

The FTC has alleged both relevant product and geographic markets that make no practical sense. Even without any economic analysis or extensive investigation into the nature of the finishing industry, it is plain that the products that the FTC has lumped together do not comprise relevant product markets. The FTC alleges five relevant product markets: (1) liquid finishing pumps for industrial use; (2) liquid finishing applicators (spray guns) for industrial use; (3) liquid finishing plural component equipment (proportioners) for industrial use; (4) circulation pumps for paint systems used in automotive assembly plants; and (5) industrial liquid finishing equipment for resale. *Federal Trade Commission v. Graco Inc., et al.*, Complaint (“Compl.”), ¶ 33. Not one of these groupings constitutes a relevant market for antitrust purposes.

The FTC even admits that its alleged markets may not accurately reflect actual interchangeability of use (or even cross-elasticity of demand), *see, e.g.*, Compl. ¶ 35, which alone is sufficient to doom the Complaint. Moreover, the FTC has based its case largely on the bald assertion that the structural features of its ill-defined product markets create a presumption of illegality. Overconfident in its mistaken presumption, the FTC suggests absolutely no actual evidence of anticompetitive effects. The FTC has provided no economic analysis or data to support its position. Tellingly, the FTC did not even provide an expert report from an economist in support of its motion for a preliminary injunction, which is a standard practice in Clayton Act Section 7 cases. Instead, in the absence of statistical evidence, the FTC relies on several untested declarations from a handful of distributors and competitors and unsubstantiated statements and share data in the parties’ documents. The FTC’s case cannot stand on such a flimsy footing. It must provide substantive economic evidence and data to support its allegations of anticompetitive effects.

RESPONSES TO THE FTC'S ALLEGATIONS

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

NATURE OF THE CASE

1. ITW denies the allegations in Paragraph 1.
2. ITW denies the allegations in Paragraph 2.
3. ITW denies the allegations in Paragraph 3.
4. ITW denies the allegations in Paragraph 4.
5. ITW denies the allegations in Paragraph 5.
6. ITW denies the allegations in Paragraph 6.
7. In response to paragraph 7 of the Complaint, ITW admits that the FTC filed an administrative complaint challenging the acquisition at issue on December 15, 2011, and that an administrative hearing on the merits is scheduled to begin on May 15, 2012. The rest of the allegations in paragraph 7 contain legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in paragraph 7.

JURISDICTION AND VENUE

8. Paragraph 8 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 8.
9. Paragraph 9 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 9.

THE PARTIES

10. ITW admits the allegations in the first sentence of Paragraph 10. The second sentence of paragraph 10 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 10.
11. ITW admits the allegations in Paragraph 11.
12. ITW admits the allegations in Paragraph 12.
13. ITW admits the allegations in Paragraph 13.
14. Paragraph 14 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in paragraph 14.

SECTION 13(b) OF THE FTC ACT

15. Paragraph 15 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 15.

THE ACQUISITION

16. ITW admits that it entered into an Asset Purchase Agreement dated April 14, 2011, with Graco Inc., Graco Holdings Inc., and Graco Minnesota Inc. in which ITW agreed to sell certain assets and equity interests for \$650 million. ITW denies the remaining allegations in Paragraph 12.
17. Paragraph 17 of the Complaint contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in paragraph 17.
18. Paragraph 18 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 18.
19. Paragraph 19 contains only legal conclusions to which no response is necessary. To the extent a response is required, ITW denies the allegations in Paragraph 19

AFFECTED MARKETS

20. ITW admits the allegations in the first sentence of Paragraph 20. ITW denies the remaining allegations in Paragraph 20.

21. ITW admits the allegations in the first sentence of Paragraph 21. ITW admits the allegations in the second sentence in Paragraph 21 to the extent that pumps, applicators (spray guns), plural component equipment (proportioners), and related equipment are types of finishing equipment but denies the allegations to the extent that this is not an exhaustive list of equipment that is used for industrial finishing. ITW denies the allegations in the second sentence of Paragraph 21 to the extent that the FTC has implied that these categories constitute relevant markets for the purpose of evaluating potential anticompetitive effects. ITW admits the allegations in the last sentence in Paragraph 21 to the extent that ITW sells finishing equipment throughout North America. ITW denies the remaining allegations in Paragraph 21.

22. ITW denies the allegations in Paragraph 22.

23. ITW admits that it sells a significant amount of its standard, non-engineered, non-system industrial liquid finishing equipment through distributors. ITW denies the remaining allegations in Paragraph 23.

24. ITW denies the allegations in Paragraph 24.

25. ITW denies the allegations in Paragraph 25, except to the extent that the FTC has quoted from the transcript of the investigational hearing of one of Graco's executives. The transcript speaks for itself.

