

## Statement of Issues

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

8 June 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. To clear an application, the Commission must be satisfied that the 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 Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so that Assa Abloy NZ and NZFD (together, the Parties) and other interested parties can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.

#### The concerns we are testing

5. We are still to conclude on the relevant markets for our assessment of the Proposed Acquisition. However, at this stage, we are testing the potential for the Proposed Acquisition to substantially lessen competition due to:
  - 5.1 horizontal unilateral effects resulting from a loss of competition in the manufacture and supply of fire-rated doors and windows in New Zealand;
  - 5.2 conglomerate and/or vertical effects in the New Zealand market for the manufacture/wholesale supply of commercial door hardware<sup>2</sup> ('commercial

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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> In this Sol, 'commercial hardware' refers to products that are installed with doors and windows on commercial (and institutional) building projects, such as door closers, locks, latches, door handles, eye viewers, magnetic clamps, hinges, hold open devices, panic exit devices, seals and grilles.

hardware'), on the basis that, post-acquisition, Assa Abloy NZ may have the ability and incentive to foreclose rival suppliers' of hardware access to customers by:

- 5.2.1 bundling fire-rated doors and commercial hardware; and/or
  - 5.2.2 refusing to allow rival hardware manufacturers' products to be tested and approved for use on its fire doors;
- and
- 5.3 coordinated effects, for example by making coordination more likely, more complete or more sustainable in any market.

6. We explain these issues further below and invite submissions on our position.

### Process and timeline

- 7. We have agreed an extension with Assa Abloy NZ until **23 July 2021** from the initial 40 working day statutory timeframe in which to decide on the Application.
- 8. The Commission would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **22 June 2021**, including a public version of any submission made. Please read the instructions for making a submission, which can be found on page 18 of this document.
- 9. All submissions received will be published on our website with appropriate redactions.<sup>3</sup> All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **29 June 2021**.
- 10. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.

### The Parties

#### Assa Abloy NZ

- 11. 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:

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<sup>3</sup> Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each piece of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

- 11.1 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.
  - 11.2 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.
  - 11.3 Placard New Zealand Pty Limited, a manufacturer of secure plastic cards used in the financial, retail, identification, government, loyalty and hospitality sectors.
12. Assa Abloy NZ also supplies a range of commercial hardware, including through key brands such as Lockwood, Abloy, Aperio, Cliq, Yale, Trimec, and Traka. Assa Abloy NZ's commercial hardware is primarily supplied to customers through commercial hardware distributors.

## **NZFD**

- 13. NZFD supplies fire-rated, non-fire-rated, acoustic and specialty doors and windows from its manufacturing facilities in Auckland.
- 14. NZFD supplies its doors and windows directly to construction companies involved in building projects, including projects to build educational facilities, aged care facilities, apartments and hotels, and commercial buildings.<sup>4</sup> NZFD also supplies its products to joiners and resellers such as Doors'n'More,<sup>5</sup> which then on-sell to end-users.

## **Background to the industry**

### **Fire doors and windows**

- 15. The Proposed Acquisition primarily relates to the supply of fire-rated doors and windows (for ease of reference, 'fire doors'). Fire doors are installed in buildings to resist the spread of fire and smoke within buildings, between buildings, and to the exterior environment.<sup>6</sup>
- 16. There are several companies that manufacture and supply fire doors ('fire door suppliers') in New Zealand, including Assa Abloy NZ (through Pacific Doors) and NZFD (the Parties), Hallmark, Best Doors, Mattson Joiners ('Mattsons'), and Doors'n'More.

### *Testing of fire doors*

- 17. For a fire door to meet the New Zealand Building Code, a prototype of that door must be tested in a certified fire testing laboratory. If the prototype passes the

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<sup>4</sup> See NZ Fire Doors' website: <https://www.nzfiredoors.co.nz/sectors/>.

<sup>5</sup> The Application at Annexure 6: Suppliers of Fire-Rated Doors and Windows, "Doors'n'More".

<sup>6</sup> The Application at [5.1].

testing, it is given a Fire Resistance Rating (FRR), which conveys the length of time that door can prevent the spread of fire (eg, 30 minutes, 60 minutes, or longer).<sup>7</sup> Testing requires the whole fire door system to be tested, including the fire door leaf and frame, and also the commercial hardware that would be installed with it.

