

Complaint

IN THE MATTER OF

**OLTRIN SOLUTIONS, LLC, JCI JONES
CHEMICALS, INC., OLIN CORPORATION AND
TRINITY MANUFACTURING, INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

*Docket No. C-4388; File No. 111 0078
Complaint, March 7, 2013 – Decision, March 7, 2013*

This consent order addresses the acquisition by Oltrin Solutions, LLC (“Oltrin”) of certain assets of JCI Jones Chemicals, Inc. (“JCI”). In March 2010, Oltrin paid JCI \$5.5 million for a list of JCI’s bulk bleach customers and for an agreement prohibiting JCI from selling bulk bleach in North Carolina and South Carolina for six years. The complaint further alleges that the transaction violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, by eliminating actual, direct, and substantial competition between Oltrin and JCI in a market for bulk supply bleach. The consent order requires Oltrin to release JCI from the agreement not to compete for the sale of bulk bleach in North and South Carolina; to transfer customer contracts to JCI; to enter into a six-month backup bleach supply agreement with JCI; and to notify customers that JCI is also a current bleach supplier. The order further contains a set of provisions designed to ensure compliance.

Participants

For the *Commission*: *Stephen Antonio, Steven A. Dahm, Melanie Hallas, Kenneth Libby, P. Abbott McCartney, and Eric M. Sprague.*

For the *Respondents*: *Thomas Dillickrath, David Emanuelson, and William A. Henry, Baker Botts LLP; Robert W. Turken and Scott Wagner, Bilzin Sumberg Baena Price & Axelrod, LLP; and Mark W. Merritt and Lawrence Moore, Robinson, Bradshaw & Hinson, P.A.*

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Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondent Oltrin Solutions, LLC

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(“Oltrin,” a joint venture between TriOlin LLC, a subsidiary of Olin Corporation, and Trinity Manufacturing, Inc.) entered into a transaction (the “Transaction”) with JCI Jones Chemicals, Inc. (“JCI”), 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, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT OLTRIN SOLUTIONS, LLC

1. Respondent Oltrin is a limited liability company with its headquarters address located at 11 E.V. Hogan Dr., Hamlet, North Carolina, 28345. Oltrin is jointly owned by Trinity Manufacturing, Inc. and TriOlin LLC, a subsidiary of Olin Corporation, and was formed in 2007. Oltrin purchases and resells all of the sodium hypochlorite (“bleach”) produced for external sales at the Trinity-operated plant in Hamlet, North Carolina.

II. RESPONDENT JCI JONES CHEMICALS, INC.

2. Respondent JCI is a privately-held, family-owned company headquartered at 1765 Ringling Blvd., Sarasota, Florida, 34236. JCI is one of the world’s leading manufacturers and distributors of water treatment chemicals and it produces bleach and other chemicals nationwide at eleven manufacturing plants. Prior to entering into a non-competition agreement with Respondent Oltrin in connection the Transaction, JCI was engaged in the manufacture and sale of bleach from its plant in Charlotte, North Carolina.

III. RESPONDENT OLIN CORPORATION

3. Respondent Olin Corporation (“Olin”) is a publicly-traded corporation incorporated in Virginia and headquartered at 190 Carondelet Plaza, Suite 1530, Clayton, Missouri, 63105. Olin produces a variety of chemicals and is the largest North American producer of bleach. Respondent Oltrin is a joint venture between TriOlin LLC, a subsidiary of Olin, and Trinity Manufacturing, Inc.

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IV. RESPONDENT TRINITY MANUFACTURING, INC.

4. Trinity Manufacturing, Inc. (“Trinity”) is a privately-owned marketer of bleach and other chemicals, headquartered at 11 E.V. Hogan Dr., Hamlet, North Carolina, 28345. Trinity operates a bleach plant in Hamlet, North Carolina. All of the bleach produced at the Hamlet plant is sold to Trinity and that portion intended for external sale is resold through Oltrin, which is a joint venture between Trinity and TriOlin LLC.

