of any remedial order and should not change hemophilia medications within fifty days?

(c) If patients need to travel to and schedule appointments at HTCs, is the sixty day grace period sufficient?

(d) If all patients currently using Novoeight need to begin seeking alternative treatments at the same time, is the availability of medical professionals qualified to treat hemophilia A sufficient to meet that spike in demand such that all patients can find alternative treatments within a sixty day time frame?

(e) If the Commission were to limit a remedy so that patients who cannot find an alternative medicine within sixty days (or other time period), despite reasonable efforts, can continue to obtain Novoeight, how could the Commission do so without placing any or only a minimal burden on patients or medical professionals and still guarantee access to Novoeight by those patients? Could such a limit on the remedy be crafted so that the parties, Customs and Border Protection (''CBP''), U.S. distributors and vendors, doctors, and patients can maintain reliable supplies of Novoeight for patients in need?

(9) If the Commission were to tailor any remedial order to allow current users to continue to reliably obtain Novoeight, how could the Commission draft such an exception? Could such an exception be crafted so that the parties, CBP, U.S. distributors and vendors, the appropriate decisionmakers, doctors or other prescribers, and patients can maintain reliable supplies of Novoeight for patients in need while providing no or only a minimal burden on medical professionals and patients?

(10) If the Commission were to issue a remedial order, to what extent should the Commission craft the remedy so that individuals who are seeking treatment for hemophilia A for the first time and for whom relevant alternative medications are not suitable could access Novoeight? For example,

(a) If such modification is appropriate, how could it be accomplished?

(b) What standards should a physician or other decisionmaker use to determine whether such medicines are suitable for the patient?

(c) Could such a limit on the remedy be crafted so that the parties, CBP, U.S. distributors and vendors, the appropriate decisionmakers, doctors or other prescribers, and patients can maintain reliable supplies of Novoeight for patients in need while providing no or only a minimal burden on medical professionals and patients?

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is, therefore, interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions responding to the above question regarding anticipation under 35 U.S.C. 102(g) of the asserted claims of the '061 patent. Parties to the investigation, interested government agencies, and the public are encouraged to file written submissions on the issues of remedy, the public interest, and bonding; and such submissions should address the recommended determination by the ALJ on remedy, public interest, and bonding, and the questions posed above. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants and OUII are also requested to state the date that the subject patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on August 19, 2016. Reply submissions must be filed no later than the close of business on August 26, 2016. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–956'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 29, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–18464 Filed 8–3–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Anheuser-Busch InBev SA/NV et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Anheuser Busch InBev SA/NV et al.,* Civil Action No. 1:16–cv–01483. On July 20, 2016, the United States filed a

Complaint alleging that the proposed acquisition by Anheuser-Busch InBev SA/NV (''ABI'') of SABMiller plc (''SABMiller'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the divestiture of SABMiller's equity and ownership stake in MillerCoors LLC, which is the joint venture through which SABMiller conducts substantially all of its operations in the United States, and SABMiller's world-wide rights to Miller-branded beers. ABI must also offer the acquirer of the divested assets perpetual, fully paid-up, royalty-free licenses to permit the acquirer to manufacture, import, distribute, market, and sell certain SABMiller-owned beers in the United States. The proposed Final Judgment also requires ABI to undertake certain actions and refrain from certain conduct for the purposes of remedying the potential loss of competition alleged in the Complaint.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter Mucchetti, Chief, Litigation I, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–353–4211).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *ANHEUSER-BUSCH InBEV SA/NV, Brouwerijplein, 1, 3000 Leuven, Belgium,* and *SABMILLER plc, SABMiller House, Church Street West, Woking, Surry, GU21 6HS, United Kingdom,* Defendants.

CASE NO.: 1:16–cv–01483
JUDGE: Emmet G. Sullivan
FILED: 07/20/2016

Complaint

1. The United States of America brings this civil antitrust action to enjoin Anheuser-Busch InBev SA/NV (''ABI'') from acquiring SABMiller plc (''SABMiller''). The United States alleges as follows:

I. Nature of the Action

2. On November 11, 2015, ABI agreed to acquire SABMiller in a transaction valued at $107 billion.

3. ABI is the largest brewing company both in the United States and worldwide. In the United States, ABI accounts for approximately 47% of all beer sales.[1]

4. SABMiller is the second-largest global brewing company. In the United States, SABMiller owns 58% of MillerCoors LLC (''MillerCoors''), which is a joint venture between SABMiller and Molson Coors Brewing Company (''Molson Coors''). In the United States, MillerCoors is the second-largest brewing company, accounting for 25% of all beer sales, and is ABI's largest competitor.

5. ABI and MillerCoors are the two largest brewers in local beer markets throughout the United States and have combined market shares that range from 37% to 94% of beer sales in 58 Metropolitan Statistical Areas (''MSA'') in the United States.[2] In more than 15 of these MSAs, ABI and MillerCoors jointly account for 70% or more of beer sales.

6. ABI's proposed acquisition of SABMiller would give ABI a majority ownership interest in and 50% governance rights over MillerCoors. Consequently, this transaction would eliminate head-to-head competition between the two largest brewers in the United States—ABI and MillerCoors—both nationally and in every local market in the United States. This reduction in competition would likely result in increased beer prices and fewer choices for beer consumers across the United States.

7. This transaction threatens other likely anticompetitive effects. ABI's proposed acquisition of SABMiller would increase ABI's incentive and ability to disadvantage its remaining rivals by limiting or impeding the distribution of their beers, thereby restricting their ability to serve the millions of Americans who spend over $100 billion on beer every year. These exclusionary effects would fall especially on brewers and consumers of high-end beers that have served as an important constraint on ABI's ability to raise the price of its beers, and thus would allow ABI to charge consumers higher prices for its beers.

8. ABI, as the largest U.S. brewer, uses a variety of practices and contractual provisions to promote exclusivity from distributors that sell ABI beer. Among other things, ABI has established financial incentive programs that reward distributors based on the percentage of ABI beer that a distributor sells as compared to the beer of ABI competitors. Moreover, ABI insists on contractual terms that limit a distributor's ability to promote and sell a competitor's beer. If permitted to acquire SABMiller, ABI would be able to expand these practices in its current distribution channel and to pursue a similar strategy with distributors that currently sell the beers of MillerCoors and third-party rivals. Consequently, ABI's acquisition of a controlling interest in MillerCoors via its acquisition of SABMiller would likely harm competition by undermining the ability of its remaining rivals to compete with ABI, leading to higher prices, fewer choices, and less innovative products for U.S. beer consumers.

9. For these reasons, ABI's proposed acquisition of SABMiller violates Section 7 of the Clayton Act, 15 U.S.C. 18, and should be permanently enjoined.

