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Turkish Competition Board conditionally approves the acquisition of Grandvision by EssilorLuxottica

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Introduction

On 1 December 2021, the Turkish Competition Board (the Board) published its decision approving the acquisition of shares of HAL Optical Investments BV, a fully controlled subsidiary of Hal Holding NV in GrandVision NV by EssilorLuxottica SA (Essi-Lux).[(1)] The decision is the most recent of three merger and acquisition decisions that were approved under commitments by the Board in 2021.[(2)]

Transaction, parties and background

The buyer, Essi-Lux, is active in the following areas:

- wholesale of sunglasses and optical frames;
- manufacture and wholesale of ophthalmic (corrective) lenses;
- manufacture and distribution of ophthalmic machines, equipment and consumables, spare parts sales and after-sales maintenance and repair services;
- wholesale of contact lenses; and
- retail sale of sunglasses in Turkey.

Additionally, it has a large portfolio of recognised brands, such as Ray-Ban.

On the other hand, GrandVision is a globally operational eyewear retailer and controls Atasun, which is a well-known optician chain in Turkey. Further, GrandVision is active through its subsidiary Atasun in the retail of optical products on the Turkish market.

The Board had previously examined and approved the merger of Essilor International Compagnie Générale d'Optique SA and Luxottica Group SpA, which established the buyer side of the transaction, Essi-Lux, in 2018. After having identified competitive concerns regarding the transaction's horizontal effects in the wholesale of sunglasses and prescription optical frames, and conglomerate effects associated with the transaction, the Board approved the merger on the condition that Essilor's Merve Optik is divested and also under certain behavioural commitments. Unlike Turkey, in March 2018 the European Commission (EC) unconditionally approved the merger of Essilor and Luxottica following an in-depth investigation.

Relevant product markets and Board's assessment

The Board identified horizontal overlaps between the activities of Essi-Lux and Atasun in the retail sale of optical products, and vertical overlaps in:

- the wholesale of stock lenses;
- the wholesale of semi-processed lenses (also known as receipt X (RX) lenses;
- the wholesale of branded sunglasses;
- the wholesale of frames for branded and optic glasses; and
- the manufacture and distribution of ophthalmic machines, equipment and consumables.

Accordingly, the Board conducted its dominant position analysis and evaluated the vertical and horizontal effects of the transaction with regard to the mentioned markets.

The Board made various references to its decisional practice in involving relevant product markets.[(3)] In this regard, the Board's practice differed from its past assessments in several ways. The Board defined a narrow market for the manufacture and wholesale of stock lenses and the wholesale of RX lenses, even though it had previously adopted a broader market definition of manufacture and wholesale of ophthalmic lenses in the Essilor/Luxottica case. The Board also took previous EC decisions into account while assessing ophthalmic machines, equipment and the consumables market and deciding on the relevant market definitions.

As stated in the decision, the Board had not previously assessed the retail sale of optical products. In this regard, it defined a broad market that would cover all of the optical products for the protection and correction of the eyes and all other products and services relating to the eye without any product-based segmentation. The Board stated that such a market definition would be in line with the approach adopted in terms of relevant product market definitions involving fast-moving consumer goods, inferring that it finds similarities between the retail sale of optical products and fast-moving consumer goods.

In its competitive assessment, the Board emphasised that Essi-Lux was active in the wholesale of optical products, whereas GrandVision, through its subsidiary Atasun, was active in the retail sale of optical products; the Board conducted its analysis based on these vertically related markets. The Board also analysed the relevant regulations that forbid ads for optical frames and lenses. The Board considered that the merged entity would benefit from Ray-Ban's popularity and reputation, especially as sunglasses are not subject to such limitations and, therefore, the sunglasses brands are better known by society. However, the Board ultimately determined that although Essi-Lux enjoys a relevantly strong position in the upstream market, it would not engage in input foreclosure in the short term. In this regard, the Board considered the commitments that had been submitted within the scope of the merger of Essilor and Luxottica and the fact that the customers in the downstream market had significant shares among Essi-Lux's sales.

