

Volution Group plc

**Notice seeking clearance to acquire the assets and business
of Proven Systems Limited**

To: registrar@comcom.govt.nz

Executive summary

Volution NZ seeks clearance to acquire Proven Systems

Volution Group plc (**Volution**)(via Lupin Investments Limited, a wholly owned subsidiary incorporated in New Zealand) is seeking clearance to acquire 100% of the business and assets of Proven Systems Limited.

Proven Systems Limited is a New Zealand owned company which supplies and installs 'DVS' branded home ventilation in New Zealand homes. For convenience, Proven Systems Limited is referred to as DVS in this application.

Acquisition will not lessen competition in the home ventilation market

Volution's wholly owned subsidiary Simx Limited (**Simx**) also supplies home ventilation systems in New Zealand primarily under the 'Smart Vent' brand.

While the acquisition will result in the DVS and Simx home ventilation businesses coming under Volution's ownership, the acquisition will not substantially lessen competition in the home ventilation market.

Indeed, the home ventilation market is highly fragmented and characterised by strong competition from competing suppliers and competing technologies.

Market is highly fragmented and competitive with multiple technologies in use

For example, while positive pressure ventilation systems have been the primary ventilation technology used in New Zealand, there has been a shift towards ventilation systems that use alternative technologies such as heat recovery ventilation systems, energy recovery ventilation systems, natural ventilation, multiple extract ventilation, and continuous extract ventilation. This is consistent with global trends in residential ventilation and with New Zealand building codes for new buildings. Neither Simx nor DVS currently have strong market share positions in relation to these technologies, but could look to grow their respective positions over time. Simx in particular has the ability to access and utilise the experience of its parent company Volution Group plc with these technologies in offshore markets, particularly in Europe.

These different technologies solve the same consumer problem. Consumers, therefore, see them as substitutable, and suppliers of these competing technologies compete strongly with each other.

Market share aggregation within concentration indicators

The fragmented nature of the market is reflected in the relatively small aggregation of market share that Volution believes will arise from the acquisition. DVS – the [] supplier of home ventilation systems in the market – has an estimated share of approximately [] while Smart Vent's share, is approximately [] and likely to be the []

]

This level of aggregation is within the Commission's concentration indicators, which indicate acquisitions that are less likely to raise competition concerns.

Merged firm will face strong competition from HRV

The lack of competitive harm suggested by the concentration indicators is confirmed by the fact that the merged firm would continue to face strong existing and potential competition from numerous sources.

The most obvious source of constraint is HRV – owned by Vector – which is the largest participant in the home ventilation systems market (an estimated market share of approximately[]). HRV has strong consumer recognition,

and there is nothing to prevent HRV from expanding its sales should the merged firm seek to increase prices or decrease quality.

By itself, Volution believes that HRV would be sufficient to constrain the merged firm.

However, HRV is far from alone as a source of competitive constraint. The low barriers to entry in relevant markets mean that there is a long tail of smaller players all with the ability to compete effectively in the market. Beyond the merged firm and HRV, the remaining approximately [] of the market would be served by a range of international and domestic suppliers of home ventilation systems including (among others):

- Reliance Ventilation Systems
- Sayr
- Steibel Eltron
- Fantech (Elta Group)
- Moisture Master
- Mitsubishi Electric
- Panasonic
- Daikin.

In addition to HRV, numerous other competing suppliers would constrain the merged firm

None of these suppliers would face any barriers to increasing their supply in the event the merged firm sought to increase prices or decrease quality.

Alone or together with HRV, these firms will constrain the merged firm.

No prospect of coordinated effects

Finally, the fragmented nature of this market means the Commission can be satisfied that this is not a market that is vulnerable to coordinated effects.

Volution submits that the Commission can be satisfied that the acquisition will not and will not be likely to substantially lessen competition in any market because:

Volution requests the Commission grants clearance

- the acquisition falls within the Commission's concentration indicators; and
- in any event, Volution will remain subject to strong competitive constraint from the largest participant in the market – HRV – and the plethora of other competing suppliers of ventilation systems.

Volution, therefore, requests that the Commission grant clearance for the acquisition.

The parties

Volution Group plc (applicant)

1. Volution Group plc (indirectly through intermediary subsidiaries) owns 100% of the shares in Volution Ventilation New Zealand Limited (**Volution NZ**), which in turn owns 100% of the shares in: Simx Limited. Simx primarily supplies home ventilation systems in New Zealand under the “Smart Vent” brand. However, it also supplies
 - extraction ventilation using Manrose branded products;
 - extraction ventilation and MEV using Vent-Axia branded products; and
 - commercial fans and commercial heat recovery using Alaskon branded products.
2. Volution NZ also owns 100% of the shares in Lupin Investments Limited, which is the proposed purchaser of the business and assets of DVS. A structure chart showing relevant Volution Group plc companies both before and after the proposed transaction is provided at Appendix 1.