II. Jurisdiction, Venue, and Interstate Commerce

10. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants ABI and SABMiller from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. ABI and SABMiller produce and sell beer in the flow of interstate commerce and their production and sale of beer substantially affect interstate commerce. ABI and SABMiller have each consented to personal jurisdiction and venue in this judicial district for purposes of this action. Venue is proper for ABI, a Belgium corporation, and SABMiller, a United Kingdom corporation, in this judicial district

[1] National market shares are based on dollar-sales data from IRI, a market research firm, whose data are commonly used by industry participants. The national market shares reflect only off-premise sales. ABI accounts for approximately 35% of dollar sales of beer made only through grocery stores.

[2] The MSAs are defined by IRI. These 58 MSAs represent every MSA in the United States for which reliable data are available at the MSA level. MSA-level data reflect dollar sales of beer only through grocery stores.

under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

III. The Defendants and the United States Beer Industry

A. The Defendants

12. ABI is a corporation organized and existing under the laws of Belgium, with its headquarters in Leuven, Belgium. ABI owns and operates 19 breweries in the United States. ABI owns more than 40 major beer brands sold in the United States, including Bud Light—the top-selling beer brand in the United States—and other popular beer brands, such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Shock Top, Goose Island, and Beck's.

13. SABMiller is a corporation organized and existing under the laws of the United Kingdom, with its headquarters in London, England. SABMiller operates in the United States through its 58% ownership interest in the MillerCoors joint venture.

14. MillerCoors is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. Under MillerCoors' corporate governance structure, SABMiller and Molson Coors, through their designated representatives, have an equal right to govern MillerCoors. MillerCoors owns and operates 12 breweries in the United States. MillerCoors has the sole right to produce and sell in the United States more than 40 major brands of beer, including Coors Light and Miller Lite—the second- and fourth-highest selling beer brands in the United States. MillerCoors also has the right to produce and sell in the United States other popular beer brands, such as Miller Genuine Draft, Coors Banquet, and Blue Moon. In addition, MillerCoors has the exclusive right to import into and sell in the United States certain beer brands owned by SABMiller, including Peroni, Grolsch, and Pilsner Urquell.

B. Beer Segments in the United States

15. Beers sold in the United States are segmented based on price and quality. Beers in the United States can generally be grouped into three segments: Sub-premium, premium, and high-end. A large majority of the beers sold by ABI and MillerCoors in the United States fall into the premium and sub-premium beer segments.

16. The sub-premium segment, also referred to as the value segment, generally consists of lager beers, such as Natural and Keystone branded beer, and some ales and malt liquor. Sub-premium beers are priced lower than premium beers and are generally perceived as being of lower quality than premium beers.

17. The premium segment generally consists of medium-priced American lager beers, such as ABI's Budweiser, and the Miller and Coors brand families, including the ''light'' varieties.[3]

18. The sub-premium and premium segments accounted for 69% of all beer sold in the United States in 2015.

19. The high-end segment generally consists of craft beers, which are often produced in small-scale breweries, and imported beers. High-end beers sell at a wide variety of prices, most of which are higher than the prices for premium beers. Examples of high-end craft beers include Dogfish Head, Flying Dog, and Sam Adams. Examples of high-end imports include Corona, Stella Artois, and Peroni.

20. High-end beers account for a much smaller portion of the beer sold by ABI and MillerCoors in the United States than premium and sub-premium beer. However, over the last five years, the high-end beer segment's market share in the United States has increased from 21% to 31%, while the market share of the premium and sub-premium segments has decreased from 79% to 69%.

21. Historically, ABI has employed a ''price leadership'' strategy whereby ABI, as the largest U.S. brewer, seeks to establish industry-wide price increases by being the first brewer to announce its prices for the upcoming year. In most local markets, ABI is the market share leader and issues its price announcement first, purposely making its price increases transparent to the market so its competitors will follow its lead. These price increases vary by region, but typically cover a broad range of beer brands and packages.

22. For many years, MillerCoors has followed ABI's price increases to a significant degree.

23. Brewers with a broad portfolio of beer brands, such as ABI and MillerCoors, seek to maintain ''price gaps'' between each beer segment to minimize competition across segments. As ABI has continued to raise premium prices, it is increasingly concerned about the threat of high-end brands constraining its ability to lead future price increases. As the prices of premium brands approach the prices of high-end brands, consumers are increasingly willing to trade up from one category of brands to another. Consequently, competition in the high-end beer segment serves as an important constraint on the ability of ABI and MillerCoors to raise—either unilaterally or through coordination—beer prices in the United States.

C. Beer Distribution in the United States

24. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those retailers are primarily grocery stores, large retailers (such as Target and Walmart), convenience stores, liquor stores, restaurants, and bars. Retailers, in turn, sell beer to consumers. Beers brewed in foreign countries are typically sold to an importer that resells the beer to distributors.

25. Distributors owned by ABI currently distribute about 9% of ABI's beer in the United States. These distributors typically distribute only brands that are owned by or affiliated with ABI. To the extent that ABI-owned distributors sell beer brands that are not owned by or affiliated with ABI, those brands tend to be local craft beers with limited sales and high operating costs.

26. Almost all of the remaining volume of ABI's beer is sold by distributors who sell large volumes of ABI beer, including the Budweiser and Bud Light brands of beer, but are not owned by ABI (''ABI-Affiliated Wholesalers''). ABI beer brands account for approximately 90% by volume, on average, of the beer sold by ABI-Affiliated Wholesalers. ABI-Affiliated Wholesalers often also distribute high-end beers that compete with ABI's beers, such as Heineken or Sam Adams.

27. ABI exerts considerable influence over ABI-Affiliated Wholesalers, in part by requiring that these distributors enter into a Wholesaler Equity Agreement (''Equity Agreement'') with ABI. The Equity Agreement contains a number of provisions that are designed to encourage ABI-Affiliated Wholesalers to sell and promote ABI's beer brands instead of the beer brands of ABI's competitors.

28. For example, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from requesting that a bar replace an ABI tap handle with a competitor's tap handle or that a retailer replace ABI shelf space with a competitor's beer. Further, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from compensating its salespeople for their sales of competing beer brands (such as a dollar-per-case incentive) unless it provides the same

[3] ABI also identifies a ''premium plus'' segment that consists largely of American beers that are priced somewhat higher than Budweiser and Bud Light. Examples of beers that ABI identifies as ''premium plus'' beers include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita, and Michelob Ultra.

incentives for sales of certain ABI beer brands.

29. ABI also provides payments to ABI-Affiliated Wholesalers based on their ABI ''alignment,'' that is, the amount of ABI beer that they sell relative to the beer of ABI competitors. For example, under a program known as the Voluntary Anheuser-Busch Incentive for Performance Program, ABI offers ABI-Affiliated Wholesalers that are 90% or more ''aligned'' a payment for each case-equivalent of ABI beer they sell. The size of the payment increases based on the ABI-Affiliated Wholesaler's level of alignment. Only the sales of very small, local craft beers are excluded from the calculation of an ABI-Affiliated Wholesaler's level of alignment.