V. JURISDICTION

5. Respondents Oltrin, JCI, Olin, and Trinity are, and at all times relevant herein have been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

VI. THE TRANSACTION

6. In March 2010, Oltrin agreed to pay JCI \$5.5 million over four years for, among other things, a list of the bulk bleach customers to JCI’s Charlotte, North Carolina plant, and an agreement that JCI would not sell bulk bleach in North Carolina or South Carolina for six years.

VII. THE RELEVANT PRODUCT MARKET

7. For purposes of this Complaint, the relevant line of commerce within which to analyze the effects of the Transaction is the market for the bulk supply of bleach. “Bulk sales” of bleach typically consist of purchases delivered in quantities of at least 4,500 or 4,800 gallons.

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VIII. RELEVANT GEOGRAPHIC MARKET

8. For purposes of this Complaint, the relevant geographic market within which to analyze the effects of the Transaction is no broader than southern Virginia, North Carolina, and South Carolina, and potentially limited to North Carolina and South Carolina.

IX. MARKET STRUCTURE

9. The market for the bulk supply of bleach in the relevant geographic market is highly concentrated. Prior to the Transaction, Oltrin and JCI were direct competitors in the relevant market.

X. CONDITIONS OF ENTRY

10. Entry into the relevant market has not been, and would not be, timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Transaction. Producers in the relevant geographic market typically produce bleach utilizing a salt-to-bleach plant or by combining electrochemical units (“ECUs”) in a Powell unit. It takes three years or more and tens of millions of dollars to build a modern salt-to-bleach plant. Entry by building a plant, or installing a Powell unit at an existing plant, that produces bleach by combining ECUs is also unlikely because doing so requires that the producer handle chlorine, which subjects the handler to stringent security regulations. Finally, there has been no entry into the relevant geographic market since the date of the Transaction.

XI. EFFECTS OF THE TRANSACTION

11. The effects of the Transaction have been a substantial lessening of competition in the relevant market in 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. Specifically, the agreement has:

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- a. Eliminated actual, direct, and substantial competition between Oltrin and JCI in the relevant market;
- b. Substantially increased the level of concentration in the relevant market; and
- c. Increased Oltrin's ability to exercise market power unilaterally in the relevant market.

XII. VIOLATIONS CHARGED

12. The allegations contained in Paragraphs 1 through 11 above are hereby incorporated by reference as though fully set forth here.

13. The Transaction described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of March, 2013, issues its Complaint against said Respondents.

By the Commission, Commissioner Leibowitz not participating.

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The Federal Trade Commission ("Commission"), having initiated an investigation of the transaction between Respondent Oltrin Solutions, LLC ("Oltrin"), a joint venture formed by Respondent Trinity Manufacturing, Inc. ("Trinity") and a subsidiary of Respondent Olin Corporation ("Olin"), and Respondent JCI Jones Chemicals, Inc. ("JCI"), (Oltrin, JCI, Olin, and Trinity collectively, "Respondents") and Respondents having been furnished thereafter with a copy of a draft Complaint that the

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Bureau of Competition proposed to present to the Commission for its consideration and that, 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 draft 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 Oltrin Solutions, LLC is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 11 E.V. Hogan Drive, Hamlet, North Carolina 28345. Oltrin Solutions, LLC is jointly owned by Trinity Manufacturing, Inc. and TriOlin LLC, a subsidiary of Olin Corporation.
2. Respondent JCI Jones Chemicals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its

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headquarters address located at 1765 Ringling Blvd., Sarasota, Florida 34236.

3. Respondent Olin Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its headquarters address located at 190 Carondelet Plaza, Suite 1530, Clayton, Missouri 63105.
4. Respondent Trinity Manufacturing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 11 E.V. Hogan Drive, Hamlet, North Carolina 28345.
5. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. “Oltrin” means Oltrin Solutions, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Oltrin, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “JCI” means, JCI Jones Chemicals, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by JCI, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- C. “Olin” means Olin Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Oltrin, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Trinity” means Trinity Manufacturing, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Oltrin, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Commission” means the Federal Trade Commission.
- F. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), specifications(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, development, manufacture, marketing, distribution, or sale of Bleach.
- G. “Agreement to Contract Manufacture” means the agreement to manufacture, or to cause to be manufactured, Bleach on behalf of JCI. The Backup Supply Agreement included as part of Confidential Appendix A is an Agreement to Contract Manufacture.
- H. “Anticipated Volume” of a Bleach Contract means the amount of Bleach sales, in gallons, that is contained in the Oltrin 2012 Bleach Rolling Forecast prepared on September 6, 2012, as amended by Exhibit A to the Amendment to Asset Purchase Agreement.
- I. “Bleach” means sodium hypochlorite at a concentration level of no less than 10% by weight.

