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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of Altria Group, Inc. a corporation; And JUUL Labs, Inc. a corporation.	Docket No. 9393 PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Altria Group, Inc. ("Altria"), a corporation, and JUUL Labs, Inc. ("JLI"), a corporation, hereinafter sometimes referred to as "Respondents," have executed agreements in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. NATURE OF THE CASE

1. This action concerns a series of agreements between Altria and JLI, whereby Altria ceased to compete in the U.S. market for closed-system electronic cigarettes ("the relevant market") in return for a substantial ownership interest in JLI, by far the dominant player in that market. Electronic cigarettes ("e-cigarettes") are devices that deliver nicotine to a user by vaporizing a liquid nicotine solution; in the case of closed-system e-cigarettes, the liquid is contained in a pre-filled, sealed cartridge. Faced with declining sales of traditional cigarettes and a shift in consumer demand toward alternative nicotine products, for years Altria had viewed participation in the relevant market as a strategic priority essential to its long-term survival. Altria entered the

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relevant market through its subsidiary Nu Mark in 2013 and continued to invest heavily in the category. By mid-2017, its MarkTen e-cigarette had achieved the second-highest market share.

2. JLI entered the relevant market in 2015, and experienced modest growth until mid-2017, when it began rapidly overtaking its competitors, including Altria. JLI's meteoric rise stunned Altria and upended the entire e-cigarette market: by the end of 2017, JLI's market share had surpassed those of all other e-cigarette manufacturers, including Altria.

3. JLI's rise presented Altria with a new threat on two fronts: it stood in the way of Altria's goal of leading the e-cigarette category and threatened to disrupt Altria's lucrative traditional cigarette business. Altria reacted to this threat by pursuing a dual-track strategy: on the one hand it would endeavor to compete aggressively against JLI, including through price promotions and product innovation; at the same time, it sought to eliminate the threat by acquiring JLI. Altria made repeated overtures to JLI about a potential acquisition or partnership, but negotiations dragged, and meanwhile Altria continued to compete aggressively. In February 2018, it introduced MarkTen Elite, a pod-based e-cigarette that closely resembled JLI's product in appearance and structure. Although JLI continued to dominate the relevant market, in mid-2018, Altria told the investment community that its own products were driving growth and gaining traction among consumers.

4. Negotiations between Altria and JLI intensified in the summer of 2018, and the future of Altria's e-cigarette business emerged as a key point of contention. During negotiations, JLI insisted, and Altria recognized, that Altria's exit from the e-cigarette market was a non-negotiable condition for any deal. When Altria sought to weaken or remove any obligation to exit that market, JLI conveyed that any such attempt was completely unacceptable. After negotiations had stalled temporarily, Altria reaffirmed its willingness to accede to JLI's demand in early October 2018. With that commitment secured, negotiations resumed. At that time, JLI dominated the relevant market with a market share of approximately 70%, and Altria was anticipating an increasingly negative impact on both its e-cigarette and its traditional cigarette businesses due in part to JLI's growth.

5. In order to meet JLI's demand that Altria cease to compete in the e-cigarette market, Altria began taking steps to withdraw its e-cigarettes from the relevant market, including pulling its MarkTen Elite product from the market in October 2018, and then, after five years of continuous operation, announcing on December 7, 2018, its decision to wind down the remainder of its e-cigarette business. At the same time [redacted] Less than two weeks later, Respondents reached a deal.

6. On December 20, 2018, Respondents announced that they had executed a Purchase Agreement and a number of related agreements (together, "the Transaction"). Under the Purchase Agreement, Altria purchased a 35% non-voting stake in JLI, which Altria could convert to a voting stake upon receiving HSR approval. In addition,

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Respondents executed a Relationship Agreement, which contained a non-compete provision ("the Non-Compete") restricting Altria from competing in the relevant market; a Services Agreement, whereby Altria agreed to provide a variety of support services for JLI; an Intellectual Property License Agreement licensing Altria's e-cigarette intellectual property to JLI; and a Voting Agreement providing Altria representation on JLI's board of directors following the conversion of its shares. Pending HSR approval, the Transaction provided Altria the right to appoint one of its executives to a non-voting "observer" position on JLI's board.

7. Altria's investment in JLI and its nearly simultaneous decision to exit the relevant market in order to meet JLI's demands not only eliminated its existing e-cigarette products from the market but also, through the Non-Compete, halted its ongoing innovation efforts toward developing a new and improved portfolio of products. Thus, consumers lost the benefit of current and future head-to-head competition between Altria and JLI, and between Altria and other competitors. As JLI summarized in a set of draft talking points for the announcement of the Transaction:

8. By securing Altria's exit from the relevant market, the Transaction eliminated a threat to JLI's market dominance. Respondents further ensured that dominance by agreeing that Altria would throw behind JLI its extensive resources, including its distribution capabilities and its premier shelf space at retailers.

9. After executing the Transaction, Altria appointed its Chief Growth Officer as its observer on the JLI board of directors. Following that executive's departure from Altria to become Chief Executive Officer of JLI, Altria appointed its Chief Financial Officer and Vice Chairman to fill the observer position.

10. Neither the entry of new producers, nor repositioning by existing producers, would be timely, likely, or sufficient to counteract the anticompetitive effects of Altria's agreement to exit the relevant market. Entry or repositioning would require extensive time and capital expenditure related to the development or acquisition of a product, as well as to securing the approval of a product by the U.S. Food & Drug Administration (FDA) through a complex, lengthy, and expensive regulatory process.

