Statement of the Federal Trade Commission
In the Matter of Graco, Inc.
FTC File No. 101-0215
April 17, 2013

Today the Commission has voted unanimously to approve the Complaint and Decision & Order ("Order") against Graco, Inc. ("Graco") to resolve allegations that it violated Section 7 of the Clayton Act when it acquired Gusmer Corp. ("Gusmer") in 2005 and Glascraft, Inc. ("Glascraft") in 2008. At the time of the acquisitions, Gusmer and Glascraft were Graco's two closest competitors in the market for fast-set equipment ("FSE") used to apply polyurethane and polyurea coatings. The acquisitions eliminated the only significant competition in the market, and resulted in Graco holding a monopoly position as the only full-line FSE manufacturer. The Order contains provisions, including prohibitions on discriminating against distributors selling competitors' FSE products, that are intended to constrain Graco's ability to exclude prospective entrants into the FSE market by establishing and/or maintaining exclusive relationships with its third-party distributors. Commissioner Wright voted in favor of the Complaint and Order, but also issued a statement outlining his disagreement with these portions of the Order. We respectfully disagree with Commissioner Wright, and believe that these specific provisions are necessary to remediate the anticompetitive impact of the two mergers in this case.

The typical remedy for the Commission in a Section 7 matter is a divestiture of the illegally acquired assets (and any other assets necessary to make the divestiture buyer a viable competitor). Pursuing such a remedy in this matter, however, would be difficult, if not impossible, because Graco had long ago integrated or discontinued the product lines it acquired from Gusmer and Glascraft. There was no easily severable package of assets that could be divested to recreate one – much less two – viable competitors to replace Gusmer and Glascraft. As a result, the most effective relief available was a behavioral remedy intended to facilitate entry into the FSE market, which, of course, includes addressing the post-acquisition conduct described in the Complaint that had precluded entry into the relevant market. Specifically, after the acquisitions Graco solidified its market share by locking up third-party distributors through a series of purchase and inventory threshold requirements, as well as threats of retaliation and termination if distributors carried the products of any remaining or newly entering FSE manufacturers.

The evidence gathered in the course of the Commission's investigation demonstrates that Graco's efforts were successful; no other firm gained more than five percent of the North American FSE market and Graco's market share of between 90 and 95 percent has remained intact since its 2008 acquisition of Glascraft. Further, the investigation uncovered no evidence that Graco's post-acquisition conduct provided any cognizable efficiency that would benefit consumers. Gove8.99 0 TD65 y that doe

assessment of the circumstances surrounding such conduct. But it is equally important to recognize that, when employed by a competitor that has acquired significant market power or monopoly power, exclusive dealing arrangements have the potential to cement such power and prevent or deter entry that would lead to lower prices, higher quality, and better service for consumers.[1] In any event, regardless of how one views exclusive dealing arrangements generally, there is ample support for the fencing-in relief prescribed in this merger settlement, which is designed to restore competition in the FSE market lost as a result of Graco's illegal acquisitions.

We join Commissioner Wright in commending the Commission staff for their hard work in this matter. They have done an excellent job in investigating the market involved and the issues raised during the course of this investigation.

[1] *See, e.g.*, *United States v. Microsoft Corp.*, 253 F.3d 34, 71-72, 74 (D.C. Cir. 2001) (holding that Microsoft's exclusive dealing arrangements with Internet access providers, independent software vendors, and Apple violated Sherman Act § 2).