26. ITW denies the allegations in Paragraph 26, except to the extent that the FTC has quoted from the transcript of the investigational hearing of one of Graco's executives. The transcript speaks for itself.
27. ITW denies the allegations in Paragraph 27.
28. ITW denies the allegations in Paragraph 28.
29. ITW admits that the statements quoted in Paragraph 29 were made in documents submitted to the FTC. The documents speak for themselves. To the extent the FTC alleges the quoted statements are admissions by ITW, they are denied. ITW denies the remaining allegations in Paragraph 29.
30. ITW denies the allegations in Paragraph 30.
31. ITW denies the allegations in Paragraph 31.

RELEVANT PRODUCT MARKETS

32. ITW denies the allegations in Paragraph 32.
33. ITW denies the allegations in Paragraph 33 and each of its subparts.

Liquid Finishing Pumps for Industrial Use

34. ITW denies the allegations in Paragraph 34. ITW denies that liquid finishing pumps for industrial use constitute a relevant product market.

Liquid Finishing Spray Guns for Industrial Use

35. ITW admits the allegation in the third sentence of Paragraph 35 that "a gun appropriate for one use will not always substitute for a spray gun used in a different process." ITW denies the remaining allegations in Paragraph 35. ITW denies that liquid finishing spray guns for industrial use constitute a relevant product market.

Liquid Finishing Proportioners for Industrial Use

36. ITW admits to the first sentence in Paragraph 36. ITW denies the remaining allegations in Paragraph 36. ITW denies that liquid finishing proportioners for industrial use constitute a relevant product market.

Circulation Pumps for Paint Systems in Automotive Assembly Plants

37. ITW denies the allegations in Paragraph 37. ITW denies that circulation pumps for paint systems in automotive assembly plants constitute a relevant product market.

Industrial Liquid Finishing Equipment for Resale

38. ITW denies the allegations in Paragraph 38. ITW denies that industrial liquid finishing equipment for resale constitutes a relevant product market.

GEOGRAPHIC MARKET

39. ITW denies the allegations in Paragraph 39.

PRESUMPTIVE ILLEGALITY OF THE ACQUISITION

40. The allegation in Paragraph 40 that the acquisition would be “illegal” is a legal conclusion, to which no response is required. To the extent a response is required, ITW denies this allegation. ITW denies the remaining allegations in Paragraph 40.

41. The first sentence in Paragraph 41 contains only legal conclusions to which no response is required. To the extent that a response is required, ITW denies this allegation. ITW denies the remaining allegations in Paragraph 41.

42. ITW denies the allegations in Paragraph 42.

43. ITW denies the allegations in Paragraph 43.

44. Paragraph 44 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 44.

ENTRY AND REPOSITIONING BARRIERS AND LACK OF EFFICIENCIES

45. ITW denies the allegations in Paragraph 45.

46. ITW denies the allegations in Paragraph 46.

47. ITW denies the allegations in Paragraph 47.

48. ITW denies the allegations in Paragraph 48

**LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF THE EQUITIES, AND
NEED FOR RELIEF**

49. Paragraph 49 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 49.

50. Paragraph 50 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 50.

51. Paragraph 51 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 51.

52. Paragraph 52 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 52.

53. Paragraph 53 contains only legal conclusions to which no response is required. To the extent a response is required, ITW denies the allegations in Paragraph 53.

AFFIRMATIVE DEFENSES

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

1. The Complaint fails to state a claim on which relief can be granted.
2. The contemplated relief would not be in the public interest because it would, among other things, harm consumers.

3. Efficiencies and other pro-competitive benefits resulting from the acquisition outweigh any and all proffered anticompetitive effects.

4. Entry and repositioning will be sufficient to maintain robust competition post-transaction and will outweigh any and all proffered anticompetitive effects.

5. To eradicate the FTC's alleged concern that this transaction will have anticompetitive effects, Graco has agreed to offer a remedy for all alleged effects.

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

Dated: February 29, 2012

Respectfully Submitted,

/s/ J. Robert Robertson
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Illinois Tool Works Finishing LLC*

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2012, I filed the attached document with the clerk of the court.

I further hereby certify that on such date I served the attached on the following counsel by electronic mail (PDF) and Federal Express:

Philip Broyles
Marc Schneider
Federal Trade Commission
1800 M Street, NW
Washington, DC 20580

Date: February 29, 2012

/s/ J. Robert Robertson
J. Robert Robertson
Hogan Lovells US LLP
*Counsel for Respondents Illinois Tool Works
Inc. and Illinois Tool Works Finishing LLC*