

## Statement of Preliminary Issues

### ASSA ABLOY New Zealand Limited / NZ Fire Doors Limited

14 April 2021

#### Introduction

1. On 30 March 2021, the Commerce Commission (the Commission) registered an application (the Application) from ASSA ABLOY New Zealand Limited (Assa Abloy NZ) for clearance to acquire all of the shares in NZ Fire Doors Limited (NZFD) (the Proposed Acquisition).<sup>1</sup>
2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.<sup>2</sup>
4. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by close of business on **29 April 2021**.

#### The parties

##### Assa Abloy NZ

5. Assa Abloy NZ is part of the Assa Abloy Group, a global manufacturer and supplier of a range of door opening products, security solutions and related services. In New Zealand, Assa Abloy NZ supplies a range of these products through the three subsidiaries described below:
  - 5.1 Pacific Doors Systems Limited (Pacific Doors), a specialist door business that manufactures and supplies commercial door and window systems for fire protection, acoustic control, and security purposes. Pacific Doors has manufacturing facilities in Wellington and Timaru, and supplies its products directly to construction companies. Its doors and windows are used in a variety of projects, including hospitals, prisons, and commercial buildings.

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<sup>1</sup> A public version of the Application is available on our website at: <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/>.

<sup>2</sup> The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

- 5.2 Assa Abloy Entrance Systems NZ Limited, a supplier of products, services and components for entrance automation including automatic swing, sliding and revolving doors, industrial doors, garage doors, and hangar doors.
- 5.3 Placard New Zealand Pty Limited, a manufacturer of secure plastic cards used in the financial, retail, identification, government, loyalty and hospitality sectors.

## NZFD

- 6. NZFD supplies fire-rated, non-fire-rated, acoustic and specialty doors and windows from its manufacturing facilities in Auckland.
- 7. NZFD supplies its doors and windows to construction companies involved in building projects, including projects to build educational facilities, aged care facilities, apartments and hotels, and commercial buildings.<sup>3</sup> NZFD also supplies its products to joiners and resellers.

## Our framework

- 8. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>4</sup> As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.
- 9. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).<sup>5</sup> This allows us to assess the degree by which the proposed acquisition might lessen competition.
- 10. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:
  - 10.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;
  - 10.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

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<sup>3</sup> See NZ Fire Doors' website: <https://www.nzfiredoors.co.nz/sectors/>.

<sup>4</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz)

<sup>5</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

- 10.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser’s ability to exert substantial influence on negotiations.

## Market definition

11. We define markets in the way that we consider best isolates the key competition issues that arise from the proposed acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.<sup>6</sup>
12. In the Application, Assa Abloy NZ submits that the relevant market is a national market for the supply of fire-rated door and window sets (fire doors and windows), as this is the main area of overlap between the Assa Abloy NZ and NZFD (the Parties) and best isolates the competitive effects of the Proposed Acquisition.
13. We will assess whether the market proposed by the Parties is appropriate, including whether the market(s) should be defined more widely or more narrowly. In doing so, the issues we examine will include:
- 13.1 whether specific kinds of fire doors are in different markets, for example, whether there are separate product markets for doors with different fire-resistance ratings or other differentiating features;
  - 13.2 whether the competitive dynamics in the supply of fire windows justify a separate product market to fire doors;
  - 13.3 the extent to which the Parties compete to supply other doors that have no fire-resistance rating (including specialty doors such as X-Ray doors);
  - 13.4 whether it is appropriate to consider separate customer markets on the basis that, for example, different types of building projects may have different requirements for the fire doors and windows needed, and the competitive alternatives available may differ depending on those requirements;
  - 13.5 the extent to which the Parties and other suppliers of doors and windows can adapt their manufacturing processes to make different kinds of doors and windows; and
  - 13.6 whether the Proposed Acquisition may impact other product markets, such as the manufacture and supply of door hardware or fire door cores.

## Without the acquisition

14. We will consider what the Parties would do if the Proposed Acquisition did not go ahead. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by the status quo, or whether the Parties would seek

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<sup>6</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

alternative options, for example, finding a different buyer for NZFD, or materially changing the way they operate their businesses.

## Preliminary issues

15. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market/s by assessing whether horizontal unilateral, coordinated, vertical, or conglomerate effects might result from the Proposed Acquisition. The questions that we will be focusing on are:
  - 15.1 *unilateral effects*: would the loss of competition between the Parties enable the merged entity to profitably raise prices or reduce quality or innovation by itself?<sup>7</sup>
  - 15.2 *coordinated effects*: would the Proposed Acquisition change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable?
  - 15.3 *vertical and conglomerate effects*: would the Proposed Acquisition increase the merged entity's ability and/or incentive to foreclose rivals?

