



Notice

Notification lodged by

Graco Australia Pty Ltd

in respect of

resale price maintenance conduct on airless and air-assisted paint sprayers.

Notification number: RPN10000461

16 November 2023

Commissioners: Keogh
Brakey
Carver

Summary

The Australian Competition and Consumer Commission (ACCC) has decided to issue a notice revoking the resale price maintenance (RPM) notification lodged by Graco Australia Pty Ltd on 21 March 2023 in relation to its airless and air-assisted paint sprayers (the Notified Products).

The legal protection from Graco Australia's notification ceases to be in force on the 31st day after the date of this notice – that is, on 17 December 2023.

The notification, if allowed to stand, would have allowed Graco Australia to stipulate a minimum advertised price below which retailers (called Graco distributors) could not advertise to sell the Notified Products with some exceptions – for example, distributors could still discount prices in store or offer discounts to trade customers through contractor accounts (the Notified Conduct).

The ACCC can only revoke the legal protection from an RPM notification if it is satisfied that the likely benefit to the public from the notified conduct would not outweigh the public detriment from the conduct.

On 31 August 2023 the ACCC issued a Draft Notice proposing to revoke the notification. In response to the Draft Notice, the ACCC received one submission from Graco Australia. The ACCC considers that the additional information Graco Australia provided has not materially changed its overall assessment of the likely public detriments and benefits from the notified conduct.

The ACCC considers that Graco Australia stipulating a price below which distributors cannot freely advertise to sell the Notified Products is likely to result in public detriment in the form of increasing the prices at least some customers pay for the Notified Products by softening distributors' ability and incentive to compete on price and offer significant discounts below the price set by Graco Australia. There is also insufficient competition to constrain the prices set by Graco Australia to a competitive level, given the supply of paint sprayers in Australia is highly concentrated – with Graco distributors suggesting there are only 2 established brands, Graco (with a share of the professional trade/contractor segment in Australia of at least 50%) and Wagner, which each focussing on different customer segments.

Distributors and competing manufacturers may also respond to the Notified Conduct by increasing the prices of other paint sprayers.

Graco Australia submits the Notified Products require significant retail services and it is concerned there are many instances where full-service distributors invest a substantial amount of time and effort with a customer, only to have the customer then purchase the product from another distributor which offers a discount but does not invest in sufficient training or retail services. Graco Australia submits this free riding is adversely impacting the viability of its distribution model and may negatively impact end users, reduce the adoption of better painting techniques, and harm Graco Australia's reputation. Graco Australia submits that the Notified Conduct will significantly reduce this free riding. It also considers the Notified Conduct will help distributors increase the conversion rate from traditional painting methods to paint sprayers.

The ACCC accepts that paint sprayers are somewhat complex products. However, based on the available information, the Notified Products do not appear to be more complex than other, similar machines. There is limited evidence that discounting distributors have been free riding on the service provided by other distributors for the Notified Products.

Conversely, it appears much of the discounting is attributable to high-service distributors. The ACCC notes that without the Notified Conduct, Graco Australia would likely continue to deliver demonstration and product training services itself at the numerous trade event days it conducts direct to customers each year.

As such, the ACCC considers the Notified Conduct is unlikely to result in any significant public benefit.

Accordingly, the ACCC is satisfied the likely benefit to the public will not outweigh the likely detriment to the public from the Notified Conduct and issues this Notice to revoke the notification. The protection from Graco Australia's notification will fall away, subject to any application for review to the Australian Competition Tribunal.

1. Introduction

- 1.1. On 21 March 2023, Graco Australia Pty Ltd (**Graco Australia**) lodged a resale price maintenance (**RPM**) notification RPN10000461 with the Australian Competition and Consumer Commission (the **ACCC**). Under the notification, Graco Australia proposes to require its distributors to advertise its airless and air-assisted paint sprayers, ranging from entry-level to professional trade products (**the Notified Products**), at or above a minimum advertised price set by Graco Australia.
- 1.2. The notification is proposed to cover Graco Australia's existing and future paint sprayers. It currently sells 51 models of paint sprayers in Australia, as listed at Schedule 1 to Graco Australia's notification.¹
- 1.3. Legal protection provided by the RPM notification commenced on 4 April 2023. However, Graco Australia agreed not to commence the Notified Conduct (defined at paragraphs 4.2–4.3) until after the ACCC completed its assessment of the notification.²
- 1.4. Further information in relation to Graco Australia's RPM notification is included below and the notification itself is available from the ACCC's [public register](#).

2. The RPM notification process

- 2.1. In broad terms, RPM occurs when a supplier of goods or services (for example, a manufacturer or wholesaler) specifies a minimum price below which a reseller must not on-sell, or advertise for sale, those goods or services.
- 2.2. RPM is a *per se* breach of the *Competition and Consumer Act 2010* (the **Act**), which means it is prohibited outright, regardless of whether it has the purpose, effect or likely effect of substantially lessening competition.³

¹ [Graco Australia Pty Ltd Resale Price Maintenance Notification, RPN10000461, 21 March 2023 \(Graco Australia Notification\)](#) Schedule 1. See also amendments made in [Graco Australia submission in response to ACCC RFI, 8 May 2023](#), pp. 18–19.

² Graco Australia Notification, p. ii.

³ Section 48 of the Act.

- 2.3. The Act allows a business⁴ to obtain protection from legal action for RPM conduct by lodging a notification describing the conduct (under section 93 of the Act) or by obtaining an authorisation for the conduct (under section 90 of the Act).
- 2.4. The legal protection provided by an RPM notification commences automatically at the end of a period of 14 days starting on the day the notification is validly lodged, unless the ACCC issues a draft notice objecting to the notification, within that 14-day period.⁵

Legal test

- 2.5. The ACCC is required to assess an RPM notification by applying the 'net public benefit test' in section 93(3A) of the Act. The test requires that, in order to revoke a notification, the ACCC must be 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.
- 2.6. If the ACCC reasonably believes it has grounds to revoke an RPM notification and these grounds would not exist if particular conditions relating to the RPM conduct were complied with by a notifying party – for example, requiring annual reporting on sales and pricing information for the relevant goods – then the ACCC can impose conditions on a notification which must be complied with.

3. Framework for assessing RPM conduct

- 3.1. Removing price competition between resellers of a particular brand of products can result in resellers selling goods or services at prices higher than they would otherwise, and consumers paying more for those goods or services without receiving any additional value. This may result in significant consumer harm. It can also deter retailers from stocking a range of competing products that have less certain retail margins. In some circumstances, RPM may also increase the risk of co-ordination or collusion between either upstream competitors (manufacturers) or among retailers.
- 3.2. Unless these potentially significant detriments are limited by competition from other brands and/or there are clear offsetting benefits, the ACCC will normally have significant concerns and will likely move to revoke an RPM notification.
- 3.3. The risk and size of potential public detriments from RPM will be smaller where the relevant good or service is subject to strong rivalry from competing goods or services. In such circumstances, a supplier is less likely to be able to sustainably set retail prices above a competitive level.
- 3.4. In certain circumstances, RPM can result in public benefits, including by promoting competition in non-price dimensions, including product innovation by manufacturers and service quality at the point of sale. For example, producers of particularly complex goods or services may seek to engage in RPM to create incentives for resellers to

⁴ Under the Act, a corporation or other person may lodge an RPM notification: s 93(1)(b) of the Act.

⁵ Section 93(7A) of the Act; *Competition and Consumer Regulations 2010* rr 9(a), 9(b).

invest in pre-and post-sales services such as in-store product demonstrations that highlight key and unique features and training staff to be able to provide advice about the products, which is valued by consumers. Faced with the same prices across all resellers, consumers are more likely to make their purchase from the reseller that offers the best service and support.

- 3.5. Without RPM, resellers who do not invest in the same high level of service could 'free ride' on these investments and set lower prices. High-service resellers may not gain sufficient returns on product sales to continue to provide these services. Resellers may also be more averse to keeping stock on hand or stocking products for which demand is uncertain if the products are not subject to RPM. This free riding problem may make providing costly retail services commercially unviable. This is more likely to be the case where a higher proportion of consumers use high levels of retail services in deciding what to buy but purchase from low-service online discounters. However, consumers 'shopping around' to understand products and check prices before purchasing does not necessarily result in a free rider problem.
- 3.6. In some cases, RPM can help to align the incentives of retailers with those of the manufacturer, allowing them to compete more strongly with vertically integrated competitors. RPM can also create an incentive for retailers to be innovative in providing valuable services to consumers and an incentive for manufacturers to develop more advanced products.

4. The notification

The Notifying Party

- 4.1. Graco Australia is a wholly owned subsidiary of *Graco Inc*, which is a US-based global manufacturer of pumps and fluid handling solutions and products, including 'high-quality, premium paint sprayers with industry leading technology and features.' While Graco Australia imports and is a wholesaler of a wide range of Graco-branded pumps and fluid handling equipment, this notification only relates to its paint sprayers. Graco Australia supplies the Notified Products via a network of distributors.⁶

The Notified Conduct

- 4.2. Graco Australia is proposing to implement a minimum advertised price policy which would require its distributors to advertise the Notified Products at or above a price set by Graco Australia. Under the minimum advertised price policy:⁷
 - the prescribed minimum advertised price will apply to all advertising, including in print and online

⁶ Graco Australia Notification, p. 8.

⁷ Graco Australia Notification, pp. i–ii.

- 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 price
- coupons, rebates, gift cards and other incentives or rewards must not be used to discount the advertised price below the prescribed minimum advertised price.

4.3. However, the minimum advertised price requirement *will not apply* to:⁸

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

4.4. The proposed conduct described in paragraphs 4.2–4.3 is hereafter referred to as the **Notified Conduct**. Graco Australia proposes to implement the Notified Conduct by issuing a policy to its retail distributors that they must not advertise below the minimum advertised price set by it. This will be incorporated into a new Distributor Agreement for its distributors. Graco Australia advises that any alterations to minimum advertised prices, policies, promotions or product coverage will be communicated on the *Graco Partner Portal* before taking effect.⁹

4.5. The Notified Conduct is proposed to cover Graco Australia’s existing and future paint sprayers. A complete list of the current Notified Products was provided by Graco Australia with its notification.¹⁰ There are currently 51 sprayers across Graco Australia’s DIY-range, semi-professional, and trade (small and large) product ranges. Consumers of Graco paint sprayers are:¹¹

- *DIY (do-it-yourself) customers*: homeowners, hobbyists, etc. who are not professional painters. They require a spray gun for infrequent use (usually 1-10 times per year) and generally will acquire a lower cost spray gun
- *Semi-professional customers*: tradespersons and small builders who offer painting as a part of their overall service portfolio and spray or apply a lower volume of paint annually than trade/contractors, and
- *Trade/contractor customers*: professional painters whose businesses are entirely or primarily focused on painting, and who buy a high volume of paint annually. These customers use a sprayer more frequently and typically spray upwards of 2000 litres of paint per year.

⁸ Graco Australia Notification, pp. i–ii.

⁹ Graco Australia Notification, p. ii.

¹⁰ Graco Australia Notification, [Schedule 1](#).

¹¹ Graco Australia Notification, p. iii.