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- J. “Bleach Contract” means any contract, purchase order or customer commitment for the delivery of Bleach to commercial, industrial or governmental customers in North Carolina or South Carolina.
- K. “Closing Date” means the date on which Oltrin (or a Divestiture Trustee, if one is appointed) releases JCI from all provisions of the JCI Agreement that prevent JCI from competing in the sale of Bleach to commercial, industrial or governmental customers in North Carolina or South Carolina pursuant to this Order.
- L. “Contract Manufacture” means to manufacture, or to cause to be manufactured, Bleach for JCI.
- M. “Customer” means any commercial, industrial or governmental purchaser of Bleach in North Carolina or South Carolina.
- N. “Direct Cost” means a cost not to exceed the cost of labor, material, freight and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. The term “Direct Cost” excludes any allocation or absorption of excess or idle capacity.
- O. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- P. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- Q. “Interim Monitor” means any monitor appointed pursuant to Paragraph IV of this Order.
- R. “JCI Agreement” means all agreements entered into between Oltrin and JCI in March 2010 related to JCI’s bulk Bleach business, including, but not limited to, the

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March 18, 2010, Asset Purchase Agreement, the March 26, 2010, Noncompetition, Nondisclosure and Nonsolicitation Agreement, the March 26, 2010, Oltrin Bleach Purchasing Agreement, and the March 26, 2010, JCI Bleach Purchasing Agreement.

- S. “JCI Amended Agreement” means the JCI Agreement as amended pursuant to this Order, including, but not limited to the Amendment to Asset Purchase Agreement and the Backup Supply Agreement attached to this Order as Confidential Appendix A.
- T. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- U. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- V. “Third Party(ies)” means any Person other than the Respondents.
- W. “Transaction” means Oltrin’s acquisition of assets of JCI in March 2010.
- X. “Transaction Date” means March 26, 2010, the date Respondents consummated the Transaction.
- Y. The terms “and” and “or” have both conjunctive and disjunctive meanings.

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II.**IT IS FURTHER ORDERED** that:

- A. Not later than ten (10) days after the date the Commission accepts the Agreement Containing Consent Order for public comment, Respondent Oltrin shall release JCI from all provisions of the JCI Agreement that prevent JCI from competing in the sale of Bleach to Customers pursuant to, and in accordance with, the JCI Amended Agreement (which agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of JCI or to reduce any obligations of Respondent Oltrin under such agreements), which is incorporated by reference into this Order and made a part hereof;

provided, however, that if Oltrin has released JCI prior to the date the Order becomes final and effective, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the release was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of the release (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Respondent Oltrin shall secure all consents and waivers from Customers to effect the assignment of Bleach Contracts to JCI as follows:
1. Prior to the Closing Date, Respondent Oltrin shall secure all consents and waivers from sufficient Customers, acceptable to JCI, to effect the assignment to JCI of Bleach Contracts totaling at least one million gallons of Anticipated Volume of Bleach annually and to permit JCI to supply

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Bleach to those Customers for the remainder of each such Bleach Contract;

provided, however, that Respondent JCI shall cooperate with Oltrin and work in good faith to facilitate the assignment of the Bleach Contracts;

provided, further, that Respondent Oltrin may satisfy this requirement by certifying that Respondent JCI has executed sufficient agreements directly with Customers who previously had Bleach Contracts with Oltrin;

provided, further, that Respondent JCI shall commence delivery of Bleach to all such Customers no later than 30 days after it signs the Agreement Containing Consent Order.

