

Application for Clearance by Assa Abloy New Zealand Limited to acquire NZ Fire Doors Limited

Submission by Dormakaba Group to the Commerce Commission on its Statement of Preliminary Issues

29 April 2021

Executive summary

1. Dormakaba Group is a global supplier of products and services related to doors and secure access to buildings and rooms. In New Zealand our business includes the supply of hardware for fire doors. This makes us a direct competitor to Assa Abloy with respect to the supply of fire door hardware.
2. Assa Abloy's proposed acquisition of NZ Fire Doors will substantially lessen competition in the market for the supply of fire door hardware by effectively foreclosing a large portion of that market. Assa Abloy is already vertically integrated in that it supplies both fire doors (through its subsidiary, Pacific Doors) and hardware (directly). Assa Abloy's current practice, originating following its acquisition of Pacific Doors, is to effectively exclude competitors in the market for the supply of fire door hardware by refusing to allow testing of competitor hardware products on Pacific Doors' fire doors. This prevents end-customers from selecting product from competing hardware suppliers, effectively foreclosing a portion of the market.
3. The exact same incentives will apply if Assa Abloy acquires NZ Fire Doors. Accordingly, the proposed merger is likely to result in a substantial lessening of competition in the market for

supply of fire door hardware because of a material increase in the portion of the market that is effectively foreclosed to competitors.

Confidential information

4. Dormakaba requests confidentiality in respect of the information in this submission that is contained in square brackets and highlighted in yellow. This information is commercially sensitive to Dormakaba and is provided to the Commission in confidence.
5. Confidentiality is sought in respect of this same information for the purposes of section 9(2)(b) for the Official Information Act 1982 on the grounds that:
 - (a) the information is commercially sensitive and valuable information that is confidential to Dormakaba; and
 - (b) disclosure would be likely to unreasonably prejudice Dormakaba's commercial position.
6. Dormakaba requests that it is notified of any request made to the Commission under the Official Information Act for release of this confidential information, and that the Commission seek and consider Dormakaba's views as to whether the information remains confidential and commercially sensitive at the time responses are being considered.

Submission in detail

7. The proposed merger is likely to result in a substantial lessening of competition in the market for the wholesale supply of hardware for fire doors. Assa Abloy is already vertically integrated, but the proposed acquisition of NZ Fire Doors will afford it even greater effective control over the market for the supply of hardware for fire doors. If the proposed merger proceeds, a significant portion of that market will be foreclosed to competitors.
8. As we set out below, Assa Abloy has both the ability and incentive to foreclose the market to competitors. This stems from its vertically integrated nature, its ability to control which hardware products can be tested and approved for compliance with fire safety regulation in respect of its fire doors, and the fact that end-customers select fire doors before purchasing associated hardware for those doors. The only genuine question for the Commission to determine is whether the proposed merger represents a substantial lessening of competition relative to a counterfactual where foreclosure is already occurring in the market to some extent.¹

Ability to foreclose

9. In its clearance application, Assa Abloy characterises the vertical effects of the proposed merger as raising no material competition law concerns. This position is justified in the application with reference to the fact that customers make separate purchasing decisions in relation to fire doors and fire door hardware. Accordingly, Assa Abloy claims that the key

1 We have taken the status quo to be the relevant counterfactual for the purposes of our assessment, as Assa Abloy does in its application. If the Commission wishes to test alternative counterfactual scenarios then we welcome further engagement on that issue at the appropriate time.

decision relating to supply of fire door hardware lies with the customer, and is not materially impacted by who is selected to be the fire door supplier.

10. This analysis significantly misrepresents the influence of Assa Abloy as a vertically integrated supplier of both fire doors and fire door hardware. As a result, it also misrepresents the problematic competitive dynamics in the relevant markets that are likely to be exacerbated by the proposed merger.
11. In reality, there are two additional features of market for the supply of fire door hardware that move market power away from end-customers and towards Assa Abloy as a vertically integrated supplier. The first feature is that all fire door hardware must be tested and approved in respect of the specific make and model of fire door to satisfy fire safety regulations. This is a requirement for compliance with the [NZS 4520](#) standard, which requires that testing is conducted on a complete door system including hardware.
12. However, it is the fire door supplier that decides unilaterally which hardware products it will allow testing and approval for with its products. Each fire door supplier is in effect a 'gatekeeper' of the market for the supply of hardware as it relates to their products. For instance, it is not uncommon for fire door suppliers to maintain a list of approved hardware suppliers for their customers to select from.² In addition to compliance with regulatory standards, failure to procure hardware from the approved supplier list can result in voiding the warranty for the fire door.
13. The second feature of relevance is that it is standard practice in the construction sector for end-customers to select fire doors (for example, via competitive tender) before sourcing the associated hardware. It is just not the case that any procurement decision would be driven by the choice of hardware supplier — the fire door supplier is the primary procurement decision.
14. These features confer on any fire door supplier the ability exclude fire door hardware suppliers from the market by refusing to allow for testing and approval of that hardware on their fire doors. The decision to allow for or refuse testing is completely at the discretion of the fire door supplier, and is not directly influenced by the commercial environment.

Incentive to foreclose

15. In the absence of vertically integrated suppliers of both fire doors and associated hardware, the ability for fire door suppliers to foreclose the market to hardware suppliers is of little practical consequence. However, any vertically integrated supplier naturally faces the incentive to leverage its market strength in the supply of fire doors to foreclose to its competitors the market for the supply of hardware.
16. There is clear market evidence that Assa Abloy has a strong incentive to foreclose the portion of the market it controls from its competitors in the market for the supply of fire door hardware. Previously, Dormakaba was a supplier of hardware to Pacific Doors. However, since the acquisition of Pacific Doors by Assa Abloy there has been a blanket refusal to our requests to have our ED100 & ED250 swing door operators or new door furniture approved for installation on Pacific Doors' fire door range. In the vast majority of cases the fire door is selected and installed before the hardware. Without regulatory approval for our hardware

2 See, for example, <https://www.pacificdoors.co.nz/fire/fire-door-standards>.

with Pacific Doors' fire doors, our hardware cannot be installed regardless of whether we are the end-customer's preferred supplier. We understand that other hardware suppliers have been similarly affected.

17. In other words, even if we engage in a competitive tender process for supply of hardware to the end-consumer and are successful in that tender, we are effectively excluded from the market (as are other competitors to Assa Abloy). This is not a result that can be associated with a workably competitive market.
18. A recent example of this practice was the construction of a new building at []. Historically this has been one of our major customers, with over []% of their doors using Dormakaba hardware. However, that customer was forced to move away from our products when they selected Pacific Doors as their provider for new fire doors. Overnight, we have effectively been excluded from continuing to supply one of our major customers.
19. Precisely the same incentives will apply following the proposed acquisition of NZ Fire Doors. Refusal to allow for the testing and approval of hardware supplied by Dormakaba and other hardware suppliers will simply exclude competition from a greater portion of the market. The ultimate question is whether this increase in market power is sufficient to result in a substantial lessening of competition relative to the current market environment where this anti-competitive conduct is already occurring.

Substantial lessening of competition

20. Given that Assa Abloy will have both the ability and incentive to foreclose the market for the wholesale supply of fire door hardware to its competitors, the Commission needs to carefully consider whether the proposed merger will likely result in a substantial lessening of competition. These features of the market invite a reassessment of both the market share estimates provided in the application for clearance, and the pro-competition arguments used in the application to contextualise that raw market share data.

Market share estimates

21. As Assa Abloy notes in its clearance application, there is no independent source of market share data for the relevant markets. Our best estimate of market shares in the market for commercial and residential fire 30-120 minute doors and non-fire rated doors is as follows:
 - (a) Pacific Doors holds approximately []% of the market;
 - (b) Best Doors Kiwi holds approximately []% of the market;
 - (c) NZ Fire Doors holds approximately []% of the market; and
 - (d) Hallmark Group holds approximately []% of the market.
22. We recognise that these estimates must be different from those set out in Assa Abloy's application for clearance, as the application suggests that the proposed merger does not trouble the Commission's market share indicators. The differences may be explained in part by data quality issues, but they are also likely the result of our particular focus on the procurement side of the market, that is, the market most relevant to the supply of fire door hardware to large-scale end-customers. This focus implies a narrower (and therefore more

concentrated) market, but we consider this appropriate in the context of the foreclosure issues we have identified.