Rationale for the Notified Conduct

- 4.6. Graco Australia submits it has experienced difficulties with free riding, resulting in its distributors being disincentivised from investing as fully in stocking, merchandising, demonstrating and servicing the Notified Products.
- 4.7. Graco Australia submits that the Notified Products are complex and 'differentiated from traditional painting products such as rollers and brushes.'¹² Graco is seeking to encourage paint contractors to convert from traditional painting methods to spray equipment. It advises that this process takes a significant amount of time for demonstrations and training.
- 4.8. Graco Australia also submits that the features and the complexity of technology available with the Notified Products require a high level of training and marketing in selling these products. There are also important safety aspects about operating high pressure paint spraying equipment that need to be explained to customers. Graco Australia considers that training and development of staff is ongoing to ensure that staff have the significant amount of knowledge they need to sell Graco paint spraying equipment properly.¹³
- 4.9. Further, Graco submits that the Notified Products require regular servicing and maintenance. Most maintenance can be performed by customers after they have been properly and professionally trained by a Graco distributor. For more advanced service and repairs, customers may need to bring a sprayer to an authorised Graco distributor who will perform the needed services and repairs.¹⁴
- 4.10. Graco Australia advises that over the last 5 years, there has been a significant growth of online sales of its paint sprayers.¹⁵ Specifically, Graco Australia estimates that the proportion of sales occurring online has increased by around 30% in the last 2 years.¹⁶ It has become increasingly concerned about the free riding behaviour by a small number of Graco distributors that have been heavily discounting the Notified Products. It submits that there are many instances where full-service distributors invest a substantial amount of time and effort with a paint contractor, educating them about the product and its features, only to have the contractor find the product advertised online for less and subsequently purchase the product from a distributor offering a discount but that may not invest in sufficient training.¹⁷
- 4.11. Therefore, Graco Australia submits that due to the complexity of the Notified Products and the need for distributors to invest to provide significant demonstration and after sales services, it needs to ensure that its distributors are incentivised to provide these retail services by maintaining a sustainable margin on the Notified Products.
- 4.12. Graco Australia has been observing aggressive online discounting in its 'Advanced' (top level) category of distributors.¹⁸ Graco Australia submits this often results in a

¹² Graco Australia Notification, p. 8.

¹³ Graco Australia Notification, p. 8.

¹⁴ Graco Australia Notification, p. 9.

¹⁵ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 16.

¹⁶ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 7.

¹⁷ Graco Australia Notification, p. 9.

¹⁸ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 17.

competitive response from other market participants, resulting in a ‘race to the bottom.’¹⁹

4.13. From its consultation with interested parties, the ACCC understands that the Notified Products are regularly advertised online at discounts of 20–30% below RRP.²⁰

Graco Australia’s distributor network

4.14. Graco Australia advises it sells the Notified Products via a network of 266 retail distributors across Australia.²¹ Table 1 provides a breakdown of Graco Australia’s distributors by state and distributor category.

Table 1: Graco Australia distributor network²²

Category	Authorised	Specialised	Advanced	Total
NSW	44	11	17	72
VIC	36	4	23	63
QLD	40	5	22	67
WA	28	5	3	36
SA	5	1	8	14
TAS	4	1	1	6
NT	4	1	0	5
ACT	1	1	1	3

4.15. Graco Australia manages its retail network via its *Graco Distributor Alliance Program*. It has one Distributor Agreement that applies to all distributor categories.²³ Each category of distributor receives a different wholesale discount off the RRP and is required to meet ‘certain objective requirements’, which are monitored by the distributor’s local Graco district manager. These distributor requirements relate to:

- stocking commitments
- maintaining technical abilities for sale and servicing products
- sales turnover.

4.16. The 3 categories of Graco Australia’s distributor are:

- *Authorised* – this is the lowest level. These distributors are not significantly involved in the sale of paint sprayer products but are often associated with Graco in some other way (for example, they sell other types of Graco products such as

¹⁹ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 17.

²⁰ Record of oral submission – Dulux, 31 May 2023, p. 4; Record of oral submission – GO Industrial, 24 May 2023, p. 2.

²¹ Graco Australia Notification, p. iv.

²² Graco Australia Notification, p. iv.

²³ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 6.

line marking equipment for use on roads). They have access to the lowest discount structure and limited access to product categories as they meet the minimum level of objective criteria of Graco's distributor program.²⁴

- *Specialised* – this is the entry level for distributors who sell paint sprayers as a primary focus of their business, and receive a 'larger level of discount' off the wholesale list price. Graco Australia advises that this category allows new distributors to prove themselves and demonstrate their commitment to the brand before moving to the advanced distributor level. Distributors that sell a small volume (generally due to their geographic location) also fall within this level. They do not have to sell every product category, but are required to meet minimum sales targets for the categories they sell. They are also meant to meet at least 3 of the following requirements:
 - Stocking a range of Graco paint sprayer products.
 - Stocking genuine Graco spare parts.
 - Offering servicing capability (this does not have to be within the distributor's premises although sometimes it is. Distributors can use other servicing centres provided they can demonstrate that customers' needs will be met).
 - Have external facing sales staff (that is, people on the ground that can discuss and demonstrate products for customers).
 - Be actively engaged in training (when a distributor becomes a Specialised Distributor, Graco provides training to set the distributor up with the ability to ask questions or demonstrate the products appropriately. This is generally the starting point for distributors and this training requirement is ongoing).²⁵
- *Advanced* – is the top level. Graco Australia advises that 'Advanced' distributors make significant investments in the Graco brand, sell a wide range of products, and are regarded as 'full-service' distributors. They are also required to meet all 5 of the requirements (listed immediately above) and meet minimum sales requirements for the product categories they sell. Advanced Distributors receive the highest discount off the wholesale list price.²⁶

4.17. Graco Australia advises that paint stores, such as Dulux, make up most of its distributor network. Non-paint store distributors are referred to as an 'equipment house' where they sell everything but the paint. These locations are often also service agents, so they have the ability to demonstrate, test and run machines at their premises.²⁷

4.18. A small volume of Graco's paint sprayers are supplied by hardware stores. Bunnings only commenced selling a limited range of Graco paint sprayers within the last 12 months. It negotiated a supply agreement with Graco Australia to have access to 3

²⁴ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 1; Graco Australia Notification, p. ii.

²⁵ Graco Australia submission in response to ACCC RFI, 8 May 2023, pp. 1–2; Graco Australia Notification, p. ii.

²⁶ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 2; Graco Australia Notification, p. ii.

²⁷ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 8.

Graco paint sprayers which are sold online only. Bunnings advises that these paint sprayers are similar to models available elsewhere but with slightly different specifications (and unique SKUs²⁸). Bunnings advised that this supply agreement sits outside the *Graco Distributor Alliance Program* and Bunnings does not have any pre- or post-sales service obligations because it has not signed a Distributor Agreement with Graco Australia.²⁹

Training support

4.19. Graco Australia advises that it has a team of 6 District Managers that visit distributors regularly to conduct ongoing training of staff in order to improve the quality of pre and post sales services. It also monitors its distributors' performance, primarily through account management and observations of product displays, stock levels, and on-site facilities during store visits. Graco Australia conducts an annual review of each distributor against the relevant objective requirements in its category.³⁰

4.20. Examples of training and sales support provided by Graco Australia to its distributor network include:

- 2-day service and repair training courses which are typically held around 10 times a year.³¹
- In-store training for staff during which Graco trainers demonstrate proper use of the equipment, discuss features and how best to sell the product. Training is also provided about how to use the Graco Partner Portal, how to process warranty claims and where to find product manuals.³²
- The Graco Partner Portal allows distributors to search for literature and instructions manuals at any time. Some distributors use this 'Graco university' to help train staff.³³

4.21. In addition to training staff across its distributor network, Graco Australia also conducts its own training and demonstrations direct to consumers – for example, Graco representatives will visit the work sites of end-customers to demonstrate 'best practice' in relation to the use and maintenance of its paint sprayers, and regularly runs stands at trade show events.³⁴

The Notified Products and retail services

4.22. Graco Australia advises that the large majority of customers of the Notified Products are professional painters and tradespeople (or 'contractors'). 'DIY customers make up a small share of its customer base. DIY customers are homeowners who are

²⁸ Stock keeping units.

²⁹ Record of oral submission – Bunnings, 9 June 2023, pp. 1–2.

³⁰ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 2.

³¹ Graco Australia Notification, p. 10.

³² Graco Australia Notification, p. 10.

³³ Record of oral submission – Phillro Industries, 30 May 2023, p. 3; Record of oral submission – GO Industrial, 24 May 2023, p. 4.

³⁴ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 12.

renovating or painting their own homes.³⁵ A DIY customer is someone who requires a spray gun for infrequent use, typically ranging from 1-10 jobs per year, and is further differentiated by their expected paint usage. Conversely, contractors are those who use a sprayer for more frequent jobs and typically spray upwards of 2000 litres of paint per year.³⁶

4.23. The ACCC is advised that the DIY segment consists of paint spraying equipment that generally costs up to \$1,500 (but most equipment is around the \$100 to \$300 level). Contractor paint sprayers start at around \$1,500 and can sell for up to \$14,000.³⁷

4.24. Graco Australia submits that a typical sales process for paint spraying equipment starts with asking a comprehensive set of questions to ensure the most suitable machine is recommended to the customer based on their intended use. Graco Australia has a brochure that it provides to its distributors to guide them through a set of relevant questions – for example:³⁸

- what types of material will you spray?
- how many litres of paint per week will you spray?
- will you be indoors or outdoors?
- what types of jobs will you be bidding for?
- what hose lengths will you use?
- how much do you want to spend?

4.25. Once the appropriate paint sprayer has been selected, the distributor will demonstrate how the product is used. This involves unboxing the product; explaining and demonstrating how to set up the product before use; and thoroughly explaining the spray gun's features and best practices in relation to its operation. If the distributor has a paint-booth setup, or an area out the back of the premises, the salesperson may also physically demonstrate how the product is used for the customer.³⁹ Paint store distributors typically have areas at the back of the store where paint sprayers can be tested and run. Graco Australia advises that a very small share of its distributors have highly specialised paint spray booths/rooms with extraction fans.⁴⁰ The ACCC understands that this kind of sale process can take around 1–1.5 hours.⁴¹

4.26. Graco Australia advises that the paint sprayers in its DIY range are 'less likely to have the full post sale treatment' as they are typically less complicated and require less demonstration than paint sprayers in its contractor range. However, sales staff still need to ask DIY-customers pre-sale questions to ensure that they are purchasing the correct sprayer for the job. Graco Australia considers that the trade/contractor spray guns come with many more features exclusive to Graco, so the pre-sales discussion

³⁵ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 10.

³⁶ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 10.

³⁷ Record of oral submission – Wagner, 8 June 2023, p. 2.

³⁸ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 11.

³⁹ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 11.

⁴⁰ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 8.

⁴¹ Record of oral submission – Dulux, 31 May 2023, p. 4.

and demonstration is of higher importance. The post-sales care is also more complex.⁴²

5. Consultation

Prior to the Draft Notice

- 5.1. The ACCC invited submissions from a range of potentially interested parties likely to be affected by the Notified Conduct, including current distributors of Graco paint sprayers, competitors, and relevant industry associations.
- 5.2. In response, the ACCC received only one written submission. This submission was from a Graco distributor, GO Industrial, and supports the Notified Conduct.
- 5.3. To better understand the likely impact of the Notified Conduct, the ACCC conducted a number of site visits and spoke with a range of Graco distributors across the different distributor categories. Some of these distributors also sell paint (such as Dulux, PaintAccess and Hempel), while others are 'equipment only' distributors – such as TRADEgear, Phillro Industries, and GO Industrial. The ACCC also spoke to Bunnings (a relatively new distributor of a small range of Graco paint spraying equipment) and Graco's main competitor, Wagner.
- 5.4. Those discussions and submissions indicate:
 - There are two dominant brands of paint spraying equipment in Australia – Graco is the dominant brand in the contractor segment and Wagner is the dominant brand in the 'DIY' segment.⁴³
 - A typical sales process predominately focusses on asking the customer about their intended use(s) and frequency of use, then recommending the right sprayer for the job.⁴⁴ Pre-sale service may also involve staff outlining important safety issues,⁴⁵ machine set up and cleaning, and maintenance and troubleshooting.⁴⁶
 - Physical demonstrations can assist in the sale of paint sprayers as they are technical equipment that require explanation about use and maintenance,⁴⁷ but there are many online videos available which do the same thing.⁴⁸
 - Consumers, and especially contractors, are very price driven in relation to paint sprayers and are more interested in getting the best price rather than a demonstration.⁴⁹

⁴² Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 11.

