

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Noah Joshua Phillips**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**  
                                 **Alvaro Bedoya**

**In the Matter of**

**Altria Group, Inc.**  
**a corporation;**

**and**

**JUUL Labs, Inc.**  
**a corporation.**

**DOCKET NO. 9393**

**RESPONDENT ALTRIA GROUP, INC.’S MOTION FOR OFFICIAL NOTICE  
OF TERMINATION OF THE NON-COMPETE**

Respondent Altria Group, Inc. (“Altria”) respectfully requests that the Commission take official notice of its September 30, 2022 Report on Form 8-K, which discloses that Altria has exercised its option to be released from its non-compete obligations to Respondent Juul Labs Inc. (“JLI”) (“Non-Compete”). Ex. A (Form 8-K).<sup>1</sup> As a result of the termination of the Non-Compete, Altria is no longer prohibited from attempting to compete. Complaint Counsel (“CC”)’s theory that the transaction with JLI is the reason Altria is not competing is moot, and the Commission has ample evidence that the market for e-vapor products is completely different from the market on which CC’s theory of the case was based.

Under the terms of the Non-Compete, Altria had the option to permanently terminate that obligation once the carrying value of Altria’s investment in JLI is 10 percent or less than Altria’s original investment. Ex. A; *see also* PX0011 § 3.4(b) (termination “shall [be] permanent[] upon

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<sup>1</sup> While Respondent JLI does not join in Altria’s motion, it does not object to the Commission taking official notice of the termination of the Non-Compete.

written notice from [Altria] that it has written down [the investment] and intends to compete”). Altria exercised this option on September 29, 2022, as the carrying value of the investment dropped to \$450 million (3.6 percent of the original investment of \$12.8 billion) as of June 30, 2022. Ex. A. This action resulted in (i) the *permanent* termination of Altria’s non-competition obligations, (ii) the loss of Altria’s board designation rights (other than its right to appoint one independent director so long as its ownership interest continues to be 10 percent or more), (iii) the loss of its consent and certain other rights in connection with a sale of JLI, and (iv) the conversion of Altria’s JLI shares to single vote common stock, which significantly reduced Altria’s voting power. *Id.*

The Commission may take notice of SEC filings such as a Report on Form 8-K, even after the close of the record, so long as the underlying facts are material. *See In the Matter of Chicago Bridge & Iron Co. N.V.*, 139 F.T.C. 553, 578 n.82 (2005) (taking official notice of SEC form 10-K filing to find that certain entities had been sold, “[a]lthough th[e] 10-K filing was not part of the record”). The underlying fact that the Non-Compete between Altria and JLI has been terminated is plainly material to CC’s claim that the transaction between Altria and JLI is diminishing competition, as well as to the need for any further remedies to restore that competition.

In the first place, the permanent termination of the non-compete moots that aspect of the Section 1 claim concerning the written non-compete between the parties. CC asserted at oral argument that it was still contending that the Non-Compete “standing alone” violated Section 1. Oral Arg. Tr. 6:7-7:15. That Non-Compete no longer exists. In addition, that Altria had the option to terminate the Non-Compete as a result of the decline of the value of its investment in JLI only underscores the significant changes in the e-vapor competitive landscape since CC brought this action. *See, e.g.*, Respondents’ Answering Br. at 31; Respondents’ Motion for Official Notice of Recent FDA Decisions at 6-8. JLI is not remotely the dominant player CC portrayed in its Complaint and at trial. This drastically different landscape further confirms Judge Chappell’s conclusion that CC cannot meet its burden of demonstrating the

anticompetitive effects resulting from the transaction (ID114), and that his decision dismissing CC’s Section 1 and Section 7 claims should be affirmed.

And, while the Commission should affirm Judge Chappell’s order, the termination of the Non-Compete is also relevant to whether further remedies are needed if the Commission reverses. The purpose of this action is to restore competition allegedly lost as a result of Altria’s investment in JLI and the Non-Compete. CC’s Appeal Br. at 98-99. That supposed lost competition is now restored. By virtue of Altria exercising its option to eliminate the Non-Compete, Altria is now free to attempt to compete without any contractual restraint. To the extent Altria is unsuccessful, or its efforts take years to bear any fruit, the Non-Compete can no longer be considered the obstacle. All that remains is Altria’s passive, minority stake in JLI, which is unlikely to yield any benefit to Altria and equally unlikely to be the cause should Altria prove unable to compete. Under these circumstances, neither the public nor any competitive interest is served by imposing a remedial order on Respondents. Indeed, any further remedies would only serve an improper punitive purpose, *United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961) (remedies should promote competition, not “punish”), and could undermine the ability of both entities to compete effectively going forward, Respondents’ Response to CC’s Third Motion for Official Notice at 5-6, 6 n.5.<sup>2</sup>

For these reasons, the 8-K attached at Ex. A satisfies the requirements under 16 C.F.R. §3.43(f) and 3.54(d) (16 C.F.R. §3.54(d)).

