



1. If we find that JLI and Altria entered an unwritten agreement prior to the closing of the challenged Transaction on December 20, 2018, for Altria to take steps to cease e-cigarette operations, would it be proper, as a matter of substantive antitrust law, to analyze that agreement under a *per se* theory of liability as opposed to the rule of reason? Would it be proper, as a matter of substantive antitrust law, to analyze that agreement under the inherently suspect theory of liability as opposed to the full rule of reason?
2. Does the history of this proceeding pose any impediment to applying either a *per se* or inherently suspect theory of liability to an unwritten agreement entered prior to the closing of the challenged Transaction on December 20, 2018, for Altria to take steps to cease e-cigarette operations? If so, what steps are necessary to remove the impediment?
3. If we find that prior to the closing of the challenged Transaction on December 20, 2018, JLI and Altria entered an unwritten agreement for Altria to take steps to cease e-cigarette operations, what are the factual and legal elements for assessing the agreement under a *per se* analysis and under an inherently suspect analysis?

The parties shall be permitted to file opening and reply briefs addressing the above questions. The parties' opening briefs shall be filed on or before December 5, 2022 and shall abide by the word limits set forth in Commission Rule 3.22(c) for dispositive motions, with each brief not to exceed 10,000 words (including footnotes and exhibits).

the Commission's deadline for ruling on
Complaint Counsel's appeal from the initial decision in this proceeding is extended to 100 days
after the deadline for filing reply briefs, as specified above.

By the Commission.



April J. Tabor
Secretary

SEAL:
ISSUED: November 3, 2022