⁴³ See records of oral submissions from: Wagner; TRADEgear; Phillro Industries; GO Industrial; Dulux; Hempel.

⁴⁴ See records of oral submissions from: Wagner; TRADEgear; Phillro Industries; GO Industrial; Dulux.

⁴⁵ See records of oral submissions from: Wagner; GO Industrial; Dulux.

⁴⁶ See records of oral submissions from: Wagner; GO Industrial; PaintAccess; Dulux.

⁴⁷ See records of oral submissions from: TRADEgear; Phillro Industries; GO Industrial; Dulux.

⁴⁸ See records of oral submissions from: TRADEgear; Phillro Industries; Dulux.

⁴⁹ See records of oral submissions from: TRADEgear; Phillro Industries; GO Industrial; PaintAccess.

- The Notified Products are not significantly distinguishable from other paint sprayers and do not have unique features which require demonstration for customers to understand their value.⁵⁰
- The Notified Conduct would enable distributors to retain higher margins, which would help cover the cost of training staff about the Notified Products to enable them to provide correct pre- and post-sale advice to customers.⁵¹
- The Notified Conduct will make discounting less visible and will ‘help stabilise floor prices.’⁵² However, customers will still be able to access discounts online (once in the ‘shopping cart’, for example) and within retail premises.
- Some distributors consider it would be ‘business as usual’ without the Notified Conduct and they are not considering reducing current retail service levels⁵³ or changing stocking decisions.⁵⁴ Dulux advised it is currently investing heavily in customer support and in training its staff on paint spraying equipment.⁵⁵ However, another distributor submits that if the Notified Conduct was not implemented, in order to trade sustainably it would need to buy more stock to sell more volume to increase its margins (by being able to secure a larger discount from Graco Australia).⁵⁶

5.5. Graco Australia provided a written submission in response to the issues raised by interested parties.

Following the Draft Notice

- 5.6. On 31 August 2023, the ACCC issued a Draft Notice proposing to revoke Graco Australia’s notification. The Draft Notice is available on the ACCC’s [public register](#).
- 5.7. A pre-decision conference in relation to the Draft Notice was not requested, and the ACCC did not receive any submissions from interested parties in response.
- 5.8. On 22 September 2023, Graco Australia provided a submission in response to the Draft Notice. Graco Australia reiterated its claims that there are many alternative brands of paint sprayers which means that it would not be able to set minimum advertised prices above competitive levels, and discounting allowed in store under the Notified Conduct would maintain intra-brand price competition. It also submitted that the Notified Conduct was likely to result in increased service levels and reduce free-riding across its distributor network, which is becoming an increasing problem as the proportion of paint sprayers sold online grows. Graco Australia submitted that a significant benefit would flow from increased service levels as a result of the Notified Conduct – namely, increased sales of paint sprayers. As outlined in its notification, Graco Australia

⁵⁰ See records of oral submissions from: Wagner; TRADEgear; Phillro Industries; PaintAccess; Dulux; Hempel.

⁵¹ See Record of oral submission – Phillro Industries, 30 May 2023.

⁵² See Record of oral submission – Dulux, 31 May 2023.

⁵³ See records of oral submissions from: Phillro Industries; Hempel.

⁵⁴ See Record of oral submission – PaintAccess, 26 May 2023.

⁵⁵ Record of oral submission – Dulux, 31 May 2023, p. 2.

⁵⁶ Record of oral submission – GO Industrial, 24 May 2023, p. 2.

reiterated that it is seeking to encourage paint contractors to convert from traditional painting methods to spray equipment to increase painting efficiency.

- 5.9. The submissions of Graco Australia and interested parties are referred to in further detail, where relevant, in the Assessment section of this Notice. All public submissions by Graco Australia and interested parties, including records of oral submissions, are available on the ACCC's [public register](#).

6. ACCC assessment

Relevant areas of competition

- 6.1. To assess the likely effect of the Notified Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.

- 6.2. Graco Australia submits:

The relevant industry is the paint application industry, which includes applying paints and coatings both by traditional means (i.e. by hand using a brush or a roller) and by mechanical means (i.e. by using paint sprayers).⁵⁷

- 6.3. Further, Graco Australia considers:

The market for the supply of paint applicator equipment is highly competitive, with many competitors providing both traditional equipment and spray equipment.⁵⁸

- 6.4. The ACCC does not consider it necessary to precisely define the relevant area of competition to be able to assess this notification. While one of the stated objectives of the Notified Conduct is to encourage paint contractors to convert from traditional painting methods to spray equipment, the ACCC considers that traditional paint application equipment, such as brushes and rollers, are unlikely to be a competitive constraint on paint spraying equipment, particularly paint sprayers used by professional contractors. Given the vast price difference between paint sprayers and brushes and rollers, it is not likely that a small increase in price of paint sprayers will prompt customers to switch to purchase brushes and rollers.

- 6.5. The ACCC considers the primary areas of competition likely to be impacted by the Notified Conduct are the national wholesale and retail supply of airless and air-assisted paint sprayers across the DIY, semi-professional, and professional/trade segments.

⁵⁷ Graco Australia Notification, p. iv.

⁵⁸ Graco Australia Notification, p. v.

- 6.6. Graco Australia estimates that it has a 25-35%⁵⁹ share of the current sales of paint spraying equipment in Australia, with its closest competitor being Wagner⁶⁰/Titan.⁶¹ It considers there are many other suppliers of paint spraying equipment which have 'comparable functionalities' to the Notified Products.⁶² For example, TriTech and QTech sprayers (both manufactured by Aristospray), Ozizto, DP Airless, Certa (an in-house brand for Kogan), and Atomex (imported by AA Spray).⁶³
- 6.7. Based on confidential information provided to the ACCC, including new market share information provided by Graco Australia after the Draft Notice, the ACCC maintains that these other paint sprayer suppliers represent a small share of paint spraying equipment sales in Australia.
- 6.8. Further, the ACCC's market inquiries indicate that sales of paint spraying equipment in Australia is highly concentrated. Graco distributors consider that there are really only 2 established brands of paint sprayers in Australia – Graco and Wagner.⁶⁴
- 6.9. For example, Dulux submits:

The majority of stores that have paint sprayers stock one or both of these brands [Graco and Wagner]...there are some fringe ones...and direct imports or private label machines.⁶⁵

- 6.10. Further, distributors advised that Graco Australia dominates the professional/contractor segment, and Wagner dominates the DIY (or 'consumer') segment.⁶⁶
- 6.11. Wagner submits that in the contractor-level equipment segment (which is predominantly paint resellers and industry specialists):⁶⁷
- ...approximately 80% of stores in the paint channel stock 2 or more brands. Often the third brand is an 'entry level', predominately Chinese manufactured sprayer and resellers may only carry one or two such products.

⁵⁹ In Graco Australia's Notification, p. iv, Graco Australia estimated that its products account for approximately 30-40% of spray equipment in Australia. In response to the Draft Notice, on 16 October 2023 Graco Australia provided revised confidential market share estimates to include an online (only) supplier which was not previously included in information provided to the ACCC on 8 May 2023. This confidential information has not been publicly tested and it is unclear whether the updated information received from Graco Australia following the Draft Notice reflects current sales volumes for the online supplier. The market share range at paragraph 0 is an estimation of Graco Australia's total market share for paint spraying equipment based on information it has provided, including if the online supplier's additional sales volumes are taken into account.

⁶⁰ Wagner's headquarters are in Germany, and it distributes paint sprayers under 2 brands. In Australia, the focus is on the Wagner brand, with Titan being used in some niche applications, such as road/line marking: See Record of oral submission – Wagner, 8 June 2023, p. 1.

⁶¹ Graco Australia Notification, p. iv.

⁶² Graco Australia Notification, p. iv.

⁶³ Graco Australia Notification, Schedule 2.

⁶⁴ Record of oral submission – TRADEgear, 31 May 2023, p. 2; Record of oral submission – Phillro Industries, 30 May 2023, p. 2; Record of submission – Dulux, 31 May 2023, p. 2; Record of oral submission – Hempel, 8 June 2023, p. 2.

⁶⁵ Record of oral submission – Dulux, 31 May 2023, p. 2.

⁶⁶ Record of oral submission – TRADEgear, 31 May 2023, p. 2; Record of oral submission – Phillro Industries, 30 May 2023, p. 2; Record of oral submission - GO Industrial, 24 May 2023, p. 3; Record of submission – Dulux, 31 May 2023, p. 2; Record of oral submission – Hempel, 8 June 2023, p. 2.

⁶⁷ Record of oral submission – Wagner, 8 June 2023, p. 3.

Future with and without the Notified Conduct

- 6.12. In applying the 'net public benefit' test, the ACCC compares the likely future with the Notified Conduct to the likely future in which the Notified Conduct does not occur.
- 6.13. Graco Australia submits that without the Notified Conduct, its distributors will be reluctant to invest in the significant retail services that are required when selling Graco paint sprayers.⁶⁸ Graco Australia considers that this is supported by the submissions from interested parties. In particular, it submits:
- ...a number of distributors have invested less in sales support for Graco paint sprayers due to 'free riding', and have indicated that they would reduce the range of products stocked and accommodate customer requests on an as-needed basis, rather than stocking the entire range and risk aggressive pricing.⁶⁹
- 6.14. The ACCC considers that without the Notified Conduct distributors are likely to continue to compete on price by offering significant discounts from RRP on the Notified Products.
- 6.15. Some industry participants noted that paint sprayers are a relatively immature market in Australia but there is high growth potential. Dulux considers that over time, prices are likely to stabilise on their own at levels that provide relatively low, but sustainable, margins, with limited, if any, discounting below those levels, which it has observed in other tool markets.⁷⁰
- 6.16. The ACCC considers some distributors may decide to reduce the range of the Notified Products they stock or display or may cease selling them altogether due to low retail margins. In addition, distributors could decide to reduce or cease customer education activities on Paint Sprayers such as the production and publication of how-to videos and in-store demonstration or off-site paint spray demonstration days. However, the ACCC has not received evidence to indicate that this is likely to occur to a significant level.
- 6.17. Confidential information provided to the ACCC prior to the release of the Draft Notice indicates that some distributors have complained to Graco Australia about having to match online prices. A small number suggested that online discounting makes it difficult to sustain stock levels and to provide retail support to customers.
- 6.18. As part of its response to the Draft Notice, Graco Australia provided an additional confidential communication recently received from a distributor, which it considers demonstrates that stocking decisions for Graco paint sprayers will be negatively impacted without the Notified Conduct. In particular, Graco Australia submits that the distributor is:⁷¹

...investing significant time in providing retail services to customers who ultimately choose to purchase the relevant product from an alternative, online supplier. It is aware of this practice as the distributor commonly provides post-sales support in the form of product

⁶⁸ Graco Australia submission in response to interested parties, 4 August 2023, p. 2.

