

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.,)
a corporation,)
)
and)
)
)

Docket No. C- 4533

Trade Commission (“Commission”), having initiated an investigation of the
of Respondent Lorillard, Inc. (“Lorillard”), by Respondent Reynolds

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 charges in that respect, and having thereupon issued its Complaint, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Reynolds American Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of North Carolina with its office and principal place of business at 401 North Main Street, Winston-Salem, NC 27101.
2. Respondent Lorillard, Inc., is a corporation organized, existing, and doing business under, and by virtue of, the laws of the state of Delaware with its principal place of business located at 714 Green Valley Road, Greensboro, NC 27401.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Reynolds” means Reynolds American Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, part.13 bnbk7slb;e2(i)-

- 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

Lieberman Research Inc., BuzzBack, and TNS Custom Research, Inc.;

5. Information obtained by Respondent Reynolds, after the Divestiture Date, concerning the competitive or other activities of the Acquirer;
6. Information that is protected by the attorney work product rule.

- P. “Divestiture Date” means the date on which Respondent Reynolds (or a Divestiture Trustee) close on the divestiture of the Combined Cigarette Business as required by Paragraph II (or Paragraph IV) of this Order.
- Q. “Imperial Divestiture Agreement” means the Asset Purchase Agreement, dated as of July 15, 2014, as amended, between Respondent Reynolds and Imperial for the divestiture of the Combined Cigarette Business attached, partially as Non-public Appendix A, and partially as Appendix B (public portions), including all amendments, exhibits, attachments, agreements (including an agreement between Respondent Lorillard and Imperial), and schedules, negotiated by the parties up to the date approved by the Commission, thereto, including, but not limited to:
1. the following documents, including all amendments, exhibits, attachments, agreements, and schedules thereto, between Respondent Reynolds and Imperial:
 - a.

R. “Intellectual Property” means:

1. Patents, and the rights to obtain and file for Patents, trademarks, and copyrights and registrations thereof and to bring suit against a third party for the past, present 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

- 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 structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondent Lorillard, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the research, development, manufacture, distribution, marketing or sale of the Lorillard Cigarette Business. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Lorillard Retained Business, may be excluded.
- PROVIDED, FURTHER, HOWEVER*, that “Lorillard Manufacturing Facility” does not include any real property interests or Tangible Personal Property, described above, that is not included in the Remedial Agreement that receives the Commission’s approval.
- V. “Lorillard Migration Manufacturing Machinery” means the machinery located at the Lorillard Manufacturing Facility that will be moved to a manufacturing facility owned by, or operated by or on behalf of, Respondent Reynolds as a part of the Imperial Divestiture Agreement.
- W. “Lorillard Retained Business” means the assets and businesses of Respondent Lorillard, other than the Lorillard Cigarette Business, and the Lorillard Migration Manufacturing Machinery.
- X. “Order Date” means the date on which this Decision and Order is issued by the Commission.
- Y. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondents.
- Z. “Patents” means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

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 be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Imperial, or to reduce any obligations of Respondent Reynolds under such Imperial Divestiture Agreement, and such Imperial Divestiture Agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

PROVIDED, HOWEVER, that if Respondent Reynolds has divested the Combined Cigarette Business to Imperial prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Reynolds that Imperial is not an acceptable purchaser of the Combined Cigarette Business, then Respondent Reynolds shall immediately rescind the trans[35-2(pe)-6(r)3(i)-2(a)4(l)-2(i)-2(s)-1(n)], t01

B. Respondent Reynolds shall provide:

1.

2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with an opportunity:
 - a. to meet, personally and outside the presence or hearing of any employee or agent of Respondent, with any Designated Employee;
 - b. to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Designated E]TJ 0.002 Tc -0.006(e)6(s)1(ig)12(n)e

- 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

- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Reynolds' 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;

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 pursuant to Paragraph IV.E.5. of this Order.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee’s efforts to accomplish the divestiture.
 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*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee’s consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee’s duties.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.

- B. The Remedial Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all provisions of the Remedial Agreement, and any breach by Respondents of any term of such Remedial Agreement shall constitute a violation of this Order. If any term of the Remedial Agreement varies from the terms of this Order, then to the extent that Respondents cannot fully comply with both terms, the terms of this Order shall determine Respondents' obligations under this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Dennis Hatchell shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Reynolds and attached as Appendix D ("Monitor Agreement") and Non-Public 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. No later than one (1) day after the Acquisition Date, the Monitor Agreement shall require that Respondent Reynolds transfers to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order, and Respondent Reynolds shall effectuate such transfer.
- C. Respondent Reynolds

2. The Monitor shall have the power and authority to monitor Respondent Reynolds' compliance with the divestiture and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
- 3.

I. Respondent Reynolds may

forth in detail the manner and form in which it intends to comply, is complying, and has complied with the Order. Respondent Reynolds shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order; and

- B. One (1) year after the date this Order becomes final and annually thereafter until this Order terminates, and at such other times as the Commission may request, Respondent Reynolds shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with the Order and any Remedial Agreement.

VIII.

IT IS FURTHER ORDERED that Respondent Reynolds shall notify the Commission at least thirty (30) days prior:

- A. to any proposed dissolution of Respondent Reynolds;
- B. to any proposed acquisition, merger, or consolidation of Respondent Reynolds; or
- C. any other change in o(e)-6(y)201.13 TD ()Tj /T(4(y)16()JTJ -3n-2(ds)-1(s)- 15 >>BDR)JTJ (p no

X.

IT IS FURTHER ORDERED that this Order shall terminate on July 30, 2025.

By the Commission, Commissioner Brill and Commissioner Wright dissenting. hat t]DC -34c 5 >>B-[7

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

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

APPENDIX B

**NON-PUBLIC APPENDIX C
EXCEPTED LORILLARD EMPLOYEES**

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

APPENDIX D
MONITOR AGREEMENT

**NON-PUBLIC APPENDIX E
MONITOR COMPENSATION**

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