11. Respondents cannot show that the Transaction resulted in cognizable efficiencies sufficient to outweigh the competitive harm caused by Altria's agreement to exit the relevant market. Nor can they point to pro-competitive benefits that could not have been achieved through less restrictive means. In fact, much of the collaboration was restructured in January 2020 to eliminate the marketing aspects of the collaboration, further reducing the scope of theoretical benefits from the agreements.

12. Respondents' conduct has illegally restrained competition in the relevant market in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and thus constitutes an unfair method of competition in violation of Section 5(a) of the FTC Act, as amended, 15 U.S.C. § 45(a).

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13. The Transaction has also substantially lessened competition in the relevant market in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act.

II. JURISDICTION

14. At all times relevant, Respondents Altria and JLI have each been, and are each now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and in Section 1 of the Clayton Act, 15 U.S.C. § 12.

15. At all times relevant, the acts and practices of Respondents Altria and JLI, including the acts and practices alleged in this complaint, are in or affect commerce in the United States, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and in Section 1 of the Clayton Act, 15 U.S.C. § 12.

16. The Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III. RESPONDENTS

17. Respondent Altria Group, Inc. is a holding company incorporated in Virginia and headquartered at 6601 West Broad Street, Richmond, Virginia 23230. Through a number of subsidiaries, Altria is engaged in the manufacture, sale and distribution of cigarettes, cigars, pipe tobacco, and smokeless tobacco products. Prior to the discontinuation of its entire product line in December 2018, Altria's Nu Mark subsidiary was engaged in the manufacture and sale of "innovative tobacco" products, which included e-cigarettes sold under the brand names MarkTen and Green Smoke. In 2018, Altria generated over $25 billion in net revenues.

18. Respondent JUUL Labs, Inc., a Delaware corporation, is headquartered at 560 20th Street, San Francisco, California 94107. JLI is the leading manufacturer of pod-based e-cigarettes, generating over $1 billion in sales in 2018.

IV. THE TRANSACTION

19. As referenced in Paragraph 6 herein, on December 20, 2018, Respondents initiated a series of transactions granting Altria a 35% non-voting equity interest in JLI in exchange for a $12.8 billion all-cash investment. This investment did not require a notification under the Hart-Scott-Rodino Act. Respondents' Purchase Agreement incorporates various ancillary agreements, including a Services Agreement, a Relationship Agreement, a Voting Agreement, and an Intellectual Property License Agreement.

20. The Transaction valued JLI at roughly $38 billion, more than double JLI's reported value less than seven months earlier, speaking to JLI's commercial success. JLI distributed the vast majority of Altria's cash payment to its shareholders and employees, including its two largest shareholders, [redacted], and its CEO Kevin Burns.

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21. On February 4, 2019, Respondents filed for HSR clearance to convert Altria's interest into voting securities (the "Antitrust Conversion") and to grant Altria permission to appoint three (of nine) members of JLI's board of directors as specified in the Voting Agreement.

22. The Relationship Agreement includes the Non-Compete, which states in the relevant part:

> [Altria] shall not . . . directly or indirectly (1) own, manage, operate, control, engage in or assist others in engaging in, the e-Vapor business; (2) take actions with the purpose of preparing to engage in the e-Vapor Business, including through engaging in or sponsoring research and development activities; or (3) Beneficially Own any equity interest in any Person, other than an aggregate of not more than four and nine-tenths percent (4.9%) of the equity interests of any Person which is publicly listed on a national stock exchange, that engages directly or indirectly in the e-Vapor Business (other than (x) as a result of [Altria's] Beneficial Ownership of Shares or (y) engagement in, or sponsorship of, research and development activities not directed toward the e-Vapor Business and not undertaken with the purpose of developing or commercializing technology or products in the e-Vapor Business) . . . . Notwithstanding the foregoing, (x) the [Altria] and its Subsidiaries and controlled Affiliates may engage in the business relating to (I) its Green Smoke, MarkTen (or Solaris, which is the non-U.S. equivalent brand of MarkTen) and MarkTen Elite brands, in each case, as such business is presently conducted, subject to Section 4.1 of the Purchase Agreement, and (II) for a period of sixty (60) days commencing on the date of this Agreement, certain research and development activities pursuant to existing agreements with third parties that are in the process of being discontinued . . . .

At the time the Non-Compete was signed, Altria had, over the preceding two months, removed all of its e-cigarette products from the market. In effect, Altria committed to shut down its own e-vapor business and participate in that business exclusively through JLI.

23. Though it was later amended, under the initial Services Agreement, Altria agreed to provide certain services to JLI, divided between Initial and Extended Services. The Initial Services included leasing convenience store shelf space to JLI, regulatory consulting, and distribution support; the Extended Services included direct marketing support and sales services. Under the terms of the Relationship Agreement, the Non-Compete went into effect early in 2019 when Altria began to perform Extended Services. The Services Agreement had an initial six-year term, subject to early termination by mutual consent or in case of material breach, bankruptcy, or insolvency. If the Services Agreement expired, Altria could discontinue the Non-Compete, at which point it would lose its right to appoint JLI board members and its pre-emptive right to maintain its 35% stake in the company, but would regain its ability to compete in the market against JLI.

24. The Intellectual Property License Agreement grants JLI a broad, non-exclusive, irrevocable license to Altria's e-cigarette intellectual property portfolio.

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