18. Fire doors installed in buildings must conform with the approved prototype. After installation in a building, fire doors will be checked to ensure they conform with the approved prototype and have been installed correctly (and with approved commercial hardware). Fire doors that meet all of the requirements will then be certified.

*How fire doors are bought and sold*

19. Fire doors are typically purchased by construction companies that are contracted to deliver building projects.<sup>8</sup> Fire doors are used in a range of building projects, including projects for high-density residential buildings (such as apartment blocks or aged care accommodation), hotels, educational institutions, office blocks and commercial premises, hospitals, and prisons.
20. The type of fire doors required for a given building project will be specified in the plans by the building architect. The features of the fire doors required (eg, the FRR, the size, the type of commercial hardware installed, and any other features such as security features) depend on the project and the location of the door within the planned building.
21. We understand that, while architects can and do specify the manufacturer/brand of the fire doors to be used, specifications may also refer just to the required fire resistance qualities of the door (eg, a 60 minute fire door). An “or equivalent” notation in a specification document can allow for the substitution of different manufacturers or brands, so long as they are rated to an equivalent FRR.
22. For buildings that need only small volumes of fire doors, construction companies may simply request a quote from a fire door supplier and purchase the units required. However, we understand that fire doors are most commonly procured by tender and that, typically, the tender will be for all the doors required in a building project, including both fire doors and non-fire doors.
23. Suppliers will compete to supply their fire doors by responding to the tender. Depending on the circumstances, fire door suppliers may offer to supply all of the doors required (including non-fire doors) or offer to subcontract the supply of (or simply purchase) some of the doors required.

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<sup>7</sup> The Application at [5.2]-[5.9].

<sup>8</sup> In New Zealand, fire doors are typically supplied by the manufacturer without commercial hardware, other than essential hardware such as hinges and seals.

## Commercial hardware

24. Although the Parties overlap in the supply of fire doors, we are also considering whether the Proposed Acquisition could impact competition in the supply of commercial hardware to building projects. As noted above, commercial hardware includes items such as door closers, locks, latches and handles, and is designed to withstand more frequent use than hardware used on residential doors (eg, doors in people's homes).
25. For a fire door to be certified, the commercial hardware installed on it must be tested and approved for use on that door. Commercial hardware manufacturers design certain items specifically for use on fire doors and seek to have these tested with the range of fire doors on the market.
26. The three major manufacturers of commercial hardware in New Zealand are Assa Abloy NZ, Allegion (New Zealand) Ltd ('Allegion'), and Dormakaba Group ('Dormakaba') (together, the 'hardware manufacturers'). Assa Abloy NZ is the only commercial hardware manufacturer that also supplies fire doors to building projects in New Zealand. To supply their hardware into building projects, these manufacturers typically import their hardware (although some hardware is manufactured domestically) and wholesale these to hardware distributors.

### *How commercial hardware is bought and sold*

27. Our current understanding is that commercial hardware is usually procured by the construction company in a single tender package, based on hardware specifications provided by the architects. We understand that generally:
  - 27.1 Architects decide which commercial hardware products are to be installed in the building (eg, the locks and closers that will be installed on the doors), as they are responsible for the design of the building and the materials/products used.
  - 27.2 The hardware manufacturers do not typically supply building projects directly. Instead they compete to have their products specified by the architect, as this tends to result in sales when the commercial hardware is procured. To do this, the hardware manufacturers contact architects involved in building projects and provide a list of their commercial hardware products that align with the building plans. The architect may then decide to specify one of the hardware manufacturer's products in the building plans. As with fire doors, the hardware specification prepared by the architect can allow for substitution of equivalent products.
  - 27.3 Once the commercial hardware specification has been decided by the architect, the construction company procures the specified hardware (or equivalent). This is typically done by tendering the entire hardware package (ie, all of the hardware that goes on all of the doors and windows (both fire- and non fire-rated) in the building is procured in one tender) to hardware distributors.

- 27.4 Hardware distributors compete to win the hardware tender by providing pricing for the items specified in the tender documents. The winning hardware distributor will source the hardware from the relevant hardware manufacturer and supply it to the building project. Some hardware distributors also provide installation services, or coordinate this on behalf of the main contractor.

