

Anticipated acquisition by Assa Abloy AB of 32.95 per cent shareholding in Agta Record AG

ME/4792/10

The OFT's decision on reference under section 33(1) given on 4 February 2011. Full text of decision published 8 March 2011.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Assa Abloy AB** is an international manufacturer and supplier of complete automatic pedestrian door sets under the trade name **Besam** in the UK. It also assembles and sells automatic door automation systems (systems) under the trade names **Ditec** and **Entrematic**. It also manufactures and supply locks and associated products and industrial automatic doors.¹ In the year ending 31 December 2009, Assa Abloy reported sales of SEK 34,963 million (approximately £2.9 billion) of which its UK sales of automatic doors (including installation and maintenance services) were £[] million.
2. **Agta Record AG (Agta Record)** has its headquarters in Switzerland and is listed on the Euronext Exchange in Paris. It manufactures and supplies systems and complete automatic pedestrian door sets. It also manufactures sensors for use in its door automation systems. In the year ended 31 December 2009, worldwide sales were equal to €198.4 million, of which UK sales were estimated to be €[] million (£[] million). Agta Record's UK subsidiary is **Record UK**.

¹ Based on the evidence before the OFT this merger does not have any impact on these products.

TRANSACTION

3. On 8 October 2010, Assa Abloy has agreed to acquire approximately 32.95 per cent of Agta Record's share capital subject, among other conditions, to regulatory competition clearance. If successful, Assa Abloy's stake in Agta Record would amount to approximately 38 per cent following its acquisition of an additional 5 per cent (approximately) of its share capital on 3 November 2010.
4. The OFT received a satisfactory submission from Assa Abloy on 1 December 2010. The administrative deadline expired on 3 February 2011.

JURISDICTION

5. This anticipated transaction will result in Assa Abloy and Agta Record ceasing to be distinct enterprises for the purposes of section 26 of the Enterprise Act 2002 (the Act). The OFT believes that Assa Abloy will acquire material influence over Agta Record. Its 38 per cent shareholding will entitle Assa Abloy to block special resolutions at Agta Record shareholder meetings and will thus acquire 'the ability to exercise material influence' over the target company. As stated in the Merger Assessment Guidelines, this is the lowest level of control that may give rise to a relevant merger situation.
6. The parties overlap in the supply of complete automatic pedestrian door sets and systems. Their estimated combined share of supply is [35-45] per cent (including an increment of [5-15] per cent) and, therefore, the share of supply test in section 23 (2) of the Act is met.
7. Based on the above, the OFT believes that it is or may be the case that arrangements are in progress or in contemplation, which if carried into effect, will result in the creation of a relevant merger situation.

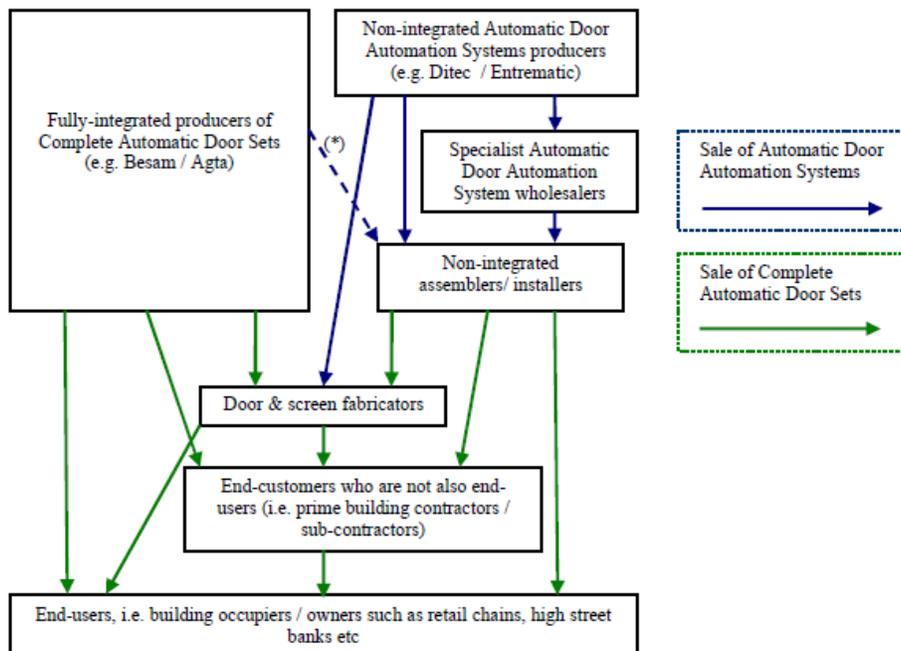
BACKGROUND

8. Automatic doors operate when a pedestrian's presence is detected by sensors, by pressing a button or by swiping a card. Automatic doors swing open, slide open or revolve. The type of door installed depends on the environment where it will be installed (in terms of its physical location and

expected usage) price, and the function of the door. There may be some degree of choice in some circumstances.

