ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Graco, Inc., Docket No. 9350

The Federal Trade Commission ("Commission"), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders, containing both a Proposed Decision and Order ("Proposed Order") and an Order To Hold Separate and Maintain Assets, with Graco, Inc. ("Graco"), Illinois Tool Works Inc., and ITW Finishing LLC ("ITW"), collectively referred to as the Respondents, to resolve an Administrative Complaint issued by the Commission on December 15, 2011. The Complaint alleged that Graco's proposed acquisition of ITW would substantially reduce competition in various markets for industrial liquid finishing equipment in North America. The proposed acquisition would harm industrial liquid finishing equipment customers by resulting in higher prices and less choice in the relevant markets. The Proposed Order requires Graco to divest all overlapping ITW businesses and to hold those assets separate pending that divestiture. The Proposed Order is for settlement purposes only and tailored to remedy the effects of Graco's proposed acquisition of ITW.

The Commission has placed the Proposed Order on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during the comment period will become part of the public record. After thirty days, the Commission will review the Proposed Order and comments received and will decide whether it should withdraw from the Agreement or make final the Proposed Order.

I. The Commission's Complaint

The Federal Trade Commission voted 4-0 to issue an Administrative Complaint against Respondents on December 15, 2011.[1] Graco is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Illinois Tool Works Inc. is a Delaware corporation with its principal place of business in Glenview, Illinois. Illinois Tool Works Inc., at the time of the Commission's Complaint, wholly owned ITW, a Delaware limited liability company with its principal place of business in Glenview, Illinois.[2] Graco and ITW manufacture and sell industrial liquid finishing equipment throughout North America and the world. Industrial manufacturers use industrial liquid finishing equipment to apply paint and other coatings to all kinds of finished goods, including automobiles, office furniture, and home appliances.

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[1] http://ftc.gov/os/adjpro/d9350/111215gracoadmincmpt.pdf.

[2] On March 13, 2012, the Secretary withdrew the Commission's administrative challenge to Graco's acquisition of ITW in order to consider Graco's proposed settlement. Graco agreed to an Agreement Containing Consent Orders requiring it to hold separate all of the ITW liquid finishing businesses and to divest up to all of the hold-separate assets to a Commission-approved acquirer. On March 27, the Commission issued an Order to Hold Separate and Maintain Assets ("Hold Separate") covering the ITW liquid finishing equipment businesses worldwide, allowing Graco to close on the Acquisition but to retain and integrate only the ITW powder finishing assets. The Commission deferred voting to accept the Consent Agreement to allow staff an opportunity to investigate whether a narrower divestiture package would fully remedy the competitive harm alleged in the Complaint. http://ftc.gov/opa/2012/03/graco.shtm.

The Complaint alleged that Graco's proposed acquisition of ITW would harm competition in five specific product markets: the manufacture and sale of (1) liquid finishing pumps for industrial uses; (2) liquid finishing spray guns, which apply paint and other liquid coatings to surfaces in industrial uses; (3) proportioners, which mix and blend paint with catalysts and other liquids before applying the coating in industrial uses; (4) circulation pumps for paint systems in automotive assembly plants; and (5) industrial liquid finishing equipment for resale.

The Complaint charged that if the proposed acquisition were completed, the combined firm would control a dominant share of all North American sales of industrial liquid finishing equipment and create a monopoly for circulation pumps used in paint systems in the automobile industry.

The Complaint also alleged that the proposed transaction would end the close competition between Graco and ITW, its largest competitor, reduce or eliminate the substantial one-time price breaks or other discounts both firms offer to distributors, and lessen Graco's incentives to develop new products after the merger. The competition lost by the acquisition could not be easily replaced, as Exel North America, the firm in the market with a distant third place in sales, as well as other fringe firms, lack the brand acceptance and distribution to challenge a combined Graco/ITW. Significant hurdles and barriers would also deter new competitors from entering the markets.

II. The Agreement Containing Consent Orders

The purpose of the Proposed Order is to ensure the continuation of ITW's liquid finishing business assets as an ongoing, viable business operating in the same relevant markets in which they were competing at the time Graco announced the proposed acquisition, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's Complaint. In order to do that, the Proposed Order requires Graco to divest ITW's liquid finishing business assets, including the Binks, DeVilbiss, Ransburg, and BGK brands, no later than 180 days after the date the Proposed Order becomes final, to a Commission-approved Acquirer. If Graco has not divested ITW's liquid finishing business assets within 180 days, the Commission may appoint a trustee to divest ITW's liquid finishing business assets in a manner that satisfies the requirements of the Proposed Order.

The divestiture maintains that status quo ante in the markets alleged in the Commission's Complaint. The Proposed Order permits Graco to complete its acquisition of ITW, but requires it to hold the businesses containing ITW's industrial liquid finishing equipment assets separate and to maintain them while it looks for a buyer for the assets to be divested. The Order to Hold Separate and Maintain Assets will protect the competitive status quo during this process.

The Proposed Order requires Graco, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the assets and the status of that undertaking. Commission representatives may have reasonable access to Graco's business records related to compliance with the Proposed Order.

III. Opportunity for Public Comment

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order to aid the Commission in its determination of whether it should make final the Proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.