### **How procurement decisions relating to fire doors and commercial hardware interrelate**

28. We have received conflicting information on how procurement decisions for fire doors and commercial hardware are made.
29. Dormakaba submits that:
- 29.1 it is standard practice in the construction sector for customers to tender for fire doors before tendering the associated hardware, and that the choice of fire door supplier is the primary procurement decision; and, therefore,
- 29.2 fire door suppliers can exclude hardware manufacturers from the market by refusing to allow for testing and approval of that hardware on their fire doors. Dormakaba submits that fire door suppliers can allow or refuse testing at their own discretion, and that this decision is not directly influenced by the commercial environment.<sup>9</sup>
30. In contrast, Assa Abloy NZ submits that:<sup>10</sup>
- 30.1 it is standard practice in the construction industry for the architect to make decisions on the type and brand of hardware that will be used in a project well before the fire door supplier is awarded the contract;<sup>11</sup> and, therefore
- 30.2 a supplier of fire doors must ensure that the widest possible range of hardware is approved for use on its doors, or it will be excluded from participation in tenders where non-approved hardware is specified.
31. We continue to consider how procurement decisions relating to fire doors and commercial hardware interrelate, and invite further submissions on this issue.

### **The relevant markets**

32. 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>12</sup>

<sup>9</sup> Dormakaba Group, Submission on the Statement of Preliminary Issues (29 April 2021) at [13]-[14].

<sup>10</sup> Assa Abloy cross-submission on the Statement of Preliminary Issues at [2.4]-[2.5].

<sup>11</sup> We note that Assa Abloy NZ has provided examples of tender specifications for fire doors in which commercial hardware brands are specified.

<sup>12</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

33. Assa Abloy NZ submits that the relevant markets for assessing the Proposed Acquisition are the national markets for the manufacture/supply of:
- 33.1 fire doors (including windows) to construction companies;<sup>13</sup> and
  - 33.2 commercial hardware to hardware distributors (which ultimately on-sell to construction companies).<sup>14</sup>
34. We are currently assessing the Proposed Acquisition using the same markets proposed by the Applicant (ie, broad markets for fire doors and commercial hardware). This is because, at this stage, we consider these markets allow us to most effectively analyse the potential competitive impact of the Proposed Acquisition.

**Product dimension: fire doors (and windows)**

35. We have been considering whether we should assess the competitive effects of the Proposed Acquisition on separate product markets for fire doors and fire windows. We have also been considering whether there might be separate product markets for different kinds of fire doors (eg, fire doors with different FRRs).
36. Based on current evidence, our preliminary view is it may be appropriate to define a market for all fire doors and windows for the purpose of assessing the Proposed Acquisition because:
- 36.1 these items are typically tendered together (ie, firms compete to supply a single tender package including both fire doors and windows); and
  - 36.2 in general, fire door suppliers (including the Parties) also manufacture fire windows (and those that do not could likely start manufacturing and supplying fire windows without significant difficulty).<sup>15</sup>
37. Further references to ‘fire doors’ in this document include both fire doors and windows.

**Product dimension: commercial hardware**

38. We have been considering whether we should assess the competitive effects of the Proposed Acquisition on separate product markets for fire-rated commercial hardware and non-fire-rated commercial hardware.
39. Based on current evidence, our preliminary view is that it is appropriate to define a market for all commercial hardware for the purposes of assessing the Proposed Acquisition because:
- 39.1 typically, all commercial hardware that goes into a building project is tendered in a single package;

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<sup>13</sup> The Application at [5.44].

<sup>14</sup> Assa Abloy NZ Limited, Cross-submission on the Statement of Preliminary Issues (20 May 2021) at [4.2].

<sup>15</sup> Commerce Commission interview with [ ].

- 39.2 the hardware manufacturers, and the hardware distributors, each supply the full range of commercial hardware (including fire-rated items and non-fire-rated items) that would ordinarily be used in a building project.

### **Geographic dimension**

40. Our current view is that, for each of the product markets considered above, the geographic dimension is likely to be national in scope. Suppliers we have spoken to say they can and do supply across New Zealand. While some suppliers have said they have a small cost advantage when competing to supply building projects that are nearer to them due to lower freight costs, it has not been suggested that this materially impacts their competitiveness outside their local areas.

### **Current position on market definition**

41. We have not reached a final view on the relevant markets in which to assess the Proposed Acquisition. For example, it may be that assessing the Proposed Acquisition requires us to consider the impact on narrower markets.
42. We invite submissions on our current position as to the relevant markets for assessing the Proposed Acquisition.

