

2 July 2021

Assa Abloy New Zealand Limited / NZ Fire Doors Limited
Cross-Submission by Assa Abloy New Zealand on submissions received on the Statement of Issues

1. INTRODUCTION

- 1.1 This cross-submission is made by Assa Abloy New Zealand Limited (**Assa Abloy NZ**) in response to submissions to the Commerce Commission (**Commission**) by Dormakaba Group (**Dormakaba**) published on 21 June 2021 (**Second Dormakaba Submission**) and Allegion (New Zealand) Limited (**Allegion**) published 24 June 2021 (**Second Allegion Submission**) in relation to the Commission's Statement of Issues published on 8 June 2021 (**SOI**).
- 1.2 This cross-submission is divided into two parts:
- (a) Part A – Assa Abloy NZ's response to the Second Dormakaba Submission; and
 - (b) Part B – Assa Abloy NZ's response to the Second Allegion Submission.
- 1.3 The Commission should be satisfied based on the evidence provided to date and the further information in this cross-submission that Assa Abloy NZ's proposed acquisition of NZ Fire Doors Limited (**NZFD**) (**Proposed Acquisition**) will not have, or would not be likely to have, the effect of substantially lessening competition in any market. However, should the Commission have any reservations about the likely effect of the Proposed Acquisition on competition in any market, Assa Abloy NZ requests a meeting with the Commission to discuss those reservations.

2. PART A – RESPONSE TO SECOND DORMAKABA SUBMISSION

- 2.1 As was the case with the submission to the Commission by Dormakaba published on 30 April 2021 (**First Dormakaba Submission**), the Second Dormakaba Submission contains allegations that are not true or are misleading.
- 2.2 Assa Abloy responds to each allegation below. For convenience, we have used the same headings used in the Second Dormakaba Submission.

Relevant product market

- 2.3 Dormakaba's position is that a focus on fire door hardware assists with the competition analysis because it is this product dimension where the competition risks are most acute. Dormakaba also comments that there is a spectrum of substitutability in the market.
- 2.4 Assa Abloy NZ agrees that, from the demand-side, there is likely to be a spectrum of substitutability between different types of hardware¹ but disagrees that there is a separate market for fire door hardware or that defining such a market (which would be artificial and would not reflect commercial reality) assists with the analysis of the competitive effects of the Proposed Acquisition. Like many markets, the commercial door hardware market comprises several product segments. Within those product segments, there may be fire rated and non-rated products. However, customers typically acquire hardware as a package, instead of individually, and as explained in Assa Abloy NZ's cross-submission published on 31 May 2021 (**Cross-Submission**), all hardware manufacturers, including Assa Abloy NZ, Allegion and Dormakaba, supply the full range of fire door and non-fire door hardware. Assa Abloy NZ refers to and relies on paragraphs [4.2] and [4.3] of the Cross-Submission.

Limitations on customer choice

- 2.5 At paragraph 9(c) of the Second Dormakaba Submission, Dormakaba states that Assa Abloy NZ now acknowledges that "*non-complying products are routinely accepted as part of the tendering process, giving integrated offerings an advantage.*" Dormakaba has misstated and/or misunderstood Assa

¹ For example, from a customer's perspective there will be a high degree of substitution between locks that offer the same functionality, however a lock will not be considered substitutable for a door handle.

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Abloy NZ's Cross-Submission. While it is not clear precisely what Dormakaba means by the words "*non-complying*"², it is not the case that fire doors that are not approved with the specified hardware are "*routinely accepted*". This would suggest that it is common for specified hardware not to be approved for use with a fire door manufacturer's fire doors. It is not.

- 2.6 The reality is that it is very uncommon for hardware to be specified that is not approved for use with a fire door manufacturer's doors. Neither Assa Abloy NZ nor Pacific Doors can recall a single project in the last 12 months in which a significant proportion of the specified hardware was not approved on Pacific Doors' doors, or in which a significant proportion of the doors quoted were not approved with the specified hardware. While there may be small inconsistencies from time to time between the door type tendered and the specified hardware, this typically relates to a very small proportion of the doors on a project and a small proportion of the hardware specified for those doors. Most of the common hardware used on fire doors is approved for use. It is generally only hardware which is not commonly used on fire doors³ or new hardware that may not (yet) be approved with a particular manufacturer's doors. On the rare occasion that such hardware is specified in a project, as explained at paragraph [2.6(d)] of the Cross Submission, the non-approved hardware is typically noted in the tender response together with suggested alternative/s which is/are approved for use on the door manufacturer's fire doors. If the specified hardware is of particular importance for the project specifications (i.e. due to a particular visual or other feature that the customer requires), Pacific Doors will commit at the tender stage to having the specified item of hardware tested for use with its doors.⁴ Otherwise, inconsistencies are resolved between the selected door supplier and selected hardware distributor as discussed further below.
- 2.7 Paragraph 9(d) of the Second Dormakaba Submission, states that Assa Abloy NZ acknowledges that "*door supply contracts are typically awarded ahead of hardware supply contracts, locking out suppliers of non-approved hardware.*" While Assa Abloy NZ agrees that door supply contracts are typically (but not always) awarded ahead of hardware supply contracts for large construction projects, it disagrees that this means that suppliers of non-approved hardware are "*locked out*" of projects for the following reasons:
- (a) First, hardware contracts are typically awarded to hardware distributors who source hardware from multiple manufacturers. Assa Abloy NZ does not participate in tenders for the supply of hardware for construction projects: it supplies its hardware to wholesale distributors who participate in those tenders. If, on the rare occasions that some of a hardware manufacturer's hardware has been specified on a project but is not approved for use with the selected fire doors, this would not "*lock out*" that manufacturer's products from the entire project. The distributor would typically use the manufacturer's products to supply the non-fire rated requirements of the project (for which approval is not required) and the remaining specified hardware that is approved. Assa Abloy NZ cannot recall a single project in which Assa Abloy hardware was the exclusive hardware supplied on a project. It is extremely rare for all of the hardware supplied on a project to be sourced from a single manufacturer;
 - (b) Second, in any event, as explained above, it is very uncommon that specified hardware is not approved for use on the successful door manufacturer's doors. This would typically only affect a small proportion of the doors required for a project and a small proportion of the specified hardware for those doors.