2. No later than thirty (30) days after the Closing Date, Respondent Oltrin shall secure all consents and waivers from sufficient additional Customers, acceptable to JCI, to effect the assignment of Bleach Contracts, when combined with the Bleach Contracts assigned pursuant to Paragraph II.B.1. above, totaling at least two million gallons of Anticipated Volume of Bleach annually to JCI and to permit JCI to supply Bleach to those Customers for the remainder of such Bleach Contract;

provided, however, that Respondent JCI shall cooperate with Oltrin and work in good faith to facilitate the assignment of the Bleach Contracts;

provided, further, that Respondent Oltrin may satisfy this requirement by certifying that Respondent JCI has executed sufficient agreements directly with Customers who previously had Bleach Contracts with Oltrin;

provided, further, that Respondent JCI shall commence delivery of Bleach to each such

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customer by the later of 30 days after it signs the Agreement Containing Consent Order or 30 days after the customer executes its consent to the assignment.

3. Prior to the later of (a) one (1) year from the date the Bleach Contract is assigned to JCI, or (2) the expiration of the Bleach Contract, including any renewals or extensions, but in any case not to exceed three (3) years from the date the Bleach Contract is assigned to JCI, Oltrin shall not, directly or indirectly, solicit, induce, or persuade the Customer whose Bleach Contract was assigned to JCI, to stop buying from JCI. *Provided, however,* that nothing in this Order shall prevent Oltrin from responding to a request for bids or other invitation to provide Bleach from the Customer and bidding to supply or otherwise furnishing prices to supply Bleach to such Customer when such request or invitation is initiated by the Customer.

C. Respondent Oltrin shall:

1. Contract Manufacture and deliver to JCI, in a timely manner and under reasonable terms and conditions pursuant to the Agreement to Contract Manufacture, a supply of Bleach at Respondent Oltrin's Direct Cost, for a period of no more than six months;
2. make representations and warranties to JCI that the Bleach supplied through Contract Manufacture meets the specifications and quality for its intended use;
3. for the Bleach supplied by Oltrin, agree to indemnify, defend and hold JCI harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Bleach supplied by Oltrin to JCI to meet the relevant Limited Warranties set out in the

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Agreement to Contract Manufacture, as well as any related provisions, in the event that the Bleach manufactured by Oltrin and sold to JCI does not meet the Customer specifications. The Agreement to Contract Manufacture shall be consistent with the obligations assumed by Oltrin under this Order; provided, however, that Oltrin may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Oltrin's responsibilities to supply Bleach in the manner required by this Order; provided further, that this obligation shall not require Oltrin to be liable for any negligent act or omission of JCI or for any representations and warranties, express or implied, made by JCI that exceed the representations and warranties made by Oltrin to JCI.

4. Be responsible to JCI for any liabilities resulting from any Oltrin breach of its delivery obligations set forth in the Agreement to Contract Manufacture in accordance with that agreement and applicable law;
 5. during the term of the Agreement to Contract Manufacture, upon request of JCI or the Interim Monitor (if any has been appointed), make available to JCI and the Interim Monitor (if any has been appointed) all records that relate to the manufacture, storage, or transport of the Bleach supplied pursuant to the Agreement to Contract Manufacture that are generated or created after the Closing Date; and
 6. during the term of the Agreement to Contract Manufacture, maintain or cause to be maintained manufacturing facilities necessary to manufacture Bleach in North Carolina.
- D. Within thirty (30) days of the Closing Date, Respondents Oltrin and JCI shall jointly send to all

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Customers from whom Oltrin received a solicitation for a bid to supply Bleach since the Transaction Date, a notice in the form attached hereto as Appendix B indicating that JCI will be supplying Bleach in North Carolina and South Carolina and requesting that the Customer add JCI's contact information to any future solicitation of bids.

- E. No later than ninety (90) days after the Closing Date, JCI will produce Bleach at its Charlotte, North Carolina plant using the Powell bleach machine referred to in Section 10.08 of the March 18, 2010, Asset Purchase Agreement, or with a machine of comparable specification, for the purpose of supplying Customers.
- F. For three (3) years after the Closing Date Respondent Oltrin shall forward to Respondent JCI, within five (5) business dates of receipt by Oltrin, a copy of all written Customer solicitations for a bid on supply of Bleach in North Carolina or South Carolina, whether through written contract or purchase order. Respondent Oltrin shall send the copy of the solicitation to JCI's General Counsel, and shall transmit no information other than the materials received from the Customer.
- G. The purpose of the amendment to the JCI Agreement and the related obligations imposed on Oltrin by this Order is:
 - 1. to enable JCI to compete in the manufacture and sale of Bleach to commercial, industrial and governmental Customers in North Carolina and South Carolina; and
 - 2. to remedy in a timely and sufficient manner the lessening of competition resulting from the Transaction as alleged in the Commission's Complaint.

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III.

IT IS FURTHER ORDERED that Respondents Olin and Trinity shall take all steps necessary to ensure that Oltrin complies with the requirements of this Order and any failure by Oltrin to comply with the requirements of this Order shall be a violation by Olin and Trinity, individually and collectively.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent Oltrin signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondent Oltrin expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order and the JCI Amended Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Oltrin, which consent shall not be unreasonably withheld. If Respondent Oltrin has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Oltrin of the identity of any proposed Interim Monitor, Respondent Oltrin shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent Oltrin shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an Interim Monitor is appointed:

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1. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with the obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission;
2. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and
3. the Interim Monitor shall serve until, the later of:
 - a. the assignment of all the Bleach Contracts required to be assigned by the Order; and
 - b. the end of the Agreement to Contract Manufacture;

provided, however, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Order.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.

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- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent Oltrin, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent Oltrin, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondent Oltrin shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim 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 Interim Monitor.
- H. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents. Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations under the Order.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

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- J. The Commission may, among other things, require the Interim Monitor and each of the Interim 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 Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph IV.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.**IT IS FURTHER ORDERED** that:

- A. If Respondent Oltrin has not fully complied with the obligations of Paragraph II.A. or II.B. of this Order within the time provided by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to fulfill the obligations of those provisions of the Order in a manner that satisfies the requirements of this Order. 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, Respondent Oltrin shall consent to the appointment of a Divestiture Trustee in such action to accomplish the requirements of the Order. Neither the appointment of

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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 Respondent Oltrin to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondent Oltrin, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Oltrin 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 Respondent of the identity of any proposed Divestiture Trustee, Respondent Oltrin shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent Oltrin shall execute a trust 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 requirements of this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, 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 effectuate the requirements of Paragraphs II.A. and II.B. of this Order.

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2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the requirements of Paragraphs II.A. and II.B. of this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to accomplish the requirements of Paragraphs II.A. and II.B. of this Order or the Commission believes that the requirements of Paragraphs II.A. and II.B. of this Order can be achieved within a reasonable time, the period may be extended by the Commission; *provided, however, the Commission may extend the 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. Respondent Oltrin shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Oltrin shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in accomplishing the requirements of Paragraphs II.A. and II.B. of this Order caused by Respondents shall extend the time for divestiture under this Paragraph 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 efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to

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Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Oltrin, 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 Respondent Oltrin, 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 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 Respondent Oltrin, 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. Respondent Oltrin 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

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wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; provided, however, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) 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.
- E. 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.
- F. 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.

VI.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order is accepted for public comment, and every thirty (30)

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days thereafter until Respondent Oltrin has fully complied with Paragraphs II.A., II.B., II.C., and II.D. of this Order, Respondent Oltrin 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 this Order. Respondent Oltrin shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent Oltrin shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a full description of all efforts to assign Bleach Contracts, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- B. One (1) year after the date this Order becomes final, issued, annually for the next two (2) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent Oltrin shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.
- C. Within thirty (30) days after the date this Order is accepted for public comment, and every thirty (30) days thereafter until Respondent JCI has fully complied with Paragraph II.E. of this Order, Respondent JCI 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 this Order. Respondent JCI shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports,

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among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraph of the Order, including a full description of all efforts to produce Bleach in the manner described in Paragraph II.E of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. The JCI Amended Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondents Oltrin or JCI to comply with any term of the JCI Amended Agreement shall constitute a failure to comply with this Order.
- C. Respondents Oltrin and JCI shall include in the JCI Amended Agreement a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondent Oltrin's obligations to JCI pursuant to this Order.
- D. Respondent Oltrin shall not modify or amend any of the terms of the JCI Amended Agreement or the JCI Agreement without the prior approval of the Commission.