IV. The Relevant Market

A. Relevant Product Market

30. Beer is a relevant product market and line of commerce under Section 7 of the Clayton Act. Beer is usually made from a malted cereal grain, flavored with hops, and brewed via a fermentation process. Beer's taste, alcohol content, image, price, and other factors make it substantially different from other alcoholic beverages.

31. Other alcoholic beverages, such as wine and distilled spirits, are not sufficiently substitutable to discipline a small but significant and non-transitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

B. Relevant Geographic Market

32. ABI and MillerCoors are the two largest brewers in local markets throughout the United States. Appendix A lists the 58 MSAs in the United States for which reliable data on beer sales are available. These and the other MSAs in the United States are relevant geographic markets for antitrust purposes. These local markets currently benefit from head-to-head competition between ABI and MillerCoors, and in each local market the proposed acquisition would likely substantially lessen competition.

33. The relevant geographic markets for analyzing the effects of the proposed acquisition are best defined by the locations of the customers who purchase beer, rather than by the locations of breweries.

34. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and local brand strength. Thus, the price for a brand of beer can vary by local market.

35. Brewers are able to price differently in different locations, in part because arbitrage across local markets is unlikely to occur. Consumers buy beer near their homes and typically do not travel to other areas to buy beer when prices rise. Also, distributors' contracts with brewers and importers contain territorial limits and prohibit distributors from reselling beer outside their territories. In addition, each state has different laws and regulations regarding beer distribution and sales that would make arbitrage unfeasible.

36. A hypothetical monopolist of beer sold in each MSA in the United States would likely increase its prices in that local market by at least a small but significant and non-transitory amount. Therefore, these areas are relevant geographic markets and ''sections of the country'' within the meaning of Section 7 of the Clayton Act.

37. Competition also exists among brewers on a national level, which affects local markets throughout the United States. Decisions about beer brewing, marketing, and brand building typically take place on a national level. In addition, a significant portion of beer advertising is placed on national television, and brewers commonly compete for national retail accounts. General pricing strategy also typically originates at a national level.

38. A hypothetical monopolist of beer sold in the United States would likely increase its prices by at least a small but significant and non-transitory amount. Accordingly, the United States is a relevant geographic market under Section 7 of the Clayton Act.

V. ABI's Acquisition of SABMiller Is Likely To Result in Anticompetitive Effects

A. The Relevant Markets Are Highly Concentrated and the Proposed Acquisition Is Presumptively Illegal

39. The relevant beer markets are highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. ABI and MillerCoors jointly account for approximately 72% of the national beer market. In every local market for which reliable data are available, ABI and MillerCoors have a combined market share that ranges from 37% to 94%. Indeed, in 18 MSAs, ABI and MillerCoors have a combined market share of 70% or greater. *See* Appendix A.

40. Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

41. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (or ''HHI,'' defined and explained in Appendix B). Markets in which the HHI is in excess of 2,500 points are considered highly concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* ¶ 5.3 (revised Aug. 19, 2010) (''*Merger Guidelines*''), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.*

42. The beer industry in the United States is highly concentrated and would become even more concentrated as a result of ABI's proposed acquisition of SABMiller. Market share estimates demonstrate that nationally, and in all but three local geographic markets identified in Appendix A, the post-acquisition HHI would exceed 2,500 points. In one local market (the Wichita, Kansas MSA), the post-acquisition HHI would be more than 8,900. Moreover, the HHI would increase in every relevant geographic market by at least 680 points. Based on the resulting HHI measures of concentration, and the increase in concentration that would result from the transaction, ABI's proposed acquisition of SABMiller is presumptively anticompetitive. *See Merger Guidelines* ¶ 5.3.

B. ABI's Acquisition of SABMiller Would Eliminate Head-to-Head Competition Between ABI and MillerCoors

43. Today, ABI and MillerCoors compete directly against each other both nationally and in every local market in the United States.

44. ABI's proposed acquisition of SABMiller would give ABI a majority ownership interest in and 50% governance rights over MillerCoors and thereby eliminate competition between the two largest beer brewers in the United States. Thus, ABI's acquisition of SABMiller would likely substantially lessen competition both nationally and in every local market in the United States, and therefore violate Section 7 of the Clayton Act.

C. ABI's Acquisition of SABMiller Would Increase ABI's Incentive and Ability to Disadvantage High-End Rivals by Limiting Their Distribution

45. ABI's proposed acquisition of SABMiller would also harm competition by increasing ABI's incentive and ability to engage in anticompetitive conduct that limits and impedes the distribution of its high-end rivals' beer. With the elimination of MillerCoors as a competitive constraint, ABI's high-end rivals would become a more important constraint on ABI's ability to raise beer prices.

46. ABI currently encourages ABI-Affiliated Wholesalers to limit their sales of the beers of ABI's high-end rivals through the Equity Agreement and ABI's incentive programs. Consequently, the beers of ABI's competitors account for only a small percentage of the sales of many ABI-Affiliated Wholesalers. ABI has also purchased distributors in states in which those purchases are legal, allowing ABI directly to limit sales of ABI's high-end rivals.

47. After the proposed acquisition, ABI would have a greater incentive and ability to invest resources in distributor acquisitions and to use practices that restrict its rivals' access to distribution. With control over the MillerCoors brands, ABI could encourage the distributors of both ABI brands and MillerCoors brands to limit their sales of high-end rivals' beer, which would likely result in increased beer prices and fewer choices for consumers.

VI. Absence of Countervailing Factors

48. New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the acquisition's likely anticompetitive effects. Barriers to entry and expansion within each relevant market include: (i) The substantial time and expense required to build a brand's reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer products in retail outlets; (iii) the time and cost of building new breweries and other facilities; and (iv) the difficulty of developing an effective network of beer distributors with incentives to promote and expand a new entrant's sales.

49. The anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies the proposed acquisition may achieve.

VII. Violation Alleged

50. The United States hereby incorporates the allegations of paragraphs 1 through 49 above as if set forth fully herein.

51. The proposed transaction would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following anticompetitive effects, among others:

(a) Head-to-head competition between ABI and MillerCoors for beer sales in the relevant geographic markets would be eliminated or substantially lessened; and

(b) competition generally in the relevant geographic markets for beer would be substantially lessened.