9. Automatic door manufacturers generally supply both separate systems and complete automatic pedestrian door sets. Systems consist of operating control components (for example, control boards, transmitters and receivers), opening and closing hardware (such as motors and gearboxes) and safety devices and actuators (for example, sensors, photocells, safety switches and push buttons). Automatic door automation systems are combined with toughened glass doors, leaves and aluminium frames to form complete automatic pedestrian door sets.
10. Automatic door automation systems and complete automatic pedestrian door sets are sold in the UK through different sales channels to end users. The diagram below presents the supply chain:

Diagram 1, automatic door products supply chain



FRAME OF REFERENCE

11. The parties overlap in the supply of systems and complete automatic door sets as well as in providing related maintenance services (maintenance services).

Product scope

Automatic door automation systems

12. Doors require an 'operator' or system to work automatically. The different components needed to create the system (see paragraph 9 above) are mostly manufactured by third parties and assembled by manufacturers of doors or systems to be sold as distinct items.
13. The type of door chosen will determine the type of system chosen. The price of the system also varies, with systems for swinging doors costing considerably less than systems for sliding doors, which in turn cost considerably less than systems for revolving doors. On this basis, systems for one type of door are not obviously demand-side substitutes for systems for another type of door.
14. On the supply side, however, Assa Abloy submits that a supplier of one system type can easily switch to supplying another type. Most third party feedback supports this view.
15. Set against this, most third party feedback also indicates that some suppliers specialise in certain types of systems. Consistent with this, quantitative data submitted by Assa Abloy shows differences in market shares among market players in the supply of systems. Further, systems are purchased by wholesalers, non-integrated installers, and door and screen fabricators who manufacture or purchase door leaves, glass, frames and other necessary hardware in order to sell and install complete automatic door sets, often in competition with integrated manufacturers².
16. In the presence of niche suppliers in certain systems, differences in shares of supply in certain types of systems and differences in distribution models, the conditions in which it is appropriate to aggregate separate demand-side

² 'Integrated manufacturers' are installers or fabricators that also manufacture or assemble systems. Many are UK subsidiaries of larger worldwide companies such as Dorma, Geze, Kaba and Ingersoll Rand. Some manufacturers, for example, Assa Abloy, supply systems to third parties as well as producing for its own consumption. These integrated manufacturers then sell the complete automatic door sets. 'Non-integrated assemblers/installers/fabricators' are installers that do not themselves manufacture systems.

markets into one wider market on the basis of supply-side considerations do not appear to be met.³

17. In light of the above, the OFT has taken a cautious approach and considered that there is a market for particular types of systems (sliders, swingers and revolvers).

Complete automatic pedestrian door sets

18. Assa Abloy, through its Besam brand, supplies and installs complete automatic pedestrian door sets. Besam is in competition with fabricators and with complete automatic door sets sold by Record UK and other integrated manufacturers.
19. There may be some limited degree of choice between types of automatic doors (that is, complete automatic door sets) in some circumstances. A common denominator to all third parties' responses on this issue is that from the demand side, the possibility of substitutability depends on many different factors (see paragraph 8). In some cases, the brand or type of set is specified by the architect or contractor, which limits the ability of customers to switch to an alternative set; in other cases, it is the end-user who specifies the set. Consistent with this, several large customers told the OFT that each type of door set forms a separate market.
20. On the supply side, Assa Abloy submitted that manufacturers of one type of set can switch easily and cheaply to another one.
21. However, there is some evidence that some manufacturers (Boon) specialise in revolving doors while others (Tormax, Ingersoll Rand, Kone and Stanley) neither manufacture nor sell revolving doors. Few companies offer the full range of door sets and even those that do may have low sales in certain types of door sets because they have specialised in supplying a different type of door set. In addition, feedback received from some customers and competitors suggests that some companies are known to have a better product in a particular type of door set.
22. Again, on this basis, the conditions in which it is appropriate to aggregate separate demand-side markets into one wider market on the basis of supply-side considerations do not appear to be met.

³ Merger Assessment Guidelines, paragraph 5.2.17.

23. Quality has also been cited by some customers and competitors as a differentiating purchasing factor. Feedback from those third parties suggested that large established manufacturers offer a quality product using high-quality components. Responses from third parties suggest that high quality doors are particularly important where the volume of pedestrian traffic is significant. Several customers identified Besam as producing high quality complete automatic door sets but this view was not unanimous and the OFT could not conclude that any differences in perceived quality justified defining separate markets for high- and low-quality complete automatic pedestrian door sets. Notwithstanding the lack of conclusive evidence on this point, the assessment below takes differences in quality into account (amongst other factors) when looking at the closeness of competition between the parties' products (see paragraph 62 below).
24. On the basis of the above, the OFT has taken a cautious approach and assessed each type of complete automatic pedestrian door set separately.

Customer groups

25. The OFT considers that it is sometimes appropriate to define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis. This may happen, for example, when competition from customers differs significantly between different customer groups. In determining whether there are separate customer groups, the key question is whether some customers could get better terms for the same requirements. The OFT may define narrow relevant markets by customer group when customers have access to different complete automatic door sets of suppliers.⁴

⁴ Merger Assessment Guidelines, 5.2.28-5.2.30.

