

## PUBLIC VERSION

22 June 2021

### Assa Abloy New Zealand Limited / NZ Fire Doors Limited Submission by Assa Abloy New Zealand on the Statement of Issues

#### 1. Introduction

- 1.1 This submission is made in response to the Commerce Commission's (**Commission**) Statement of Issues published on 8 June 2021 (**SOI**) in relation to proposed acquisition of NZ Fire Doors Limited (**NZFD**) by Assa Abloy New Zealand Limited (**Assa Abloy NZ**) (**Proposed Acquisition**).
- 1.2 Assa Abloy NZ remains of the view that the Proposed Transaction will not have the effect or likely effect of substantially lessening competition in any market. It trusts that the information provided in Assa Abloy NZ's *Cross-Submission on submissions received on the Statement of Preliminary Issues* dated 20 May 2021 (**Cross-Submission**) and this further submission will assist the Commission to reach the same conclusion.
- 1.3 Assa Abloy NZ welcomes the opportunity to discuss this further with the Commission.

#### 2. The relevant markets

- 2.1 Assa Abloy NZ agrees with the Commission that the markets that allow the Commission to most effectively analyse the potential competitive impact of the Proposed Acquisition are national markets for the manufacture/supply of:
  - (a) fire doors (including windows) to construction companies; and
  - (b) commercial hardware to hardware distributors (which ultimately on-sell to construction companies).<sup>1</sup>
- 2.2 Assa Abloy NZ refers to and relies on the analysis set out at [5.40] – [5.48] of its *Notice Seeking Clearance of a Business transaction pursuant to section 66 of the Commerce Act 1986* dated 26 March 2021 (**Clearance Application**) and [4.2] and [4.3] of the Cross-Submission.

#### 3. With and without scenarios

- 3.1 The Commission at [43] – [46] of the SOI explains it is considering whether, absent the Proposed Acquisition, either of the parties would:
  - (a) merge with, acquire, or be acquired by, an alternative counterparty; and/or
  - (b) change the way in which they compete (eg, by altering or adding to the range of fire doors they supply) such that they would be likely to compete more closely in the future.
- 3.2 Assa Abloy NZ submits that neither of these scenarios are likely.

##### ***Merger or acquisition***

- 3.3 Assa Abloy has no plans to acquire or be acquired by an alternative counterparty, and there is no evidence that the acquisition of NZFD by another party is likely.

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<sup>1</sup> NZCC *Statement of Issues – Assa Abloy New Zealand Limited / NZ Fire Doors Limited* 8 June 2021 (**SOI**) [34].

## ***Alter or add to the range of fire doors***

- 3.4 Neither Pacific Doors nor NZFD have any plans to alter the range of fire doors they supply to compete more closely with each other in the future.
- 3.5 As explained in the Clearance Application, Pacific Doors' and NZFD's each serve very different market segments:
- (a) NZFD predominantly supplies low-cost, low-specification fire-rated doors and windows made from Triboard for residential apartments, hotels and retirement homes;
  - (b) Assa Abloy NZ supplies higher-cost, higher-specification fire-rated doors made using a Pyropanel core predominantly for large commercial or institutional premises, such as hospitals and prisons;<sup>2</sup> and
  - (c) as explained at [5.11] and [5.21] of the Clearance Application, the manufacturing processes for the Pyropanel doors produced by Pacific Doors and the low-cost fire doors produced by NZFD are completely different and there is a significant difference in their average unit price.
- 3.6 We have previously invited the Commission to visit the Pacific Doors and NZFD factories. This would demonstrate the very different manufacturing processes for the products produced by each party. We repeat that invitation.
- 3.7 For Pacific Doors to "*alter the range of doors they supply such that they would be likely to compete more closely*" with NZFD to supply residential apartments, hotels and retirement home projects it would need to invest in developing a low-cost fire door similar to NZFD's fire door which would require new manufacturing processes. This would, in effect, equate to de novo entry into a new product line.
- 3.8 Pacific Doors has been operating in the New Zealand fire door market for more than 30 years. It has not, during that time, sought to develop a low-cost fire door to compete more closely with NZFD and has no plans to do so in the future if the Proposed Acquisition does not proceed.
- 3.9 NZFD already supplies higher-cost, higher-specification, fire-rated doors made using an e-Core. However, its sales of e-Core doors represented significantly less than 10% of its total fire door sales in the period 2017 to 2019 because NZFD is focused predominantly on the supply of fire doors to residential apartment, hotels and retirement homes projects, which typically require only a small number of higher-specification fire doors.<sup>3</sup> For NZFD to "*compete more closely*" with Pacific Doors, it would need to supply the large commercial and institutional premises customer segments. In addition to requiring higher-specification fire doors, supplying to these customer segments requires specialised sales and marketing and project management skills which NZFD does not presently have. While it could develop these skills by hiring external expertise, there is no evidence to suggest that NZFD would do so if the Proposed Acquisition did not proceed.

## ***Neither scenario is likely***

- 3.10 The Commission must be satisfied, based on evidence, that there is a real chance that, absent the Proposed Acquisition, NZFD would be acquired by another party, or either party would alter or add to their range of fire doors to compete more closely with the other.
- 3.11 No such evidence exists because neither of those scenarios is likely. Neither can therefore be a counterfactual for the purposes of analysing the competitive effect of the proposed Acquisition.

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<sup>2</sup> Clearance Application at [4.13].

<sup>3</sup> For example, typically an apartment building will only require a 90-minute plus fire rated door for its plant room.

## 4. Horizontal unilateral effects

### ***Constraints from existing competition***

- 4.1 Assa Abloy NZ maintains that Pacific Doors and NZFD are not close competitors for the reasons set out at [6.2] of the Clearance Application. As shown in Table 3 of the Clearance Application and explained at [6.2(c)], the price differential between NZFD's and Pacific Doors' fire rated doors are indicative that they participate in different market segments, and their fire doors are not substitutable.
- 4.2 The Commission considers the merged entity "*would be likely to be significantly larger than [Best Doors, Hallmark and Mattsons] and other competitors*".<sup>4</sup> Assa Abloy NZ accepts that, post-acquisition, the merged entity will be the largest supplier of fire doors in New Zealand. However, Assa Abloy NZ estimates that the merged entity will have a market share of only circa [ ] by revenue or [ ] by volume. The next largest suppliers, Hallmark and Best Doors, have an estimated share of [ ] and [ ] by revenue, respectively. While their estimated shares are [ ] the estimated share of the merged entity, each of Hallmark and Best Doors are significant participants in the broader commercial door market and could expand their fire door operations in response to an increase in price or decrease in quality by the merged entity. There are also a range of smaller suppliers that could also seek to expand their operations, as identified in Table 5 of the Clearance Application.
- 4.3 The Commission considers that the parties may compete more closely for "*projects that have moderately complex requirements for fire doors, such as hotels and commercial buildings*".<sup>5</sup> Assa Abloy NZ is not aware of any evidence that Pacific Doors and NZFD compete more closely for hotels and commercial buildings projects than for other projects. As explained earlier, Pacific Doors' and NZFD's product offering and focus is very different. It is not common for Pacific Doors and NZFD to participate in the same tenders.
- 4.4 Where this does occur, the parties typically bid to supply different aspects of the project requirements (i.e. NZFD may have quoted for only the low-cost fire doors while Pacific Doors may have quoted the higher specification doors required for the project). For the few projects where Pacific Doors' quote included low-specification fire doors its quoted price would typically not be competitive because it does not have low-cost doors similar to NZFD's Triboard doors in its product range. In any event, hotel projects in particular represent only a very small part of the fire door market and most commercial buildings require a small proportion of high specification fire doors. Out of the [ ] tenders that Pacific Doors participated in during 2020 only [ ] of those were hotel projects. It was the successful tenderer for only [ ] hotel projects in 2020.
- 4.5 The Commission notes that Best Doors supplies fire doors that use Pyropanel fire door cores<sup>6</sup> and Doors'n'Moore is a reseller of NZFD doors and asks how this may affect their ability and incentive to constrain the merged entity.<sup>7</sup> Assa Abloy NZ does not consider that the mere fact that Best Doors is a Pyropanel licensee and Doors'n'More is a reseller of NZFD doors limits their ability and incentive to compete with Pacific Doors and NZFD, or that this would change post-acquisition. Assa Abloy NZ repeats paragraph [3.9] of its Cross-Submission.