⁶⁹ Graco Australia submission in response to interested parties, 4 August 2023, p. 2.

⁷⁰ Record of oral submission – Dulux, 31 May 2023, p. 5.

⁷¹ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 8.

repairs to such online purchasers. The distributor has stopped carrying machinery in its showroom given the difficulties attending the movement of stock. The distributor considers that selling at or close to RRP is necessary to remain profitable. However, it considers that the small volume of products that it sells are sold at such small margins that holding stock is no longer commercially viable...if current pricing practices in relation to Graco paint sprayers continue, it will be necessary... to stop recommending and promoting Graco products. Instead, it will favour the paint sprayers of alternative brands, the prices of which are not being reduced to the same extent.

6.19. While noting this new example from a single distributor provided by Graco Australia after the Draft Notice, the ACCC balances this against discussions with other interested parties. In discussions with the ACCC, many interested parties agreed that higher retail margins would help stabilise 'floor prices' and help cover the cost of training staff. However, these interested parties did not raise significant concerns about their ability to maintain stock volumes and current retail service levels absent the Notified Conduct.

6.20. PaintAccess submits that if the Notified Conduct is not introduced:

...it would not change PaintAccess' stocking decisions.⁷²

6.21. Without the Notified Conduct and if discounting continued, GO Industrial submits it:

...would have to buy more stock to get more margin [by being able to secure a larger discount from Graco] to trade sustainably...⁷³

6.22. Phillro Industries submits that it would be 'business as usual' for it without the Notified Conduct, and 'it is not considering dropping its service levels', which include repair services.⁷⁴

6.23. Similarly, Hempel submits it:

...is unlikely to change its commercial strategies for paint spraying equipment, with or without the [Notified Conduct].⁷⁵

6.24. Dulux submits that it is investing heavily in customer support and training its staff on paint sprayers. It displays a range of the Notified Products in most of its stores, runs expos and trade events for spray equipment at its sites, as well as in-house, informal training to painters to given them more confidence with paint sprayers.⁷⁶ Dulux advised that it opened its first 'spray centre' (at which it both services and hires out paint sprayers) 4 years ago, and it now has a total of 12 across its retail network.⁷⁷ It submits that while it has been experiencing diminishing returns on sales of paint sprayers, it is still committed to the market.⁷⁸

⁷² Record of oral submission – PaintAccess, 26 May 2023, p.3.

⁷³ Record of oral submission – GO Industrial, 24 May 2023, p. 2.

⁷⁴ Record of oral submission – Phillro Industries, 30 May 2023, p. 3.

⁷⁵ Record of oral submission – Hempel, 8 June 2023, p. 2.

⁷⁶ Record of oral submission – Dulux, 31 May, pp. 2–3,

⁷⁷ Record of oral submission – Dulux, 31 May, p. 1.

⁷⁸ Record of oral submission – Dulux, 31 May, p. 2.

6.25. TRADEgear is a current distributor with a unique business model of taking the Notified Products direct to work sites to run demonstrations for trade customers and pick up sprayers for repair and maintenance. It submits that its:

Graco business is growing because of its business model of putting TRADEgear sales representatives in front of the trade at their own sites.⁷⁹

6.26. Therefore, the ACCC maintains its view that current levels of retail service offered by distributors is also likely to continue – focussed largely on assisting customers choose the most appropriate paint sprayer given their circumstances. Provision of post-sales servicing for the Notified Products is likely to continue to be provided by larger distributors within regions, as this is a profitable fee-for-service arrangement.

6.27. Further, many of the distributors the ACCC spoke to consider that Graco Australia is the market leader of paint sprayers for the contractor sector, and that there is significant growth potential for paint spraying equipment in Australia. In its Draft Notice, the ACCC outlined its view that Graco Australia itself is likely to continue to provide training and product demonstrations direct to customers, including at industry trade events and at work sites.

6.28. In response to the Draft Notice, Graco Australia submitted that it agrees that it has a strong commercial incentive to continue to run spray equipment demonstrations at distributors' stores and at trade events, but it noted that it relies 'on its distributors to demonstrate and discuss in detail the Notified Products...because it can't do it all itself'.⁸⁰

6.29. Graco Australia also advised that between January 2023 to September 2023 it ran 743 trade days and other demonstration events.⁸¹ It also provided confidential details of an upcoming large-scale trade event it is co-hosting with one of its distributors. It submits that it 'anticipates that there would be other similar events' if the Notified Conduct was implemented.⁸²

6.30. The ACCC notes that without the Notified Conduct, Graco Australia has been significantly involved in providing product training and demonstrations direct to industry, the cost of which would be incorporated into its wholesale prices. Indeed, Graco Australia's submission supports the ACCC's conclusion that current retail services, of which Graco Australia plays a significant part, are likely to be maintained without the Notified Conduct.

6.31. Therefore, the ACCC considers that, absent the Notified Conduct, and as is currently occurring, Graco Australia will continue to have a strong commercial incentive to run spray equipment demonstrations at distributors' stores and at industry events to maintain and grow its position in this sector as well as the size of the sector overall by educating commercial painters about the benefits of using spraying equipment (over traditional paint application methods).

⁷⁹ Record of oral submission – TRADEgear, 31 May 2023, p. 1.

⁸⁰ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 2.

⁸¹ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 7.

⁸² Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 8.

Public detriments

6.32. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁸³

6.33. Graco Australia submits the Notified Conduct will not result in any significant public detriment.

6.34. The ACCC has considered the following potential public detriments:

- higher prices for the Notified Products
- higher prices for competing paint sprayers
- loss of product range and choice.

Higher prices for the Notified Products

6.35. The primary harm likely to arise from RPM conduct is the loss of price competition between retailers selling the same product. As a result, some or all consumers will likely pay higher prices for the relevant products.

6.36. RPM will be less likely to have a detrimental impact on competition in a market if the product is subject to strong rivalry from competing products. In such a situation, a manufacturer or importer would be unable to commercially maintain a specified minimum price that is above the level determined by competition.

Graco Australia submission

Prior to the Draft Notice

6.37. Graco Australia submits the Notified Conduct would not adversely impact the price customers will pay for the Notified Products as:

- Distributors can offer, and customers may negotiate, better prices at the point of sale.⁸⁴
- The presence of numerous suppliers and alternative products in the market, including a number of alternative suppliers that are 'white labelling' paint sprayers and selling them online for a significant discount, constrains Graco Australia from setting prices above the competitive level. If Graco Australia were to set the minimum advertised prices above the competitive level, it could lead to

⁸³ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

⁸⁴ Graco Australia Notification, pp. iii, 16.

customers switching to these alternative brands and distributors 'de-ranging' the Notified Products.⁸⁵

- The countervailing power exercised by large distributors such as Phillro Industries and Dulux will ensure that inter-brand price competition is maintained.⁸⁶

6.38. In support of these points, Graco Australia submits:

- It has no plans to alter its wholesale margins for the Notified Products and thus the Notified Conduct will not affect distributors' ability to offer discounts on the Notified Products in-store or through the online checkout process.⁸⁷
- Graco Inc's prices in North America have followed a normal price increase path following the introduction of the minimum advertised price policies and that these increases have been linked to inflation and rising material costs, amounting to net price increases of 3-4% per year with the exception of 2022 where prices were increased in response to significant pressure and cost increases.⁸⁸ Graco Australia later clarified this refers to the wholesale – not retail – prices for those products.⁸⁹

Following the Draft Notice

6.39. In response to the Draft Notice, Graco Australia maintains that the Notified Conduct will not reduce distributors' incentives to compete on price, due to customers still being able to negotiate discounts in store and apply discount codes online in certain circumstances. It is also advised that it is Graco Australia's experience that customers 'shop around' to obtain the best possible price for paint sprayers. It considers that the incentive to compete on price will be particularly strong for those distributors with existing customer relationships with large contractors that purchase bulk volumes. Graco Australia currently facilitates such arrangements by offering bulk discounts, which it submits will continue under the Notified Conduct.⁹⁰

6.40. Graco Australia also maintains its view that there will be sufficient competition from other paint sprayer suppliers to constrain the minimum advertised prices set by it.⁹¹ While acknowledging that Graco Australia and Wagner are the 2 largest suppliers of paint sprayers in Australia, it re-stated that 'there are a wide range of alternative paint spraying products at different price points.' In particular, it submits that Atomex airless paint sprayers will provide a 'significant constraint' as they are similar to Graco products and are distributed exclusively in Australia through a large dealer, AA Spray.⁹² In addition, Graco Australia submits that there are other suppliers of paint sprayers which are manufactured in China and sold on eBay within Australia.

⁸⁵ Graco Australia Notification p. 16 and Schedule 2.

⁸⁶ Graco Australia Notification p. 17.

⁸⁷ Graco Australia Notification p. 16.

⁸⁸ Graco Australia Notification p. 16.

⁸⁹ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 20.

⁹⁰ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 4.

⁹¹ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 4.

⁹² Graco Australian submission in response to the Draft Notice, 22 September 2023, p. 4.

Interested party submissions

6.41. Interested party submissions varied in relation to the likely impact of the Notified Conduct on prices:

- GO Industrial submits that, under the Notified Conduct, price matching and discounting will no longer be an issue because consumers are unlikely to call around for prices.
- Other distributors submit price matching and discounting will remain an issue due to the structure of the proposed minimum advertised price policy, through the use of contractor accounts and/or discount codes.⁹³
- Phillro Industries submits that DIY customers are more likely to pay higher prices under the Notified Conduct.
- PaintAccess submits distributors will retain more margin.

6.42. In response to interested party submissions, Graco Australia confirmed that it is correct that the Notified Conduct won't prevent stores from 'emailing customers or advertising with the promise of great deals if they sign up for a trade account'.⁹⁴

ACCC view

6.43. The impact on the prices paid by customers for the Notified Products would depend, to a large extent, on the implementation and enforcement of the Notified Conduct. While some customers would still be able to obtain discounts for the Notified Products, it is difficult to see how the claimed public benefits could be sustained without an increase in the margins earned by distributors and therefore the prices paid by customers.

6.44. The Notified Conduct would prevent distributors advertising prices below the set minimum price. The ACCC considers this is likely to result in public detriment in the form of customers paying higher prices for the Notified Products due to the reduced incentive for distributors to compete on the prices of the Notified Products.

6.45. The ACCC's market inquiries indicate that price competition for paint sprayers primarily occurs through online and print advertising aimed at attracting customers physically into stores. This appears to occur across distributor types – both by speciality 'equipment only' distributors seeking to entice customers to their stores when they otherwise might not be able to and general distributors using paint sprayers to drive sales of related consumables, such as paint and protective coatings.

6.46. While in-store negotiation is not prohibited under the Notified Conduct, and despite Graco Australia's latest submission maintaining that its distributors are still incentivised to negotiate discounts in store or apply discounts in an 'online cart', the

⁹³ See records of oral submissions from: TRADEgear; Phillro Industries; Dulux.

⁹⁴ Graco response to interested party submissions, 4 August 2023, p. 10.

ACCC considers an increase in the prices paid by customers is nonetheless likely, because:

- if all online prices are essentially the same and therefore preclude price match requests, customers would lose most – if not all – leverage to effectively negotiate discounts
- the ACCC did not receive information suggesting that many customers have significant bargaining power in relation to the purchase of paint sprayers which would otherwise afford them the same or similar levels of discounts
- even for trade or large contractor customers that are offered discounts through workarounds such as contractor accounts (as suggested would happen by interested parties) or continue to seek to negotiate bulk discounts with Graco distributors (as submitted by Graco Australia following the Draft Notice):
 - the Notified Conduct would reduce visibility over prices between distributors which would be likely to have a dampening effect on the extent of the discounts negotiable by such customers
 - instead of advertising discounted prices to attract new customers to their stores, distributors would be making these offers only to customers they already have an established relationship with, so it is unlikely distributors would offer the same level of discount.

