

Anticipated acquisition by Graco BV of Hi-Tech Spray Equipment, S.A

Decision on relevant merger situation and substantial lessening of competition

ME/6904/20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 18 February 2021. Full text of the decision published on 5 March 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. Graco BV (**Graco**) has agreed to acquire Hi-Tech Spray Equipment, S.A (**Hi-Tech**) (the **Merger**). Graco and Hi-Tech are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Graco and Hi-Tech is an enterprise, that these enterprises will cease to be distinct as a result of the Merger, and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of polyurethane foam proportioning equipment and polyurea proportioning equipment (**fast-set equipment**), and related spare parts and accessories including spray guns and heated hoses (**spare parts**) (together **fast-set systems**) to distributors in the United Kingdom (**UK**).
4. The CMA's investigation confirmed that, under any plausible frame of reference, the aggregate value in the UK of the market (or markets) concerned by the Merger is below £5 million. The CMA also found that (i) in the event that the Merger were to result in a realistic prospect of a substantial

lessening of competition (**SLC**), there are no clear-cut undertakings in lieu (**UILs**) in principle available to address such competition concerns, (ii) any customer harm potentially resulting from the Merger is not likely to exceed the costs of a reference, and (iii) the Merger is not one of a potentially large number of similar mergers that could be replicated across the sector in question.

5. As a result, the CMA believes that the market(s) concerned is/are not of sufficient importance to justify a reference and has decided to exercise its discretion under section 33(2)(a) of the Enterprise Act 2002 (the **Act**) not to refer the Merger (the **de minimis exception**). The CMA did not have to conclude whether the Merger gives rise to a realistic prospect of a SLC in the market(s) concerned because, even if the duty to refer is met, then the discretion would be applied.
6. The Merger will therefore **not be referred** under section 33(1) of the Act.

ASSESSMENT

Parties

7. Graco is a multinational manufacturing company that supplies equipment, technology, and expertise for the application of fluids and coatings in both industrial and commercial settings.¹ Graco's equipment is used in the manufacturing, processing, construction and maintenance industries.² In 2019, the worldwide turnover of the Graco Group was approximately £1,289 million, of which approximately £[~~3~~] million was generated in the UK.³
8. Hi-Tech is a Spanish company that is engaged in the design, assembly, and sale of polyurethane foam and polyurea spray equipment.⁴ In 2019, the worldwide turnover of Hi-Tech was approximately £5 million, of which £[~~3~~] was generated in the UK.⁵

¹ Graco is an indirect wholly owned Belgian subsidiary of Graco Inc. and serves as a holding company for many of Graco's subsidiaries in Europe, the Middle East, and Africa. See the Final Merger Notice dated 12 January 2021 submitted jointly by Graco and Hi-Tech (**FMN**), page 3.

² FMN, page 3.

³ FMN, page 11.

⁴ FMN, page 3.

⁵ FMN, page 11.

Transaction

9. On 15 December 2020, Graco entered into a share purchase agreement pursuant to which it agreed to acquire [80-90]% of the issued and outstanding capital stock of Hi-Tech.⁶
10. The Merger is also the subject of review by the competition authorities in Spain and Portugal.⁷

Jurisdiction

11. Each of Graco and Hi-Tech is an enterprise. As a result of the Merger, these enterprises will cease to be distinct. The CMA believes that the Merger (as described in paragraph 9) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.⁸
12. The Parties overlap in the supply of fast-set systems in the UK, with a combined share of supply of [60-70]% by value and an increment of [0-5]% brought about by the Merger.⁹ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
13. The CMA therefore believes that it is or may be the case that, as a result of the Merger, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 January 2021 and the statutory 40 working day deadline for a decision is therefore 9 March 2021.

Background

15. The Parties overlap in the supply of fast-set systems, which includes polyurethane foam proportioning equipment, polyurea proportioning equipment, and related spare parts.¹⁰
16. Polyurethane foam proportioning equipment mixes two chemicals (an isocyanate and a polyol) to create foam, which can then be sprayed onto a

⁶ FMN, page 4. The remaining [10-20]% shares of Hi-Tech will be held by Carles Royo, the current managing director of Hi-Tech, through his company Royo Cardona SL ([5-10]%), Fernando Perea Povedano ([0-5]%) and Gemma Inglés Guillen ([0-5]%).

⁷ FMN, page 6.

⁸ Section 33(1)(a) of the Act.

⁹ See the CMA's estimates of the shares of supply in Table 1 below.

¹⁰ A central characteristic of polyurethane foam and polyurea is their ability to "set" (cure) quickly. Therefore, polyurethane foam and polyurea proportioning equipment are commonly referred to as "fast-set equipment".

surface (eg wall) where it hardens. It is commonly used for insulation applications, including building insulation (residential and commercial).

