced sunglasses, as market inquiries revealed that pricing, advertising and promotions and other strategic decisions are typically made by retail chains such as Luxottica on a national basis.
33. The ACCC did not define a distance-based geographic radius of competition that could be applied across all local markets, given that the store catchment area and the region within which competition appeared to occur most closely between available suppliers varied significantly on a market by market basis. Instead, the ACCC focused on the closeness of competition between the merger parties and various alternative suppliers identified by the merger parties and through market inquiries.
34. The ACCC considered that the wholesale supply of prescription frames and the wholesale supply of mid to premium priced sunglasses typically occurs on a national basis as transportation and other distribution costs are low. Lens processing services also appear to be supplied largely on a national basis.

## Competition analysis

### Horizontal analysis — retail markets

35. The ACCC considered that the proposed acquisition would be likely to substantially lessen competition in four local markets for the retail supply of optical dispensing services – being those in the regions of Karratha, Kwinana, Northam and Bunbury in Western Australia. In each of these local markets, the merged firm would supply a substantial share of the available optical dispensing services by value and by volume. Any remaining competitors in these regions appeared unlikely to provide an effective competitive constraint on the merged firm. These concerns were subsequently addressed by the parties agreeing to exclude these retail outlets from the proposed acquisition.
36. Given the extensive presence of Luxottica’s retail outlets at the national level, the ACCC also considered how the retail operations of Luxottica in a national context may impact on local optical dispensing and sunglass markets. While the ACCC concluded that the proposed acquisition would be unlikely to substantially lessen competition in any of the other local retail markets, the ACCC has some concerns about the ongoing ability of independent optical dispensing and sunglass retailers to provide an effective competitive constraint on large scale, vertically-integrated national retail chains such as Luxottica (particularly in light of the presence of Luxottica’s optical dispensing and sunglass brands across multiple price points in the market), notwithstanding the presence of some optical dispensing industry buying groups.
37. The ACCC is aware that Luxottica has made a series of acquisitions in the optical dispensing and sunglass retail industries in Australia in recent years and will be closely reviewing any future proposed acquisitions by Luxottica in these sectors or in any other new or related market.
38. The reasons for the ACCC’s view in relation to each of the various retail markets are outlined below.

### Local markets for the retail supply of optical dispensing services

39. Although the ACCC did not ultimately apply a uniform geographic radius to define local areas of competition, the ACCC initially focussed on certain geographic regions where the proposed acquisition would result in significant concentration for the merged firm (by number of outlets), usually within a five kilometre travelling distance of the targeted optical dispensing site. Market inquiries then centred on actual and potential rival optical dispensing suppliers within each relevant region (including a broader catchment area where appropriate) to obtain further information including:
  - suppliers’ geographic area of competition and store customer catchment area;
  - suppliers’ closest competitors;



- suppliers' annual sales revenue and sales volume (in order to assess the likely share of supply in the region held by individual suppliers and the merger parties);
  - details of pricing, advertising and promotional practices; and
  - any plans for new entry into and/or expansion in the relevant region.
40. The competitive effects of the proposed acquisition were then considered in each region on a case by case basis, in light of the above factors and other information provided by market participants which was relevant to the ACCC's competition assessment.

*Barriers to entry and expansion in the retail supply of optical dispensing services*

41. The ACCC considered that while the capital cost and lead time associated with establishing an optical dispensing retail outlet did not appear to be substantial, the incentive for new entry and ability of any new entrants to effectively compete, may be limited by factors including:
- the economies of scale held by incumbent suppliers (that is, large-scale vertically integrated optical dispensing retail chains), including in relation to branding, advertising and promotion;
  - access to retail sites in key shopping centres or high traffic retail locations; and
  - access to optometrists.
42. Market inquiries suggested that the incentives for entry and expansion by small optical dispensing chains and independent optometrists may be limited by their inability to compete, particularly on price, with large, vertically integrated retail chains. The ACCC considered that large retail chains would be likely to have a competitive advantage over smaller operators in terms of wholesale procurement, branding and economies of scale in advertising and promotions.
43. Market inquiries indicated that in some cases, the saturation by existing optical dispensing outlets in key metropolitan or regional shopping centres, may limit the scope for new entry. Market inquiries suggested that the closest competition between optical dispensing suppliers may occur between suppliers located within key shopping centres. Access to a shopping centre may therefore enhance the ability of new entrants to provide an effective competitive constraint. Market participants also provided some evidence about a shortage of optometrists, particularly in Western Australia, which may have delayed new entry and expansion – most commonly in regional areas and over the short to medium term.

