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The Honorable Maurren K. Ohlhausen
The Honorable Terrell McSweeny
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20850

Re: Proposed Merger of Essilor and Luxottica

Dear Chairwoman Ohlhausen and Commissioner McSweeny,

We, the undersigned consumer groups, are writing to urge that the Commission block the proposed acquisition of the lens manufacturer Essilor by the eyewear company Luxottica, on the grounds that the merger will harm competition and consumers and lead to higher costs and less choice.

Today's Eyewear Market: Increasing Prices, Increasing Power

In 2016, the global eyewear market was worth $121 billion.[1] The market has become increasingly consolidated through a series of acquisitions leading to consistently higher prices. Since Luxottica bought Ray-Ban almost twenty years ago, the selling price for some of its products has skyrocketed from $19 in 1999 to $155 in 2014[2,3] -- and so have Luxottica's profit margins. Based on this history is is clear that the proposed merger of Luxottica and Essilor would have severe consequences for consumers and likely make eyewear increasingly unaffordable.

Indeed, pre-existing problems with the eyewear industry are probably what led to Senate Democrats identifying this merger as being dangerous for consumers.[4] After considerable study Senate Democrats singled out the eyewear market as one where increased concentration has harmed consumers through higher prices in their "A Better Deal" platform. The Report specifically identified the Essilor/Luxottica transaction as one that would "harm consumers, workers, and competition." Their white paper points out that "the current average price of eyeglasses is now at $400, a cost in line with an iPad, and is steadily rising." This merger will only make things worse.

Luxottica is the market leader in prescription eyeglasses and markets those and sunglasses under a variety of brands. Luxottica owns numerous brands, sells in over 9,000 stores, and has a very powerful brand portfolio, including licensed names such as Chanel and Armani.[5] It also owns one of the largest insurers, Eyemed, with over 34 million subscribers. Essilor is the market leader in lenses. The two companies are by far the largest firms in the market; the next largest company in the market is contact lens manufacturer Johnson & Johnson, which only has a 3.9% market share.[6] Luxottica and Essilor are dominant players in an otherwise fragmented market and their vertical integration puts them in the kingmaker position.

Indeed, Luxottica has already displayed the power to shut out rivals through the use of its power in vertical markets. The company had a disagreement with Oakley about pricing, and retaliated by refusing to sell Oakley's products in its stores. Oakley's stock price collapsed and Luxottica acquired the firm, having used its market power to eliminate a competitor.[7]

The European Union has opened an investigation into the merger, and is concerned that the acquisition will harm competition and consumers by driving out rival companies, leading to fewer choices and higher prices for consumers. Luxottica and Essilor have refused to offer any concessions to obtain approval of the merger. The European Commission will decide by March 22, 2018 whether to approve the deal.[8]

Industry Consolidation Presents False Choices for Consumers

The cost of eyewear has been increasing, partly due to the substantial consolidation in the market. Luxottica owns numerous brands and has the largest retail network and controls the largest insurer, Eyemed. Control over Eyemed makes it the gatekeeper for market competition for the 34 million consumers covered. A combined Luxottica and Essilor company would have enormous power over every stage of producing and selling eyewear. The merger would exacerbate an already difficult situation.

Worse for consumers, the market has serious transparency problems that make true competition difficult. Most consumers do not know the extent of Luxottica and Essilor's brand portfolios. A customer may think that Ray-Ban, Oliver Peoples, and Giorgio Armani eyeglass frames are all competing for their dollar without realizing these brands are all owned and manufactured by the same company. Likewise, a customer might comparison shop between LensCrafters and Pearle Vision at a mall or Sears Optical and Target Optical at department stores again not realizing that these retailers are owned by the same company and have no incentive to compete against each other on price.

We are also concerned about the merged company's using its power to shut out competitors, leaving consumers with fewer options and little freedom of choice. For example, if the company bundles together frames and lenses for sale in its Lenscrafters stores, other lens manufacturers will lose sales. Luxottica can also use EyeMed to steer customers towards its own products. EyeMed could refuse to cover rival frames, lenses, or even retailers. This would make rival products unattractive to EyeMed customers. Indeed, the merged company will have an increased incentive and ability to disadvantage rivals at each step in the supply chain. These concerns are similar to those in the AT&T/Time Warner case. In that case, the DOJ alleges that AT&T would have the incentive and enhanced ability to raise the costs of Time Warner content to disadvantage its video distributor rivals.[9]

Concerns Around Competition in the Future

Finally, the merger eliminates competition between the companies and forecloses the possibility of future competition. Before the merger was announced, Essilor had started promoting its own sunglasses and online sales, and Luxottica had begun to manufacture its own lenses. The two companies were expanding into each other's markets and engaging in direct competition, which would have decreased prices, improved product quality, and benefited consumers. This merger ends that future competition.

We urge the Federal Trade Commission to file suit to block the merger between Luxottica and Essilor and therefore protect consumers and competition in eyewear markets.

Sincerely,

Consumer Action
Coalition to Protect Patient Choice

CC: Bruce Hoffman, Director, Bureau of Competition

1 http://blog.euromonitor.com/2016/07/31021.html
2 http://fortune.com/2016/01/27/ray-ban-luxottica-retooled/
3 http://money.cnn.com/2014/06/24/luxury/cost-of-sunglasses/index.html
4 https://www.democrats.senate.gov/imo/media/doc/2017/07/A-Better- Deal-on- Competition-and- Costs-1.pdf.
5 http://www.luxottica.com/en/about-us/company-profile/facts-and-figures
6 https://www.nytimes.com/2017/01/16/business/dealbook/luxottica-essilor-merger.html?_r=0
7 https://www.forbes.com/sites/agoodman/2014/07/16/theres-more-to-ray-ban-and-oakley-than-meets-the-eye/#21475a6222cd
8 http://europa.eu/rapid/press-release_IP-17-3481_en.htm
9 https://www.washingtonpost.com/news/the-switch/wp/2017/11/20/the-justice-department-just-sued-att-to-block-its-85-billion-bid-for-time-warner/?utm_term=.04c9e6f5e8a8