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IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to a Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, the Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on March 7, 2023.

By the Commission, Commissioner Leibowitz not participating.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Oltrin Solutions, LLC (“Oltrin”) and JCI Jones Chemicals, Inc. (“JCI”). Oltrin is a joint venture between Olin Corporation (“Olin”) and Trinity Manufacturing, Inc. (“Trinity”). The purpose of the Consent Agreement is to remedy the anticompetitive effects stemming from a March, 2010 transaction (the “Transaction”) in which Oltrin (1) acquired from JCI, among other things, a list of its bulk sodium hypochlorite (“bleach”) customers from its plant in Charlotte, North Carolina and (2) entered into a non-compete agreement that prohibited JCI from selling bulk bleach in North Carolina and South Carolina for six years. Under the terms of the proposed Consent Agreement, Oltrin is required to release JCI from the non-compete agreement, transfer a minimum volume of bleach contracts to JCI, and provide a short-term backup supply agreement in order to facilitate JCI’s reentry into the market.

At the time of the Transaction in March of 2010, Oltrin and JCI produced and sold bulk bleach to municipal water departments and industrial customers in southern Virginia, North Carolina, and South Carolina. The Commission’s Complaint alleges that the Transaction violated 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, by eliminating actual, direct, and substantial competition between Oltrin and JCI in a market no broader than the bulk supply of bleach in southern Virginia, North Carolina, and South Carolina, and potentially limited to North Carolina and South Carolina.

The proposed Consent Agreement has been placed on the public record for thirty days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the Consent Agreement again and any comments received, and decide whether to withdraw from the proposed Consent

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Agreement, modify it, or make final the accompanying Decision and Order.

II. The Respondents

Respondent Oltrin is a limited liability company with its headquarters address located at 11 E.V. Hogan Dr., Hamlet, North Carolina, 28345. Oltrin is jointly owned by Trinity and TriOlin LLC, a subsidiary of Olin, and was formed in 2007. Oltrin purchases and resells all of the bleach produced for external sales at the Trinity-operated plant in Hamlet, North Carolina.

Respondent JCI is a privately-held, family-owned company headquartered at 1765 Ringling Blvd., Sarasota, Florida, 34236. JCI is one of the world's leading manufacturers and distributors of water treatment chemicals and it produces bleach and other chemicals nationwide at eleven manufacturing plants. Prior to entering into the Transaction, JCI was engaged in the manufacture and sale of bleach from its plant in Charlotte, North Carolina.

Respondent Olin is a publicly-traded corporation incorporated in Virginia and headquartered at 190 Carondelet Plaza, Suite 1530, Clayton, Missouri, 63105. Olin produces a variety of chemicals and is the largest North American producer of bleach.

Trinity is a privately-owned marketer of bleach and other chemicals, headquartered at 11 E.V. Hogan Dr., Hamlet, North Carolina, 28345. Trinity operates a bleach plant in Hamlet, North Carolina. All of the bleach produced at the Hamlet plant is sold to Trinity and that portion intended for external sale is resold through Oltrin.

III. The Relevant Market and Market Structure

The relevant market within which to analyze the competitive effects of the Transaction is no broader than the sale of bulk bleach in southern Virginia, North Carolina, and South Carolina, and potentially limited to North Carolina and South Carolina. Bulk bleach is primarily used by municipal and industrial customers to disinfect water. Although there are other methods of disinfecting water – including ozone, ultraviolet light, and

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chlorine gas – customers are unlikely to switch to these alternatives once they have installed the infrastructure to disinfect water with bleach. “Bulk sales” of bleach typically consist of purchases delivered in quantities of 4,500 to 4,800 gallons.