44. Nevertheless, there has been evidence of new entry and expansion in the optical dispensing industry in Australia. Most notably, *Specsavers* has grown to a network of over 200 retail stores nationally since its entry in around 2008. In Western Australia, most of this recent expansion has been through ‘greenfields’ entry, rather than acquisitions. Market inquiries also revealed evidence of new entry and expansion on a national basis by other optical dispensing chains including *Big W Vision* and *The Optical Superstore*.

*Removal of a vigorous and effective competitor*

45. The ACCC considered that the proposed acquisition would appear to remove a key price-based competitor of Luxottica’s in each of the regions of Karratha, Northam, Kwinana and Bunbury in Western Australia. However, market participants generally did not otherwise consider Optifashion’s various optical dispensing brands as leaders in the industry on either price-based or non-price-based competition, such as service levels and quality of service.
46. Some market participants suggested that in the past, Optifashion’s *Just Spectacles* brand may have been a leader in Western Australia and South Australia, in terms of pricing promotions and discounting, such as “two for one” spectacle offers. However, many market participants pointed to other discount suppliers, such as Specsavers and The Optical Superstore as being the key drivers of this aspect of competition more recently.
47. Market inquiries indicated that independent optometrists were likely to be the drivers of non-price competition and typically sought to differentiate themselves from large optical dispensing chains on the basis of quality and customer service.

*Conclusion - retail supply of optical dispensing services in the Karratha region*

48. The ACCC considered that the proposed acquisition would be likely to substantially lessen competition in the retail supply of optical dispensing services in the region of Karratha in Western Australia. The merged firm and its franchisee store (Just Spectacles franchised store) would have become the only supplier of optical dispensing services in Karratha.
49. The ACCC considered that the merged firm and its franchisee would have no incentive to compete with one another. Given that Karratha is an isolated town in the Pilbara region on the north-west coast of Western Australia, there did not appear to be any other regional areas containing optical dispensing stores which would compete closely with optical dispensing outlets located in Karratha or provide a close alternative to consumers.

*Conclusion - retail supply of optical dispensing services in the Northam region*

50. The ACCC considered that the proposed acquisition would be likely to have the effect of substantially lessening competition in the retail supply of optical dispensing services in the region of Northam in Western Australia. The proposed acquisition would have reduced the number of suppliers of optical dispensing services in the Northam region from three to two, with the merged firm and its franchisee and a local independent optometrist remaining.
51. The merged firm appeared to supply a substantial share of the optical dispensing services in the Northam region by value and volume. Market inquiries also indicated that the proposed acquisition would remove a key price-based competitor of Luxottica's in the region. In addition, it appeared that new entry in the Northam region was unlikely to occur within the foreseeable future. It also appeared that no other regional locations containing optical dispensing stores would compete closely with optical dispensing outlets located in Northam or provide a close alternative to consumers.

*Conclusion - retail supply of optical dispensing services in the Kwinana region*

52. The ACCC considered that the proposed acquisition would be likely to have the effect of substantially lessening competition in the retail supply of optical dispensing services in the region of Kwinana in Western Australia. With five optical dispensing outlets in the region (including two in Kwinana and three in Rockingham), the merged firm would have supplied a substantial share of the optical dispensing services in the Kwinana region by value and volume.
53. Market inquiries indicated that competition between the target optical dispensing outlet and rival suppliers was likely to occur most closely within a five kilometre travelling distance of Kwinana, within which there would be no alternative optical dispensing suppliers to the merged firm (consisting of one company-owned Budget Eyewear store and one Just Spectacles franchised store in Kwinana). Alternative optical dispensing outlets located in nearby Rockingham (around eight kilometres from Kwinana), did not appear to be particularly close competitors of the merged firm.
54. The ACCC considered that a reduction in discounting, customer service and/or local promotions by the merged firm was likely to be profitable, even if some marginal sales were lost to the Specsavers outlet in nearby Rockingham. The other two remaining independent suppliers in the region, a local independent optometrist and a Terry White Chemist in Rockingham, did not appear likely to provide an effective competitive constraint on the merged firm. On the basis of market inquiries, the local independent optometrist appeared to generate far fewer sales than the merged firm. Market participants considered Terry White Chemist to be an ineffective competitor, given the very limited range of prescription frames and lenses it supplies and the lack of an optometry service at this outlet.