17. Polyurea proportioning equipment also mixes two chemicals (an isocyanate and a resin or amine blend) to create a protective coating. It is commonly applied to storage tanks, pipes, roofs, wastewater infrastructures, truck beds, waterproofing, and concrete structures.¹¹ Polyurea equipment can generally apply polyurethane spray foam and polyurea coatings.
18. The essential components of a complete fast-set system are: (i) a proportioner, which controls the ratio, temperature and flow of chemicals, (ii) heated hoses, which maintain the correct temperature, and (iii) a spray gun, which mixes and dispenses spray foam or polyurea coatings.¹² Spare parts for proportioning equipment include spray guns, heated hoses, transfer pumps and smaller replacement parts such as packings and seals.¹³
19. Depending on the power source, fast-set equipment can be classified into air-driven, electric, or hydraulic. Graco supplies all three types of units, whereas Hi-Tech supplies only air-driven and hydraulic types.¹⁴ The life cycle of fast set equipment can be ten years or more.¹⁵

Frame of reference

Product Frame of Reference

20. The Parties submitted that the appropriate frame of reference is the supply of fast-set systems, comprising both fast-set equipment and spare parts.
21. The CMA considered whether the product frame of reference should be further segmented according to the type of fast-set equipment (ie, polyurethane foam and polyurea proportioning equipment) and/or the relevant power source (ie, air-driven, electric, or hydraulic). The CMA also considered whether there should be separate frames of reference for fast-set equipment and spare parts.
22. However, the CMA has not found it necessary to conclude on the exact product frame of reference because the size of the UK market for fast-set systems (the widest possible frame of reference) is significantly below £5

¹¹ FMN, page 18.

¹² FMN, page 19.

¹³ FMN, pages 21-22.

¹⁴ FMN, page 21.

¹⁵ FMN, page 22. The Parties submitted that spare parts constitute a significant proportion of suppliers' total sales, for example, in 2019 [§] of Graco's sales of fast-set equipment in the UK comprised spare parts.

million and the criteria for the *de minimis* exception are met under any plausible product frame of reference.

Geographic Frame of Reference

23. The Parties submitted that the geographic frame of reference is worldwide because (i) there are no material price differences between jurisdictions, (ii) transportation costs are not significant, and (iii) suppliers are active globally and supply from one or a few production facilities worldwide.¹⁶
24. The CMA found that most competitors active in the UK manufacture their fast-set systems outside the UK and supply UK customers via third-party distributors. This suggests that the geographic frame of reference for fast-set systems may be wider than the UK. However, the CMA has not found it necessary to conclude on the exact geographic frame of reference because, under any plausible geographic frame of reference, the criteria for the *de minimis* exception is met.¹⁷

Markets of insufficient importance

25. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference. The Act does not specify what criteria the CMA should consider in exercising this discretion.¹⁸
26. The starting point for the CMA's decision on whether to apply the *de minimis* exception is the size of the market(s) concerned.¹⁹ The smaller the size of the market(s) concerned, the more likely it is that the CMA will apply the '*de minimis*' exception.
27. In all cases where the value of the market(s) concerned is below £15 million, the CMA will consider whether a reference, overall, would be proportionate on the basis of a broad cost/benefit analysis. In making this assessment, the CMA will typically consider (i) whether UILs could in principle be offered by the merging parties to remedy in a clear-cut way any SLC concerns created

¹⁶ FMN, pages 25-26.

¹⁷ *Mergers: Exceptions to the duty to refer (CMA64)*, 13 December 2018. Paragraph 37 states that, even if the geographic scope of any market concerned is wider than the UK, turnover generated outside the UK will not be taken into account.

¹⁸ *Mergers: Exceptions to the duty to refer*, paragraph 14.

¹⁹ For the purposes of applying the *de minimis* exception, the markets concerned are the affected markets (*Mergers: Exceptions to the duty to refer*, paragraph 37). These are the markets where the CMA concludes that there is a realistic prospect of an SLC (or where an SLC is not ruled out), or a subset of these markets where it is clear that the size of any customer detriment will be experienced by only a proportion of the relevant market.

by the merger, (ii) whether the customer harm potentially resulting from the merger is likely to materially exceed the costs of a reference, and (iii) whether a reference would be proportionate when taking account of the wider implications of the decision.²⁰

28. In cases where it becomes clear to the CMA during its investigation that the market(s) concerned is/are of insufficient importance to justify a reference, and that there would not be any clear-cut UILs available if the duty to refer were met, the CMA may leave open the question of whether its duty to refer is met.²¹
29. The CMA therefore considered whether it is appropriate to apply the *de minimis* exception to the present case.²²

Market size

30. Where the annual value in the UK of the market(s) concerned is, in aggregate, less than £5 million, the CMA will generally not consider a reference justified unless a clear-cut UIL is in principle available.²³
31. The CMA estimated the size of the UK market for fast-set systems (the widest plausible market) based on data obtained from the Parties and their distributors. This data indicates that the market size for fast-set systems in the UK is approximately £1.9 million. The CMA considers, therefore, that a reference is unlikely to be justified in this case unless clear-cut UILs are in principle available.²⁴

'In principle' availability of UILs

32. The CMA's general policy is not to apply the *de minimis* exception where clear-cut UILs could be offered by the parties to resolve the competition concerns identified.²⁵

²⁰ [Mergers: Exceptions to the duty to refer](#), paragraphs 22-23.

²¹ [Mergers: Exceptions to the duty to refer](#), paragraphs 60-61.

²² [Mergers: Exceptions to the duty to refer](#), paragraph 19.

²³ [Mergers: Exceptions to the duty to refer](#), paragraph 9.

²⁴ The Parties were not aware of any publicly available sources on the total size of the market, and the CMA did not receive sufficient data from the Parties' competitors to estimate the total market size. The CMA therefore collected information on revenues generated by distributors of fast-set systems in the UK in 2019. The Parties and other market participants confirmed that the vast majority of sales of fast-set systems into the UK are through distributors and that, aside from small volumes of online sales from manufactures located outside the UK (for example, Poland, Turkey, and China), no significant competitors sell directly to UK customers. As such, whilst the CMA cannot exclude that there may be some additional sales into the UK that are not captured in this data, any such sales would be unlikely to materially increase the CMA's market size estimate.

²⁵ [Mergers: Exceptions to the duty to refer](#), paragraph 28.

33. In most cases, a clear-cut UIL will involve a structural divestment. The CMA will not consider that UILs are in principle available where the CMA's competition concerns relate to such an integral part of a transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger altogether.²⁶ Nor will the CMA consider for these purposes that UILs are in principle available where the minimum structural divestment that would be required to ensure the remedy was effective would be wholly disproportionate in relation to the concerns identified.²⁷
34. The Parties submitted that Hi-Tech is active almost exclusively in the manufacture and supply of fast-set systems. In 2019, Hi-Tech's worldwide turnover was approximately £5 million, of which approximately [X] was generated from the sale of fast-set systems. Hi-Tech assembles all of its fast-set systems at a single facility in Sitges, Spain. The CMA considers that a structural divestment of this facility would be tantamount to prohibiting the Merger altogether.²⁸
35. On this basis, the CMA concluded that UILs are not, in principle, available in this case.

Potential Customer Harm

36. Where the annual value in the UK of the market(s) concerned is in aggregate less than £15 million, and the CMA concludes that clear-cut UILs are not in principle available, it will consider whether the merger impact is expected materially to outweigh the public costs of a reference. In assessing the customer harm of an individual merger, the CMA will generally pay close attention to (i) the size of the market (considered above), (ii) the likelihood that any SLC will actually occur, (iii) the magnitude of competition lost by the merger, and (iv) the duration of any SLC.²⁹ The CMA considers these factors in the round as part of its overall assessment of whether the expected impact of the merger in terms of customer harm is likely to materially exceed the public costs of a reference.³⁰

²⁶ [Mergers: Exceptions to the duty to refer](#), paragraph 32.

²⁷ [Mergers: Exceptions to the duty to refer](#), paragraph 33.

²⁸ The CMA notes that clear-cut UILs could, in principle, also involve a structural divestment by Graco. As set out below, however, Graco's sales of fast-set systems in the UK are significantly larger than Hi-Tech's. It also manufactures its fast-set systems in three manufacturing plants located outside of the UK, which it uses to manufacture a range of other products (over 80% of the products manufactured in each of Graco's plants are not fast-set systems). The CMA considers, therefore, that a structural divestment by Graco would be more onerous than a full divestment of Hi-Tech, which would itself be tantamount to prohibiting the Merger altogether.

²⁹ [Mergers: Exceptions to the duty to refer](#), paragraph 35.

³⁰ [Mergers: Exceptions to the duty to refer](#), paragraph 36.

Magnitude of competition lost by the merger and likelihood of any SLC

37. The Parties submitted that their combined share of supply in fast-set systems in the UK, by value of sales in 2019, was [70-80]% with an increment of [0-5]% brought about by the Merger.³¹
38. The CMA obtained data from the Parties' UK competitors and used it to supplement the Parties' estimates. The CMA's estimates are set out in Table 1 below.³²

Table 1: Shares of supply of fast-set systems by value, in the UK (2019)

Supplier	Share of supply
Graco	[60-70]%
Hi-Tech	[0-5]%
Combined	[60-70]%
WIWA	[10-20]%
PMC	[0-5]%
SPI	[0-5]%
JHPK	[0-5]%
TEC MAC	[0-5]%
Others (including Nitrosys, SprayFoam Equipment & Manufacturing, Magma, ATG, Wintermann, Isotherm, Izoler, Sanberg, Shandong Reanin Machinery)	[10-20]%

Source: CMA's calculations using Parties submissions, and [X].

39. These estimates show that Graco is by far the largest supplier of fast-set systems in the UK, and that the Merger would result in a relatively small increment of approximately [0-5]%. There are several other competitors active in the market, with WIWA being the next largest supplier after Graco, followed by PMC and a long tail of smaller suppliers. None of the evidence available to the CMA otherwise indicates that Hi-Tech would be a particularly significant competitive force in the market.
40. Third-party responses to the CMA's Merger investigation generally indicated that Graco is the leading supplier of fast-set systems in the UK and globally,

³¹ FMN, pages 31-32. The Parties estimated their shares of supply and total market size estimates for fast-set systems in the UK and worldwide using internal sales data and competitor sales estimates. The Parties submitted that they are not aware of publicly available sources that provide estimates of the total market size or shares of supply for the market for fast-set systems globally and in the UK. Further, the Parties submitted that their shares of supply may be overstated because their UK customers are distributors who are free to sell outside the UK, and often stock proportioning units, so their actual sales may be lower. The Parties also submitted that because of very limited visibility of their competitors' sales, the shares of supply for competitors may be understated.

³² The CMA requested data on revenues from the Parties' competitors to verify the Parties' share of supply estimates in the UK, but it did not receive sufficient data to produce independent estimates for each supplier. Where available, the CMA replaced the Parties' estimates of third-party sales with the actual data received from those third parties. See also footnote 24 above.

but that there are several actual and potential smaller suppliers in the UK.³³ Only one customer expressed concerns about the Merger.

41. Overall, the CMA does not consider that the magnitude of competition lost by the Merger or the likelihood of an SLC occurring are factors pointing against the application of the *de minimis* exception.

Duration of any SLC

42. The CMA assesses the likely durability of the merger effect as part of its assessment of the suitability of the application of the *de minimis* exception. In this case, the evidence available to the CMA does not suggest that barriers to entry in this market are particularly high, consistent with some competitors not currently active in the UK expressing an intention to begin supplying fast-set systems into the UK in the foreseeable future.
43. As such, the CMA does not regard duration as a factor pointing against the exercise of the *de minimis* exception.

Wider implications of a 'de minimis' decision

Replicability

44. The CMA is less likely to apply the *de minimis* exception where it believes that the merger is one of a potentially large number of similar mergers that could be replicated across the sector in question.³⁴
45. In this case, the CMA has seen no evidence of any similar mergers taking place in the recent past or being in contemplation in this sector. [X].³⁵
46. The CMA therefore considers that the wider implications of a *de minimis* decision do not point against the application of the *de minimis* exception in this case.

Economic rationale

47. As regards the economic rationale for the Merger, the evidence available to the CMA does not suggest that the Merger was solely or primarily motivated by the acquisition of market power. The available evidence indicates that the

³³ Alternative suppliers of fast-set systems mentioned by third parties include WIWA, PMC, JHPK, Pusmak, Purcraft, Shandong Hightop Machinery Co Ltd, as well as certain Spanish and Korean brands.

³⁴ [Mergers: Exceptions to the duty to refer](#), paragraph 48.

³⁵ Graco's response dated 14 January 2021 to the CMA's email of 11 January 2021.

Merger was an opportunistic transaction driven by the seller's desire to sell the Hi-Tech business.³⁶

Conclusion on the application of the *de minimis* exception

48. Taking all the above factors into consideration, the CMA believes that the market(s) concerned in this case is/are not of sufficient importance to justify the making of a reference. As such, the CMA believes that it is appropriate for it to exercise its discretion to apply the *de minimis* exception in accordance with section 33(2)(a) of the Act. The CMA did not have to conclude whether the Merger gives rise to a realistic prospect of a SLC in the market(s) concerned because, even if the duty to refer is met, then the discretion would be applied.

Decision

49. The CMA believes that the market(s) concerned in this case is/are not of sufficient importance to justify the making of a reference, in accordance with section 33(2)(a) of the Act.
50. The Merger will therefore **not be referred** under section 33 of the Act.

Naomi Burgoyne
Director, Mergers
Competition and Markets Authority
18 February 2021

³⁶ FMN, Annex 053 – Divestiture Process.