

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright  
Terrell McSweeney

In the Matter of	)	
	)	
	)	
REYNOLDS AMERICAN INC.,	)	Docket No. G
a corporation,	)	
	)	
and	)	
	)	
LORILLARD, INC.	)	
a corporation.	)	
	)	

DECISION AND ORDER  
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Respondent Lorillard, Inc. (“Lorillard”), by Respondent Reynolds American Inc. (“Reynolds”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its char

- D. "Commission" means the Federal Trade Commission.
- E. "Acquirer" means Imperial or any Person that receives the prior approval of the Commission to acquire the Combined Cigarette Business pursuant to this Decision and Order.
- F. "Acquisition" means the proposed acquisition by Reynolds of Lorillard as described in the Agreement and Plan of Merger, dated as of July 15, 2014, between Respondents Reynolds and Lorillard.
- G. "Acquisition Date" means the date the Acquisition is consummated.
- H. "Assets" means the tangible and intangible assets related to the manufacture, distribution, and sale of the Reynolds Cigarette Brands and Lorillard Cigarette Brand. Such assets include, among other things:
  - 1. All Business Records relating to the research, development, manufacture, distribution, marketing or sale of the Brands including, but not limited to:
    - a. Brand profit and loss statements, contribution statements, advertising, promotional and marketing spend records for each Brand since January 1, 2010;
    - b. A list of all direct customers who have bought the Brands from Reynolds and Lorillard at any time from January 1, 2010, including names and addresses, telephone numbers of the individual customer contracts, and unit and dollar amount of sales, by Brand, for each customer;
    - c.

4. Finished goods inventories uniquely related to each of the Brands and Lorillard Cigarette Brand packaging;
5. All fixtures, shelving, and point of sale materials, owned by Respondent Lorillard at any retail or wholesale location







or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

2. product manufacturing technology, including process technology, technology for equipment, inspection technology, and research and development of product or process technology;
  3. product and manufacturing copyrights;
  4. all plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the non-exclusive right to use Patents, know-how, and other intellectual property relating to such plans);
  5. product trademarks, trade dress, trade secrets, technology, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development, and other information, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the products, including, but not limited to, all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with any Government Entity approvals and compliance, and labeling and all other information related to the manufacturing process, and supplier lists;
  6. licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by Respondents;
  7. formulations and a description of all ingredients, materials, or components used in the manufacture of products; and
  8. any other intellectual property used in the past by Respondents in the design, manufacture, and sale of the Brands.
- S. “Lorillard Cigarette Brand” means the following brand of Cigarettes in the U.S.:  
Maverick.
- T. “Lorillard Cigarette Business” means:
1. The Lorillard Cigarette Brand Assets;
  2. The Lorillard Manufacturing Facility.



U. “Lorillard Manufacturing Facility” means the infrastructure and factory located at East Market St., Greensboro, N.C. 27401, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other

attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by Respondent Reynolds to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order.

BB. "Reynolds Cigarette Brands" means the following brands of Cigarettes in the U.S.: Winston, Salem, and ~~COL~~.

CC. "Reynolds Cigarette Business" means:

1. The Reynolds Cigarette Brands Assets; and
2. The Reynolds Migration Manufacturing Machinery.

DD. "Reynolds Migration Manufacturing Machinery" means the machinery located at Respondent Reynolds' Tobaccoville cigarette manufacturing facility, located at 7855 King Tobaccoville Road, Tobaccoville, NC 27050, that will be moved to a manufacturing facility owned by, or operated by or on behalf of, Imperial as a part of the Imperial Divestiture Agreement.

*PROVIDED, HOWEVER*, that "Reynolds Migration Manufacturing Machinery" does not include any machinery, described above, that is not included in the Remedial Agreement that receives the Commission's approval.

EE. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondents, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

FF. "Transitional Assistance" means transitional services that may be required by the Acquirer for the operation of the divested business, including, but not limited to administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services), technical assistance, and supply agreements.

