
Anticipated acquisition by FGX Europe Limited of Framed Vision Limited

ME/4814/10

The OFT's decision on reference under section 33(1) given on 17 February 2011. Full text of decision published 18 March 2011.

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. **FGX Europe Limited** (FGX), a wholly owned subsidiary of FGX International Inc (FGXI) is a wholesale supplier of plano sunglasses (sunglasses) and non-prescription reading glasses (readers). FGX's ultimate parent company is Essilor International (Compagnie Générale d'Optique) S.A.¹ FGXI also sells a small amount of plano sunglasses and readers to UK customers via its website.
2. **Framed Vision Limited** (Framed Vision) is a privately owned UK incorporated company, and its trading name is Sight Station. Sight Station is both a wholesaler and retailer of plano sunglasses and readers. In the year to 30 November 2009, Sight Station's worldwide group turnover was approximately £2.2 million, of which approximately £[] million was generated in Europe, almost all of which was generated in the UK.

¹ Essilor acquired Frames for America Inc, a US-based firm in November 2009. Frames for America Inc, operates an online optician which trades as Frames Direct. In 2009, it generated a small amount of revenue from the retail sale of plano sunglasses and readers. Frames Direct launched a UK website in 2010 and therefore has the potential to supply plano sunglasses and readers to UK customers.

TRANSACTION

3. On 20 December 2010, FGX and FGXI entered into a Purchase Agreement to acquire 100 per cent of the shares in Framed Vision for a consideration of approximately £[] million.
4. The administrative target deadline for a decision is 17 February 2011.

JURISDICTION

5. As a result of this transaction FGX and Framed Vision will cease to be distinct. The parties have a combined share of supply of approximately [50-60] per cent by revenue in the wholesale supply of readers in the UK. Therefore the share of supply test in section 23(3) of the Enterprise Act 2002 (the Act) is met. As a result, the OFT 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.

RATIONALE FOR THE MERGER

6. At an international level, FGX submits that it is seeking – through a series of acquisitions - to re-balance its business in favour of the wholesale supply of readers, by increasing the proportion of its global turnover contributed by sales of readers, compared to sales of sunglasses.
7. At a UK level, FGX also indicates that it is seeking to expand its readers product offering from its core mass market readers, which it supplies mainly to supermarkets and pharmacies, to include higher-end readers aimed at retailers selling to fashion conscious consumers. FGX believes that the acquisition of Sight Station will enable FGX to expand its product offering into this segment of the readers market.²

² The OFT considered whether the launching of Framed Vision's lower value, mass market 'Essential Eyes' range was a motivation for the merger. However, the OFT has found no evidence that FGX was aware of this new range prior to the start of merger negotiations between the parties.

MARKET DEFINITION

8. The parties overlap in the wholesale and retail supply of sunglasses and readers. The main function of sunglasses is to protect an individual's eyesight from the sun's rays, although they may also serve aesthetic (fashion accessory) or sports-performance functions. Readers are reading glasses, and their main function is therefore to enable an individual with hyperopia³ or presbyopia⁴ to read fine print and focus on near objects. Readers are relatively low-cost and available without an optician's prescription. Therefore, they may be purchased on impulse, and consumers will often own more than one pair.

Product scope

Sunglasses

9. The parties did not submit a view on product scope but referred to the Luxottica/Oakley decision⁵ in which the OFT had examined the transaction on the basis that sunglasses formed their own, separate wholesale and retail supply markets. The parties provided share of supply data on this basis, that is, the wholesale supply of sunglasses and the retail supply of sunglasses.
10. The OFT did not receive evidence to indicate an alternative frame of reference should be used to examine this transaction in relation to the supply of sunglasses.

Readers

11. The parties submit that readers are also likely to form their own, separate wholesale and retail markets, distinct from ophthalmic lenses and prescription glasses. However, the parties note that the price of readers is constrained indirectly at the wholesale level, and directly at the retail level, by the sale of budget prescription reading glasses⁶ which could suggest

³ Long sightedness

⁴ As part of the ageing process the eye's lens becomes less elastic potentially affecting both near and distance vision

⁵ ME/3242/07 'Anticipated acquisition by Luxottica S.p.A of Oakley Inc.'

⁶ The parties submit that Tesco Opticians offers prescription glasses for as little as £10 per pair and Specsavers sells prescription glasses for as little as £25 per pair.

that single vision lenses or mono-focal prescription glasses might be in the same market as readers.

12. The parties also indicate that there are certain important distinctions between prescription and non-prescription reading glasses, in particular the fact that the purchase of a pair of prescription lenses requires a consumer to have an eye test. In contrast, this is not a requirement for purchasing readers, where the consumer judges which strength of lenses is most appropriate for them.⁷
13. The OFT has not, therefore, received sufficient evidence to support the view that prescription and non-prescription reading glasses are part of the same market, and therefore it is appropriate to consider the wholesale supply of readers and the retail supply of readers as the appropriate frames of reference on which to examine this transaction.

Geographic scope

14. In Luxottica/Oakley, the OFT did not conclude on the geographic scope for the wholesale supply of sunglasses. The parties submit that the wholesale market for sunglasses and readers is at least national in scope.
15. UK wholesalers source sunglasses and readers from low-cost manufacturers, located mainly in Asia, but often have a local (that is, UK) presence in order to provide stock management services to retail customers. Evidence received from customers during the OFT's investigation support the view that a national physical presence for wholesalers is of significance for customers (for example in terms of distribution), such that it would be appropriate to consider the transaction at a national level. In light of this, the OFT considers it appropriate to consider the transaction on a UK-wide basis, and any constraint from direct sourcing from Asia will be assessed as part of the competitive assessment.
16. The OFT usually considers retail markets at a local level but as the merger does not raise competition concerns on either a local or national level, it has not been necessary for the OFT to reach a conclusion as to the appropriate geographic frame of reference for the retail supply of sunglasses and readers.

⁷ Readers are usually sold in vision correction strengths from +1 to +3.5 dioptres.

Conclusion on product and geographic scope

17. For the purposes of the competitive assessment, the OFT considers the appropriate frames of reference to be:

- the wholesale supply of sunglasses in the UK
- the retail supply of sunglasses in the UK
- the wholesale supply of readers in the UK
- the retail supply of readers in the UK.

As no competition concerns arise as a result of the transaction, it has not been necessary to conclude on the precise product and geographic scope.

UNILATERAL EFFECTS

Introduction

18. As stated in the Mergers Assessment Guidelines, '[t]heories of harm are drawn by the Authorities to provide a framework for assessing the effects of a merger and whether it would lead to a substantial lessening of competition. They describe possible changes arising from the merger, any impact on rivalry and expected harm to customers as compared with the situation likely to arise without the merger'.⁸

Shares of supply

19. The parties provided estimates for their own shares of supply in the wholesale and retail supply of sunglasses and the wholesale and retail supply of readers. The parties indicated that due to the lack of independent data available, they were unable to provide estimates of their competitors' shares of supply. Given this difficulty in obtaining independent data (which was corroborated during the OFT's investigation), the OFT has treated these shares of supply with a degree of caution, and has therefore sought to assess the competitive strength of the parties based on evidence from additional sources (which are discussed further below) in conjunction with these data.

⁸ OFT/CC Mergers Assessment Guidelines, paragraph 4.2 (OFT 1254).

Sunglasses

20. The parties' estimated combined share of supply in both the wholesale and retail supply of sunglasses is less than five per cent by value, with a minimal increment in each case (less than one per cent).
21. Due to the parties' low shares of supply, and the number of strong competitors identified by the parties (including Fabris Lane, Alfred Franks and Bartlett, Blue Gem, Fitral, Luxottica, Safilo and De Rigo), the OFT does not consider that the transaction raises significant competition concerns in the wholesale or retail supply of sunglasses in the UK. The wholesale and retail supply of sunglasses will not therefore be considered further in the competitive assessment.

Readers

22. The parties' estimated combined share in the retail supply of readers is less than five per cent by value, with a minimal increment (less than one per cent).
23. Due to the parties' low shares of supply, and the number of strong competitors identified by the parties (such as high street and online retailers), the OFT does not consider that the transaction raises competition concerns in the retail supply of readers in the UK. Therefore the retail supply of readers will not be considered further in the competitive assessment.