² The words "*non-compliant*" in this context would usually mean a non-compliant tender response. As explained in the Cross Submission, door schedules generally have the words "*or equal or approved*". Therefore, a tender response which includes alternative brands of fire door would not be "*non-compliant*".

³ For example, Dormakaba's Cobalt Mini Electronic Side Load Lock is not commonly used on a single latching wooden fire door. It is typically used on dual action aluminium commercial doors that are not fire rated. [

] Another example is a hinge bolt which is designed for security doors. A hinge bolt for a security door is designed to withstand attack and keep the door secured in the event the hinges are removed or damaged. This type of bolt is not typically required on a fire door because fire doors are not usually high security doors. There is therefore a limited range of hinge bolts that are approved on fire doors.

⁴ Pacific Doors cannot guarantee that any item of hardware will pass the required testing. Hardware must meet the required independent testing standards before it can be approved for use with a fire door. Testing is undertaken by independent third parties and neither Assa Abloy NZ nor Pacific Doors has any control over their testing processes or outcomes.

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2.8 Dormakaba submits at paragraph 10 of the Second Dormakaba Submission that there are multiple opportunities for a supplier of commercial doors and hardware to influence the end-customer's choices. Assa Abloy NZ responds as follows:

- (a) Contrary to Dormakaba's submission at paragraph [10(a)], door manufacturers do not actively "*cultivate*" relationships with architects. Pacific Doors does not (and as far as Assa Abloy NZ is aware, other door manufacturers do not) actively target architects, nor does it have a sales team dedicated to ensuring that its products are included in project specifications. Instead, Pacific Doors makes all the information needed by an architect to prepare a door schedule available on its website and focuses its sales efforts on winning tenders. This can be contrasted with the hardware manufacturers who have sales staff dedicated to actively targeting architects. The hardware companies (Assa Abloy NZ, Dormakaba, Allegion and the wholesale distributors) compete vigorously to provide specification services to architects and hardware schedules for projects, in a bid to make their products the presumptive choice for construction projects.
- (b) While for large construction projects door manufacturers commonly tender before the hardware supply is tendered, the selection of door manufacturer does not drive a customer's choice of hardware as alleged at paragraph [10(b)] of the Second Dormakaba Submission. As explained earlier, most of the common hardware used on fire doors is approved on all fire door manufacturer's doors. On the rare occasions that there are inconsistencies between the door type supplied on a project and the specified hardware, this is typically limited to a small proportion of doors supplied and a small number of items of hardware specified for those doors. These inconsistencies are usually resolved between the door manufacturer and the hardware distributor, either by substituting the type of door to one that is approved with the required hardware,⁵ substituting the non-approved hardware for approved hardware⁶ or by obtaining the required testing or assessments. The decision to change a door or hardware in the event of an inconsistency comes down to the following:
- (i) what was known at time of tender and whether there was a hardware specification made available to the door manufacturer;
 - (ii) whether the proposed hardware has changed since the time of tender – project specifications can and do change during the course of a construction project; and
 - (iii) what the architect and end customer see as more important.

As noted earlier, inconsistencies may also be resolved at the door tender stage, including by the door manufacturer making a commitment to have the door tested with the specified hardware.

- (c) Assa Abloy NZ does not understand the allegation at paragraph [10(b)(ii)] of the Second Dormakaba Submission. Assa Abloy NZ believes it is unlikely that hardware suppliers would not know who the appointed door supplier is at the time of the hardware tender if the door supplier has been selected before the hardware supply is tendered, but if that were the case, it is unclear how this could provide Assa Abloy NZ with a competitive advantage. As explained above, hardware contracts are typically awarded to hardware distributors, not hardware manufacturers.
- (d) Door manufacturers do not "*regularly tender with non-compliant options*" as alleged at paragraph [10(c)] of the Second Dormakaba Submission. As explained earlier, door schedules generally have the words "*or equal or approved*". Therefore, a tender response which includes

⁵ For example, there have been occasions where an F05 30 minute fire rated doorset has been priced by Pacific Doors for a project but it has had to change it to another 30 minute fire door (e.g. VP30A or VP30) because the required hardware was not approved on that doorset. The F05 is an older door type that is very rarely used due to its limited range of scope (height, width, extras) and therefore a more limited number of hardware items have been tested with it.

⁶ For example, whenever Allegion prepares a hardware schedule, it always includes its Legge 15211 roller door bolt for all fire rated and non fire rated doors for the project even though the roller bolt, to the best of Assa Abloy NZ's knowledge, is not approved for use with any fire doors above a 30 minute rating. This product is always substituted with an approved product from another manufacturer, even if the majority of the hardware on the project is Allegion hardware.

alternative brands or types of fire door to those specified in a door schedule would not be “*non-compliant*”. If Dormakaba is suggesting that Pacific Doors “*regularly*” includes fire door options in its tenders which do not have the specified hardware approved for use with those doors, that is not correct. Further, it is not the case that Pacific Doors can and does deliberately select the fire doors it will include in a tender response to influence a consumer’s hardware selection. As explained earlier, it is very uncommon for specified hardware not to be approved for use with door manufacturers’ fire doors and, to the extent non-approved hardware is specified for a project, it typically affects a very small number of doors and a small number of hardware items specified for those doors. Pacific Doors is incentivised to maximise sales of its doors. It would not jeopardise the possibility of losing a contract by tendering with alternative, non-specified doors, simply to try to influence a customer’s hardware selection.

- 2.9 At paragraph [11] of the Second Dormakaba Submission, Dormakaba alleges that Assa Abloy NZ and its related companies have an advantage over “*standalone hardware suppliers*” and suggests that it is one such “*standalone hardware supplier*”. Dormakaba is not a standalone hardware supplier. It acquired E Plus Building Products Pty Ltd (**E Plus**), the manufacturer and supplier of e-Core fire doors, in late 2020.⁷

Fire safety testing

- 2.10 Dormakaba alleges that Assa Abloy NZ has control (through its interrelated companies) over the fire safety testing of competitor hardware on its fire door products. In particular, at paragraph [13] of the Second Dormakaba Submission, Dormakaba alleges that “*Assa Abloy’s permission is required to undertake the necessary fire safety testing for Dormakaba’s hardware to be used with Pacific Doors’ products.*” This is false.
- 2.11 The testing and assessment of hardware is carried out by independent laboratories. Neither Assa Abloy NZ nor its related parties have any control over the testing processes of those laboratories. Dormakaba would know this. While Assa Abloy Australia’s or Pacific Doors’ permission is required to utilise their previous testing results for the purposes of obtaining an assessment, a hardware manufacturer can acquire a Pacific Doors door, fit their own hardware and have it tested through any of the independent laboratories without Pacific Doors’ or Assa Abloy Australia’s knowledge or permission. In any event, as explained in the Cross Submission, Pacific Doors has never refused to arrange for a test or assessment to be undertaken of its non-Pyropanel fire doors and, to Assa Abloy NZ’s knowledge, Assa Abloy Australia has also never refused a request by another hardware company to test its hardware (or have it assessed) with a Pyropanel door.
- 2.12 At paragraph [15] of the Second Dormakaba Submission, Dormakaba alleges that “[a] *combined offering of doors and hardware allows Assa Abloy to capture more of the market where it can exclude standalone hardware suppliers.*” Dormakaba has provided a screenshot of Pacific Doors’ website which it alleges makes the integrated pairing between Assa Abloy and Pacific Doors “*obvious*”.
- 2.13 Many of the hardware products pictured in the fire product gallery on the Pacific Doors website shown in the screen shot in the Second Dormakaba Submission are not Assa Abloy NZ products. Annexure A sets out several of the images displayed in the fire product gallery on the Pacific Doors website and the hardware products shown in those images. As Annexure A shows, the hardware products displayed include Allegion and Dormakaba hardware. If it were the case that Pacific Doors was incentivised to promote an integrated door and hardware offering using Assa Abloy NZ hardware products, Pacific Doors would not picture other manufacturers’ hardware on its website and it would not provide information on other manufacturers’ approved products. However, as shown by the below screenshot of Pacific Doors’ website, Pacific Doors has listed all approved hardware on its website, not only Assa Abloy approved hardware.

⁷ <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/dormakaba%E2%80%99s-proposed-acquisition-of-e-plus>

FIRE

- FRR APPROVED HARDWARE
- FIRE / ACOUSTIC DOORS
- FIRE DOORS
- FIRE PANELS & HATCHES
- FIRE PRODUCT GALLERY
- FIRE WINDOWS
- FORSTER STEEL GLAZED
- INSTALLATION INSTRUCTIONS
- FIRE DOOR STANDARDS

FRR Approved Hardware

This tool is designed to filter the available results as you search. Once you have applied a filter, you may need to reset the filter to be able to see all other available options.

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Hardware fitting instructions

All Ratings | All Doors | Closers | All Brands | Reset

CLOSERS

CONCEALED CLOSERS

Brand	Series	Product Door Code
Arrow	747 CMBC (obsolete)	Smoke Control, VP30A, VP60A
Arrow	7x7 Series (obsolete) (surface mounted closers with plastic covers may only be included where the leaf is fitted with intumescent seals set into grooved edge strips of Greenboard at head and sill. Without these seals the fire resistance is limited to 90)	SPA29-P, SPA37-FD, Smoke Control, VP30A, VP30, VP30HR, VP60A, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR
Briton	531	SPA29-P, SPA37-FD, Smoke Control, VP30, VP30HR, VP60, VP60P, VP60SE, VP60HR
Corbin	500	SPA29-P, SPA37-FD, Smoke Control, VP30, VP30HR, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR
Dorma	ITS-86 (obsolete) Steel Frame Only	SPA29-P, SPA37-FD, Smoke Control, VP30, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR, VP180
Dorma	ITS-86, Size 2-4 model without hold open option (steel frame only)	SPA29-P, SPA37-FD, Smoke Control, VP30, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR, VP180
Geze	Boxer gr. 2-4 closer, steel frame only	Smoke Control, VP30A, VP60A
LCN	3030 Series	SPA29-P, SPA37-FD, Smoke Control, VP30, VP30HR, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR, VP180, VP240
LCN	330	SPA29-P, SPA37-FD, Smoke Control, VP30, VP30HR, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR, VP180, VP240
Lockwood	409/091	SPA29-P, SPA37-FD, Smoke Control, VP30, VP30HR, VP60, VP60P, VP60SE, VP60HR, SPS1-FR, VP90, SPS1-E, VP120, Armashield-FR, VP180, VP240
Lockwood	8014, steel frame only (Special rail required) (Assa Abloy 8014)	SPA29-P, SPA37-FD, Smoke Control, VP30A, VP30, VP60A, VP60, VP60P, VP60SE, VP60HR, VP90, VP120, VP180, VP240
Lockwood	9024 (Obsolete)	SPA29-P, SPA37-FD, Smoke Control, VP30A, VP30, VP30HR, VP60A, VP60, VP60P, VP60SE,

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Fire Door Standards

Trim size calculator

- 2.14 The fact that Pacific Doors promotes the interoperability of its fire doors with hardware supplied by third party manufacturers by listing all of the approved hardware with its doors on its website demonstrates that the dominant incentive is to prioritise interoperability, not to seek to exclude hardware competitors as alleged by Dormakaba at paragraph [17] of its submission. It is in Pacific Doors' interests for its doors to be tested and approved with as many hardware products as possible so that it can maximise its participation in tenders, and sales.
- 2.15 Dormakaba states at paragraph [17] of the Second Dormakaba Submission that its "*contention is a straight-forward one based on the evidence: that the incentive towards prioritising interoperability is weak.*" However, all the "*evidence*" that Dormakaba has provided (such as the Pacific Doors website discussed above) points the other way. It is also significant that, since Dormakaba acquired E-Plus in late 2020, the testing of Assa Abloy hardware with e-Core doors has continued unchanged, notwithstanding that it is now owned by a competing hardware manufacturer. If it were true (as Dormakaba contends at paragraph [15] of the First Dormakaba Submission and repeated in the Second Dormakaba Submission) that a vertically integrated manufacturer of hardware and fire doors has an incentive to exclude fire door hardware manufacturers from the market by refusing to test competitor hardware with that manufacturer's doors, one would expect to observe such conduct by E-Plus. The fact that E-Plus has not acted in this way (and that Pyropanel has not acted in this way since Assa Abloy NZ's acquisition of Pacific Doors) is because their incentives are the same – to ensure that a wide range of hardware is approved for use with their doors.
- 2.16 The evidence shows that integrated offerings to end customers are rare and do not provide an ability or incentive to foreclose competition in the hardware market. As explained at paragraphs 2.21 to 2.26 of its Cross Submission, Pacific Doors has offered a package price for the supply of doors, hardware and installation services for large construction projects on only [] occasions, [] of which preceded the acquisition of Pacific Doors by Assa Abloy NZ. Pacific Doors (and its related entities) did not supply the hardware or installation services components of any of those packages. Pacific Doors, like the other door manufacturers (including NZFD), does not have the necessary skills or expertise to offer

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hardware installation or after sales services. Instead, Pacific Doors sub-contracted the majority of the hardware supply and hardware installation services to [] who in turn acquired the required hardware from the relevant manufacturers. Pacific Doors also outsourced the door installation services to another third party. As a result, the package was not a true 'bundle' from a competition law perspective: in each case there was an independent third party who supplied several components of the package on arm's length terms.

2.17 On the [] post-acquisition by Assa Abloy NZ where Pacific Doors successfully tendered to supply doors, hardware and installation services for a large construction project, Assa Abloy hardware comprised less than [] of the value of the hardware and installation costs for []. Details of the total value of the hardware and installation components of [] are set out below, together with the value of the Assa Abloy NZ hardware supplied on [].

2.18 Details of the total value of the hardware and installation components for the [] large construction projects that Pacific Doors successfully tendered in which it offered a package price prior to its acquisition by Assa Abloy NZ are set out in the table below, together with the value of the Assa Abloy NZ hardware supplied on each project.

2.19 As explained previously, Pacific Doors (either itself or through its related entities) does not have the ability to offer a true 'bundle' in the competition law sense and the Proposed Acquisition will not change this. Neither Assa Abloy NZ nor Pacific Doors have the necessary skills or expertise to offer hardware installation or after sales services, which is an integral component for the supply of hardware. These services and hardware are supplied to construction companies by wholesale hardware distributors. As NZFD also does not have the necessary skills and expertise to offer hardware installation services, the Proposed Acquisition will not give the merged entity an enhanced ability to supply "bundles" of doors, hardware and installation services. Instead, the merged entity will have the same ability as any other door manufacturer to offer a package price for these components by outsourcing the hardware and installation services to an independent wholesale distributor.

Alleged anti-competitive impact on competitors

2.20 At paragraphs [18] and [19] of the Second Dormakaba Submission, Dormakaba refers to a confidential example that it alleges demonstrates Assa Abloy NZ's "*effective control over a portion of the market.*" This alleged example has not been disclosed to Assa Abloy NZ and therefore Assa Abloy NZ has not been provided with an appropriate opportunity to respond to Dormakaba's allegations. On this basis (and given that the other alleged examples provided in the Second Dormakaba Submission have proven baseless or do not support Dormakaba's conclusions), Assa Abloy NZ expects the alleged example at paragraph [18] to be disregarded by the Commission.

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- 2.21 At paragraph [20] of the Second Dormakaba Submission, Dormakaba comments on the impact that the Proposed Acquisition will have on competition in the fire door market. Assa Abloy NZ responds as follows:
- (a) Assa Abloy NZ disagrees that the merged entity will be the largest player in the commercial door market “*by some margin*”. It repeats paragraphs [3.3] to [3.7] of the Cross Submission and paragraph [4.2] of Assa Abloy NZ’s submission in response to the Commission’s Statement of Issues published on 24 June 2021 (**SOI Submission**);
 - (b) Assa Abloy will not have an “*unsurpassable access to an integrated offering*” as alleged by Dormakaba. As explained above and in the Cross Submission, all commercial door manufacturers have the ability to offer package pricing for doors, hardware and installation services by partnering with a wholesale hardware distributor. Pacific Doors is not uniquely placed to offer package pricing by virtue of its Assa Abloy NZ ownership because hardware is supplied and installed by hardware distributors that are independent of Pacific Doors and Assa Abloy NZ. The Proposed Acquisition will not change this – NZFD does not have the necessary skills and expertise to supply hardware installation and after sales services;
 - (c) Assa Abloy NZ disagrees that the Proposed Acquisition will result in a substantial increase in the portion of either the fire door or commercial hardware markets under Assa Abloy NZ’s effective control for the reasons already explained in the Cross Submission;
 - (d) Assa Abloy NZ agrees with Dormakaba that Pacific Doors and NZFD are not close competitors. However, it disagrees that this exacerbates the potential for competitive harm. As explained earlier, it is very uncommon that specified hardware is not approved for use with a door manufacturer’s fire doors and therefore the potential for a hardware manufacturer to be ‘excluded’ is only relevant to a very small proportion of doors and hardware items specified in a small proportion of projects. As explained in the Cross Submission, Assa Abloy Australia and Pacific Doors are both incentivised to ensure the widest possible range of hardware is approved for use on their doors because typically, and particularly for high value projects, the architect or end customer specifies the choice of hardware. This will not change post-acquisition.
 - (e) The evidence shows that construction companies do not prefer an integrated solution for large construction projects. If customers preferred integrated solutions, package offers would be commonplace for those projects. They are not. In the last two and a half years, Pacific Doors participated in approximately [] tenders. Of those tenders, [] were for contracts that had a value of more than \$50,000. Pacific Doors successfully tendered for only [] of those contracts with a package offer.

3. PART B – RESPONSE TO SECOND ALLEGION SUBMISSION

- 3.1 Similar to the submission to the Commission by Allegion published on 31 May 2021 (**First Allegion Submission**), the Second Allegion Submission contains allegations that are not true or are misleading.
- 3.2 Assa Abloy responds to each allegation below.

Procurement decisions relating to fire doors and commercial hardware

- 3.3 At paragraph [9] of the Second Allegion Submission, Allegion states that it is “[s]tandard industry practice for the architect to first specify doors and then hardware.” To Assa Abloy NZ’s knowledge, architects prepare specifications for doors and hardware at the same time, i.e. before tendering for the door manufacturer. For large construction projects, both the door and hardware specifications are almost invariably included in the tender documents when the project goes out to tender for the supply of doors. The most common process for the selection and procurement of fire doors and hardware for large construction projects is set out at paragraph [2.6] of the Cross-Submission.