Contact details

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Proven Systems Limited (Target)

6. Proven Systems Limited is a New Zealand registered company, which supplies and installs “DVS” branded home ventilation in New Zealand homes. For convenience, Proven Systems Limited is referred to as “DVS” in this application.

Contact details

7. Tony Sandes
Managing Director
Proven Systems Limited

20 Mahoe Street (front unit)
Taupo

[]

The proposed transaction

8. Pursuant to a Sale and Purchase Agreement (**SPA**) signed on 24 April 2023, and subject to the satisfaction of certain conditions precedent, including Commerce Commission clearance, Volution NZ has agreed to purchase the assets and business of Proven Systems Limited.

Rationale for the acquisition

9. [

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10. [

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Market definition

11. The appropriate market definition for assessing the proposed transaction is the national market for the manufacture and distribution of home ventilation systems (**the home ventilation market**). The market is primarily transactional with competition focussed at the point of installation. Although there are no material servicing requirements, there is a modest after market opportunity with regard to the supply of filters (which should be replaced periodically).¹ However, this aspect of the market includes supply of generic components so is broadly contested and is not a focus of this application.

¹ For Smart Vent, filter sales are in the order of []

Product dimension

12. Good air circulation and home heating are essential for maintaining air quality. A home ventilation system reduces the excess damp, moisture-filled air and improves the overall air quality inside the house. There are a range of different technologies used to provide home ventilation to address these issues, including “positive pressure”, heat and energy recovery and MEV. A background paper detailing how these systems work is provided at Appendix 2.²
13. Any of these technologies can be and are used to provide ventilation solutions for any type of home. However, the effectiveness of a home ventilation system may vary depending on the characteristics of the building and, in particular, the extent to which the building is a modern airtight home or an older non-airtight home (such as a villa):
- **Older non-airtight homes.** A “positive pressure” system is generally effective for an older villa. This system draws in fresh air from the roof cavity and filters it before distributing the clean air into, and around the home via a network of ceiling diffusers. The air movement created forces out the moist, stale air that causes condensation, mould and mildew. In a positive pressure system the air simply escapes out of gaps in the structure of the building – gaps which do not exist so much in modern buildings. These systems often incorporate multiple temperature and humidity sensors, and easy to use touch screens or an App to manage the system. It is possible to add functionality such as Heat Transfer and Summer Cool venting.
 - **Modern airtight homes:** The more effective technologies used in this context are heat and energy recovery systems (e.g. dMVHR, MVHR, ERV). These draw fresh air into the home primarily from outside while simultaneously extracting moisture-laden, stale air from inside the home. This simultaneous process is referred to as a **balanced system**. The two separated streams of air go through a heat exchange core. While the two airstreams never mix the core allows the transfer of the energy from the outgoing air to the incoming air. In the case of energy recovery, moisture can also be transferred, which is sometimes required in low humidity environments. The result is a transfer of heat energy from already warm inside air as it is exhausted in the winter, and cold energy from already cooled inside air as it is exhausted in the summer.
14. Heat and energy recovery systems are more costly than positive pressure systems and that is reflected in significantly higher prices for heat and energy systems. However, another technology, namely “MEV” (which stands for mechanical extract ventilation) is comparable in price to positive pressure, but can also be used for modern airtight homes. An MEV system removes damp air (say, from a bathroom or kitchen in an apartment) through a ducted system with the result that fresh air is then effectively sucked in to replace the air that has been removed via a vent to the outside. It is technology used extensively in Europe and so broadly available.
15. Market share estimates for the various participants in the home ventilation market with respect to each of the relevant technologies are specified at Appendix [3].

² The following videos may also assist: (1) Positive Pressure: <https://www.youtube.com/watch?v=O4rOBB33WSY>;
 (2) Heat Recovery: [https://www.youtube.com/watch?v=Kd4ZBuZWC-Y](https://www.youtube.com/watch?v=Kd4ZBuZWC-Y;);
 (3) MEV video: <https://www.youtube.com/watch?v=j5dQS3450zo>

16. The primary competitive overlap between Simx and DVS is in the home ventilation market. In particular:
- Simx competes in this market with positive pressure and heat and energy recovery systems and, more recently, also with MEV systems; and
 - DVS competes in this market with positive pressure and heat recovery systems. DVS does not offer energy recovery or MEV solutions.
17. Note that:
- **Extraction:** Simx is the market leader in New Zealand for the supply of extraction fans (primarily intermittent as opposed to continuous). Intermittent extract fans are the traditional way of removing unwanted air created by bathing or cooking in bathrooms and kitchens. The fans are switched on for an intermittent period – generally by a wall switch, a run-on timer, or a sensor. Intermittent fans run at a high airflow rate with the aim of extracting moisture over a short duration. However, while Simx has a strong market position with extraction, DVS does not. Accordingly, there is minimal competitive overlap between Simx and DVS in relation to extraction.
 - **Heat Pumps:** Heat pumps are in common use in New Zealand with the market understood to be \$240m/year.³ Volution does not consider heat pumps to be in the same market as ventilation products because the primary function of a heat pump is heating (and cooling). Some heat pumps (Volution estimates 16% of the total by value) use a ducted system and, although they can be configured to provide ventilation, Volution’s experience is that often this does not happen. Under the Building Code, mechanical ventilation requires air to be extracted from the wet rooms whilst most ducted heat pump solutions provide heating (or cooling) to the habitable spaces only. Therefore conversion of a ducted system to comply with Building Code or the healthy homes standard for ventilation means the addition of a considerable number of components making it much more expensive. Having said that Mitsubishi installers can offer the Lossnay heat recovery ventilation unit to a ducted system, particularly in the southern (cooler) part of New Zealand where there is a higher demand for heating and recovering the heat has greater value. In any event, there is no competitive overlap between Simx and DVS in heat pumps because, while DVS has a small presence in this market ([]), Volution is not active in supplying heat pumps either in New Zealand or in any offshore markets in which it is active.
18. By way of further background, the majority of systems installed are retrofit (existing houses). Our estimate is 90% retrofit, 10% new build. This high proportion of retrofit is because home ventilation was not considered in previous eras of housebuilding. It is only recently that newer houses are more likely to include home ventilation as they are more airtight and there is much more information and industry advice suggesting that ventilation is a requirement. There is generally minimal cost difference between new and retrofit although retrofit can occasionally have some challenging issues that could result in additional costs. Having said that, given that new houses tend to be more airtight, it is more likely that a more expensive heat recovery system would be installed rather than a positive pressure system. Installed costs can be approximately \$6,000 for heat recovery as compared with \$3,500 for positive pressure. In addition, Part G4 of the Building Code requires exhaust ventilation from the wet rooms, and positive pressure systems are not compliant on their own.

³ This estimate is based on information provided by an industry player as part of a presentation providing an overview of the Heatpump market

Customer dimension

19. Commercial customers tend to have more extensive needs than residential customers meaning the ventilation solution can be quite different, often requiring a more costly bespoke solution. In particular, positive pressure systems (which is the focus for DVS) is generally not suitable for commercial applications. Simx does supply a reasonable volume of ventilation systems to various commercial customers. However, DVS does not supply commercial customers. Accordingly, the focus of this application is supply of ventilation to residential customers (hence the term “home ventilation systems”).

Geographic dimension

20. In terms of the geographic scope of the market, Volution submits that there is a national market for the manufacture and distribution of home ventilation systems. Simx supplies customers across all of New Zealand and many of its competitors do (or could do with minimal investment) likewise. Some smaller competitors provide services on a more localised basis. Details of the geographic coverage of the various competitors is included in the detailed market share information provided at Appendix [3]. Prices can vary slightly in different regions, normally due to individual pricing strategies of local installers or franchisees.

Functional dimension

21. In terms of the functional level of the market, Simx operates only at the wholesale level of the market (via intermediaries such as electrical wholesalers and large retailers). Under this model, installers maintain the selling relationship with the consumer and buy Smart Vent branded product from these intermediaries as required. On the other hand, DVS operates a direct to consumer model and disintermediates the electrical wholesalers and large retailers completely. From a competition perspective, Volution considers that Simx competes with DVS, HRV and all other competitors selling direct to consumer and does not consider that viewing these functional markets separately assists the competition analysis.
22. Volution has not considered the relative profitability of the two business models. The comparison would be problematic by reference to the Smart Vent and DVS businesses because: (i) the Smart Vent business is not reported separately within the Simx group; and (ii) the DVS business sells ventilation units as a bundle that includes installation. In the process of evaluating the proposed acquisition, Volution was primarily focussed on the broader strategic opportunity provided by the direct to consumer model. Accordingly, while Volution did form the view that the DVS business is profitable, it did not see any need to develop a methodology to produce one particular view of whether one business model is more profitable than the other.
23. Prices paid by residential homeowners tend to be similar (for like for like solutions and including allowing for variances in installation costs for different scenarios), regardless of the route to market.

How competition occurs in these markets

24. In these markets, while price is always important, service and innovation also play a significant role:
- *Service:* Even though installation is a relatively straight forward exercise and a “one-off” (i.e. there is generally little if any after sales service required), service is important in terms of maintaining availability and particularly the ability to fulfil orders in a timely manner.
 - *Innovation:* There are range of ways that competitors use innovation to differentiate their products. For example: Simx places particular emphasis on the controllability

of the system particularly by reference to temperature and humidity. Other providers (including DVS) offer energy efficient models using EC/DC motors.

- *Price*: price is always important, particularly with respect to positive pressure systems, which are well established in the New Zealand market. Consumers often get multiple quotes and then negotiate with prospective providers. The dynamics with regard to heat recovery and energy recovery systems are somewhat different given that these products are more sophisticated from a technology perspective and also more costly. This means that consumers are generally likely more open to considering paying a higher price for a product that can be shown to have better or more relevant functionality for the specific needs of their home.

Counterfactual

25. Volution submits that the relevant counterfactual against which to assess the competition effects from the Proposed Transaction is the status quo under which Simx and DVS would remain in competition with each other albeit with Simx remaining focused on servicing the market with the Smart Vent brand via intermediaries and DVS retaining its direct to consumer model. [

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Competition analysis

Why the acquisition will not result in unilateral effects

Acquisition will result in limited aggregation of market share and fall within Commission concentration indicators

26. We provide a detailed (confidential) breakdown of market share estimates together with this application. Please note these are very much estimates as Volution does not have direct visibility of the sales of its competitors. Volution’s estimates suggest the market is unconcentrated with the three firm concentration ratio below 70%. DVS has an estimated market share of approximately [] and Smart Vent’s share, is approximately []. The combined share of [] is well within the Commission’s unconcentrated market share indicator. A market share within these indicators is not suggestive of an acquisition that would substantially lessen competition.

Simx and DVS operate in different channels and are not each other’s closest competitors

27. Simx’s Smart Vent and DVS are not each other’s closest competitors because they operate using different channels to market. In addition, DVS only supplies positive pressure and heat recovery systems. It does not provide energy recovery or MEV.

28. DVS and HRV both sell direct to consumers, competing with each other and many other manufacturers and independent installers. In effect, DVS and HRV are vertically integrated importer/manufacturers who compete directly for consumers. DVS’s closest competitor is HRV.

29. In contrast, Simx is an importer / manufacturer whose principal form of distribution is to wholesalers and merchants (with an insignificant number of direct to consumer sales). Accordingly, Simx’s top customers are as follows:

- []
- []
- []

- []
- []
- []
- []
- []

30. So, rather than competing directly for consumers, Simx competes to sell its products via merchants to independent installers as well as large retail operators such as Bunnings, Mitre 10 and Placemakers.⁴ Independent installers then compete with each other and HRV and DVS to sell systems to consumers. Smart Vent’s closest competitors are other manufacturers of home ventilation systems that compete to supply independent installers.

31. Simx does operate a webshop website where consumers can buy direct, but this was set up mainly to sell filters, which were only selling in low volumes through traditional channels. Total value of sales through the webshop over 2 years of its operation is around [

] The SmartVent brand is marketed through TV, direct mail and social media to gain enquiries from consumers. Those enquiries are passed onto a list of accredited SmartVent installers, who mostly purchase systems through electrical wholesalers.

32. A list of the [] accredited Smart Vent installers is attached as Appendix [4]. Note that the installation process is not particularly complex. Installers do not need specific qualifications except that electrical works must be undertaken by a registered electrician. We expect that in some instances an electrician installs the plug only with the homeowner installing the rest themselves on a DIY basis. Having said that, while Smart Vent can be installed by anyone, some brands (such as HRV and DVS) require installation to be done by themselves as a turnkey solution.

33. As Simx does not sell Smart Vent directly to the electrical contractor installers, Volution does not know what volumes they purchase, but we have noted who we believe are the top 7 installers in the list attached as Appendix [4]. Note that some of the largest installers of Smart Vent systems [] are not one of the [] accredited installers. Note also that there would be a long tail of electricians who buy only 1 or 2 Smart Vent systems per year, perhaps installing for own or family and friends use.

HRV will remain a strong competitor and there is nothing to prevent HRV from expanding sales to defeat any price increases

34. HRV is the clear market leader, which competes strongly, backed by a robust balance sheet due to its ownership by Vector. There are no barriers to HRV expanding its sales if the merged firm sought to increase prices or reduce quality and the Commission can be confident that HRV would seek to do so.

Numerous other strong competitors and nothing to stop them expanding

35. There are numerous international and domestic manufacturers/installers who compete to provide home ventilation solutions, most notably the following:

- **Mitsubishi Electric:**⁵ Markets ERV (MVHR) through HVAC contractors and electricians. Uses TV advertising to promote Lossnay Heat Recovery and has

⁴ []

⁵ []

become established in the market. Similar products are also available from **Panasonic and Daikin**. Given that Mitsubishi has sought to grow its presence in this market, it is reasonable to expect that Panasonic and Daikin and potentially other global heat pump suppliers (such as Fujitsu) will seek to do likewise in due course. The market share of these global players has been modest to date primarily because the New Zealand market has to date been focussed on cheaper solutions such as positive pressure. As this changes, we would expect these players to increase their market share.

- **Reliance Ventilation Systems:** Focussed on Auckland, Waikato and Bay of Plenty (which accounts for approximately 60% of national demand). Reliance installs positive pressure systems. It has been in business 17 years and has grown to the point where its website says it has installed 33,000 systems.
- **Fantech:** Fantech's parent is a large global payer (Elta Group). Fantech sells European Zhender and Aerauliga MVHR, dMVHR and Passive House specialty and extraction fans through electrical wholesalers. Also owns **Smooth Air** which sells own developed Drymatic Hex PP, MVHR, dMVHR.
- **Sayr:** Started as a new entrant in 2008 and has grown to operate nationally selling positive pressure systems.
- **Condensation Control Limited:** Particular strength in the South Island due to Dunedin head office but sells nationally. It has been in business over 20 years selling Moisture Master branded positive pressure systems as well as MVHR and dMVHR. They have their own design/manufacture plus large European brands and work with independent installers such as *Beyond Electrical (Auckland) and Southland Home Ventilation (Invercargill)*.
- **Homotech:** Owned by NZX listed Just Life Group. Homotech sells Unovent – an innovative single unit whole home ventilation system. They also sell positive pressure, MVHR (ERS). Homotech installs its own units via a nationwide licensee network.
- **The Heating Company:** Sells large European brands, namely Lunos, Brookvent, Alnor, Awenta and are preferred by many architects and builders.
- **Stiebel Eltron NZ:** Owned by a large German parent company with EUR 1 billion turnover. Sells MVHR, dMVHR (decentralised) and Passive House home ventilation systems.

36. There are many other smaller players in addition to those discussed above. For completeness, we set out below our market share estimates for all known competitors. These suppliers range from quite small to sizes approaching Simx:

Market participants	Approx market share
Mitsubishi Electric (Black Diamond Technologies Ltd)	[]
Reliance Ventilation Systems	[]
Fantech (NZ) Ltd (Air Design) (Zhender)	[]
Sayr (Switched On Energy Ltd)	[]
Stiebel Eltron NZ Ltd	[]
Condensation Control Ltd	[]
Dryliving	[]
The Heating Company (RM Trustee 2019 Ltd) (Lunos)	[]
Homotech / Unovent (Just Life Group Ltd)	[]

Market participants	Approx market share
Drivair	[]
Solution Air (Gecko International Ltd)	[]
Smoothair	[]
Mingfans	[]
EVOAQ	[]
Bettervent	[]
Kiwivac (Nuair Drimaster and Lossnay)	[]
O2vent (Pacific Heating & Cooling Technology Ltd)	[]
Avon Electric	[]
Weiss	[]
Homesol (EVOAQ & Airstream)	[]
Heatforce	[]
Daikin	[]
Tranzheat	[]
Green Solutions – Swegon	[]
BDV Air	[]
Panasonic	[]

37. **Conditions of entry / expansion are benign**
This large number of players exists because there is significant demand for home ventilation, the positive pressure technology is simple to deliver and the main components used to manufacture positive pressure home ventilation systems are readily available from the following suppliers (none of whom supply any party on an exclusive basis):

Motors:

- []
- []
- []
- []

Controllers:

- []
- []
- []
- []
- []
- []
- []
- []

Duct and Fittings:

- []
- []
- []
- []
- []
- []
- []

Dampers/ Actuators:

- []
- []
- []
- []
- []

38. The merged entity will continue to be constrained by the fact there is nothing to prevent any supplier in this market from increasing their sales in New Zealand at any time.

Specifically:

- There is nothing to prevent independent installers or merchants from switching supplier away from Simx should they wish to;
- There is nothing to prevent suppliers from cost effectively increasing their sales into New Zealand;
- Suppliers of components typically trade on non-exclusive terms meaning that any prospective provider of home ventilation can easily secure the required components; and
- There are no material sunk costs associated with expanding sales in New Zealand.

39. These manufacturers would be incentivised to increase their sales should the merged firm seek to increase prices.

The market is moving away from positive pressure systems

40. It is also important that the leading market share positions of the larger players largely reflect the prevalence of positive pressure systems, which Volution NZ estimates accounts for 90% of the installed systems to date. However, the trend now is away from positive pressure as opportunities with existing older housing stock naturally declines with the focus inevitably moving towards installation of home ventilation systems in newer airtight homes. This means that new entrants can operate without any material disadvantage from a lack of incumbency. While both Simx and DVS have reasonably strong competitive positions with respect to positive pressure systems, neither Simx nor DVS are market leaders in heat and energy recovery systems, as the following market share estimates demonstrate:

- Mitsubishi Electric: []
- Fantech: []
- Stiebel: []
- Smart Vent: []
- DVS: []

41. In practice, heat and energy recovery systems are in widespread use in the UK/Europe and in USA/Canada. Accordingly, there are many potential suppliers of the equipment required to compete using this technology, including the following:

Heat/ Energy Recovery Component Cores

- []

- []
- []
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- []
- []

Heat Recovery, Energy Recovery and MEV Suppliers

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Industry best practice

42. The trend away from positive pressure is driven to some degree by evolving industry views regarding best practice. In response to the significant problem of mould in homes that has resulted in serious negative health outcomes for New Zealanders, key influencers such as BRANZ and the NZ Green Building Council (NZGBC) have been endorsing specification of improved residential ventilation practices to improve Indoor Air Quality (IAQ) for many years. In particular:

- BRANZ have undertaken extensive research on IAQ and mechanical ventilation systems: <https://www.branz.co.nz/healthy-homes-research/>. The above link includes articles where continuous ventilation (heat recovery and MEV are clearly favoured over positive pressure ventilation).
- The NZ Green Building Council are a not for profit organisation belonging to the World Green Building Council, with 700+ building industry members. NZGBC list advisors and Technical Experts to their Homestar programme from EECA, Kainga Ora, MBIE, BRANZ, Massey University, Auckland Council and others. <https://www.nzgbc.org.nz/about-us-and-membership/our-vision>. NZGBC's Homestar V5 rating tool acknowledges the importance of home ventilation with a points system that recognises continuous extract ventilation, Balanced Ventilation, MVHR. It does not recognise positive pressure ventilation.

Regulation

43. The regulatory environment is also evolving to reflect this shift. A landlord who rents a property under the Residential Tenancies Act 1986 needs to ensure the property meets the healthy homes standards. Note that Tenancy Services has expressly noted that positive pressure systems do not meet the ventilation standard.⁶

Recirculating systems (products like HRV and DVS systems), or fans that do not extract to the outdoors are not suitable to meet the ventilation standard.

44. [
-]
- Kainga Ora transitional building documents also reference NZGBC Homestar V5 programmes and reference HHS compliant constant mechanical ventilation.⁷ Kainga Ora also state that Balanced mechanical ventilation with heat recovery is the preferred solution in public housing Design Requirements.⁸ They also have committed to ensuring all new homes meet the requirements of Homestar.⁹

45. Regulatory requirements regarding the ventilation of New Zealand residential homes and apartments is covered by the Building Code for new homes or consented additions/alterations. G4 Ventilation states at 1.1.2:¹⁰

Ventilation of spaces within buildings must be provided by natural ventilation (refer to Paragraphs 1.2 and 1.3), mechanical ventilation (refer to Paragraph 1.5), or a combination of mechanical and natural ventilation (refer to Paragraph 1.4).

46. While Building Code ventilation clause G4 in this form does not exclude positive pressure, our view is that over time, the emphasis on Heat Recovery and continuous extract will in time be further reflected in Building Code requirements which will in turn reduce demand for Positive Pressure systems.
47. The short point is that, while the merged entity will retain a strong position in the market generally by reason of its strong Positive Pressure proposition, any advantage is being slowly eroded by the market moving away from these solutions towards more sophisticated solutions such as heat recovery and MEV.

Countervailing market power

48. In addition, the merged entity will continue to use the Smart Vent brand to supply its wholesale customers, each of whom have the ability to buy from whoever they please. To the extent a wholesaler chooses to purchase home ventilation systems from a single supplier, that approach likely reflects the home ventilation category being a small component of their overall business, rather than a lack of suitable alternative choices.

⁶ <https://www.tenancy.govt.nz/assets/Uploads/files/healthy-homes-standards-ventilation.pdf>

⁷ <https://kaingaora.govt.nz/assets/Developments-and-Programmes/Kainga-Ora-Homestar-v5-Transition-Standard-Summary-by-Credit.pdf>

⁸ <https://kaingaora.govt.nz/assets/Publications/Design-Guidelines/Design-Requirements.pdf>, page 74

⁹ <https://kaingaora.govt.nz/assets/Publications/Design-Guidelines/Design-Requirements.pdf>, page 4

¹⁰ <https://www.building.govt.nz/assets/Uploads/building-code-compliance/g-services-and-facilities/g4-ventilation/asvm/g4-ventilation-4th-edition.pdf>

49. Volution considers that, although most of the competing suppliers choose a more direct route to market through their own licensed installers or HVAC contractors or electricians (sidestepping the electrical wholesalers), any of the competing suppliers from the list above could easily expand their operations to meet the requirements to supply any of the major wholesalers.
50. Simx is the main supplier into the wholesale channel with most other competitors operating direct to consumer. While consumers do not purchase at scale like wholesale purchasers, they are the ones that make the purchasing decision and have significant choice of provider in doing so. In that regard, consumers can and often do get quotes from multiple suppliers with negotiation on price being common.

The role of architects

51. Many of the various competitors have relationships with architects and will answer queries and give design assistance to architects as required. There can also be engagement with architects to explain how to specify and design products correctly. Generally, heat recovery and MEV are likely to be promoted to architects more actively due to the lower level of awareness of the products, the design support needed, and the relatively more sophisticated technology needing to be explained. So suppliers of “Passive House” heat recovery units (such as Steibel and Fantech) are likely to be engaging with architects more than others due to these factors.

The acquisition will not result in coordinated effects

52. The merger will not change the features of the market in a way that would make coordinated conduct more likely, than is otherwise the case.
53. The market does not have features that make it prone to coordinated conduct. In particular:
- the market is fragmented with a long tail of numerous competitors who can expand sales easily making coordination much more difficult in practice;
 - pricing of rivals is not easily observable meaning that it is difficult for competitors to act in ways that promote coordination;
 - the products are differentiated with different technologies and solutions (i.e. positive pressure, heat and energy recovery, MEV) being used by different players; and
 - the different sales channels utilised by different parties (i.e. sales at wholesale to intermediaries as compared with direct to consumer sales models) make coordination difficult.

Confidentiality

54. This application contains information that is confidential to one or more of the parties. The confidential information is commercially sensitive, and disclosure of it would be likely to unreasonably prejudice the commercial position of the party providing that information. For this reason, the highlighted information should not be disclosed under an Official Information Act 1982 request, in accordance with s 9(2)(b)(ii) of that Act.
55. Confidential information in this application is highlighted to reflect who the information is confidential to.

- Information that is confidential to the parties as against third parties is highlighted in yellow (i.e., [CONFIDENTIAL]) and listed in the Schedule of Confidential Information.
- Information that is confidential to Volution as against all parties is highlighted in blue (i.e., [CONFIDENTIAL]) and listed in the Schedule of Confidential Information.
- Information that is confidential to DVS as against all parties is highlighted in green (i.e., [CONFIDENTIAL]) and listed in the Schedule of Confidential Information.

Summary and conclusion

56. For the reasons explained, the acquisition will not substantially lessen competition in any market (however the markets are defined).
57. Volution, therefore, requests that the Commission grant clearance for the acquisition.

Declaration

I, Andy O'Brien, have supervised the preparation of this notice seeking clearance. To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am Chief Financial Officer at Volution Group plc, the parent company of Simx Limited, and I am duly authorised to submit this notice.

Andy O'Brien

Date: 17 May 2023

Schedule of confidential information

NB: references are to the confidential version of the application.

The following information has been removed from the public version of the Application because the information is confidential to the parties and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice the commercial position of one or both of the parties (*cf*s 9(2)(b)(i) and (ii) of the Official Information Act):

- In the Executive Summary:
 - In the 8th paragraph: the words between “the” and “supplier”; both percentage figures; the last 2 words of the second sentence and the last sentence in its entirety
 - In the 11th paragraph: the percentage figure
 - In the 13th paragraph: the percentage figure
- In paragraphs [3], [4] and [7], the contact details of the named individuals
- Paragraphs [9 and [10] in their entirety
- In footnote 1: the figure
- In paragraph [17], bullet 2: the final percentage figure in brackets
- In paragraph [25], the last 2 sentences in their entirety
- In paragraph [26], all 3 percentage figures
- In paragraph [29], the names of Simx’s top customers
- In paragraph [30], the names of Simx’s customers
- In paragraph [31], the remainder of the 2nd sentence after the word “around” plus the 3rd sentence in its entirety
- In paragraph [32], the figure
- In paragraph [33], the words in brackets and the figure in the second sentence
- Footnote 4 in its entirety
- Footnote 5 in its entirety
- In paragraph [36], all of the percentage figures
- In paragraph [37], all of the named suppliers
- In paragraph [40], all of the percentage figures
- In paragraph [41], all of the named suppliers
- In paragraph [44], all of the first sentence, plus the first word of the second sentence
- Appendix 2 in its entirety

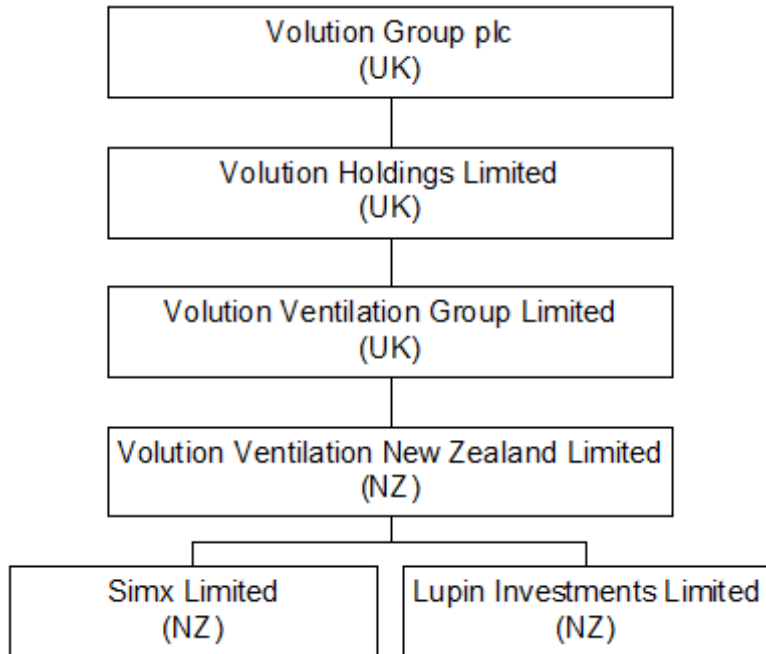
- Appendix 3 in its entirety
- Appendix 4 in its entirety
- In Appendix 5, all of the figures
- Appendix 8 in its entirety

Schedule of required information in notice for clearance

Notice para.	Commission request	Response
[1]	Applicant details	Paras 1-5
[2]	Other party details	Paras 6-7
[3.1]	Type of transaction	Para 8
[3.2]	Merger rationale	Para 9-10
[3.3]	How merger changes control	Para 8
[3.4]	Ancillary agreements	N/A
[3.5]	Counterfactual	Para 25
[4]	International notification	N/A
[5.1]	Applicant's view on market definition	Para 11-23
[5.2]	Each merging party's total sales revenues, volumes, and capacity for the last three financial years.	Appendix 5
[5.3]	Names and contact details of the merging parties' main competitors	Appendix 6
[5.3]	Names of any trade or industry associations which either of the merging parties participate	Appendix 7
[5.4]	Names and contact details of merging parties top 5 customers	Appendix 8
[6]	Why the transaction will not substantially lessen competition	Para 26-53
[7]	Copies of documents bringing about the merger	Provided separately
[8]	Internal applicant documents seen by the Board or senior management within the last two years that relate to: <ul style="list-style-type: none"> • the transaction; or • market conditions. 	Provided separately
[9]	Most recent annual report, audited financial statements and management accounts	Provided separately

Appendix 1: Structure chart

Note: structure remains the same before and after the transaction as Lupin Investments was incorporated prior to the transaction in order to be the vehicle to purchase the business and assets of DVS



Appendix 2: Background information regarding ventilation technologies

Appendix 3: Market share information

Appendix 4: Smart Vent installers

Appendix 5: Total sales revenues, volumes, and capacity for the last three financial years**Simx**

YE		Revenue	Volumes (units)
2022	[]	[]	[]
	[]	[]	[]
	Total	[]	[]
2021	[]	[]	[]
	[]	[]	[]
	Total	[]	[]
2020	[]	[]	[]
	[]	[]	[]
	Total	[]	[]

DVS

YE	Revenue	Volumes (units)
2022	[]	[]
2021	[]	[]
2020	[]	[]

Note: volumes (units) forecast this year and next:

2023F: []

2024F: []

Appendix 6: Names and contact details of the merging parties' main competitors

Customer	Name	Position	Contact details
HRV	Norman Woods	Group Commercial Manager	0800 478123
Reliance	Sanjiv Brahmbhatt	Director	0800 787111
Sayr	Mark Williams	Director	0800 729748
Mitsubishi	Daryll Rochester	Managing Director	04 5609100
Fantech	Vikrant Bhatt	NZ General Manager	09 4446266

Appendix 7: Names of any trade or industry associations which either of the merging parties participate

Simx

CCCA	Climate Controls Companies Association
NZGBC	NZ Green Building Council
EMA	Employers Manufactures Association
ECANZ	Electrical Contractors Association

DVS

NZGBC	NZ Green Building Council
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Appendix 8: Names and contact details of merging parties' top 5 customers

Smart Vent

Customer	Revenue(\$)*	Name	Position	Contact details
[]	[]	[]	[]	[] []
[]	[]	[]	[]	[] []
[]	[]	[]	[]	[] []
[]	[]	[]	[]	[] []
[]	[]	[]	[]	[] []

*Revenue is Smart Vent sales to the customer

DVS

Customer	Name	Position	Contact details
[]	[]	[]	[] []
[]	[]	[]	[] []

[]