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Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Dear Chairman Simons:

I write to express alarm at the recent announcement by Altria Group, Inc. (Altria) that it plans to acquire a 35% economic interest in JUUL Labs, Inc. (Juul).¹ This acquisition involves two giant companies selling tobacco products that dominate their respective markets: Altria with a capitalization of over \$90 billion and over 50% of the U.S. cigarette market; Juul with a \$38 billion capitalization and over 70% of the U.S. market for the most popular design of e-cigarettes. In addition to the sheer size and dominance of these companies, their combination would have profound public health implications that should receive the attention of the Federal Trade Commission as part of its review of the proposed transaction. The acquisition would bring together the two companies that have marketed the tobacco products most popular among young people, Marlboro cigarettes and Juul e-cigarettes. It is occurring at a time when, according to both the United States Surgeon General and the Commissioner of the Food and Drug Administration (FDA), we face an “epidemic” of youth nicotine addiction fueled largely by Juul e-cigarettes. The fact is that both of these companies owe their extraordinary profitability to their successful exploitation of the youth market. The proposed acquisition, therefore, is of urgent public health concern.

The Youth E-Cigarette Epidemic

It is undeniable that youth usage of e-cigarettes is now a public health crisis. Two days before the Altria/Juul announcement, the U.S. Surgeon General issued his first-ever Advisory on e-cigarettes in which he called for “action now” to curb “the epidemic of e-cigarette use among youth.”² Since 2014, e-cigarettes have become the most commonly used tobacco product among

¹ For simplicity, “Juul” will be used throughout to refer to both the company and its e-cigarette products.

² Surgeon General’s Advisory on E-Cigarette Use Among Youth (Dec. 18, 2018) (SG Advisory).

U.S. youth.³ E-cigarette use among U.S. high school students increased more than 900% during 2011-15, before declining for the first time during 2015-16 and then increasing again slightly by 2017.⁴ In November, the FDA and the Centers for Disease Control and Prevention (CDC) published data from the 2018 National Youth Tobacco Survey (NYTS) showing that from 2017 to 2018, there was a 78% increase in current e-cigarette use among high school students and a 48% increase among middle school students,⁵ an increase that FDA Commissioner Scott Gottlieb called “astonishing.”⁶ The NYTS showed that in 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes.⁷

Three days before the Altria/Juul announcement, the University of Michigan’s Monitoring the Future survey confirmed the extent of the epidemic. It found that the share of students reporting current e-cigarette use increased this year by 91% among 12th graders and by 74% among 8th graders, representing the single largest increase in the survey’s 43-year history for adolescent use of any substance.⁸ HHS Secretary Alex Azar said in a recent statement, “We have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use is rising.”⁹

The use of e-cigarettes by adolescents has profound public health consequences. The Surgeon General’s Advisory warns that “[n]icotine exposure during adolescence can harm the developing brain,” impacting “learning, memory and attention.”¹⁰ Moreover, according to a 2018 report of the National Academy of Sciences, Engineering and Medicine, “There is substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”¹¹ Thus, the current e-cigarette youth epidemic threatens to undermine the historic gains in reducing youth smoking made over the last several decades. But, as the Surgeon General has said, “any e-cigarette use among young people is unsafe, even if they do not progress to future cigarette smoking.”¹²

³ Centers for Disease Control and Prevention (CDC), “Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018,” *Morbidity and Mortality Weekly Report (MMWR)*, 67(45): 1276-1277. https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm?s_cid=mm6745a5_w.

⁴ Id.

⁵ Id.

⁶ Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes (November 15, 2018).

⁷ MMWR, at 1276.