*Conclusion - retail supply of optical dispensing services in the Bunbury region*

55. The ACCC considered that the proposed acquisition would be likely to have the effect of substantially lessening competition in the retail supply of optical dispensing services in the region of Bunbury in Western Australia. With its five optical dispensing outlets in Bunbury, the merged firm would have supplied a substantial share of the optical dispensing services in the Bunbury region by value and volume.
56. The ACCC's market inquiries indicated that a reduction in discounting, customer service and local promotions by the merged firm was highly likely to be profitable even if some marginal sales were lost to two Specsavers' outlets (including one outlet in Bunbury and one in nearby Eaton).
57. Apart from Specsavers, two local independent optometrists would remain in the Bunbury region, including one in Bunbury and one in nearby Australind (around nine kilometres from Bunbury). However the ACCC considered that these suppliers would be unlikely to pose an effective competitive constraint on the merged firm. On the basis of market inquiries, the local independent optometrist in Bunbury appeared to generate far fewer sales than the merged firm. The local independent optometrist in Australind generally attracted customers from within the immediate Australind catchment area and did not appear to be a close competitor of the optical dispensing outlets in Bunbury.
58. Market inquiries did not provide any evidence of likely new entry and/or expansion in the supply of optical dispensing services in the foreseeable future which could be expected to constrain the merged firm.

*Conclusion - other local markets for the retail supply of optical dispensing services*

59. The ACCC considered that the proposed acquisition would be unlikely to substantially lessen competition in any other local market for the retail supply of optical dispensing services. This view was based on at least one of the following reasons:
  - there was no overlap between the operations of the merger parties within the relevant local market;
  - a number of alternative suppliers would be likely to provide an effective competitive constraint on the merged firm, in particular, Specsavers may have had a significant presence in the region; and/or
  - market inquiries revealed that there was likely to be new entry in the relevant region within the foreseeable future which would be likely to provide an effective competitive constraint on the merged firm.

#### Local markets for the retail supply of mid to premium priced sunglasses

60. The ACCC considered that the proposed acquisition would be unlikely to substantially lessen competition in any relevant market for the retail supply of mid to premium priced sunglasses. The ACCC considered that the proposed acquisition would not materially impact the competitive dynamics of the retail sunglass industry, given that it involved the acquisition of seven sunglass retail outlets nationally.
61. The ACCC examined the extent of competition on a local basis in the regions of Booragoon, Cannington, Claremont, Karrinyup and Rockingham in Western Australia, central Adelaide in South Australia and Chermside in Queensland (where the target's specialist sunglass retail outlets are located). The ACCC considered that the retail supply of sunglasses did not appear to be significantly concentrated in any of the relevant local markets post-acquisition. There appeared to be a wide number of alternative suppliers in each relevant market which would be likely to provide an effective competitive constraint on the merged firm.
62. In terms of barriers to entry and expansion in the retail supply of sunglasses, the ACCC considered that whilst the capital cost and lead time associated with setting up a retail sunglass outlet (whether an in-line store or kiosk) did not appear to be substantial, the incentive for new entry and the ability for new entrants to effectively compete may be limited by factors including the economies of scale and brand recognition held by incumbent suppliers and access to retail sites in key shopping centre locations. In some local areas, the ACCC considered that the saturation of stores, notably by Luxottica, may limit incentives for new entry and/or expansion.

#### Conclusion – local optical dispensing and mid to premium priced sunglass retail markets

63. The ACCC considered that the proposed acquisition would be likely to substantially lessen competition in four local markets for the retail supply of optical dispensing services – in the regions of Karratha, Northam, Kwinana and Bunbury in Western Australia.
64. The ACCC considered that the proposed acquisition would be unlikely to substantially lessen competition in any remaining local markets for the retail supply of optical dispensing services or any relevant local market for the retail supply of mid to premium priced sunglasses, as there appeared to be a number of alternative suppliers in each of these markets which would afford an effective competitive constraint on the merged firm.

#### **Vertical analysis**

65. In addition to considering any competition concerns that may have arisen from the proposed acquisition in local retail markets, the ACCC considered whether additional concerns arose as a result of Luxottica being vertically integrated and supplying prescription frames and mid to premium priced sunglasses at the wholesale level as well as lens processing services (through Eyebiz).

66. In light of Luxottica's increased vertical integration as a result of the proposed acquisition, the following theories of harm were considered:
- *foreclosure of rival wholesale suppliers of prescription frames, mid to premium priced sunglasses and/or lens processing services* – whether the merged firm would have an increased ability or incentive to foreclose rival wholesale suppliers by restricting access to and/or raising rivals' costs in securing retail distribution, with the likely effect of substantially lessening competition in any relevant wholesale market; and
  - *foreclosure of rival retail suppliers of optical dispensing services and/or mid to premium priced sunglasses* – whether the merged firm would have an increased incentive to foreclose rival retailers by restricting access to and/or raising rivals' costs of obtaining wholesale supply of prescription frames, mid to premium priced sunglasses and/or lens processing services, with the likely effect of substantially lessening competition in any relevant retail market.
67. The ACCC concluded that the proposed acquisition would be unlikely to substantially lessen competition pursuant to either theory of harm. The reasons for the ACCC's conclusion are outlined below.

#### Barriers to entry and expansion

68. Market inquiries indicated that the vast majority of prescription frames and sunglasses sold in Australia are imported. As such, it is unlikely that a new entrant would be required to establish manufacturing operations in Australia, which may limit the capital investment and lead times associated with entry.
69. While market inquiries indicated that there are currently sufficient retail distribution channels available to rival wholesale suppliers, the ACCC considers that further concentration in optical dispensing and sunglass retail markets in the foreseeable future may have the effect of raising barriers to entry and expansion.
70. In particular, the ACCC is of the view that further concentration of Luxottica optical dispensing and sunglass retail outlets may have the effect of deterring new entry and expansion by prospective and current wholesale suppliers. The ACCC will therefore be closely reviewing any future acquisitions by Luxottica in any relevant market.

#### Foreclosure of rival wholesale suppliers

71. The proposed acquisition would result in the partial or complete removal of Optifashion, as an alternative distribution channel for rival wholesale suppliers of prescription frames, mid to premium priced sunglasses and lens processing services.
72. The ACCC considered that there would be sufficient alternative distribution channels available to wholesale suppliers of prescription frames and lens processing services. Market inquiries indicated that wholesale supply to independent optical dispensing retail outlets accounted for the majority of rival wholesalers' supply. Market inquiries indicated that there would remain at least

1,000 independent optical dispensing retail outlets, a number of small to medium sized optical dispensing retail chains (such as *The Optical Superstore* and *Big W Vision* amongst others) and independent optometrists forming part of buying groups, which would remain as alternative distribution channels for wholesale suppliers. Further, market inquiries indicated that Optifashion did not appear to be a significant wholesale buyer of prescription frames or lens processing services nationally.

