

Determination

ASSA ABLOY New Zealand Limited and NZ Fire Doors Limited [2021] NZCC 9

The Commission:	Dr Derek Johnston (Chair) Dr John Small Vhari McWha
Summary of application:	An application from ASSA ABLOY New Zealand Limited seeking clearance to acquire all of the shares in NZ Fire Doors Limited.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance to the proposed acquisition.
Date of determination:	23 July 2021

Confidential material in this report has been removed. Its location in the document is denoted by [].

The Proposed Acquisition

1. On 30 March 2021, the Commerce Commission (the Commission) registered an application (the Application) from ASSA ABLOY New Zealand Limited (Assa Abloy NZ) seeking clearance to acquire all of the shares in NZ Fire Doors Limited (NZFD) (the Proposed Acquisition).

Our decision

2. The Commission gives clearance to the Proposed Acquisition because it is satisfied it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. NZFD and Assa Abloy NZ (the Parties) are both major manufacturers and suppliers of fire-rated doors and windows to the construction industry. Fire doors and windows are used to prevent or delay the spread of fire and smoke within buildings, between buildings, and from within a building to the exterior environment. Assa Abloy NZ manufactures and supplies fire doors and windows through its subsidiary Pacific Door Systems Limited (Pacific Doors).
4. Assa Abloy NZ is part of the Assa Abloy Group, which also manufactures commercial hardware. Commercial hardware is the range of hardware (such as locks, handles and door closers) that goes on doors in commercial building projects, including non-residential buildings (for example, offices, hospitals, prisons, and commercial premises) and for larger residential buildings such as apartment blocks. Commercial hardware needs to be tested and approved for use on fire doors to ensure that the entire door system meets fire protection performance requirements.
5. In its Application, Assa Abloy NZ submitted that the relevant market for assessing the Proposed Acquisition includes all types of fire doors and windows, but that Pacific Doors and NZFD focus on supplying different customer segments within this broader market.¹ Consistent with this we have defined a market that includes all types of fire doors and windows to assess whether the Proposed Acquisition would be likely to substantially lessen competition, as this best captures the rivalry between Pacific Doors and NZFD. However, we take the differentiated offerings of the Parties into account in our competition analysis.
6. We do not consider the aggregation of NZFD and Pacific Doors would be likely to substantially lessen competition as the evidence indicates that NZFD and Pacific Doors specialise in providing different kinds of fire doors and windows, which are often used in different kinds of buildings, and so do not compete very closely. In particular, Pacific Doors focuses on supplying projects with more complex requirements such as hospitals and prisons, while NZFD focuses on supplying projects with more standard requirements such as hotels and apartment buildings.

¹ The Application at [5.41] and [1.3(a)].

7. To the extent that competition between the Parties is lost in the supply of fire doors and windows to some projects, we consider that the merged entity is likely to be constrained from raising prices or reducing quality by a combination of:
 - 7.1 competition from existing suppliers, many of which have spare capacity and the ability to expand;
 - 7.2 the threat of entry by new suppliers; and
 - 7.3 in the case of some large customers, countervailing power.

8. We also considered whether Assa Abloy NZ would have the ability and the incentive to make it more difficult for its commercial hardware rivals to compete by bundling or tying its commercial hardware with its fire doors and windows. However, we consider Assa Abloy NZ would be unlikely post-acquisition to have the ability or the incentive to materially hinder other manufacturers of commercial hardware from competing by bundling or tying its products. We do not consider it would have sufficient market power in the manufacture and supply of fire doors to restrict rival hardware manufacturers' access to customers:
 - 8.1 If Assa Abloy NZ chooses to bundle (or tie) its commercial hardware and fire doors post-acquisition, rival suppliers could partner together to compete with their own bundles; and
 - 8.2 if Assa Abloy NZ sought to tie its fire doors and commercial hardware, it could lose potential fire door customers that wish to use rival commercial hardware brands for their buildings.

Our framework

9. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).²

The substantial lessening of competition test

10. As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.

11. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).³

12. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise prices above the price that would exist in a

² Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019).

³ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

competitive market (the ‘competitive price’),⁴ or reduce non-price factors such as quality or service below competitive levels.

When a lessening of competition is substantial

13. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.⁵ Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.⁶
14. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.⁷
15. A lessening of competition or an increase in market power may manifest itself in several ways, including higher prices or reduced services.⁸
16. While we commonly assess competition effects over the short term (up to two years), the relevant timeframe for assessment depends on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.⁹

When a substantial lessening of competition is likely

17. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.¹⁰

The clearance test

18. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.¹¹ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

The parties and background to the industry

The Applicant

19. Assa Abloy NZ is part of the Assa Abloy Group, a global manufacturer and supplier of door opening products, security solutions and related services. In New Zealand, Assa Abloy NZ supplies commercial hardware through key brands such as Lockwood, Abloy, Aperio, Cliq, Yale, Trimec, and Traka.¹² Like other hardware manufacturers,

⁴ Or below competitive levels in a merger between buyers.

⁵ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

⁶ *Ibid* at [129].

⁷ *Mergers and Acquisitions Guidelines* above n2 at [2.23].

⁸ *Ibid* at [2.21].

⁹ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [131].

¹⁰ *Ibid* at [111].

¹¹ Section 66(3)(a).

¹² The Application at [4.3].

Assa Abloy NZ imports its commercial hardware (manufactured overseas by the Assa Abloy Group) and supplies its product range to building projects through independent hardware distributors.

20. Assa Abloy NZ also manufactures and supplies fire doors and windows (and a range of non-fire doors) for the construction industry through its subsidiary Pacific Doors. Pacific Doors has manufacturing facilities in Wellington and Timaru and supplies its products directly to construction companies. Its fire doors are used in a variety of projects, including hospitals, prisons, and commercial buildings.¹³
21. Assa Abloy NZ's other activities in New Zealand include the supply of entrance automation systems including automatic swing, sliding and revolving doors, and the manufacture and supply of secure plastic cards used for identification, loyalty schemes and similar sectors.¹⁴ The Assa Abloy Group also supplies fire door cores to several fire door manufacturers in Australia and New Zealand through its Pyropanel brand.¹⁵ In New Zealand, the Assa Abloy Group supplies Pyropanel to Pacific Doors and also to its competitor Best Doors.

The Target – NZFD

22. NZFD manufactures and supplies fire-rated, non-fire-rated, acoustic and specialty doors and windows from its facilities in Auckland.¹⁶ It does not manufacture or distribute commercial hardware.
23. NZFD supplies its fire doors directly to construction companies involved in building projects, including projects to build educational facilities, aged care facilities, apartments, hotels, and commercial buildings. NZFD also supplies some products to joiners and resellers such as Doors 'n' More Limited ('Doors 'n' More'), which then on-sell to end-users.¹⁷

Other industry participants

Fire door and window manufacturers

24. There are several other companies that compete with the Parties to supply fire doors and windows in New Zealand, including:
 - 24.1 Hallmark Group Limited ('Hallmark'): Hallmark manufactures a range of fire doors and non-fire-rated doors from its facilities in Rangiora. Hallmark supplies its products to residential and commercial building projects across New Zealand.¹⁸

¹³ The Application at [4.5(c)].

¹⁴ The Application at [4.5].

¹⁵ Fire door cores are an input into the manufacture of some types of fire doors. See the Application at [5.11]-[5.14].

¹⁶ The Application at [4.9].

¹⁷ The Application at [5.51].

¹⁸ See <https://www.hallmarkgroup.co.nz/>.

- 24.2 Best Doors Limited ('Best Doors'): Best Doors manufactures doors for commercial and residential use, including fire doors and windows. It supplies these to residential and commercial building projects across New Zealand from its manufacturing facilities in Auckland.¹⁹
- 24.3 B Mattson Limited ('Mattson Joinery'): Mattson Joinery manufactures commercial doors, including 30- and 60-minute fire doors and windows, and supplies these to building projects from its facilities in Auckland.²⁰
- 24.4 Doors 'n' More: Doors 'n' More manufactures 30-minute fire doors, fire windows, and non-fire doors for commercial and residential building projects from its facilities in Dargaville. Doors 'n' More also resells NZFD's 60-minute fire doors.²¹

Commercial hardware manufacturers

25. Hardware manufacturers produce a large range of commercial hardware such as locks, handles and closers for use on fire and non-fire doors, and compete to supply building projects indirectly by wholesaling to hardware distributors.
26. Other than Assa Abloy NZ, the two major manufacturers of commercial hardware used in New Zealand are Allegion (New Zealand) Limited ('Allegion') and Dormakaba New Zealand Limited (Dormakaba).²²
- 26.1 Allegion is a global commercial hardware manufacturer based in Ireland. In New Zealand, Allegion supplies commercial hardware imported from overseas facilities and also from its Auckland-based manufacturing facility. Its hardware brands include Legge, Brio, FSH, Austral, Gainsborough, Schlage, LCN, Briton, and Von Duprin.
- 26.2 Dormakaba is a global commercial hardware manufacturer based in Switzerland. Dormakaba was established following the merger between Dorma and Kaba in 2015. In New Zealand, Dormakaba's business includes the supply of imported commercial hardware in competition with Allegion and Assa Abloy NZ.

Commercial hardware distributors

27. Hardware distributors participate in tenders for the supply and installation of commercial hardware for building projects, sourcing the required units from hardware manufacturers such as Assa Abloy NZ, Allegion, and Dormakaba.

¹⁹ See <https://www.bestdoors.co.nz/>.

²⁰ See <https://www.mattsonjoinery.co.nz/>.

²¹ See <http://doorsnmore.co.nz/>. The Application at [5.51].

²² The Application at [5.16]. See also Commerce Commission interview with []; Commerce Commission interview with [].

28. Some of the major hardware distributors in New Zealand include Sopersmac,²³ Hardware Direct,²⁴ KnK Architectural Hardware & Italian Wrought Iron ('KnK Hardware'),²⁵ James Bull Access and Security,²⁶ and Henry & Kemp.²⁷

Fire doors and windows

29. Fire doors and windows are installed in buildings to resist the spread of fire and smoke within buildings, between buildings, and to the exterior environment.²⁸ A fire door system comprises a door leaf,²⁹ a door frame, seals, and commercial hardware (such as locks, handles, and door closers), while a fire window is made using fire-resistant glass, a frame, and seals.³⁰

Different features and characteristics

30. Fire doors and windows are used in a range of building projects, including high-density residential buildings (such as apartment blocks or aged care accommodation), hotels, educational institutions, office blocks and commercial premises, hospitals, and prisons. As different types of buildings (and different types of areas within buildings) have different fire safety requirements, fire doors are available with different properties that suit a range of applications.
- 30.1 *Fire resistance.* Some fire doors are fire resistant for longer than others. Many provide fire resistance for 30 or 60 minutes, but some fire doors can resist fire for 120 or 240 minutes. Apartment buildings and hotels typically require mainly 30- or 60-minute doors, while other buildings such as hospitals may require doors that provide a longer period of fire resistance.
- 30.2 *Sound proofing.* Some customers require fire doors that provide increased sound proofing. For example, manufacturing sites co-located with offices require fire doors that block noise produced by machinery from reaching these office areas.
- 30.3 *Strength.* Fire doors that provide access into secure areas need to be able to withstand attempts to attain entry by force. For example, prisons require high strength doors to ensure the safety of staff and prisoners.
31. Similarly, there are a variety of fire windows available with different fire resistance ratings.

²³ Sopers Macindoe Limited <https://www.sopersmac.co.nz/>.

²⁴ Hardware Direct Limited (www.hardwaredirect.co.nz).

²⁵ Knobs 'n Knockers Limited (<https://www.knkhardware.co.nz>).

²⁶ James Bull & Co CHCH Limited (<https://www.jamesbull.co.nz>).

²⁷ Henry & Kemp Limited (<https://www.henryandkemp.co.nz>).

²⁸ The Application at [5.1].

²⁹ A fire door leaf (the part of a door that swings open and shut) can either be made using a solid fire-resistant material, or by affixing a 'fire core' (a core made out of fire resistant material such as vermiculite or flax board) in between two outer facings. See the Application at [5.10]-[5.14].

³⁰ The Application at [5.30].

Testing for fire doors and windows

32. To be used in New Zealand, fire doors and windows that are installed in buildings must be identical to prototypes that have undergone fire testing.³¹ Prototypes for a specific fire door or window are tested by a certified test laboratory such as BRANZ or Pfits, and given a fire resistance rating that specifies how long the door or window can resist fire (including the ability to resist the passage of flames and hot gases, and the ability to maintain a sufficiently low temperature on the surface unexposed to the fire).
33. New Zealand's fire testing standards require that the whole door or window system be tested, including the frame and any commercial hardware intended to be used with it. Once a fire door or window system has passed an initial 'full-scale' test, fire doors and windows that conform to the tested prototype can be installed in buildings.
34. The test data for a fire door or window system that has passed a full-scale test can be used as a base for further testing to approve variations of the prototype. Variations can include changes to the size of the door or window system, or the approval of additional commercial hardware units that can be installed as part of the system. In some circumstances, variations can be approved without the need for another full-scale test, but instead can be approved using a more basic 'pilot test' or an assessment by a fire engineer.^{32 33}

How fire doors and windows are bought and sold

35. The fire doors and windows required for a building project will typically be specified by the architect or building designer in the early stages of a building project. Sometimes architects specify the precise manufacturer and model of the fire doors to be used, but other times will specify the performance requirements only.³⁴
36. Once the fire doors for a building have been specified, the construction company contracted to deliver the building will procure the doors. Fire doors are most commonly procured by tender in a single package that includes fire doors, non-fire doors, and fire windows where required. Depending on the circumstances, fire door suppliers may offer to supply all of the doors required (including non-fire doors) or offer to supply some of the doors and subcontract the supply of (or simply purchase) the rest.

³¹ The relevant standards for fire testing in New Zealand are 'NZS 4520 Fire-resistant door sets' for fire doors, and 'NZS 4232.2:1988 Performance criteria for fire resisting enclosures – Fire resisting glazing systems' for fire windows. We understand that the New Zealand standard for fire doors can also be used for fire windows.

³² A pilot test is a smaller-scale fire test that costs less than a full-scale test and is often used to test variations to fire door systems that have previously passed a full-scale test. Commerce Commission interview with [].

³³ Fire assessments can be used to obtain approvals for some variations to fire door or window systems. See <https://www.branz.co.nz/fire-testing/fire-assessments/>.

³⁴ Commerce Commission interview with []; Commerce Commission interview with [].

37. In some cases where a specific fire door brand is specified, architects and construction companies may ultimately decide to purchase a different brand or supplier. However, feedback we have received indicates that where a manufacturer is specified in the building plans by the architect, that manufacturer has an advantage over competitors at the tendering stage. In particular, market participants have indicated that, for an alternative product to be selected, the construction company may need to obtain agreement from the architect and may also need revised building plans to be reviewed by the relevant local council.

Commercial hardware

38. Commercial hardware includes products such as locks, handles, and door closers that are installed on fire doors and non-fire doors in building projects (including for high-density residential buildings).³⁵ Commercial hardware is designed to withstand more frequent usage than hardware used in residential buildings.³⁶
39. Commercial hardware that is installed on a fire door must be tested and approved for use on that door in accordance with the New Zealand Building Code. For this reason, commercial hardware manufacturers seek to have their hardware tested with as many of the fire doors available on the market as possible, and particularly with the most commonly-used fire doors.

How commercial hardware is bought and sold

40. As with fire doors, commercial hardware is typically specified in the initial stages of a building project. In some cases, architects will prepare a specification identifying the commercial hardware (and fire doors) required for the building. However, unlike fire doors, architects will sometimes choose to outsource the specification of commercial hardware to a hardware manufacturer or a hardware distributor. Both hardware manufacturers and distributors offer to write hardware specifications for architects as a way of generating sales,³⁷ but it is generally only the distributors that tender directly to supply building projects and provide installation services on-site.
41. Once the commercial hardware specification has been prepared, the construction company tenders for the specified hardware in a single package. Hardware distributors compete to supply the package by providing pricing to supply and install the items specified. The hardware distributor that wins the tender will source the products required from the relevant hardware manufacturer(s).³⁸

Market definition

42. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market(s)

³⁵ The Application at [5.15].

³⁶ Commerce Commission interview with [].

³⁷ See for example: Commerce Commission interview with []; Commerce Commission interview with []; Email to Commerce Commission from [].

³⁸ Hardware distributors are independent from hardware manufacturers, and have non-exclusive arrangements with a range of manufacturers for the sourcing and on-selling of their hardware.

requires us to judge whether, for example, two products or services are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.

43. We define markets in the way that best isolates the key competition issues that arise from a merger.³⁹ In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services which fall outside the market but which still impose some degree of competitive constraint on the merged entity.

The supply of fire doors and windows

The Applicant's view

44. In its Application, Assa Abloy NZ submitted that the relevant product market for assessing the Proposed Acquisition is the national market for the supply of fire doors and windows because:⁴⁰
- 44.1 although there are a range of different types of fire doors that may not be substitutable from a customer's perspective,⁴¹ customers will often procure a range of different fire doors in a single package that also includes fire windows;
- 44.2 all fire door suppliers offer a range of fire doors to meet the varied requirements of customers; and
- 44.3 most suppliers of fire doors also supply fire windows.⁴²
45. We considered whether the relevant market(s) for assessing the Proposed Acquisition should be narrower than that proposed by Assa Abloy NZ. In particular, we have considered whether there are narrower relevant markets for different kinds of fire doors and for fire windows.

Product dimension

46. For the reasons below, we consider it is appropriate to assess the impact of the Proposed Acquisition on a product market that includes all fire doors and fire windows.
47. We note that Assa Abloy NZ submitted in the Application that the relevant market includes all types of fire doors and windows, notwithstanding its submission that the Parties focus on different customer segments within this market. In this case, we

³⁹ *Mergers and Acquisitions Guidelines* above n2 at [3.10]-[3.12].

⁴⁰ The Application at [5.41].

⁴¹ For example, Assa Abloy NZ submits in its Application (at [5.45]) that a hospital requiring a 240-minute fire door for a specific purpose is unlikely to view a standard 30-minute fire door as a substitute.

⁴² The Application at [5.44]-[5.46].

consider that defining a market that includes all fire doors and windows captures the rivalry between the Parties.

The relevant market includes all types of fire doors

48. We consider that it is appropriate to consider the competition effects of the Proposed Acquisition on a broad market encompassing all types of fire doors.
- 48.1 On the demand side, fire doors can have a range of performance characteristics in terms of fire resistance, sound proofing and strength, and our enquiries found that there is limited substitutability between types of doors with these different characteristics. However, we found that customers typically purchase all of the fire doors for a particular project in a single package, including a range of fire door types and performance ratings. So, on the demand side competition tends to occur at the product range level, rather than among particular types of doors within those ranges.
- 48.2 On the supply side, most fire door manufacturers, including the Parties, supply a range of fire doors of different performance levels and specifications, and defining a wider market for all fire doors best captures the competitive constraint that suppliers impose on one-another across the range of products.

The relevant market includes fire windows

49. For the purposes of assessing the Proposed Acquisition, we do not consider it is necessary to define a market for fire windows separate from fire doors because:
- 49.1 where the supply of windows is included in a tender for a building project, these items are typically tendered together with the fire doors (ie, firms compete to supply a single tender package including both fire doors and windows),⁴³ and
- 49.2 in general, fire door suppliers (including the Parties) also manufacture fire windows (and our enquiries indicated that those that do not could start manufacturing and supplying fire windows without significant difficulty).⁴⁴

Geographic dimension

50. We consider it is appropriate to define a national market for fire doors and windows for the purposes of assessing the Proposed Acquisition, because the Parties (and most of their competitors) compete to supply their products throughout New Zealand.⁴⁵

⁴³ Commerce Commission interview with []; Commerce Commission interview with [].

⁴⁴ Commerce Commission interview with []; Commerce Commission interview with [].

⁴⁵ Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

51. While some suppliers have said they have a small cost advantage when competing to supply building projects that are nearer to them due to lower freight costs,⁴⁶ it has not been suggested that this materially impacts their competitiveness outside their local areas.

Conclusion on the relevant market for the supply of fire doors and windows

52. For the reasons above, we consider it is appropriate to define a national market for the manufacture and supply of fire doors and windows ('the fire door market') for the purpose of assessing the Proposed Acquisition. However, we have taken account of how closely the Parties (and other suppliers) compete in different parts of the fire door market in our competition assessment.
53. Further references to 'fire doors' in this determination include both fire doors and fire windows.

The supply of commercial hardware

54. As Assa Abloy NZ manufactures and supplies commercial hardware, the Proposed Acquisition would lead to increased vertical integration in respect of commercial hardware and fire doors.
55. We have therefore assessed whether the Proposed Acquisition could impact competition in a market for the supply of commercial hardware. In conducting this assessment we considered whether the relevant market should include all commercial hardware, or whether there are narrower relevant markets for different kinds of commercial hardware, (eg, locks, handles and door closers, or fire-rated and non-fire-rated commercial hardware).
56. For the purpose of assessing the Proposed Acquisition, we consider it appropriate to define a national market for the manufacture and wholesale supply of all commercial hardware to hardware distributors (which in turn supply to building projects).
- 56.1 In relation to the product market, while customers cannot substitute certain kinds of hardware for others (eg, a lock is not a substitute for a handle), all commercial hardware that goes into a building project is typically acquired in a single package, and hardware manufacturers each produce the full range of commercial hardware (including fire-rated items and non-fire-rated items) that would ordinarily be used in a building project; and
- 56.2 In relation to the geographic dimension of the relevant market, competitive conditions do not differ between regions as commercial hardware is typically imported and then on-sold to construction companies by hardware distributors that operate across New Zealand.

⁴⁶ Commerce Commission interview with [].

Conclusion on the relevant markets

57. For the purposes of our assessment we consider that the relevant markets are national markets for:
- 57.1 the manufacture and supply of fire doors to building projects; and
 - 57.2 the manufacture and wholesale supply of commercial hardware to hardware distributors (which in turn supply to building projects).

With and without scenarios

58. To assess whether a merger is likely to substantially lessen competition in a market, we compare the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).⁴⁷
59. In the Application, Assa Abloy NZ submitted that the most likely counterfactual is a continuation of the status quo.⁴⁸ Pacific Doors stated that
[
] ⁴⁹ Similarly, NZFD informed the Commission that
[
].⁵⁰
60. Based on our investigation, we consider that these statements reflect the likely competitive situation absent the Proposed Acquisition, with Pacific Doors and NZFD continuing to operate independently in the relevant markets.
61. Accordingly, for the purposes of considering the competitive effects of the Proposed Acquisition we have adopted a without-the-acquisition scenario of the status quo, with NZFD continuing to supply fire doors to the construction industry as an independent competitor to Pacific Doors.

How the Proposed Acquisition could substantially lessen competition

62. The Proposed Acquisition would lead to an aggregation of suppliers in the supply of fire doors and align NZFD with a major supplier of commercial hardware.
63. We have considered whether the Proposed Acquisition would be likely to have the effect of substantially lessening competition due to:
- 63.1 unilateral effects, ie, whether the loss of competition between Pacific Doors and NZFD would enable the merged entity to raise prices (and/or reduce quality) in the supply of fire doors; and

⁴⁷ *Mergers and Acquisitions Guidelines* above n2 at [2.29].

⁴⁸ The Application at [3.8].

⁴⁹ Commerce Commission interview with [].

⁵⁰ Commerce Commission interview with [].

- 63.2 conglomerate effects, ie, whether the Proposed Acquisition would give the merged entity the ability and the incentive to bundle or tie its fire doors and commercial hardware such that rival hardware manufacturers are denied access to customers and so are unable to compete effectively.
64. We have also considered whether the Proposed Acquisition would be likely to substantially lessen competition due to coordinated effects. Coordinated effects can occur when a merger or acquisition makes it significantly more likely that the remaining firms can collectively exercise market power to increase prices (or reduce quality). Coordinated effects are more likely when a market is characterised by certain features, which make it easier to reach, and then to sustain, an agreement or understanding.
65. However, we consider that the Proposed Acquisition would be unlikely to change market conditions to make coordination more likely, complete or sustainable in the supply of fire doors, because fire door suppliers are asymmetric and in some cases focus on supplying different kinds of building projects, and because prices are not transparent due to supply being commonly awarded by tender. We also consider coordinated effects are unlikely to arise post-acquisition in respect of the supply of commercial hardware, because the Proposed Acquisition does not remove a competitor and increases the asymmetry between commercial hardware manufacturers.
66. We do not consider coordinated effects further in this determination.

Horizontal effects in the market for the manufacture and supply of fire doors

67. Horizontal effects may occur when a firm acquires a current or potential competitor that would otherwise provide a competitive constraint and remaining constraints are insufficient to prevent the merged firm from being able to profitably increase prices or reduce service quality.
68. The Proposed Acquisition would mean that any competition between Pacific Doors and NZFD to supply fire doors would be lost. We have therefore assessed whether the merged entity would be able to raise prices or reduce service quality in the New Zealand market for the manufacture and supply of fire doors. In conducting our assessment, we considered:
- 68.1 how closely Pacific and NZFD compete to supply fire doors;
- 68.2 the level of competitive constraint the merged entity is likely to face from competing fire door suppliers;
- 68.3 the extent to which potential entry and expansion is likely to constrain the merged entity; and
- 68.4 the extent to which construction companies, which are the main customers of fire doors, could resist or prevent price increases or decreases in quality by the merged entity.

69. We expand on these topics below.

Closeness of competition between Pacific and NZFD

70. Pacific Doors and NZFD are two of the largest fire door suppliers in New Zealand. Based on fire door sales estimates we have received, the merged entity would have a market share of approximately []% by revenue and []% by number of units sold.
71. However, in the Application Assa Abloy NZ submitted that Pacific Doors and NZFD are not close competitors in the supply of fire doors because their product offerings are differentiated. It submitted that Pacific Doors focuses on supplying higher-cost and higher-specification fire-rated doors for large commercial or institutional premises, such as hospitals and prisons, while NZFD focuses on supplying low-cost, low-specification fire-rated doors for buildings such as residential apartments, hotels, and retirement homes.⁵¹
72. Consistent with this, our enquiries have indicated that NZFD and Pacific Doors may not compete closely for all building projects. In particular, the majority of market participants have told us that Pacific Doors has a larger range of high-specification fire doors (eg, higher fire-resistance ratings, more demanding acoustic performance requirements, or specific materials for the door facings), and focuses on supplying projects with higher specification fire door requirements such as hospitals and prisons.⁵² Conversely, market participants also indicated that NZFD has a lower specification (and more limited) range of fire doors and focuses on supplying building projects such as apartment buildings and aged care facilities, which do not require the kinds of high-specification doors that may be used in hospitals and prisons.⁵³
73. Based on our enquiries, we consider NZFD does not compete closely with Pacific Doors to supply projects such as hospitals or prisons, where a large proportion of the fire doors used are higher-specification.⁵⁴
74. However, based on market feedback, we consider the Parties compete more closely to supply fire doors to building projects with more basic fire door requirements.⁵⁵ For example:

⁵¹ The Application at [1.3(a)].

⁵² See Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

⁵³ See Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

⁵⁴ []
Commerce Commission interview with [].

⁵⁵ See for example Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

- 74.1 two construction companies have provided us with examples of building projects including an office building, a commercial building and a university building where the Parties submitted competing bids in the fire door tender;⁵⁶
- 74.2 one architectural firm [] told us that Pacific Doors and NZFD are its two ‘default’ options for fire doors, although in some cases it may choose one over the other depending on its performance requirements;⁵⁷ and
- 74.3 []
[]
[]⁵⁸

75. We have therefore assessed the potential unilateral effects of the Proposed Acquisition on the basis that it would remove meaningful competition between the Parties to supply building projects that do not require a large proportion of high-performance fire doors.

Constraint from existing competition and expansion by existing competitors

76. In its Application, Assa Abloy NZ submitted that the merged entity would continue to face vigorous competition from existing competitors, and particularly from Hallmark, Best Doors and Mattson Joinery.⁵⁹
77. We have assessed the level of competition the merged entity would face from competing fire door suppliers. As part of this assessment, we have also considered the extent to which existing competitors could expand their production and thereby provide an increased level of constraint on the merged entity.
78. We have identified four competitors that we consider are likely to impose varying degrees of constraint on the merged entity.

Hallmark

79. Hallmark is a large manufacturer that competes to supply fire doors to a wide range of projects including hospitals, hotels, apartments, aged care facilities, and commercial buildings.⁶⁰ Based on estimates we have received, Hallmark’s [] []⁶¹ We consider that Hallmark is likely to provide strong

⁵⁶ Commerce Commission interview with []; Email to Commerce Commission from [].

⁵⁷ Commerce Commission interview with [].

⁵⁸ Commerce Commission interview with [].

⁵⁹ The Application at [6.4].

⁶⁰ Our estimates suggest that Hallmark is currently the [] supplier by revenue and the [] supplier by volume.

⁶¹ Commerce Commission interview with []; Email to Commerce Commission from [].

competitive constraint, and that []⁶²

Best Doors

80. Best Doors competes to supply fire doors to a range of commercial building projects such as office buildings and apartments, [].
Based on estimates we have received, Best Doors' []⁶³

81. We considered whether the constraint from Best Doors could be weakened due to its use of Pyropanel fire door cores (which it sources from Assa Abloy Australia) to make some of its fire doors. However, we consider it is unlikely that Best Doors would be materially hindered as a competitor on this basis because:

81.1 it is unclear that the Assa Abloy Group would have the incentive to worsen terms of supply of Pyropanel to Best Doors; but, in any event

81.2 even if the terms of supply of Pyropanel to Best Doors were worsened, our enquiries indicated that there are other options for fire door cores that Best Doors could viably switch to, including E-Core (a brand of fire door cores supplied in New Zealand and Australia by Dormakaba Group).⁶⁴

82. Overall, we are satisfied that Best Doors is likely to provide meaningful constraint on the merged entity. We also consider that the constraint from Best Doors []⁶⁵

Mattson Joinery

83. Mattson Joinery supplies fire doors to building projects such as office buildings and apartments. We consider Mattson Joinery is likely to provide some degree of constraint on the merged entity for certain projects, [].
[]
[]

⁶² []

⁶³ Commerce Commission interview with []. Email to Commerce Commission from [].

⁶⁴ We understand that [].
See Commerce Commission interview with [].

⁶⁵ Commerce Commission interview with []. Email to Commerce Commission from [].

].⁶⁶

Doors ‘n’ More

84. Doors ‘n’ More supplies fire doors for a range of building projects such as apartments, hotels, commercial buildings and aged care facilities.⁶⁷ []⁶⁸ We considered whether Doors ‘n’ More could be harmed as a competitor due []⁶⁹ However, we consider []⁷⁰ Even if Doors ‘n’ More could be compromised as a competitor, []⁷¹ []⁷² We consider Doors ‘n’ More is likely to provide some constraint on the merged entity for some projects.
85. Overall, we consider that the combined constraint from these competitors is likely to be significant and, moreover, we consider it likely that this constraint will increase in the future.

Constraint from other competitors

86. In the Application, Assa Abloy NZ submits that the merged entity would also face constraint from other fire door suppliers such as Crittall Arnold,⁷¹ Steelguard,⁷² Southern Steel Windows,⁷³ and McNaughton.⁷⁴
87. While these suppliers may compete with the Parties for certain types of projects, market feedback has indicated that they are more distant competitors with different focus areas to the Parties. We have therefore not relied on the constraint from these competitors in our assessment of the Proposed Acquisition.

⁶⁶ Commerce Commission interview with []; Commerce Commission interview with [].

⁶⁷ See the Application at Table 5. []

⁶⁸ The Application at Table 5.

⁶⁹ []

⁷⁰ []

⁷¹ Crittall Arnold <http://crittall.co.nz/>.

⁷² Steelguard <http://www.steelguard.co.nz/>.

⁷³ Southern Steel Windows <https://www.southernsteelwindows.co.nz/>.

⁷⁴ McNaughton <https://www.mcnaughton.co.nz/>.

Constraint from new entry

88. In the Application, Assa Abloy NZ submitted that the merged entity would face strong constraint from potential entry, including from Australian suppliers that can import their fire doors into New Zealand. It submitted that imports from Australian suppliers pose a threat to the merged entity because the building code standards for fire doors are the same in Australia as they are in New Zealand.⁷⁵
89. In particular, Assa Abloy NZ identified one firm, Hume Doors & Timber (Hume), as being a notable constraint on the basis that Hume is a major supplier of fire doors in Australia and also manufactures and supplies non-fire doors to New Zealand customers from its plant in Auckland.
90. Hume told us that
[
]. Hume is a large supplier of fire doors in Australia
[

] ⁷⁶
91. In general, the evidence we have viewed suggests that constraint from potential entry may not be strong because testing requirements for fire doors make it difficult for a new supplier to develop an approved range of fire doors quickly. In particular, market participants have told us that testing fire doors can take months to book and complete, and that it is not uncommon for fire doors to fail testing resulting in additional cost and delay.⁷⁷
92. In respect of imports, market enquiries indicated that customers rarely seek to source fire doors from overseas.⁷⁸
- 92.1 Some construction companies told us that they have never used imported fire doors.

⁷⁵ The Application at [6.6]-[6.9].

⁷⁶ Commerce Commission interview with []; Commerce Commission interview with [].

⁷⁷ Although the relevant building code standards between Australia and New Zealand are the same, we understand that fire doors sold in Australia are usually installed and tested with steel frames rather than a timber one, and so Australian suppliers may need to conduct significant testing before being able to supply their doors in New Zealand. Commerce Commission interview with []; Commerce Commission interview with [].

⁷⁸ Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

- 92.2 Others indicated that they prefer to source fire doors locally because local products are more likely to be compliant with New Zealand building code standards, and lead times from local suppliers tend to be shorter.
- 92.3 Smaller projects may not require enough fire doors to justify the use of imports.
93. In light of the above, on a conservative basis we do not place significant weight on the likely constraint that potential entry will have on the merged entity.

Countervailing power

94. In the Application, Assa Abloy NZ submitted that construction companies have significant countervailing power because they are sophisticated buyers that typically procure by competitive tender and could switch suppliers mid-contract.⁷⁹ It also submitted that larger construction companies can sponsor new entry or expansion of existing competitors.⁸⁰
95. We consider that the merged entity may face some constraint from construction companies' countervailing power. The information we received indicated that construction companies:
- 95.1 typically use tenders (and often multiple rounds of tendering) to secure competitive terms,⁸¹ and may be able to discipline suppliers where they are unhappy with price or quality for example by excluding suppliers from future tenders.⁸²
- 95.2 in some cases, can influence which suppliers' products are specified in building plans.⁸³
- 95.3 could support smaller fire door suppliers to increase competition. However, based on the evidence it appears less likely that they would sponsor new entry or self-supply, due to the time and costs associated with testing and gaining approvals for fire doors.⁸⁴

⁷⁹ The Application at [6.12].

⁸⁰ The Application at [6.13].

⁸¹ Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

⁸² Commerce Commission interview with [].

⁸³ For some projects, construction companies have more control over the products that are specified in the building plans, in particular, 'design and build' projects and projects where the client has chosen to engage the construction company at an early stage (see <https://www.procurement.govt.nz/assets/procurement-property/documents/early-contractor-involvement-construction-procurement.pdf>.) We have received consistent feedback that the supplier that is specified at an early stage has a meaningful advantage at the procurement stage.

⁸⁴ Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

Conclusion on horizontal effects

96. The Proposed Acquisition would combine two of the largest suppliers in the fire door market and remove competition between NZFD and Pacific Doors in particular to supply building projects that do not require a large number of high-performance fire doors.
97. However, we consider that the merged entity:
- 97.1 would be constrained by competition from several existing suppliers, [] and/or could expand;⁸⁵ and
- 97.2 may face further constraint from the countervailing power of some construction companies and, potential entry, albeit to a less significant extent.
98. We are therefore satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the fire door market due to horizontal effects.

Conglomerate effects in the commercial hardware market

99. Conglomerate effects can arise where the merged entity can bundle complementary products (ie, provide them together, typically at a discount) or tie them (ie, only provide one product on the condition that another is acquired).
100. For conglomerate effects to arise, the merged entity would need to use bundling or tying to substantially lessen competition from rivals in a market for a complementary product(s) with the ultimate aim of raising prices in that market. For a bundling or tying theory of harm to be made out, the merged entity must have:
- 100.1 the ability to foreclose competitors through a bundling or tying strategy, which requires that the merged entity has market power in one of the products being bundled or tied that it can leverage into the otherwise more competitive complementary market; and
- 100.2 the incentive to take the actions needed to foreclose rivals from competing effectively.
101. We have considered whether the Proposed Acquisition would give the merged entity the ability and incentive to bundle or tie its commercial hardware with its fire doors in a way that forecloses competitors and substantially lessens competition.

⁸⁵ We note that []
[] so we consider the
constraint from existing competition is likely to increase.

Submissions received on bundling and tying

Submissions on bundling

102. Allegion and Dormakaba, which compete with Assa Abloy NZ in the manufacture of commercial hardware, have submitted that the merged entity could foreclose rival hardware manufacturers by bundling its doors and commercial hardware. Allegion submitted that the merged entity would be able to foreclose it by offering bundles against which Allegion cannot compete,⁸⁶ and Dormakaba submitted that the merged entity would be able to make integrated fire door/commercial hardware offerings that would limit its competitors to competing for smaller supply contracts.⁸⁷
103. Assa Abloy NZ has submitted that it would not be materially more able to bundle post-acquisition, as it would continue to lack the capability to install hardware post-acquisition internally, instead needing to outsource installation to a hardware distributor.⁸⁸ Assa Abloy NZ also submitted that, while some customers may view a bundled offer as convenient, customer demand for bundles is currently insignificant [].⁸⁹ It has submitted that Pacific Doors has bundled doors, hardware and installation on very few projects to date, and only [] since Assa Abloy NZ acquired Pacific Doors in 2018. [].^{90 91}

Submissions on tying

104. Allegion and Dormakaba have submitted that the merged entity could foreclose rival hardware manufacturers by limiting the approval of rivals' hardware on its fire doors, effectively tying its fire doors with its own hardware, and in doing so prevent rivals from competing effectively. In particular, Allegion and Dormakaba submit that customers procure fire doors before awarding contracts for commercial hardware,⁹² and that the merged entity could effectively foreclose rival hardware manufacturers by limiting the availability of its fire doors for testing with rivals' hardware.⁹³ Dormakaba also submitted that Assa Abloy NZ has refused to test some of its hardware on its fire doors since it acquired Pacific Doors.⁹⁴

⁸⁶ Allegion submission on the Statement of Preliminary Issues at [29]-[30]; Allegion submission on the Statement of Issues at [23]-[25].

⁸⁷ Dormakaba submission on the Statement of Issues at [9]-[20].

⁸⁸ Assa Abloy NZ submission on the Statement of Issues at [7.6]-[7.7]. See also Assa Abloy NZ cross-submission on the Statement of Issues at [2.19].

⁸⁹ See Assa Abloy NZ cross-submission on the Statement of Issues at [3.12]-[3.14]; Commerce Commission interview with Assa Abloy [].

⁹⁰ Assa Abloy NZ submission on the Statement of Issues at [7.4]. Also see Assa Abloy NZ's cross-submission on the Statement of Preliminary Issues.

⁹¹ Assa Abloy NZ cross-submission on the Statement of Issues at [2.17]-[2.19].

⁹² Dormakaba submission on the Statement of Preliminary Issues at [13]; Dormakaba submission on the Statement of Issues at [10(b)]; Allegion submission on the Statement of Issues at [9]-[12].

⁹³ Allegion submission on the Statement of Preliminary Issues at [29]-[30]; Dormakaba submission on the Statement of Preliminary Issues at [12]; Dormakaba submission on the Statement of Issues at [17].

⁹⁴ Dormakaba submission on the Statement of Preliminary Issues at [16].

105. Assa Abloy NZ has submitted that, by limiting the approval of rivals' hardware on its fire doors, it would risk losing fire door sales from customers that are prepared to use an alternative fire door supplier in order to use an alternative brand of commercial hardware.⁹⁵ It also submitted that it is incentivised to ensure a wide range of commercial hardware is approved on its doors, and that it has never refused to test rival hardware previously.⁹⁶ Assa Abloy NZ has further submitted that, while customers typically award fire door contracts before awarding commercial hardware contracts, the choice of fire door would not be likely to exclude rival commercial hardware from supplying the entire project, but only the specific items that lack the necessary approvals.⁹⁷

Our assessment of conglomerate effects

106. Based on the evidence we have seen, we consider the Proposed Acquisition would be unlikely to give rise to conglomerate effects in the commercial hardware market. In particular, we do not consider that the Proposed Acquisition would give Assa Abloy NZ increased ability or incentive to bundle or tie its doors and hardware in an anticompetitive way. We expand on this in the sections below.

Foreclosure by bundling

107. Without the Proposed Acquisition, Assa Abloy NZ can already offer customers a bundle consisting of Pacific Doors' fire doors and Assa Abloy NZ commercial hardware (although it currently needs to outsource hardware installation to do this). Post-acquisition, Assa Abloy NZ would be able to bundle NZFD's fire doors with its hardware in a similar way.
108. However, we consider it is unlikely that the merged entity would have the ability to bundle its fire doors and commercial hardware in such a way that prevents rival hardware manufacturers from competing effectively. In particular, we do not consider that the Proposed Acquisition would give Assa Abloy NZ market power in fire doors currently supplied by NZFD. Rather, the evidence we have received is that NZFD's fire doors are often substitutable for fire doors made by other suppliers, and that customers would have genuine alternatives to any bundle combining NZFD doors with Assa Abloy NZ commercial hardware.⁹⁸
109. Further, the evidence we have seen indicates that bundling is not a prominent feature of the market, but rather has only occurred in a handful of larger building projects. In particular, we understand that only Pacific Doors has supplied bundled

⁹⁵ Assa Abloy NZ cross-submission on Statement of Preliminary Issues at [2.8].

⁹⁶ Assa Abloy NZ cross-submission on the Statement of Preliminary Issues at [2.12].

⁹⁷ Assa Abloy cross-submission on the Statement of Issues at [2.6].

⁹⁸ Therefore, we consider that a strategy of offering NZFD doors at high prices standalone (perhaps higher than today's) but at more attractive prices when bundled with hardware – with the aim of driving customers onto the merged entity's hardware – is unlikely to gain much leverage. We consider that customers would likely be able to purchase hardware and doors combined at a similar total cost as the merged entity's bundles by buying hardware and doors separately from the merged entity's rivals.

fire doors and commercial hardware to date,⁹⁹ and that no other suppliers have offered similar bundles to date.

110. However, even if customer demand for bundled doors and hardware increases in the future, the evidence we have received suggests that other suppliers could compete with their own bundles. For example:

110.1 [] told us that it would consider partnering with [] to distribute its hardware with [] fire doors;¹⁰⁰

110.2 we understand that [] and [] had preliminary discussions about partnering to offer bundled doors and hardware [].¹⁰¹

110.3 [], a hardware distributor, told us that it would consider entering the door market if customer demand for bundles were to increase.¹⁰²

110.4 [], another hardware distributor, told us that there is potential for bundling in the future to be led by hardware distributors rather than fire door suppliers, as hardware distributors are more experienced in working with construction companies on-site and may be more capable of managing the risks that come with supplying a bundle.¹⁰³

111. We consider that competitors' bundles would likely be competitive with those offered by the merged entity, as we consider that NZFD's fire doors are generally substitutable with alternative fire door brands such as Best Doors, Hallmark, and Mattson Joinery.

Foreclosure by tying

112. We have considered whether the merged entity would have the ability and the incentive to foreclose rival hardware manufacturers by limiting the approval of rivals' hardware on its fire doors as a way of tying its own fire doors and commercial hardware.

113. Market feedback we have received indicates that fire door suppliers have a high level of control over what hardware is tested and approved on their fire doors.¹⁰⁴ Post-acquisition, Assa Abloy NZ would likely be able to influence what commercial hardware is tested on the fire doors supplied by NZFD. However, based on the

⁹⁹ [] Assa Abloy NZ cross-submission on the Statement of Preliminary Issues.

¹⁰⁰ Commerce Commission interview with [].

¹⁰¹ [] provided to the Commission in response to an information request to [].

¹⁰² Commerce Commission interview with [].

¹⁰³ Commerce Commission interview with [].

¹⁰⁴ See Commerce Commission interview with []; Commerce Commission interview with [].

evidence we have received, we consider it is unlikely that the merged entity would have the ability and the incentive to substantially lessen competition by tying.

114. In particular, we do not consider the aggregation of NZFD with Pacific Doors would give Assa Abloy NZ the market power in fire doors needed to restrict competition in the manufacture and supply of commercial hardware. This is because we consider that customers have sufficient alternative options to the merged entity's fire doors and so could retain the option to use rivals' hardware by selecting an alternative fire door supplier. In addition, we note that rival hardware manufacturers such as Allegion and Dormakaba already have approvals for a significant range of their commercial hardware on the Parties' fire doors, and so would still be able to compete on most projects with these ranges.¹⁰⁵
115. Further, while the merged entity could potentially gain some hardware sales by restricting rivals from obtaining approvals, we consider there would be a real risk that it would lose fire door sales in cases where its doors are not approved with the hardware that customers prefer.
- 115.1 Some market participants have indicated that, depending on the project, customers may have stronger preferences about the brand of commercial hardware than they do about the brand of fire door. For example, where a building requires more standard fire doors (such as those often supplied by NZFD), the customer may be more focused on the choice of hardware as there is more variety and differentiation between brands when it comes to the design and appearance of hardware.¹⁰⁶
- 115.2 Fire door suppliers such as [] and [] have indicated that having a range of hardware approvals is an important factor in being able to supply fire doors to some customers.¹⁰⁷
- 115.3 We also consider that there could be a reputational impact on the merged entity if it pursued a tying strategy. If the merged entity sought to limit rivals' ability to test their hardware on its fire doors, this would reduce the level of cross-compatibility in the market and add complexity to the process of specifying and procuring fire doors and commercial hardware, and could cause some customers to respond by favouring other suppliers.¹⁰⁸
116. To better understand how a tying strategy could impact profitability, we have analysed estimated profit margins for the Parties' commercial hardware and fire

¹⁰⁵ See NZFD's approved hardware list: <https://www.nzfiredoors.co.nz/assets/Uploads/Hardware/Approved-Hardware-List.pdf>; and Pacific Doors' approved hardware list: <https://www.pacificdoors.co.nz/fire/frr-approved-hardware>.

¹⁰⁶ Commerce Commission interview with []; Commerce Commission interview with []; Commerce Commission interview with [].

¹⁰⁷ Commerce Commission interview with []; Commerce Commission interview with [].

¹⁰⁸ Commerce Commission interview with []; Commerce Commission interview with [].

doors. Based on this information, we understand that the margins on fire doors (per-door) are [].¹⁰⁹ This indicates that the merged entity []. Our analysis indicates that tying would be unlikely to be profitable.

117. Finally, we have considered the conflicting submissions we received on whether the Assa Abloy Group has previously refused to test rivals' hardware. Based on the submissions and further information we have been provided, we are unable to conclude that the Assa Abloy Group has refused to test rival hardware manufacturers products on its fire doors for the purpose of excluding or preventing them from competing. However, even if the Assa Abloy Group has refused to test some rival products with its fire doors, we have seen no evidence that this is significantly impacting competition in the supply of commercial hardware. We do not consider this is likely to change post-acquisition, as for the reasons above we consider it is unlikely that the merged entity would profit by attempting to foreclose rivals by tying.

Conclusion on conglomerate effects

118. On the basis of the evidence we have received, we consider that the Proposed Acquisition is unlikely to give Assa Abloy NZ increased ability or incentive to foreclose rival hardware manufacturers by bundling or tying its fire doors and commercial hardware. As such, we consider the Proposed Acquisition is unlikely to substantially lessen competition due to conglomerate effects.

Overall conclusion – no likely substantial lessening of competition

119. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

¹⁰⁹ In particular, based on the estimates received the margins on doors are typically greater than \$[] per door, while margins for commercial hardware are approximately \$[] per unit, although this may vary significantly by the category of hardware.

Determination on notice of clearance

120. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to Assa Abloy NZ to acquire all of the shares in NZFD.

Dated this 23rd day of July 2021

Dr Derek Johnston
Chair of Division