6.47. Therefore, while many interested parties and Graco Australia (in response to the Draft Notice) submit that customers are very price sensitive and like to ‘shop around’ to obtain the best possible price for the Notified Products, the ACCC maintains that distributors are unlikely to compete as aggressively on price once a customer is already in their network and especially once they are already in store. Further, a number of distributors indicated they were supportive of the margin ‘protection’ offered by the Notified Conduct, which suggests they are likely to seek to retain those increased margins rather than offer equivalent discounts in store without the pressure of strong visible price competition.

6.48. Despite Graco Australia’s claim that Atomex and other sprayers provide a strong competitive constraint in the market for paint sprayers, the ACCC maintains its view that there will not be sufficient competitive constraint to mitigate this detriment by restraining the prices set by Graco Australia under the Notified Conduct, because:

- During the ACCC’s market inquiries, distributors consistently submitted that there are only 2 established manufacturers of paint sprayers currently supplying in Australia: Graco and Wagner. Further, these brands have different focuses in the paint sprayer market, with Graco specialising in ‘trade/contractor’ products, while Wagner specialises in DIY products. Other brands were described as ‘fringe brands’. The ACCC notes that Graco Australia itself submits that ‘Wagner supplies significantly more DIY paint sprayers, which are less complicated and offer less features than the contractor range of products that Graco specialises in’. Based on these inquiries, the ACCC is not satisfied that these other brands have paint spraying equipment that is a close substitute for Graco paint sprayers, particularly its professional/trade products.

- The ACCC maintains its view that Graco Australia has a very large share of the contractor/trade sector of the paint sprayer market. Using new confidential information provided to the ACCC by Graco Australia in response to the Draft Notice, its share of the 'trade sector' in 2022 was estimated to be somewhere in the range of 50-75%.⁹⁵ Even at the lower end, Graco Australia has a substantial share of this sector.
- Where there is overlap between Graco and Wagner, consumer brand loyalty appears to be particularly strong such that customers are resistant to move between these 2 manufacturers.
- The ACCC's market inquiries suggest that there is no credible threat of significant new entry, whether by manufacturers or through distributors importing and 'white labelling' paint sprayers themselves.
- Customers, especially those in the 'trade/contractor' segment, are unlikely to consider manual paint-application products such as brushes and rollers to be feasible alternatives to paint sprayers.

6.49. As such, the ACCC considers the Notified Conduct is likely to result in detriment by reducing intra-brand price competition, resulting in customers paying higher prices for the Notified Products. This detriment is likely to be significant, given advertised discounts are regularly 20–30% below RRP.

Higher prices for competing products

6.50. Graco Australia submits the Notified Conduct will not incentivise other market participants to unilaterally increase their respective prices as they will be constrained by the availability of alternative products at different price points, including those of Rongpeng, Ningbo (DP Airless) as well as a variety of other airless sprayers manufactured in China and sold on eBay in Australia, and the possibility of discounts on the Notified Products at the point of sale.⁹⁶

6.51. Elsewhere, Graco Australia submits the interested party submissions support its argument that 'Graco paint sprayers are complex and differentiated from traditional painting products such as rollers and brushes'.⁹⁷

6.52. Following the Draft Notice, Graco Australia submits that given the Notified Conduct is not likely to increase the prices for the Notified Products, any likely public detriment from increasing the price of competing products is also 'not likely to materialise'.⁹⁸

⁹⁵ Graco Australia originally provided confidential sales revenue data on 8 May 2023. Following the Draft Notice, on 16 October 2023 Graco Australia provided revised confidential sales revenue estimates to include an online (only) supplier. Graco Australia's estimated share of the trade/contractor segment of the market was calculated by the ACCC based on both sets of confidential information provided by Graco Australia. This confidential information has not been publicly tested and it is unclear whether the updated information received from Graco Australia reflects current sales volumes for the online supplier, and what proportion of these online sales was for trade/contractor equipment. Therefore, the market share range at paragraph 6.48 is an estimation of Graco Australia's share of the trade/contractor sector, including if all of the additional online supplier's sales volumes are taken into account.

⁹⁶ Graco Australia Notification p. 17; Graco Australia response to interested party submissions, 4 August 2023, p. 3.

⁹⁷ Graco Australia response to interested party submissions, 4 August 2023, p. 2.

⁹⁸ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 5.

6.53. The ACCC notes Graco Australia's submission is inconsistent with the views of its closest competitor. Wagner submits that the introduction of the minimum advertised price policy would be 'advantageous to the wider industry in general...[it] would assist to protect reseller margins...'.⁹⁹ Further, if the Notified Conduct is introduced, a potential outcome is that resellers would start aggressively discounting Wagner products more. If this occurred, Wagner submits that it:¹⁰⁰

...would consider a MAP policy to address this and consider lodging an RPM notification like what is being proposed.

6.54. Therefore, the ACCC maintains its view that higher retail prices for the Notified Products may encourage manufacturers and distributors of competing products to increase their prices. It is unlikely 'manual paint application products' provide an effective constraint in this regard, given the substantial price differential between these products and paint sprayers and the time saving efficiencies from the use of paint sprayers. This lessening of competition and upward pressure on prices of paint sprayers across the market would be a public detriment.

Loss of retail product range and choice

6.55. A manufacturer may seek to limit its rivals' access to retailers through RPM conduct. By guaranteeing a higher margin on the manufacturer's products, RPM may lead retailers to prioritise stocking the Notified Products to maximise profits. This may lead distributors, particularly smaller ones, to discontinue selling or substantially reduce their stock or range of current and new competing products. This potential detriment is likely to be greater where retail markets are highly concentrated, as it is more likely rival manufacturers will be excluded from the market.

Graco Australia submission

Prior to the Draft Notice

6.56. Graco Australia submits the Notified Conduct is not likely to cause distributors to favour the Notified Products and de-range competing products as any product-ranging decisions made by distributors will continue to be influenced by the quality of the products offered by Graco Australia as compared with its competition, and each distributor's capacity to deliver the required retail services to support their range of Graco products.¹⁰¹

6.57. Graco Australia further submits that even if distributors choose to stock a wider range of the Notified Products as a result of the Notified Conduct, it expects most distributors will continue to stock competing brands to keep up with the demand for a variety of products, as has been the case in North America.¹⁰²

⁹⁹ Record of oral submission – Wagner, 8 June 2023, p. 5.

¹⁰⁰ Record of oral submission – Wagner, 8 June 2023, p. 5.

¹⁰¹ Graco Australia Notification, p. 21.

¹⁰² Graco Australia Notification, p. 21.

Following the Draft Notice

6.58. In response to the Draft Notice, Graco Australia submits that the Notified Conduct is not likely to entrench it as the incumbent supplier of paint sprayers in Australia. It considers that distributors will have an incentive to stock a 'greater range of competing products' because:¹⁰³

- they will not be required to advertise competing paint sprayers at or above a minimum advertised price, so will be able to attract customers to their store with price-based strategies. and
- Wagner and other suppliers of paint sprayers may experience higher sales of their brands due to the fact that distributors can offer discounts online.

Interested party submissions

6.59. The ACCC received few interested party submissions on this potential detriment.

6.60. GO Industrial submits the Notified Conduct will encourage investment in competing products to fill the pricing gaps. However, the ACCC notes GO Industrial does not currently stock any products which compete with Graco paint sprayers and GO Industrial also advised it operates a 'best of brands approach' whereby it gives one brand a pledge that it is invested in them and will not stock their competitors.¹⁰⁴

6.61. Confidential information provided to the ACCC suggests distributors would be encouraged to promote the Notified Products over other paint sprayers.

ACCC view

6.62. Generally, the ACCC considers that RPM conduct can have a detrimental impact on inter-brand competition via reduced product range where retail floor space is limited, as is the case in many tool and specialist stores. Distributors are likely to favour brands which provide a higher and more certain profit margin and, where floor space is limited, may cease or limit their stocking of competing brands.

6.63. Graco Australia is an established brand – and likely the leading brand (particularly in the contractor/trade segment) – for paint sprayer sales in Australia. As acknowledged by Graco Australia, the Notified Conduct is likely to encourage distributors to stock a more complete range of the Notified Products.

6.64. While Graco Australia considers that being free to advertise competing paint sprayers at discounted prices means that distributors are likely to continue to stock a 'greater range' of these brands, the ACCC considers distributors would be less likely to stock competing products, which may be the subject of online discounting and therefore lower margins, while the Notified Products have more certain margins.

6.65. Further, the ACCC considers that Graco Australia's submission (detailed at paragraph 6.58), demonstrates the detrimental impact the Notified Conduct would likely have on

¹⁰³ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 5.

¹⁰⁴ Record of oral submission – GO Industrial, 24 May 2023, p. 3.

its own distributors' ability to compete using advertised prices to attract customers to their stores.

- 6.66. Therefore the ACCC maintains its view that the Notified Conduct may further entrench Graco Australia as the incumbent supplier of paint sprayers and could increase barriers to entry.
- 6.67. Conversely, some distributors (particularly specialty equipment distributors) may limit or cease stocking the Notified Products as they are no longer able to attract customers to their stores with price-based strategies. This could facilitate the entry or expansion of other paint sprayer manufacturers, but for the reasons discussed above, the ACCC considers this is not likely to occur to a significant extent.
- 6.68. Balancing these considerations, the ACCC does not consider the impact on retail product range and choice is likely to be significant and therefore does not consider the Notified Conduct is likely to result in public detriment in the form of loss of retail product range and choice for customers.

ACCC conclusion on public detriment

- 6.69. The ACCC considers that the Notified Conduct is likely to result in public detriment largely in the form of customers paying higher retail prices for the Notified Products because the Notified Conduct will reduce distributors' incentives to offer, and limit customers' ability to effectively negotiate, lower prices equivalent to those likely to occur in the future without the Notified Conduct. Given current discounts are commonly around 20–30% off RRP, this detriment is likely to be significant.
- 6.70. The ACCC considers the Notified Conduct is also likely to result in public detriment in the form of consumers paying higher retail prices for competitors' products as competitors and distributors respond to the decrease in discounting on the Notified Products.

Public benefits

- 6.71. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Tribunal, which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.¹⁰⁵

- 6.72. Graco Australia submits the Notified Conduct will result in the following public benefits:

- increased supply of retail services and reduced free riding across all distributors
- encouraging innovation in retail services

¹⁰⁵ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

- encouraging innovation in products.

6.73. The ACCC has considered the following potential public benefits:

- increased service-based competition in relation to the Notified Products
- increased innovation in Graco Australia's Notified Products.

