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Altria Group, Inc. Prevails at Trial Over FTC Antitrust Challenge

As we have discussed [here](#), [here](#), and [here](#), the government has recently declared, and demonstrated, an increasing willingness to litigate to block transactions. The specter of increasingly litigious antitrust enforcement authorities makes ever more important the preparedness of parties to defend their deals against regulatory challenges and, if necessary, in trials to verdict. One such major enforcement challenge brought against Altria culminated yesterday in a resounding trial victory and a repudiation of the government's claims.

In December 2018, Altria invested \$12.8 billion in Juul Labs, Inc. (“Juul”), in exchange for a 35 percent stake, along with various governance rights. In April 2020, the FTC sued Altria and Juul in its administrative forum, seeking to unwind the investment. The FTC asserted two claims. First, the FTC alleged that Altria had conspired with Juul to exit the e-vapor category, in violation of the Sherman Act. Second, the FTC alleged that the transaction substantially lessened competition, in violation of the Clayton Act. Altria and Juul [held firm](#) to their position that the investment did not violate the antitrust laws and chose to take the case to trial.

Yesterday, the FTC's Chief Administrative Law Judge (the “ALJ”) issued his post-trial decision, dismissing the FTC's complaint, finding that the FTC had failed to prove its factual allegations and to demonstrate anticompetitive harm. Such a favorable result is exceedingly rare. Until yesterday, the ALJ had granted transacting parties a complete victory only once in the past 15 years. Nevertheless, the ALJ's careful and comprehensive decision demonstrates that parties can put the government to its proof and prevail at the trial level—even in the current regulatory environment.

Parties negotiating transactions subject to potential scrutiny benefit from teams with experience across all facets of dealmaking, including litigating regulatory challenges to verdict. Developing a thoughtful litigation strategy at an early stage is vital to beating back any aggressive government challenge that may await.

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