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<sup>2</sup> The Commission may also order further proceedings on what remedy is necessary and appropriate, if any. *See, e.g., In the Matter of S.C. State Bd. of Dentistry*, No. 9311, 2004 WL 1814165, at \*20 (F.T.C July 28, 2004) (holding in abeyance respondents’ motion to dismiss on mootness grounds and “refer[ring] the matter to the [ALJ] to conduct limited discovery and to make [additional] findings”). And it has the power to dismiss the action as no longer in the public interest. *See In the Matter of Am. Gen. Ins. Co., et al.*, 97 F.T.C. 339 (1981) (dismissing because it was not “in the public interest to impose an order”); *see also In the Matter of Soundtrack Chevell Indus., Inc., et al.*, 85 F.T.C. 794 (1975) (dismissing for the same reason and pursuant to a “*sua sponte* . . . order directing complaint counsel to show cause why th[e] complaint should not be dismissed”).

Dated October 12, 2022

Respectfully submitted,

s/ Beth Wilkinson

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*Counsel for Altria Group, Inc.*

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BEFORE THE FEDERAL TRADE COMMISSION**

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**[PROPOSED] ORDER GRANTING RESPONDENT ALTRIA'S MOTION FOR  
OFFICIAL NOTICE OF TERMINATION OF THE NON-COMPETE**

Upon consideration of Respondent Altria's Motion Requesting Official Notice of the Non-Compete Termination Disclosure, it is hereby ORDERED that the motion is GRANTED.

ORDERED By the Commission:

\_\_\_\_\_  
April J. Tabor  
Secretary

Dated:

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
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**STATEMENT OF CONFERENCE  
PURSUANT TO PARAGRAPH 4 OF SCHEDULING ORDER**

In a conversation on October 12, 2022, Respondent's counsel Jonathan Moses and Complaint Counsel Stephen Rodger and James Abell conferred in an effort in good faith to resolve by agreement the issues raised by the attached motion and were unable to reach an agreement.

Dated: October 12, 2022

By: s/ Jonathan M. Moses  
Jonathan M. Moses

# **EXHIBIT A**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): September 29, 2022**

**ALTRIA GROUP, INC.**

(Exact name of registrant as specified in its charter)

**Virginia**  
(State or other jurisdiction  
of incorporation)

**1-08940**  
(Commission File Number)

**13-3260245**  
(I.R.S. Employer  
Identification No.)

**6601 West Broad Street, Richmond, Virginia**  
(Address of principal executive  
offices)

**23230**  
(Zip Code)

**Registrant's telephone number, including area code: (804) 274-2200**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Stock, \$0.33 1/3 par value	MO	New York Stock Exchange
1.000% Notes due 2023	MO23A	New York Stock Exchange
1.700% Notes due 2025	MO25	New York Stock Exchange
2.200% Notes due 2027	MO27	New York Stock Exchange
3.125% Notes due 2031	MO31	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company





**Item 8.01. Other Events.**

As previously disclosed, Altria Group, Inc. (“Altria,” “we” or “our”) agreed to certain non-competition obligations pursuant to our relationship agreement with JUUL Labs, Inc. (“JUUL”), which generally required that we participate in the e-vapor business only through JUUL. Altria also obtained the option to be released from such non-competition obligations in certain circumstances, including if the carrying value of our investment in JUUL is not more than 10% of its initial carrying value of \$12.8 billion. At June 30, 2022, the carrying value of Altria’s investment in JUUL was \$450 million. We exercised our option to be released from our JUUL non-competition obligations on September 29, 2022, resulting in (i) the permanent termination of our non-competition obligations to JUUL, (ii) the loss of our JUUL board designation rights (other than the right to appoint one independent director so long as our ownership continues to be at least 10%), our preemptive rights, our consent rights and certain other rights with respect to our investment in JUUL and (iii) the conversion of our JUUL shares to single vote common stock, significantly reducing our voting power.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ALTRIA GROUP, INC.

By: /s/ W. HILDEBRANDT SURGNER, JR.  
Name: W. Hildebrandt Surgner, Jr.  
Title: Vice President, Corporate Secretary and  
Associate General Counsel

DATE: September 30, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2022, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Stephen Rodger (srodger@ftc.gov)  
James Abell (jabell@ftc.gov)  
Peggy Bayer Femenella (pbayer@ftc.gov)  
Erik Herron (eherron@ftc.gov)  
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*Complaint Counsel*

*s/ Beth Wilkinson*

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Beth Wilkinson  
*Counsel for Altria Group, Inc.*