### **With and without scenarios**

43. Assessing whether a substantial lessening of competition is likely requires us to compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual) and to determine whether competition is likely to be substantially lessened by comparing those scenarios.
44. With the Proposed Acquisition, NZFD would come under the ownership and control of Assa Abloy NZ. Assa Abloy NZ states that it proposes to merge NZFD with Pacific Doors if the Proposed Acquisition takes place.<sup>16</sup>
45. Without the Proposed Acquisition, Assa Abloy NZ submits that the status quo would continue; that is, both it and NZFD would continue to operate as separate entities, competing to supply fire doors as they currently do.<sup>17</sup>
46. We continue to consider whether, absent the Proposed Acquisition, either of the Parties would:
- 46.1 merge with, acquire, or be acquired by, an alternative counterparty; and/or
- 46.2 change the way in which they compete (eg, by altering or adding to the range of fire doors they supply) such that they would be likely to compete more closely in the future.

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<sup>16</sup> The Application at [3.2].

<sup>17</sup> At [3.8].



47. We invite submissions on this issue.

### **Competition concern: horizontal unilateral effects**

48. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint such that a market participant can profitably increase prices above (and/or reduce quality below) the level that would prevail without the merger.

49. For the reasons set out below, the Commission is not currently satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in the supply of fire doors. While the Parties may currently focus on supplying fire doors to different types of building projects, we consider the Parties may compete more closely for certain kinds of building projects.

50. Assa Abloy NZ submits in its Application that horizontal effects are unlikely as:

50.1 Pacific Doors and NZFD are not close competitors. For example, Pacific Doors focuses on high-end specialist building projects such as hospital and prisons projects, whereas NZFD focuses on apartment, hotel and aged living projects.<sup>18</sup>

50.2 Constraint from existing competition will remain strong.<sup>19</sup>

50.3 There is constraint from potential competition (as Australian fire door suppliers could readily enter the New Zealand market in response to a price increase), and from imports.<sup>20</sup>

50.4 There is constraint from countervailing power as construction companies have strong bargaining power and could credibly threaten to sponsor entry and/or expansion.<sup>21</sup>

51. We expand on these topics below.

### **Closeness of competition between the Parties and constraints from existing competition**

52. As noted above, Assa Abloy NZ submits that the parties do not compete closely and that there is a strong constraint in the market for fire doors and windows from existing competition. It submits:

52.1 Pacific Doors competes more closely with Hallmark and Best Doors, while NZFD competes more closely with Mattsons.<sup>22</sup>

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<sup>18</sup> The Application at [6.2].

<sup>19</sup> At [6.4].

<sup>20</sup> At [6.8-6.9].

<sup>21</sup> At [6.12-6.13].

<sup>22</sup> At [6.2].

- 52.2 The merged entity will face strong competitive constraint from existing competitors, and in particular from Best Doors, Hallmark and Mattsons.<sup>23</sup>
53. We currently consider that there may be some types of building projects for which the Parties may not be close competitors. However, we also consider there are likely to be projects where the Parties compete more closely, including projects that have moderately complex requirements for fire doors, such as hotels and commercial buildings.
54. While we currently consider that competitors such as Best Doors, Hallmark and Mattsons may impose some constraint in respect of these projects, our current evidence indicates that the merged entity would be likely to be significantly larger than most of these (and other) competitors. We are continuing to consider the strength of constraint from these competitors, and other existing competitors, and particularly in respect of projects where the Parties may compete more closely.
55. We are also considering:
- 55.1 the extent to which existing competitors would have sufficient spare capacity to constrain the merged entity.
- 55.2 the extent to which supply arrangements of the merged entity with some competitors may impact the incentive and ability of these competitors to constrain the merged entity. In particular, we note that:
- 55.2.1 Best Doors supplies fire doors that use Pyropanel fire door cores,<sup>24</sup> and so will be supplied a key input by Assa Abloy Group, which owns Pyropanel;<sup>25</sup> and
- 55.2.2 Doors'n'More competes in part by reselling NZFD doors,<sup>26</sup> and may therefore be more limited as a competitive constraint than other competitors not supplied by the merged entity.
56. We invite further submission on these issues, and in particular on Best Door's and Doors'n'More's likely incentive and ability to constrain the merged entity.

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<sup>23</sup> The Application at [6.4].

<sup>24</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.

<sup>25</sup> The Application at Annexure 6: Suppliers of Fire-Rated Doors and Windows, "Best Doors Limited".

<sup>26</sup> At Annexure 6: Suppliers of Fire-Rated Doors and Windows, "Doors'n'More".

