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6 April 2023

Carolyn Oddie  
Partner  
Allens

Via email: [REDACTED]

Dear Ms Oddie

**Re: Graco Australia Pty Ltd resale price maintenance (RPN10000461) - request for information**

As discussed, the Australia Competition and Consumer Commission (**ACCC**) is closely assessing Graco Australia Pty Ltd's (**Graco Australia**) resale price maintenance notification in relation to its entry level to professional trade airless and air assisted paint sprayers (**Paint Sprayers**).

Under the notification, Graco Australia proposes to require its distributors to advertise its Paint Sprayers at or above a minimum advertised price set by it (**Notified Conduct**).

To assist the ACCC's assessment of the likely public benefits and detriments from the Notified Conduct, the ACCC requests Graco Australia and Graco Inc provide the information set out in **Attachment A** by no later than **5pm on Wednesday, 26 April 2023**.

Graco Australia may request to exclude certain information contained in its response from the ACCC's public register (see [Guidelines for excluding information from the public register](#)).

This letter and a redacted Attachment A will be placed on the ACCC's public register. Please let us know if you identify any other confidential information (see shaded) within Attachment A that Graco Australia seeks to exclude from the public register by **5pm on Wednesday, 12 April 2023**.

Should you have any questions in relation to this information request, or would like to discuss its scope, please contact David Hatfield (02) 6243 1266 ([david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)), Jaime Martin (03) 9290 1477 ([jaimemartin@acc.gov.au](mailto:jaimemartin@acc.gov.au)), or Gemma Smith on (03) 9290 1405 ([gemma.smith@acc.gov.au](mailto:gemma.smith@acc.gov.au)).

Yours sincerely

Lyn Camilleri  
General Manager  
Competition Exemptions

**Resale price maintenance notification RPN10000461 lodged by Graco Australia Pty Ltd – ACCC information request**

**Definitions**

*Director* has the same meaning as in section 9 of the *Corporations Act 2001*.

*Graco Australia* means Graco Australia Pty Ltd.

*MAP* means minimum advertised price.

*MAP Policy* means the terms of the proposed resale price maintenance conduct that Graco Australia proposes to incorporate into the new distributor agreement for relevant Graco Australia distributors.

*Notified Conduct* means the requirement that Graco Australia distributors advertise Paint Sprayers, including online and in print, at or above a minimum advertised price set by Graco Australia. The minimum advertised price 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.

*Paint Sprayers* means airless and air assisted paint sprayers ranging from entry level to professional trade products supplied by Graco Australia to which the Notified Conduct relates (and listed at Schedule 1 to the notification).

*Relevant Period* means 1 July 2019 to 31 March 2023.

*Senior Management* has the same meaning as in section 9 of the *Corporations Act 2001*.

**Graco Australia’s distributor network and program**

1. We understand from the notification that there are currently three categories of Graco Australia distributors in Australia - namely, ‘Authorised’, ‘Specialised’, and ‘Advanced’. Each category receives a different discount structure and is required to meet certain objective requirements (relating to stocking commitments, maintaining technical capabilities for sale and servicing products, and turnover requirements) under Graco Australia’s current distributor program. Please detail:
  - a) the complete discount structure and ‘objective requirements’ for each distributor category, including any pre- and post-sales service standards that Graco Australia currently imposes.
  - b) how Graco Australia currently monitors and supports distributors to meet their ‘objective requirements’, including any pre- and post-sales service standards. Please include (without limitation) information about any instances where Graco Australia has become aware of a distributor not meeting Graco Australia’s ‘objective requirements’ and the actions taken by Graco Australia in response.

2. Please provide a copy of the current distributor agreement for each distributor category.
3. For each distributor category, please detail what, if any, changes will be introduced to Graco Australia's 'objective requirements', including any pre- and post-sales service standards, under the Notified Conduct.
4. Please detail how Graco Australia proposes to monitor and support current and new distributors in each distributor category to meet their 'objective requirements', including pre- and post-sales service standards under the Notified Conduct. Please also explain how Graco Australia proposes to monitor and support new and existing distributors' investment in on-site facilities, such as product displays or demonstration areas.
5. Please detail how Graco Australia intends to monitor compliance with the Notified Conduct more broadly.
6. Please clarify which distributor category is classified as 'full-service' distributors (for example, as referred to in section 5, page iii of the notification).
7. Please clarify whether any distributors are currently permitted to provide online sales only of Graco Paint Sprayers.
8. Please outline the proportion of Graco Australia's distributors that have Graco Paint Sprayer demonstration areas within their stores, and which distributor category these stores typically fall under.
9. Please outline whether Graco Australia currently supplies Paint Sprayers to equipment hire businesses. If so, please explain how Graco Australia supports and monitors staff in these businesses receiving the necessary training about Paint Sprayers to instruct end-customers about their correct use.
10. (Confidential) Schedule 5 to the notification provides a list of Graco Australia's current distributors. However, it appears that certain distributors are not included in Schedule 5 - for example, [REDACTED]. Please provide an updated and complete list of Australian distributors of Graco Paint Sprayers at Schedule 5, including email contact details and distributor category. There also appears to be a discrepancy between the total number of distributors within Graco Australia's network provided at section 6.2 of the notification (266) and the total number of distributors in Schedule 5. Please reconcile any differences in this total number in your response.