⁸ University of Michigan, “National Adolescent Drug Trends in 2018: Vaping Surges; Largest Year-to-Year Increase in Substance Use Ever Recorded in the U.S. for 10th and 12th Grade Students,” Press Release, December 17, 2018, <http://monitoringthefuture.org/pressreleases/18drugpr.pdf>. See also, Miech, R, et al., “Adolescent Vaping and Nicotine Use in 2017–2018 — U.S. National Estimates,” *The New England Journal of Medicine*, DOI: 10.1056/NEJMc1814130, December 17, 2018, <https://www.nejm.org/doi/pdf/10.1056/NEJMc1814130>.

⁹ Alex M. Azar II, Remarks for E-Cigarette Press Conference, Dec. 18, 2018.

¹⁰ SG Advisory, at 1.

¹¹ National Academies of Sciences, Engineering, and Medicine, *Public health consequences of e-cigarettes.*, Washington, DC: The National Academies Press, 2018, <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

¹² SG Advisory, at 1.

The Epidemic Is the Result of Juul and its Marketing to Youth

There is no doubt that the rise of adolescent e-cigarette use in the past year to epidemic proportions is due to the remarkable appeal to this age group of a novel cartridge-based e-cigarette design, a market totally dominated by Juul. Indeed, in October, Department of Health and Human Services Secretary Azar and FDA Commissioner Gottlieb, in an op-ed in *The Washington Post* about the “epidemic” of e-cigarette use among young people, pointed to Juul’s 70% share of the cartridge-based market, dominance that has only grown since that time.¹³ Surgeon General Adams, in his Advisory, cited the 600% increase in Juul sales during 2016-17 and described the features of these products that are so appealing to young people, including their minimal exhaled aerosol, reduced odor, small size, and similarity in appearance to a USB flash drive, making them easy to conceal from parents and teachers.¹⁴

Moreover, Juul is highly addictive. The Surgeon General noted Juul’s “high level of nicotine,” with a typical Juul cartridge, or “Juulpod,” containing about as much nicotine as a pack of 20 regular cigarettes.¹⁵ He also pointed to Juul’s use of “nicotine salts, which allow particularly high levels of nicotine to be inhaled more easily and with less irritation” than the nicotine traditionally used in tobacco products, including other kinds of e-cigarettes. “This is of particular concern for young people,” the Surgeon General warned, “because it could make it easier for them to initiate the use of nicotine through these products and also could make it easier to progress to regular e-cigarette use and nicotine dependence,” although studies show that “approximately two-thirds of Juul users aged 15-24 do not know that Juul always contains nicotine.”¹⁶ The stories of individual teens who find themselves unable to stop “Juuling” are deeply disturbing to every American family.¹⁷ The epidemic of e-cigarette use is, in Commissioner Gottlieb’s words, “an epidemic of addiction”¹⁸ and Juul is responsible.

The current crisis of adolescent nicotine addiction is due not only to Juul’s design and chemistry; it also has been fueled by Juul’s sophisticated use of social media and other strategies to reach young people. When Juul was first launched in 2015, the company used colorful, eye-catching designs and youth-oriented imagery and themes, such as young people dancing and using Juul. Its original marketing campaign included billboards, YouTube videos, advertising in

¹³ Alex M. Azar and Scott Gottlieb, “We cannot let e-cigarettes become an on-ramp for teenage addiction,” *Washington Post* (October 11, 2018).

¹⁴ SG Advisory, at 1-2.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ Hoffman, J, “The Price of Cool: A Teenager, a Juul and Nicotine Addiction,” *The New York Times*, November 16, 2018, <https://www.nytimes.com/2018/11/16/health/vaping-juul-teens-addiction-nicotine.html>. Hoffman, J, “Addicted to Vaped Nicotine, Teenagers Have No Clear Path to Quitting,” *The New York Times*, December 18, 2018, <https://www.nytimes.com/2018/12/18/health/vaping-nicotine-teenagers.html>. McKay, B, “Teen Vaping Has Created Addicts With Few Treatment Options,” *The Wall Street Journal*, December 18, 2018, <https://www.wsj.com/articles/surge-in-teen-vaping-gives-rise-to-nicotine-addiction-11545142195>.