### **Unilateral effects: would the merged entity be able to profitably raise prices by itself?**

16. Unilateral effects arise when a firm merges with (or acquires) a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase price above the level that would prevail without the merger without the profitability of that increase being thwarted by rival firms' competitive responses. A merger could also reduce competition if one of the merging firms was a potential or emerging competitor. In such a case, the merger may preserve the market power of the incumbent firm.
17. Assa Abloy NZ submitted that the Proposed Acquisition would not be likely to substantially lessen competition in the supply of fire doors and windows due to unilateral effects for the following reasons:
  - 17.1 the Parties are not close competitors, and compete more closely with other suppliers. For example, Assa Abloy submits that Pacific Doors' closest competitors are Hallmark Group Limited and Best Doors Limited, and that NZFD's closest competitor is Mattson Joinery (B Mattson Ltd);<sup>8</sup>

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<sup>7</sup> For ease of reference, we only refer to the ability of the merged entity to "raise prices" from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition, i.e. it could increase quality-adjusted prices.

<sup>8</sup> The Application at [14.1].

- 17.2 the merged entity will continue to face the threat of entry from Australian suppliers such as Hume Doors & Timber;<sup>9</sup> and
- 17.3 construction companies possess significant countervailing power because:
- 17.3.1 they are sophisticated buyers that procure by way of competitive tender; and
- 17.3.2 have strong bargaining power that they can use to prevent an increase in price.
18. We will consider:
- 18.1 *closeness of competition*: the degree of constraint that Assa Abloy NZ and NZFD impose upon one another. To the extent that any constraint is material, we will assess whether the lost competition between the merging parties could be replaced by existing competitors;
- 18.2 *entry and expansion*: whether competitors are likely to enter or expand on a sufficient scale and within a reasonable time period, such that they would constrain the merged entity; and
- 18.3 *countervailing power*: the ability of construction companies (and any other relevant customer groups) to sponsor new entry, seek their own supply, or use any bargaining power or procurement strategies to prevent an increase in price.

**Coordinated effects: would the proposed acquisition make coordination more likely?**

19. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.<sup>10</sup>
20. In the Application, Assa Abloy NZ submitted that the Proposed Acquisition would not be likely to substantially lessen competition in its proposed market due to coordinated effects because:
- 20.1 there is a high degree of product differentiation;
- 20.2 the Proposed Acquisition would not remove a particularly vigorous or effective competitor;

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<sup>9</sup> The Application at [14.1].

<sup>10</sup> *Mergers and Acquisitions Guidelines* above n4 at [3.84].

- 20.3 there are several strong competitors in the market and pricing and volumes are not transparent;
  - 20.4 customers have a high degree of countervailing power and procure products through competitive tendering processes; and
  - 20.5 there are strong suppliers in Australia that could easily enter New Zealand to disrupt any potential for coordination.
21. We will assess whether:
- 21.1 there are factors that make the relevant market/s vulnerable to coordination; and
  - 21.2 the Proposed Acquisition would change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable.

**Vertical and conglomerate effects: would the merged entity be able to foreclose rivals?**

22. A merger between suppliers (or buyers) who are not competitors but who operate in related markets can result in a substantial lessening of competition due to vertical or conglomerate effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively.
23. In addition to fire doors and windows, Assa Abloy NZ competes to supply other products and services in New Zealand such as:
- 23.1 door hardware (eg, closers, handles, locks, vision panels, and air grilles) which it sells under several brand-names, including Lockwood, Abloy, Aperio, Yale, Trimec, Whitco, and Interlock; and
  - 23.2 fire door cores,<sup>11</sup> which are made by Pyropanel Developments Pty Limited, a company that is part of the Assa Abloy Group and based in Australia.
24. Assa Abloy NZ submitted in the Application that the merged entity will not have an increased ability or incentive to foreclose competition in any related markets because there are other suppliers of door hardware and fire door cores, and existing competitors that will continue to acquire from these suppliers.
25. We will consider whether the Proposed Acquisition would be likely to give rise to vertical effects, for example by giving the merged entity the ability and incentive to

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<sup>11</sup> Fire door cores are part of the “door leaf”, which is the part of a door that swings open and shut. Fire door cores are a solid block of material that are typically covered on each outward facing surface by a “door facing” and any other finishings that may be required. There are a variety of different materials that can be used for door cores (such as vermiculite mineral, flax board and particle board) and each have different properties. A fire-rated door leaf may also be made from a solid material that has fire resistant properties, removing the need for separate door cores and facings.

foreclose rivals in any market (including competing suppliers of fire doors, windows, door hardware, and fire door cores).

26. We will also assess whether the Proposed Acquisition is likely to give rise to conglomerate effects, such as by giving the merged entity the ability to bundle (ie, provide products or services together at a discount) or tie (ie, only provide one product or service with another) complementary products, so that competitors are less able to provide a competitive constraint on the merged entity.

### **Next steps in our investigation**

27. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **28 May 2021**. However, this date may change as our investigation progresses.<sup>12</sup> In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
28. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

### **Making a submission**

29. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference "Assa Abloy NZ / NZFD" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **29 April 2021**.
30. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.
31. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

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<sup>12</sup> The Commission maintains a clearance register on our website at <http://www.comcom.govt.nz/clearances-register/> where we update any changes to our deadlines and provide relevant documents.