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- 3.4 Door manufacturers do not have any involvement in or direct influence⁸ over the selection of doors at the specification stage. The decision on the type of fire-rated door used in a project (i.e. the particular fire rating) is dictated by the Building Code, the fire rating of the walls in which the door is to be placed, the location of the door in the building and the expected use of the door (for example, an exterior door has different requirements to an internal door, or a door which will have high use will require different features to a door less frequently used etc.). Door manufacturers do not prepare door schedules for projects. While in about half of large construction projects, the brand of door is specified in the door schedule, this does not give the door manufacturer a greater chance of winning a tender.⁹ It is for this reason that Pacific Doors does not (and as far as Assa Abloy NZ is aware, other door manufacturers do not) actively target architects, nor does it have a sales team dedicated to ensuring that its products are included in the project specifications. Instead, Pacific Doors makes all the information needed by an architect to prepare a door schedule available on its website and focuses its sales efforts on winning tenders.
- 3.5 This can be contrasted with the specification of hardware. As explained in the Cross-Submission, a hardware schedule for a large construction project is typically obtained by the architect from a wholesale hardware distributor or directly from the hardware manufacturer. Each of Assa Abloy, Dormakaba, Allegion and the wholesale distributors actively target architects and compete to provide specification services and hardware schedules for projects. This is because there is a greater chance that a manufacturer's brand of hardware will be the brand that is ultimately supplied on the project if it is included in the hardware schedule.
- 3.6 At paragraph [10] of the Second Allegion Submission, Allegion states that "*doors are always the primary selection for an architect and the construction company because they are structural building components and typically have long manufacturing and supply lead times.*" This is not correct. Doors are not "*structural building components.*" Doors and door frames do not bear any weight of the building or wall that they are in. As a result, they are excluded from the structural rating of a building or wall. This is apparent from the *NZS 4520:2010 Fire-resistant doorsets* which notes that structural adequacy or stability does not apply to doorsets. Doors cannot be manufactured until the opening has been completed by the construction company, and the required dimensions are finalised. Because of this, the lead times are quite short when considered in the context of a large construction project. Most doors have a 4-6 week lead time from the completion of the openings.
- 3.7 At paragraph [11] of the Second Allegion Submission, Allegion states that "*a construction company will not delay constructing a building in the event that an architect's first-choice of hardware is not tested with a fire door.*" In general, if specified hardware is an important design element and is not approved for use with a door manufacturer's door, it will be addressed at the tender stage of a project. Otherwise, it is correct that, on the rare occasions that there are inconsistencies between the selected doors and specified hardware, this could result in a non-approved hardware item being substituted for an approved hardware item, either of the same brand as the specified hardware or of a different brand or the door manufacturer's door being substituted for another type of door. In any event, as explained earlier in this submission, the majority of hardware used on fire doors is approved on most manufacturer's fire doors and any inconsistencies are typically limited to a very small number of doors required for a project and a small number of items of hardware specified for those doors.
- 3.8 At paragraph [12] of the Second Allegion Submission, Allegion asserts that "*architect specification and procurement are two distinct and unrelated activities of the construction process.*" This is not correct. Architect specification and procurement are plainly related: construction companies tender for the supply of products and services based on the architect's specifications. If it were the case that architect specifications had no role in the ultimate procurement decisions of construction companies, hardware manufacturers including each of Assa Abloy NZ, Dormakaba and Allegion, would not have resources dedicated to ensuring that their products are specified by architects in construction projects. As

⁸ Pacific Doors may have indirect influence over the selection of its doors through the promotion of its products on its website.

⁹ This is because a door leaf does not usually have distinguishing visual features. Provided it can meet the particular requirements of a project (i.e. has the requisite fire rating, and can support the other features required such as vision panels etc.), one brand of fire door is equivalent to another brand of fire door. This can be contrasted with hardware, where different brands more commonly have different designs and features.

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explained earlier, each of these manufacturers offer specification services to architects and dedicate resources to promoting their brands to this channel.

Fire door manufacturers are incentivised to ensure the widest range of hardware is approved for use on their doors

- 3.9 At paragraphs [15] to [19] of the Second Allegion Submission, Allegion alleges that fire door manufacturers are not incentivised to ensure the widest range of hardware is approved for use on its doors to avoid exclusion from participating in tenders. Allegion states that construction companies do not review hardware compatibility until they tender for hardware, that fire doors are never excluded from participating in a tender based on how much hardware is approved for use on the doors concerned and that hardware manufacturers always pay for fire testing.
- 3.10 Assa Abloy NZ responds as follows:
- (a) The assertion that construction companies do not review hardware compatibility until after a door manufacturer is selected is incorrect. Door manufacturers are required to review any hardware schedules provided with the tender documentation (along with any other relevant information relating to the supply of doors) and are typically expected to advise on any issues relating to their offer, which would include incompatibilities between the specified hardware and the offered doors. This information is then reviewed by construction companies, and presumably is taken into consideration, when selecting the door manufacturer. There are usually multiple tender rounds in large construction projects, so there are many opportunities for issues such as incompatibilities between doors and hardware to be raised and considered during the tender process.
 - (b) It is correct that a door manufacturer will not be excluded from responding to a tender if specified items of hardware are not approved for use on their doors. Anyone can submit a tender response to supply products: the real question is whether a tender response that has substantial inconsistencies with the project specifications is likely to be successful. Significant compatibility issues would plainly impact on the likelihood of a door manufacturer winning a tender. In any event, as explained earlier, significant compatibility issues between the hardware schedule and a fire door manufacturer's doors are very uncommon. To the extent that inconsistencies may occur from time to time, they are typically limited to a very small number of doors and items of hardware on those doors. On the rare occasions there has been an inconsistency with an important item of hardware, Pacific Doors has committed, during the tender process, to have the non-approved specified hardware item tested on its doors prior to supply.
 - (c) Contrary to Allegion's contentions, door manufacturers do pay to have hardware tested or assessed with their doors. Where the testing or assessment takes place at the request of Pacific Doors, it typically shares the cost equally with the hardware manufacturer.

Construction companies are likely to sponsor new entry into the fire door market

- 3.11 Allegion alleges that it is unlikely that a construction company would ever sponsor entry of a new fire door manufacturer. As explained at paragraph 6.2 of the SOI Submission, some customers could (and are likely to) sponsor new entry into the fire door market by other commercial door manufacturers using a fire-rated core, such as e-Core or Firecore, which have already been tested to the required standards. e-Core and Firecore cores are already supplied into the New Zealand market and therefore carry none of the issues outlined at paragraphs 20 to 22 of the Second Allegion Submission.

Customer demand for 'bundles' is insignificant

- 3.12 Assa Abloy NZ repeats paragraphs [7.4] to [7.7] of the SOI Submission. While there may be a degree of convenience for a customer in combining doors, hardware and installation services in a single contract for large construction projects, package prices are generally higher than if the doors and hardware are sourced separately. This is because the supply of hardware and installation services is outsourced to independent wholesale distributors (as explained above), and therefore a margin is added by the door manufacturer to account for the contract risk of subcontracting to a third party.

PUBLIC VERSION

- 3.13 At paragraph [23] of the Second Allegion Submission, Allegion alleges that “[b]undling doors and hardware has become more common in other countries, in particular the USA and recently in Australia driven largely by Assa Abloy.” This allegation is not correct. “Bundling” within the true competition law meaning of the word does not occur in Australia. In Australia, hardware manufacturers supply only to distributors or retailers and do not supply directly to door manufacturers or construction companies. As far as Assa Abloy NZ is aware, no door manufacturers in Australia offer package prices for doors, hardware and installation services. In the USA, commercial doors are supplied to construction companies by distributors, and not by manufacturers. Distributors may offer bundles of doors, hardware and installation services. This is a characteristic of the USA market, not a “*trend*” that has been driven by the Assa Abloy group. Assa Abloy is not a distributor and does not supply door and hardware bundles to construction companies in the USA. Allegion would be well aware of this.
- 3.14 At paragraph [24] of the Second Allegion Submission, Allegion speculates that there will be a high uptake of bundles for large construction projects over time if the Proposed Acquisition proceeds. However, as explained earlier, the Proposed Acquisition will not provide a greater opportunity for the merged entity to offer package prices. The ability of the merged entity to offer package pricing will continue to be independent of its relationship with Assa Abloy NZ because of the requirement to acquire the hardware and installation services components of the package from independent wholesale distributors.
- 3.15 At paragraphs [26] and [27] of the Second Allegion Submission, Allegion refers to Assa Abloy’s software called Opening Studios. Opening Studios is a plug in that is used with an architect’s specification tool. It provides a greater level of detail for project specifications. The software can be used to help create door specifications but, as far as Assa Abloy NZ is aware, it is not currently being used in New Zealand by architects to create door schedules. Door schedules are not as complex as hardware schedules to create. Both Allegion and Dormakaba offer similar software solutions to Opening Studios. The fact that all of the major hardware manufacturers offer such a software solution further demonstrates the importance to the hardware manufacturers of having their hardware specified in hardware schedules, and therefore the important role that architects play in the ultimate selection of a manufacturers’ hardware for a project.

The size of the contestable market

- 3.16 Assa Abloy NZ repeats its submissions at paragraph [7.5] of the SOI Submission that customer demand for package pricing for large construction projects is insignificant, and therefore the remaining contestable portion is sufficient for rival hardware manufacturers to remain effective competitors. Assa Abloy NZ also reiterates that the supply of “bundles” by door or hardware manufacturers (that is, the supply of doors, hardware and installation services by a single manufacturer) is non-existent in the fire door market because no manufacturer can supply all of the required components – doors, hardware and installation services – by itself.
- 3.17 Allegion has provided to the Commission at paragraphs [29] to [31] of the Second Allegion Submission its calculations of the contestable proportion of the market. While Allegion’s estimates are confidential, it is apparent from the non-confidential information that Allegion has provided no basis or evidence for its estimates of the proportion of commercial construction projects it would allegedly be excluded from as a consequence of alleged demand from customers for “bundles”.
- 3.18 As explained earlier, customer demand for package pricing for doors, hardware and installation services for large construction projects is insignificant. In the last two and a half years, Pacific Doors has successfully tendered for [] with a package price for doors, hardware and installation services: it outsourced the hardware and hardware installation services to an independent wholesale distributor and outsourced the door installation to another third party on arm’s length terms because it was unable to supply the required installation services. Customer demand for package pricing for large construction projects is unlikely to change post-acquisition. As explained earlier, package prices are generally higher than acquiring doors and hardware separately due to the contract risk of providing a package.

PUBLIC VERSION

Pacific Doors does not have a unique ability to offer a package price for doors, hardware and installation services

- 3.19 At paragraph [35] of the Second Allegion Submission, Allegion states that “[r]ival hardware manufacturers would not be able to assemble bundles to compete with the merged entity...”. Assa Abloy NZ agrees that hardware manufacturers are unlikely to offer “bundles” to customers. Assa Abloy NZ understands that all hardware manufacturers, including Allegion and Dormakaba, supply to wholesale hardware distributors and do not generally supply directly to construction companies. In addition, as explained earlier, it is rare that all the door hardware for a project would be sourced from a single manufacturer. For each of the projects where Pacific Doors agreed a package price for doors, hardware and installation services, Assa Abloy NZ products comprised only a proportion of the total hardware value for the project.
- 3.20 At paragraph [36] of the Second Allegion Submission, Allegion alleges (with no evidence) that only Pacific Doors, NZFD and Hallmark have the manufacturing capacity to supply larger commercial projects. Assa Abloy NZ disagrees with this submission. Assa Abloy NZ repeats paragraph [3.4] of its Cross Submission.
- 3.21 At paragraph [37] of the Second Allegion Submission, Allegion alleges (with no evidence) that “*there would seem to be reduced incentives for Assa Abloy and Hallmark to compete hard against each other...*”. There is no basis for this submission. Hallmark is a vigorous and effective competitor in the fire door market and broader commercial door market. There is no evidence to suggest that this would change post-acquisition.

The merged entity is not likely to limit access to testing of competitors’ hardware with its fire doors


- 3.22 For the reasons already explained in the Cross Submission and SOI Submission, the merged entity will continue to have an incentive to ensure that the widest possible range of hardware is approved for use on its doors.
- 3.23 At paragraph [39] of the Second Allegion Submission, Allegion asserts that “[w]ithout a regulatory body or universal testing standard, Assa Abloy would be in the prime position to set costs, procedures and time frames for product testing approvals.” This is plainly incorrect. The applicable fire door standards are set by third-parties. Testing and assessments are carried out by independent laboratories. Assa Abloy NZ has no control over the setting of standards, the cost of testing or assessments (which are controlled by the independent laboratories), the testing or assessment procedures (which are governed by the independent standards) or the time-frames (which are controlled by the independent laboratories).

The merged entity is unlikely to alter its fire doors so that existing approvals no longer apply

- 3.24 Contrary to Allegion’s submission at paragraph [41] of the Second Allegion Submission, Assa Abloy NZ is not likely to alter its fire doors so that existing approvals no longer apply. Assa Abloy NZ repeats paragraphs 7.12 and 7.13 of the SOI Submission.



[END]

Annexure A

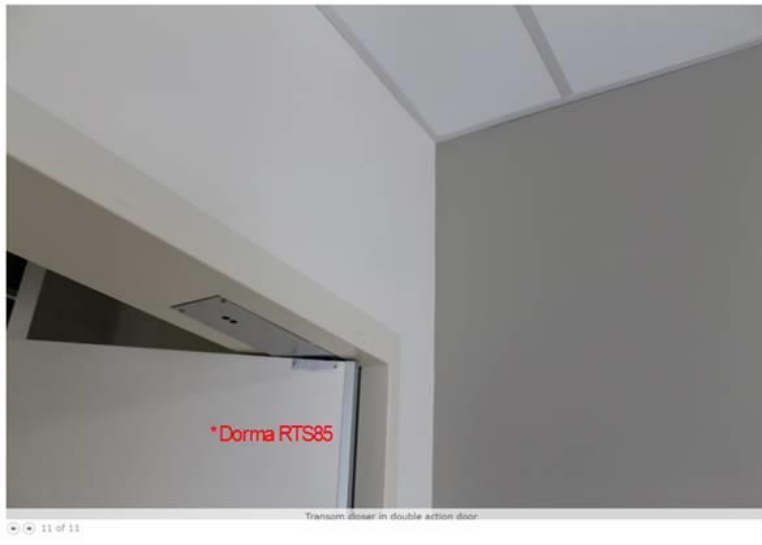
Number	Photo	Hardware products shown in photo
1		<ul style="list-style-type: none"> • Levers: Legge 700 series Alpha (Allegion) • Closer: LCN 1461 (Allegion) • Lock: unknown

MinterEllisonRuddWatts

PUBLIC VERSION

2		<ul style="list-style-type: none">• Closer: LCN 1461 door closer (Allegion)• Handle plate: Lockwood artefact 121524NN/P3 pull handle plate or similar manufacturer (Assa Abloy)
3		<ul style="list-style-type: none">• Lock: FSH mag lock (Allegion)• Closer: unknown

4



- Closer: Dorma RTS85 (Dormakaba)