## Constraint from expansion and entry

### *Expansion*

57. We have received some evidence from some existing suppliers that they could materially expand their productive capacity to make fire doors. If so, such increased capacity could mean that some existing competitors impose a stronger competitive constraint on the merged entity into the future.
58. However, we are still assessing the likely extent of the constraint such expansion may represent. In particular, we are considering whether:
- 58.1 expansion may, in some cases, be delayed by the time it takes to get new doors tested;<sup>27</sup>
- 58.2 expansion may be aimed at catering to growing demand in the market. If so, increasing capacity may not necessarily represent a materially increasing constraint on the merged entity.

### *Entry*

59. Assa Abloy NZ submits that the constraint from potential entry is strong, particularly from Australian suppliers as the relevant building code standards are the same as they are in New Zealand.
60. In general, our evidence to date suggests that the constraint from potential entry is unlikely to be strong.
- 60.1 We have seen little evidence of the use of imported fire doors.
- 60.2 Construction companies have indicated that they prefer to use local manufacturers for fire doors, especially due to the penalty costs associated with potential project delays.
- 60.3 Testing of doors can take months to book and complete, and different variations of door (for example by size) may require separate testing. There is also the prospect that not all tests will pass, in which case the door will need to be re-tested. This may impact the timeliness of entry, and the uncertainty associated with testing may also impact the desirability of entering with a large range of fire doors.
- 60.4 While the relevant building code standards between Australia and New Zealand are the same, we understand that:

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<sup>27</sup> We understand that costs can range between \$2,000 to \$30,000 depending on the nature of the test, and that scheduling and conducting a full test of a fire door can take months. Scheduling and conducting a pilot test or an engineer's assessment is likely to take less time.

60.4.1 while fire doors are usually installed in a timber frame in New Zealand, Australian fire doors are most often installed in steel frames; and, as a result,

60.4.2 Australian fire door suppliers test their doors with steel frames but may not commonly test with timber frames.

In practice, this may mean Australian suppliers may need to conduct significant testing to sell their doors in New Zealand.

61. We continue to assess the strength of the constraint from expansion and entry, including whether demand growth in the market is likely to support expansion and entry in the coming years.
62. We invite submissions on these issues.

### **Constraint from countervailing power**

63. We are considering the extent to which the merged entity would be constrained by the countervailing power of customers.
64. In the Application, Assa Abloy NZ submits that construction companies:<sup>28</sup>
  - 64.1 are sophisticated procurers with strong bargaining power, and can use this power to prevent an increase in price or decrease in quality; and
  - 64.2 will continue to wield a considerable degree of countervailing power and thereby impose a significant competitive constraint on the merged entity eg, by taking steps, or credibly threatening, to:
    - 64.2.1 sponsor the expansion of existing competitors;
    - 64.2.2 sponsor entry into the New Zealand market; and/or
    - 64.2.3 import fire doors directly from overseas suppliers.
65. We are still considering the extent to which the merged entity would be constrained by the countervailing power of customers, and the extent to which this may differ depending on the size of the customer and/or building project in question. Our current evidence is that:
  - 65.1 some customers are able to put pressure on price (eg, through multiple rounds of tendering, or playing bidders off against each other);<sup>29</sup> and
  - 65.2 some customers may be able to sponsor expansion of existing smaller players, eg, by awarding them incrementally larger projects;<sup>30</sup> but

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<sup>28</sup> The Application at [6.11]-[6.15].

<sup>29</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>30</sup> Commerce Commission interview with [ ].

- 65.3 customers are unlikely to self-supply or sponsor new entry due to the time and cost of testing fire doors.<sup>31</sup>
66. We are still assessing the likely constraint from countervailing power, and invite submissions on this issue.

### **Competition concern: foreclosure of competing commercial hardware manufacturers**

67. A substantial lessening of competition can arise where a merged firm operates in a number of different markets and, post-transaction, has the ability and incentive to take actions that prevent rivals from competing effectively in one of those markets ('foreclosure').
68. We are investigating whether the Proposed Acquisition would give the merged entity the ability and incentive to use its position in the fire door market to foreclose rival manufacturers in the commercial hardware market, such that a substantial lessening of competition in the commercial hardware market is likely.
69. In the Application, Assa Abloy NZ submits that the merged entity would have no ability or incentive to take actions that would foreclose rivals in any market.
70. We are considering whether a substantial lessening of competition could arise in the commercial hardware market due to the potential for (separately or in combination):
- 70.1 the merged entity to bundle hardware with its doors; and
  - 70.2 the merged entity to limit what rival hardware is approved on its fire doors (effectively tying its hardware to its doors).
71. Our preliminary concern is that these strategies may have the effect of limiting rival hardware manufacturers' access to a sufficient customer base to remain effective competitors in the commercial hardware market. If this is the case, the Proposed Acquisition may weaken competitive constraints on the merged entity in the commercial hardware market such that a substantial lessening of competition is likely.
72. In order to test these concerns, we are assessing:
- 72.1 the merged entity's ability and incentive to engage in bundling strategies that foreclose rival hardware manufacturers;
  - 72.2 the merged entity's ability and incentive to engage in tying strategies that foreclose rival hardware manufacturers; and

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<sup>31</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

72.3 the effect of any such foreclosure on competition in the commercial hardware market.

73. We expand on these issues below.

**The merged entity's ability and incentive to foreclose competitor hardware suppliers through bundling**

74. In response to our Statement of Preliminary Issues, Allegion submits that "Assa Abloy's significant size and scale across the supply chain would see it offer commercial door and hardware bundles that could not be consistently or reliably matched by Allegion working with much smaller third-party door manufacturers."<sup>32</sup>

75. In its cross-submission on the Statement of Preliminary Issues, Assa Abloy NZ states that it has previously offered bundled fire doors and commercial hardware, but that it has only done so on [ ] since acquiring Pacific Doors in 2018.<sup>33</sup> Assa Abloy NZ submits that any door supplier can offer a package price for doors, hardware and installation by sub-contracting the hardware and installation to hardware distributors or acquiring the hardware direct from the manufacturer.<sup>34</sup>

76. Assa Abloy NZ is already able to offer bundles of fire doors and commercial hardware. However, the Proposed Acquisition would create opportunities for the merged entity to create new bundles across a wider range of fire doors.

77. We are therefore seeking further information on whether the Proposed Acquisition would alter the merged entity's ability and incentives to engage in bundling strategies that forecloses rival hardware suppliers. In particular, we continue to seek information on:

77.1 the magnitude of likely customer demand for bundles of fire doors and commercial hardware and the size of the market that would remain contestable for rival hardware manufacturers;

77.2 whether the remaining contestable portion of the hardware market would be sufficient for rival hardware manufacturers to remain effective competitors in the commercial hardware market; and

77.3 whether rival hardware manufacturers would be able to assemble bundles to compete with the merged entity.

78. We invite submissions on these issues.

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<sup>32</sup> Allegion, Submission on the Statement of Preliminary Issues (29 April 2021) at [29.1].

<sup>33</sup> Assa Abloy NZ Limited, Cross-submission on the Statement of Preliminary Issues (20 May 2021) at [2.23].

<sup>34</sup> At [2.26].

### The merged entity's ability and incentive to foreclose through tying

79. In their submissions responding to our Statement of Preliminary Issues, Allegion and Dormakaba submit that the merged entity would have the ability and incentive to refuse to test competitors' hardware on its doors, effectively enabling it to tie the sale of Assa Abloy NZ hardware to the sale of its fire doors.<sup>35</sup> In particular:
- 79.1 Allegion submits that:
- 79.1.1 fire door manufacturers have control over which hardware is tested on their doors;<sup>36</sup> and
- 79.1.2 Assa Abloy NZ already refuses to test competitors' roller catches on its doors;<sup>37</sup>
- 79.2 Dormakaba submits that:
- 79.2.1 fire door manufacturers control the hardware testing on their doors;<sup>38</sup>
- 79.2.2 (as set out above at [29]) construction companies typically tender for fire doors at an earlier stage than commercial hardware, and this has the effect of limiting the customer's choice of commercial hardware to the brands that are approved on the fire doors being supplied;<sup>39</sup> and
- 79.2.3 Assa Abloy NZ's current practice is to refuse to allow testing of competitor hardware products on Pacific Doors' fire doors.<sup>40</sup>
80. In its response to Allegion and Dormakabas' submissions, Assa Abloy NZ submits that the Proposed Acquisition would not give rise to any ability or incentive for the merged entity to foreclose competition in the supply of commercial hardware.
81. Assa Abloy NZ submits that:<sup>41</sup>
- 81.1 customers typically choose the brand and type of hardware before the fire door supplier is awarded the contract, and that the specified hardware is usually included in the tender documents for the fire door (as set out above at [30]); and, therefore,

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<sup>35</sup> Allegion, Submission on the Statement of Preliminary Issues (29 April 2021) at [29.2]. Dormakaba Group, Submission on the Statement of Preliminary Issues (29 April 2021) at [8].