### **Graco Paint Sprayers – product features and end-customers**

11. Please describe the end-customers of Graco Australia's Paint Sprayers, and what the current proportion of entry level (or DIY) customers is compared to professional tradespeople.
12. Pages 12 – 14 of Annexure A to the notification lists a range of features that are unique to Graco Australia Paint Sprayers which it submits require significant pre-sales demonstration and post-sales support. Can you please explain what a typical sales process involves in order to explain or demonstrate these features to end-customers. In your response, please explain how this sales process might differ between entry level and professional trade Paint Sprayers.

13. Please outline the extent to which in-store training, demonstrations or repair services are currently offered across the Graco Australia distributor network. In your response, please include how they are proposed to change or be introduced under the Notified Conduct.
14. Please outline the training and demonstration activities Graco Australia currently undertakes directly with end-customers including at trade shows and on site or in store demonstrations.
15. Schedule 3 to the notification provides an example of a two-day training course that Graco Australia runs for its distributors. Graco Australia advises that in 2022 it ran this two-day program around 10 separate times. For the Relevant Period, please provide the total number of training events conducted by Graco Australia and the total number of attendees in each year. In your response, please explain whether these training events are conducted onsite by Graco Australia within the distributors' stores or require offsite attendance by distributors' staff.

### **Rationale for the Notified Conduct**

16. Please outline how long Graco Australia has been concerned about 'free riding' and what other measures Graco Australia has implemented, or considered implementing, to address this problem.
17. Pages 9 – 10 in Annexure A summarises correspondence received by Graco Australia from 'full-service' distributors which cite examples of other distributors advertising below list price and being forced to match those discounted prices. To the extent these are available, please provide full copies of all such correspondence received by Graco Australia for the Relevant Period and Graco Australia's response in each case, including any internal records of complaints which occurred in person or via phone call or online meeting.
18. Please explain in which distributor categories Graco Australia is observing 'aggressive' online discounting of Paint Sprayers. In your response, please provide a complete list of these distributors for the Relevant Period.
19. Please provide information about any complaints received in the Relevant Period by Graco Australia from distributors alleging that another dealer has failed to meet Graco Australia's 'objective requirements', including any pre- and post-sales service standards imposed under distributor agreements.
20. Please provide any documents prepared by or for a Director, the board of Directors or any Senior Management of Graco Australia or Graco Inc that examines or considers introducing the MAP Policy in Australia.
21. Please provide a list of any distributors that have stopped stocking Graco Paint Sprayers or have significantly decreased the volumes purchased from Graco Australia for the Relevant Period.
22. Please identify any potential distributors that have refused to *start* stocking Graco Paint Sprayers and any current distributors that have refused to invest further in Graco Paint Sprayers because of 'free-riding'.

## Prices and sales volumes

23. Please detail how Graco Australia determines its wholesale prices and RRP for each of its Paint Sprayers.
24. Please provide all wholesale price lists for each of Graco Australia's Paint Sprayers for the Relevant Period.
25. For each Paint Sprayer (listed at Schedule 1 to the notification), please provide total annual revenue and wholesale sales volumes for each of 2019 to 2022 FY and 2022/23 FYTD.
26. For each of Graco Australia's top 20 distributors (by sales volume) for each of 2019 to 2022 FY and 2022/23 FYTD, please provide:
  - a) a list of each Paint Sprayer (listed at Schedule 1 to the notification) supplied to the distributor;
  - b) for each Paint Sprayer listed in a), the total wholesale revenue and wholesale sales volumes.
27. Please provide any internal documents which record or analyse retail prices or margins of Graco's Paint Sprayers in Australia during the Relevant Period.
28. 

## Overseas experience

29. Please provide a list of all countries in which Graco Paint Sprayers are sold and identify whether the products are subject to resale price maintenance in each of these countries. Please provide details of any differences in reported or perceived service quality, distributor performance, or distributor numbers and sales over time between the countries in which the Paint Sprayers are subject to RPM and those countries in which they are not.
30. In section 7.2 of Annexure A to the notification, Graco Australia advises that in the United States, Graco Inc's prices have increased by 3-4% each year since they introduced MAP policies there. Please clarify if this relates to Graco Inc's Paint Sprayer range only, and whether this refers to wholesale or retail prices.
31. To the extent that Graco Australia or Graco Inc is aware, please outline whether other US-based companies have introduced a minimum advertised price requirement for similar paint spraying equipment.
32. Following Graco Inc's introduction of MAP policies in the United States, please explain how wholesale prices and cost of production and supply have changed over the same period.
33. Please detail any distributor network-wide sales and promotions Graco Inc has run in the United States during the Relevant Period, while a minimum advertised price requirement has been in place. Please also outline any special discounting or sales promotions that Graco Australia has or would consider implementing across its

distributor network under the Notified Conduct, and how such promotions would be implemented in Australia.