73. On the basis of market inquiries, the ACCC also considered that there were a sufficient number of alternative retail distribution channels available to wholesale suppliers of mid to premium prices sunglasses, including rival specialist sunglass retail chains, optical dispensing retail chains, department stores and fashion retailers. Moreover, Optifashion did not appear to be a significant wholesale buyer of mid to premium priced sunglasses in the national context.
74. The ACCC also considered whether the proposed acquisition would provide Luxottica with an increased ability or incentive to foreclose rival wholesalers from accessing its national retail network. Luxottica's retail outlets currently supply rival prescription frames and sunglass brands in order to provide choice to customers beyond the brands that Luxottica owns or is licensed to manufacture and supply. Although Luxottica's stores stock different third-party brands than Optifashion's, and the acquisition could thereby remove a supply channel for some of Optifashion's current wholesale suppliers, the ACCC did not consider that the proposed acquisition would materially change Luxottica's current ability and incentive to foreclose rival wholesalers by restricting access to and/or raising rivals' costs in supplying Luxottica's retail outlets.
75. The ACCC considered that although the proposed acquisition may benefit some wholesale suppliers, such as those with an existing supply relationship with Luxottica's retail stores, at the expense of others, the proposed acquisition would ultimately result in a moderate contraction in the distribution and market share of rival wholesalers.
76. The ACCC's market inquiries indicated that the significant majority of rival wholesalers' supply was to independent retailers and smaller national chains which in turn constitute the majority of optical dispensing outlets. The ACCC therefore considered that the current retail channels available for rival wholesalers to supply appeared sufficient to support competitive alternatives to Luxottica. The proposed acquisition of Optifashion did not appear to materially affect the ability or incentives of Luxottica to foreclose rival wholesalers by restricting rivals' access to and/or raising rivals' costs in securing retail distribution. However, the ACCC may be concerned about any future acquisitions by Luxottica of competing retail chains or rival prescription frames and sunglass brands.

Foreclosure of rival retail suppliers of optical dispensing services and mid to premium priced sunglasses

77. The ACCC considered that the merged firm would be unlikely to have an increased incentive to foreclose rival retail suppliers of optical dispensing

services and mid to premium priced sunglasses, by restricting their access to and/or raising their costs in obtaining wholesale supply of either prescription frames, mid to premium priced sunglasses or lens processing services.

*Access to wholesale supply of prescription frames and mid to premium priced sunglasses*

78. The ACCC considered that Luxottica would continue to be constrained by a number of significant rival wholesale suppliers of prescription frames and sunglasses, including but not limited to *Safilo*, *General Optical*, *Mondottica*, *Marchon* and *Healy*. In the event that Luxottica removed all of its brands from competing retailers, it appeared that there would continue to be a number of substitutable brands available across all price points to enable new and existing retailers to compete effectively at the retail level.
79. The ACCC also considered the extent to which any of the prescription frames or sunglass brands supplied by Luxottica would be considered a ‘must-have’ from the perspective of retailers and whether Luxottica would have an increased incentive to foreclose rival retailers by limiting the wholesale supply of its products. Luxottica owns or has the exclusive right to manufacture and supply a number of high profile brands, including *Ray Ban*, *Oakley*, *Prada*, *Versace* and *Vogue*.
80. Some market participants provided examples of a refusal by Luxottica to supply its prescription frames and sunglasses to certain rival retailers. Market participants suggested that such refusals were often based on the geographic proximity of a competing retailer to one of Luxottica’s retail stores. In other instances, market participants suggested that Luxottica may seek to include some conditions on supply to certain rival retailers, such as dedicating a significant percentage of their range to Luxottica brands and/or requiring retailers to place a minimum value of orders per month (which may exceed the retailers’ demand for the products).
81. However, while some retailers considered it preferable to stock Luxottica’s brands, they were not typically considered essential in order to be able to compete effectively in a retail market. Furthermore, a number of retailers preferred not to stock Luxottica’s brands to differentiate themselves from Luxottica-owned retail outlets. Market inquiries indicated that retailers did not typically find it difficult to source prescription frames and sunglasses from wholesalers. Independent buying groups, such as *Provision* and *Eyecare Plus* may also facilitate supply between independent optometry members and non-integrated wholesalers.
82. Therefore, the ACCC considered on balance that Luxottica’s brands could not be classified as ‘must haves’ and as a result attempts by Luxottica to foreclose rival retailers from accessing wholesale supply from Luxottica would be unlikely to result in a substantial lessening of competition.
83. While the proposed acquisition of Optifashion may potentially increase Luxottica’s incentive to restrict the supply of its brands to some rival optical dispensing outlets, this was unlikely to have the effect of substantially lessening



competition in any relevant market, due to the availability of substitutable brands from a range of alternative wholesalers.