23. If the proposed merger proceeds, Assa Abloy will control, by our estimate, []% of the market for the supply of fire doors where there might otherwise be competition for the supply of associated hardware. This has the effect of excluding Dormakaba and other suppliers of fire door hardware from []% of that market. Put in terms of the effect on end-customers, there will be no effective competition for the supply of fire door hardware in respect of []% of the market. Even if the Commission does not accept that the market share of the merged entity will be quite this high, the proposed merger will certainly have the effect of raising prices and reducing consumer welfare in the fire door hardware market as a further significant portion of the market is foreclosed to competition.
24. On any meaningful competition law assessment this represents a substantial lessening of competition in the market for the supply of fire door hardware. Not only is Assa Abloy's effective control of the fire door hardware market increased dramatically in raw terms, it will for the first time exercise that effective control over a majority of the market (or at the very least, close to a majority). The effect on Assa Abloy's competitors, who can no longer compete on their merits, will be devastating. However, the key point for the purposes of the Commission's assessment is that competition in the market will be greatly reduced.

Other contentions made by the applicant

25. We note that Assa Abloy has advanced a number of arguments to suggest that the impact on the market is not as dramatic as the raw market share and market concentration data indicate. Many of these arguments stand to be addressed given the very real concerns we have raised in this submission:
 - (a) Assa Abloy claims that there is vigorous competition in the market at present, and that this will continue post-acquisition. Similarly, Assa Abloy claims that there are low barriers to entry and as a result there is a genuine threat of potential competition from new entry. Neither claim directly addresses Assa Abloy's ability and incentive to foreclose the market for the supply fire door hardware.
 - (b) Assa Abloy suggest that Pacific Doors and NZ Fire Doors are not close competitors, with each serving different segments of the market. On this basis it argues that the raw market data understates the competitive tension in the market. Two points are relevant here:
 - (i) While this may be a relevant consideration in respect of the supply of fire doors to end-consumers, strictly it has no relevance to the issue of foreclosure in the fire door hardware market. Locking competitors out on the basis of scope rather than just scale is still detrimental to competitive market outcomes, and the merged entity will clearly have influence over new market segments where currently Assa Abloy has little market presence.
 - (ii) We consider that the raw market data may actually under-estimate the impact on competition. We understand that at least one other fire door supplier sells Assa Abloy products, which give rise to the same issue of foreclosure given our inability of have our hardware tested and approved for use of those doors. This extends Assa Abloy's indirect control of the fire door hardware market to as

much as []% of the market. This is, frankly, untenable from a competition law perspective.

- (c) Assa Abloy suggests there is a degree of countervailing power from end-consumers. However, this argument seems to be premised on sponsoring a new entrant or bypassing New Zealand suppliers to source directly. Here we have three responses:
- (i) Countervailing power is conventionally understood in terms of market share and concentration indicators mirroring those where market power is under consideration. Neither end-customers nor fire door hardware suppliers have a degree of influence over the market that might counteract Assa Abloy's dominance.
 - (ii) The market reality is that end-customers select fire doors before selecting associated hardware. Once the initial procurement decision is made customers are to an extent locked in, and would only revisit that decision for overwhelming reasons.
 - (iii) Assa Abloy's argument does not address the link between the market for supply of fire doors and the market for the supply of fire door hardware where the risk of foreclosure is present. Hardware suppliers who are locked out of a portion of the market have no countervailing power against the threat of foreclosure.

26. Indeed, the applicant has not offered any positive argument to indicate that the merger will not result in a lessening of competition in respect of vertical effects. As a result, without more the Commission cannot be satisfied that there is no likely substantial lessening of competition post-merger.

Concluding remarks

27. We anticipate that Assa Abloy will resist this line of argument, and we understand that the Commission is likely to want to carefully test the views set out in this submission and, where necessary, make further inquiries of us. We welcome the opportunity to engage with the Commission further as it undertakes consideration of the potential issues with the proposed acquisition. Our contact details are:

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