

**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

**LORILLARD, INC.,
a corporation.**

Docket No. C-

COMPLAINT

As authorized by the Clayton Act and the Federal Trade Commission Act, the Federal Trade Commission (“Commission”), having reason to believe that Reynolds American Inc. (“Reynolds”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Lorillard, Inc. (“Lorillard”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding on this matter would be in the public interest, issues this Complaint, stating the following charges.

I. RESPONDENTS

1. Respondent Reynolds is a corporation 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, North Carolina 27101. Directly or by a subsidiary, Reynolds sold approximately 70 billion cigarettes throughout the United States in 2014.
2. Respondent Lorillard is a corporation existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business at 714 Green Valley Road, Greensboro, North Carolina, 27408-7018. Directly or by a subsidiary, Lorillard sold approximately 39 billion cigarettes throughout the United States in 2014.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to an agreement executed on July 15, 2014 (the “Agreement”), Reynolds proposes to acquire all of the voting securities of Lorillard for approximately \$27.4 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. The relevant line of commerce for analyzing the Acquisition is the design, manufacture, and sale of traditional combustible cigarettes (“cigarettes”).
6. The relevant geographic area for analyzing the Acquisition is the United States.

IV. THE STRUCTURE OF THE MARKET

7. The U.S. cigarette market is already concentrated. After the acquisition, Altria Group, Inc. and Reynolds would have approximately 90% of all U.S. cigarette sales. As measured by the Herfindahl-Hirschman Index, the Acquisition would increase the concentration index of the market by roughly 775 points, to a post-merger level of roughly 4,250. This increase in concentration far exceeds the thresholds set out in the *Horizontal Merger Guidelines* for raising a presumption that the Acquisition would create or enhance market power.

V. BARRIERS TO ENTRY AND EXPANSION

8. Entry and expansion by other cigarette producers would not deter or counteract the anticompetitive harm of the Acquisition. Entry is unlikely in light of the statutory and regulatory barriers to product development and advertising, and the contractual barriers to securing visible shelf space at retail.

VI. EFFECTS OF THE ACQUISITION

9. The Acquisition, if consummated, is likely to substantially lessen competition for the retail sale of cigarettes in the United States in the following ways, among others:
 - (a) by eliminating current and emerging competition between Respondents Reynolds and Lorillard;

(b) by increasing the likelihood that Respondent Reynolds will unilaterally exercise market power; and

(c) by increasing the likelihood of, or facilitating, coordinated interaction between the remaining participants in the relevant market.

VII. VIOLATIONS CHARGED

10. The Agreement described in Paragraph 4 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.
11. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. §45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2015, issues this Complaint against the Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: