

**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. C-
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 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, 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, partnerships, divisions, groups, and affiliates in each case controlled by Reynolds American Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Lorillard” means Lorillard, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Lorillard, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Imperial” means Imperial Tobacco Group PLC, a public limited company incorporated under the laws of England and Wales with its headquarters and principal place of business located at 121 Winterstoke Road Bristol BS3 2LL, United Kingdom. Imperial Tobacco Group PLC’s U.S. subsidiaries are ITG Brands, LLC, a Texas limited liability company (f/k/a Lignum-2, L.L.C.), and Commonwealth – Altadis, Inc., with its principal place of business located in Fort Lauderdale, Florida.

- 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. All names of manufacturers and suppliers under contract, and the contract, with Respondent Reynolds or Respondent Lorillard who produce for, or supply to, Respondent Reynolds or Respondent Lorillard, as applicable, in connection with the manufacture or sale of each of the Brands; and
 - d. All current and projected advertising, promotional, and marketing information, materials, and programs specifically dedicated to the sale and distribution of each of the Brands including, but not limited to, sales training materials, consumer research (quantitative and qualitative), pricing and marketing research and documents, advertising and promotions.
 2. A bill of materials for each of the Brands, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including a list of authorized sources for materials and components;
 3. Machinery used for the manufacture of the Brands;

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 relating to the Lorillard Cigarette Brand;
6. Trademarks, trade dress, trade secrets, technical information, Intellectual Property, Patents, manufacturing technology, know-how, tobacco content formulae, designs, specifications, drawings, processes, quality control data, and any other intellectual property exclusively related to any of the Brands;
7. A copy of all testing and results required by any regulatory authority specific to the Brands from January 1, 2010, including but not limited to tar and nicotine content testing, and all regulatory registrations and correspondence;
8. A copy and license to all internal toxicology testing and historical test data of the Lorillard and Reynolds research and development staff including, but not limited to, animal testing and ingredient databases relating to the Lorillard Cigarette Brand and the Reynolds Cigarette Brands, respectively;
9. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body, including, but not limited to the Food and Drug Administration, or pursuant to any legal requirement relating to the research, development, manufacture, distribution, marketing or sale of the Brands, and all pending applications therefor or renewals thereof;
10. All price lists for each of the Brands from January 1, 2010.

PROVIDED, HOWEVER, that “Assets” does not include any asset, described above, that is not included in the Remedial Agreement that receives the Commission’s approval.

- I. “Brands” means, collectively, the Reynolds Cigarette Brands and the Lorillard Cigarette Brand.
- J. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales

materials; research and development data, files, and reports; technical information; data bases; studies; designs, drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.

- K. “Cigarette” means any roll of tobacco wrapped in paper not containing tobacco.
- L. “Combined Cigarette Business” means the Reynolds Cigarette Business and the Lorillard Cigarette Business.
- M. “Confidential Business Information” means Business Records and Intellectual Property (together “Information”) owned by, or in the possession or control of, Respondent Reynolds that is not in the public domain and that is directly related to the Combined Cigarette Business. *PROVIDED, HOWEVER*, that the term “Confidential Business Information” *EXCLUDES* the following Information:
1. Information relating to any of Respondent Reynolds’ general business strategies or practices:
 - a. that are not divested pursuant to this Order; and
 - b. do not discuss exclusively the Reynolds Cigarette Brands or Lorillard Cigarette Brand, or
 - c. are aggregated Information that includes Information about Reynolds Cigarette Brands or Lorillard Cigarette Brand
 2. Information not divested to the Acquirer pursuant to a Remedial Agreement including, but not limited to, Information permitted to be retained by Respondent Reynolds under the Remedial Agreement;
 3. Information that is:
 - a. provided to an Acquirer; and
 - b. is unrelated to the Combined Cigarette Business acquired by that Acquirer; or
 - c. is exclusively related to businesses or products retained by Respondent Reynolds;
 4. Information provided to Respondent Reynolds, by third parties, including, but not limited to, wholesalers, retailers, or third party data providers such as Management Sciences Associates, Inc., Burke Inc., Information Resources, Inc., Capstone Research, Inc., Nielsen, Bellomy Research, Inc., MARC Research,

