

**Statement of Commissioner Joshua D. Wright**

Because behavioral remedies displace normal competitive decision-making in a market, they pose a particularly high risk of inadvertently reducing consumer welfare and should be examined closely prior to adoption to ensure consumers' interests are best served. In particular, effective behavioral remedies must be "tailored as precisely as possible to the competitive harms associated with the merger to avoid unnecessary entanglements with the competitive process."<sup>3</sup> Merely showing high market shares and the unavailability of structural remedies does not justify restricting conduct that typically is procompetitive because these conditions do not make the conduct any more likely, much less generally likely, to be

business.<sup>6</sup> 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.<sup>7</sup> In fact,

approach that counsels against imposing restrictions on loyalty discounts unless there is sufficient evidence to establish that such arrangements have or are likely to harm competition and consumers.

The Order permits Graco to enter into certain loyalty discount agreements that require