Table 1: Wholesale supply of readers – UK sales by value – 2009

Name	Sales(GBP)	Share of UK supply (GBP) (per cent)	Sales (million units)	Share of UK supply (units) (per cent)	Average wholesale price
FGX	[]	[40-50]	[]	[50-60]	[]
Sight Station	[]	[10-20]	[]	[5-10]	[]
Combined	[]	[50-60]	[]	[60-70]	[]
Others	[]	[40-50]	[]	[30-40]	[]
Total	[]	100.0	[4-5]	100.0	[]

Source: the Parties

24. The parties estimate that post-merger they will have a combined wholesale share of supply of readers of approximately [50-60] per cent (increment [10-20] per cent) by value and [60-70] per cent⁹ (increment [five-10] per cent) by volume.
25. Estimates of shares of supply of wholesale readers provided by third parties were generally consistent with those provided by the parties. Although one third party estimated Sight Station's share of wholesale supply of readers to be nearer 20 per cent, this was not consistent with other third party views or sales data received from the parties and third parties. Accordingly, the OFT did not place any weight on this particular estimate of supply.
26. The parties submit that the market is fragmented and that retail customers have a wide choice of suppliers, including Blue Gem, Fabris Lane, Peer Limited and Clere Vision. Further, they submit that intense price competition between suppliers and significant buyer power has resulted in falling wholesale prices and reduced margins in recent years. By way of example, FGX's average gross margin has declined from approximately [] per cent in 2007 to [] per cent in 2009. FGX subsequently clarified to the OFT that these figures exaggerated its true profit margin (since they did not take into account the costs of equipment provided free of charge to retailers, costs of merchandising services and the cost of postage/freight), and that a more accurate figure was approximately [] per cent.

⁹ The parties submit that its estimates are likely to understate the true UK market size. The market size estimate does not include all sales to smaller UK retailers such as discounters, garden centres, duty free shops.

27. Notwithstanding these arguments of the parties, Sight Station is described in an internal FGX document as the 'No. 2 seller of readers in the UK'.¹⁰ Moreover, according to the share of supply data obtained during the OFT's investigation, Sight Station is the third largest wholesale supplier of readers in the UK, meaning that the merger will bring together the number one and three wholesale suppliers of readers in the UK.
28. The parties' combined share of supply of [50-60] per cent (and the existence of considerable profit margins, whether [] per cent or higher) is high enough to give the OFT prima facie cause for concern over potential unilateral effects to warrant further examination. However, the OFT notes that wholesale market shares are capable of changing significantly in the event that one or more large national retailers switches supplier. For example, FGX estimates that in 2011 it will generate approximately [] per cent of its readers sales from only seven customers, and that the loss of its largest customer would see FGX lose approximately [] per cent of its readers sales. This would constitute approximately [] per cent of the overall market, which is broadly the equivalent size of Sight Station.

Closeness of Competition

Competition between the parties' core product offerings

29. Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' products compete closely. This includes situations where the parties are often amongst the leading candidates for the award of supply contracts.
30. The parties submit that they are not each other's closest competitors, in particular given the different product characteristics and target customer audiences for their respective products. In summary:
- FGX's sales are to supermarkets and pharmacies, and its readers products are marketed as well-designed, functional, mass-market readers.

¹⁰ Response from parties 12/1/11 Annex 1 'Acquisitions Update'.

- By contrast, Sight Station is best known as a supplier of high-end readers to fashion conscious customers.

On the basis of this distinction, the parties consider that they have, to a large extent, complementary (rather than substitutable) product offerings.

31. In this regard, it should be noted that in January 2010, Sight Station began marketing a lower value range of readers under the brand of 'Essential Eyes'¹¹ with which it won a [] trial with one of the major supermarket chains.¹² The relevance and potential impact of this new range on the degree of substitutability (and therefore competition) between FGX and Sight Station's products is discussed further below. The remainder of this part of the decision considers the extent of competition between the parties' respective core offerings (that is, FGX's 'functional' or 'mass market' readers, and Sight Stations' 'fashion' readers).
32. The OFT received somewhat mixed views from third parties on whether FGX and Sight Station are close competitors. Therefore, in order to test the parties' argument that their respective core offerings do not compete closely and, if anything, are more complements than substitutes, the OFT considered the relative price of each party's respective readers as well as their characteristics and their typical target customer groups.