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, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law;
 7. Information that Respondent Reynolds demonstrate to the satisfaction of the Commission, in the Commission's sole discretion:
 - a. Was or becomes generally available to the public other than as a result of disclosure by Respondent Reynolds;
 - b. Is necessary to be included in Respondent Reynolds' mandatory regulatory filings;
 - c. Was available, or becomes available, to Respondent Reynolds on a non-confidential basis, but only if, to the knowledge of Respondent Reynolds, the source of such Information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the Information;
 - d. Is Information the disclosure of which is consented to by the Acquirer;
 - e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Remedial Agreement;
 - f. Is disclosed in complying with the Order;
 - g. Is Information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or
 - h. Is disclosed in obtaining legal advice.
- N. "Cost-Plus Price" means a cost not to exceed a ten percent premium on the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the product or service or are reasonably allocated to the provision of such product or service.
- O. "Designated Employee" means employees of Respondent Lorillard who are or have worked for Respondent Lorillard since July 15, 2014, including, but not limited to, employees at the Lorillard Manufacturing Facility, Respondent Lorillard sales personnel, and executives, *EXCEPT* for those Persons listed on Non-Public Appendix C.

- 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. Route to Market Agreement, Exhibit C to the Asset Purchase Agreement, dated as of July 15, 2014;
 - b. Transition Services Agreement;
 - c. the Reciprocal Manufacturing Agreement, (“Reynolds-Imperial Reciprocal-Manufacturing Agreement”);
 - d. the Patent License Agreement;
 - e. the Substantial Equivalence License Agreement;
 - f. the Supply Agreement For Reconstituted Tobacco;
 - g. the Retained Trademark and Retained UPC Codes Agreement;
 - h. the Document Access, Return, and Preservation Agreement;
 - i. the RAI Information Protection Agreement;
 - j. the Imperial Information Protection Agreement; and
 2. the Transfer Agreement, between Respondent Lorillard and Imperial as Exhibit I to the Asset Purchase Agreement, dated as of July 15, 2014, including all amendments, exhibits, attachments, agreements, and schedules thereto.
- 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, 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 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.

AA. “Remedial Agreement” means:

1. the Imperial Divestiture Agreement if such agreement has not been rejected by the Commission; or
2. any agreement between Respondent Reynolds and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits,

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 KOOL.

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 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 transaction with Imperial, in whole or in part, as directed by the Commission, and shall divest the Combined Cigarette Business, including, as directed by the Commission, adding assets related to the Brands that are not included in the Combined Cigarette Business, within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

PROVIDED, FURTHER, 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 and effective, the Commission notifies Respondent Reynolds that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Reynolds, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Combined Cigarette Business (including, but not limited to, entering into additional agreements or arrangements, or adding assets related to the Brands that are not included in the Combined Cigarette Business) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Respondent Reynolds shall provide:

1. at the Acquirer's option and approved by the Commission as part of the Remedial Agreement, Transitional Assistance:
 - a. sufficient to enable the Acquirer to operate the divested business in substantially the same manner that Respondents conducted the divested assets and business prior to the divestiture; and
 - b. at substantially the same level and quality as such services are provided by Respondents in connection with their operation of the divested assets and businesses prior to the divestiture.
2. Transitional Assistance included in the Imperial Divestiture Agreement includes, but is not limited to:

- a. An agreement that, among other things, provides for the supply to Imperial Cigarettes from the Reynolds Cigarette Brands for a period, at Imperial's option, of up two (2) years from the Divestiture Date, with an option for Imperial for successive one-year extensions;
 - b. An agreement relating to the Reynolds Migration Manufacturing Machinery which involves the removal, transfer, and reinstallation of Respondent Reynolds' machines that manufacture the Reynolds Cigarette Brands (including machines for manufacturing filters) as directed by Imperial; and
 - c. An agreement that allows for, among other things, Imperial access for a period of time to certain signage and shelf space at retail locations previously occupied or used by the Lorillard Cigarette Brand.
3. Transitional Assistance not included in the Remedial Agreement, if requested by the Acquirer within one (1) year after the Divestiture Date, and if the Monitor, after consultation with Respondent Reynolds, and approved by Commission staff, believes such additional assistance is necessary for the Acquirer to operate the Combined Cigarette Business. *PROVIDED, HOWEVER*, that Respondent Reynolds shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Cost-Plus Price of providing such goods and services, or (ii) limit the damages (such as indirect, special, and consequential damages) which an Acquirer would be entitled to receive in the event of Respondent Reynolds' breach of any agreement to provide Transitional Assistance.
- C. Respondents shall not terminate or modify any agreement that is part of the Remedial Agreement before the end of the agreement, as approved by the Commission, without prior approval of the Commission.
- D. Until the Divestiture Date, Respondents shall take such actions as are necessary to:
1. maintain the full economic viability and marketability of the Combined Cigarette Business;
 2. minimize any risk of loss of competitive potential for the Combined Cigarette Business;
 3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Combined Cigarette Business; and
 4. not sell, transfer, encumber, or otherwise impair the Combined Cigarette Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Combined Cigarette Business.

- 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) days 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; full-time or part-time);
 - f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Designated Employee(s).
 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 Employee.
 3. Respondents shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Designated Employee, (ii) not offer any incentive to any Designated Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Designated Employee who

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 any Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete 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; and
 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 safety policies and standards, ensuring the integrity of the financial and operational controls on the Combined Cigarette Business, obtaining legal advice, defending legal

claims, investigations, or enforcing actions threatened or brought against the Combined Cigarette Business, or (iii) as required by law or expressly allowed under this Order,

1. Respondent Reynolds shall not:
 - a. provide, disclose or otherwise make available any Confidential Business Information to any Person;
 - b. use any Confidential Business Information to interfere with any suppliers, distributors, resellers, or customers of the Acquirer.
 2. Respondent Reynolds shall make all reasonable efforts to maintain the confidentiality of the Confidential Business Information in the regulatory reportings or filings, as described, above.
- B. The purpose of this Paragraph III is to minimize the risk of disclosure of unauthorized use of Confidential Business Information.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested the Combined Cigarette Business and otherwise fully complied with the obligations as required by Paragraph II.A of this Order, the Commission may appoint a Divestiture Trustee to divest the Combined Cigarette Business, including the addition of assets related to the Brands that are not included in the Combined Cigarette Business, in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order.
- 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 terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents has not opposed, in writing, including the reasons for opposing, the

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
 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; *PROVIDED, HOWEVER*, that the Commission may extend the divestiture period only two (2) times.
 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; *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 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.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

- A. The Remedial Agreement shall not limit or contradict, or be construed to limit 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 an Acquirer or to reduce any obligations of the Respondents under such Remedial Agreement.
- 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 shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Reynolds’ compliance with the terms 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 including, but not limited to:
 - a. Assuring that Respondent Reynolds expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Order in this matter;
 - b. Monitoring any Transitional Assistance;
 - c. Assuring that Confidential Business Information is not received or used by Respondent Reynolds or the Acquirer, except as allowed in the Order in this matter.
 - 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. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

- 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, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VI.G., the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VI.F. of this Order.
- H. Respondent Reynolds shall report to the Monitor in accordance with the requirements of the Order and as otherwise provided in the agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondent Reynolds, and any reports submitted by the Acquirer with respect to the performance of Respondent Reynolds' obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondent Reynolds of its obligations under the Order.
- I. Respondent Reynolds may require the Monitor and each of the Monitor's consultants, accountants and other representatives and assistants to sign a customary confidentiality agreement. *PROVIDED, HOWEVER*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor'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 Monitor's duties.

- K. If the Commission determines that the Monitor has ceased to act or failed to act 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, in writing, 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. (completion of the manufacturing migration of Respondent Reynolds' machines to Imperial and production of cigarettes on the migrated machines pursuant to Exhibit F to the Reynolds-Imperial Reciprocal-Manufacturing Agreement), and II.E. of this Order, Respondent Reynolds shall submit to the Commission a verified written report setting 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 Respondent Reynolds, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or the Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents;
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

**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

**NON-PUBLIC APPENDIX E
MONITOR COMPENSATION**

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