

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO**

throughout North America and the world. The acquisition increased Graco's share of the North American fast-set equipment market to over 65%, and left GlasCraft as Graco's only significant North American competitor. Graco's acquisition of GlasCraft in 2008 raised Graco's market share above 90% and removed Graco's last significant North American competitor. Following the acquisitions of each of Gusmer and GlasCraft, Graco closed both firms' fast-set equipment manufacturing facilities and has fully assimilated or terminated all remaining assets, products, intellectual property, and personnel from both firms.

Prior to the acquisitions, fast-set equipment distributors typically carried products from multiple manufacturers. Distributors and end-users were able to mix and match the products from the different manufacturers to assemble a fast-set system that best satisfied end-users' demands. Further, manufacturers did not impose exclusive relationships on distributors – a distributor was free to make some or all of its fast-set equipment purchases from whichever manufacturers it chose. The Complaint alleges, among other effects, that the acquisitions of Gusmer and GlasCraft have removed the ability of distributors and end-users to select the equipment that best serves their, and their customers', interests and needs.

II. Conditions of Entry and Expansion

The Complaint alleges high entry barriers in the relevant market. The principal barrier to entry is the need for specialized third-party distribution. As a result of its acquisitions, Graco obtained substantial control over access to that distribution channel. Subsequent Graco practices have further heightened barriers to competitive entry and expansion, such that restoration of the competition lost as a result of Graco's acquisitions is unlikely to be restored unless Graco's continuation of those practices is enjoined.

Beginning in 2007, former employees of Gusmer began distributing fast-set equipment as Gama Machinery USA, Inc., now doing business as Polyurethane Machinery Corp. ("Gama/PMC"). In March 2008, Graco sued Gama/PMC and others alleging, among other things, breach of contract. The continuation of that litigation has reduced the willingness of distributors to purchase fast-set equipment from Gama/PMC, for fear that their supply of fast-set equipment might later be interrupted as a result of litigation. To reduce that barrier, an impending settlement of that litigation is incorporated in the Commission's Consent Order.

Like Gama/PMC, other prospective competitors—some of which presently offer only some components, rather than a full line of proportioners, hoses, and spray guns—have been unable to gain a meaningful foothold in the North American fast-set equipment market because of barriers to access to the required specialty distribution channel. Following its obtaining of market power through its acquisitions, Graco increased the discount and inventory thresholds it required of distributors, and threatened to cut off any distributor's access to needed Graco fast-set equipment if the distributor purchased fast-set equipment from any Graco rival. The reduction of barriers to entry and expansion by enjoining the continuation of this conduct is necessary to the restoration of competition lost as a result of Graco's acquisitions, and certain provisions of the Commission's cease and desist order are directed to that end.

III. Effects of Graco's Acquisitions

As a result of the acquisitions, Graco has eliminated head-to-head competition with Gusmer and GlasCraft. The Complaint alleges that concentration in the relevant market has increased substantially, and given Graco the ability to exercise market power unilaterally. The Complaint alleges that Graco has exercised that market power by raising prices, reducing product options and alternatives, and reducing innovation. The Complaint further alleges that Graco engaged in certain post-acquisition conduct that has raised barriers to entry and expansion such that the continuation of that conduct must be enjoined if the competition lost as a result of Graco's acquisitions is to be restored.

IV. The Consent Agreement

Since the acquisitions were completed some time ago, it is not practicable to recreate the acquired firms as independent going concerns. Instead, the purpose of the Consent Order is to ensure the restoration of the competitive conditions that existed before the acquisitions, to the extent possible, by facilitating Gama/PMC's entry and expansion and lowering barriers to entry. Therefore, the Consent Order requires Graco to enter into a settlement agreement with Gama/PMC within ten (10) days of the entry of the Order. In addition, Graco must grant to Gama/PMC an irrevocable license to certain Graco patents and other intellectual property in order to ensure that Graco cannot continue or

against a distributor or end-user with regard to a claimed violation of Graco's trade secrets or other intellectual property covering