¹⁸ Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use” (September 12, 2018).

Vice Magazine, launch parties and a sampling tour. One study of Juul’s marketing showed that “the growth of JUUL was accompanied by innovative marketing across a variety of new media platforms.”¹⁹ It found that “JUUL was one of the first major retail e-cigarette brands that relied heavily on social media to market and promote its products,” and it did so effectively. The study “found the number of JUUL-related tweets was highly correlated with quarterly retail sales” of the product and that its Instagram account, reaching a quarter million followers, used artsy photographs to display its products and “evoke lifestyle feelings such as relaxation, freedom and sex appeal,” while emphasizing Juul’s flavors.²⁰ A later study found that Juul’s official Twitter account was being followed by adolescents and that 25% of people retweeting official Juul tweets were under 18.²¹

Although Juul, faced with public criticism of its youth-oriented social media marketing and the threat of FDA action, has suspended its official social media accounts on Instagram and Facebook, placed some limits on its Twitter posts and limited sales of some flavored products to its website instead of retail stores for now, the spectacular success of its social media marketing has already given rise to an intense adolescent demand for the product that is not likely to diminish, particularly given its addictiveness. Juul need no longer promote its products through its own social media outlets; young people are now becoming “brand ambassadors” themselves. In short, the end of the current epidemic is not in sight.

Altria’s History of Marketing to Children

The public health concerns arising from the current e-cigarette crisis are multiplied by the prospect of significant investment in Juul by Altria, a company with a long history of utter disregard for the health and welfare of our nation’s children. Marlboro, marketed for decades by Altria and its corporate predecessor, Philip Morris, Inc. (Philip Morris), has long been, and still is, the cigarette most smoked by adolescents.²² A 2006 study showed that Philip Morris earned more revenue from cigarettes smoked by American kids than all other tobacco companies combined.²³ An internal Philip Morris document explained that “[T]he success of Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it as they grew older.”²⁴ In 2006, the U.S. District Court for the District of Columbia, based on voluminous evidence, including internal company documents, found that

¹⁹ Huang, J, et al., “Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market,” *Tobacco Control*, epub ahead of print, doi: 10.1136/tobaccocontrol-2018-054382, May 31, 2018.

²⁰ Huang at 5.

²¹ Chu, K-H, et al., “JUUL: Spreading Online and Offline,” *Journal of Adolescent Health* 63:582-586, 2018.

²² SAMHSA’s public online data analysis system (PDAS), National Survey on Drug Use and Health, 2015.

http://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CIG30BR2&column=CATAG2&weight=ANALWT_C&results_received=true. Another survey, the 2016 NYTS, found that 78.7% of high school students prefer these three brands. CDC, “Cigarette Brand Preference and Pro-Tobacco Advertising Among Middle and High School Students—United States, 2012-2016,” *MMWR*, 67(4): 119-124, February 2, 2018, <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6704a3-H.pdf>.

²³ Heaton, C, “Youth smoking prevention and tobacco industry revenue,” *Tobacco Control* 15:103-106, 2006.

²⁴ *Special Report, “Young Smokers: Prevalence, Trends, Implications, and Related Demographic Trends,”* March 31, 1981, Bates No. 1000390803/55 (“Special Report”).

Philip Morris, Altria and other tobacco companies had violated federal civil racketeering laws by engaging in a conspiracy to defraud the public by lying about the health risks of smoking and their marketing to children over a period spanning more than 50 years.²⁵ The Court found that, “[f]rom the 1950s to the present,” the defendant companies “have intentionally marketed to young people under the age of twenty-one in order to recruit ‘replacement smokers’ to ensure the economic future of the tobacco industry.”²⁶ Indeed, as to Philip Morris, the Court found that the company “has conducted extensive consumer research to help inform and shape marketing campaigns that appeal to their youngest potential smokers.”²⁷ According to one internal Phillip Morris document, “It is important to know as much as possible about teenage smoking patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to smoke while in their teens . . . The smoking patterns of teenagers are particularly important to Philip Morris. . . [I]t is during the teenage years that the initial brand choice is made.”²⁸