Increased service-based competition in relation to the Notified Products

Graco Australia submission

6.74. Graco Australia submits the Notified Products require significant demonstration and after-sales services to ensure customers appreciate the features and complexity of the technology and to prevent damage caused by incorrect usage. Graco Australia therefore places a number of requirements on its authorised distributors, including to provide and maintain active service centres and staff including Graco-certified technical specialists. Such requirements have a significant positive impact on the customer experience but require substantial investment by distributors. Graco Australia submits it must therefore ensure its distributors are incentivised to provide these retail services by maintaining a sustainable margin on the Notified Products.¹⁰⁶

6.75. Graco Australia submits its paint sprayers include the following unique features which require significant pre-sale demonstration and post-sale support:

- **Endurance™ piston pumps** – result in 'money and time savings for painters' but require 'highly technical training for painters to fully understand the benefits' and training needs to be delivered in a way that 'ensures it is used correctly'.
- **ProConnect® pump replacement system** – allows for 'fast, on-the-job pump replacements to eliminate costly downtime' and is 'a key feature that Graco is known for'.
- **RAC X low pressure switch tip** – allows the contractor to paint at low pressures to extend battery time, reduce overspray and ensure the longest tip life. Staff training assists them to ask the right questions and supply the customer with the right tips for the job and paint being used.
- **SmartTip™ spray tip technology** – delivers the 'industry's best finish at the lowest airless spray pressure' using 'highly technical and unique' technology which requires training that is delivered in a simple way to the customer. This technology offers significant maintenance and paint savings, provides a better working environment for the applicator and a superior sprayed finish. Hands on demonstrations are vital for painters to test the product and to understand the difference with other tips in the market.
- **DeWalt® FlexVolt® batteries** – licenced exclusively to Graco in the paint sprayer industry. Graco is the first company to market a battery powered product which is cutting edge technology in the painting industry. Being a battery product, it does not require a petrol engine and avoids potentially dangerous exhaust fumes.

¹⁰⁶ Graco Australia Notification, pp. 8–9.

- **Advantage™ drive** – the industry’s longest lasting drive, featuring hardened steel gears to provide extremely quiet operation and a lifetime warranty.
- 6.76. In relation to post-sales service, Graco Australia submits its paint sprayers require regular maintenance but the majority of that can be performed by the consumer after they have been properly and professionally trained by a Graco distributor.
- 6.77. Graco Australia submits it is ‘seeking to encourage paint contractors to convert from traditional painting methods to spray equipment to increase painting efficiency. By substituting brushes / rollers with paint sprayers, paint contractors spend less time on a job and have the ability to increase the number of jobs they can complete in a given period. The process of converting contractors from hand painting to sprayers requires a significant number of demonstrations and training. This increases costs for both Graco and its distributors as compared to businesses that sell products without demonstrations and training’.¹⁰⁷
- 6.78. Graco Australia submits free riding behaviour by a small number of its distributors is adversely impacting the viability of its distribution model and smaller distributors. Distributors are disincentivised from making the necessary investment in retail services given they may be forced to price match or lose sales to discounting sellers.¹⁰⁸ Graco Australia further submits this free riding behaviour may also negatively impact consumers themselves, as distributors that only sell online may not have the ability to provide customers with the product training and/or servicing they need.¹⁰⁹
- 6.79. Graco Australia submits the Notified Conduct will ensure distributors can obtain a viable margin on the products to continue their investment in the product category and incentivise competition in relation to sales support, service support, product knowledge, training, demonstrations, trade shows and repairs. This will likely result in better overall services offered to customers.¹¹⁰
- 6.80. Graco Australia further submits the Notified Conduct will encourage distributors to invest in better on-site facilities such as displays which would enable customers to try before they buy and interact with in-store displays that assist their purchasing decisions. Distributors could also look to stock a more complete range of Graco products, providing greater choice to consumers.¹¹¹
- 6.81. In support of these points, Graco Australia submits:¹¹²
- it intends to monitor the effectiveness of sales and service staff and will likely expand minimum requirements to emphasise training, demonstrations and sales support further
 - in other countries that lack the same capabilities of training demonstrations and servicing, most contractors are still using traditional paint equipment

¹⁰⁷ Graco Australia Notification, p. 8.

¹⁰⁸ Graco Australia Notification, p. 9.

¹⁰⁹ Graco Australia Notification, p. 10.

¹¹⁰ Graco Australia Notification, pp. 14–15.

¹¹¹ Graco Australia Notification, p. 15.

¹¹² Graco Australia Notification, pp. 14–15.

- the growth in the do-it-yourself segment has heightened the need for greater sales and service support from distributors
- the non-professional segment often consists of untrained and inexperienced customers who rely heavily on the demonstrations provided by sales staff as well as post-sales service
- given their popularity, the Notified Products often suffer from the most significant discounting, thus the Notified Conduct will ensure its full-service distributors will be able to obtain a sufficient overall margin on these high-volume products to deliver the required retail services to customers
- these sustainable margins will also encourage smaller distributors to better compete with larger, national distributors by expanding their service capabilities
- reducing the extent of advertising price competition between distributors, they will be encouraged to compete on retail services to the benefit of end-users
- over the last few years distributors have been less willing to attend training because of diminishing margins associated with the products.¹¹³

Interested party submissions

6.82. In relation to consumers and purchasing behaviour, interested parties submit:

- consumers (especially in the contractor segment) research paint sprayers online thoroughly before purchasing¹¹⁴
- it is unlikely that large volumes of paint sprayers are being purchased online; the majority of Paint Sprayers (whether DIY or contractor) are bought in store¹¹⁵
- online sales are likely to be for customers that already know what they want and have used paint sprayers or been in-store before¹¹⁶
- online sales are mostly DIY-models¹¹⁷
- there does not appear to be a significant problem with untrained or ill-informed users in the market.¹¹⁸

6.83. In relation to pre- and post-sales service for paint sprayers, interested parties submit:

- paint sprayers are technical equipment that require explanation about their use and maintenance¹¹⁹

¹¹³ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 11.

¹¹⁴ See records of oral submissions: Wagner; GO Industrial; Hempel.

¹¹⁵ See records of oral submissions: Wagner; PaintAccess; Hempel.

¹¹⁶ See records of oral submissions: Wagner; PaintAccess.

¹¹⁷ See Record of oral submission – Phillro Industries, 30 May 2023.

¹¹⁸ See Record of oral submission – Phillro Industries, 30 May 2023.

¹¹⁹ See records of oral submissions from: TRADEgear; Phillro Industries; GO Industrial; Dulux.

- typical sales processes predominately focus on recommending the right model for the customer, their intended use(s) and frequency of use¹²⁰
- the sales process may also involve outlining important safety measures, set up, clean up, maintenance processes and/or troubleshooting¹²¹
- there is a large volume of videos online demonstrating how to use paint sprayers, their varied uses and how to maintain them¹²²
- there are not online videos about selecting the right machine¹²³
- in-store physical demonstrations of paint sprayers are not necessary anymore (they were more important in the early days) and few sales are tied to physical demonstrations¹²⁴
- many stores don't have the ability to demonstrate spray equipment in-store¹²⁵
- some distributors run trade day events which may include offering product demonstrations¹²⁶
- customers find paint sprayers efficient and easy to use, once you put one in their hands (e.g. at the above trade days)¹²⁷
- some paint sprayer issues can be troubleshooted over the phone¹²⁸
- contractor-grade paint sprayers should be serviced every 6 months, approximately¹²⁹
- customer interaction and instruction is just as easy for online/distant sales¹³⁰
- some distributors already consider they differentiate themselves based on customer service and support¹³¹
- 'online only' distributors provide limited pre-sale information, service and after-sales support, to the chagrin of distributors¹³²
- paint sprayers do not vary greatly between brands – operation is very similar, though there may be some differences in cleaning and maintenance (though it was submitted that this may be simpler in relation to Graco paint sprayers)¹³³
- the other difference between the brands largely comes down to quality of components.¹³⁴

¹²⁰ See records of oral submissions from: Wagner; TRADEgear; Phillro Industries; GO Industrial; Dulux.

¹²¹ See records of oral submission from: GO Industrial, Dulux, PaintAccess.

¹²² See record of oral submissions from: TRADEgear; Phillro Industries; Dulux.

¹²³ See Record of oral submission – Dulux, 31 May 2023.

¹²⁴ See records of oral submissions from: Wagner; Phillro Industries.

¹²⁵ See Record of oral submission – Wagner, 8 June 2023.

¹²⁶ See records of oral submissions from: TRADEgear; Dulux; Hempel.

¹²⁷ See Record of oral submission – Dulux, 31 May 2023.

¹²⁸ See records of oral submissions from: Wagner; GO Industrial.

¹²⁹ See Record of oral submission – Wagner, 8 June 2023.

¹³⁰ See Record of oral submission – Phillro Industries, 30 May 2023.

¹³¹ See records of oral submissions from GO Industrial; PaintAccess; Hempel.

¹³² See Record of oral submission – Wagner, 8 June 2023.

¹³³ See records of oral submissions from: Wagner; TRADEgear; Phillro Industries; PaintAccess; Dulux.

¹³⁴ Record of oral submission – GO Industrial, 24 May 2023.

ACCC view

6.84. Generally, when assessing whether RPM conduct is likely to increase the provision of pre- and post-sales retail services and hence generate public benefits, the following factors are considered:

- whether the provision of retail services is important in the sale of the relevant products to consumers
- whether retailers are best placed to provide these services
- whether there is a material risk of under-provision of these services
- whether the RPM conduct will decrease the risk of under-provision of these services
- what benefits flow from ensuring an adequate provision of these services.

6.85. Following the Draft Notice, Graco Australia responded to the ACCC's conclusions in relation to each of these factors listed immediately above. Graco Australia's views are summarised where relevant below.

Is the provision of retail services important in the sale of the Notified Products to consumers?

6.86. Not all products – or even all premium products – require a high level of pre-sales service in order to be sold to customers. In many circumstances, customers are able to assess the attributes of products for themselves without the need for any prolonged or significant interaction with sales staff. Indeed, in relation to its 'DIY category' of paint sprayers, to which the Notified Conduct is also proposed to apply, Graco Australia submits that 'the DIY sprayers....are less likely to have the full post sale treatment such as set up and a demo on how to use, as they are...less complicated.'¹³⁵

6.87. For customers considering the purchase of a paint sprayer, the prevailing impression is that pre-sales service predominately relates to assisting with the selection of the most suitable paint sprayer model. Further, this selection is frequently limited by consumer brand preferences to being a choice between different models within the Graco paint sprayer range rather than from the product category more broadly.

6.88. For customers who have used any brand of paint sprayer before, pre-sales service largely covers the operational differences between machines – generally maintenance and cleaning – though it was suggested these are minimal. Further, it has been suggested to the ACCC that the maintenance of Graco paint sprayers is easier.

6.89. For customers who have not used paint sprayers before, pre-sales service may also include the provision of information on usage, maintenance/cleaning, spray tip selection and safety. However, the ACCC understands from consulting with Graco distributors this information is not particularly unique to the brand nor model selected, especially in relation to spray tip selection and safety advice which apply universally across the product category.

¹³⁵ Graco Australia submission in response to interested parties, 4 August 2023, p. 5.

6.90. In relation to the features Graco Australia submits as being unique to its paint sprayers and requiring 'significant pre-sale demonstration and post-sale support' (summarised above in paragraph 6.75), the ACCC considers:

- customers – especially contractors familiar with paint sprayers – would find any benefits of the product relating to time and money savings readily understandable without demonstration
- many of these features appear to be designed to be easy to use and long-lasting, and should therefore require less, not more demonstration, instruction and maintenance training.¹³⁶

6.91. In response to the Draft Notice, Graco Australia submits that consumers do not find the Notified Products simple to use, and do not understand all the features of the Notified Products without demonstration. Graco Australia advises that it has conducted 743 trade days this year, which demonstrates that consumers benefit from product demonstrations.¹³⁷

6.92. The ACCC maintains that explaining the various features of the Notified Products appear to be a normal part of the sale of any paint sprayer, with most (if not all) of the advice applying across models and brands. Some distributors also undertake other pre-sales activities directed at introducing customers to the product segment as a whole, with the intention of converting them from manual paint-application products such as brushes and rollers to paint sprayers. This appears to largely be done through special events such as trade days.