<sup>36</sup> Allegion, Submission on the Statement of Preliminary Issues (29 April 2021) at [16].

<sup>37</sup> At [17].

<sup>38</sup> Dormakaba Group, Submission on the Statement of Preliminary Issues (29 April 2021) at [12].

<sup>39</sup> At [13].

<sup>40</sup> At [2].

<sup>41</sup> Assa Abloy NZ Limited, Cross-submission on the Statement of Preliminary Issues (20 May 2021) at [2.4]-[2.5].

- 81.2 suppliers are incentivised to ensure the widest possible range of hardware is approved for use on their doors. They otherwise risk being foreclosed from supplying doors on some projects.
82. Assa Abloy NZ also submits that it does not refuse to allow testing of competing hardware on its doors, submitting that:<sup>42</sup>
- 82.1 Pacific Doors refers all testing requests it receives from hardware manufacturers (in respect of its doors that use a Pyropanel core) to Assa Abloy Australia;
- 82.2 Assa Abloy Australia has never, to Assa Abloy NZ's knowledge, refused any request to test hardware on Pyropanel doors; and
- 82.3 between 2017-2020 it has approved [ ] Allegion (including [ ] in 2020) and [ ] Dormakaba products (including [ ] in 2020).
83. We continue to assess whether Assa Abloy NZ would have the ability and incentive to limit the hardware that rivals can have approved on its doors. We also continue to assess whether any such tying strategies would be likely to restrict rival hardware suppliers' access to a sufficient customer base to remain effective competitors in the hardware market.
84. To test these issues, we are seeking further information on:
- 84.1 whether customers choose hardware on the basis of the doors they have chosen, or vice versa;
- 84.2 whether the merged entity would be likely to limit access to testing of competitors' hardware with its fire doors;
- 84.3 whether the merged entity would be likely to take steps to limit the use of competitors' hardware that is currently approved on its fire doors, for example, by altering some of its fire doors so that existing approvals are no longer applicable;
- 84.4 the effect of any such tying strategies on the competitiveness of rivals in the hardware market; and
- 84.5 how other market participants such as customers and hardware distributors would be likely to respond to more limited compatibility between hardware and doors in the market.
85. We invite submissions on these issues.

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<sup>42</sup> Assa Abloy NZ Limited, Cross-submission on the Statement of Preliminary Issues (20 May 2021) at [2.10]-[2.15].



## Competition concern: coordinated effects

86. 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.
87. 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:
- 87.1 there is a high degree of product differentiation;
  - 87.2 the Proposed Acquisition would not remove a particularly vigorous or effective competitor;
  - 87.3 there are several strong competitors in the market and pricing and volumes are not transparent;
  - 87.4 customers have a high degree of countervailing power and procure products through competitive tendering processes; and
  - 87.5 there are strong suppliers in Australia that could easily enter New Zealand to disrupt any potential for coordination.
88. While we continue to assess whether the Proposed Acquisition would be likely to increase the potential for coordination in any market, our current evidence suggests that the fire door market is unlikely to be particularly vulnerable to coordination. This is because:
- 88.1 competitors appear to be asymmetric and in some cases focus on supplying different types of building projects; and
  - 88.2 prices are not transparent due to supply being awarded through tenders.<sup>43</sup>
89. Similarly, while we have not concluded on the matter, we do not currently consider the Proposed Acquisition would be likely to increase the potential for coordination in the commercial hardware market. This is because the transaction would not remove an independent competitor from this market, and would likely increase the asymmetry between Assa Abloy NZ and its rivals.
90. We invite submissions on these issues.

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<sup>43</sup> That said, the merged entity would likely have some visibility of several of its rivals' costs, given that Assa Abloy Group supplies Best Doors with Pyropanel fire cores, and that NZFD supplies Doors' n'More with some fire doors.

## Next steps in our investigation

91. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **23 July 2021**. However, this date may change as our investigation progresses.<sup>44</sup> In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
92. 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

93. We are continuing to undertake enquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this Sol.
94. 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 / 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 **22 June 2021**.
95. 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.
96. 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>44</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.