In terms of its customer foreclosure assessment, the Board emphasised the possibility that Atasun could use most or all its supplies from Essi-Lux, and thus Essi-Lux could increase its sales in the wholesale of branded sunglasses and branded prescription optical frames, reinforcing its leading position in these markets. The Board also conducted an analysis on coordinative effects (particularly vertical coordination) stemming from the transaction. It particularly pointed out the risk of sharing commercially sensitive information that Atasun and Essi-Lux could acquire within the scope of their operations in the vertically related markets.

Having analysed the above competitive concerns, the Board initiated an in-depth investigation and evaluated the commitments proposed by Essi-Lux in order to satisfy the Board's concerns.

Behavioural commitments and board's approval with conditions

The behavioural commitments offered by Essi-Lux included:

- not engaging in the tying sales of branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment;
- not applying discriminatory conditions with respect to sales of branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment to equal customers, offering reasonable conditions in any case and applying the same sale terms and conditions that Essi-Lux applies to its subsidiaries in the retail level, to all customers of the merged entity (including Atasun) with respect to sales of branded sunglasses, branded optical frames, ophthalmic lenses, ophthalmic equipment as well as the relevant consumables; and
- ensuring that the total share of value-based purchases from third-party suppliers that Atasun undertakes with respect to branded sunglasses, branded optical frames and RX lenses is at the same ratio as or more than that of 2019. This commitment did not cover stock lenses, since Atasun had already acquired all of these from Essi-Lux before the acquisition. In addition, the Board stated that the role of commitments is to maintain the existing competitive structure, not to establish a more competitive market. The Board further considered the conditions created by the covid-19 pandemic while considering the efficiency of the commitments and stated that 2019 would better demonstrate competitive structure given the economic and financial effects of the covid-19 pandemic on the market in 2020.

In relation to vertical coordination risks, the parties' commitments also included the commitment that Essi-Lux and Atasun will not share with each other competitively sensitive information that they may acquire from their operations in the vertical markets. To ensure this, the parties' commitments included detailed assurances to not engage in such sharing of information.

Upon its review, the Board found the commitments submitted by the parties adequately addressed its competitive concerns. Therefore, the Board approved the transaction under behavioural commitments. This was unlike the situation in the European Union, where the retail footprint of the transaction was lessened through certain structural remedies.

Notifications to other competition authorities

The acquisition of GrandVision by Essi-Lux was also subject to approvals from the EC, the Russian, Colombian, Chilean and Brazilian competition authorities and the US Federal Trade Commission. The EC assessed the incentive of the merged entity to sell its products at more expensive prices at wholesale and retail levels. It additionally held that the acquisition may result in less choice and higher prices in certain countries.[(4)]

Consequently, the EC decided that:

- the merged entity would have the ability and incentive to use its position in the wholesale supply of frames market to hinder the competitor retailer's access to eyewear products it supplies or allocates; and
- for Italy, the transaction meant that two strongest retailers would turn into one entity thereby establishing the "largest player on the optical market".[(5)]

Comment

The decision, which is one of the three decisions approved by the Board under commitments in 2021, provides detailed insights into the whole supply chain of the optical sector and competitive dynamics of the market. In this regard, the Board also took into account its assessments and commitments submitted within the previous Luxottica and Essilor merger before rendering its decision. While the decision was subject to certain divestments in European Union, the Board approved the transaction solely on the basis of behavioural commitments. Therefore, the decision also reveals the increasing importance of behavioural remedies in Turkish merger control regime.

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Endnotes

(1) See decision 21-30/395-199, dated 10 June 2021.

(2) Further information is available here.

(3) See decision 19-22/333-150, dated 20 June 2019 and 19-22/334-151, dated 20 June 2019.

(4) EC decision M.9569, dated 6 February 2020.

(5) EC decision M.9569, dated 6 February 2020.