6.93. In relation to post-sales service, there do not appear to be unusual or particularly onerous post-sales requirements for the Notified Products which might require margin-based incentives, for example stocking a wide range of consumables and accessories or the provision of replacement loan tools when repairs are required. In fact, it appears common for distributors – even those who do not sell the Notified Products – to stock a range of spray tips.

6.94. Further, Graco Australia's submissions that its paint sprayers require significant demonstration and after-sales services appear to be undermined by its broad lack of enforcement of its distributor agreement 'obligations' and its recently negotiated agreement with Bunnings.

6.95. In response, Graco Australia submits that it has enforced its distributor agreement 'obligations' and provided a confidential example of this occurring. The ACCC notes that the example provided by Graco Australia did not relate to a distributor failing to meet its service-based obligations. Further, Graco Australia did not provide any specific examples of it monitoring the service obligations under the distributor

¹³⁶ See, for example, in addition to the ACCC's market inquiries summarised in this Notice:

- Graco, *Graco Airless Sprayers: Australia and New Zealand* [[PDF – 4.0 MB](#)] describing its products as having the 'easiest service in the industry' due to the pump replacement system which provides a 'complete no tools pump replacement system'. Accessed on 30 August 2023.
- Graco Contractor Equipment, [ProConnect Pump Change](#) [YouTube video]. Accessed on 30 August 2023.
- ACCC, [RPN10000455 Final Objection Notice](#) (4 June 2020), p. 20 in which the ACCC considered DeWalt 'FlexVolt' batteries in the context of a similar RPM notification, p 20. Further, the ACCC notes this appears to be relevant currently to only one of the Notified Products under Graco Australia Notification, Schedule 1.

¹³⁷ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 6.

agreement - namely, the requirements to offer servicing capability, having external facing sales staff, and being actively engaged in training.¹³⁸

- 6.96. Bunnings submits it was approached by Graco Australia about stocking Graco paint sprayers and that this agreement is not currently subject to any pre- or post-sales service obligations, and that it would consider such obligations to be problematic. Bunnings currently offers three Graco paint sprayers 'online only' (noting this includes orders facilitated through Bunnings' in-store service desks).¹³⁹ No product information is provided in-store to customers interested in Graco paint sprayers, nor are Bunnings' team members undertaking any training on Graco products. Bunnings submits that if a customer comes into store regarding maintenance or repair of a Graco paint sprayer, Bunnings would seek the support of Graco Australia or one of Graco's service agents.
- 6.97. In response, Graco Australia submits that the DIY sprayers that Bunnings sell are less likely to have the full post-sale treatment such as setup and a demonstration as they are a lower cost item and are less complicated.¹⁴⁰
- 6.98. The ACCC notes the model numbers listed on Bunnings' website are included in Schedule 1 to the notification, which lists the products the MAP Policy would apply to (in relation to other distributors) and further notes one of these is categorised as 'semi-professional' by Graco Australia in that schedule.
- 6.99. Overall, the ACCC does not consider the sale of the Notified Products relies on or would be significantly enhanced by high levels of retail services.
- 6.100. The level of paint spraying equipment used in Australia is relatively low and manufacturers and distributors are seeking to increase this. As such, the provision of retail services in relation to paint sprayers in general, would assist in converting consumers from manual paint application products (such as brushes and rollers) to paint sprayers. It is also likely to become less important as the paint sprayer market matures in Australia.

Are distributors best placed to provide these services?

- 6.101. As RPM is designed to incentivise distributors to provide higher service levels, it is relevant to consider whether distributors are best placed to provide those services or whether they could be provided by others, including Graco Australia itself.
- 6.102. The investment by distributors to provide a dedicated spray room, equipment and consumables to facilitate in-store demonstrations is likely to be significant. The ACCC notes Wagner submits that, as most stores don't have the ability to demonstrate spray equipment in their stores, it puts up a temporary booth or trailer for training at events arranged by stores (i.e. trade days, breakfast events, demo days etc). The ACCC understands Graco Australia similarly attends special demonstration and trade expo events (743 such events the past year) and is working with TAFE's to teach apprentice painters how to use spray equipment, in seeking to convert them from traditional paint application methods.

¹³⁸ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 6.

¹³⁹ [TrueCoat 360 Paint Sprayer](#) (model number 16Y391); [Magnum Project Painter Plus Paint Sprayer](#) (model number 16W119); [GX 21 Electric Airless Sprayer](#) (model number 17H219).

¹⁴⁰ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 5.

6.103. Alternatively, information about the use of the Notified Products appears to be easily accessible by customers online through Graco Australia’s website as well as user-created videos on YouTube. It may be that some information – for example, how to ‘dial in’ the pressure or get the right ‘finish’ on the paint application – is better provided at the time of use, rather than the point of sale. Indeed, the ACCC understands that some distributors point customers towards such videos when hiring out or selling paint sprayers.

6.104. In response to the Draft Notice, Graco Australia submits that online videos are not a substitute for in person demonstrations, and online videos cannot assist a customer to determine the right paint sprayer for their needs.¹⁴¹

6.105. Further, Graco Australia considers distributors are well placed to provide the necessary pre-sale services for the Notified Products, which is demonstrated by distributors currently requesting paint sprayers from Graco Australia at a reduced price which are then used as demonstration models in stores.¹⁴² The ACCC considers this is likely to continue absent the Notified Conduct.

6.106. The ACCC also notes that Graco Australia’s views about online instructional videos contrasts with information obtained from distributors during the ACCC’s market inquiries, that many customers find the instructional videos useful. In any event, the ACCC considers that asking customers a series of questions at the point of sale to determine the best product for their needs is not unique to Graco paint sprayers or likely to require a significant level of investment.

6.107. In relation to post-sales service, the ACCC notes:

- Graco advertises that ‘ongoing support is always available and is simply a phone call away with the Graco A+ Service commitment to exceed customer expectations...’¹⁴³
- Graco Australia representatives visit the work environments of customers to assess the suitability of its products, provide personalised advice and recommendations, explain and/or demonstration ‘best practice’ in relation to the use and maintenance of its products¹⁴⁴
- Graco Australia attends trade show training events where it sets up a stand with machines and accessories, and has one or two units with paint ready to demonstrate techniques. These events are often the starting point in conversations and the next step is on-site training for the customer¹⁴⁵
- Graco Australia appears to offer courses directly to customers, aimed at professional contractors, through ‘Graco University’ which offers hands-on learning and covers topics including servicing and pump repair.¹⁴⁶ It is unclear

¹⁴¹ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 6.

¹⁴² Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 7.

¹⁴³ See Graco Inc, *The Basics of Airless Spraying: Information on Basic Components, Spray Technology and Safety* [[PDF - 12.1 MB](#)], accessed on 30 August 2023.

¹⁴⁴ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 12.

¹⁴⁵ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 12.

¹⁴⁶ See Graco, [Graco University](#), accessed on 30 August 2023.

why the provision of technical information and servicing and maintenance procedures would be better provided by distributors.

6.108. In relation to the provision of important safety information, the ACCC considers that any face-to-face advice is not a substitute for written advice and warnings which should be provided with the Notified Products which users can refer to later.

Is there a material risk of under-provision of these services which the Notified Conduct will address?

6.109. The ACCC considers the majority of Graco distributors do currently provide high levels of pre- and post-sales services with respect to the Notified Products. There is no clear indication of Graco distributors free riding and focussing solely on undercutting competitors' prices while not investing in retail services. The ACCC also notes:

- market inquiries indicated the majority of paint sprayers are purchased in-store; not online.¹⁴⁷ While Graco Australia agrees that the majority of sales of paint sprayers currently occurs in stores, it submits that the volume of online sales has increased by around 30% over the last 2 years, which threatens the provision of retail services in 'bricks and mortar' stores.¹⁴⁸ The ACCC notes this appears inconsistent with Graco Australia's own submissions that aggressive discounting is occurring by its distributors that provide the highest levels of service.
- it is not aware of any current distributors only providing online sales of Graco paint sprayers except Bunnings under the recently negotiated agreement
- while most distributors appear to engage in both initiating or at least responding to discounting, there do appear to be some distributors in the market sustainably differentiating themselves based predominately on service-based competition and limiting their engagement with discounting and price matching
- smaller distributors and especially speciality equipment stores invest substantially in retail services but attract new customers to their stores through advertising discounts
- more generalised retailers also offer high levels of service but use discounting to attract customers to their stores to secure sales of related consumables such as paint and protective coatings
- the market is already characterised by innovation in the supply of retail services, such as TRADEgear's van-based business model which 'takes the shop to the customer' and trade-focused 'spray day' events and training offerings.

¹⁴⁷ See records of oral submissions: Wagner; PaintAccess; Hempel.

¹⁴⁸ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 7.

6.110. Further, while Graco Australia submits the Notified Conduct seeks to prevent 'online discounting which must be matched by 'bricks and mortar' and full-service distributors',¹⁴⁹ the ACCC notes Graco Australia also submits:

- the 'aggressive online discounting' is occurring particularly in the 'advanced' distributor category (i.e. top level category which must comply with all distributor obligations, including all service-based obligations)
- it investigates any complaints received from end-users about a distributor and, in the event that a distributor is not meeting expectations, will seek to address the issues with the distributor or, should lapses persist, consider terminating their account.¹⁵⁰

6.111. Overall, the ACCC maintains its view that, based on the available information, there is not a significant free riding problem in this market and discounting behaviour is simply a function of strong competition between distributors.

6.112. Further, the ACCC considers the discounting that is occurring does not appear to create a material risk that high-service retailers will scale back their investments in retail services to meet lower priced distributors or cease supplying Graco paint sprayers due to insufficient margins. While Graco Australia submits it has received significant complaints from a range of distributors about free riding and it is concerned about the growth in online sales which has resulted in distributors investing less in sales support for its paint sprayers,¹⁵¹ most distributors indicated to the ACCC during its market inquiries that, in the absence of the Notified Conduct, it would be 'business as usual' and they would not reduce their service-levels. Similarly, there is no indication other high-service retailers have refused to start stocking Graco paint sprayers for this reason.

6.113. It also does not seem likely that the Notified Conduct will encourage distributors to invest further in pre-sales services such as offering product demonstration, which would likely require setting aside significant floor space (if establishing a dedicated spray space, as opposed to a space at the back of the store) and dedicated demonstration tools and/or implementing try-before-you-buy arrangements. The ACCC also notes existing arrangements with Graco Australia to supply discounted demonstration equipment to its distributors (as outlined in its submission in response to the Draft Notice) are likely to continue without the Notified Conduct. The ACCC understands most distributors do not consider large, dedicated spray areas are necessary for selling paint sprayers and even distributors that already have the dedicated facilities don't regularly offer ad hoc demonstrations of paint sprayers.

6.114. Further, distributors have suggested the low levels of display stock and demonstration models in stores have been implemented to reduce the risk of theft; not in response to free riding and low margin concerns. It is unlikely that an increase in retained margin from the Notified Conduct would change this.

6.115. In relation to post-sale service, it appears repairs (whether under warranty or otherwise) can be separately remunerated and customers are not restricted to having their machine serviced at the place of purchase. It is therefore unclear to what extent

¹⁴⁹ Graco Australia submission in response to ACCC RFI, 8 May 2023, p. 10.

