

Interlocutory Orders, Etc,

IN THE MATTER OF

PEPSICO, INC.

Docket No. C-4301. Order, February 18, 2021

Letter Order approving respondent's motion to extend the term of the Monitor's agreement for an additional two years.

LETTER APPROVING THE THIRD AMENDMENT TO THE MONITOR'S AGREEMENT

Megan H. Hurley, Esq.
Senior Vice President and General Counsel
PepsiCo Beverages North America

Eric A. Croson
Ann Arbor, Michigan 48108

Re: *In the Matter of PepsiCo, Inc.*, Docket No. C-4301

Dear Ms. Hurley and Mr. Croson:

This letter serves to approve the Third Amendment to the Monitor's agreement submitted to the Commission on January 14, 2021. The Amendment extends the term of the Monitor's agreement for an additional two years.

By direction of the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

**ALTRIA GROUP, INC.,
AND
JUUL LABS, INC.***Docket No. 9393. Order, February 22, 2021*

Order denying respondent's motion for a further, 90-day continuance, citing continuing health concerns engendered by the pandemic.

ORDER GRANTING CONTINUANCE

This proceeding involves the Commission's challenge to a series of agreements, along with the resulting partial purchase transaction, between Altria Group, Inc. ("Altria") and Juul Labs, Inc. ("JLI"), collectively "Respondents." Through those agreements and the transaction, Altria allegedly ceased to compete in the United States market for closed-system electronic cigarettes in return for a substantial ownership interest in JLI. Following a series of continuances ordered by the Commission in recognition of the dangers posed by the COVID-19 pandemic, the evidentiary hearing in this proceeding is scheduled to begin on April 13, 2021.¹

Respondents have now moved for a further, 90-day continuance, citing continuing health concerns engendered by the pandemic. Motion to Reschedule the Evidentiary Hearing Due to the Ongoing Pandemic (Jan. 15, 2021) ("Respondents' Motion" or "Respondents' Motion to Reschedule the Evidentiary Hearing"). Complaint Counsel oppose Respondents' Motion.

The FTC's Rules of Practice authorize the Commission to order a later hearing date in an adjudicative proceeding "upon a showing of good cause." 16 C.F.R. § 3.41(b); *see also* 16 C.F.R. § 3.21(c)(1). As discussed below, we conclude that the evidentiary hearing in this proceeding may be safely and fairly conducted electronically, without posing health risks or prejudicing any party. However, due to conflicts posed to the current hearing schedule by the timing of another evidentiary hearing, scheduled to commence on April 20, 2021, we have determined that there is good cause to defer commencement of the evidentiary hearing in this proceeding until June 2, 2021.

Respondents argue that retaining the April 13 date and holding an in-person hearing "would create a non-trivial risk of COVID-19 infection for the Chief ALJ, the witnesses, Complaint Counsel, Respondents' counsel, and their support teams—many of whom are unlikely to be vaccinated by April." Respondents' Motion at 2. We share Respondent's concern for the health of participants and support staff involved with our adjudicative proceedings. Indeed, our initial response to the COVID-19 pandemic was to issue a series of short stays of this and other

¹ *Altria Group, Inc.*, Docket No. 9393, Third Order regarding Scheduling in Light of Public Health Emergency (June 3, 2020), https://www.ftc.gov/system/files/documents/cases/d09393_commission_third_order_regarding_scheduling_in_light_of_public_health_emergency.pdf ("Third Stay Order").