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By email

Dear interested party

Resale Price Maintenance Notification RP N10000461 lodged by Graco Australia Pty Ltd – interested party consultation

The Australian Competition and Consumer Commission (the **ACCC**) has received a notification from Graco Australia Pty Ltd (**Graco**) which is proposing to engage in resale price maintenance (**RPM**) with regard to airless and air assisted paint sprayers supplied by Graco in Australia.

The ACCC invites you to comment on the arrangement.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

RPM notification lodged by Graco

On 21 March 2023, Graco lodged an RPM notification. Graco is proposing to require its distributors to advertise its airless and air assisted paint sprayers ranging from entry-level to professional trade products (**Paint Sprayers**) at or above a minimum advertised price set by Graco (the **Notified Conduct**).

Under the Notified Conduct:

- the prescribed minimum advertised price will apply to all advertising, including in print and online
- advertising that offers to match competitor's prices or states "Call for Price" is permitted as long as it does not suggest that the product is being sold below the prescribed minimum advertised price
- bundled promotions featuring Graco products must be advertised at or above the cumulative minimum advertised prices
- coupons, rebates, gift cards and other incentives or rewards must not be used to discount the advertised price below the prescribed minimum advertised price
- Graco may alter the prescribed minimum advertised prices at any time.

However, the minimum advertised price requirement will not apply to:

- any in-store merchandising, quotes or contracts

- secure internet sites that are not viewable by public and that are used to conduct business-to-business transactions, and
- items in internet “shopping carts” after the customer places the product in the cart by clicking “order”, “add to cart” or a similar command.

As described in further detail below, resale price maintenance conduct is normally a breach of the *Competition and Consumer Act 2010* (the **Act**), but businesses can obtain legal protection (or immunity) by lodging a notification with the ACCC.

Under Graco’s notification, immunity from legal action will commence on 4 April 2023 provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect. However, Graco has agreed not to engage in the conduct until the ACCC completes its assessment of the notification.

The ACCC may proceed to remove the immunity provided by an RPM notification where it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment to the public from the Notified Conduct.

A full copy of the RPM notification is available on the ACCC’s [Resale Price Maintenance Notifications register](#). We recommend that you read Graco’s notification before preparing any submission.

Request for submissions

The ACCC invites you to make a submission on the notification. In making your submission, please provide information, evidence and views about the:

- likely public benefits from the Notified Conduct and
- effects on competition and any other public detriment that you consider will result from the Notified Conduct.

We also seek your views on the following issues (to the extent you are able to comment):

1. The likely impact of the Notified Conduct on businesses and customers, including:
 - the feasibility of, and incentives for, Graco distributors to offer in-store discounts on Paint Sprayers
 - incentives for Graco distributors to stock competing paint spraying products
 - the extent to which it will enable Graco distributors to offer improved services to customers.
2. Whether Graco Paint Sprayers require specialised pre or post-sales service, including for example, in-store demonstrations, training or repair services.
3. The nature and extent of any problems associated with online discounting of Graco Paint Sprayers.

If you intend to provide a submission in relation to this RPM notification, please do so by **14 April 2023**. If you wish to request an extension, please contact us on the details below as early as possible. Submissions after the due date (or after any extension granted) may not be taken into account.

Submissions should be lodged via this [Web form](#), which is also accessible on the [public register page](#) for this matter. Alternatively, if you would like to provide comments orally, please contact Gemma Smith via the details in this letter to organise a suitable time.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

Indicative timetable

The ACCC will progress its assessment of the notification in a timely manner. An indicative timetable is set out below for your information, and an up to date version (including any changes) will be maintained on the public register.

Indicative date	Stage in assessment process
21 March 2023	Lodgement of notification
23 March 2023	Public consultation process begins
14 April 2023	Closing date for submissions from interested parties
April/May	Graco Australia responds to issues raised in the public consultation process
June/July	Expected timing for the ACCC decision to either allow the notification to stand or issue a draft notice of objection

Background on RPM notification process

RPM refers to an arrangement where a supplier of goods or services (e.g. a manufacturer or wholesaler) specifies a minimum price below which a reseller must not on-sell, or advertise for sale, those goods or services.

RPM conduct is normally in breach of the Act, but businesses can obtain immunity for certain forms of RPM conduct by lodging a notification or authorisation application with the ACCC. Businesses will do this if they consider the public benefits resulting from the conduct are likely to outweigh the public detriments.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences automatically 14 days after the notification was lodged, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

Further information about the RPM notification process is provided in the ACCC's [Resale Price Maintenance Guidelines](#).

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Gemma Smith on (03) 9290 1405 or exemptions@acc.gov.au

Yours sincerely



David Hatfield
Director
Competition Exemptions