

From the Presidency of Competition Authority;

COMPETITION AUTHORITY DECISION

File No : 2019-3-061

Decision No : 21-30/395-199

Date of Decision : 10.06.2021

A. BOARD MEMBERS IN ATTENDANCE

Chairman: Birol KÜLE

Members: Şükran KODALAK, Ahmet ALGAN, Hasan Hüseyin ÜNLÜ, Cengiz ÇOLAK

B. RAPPORTEURS: Emin Cenk GÜLERGÜN, İbrahim Hilmi KOÇAK, Ebru ÖZAKTAŞ, Ebrar KOCAMAN, Emre KARA

C. APPLICANT: -EssilorLuxottica S.A.

Representatives: Dr. M. Fevzi TOKSOY, Bahadır BALKI, Ayberk KURT

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- (1) **D. SUBJECT OF THE FILE: The acquisition, by EssilorLuxottica S.A., of HAL Holding N.V.'s fully-owned subsidiary HAL Optical Investments B.V.' s shares in GrandVision N.V.**
- (2) **E. PHASES OF THE FILE:** The application submitted to the Competition Authority (Authority) records on 25.10.2019 with the number 7449, requests the authorization of EssilorLuxottica S.A.'s (ESSI-LUX) acquisition of the shares held by HAL Holding N.V.'s (HAL HOLDING) fully-owned subsidiary HAL Optical Investments B.V. in GrandVision N.V. (GRANDVISION) ¹.
- (3) On the date of notification of the transaction concerned, Essilor International Compagnie Générale d'Optique S.A. (ESSILOR) was bound by a commitment to transfer its control over Merve Optik Sanayi ve Ticaret A.Ş. (MERVE OPTİK) to a third party by divesting its shares in accordance with a Competition Board (Board) decision dated 01.10.2018 and numbered 18-36/585-286. An information note dated 06.11.2019, numbered 2019-3-61/BN-01 was discussed in the Board meeting of 14.11.2019, and the decision numbered 19-40/639-M was taken to assess the notification concerning the acquisition of all shares of Hal Optical Investments B.V. in

¹ The transaction concerned was submitted for the authorization of various competition authorities. The decisions taken by the other competition authorities concerning the transaction were presented by ESSI-LUX to the Turkish Competition Authority as follows:

- The European Commission (EU Commission) authorized the transaction on 23.03.2021, subject to the commitment that, due to the overlap created at the retail level, ESSI-LUX should sell 174 stores in Italy operating under the Vistasi brand, 35 stores in Belgium operating under the Eyewish brand, and 142 stores in the Netherlands operating under the Eyewish brand.
- In the US, the first authorization decision taken on 05.12.2019 with a one-year period expired and the authorization was renewed on January 4, 2021.
- In Russia, the authorization was renewed on 27.01.2021 since the first authorization decision expired on 19.11.2019.
- The transaction was authorized on 11.12.2019 in Colombia, on 18.03.2020 in Brazil, and on 09.04.2021 in Chile.

GRANDVISION by ESSI LUX after the completion of the commitments process. Afterwards, with the decision dated 29.11.2019 and numbered 19-42/703-301 authorizing the transfer of MERVE OPTİK, the investigation process was started for the current file.

- (4) In the preliminary examination stage, a number of letters were sent to request information from the notifying party ESSI-LUX; and many undertakings operating in wholesale market for ophthalmic lenses were asked to provide their opinions, as well as Limited Liability All Opticians and Lens Makers' Opticians Provision and Distribution Cooperative (S.S. Tüm Optisyenler ve Gözlükçüler Temin Tevzi Kooperatifi – GÖZKOOP) , Turkish Eyewear Manufacturers' Association (Türkiye Gözlük Sanayicileri Derneği – GÖZSAN-DER) , Türkiye Optic and Optometric Professions Association (Türkiye Optik ve Optometrik Meslekler Derneği – TOOMD) , Lens Makers' and Opticians' Confederation (Gözlükçüler ve Optisyenler Konfederasyonu – GOK) , Customs General Directorate of the Ministry of Commerce, and Türkiye Medicines and Medical Devices Association Presidency (Türkiye İlaç ve Tıbbi Cihaz Kurumu Başkanlığı – TİTCK).
- (5) The Preliminary Examination Report dated 12.06.2020 and numbered 2019-3-61/Öİ prepared was discussed at the Board Meeting of 25.06.2020 and the decision no 20-31/384-M was taken to launch a final examination on the relevant acquisition, in accordance with Article 10.1 of the Act no 4054.
- (6) The Final Examination Notification was received by ESSI-LUX on 08.07.2020, and ESSI-LUX's written plea was submitted to the Authority records on 07.08.2020, with the number 8285.
- (7) The Information Note dated 25.11.2020 and numbered 2019-3-61/BN-02 requesting an extension was negotiated during the Authority meeting on 03.12.2020, and the decision numbered 20-52/728-M was taken extending the final examination a further six months following the date of expiry of the initial six month period.
- (8) During the final examination stage, the response letter of the GÖZKOOP was received into the Authority records. In addition, the letters that contain objections to the process sent by Optik Elit İth. İhr. Paz. Tic. Ltd. Şti. (ELİT OPTİK), Hocaoğlu Optik İth. İhr. San. ve Tic. Ltd. Şti (HOCAOĞLU), (.....) were entered into the Authority records under the date 29.04.2021, number 17563; date 07.05.2021, number 17752; date 24.05.2021, number 18024; date 24.05.2021, number 18027, and date 26.05.2021, number 18110, respectively. The objections received from the Turkish Opticians and Lens Makers' Association were entered into the Authority records with the date 17.05.2021, number 17847, and date 10.05.2021, number 17769. During this period, information requested from the ESSI-LUX were also entered into the Authority records under various dates and numbers.
- (9) The Final Examination Report dated 27.05.2021 and numbered 2019-3-61/Nİ, prepared after the commitments package that was finally received into the Authority records on 30.03.2021 with the number 16555, was evaluated in the Board meeting of 03.06.2021, and the decision numbered 21-21/367-Mİ took the file into the Board agenda for additional study. Meanwhile, the updated commitment text was entered into the Authority records on 09.06.2021, with the number 18474.
- (10) The Final Examination Report dated 27.05.2021 and numbered 2019-3-61/Nİ was considered and concluded together with the Information Note dated 10.06.2021 and numbered 2019-3-61/BN-03, which was prepared in response to the Board's decision to conduct additional work.

(11) **F. RAPPORTEURS' OPINION:** In summary, the relevant report states the following:

- The notified transaction is subject to authorization under Article 7 of the Act no 4054 on the Protection of Competition (Act no 4054) and the Communiqué no 2010/4 concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (Communiqué no 2010/4), which was issued based on the aforementioned Article.
- Under the same Article of the Act, the transaction poses the risk of significantly restricting competition.
- The following commitments text entered into the Competition Authority records on 30.03.2021 with the number 16555 is found to be sufficient to eliminate the competition problems that will be caused by the transaction, and therefore the transaction can be authorized subject to conditions, under the framework of the commitments offered by ESSI-LUX:

"EssilorLuxottica presents the following behavioural commitments to your attention, whose scope was extended to address the Competition Authority's potential vertical competition concerns:

1. *EssilorLuxottica guarantees that it shall not engage in tied sales of the relevant products, which includes a guarantee not to refuse to supply branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment products (along with related consumables), separately to current and potential customers in Türkiye.*
2. *EssilorLuxottica guarantees that it shall not implement discriminatory conditions for customers on equal standing related to the sales of branded sunglasses, branded optical frames, ophthalmic lenses, and ophthalmic equipment (along with related consumables), and that it shall provide reasonable conditions under all circumstances.*
3. *EssilorLuxottica guarantees that for branded sunglasses, branded optic frames and RX lenses, the total share of the purchases made by Atasun from third party suppliers will be on the same scale as the purchases made in 2019 in terms of value.*
4. *Regarding the supervision and reporting of the implementation of the commitments numbered 1, 2 and 3 above, EssilorLuxottica guarantees to establish the following supervision and reporting systematic for the commitment process following the transaction:*
 - a. *EssilorLuxottica will sign an agreement with an independent third-party company ("Principal Auditor") within 45 days after the notification of the short decision of the Competition Board.*
 - b. *The Principal Auditor will submit an annual report including his opinion on EssilorLuxottica's compliance with commitments numbered 1, 2 and 3 to the Competition Authority and to the EssilorLuxottica simultaneously before the end of every year for the duration of the commitment specified below. On the request of the Competition Authority or on his own initiative, the Principal Auditor will be able to submit interim reports in addition to the abovementioned annual report.*
 - c. *EssilorLuxottica will submit to the Competition Authority a specification containing the general conditions of the agreement to be made with the Principal Auditor within 30 days after the notification of the short decision of the Competition Authority.*
 - d. *EssilorLuxottica will provide the Principal Auditor with all the information and support necessary to realize the relevant reporting within the framework of the honesty rule,*

on the condition that all kinds of confidentiality are guaranteed by the Principal Auditor.

- e. During the period between the closing of the transaction and the end of the Principal Auditor's commissioning, EssilorLuxottica shall submit monthly reports relating to the interim period to the Competition Authority.*
 5. *Following the transaction, in order to eliminate any concerns with regard to coordination;*
 - a. EssilorLuxottica will not directly or indirectly share with Atasun any commercially sensitive information (related to Atasun's competitors/rivals) that it receives in its capacity as a wholesaler through its retail-level business relations.*
 - b. Atasun guarantees that it will not directly or indirectly share with EssilorLuxottica any commercially sensitive information (related to EssilorLuxottica's competitors/rivals) that it receives in its capacity as a retailer through its retail-level business relations.*
 - c. Additionally, EssilorLuxottica guarantees that, in accordance with the purposes mentioned above, it will establish restrictions on accessing sensitive information between Atasun and EssilorLuxottica.*
 - d. Moreover, Atasun's operational management guarantees that it will maintain its separate organization with EssilorLuxottica's retail-level affiliates in terms of its personnel and organizational structure. In this scope, managers at responsible for Atasun's operational management will not participate under EssilorLuxottica itself or in its wholesale-level affiliates. In the same context, managers responsible for operational management under EssilorLuxottica itself or its wholesale-level affiliates will not be assigned under Atasun corporate structure simultaneously. (Operational management is defined as the administration and management of the daily tasks, and executive board members who are not responsible for the management of the daily tasks will not be evaluated in this framework. In addition to this, the operational separation mentioned above covers the monitoring of the relevant commercial relationships under the responsibility of separate people and teams, up to the level of deputy director general.)*
 - e. In addition, and in parallel with the evaluations in Competition Authority's AEH/Migros decision, in order to eliminate potential concerns of the Competition Authority on the implementation of the relevant commitments, EssilorLuxottica will submit annual reports concerning the effective measures taken with regards to the restriction of the flow of commercially sensitive information between EssilorLuxottica and Atasun, the first of which is to be prepared after the conclusion of the Transaction by the Competition Authority.*
 6. *The duration of the behavioural commitments herein will be three years from the conclusion date of the Transaction and, if deemed necessary by the Competition Authority, it can be extended for a maximum of three more years at the end of the initial period."*
- The behavioural commitments imposed in terms of the authorization decision are to constitute an obligation, and in case of violation of these obligations, an administrative fine can be imposed in accordance with Article 17 of the Act no 4054

G. EXAMINATION AND ASSESSMENT

G.1. Parties

G.1.1. ESSI-LUX

- (12) ESSI-LUX is a Paris based, vertically integrated, multinational French-Italian company founded after the merging of the Italian company Luxottica Group S.p.A (LUXOTTICA) with ESSILOR, a French company, on 01.10.2018. The Board² authorized the merger between ESSILOR and LUXOTTICA subject to conditions. As an integrated manufacturer of optical products, ESSI-LUX operates at every stage of the lens technology sector, from the development, design and production of the ophthalmic (corrective) lenses to the wholesale level, as well as in the design, production and distribution of the prescription spectacle frames and their parts, and sunglasses. ESSI-LUX incorporates licensed trademarks such as Varilux, Transitions, Crizal, Ray-Ban, Oakley, Eyezen and Xperio, Ray-Ban, Oakley, Vogue Eyewear, Persol, Oliver People, Alain Mikli, Arnette, Bolon and Costa; and licensed marks such as Giorgio Armani, Burberry, Bulgari, Chanel, Coach, Dolce&Gabbana, Ferrari, Michael Kors, Miu Miu, Prada, Ralph Lauren, Starck Eyes, Tiffany &Co., Torry Burch, Valentino and Versace. ESSI-LUX has over 9,100 retail stores worldwide.
- (13) In the Notification Form, it is stated that no shareholder has legal and actual control over ESSI-LUX, and that, according to the Merger Agreement signed between Delfin S.a.r.l. (DELFIN) and ESSILOR, the articles of association of ESSILOR provides for a limitation on the voting rights of those shareholders with more than (.....)% of the company's shares in Article 23(3).2. The following table shows the shareholding structure of ESSI-LUX.

Table 1- Shareholder Structure of ESSI-LUX based on Investor Type as of 16.04.2021

Shareholders	Share Percentage (%)
Public Offering	(.....)
DELFIN	(.....)
Staff	(.....)
Treasury Stock	(.....)
TOTAL	100,0
Source: ESSI-LUX	

- (14) Additionally, the Notification Form also states that DELFIN cannot have actual control over ESSI-LUX for the following reasons:
- In light of the voting habits demonstrated in the previous shareholder meetings of ESSILOR and LUXOTTICA, the (.....)% limitation in terms of voting rights will prevent DELFIN from acquiring the majority of valid voting rights (more than 50%).
 - There are no shareholder agreements or deadlock resolution processes that provide DELFIN with any additional rights regarding the appointment or dismissal of its directors.
- (15) In Türkiye, ESSI-LUX operates through Essilor Türkiye Yönetim Hizmetleri Ltd. Şti. (ESSILOR TÜRKİYE), Opak Optik ve Ticaret A.Ş. (OPAK), İşbir Optik Sanayi A.Ş. (İŞBİR), Altra Optik Sanayi ve

² The Board's Essilor/Luxottica Decision dated 01.10.2018 and numbered 18-36/585-286.

Ticaret A.Ş. (ALTRA) , Esel Optik Makinaları İthalat İhracat Pazarlama ve Ticaret A.Ş. (ESEL) , Luxottica Gözlük Endüstri ve Ticaret A.Ş. (LUXOTTICA TÜRKİYE) , Sunglass Hut Turkey Gözlük Ticaret A.Ş. (SUNGLASS HUT).

G.1.1.1. ESSILOR TÜRKİYE

- (16) ESSILOR Türkiye, in which Essilor Optica International Holding holds (.....)% of shares, is under the sole control of ESSI-LUX and is responsible for the management of ESSILOR's subsidiaries operating in the Turkish market. ESSILOR TURKEY does not have any commercial activities.

G.1.1.2. LUXOTTICA TÜRKİYE

- (17) Of the shares of LUXOTTICA TÜRKİYE, (.....)% belong to LUXOTTICA, and the remaining (.....)% belong to Luxottica Netherlands BV. LUXOTTICA TURKEY, which operates in the field of wholesale distribution of optical frames and sunglasses, sells ESSI-LUX's products to independent resellers, mainly opticians. LUXOTTICA TÜRKİYE distributes and sells sunglasses through SUNGLASS HUT and the Ray-Ban website.

G.1.1.3. SUNGLASS HUT

- (18) LUXOTTICA owns (.....)% of the shares of SUNGLASS HUT, which is ultimately controlled by ESSI-LUX and operates in the field of retail sale of sunglasses. LUXOTTICA TURKEY and SUNGLASS HUT merged their operations in 2019 and SUNGLASS HUT terminated its existence as a legal entity. SUNGLASS HUT maintains its wholesale activities under LUXOTTICA TÜRKİYE.

G.1.1.4. OPAK

- (19) Essilor Optica International Holding and ESSILOR owns (.....)% of the shares of OPAK, which is under the sole control of ESSI-LUX. OPAK operates in the market for the wholesale of imported finished ophthalmic lenses, completion of half-finished ophthalmic lenses, and the wholesale thereof. OPAK distributes various lenses belonging to the ESSILOR Group brand, including Essilor, Crizal, Varilux, Transitions, Xperio, E-SPF, Airwear, Orma, Ormix, Ormex, Stylis, Lineis and Interview. The company also operates in the sale of ophthalmic equipment and contact lenses.

G.1.1.5. İŞBİR

- (20) ESSI-LUX owns (.....)% of the shares of İŞBİR as well as sole control over the company. The remaining (.....)% of the shares are owned by real persons. İŞBİR operates in the wholesale of imported finished ophthalmic lenses, completing half-finished ophthalmic lenses, and the wholesale thereof. İŞBİR performs the exclusive distribution of Nikon-brand lenses supplied by Nikon-Essilor as well as ESSILOR's BBGR lenses supplied by ESSI-LUX in Türkiye. After finishing BBGR lenses in its own prescription laboratory, İŞBİR sells them under the "VisionArt" brand. Previously a subsidiary of ESSILOR, İpek Optik Ürünleri San. Tic. A.Ş. (İPEK) started to operate under İŞBİR in 2019 as a new business unit under the title of Tora Optik (TORA).

G.1.1.6. ALTRA

- (21) ESSI-LUX holds sole control³ over Shamir Optical Industry Ltd. (SHAMİR), an Israel-based ophthalmic lens manufacturer, which owns a subsidiary named ALTRA in Türkiye. ALTRA operates

³ ESSILOR's sole control over ALTRA was confirmed in the Notification Form submitted by the parties within the framework of the file.

in the wholesale of imported finished ophthalmic lenses, completion of half-finished lenses, and the wholesale thereof. The final ownership structure of ALTRA is included in the following figure.

G.1.1.7 ESEL

- (22) ESEL, (.....)% of the shares of which are owned by Essilor Optica International Holding, sells ophthalmic equipment manufactured by ESSILOR.

G.1.1.8. FIELDS OF ACTIVITY OF ESSI-LUX

Production and Wholesale of Ophthalmic Lenses

- (23) Ophthalmic lenses allow correcting visual disorders diagnosed by ophthalmologists, and they are manufactured in the form of (i) stock lenses that are compatible with the most common visual impairments, both surfaces of which have an optical function, and (ii)“half-finished” lenses in which only the front surface is optically functional, while the back surface can be processed at prescription laboratories in line with the specific combination demanded (i.e. consumer’s prescription). ESSI-LUX operates in the wholesale market for ophthalmic lenses, together with its subsidiaries OPAK, İŞBİR and ALTRA.

Production and Distribution of Optical Machines, Equipment and Consumables

- (24) That the market for the production and distribution of ophthalmic machinery, equipment and consumables have an international aspect was stated in the Board decision dated 17.04.2013 and numbered 13-22/305-142. All leading suppliers of ophthalmic machinery, equipment and consumables operate worldwide and distribute their products through one or more factory channels. ESSILOR manufactures its surfacing machines in Germany, coating machines in Italy and shaping machines in the USA, and services their customers through these factories.
- (25) The production and distribution of optical machines, equipment and consumables are important in that they demonstrate the vertically integrated structure of the relevant group.

Contact Lenses

- (26) ESSI-LUX operates in the contact lens market through its subsidiaries OPAK and ALTRA.

Wholesale of Sunglasses and Optical Frames

- (27) Sunglasses are optical products that are designed to protect the eyes from the harmful rays of the sun. LUXOTTICA TÜRKİYE operates in the fields of wholesale distribution of optical spectacle frames and sunglasses, and in the online retail sales of Ray-Ban branded sunglasses.
- (28) ESSI-LUX operates in the wholesale of ophthalmic lenses, ophthalmic equipment, contact lenses, sunglasses and optical frames. The following table shows the distribution of ESSI-LUX’s total turnover in Türkiye according to its areas of activity in the year 2020.

Table 2- Distribution of ESSI-LUX’s Total Turnover in Türkiye According to Areas of Activity in 2020

Field of Activity	Share in Turnover (%)
Ophthalmic Lenses ⁴	(.....)
- RX Lenses	(.....)

⁴ Since ESSI-LUX is unable to separate between RX and Stock in terms of exports, the RX and stock lens data given above do not include those sales.

- Stock Lenses	(.....)
Ophthalmic equipment	(.....)
Contact Lenses	(.....)
Sunglasses ⁵	
Optical Frames	
Other	
Total	
Source: ESSI-LUX	

(29) In 2020, ESSI-LUX gained (.....)% of its turnover in Turkey from the sales of ophthalmic lenses and (.....)% from sunglasses, which shows that ESSI-LUX's main fields of activity are the production and marketing of optical lenses and sunglasses. It is evaluated that the merger of ESSILOR and LUXOTTICA reinforced the strength of the undertaking in these areas.

Retail Sale of Optical Products

(30) ESSI-LUX operates at the retail level through SUNGLASS HUT and Ray-Ban's online platform.

G.1.2. HAL TRUST

(31) Operating under Bermuda law, Hal Trust is a trust company that owns all shares of HAL HOLDING. Hal Trust generates turnover in Türkiye through the following subsidiaries:

- Koninklijke Ahrend B.V. operates in the office furniture sector.
- Sport Timing Holding B.V. operates in the fields of development and production of identification and time measurement equipment for sports competitions.
- Broadview Holding B.V. operates in Türkiye through its subsidiaries Trespa, Arpa and Westag&Getalit.
- Trespa International B.V. manufactures laboratory furniture, as well as exterior composite panels for siding.
- Arpa Industriale S.p.A. is a furniture retailer.
- Westag & Getalit AG manufactures products for construction.
- Safilo Group S.p.A (SAFİLO Grup) is a manufacturer and distributor of optical frames and sunglasses.
- GRANDVISION is active in the retail sales of optical products through Atasun Optik Perakende Ticaret A.Ş. (ATASUN).

G.1.2.1. GRANDVISION

(32) Founded in its current structure in 2010, GRANDVISION is in the Netherlands and operates at the global level in the field of retail sales of optical products. GRANDVISION provides eye-care services in the fields of prescription glasses products, contact lenses and contact lens care products, sunglasses used with flat and prescription lenses. It releases its products to markets in more than 40 countries. GRANDVISION conducts its activities through (.....) stores.

⁵ Only includes third party sales.

(33) GRANDVISION is ultimately controlled by Hal Trust through HAL HOLDING. In the Notification Form, it was noted that following the conclusion of the transaction and the mandatory public offering, ESSI-LUX intended to delist GRANDVISION from the Euronet Amsterdam Stock Exchange list and to gain full ownership of GRANDVISION by purchasing (.....)% of its shares or through other secondary transactions, and that ESSI-LUX would gain sole control over GRANDVISION, in accordance with the legal acquisition processes. The shareholding structure before and after the transaction is presented in the following table.

Table 3- Shareholder Structure of GrandVision Based on Investor Type⁶

Before Transaction		After Transaction	
Shareholders	Share Percentage (%)	Shareholders	Share Percentage (%)
Hal Optical Investments B.V.	(.....)	ESSI-LUX	(.....)
Public	(.....)	Public	(.....)
Other	(.....)	Other	(.....)
Total	100.00	Total	100.00
Source: Notification Form			

(34) In Türkiye, GRANDVISION operates at the retail level through ATASUN, over which it has sole control.

G.1.2.1.1. ATASUN

(35) ATASUN, whose shares are owned by GrandVision Türkiye B.V., is a chain store that operates at the retail level of the optical industry, in the sale of sunglasses, prescription optics, frames and ophthalmic lenses. Operating since 2007, ATASUN is active in 61 cities with 291 outlets. While it used to sell prescription optical frames and ophthalmic lenses in its retail stores exclusively, since 2016, it began to carry sunglasses both in retail stores and on its website. Moreover, ATASUN also sells Seen, Instyle, Solaris, Sensaya, Julius, Heritage, C-line and Unofficial Sunglasses, which are GRANDVISION's own brands.

G.1.2.1.2. SAFILO GRUP and SAFILO

(36) SAFILO GRUP and SAFILO operate in the wholesale market of sunglasses and optical frames in Türkiye. SAFILO GRUP owns (.....)% of SAFILO's shares, and its shareholding structure is presented in the following table:

Table 4- Shareholder Structure of SAFILO GROUP

Shareholders	Share Percentage (%)
HAL Holding	(.....)
BDL Capital Management	(.....)
Brandes Investment Partners LP	(.....)
Vittorio Tabacchi	(.....)
Other	(.....)
Total	100.00
Source: Notification Form	

⁶ <https://investors.grandvision.com/static-files/3978742b-531b-4aab-bea7-b0cd99bcd88b>, p. 97.

G.1.2.1.3. GrandVision's Areas of Activity

- (37) GRANDVISION operates in the field of retail sales of optical products in Türkiye through ATASUN. The following table shows the distribution of the total turnover of ATASUN by product groups in Türkiye in 2020:

Table 5- Distribution of ATASUN's Turnover in Türkiye in the year 2020 based on Product Groups

Product Line	Turnover Share (%)
Ophthalmic lenses	(.....)
Optical Frames	(.....)
Sunglasses	(.....)
Contact Lenses	(.....)
Other ⁷	(.....)
Total	100.00

Source: ESSI-LUX

- (38) As seen in the table, ATASUN generated (.....)% of its Turkish turnover from the sale of sunglasses, (.....)% from ophthalmic lenses, and (.....)% from optical frames.

G.2. NATURE OF THE TRANSACTION

- (39) With the notified transaction, ESSI-LUX will acquire all shares of HAL HOLDING in the latter's fully owned subsidiary GRANDVISION as well as sole control over GRANDVISION. Because the notified transaction will cause a permanent change in the control of GRANDVISION, it is an acquisition within the framework of Article 5 of the Communiqué no 2010/4. Since the turnovers of the parties to the transaction are over the thresholds set out in Article 7.1 of the Communiqué no 2010/4, the transaction is subject to authorization.

G.3. Competition Board Decision Dated 01.10.2018 and Numbered 18-36/585-286

- (40) In the Board decision dated 01.10.2018 and numbered 18-36 / 585-286 concerning the merger of LUXOTTICA and ESSILOR, the transaction was conditionally authorized within the framework of the commitments offered by the parties. The file defined the relevant product markets as "wholesale of branded sunglasses", "wholesale of branded prescription optical spectacle frames" and "wholesale of ophthalmic lenses". The decision also evaluated that horizontal and conglomerate effects could cause competitive concerns, and noted that the merged undertaking would be the market leader with fairly high market shares.
- (41) The commitment text, entered into the Authority records on 01.10.2018 with the number 18-36/585-286, notes that ESSILOR will transfer sole control over MERVE OPTİK to a suitable buyer by divesting all of its shares in MERVE OPTİK, and furthermore will present the following behavioural commitments in order to eliminate the conglomerate effects stemming from the product portfolio of the merged undertaking:
- The merged undertaking will not engage in bundled sales of ophthalmic lenses, optical frames and sunglasses, including a guarantee not to refuse offering the unbundled sales of ophthalmic lenses, optical frames and sunglasses to opticians in Türkiye,

⁷ Includes accessories, spare parts for frames, spare parts for sunglasses, contact lens solutions, contact lens maintenance products, and warranty services.

- The parties and the merged undertaking will not implement contractual or actual exclusivity provisions which prohibit or restrict opticians from purchasing competing ophthalmic lens, optical frame and sunglasses products,
 - The duration of the behavioural commitments will be three years from the conclusion date of the transaction.
- (42) In addition, independent of the behavioural commitments related to the tying mentioned above, it is stated that the parties will be free to carry out bundled sales of various products, if requested by opticians.
- (43) It is decided that the notified transaction could be authorized subject to conditions, provided that the phrase *“independent of the behavioural commitments related to the tying mentioned above, it is stated that the parties will be free to carry out bundled sales of various products, if requested by opticians. Similarly”* is removed from the commitments package entered into the Authority records on 14.09.2018 with the number 6709, which include provisions concerning the divestiture of MERVE OPTİK⁸ as well as the relevant behavioural commitments, and that the behavioural commitments should be reassessed by the Board at the end of three years.

G.4. Negotiations Conducted Within the Scope of the File

- (44) In order to evaluate the effects of the related acquisition on the market in detail, interviews were conducted with officials from the undertakings operating in the sector.

G.4.1. Interview Conducted with OPAK LENS

- (45) The following points were mentioned in the meeting held with (.....) and (.....), Chairman of the Board for OPAK LENS, in order to exchange information and views on the wholesale of ophthalmic lenses:
- They are operating in the wholesale market for ophthalmic and contact lenses, working with independent optical stores with no sales to chain stores,
 - Through their subsidiary Akay Optik, they manufacture lenses in their RX lens laboratories, the raw materials for which are imported from countries such as China, Korea, Thailand, Spain and Italy,
 - The sector is a profitable business field which may give rise to a monopoly if it were taken over by a strong company,
 - ESSI-LUX operates both in the field of machinery equipment and in the field of manufacturing, with ESSI-LUX branded machines comprising the most sought-after glass cutting machines on the market. Since machinery and glass sales are carried out through long-term contracts, the competitive structure in the market is disrupted,
 - ESSI-LUX also works with doctors for ophthalmic lenses, getting them to prescribe ESSI-LUX brand products to patients, which results in the consumers preferring the ESSI-LUX brand over the others,
 - It is prohibited to advertise in the sector as per the relevant legislation, but ATASUN circumvented this prohibition via its sunglasses sales, which promotes the ATASUN brand to

⁸ With the Board decision dated 29.11.2019 and numbered 19-42/703-301, the acquisition of MERVE OPTİK by the Demirel Family was found in compliance with the commitments offered within the scope of the authorization subject to conditions granted to the merger between ESSI-LUX and LUXOTTICA.

the consumers. ATASUN is predicted to grow even larger due to franchising, resulting in the closure of independent opticians.

G.4.2. Interview Conducted with MERVE OPTİK

(46) The following points were mentioned in the phone call held with an official from MERVE OPTİK, which is active in the wholesale markets for ophthalmic lenses as well as for sunglasses and optical frames:

- LUXOTTICA is both a manufacturer and the owner of many licensed trademarks, allowing it to dominate the market easily. Its merger with ESSILOR strengthened the undertaking, making it the leader in the market for spectacle lenses and frames,
- Since ESSILOR is engaged in wholesales to firms operating at the retail level, it knows the trade volumes of these firms, which it may use to establish retail outlets at strategic locations through ATASUN or to make an offer to buy the store. Domestic firms lack sufficient capital to compete with foreign firms,
- ESSI-LUX can grow as much as it wants through both online stores and physical stores. In some countries, for example in Greece, it is mandatory for outlets to sell 51% domestic brands in order to prevent foreign firms from eliminating the domestic firms and to protect the latter,
- While ATASUN can easily operate in shopping malls, other domestic firms are facing difficulties in accessing those outlets,
- They currently supply products to ATASUN and the consumers prefer their brand, yet domestic brands will face difficulties if ATASUN began to work with its own brands without purchasing from the domestic market and if the MERVE OPTİK brands were no longer offered at ATASUN stores,
- Additionally, ESSI-LUX is active in the sales of both machinery and ophthalmic lenses, giving discounts to undertakings that purchase machinery if they also purchase glass, organizing machinery-related campaigns in which it supplies the machinery free-of-charge or at discounted prices in exchange for which it signs a two-year glass sales contract. Therefore, domestic firms are unable to compete with ESSI-LUX,
- With the acquisition of ATASUN by ESSI-LUX, ATASUN will obtain important information and gain easier access to strategic outlets.

G.4.3. Interview Conducted with OPTIC GALERİ

(47) The following points were mentioned in the phone calls held with (.....) and (.....), managers of OPTİK GALERİ, which owns a chain of retail stores:

- They predict that both domestic wholesalers and retailers will exit the market in five years,
- ATASUN makes retail sales at the wholesale prices they currently get from ESSI-LUX for the products, and this will be even easier after the acquisition concerned,
- Wholesale prices will carry over to retail, rival retailers will not be able to compete with these prices, and competition will disappear in the market. In order to prevent this situation, ESSI-LUX has to provide products to retailers at the same price without discrimination.

G.4.4. Interview Conducted with (.....)

(48) An interview over the phone was conducted with (.....) in order to obtain information and opinions on the wholesale market for sunglasses and glass frames. The following points were mentioned in this interview, which involved a request for confidentiality:

- (.....) ,
- In the current situation, there is a lot of competition in the market but competing retailers may face significant difficulty in procuring products after the transaction, and price competition may make business harder,
- Retailers are closing down in the sector in recent times and there are no more strong players, they were put in a difficult position since their biggest buyers were among these closed stores, and the acquisition concerned would put independent stores in a tight situation, as well,
- ATASUN is a chain retailer that invests in advertising, whose product portfolio impacts brand consumer preferences. Being showcased by ATASUN strengthens a brand, but being left out may negatively affect brand value and consumer preferences,
- They do not foresee that the prices will evolve against the consumers in the short-term, however ATASUN will be able to implement whatever pricing it wishes once it manages to incorporate enough brands, thanks to the new power it will have,
- In order to dispel these concerns, it would be beneficial to obtain certain commitments from ATASUN. For instance, ATASUN should not be allowed to set prices below a certain level of its costs, or a portion of its product portfolio should consist of products that are not ESSI-LUX branded.

G.5. RELEVANT MARKET

G.5.1. Relevant Product Market

(49) ESSI-LUX operates in the following fields through OPAK, İŞBİR, TORA, ESEL, ALTRA, LUXOTTICA and SUNGLASS HUT in Türkiye:

- Wholesale of sunglasses and optical frames,
- Production and wholesale of ophthalmic lenses,
- Production and distribution of ophthalmic machinery, equipment and consumables, sales of spare parts, and after-sales maintenance and repair services,
- Wholesale of contact lenses, and
- Retail sale of sunglasses.

(50) The acquired undertaking GRANDVISION, on the other hand, is operating in the fields of retail sales of sunglasses, prescription glasses (ophthalmic lenses and optical frames) and contact lenses through ATASUN in Türkiye, and it is not active at the wholesale level. Within the framework of this information, there is an overlap between the parties' operations

- In the horizontal sense regarding the retail sale of sunglasses,
- In the vertical sense regarding other activities.

The vertically and horizontally overlapping product markets are addressed below, respectively.

G.5.1.1. Relevant Product Markets with Vertical Overlap⁹

G.5.1.1.1. Production and Wholesale of Ophthalmic Lenses

- (51) Ophthalmic (optical) lenses are used for correction of vision defects. The term ophthalmic lens is derived from the words “ophthalmic,” which means related to eye, and lens, which refers to spectacle glasses¹⁰.
- (52) Lenses are categorized as glass and plastic according to the material used, as single vision, two/three-focus and progressive according to their corrective design, and as stock lenses and half-finished lenses according to their manufacturing process.
- (53) Single-vision lenses have a single focal length, and in general are suitable for those people under 40-45 years of age who do not have problems with near vision. In two/three-focus lenses, the upper part of the glass is used to focus on things far away, and the lower part is used to focus on closer things. There is a visible line between the far-sighted and near-sighted sections of these lenses, which are suitable for those experiencing difficulty seeing nearby. These lenses are generally used by people over the age of 40-45. Progressive lenses, on the other hand, have more than one focus or grading. The upper parts of the lenses are for far vision, the lower parts are for near vision and the part that lies between the two is graded for medium vision. These lenses in question are mostly used by people who are over the age of 40-45, who experience eye fatigue and who have one or more visual impairments.
- (54) Two/three-focus and progressive lenses are products that are designed to avoid the difficulty of having glasses with multiple single vision lenses for patients with multiple eye impairments. A number of patients with multiple visual defects may prefer using two glasses with a single vision lens installed in each to using a single pair of glasses in which graduated or dual-focus lenses are installed. The choice between corrective designs is more a choice of personal convenience rather than a health concern.
- (55) If we were to look into how patients access prescription glasses in Türkiye, customers with visual defects consult an optician with a prescription written by an ophthalmologist. If the visual defect indicated in the prescription is common in the society and if the optician has the corresponding lenses in stock, the request can be met immediately from the inventory. Lenses that are manufactured this way for the purpose of correcting common visual impairments which can be stocked by opticians are called “stock lenses”. Since they do not require much work for final use, stock lenses are also called “finished lenses”.
- (56) Lens manufacturers operating on a global scale, which include ESSI-LUX subsidiaries, manufacture stock lenses, which are then delivered to opticians in a ready-for-use form, directly or through distributors. Stock lenses are manufactured and distributed in large quantities by lens

⁹ See Board Decisions dated 14.03.2012, numbered 12-11/371-106; dated 26.06.2012, numbered 12-35/990-304, dated 17.04.2013, numbered 13-22/305-142, dated 13.08.2013, numbered 13-47/639-278, dated 23.02.2017, numbered 17-08/99-42, dated 01.10.2018, numbered 18-36/585-286, dated 20.06.2019, numbered 19-22/333-150, dated 20.06.2019, numbered 19-22/334-151.

¹⁰ Within the context of the file, the term ophthalmic lens refers to the spectacle glasses as used commonly in the sector. In that sense, contact lenses used to correct eye defects, change eye colour, or treat corneal diseases remain outside the scope of this term.

manufacturers, using molds based on common eye impairments. For this reason, the costs and prices of stock lenses are rather low.

- (57) Opticians apply a number of consumer-specific processes to the lenses they receive in a ready form and then deliver the glasses after installing these lenses in a frame selected by the consumer. Since a large number of consumers apply to opticians in this way, opticians have some stock lenses in their stores.
- (58) On the other hand, if a consumer consults with a prescription that is not very common in society, which includes one and/or more visual defects, the optician sends a request to the prescription laboratories they are working with to produce a lens with the characteristics specified in the prescription. Prescription laboratories are undertakings with the ability and equipment (machinery) to produce consumer-specific lenses, and they process the half-finished lenses they receive from the lens manufacturers specifically for the consumer, according to the qualities specified in the prescription to make them ready for use.
- (59) Half-finished lenses, also referred to as RX (receipt X), are used as raw materials in this process, and they are products which have been processed to a certain extent, and but are not yet finished. These can also be procured in a completely unprocessed form, either branded or unbranded, as single vision, two-/multi-focus or progressive lenses. All prescription laboratories can manufacture all three types of these lenses thanks to the free-form production technology¹¹.
- (60) Half-finished lenses are usually delivered to opticians within 1-2 working days once the order is placed. Instead of establishing a distribution network, prescription laboratories use the distribution networks of the courier companies. This enables laboratories to operate throughout Türkiye, regardless of their physical locations. On the other hand, laboratories may also have communication offices, which laboratories call branches. These offices are used for order collection or stock lens distribution, and they may be replaced by centralized ordering systems over time.
- (61) The consumer’s choice of eyeglass lenses is largely guided by the optician. The main reason for this is that the user often does not have information on the brand and quality of the spectacle lenses, as well as on various processing options. In this case, the guidance of the optician rather than the choice of the final consumer is more decisive on the choice between different providers/brands.
- (62) Opticians generally work with more than one prescription laboratories and present their customers with products from different brands. This both ensures supply safety and brand diversity. The stages starting from the production of ophthalmic lenses to their delivery to the consumers are shown below:

Figure 1- Ophthalmic Lens Production and Distribution

Level 1	Chemical Companies and Glass Manufacturers	
Level 2		Non-Integrated Lens Manufacturers

¹¹ While traditional technology produces a finished single vision lens (product) from a half-finished single vision lens (and similarly, a multi-vision finished lens out of a multi-vision half-finished lens and a progressive finished lens out of a progressive half-finished lens), free-form machines can produce a finished lens of any desired characteristics from any type of half-finished lens, through a process referred to as double surface processing.

Level 3	Lens Manufacturers with Integrated Laboratories	Independent Prescription Laboratories	Opticians with Integrated Prescription Laboratories
Level 4	Non-Integrated Opticians		
Level 5	Customers		

- (63) ESSI-LUX is an integrated undertaking operating in the fields of production and wholesale distribution of ophthalmic lenses worldwide, and it operates in Türkiye at the level of prescription laboratories through OPAK, İŞBİR, TORA and ALTRA.
- (64) Within the framework of the information above, it is necessary to examine whether stock lenses and RX lenses can be substitutes for each other. A large number of undertakings are operating in the field of stock lenses, and this segment of the market is relatively competitive on a global scale. This situation can be explained by the lack of quotas or customs barriers for imports and easy/cheap product transportation. Since stock lenses are mass-produced, their prices are rather low. The trade of these lenses does not require machinery and equipment.
- (65) On the other hand, stock lenses do not meet all of the demand coming from the opticians. Opticians work with prescription laboratories to procure the rest of the demand. Laboratories that carry out customized production process half-finished lenses according to the prescription and offer additional applications (such as UV filter and other special coatings) according to the consumers' requests. Depending on this, costs start to increase and sales prices get higher than those of stock lenses¹². In this context, in terms of the nature of the demand they meet and the way they operate, prescription laboratories are clearly differentiated from stock lens wholesalers.
- (66) On the other hand, half-finished lenses also differ among themselves. As mentioned above, lenses can be divided into 3 categories: single vision lenses designed to correct only one visual defect, bi-/multifocal lenses designed to correct multiple visual defects, and progressive lenses. Single vision lenses are products that can be produced in large quantities at a low price, without the need for a relatively complex production process and advanced technology. Bi-/multifocal and progressive lenses, on the other hand, are more complex, and they require advanced technology in the production process with high added value so they are available at higher prices. However, the new generation of production machinery, called free-form machinery, can carry out the production of all the types of lenses mentioned before. Thanks to this feature of the machinery used, the specified lenses can be produced with a single machine track. All prescription laboratories can prepare the lenses needed as single vision, bi-/multifocal or progressive, according to the customer's request. Therefore, supply substitution is high in terms of the types of half-finished ophthalmic lenses.
- (67) As a result, in terms of the production and wholesale of ophthalmic lenses, two separate related product markets are defined, which are "production and wholesale of stock lenses" and "wholesale of half-finished lenses (RX lenses)".

¹² Following the processing of the lens to correct the vision defect (grading), additional applications may be performed according to consumer preferences. These include polishing, coating, colouring, hard coating in organic lenses, anti-reflection coating, UV protection, and marking (for installation references) in multi-vision and some special-purpose (prism, etc.) lenses.

G.5.1.1.2. Wholesale of Sunglasses and Optical Frames

- (68) Glasses used by consumers are divided into two categories of sunglasses and prescription optical glasses. ESSI-LUX owns brands and supplies products in both product groups.
- (69) In terms of demand, both types of glasses serve different functions. Sunglasses are used to protect vision and eye health, while prescription optical glasses are used to correct impairments in the eye. In terms of the demand for sunglasses, aesthetic concerns play a role that is at least as important as their primary function. In this context, the demand for the product is affected by how fashionable the product is, by its quality, and by the brand's image in the society.
- (70) The second group, prescription optical glasses, are glasses that are used in order to treat eye conditions and serve the function of correcting vision defects. Although health concerns play a decisive role in the customer's choice of glasses, just like sunglasses, factors such as fashion, design, brand reputation and quality can also affect purchasing behaviour.
- (71) It may be said that there is a differentiation between these two types of frames according to the purchasing behaviour of the consumers. Almost all of the consumers purchase sunglasses with the glass that comes on the frame. However, when choosing the optical frames, consumers' glass choice is in accordance with their eye impairments and special requests.
- (72) To summarize, due to the fundamental differences in purpose and the process of purchase, the products in question are distinctively different from each other. Therefore, it is concluded that sunglasses and optical frames are not in the same market.
- (73) There are many brands of sunglasses in the Turkish market. A significant portion of these products is branded and offer after-sales services. In addition, unbranded products or products with a fairly low brand value and price with no after-sales service can also be found in Türkiye. It is known that these products are not particularly suitable for use in terms of health concerns. Therefore, glasses which do not meet the necessary criteria for health and whose materials are of rather low quality compared to higher-quality, more fashionable products should not be included in the same market as branded sunglasses¹³.
- (74) In the Board decision dated 23.02.2017 and numbered 17-08/99-42 on this subject, all wholesalers interviewed within the scope of the file limited the market to those sunglasses with a certain brand recognition and did not consider the unbranded (nameless) products sold in ready-to-wear clothing stores as rivals. The decision also included a presentation titled "2016 Business Plan Türkiye," obtained during the on-site inspection conducted at LUXOTTICA, which stated that the undertaking considered the part of the market including frames with a price of 25 Euro and above as the "Reference Market" and also made similar assessments in terms of sunglasses. Taking into account all of these, the decision in question defined the relevant product market as "wholesale of branded sunglasses" and "wholesale of branded prescription optical spectacle frames".

¹³ Some optical stores are known to directly import sunglasses exclusively for retail sales. In addition, stores whose main area of operation is clothes retailing, such as H&M, Zara, LC Waikiki and De Facto, and departments stores such as Boyner and Beymen can also import sunglasses for retail sales either directly, or through an intermediary. However, these undertakings perform the retail sales of the imported products in their stores and do not engage in wholesales. As a result, the undertakings concerned are not considered to be competitors to the wholesalers such as ESSI-LUX.

Likewise, the same market definitions were included in the Board decision dated 01.10.2018 and numbered 18-36/585-286.

- (75) Within the framework of the matters mentioned above, and in light of the case-law of the Authority on the subject¹⁴, two separate related product markets are defined, consisting of “wholesale of branded sunglasses” and “wholesale of branded prescription optical glasses frames”.

G.5.1.1.3. Production and Distribution of Ophthalmic Machinery, Equipment and Consumables, Sales of Spare Parts, and After-Sales Maintenance and Repair Services

- (76) Ophthalmic machinery and equipment are used at all stages of production of stock or half-finished lenses, completion of half-finished lenses in prescription laboratories and measurement and frame mounting of lenses prepared for opticians. There are no undertakings in Türkiye engaged in the production of ophthalmic machinery and equipment, which include various types such as surfacing, coating, polishing machines and tabletop trimmers. On a global scale, in addition to ESSI-LUX, undertakings operating in the production and distribution of ophthalmic machinery and equipment as well as their consumables are Schneider GmbH & Co. KG, OptoTech Optikmaschinen GmbH, Nidek Co., LTD., Leybold Optics and MEI S.r.l. The products can be procured directly from the manufacturers abroad or through their subsidiaries in Türkiye, or products resold as second-hand machinery and equipment after being purchased from local opticians may be preferred.
- (77) ESSI-LUX carries out direct sales of industrial optical equipment and consumables required by the prescription laboratories and commercial optical equipment for opticians in Türkiye, and it also makes sales through its Türkiye-based subsidiaries OPAK, TORA, ALTRA, İŞBİR and ESEL¹⁵.
- (78) With regard to the market of production and distribution of ophthalmic machinery equipment and consumables, there are various alternative market definitions, from the widest, which assess machinery and consumables under the same market, to the narrowest definition where each of these machineries and equipments are further categorized into downstream markets.
- (79) In the *Essilor-Luxottica* Decision¹⁶ of the EU Commission, the parties of the transaction opined that, in terms of ophthalmic machines, the market could be broken down into surfacing, coating, polishing machines and tabletop machines but the market definition could also be left open, and in terms of consumables, a single market could be defined in light of supply-side substitution. However, a relevant product market was not defined on the grounds that the transaction would have a limited effect on this market. Similarly, the Board decision dated 01.10.2018 and numbered 18-36/585-286 on the *Essilor-Luxottica* merger did not define a relevant product market for the activities in question, while the market was defined in the widest sense, as “the market for the production and distribution of ophthalmic machinery, equipment and consumables” in the *Essilor-Opak* acquisition decision dated 26.06.2012 and numbered 12-35/990-304.

¹⁴ Similar to the aforementioned decisions, all sunglasses and optical frames sold by those undertakings that sell sunglasses wholesale and whose data were collected based on the assumption that they were in competition with the parties were included in the markets for the “wholesale of branded sunglasses” and “wholesale of branded prescription optical spectacle frames,” without any concrete restrictions based on brand or price.

¹⁵ It was noted that surfacing, coating and polishing machinery were imported to Türkiye directly by ESSI-LUX and that these products were not sold through its subsidiaries.

¹⁶ Case M.8394 - *Essilor/Luxottica*, para. 130-134.

- (80) Within the framework of the explanations, the relevant product market is defined as the "market for the production and distribution of ophthalmic machinery, equipment and consumables".
- (81) Since the ophthalmic machines and equipment in question are durable goods that can be used for a long time, the sale of spare parts and the provision of warranty and maintenance/repair services for the machines become an issue following the sale of the machinery in question. ESSI-LUX notes that the warranty period of the devices sold is two years, yet in some cases, this period may be increased to three years due to the incentives provided by the relevant subsidiary to increase their sales for a period of time. After the expiration of the warranty period, ESSI-LUX continues to provide repair and maintenance services for ophthalmic machinery and equipment through its subsidiaries İŞBİR and ESEL.
- (82) The main products and the products and services related to that product such as spare parts, repair/maintenance services comprise complementary products that are needed at different times. The market for the first product purchased by the customer is called the "primary" market due to the fact that it needs complementary products and services as time goes by. The markets for those products which are used together with the primary product and which are needed after a certain amount of time following the purchase of the primary product, such as spare parts, consumables, repair/maintenance services, are defined as the "secondary" markets.
- (83) In competition law literature, when defining primary and secondary markets for products and services, it is important to analyze i) whether the products and services in question can be included in the same market, and ii) if not, whether the markets for the secondary products and services can be defined as brand-specific. When deciding whether secondary markets can be defined as brand-specific, factors such as the substitutability of the product or service both during production and during use, consumer demand, and whether there are any obstacles to its production by other undertakings must be taken into consideration.
- (84) Since this would not change the conclusion, an analysis under the criteria listed above is not conducted for the market involving spare parts sales, after-sales warranty, and repair/maintenance for ophthalmic machinery and equipment, and a clear market definition is not provided.

G.5.1.1.4. Wholesale of Contact Lenses

- (85) ESSI-LUX also operates in the field of wholesale of contact lenses through its subsidiaries OPAK and TORA.
- (86) Contact lenses (including coloured contact lenses) are medical devices that aim to correct the refraction problems in the eye (with the exception of plano/non-prescription coloured contact lenses), which are only available in Turkey with a prescription received after an ophthalmologist's examination, and only sold by retail opticians' establishments. Contact lenses can be classified based on the refractive impairment they correct, the likely time they need before requiring replacement, and the presence or absence of a cosmetic purpose. There are different combinations of these features.
- (87) Contact lenses are classified as follows according to the refractive impairment they correct:

- Spherical Lenses: These are used in order to correct impairments related to the inability to see close distances (hyperopia) and the inability to see far distances (myopia), both of which occur as a result of a refractive defect in the eye.
 - Toric Lenses: These are used to correct visual impairments that occur as a result of the inability to focus the image on a certain point in the eye (astigmatism).
 - Multifocal/Progressive Lenses: These are used to correct difficulties in seeing close distances (presbyopia), which develop due to ageing as a result of an inability to focus the image on a certain point in the eye.
 - Plano Lenses: These are lenses that do not correct refractive impairments and are used instead for cosmetic or therapeutic/bandaging purposes.
- (88) Contact lenses are classified as follows according to their likely period of replacement:
- Disposable contact lenses that are used daily and replaced monthly,
 - Disposable lenses that are used daily and replaced every two-weeks,
 - Disposable contact lenses that are replaced daily,
 - Disposable contact lenses that are replaced in periods other than those listed above.
- (89) Contact lenses are classified as follows according to whether they have a cosmetic purpose:
- Contact lenses without a cosmetic purpose: These are transparent contact lenses that are often used in cases where one or more refractive impairments are present at the same time, or that are used for therapeutic purposes and/or as bandaging lenses.
 - Contact lenses with a cosmetic purpose: These are coloured contact lenses that are used for cosmetic purposes and/or to meet a cosmetic need in combination with a visual impairment.
- (90) There are no significant barriers to entry in the contact lens market (including colour contact lenses) in terms of capital, know-how and legislation. All contact lenses (including colour lenses, but excluding plano lenses) are subject to medical devices legislation. In general, contact lenses are imported into Türkiye by companies that manufacture abroad, after which they are sold to contact lens warehouses or optician establishments that sell directly at retail. There are no quotas or customs barriers for importing the product, and transportation of the product is rather easy.
- (91) Contact lens warehouses that are in the distributor position in the market are those qualified to be a sales centre with an authorization certificate, in accordance with the Regulation on Medical Device Sales, Advertising and Promotion, dated 15.05.2014 and numbered 29001. Contact lens warehouses do not engage in retail sales, and they only supply products to opticians that make retail sales.
- (92) The sale of contact lenses to the final consumer is legally carried out in exchange for a prescription for contact lenses. In accordance with the provisions of the Law no 5193 on Opticianry and of the Regulation on Optician Establishments, dated 18.01.2014 and numbered 28886, only licensed opticians can carry out this sale.
- (93) An examination of the Board decisions on the subject of contact lenses shows that the decision dated 13.08.2013 and numbered 13- 47/639-278 includes the statement "*...it is understood that contact lenses can be sub-categorized according to the impairment they treat, the way they are used, the purpose of their use, the material from which they are manufactured, and the level of*

comfort they provide. Therefore, it is possible for the product market in the file to be defined in terms of alternative relevant product markets consisting of contact lens product groups that are substitutable with each other according to their characteristics, purposes and prices before the consumers. At the same time, even though each of the aforementioned categories are manufactured via a different method in terms of supply, companies in the sector do not operate in a single category, but in all of them, and similarly, lens warehouses also carry out the sales and marketing of almost every product group,” defining the relevant product market as “contact lens market”. Subsequently, with the Board decisions dated 20.06.2019, numbered 19-22/333-150 and dated 20.06.2019, numbered 19-22/334-151, the relevant product market is defined as “contact lens market,” due to supply-side substitution.

- (94) While the Board’s approach in the aforementioned decisions could be adopted to define the relevant product market as “wholesale of contact lenses” without any further breakdown, a clear market definition was not made for the wholesale of contact lenses, since the transaction would have a limited effect on this particular market.

G.5.1.2. Relevant Product Market within the Framework of Horizontal Overlap: Retail Sale of Optical Products

- (95) The profession of opticianry in Türkiye is performed within the scope of the Law No. 5193 on Opticianry. Under Article 4 of the afore-cited Law, in order to be able to practice the profession of opticianry by selling prescription glasses and spectacle frames, assembling glasses and selling all types of prescription lenses, one must graduate from an institution offering under-graduate professional training and education in the field of opticianry, at a minimum. Additionally, Article 6 of the same Law states, “*Opticians may only sell protective glasses, sunglasses, prescription glasses issued by ophthalmologists, all kinds of lenses, optical vision equipment and spectacle frames. It is illegal for opticians to sell, give or recommend prescription glasses without a prescription, to conduct all types of eye and vision examinations and tests, including those performed with computerized instruments such as autorefractometers and keratometers, or to have any kinds of tools and devices used for these purposes in their establishments,*” emphasizing the fact that over-the-counter sales of products intended for correcting eye impairments are prohibited.
- (96) It is possible to divide undertakings operating in the field of opticianry into two categories: individual/independent opticians and chain opticians. Independent opticians can be defined as those establishments with one or a small number of retail stores in general, whose locations may vary but are generally near hospitals and on side streets and neighborhoods. Chain opticians, on the other hand, are generally located in malls or similar locations with a high level of shopping and have more than one retail store nationwide or in the relevant region¹⁷.
- (97) According to the information obtained from TİTCK, as of 10.02.2020, there are 7119 active opticianry establishments in Türkiye. Within the framework of the information collected from the

¹⁷ In the Board’s *Opak Lens-Alcon* decision, dated 20.06.2019 and numbered 19-22/334-151, opticians with at least five stores are defined as chain opticians. However, the Board’s *Essilor-Luxottica* Decision, dated 1.10.2018 and numbered 18-36/585-286, which includes various analyses on chain opticians, does not establish any criteria on chain opticians. In the examination of the current transaction, chain optics are defined as stores with at least two branches, to the extent available.

parties of the transaction and their competitors at the retail level, around 550 of these operate as branches of chain opticians, while the rest are independent. ATASUN, which is the Turkish subsidiary of GRANDVISION, the transaction party to be acquired, operates in the form of chain optician stores, with a total of 291 stores in 61 provinces, including fourteen franchises and one temporary (pop up) store¹⁸.

- (98) In the retail sale sector for optical products, the EU Commission's *Essilor-Luxottica* decision¹⁹ defines the relevant product market as "retail sales of optical products," to include all optical products and services. Similarly, at the national level, the *Luxottica-Salmoiraghi* decision²⁰ of the Italian Competition Authority defines the relevant product market as "retail market for optical products".
- (99) The Authority has no decision concerning retail sales of optical products. However, among the decisions taken by the Board in other retail sectors, for example in the *Teknosa-ElectronicPartner* decision²¹, the relevant product market is defined as "retail services of electrical and electronic household appliances," without any further breakdown based on product groups. In addition, in numerous decisions of the Board concerning the retail sales of fast moving consumer goods²², the relevant product market is, once again, defined without further breakdowns, as "FMCG organized retail market".
- (100) For the notified transaction, the relevant product market should be defined as "retail sales of optical products," to cover all products aimed at protecting and correcting vision, as well as other products and services for the eyes (e.g. solutions, cleaning fluids, etc.), without going into product-based segmentations.
- (101) Regarding the matter of whether a distinction should be made based on the type of retailer, the first issue that needs to be addressed is whether there should be a differentiation between the chain opticians and independent opticians mentioned above in terms of retail sales of optical products.
- (102) In a survey included in a study²³ titled "The Historical Development of Opticianry and the Spectacle Sector in Türkiye", the participants gave the following answers to the question "What is your main criterion for choosing an optician?":
- 55.44%: "I choose the store I have been going for a long time."
 - 14.52%: "I choose the store that is recommended to me."
 - 11.24%: "I choose the store that is close to the hospital/ophthalmologist."

¹⁸ The undertaking also sells sunglasses and various accessories through the websites <https://www.atasunoptik.com.tr/> and https://www.shopsolaris.com/TR_TR/.

¹⁹ *Essilor/Luxottica*, Case no M.8394, 01.03.2018, para. 139.

²⁰ *Luxottica Group- Salmoiraghi & Vigano*, Case no C11851, 19.12.2012.

²¹ Board Decision dated 04.07.2007 and numbered 07-56/632-214.

²² For instance, Board Decisions dated 09.07.2015, numbered 15-29/420-117; dated 09.02.2017, numbered 17-06/56-22; dated 18.04.2018, numbered 18-11/204-95; dated 22.05.2018, numbered 18-15/279-138; dated 13.12.2018, numbered 18-47/736-356.

²³ See Gözlükçülüğün Tarihsel Gelişimi ve Türkiye'de Gözlük Sektörü, E. Özdemir, S. Kabak, İTO Bilgiyi Ticarileştirme ve Araştırma Vakfı İstanbul Düşünce Akademisi, s. 118, <https://www.kalkinmakutuphanesi.gov.tr/dokuman/gozlucculugun-tarihsel-gelisimi-ve-turkiye-de-gozluk-sektoru/567>, Accessed: 15.05.2021.

- 9.65%: “I choose a store that is close to my home.”
- 9.15%: “I choose a store that offers advertising, campaigns and discounts.”

When the answers in question are examined, it is noted that the loyalty element becomes important in consumers’ optical store preferences, followed by criteria such as recommendations, distance and price. Considering that independent opticians are usually located around hospitals while chain optical stores are usually located in shopping malls and on main streets, it is estimated that those consumers who answer, “I choose the store that is close to the hospital/ophthalmologist” will generally choose in favor of independent opticians. It does not seem possible to make a prediction about whether consumers who gave the other answers will prefer chain opticians or independent opticians; in other words, it seems likely that these consumers may prefer either type of optical stores.

(103) In the same study, in response to the question of “What type of opticians do you prefer?” 80.73% of the participants said, “I prefer individual opticians²⁴”, and 19.27% said, “I prefer corporate (chain) opticians”. The mentioned ratios show that the vast majority of consumers is in favor of individual opticians. The study notes that a large majority of corporations did not allow surveys to be conducted in its stores, which might have had an effect on the difference between the responses given to this particular question.

(104) The following table includes the market shares of chain opticians and independent opticians for the years of 2016-2019, as presented by the transaction parties.

Table 6 - Market Share (%) of Chain Opticians and Independent Opticians on the Basis of Value (TL)

Store Type	2016	2017	2018	2019
Chain Opticians	(.....)	(.....)	(.....)	(.....)
Independent Opticians	(.....)	(.....)	(.....)	(.....)
Source: Information Collected from the Undertakings and the Rapporteur’s Calculations				

(105) An examination of the table above shows that the share of independent opticians has decreased over the years, but still this channel retains its importance in comparison to chain opticians. In light of the information above and from a supply-focused point of view, there seems to be no difference between individual opticians and chain opticians, who serve their consumers in accordance with the same legislation and with the same product portfolio. A demand-focused approach to the subject, on the other hand, shows that, since there are no concrete parameters that determine consumer preferences and require a separation between chain opticians and independent ones, making such a distinction will not comply with the realities of the market. As a result, it is concluded that individual opticians and chain opticians are in competition with each other in terms of retail sales of optical products.

(106) Another issue that should be noted with relation to retailer type is whether optician stores face competitive pressures from those stores which exclusively sell sunglasses, such as SUNGLASS HUT, and from department stores (such as Boyner, Beymen) that have a section allocated to the sale of

²⁴ In the study, the term “individual opticianry establishment” is used in the same sense as the term “independent optician” used in the decision.

sunglasses. The following is a table showing the share of the sales made by department stores within the retail sales of optical products:

Table 7- Share of Optical Products Sold by Department Stores within Total Optical Product Sales

Years	Sales by Department Stores (TL)	The Share of Sales by Department Stores (%)
2016	(.....)	(.....)
2017	(.....)	(.....)
2018	(.....)	(.....)
2019	(.....)	(.....)

Source: Information Collected from the Undertakings and Rapporteurs' Calculations

- (107) As can be seen from the table, optical product sales in department stores account for about (.....)% of total optical product sales. Considering that prescription products cannot be sold outside the opticians' stores in accordance with the Opticianry Law, it can be said that the ratio in question is substantial. With a total of 93 stores, more than half of the stores of SUNGLASS HUT (53 units) are located in the Boyner and Beymen department stores.
- (108) As to whether department stores are only in competition with each other or whether they are also competing with stores specializing on the relevant field for each department, the Board's *YKM/Boyner* Decision dated 09.08.2012 and numbered 12-41/1162-378 may be taken into account. The decision defines department stores as a store format that accommodates many sub-segments of the non-food retail sector under the same roof, and conducts an analysis of customer preferences by collecting data on credit card transactions from various banks. As a result of the analysis in question, the decision states that consumers' first choice after a department store may be in favor of specialized stores rather than another department store and that, in this sense, they evaluate all their available options. Therefore, it is accepted that the department stores are in competition with specialized stores and the relevant product market is defined as "*department stores and specialized stores that cater to the middle- and upper-income groups*". Based on the aforementioned decision of the Board, it is possible to conclude that departmental stores that sell sunglasses can exert competitive pressure on opticians in terms of retail sales of sunglasses. In this case, it is necessary to recognize that stores that exclusively engage in the retail sales of sunglasses, such as SUNGLASS HUT, exert competitive pressure on optician stores.
- (109) On the other hand, similarly, it is evaluated that ready-made clothing stores such as H&M and Zara that sell sunglasses as complementary products are not in competition with opticians. This is because the stores in question are specialized for ready-to-wear clothes retailing, and so sunglasses sold at these outlets are mostly intended to meet the impulse buying needs of those consumers who aim to shop ready-to-wear clothing. In this sense, from the perspective of those costumers whose main goal is to purchase sunglasses, the stores in question are unlikely to be substitutes for opticians²⁵.

²⁵ The existence of significant differences in quality, brand and price between the sunglasses sold at ready-to-wear clothing stores and those sold at opticians is a factor. However, since the relevant product market at the horizontal level is defined as the "retail sales of optical products" to cover all product groups, unlike the wholesale of sunglasses,

(110) Lastly, in terms of retail sales of optical products, it is necessary to focus on whether the traditional channel (physical stores) is in competition with the online channel (internet sales)²⁶. The table below includes the sales of optical products in the online channel as well as the share of these sales within total retail sales of optical products:

Table 8- Sales of Optical Products in the Online Channel and the Share Thereof within Total Retail Sales

Years	Online Channel (TL)	Share of the Online Channel (%)
2016	(.....)	(.....)
2017	(.....)	(.....)
2018	(.....)	(.....)
2019	(.....)	(.....)

Source: Information Collected from the Undertakings and Rapporteurs' Calculations

(111) An examination of the table above shows that the online channel sales have gained ground within the retail sales of optical products with a market share of around (.....)%, and that this share has been increasing steadily. On the other hand, it should be emphasized that online retailers sell at lower prices compared to physical stores. Online platforms, in particular, offer great discounts to consumers.

(112) Looking at previous Board decisions²⁷, the practice is to consider the two channels in the same market if online sales are in competition with traditional sales, but if there is a completely new product that is sold exclusively online, or if selling a product online offers significant advantages, e-commerce of the product in question can be defined as a separate market. With regard to the competitive parameters related to the differences between these two channels, the *Sahibinden.com* decision takes into account factors such as ease of use, accessibility (reaching large masses) and time savings that determine the nature of the service, and notes that channels such as newspaper advertisements and real estate offices cannot be considered a substitute²⁸. Similarly, in the *Booking*²⁹ and *YemekSepeti*³⁰ decisions, it was concluded that the online channel was in a different market than the traditional channels, in light of the fact that the former include comprehensive images, offer free cancellations within a certain period, could quickly inform consumers about all opportunities and discounts, allow making multiple transactions from a single outlet, and facilitate the comparison of all products with certain characteristics to choose the best option (in terms of price, etc.). On the other hand, the *D&R* decision of the Board found that for retail book sales, the online channel could put competitive pressure on the traditional channel,

a branded/unbranded differentiation was not used in the retail sales of sunglasses. Instead, it is deemed appropriate to focus on the specialties of the stores, which is also mainly based on the perceptions and choices of the consumer.

²⁶ Under the Opticianry Law, prescription glasses and lenses may only be sold by opticianry establishments, which means discussions about the online channel are only applicable for associated products such as sunglasses, solutions and cleaning products. However, it is known that currently there are illegal websites selling prescription lenses, as well.

²⁷ The *Yemek Sepeti* Decision dated 25.03.2004, numbered 04-22/231-48; the *E-commerce* Decision dated 03.01.2013, numbered 13-01/7-7; the *Yemek Sepeti* Decision dated 09.06.2016, numbered 16-20/347-156; the *Booking* Decision dated 05.01.2017, numbered 17-01/12-4, the *Sahibinden.com* Decision dated 04.05.2017, numbered 17- 15/175-87.

²⁸ The Board's *Sahibinden.com* Decision dated 04.05.2017 and numbered 17- 15/175-87, para. 15.

²⁹ The Board's *Booking* Decision dated 05.01.2017 and numbered 17-01/12-4, para. 41.

³⁰ The Board's *Yemek Sepeti* Decision dated 09.06.2016 and numbered 16-20/347-156, para. 83-92.

especially in terms of prices, regardless of whether the traditional channel can do the same for the online channel, which was considered sufficient to include both channels in the same product market³¹.

- (113) Since the online channel can similarly put competitive pressure on stores operating in the retail sale of optical products for sunglasses, online sales are included in the relevant product market.

G.5.2. Related Geographical Market

- (114) Since the sunglasses, optical frames and ophthalmic lenses distributed by ESSI-LUX, its subsidiaries and their competitors are sold throughout Türkiye with very low shipping costs and thus do not require a distribution network for sales to opticians, the conditions for defining regional markets have not been established, and the geographical market for the relevant product markets of

- “production and wholesale of stock lenses,”
- “wholesale of half-finished lenses (RX lenses),”
- “wholesale of branded sunglasses,” and
- “wholesale of branded prescription optical spectacle frames”

defined within the scope of the vertical overlap have been established as “Türkiye”.

- (115) On the other hand, in terms of “*retail sale of optical products*” defined under the horizontal overlap, it is estimated that consumers will only suffer a limited distance for shopping purposes. In this sense, it is obvious that the customer attraction area of an optician store cannot cover the entirety of a country. In order to set a limit within the scope of the definition of a regional market, the Board’s decisions concerning the fast moving consumer goods organized retail sector were examined as a guideline, and it was found that some decisions³² handled relevant geographical markets on the basis of the province, and others³³ on the basis of the districts.

- (116) Optical products are less likely to be the subject of instant consumption and necessity compared to fast-moving consumer goods. Therefore, consumers who wish to purchase optical products will be able to spare more time and shop further to get them. Based on this, it is concluded that a narrower regional market definition than province borders was not necessary for the retail sale of optical products, and that each of the provinces of “Adana”, “Ankara”, “Antalya”, “Balıkesir”, “Bursa”, “Denizli”, “Eskişehir”, “Gaziantep”, “İstanbul”, “İzmir”, “Kocaeli”, “Mersin”, “Muğla” and

³¹ Board Decision dated 29.05.2018 and numbered 18-16/293-146. Similarly, the Board’s *Sony* Decision, dated 22.11.2018 and numbered 18-44/703-345 notes that sales in the online channel have a rather limited share within total shares, which limits the restrictive effect of the intervention in resale prices on competition with regards to the online channel; however, it also emphasizes that consumers check online sales prices before buying from a physical store and uses those prices as a negotiating tool, which ensures that online prices can exert a general pressure on the market.

³² The Board’s *Carrefour-Gima* Decision dated 17.06.2005 and numbered 05-40/557-136, *Kiler-Canerler* Decision dated 04.05.2006 and numbered 06-32/392-102, *Migros-Yonca* Decision dated 18.12.2008 and numbered 08-73/1158-452, *Migros-Egeden* Decision dated 17.06.2010 and numbered 10-44/774-256.

³³ The Board’s *Migros-Tansaş* Decision dated 31.10.2005 and numbered 05-76/1030-287, *Kiler-Güler* Decision dated 06.07.2006 and numbered 06-47/632-180, *Makromarket-Nazar* Decision dated 05.04.2007 and numbered 07-30/293-110, *Kiler-Yimpaş* Decision dated 15.07.2009 and numbered 09-33/728-168, *Migros-Greens* Decision dated 23.02.2011 and numbered 11-10/186-62, *Kipa-Ardaş* Decision dated 09.02.2012 and numbered 12-06/185-47, *Migros-Kipa* Decision dated 09.02.2017 and numbered 17-06/56-22.

“Samsun,” where the activities of the parties intersect could be considered a separate relevant geographical market for the aforementioned market³⁴. Nevertheless, since making a detailed market definition in the current file will not affect the result in any way, a relevant geographical market is not defined for the retail level.

- (117) Lastly, for the “production and distribution of ophthalmic machinery, equipment and consumables” market, a clear geographical market definition will not be given; data and assessments on the global as well as the Turkish scale will be provided.

G.6. ASSESSMENT

- (118) Article 7 of the Act no. 4054 prohibits all mergers and acquisitions carried out by one or more undertakings, which would cause a significant reduction of effective competition in any market for products and services in the whole or certain parts of the country. Mergers and acquisitions which are subject to authorization under Article 7 of the Act no 4054 and the Communiqué no 2010/4 are first examined to find out whether the undertakings can, either on their own or jointly, acquire the power indicated by the dominant position concept, or whether they can increase any existing power they held before the transaction.
- (119) It is observed that the activities of the transaction parties ESSI-LUX and ATASUN overlap horizontally in the market for “retail sales of optical products,” and vertically in the markets for “wholesale of stock lenses”, “wholesale of half-finished lenses (RX lenses)”, “wholesale of branded sunglasses”, “wholesale of branded and prescription optical spectacle frames,” and “production and distribution of ophthalmic machinery, equipment and consumables”. For this reason, the transaction should be evaluated both in the scope of horizontal and vertical overlaps.
- (120) Market shares, market entry conditions and bargaining power of the buyers are taken into account when determining dominant position. Accordingly, a dominant position analysis in these markets will be given below, followed by separate assessments of the horizontal and vertical effects of the notified transaction.

Market Share and the Position of the Competitors in the Market

- (121) The most important indicator used to establish market power in a particular market in competition law analyses is the market shares of the undertaking examined and of its competitors. In order for market shares to be calculated, first the sales data from ESSI-LUX and from the undertakings operating in the same market as ESSI-LUX are examined, in terms of the markets for “wholesale of ophthalmic lenses,” “wholesale of branded sunglasses” and “wholesale of branded prescription optical spectacle frames”. Finally, this section will also include the data prepared, based on the best estimates of ESSI-LUX, concerning the market for “production and distribution of ophthalmic machinery, equipment and consumables”.
- (122) Accordingly, the market shares of the undertakings operating in the market for wholesale of ophthalmic lenses and in the sub-categories thereof during 2016-2019 are as follows for the top 10 undertakings with the highest market shares in 2019 on the basis of value.

Table 9- Market Shares in the Market for Wholesale of Ophthalmic Lenses

³⁴ Among these, in the provinces of Antalya, Balıkesir, Denizli, Gaziantep, Kocaeli and Samsun, SUNGLASS HUT does not operate as a separate store, but in its own section within Boyner stores.

Ophthalmic Lenses Total (Stock+RX)								
	2016		2017		2018		2019	
	QTY	TL	QTY	TL	QTY	TL	QTY	TL
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MERVE CAM	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
OPAK LENS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BETA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CEMFA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ADELLENS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HOYA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SEIKO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AKAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HAZEL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other ³⁵	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	100.00	100.00	~100.00	~100.00	~100.00	100.00	~100.00	100.00

Source: Information Collected from the Undertakings

(123) As seen in the table above, the market share of ESSI-LUX, which controls OPAK, İŞBİR, TORA and ALTRA, in the wholesale market of ophthalmic lenses between 2016-2019 is in the range of (.....)% on a turnover basis and (.....)% on a quantity basis. In 2019, ESSI-LUX obtained a share of (.....)% on the basis of turnover, while its closest rival MERVE CAM obtained (.....)%, and its second rival OPAK LENS obtained (.....)%. ESSI-LUX holds almost half of the market and has a market share of about (.....) times that of its closest competitor.

(124) In the following tables, the market shares of the 10 undertakings with the highest market share in 2019 based on value are presented, broken down into stock lenses and RX lenses.

Table 10- Market Shares in the Market for Wholesale of Stock Lenses

Stock Lenses								
	2016		2017		2018		2019	
	QTY	TL	QTY	TL	QTY	TL	QTY	TL
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
OPAK LENS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MERVE CAM	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ADELLENS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SEIKO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HOYA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BETA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HAZEL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CEMFA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NEŞE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	~100.00	100.00	~100.00	~100.00	100.00	~100.00	100.00	~100.00

Source: Information Collected from the Undertakings

³⁵ In the tables prepared for the market for the wholesale of ophthalmic lenses and for the sub-categories of this market, the line titled "Other" includes data from 20 undertakings.

(125) According to the table, in 2019, ESSI-LUX's market share in the market for wholesale of stock lenses was (.....)% based on turnover and (.....)% based on quantity. Based on turnover, ESSI-LUX is followed first by OPAK LENS and second by MERVE CAM, with (.....)% and (.....)%, respectively. Even though ESSI-LUX has a smaller share in the sub-category of stock lenses as compared to its share in the market for the wholesale of ophthalmic lenses, its share is still above the dominant position threshold.

Table 11- Market Shares in the Market for Wholesale of RX Lenses (%)

RX Lenses								
	2016		2017		2018		2019	
	QTY	TL	QTY	TL	QTY	TL	QTY	TL
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
BETA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CEMFA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MERVE CAM	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ADELLENS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HOYA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SEIKO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AKAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
OPAK LENS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
OPSA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	~100.00	100.00	~100.00	100.00	100.00	~100.00	100.00	~100.00

Source: Information Collected from the Undertakings

(126) According to the table, compared to the share of ESSI-LUX in the wholesale market for ophthalmic lenses, its share in the RX lens portion of this market is at a remarkably high level. That is, in 2019, this value was calculated as approximately (.....)% and (.....)% based on quantity and value. Therefore, in terms of the purchases of half-finished lenses made by opticians from prescription laboratories, ESSI-LUX seems to be an indispensable supplier.

(127) In the market for wholesale sale of branded sunglasses, market shares for the 2016-2019 period based on quantity and value are shown for the top 10 undertakings according to sales values in 2019³⁶, in the following table³⁷:

Table 12- Market Shares in the Market for the Wholesale of Branded Sunglasses

Sunglasses								
	2016		2017		2018		2019	
	QTY	TL	QTY	TL	QTY	TL	QTY	TL
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

³⁶ In parallel with the Board Decision dated 01.10.2018 and numbered 18-36/585-286, market shares calculated over the sales value are considered to better reflect the market power of the undertakings. The aforementioned Board Decision notes the diversification of the products in the branded sunglasses market due to the consumer awareness and image of their brands, quality of the material used in their production, and elements such as precious stones, processing, etc. used in the products, and states that sunglasses could be price in a large range, with prices starting from 10 TL and going above 1.000 TL at the wholesale level.

³⁷ In the tables prepared for the market for the wholesale of ophthalmic lenses and for the sub-categories of this market, the line titled "Other" includes data from 60 undertakings.

MERVE OPTİK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SAFİLO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ELİT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MERCAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ENTERNASYONEL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ARIKAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKUAZ TOPTAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DERİGO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	~100.00	~100.00	100.00	~100.00	~100.00	100.00	~100.00	100.00	100.00
Source: Information Collected from the Undertakings									

(128) As seen in the table, between 2016 and 2019, ESSI-LUX gained a market share of (.....)% based on quantity and (.....)% based on value in the market for the wholesale of branded sunglasses. Also, it can be seen that between 2016-2019, the market share of ESSI-LUX based on value was above (.....)%, and that it increased its market share, with the exception of 2018. MERVE OPTİK follows ESSI-LUX with a market share of (.....)% based on quantity and (.....)% based on value. After MERVE OPTİK, the largest player in the market in question is SAFİLO, with a market share of (.....)% based on value. As such, ESSI-LUX has reached a size that is (.....) times bigger than its closest rival, and (.....) times bigger than its second closest rival. In light of the fact that there are many competitors operating in the market, and that the market shares of the remaining competitors are very low, not even reaching (.....), it is evident that the competitors are quite far from putting competitive pressure on ESSI-LUX.

(129) On the other hand, in the market for the wholesale of branded sunglasses, ESSI-LUX reinforces its power with the RayBan brand. The Board Decision dated 23.02.2017 and numbered 17-08/99-42, emphasized that the Ray-Ban brand was a must-stock product for opticians, which would competitively disadvantage opticians if they did not carry it. The following table shows Ray-Ban's market shares between the years 2014 and 2019.

Table 13- Market Share of Ray-Ban Branded Sunglasses (%)

	2014		2015		2016		2017		2018		2019	
	QTY	TL	QTY	TL	QTY	TL	QTY	TL	QTY	TL	QTY	TL
Ray-Ban	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information Collected from the Undertakings												

(130) Owned by ESSI-LUX, Ray-Ban is the brand with the highest share in the market for the wholesale of sunglasses in 2019 with (.....)%. Ray-Ban has maintained the market power it held during the 2014-2019 period, and is the market leader with a high percentage in terms of consumer awareness³⁸ as well.

(131) The following table shows the market shares based on quantity and value for the 2016-2019 period in the market for the wholesale of branded prescription optical spectacle frames, for the top 10 undertakings in 2019 according to value.

³⁸ Board Decision dated 01.10.2018 and numbered 18-36/585-286.

Table 14- Market Shares in the Market for the Wholesale of Branded Prescription Optical Spectacle Frames (%)

Prescription Optical Spectacle Frames								
	2016		2017		2018		2019	
	QTY	TL	QTY	TL	QTY	TL	QTY	TL
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MERVE OPTİK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ARIKAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MERCAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
EFOR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AYDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KAYATUR	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ENTERNASYONEL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	100.00	~100.00	~100.00	~100.00	100.00	100.00	~100.00	100.00

Source: Information Collected from the Undertakings

(132) As seen in the table, in 2019, ESSI-LUX was the leader in the market for the wholesale of branded prescription optical spectacle frames with a market share of (.....)% based on value, followed by MERVE OPTİK with (.....)%, ARIKAN with (.....)% and MERCAN with (.....)%. Looking at the 2016-2019 period in general terms on the basis of sales values, ESSI-LUX can be seen to have reached a size that is (.....) and (.....) times of its closest rivals, respectively.

(133) The following table includes the market shares in the sub-categories of the market for ophthalmic machinery and equipment for the years 2016-2019 separately for the world and Türkiye, based on ESSI-LUX's best estimates.

Table 15- ESSI-LUX's Shares in Ophthalmic Machinery and Equipment Market (%)

Ophthalmic Machinery and Equipment									
		2016		2017		2018		2019	
		QTY	TL	QTY	TL	QTY	TL	QTY	TL
Surfacing Machines	World	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Türkiye	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Coating Machines	World	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Türkiye	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Polishing Machines	World	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Türkiye	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Consumables	World	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Türkiye	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Tabletop Trimmers	World	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Türkiye	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

Source: ESSI-LUX

(134) ESSI-LUX noted that the ophthalmic machinery and equipment market was a global market, and stated that it might have failed to calculate the Turkish market shares correctly, even though the calculations were based on its best estimates. A look at the market shares in the table shows that the global power ESSI-LUX held is also reflected in the geographical market of Türkiye, and that

the undertaking even gained significantly higher market shares in Türkiye compared to its global average. In 2019, ESSI-LUX achieved an average market share of (.....)% in Türkiye based on turnover, for all product categories listed in the table, with the exception of polishing machines. On the other hand, ophthalmic machinery and equipment is one of the most important inputs that prescription laboratories need to maintain their activities. Other than ESSI-LUX, some of the companies operating at the global scale in the field of production and distribution of ophthalmic machinery, equipment and consumables are Schneider, OptoTech, Nidek Co., Leybold Optics and MEI. Additionally, from the interviews conducted within the framework of the file, it is known that ESSI-LUX is in a leading position in terms of the machines used by prescription laboratories operating in Türkiye. Although it is possible for undertakings operating in the sector concerned to obtain the relevant products from different companies through imports, the established and vertically integrated power of ESSI-LUX in this market is undeniable.

Entry to the Market and Growth Barriers in the Market

- (135) Although market share is considered the most important criterion when assessing dominant position, the existence of barriers to entry or obstacles before the growth of undertakings operating in the market are among the factors that directly affect the position of the undertaking in the market.
- (136) It must be noted that, in parallel with the previous decisions of the Board³⁹, there is no absolute barriers to entry in the market for the wholesale of branded sunglasses and that even though there are new entries to the market, these new entries do not put significant competitive pressure on ESSI-LUX, due to the presence of strong brands in the market that have been there for years, the portfolio strength of the established companies and the importance of the distribution network. The special power of the Ray-Ban brand also reinforces ESSI-LUX's position in this market.
- (137) Also in the market for the whole of ophthalmic lenses, structural and strategic obstacles are more important than the absolute barriers to market entry. In this context, the establishment of a prescription laboratory is not subject to any special permission, and the general rules for opening an industrial facility apply. In addition to the capital required to establish a prescription laboratory, actual entries into the sector depend on the creation of a well-functioning distribution channel and customer portfolio. The fact that ESSI-LUX has maintained its strength in this market through the years shows that although there were new entries to the market, this did not put competitive pressure on ESSI-LUX due to its ability to protect its market position. In terms of the market for the wholesale of stock lenses, the lenses purchased as stock are distributed to opticians. A stock lens distributor who does not have any ophthalmic machinery and equipment can distribute stock lenses by importing them itself or by purchasing them from the importer. However, the aforementioned structural and strategic barriers to entry apply in this market, as well.

Buyer Power

- (138) The third factor to consider in dominant position assessments is whether customers have buyer power before the power and concentration level that will emerge in those markets with vertical overlap.

³⁹ Board Decisions dated 23.02.2017, numbered 17-08/99-42, and dated 01.10.2018, numbered 18-36/585-286.

- (139) There are more than 7,000 licensed opticians in Türkiye. Besides the chain stores operating in the market, a very large part of the market consists of independent opticians. The dispersed structure of demand and the lack of countervailing buyer power against ESSI-LUX in the market were also pointed out in the previous Board decisions taken in the relevant sector⁴⁰.
- (140) In summary, the acquiring party in the transaction, namely ESSI-LUX, is an undertaking with a vertically integrated structure operating in the entirety of ophthalmic lens market. Following the Board decision dated 01.10.2018 and numbered 18-36/585-286, ESSILOR merged with LUXOTTICA and the product portfolio of the undertaking expanded. Currently, ESSI-LUX already commands a market share in the markets for “wholesale of stock lenses,” “wholesale of half-finished lenses (RX lenses)” and “wholesale of branded sunglasses” that is considered to indicate the existence of a dominant position in competition law practice. In light of the presence of barriers to entry into and growth in the market, and the lack of countervailing buyer power, it is concluded that ESSI-LUX holds a dominant position in these three related product markets.
- (141) In terms of the market for “wholesale of branded and prescription optical spectacle frames,” it is impossible to assess dominant position, especially in light of market share held by the undertaking. Additionally, the relevant market needs to be evaluated together with the other markets with relation to the acquisition. This is because, given the presence of barriers to entry into and growth in the market and the lack of countervailing buyer power, it is considered that ESSI-LUX holds significant market power in the market for “wholesale of branded and prescription optical spectacle frames,” thanks to its existing portfolio strength. In addition, ESSI-LUX has a strong position in the market for “production and distribution of ophthalmic machinery, equipment and consumables”. This market power held by ESSI-LUX in the market concerned will be discussed in the following sections. Based on the market power ESSI-LUX commands in this market, even if it does not hold dominant position, the transaction concerned may lead to a reduction in effective competition.
- (142) As mentioned before, the activities of the transaction parties overlap horizontally in terms of the market for “retail sales of optical products,” and vertically in terms of the other relevant product markets. Therefore, the transaction must be evaluated in terms of both horizontal and vertical overlaps.

G.6.1. Evaluation of Horizontal Effects

- (143) As mentioned above, the activities of the parties in Türkiye overlap horizontally in the market for the retail sales of optical products. In the market concerned, ESSI-LUX operates through SUNGLASS HUT, while GRANDVISION operates through its subsidiary ATASUN. In terms of the geographical market, the activities of the parties overlap in the provinces of “Adana,” “Ankara,” “Antalya,” “Balıkesir,” “Bursa,” “Denizli,” “Eskişehir,” “Gaziantep,” “İstanbul,” “İzmir,” “Kocaeli,” “Mersin,” “Muğla” and “Samsun”.
- (144) As emphasized in the Guidelines on the Assessment of Horizontal Mergers and Acquisitions (Horizontal Guidelines), horizontal mergers and acquisitions can significantly reduce competition in two ways. The first of these is within the context of unilateral effects, where the undertaking created as a result of the transaction becomes dominant or strengthens its dominant position,

⁴⁰ Board Decisions dated 23.02.2017, numbered 17-08/99-42; dated 01.10.2018, numbered 18-36/585-286.

while the second is that two undertakings which were not in coordination previously may significantly prevent competition by entering into a coordination. However, in accordance with the regulation of the Law no 7246 amending the Act on the Protection of Competition, the merged undertaking may significantly reduce effective competition, even if it does not achieve dominant position under Article 7 of the Act no 4054.

G.6.1.1. Evaluation of Unilateral Effects

- (145) In the evaluation of unilateral competitive effects, the decisive criteria include the market share held by the parties, whether they are close competitors, whether customers can switch suppliers, whether competitors can exert competitive pressure, and whether the transaction eliminates an important competitive power. Not all of these factors that determine whether an acquisition will lead to unilateral effects need to be present simultaneously, and the effects in question should be evaluated together.
- (146) The following table shows the market shares obtained by ATASUN and SUNGLASS HUT at the retail level, based on turnover between 2016-2019

Table 16- The Shares Acquired by the Parties in the Retail Market in 2016-2019 (%)

	2016	2017	2018	2019
ATASUN	(.....)	(.....)	(.....)	(.....)
SUNGLASS HUT	(.....)	(.....)	(.....)	(.....)
TOTAL	(.....)	(.....)	(.....)	(.....)

Source: ESSI-LUX

- (147) According to the table, both ATASUN and SUNGLASS HUT have increased their market share over the years. ATASUN's market share was (.....)% in 2016 but increased to (.....)% in 2019. The same percentage for SUNGLASS HUT increased from (.....)% to (.....)%. After the acquisition, the market shares of the parties would reach (.....)% for 2019. As stated in the Horizontal Guidelines, if the total market shares of the merged undertakings in the relevant market is less than 20%, it is assumed that the negative effects of the acquisition in question are unlikely to occur. In fact, the total market share of the parties in the geographical market of Türkiye remains below this limit.
- (148) ESSI-LUX shared an analysis commissioned to RBB Economics, which is a consultancy company providing economic analyses in the field of competition law. The study uses store counting analysis to examine the retail markets at the local level, examining a data set consisting of a total of 4,254 competing opticians, including stores owned by ATASUN and SUNGLASS HUT⁴¹. In this method, a capture area in the form of a circle is drawn for each store of the parties, and it is examined whether the other party is located within this capture area. For each of the capture areas where the parties overlap, the number of alternatives in the relevant area is determined and the change expected to occur in the number of these alternatives due to the concentration is calculated (for example, from three to two, from four to three). It is noted that, for the analysis in question, RBB

⁴¹ For competitors' information, the customer list of OPAK, one of the subsidiaries of ESSI-LUX, was used.

determined a conservative capture area of (.....) km⁴². The results of the analysis are presented in the table below.

Table 17- Results of the Store Counting Analysis

Analysis	Results
From 2 to 1	(.....)
From 3 to 2	(.....)
From 4 to 3	(.....)
From 5 to 4	(.....)
From 6 to 5	(.....)
From 7 to 6	(.....)
From 8 to 7	(.....)
No Overlap	(.....)
Source: Notification Form	

- (149) According to the table, it can be said that competitive concerns would not arise even when a capture area of fewer kilometres is determined. When the capture area was set to (.....) km with a much more conservative approach, (.....) stores were detected leading to the outcomes of from 3 to 2 and from 4 to 3, and a closer look at these stores revealed additional competitors which were not included in the data set RBB's assessment used. In that context, it is assessed that a concentration that could lead to competitive concerns in terms of the geographical market would not emerge and that the customers had the opportunity to switch providers.
- (150) On the other hand, ATASUN and SUNGLASS HUT are operating in the sector with the chain store format and they compete with over 7,000 opticians alongside other chain stores such as DERIGO-OPMAR, EMO OPTİK, GÖZ GRUP and KENT OPTİK. The market share of the largest competing chain (.....) was calculated as (.....)% in 2019. Within chain stores, the same undertaking has a market share of (.....)%, while ATASUN and SUNGLASS HUT's markets shares are (.....)% and (.....)%, respectively. However, it is known that some of ATASUN's competitors exited the market for various reasons⁴³. When all these matters are taken into account, it is concluded that chain competitors are not in a position to exert competitive pressure.
- (151) Regarding whether the parties are close rivals to each other, it should be emphasized that while ATASUN distributes relatively affordable products with a wide product portfolio and different brands in the market for retail sales of optical products, SUNGLASS HUT only sells ESSI-LUX branded sunglasses products. In this sense, the activities of the parties overlap in a narrow product range and they cater to different customer groups in terms of pricing. In this sense, it can be said that those opticians who sell all optical products similar to ATASUN are closer competitors to ATASUN.

⁴² For the analysis mentioned in the Notification Form, UK Competition and Markets Authority's *Tesco/Vision Express* Decision notes that the areas established for one of the parties were in average 5-10 km, and for the other 10-15 km. (https://assets.publishing.service.gov.uk/media/59e9b28aed915d6aadcdaf2d/final_decision_vision_express_tesco.pdf Accessed: 03.06.2020)

⁴³ It is known that Magrabi Optikal Optik Ticaret A.Ş. terminated its operations in 2020, while Mert Optik Gözlükçüler San. ve Tic. A.Ş. closed around 30 of its stores.

- (152) As a result of these evaluations, it is concluded that the unilateral effects of the acquisition examined under the file are not of a nature to significantly prevent competition by creating a dominant position.

G.6.1.2. Evaluation of Coordination-Generating Effects

- (153) A reduction in the number of undertakings operating in the relevant market because of a merger or acquisition increases the potential to engage in coordinated conduct and raise prices. In this context, concentration levels in the market and the market structure need to be clarified. The conditions that facilitate coordination and the factors that support the sustainability of coordination stand out in the assessment in this field.
- (154) As mentioned in the Horizontal Guidelines, coordination is more likely in concentrated markets, where a small number of undertakings operate. Although there are over 7,000 opticians active in the market for the retail sales of optical products, a very large part of this number consists of independent opticians with relatively low competitive power (an estimated 5,500 stores).
- (155) The market for the retail sales of optical products includes many different product categories such as sunglasses, spectacle frames, ophthalmic lenses and contact lenses. Among these, SUNGLASS HUT is only engaged in the sale of sunglasses. On the other hand, the fact that SUNGLASS HUT sells only ESSI-LUX branded products including Ray-Ban, and the brand power held by Ray-Ban is an issue that requires evaluation, since two important chains operating in the market will merge under the same economic entity.
- (156) The merging of SUNGLASS HUT and ATASUN under the same economic entity will increase the concentration at the retail level to some extent. However, in terms of both unilateral effects and coordination-generating effects, the likelihood of negative effects on competition caused by the horizontal overlap seems low in this particular case. In this context, competition concerns in the sector fundamentally consist of vertical competition problems caused by the transaction.

G.6.2. Evaluation of Vertical Effects

- (157) Since in Türkiye, ESSI-LUX operates through its subsidiaries at the wholesale level for optical products, while GRANDVISION through its subsidiary ATASUN at the retail level for optical products, the transaction concerned has some vertical effects. In this context, the acquisition in question must be addressed under the provisions of the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions (Non-Horizontal Guidelines), and its potential anti-competitive effects must be examined in this framework.
- (158) Mergers and acquisitions between undertakings operating in different relevant product markets are defined as non-horizontal mergers and acquisitions. ESSI-LUX operates in the markets for *“production and wholesale of stock lenses,” “wholesale of half-finished lenses (RX lenses),” “wholesale of branded sunglasses,” “wholesale of branded prescription optical spectacle frames,” “production and distribution of ophthalmic machinery, equipment and consumables,”* and *“retail sales of optical products”* through its subsidiaries. GRANDVISION, on the other hand, operates in the market for *“retail sale of optical products”* through ATASUN. In this context, the transaction in question is a vertical acquisition at the same time.
- (159) With relation to the evaluation of vertical acquisitions, Non-Horizontal Guidelines state that, in general, the markets in which the transaction parties operate are divided into the downstream

and upstream markets, where it is assumed that those undertakings in upstream provide input to the undertakings operating in the downstream. In this framework, the market for the retail sales of optical products in which ESSI-LUX and GRANDVISION operate may be characterized as the downstream market, with the other markets listed above in which ESSI-LUX operates being characterized as the upstream markets.

- (160) Unlike horizontal acquisitions, vertical acquisitions do not directly lead to the elimination or reduction of competition between the undertakings operating in the same relevant market. In this sense, vertical acquisitions are considered to pose fewer competitive concerns when compared to horizontal acquisitions. Additionally, it is claimed that vertical acquisitions significantly reduce transaction costs, incentivizes a reduction in the price of the final product or an increase in output quantity by eliminating double marginalization, and can generate certain efficiencies in terms of production, distribution and sales organization.
- (161) However, in some cases, vertical acquisitions have the potential to create a dominant position or significantly reduce competition by strengthening a dominant position. In this context, the Non-Horizontal Guidelines notes that vertical acquisitions may have two main types of negative effects on competition, consisting of unilateral effects and coordination-creating effects. Nonetheless, with the Law no 7246 amending the Act no 4054 on the Protection of Competition, the merged undertaking may significantly reduce effective competition even if it does not achieve a dominant position under Article 7 of the Act no 4054. For this reason, the transaction comprising the subject matter of the file should also be addressed in this context.
- (162) Unilateral effects are examined mainly to see whether vertical acquisitions lead to market foreclosure. In that context, market foreclosure refers to the reduction of the rivals' opportunities or incentives to compete by obstructing or preventing the access of existing or potential rivals to sources of supply. On the other hand, Non-Horizontal Guidelines addresses market foreclosure in two different ways: input foreclosure and customer foreclosure.
- (163) Meanwhile, coordination-creating effects may be defined as an increase in the likelihood of rising prices and reducing competition by means of the coordination between the two undertakings, which used to operate without harmonizing their conduct before the acquisition. The Non-Horizontal Guidelines also states that, in case the undertakings in the market were already coordinating before the acquisition, the acquisition process would help maintain the existing coordination in a simpler, more permanent and effective manner.
- (164) In the light of the information above, the main restrictive effects of the acquisition concerned on competition will be addressed within the framework of unilateral effects and coordination-creating effects, with unilateral effects further divided into the headings of input foreclosure and customer foreclosure.

G.6.2.1. Evaluation of Unilateral Effects

G. 6.2.1.1. Input Foreclosure

- (165) Essentially, input foreclosure is defined as the merged undertaking making it harder for competing undertakings to procure inputs at the prices and conditions that were valid before the acquisition by restricting the provision of input to the competing undertakings downstream, which results in

an increase in costs. This would give the merged undertaking the opportunity to raise its own prices.

- (166) With regard to input foreclosure, first it is evaluated whether the merged undertaking has the possibility and incentives for input foreclosure, and lastly whether such a market foreclosure practice would significantly distort competition in the downstream. These issues are usually addressed together at the evaluation stage since they are intertwined.
- (167) For input foreclosure assessments, Non-Horizontal Guidelines first looks at whether the input is an important input in terms of production in the downstream market. Market foreclosure can become an issue if the relevant input is important. Moreover, in addition to the fact that the input is an important item among the production costs in the downstream market, it can also maintain its importance with non-cost factors. However, Non-Horizontal Guidelines notes that, in order for the market foreclosure effect to emerge through input foreclosure, the vertically integrated undertaking created after the acquisition should have a certain level of market power in the upstream market.
- (168) Within the framework of the acquisition under examination, the main subject of the retail sales of optical products consist of branded sunglasses, optical frames and stock and RC lenses, the wholesale of which are handled by the acquiring party ESSI-LUX in the upstream market. Therefore, there is no doubt that these products are an important input. At this point, it should be examined whether ESSI-LUX holds market power in the upstream market in which it engages in the wholesale of the product.
- (169) As mentioned above, ESSI-LUX achieved a market share of
- (.....)% in the wholesale of branded sunglasses,
 - (.....)% in the wholesale of branded prescription optical frames,
 - (.....)% in the wholesale of stock lenses,
 - (.....)% in the wholesale of RX lenses,
- in 2019, based on value. Also, the parties estimate that, with regard to surfacing machines, coating machines, polishing machines, consumables and tabletop trimmers, which are the subcategories of the market for the production and distribution of ophthalmic machinery, equipment and consumables, in 2019, ESSI-LUX had a value-based market share of (.....)%, (.....)%, (.....)% and (.....)%, respectively for Türkiye⁴⁴, and (.....)%, (.....)%, (.....)% and (.....)% at the global scale. In addition, its global market share based on value in 2019 with regard to polishing machines is estimated at (.....)%. An examination of the market shares show that ESSI-LUX's market share in all markets other than branded prescription optical frames is above the dominant position threshold.
- (170) An examination of market shares and market recognition on a brand basis shows that ESSI-LUX is in a strong position against its competitors. This superiority is most obvious in branded sunglasses. During the 2016-2019 period, ESSI-LUX's Ray-Ban brand held a market share of (.....)%, (.....)%, (.....)% and (.....)%, respectively, on the basis of value. In that sense, it can be easily said that ESSI-LUX holds market power in the markets concerned.

⁴⁴ The parties state that all sales are direct imports by ESSI-LUX and that its Turkish subsidiaries do not make such sales.

- (171) In addition, in accordance with the relevant legislation, public promotion activities in the field of optical frames and lenses are not permitted. Therefore, it would be inevitable that the strength and image of the Ray-Ban brand will contribute to the other wholesale activities of the merged undertaking, as well as to its retail sales. On the other hand, ESSI-LUX's global market share is very close to the dominant position threshold, especially in the surfacing and coating machines sub-categories of the ophthalmic machinery and equipment market. The data for the Turkish market shares that are based on the best estimations of the parties show that this situation reinforces the combined undertaking's power in the ophthalmic lens market in Türkiye. In fact, the statements of the undertakings operating in the sector also support that ESSI-LUX holds a strong position in the field of ophthalmic machinery and equipment. This strength creates considerable bargaining power against opticians and makes it impossible for competitors to exert competitive pressure against it.
- (172) On the other hand, it is necessary to mention the share of ATASUN and other retailers in ESSI-LUX's sales. When the year of 2019 is taken into consideration, ESSI-Lux made (.....)% of its total branded sunglasses sales, (.....)% of its optical frame sales, (.....)% of its stock lens sales and (.....)% of its RX lens sales to ATASUN. In this regard, in case ESSI-LUX implements input foreclosure for competing retailers, it will lose (.....)% of its branded sunglasses sales, (.....)% of its optical frame sales, (.....)% of its stock lens sales and (.....)% of its RX lens sales.
- (173) Additionally, the Essilor/Luxottica Merger was permitted with the Board decision dated 01.10.2018 and numbered 18-36/585-286, subject to the following commitments:
- ESSI-LUX will not engage in tied sales of sunglasses, optical frames, and ophthalmic lens products, which includes a guarantee not to refuse to suggest selling them separately.
 - ESSI-LUX will not, explicitly or implicitly, refuse to supply any of the products it produces (ophthalmic lenses, optical frames and sunglasses) to customers separately.
 - ESSI-LUX will guarantee that, following the transaction, each product category it currently offers to its customers (ophthalmic lenses, optical frames and sunglasses) will continue to be accessible independently and separately, with reasonable and fair conditions under all circumstances, and it will not apply discriminatory terms to customers in equal positions.
 - ESSI-LUX will not apply contractual and de facto exclusivity to opticians, to prohibit or restrict competitors from purchasing these products.

It should be noted that these obligations would be valid until 01.10.2021 and that the Board could re-evaluate these obligations. The obligations concerned reduce the possibility of ESSI-LUX to implement input foreclosure at the retail level.

- (174) As a result, although ESSI-LUX holds significant power compared to its competitors in the upstream markets, it is concluded that it cannot apply input foreclosure on competing retailers in the short term, in consideration of the aforementioned commitments, as well as the fact that a large portion of the undertaking's total sales in the downstream are made to independent customers.

G.6.2.1.2. Customer Foreclosure

- (175) Customer foreclosure refers to when the merged undertaking restricts its upstream competitors' access to a sufficient customer base. In this framework, the merger of an undertaking operating in the upstream market with an undertaking that has a significant market share in the downstream leads to the possibility of preventing and restricting competition through customer foreclosure.
- (176) Since the combined undertaking will continue its activities in the downstream, it will be able to restrict the access of competitors operating in the upstream to a significant customer base. After

this, undertakings operating in the downstream market will not be able to procure their input at the pre-acquisition prices and terms due to the decrease in supply, and there may be an increase in final product prices.

- (177) With regard to the assessment of customer foreclosure, the Non-Horizontal Guidelines states that it must first be determined whether the merged undertaking’s reducing the purchase of inputs from competing undertakings in the upstream and limiting their access to the lower market would lead to market foreclosure. Secondly, after assessing whether the combined undertaking has an incentive to reduce input intakes, it is necessary to analyze whether such a market foreclosure would have a negative impact on the final consumer.
- (178) Within the framework of the points above, for market foreclosure effects to emerge by means of customer foreclosure, undertakings operating in the upstream should be excluded from customer resources to a significant degree. Once the transaction is complete, ESSI-LUX’s share in the downstream market will rise from (.....)% to (.....)%. In addition, it is estimated that there are around 7,000 outlets in the downstream market, excluding the online and department stores. At first glance, the low rate in question and the large number of competitors may suggest that there is not enough power to restrict the access of competitors in the upstream to customers in the downstream. However, in the market for the retail sale of optical products, a large proportion of the more than 7,000 opticians consists of small, independent opticians.
- (179) On the other hand, the importance of the chain stores in the retail sales of optical products is increasing year by year. The share of the chain stores was (.....)% in 2016, but increased to (.....)% in 2019⁴⁵. An examination of ATASUN’s market share specific to chain stores shows an increase from (.....)% to (.....)% during the 2016-2019 period. After the transaction, the share of the merged undertaking will increase to a significant percentage of (.....)%.
- (180) The alternative sales channels of online and department stores have been growing as well. The sales of the parties in these channels are rising at a much faster rate than those of the other players in the market, especially for online sales. The rate of increase in these channels was (.....)% in 2019, yet the transaction parties saw an increase of (.....)% in the same year. In other words, (.....)% of the increase in online and department channels came from the parties. Thus, it is considered that the combined undertaking is in a strong position at the retail level.
- (181) At this point, due to the vertically integrated structure that will emerge after the transaction, the possibility of ATASUN directing some or all of its purchases to ESSI-LUX becomes an issue. The effect of such a situation on ESSI-LUX’s position must be analyzed. On the other hand, ESSI-LUX’s share in ATASUN’s purchases is also important.
- (182) The table below includes ESSI-LUX’s potential market share that is calculated to occur if ATASUN were to make its purchases entirely from ESSI-LUX, according 2019 data.

Table 18- ESSI-LUX’s Market Share If ATASUN Made Its Purchases Entirely from ESSI-LUX (%)

Market	Before	After
Branded Sunglasses	(.....)	(.....)

⁴⁵ Data on the share of chain stores and independent stores in the market for the retail sales of optical products as well as on the shares of ATASUN and SUNGLASS HUT in the same market were provided by the parties. On the other hand, ATASUN’s share among chain opticians was calculated by collecting data from the chain opticians active in the sector. Thus, it should be noted that the data sets used in the calculations in question were different, which should be taken into consideration when comparing these calculations.

Branded Prescription Optical Frames	(.....)	(.....)
Stock Lenses	(.....)	(.....)
RX Lenses	(.....)	(.....)
Source: Information Collected from Undertakings and Rapporteur's Calculations		

(183) The following table shows how much of ATASUN's purchases were made from ESSI-LUX in 2019 and 2020.

Table 19- Shares Owned by ESSI-LUX in ATASUN's Acquisitions

Market	2019	2020
Branded Sunglasses	(.....) ⁴⁶	(.....)
Branded Prescription Optical Frames	(.....) ⁴⁷	(.....)
Stock Lenses	(.....)	(.....)
RX Lenses	(.....)	(.....)
Source: Information Collected from Undertakings and Rapporteur's Calculations		

(184) The tables show that in a situation where ATASUN shifts all of its purchases to ESSI-LUX, ESSI-LUX's share in the markets for the wholesale of branded sunglasses and branded prescription optical frames will increase by around (.....) points. This will strengthen ESSI-LUX's dominant position in the wholesale of sunglasses, and its market leader position as well as its market power in the market for the wholesale of branded prescription optical frames. On the other hand, there will be no change in the wholesale of stock lenses, with a very small increase in the wholesale of RX lenses. This is because ATASUN purchases all of its stock lenses and nearly all of its RX lenses from ESSI-LUX.

(185) Although almost all of ATASUN's purchases in the lens market are made from ESSI-LUX, a significant portion of these purchases ((.....)% for 2019 (.....)% for 2020) are in the form of production of private label products⁴⁸. Therefore, while it is currently possible for ATASUN to have its private label products manufactured by other undertakings, this possibility may disappear if the transaction is realized.

(186) In light of the evaluations above, it is concluded that ESSI-LUX will strengthen its dominant position in the relevant markets and/or increase its market power by customer foreclosure after the transaction.

(187) Currently, ESSI-LUX is the market leader in the relevant wholesale markets and holds a high market power in the branded sunglasses and lens markets, which is reinforced by its position in the field of ophthalmic machinery and equipment, in particular. In fact, ESSI-LUX's market share in the surfacing and coating machines sub-categories of the ophthalmic machinery and equipment market is very close to the dominant position threshold at the global scale. Market share data based on the best estimates of the parties also show that this situation reinforces the merged undertaking's market power in the Turkish ophthalmic lens market. This strength creates significant bargaining power against opticians and it is not possible for competitors to establish competitive pressure against it. Additionally, the transaction will create a vertically integrated

⁴⁶ When purchases from MERVE OPTİK are excluded, ESSI-LUX's share is (.....)%.

⁴⁷ When purchases from MERVE OPTİK are excluded, ESSI-LUX's share is (.....)%.

⁴⁸ Private label products are those retailers either produce themselves or get other producers to manufacture and then offer for sale under their own brand/private label.

structure, which will allow ESSI-LUX, with its considerable product portfolio strength, to achieve a strong leadership position in all channels of the retail level. When all these matters are taken into consideration, it is concluded that the acquisition concerned will significantly restrict effective competition, first at the wholesale level in the short term, and then at the retail level in the long term.

G.6.2.2. Evaluation in Terms of Coordination-Generating Effects

- (188) The undertakings that were in the position of suppliers and buyers before the transaction will start to operate within a vertically integrated structure after the transaction, which opens up the risk of vertical coordination. The Non-Horizontal Guidelines state that if a vertical acquisition is shown to lead to market closure, just a decrease in the number of competitors may make it easier for other undertakings remaining in the market to coordinate.
- (189) In addition, in case vertical acquisitions provide the merged undertaking access to sensitive information about its competitors, there is a possibility of increasing market transparency and thus facilitating the establishment and execution of coordination. Especially where final consumer prices are publicly available but the main input prices remain confidential, in other words, where the downstream market is more transparent than the upstream market, coordination will become more effective as a result of vertical acquisitions.
- (190) After the vertical acquisition comprising the subject matter of the file is completed, there is a possibility of accessing sensitive information about the competitors in the relevant markets, and consequently, the risk of coordination. To wit, competitive concerns may emerge in the market if, after the transaction, ATASUN were to share commercially sensitive information obtained from competitors of ESSI-LUX at the wholesale level with ESSI-LUX itself, and if ESSI-LUX were to share commercially sensitive information obtained from competitors of ATASUN on the retail level with ATASUN itself. For example, if ESSI-LUX knows the sales potential of each retailer, this would bring up other advantages for ATASUN, and the location of the stores may be planned within the framework of this information, in particular. In fact, the undertakings whose opinions have been consulted also confirm this concern. Therefore, the notified acquisition involves the risk of increasing the transparency and coordination in the relevant markets.

G.7. Commitments form dated 09.06.2021 and numbered 18474, and Its Evaluation

- (191) Below are the behavioural commitments submitted with the Commitment Form⁴⁹ dated 09.06.2021 and numbered 18474, concerning the vertical effects of the transaction:

"EssilorLuxottica presents the following behavioural commitments to your attention, whose scope was extended to address the Competition Authority's potential vertical competition concerns:

- 1. EssilorLuxottica guarantees that it shall not engage in tied sales of the relevant products, which includes a guarantee not to refuse to supply branded sunglasses, branded optical*

⁴⁹ Unlike the Commitments Form received into the Authority records on 30.03.2021, with the number 16555, this Commitments Form adds the commitment no 3 and includes the phrase "at least" to the commitment no 4.

- frames, ophthalmic lenses and ophthalmic equipment products (along with related consumables)⁵⁰, separately to current and potential customers in Türkiye.*
- 2. EssilorLuxottica guarantees that it shall not implement discriminatory conditions for customers on equal standing related to the sales of branded sunglasses, branded optical frames, ophthalmic lenses, and ophthalmic equipment (along with related consumables), and that it shall provide reasonable conditions under all circumstances.*
 - 3. EssilorLuxottica guarantees that it will apply the same terms and conditions of sale to all of its customers as those it will apply to its retailer subsidiaries (including Atasun), with regard to branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment products (including related consumables).*
 - 4. EssilorLuxottica guarantees that for branded sunglasses, branded optic frames and RX lenses, the total share of the purchases made by Atasun from third party suppliers will be on the same scale with the purchases made in 2019 in terms of value.*
 - 5. Regarding the supervision and reporting of the implementation of the commitments numbered 1, 2, 3 and 4 above, EssilorLuxottica guarantees to establish the following supervision and reporting systematic for the commitment process following the transaction:*
 - a. EssilorLuxottica will sign an agreement with an independent third-party company (“Principal Auditor”) within 45 days after the notification of the short decision of the Competition Board.*
 - b. The Principal Auditor will submit an annual report including his opinion on EssilorLuxottica compliance with commitments numbered 1, 2 and 3 to the Competition Authority and to the EssilorLuxottica simultaneously before the end of every year for the duration of the commitment specified below. On the request of the Competition Authority or on his own initiative, the Principal Auditor will be able to submit interim reports in addition to the abovementioned annual report.*
 - c. EssilorLuxottica will submit to the Competition Authority a specification containing the general conditions of the agreement to be made with the Principal Auditor within 30 days after the notification of the short decision of the Competition Authority.*
 - d. EssilorLuxottica will provide the Principal Auditor with all the information and support necessary to realize the relevant reporting within the framework of the honesty rule, on condition that all kinds of confidentiality is guaranteed by the Principal Auditor.*
 - e. During the period between the closing of the transaction and the end of the Principal Auditor’s commissioning, EssilorLuxottica shall submit monthly reports relating to the interim period to the Competition Authority.*

⁵⁰ It is observed that the commitment text does not include the phrases “machinery” and/or “consumables” in the articles concerning the “ophthalmic machinery, equipment and consumables” product group. It is stated that ophthalmic machinery in this context were sold to prescription laboratories – operating at the wholesale level – while ophthalmic equipment was sold to the opticians – operating at the retail level. The commitment process involves the introduction of commitments aimed at eliminating the vertical concerns that may arise after the transaction. Therefore, it is noted that the commitments were designed in accordance with the purchases of the opticians and thus the relevant commitment article did not include the phrase “machinery”. Consumables, on the other hand, can be used with the machinery as well as the equipment. In that context, it is confirmed that the commitments offered did include the consumables used with the equipment, since they are sold to the opticians, and the commitments were offered in this way.

6. *Following the transaction, in order to eliminate any concerns with regard to coordination;*
 - a. *EssilorLuxottica will not directly or indirectly share with Atasun any commercially sensitive information (related to Atasun’s competitors/rivals) that it receives in its capacity as a wholesaler through its retail-level business relations.*
 - b. *Atasun guarantees that it will not directly or indirectly share with EssilorLuxottica any commercially sensitive information (related to EssilorLuxottica’s competitors/rivals) that it receives in its capacity as a retailer through its retail-level business relations.*
 - c. *Additionally, EssilorLuxottica guarantees that, in accordance with the purposes mentioned above, it will establish restrictions on accessing sensitive information between Atasun and EssilorLuxottica.*
 - d. *Moreover, Atasun’s operational management guarantees that it will maintain its separate organization with EssilorLuxottica’s retail-level affiliates in terms of its personnel and organization structure. In this scope, managers at responsible for Atasun’s operational management will not participate under EssilorLuxottica itself or in its wholesale-level affiliates. In the same context, managers responsible for operational management under EssilorLuxottica itself or its wholesale-level affiliates will not be assigned under Atasun corporate structure simultaneously. (Operational management is defined as the administration and management of the daily tasks, and executive board members who are not responsible for the management of the daily tasks will not be evaluated in this framework. In addition to this, the operational separation mentioned above covers the monitoring of the relevant commercial relationships under the responsibility of separate people and teams, up to the level of deputy director general.)*
 - e. *In addition, and in parallel with the evaluations in Competition Authority’s AEH/Migros decision, in order to eliminate potential concerns of the Competition Authority on the implementation of the relevant commitments, EssilorLuxottica will submit annual reports concerning the effective measures taken with regards to the restriction of the flow of commercially sensitive information between EssilorLuxottica and Atasun, the first of which is to be prepared after the conclusion of the Transaction by the Competition Authority.*
7. *The duration of the behavioural commitments herein will be three years from the conclusion date of the Transaction and, if deemed necessary by the Competition Authority, it can be extended for a maximum of three more years at the end of initial period.”*

(192) The restricting effects that will arise from the transaction in the file mainly result from ESSI-LUX’s dominant position and/or significant market power in the four wholesale markets listed among the relevant product markets. Therefore, there is a concern that certain conduct and practices will arise after the transaction, which will lead to a significant reduction of effective competition within the framework of the Ac no 4054. It is important whether the commitments offered by ESSI-LUX are of a nature to eliminate these concerns.

(193) The first competitive concern that the notified transaction may raise in terms of unilateral effects is input foreclosure. Accordingly, following the acquisition, it was examined whether ESSI-LUX had any possibilities or incentives to restrict inputs towards competing retailers. As detailed in the relevant section above, although ESSI-LUX holds significant power compared to its competitors in

the upstream markets concerned, purchases made by competing customers in the downstream have an important place in ESSI-LUX's sales. That is to say, in 2019, (.....)% of the total branded sunglasses sales, (.....)% of the optical frame sales, (.....)% of the stock lens sales and (.....)% of the RX lens sales of ESSI-LUX are made to ATASUN. In this regard, if ESSI-LUX were to apply input foreclosure towards competing retailers, it would lose (.....)% of its branded sunglasses sales, (.....)% of its optical frame sales, (.....)% of its stock lens sales and (.....)% of its RX lens sales. Therefore, ESSI-LUX is not expected to apply input foreclosure against competing retailers in the short term.

- (194) At the same time, as often stated by competing wholesalers, a potential tying strategy⁵¹ to be implemented by the merged undertaking may lead to anti-competitive results stemming from the vertical integration. It has been noted that the commitments numbered 1, 2 and 3 offered within the scope of the Commitments Form can potentially prevent those strategies aimed at input restriction. In fact, regardless of whether ESSI-LUX has the power and incentive to adopt leverage strategies, commitment no. 1 ensures that each retailer can purchase these products separately, as they currently can, and that ESSI-LUX will not explicitly or implicitly refuse to sell these products to retailers.
- (195) Similarly, commitment no. 2 is introduced in order to eliminate the risk of any potential discrimination that may occur in favor of ATASUN, and it ensures that all equally positioned ESSI-LUX customers can purchase ESSI-LUX branded sunglasses, optical spectacle frames, ophthalmic lenses and equipment on equal terms⁵². In addition to this, it is stated that commitment no. 3 is included in order to ensure that competing chain stores and independent opticians face the same sales terms and conditions applied for ATASUN (or for any other subsidiary of ESSI-LUX that is/will be operating at the retail level).
- (196) Another competitive concern that may arise in terms of the unilateral effects of the transaction is customer foreclosure. Since the merged undertaking will continue its operations in the downstream market, it will be able to restrict the access of competing undertakings operating in the upstream to a significant customer base. In light of the facts that ESSI-LUX's share in the downstream market will increase from (.....)% to (.....)% after the transaction, and that ATASUN is the most powerful chain optician operating in Türkiye at the retail level, ESSI-LUX will be able to achieve a strong position at the retail level after the transaction. On the other hand, the possibility that ATASUN may make some or all of its purchases from ESSI-LUX following the transaction may also to strengthen ESSI-LUX's position in wholesale markets. At this point, it is important to ensure that the competitors' shares within ATASUN's purchases are protected. The commitment number 4 offered by ESSI-LUX is intended to eliminate those effects of the transaction that may arise in terms of customer foreclosure.
- (197) During the commitment process, the proportions of the purchases made by ATASUN from third-party providers for all product groups comprising the relevant products markets covering the 2016-2020 period, were calculated and submitted to the Authority by ESSI-LUX, based on the values and quantities of the purchases, separately. Within this context, the breakdown of the

⁵¹ For instance, sector representatives frequently mentioned the tying of ophthalmic lens purchases to the purchase of ophthalmic machinery and equipment.

⁵² Concerning which criteria to consider when assessing parties with equal position, the Commitments Form gives paragraph 49 of the *State Airports Administration* Decision, dated 09.09.2015, numbered 15-36/559-182, and paragraph 127 of the *Radontek* Decision, dated 11.10.2018, numbered 18-38/617-298.

purchases made by ATASUN between 2016- 2020 based on value and quantity are given in the table below.

Table 20- Breakdown of ATASUN’s Purchases by Value and Quantity in the Related Product Markets (%)

	Branded Sunglasses									
	2016		2017		2018		2019		2020	
	QTY	Value	QTY	Value	QTY	Value	QTY	Value	QTY	Value
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brand	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Branded Optical Frames									
	2016		2017		2018		2019		2020	
	QTY	Value	QTY	Value	QTY	Value	QTY	Value	QTY	Value
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brand	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	RX Lenses									
	2016		2017		2018		2019		2020	
	QTY	Value	QTY	Value	QTY	Value	QTY	Value	QTY	Value
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
	Stock Lenses									
	2016		2017		2018		2019		2020	
	QTY	Value	QTY	Value	QTY	Value	QTY	Value	QTY	Value
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

Source: ESSI-LUX

- (198) As seen in the table, in terms of branded sunglasses, the share of ATASUN’s purchases from ESSI-LUX’s competitors showed an increasing trend between 2017-2019, reaching (.....)% in 2019. This ratio dropped around (.....) points in 2020. The same seems to apply on a quantity basis, as well. In terms of branded optical frames, the share of competitors in ATASUN’s purchases also showed an increasing tendency between 2017-2019, and reached (.....)% in 2019. In 2020, this ratio dropped by around (.....) points. Examining the data on a quantity basis, the share of competitors follow a more fluctuating course. In terms of the market for the wholesale of ophthalmic lenses, a higher percentage of purchases were made from ESSI-LUX, compared to the other related markets. In terms of RX lenses, one of the sub-categories of the aforementioned market, the share of competitors in purchases increased between the years of 2017 and 2020 in terms of value, reaching (.....)% in 2020. In the relevant years, (.....) of the stock lens purchases were made from ESSI-LUX.
- (199) The Commitment Form states that value-based data will be taken into account in terms of ATASUN’s purchases, which is considered the more appropriate approach. This is because if the parties offered both quantity-based and value-based commitments, this could cause some technical difficulties. For instance, if the merged undertaking were to comply with the value-based commitments but failed to comply with the quantity-based commitments to the same extent, the validity of the transaction may be called into question. However, trying to achieve the same

quantity- and value-based rates at the same time could lead to the merged undertaking constantly working with the same suppliers, which could result in the absence of competing products on ATASUN shelves, both for the existing independent suppliers in the market and for new entrants. In terms of branded sunglasses and branded optical frames, there are numerous brands in the relevant markets, and these products are offered for sale in a fairly wide price range. On the other hand, it is observed that value-based rates were taken into account in the previous Board decisions.

- (200) On the other hand, the special brand lines in the table consist of the sum of GRANDVISION’s self-produced brands and the private label products produced by local manufacturers exclusively for ATASUN. In other words, private label products included in the data provided by the party cover the products manufactured by the vertically integrated undertaking that is under the umbrella of the same economic entity ATASUN is in, as well as the products manufactured by other manufacturers operating at the wholesale level. At this point, it is necessary to separate how much of the private label products are produced by ESSI-LUX’s competitors.
- (201) After these evaluations, market shares related to ATASUN’s purchases have been recalculated. The following table shows the value-based distribution of ATASUN’s purchases in the relevant markets between 2016 and 2020, in a way that maintains the shares of the competitors in terms of private label products.

Table 21- Breakdown of ATASUN’s Purchases in Terms of the Related Product Markets, Based on Value (%)

Branded Sunglasses					
	2016	2017	2018	2019	2020
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brands	(.....)	(.....)	(.....)	(.....)	(.....)
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
GRANDVISION	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
Branded Optic Frames					
	2016	2017	2018	2019	2020
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brands	(.....)	(.....)	(.....)	(.....)	(.....)
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
GRANDVISION	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
Ophthalmic Lenses (RX + Stock Lenses)					
	2016	2017	2018	2019	2020
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brands	(.....)	(.....)	(.....)	(.....)	(.....)
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
GRANDVISION	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
RX Lenses					
	2016	2017	2018	2019	2020

ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brands	(.....)	(.....)	(.....)	(.....)	(.....)
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
GRANDVISION	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
Stock Lenses					
	2016	2017	2018	2019	2020
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Private Brands	(.....)	(.....)	(.....)	(.....)	(.....)
ESSI-LUX	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)
GRANDVISION	(.....)	(.....)	(.....)	(.....)	(.....)
Competitors	(.....)	(.....)	(.....)	(.....)	(.....)

- (202) Commitment number 4 takes the year 2019 as the basis for ATASUN’s purchases. As stated before, the share of competitors in ATASUN’s purchases in terms of branded sunglasses and optical frames increased until 2019. In 2020, this ratio was observed to decrease. In consideration of the effects of the Covid-19 pandemic on business models, it becomes clear that the year 2019 rather than 2020 is more appropriate for evaluating the ongoing existing trade relations. ESSI-LUX also noted that 2019 was the most suitable year for making a competitive comparison.
- (203) Within the framework of the evaluations given above regarding the shares of competitors in ATASUN’s purchases, the table below is prepared, using the data calculated based on value for the year 2019 and simplifying the share of competing wholesalers in ATASUN’s purchases to include private label products.

Table 22- Ratio of Purchases Made by ATASUN from Competing Suppliers On The Basis of Value (%)

	2019
Branded Sunglasses	(.....)
Branded Optical Frames	(.....)
RX Lenses	(.....)
Source: ESSI-LUX (Document-168)	

- (204) Therefore, in order to protect the shares of competitors in ATASUN’s purchases and thus to eliminate the effects of the transaction in terms of customer foreclosure; ESSI-LUX guarantees, with the commitment no. 4, that it will procure from competing suppliers
- At least (.....)% of its annual branded sunglasses purchases based on value,
 - At least (.....)% of its branded optical frame purchases based on value,
 - At least (.....)% of its RX lens purchases based on.
- (205) Since all stock lens purchases are made from ESSI-LUX, the relevant product group in question is not included in the table. ESSI-LUX states that the elimination of the possibility of ATASUN doing business with other stock lens providers should not cause any concern. In fact, ATASUN makes all of its purchases from ESSI-LUX in the current situation, with no chance that the customer base, which is open to competitors, will change to the detriment of customers after the transaction. As noted in paragraph 12 of the Guidelines on Remedies that are Acceptable by the Turkish

Competition Authority in Merger/Acquisition Transactions (Commitment Guidelines), commitments are expected to serve to maintain pre-transaction levels of competition, and they are not expected to make the market more competitive. Therefore, the fact that commitment no. 4 does not cover the stock lens market is not considered a deficiency.

- (206) Within the framework of the explanations above, it is concluded that commitments no. 1, 2, 3 and 4 are sufficient in addressing related competitive concerns.
- (207) According to paragraph 19 of the Commitments Guidelines, in order to make sure that the proposed remedies work, it is necessary to establish an effective implementation and supervision system. Commitment no. 5 is introduced in this context, and it is designed in a way similar to the commitments adopted in the *AEH/Migros* decision. With the commitment no. 5, ESSI-LUX undertakes to appoint a principal auditor who will monitor the implementation of the commitments no. 1, 2, 3 and 4, and ensure their effective application. ESSI-LUX will submit the contract containing the general conditions of the agreement to be made with the principal auditor to the Authority within 30 days from the notification of the short decision of the Board. The principal auditor will be appointed after the approval of the Board, and will prepare annual reports on whether the audit process is being carried out in accordance with the commitments, and will submit these reports to the Authority at the end of each year⁵³. When assessed together, factors such as the fact that the relevant behavioural commitments are offered based on annual purchases, and the fact that the sales of the products display seasonality mean that annual submission of the reports is found appropriate.
- (208) Commitment number 6 offered by ESSI-LUX aims to eliminate the coordination-generating effects of the transaction concerned. With regard to the transparency and the resulting coordination stemming from the vertical merger, the proposed commitment establishes a full and effective information/communication wall (*Chinese Wall*), separating the wholesale and retail departments and serving as a barrier against the exchange of all information, including store locations, prices, price increases, pricing strategies, profit margins, costs, sale conditions or quantities, and inventory or coating information. In accordance with the commitment offered, both ESSI-LUX and ATASUN will not share the competition-sensitive information they obtain within the scope of their ongoing commercial relations. In that framework, it is guaranteed that ATASUN will continue its activities with separate personnel, managerial and organizational structure from ESSI-LUX and its operations in its subsidiaries and/or affiliates. Under the commitment, ESSI-LUX will not share commercially sensitive information obtained through its commercial relations in its capacity as a wholesaler with ATASUN, and in return, ATASUN will not, directly or indirectly, share the commercially sensitive information it receives in its capacity as a retailer with ESSI-LUX. At this point, it is guaranteed that sensitive information about competitors, customers and similar issues will not be shared. The commitment concerned was introduced in reference to those in the *AEH/Migros* decision, which were deemed sufficient by the Board to eliminate the potential coordination concerns. Regarding the measures taken by ESSI-LUX concerning the restriction of the flow of commercially sensitive information, it is stated that annual reports will be submitted,

⁵³ ESSI-LUX guarantees that it will submit monthly reports during the interim period between the final decision of the Board and the official appointment of the principal auditor. Since ESSI-LUX will not have any control over ATASUN's operations before the transaction is concluded, the reports in question will begin after the conclusion of the transaction.

the first of which will be after the notification of the short decision of the Board. The reporting in question will be carried out by ESSI-LUX.

- (209) In the scope of these explanations, this commitment, which was introduced to eliminate the coordination risk, is found to be sufficient to address the concerns.
- (210) Commitment number 7 on the duration of the commitments states that behavioural commitments will be valid for a period of three years, and that the Board will be able to extend the validity period of the commitments for three more years at most. It is stated that the goal of the behavioural commitments is to ensure that the relevant stakeholders (competitors, customers or suppliers) respond to the structural change in the market caused by the vertical merger. Within this framework, it is noted that behavioural commitments with indefinite or very long-term durations may prevent the significant efficiency gains expected to occur as a result of the transaction. On the other hand, it is emphasized that the relevant markets consisting of the retail sales of optical products, wholesale of sunglasses, wholesale of optical frames, wholesale of ophthalmic lenses and production and distribution of ophthalmic equipment and consumables are dynamic markets in which strong local and international undertakings operate. Thus, these relevant markets are dynamic markets that are open to new entries. Therefore, it is stated that the three-year period is sufficient for competitors to develop and implement strategies that can exert significant competitive pressure on ESSI-LUX. These periods mentioned in the commitment text are found sufficient.

G.8. Assessment of the Objections Submitted to the Authority

- (211) Within the scope of the file, objection petitions concerning the transaction were submitted by the undertakings operating in the sector and related associations. In this context, letters sent by ELİT OPTİK, HOCAOĞLU, (.....) and (.....) that contained objections to the transaction were received into the Authority records as follows, respectively: on 29.04.2021 with the number 17563; on 07.05.2021, with the number 17752; on 24.05.2021, with the number 18024; on 24.05.2021, with the number 18027, and on 26.05.2021, with the number 18110. Objections sent by the Turkish Opticians and Lens Makers Association entered into the Authority records on 17.05.2021, with the number 17847, and on 10.05.2021, with the number 17769. The objections in question and whether these concerns were addressed by the commitments will be briefly evaluated below.
- (212) In summary, the application made by HOCAOĞLU and ELİT raises the following issues:
- As a result of ESSI-LUX's acquisition of ATASUN, ESSI-LUX and ATASUN will become dominant in the market, the market will be managed by a single party, the prices of spectacle lenses, spectacle frames and sunglasses will increase at the wholesale and retail levels, competitors may be excluded and a cartel may form in the market, blocking entries into the sector and new investments,
 - ESSI-LUX may transfer to ATASUN the purchase information of the retail stores with which it does business,
 - Due to the pricing policy ESSI-LUX will implement for ATASUN, differences may arise between the prices of ATASUN and those of independent opticians, with medium- and small-sized undertakings being unable to maintain their operations.
- (213) In summary, the application made by the Turkish Opticians and Lens Makers Association raises the following issues:
- ESSI-LUX is a company that supplies optical products such as sunglasses, spectacle lenses and frames to opticians in the sector, and it is the market leader,

- ATASUN is a powerful optical chain operating at the retail level,
- ESSI-LUX supplying the products to ATASUN below the price it asks from other independent opticians leads to unfair competition,
- If it takes over ATASUN, ESSI-LUX will become dominant in and monopolize the retail market as well.

(214) In summary, the application with confidentiality request made by (.....) raises the following issues,

- ESSI-LUX holds dominant position in the market for branded sunglasses, is the leader in the markets for the wholesale of ophthalmic lenses and branded frames, and is an important player in the markets for many other products sold to optical retailers,
- GRANDVISION is in the leading position in the optical retail sector in Türkiye,
- The transaction will lead to vertical and horizontal effects, will significantly prevent effective competition in Türkiye, and will cause final users to pay high prices for the products,
- ESSI-LUX will have the ability and incentives to supply sunglasses, lenses, frames and other products to optical-retailers in competition with ATASUN on less advantageous terms, the costs of competing retailers will increase significantly and they may be excluded from the market, ESSI-LUX may refuse to provide new series of the indispensable brands such as Ray-Ban to competing retailers,
- The products may be supplied to GRANDVISION with priority and the prices of these products may increase when sold to competing retailers,
- ESSI-LUX will have the motivation to implement market foreclosure methods, ESSI-LUX may engage in anti-competitive practices by using its dominant position in the wholesale market of branded sunglasses as leverage, these assessments are consistent with the findings of the European Commission in its review of the planned transaction,
- After the planned transaction, ATASUN will make its ophthalmic lens purchases from ESSI-LUX, which will cause competing wholesalers to lose business and make it harder for other ophthalmic lens suppliers to compete effectively, a similar situation will arise in terms of sunglasses, frames and other products, ATASUN will significantly reduce its purchases from ESSI-LUX's rivals and it will supply these products from ESSI-LUX itself, increasing ESSI-LUX's market share in the wholesale market of ophthalmic lenses and branded sunglasses, the transaction will lead to an increase in the final prices of ophthalmic lenses,
- The transaction will lead to an overlap in the retail sector and further reduce competition, the costs of competing retailers will increase significantly, and it will be difficult for them to compete effectively,
- Consistent with previous decisions of the United Kingdom's Competition and Markets Authority, optical retail markets can be defined locally in terms of geography, in which case they are comprised of service areas that are less than 10 km in diameter around a particular store; in this context, there may be local overlaps where the parties have a significant combined market share in Türkiye,

noting that the transaction should not be authorized or appropriate commitments to address the concerns should be implemented:

(215) In summary, the application made by (.....), who operates as an optician in Istanbul, raises the following issues:

- ESSLOR and ATASUN act in concert under Article 6 of the Act no 4054 to create unfair competition and abuse their dominant position by selling spectacle lenses to the final consumers below the purchase price of opticians,
- ESSLOR is a spectacle lens manufacturer that holds dominant position in the global market for spectacle lenses, ESSLOR wants to gain global dominant position by acquiring GRANDVISION following its merger with LUXOTTICA, and for this reason, the merger in question should be prohibited in accordance with Articles 4 and 7 of the Act no 4054.

(216) In summary, the application made by (.....), who operates in the optical products sector, raises the following issues:

- The EU Commission conducted a detailed assessment while evaluating the relevant transaction, opinions were received from opticians operating in the retail sector, and the focus was put on addressing the competitive concerns arising from the merger,
- The EU Commission determined that the acquisition will limit consumer preferences and lead to an increase in prices,
- The EU Commission authorized the transaction with commitments involving divestitures, and applying similar examination methods would be beneficial in Türkiye as well.

(217) As mentioned above, ESSI-LUX achieved the following market share percentages on a value basis in 2019:

- (.....)% in the wholesale of branded sunglasses,
- (.....)% in the wholesale of branded prescription optical frames,
- (.....)% in the wholesale of stock lenses,
- (.....)% in the wholesale of RX lenses.

At the retail level, the total market share of the parties (SUNGLASSHUT and ATASUN) in 2019 was (.....)%. Therefore, the likelihood of negative effects on competition due to the horizontal overlap is considered low within framework of the file, and the intention is to eliminate the vertical competition problems that the transaction may cause.

(218) Within the scope of the commitments package, there are commitments envisaged to ensure that ESSI-LUX will not abuse its market power at the wholesale level within the context of theories of harm, and will not discriminate against customers at the retail level. In addition, the parties guaranteed not to share any sensitive information they may have with each other. Therefore, it is concluded that the concerns expressed in the objections can be addressed with the commitments.

G.9. General Assessment

(219) In light of all the observations and assessments above, the following conclusions were drawn:

- The acquiring party ESSI-LUX holds dominant position in the markets for the “wholesale of stock lenses,” “wholesale of semi-processed lenses (RX lenses)” and “wholesale of branded sunglasses,” while dominant position in the markets for the “wholesale of branded and prescription optical eyeglass frames” and “production and distribution of ophthalmic machinery, equipment and consumables” cannot be established directly; however, ESSI-LUX commands significant market share and market power in the latter markets.
- SUNGLASS HUT and ATASUN operate as competitors in the market for the retail sales of optical products, and their inclusion in the same economic entity will not increase the concentration at the retail level to a degree that will cause competitive concerns.

- However, the acquisition will give rise to a vertically integrated structure in which ESSI-LUX, which is already the market leader in the relevant wholesale markets and has considerably high market power in the markets for branded sunglasses and lenses, will also have achieved a strong leadership position in all channels of the retail level; this creates the possibility that ESSI-LUX may be able to abuse this portfolio power against its competitors through market foreclosure.
- In consideration of all of the issues above, the acquisition in the file may have the effect of significantly restricting competition at the wholesale level in the short term, and then at the retail level in the long term.

It is decided that any potential vertical competitive concerns that may arise have been addressed by the behavioural commitments offered by ESSI-LUX, which have been assessed as sufficient to eliminate any possible competition problems, and thus, the transaction should be allowed subject to conditions, within the framework of the commitments offered.

G.10. First Written Plea and Its Assessment

(220) The written plea submitted by ESSI-LUX and entered into the Authority records on 07.08.2020 with the number 8285 is summarized below.

- Related product markets and geographical markets were defined incorrectly and were in conflict with the current decisions of the Commission and the Board,
- The commitments offered in the *EssilorLuxottica* merger in the market for the “production and wholesale of ophthalmic lenses” eliminated the risk of potential barriers to market entry; market shares could not be used as evidence to prove that there is no competitive pressure on ESSI-LUX, and thus ESSI-LUX did not hold dominant position in the relevant market,
- Quantity-based market share in the market for the “wholesale of branded sunglasses” have been consistently decreasing in the recent years; consideration of market shares on a value basis would cause incorrect inferences in the calculation of market power; customers had sufficiently high bargaining power to limit market power; the buyer power analysis did not take into account the retail chains, department stores and the availability of buyers’ groups; there were no entry barriers in the market; special powers should not be ascribed to the Ray-Ban brand, which therefore did not hold dominant position in the market,
- There were many rivals operating in the market for the “wholesale of branded prescription optical spectacle frames”, and buyer power was much stronger than other markets,
- There were many international companies competing at a global scale in the market for the “production and distribution of ophthalmic machinery, equipment and consumables”, and it was not possible for ESSI-LUX to impose its market power on customers,
- The competitive pressure that ATASUN and SUNGLASS HUT’s rivals were putting on would continue after the transaction, when the concentration rate would be below 1,000 and the change below 250; thanks to the HHI levels, it was not possible for the transaction to give rise to any concerns due to horizontal overlap,
- There were thousands of opticians and other market participants in the retail market; according to the RBB analysis a level of concentration that would suggest the possibility of coordination effects was not possible; coordination was impossible in a market with thousands of different products, and price monitoring was particularly hard in the market,
- The merged undertaking would not be able to apply input foreclosure under the commitments offered within the scope of the *Essilor/Luxottica* merger; moreover, the merged undertaking

would have no opportunity for input restriction either; retailers were not dependent on the inputs of the merged undertakings; the claim that Ray-Ban's market share would contribute to the merged undertaking's other wholesale activities and retail sales was mistaken; MERVE OPTİK created significant competitive pressure on the merged undertaking,

- With regard to the market for the wholesale of ophthalmic lenses, opticians worked with an average of 4-5 prescription laboratories; switching between suppliers was common; the assessment that ESSI-LUX's position in the ophthalmic equipment market gave additional support to the concerns that might arise in relation to input foreclosure was unacceptable,
- An input foreclosure strategy would not be profitable; it was not possible to pursue a strategy of input foreclosure without acting contrary to the commitments presented under the *Essilor/Luxottica* decision; the commitments offered weakened the possibility of implementing input foreclosure at the retail level,
- Market share in the downstream was too low to grant the merged undertaking the ability to restrict customers; ATASUN's position in the downstream should be assessed within the relevant market defined as the retail sales of optical products, which includes department/online sales, in addition to chain stores; there were thousands of different stores through which the undertakings in the upstream could make sales in the downstream,
- Sales of the other retailers made up (.....)% of the sales in the downstream; therefore, a large part of the market was available to be captured by the rivals; competitors in the upstream did not face any legal obstacles for customer switching; however, ESSI-LUX had no incentives or means for customer foreclosure.
- There were no economies of scale in the upstream markets; any undertaking entering the market, regardless of its scale, could turn into an important rival easily and efficiently; competition in the market was quite tough.
- The transaction would eliminate double marginalization; it would ensure cost savings through the optimization of the logistics chain and production process, which would be transferred to the final consumers in the form of better services, offers and overall experiences; ESSI-LUX's incentives to invest would increase and this would have a positive impact on the overall quality level of the industry.
- The information that ESSI-LUX had access to should not be classified as sensitive information; the only information accessible by it would be the wholesale prices offered to ATASUN by competitors in the upstream market; the possibility of an information line extending from ATASUN to ESSI-LUX would not increase the risk of coordination in the upstream due to the structure of the market; in terms of the downstream markets, ATASUN being able access wholesale prices offered to its competitors would not facilitate coordination in the downstream.

(221) The information, findings and evaluations in sections "G.5. Relevant Market" and "G.6. Assessment" were given in response to the claims in the pleas.

H. CONCLUSION

(222) In accordance with the report prepared and the contents of the file under examination, it was decided, UNANIMOUSLY, that:

- The notified transaction was subject to authorization under Article 7 of the Act no 4054 on the Protection of Competition, and the "Communiqué no 2010/4 Concerning the Mergers and

Acquisitions Calling for the Authorization of the Competition Board,” issued based on the abovementioned article;

- Under the same Article of the Act, it was likely that effective competition would be significantly reduced following the transaction;
- However, the following commitments text, submitted by EssilorLuxottica S.A. and ultimately entered into the Competition Authority records on 09.06.2021 with the number 18474, was found sufficient in addressing the competition concerns caused by the transaction, and therefore the transactions should be authorized based on conditions, within the framework of these commitments submitted by EssilorLuxottica S.A.:

1. *“EssilorLuxottica guarantees that it shall not engage in tied sales of the relevant products, which includes a guarantee not to refuse to supply branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment products (along with related consumables), separately to current and potential customers in Türkiye.*
2. *EssilorLuxottica guarantees that it shall not implement discriminatory conditions for customers on equal standing related to the sales of branded sunglasses, branded optical frames, ophthalmic lenses, and ophthalmic equipment (along with related consumables), and that it shall provide reasonable conditions under all circumstances.*
3. *EssilorLuxottica guarantees that it will apply the same terms and conditions of sale to all of its customers as those it will apply to its retailer subsidiaries (including Atasun), with regard to branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment products (including related consumables).*
4. *EssilorLuxottica guarantees that for branded sunglasses, branded optic frames and RX lenses, the total share of the purchases made by Atasun from third party suppliers will be on the same scale with the purchases made in 2019 in terms of value.*
5. *Regarding the supervision and reporting of the implementation of the commitments numbered 1, 2, 3 and 4 above, EssilorLuxottica guarantees to establish the following supervision and reporting systematic for the commitment process following the transaction:*
 - a. *EssilorLuxottica will sign an agreement with an independent third-party company (“Principal Auditor”) within 45 days after the notification of the short decision of the Competition Board.*
 - b. *The Principal Auditor will submit an annual report including his opinion on EssilorLuxottica compliance with commitments numbered 1, 2 and 3 to the Competition Authority and to the EssilorLuxottica simultaneously before the end of every year for the duration of the commitment specified below. On the request of the Competition Authority or on his own initiative, the Principal Auditor will be able to submit interim reports in addition to the abovementioned annual report.*
 - c. *EssilorLuxottica will submit to the Competition Authority a specification containing the general conditions of the agreement to be made with the Principal Auditor within 30 days after the notification of the short decision of the Competition Authority.*
 - d. *EssilorLuxottica will provide the Principal Auditor with all the information and support necessary to realize the relevant reporting within the framework of the honesty rule, on condition that all kinds of confidentiality is guaranteed by the Principal Auditor.*

- e. *During the period between the closing of the transaction and the end of the Principal Auditor's commissioning, EssilorLuxottica shall submit monthly reports relating to the interim period to the Competition Authority.*
6. *Following the transaction, in order to eliminate any concerns with regard to coordination;*
- a. *EssilorLuxottica will not directly or indirectly share with Atasun any commercially sensitive information (related to Atasun's competitors/rivals) that it receives in its capacity as a wholesaler through its retail-level business relations.*
- b. *Atasun guarantees that it will not directly or indirectly share with EssilorLuxottica any commercially sensitive information (related to EssilorLuxottica's competitors/rivals) that it receives in its capacity as a retailer through its retail-level business relations.*
- c. *Additionally, EssilorLuxottica guarantees that, in accordance with the purposes mentioned above, it will establish restrictions on accessing sensitive information between Atasun and EssilorLuxottica.*
- d. *Moreover, Atasun's operational management guarantees that it will maintain its separate organization with EssilorLuxottica's retail-level affiliates in terms of its personnel and organization structure. In this scope, managers at responsible for Atasun's operational management will not participate under EssilorLuxottica itself or in its wholesale-level affiliates. In the same context, managers responsible for operational management under EssilorLuxottica itself or its wholesale-level affiliates will not be assigned under Atasun corporate structure simultaneously. (Operational management is defined as the administration and management of the daily tasks, and executive board members who are not responsible for the management of the daily tasks will not be evaluated in this framework. In addition to this, the operational separation mentioned above covers the monitoring of the relevant commercial relationships under the responsibility of separate people and teams, up to the level of deputy director general.)*
- e. *In addition, and in parallel with the evaluations in Competition Authority's AEH/Migros decision, in order to eliminate potential concerns of the Competition Authority on the implementation of the relevant commitments, EssilorLuxottica will submit annual reports concerning the effective measures taken with regards to the restriction of the flow of commercially sensitive information between EssilorLuxottica and Atasun, the first of which is to be prepared after the conclusion of the Transaction by the Competition Authority.*
7. *The duration of the behavioural commitments herein will be three years from the conclusion date of the Transaction and, if deemed necessary by the Competition Authority, it can be extended for a maximum of three more years at the end of initial period.*
- The behavioural commitments introduced within the scope of the authorization decision would be binding, and in case of violation of these obligations, in addition to other necessary measures, the administrative fines specified in Article 17 of the Act no 4054 on the Protection of Competition should be imposed on the parties;

with the decision subject to review before Ankara Administrative Courts within 60 days after the notification of the reasoned decision.