#### *Access to wholesale supply of lens processing services*

84. The ACCC considered that the proposed acquisition was unlikely to provide the merged firm with an increased incentive to foreclose rival retailers' by restricting access to and/or raising rivals' costs of obtaining wholesale supply of lens processing services. Market inquiries indicated that there are a wide number of alternative wholesale suppliers of lens processing services available to rival retailers post-acquisition.
85. Market inquiries indicated that Optifashion would account for a small proportion of the total demand for lens processing services in Australia. The ACCC considered that the proposed acquisition would therefore be unlikely to alter the incentives of the merged firm to continue to supply lens processing services to rival retailers.

#### Conclusion – vertical integration issues

86. The ACCC concluded that the proposed acquisition would be unlikely to provide the merged firm with an increased ability or incentive to foreclose rival wholesale suppliers of prescription frames, mid to premium priced sunglasses and lens processing services, with the likely effect of substantially lessening competition in any relevant market. There appeared to be a wide number of alternative retailers available to rival wholesale suppliers post-acquisition. Further, the merged firm would continue to have the incentive to source supply from other wholesalers.
87. The ACCC also concluded that the proposed acquisition would be unlikely to increase the incentive of the merged firm to foreclose rival retailers, by restricting access to or raising rivals' costs in obtaining wholesale supply of prescription frames, mid to premium priced sunglasses or lens processing services. There appeared to be a wide number of alternative wholesale suppliers available to retailers post-acquisition. In the case of prescription frames and sunglasses, rival wholesalers also appeared to offer a range of substitutable brands.
88. However, the ACCC is of the view that the further concentration of Luxottica's optical dispensing and sunglass retail outlets in the future, could deter new entry and expansion by prospective and current wholesale suppliers. The ACCC will therefore be closely reviewing any future proposed acquisitions by Luxottica in any relevant market.

#### **Resolution of the ACCC's competition concerns**

89. In response to the competition concerns that arose during the ACCC's market inquiries process, Luxottica and Optifashion agreed to exclude the target's *Just Spectacles* branded retail optical dispensing outlets in Karratha, Kwinana, Northam and Bunbury in Western Australia from the proposed acquisition.

90. Whilst the Karratha and Northam optical dispensing outlets are to be sold by HAL to an alternative acquirer, ownership of the Bunbury and Kwinana stores will be retained by the current owner, HAL, until a suitable alternative purchaser can be found. Each of these stores will continue to use the 'Just Spectacles' brand name under license from HAL for a transitional period.
91. Luxottica and HAL indicated that a number of ancillary arrangements are required to ensure the continued, effective operation of the Kwinana and Bunbury stores until a new purchaser is found. These ancillary arrangements include the provision of management, accounting and information technology (IT) support. The ACCC notes that:
- management, accounting and IT support will be provided to the Kwinana and Bunbury stores by a third party, which is independent of Luxottica);
  - Optifashion's IT systems will be housed and maintained by an independent third party provider, which will enter into separate contracts to supply services to Luxottica and HAL's Kwinana and Bunbury stores. The third party will provide information to Luxottica in relation to the stores that Luxottica will own but not any of the excluded stores; and
  - until a suitable alternative purchaser is considered for the Bunbury and Kwinana stores, Luxottica will not make offers of employment to, or otherwise solicit, the optometrists of the excluded stores, or accept an offer from such optometrists to be employed by Luxottica.
92. The ACCC considered that the exclusion of the four retail outlets from the proposed acquisition satisfactorily addressed the ACCC's competition concerns in relation to the retail supply of optical dispensing services in the regions of Karratha, Northam, Kwinana and Bunbury in Western Australia.

## **Conclusion**

93. On the basis of the above analysis and taking into account the exclusion of the target's optical dispensing outlets in Karratha, Kwinana, Northam and Bunbury in Western Australia from the proposed acquisition, the ACCC concluded that the proposed acquisition of Optifashion by Luxottica would be unlikely to result in a substantial lessening of competition in any relevant market in contravention of section 50 of the Act.