## 5. Constraint from expansion and entry

### ***Expansion***

- 5.1 The Commission is considering whether:
- (a) expansion may, in some cases, be delayed by the time it takes to get new doors tested; and

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<sup>4</sup> SOI [54]

<sup>5</sup> SOI [54]

<sup>6</sup> SOI [55.2.1]

<sup>7</sup> SOI [56]

- (b) expansion may be aimed at catering to growing demand in the market. If so, increasing capacity may not necessarily represent a materially increasing constraint on the merged entity.
- 5.2 Expansion by existing competitors in the fire door market can occur by increasing sales of their existing product range or by expanding into new product ranges.
- 5.3 If an existing supplier has the ability to increase capacity in response to increased demand this would, in Assa Abloy NZ's submission, present a competitive constraint on the merged entity. This is because existing competitors will have the capacity to compete for a greater share of market demand in the event that the merged entity increases its price/reduces quality.
- 5.4 Barriers to expanding into certain new product ranges are relatively low. For example, existing fire door suppliers could expand their ranges to include fire doors with a vermiculate core by acquiring the core from e-Core or Firecore. Both e-Core and Firecore assist door suppliers by providing all the technical information required, including manufacturing manuals, to build their fire doors and their doors have already been tested to the required standards.

## **Entry**

- 5.5 The Commission preliminary view is that "*constraint from potential entry is unlikely to be strong*".<sup>8</sup>
- 5.6 The Commission's view is that Australian fire doors are not suitable for the New Zealand market because the doors are tested with steel frames, but not with timber frames which are more commonly used in New Zealand, so that in practice Australian suppliers may need to conduct significant testing to sell their doors in New Zealand.<sup>9</sup> Assa Abloy NZ disagrees with this view.
- 5.7 While it is correct that, in Australia, fire doors with steel frames are more commonly used than fire doors with wooden frames, the most common cores in Australia, Pyropanel, e-Core and Firecore, are already supplied in New Zealand. This means that they have already been tested with both steel and timber frames. It would be relatively simple for an established Australian door supplier who uses these cores in its fire doors to supply into the New Zealand market.
- 5.8 It would also be a relatively simple exercise for an existing commercial door manufacturer in New Zealand to enter the fire door market using an e-Core or Firecore core. As explained above, both e-Core and Firecore assist door suppliers by providing all the technical information required, including manufacturing manuals, to build their fire doors and their doors have already been tested to the required standards. For a company that is already manufacturing non fire-rated doors there would be little to no capital investment required to manufacture fire doors under license as the machinery used is the same as that used to manufacture non-fire rated doors.

## **6. Constraint from countervailing power**

- 6.1 Assa Abloy NZ agreed with the Commission's assessment at [65] of the SOI that it is satisfied that the merged entity is likely to be constrained to some extent by countervailing power: "*some customers are able to put pressure on price (eg, through multiple rounds of tendering, or playing bidders off against each other)*"<sup>10</sup> and "*some customers may be able to sponsor expansion of existing smaller customers*"<sup>11</sup>.
- 6.2 Assa Abloy NZ considers that some customers could (and are likely to) sponsor new entry into the fire door market by other commercial door suppliers using a fire-rated core, such as e-Core or Firecore, which have already been tested to the required standards. As noted at 5.8 above, there is no barrier to a commercial door manufacturer entering the fire door market using an e-Core or Firecore core.

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<sup>8</sup> SOI [60]

<sup>9</sup> SOI [60.4]

<sup>10</sup> SOI [[65.1]

<sup>11</sup> SOI [65.2]

## 7. Foreclosure of competing commercial hardware manufacturers

7.1 The Commission is assessing the merged entity's ability and incentive to engage in

(a) bundling strategies; and

(b) tying strategies,

that foreclose rival hardware manufacturers.<sup>12</sup>

7.2 As Assa Abloy NZ has explained at length in its Cross-Submission, the merged entity would have neither the ability nor the incentive to engage in either strategy.

### ***Bundling***

7.3 The Commission acknowledges Assa Abloy NZ's submission that any door manufacturer can offer a package price for doors, hardware and installation,<sup>13</sup> but asserts "*the Proposed Acquisition would create opportunities for the merged entity to create new bundles across a wider range of fire doors*".<sup>14</sup>

7.4 As explained in the Cross-Submission, supported by evidence, the vast majority of tenders specify the hardware for the project. In the two and a half years since Assa Abloy NZ acquired Pacific Doors, Pacific Doors has successfully offered a package price for doors, hardware and installation on [ ]<sup>15</sup> specified the hardware to be supplied. During that period, Pacific Doors has responded to more than [ ] tenders/requests for quotes.

7.5 The Commission seeks information on likely customer demand for bundles of fire doors and commercial hardware, the size of the market that would remain contestable, and whether that market is sufficiently large for rival hardware manufactures to remain effective customers.<sup>16</sup> The objective evidence Assa Abloy NZ has provided to the Commission demonstrates that customer demand for bundles is insignificant, and the remaining contestable portion is sufficient for rival hardware manufacturers to remain effective competitors.

7.6 The Commission also seeks information on whether rival hardware manufacturers would be able to assemble bundles to compete with the merged entity.<sup>17</sup> We think the correct question is whether rival door manufacturers would be able to assemble such bundles, and the evidence clearly establishes this is the case. As explained in the Cross-Submission<sup>18</sup>, Pacific Doors offered a package price for doors, hardware and installation more frequently in the period before it was acquired by Assa Abloy NZ than it has post-acquisition.

7.7 Importantly, a bundle includes both hardware and installation. Installation services are typically provided by the large hardware distributors. v Where Pacific Doors has offered bundled prices, both pre- and post-acquisition by Assa Abloy NZ, it has acquired hardware and installation services from one of those distributors. Every other door manufacturer is in the same position, and the Proposed Acquisition will not create the opportunity to create new bundles across a wider range of doors.

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<sup>12</sup> SOI [72]

<sup>13</sup> SOI [75]

<sup>14</sup> SOI [76]

<sup>15</sup> [ ]

<sup>16</sup> SOI [77.1] and [77.2]

<sup>17</sup> SOI [77.3]

<sup>18</sup> Cross-Submission footnote 19

## ***Tying***

- 7.8 The Commission is assessing whether Assa Abloy NZ:
- (a) would have the ability and incentive to limit the hardware that rivals can have approved on its doors; and
  - (b) whether such tying strategies would be likely to restrict rival hardware suppliers' access to a sufficient customer base to remain effective competitors.<sup>19</sup>
- 7.9 The Cross-Submission explains why Assa Abloy NZ has no incentive to limit the hardware that rivals can have approved on Pacific Doors' doors<sup>20</sup>, and also provided evidence to the Commission that demonstrates Assa Abloy Australia has not in the past refused to test competitor hardware, and its testing policies did not change following the acquisition of Pacific Doors.<sup>21</sup> While we do not propose to repeat those submissions here, we do address below the specific questions asked by the Commission at [84] of the SOI.

### ***Whether customers choose hardware on the basis of the doors they have chosen or vice-versa***

- 7.10 We refer the Commission to [2.6] and Confidential Exhibit 1 of the Cross-Submission. The evidence provided demonstrates that overwhelmingly customers select hardware independently of the doors. It is for this reason a fire door supplier is incentivised to ensure that the widest range of hardware possible has been approved for use with its doors.

### ***Whether the merged entity would be likely to limit access to testing of competitor's hardware on its fire doors***

- 7.11 As explained in the Cross-Submission, there is no likelihood that the merged entity would limit access to third party testing. The evidence provided shows that third-party testing of hardware on fire doors manufactured by Pacific Doors has continued unchanged following its acquisition by Assa Abloy NZ.

### ***Whether the merged entity would be likely to alter some of its fire doors so that existing approvals are no longer applicable***

- 7.12 This hypothetical defies commercial common sense. It is unclear what changes could be made to the fire doors to void current approvals while still comply with existing standards. The cost, time and effort required to redesign Pacific Doors' door range (if that were possible) and have those doors retested with Assa Abloy hardware would be prohibitive.
- 7.13 Standards are set by third-parties. Testing is carried out by independent testing authorities. If the merged entity were to alter its fire doors so that existing approvals are no longer applicable, Assa Abloy hardware would also no longer be approved for use. This would also impact the Australian market because the existing door range is approved in both countries.

### ***The effect of such tying strategies on the competitiveness of rivals in the hardware market***

- 7.14 As neither strategy being considered by the Commission is likely, we have not responded to this question.

### ***How other market participants would be likely to respond***

- 7.15 As neither strategy being considered by the Commission is likely, we have not responded to this question.

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<sup>19</sup> SOI [83]

<sup>20</sup> Cross-Submission [2.12] and [2.19]

<sup>21</sup> SOI [2.15]

## 8. Coordinated effects

- 8.1 Assa Abloy NZ agrees with the Commission's assessment that "*the fire doors market is unlikely to be particularly vulnerable to coordination*",<sup>22</sup> and "*the Proposed Acquisition would not be likely to increase the potential for coordination in the commercial hardware market*".<sup>23</sup>
- 8.2 In this regard, we refer to and rely on paragraph [6.20] of the Clearance Application.

**END**

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<sup>22</sup> SOI [88]

<sup>23</sup> SOI [89]