Moreover, the Court found that remedies to “prevent and restrain” violations of the federal racketeering laws were appropriate because the defendant companies, including Altria, were continuing their fraudulent conduct and were likely to continue it into the future. As to their marketing to youth, the Court wrote:

. . . Defendants continue to engage in many practices which target youth, and deny that they do so. . . Defendants continue to track youth behavior and preferences and market to youth using imagery which appeals to the needs and desires of adolescents. Defendants are well aware the over eighty percent of adult smokers began smoking before the age of 18, and therefore know that securing the youth market is critical to their survival. *There is therefore no reason, especially given their long history of denial and deceit, to trust their assurances that they will not continue committing RICO violations denying their marketing to youth.*²⁹

Indeed, because of the likelihood that their racketeering activity will continue, Altria and the other defendants have been required by the Court to run “corrective statements” setting out the truth about their products in major newspapers, on television, in inserts on cigarette packages and on their websites.

²⁵ *United States v. Philip Morris, U.S.A., Inc.*, 449 F.Supp.2d 1 (D.D.C. 2006), *aff’d in relevant part*, 566 F.3d 1095 (D.C. Cir. 2009), *cert. denied*, 130 S.Ct. 3501 (2010). The Court found that “Defendant Altria effectively and actively controls the activities of all of its subsidiaries, including Defendant Philip Morris USA, Inc. and Philip Morris International . . .” and thus “Altria has participated in the . . . conspiracy.” 449 F.Supp. at 907-908.

²⁶ *Id.* at 561.

²⁷ *Id.* at 589.

²⁸ Special Report, *supra*.

²⁹ *United States v. Philip Morris, U.S.A., Inc.*, 449 F.Supp. at 912 (emphasis added).

The Implications of the Acquisition for Public Health

Thus, the proposed acquisition would mean that a company, Altria, found liable for racketeering activity in part because it lied about marketing its cigarettes to children, and found likely to continue this racketeering activity into the future, would acquire a substantial financial interest in a company, Juul, that has recently been engaged in sophisticated marketing of its highly-addictive e-cigarettes to teens, causing an epidemic of youth nicotine addiction. It may be said that the two companies were “made for each other,” but it is a combination that constitutes a clear and present danger to public health.

Altria’s \$12.8 billion investment in Juul will effectively combine Altria’s decades of experience in marketing tobacco products to young people with Juul’s extraordinary ability to design e-cigarettes with features perfectly adapted to appeal to digital-age youth and market those products through the communication avenues now certain to reach the most young people and cause them to become social media “brand ambassadors” to other young people. There is every reason to believe that the Altria/Juul combination will serve to accelerate the spread of the youth nicotine epidemic.

Moreover, despite Juul’s statements that the acquisition will serve to strengthen the company’s claimed mission of switching smokers to non-combustible tobacco products, the acquisition rather ends any doubt that this mission is fictional. With Marlboro cigarettes as its most profitable product, Altria has every incentive to use its new position of influence over Juul to ensure that its e-cigarettes are designed and marketed in a way that constitutes no real threat to the market for cigarettes. Indeed, with evidence emerging that youth who use e-cigarettes are more likely than non-users to smoke cigarettes, this migration is likely to be seen by Juul/Altria as the optimum result of the spreading youth nicotine epidemic.

Conclusion

For these reasons, the Campaign for Tobacco-Free Kids asks that the Federal Trade Commission fully evaluate the public health consequences of the Altria/Juul acquisition before giving its clearance to proceed and that, as part of that evaluation, it consult with the Food and Drug Administration, the Centers for Disease Control and Prevention and the Office of the Surgeon General. The health of America’s young people is at stake.

Respectfully submitted



Matthew L. Myers, President