

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL



In the Matter of)
)

GRACO INC.)
a corporation,)

ILLINOIS TOOL WORKS INC.,)
a corporation)

and)
)

ILLINOIS TOOL WORKS FINISHING)
LLC,)
a limited liability company.)

Docket No. 9350

PUBLIC

**ANSWER OF RESPONDENTS ILLINOIS TOOL WORKS INC. AND
ILLINOIS TOOL WORKS FINISHING LLC**

Pursuant to 16 C.F.R. § 3.12, Respondents Illinois Tool Works Inc. and Illinois Tool Works Finishing LLC (collectively referred to as "ITW") hereby answer the Federal Trade Commission's ("FTC's") December 15, 2011 Complaint as follows.

PRELIMINARY STATEMENT

Graco's acquisition of ITW's finishing businesses does not violate the Clayton Act. The FTC's Complaint ignores the realities of competition for the sale of liquid industrial finishing products and provides no reasoned economic analysis of any actual data regarding competitive effects. Instead, the FTC relies wholly on a handful of documents, cherry-picked from among hundreds of thousands of others that run contrary to the FTC's unfounded conclusion that this transaction will have anticompetitive effects, and a set of untested third-party declarations, all of which were submitted to avoid the substantially more burdensome requirements of compulsory

process. In short, the FTC has overreached. Competition for the sale of liquid industrial finishing worldwide is robust.

The FTC has alleged both relevant product and geographic markets that make no practical sense. Even without any economic analysis or extensive investigation into the nature of the finishing industry, it is plain that the products that the FTC has lumped together do not comprise relevant product markets. The FTC alleges five relevant product markets: (1) liquid finishing pumps for industrial use; (2) liquid finishing applicators (spray guns) for industrial use; (3) liquid finishing plural component equipment (proportioners) for industrial use; (4) circulation pumps for paint systems used in automotive assembly plants; and (5) industrial liquid finishing equipment for resale. *In the Matter of Graco Inc., et al.*, Complaint (“Compl.”), ¶ 26. Not one of these groupings constitutes a relevant market for antitrust purposes.

The FTC even admits that its alleged markets may not accurately reflect actual interchangeability of use, *see, e.g.*, Compl. ¶ 28, which alone is sufficient to doom the Complaint. Moreover, the FTC has based its case largely on the bald assertion that the structural features of its ill-defined product markets create a presumption of illegality. Overconfident in its mistaken presumption, the FTC suggests absolutely no actual evidence of anticompetitive effects. The FTC has provided no economic analysis or data to support its position. Tellingly, the FTC did not even provide an expert report from an economist in support of its motion for a preliminary injunction, which is a standard practice in Clayton Act Section 7 cases. Instead, in the absence of statistical evidence, the FTC relies on several untested declarations from a handful of distributors and competitors and unsubstantiated statements and share data in the parties’ documents. The FTC’s case cannot stand on such a flimsy footing. It must provide substantive economic evidence and data to support its allegations of anticompetitive effects.

RESPONSES TO THE FTC'S ALLEGATIONS

The FTC's unnumbered introductory paragraph contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations of the introductory paragraph.

NATURE OF THE CASE

1. ITW denies the allegations in Paragraph 1.
2. ITW denies the allegations in Paragraph 2.
3. ITW denies the allegations in Paragraph 3.
4. ITW denies the allegations in Paragraph 4.
5. ITW denies the allegations in Paragraph 5.
6. ITW denies the allegations in Paragraph 6.

RESPONDENTS

7. ITW admits the allegations in Paragraph 7.
8. ITW admits the allegations in Paragraph 8.
9. ITW admits the allegations in Paragraph 9.

JURISDICTION

10. Paragraph 10 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 10.
11. ITW admits this transaction is an acquisition within the meaning of Section 7 of the Clayton Act. Any other allegation in Paragraph 11 is a legal conclusion to which no response is required. To the extent that a response is required to the allegation that the transaction violates Section 7 of the Clayton Act, ITW denies this allegation.

THE ACQUISITION

12. ITW admits that it entered into an Asset Purchase Agreement dated April 14, 2011, with Graco Inc., Graco Holdings Inc., and Graco Minnesota Inc. in which ITW agreed to sell certain assets and equity interests for \$650 million. ITW denies the remaining allegations in Paragraph 12.

INDUSTRY STRUCTURE AND ANTICOMPETITIVE EFFECTS

13. ITW admits the allegations in the first sentence of Paragraph 13. ITW denies the remaining allegations in Paragraph 13.