¹⁵⁰ Graco Australia submission in response to ACCC RFI, 8 May 2023, pp. 3, 17.

¹⁵¹ Graco Australia submission in response to ACCC RFI, 8 May 2023, pp. 3, 18; and Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 8.

the Notified Conduct would be likely to increase (or prevent a decrease in) the provision of post-sales service by Graco distributors.

What benefits are likely to flow from ensuring an adequate provision of these services?

6.116. The ACCC's market inquiries indicate the current service levels by Graco distributors are sufficient to properly inform most customers and it is unclear that significant benefits would flow from increased service levels.

6.117. In response to the Draft Notice, Graco Australia considers there is likely to be a significant public benefit that would flow from increased service levels as a result of the Notified Conduct – namely, 'increased sales of paint sprayers'.¹⁵² With the Notified Conduct, Graco Australia submits that distributors will be able to invest in product demonstrations and training, while still maintaining sustainable margins, thereby increasing the conversion rate to paint spraying equipment. Graco Australia did not provide further information to estimate the likely volume increase in sales of paint sprayers.

6.118. The ACCC considers that an increase in conversion-focused activities (whether in-store or otherwise) may result in some customers being better informed about the benefits of paint sprayers generally and result in efficiency gains in this sector. However, any conversion-based benefits will reduce over time as the product segment matures.

6.119. Moreover, these activities are already occurring – by both manufactures and distributors – and are likely to continue to occur at the same or similar level without the Notified Conduct. Indeed, Graco Australia's submission in response to the Draft Notice estimated that it participated in 743 such events this past year. It is unclear to what extent the Notified Conduct would increase these activities, if at all.

ACCC conclusion

6.120. The ACCC considers that the provision of high levels of retail service does not appear to be essential to communicate any unique features, uses or benefits of the Notified Products which would not be obvious to customers when compared to other paint sprayers. Many distributors consider hands-on product demonstrations to be unnecessary and, by Graco Australia's own submission, the Notified Products are popular and sell in high volumes.¹⁵³

6.121. Further, many distributors consider they already differentiate themselves based on service.

6.122. Therefore, it appears unlikely distributors will be incentivised to increase their service levels beyond their current levels by the Notified Conduct.

6.123. Likewise, it does not appear that the Notified Conduct would prevent a decrease in service levels. The ACCC found little evidence of a free rider problem making these levels of service commercially unsustainable. This market is characterised by strong intra-brand price competition but it is not evident that under-provisioning distributors

¹⁵² Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 8.

¹⁵³ Graco Australia Notification, p. 15.

are free riding on high-service distributors. Indeed, it appears high-service retailers commonly advertise substantial discounts on the Notified Products themselves.

6.124. Even if increased margins encouraged retailers to increase their investment in service-based competition, the ACCC considers the extent of any likely benefit is unclear but likely to be insignificant given current service levels are sufficient to properly inform most customers.

Innovation in products

6.125. By incentivising the provision of pre-sale retail services, and better informing consumers, RPM can encourage manufacturers to innovate by developing novel features and to adapt their products to consumer preferences. By making more informed decisions, consumers can better reward manufacturers which best cater to their needs.

Graco Australia submission

6.126. Graco Australia submits the Notified Conduct will assist it in launching innovative products more effectively. Currently, product launches are undermined by heavy discounting and Graco Australia submits this has led to distributors being less supportive of new product launches that involve significant investment in staff training in case they are unable to obtain a viable margin. This impacts the effectiveness of campaigns when new products are launched, damaging the necessary promotion of Graco's new technologies and innovations.

6.127. Graco Australia submits it relies heavily on these product launches to educate the market and customers about the benefits of the products and their unique features and if distributors are able to maintain sufficient margins, they will be incentivised to continue investing in training and the conversion of painters from more manual methods.¹⁵⁴

6.128. Following the Draft Notice, Graco Australia provided an example of the launch of a new product, the '390PC Cordless Airless Paint Sprayer'. It submits that this is the first and 'remains the only high-performance cordless, stationary, airless paint sprayer on the market'. However, due to heavy online discounting by a single distributor early on, Graco Australia submits that many other distributors were reluctant to stock this product. Graco Australia submits that these distributors were also reluctant to invest in providing product-specific training to their staff because they would not have appropriate retail margins to justify that. Graco Australia submits that distributors remain reluctant to acquire this new product, and it still carries excess stock.¹⁵⁵

Interested party submissions

6.129. Phillro Industries submits Graco is the lead innovator in spray equipment and puts about 4% of its annual revenue back into research and development.¹⁵⁶ No other interested party submissions commented on this point.

¹⁵⁴ Graco Australia Notification, pp. 15–16.

¹⁵⁵ Graco Australia submission in response to the Draft Notice, 22 September 2023, p. 9.

¹⁵⁶ Record of submission – Phillro Industries, 30 May 2023, p. 2.

ACCC view

- 6.130. The ACCC notes this was listed as a separate public benefit in the notification, but Graco Australia's submissions on this point largely appear to restate the retail service-related benefits already discussed above, applied specifically to the launch of new products.
- 6.131. While it is unclear whether Graco Australia submits that, without the Notified Conduct, Graco Inc will have less incentive to invest in innovation, the ACCC does not accept that the implementation of the Notified Conduct in the Australian market would prevent a decrease in nor lead to an increase in Graco Inc's investment in innovation.
- 6.132. Nevertheless, the ACCC accepts that new and especially innovative products may require distributors to undergo additional product training and the current market dynamics of strong price competition could have a chilling effect on distributors stocking such products. Over time, this could lead to a decrease or delay in new Graco paint sprayers being launched in the Australian market. To the extent the Notified Conduct prevents or limits this, the ACCC considers this would likely be a public benefit. While Graco Australia provided an example in its response to the Draft Notice of a new product having lower than anticipated uptake by distributors due to discounting behaviour, the ACCC does not consider this to be evidence of innovation being negatively impacted or reduced to a great extent. The ACCC also maintains its view that new product launches would likely continue to be facilitated by Graco Australia direct to customers at trade day events.
- 6.133. Any benefits which may otherwise result from distributors continuing to invest in staff training and driving conversion activities in relation to new Graco paint sprayers is already captured in the above analysis.
- 6.134. As such, the ACCC does not consider the Notified Conduct is likely to lead to an increase in product innovation. To the extent the Notified Conduct would result in an increase in the 'necessary promotion of Graco Australia's new technologies and innovations', this is already captured in the above analysis.

ACCC conclusion on public benefit

- 6.135. The ACCC considers the Notified Products do not require particularly unusual or high-investment retail activities which are at risk of under-provision or otherwise require more certain margins to incentivise retailers to stock and provide adequate service in relation to them. Moreover, the ACCC considers the deep discounting is the effect of vigorous competition between Graco's 'full-service' distributors rather than a consequence of free riding by online retailers. As such, the ACCC considers any increase in service levels and associated public benefits resulting from the Notified Conduct is likely to be limited.
- 6.136. The ACCC does not consider the Notified Conduct is likely to result in public benefits in the form of increased product innovation.

Balance of public benefit and detriment

- 6.137. The ACCC considers that, to the extent the Notified Conduct is implemented effectively and curbs or eliminates price competition by Graco distributors, it is likely to result in public detriment in the form of customers paying higher prices for paint sprayers. The ACCC does not consider there is sufficient rivalry from competing goods to limit this detriment by reducing or eliminating Graco Australia's ability to set the prices of the Notified Products above a competitive level.
- 6.138. While the ACCC accepts the Notified Conduct is likely to result in limited public benefits relating to increased service-based competition, it does not consider these are likely to outweigh the likely public detriments. It does not appear that the Notified Products require complicated and high-investment retail activities which are at risk of under-provision or otherwise require increased and more certain margins to incentivise distributors to stock the Notified Products.
- 6.139. The ACCC considers customers already receive sufficient service in relation to the Notified Products through in-store pre- and post-sales service and trade events. There is no identifiable problem with customer satisfaction nor Graco's competitiveness in relation to the Notified Products.
- 6.140. The ACCC does not consider there is a significant free riding problem in the market which would make the current levels of retail service in relation to the Notified Products commercially unviable in the absence of the Notified Conduct.
- 6.141. Therefore, the ACCC considers that any likely benefit from an increase in service levels due to higher prices will not outweigh the likely public detriment caused by those higher prices. At most, customers who rely heavily on store-based retail service may be better informed about their choice of paint sprayer, associated spray tips, and may be able to obtain better results when using the products. However, all or most Graco customers (depending on any bargaining power) will be paying for these higher service levels which only some customers value.
- 6.142. Overall, the ACCC considers that customers in this market are price sensitive and the likely detriments from the impact of the Notified Conduct on prices will be more significant than the likely benefits. To the extent the Notified Conduct has any impact on discounting, the resulting public benefit will not outweigh the significant public detriment from higher prices for the Notified Products. Conversely, to the extent the conduct doesn't curb discounting, it is unlikely to result in significant benefits, given the benefits rely on incentivising distributors to increase their investment in service-based activities such as training, in-store demonstration equipment and product displays through the promise of higher retained margins. Accordingly, the ACCC considers that, in all the circumstances, the Notified Conduct is likely to result in limited benefit to the public that would not outweigh the detriment to the public that would be likely to result from the Notified Conduct.

7. Notice

- 7.1. On 21 March 2023, Graco Australia Pty Ltd (**Graco Australia**) lodged a resale price maintenance (**RPM**) notification RPN10000461 with the ACCC. Under the notification,

Graco Australia proposes to require its distributors to advertise its airless and air-assisted paint sprayers, ranging from entry-level to professional trade products (**the Notified Products**), at or above a minimum advertised price set by Graco Australia.

- 7.2. Legal protection provided by RPM notification RPN10000461 commenced on 4 April 2023. Graco Australia committed not to commence the conduct until the ACCC completed its assessment.
- 7.3. Graco Australia proposes to require its distributors to advertise the Notified Products at or above a price set by it. Under the minimum advertised price policy:¹⁵⁷
- 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 price
 - coupons, rebates, gift cards and other incentives or rewards must not be used to discount the advertised price below the prescribed minimum advertised price.
- 7.4. However, the minimum advertised price requirement *will not apply* to:¹⁵⁸
- any in-store merchandising, quotes or contracts
 - secure internet sites that are not viewable by the public and that are used to conduct business-to-business transactions
 - items in internet "shopping carts" after the customer places the product in the cart by clicking "order", "add to cart" or a similar command.
- 7.5. The proposed conduct described in paragraphs 7.3 to 7.4 is referred to as the **Notified Conduct**.
- 7.6. For the reasons set out in this Notice, and based on the information before it, the ACCC is satisfied in accordance with s 93(3A) that the likely benefit to the public will not outweigh the likely detriment to the public from the Notified Conduct.
- 7.7. Therefore, the ACCC gives this notice under s 93(3A), revoking notification RPN10000461 lodged by Graco Australia. Notification RPN10000461 ceases to be in force on 17 December 2023, being the 31st day after the date the ACCC issued this notice.

¹⁵⁷ Graco Australia Notification, pp. i–ii.

¹⁵⁸ Graco Australia Notification, pp. i–ii.

Australian Competition Tribunal

- 7.8. The ACCC's giving of a Notice revoking a notification may be reviewed by the Australian Competition Tribunal.¹⁵⁹ A person seeking review must lodge an application for review by the Tribunal within 21 days of the ACCC giving the notice.¹⁶⁰

¹⁵⁹ Section 101A of the Act.

¹⁶⁰ *Competition and Consumer Regulations 2010 (Cth)*, regulation 20(2).