26. In this case, the argument put to the OFT by some large customers is that they require national suppliers, even though large composite orders can in principle be packed into smaller lots. In the view of these customers, only the largest companies have the necessary logistical infrastructure to support such large contracts. This was corroborated by some competitors who told the OFT that large customers' requirements (such as nationwide coverage) may preclude local independents from supplying them because large national buyers prefer to complete automatic door sets from established manufacturers, particularly if they believe that they can exploit their buyer power from buying on a national basis. Bid data revealed that large customers had switched mostly to competing integrated manufacturers. (The bid data received did not include enough information on bids won by local suppliers for the OFT to ascertain the extent of the constraint posed by them.)
27. Consistent with this, other third parties also suggested that there are two types of customers for complete automatic door sets:
- one-off 'ad hoc' purchasers buying a single door or set of doors for a specific contract (such as a new build or refurbishment); and
 - ongoing, multiple purchasers buying doors for, say, a retail chain, where the value of the contract is large and the customers are particularly interested in the quality and reputation of the supplier.
28. Some third parties suggested that large integrated manufacturers such as the merging parties were not interested in supplying small ad hoc purchases.

29. Set against this, other evidence submitted to the OFT by third parties suggests that local independent suppliers may act as sub-contractors to integrated manufacturers and fabricators and on occasion to large building or maintenance companies. Further, in respect of whether some customers can get better terms for the same arrangements, Assa Abloy submitted that, although large customers do buy from large suppliers, they do not buy exclusively from them. In this regard, Assa Abloy supplied bid data and information on contractual arrangements between them and their customers, which shows that:

- at least six large competitors have contractual arrangements with large national retailers; and
- a comparable number of large competitors have contractual arrangements with large public sector end-users and hospitals.

30. This bid data also showed that Assa Abloy has bid for a significant number of smaller contracts which would suggest that the claim that it is not interested in supplying these customers is not borne out. The same applies to other large integrated manufacturers which also compete for both large and small contracts.

31. On the basis of the above, the OFT does not consider it appropriate to define separate relevant markets for defined customer types.

Maintenance contracts

32. Installed doors are generally sold with a one year warranty. After that period, manufacturers, installers and other maintenance contractors compete for maintenance contracts. Maintenance contracts are therefore secondary products, purchased only after having acquired one type of door (the primary product). In terms of market definition, the OFT may characterize the relationship between the primary and the secondary product markets in one of three ways:

- if customers predominantly buy a type of door and maintenance from the same supplier, then the OFT may define a single 'system market' for both—in particular if customers consider the cost of both when purchasing doors ('whole life costing')

- if each brand of door is associated with a range of maintenance contracts that are compatible with it—but not with other brands of doors of the same type—then the OFT may define multiple secondary markets, each containing the maintenance contracts that are compatible with each brand of door.⁵ In this case, sometimes the same firm supplies both a brand of door and one type of maintenance contract. If so, then the OFT may have regard to the indirect constraint from competition in the market for the maintenance contract on competition in the market for that type of door
 - if most maintenance contracts are generally compatible with a number of different types of doors and brands, then the OFT may define one market for all maintenance contracts.
33. In respect of a putative system market for doors plus maintenance, the OFT has been told that customers do not predominantly buy doors and maintenance contracts from the same supplier and tend not to 'whole life cost'. Indeed the purchasing decision for the door is often made by a different party than that who purchases the maintenance (for example, a building contractor). A system market therefore appears inappropriate.
34. In respect of putative separate markets for maintenance contracts for each brand of door, the OFT has been told that technicians are able to service all types and brands of automatic doors. They are able to buy spare parts for all types and brands of doors from each manufacturer under an agreement between all full members of the Automatic Door Suppliers' Association (ADSA). Defining separate markets for maintenance contracts for each brand of door therefore appears inappropriate.
35. Based on the above, the OFT believes that there is a market for the supply of maintenance services to complete automatic pedestrian door sets and systems, without segmenting any further by type of door or brands.

⁵ As an example, consider cars. Within each type of car (for example, hatchbacks) many makes may be substitutes. But spare parts for each make of hatchback car need not be compatible with any other make of hatchback car.

36. That said, to meet the requirements of national maintenance contracts, manufacturers may require remote monitoring facilities (including a call centre) and sufficient technicians to undertake the work at national level. This might suggest that there is a distinction between customers requiring maintenance contracts with additional logistics and those requiring a more local focus (which are often serviced by independent individual technicians).
37. There is no need for the OFT to conclude on whether it is appropriate to segment the market for maintenance contracts by customer type because no concerns arise on any plausible market definition.