14. ITW admits the allegations in the first sentence of Paragraph 14. ITW admits the allegations in the second sentence in Paragraph 14 to the extent that pumps, applicators (spray guns), plural component equipment (proportioners), and related equipment are types of finishing equipment but denies the allegations to the extent that this is not an exhaustive list of equipment that is used for industrial finishing. ITW denies the allegations in the second sentence of Paragraph 14 to the extent that the FTC has implied that these categories constitute relevant markets for the purpose of evaluating potential anticompetitive effects. ITW admits the allegations in the last sentence in Paragraph 14 to the extent that ITW sells finishing equipment throughout North America. ITW denies the remaining allegations in Paragraph 14.

15. ITW denies the allegations in Paragraph 15.

16. ITW admits that it sells a significant amount of its standard, non-engineered, non-system industrial liquid finishing equipment through distributors. ITW denies the remaining allegations in Paragraph 16.

17. ITW denies the allegations in Paragraph 17.

18. ITW denies the allegations in Paragraph 18, except to the extent that the FTC has quoted from the transcript of the investigational hearing of one of Graco's executives. The transcript speaks for itself.
19. ITW denies the allegations in Paragraph 19, except to the extent that the FTC has quoted from the transcript of the investigational hearing of one of Graco's executives. The transcript speaks for itself.
20. ITW denies the allegations in Paragraph 20.
21. ITW denies the allegations in Paragraph 21.
22. ITW admits that the statements quoted in Paragraph 22 were made in documents submitted to the FTC. The documents speak for themselves. To the extent the FTC alleges the quoted statements are admissions by ITW, they are denied. ITW denies the remaining allegations in Paragraph 22.
23. ITW denies the allegations in Paragraph 23.
24. ITW denies the allegations in Paragraph 24.

RELEVANT PRODUCT MARKETS

25. ITW denies the allegations in Paragraph 25.
26. ITW denies the allegations in Paragraph 26 and each of its subparts.

Liquid Finishing Pumps for Industrial Use

27. ITW denies the allegations in Paragraph 27. ITW denies that liquid finishing pumps for industrial use constitute a relevant product market.

Liquid Finishing Spray Guns for Industrial Use

28. ITW admits the allegation in the third sentence of Paragraph 28 that "a gun appropriate for one use will not always substitute for a spray gun used in a different process." ITW denies

the remaining allegations in Paragraph 28. ITW denies that liquid finishing spray guns for industrial use constitute a relevant product market.

Liquid Finishing Proportioners for Industrial Use

29. ITW admits to the first sentence in Paragraph 29. ITW denies the remaining allegations in Paragraph 29. ITW denies that liquid finishing proportioners for industrial use constitute a relevant product market.

Circulation Pumps for Paint Systems in Automotive Assembly Plants

30. ITW denies the allegations in Paragraph 30. ITW denies that circulation pumps for paint systems in automotive assembly plants constitute a relevant product market.

Industrial Liquid Finishing Equipment for Resale

31. ITW denies the allegations in Paragraph 31. ITW denies that industrial liquid finishing equipment for resale constitutes a relevant product market.

GEOGRAPHIC MARKET

32. ITW denies the allegations in Paragraph 32.

PRESUMPTIVE ILLEGALITY OF THE ACQUISITION

33. The allegation in Paragraph 33 that the acquisition would be “illegal” is a legal conclusion, to which no response is required. To the extent a response is required, ITW denies this allegation. ITW denies the remaining allegations in Paragraph 33.

34. The first sentence in Paragraph 34 contains only legal conclusions to which no response is required. To the extent that a response is required, ITW denies this allegation. ITW denies the remaining allegations in Paragraph 34.

35. ITW denies the allegations in Paragraph 35.

36. ITW denies the allegations in Paragraph 36.

37. Paragraph 37 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 37.

ENTRY AND REPOSITIONING BARRIERS AND LACK OF EFFICIENCIES

38. ITW denies the allegations in Paragraph 38.

39. ITW denies the allegations in Paragraph 39.

40. ITW denies the allegations in Paragraph 40.

41. ITW denies the allegations in Paragraph 41.

VIOLATIONS

Count I – Illegal Agreement

42. Except as where specifically admitted above, ITW denies the allegations in Paragraphs 1-41 of the Complaint.

43. Paragraph 43 contains only a legal conclusion to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 43.

Count II – Illegal Acquisition

44. Except as where specifically admitted above, ITW denies the allegations in Paragraphs 1-41 of the Complaint.

45. Paragraph 45 contains only legal conclusions to which no response is required. To the extent that a response is required, ITW denies the allegations in Paragraph 45.

AFFIRMATIVE DEFENSES

The inclusion of any ground within this section does not constitute an admission that ITW bears the burden of proof on each or any of the matters, nor does it excuse Complaint counsel from establishing each element of its purported claim for relief.

1. The Complaint fails to state a claim on which relief can be granted.

2. The contemplated relief would not be in the public interest because it would, among other things, harm consumers.
3. Efficiencies and other pro-competitive benefits resulting from the acquisition outweigh any and all proffered anticompetitive effects.
4. Entry and repositioning will be sufficient to maintain robust competition post-transaction and will outweigh any and all proffered anticompetitive effects.
5. To eradicate the FTC's alleged concern that this transaction will have anticompetitive effects, Graco has agreed to divest the following product lines, to a buyer approved by the FTC within a period of 180 days:
 - a. ITW's line of Ransflow manual electronic proportioners (including spare parts)
 - b. ITW's line of BX pumps (including spare parts)
 - c. ITW's Solo line of manual electrostatic guns (including spare parts)
 - d. ITW's line of Pitbull airless guns (including spare parts)
 - e. ITW's line of Protective Coatings BX Packages (including spare parts)
6. To provide further assurances that there will be no anticompetitive effects from this transaction, Graco has agreed to:
 - a. **Regarding ITW Industrial Finishing Distribution:** Graco will continue to operate ITW Finishing distribution channels in the same manner as they were pre-merger for a period of three years. To that end, Graco will:
 - i. Offer to extend any current ITW Finishing Distributor or Integrator agreement for a period of three years (subject to existing minimum sales and credit standards).

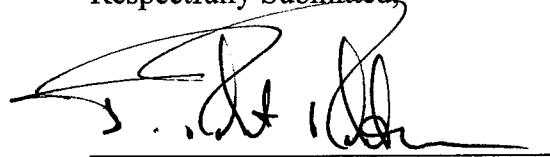
- ii. Confirm in writing to each ITW Finishing Distributor that its agreement is non-exclusive and that there are no restrictions on which manufacturers, customers, or integrators with which they choose to deal as it relates to ITW Finishing products.
 - iii. If the ITW Finishing Distributor or Integrator is also a Graco distributor, integrator or customer, Graco will not use any means to restrict that Distributor or Integrator from selling ITW Finishing Products;
 - iv. For a period of three years, Graco will continue to offer for sale to ITW Distributors and Integrators a full package of ITW Finishing branded products (no lesser in scope to the previously offered package, with the exception of divested lines).
- b. **Regarding Graco Industrial Finishing Distribution:** Graco will continue to operate Graco Finishing distribution channels in the same manner as they were pre-merger for a period of three years. To that end, Graco will:
- i. Offer to extend any current Graco Industrial Finishing Distributor or Integrator agreement for a period of three years (subject to existing minimum sales and credit standards).
 - ii. Confirm in writing to each Graco Finishing Distributor that its agreement is non-exclusive and that there are no restrictions on which manufacturers, customers, or integrators with which they choose to deal.
 - iii. For a period of three years, Graco will continue to offer for sale to Graco Distributors and Integrators a full package of Graco Finishing branded

products (no lesser in scope to the previously offered package, with the exception of divested lines).

WHEREFORE, respondents Illinois Tool Works Inc. and Illinois Tool Works Finishing LLC respectfully request that the Court (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award respondents their costs of suit, including attorneys' fees, and (iv) award such other and further relief as the Court may deem proper.

Dated: January 3, 2012

Respectfully Submitted,



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*Attorneys for Illinois Tool Works Inc. and
Illinois Tool Works Finishing LLC*

CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed via hand delivery an original with signature and one paper copy and a .PDF copy on disk that is a true and correct copy of the paper original of the foregoing *Public Answer of Respondents Respondents Illinois Tool Works Inc. and Illinois Tool Works Finishing LLC* with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580
secretary@ftc.gov

I also certify I caused to be delivered by hand a paper and electronic copy of the foregoing *Public Answer of Respondents Illinois Tool Works Inc. and Illinois Tool Works Finishing LLC* to:

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission, Office of Administrative Law Judges
600 Pennsylvania Avenue, NW, Rm. H-113
Washington, DC 20580
oalj@ftc.gov

I also certify I delivered via electronic mail a copy of the foregoing *Public Answer of Respondents Illinois Tool Works Inc. and Illinois Tool Works Finishing LLC* to:

Phillip Broyles
Peter Richman
Marc Schneider
Federal Trade Commission
1800 M Street, NW
Washington, DC 20580

Date: January 3, 2012



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