

business.⁶ On the other hand, the economic literature is replete with procompetitive justifications for exclusive dealing, including aligning the incentives of manufacturers and distributors, preventing free riding, and facilitating relationship-specific investments.⁷ In fact, the empirical evidence substantially supports the view that exclusive dealing arrangements are much more likely to be procompetitive than anticompetitive.⁸

Because exclusive dealing contracts typically are procompetitive and a part of the normal competitive process, the Commission should not restrict the use of such arrangements when there is sufficient evidence that they have or are likely to decrease consumer welfare. This ensures consumers the merger remedy does not deprive them the fruits of the competitive process. The evidence in this case is insufficient to conclude that Graco has used, or intends to use, exclusive dealing or factoexclusive contracts to foreclose rivals and ultimately harm consumers. To the contrary, the Commission's Complaint describes the fast-set equipment market as one particularly well suited for exclusive arrangements. Specifically, the Complaint acknowledges the sale of fast-set equipment demands specialized third party distributors that possess the technical expertise to teach consumers how to use and maintain the manufacturer's equipment.⁹ One could therefore easily imagine that manufacturers might only be willing to provide training to distributors if they have some assurance that current or future competitors will be unable to free ride on their investments in the distributors' technical expertise. Exclusive dealing arrangements with distributors are one well-known and common method of preventing such free riding.

The provisions in the Order prohibiting exclusive contracts therefore may needlessly harm consumers by deterring potentially procompetitive arrangements. For that reason, I do not believe that provision is in the public interest.

III. Restrictions on Loyalty Discounts

The primary anticompetitive concerns with loyalty discounts are analytically similar to those associated with exclusive dealing and factoexclusive contracts.¹⁰ As with exclusive dealing, the economic literature also supports the view that loyalty discounts are often than not procompetitive.¹¹ The Commission's competition mission therefore is best served by an

⁶ See e.g. Alden F. Abbott & Joshua D. Wright,