The geographic market for bleach is limited by the expense of transporting it, which when shipped by truck is generally a maximum distance of approximately 250 to 300 miles from the point of production. At the time of the Transaction, Oltrin was the largest, and JCI was Oltrin’s next-largest, competitor in the relevant market.

IV. Entry

Entry is not likely to deter or counteract the anticompetitive effects of the Transaction. Producing bleach with a modern salt-to-bleach plant requires time-consuming and capital-intensive investment. Alternatively, producing bleach by combining electrochemical units (“ECUs”) requires that the producer handle chlorine. Chlorine is a hazardous substance and handling it subjects the producer to stringent security regulations. There has been no entry in the relevant market since the date of the Transaction.

V. Effects of the Transaction

Absent the proposed Consent Agreement, the Transaction would result in further and ongoing competitive harm in the southern Virginia, North Carolina, and South Carolina bulk bleach market. Prior to the Transaction, Oltrin bid on bleach contracts, either directly or through a distributor, against JCI on multiple occasions. As a result, the Transaction eliminated actual, direct, and substantial competition between Oltrin and JCI for the sale of bulk bleach in the relevant geographic market.

VI. The Consent Agreement

The proposed Consent Agreement remedies the alleged violation by requiring Oltrin to release JCI from the agreement not to compete for the sale of bulk bleach in North and South Carolina. Having formerly produced bleach at its Charlotte, North Carolina plant, JCI has demonstrated that it is capable of

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competing with Oltrin. Today, just as before, JCI is well-positioned to restore the competition that was lost when it entered into the Transaction with Oltrin.

The proposed Consent Agreement also contains several provisions designed to ensure that the remedy is successful. First, Oltrin will transfer to JCI customer contracts totaling approximately two million gallons worth of bleach volume. Second, Oltrin will enter into a six month backup bleach supply agreement with JCI, so that JCI can continue to supply its bleach customers if JCI encounters any unexpected production interruptions. Third, Oltrin and JCI must notify the Commission in advance of any future Transactions. Finally, Oltrin must notify any customers which requested a bid since the Transaction occurred (1) that JCI will be supplying bleach in North Carolina and South Carolina and (2) requesting that the customer add JCI's contact information to any future solicitation of bids.

If, after the public comment period, the Commission determines that the Consent Agreement will not restore competition to the relevant market, then the Consent Agreement will be withdrawn. The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF

**EPIC MARKETPLACE, INC. AND
EPIC MEDIA GROUP, LLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4389; File No. 112 3182
Complaint, March 13, 2013 – Decision, March 13, 2013*

This consent order addresses allegations of deceptive business practices by respondents Epic Media Group, LLC and its wholly-owned subsidiary, Epic Marketplace, Inc. (collectively “Epic”). As part of its business, Epic engages in online behavioral advertising, which is the practice of tracking a consumer’s online activities in order to deliver advertising targeted to the consumer’s interests. The Commission’s complaint alleges that Epic failed to disclose to consumers in its privacy policy that it engaged in “history sniffing,” a practice that examines a user’s browsing history without using cookies. Though Epic claimed it would collect only information about consumers’ visits to sites in its network, the complaint alleges that Epic used history sniffing to secretly gather data from millions of consumers about their interests in sensitive medical and financial issues ranging from fertility and incontinence to debt relief and personal bankruptcy. Under the order, respondents are required to destroy all information collected using history sniffing. Respondents are also prohibited from engaging in history sniffing or from using any information obtained by history sniffing for the next 20 years. Further, respondents are prohibited from misrepresenting to consumers their privacy practices or the extent to which software code is used to determine whether a user has previously visited a webpage.

Participants

For the *Commission*: *Kristen Anderson, Katherine White, and Jonathan Zimmerman.*

For the *Respondents*: *Charulata B. Pagar, VLP Law Group LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Epic Marketplace, Inc., a corporation, and Epic Media Group, LLC, a corporation, have violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges: