



Statement of Issues

14 November 2019

Assa Abloy – proposed acquisition of E Plus

Purpose

1. Assa Abloy Australia Pacific Pty Ltd (**Assa Abloy**) proposes to acquire E Plus Building Products Pty Ltd (**E Plus**) (**the proposed acquisition**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views of the competition issues arising from the proposed acquisition
 - identifies areas of further inquiry, and
 - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants, and therefore may not necessarily represent a full articulation of the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. The legal test the ACCC applies in considering the proposed acquisition is set out in section 50 of the *Competition and Consumer Act 2010* (the Act). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. For this Statement of Issues, there is one 'issue of concern' and one 'issue that may raise concerns'.

Issue of concern – SLC in relation to fire door core supply

6. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the market for the supply of fire door cores, increasing suppliers' ability and incentive to raise prices. Pyropanel, an Assa Abloy subsidiary, and E Plus are two of the largest fire door core suppliers in an already concentrated market, with only one other supplier to third parties in Australia. The proposed acquisition will give Assa Abloy an estimated market share of over 65 per cent.

Issues that may raise concerns – potential for foreclosure exacerbated by consolidation of fire door core suppliers

7. The ACCC also has concerns that the proposed acquisition could increase Assa Abloy's ability and incentive to prevent its competitors from testing their fire door cores and door hardware with Assa Abloy owned door hardware and cores, respectively. Without the ability to test their products on Assa Abloy owned products, suppliers of fire door cores and door hardware will be certified in fewer combinations and therefore have a reduced product offering. This would be likely to reduce the constraint that these door core and hardware competitors could impose on Assa Abloy, allowing it to increase prices for these products.

Making a submission

8. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
 - the importance of E Plus as a competitor to Pyropanel and Firecore
 - examples of price increases for fire door cores, and examples of core suppliers refusing to supply new customers
 - the likelihood of new fire door core suppliers commencing supply into Australia or customers self-supplying, and any barriers to such entry
 - Assa Abloy's and rival door hardware manufacturers' architect specification and retention rates, and
 - Assa Abloy's incentives in considering fire testing requests from rival core, door hardware and seal suppliers.
9. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
10. Interested parties should provide submissions no later than 5pm on Thursday, 28 November 2019. Responses may be emailed to mergers@acc.gov.au with the title: Submission re: Assa Abloy Seal Doors E Plus - attention Elizabeth Elias/Nadia Vassos. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Elizabeth on 02 6243 1104 or Nadia on 02 6243 1016.
11. The ACCC anticipates making a final decision on Thursday, 5 March 2020, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit

the Mergers Register on the ACCC's website at: www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

12. The ACCC will not publish submissions regarding the acquisitions. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s 155AAA of the Act. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC 'Statements of Issues'

13. A Statement of Issues published by the ACCC is not a final decision about an acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
14. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Timeline

Date	Event
21 August 2019	ACCC commenced review of the proposed acquisition
14 November 2019	ACCC publication of Statement of Issues
28 November 2019	Deadline for submissions from interested parties in response to this Statement of Issues
5 March 2020	Anticipated date for ACCC final decision

The parties

Assa Abloy

15. Assa Abloy is a vertically integrated global supplier of locks, security and related products. In Australia, Assa Abloy owns a number of brands at various levels of the fire door supply chain:
 - Fire door cores: Pyropanel

- Door hardware: Lockwood, Abloy, Aperio, Yale, Trimec, Whitco and Interlock
- Seals: Lorient
- Door manufacturing, installation and distribution: Spence Doors, Action Building Systems, All Door Installations, Sliding Door Pockets, National Doors, Peninsula Fire Doors and Victoria Fire Doors.

E Plus

16. E Plus (previously part of Seal Doors) is one of three suppliers of fire door cores to third party fire door manufacturers in Australia, supplying the E-Core fire door core product. E-Core is distributed via a network of licenced fire door manufacturers throughout Australia.

The transaction

17. On 29 March 2019, Assa Abloy acquired the Seal Doors Group, comprising Seal Doors Pty Ltd and seven subsidiaries (excluding E Plus) (**Seal Doors**). Prior to the completed acquisition, E Plus was separated from Seal Doors, to be run independently as a standalone business.
18. Assa Abloy has sought ACCC clearance for the proposed acquisition of E Plus.
19. While this Statement of Issues relates to the proposed acquisition of E Plus, if industry participants have comments in relation to the completed acquisition of Seal Doors, please send them to mergers@accc.gov.au with the title: "attention Elizabeth Elias/Nadia Vassos".

Future with and without the proposed acquisition

20. Section 50 of the Act prohibits mergers or acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the "with" position) to the likely future state of competition if the acquisition does not proceed (the "without" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
21. On the basis of the information currently available, the ACCC considers that absent the proposed acquisition, E Plus would be likely to continue to operate as a competitor to Assa Abloy's Pyropanel and Firecore.

Industry background

22. Fire door cores are the key element of fire protection in doors, providing passive resistance to contain fire, smoke and heat within an area, while providing a safe passage for building occupiers to exit a building during an emergency. The ACCC understands that fire doors are required in multi-unit residential buildings over 4 storeys, and all commercial buildings, including hospitals and schools.

23. The ACCC understands that each fire door combination of the core, leaf, frame, wall type, installation method, door hardware and seal must be tested and certified to Australian Standards 1905.1 and 1530.4. Testing can occur by a full scale fire test (typically of the base door and frame combination), a pilot fire test (typically used for different door hardware combinations), and an opinion or assessment by a fire engineer, although market feedback suggests that builders prefer to use combinations that have been subject to actual fire testing.
24. Fire door cores are typically manufactured by a third party and imported for the core supplier. In addition to Pyropanel and E Plus described above, Firecore is the only other supplier of fire door cores to third party door manufacturers in Australia. Firecore is an independent business with no other operations in the fire door supply chain.
25. Fire door core suppliers typically have exclusive licensee arrangements with fire door manufacturers, who assemble the fire door core and the door leaf. Fire door manufacturers typically compete by way of tender to supply the fire doors and standard timber doors used in construction projects.
26. Market participants estimate that the market for the supply of fire door cores in Australia is approximately \$15 - 20 million.

Market definition

27. The ACCC's starting point for defining relevant markets, to assess the competitive effects of the proposed acquisition, involves identifying the products and geographic regions actually or potentially supplied by the parties to the transaction. The ACCC then focuses on areas of activity where competitive harm could occur as a result of the proposed acquisition.

Market for the supply of fire door cores

28. The ACCC's preliminary view is that the competitive conditions for the supply of fire door cores are distinct from the supply of completed fire doors and other components of fire doors. While other Assa Abloy subsidiaries are active in the supply of other door products, Pyropanel, E Plus and Firecore are all only active in the supply of fire door cores to fire door manufacturers in Australia. Although market feedback suggests that some core suppliers have a greater geographic presence in some areas than others, all three currently supply customers across Australia.
29. Due to regulations requiring their use in commercial and certain residential buildings, the ACCC considers that customers of fire door cores are unlikely to have alternative products to switch to in response to a price increase. Similarly, suppliers of other door components are unlikely to be able to quickly commence supply of fire door cores in response to a price increase due to the cost and time involved in developing a core and obtaining certifications.
30. As such, the ACCC's preliminary view is that the market in which to consider the effect of the proposed acquisition is the supply of fire door cores to fire door manufacturers in Australia.

Market for the supply of door hardware for use on fire doors

31. The ACCC's preliminary view is that there is also likely to be a market for the supply of door hardware certified for use on fire doors in Australia.
32. On the demand side, the ACCC considers that certified door hardware is unlikely to be substituted for non-certified door hardware due to regulations requiring door hardware to be tested and certified for use on a fire door. Market feedback suggests that door hardware that is not certified for use in that fire door combination would be replaced with door hardware that is certified, rather than conducting fire testing of that combination solely for use on that project.
33. The ACCC is further considering supply side substitution. Specifically, how quickly a non-rated door hardware supplier would be able to obtain certification for its door hardware in response to a price increase for certified door hardware.

Issue of concern: SLC in relation to fire door core supply

34. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of fire door cores to third party door manufacturers in Australia, increasing the remaining fire door core suppliers' ability and incentive to raise prices. The proposed acquisition will reduce the current number of fire door core suppliers from three to two, and the ACCC is concerned that timely and sufficient new entry is unlikely to be a sufficient constraint.

The proposed acquisition would remove a significant competitor

35. The ACCC understands that there are currently only three companies in Australia that are viable suppliers of fire door cores to third party fire door manufacturers: Assa Abloy, E Plus and Firecore.
36. The only other company currently importing fire door cores into Australia, Howhua, does not supply other fire door manufacturers. Market participants also generally considered it is not a viable alternative to Pyropanel, E Plus and Firecore, as Howhua's range of certifications is substantially limited compared to the other fire door core suppliers. The ACCC considers that the threat of customers switching to Howhua is unlikely to be a sufficient constraint.
37. Information available to the ACCC indicates that a combined Assa Abloy-E Plus would have at least a 65 per cent market share of fire door cores. If the proposed acquisition proceeded, the Herfindahl-Hirschman Index (**HHI**)¹ would increase from in excess of 3000, to in excess of 5000, indicating that the market is already extremely concentrated, and this would be significantly exacerbated by the proposed acquisition.
38. As fire door cores are a non-discretionary component of a building project, the ACCC considers that demand for fire door cores is unlikely to be price sensitive.

¹ HHIs range from 0 to 10,000. A HHI of 10,000 would represent an absolute monopoly. As identified in the ACCC's 2008 Merger Guidelines, the ACCC will generally be less likely to identify competition concerns when the post-merger HHI is less than 2000, or greater than 2000 with an increase less than 100.

As such, suppliers can increase prices with little to no decrease in overall demand, as overall demand is determined by external factors, such as new construction projects. Market feedback to the ACCC suggests that fire door core prices already increase each year.

39. The proposed acquisition would remove E Plus as a competitor to Pyropanel and Firecore. The removal of the competitive constraint imposed by E Plus would result in less discipline on any attempt by Pyropanel and/or Firecore to increase prices.
40. Further, competition between Pyropanel and Firecore will become a 'zero sum game' as a result of the proposed acquisition; any market share lost by Pyropanel will be picked up by Firecore, and vice versa. The proposed acquisition will increase Pyropanel's and Firecore's ability to observe each other's behaviour and pricing strategies as a result of losing customers to the other, for example. The threat of a price war may also act as a deterrent to Pyropanel and Firecore engaging in meaningful price competition, particularly as fire door core suppliers are likely to face increased costs in obtaining new certifications to comply with the 2015 Australian Standards by 2022.
41. As such, the ACCC is concerned that the proposed acquisition is likely to result in higher, more sustainable price increases than otherwise would be the case if E Plus remained a competitor.

The threat of timely and sufficient new entry is unlikely to be a sufficient constraint

42. The ACCC's preliminary view is that the threat of timely and sufficient new entry is unlikely to be a sufficient constraint on the remaining fire door core suppliers post-acquisition.
43. Market feedback suggests that developing a fire door core that is capable of being certified to the Australian Standards requires expertise, and it will generally take multiple testing attempts and redesign before the core will pass initial fire tests, with no guarantee that the core will meet the Australian Standards. Due to the unique requirements of the Australian Standards, importing a fire door core already used in another jurisdiction is also likely to require redesign and multiple testing attempts.
44. For a supplier to be a viable competitor to Pyropanel, E Plus and Firecore, it must have a large range of certified combinations. While market feedback suggests that a supplier must have a core certified in at least 50 combinations for it to be a viable option, information available to the ACCC indicates that the three core suppliers to third parties have in excess of a few hundred certifications (a combination of full scale tests, pilot tests and assessments). The cost of testing this many combinations is likely to exceed \$2 million, which is material in the context of industry revenues.
45. Market feedback suggests that testing takes time, and is likely to occur over the course of a number of years. While the ACCC is aware of one or more companies who may be considering future supply of fire door cores in Australia, the ACCC's preliminary view is a new entrant is only likely to become a material competitor capable of exerting sufficient constraint on the incumbents a few years after entry.

46. Market participants have noted that Firecore has been the only new entrant in the past 15 years who has become a viable alternative to Pyropanel and E Plus. Market participants have indicated that the Australian Standards have become more stringent since Firecore entered, and there has been a substantial increase in the number of possible combinations of fire doors, substantially increasing the cost and time involved in entry.

Customers are unlikely to have countervailing power

47. Market participants generally submit that the majority of fire door manufacturers are unlikely to consider self-supply due to the difficulties in developing a fire door core capable of certification, and the cost and time involved in obtaining a sufficient range of certified combinations. Market feedback to date suggests that the price of fire door cores would need to increase by substantially more than 5 – 10 per cent for door manufacturers and construction companies to consider self-supply of fire door cores or completed fire door sets, respectively.
48. While the ACCC is aware of some examples of customers self-supplying cores and fire door sets, information available to the ACCC suggests that these examples are likely to be unique circumstances for specialised applications, including where Australian door manufacturers were not able to produce a fire door capable of meeting both the customer's requirements and the Australian Standards. The ACCC is also aware of at least one failed attempt at self-supply.
49. As such, the ACCC's preliminary view is that customers are unlikely to have a sufficient degree of countervailing power to constrain core suppliers from increasing prices.

ACCC's preliminary view

50. In summary, the ACCC considers that the proposed acquisition is likely to substantially lessen competition in the market for the supply of fire door cores to third party door manufacturers in Australia. The ACCC's preliminary view is that there is unlikely to be a threat of timely and sufficient new entry, or that customers have a sufficient degree of countervailing power, that would constrain the remaining fire door core suppliers. The ACCC is concerned that fire door core suppliers would be able to increase prices by more than they would have absent the proposed acquisition.

The ACCC invites comments from market participants on its concerns in relation to the issues identified above. In particular, market participants may wish to comment on the following:

- Examples of door manufacturers switching between Pyropanel, E Plus and Firecore.
- Examples of fire door core suppliers refusing to supply new customers.
- Whether you have sought to obtain supply of fire door cores from Howhua? Why/why not? If you did, what was the response?
- The cost and time involved in fire door manufacturers switching fire door core suppliers.

- Any new core suppliers currently considering or planning to commence supply into Australia.
- The cost and time involved in sourcing and developing a fire door core.
- The cost and time involved in the various options (e.g. full scale test, pilot test, assessment or opinion) for obtaining certification for fire door cores and sets, and any limitation on those options.
- The number of certified fire door combinations a new entrant would need in order to be a viable fire door core supplier.
- How high would prices need to increase before door manufacturers and/or construction companies consider self-supply of fire door cores or completed fire door sets.
- Examples of attempted new fire door core supply into Australia and/or self-supply of cores or fire door sets.
- Examples of fire door cores and completed fire doors supplied into Australia that have been tested to the Australian Standards in overseas testing facilities.

Issue that may raise concerns: potential for foreclosure exacerbated by consolidation of fire door core suppliers

51. While Assa Abloy is vertically integrated at every level of the fire door supply chain since acquiring Seal Doors (including door hardware, seals, fire door cores, and fire door manufacturing and installation), the proposed acquisition is likely to increase Assa Abloy's control over interdependent components within the fire door supply chain.
52. The ACCC is concerned that Assa Abloy may have the ability and incentive post-acquisition to prevent its competitors from testing their:
 - fire door cores with Assa Abloy owned door hardware and seals, and
 - door hardware and seals with Assa Abloy cores.
53. Without the ability to test their products on Assa Abloy owned products, other suppliers of fire door cores, and door hardware and seals, will be certified in fewer combinations, preventing their use in fire doors where Assa Abloy owned products are used.

Ability to prevent testing and certification

54. The ACCC understands that the Australian Standards require core suppliers to "sponsor" testing, meaning that the assembled fire door² is supplied by the fire door core supplier, in order for testing with that core to be recognised. While the Australian Standards do not require the same for door hardware, market feedback suggests that some NATA accredited laboratories require approval

² The core constructed with the door leaf.

from the suppliers of fire door components before they will conduct fire tests using those products. As such, suppliers will generally cooperate when their products require testing with another suppliers' products. However, market feedback indicates that some fire door core suppliers have refused to cooperate in the past, or delayed for such a long time that the testing did not occur.

55. Due to the requirements of the Australian Standards and the laboratories, the ACCC considers that Assa Abloy currently has the ability to prevent rivals from testing their products with Pyropanel cores and Assa Abloy hardware. By acquiring E Plus, it would also have the ability to prevent rival door hardware and seal suppliers from being certified for use with E Plus cores.

Incentive to prevent testing and certification

56. The ACCC is concerned that Assa Abloy may have an increased incentive to maximise its door hardware sales by preventing one or more rival hardware and seal suppliers' requests to test with Pyropanel and E Plus cores. The ACCC's preliminary view is that the proposed acquisition is likely to increase this incentive as Assa Abloy would control at least 65 per cent of core supply in Australia, increasing the likelihood of success of a strategy to block competitors from introducing new hardware or seal products, or from retesting products before 2022 to comply with the 2015 Australian Standards.
57. By acquiring E Plus, Assa Abloy is also likely to have an increased incentive to maximise its fire door core sales by preventing Firecore and any other core suppliers from testing their cores with Assa Abloy door hardware and seals.
58. The ACCC's preliminary view is that Assa Abloy's incentive to restrict testing will depend on whether increased sales of:
 - door hardware and seals will compensate for any loss of sales in cores, or
 - cores will compensate for any loss in sales of door hardware and seals.
59. The ACCC is currently considering whether this loss of sales of one Assa Abloy product is likely to be outweighed by the potential gain of sales of the other Assa Abloy product if such a strategy was employed.
60. Market feedback suggests that the architect's specifications for door hardware will typically determine the choice of suppliers for the remaining door components, although there are some situations in which the core used in a fire door will dictate the choice of door hardware and seals. Market participants generally considered that Lockwood, owned by Assa Abloy, has the highest rate of specification in Australia.

Effect on Firecore, and rival door hardware and seal suppliers

61. The ACCC is concerned that if Assa Abloy prevents its rivals' products from being certified with Assa Abloy owned products, customers will be restricted in their ability to select individual products on the basis of price and quality. In that situation, the choice of fire door components would be dictated by available certified combinations. This may decrease sales of, and the constraint imposed by, Firecore, and rival hardware and seal suppliers, allowing Assa Abloy to increase prices and/or decrease product quality. Price competition by Firecore

would be ineffective in regaining any loss in market share, particularly if Assa Abloy hardware has a high architect specification rate.

62. The ACCC is also concerned that any restriction of testing with E Plus and/or Pyropanel cores may prevent rival hardware brands from competing to supply a range of customers. The impact of this restriction:

- May decrease the incentive for rival door hardware manufacturers to invest in developing innovative products, as door hardware manufacturers may need to sell a critical mass of new product for it to be profitable.
- May decrease the incentive for private label door hardware manufacturers to develop cheaper versions of high-cost door hardware, as private label products may be reliant on high volumes to compensate for lower margins.
- Effectively limits rival door hardware manufacturers to be offered with Firecore cores. This may allow Firecore to increase its prices where rival door hardware suppliers are specified by architects.

ACCC's preliminary views

63. In summary, the ACCC's preliminary view is that the proposed acquisition may increase Assa Abloy's ability to prevent rivals from testing and being certified with Assa Abloy's products. The ACCC will continue to consider whether Assa Abloy is likely to have the incentive to do so post-acquisition, and the effect on Firecore, and/or rival hardware and seal suppliers.

The ACCC invites comments from market participants on its concerns in relation to the issues identified above. In particular market participants may wish to comment on the following:

- The competitive strengths and weaknesses of the various door hardware and seal suppliers, with reference to their product ranges, range of certifications and architect specification rates.
- The importance of architect specifications, and rates of substitution from specified hardware.
- Examples of door hardware or seals being substituted for another brand as a result of the fire door core that is used on a project.
- The cost and time involved in the various options (e.g. full scale test, pilot test, assessment or opinion) for obtaining certification for door hardware, and any limitation on those options.
- The importance of obtaining certification for door hardware with a range of different fire door cores, door hardware and seals.
- The importance of obtaining certification for fire door cores with a range of different door hardware and seals.
- Examples of new door hardware and/or seal products not being launched due to inability to obtain certification with all fire door core types.

- Examples of testing refusals and/or delays, and any reasons given for the refusal or delay.
- The amount of market penetration needed to cover costs for (i) door hardware innovations, and (ii) private label door hardware.
- Profit margins on fire door cores, door hardware and seals.

ACCC's future steps

64. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 5pm on Thursday, 28 November 2019 and should be emailed to mergers@acc.gov.au.
65. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
66. The ACCC intends to publicly announce its final view by Thursday, 5 March 2020. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.