## II.

IT IS FURTHER ORDERED that:

A. On the Acquisition Date Respondent Reynolds shall divest the Combined Cigarette Business, absolutely and in good faith, to Imperial, pursuant to, and in accordance with, the Imperial Divestiture Agreement. The Imperial Divestiture Agreement (which includes, among other things, the divestiture agreement, supply agreements, and

transition services agreements between Respondent Reynolds and Imperial shall not vary or contradict, or



E. No later than from the date Respondents execute the Consent Agreement Respondents shall provide a proposed Acquirer with the opportunity to recruit and employ any Designated Employee in conformance with the following:

1. No later than ten (10) da after a request from a proposed Acquirer, or staff of the Commission, Respondents shall provide a proposed Acquirer with the following information for each Designated Employee, to the extent permitted by law:

- a. name, job title or position, date of hire and effective service date;
- b. a specific description of the employee's responsibilities;
- c. the base salary or current wages;
- d. the most recent bonus paid, aggregate annual compensation for the employee's last fiscal year and current target or guaranteed bonus, if any;
- e. employment status (i.e., active or on leave or disability; fulltime or part time)

receives a written offer of employment from a proposed Acquirer; *PROVIDED, HOWEVER*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee; and (iv) remove any impediments within the control of Respondents that may deter a Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any noncompete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer.

- F. For a period of two (2) years after the Divestiture Date, Respondent Reynolds shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by the Acquirer, to terminate his or her employment relationship with an Acquirer; *PROVIDED, HOWEVER*, Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Acquirer employee;
  2. Hire employees of the Acquirer who apply for employment with Respondent Reynolds, so long as such individuals were not solicited by Respondents in violation of this paragraph; *PROVIDED, FURTHER, HOWEVER*, that this Sub-Paragraph shall not prohibit Respondent Reynolds from making offers of employment to or employing any employee of the Acquirer if the Acquirer has notified Respondent Reynolds in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.
- G. The purpose of this Paragraph II is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents, minimize the loss of competitive potential for the Combined Cigarette Business, to prevent the destruction, removal, wasting, deterioration, or impairment of the Combined Cigarette Business, except for ordinary wear and tear, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

### III.

IT IS FURTHER ORDERED that:

- A. Except in the course of (i) performing its obligations under the Remedial Agreement, (ii) complying with tax and financial reporting requirements or environmental, health, and



selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee. Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
  - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transitional Assistance agreements



submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *PROVIDED, HOWEVER*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER,*

VI.

IT IS FURTHER ORDERED that:

- A. Dennis Hatchel shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Reynolds and attached as Appendix D ("Monitor Agreement") and NonPublic Appendix E ("Monitor Compensation"). The Monitor is appointed to assure that Respondent Reynolds expeditiously comply with all of its obligations and perform all of its responsibilities as required by this Order.
- B.

- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Reynolds' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Reynolds' compliance with its obligations under the Order, including, but not limited to, its obligations related to the Combined Cigarette Business.
- E. Respondent Reynolds shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Reynolds' compliance with the Order.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondent Reynolds on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondent Reynolds, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondent Reynolds shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses,

appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

- K. If the Commission determines that the Monitor has ceased to act or failed to diligently, the Commission may appoint a substitute Monitor:
  - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Reynolds, which consent shall not be unreasonably withheld. If Respondents have not opposed, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondent Reynolds of the identity of any proposed Monitor, Respondent Reynolds shall be deemed to have consented to the selection of the proposed Monitor.
  - 2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent Reynolds' compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order
- L. Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order
- M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

## VII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraph II.A., II.B.2.b. I-2(0.245 8Td [(W)1o-2(he)-1( )]T-2(he-1( tJ 0 -[(n(vi))5(i)]T 0 - Td (. )T-(0.245 Tc -0.00

the manner and form in which it has complied and is complying with the Order and any Remedial Agreement.

VIII.

IT IS FURTHER ORDERED

NON-PUBLIC APPENDIX A  
IMPERIAL DIVESTITURE AGREEMENT  
(CONFIDENTIAL PORTIONS)

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX B  
IMPERIAL DIVESTITURE AGREEMENT (PUBLIC  
PORTIONS)



NON-PUBLIC APPENDIX C  
EXCEPTED LORILLARD EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX D  
MONITOR AGREEMENT