The parties' core products are priced differently

33. Information provided by third parties suggests that the wholesale supply of readers may consist of separate product segments that are differentiated by price. At the high-end of the market, for example, designer brand readers retail from around £50. These suppliers do not necessarily consider themselves to be direct competitors to the parties in the supply of readers. This is because they consider FGX and Sight Station to supply the middle-priced mass market.¹³
34. The parties consider that even within the middle-priced mass market, there is a distinct retail price difference of their respective readers – FGX readers typically retail at £10 compared with Sight Station at £16. The parties

¹¹ As explained at the Issues Meeting, Framed Vision introduced the 'Essential Eyes' brand in order to distinguish it from its successful fashion brand, Sight Station.

¹² [].

¹³ For example, one third party told the OFT that Luxottica UK Limited, Safilo UK Limited and De Rigo (UK) Limited would not supply the same customers as FGX and Sight Station.

provided evidence to show that about [] per cent of readers supplied by FGX have a retail price of below £11.99 and, in contrast, about [] per cent of Sight Station readers sell for a retail price over £14. This price difference is consistent with FGX's stated rationale for the merger of seeking to expand into higher end readers, and is also supported by FGX internal documents.¹⁴

35. The OFT also notes that there is a significant difference between the average wholesale prices of FGX and Sight Station readers (see Table 1 above). The average wholesale price of FGX readers is £[], which is less than the estimated market average wholesale price of £[]. In contrast, the average wholesale price of Sight Station readers is £[], which is significantly higher (more than 50 per cent) than the estimated market average wholesale price.
36. The OFT therefore considers that there is good evidence to suggest that parties' readers do compete at different price points.

The parties' core products have different characteristics

37. The Parties provided examples and images of their respective ranges of readers to show that they are very different in appearance. FGX readers are primarily aimed at more conservative customers, and are male-orientated or unisex in style. By contrast, Framed Vision's Sight Station branded readers are aimed expressly at younger, more fashion conscious customers, and are mostly female in style. Further, Sight Station offers a much larger range of readers - approximately 500 fashion designs (with 100 core styles) incorporating a wide range of designs and colours - compared to FGX's UK range of sixteen core styles.
38. Whilst both parties supply the retailer, Boots, with readers, they are marketed as very different propositions. FGX supplies Boots the Chemist with own brand readers while Sight Station supplies Boots' optician business with 'fashionable' readers. The products are therefore generally retailed in separate stores, and are not in direct competition to each other. The parties further provided evidence to demonstrate that Boots clearly targets different customer groups with the parties' respective offerings.

¹⁴ Response from parties 12/1/11 Annex 4: The FGX five year growth strategy identifies in its key strategic priorities, []

While Sight Station's readers are located next to the designer brand frames in the Opticians, Boots branded readers (supplied by FGX) are located next to everyday healthcare products in its Chemist stores. This difference in product offering was confirmed by Boots who stated: 'Sight Station's readers are very different; colourful with coordinated cases. FGX is a much more standard product.'

The parties target different customer groups for their core products

39. The different target audiences of the parties is reflected in the advertising strategies each adopts. On the one hand, Sight Station advertises its products in fashion magazines¹⁵ and attends trade fairs to win new customers. On the other hand, FGX confirmed that it does not engage in any of these activities because FGX's products are designed for the mass retail market and not for fashion customers. Indeed, during its investigation, the OFT found no evidence that a supplier of 'fashion readers' has supplied the mass market. Similarly, there is no evidence that retailers of 'functional' readers have considered using a 'fashion' provider for the mass market. Indeed, for Sight Station to win a 'trial' with one of the big four supermarkets, it offered more 'functional' styles under a new, separate brand 'Essential Eyes' (discussed further below).