Geographic scope

Automatic door automation systems and automatic door sets

38. Assa Abloy manufactures door systems under the Entrematic brand and complete automatic door sets under the Besam brand in the Czech Republic. Ditec products (which include complete automatic pedestrian door sets and automation systems) are manufactured in Italy. Those facilities supply the systems and complete automatic door sets. Agta Record has manufacturing facilities in Switzerland, France and Germany where it manufactures door systems and complete automatic door sets from where it supplies to its sales network in the European Economic Area (EEA). Automatic door automation systems and complete automatic pedestrian door sets do not differ by country and there are no national regulatory requirements on these products.
39. Systems manufacturers source their components from across Europe and Asia and, Assa Abloy sells to customers across Europe from single sale offices. In other words, a local presence is not required.
40. The opposite applies to the supply of complete automatic pedestrian door sets. Here, despite some examples provided by Assa Abloy, all third parties that responded to the OFT information request told the OFT that the market was national (UK) as national presence is required. This presence consists, at least, of a sales office while manufacturing facilities remain in continental Europe.

41. Based on the above, the OFT has taken a cautious view and assessed this case based on a geographic scope extending only to the UK for the supply of complete automatic pedestrian door sets and the EEA for the assembling and supply of automatic door automation systems.*

Maintenance contracts

42. As stated above, there may be a distinction between national maintenance contracts and more local ones (see paragraph 36): small companies with a single door may choose a local technician to carry out maintenance. Larger companies, such as retailers or banks with multiple outlets, may require maintenance on a national scale.
43. All responses from third parties suggest that—to the extent that it may be appropriate to define a market for 'small' customers—there is sufficient competition at the local level to service small customers. Consequently, there is no need for the OFT to further assess the effect of the merger in any sub-national geographic markets and this decision only considers competition for the supply of maintenance services from a national perspective.

* See further the clarification at end note 1 to this decision.

COMPETITIVE ASSESSMENT: UNILATERAL EFFECTS

44. Assa Abloy submits that this transaction does not raise competition concerns because:

- the level of control Assa Abloy is acquiring will not give it sufficient leverage to intervene in commercial day-to-day decisions but only to block special resolutions
- sufficient competition remains post merger from other automatic door manufacturers
- competition is provided not just by other manufacturers but by a range of intermediaries as well
- the market share increment in all affected markets is minimal
- products are largely commoditised and entry barriers are low as corroborated by many recent entrants
- many customers are sophisticated and have considerable buyer power, and
- Assa Abloy does not have any existing market power at any level of the supply chain; and, in any case, it would not have any incentive to foreclose any essential input it is currently supplying to large multinationals in these relevant markets.

45. These points are discussed below.

Insufficient level of control to impact on competition

46. Assa Abloy has acquired a shareholding (of 38 per cent of shares) in Agta Record that is sufficient for the OFT to conclude that it has acquired material influence. In the context of the substantive assessment, the OFT takes the view that it is not appropriate to treat the acquisition of material influence as equivalent to the acquisition of full control (de facto or de jure). This conclusion is in line with the scheme of the Act. The Act recognises three different levels or qualities of control – material influence, de facto control and de jure control – and provides that the OFT may treat a change in the level of control (for example, from material influence to de facto control) as a new merger situation. This indicates that the OFT should recognise the differences between the various qualities of control in its substantive analysis.
47. Agta Record agreed that this level of control was insufficient to give Assa Abloy leverage to participate in the ordinary course of its business decisions but that this level of control will give Assa Abloy the opportunity to block special resolutions and that the purpose of these is often major corporate re-structuring. Agta Record explains that four other shareholders hold legal control over the company by aggregating their interests in the company (including voting rights) in a shareholders' agreement. This prevents Assa Abloy from gaining any level of control above 'material influence'.
48. In BSKYB/ITV, the OFT found that active minority shareholders will almost invariably seek to impose their views and wishes through the mechanism of regular contact with the management of the companies in which they have invested.⁶
49. On the basis of the above, post-merger, as a result of the material influence that Assa Abloy has the ability to exercise in relation to Agta Record, the two companies can no longer be considered to be independent strategic rivals.

⁶ See for example, paragraph 69 of the OFT report to the Secretary of State for Trade and Industry on the acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc. See at <http://www.of.gov.uk/news-and-updates/78a-07>

Sufficient competition remaining post merger from other automatic door manufacturers

50. Assa Abloy submits that there are 12 large manufacturers in the UK, excluding fabricators⁷, selling systems and complete automatic pedestrian door sets. Some of these manufacturers are vertically integrated and manufacture and/or assembling systems as well as producing complete automatic pedestrian door sets. Many of these integrated manufacturers are UK subsidiaries of larger worldwide companies such as Dorma, Geze, Kaba and Ingersoll Rand.

51. Assa Abloy has estimated its and other competitors' market shares in the relevant markets in which the parties overlap. These are shown in Table 1 below:

Table 1: the parties' shares of markets relating to automatic doors, 2009

	UK door systems ⁸		UK complete door sets			UK mainten.
	Sliders	Swingers	Sliders	Swingers	Revolvers	All doors
Besam	[0-10]	[0-10]	[5-15]	[0-10]	[15-25]	[10-20]
Ditec	[25-35]	[15-25]	[0-10]	[0-10]	[0-10]	[0-10]
Entrematic	[15-25]	[25-35]	[0-10]	[0-10]	[0-10]	[0-10]
Record	[0-10]	[0-10]	[5-15]	[5-15]	[0-10]	[5-15]
Combined	[55-65]	[45-55]	[15-25]	[10-20]	[20-30]	[20-30]
Dorma	[0-10]	[0-10]	[5-15]	[5-15]	[5-15]	[10-20]
Geze	[0-10]	[0-10]	[5-15]	[5-15]	[5-15]	[0-10]
Kaba	[0-10]	[0-10]	[0-10]	[0-10]	[5-15]	[0-10]
Tormax	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Boon	[0-10]	[0-10]	[0-10]	[0-10]	[30-40]	[0-10]
Ingersoll Rand	[0-10]	[0-10]	[10-20]	[5-15]	[0-10]	[10-20]
Kone	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Horton	[0-10]	[5-15]	[0-10]	[0-10]	[0-10]	[0-10]
Stanley	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Others	[5-15]	[15-25]	[0-10]	[0-10]	[0-10]	[10-20]
Fabricators	[0-10]	[0-10]	[25-35]	[45-55]	[0-10]	[0-10]
TOTAL	100	100	100	100	100	100

Source: Assa Abloy's estimate based on ADSA data. Shares may not add to 100 because of rounding.

⁷ Seven of these are integrated: Assa Abloy, Agta Record, Dorma, Geze, Kaba, Ingersoll Rand, Kone, Horton, Stanley. See footnote 2 above on 'fabricators'.

⁸ Neither party supplies revolving door systems to third parties, so there is no overlap in this market.

Complete automatic pedestrian door sets and maintenance

52. In the markets for complete sliding door sets, complete swinging door sets, complete revolving door sets and maintenance, the parties' combined market share is not at a level that would normally give the OFT cause for concern over unilateral effects, given the number of remaining competing suppliers and the 'material influence' level of control conferred by the merger.

Automatic door automation systems

53. In the supply of automatic sliding door systems, the parties' combined market share ([55-65] per cent) is high enough to give the OFT cause for concern over unilateral effects, although the merger increment is small ([0-10] per cent). Likewise, in the supply of automatic swinging door systems, the parties' combined market share ([45-55] per cent) is high enough to give the OFT cause for concern over unilateral effects, although the increment is very small ([0-10] per cent).
54. In this regard, the OFT notes that purchasers of systems are mostly independent fabricators who will use them to build and install complete automatic pedestrian door sets to compete directly with the merging parties in the downstream market, where independent fabricators supply an estimated [25-35] per cent of the market for complete automatic sliding door sets and [45-55] per cent of the market for complete automatic swinging door sets.
55. In practice, the extent to which competition in complete sliding and swinging door sets constitutes a constraint upon the supply of sliding and swinging door systems depends on: (i) how competitively complete pedestrian door sets are supplied; (ii) how competitively door systems are supplied; (iii) how competitively other complementary inputs (such as toughened glass doors, leaves and aluminium frames) into complete door sets are supplied; and (iv) what proportion of the total costs of the complete door set is accounted for by the door system.⁹

⁹ See Merger Assessment Guidelines, paragraph 5.2.20. These factors dictate how price-elastic the demand for door systems will be, i.e. how price sensitive customers of door systems are. As noted in the Merger Assessment Guidelines (paragraph 5.4.9 (c)), unilateral effects are less likely when customers are sensitive to changes in price.

56. In respect of (i), the supply of door systems will be more competitive, the more competitive is the supply of automatic pedestrian door sets. Here, on the basis of the market shares in Table 1, the merger does not give the OFT cause for concern over unilateral effects in the supply of any type of complete door system (see paragraph 52).
57. With regard to (ii), the OFT notes that the increment to Assa Abloy's market share in the supply of systems is relatively small (see paragraph 53 above) with at least other four systems manufacturers remaining in the market. Most fabricators were also of the view that there were other suppliers of door systems that they could source from and that switching costs were low. The OFT further notes the entry in 2010 of a UK-based non-integrated fabricator which has recently begun to supply systems, albeit on a small scale, to other fabricators. A large wholesaler (who supplies independent fabricators) also told the OFT that it intends to source its systems from overseas.
58. Further on (i) (and by implication (ii)), see the **Closeness of competition** and **Spare capacity** sections below.
59. In respect of (iii), the supply of door systems will be more competitive, the more competitive is the supply of other complementary inputs such as door leaves and frames. Here, manufacturers and assemblers have told the OFT that the supply of these complementary inputs to the final automatic door set is competitive. Further, fabricators typically multi-source from a number of different suppliers and have low switching costs.
60. On (iv), the supply of door systems will be more competitive, the greater is the share of door systems in the total cost of door sets. Here, the door system represents a significant proportion (estimated by the parties to be between one third and one half) of the final cost of the complete automatic door set, and is described by third parties as an essential input into the downstream manufacturing of automatic door complete automatic door sets.¹⁰

¹⁰ See paragraphs 8-10 above.

Closeness of competition in automatic door sets

61. Several customers and competitors told the OFT that Assa Abloy and Agta Record were each other's closest competitors, at least when competing for supplying complete automatic pedestrian door sets to large customers.
62. Assa Abloy submits that the focus of the parties' businesses is different: it estimates that around [] per cent of Agta Record's sales are for complete automatic door sets whereas Ditec and Entrematic (who account for a significant share of Assa Abloy's business) supply systems and do not supply complete automatic door sets to end users. In addition Assa Abloy has submitted bid data and contractual details in support which indicate that other integrated manufacturers of sets and systems are equally close competitors to them in terms of gaining contracts with large national customers. For these reasons, Assa Abloy submits that the parties are not close competitors.
63. Responses from most customers and bidding data supplied by Assa Abloy have corroborated that both companies are not closer to each other than other integrated manufacturers, particularly Dorma, but also Geze, Tormax and Ingersoll Rand.
64. As stated above (see paragraph 29), at least six large competitors have many contracts with large national retailers and a comparable number of large competitors have contracts with large public sector end-users. No customer has indicated that, in those cases where competition between the merging parties has taken place, both parties have been particularly close competitors. In fact, as stated above, all customers have identified a number of competitors as equally viable alternatives.
65. Based on this, the merging parties do not appear to be particularly close competitors to each other and other national companies appear to be equally close to them.

Spare capacity in automatic door sets

66. Competitors producing complete automatic door sets told the OFT that they are running between 80 and 90 per cent capacity but that they could quickly and cheaply increase capacity by extending night or weekend shifts if needed. On this basis, the OFT believes that additional capacity could be allocated for the production of complete automatic door sets, if required. If so, then this would increase the indirect constraint from complete automatic pedestrian door sets to automatic door systems.
67. In addition, an independent fabricator told the OFT that it had started to assemble its own systems and would be able to supply small quantities to other independent fabricators in the next year. A wholesaler also told the OFT that it had started to look directly overseas for systems which would also increase the amount of capacity available in the UK.
68. Given this spare capacity, the OFT combined the evidence available to it on the parties' market shares and their gross profit margins to provide a simple, illustrative gauge of the possible upward pressure on prices that may arise from the merger and the extent to which this may be passed through into higher prices.¹¹ In sliding and swinging door systems, this results in a 'price rise' of no more than approximately 3 per cent. This would not normally be high enough to give the OFT cause for concern over unilateral effects.¹²

¹¹ See ME/3982/08, ME/3963/08, ME3964/08 'Completed acquisitions by Celsa Steel Service (UK) Limited of the manufacturing and reinforcement divisions of BRC Limited, Express Reinforcements Limited and the ROM Group', ME/4072/09 'Anticipated acquisition by Prince Minerals Limited of Castle Colours Limited' and ME/4732/10 'Anticipated acquisition by Essilor International (Compagnie Générale D'Optique) S.A. of Shamir Optical Industry Ltd' where this analysis has previously been used.

¹² In each case, the 'price rise' is $S/N * E$, where S is the incremental market share of the merged firm ([0-0.1] to [0-0.1], in this case), N is the number of effective competitors in the market (five, on a conservative basis, given Table 1) and E is the market elasticity of demand, which appears to be elastic (i.e. greater than or equal to 1 in absolute terms) on the basis of the OFT's assessment of the factors in paragraph 55. This gives a 'price rise' of no more than [0-0.02], or [0-2] per cent. Alternatively, this expression may be written M/N , where M is the percentage gross profit margin. Although the OFT does not have evidence on the parties' gross profit margins in door systems, the parties' gross profit margin in entry systems generally is 15.7 per cent (0.157). Using this as a proxy and dividing it by five gives 0.032, or a 3.2 per cent 'price rise', consistent with the calculation above.

Conclusion on unilateral effects in automatic sliding door systems, automatic swinging door systems and automatic revolving door systems

69. On the basis of the above, the OFT does not consider that the merger gives rise to a realistic prospect of a substantial lessening of competition on the basis of unilateral effects.

Barriers to entry and expansion

70. Assa Abloy submitted that barriers to entry to the market for complete automatic pedestrian door sets are low and that a new entrant could start up with an investment of around £[], in less than a year. In Assa Abloy's view, suppliers of automatic door systems that are already present in other EEA countries would not face significant barriers to starting to sell into the UK. In particular, it submits, most manufacturers supply all EEA countries from one or a few central manufacturing locations, shipping costs are low and there is no need for a local sales force based in the UK. Alternatively, to begin producing and supplying complete automatic pedestrian door sets in the UK, a new entrant would simply need to invest in assembly facilities, staff (including management personnel with experience of the sector) and a sufficient level of stock. Specifically, there are no significant intellectual property barriers that would prevent a new entrant either sourcing the key components from third parties or producing them in-house and branding is relatively unimportant.

71. Assa Abloy has presented two specific examples of non-integrated automatic door fabricators starting to supply automatic door inputs to other non-integrated fabricators. The OFT found further evidence of a wholesaler starting to source automatic door systems from other EEA suppliers.

72. These examples are consistent with the feedback received from several non-integrated fabricators. For example, one fabricator confirmed that it had recently begun to supply systems to other fabricators, albeit on a small scale, and that its development costs were around £[]. It had spent [] years developing its products. An integrated manufacturer advised that entering the market for complete automatic pedestrian door sets with sufficient scale to compete would cost around £5 million.

73. However, given its conclusion on unilateral effects, the OFT has not needed to conclude on whether any barriers to entry are surmountable to

an extent that entry would be timely, likely and sufficient enough to countervail a potential substantial lessening of competition.

Buyer power

74. All the customers contacted were large customers who noted that the cost of the complete automatic door set was generally small in comparison with the overall costs of their refurbishment/ building projects. They all believed that they would be able to resist price increases as a result of the exercise of market power by switching to competing suppliers.
75. Competitors also told the OFT that customers would resist price increases. Some competitors said that the fall in the value of sterling had increased input prices but that, mindful of competition in the UK, overseas parent companies had absorbed these price increases so that the overall cost of door systems and complete automatic pedestrian door sets in the UK had remained unchanged.
76. Given its conclusions on unilateral effects, the OFT has not needed to conclude on whether buyer power would be sufficient to countervail a potential substantial lessening of competition.

VERTICAL ISSUES

77. The merged firm will be a supplier of door systems—which are an input into complete door sets—and complete automatic pedestrian door sets. On this basis, one wholesaler raised concerns that the merger may give Assa Abloy the ability and incentive to refuse to supply it with systems ('total input foreclosure'). A fabricator also noted that Assa Abloy had just tried to increase its prices for systems significantly ('partial input foreclosure'). Both parties were concerned that such 'input foreclosure' would harm competition in the market for complete automatic pedestrian door sets.
78. Assa Abloy's ability and incentive to engage in partial or total input foreclosure, and any anticompetitive effects of that foreclosure, are examined below.¹³

¹³ See Merger Assessment Guidelines, paragraphs 5.6.9 to 5.6.12.

Assa Abloy's *ability* to foreclose supplies of automatic door automation systems

79. Assa Abloy's market share in the supply of automatic sliding door systems is estimated to be around [55-65] per cent, with a merger increment of [0-10] per cent. Similarly, its market share in the supply of automatic swinging door systems is estimated to be around [45-55] per cent, with a merger increment of [0-10] per cent. These are too high to rule out concerns over input foreclosure¹⁴, though—on the basis of the OFT's conclusions over unilateral effects—the merger does not appear to have added much (if at all) to Assa Abloy's ability to engage in foreclosure. Further, door systems are an important input to door sets, meaning the merged firm would be more able to harm its rivals' ability to compete through foreclosure than if they were an unimportant input.¹⁵
80. Set against this, Assa Abloy submitted that any attempt to foreclose the supply of systems, would quickly be defeated by new entry and/or expansion as barriers to entry are low (see section above).
81. Further, in assessing possible total input foreclosure, the OFT will examine whether the merged firm may be able to commit not to continue supplying systems, for example by adopting a system technology that is incompatible with the production techniques of rival suppliers of complete automatic door sets. This wholesaler did not explain why this might be the case and the OFT received no evidence that Assa Abloy could commit to so doing. On this basis, it is not clear to the OFT that Assa Abloy has the ability to engage in total input foreclosure.
82. On a cautious basis, however, the OFT considers that the merged firm may have the ability to engage in partial input foreclosure and has gone on to examine whether it may have the incentive to do so and what effect, if any, that this may have.

¹⁴ See Merger Assessment Guidelines, paragraph 5.3.5, first bullet.

¹⁵ See Merger Assessment Guidelines, paragraph 5.6.10(a).

Assa Abloy's *incentive* to foreclose supplies of automatic door automation systems

83. The incentive of the merged firm to engage in input foreclosure will depend on whether the gain in profits in the markets for complete door sets of various types (as customers switch from foreclosed competitors to the merged firm) exceeds the loss in profits in the corresponding markets for door systems of various types (as competitors buy less of the merged firm's door systems). This in turn is a function of the volume of business won and lost and the relative profitability of that business.
84. In this regard, Assa Abloy currently operates both a fully integrated business (Besam) and two non-integrated upstream supply businesses (Ditec and Entrematic). The OFT received no evidence that Assa Abloy had ever attempted such a foreclosure strategy before.
85. Assa Abloy submits that over recent years Besam has been losing market share in the UK while Entrematic's sales to intermediaries have actually increased. While no quantitative data has been supplied to corroborate this statement, there is no reason to believe that the acquisition of a non-controlling minority stake in Agta Record would cause Assa Abloy to depart from its current strategy. Moreover, Assa Abloy is acquiring only 37.9 per cent of Agta Record and would therefore receive the benefit of no more than 37.9 per cent of any additional downstream sales made by Agta Record as a result of upstream foreclosure.
86. Assa Abloy earned £[] million in the UK in 2009 from sales of systems through Ditec and Entrematic and £[] million through Besam, of which £[] million was earned through the sale of complete automatic pedestrian door sets and £[] million through maintenance contracts. These figures highlight the importance of systems to Assa Abloy, accounting for [] of its UK revenues from product sales. This makes it less likely that Assa Abloy would be willing to sacrifice these sales to non-integrated automatic door fabricators for the possibility of increasing sales at the downstream level.

87. On this basis, Assa Abloy does not appear to have the incentive to engage in partial input foreclosure. Nevertheless, the OFT has proceeded to consider what effect, if any, a strategy of partial input foreclosure by Assa Abloy may have.

Effects on end customers

88. A hypothetical input foreclosure strategy would not have any impact on rival integrated manufacturer-installers such as Geze, Dorma, Kaba, Tormax and Ingersoll Rand. Integrated manufacturers, which together represent nearly 60 per cent of the UK market for complete automatic door sets, would continue to exert a strong competitive constraint on Assa Abloy and Agta Record post-transaction. Assa Abloy would thus have no ability to raise prices at the downstream level even if it *were* able to foreclose the supply of automatic door inputs to non-integrated automatic door installers.

89. On this basis, any putative partial input foreclosure strategy by Assa Abloy does not appear likely to have any anticompetitive effects.

90. Consequently, the OFT does not consider that the merger gives rise to a realistic prospect of a substantial lessening of competition on the basis of input foreclosure.

THIRD PARTY VIEWS

91. Most large competitors at different levels of the supply chain were concerned, in particular since Assa Abloy has increased market share through acquisition and is said to be gaining market share by sharp pricing. In contrast with this view, several small competitors believed that the merger would present them with opportunity because of the high overheads faced by larger companies. One wholesaler and one fabricator raised input foreclosure concerns which have been assessed above.

92. Customers of complete automatic pedestrian door sets were generally unconcerned as were most customers of door systems.

ASSESSMENT

93. Assa Abloy intends to acquire material influence over Agta Record by acquiring up to 32.95 per cent of Assa Abloy's shares. This follows the completed acquisition of an additional 5 per cent shareholding. These companies overlap in the supply of two types of automatic doors automation systems and three types of complete automatic pedestrian door sets in the UK.
94. Taking a cautious approach this decision has assessed each type of system as a separate market and equally each type of complete automatic pedestrian door set. Systems for one type of door do not appear to be demand-side substitutes for systems for another type of door and the substitutability among different types of doors from the demand side appears limited. The OFT could not conclude that supply-side substitution in either systems or sets would justify aggregating the separate product markets into one.
95. The case has been assessed on a UK-wide basis for the supply of complete automatic pedestrian doors sets (given customers' need for a sales force with a national presence). The market for systems has been defined as EEA-wide, on the basis that such a local national presence is not needed. All manufacturers of systems are located outside the UK and import into the UK to non-integrated manufacturers, assemblers and fabricators.
96. In the supply of complete automatic pedestrian door sets and maintenance, combined market shares are not at a level that usually gives the OFT cause for concern over unilateral effects.
97. Concerns received (primarily) from integrated manufacturers competitors and from non-integrated intermediary customers related to Assa Abloy's strong position in the market for the supply of systems. The merging parties' estimated combined market shares are between [45-55] and [55-65] per cent (but with an increment of not more than [0-10] per cent), high

enough to give cause for concern over unilateral horizontal and vertical effects.*

98. The evidence available to the OFT suggests that, despite this, there is no realistic prospect of the merger leading to a substantial lessening of competition in any of the affected markets on the basis of horizontal unilateral effects: small increments to market share from the merger; the number of remaining (albeit smaller) competitors, which will continue constraining the parties post-merger; and indirect constraints from competition in complete pedestrian door sets (including the existence of spare capacity and that the parties are not close competitors).
99. One wholesaler and one fabricator were concerned that Assa Abloy could increase the price of, or restrict access to, its Ditec and Entrematic branded systems. However, the evidence available to the OFT suggests that—although Assa Abloy may have the ability to increase the price of its systems—it does not have the incentive to do so and any such strategy is unlikely to have anticompetitive effects in any event.
100. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

101. This merger will therefore **not be referred** to the Competition Commission under section 33(1) for anticipated mergers of the Act.

* See further the clarification at end note 1 to this decision.

END NOTES

1. The OFT clarifies that, although it has defined the market for the assembly and supply of automatic door automation systems as EEA-wide (as stated in paragraphs 41 and 95 of this decision), it has on a cautious basis assessed the impact of this transaction not only in the EEA but also in the UK because the parties' shares in the market on a UK basis, as set out at Table 1 and elsewhere in this decision, are materially higher than their EEA-wide shares. The parties' combined share in the market for the assembly and supply of automatic door automation systems on an EEA-wide basis is estimated to be [35-45] per cent (sliders) and [30-40] per cent (swingers) and on this basis, combined with the other considerations set out in this decision, the OFT considered no competition concerns arose on an EEA-wide basis.
2. With regard to paragraph 38, Assa Abloy clarified that certain EEA states do in fact have national regulatory requirements in relation to automatic door products, but that these do not prevent the main automatic door suppliers from operating in these states.
3. With regard to the final sentence of paragraph 84, the OFT clarifies that the only possible exception may be a price increase for systems that a third party referred to (see at paragraph 77).
4. With regard to paragraph 86, Assa Abloy clarified that Besam's earnings of £[] million were through the sale of not only complete automatic pedestrian door sets but also systems.