Some third party concerns

40. Notwithstanding these differences in product offering and target audiences, a small number of large national retailers contacted by the OFT during the investigation expressed concern over the merger as they consider the parties to be close competitors. For example, one retailer responded that 'we consider that Sight Station brands are close substitutes to FGX readers'.
41. These concerns are not consistent with the evidence obtained during the OFT's investigation (discussed above), on the closeness of competition between the parties' respective core product offerings. The OFT was not able to identify the reason for this inconsistency but it appears from market enquiries that awareness of suppliers of readers is poor amongst some of the large national retailers. In particular, some were only able to name one

¹⁵ 'Attire Accessories' May/June 2009 Issue 12; 'Footwear and Fashion Extras' October 2009 Issue 45.

or two alternative suppliers notwithstanding the larger number of suppliers that the OFT has been made aware of during this investigation. In this regard, the OFT would note that it is not necessarily surprising that some retailers are not aware of the full range of suppliers given that readers are not a core part of their business; and at least for some, it may be that the retailer is satisfied with its current supplier and has not needed to consider alternatives. It might also have been the case that some third parties were referring to Sight Station's 'Essential Eyes' brand (discussed below) when making the comparison between the Parties. Finally, the OFT notes that whilst concerns were voiced by some retailers, others considered that sufficient choice would remain post-merger.

Conclusion on parties' core product offerings

42. On the basis of the evidence presented by the parties and third parties, the OFT considers that the degree of competition between Sight Station's fashion readers and FGX's mass market readers to be very limited on the basis of significant differences in terms of product characteristics, price and target audience. However, the OFT considers the similarity in styles between 'Essential Eyes' and FGX to be much closer, and therefore the remainder of the decision focuses on competition for the wholesale supply of readers to the mass market.

Competition between FGX and Sight Station's 'Essential Eyes' range

43. As noted above, in January 2010, Sight Station began marketing a lower range value of readers under the brand name, 'Essential Eyes'.¹⁶ Sight Station submits that this initiative was in response to feedback it had received from the larger retail chains regarding its core range of 'fashionable' readers. For example, one retailer commented, 'There isn't space in stores to have a larger range...I thought the styles and range were good but that now isn't the right time to move to an exclusively fashion range.' The parties submit that it was in response to this and similar comments from large retailers that persuaded Sight Station to establish a separate brand focused on the mass market segment.

¹⁶ The parties indicate that around January 2010, Sight Station came up with the idea of trying to offer a lower value, but still more fashionable range, to multiple retailers who had previously dismissed Sight Station's range as too expensive and/or fashion focused. Recommended retail prices for this range were between £2.99 and £12.99 targeting the mass market demographic of these retailers. (See: Page 1, FGX - OFT Issues Meeting - Additional Information Response (2).)

44. Sight Station informed the OFT that despite contacting several of the large retailers, []. Here, Sight Station's 'Essential Eyes' readers replaced the incumbent supplier, who was FGX, []. Sight Station informed the OFT that []. However, when contacted by OFT, the retailer explained that their decision to trial 'Essential Eyes' was based on the fact that []. The retailer also confirmed that they were [] with the results of the 'Essential Eyes' trial to date. It did not, however, indicate whether or not it would switch permanently any of its requirements from FGX to Sight Station.
45. While this retailer did not indicate whether it would be willing to switch some or all of its requirements permanently from FGX to Sight Station, the OFT has, on a conservative basis, considered the counterfactual where Sight Station was successful with its 'Essential Eyes' brand and had gained an important foothold in the mass market segment.¹⁷ This led the OFT to consider the existence of other constraints in the market (including the possibility of direct sourcing from Asia as well as the choice of alternative wholesales in the UK), and whether these would be sufficient to constrain the parties post-merger.

Constraint from existing wholesale suppliers

46. The parties expect the overall market for readers to continue growing steadily¹⁸ and within this context, identified a significant number of competitors in the wholesale supply of readers who either supply the 'mass market' or who currently supply the 'fashion' segment including Blue Gem, Sun Optic, Peer, Yakira, Optical California, Clere Vision, Good lookers, Norcar International and Fabris Lane.
47. A small number of competitors contacted by the OFT during its investigation raised concerns regarding the merger. The OFT notes that competitors largely considered FGX to be by far the largest supplier in the mid-range segment of the market, and that the acquisition would only add to its strength.

¹⁷ The OFT estimate that Sight Station's share of supply would increase by approximately five per cent if the customer currently trailing 'Essential Eyes' were to switch all of its requirements from FGX to Sight Station.

¹⁸ Response from parties 12/1/11 Annex 3: FGX International five-year plan presented to its Board of Directors meeting on [] estimates that average sales growth in readers is expected to be [] per cent per annum.

48. Despite the concerns expressed by some third parties, the OFT identified a number of competitors that it considered would provide a strong competitive constraint on the merged entity on the basis that they currently supply (or have supplied in the recent past) one or more large national retailer, such as Blue Gem, Sun Optic, Fabris Lane and Peer.
49. Further, the parties submitted that the success of 'Essential Eyes' in gaining a trial with a mass retailer reflects the ease with which an existing supplier (for example, a supplier to smaller retailers and department stores) can expand into a new segment (for example, supply to national retailers).
50. The OFT therefore considered whether those firms (of which there are several) that currently supply pharmacies, smaller retailers and department stores could easily expand into the mass market segment, and hence provide a material constraint on the merged parties.
51. The parties confirmed that a would-be supplier to large retailers must be able to demonstrate its ability to supply sufficient quantities of readers on demand, and this was also emphasised as necessary by a third party. However, the parties submit that suppliers can readily increase supplies of readers in response to increased demand.¹⁹
52. The parties also indicated that there are additional costs involved in supplying major retailers for example, brand development payments which, in some cases, can be very significant. Indeed, Sight Station submitted that its expansion of the 'Essential Eyes' brand in the mass market would have been relatively slow as it sought to establish its position, and secure additional finance. This reflects the views of a third party who commented that small scale suppliers often enter the readers market but do not remain or grow to a significant level.
53. Therefore, the OFT considers that while wholesalers can relatively easily increase their supply of readers in response to increased demand from a mass retailer, there may be additional costs to supply the larger retailers. Although the OFT did not identify any firm that was actively considering

¹⁹ One third party noted that finding reliable suppliers can be difficult as manufacturers in China often delay deliveries due to shortages of labour. The parties clarified that this concern may relate to the period following the Chinese New Year which can cause short production and delivery delays.

expanding into the mass market, the OFT considers that they have the potential to do so, just as Sight Station has demonstrated with its 'Essential Eyes' brand. Therefore, although these firms may not be considered as effective a constraint on the merged entity as existing suppliers in the mass market (particularly if, like Sight Station, they need to secure additional finance), the OFT did not obtain any evidence to indicate they would be any less well placed than Sight Station to expand into the mass market segment.

54. The OFT therefore considers that the constraint represented by existing suppliers of readers in the mass market segment, together with the potential for existing suppliers to small retailers, department stores and pharmacies to expand into the mass market is sufficient for the merger not to raise concerns of unilateral effects.

Constraint from direct sourcing by mass market retailers

55. The parties submit that some retailers choose to source their readers directly from Asian manufacturers and other large, sophisticated retailers have the potential to do so. While this was confirmed by some third parties, others indicated that they value the additional services provided by UK wholesalers²⁰ such that they do not consider direct sourcing as a viable alternative. Therefore, the OFT considers that direct sourcing by mass market retailers is a viable alternative (and therefore represent an important constraint on wholesalers) for some retailers although it is unlikely to represent a market-wide alternative and constraint.

Conclusion on constraints from existing wholesalers and direct sourcing

56. On the basis of the evidence available, the OFT considers that the parties post-merger will be sufficiently constrained to prevent a substantial lessening of competition in the wholesale supply of readers by a combination of existing suppliers of readers in the mass market segment, the potential for existing suppliers to small retailers, department stores and

²⁰ One third party identified the benefits of using a wholesaler as having confidence in the continuity of supply so less stock is needed in-store; not having to undertake regular audits and updates and no resource needed to identify market trends or work with manufacturers to develop new designs.

pharmacies to expand into the mass market, and the potential for some (but not all) customers to switch to direct sourcing.

BARRIERS TO ENTRY AND EXPANSION

57. When assessing barriers to entry and expansion, the OFT will consider whether entry and expansion is (i) timely, (ii) likely, and (iii) sufficient.²¹ In terms of timeliness, the guidance suggests that the OFT will look for entry to occur within two years. This section deals with de-novo entry only, as the potential for expansion has already been dealt with above.

De-Novo entry

58. The parties highlight that there have been a number of new entrants into the market for the wholesale supply of readers, including Sight Station itself in 2005 and Norcar International more recently.²² However, the OFT notes that both of these firms entered the 'fashion' rather than the 'mass market' segment. Nevertheless, the parties submit that entry is relatively easy and low cost, and explain that a company would need to establish a relationship with a low-cost manufacturer of readers - for example through attending a trade fair, and with that manufacturer, developing a product range. Business premises can be established in a small office with some space to store the product and a team of as few as three employees would be sufficient to develop a credible business. Although it would be necessary to obtain product samples, there are not likely to be any up-front costs for stock, display stands or merchandising. These can be ordered on the back of confirmation of a retail supply contract. The parties estimate that the cost of entry into the market would be approximately [less than £500,000]. The parties' estimate of entry was confirmed by competitors who also consider entry to be relatively easy.
59. However, one third party indicated that establishing a recognisable brand in readers, such as FGX's 'Foster Grant' brand may require investment in advertising and marketing of a further £500,000 each year. The parties consider this to be an exaggeration, and confirmed that Sight Station spends less than £[] per annum on advertising and marketing. It should

²¹ OFT Merger Assessment Guidelines 5.8.3.

²² Although the OFT did not contact Norcar International, we were informed by the Parties that Norcar International [].

also be noted that Sight Station was successful in winning its supermarket trial with an unknown brand, 'Essential Eyes'. This evidence suggests that having a recognisable brand in readers may not be that important a factor to mass market retailers when choosing their supplier.

60. Although no potential new entrant into the 'mass market' segment was identified during the course of the investigation, the parties submit that the most likely new entrant would be a wholesale supplier of sunglasses since they would already have a distribution network, links to both manufacturers and retailers, and a good understanding of the optical goods sector.

Conclusion on barriers to entry

61. The evidence on barriers to entry is mixed. However, given the competitive assessment it has not been necessary to conclude on the extent of entry barriers or of competitive constraints arising from potential entry.

BUYER POWER

62. The parties submit that retailers who buy in large quantities exercise significant buyer power and demand low prices from wholesale suppliers. They submit that switching costs are low and that direct sourcing from Asia by the larger retailers is relatively easy.
63. The parties state that the majority of readers are sold through mass retail chains, such as supermarkets, pharmacies, high-street fashion stores and opticians. As mentioned above, FGX estimates that in 2011 it will generate approximately [] per cent of its readers sales from only seven customers. The loss of its largest customer would see FGX lose approximately [] per cent of its readers sales. As such, a decision by one or more of its customers to purchase from a competing UK wholesaler will have a significant impact on FGX's business.
64. The OFT received mixed views from customers over whether they consider they have any countervailing buyer power. However, in the information provided by the parties, it was observed that the wholesale prices paid by these retailers to FGX were consistent with their views on whether they have buyer power. For example, one retailer who indicated that it has bargaining power pays a low price for its readers (just £[] on average)

while another retailer who indicated that their negotiating strength is not strong pays an average price of £[] and another paid £[] on average.

65. The parties indicated that contract negotiations are non-transparent in nature, and this strengthens the hand of retailers. Whilst there are few formal tenders, retailers enter into negotiations with multiple wholesalers. For example, in the last three years, FGX has entered into negotiations with the following retailers, who all indicated that they were also in discussions with other UK wholesalers or considering sourcing directly: [].

Switching Costs

66. The parties submit that there is a wide choice of suppliers in the market, and that retailers can switch between these suppliers easily. They indicate that in general, retailers only have informal supply arrangements with wholesalers and even where FGX has been able to agree a written supply contract with a retailer, these are typically [] and for a term of [] years or less. Nevertheless, the length of contracts could act as a barrier to switching and from information provided by the parties, it became apparent that FGX has contracts with [] national retailers of between [] and [] years. Whilst FGX submit that these contracts are [], customers indicated that their preference is to purchase from a single supplier.
67. The parties submit that the costs of switching are negligible for retailers: no additional staff training is required, nor any capital investment. For example, they indicate that the stands used in-store to display readers are usually provided free of charge by the wholesaler. Customers contacted by the OFT agreed that the costs of switching are relatively low as only marketing and display equipment needs to be changed but indicated that it can take between six to 12 months to complete the whole switching process and this could deter some retailers from switching.
68. Nevertheless, the parties provided evidence of switching by larger retailers including examples of where FGX had lost customers to competitors and this was confirmed by third parties.

Conclusion on Buyer Power

69. Information obtained from the parties and third parties on buyer power is relatively mixed. However, given that no competitive concerns were found as a result of the merger, it has not been necessary to conclude on buyer power.

VERTICAL ISSUES

70. We did not find any significant vertical issues to be considered further. The parties do not manufacture their own readers, but purchase them from manufacturers in South East Asia. The parties do, however, retail their readers, but their combined share of supply in the retail market is minimal and therefore does not raise any vertical concerns.

THIRD PARTY VIEWS

71. Of the 20 third parties who commented, a minority raised concerns that the merger would lead to a lessening of competition through unilateral effects in the wholesale supply of readers in the UK. Two competitors noted the high shares of supply that FGX has in the supply of readers to major retailers and one competitor raised concerns that Sight Station would be a more effective competitor in the fashion end of the market post-merger, having greater capital support than hitherto. The parties combined share of the wholesale supply of readers is high and did raise prima facie concerns. However, the OFT considers that the constraint represented by existing suppliers in the mass market together with the potential for suppliers to small retailers, department stores and pharmacies to expand into the mass market segment is sufficient not to raise concerns of unilateral effects. The OFT also considers that the numerous suppliers in the 'fashionable' readers segment, where demand is more dispersed and differentiated than in the mass market segment, will provide a sufficient competitive constraint on the parties post-merger in this segment.
72. A small number of retailers considered the parties to be close competitors and were not aware of alternative suppliers of readers. The OFT carefully considered these views but found limited evidence that the parties are close competitors. This is discussed in more detail under 'closeness of competition' above.

ASSESSMENT

73. The parties overlap in the supply of sunglasses and readers in the UK. Due to the low shares of supply of the parties, the OFT does not consider that the transaction raises competition concerns in the wholesale and retail supply of sunglasses or the retail supply of readers. The OFT investigation therefore focused on the wholesale supply of readers, where the parties' combined share would be approximately [50-60] per cent with an increment of [10-20] per cent. Although the OFT treated these shares of supply with a degree of caution (given difficulties experienced by both the Parties and OFT in obtaining independent data for third party suppliers), they are high enough to give the OFT prima facie cause for concern over potential unilateral effects to warrant further examination.
74. During the investigation, it became apparent that the market for wholesale readers may be best characterised by two distinct segments, that is, 'functional' readers supplied to large national retail chains where FGX competes and 'fashionable' readers supplied typically to smaller retailers, pharmacies and department stores where Sight Station is most active. On this basis, the OFT considers the degree of competition between Sight Station's fashion readers and FGX's mass market readers to be limited due to significant differences in terms of product characteristics, price and target audience.
75. The OFT also assessed the potential impact of Sight Station's new, lower value range, 'Essential Eyes', on the degree of competition between the Parties. Sight Station began marketing the new range to the large retailers in January 2010 but with only []. While this retailer informed the OFT that it was [] with Sight Station's product, it did not indicate whether it would be willing to roll out the product more widely or switch some (or all) of its requirements away from FGX to Sight Station.
76. Out of caution, the OFT assumed a counterfactual where Sight Station was successful with its 'Essential Eyes' brand and had gained an important foothold in the mass market segment, and went on to consider whether there would be sufficient post-merger alternatives to constrain the Parties.

77. In this regard, the OFT identified a number of competitors that it considered would provide a strong, direct competitive constraint on the merged entity on the basis that they currently supply (or have supplied in the recent past) one or more large national retailers. The OFT also identified the potential for firms currently supplying smaller retailer, department stores and pharmacies to expand into the mass market segment, just as Sight Station did with its 'Essential Eyes' brand. Finally, while the OFT received mixed evidence on the viability of direct sourcing from Asia for all customers, it considers that it is a credible alternative for at least some, and therefore will provide some level of constraint on the merged entity (even if it is not a market-wide constraint). For these reasons, the OFT does not consider that the merger raises unilateral effects concerns.
78. A limited number of third parties expressed concerns over the merger as they consider the parties to be close competitors, and were only able to name one or two alternative suppliers. These concerns are not, however, consistent with the evidence obtained during the investigation as the OFT was made aware of a large number of suppliers. The OFT was not able to verify the reason for this but it may be because readers are not a core part of their business, and/or retailers may be satisfied with their current supplier and therefore are not actively looking to change their supplier. It might also have been the case that some third parties were referring to Sight Station's 'Essential Eyes' brand (discussed above) when considering the impact of the merger.
79. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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