Requested Relief

The United States requests:

1. That the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

2. That Defendants be permanently enjoined and restrained from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan by which ABI would acquire, be acquired by, or merge with SABMiller or MillerCoors;

3. That the United States be awarded costs in this action; and

4. That the United States have such other relief as the Court may deem just and proper.

Dated: July 20, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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Attorneys for the United States
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Appendix A

RELEVANT GEOGRAPHIC MARKETS AND CONCENTRATION DATA

Metropolitan statistical area	Combined share (%)	Post-acquisition HHI	HHI increase
Wichita, KS	94	8904	4431
Tulsa, OK	90	8094	3477
Green Bay, WI	87	7551	3761
Oklahoma City, OK	83	6985	3013
Peoria/Springfield	80	6465	3148
St. Louis, MO	79	6268	2343
Milwaukee, WI	78	6105	2303
Salt Lake City, UT	77	6081	2828
Denver, CO	76	5916	2903
Omaha, NE	76	5796	2643
Louisville, KY	76	5791	2774
Des Moines, IA	75	5694	2614
New Orleans/Mobile	75	5646	2593
Minneapolis/St Paul	72	5506	2478
Indianapolis, IN	72	5296	2605
Roanoke, VA	72	5205	2454
Birmingham/Montgom	71	5115	2303

RELEVANT GEOGRAPHIC MARKETS AND CONCENTRATION DATA—Continued

Metropolitan statistical area	Combined share (%)	Post-acquisition HHI	HHI increase
Kansas City, KS	70	5027	2328
Memphis, TN	69	4909	2085
Cincinnati/Dayton	69	4841	2350
Tampa/St Petersburg	69	4832	2091
Knoxville	68	4763	2237
Spokane, WA	68	4760	2316
Toledo	68	4699	2163
Charlotte, NC	67	4626	2200
Phoenix/Tucson	66	4624	2147
Houston, TX	66	4594	1910
Richmond/Norfolk	67	4580	2168
Jacksonville, FL	66	4513	1805
Dallas/Ft. Worth	65	4474	2113
Raleigh/Greensboro	66	4427	2018
Orlando, FL	65	4416	1898
Grand Rapids, MI	65	4326	2053
Las Vegas	63	4221	1948
Chicago, IL	63	4157	1838
Nashville, TN	64	4155	1958
Boise, ID	63	4150	1923
Detroit, MI	62	3995	1891
Columbus, OH	59	3611	1722
Cleveland, OH	59	3568	1722
Hartford/Springfield	57	3552	1442
Albany, NY	57	3528	1640
Miami/Ft Lauderdale	53	3367	1274
Los Angeles, CA	49	3261	1166
Atlanta, GA	55	3241	1506
New York	53	3190	1319
Syracuse, NY	54	3179	1400
Portland, OR	54	3042	1382
Seattle/Tacoma	51	2878	1323
Boston, MA	50	2836	1169
Buffalo/Rochester	50	2773	1207
Sacramento, CA	48	2715	1174
San Diego, CA	47	2594	1085
Harrisburg/Scranton	49	2582	1172
Baltimore/Washington	48	2513	1124
San Fran/Oakland	41	2251	820
Pittsburgh, PA	42	1960	835
Philadelphia, PA	37	1556	683

Appendix B

Definition of the Herfindahl–Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is in excess of 2,500 are considered to be highly concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* ¶ 5.3 (revised Aug. 19, 2010), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.* Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Anheuser-Busch InBEV SA/NV, and SABMILLER plc, Defendants.

CASE NO.: 1:16–cv–01483

JUDGE: Emmet G. Sullivan

FILED: 07/20/2016

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b), Plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment submitted on July 20, 2016, for entry in this civil antitrust proceeding.[1]

I. Nature and Purpose of the Proceeding

On November 11, 2015, Defendant Anheuser-Busch InBev SA/NV (''ABI'') agreed to acquire Defendant SABMiller plc (''SABMiller'') in a transaction valued at $107 billion. The United States filed a civil antitrust Complaint against ABI and SABMiller (collectively, ''Defendants'') on July 20, 2016, seeking

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the proposed Final Judgment.

to enjoin the proposed acquisition. The Complaint alleges that this proposed transaction will likely lessen competition substantially in the U.S. beer industry—an industry in which millions of U.S. consumers spend over $100 billion per year—in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Specifically, the Complaint alleges that this proposed transaction will reduce competition by eliminating head-to-head competition between the two largest beer brewers in the United States—ABI and MillerCoors LLC (''MillerCoors'')—both nationally and in every local market in the United States. The Complaint also alleges that the elimination of competition between ABI and MillerCoors will increase ABI's incentive and ability to disadvantage its remaining rivals—in particular, brewers of high-end beers that serve as an important constraint on ABI's ability to raise its beer prices—by limiting or impeding the distribution of their beers. As detailed in the Complaint, these anticompetitive effects likely would result in higher beer prices and fewer choices for U.S. beer consumers.

Simultaneously with the filing of the Complaint, the United States filed a Hold Separate Stipulation and Order (''Hold Separate Stipulation and Order'') and a proposed Final Judgment, which seek to prevent the transaction's likely anticompetitive effects.

As detailed below, the proposed Final Judgment requires ABI to divest SABMiller's equity and ownership stake in MillerCoors, which is the joint venture through which SABMiller conducts substantially all of its operations in the United States, as well as certain other assets related to MillerCoors' business and the Miller-branded beer business outside of the United States. The divestiture will not only maintain MillerCoors as an independent competitor, but will protect MillerCoors' competitiveness by giving MillerCoors (or its majority owner) (i) perpetual, royalty-free licenses to products for which it currently must pay royalties, and (ii) ownership of the international rights to the Miller brands of beer.

To further help preserve and promote competition in the U.S. beer industry, the proposed Final Judgment (i) imposes certain restrictions on ABI's distribution practices and ownership of distributors, and (ii) requires ABI to provide the United States with notice of future acquisitions, including acquisitions of beer distributors and craft brewers, prior to their consummation. Among other things, the proposed Final Judgment prohibits ABI from:

- Acquiring a distributor if the acquisition would cause more than 10% of ABI's beer in the United States to be sold through ABI-owned distributors;
- Prohibiting or impeding a distributor that sells ABI's beer from using its best efforts to sell, market, advertise, promote, or secure retail placement for rivals' beers, including the beers of high-end brewers;
- Providing incentives or rewards to a distributor who sells ABI's beer based on the percentage of ABI beer the distributor sells as compared to the distributor's sales of the beers of ABI's rivals;
- Conditioning any agreement or program with a distributor that sells ABI's beer on the fact that it sells ABI's rivals' beer outside of the geographic area in which it sells ABI's beer;
- Exercising its rights over distributor management and ownership based on a distributor's sales of ABI's rivals' beers;
- Requiring a distributor to report financial information associated with the sale of ABI's rivals' beers;
- Requiring that a distributor who sells ABI's beer offer its sales force the same incentives for selling ABI's beer when the distributor promotes the beers of ABI's rivals with sales incentives; and
- Consummating non-reportable acquisitions of beer brewers—including craft brewers—without providing the United States with advance notice and an opportunity to assess the transaction's likely competitive effects.

These provisions will help ensure that U.S. beer consumers receive the products they want at competitive prices and that ABI is not able to disadvantage its rivals in their efforts to compete for consumer demand.

Finally, under the terms of the Hold Separate Stipulation and Order, Defendants will take certain steps to ensure that, pending the ordered divestiture, MillerCoors will continue to be operated as an economically viable, ongoing business concern and that all divestiture assets will be preserved and will be independent from, and not influenced by, ABI.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI brews and markets more beer sold in the United States than any other company, accounting for approximately 47% of beer sales nationally.[2] ABI owns and operates 19 breweries in the United States and over 40 major beer brands sold in the United States, including Bud Light (the highest-selling brand in the United States) and other popular brands, such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Shock Top, and Beck's.

SABMiller is a corporation organized and existing under the laws of the United Kingdom, with its headquarters in London, England. In the United States, SABMiller operates through its ownership interest in MillerCoors. MillerCoors is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. MillerCoors is a joint venture between SABMiller and Molson Coors Brewing Company (''Molson Coors''). SABMiller and Molson Coors have, respectively, a 58% and 42% ownership interest in and equal governance rights over MillerCoors.

MillerCoors is the second-largest brewing company in the United States, accounting for 25% of beer sales nationally. MillerCoors owns and operates 12 breweries in the United States, and has the sole right to produce and sell in the United States more than 40 brands of beer, including Coors Light and Miller Lite, the second- and fourth-highest selling beer brands in the United States. MillerCoors also has the right to produce and sell in the United States other popular brands of beer, such as Miller Genuine Draft, Coors Banquet, and Blue Moon. In addition, MillerCoors has the exclusive right to import into and sell in the United States certain beer brands owned by SABMiller, including Peroni, Grolsch, and Pilsner Urquell.

At the same time that ABI agreed to acquire complete ownership of SABMiller, ABI also agreed to divest to Molson Coors (1) SABMiller's equity and ownership stake in MillerCoors; (2) perpetual, royalty-free licenses to

[2] National market shares are based on dollar-sales data from IRI, a market research firm, whose data are commonly used by industry participants. The shares reflect only off-premise sales. ABI accounts for approximately 35% of dollar sales of beer made only through grocery stores.

import, manufacture, distribute, market, and sell the Import Products, which are SABMiller brands that are imported by MillerCoors for sale in the United States; [3] (3) perpetual, royalty-free licenses to manufacture, distribute, market, and sell the Licensed Products, which are brands currently manufactured under contract in the United States by MillerCoors under royalty-bearing licenses with SABMiller; (4) all rights, title, and interests in Miller-Branded Products outside the United States; and (5) certain tangible and intangible assets related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the United States. The transaction between ABI and Molson Coors is contingent upon ABI completing its acquisition of SABMiller.

B. The Competitive Effects of the Transaction on the Market for Beer in the United States

1. Relevant Markets

Beer is a relevant product market under Section 7 of the Clayton Act. Beer is usually made from malted cereal grain, flavored with hops, and brewed via a fermentation process. Wine, distilled liquor, and other alcoholic or non-alcoholic beverages do not substantially constrain the prices of beer, and a hypothetical monopolist in the beer market could profitably raise prices.

Beer brewers generally categorize beer into different segments based primarily on price. Beers in the United States can generally be grouped into three segments: Sub-premium, premium, and high-end.[4] However, beers in different segments—particularly those in adjacent segments—can compete with each other under certain circumstances. For example, the prices of high-end beers can constrain the prices of premium beers because some consumers of premium beers may trade up to high-end beers when the prices of premium beers approach the prices of high-end beers.

Most sales of beer in the United States are of premium and sub-premium brands. The vast majority of premium and sub-premium beer sold in the United States is brewed by ABI and MillerCoors, which own most of the popular premium and sub-premium brands. But high-end brands—in particular, Mexican imports and craft brands—are increasingly gaining market share. This market trend is increasing the competition faced by ABI and MillerCoors and the choices available to consumers.

Both national and local geographic markets exist in the beer industry. At the local level, demand for beer is driven by the locations of the customers who purchase beer, rather than by the locations of the breweries that brew it. Beer brewers also make many pricing and promotional decisions at the local level, reflecting local brand preferences and demand, demographics, and other competitive conditions and factors, which can vary significantly from one local market to another. This is sustainable in part because arbitrage across local markets is unlikely to occur.

Important competitive decisions, however, are also made at the national level. At the national level, large beer companies, such as ABI and MillerCoors, make competitive decisions and develop strategies regarding product development, marketing, and brand building. Moreover, large beer brewers typically create and implement national pricing strategies, place a significant portion of beer advertising on national television, and compete for national retail accounts.

2. Competitive Effects of Increased Concentration in the Relevant Markets

The beer industry in the United States is highly concentrated and would become significantly more so if ABI were allowed to acquire SABMiller, including its ownership interest in MillerCoors. As a majority owner with equal governance rights over MillerCoors, ABI would be able to direct the competitive behavior of MillerCoors, leading to a loss of competition between the firms both nationally and in every local market in the United States. Although Molson Coors would continue to own a minority equity interest in MillerCoors and have equal governance rights, Molson Coors' interest in MillerCoors would not eliminate the anticompetitive effects that would result from the acquisition. After the acquisition, ABI would have the right to appoint half of the board members of MillerCoors, who would have the same governance rights as other board members over MillerCoors' business. Given that ABI would have significant influence over MillerCoors, ABI and MillerCoors would be able to coordinate their competitive behavior, possibly to the extent where they behaved as a single, profit-maximizing entity.

The result would be a combination of the two largest beer brewers in the United States, leaving only a fringe of competitors with substantially smaller market shares than ABI and MillerCoors. ABI and MillerCoors account for more than 70% of beer sold in the United States. After the proposed acquisition, ABI would have a commanding market share ranging from 37% to 94% in every local U.S. market for which reliable data are available.[5] In 18 local markets, ABI and MillerCoors would have a combined share of 70% or more.

3. Beer Distribution in the United States

Effective distribution is important for a brewer to be competitive in the U.S. beer industry. Many states require large brewers to use independent distributors, and these distributors typically have exclusive and perpetual rights to sell the brands they carry within a particular territory. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those retailers are primarily grocery stores, large retailers (such as Target and Walmart), convenience stores, liquor stores, restaurants, and bars. Retailers, in turn, sell beer to consumers.

ABI beers are distributed both through ABI-owned distributors and through distributors that are not owned by ABI but who sell large volumes of ABI beer, including the Budweiser and Bud Light brands (''ABI-Affiliated Wholesalers''). ABI beer brands account for approximately 90% of the volume of the beer sold by ABI-Affiliated Wholesalers. In spite of many state laws requiring that beer distributors be independent of brewers, ABI exerts considerable influence over ABI-Affiliated Wholesalers, in part by requiring them to enter into a Wholesaler Equity Agreement (''Equity Agreement'') with ABI.

The Equity Agreement contains a number of provisions that are designed to encourage ABI-Affiliated Wholesalers to sell and promote ABI's beer brands instead of the beer brands of ABI's competitors. For example, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from requesting that a bar replace an ABI tap handle with a competitor's tap handle or that a retailer replace ABI shelf space with a

[3] For purposes of this Competitive Impact Statement, the United States includes the fifty states of the United States of America, the District of Columbia, Puerto Rico, and all United States military bases located therein.

[4] The high-end segment is composed of imports and craft brands. ABI also identifies a ''premium plus'' segment that consists largely of American beers that are priced somewhat higher than Budweiser and Bud Light. Examples of beers that ABI identifies as ''premium plus'' beers include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita, and Michelob Ultra.

[5] The Complaint identifies 58 metropolitan statistical areas (''MSAs''), as defined by IRI, for which reliable data are available. The market shares for these MSAs are based on dollar-sales data from IRI and reflect sales of beer only through grocery stores.

competitor's beer. Further, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from compensating its salespeople for their sales of competing beer brands (such as a dollar-per-case incentive) unless it provides the same incentives for sales of certain ABI beer brands. The expense of extending a per-case sales incentive to the large volume of ABI brands effectively limits an ABI-Affiliated Wholesaler's ability to promote brands of Third-Party Brewers through targeted sales incentives.

ABI also promotes distributor exclusivity by providing payments to ABI-Affiliated Wholesalers based on their ABI ''alignment,'' that is, the amount of ABI beer that they sell relative to the beer of ABI's competitors. For example, under a program known as the Voluntary Anheuser-Busch Incentive for Performance Program, ABI offers ABI-Affiliated Wholesalers that are 90% or more ''aligned'' a payment for each case-equivalent of ABI beer they sell. The size of the payment increases based on the ABI-Affiliated Wholesaler's level of alignment. Only the sales of very small, local craft beers are excluded from the calculation of an ABI-Affiliated Wholesaler's level of alignment. This allows ABI-Affiliated Wholesalers to carry small, local craft beers but decreases or eliminates the payments to ABI-Affiliated Wholesalers that add craft beers that grow above a certain size or expand outside of a certain geographic area. Thus, this incentive program has the effect of impeding rival craft brewers from growing large enough to have the scale to better compete with ABI.

MillerCoors beers are distributed almost exclusively through distributors that are not owned by MillerCoors but who sell large volumes of MillerCoors beer (''MillerCoors-Affiliated Wholesalers''). MillerCoors brands account for approximately 65% of the volume of the beer sold by MillerCoors-Affiliated Wholesalers.

Other than MillerCoors and ABI, most brewers do not have a distribution network affiliated with their brands. Consequently, the majority of other brewers' beers are distributed either by the ABI-Affiliated Wholesaler or the MillerCoors-Affiliated Wholesaler in a given geographic area. For example, in 2014, 85% or more of the beer sold in the United States was distributed by a Miller-Coors Affiliated Wholesaler, an ABI-Affiliated Wholesaler, or a distributor owned by ABI.

Although some brewers use alternative means to sell their beer to retailers, their only alternatives to an ABI-Affiliated Wholesaler or MillerCoors-Affiliated Wholesaler tend to be considerably smaller and significantly less efficient distributors. Indeed, some of these alternative distributors are not even primarily focused on selling beer. For instance, these distributors may be more focused on selling a broad range of wine and liquor while only offering a small selection of beers. Moreover, beer distributors who are not affiliated with ABI or MillerCoors typically service fewer retail establishments (or exclude entire classes of retailers), visit the establishments that they do service less frequently, and provide fewer resources (such as financial support and sales associates) than the ABI-Affiliated Wholesaler or the MillerCoors-Affiliated Wholesaler that operates in the same territory.

Unlike ABI, MillerCoors does not include in its agreements with MillerCoors-Affiliated Wholesalers any provisions that discourage or impede the promotion and sales of the brands of Third-Party Brewers. There is, however, a practical limit to the number of brands that any distributor can effectively carry and promote to its retail accounts. As the number of brands carried by a distributor increases, the distributor may incur costs to manage the resulting complexities, and the distributor may become less focused on promoting the smaller brands that it carries. Consequently, the presence of a MillerCoors-Affiliated Wholesaler or a small distributor in a market does not eliminate the advantages that many independent craft brewers would receive from having access to ABI-Affiliated Wholesalers.

4. The Proposed Divestiture Alone Would Not Eliminate the Likely Competitive Effects of the Transaction on Beer Distribution

Even though ABI has proposed to divest SABMiller's interest in MillerCoors to Molson Coors, the divestiture to Molson Coors likely would not eliminate the anticompetitive effects of the transaction on beer distribution, which, as noted above, plays an important role in a brewer's ability to effectively compete in the U.S. beer industry.

Presently, MillerCoors competes against ABI only in the United States. Molson Coors, however, competes with ABI in multiple countries throughout the world—most significantly in Canada, where ABI and Molson Coors are the two largest brewers and together account for a large share of beer sales. ABI and Molson Coors also have certain cooperative arrangements in Eastern Europe. For example, ABI brews and distributes Molson Coors' beers in certain countries while Molson Coors provides such services to ABI in other countries. ABI and MillerCoors have no comparable business arrangements.

The change in ownership of MillerCoors—from a joint venture between SABMiller and Molson Coors to a wholly owned subsidiary of Molson Coors—will increase the number of highly concentrated markets across the world in which ABI competes directly against Molson Coors. By increasing the number of markets in which ABI and Molson Coors compete, the divestiture of SABMiller's interest in MillerCoors to Molson Coors could facilitate coordination between ABI and Molson Coors in the United States. For example, this multi-market contact could lead Molson Coors and ABI to be more accommodating to each other in the United States in order to avoid provoking a competitive response outside the United States or disrupting their cooperative business arrangements in other countries. Coordination could also be facilitated by the existing and newly-created cooperative agreements between ABI and Molson Coors around the world.

If the divestiture facilitates coordination between ABI and Molson Coors, it would also increase ABI's incentive to limit competition from its high-end rivals. This is because competition from high-end rivals would become an even more important constraint on the ability of ABI and Molson Coors to increase the prices of their beers across all segments. As a result, following a divestiture to Molson Coors, ABI may have a greater incentive to impede the growth and reduce the competitiveness of its high-end rivals by limiting their access to effective and efficient distribution. The extent to which craft and other brewers in the United States are able to compete with ABI and Molson Coors will thus affect the likelihood of the divestiture to Molson Coors leading to unilateral or coordinated anticompetitive effects.

5. Entry and Expansion

Neither entry into the national or local beer markets in the United States, nor any repositioning of existing brewers, would undo the likely anticompetitive harm from ABI's acquisition of SABMiller. Many MillerCoors brands compete directly against ABI brands in terms of their brand position, reputation, taste profile, well-established marketing, acceptance by a wide range of consumers, and robust distribution networks. ABI and MillerCoors brands of beer are available in almost every establishment in which consumers can purchase or consume

beer. ABI and MillerCoors also compete directly on a national level for advertising and promotions, such as sports sponsorships. Any entrant would face enormous costs attempting to replicate these assets and would, at best, take many years to succeed.

Building nationally-recognized and accepted brands, which retailers will support with feature and display activity, is difficult, expensive, and time consuming. Although new beer breweries open frequently, new brewers face significant barriers to achieving efficient scale. In addition, ABI's distribution practices hinder new entrants from accessing effective and efficient distribution, which prevents them from growing to a scale that allows significant economies in production. While consumers have undoubtedly benefited from the launch of many individual craft and specialty beers in the United States, the multiplicity of such brands does not replace the nature, scale, and scope of the existing competition between ABI and MillerCoors, which would be eliminated by the proposed transaction.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment contains a remedy designed to eliminate the likely anticompetitive effects of the acquisition in the national market for beer in the United States and local markets throughout the United States. The proposed Final Judgment contemplates that the divested assets will be sold to Molson Coors, which, on November 11, 2015, entered into an agreement with ABI to acquire the divested assets. If the divestiture to Molson Coors should fail to close, ABI would be required to make the same divestiture to another acquirer acceptable to the United States, in its sole discretion, for the purpose of enabling that alternative acquirer to assume SABMiller's role with respect to the ownership and governance of MillerCoors.[6]

The divestiture required by the proposed Final Judgment will preserve MillerCoors as an independent and economically viable competitor and will strengthen MillerCoors by giving it valuable rights that it does not currently have. The divestiture includes assets that are necessary to preserve or enhance the viability of MillerCoors as a competitor in the national and local beer markets in the United States. Those assets include SABMiller's full interest in MillerCoors and the intangible assets necessary to permit Molson Coors to brew and import the Import Products for sale in the United States. The proposed divestiture also gives Molson Coors full rights to the Miller-Branded Products, as well as the tangible and intangible assets that are primarily related to the manufacture, distribution, marketing, and sale of the Miller-Branded Products outside the United States.

The distribution-related relief seeks to prohibit ABI from rewarding, penalizing, or otherwise conditioning its relationships with ABI-Affiliated Wholesalers, or any employees or agents of the wholesalers, based on the wholesalers' sale, marketing, advertising, promotion, or retail placement of rivals' beers—including ABI's high-end rivals. For example, the remedy seeks to prevent ABI from using its relationship with ABI-Affiliated Wholesalers to disadvantage, or maintain or erect barriers to scale for, ABI's high-end rivals. Under the proposed Final Judgment, ABI-Affiliated Wholesalers should be free to make independent decisions regarding their sale of ABI's high-end rivals' beers. By removing obstacles to effective distribution, competition in the high-end beer segment can continue to serve as an important constraint on the ability of ABI and MillerCoors (Molson Coors) to raise—either unilaterally or through coordination—beer prices in the United States.

In short, the remedy seeks to preserve and promote competition in the U.S. beer industry by maintaining MillerCoors as an independent competitor and by reducing the influence of ABI on the distribution of beer in the United States. In addition, the proposed Final Judgment also provides for supervision by this Court and the United States of the transition services and supply arrangements between ABI and Molson Coors. Those arrangements will allow Molson Coors time to establish the ability to brew the Import Products and Miller-Branded Products independently of ABI. The remedy also provides for supervision of ABI's compliance with the restrictions on its distribution practices.

A. The Divestiture

The proposed Final Judgment requires ABI, within 90 days after entry of the Hold Separate Stipulation and Order by the Court, to divest (1) SABMiller's equity and ownership stake in MillerCoors; (2) all raw material inventory exclusively related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the United States; (3) all other tangible and intangible assets of SABMiller and its subsidiaries (other than MillerCoors and its subsidiaries) that are primarily related to the Miller-Branded Products, both inside and outside the United States; and (4) perpetual, fully paid-up, royalty-free licenses to any intellectual property and any other intangible assets required to permit the acquirer of the divested assets to manufacture, import, distribute, market, or sell the Import Products and Licensed Products in the United States. Molson Coors will also have a one-year period in which to negotiate to hire employees of SABMiller whose primary responsibility is the production, manufacture, importation, distribution, marketing, or sale of Miller-Branded Products.

The proposed divestiture will permit MillerCoors to continue as a viable competitor in the relevant beer markets independent of ABI. After the divestiture, Molson Coors will own all assets in the United States that are used in the production, marketing, and sale of the MillerCoors brands of beer that are brewed in the United States. Under the proposed divestiture, Molson Coors will also obtain the international rights to brew and export the Miller-Branded Products. With respect to two beer brands, Redd's and Foster's, MillerCoors now produces those brands for sale in the United States under royalty-bearing licenses from SABMiller. The divestiture provides that Molson Coors will have perpetual, fully paid-up, royalty-free licenses and any other intangible assets required to manufacture and sell those brands in the United States. MillerCoors now has the right to import and sell in the United States certain SABMiller brands that are brewed internationally. The proposed divestiture provides that Molson Coors will have perpetual, royalty-free licenses to brew those brands and import them into the United States.

The European Commission also investigated the effects of ABI's proposed acquisition of SABMiller. To resolve concerns raised by the European Commission, ABI is divesting essentially all of the European business that it would have acquired from SABMiller. ABI has already agreed to sell to Asahi Group, a Japanese brewer, the Peroni, Grolsch, and Meantime brands of beer. ABI has also agreed to divest SABMiller's business in the Czech Republic, Hungary, Poland, and Romania, including the Pilsner Urquell brand of beer. The proposed Final

[6] The remainder of the explanation of the proposed Final Judgment refers to the proposed acquirer as Molson Coors. If Molson Coors does not acquire the Divestiture Assets, the proposed Final Judgment will apply to another Acquirer in the same manner as described with respect to Molson Coors.

Judgment, however, requires that ABI divest the U.S. rights to the Import Brands—including Peroni, Grolsch, and Pilsner Urquell—to Molson Coors, notwithstanding the divestiture of the ex-U.S. rights to those brands to other buyers.

B. Transition Services and Interim Supply Agreements

Sections IV.I and IV.J of the Final Judgment require ABI to enter into one or more transition services agreements and interim supply agreements with Molson Coors. The transition services agreements require ABI to provide Molson Coors with services with respect to the development, production, servicing, importing, distributing, marketing, and selling of Miller-Branded Products outside of the United States. The transition services agreements will allow Molson Coors to operate the business of selling Miller-Branded Products outside of the United States in a manner that is consistent with SABMiller's current operation of that business. The interim supply agreements will require ABI to supply beer such that Molson Coors can continue to import SABMiller brands of beer to the United States and can operate the Miller International Business.

The transition services and interim supply agreements are time-limited to assure that Molson Coors will become fully independent of ABI with respect to the supply of the Import Products and the Miller International Business as soon as practicable. As such, in conjunction with the nondisclosure of information provisions in the proposed Final Judgment, the terms of the transition services and interim supply agreements are intended to prevent the vertical supply arrangements from causing competitive harm in the near term. The proposed Final Judgment subjects these agreements, including any extensions, to monitoring by a trustee appointed by the United States and requires that the agreements be approved by the United States. Section V.C of the proposed Final Judgment further provides that if ABI and Molson Coors enter any new agreements with each other with respect to the brewing, packaging, production, marketing, importing, distribution, or sale of beer in the United States, ABI must notify the United States of the new agreements at least 60 calendar days in advance of such agreements becoming effective, and the United States must approve the agreements. To the extent that ABI has divested the worldwide rights to a brand, however, the provisions of the proposed Final Judgment relating to transition services and interim supply agreements do not apply to arrangements, if any, between Molson Coors and the new owner of the brand outside of the United States.

C. Limits on ABI's Distribution Practices

Section V.A of the proposed Final Judgment requires ABI and SABMiller to agree—and for ABI to further require Molson Coors to agree—not to cite the transaction or the required divestiture as a basis for modifying, renegotiating, or terminating any contract with any Distributor. This language prevents ABI, SABMiller, and Molson Coors from claiming that either the transaction or the divestiture is a change of ownership or control that would otherwise enable ABI or Molson Coors to make changes to their distribution contracts, potentially limiting their rival brewers' path to market.

Section V.B prevents ABI from acquiring any equity interests in, or ownership or control of the assets of, a Distributor if such acquisition would transform the Distributor into an ABI-Owned Distributor, and if more than 10% of ABI's beer sold in the United States, measured by volume, would be sold through ABI-Owned Distributors after such acquisition. The United States' investigation revealed that ABI-Owned Distributors typically distribute only brands owned by or affiliated with ABI, and that ABI-Owned Distributors currently sell approximately 9% of ABI's beer in the United States. This provision limits ABI's ability to acquire Distributors and then cause the Distributors to cease to promote or to expel rival brands from the Distributors' portfolios—thus preventing or impeding a rival from selling its beer through a Distributor or forcing the rival to find a different and potentially less effective path to market.

Section V.D prohibits ABI from instituting or continuing any practices or programs that impede or disincentivize ABI-Affiliated Wholesalers from selling, marketing, advertising, promoting, or maximizing the retail placement of the beers of Third-Party Brewers,[7] including the beers of high-end brewers.[8] In particular, Section V.D precludes ABI from, among other things:

- Conditioning the availability of ABI's beer to an ABI-Affiliated Wholesaler on the wholesaler's sales, marketing, advertising, promotion, or retail placement of Third-Party Brewers' beers;
- Conditioning the prices, services, product support, rebates, discounts, buy backs, or other terms and conditions of sale of ABI's beer that are offered to an ABI-Affiliated Wholesaler based on its sales, marketing, advertising, promotion, or retail placement of Third-Party Brewers' beers;
- Conditioning any agreement or program with an ABI-Affiliated Wholesaler on the fact that it sells Third-Party Brewers' beers outside of the geographic area in which it sells ABI beer;
- Requiring an ABI-Affiliated Wholesaler to offer any incentive for selling ABI beer in connection with or in response to any incentive that the wholesaler offers for selling Third-Party Brewers' beers; and
- Preventing an ABI-Affiliated Wholesaler from using best efforts to sell, market, advertise, or promote any Third-Party Brewer's beers, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of the Third Party Brewer's beers in a geographic area.

In sum, Section V.D seeks to ensure that ABI cannot use distribution-related practices and incentives to prevent or limit Third-Party Brewers from securing the distribution necessary to effectively compete with ABI. This is especially important with respect to brewers of high-end beers, which, as detailed above and in the Complaint, have served as an important constraint on ABI's ability to raise prices of its beers.

It should be noted, however, that the proposed Final Judgment—including Section V.D—does not prevent ABI from requiring that an ABI-Affiliated Wholesaler use its best efforts to sell, market, advertise, or promote ABI's beers. The proposed Final Judgment also does not prohibit ABI from conditioning incentives, programs, or contractual terms based on an ABI-Affiliated Wholesaler's volume of sales of ABI beer,[9] the retail placement of ABI beer, or ABI's percentage of beer sales in a geographic area, provided that any such incentives, programs, or

[7] Third-Party Brewers include any brewer, contract-brewer, or importer of beer for sale in the United States other than ABI, SABMiller, Molson Coors, or MillerCoors.

[8] In the proposed Final Judgment, ''Beer'' includes not only products made from malted barley, but also flavored malt beverages, alcoholic root beers, and hard ciders. This definition is necessary because ABI-Affiliated Wholesalers who sell a Third-Party Brewer's beer typically also sell any flavored malt beverages, alcoholic root beers, and hard ciders made by the Third-Party Brewer.

[9] ABI, however, may not define the percentage of its beer sales in a geographic area by reference to or derived from information obtained from ABI-Affiliated Wholesalers concerning their sales of any Third-Party Brewer's beers.

contractual terms do not require or encourage an ABI-Affiliated Wholesaler to provide less than best efforts to the sale, marketing, advertising, retail placement, or promotion of Third-Party Brewers' beers or to stop distributing Third-Party Brewers' beers.

The proposed Final Judgment also does not prevent ABI from requiring an ABI-Affiliated Wholesaler to allocate to ABI's beers a proportion of the ABI-Affiliated Wholesaler's annual spending on beer promotions and incentives as long as the allocation does not exceed the proportion of revenues that ABI's beers constituted in the ABI-Affiliated Wholesaler's overall revenue for beer sales in the preceding year. The proposed Final Judgment permits this practice because, in any given geographic area, the ABI-Affiliated Wholesaler provides the exclusive path to market for ABI's beers, and therefore ABI may be reluctant to invest in its distributors without some assurance that those investments will not be used primarily to benefit its rivals. ABI therefore may require an ABI-Affiliated Wholesaler to promote ABI's beers in proportion to the revenues it earns on ABI's beers.

The proposed Final Judgment does not prohibit ABI from taking the above actions, because such actions can be undertaken in a way that does not undermine the proposed Final Judgment's objective of ensuring that Third-Party Brewers have access to the distribution networks necessary to effectively compete with ABI and meet consumer demand. The proposed Final Judgment is not designed to prevent ABI from competing. Rather, it is designed to ensure that Third-Party Brewers whose beer is sold by ABI-Affiliated Wholesalers have the opportunity to compete with ABI on a level playing field—not on a playing field in which ABI has used its influence over the distributor to favor ABI's beers at the expense of other beers in the distributor's portfolio.

The proposed Final Judgment contains provisions designed to ensure that ABI-Affiliated Wholesalers are free to carry and promote rival brands without concern that ABI will use its control over management and ownership changes to punish the wholesaler. Section V.E prohibits ABI from disapproving an ABI-Affiliated Wholesaler's selection of its own general manager, or a successor general manager, based on the ABI-Affiliated Wholesaler's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's beer. Similarly, Section V.F requires that when ABI exercises any right related to the transfer of control, ownership, or equity in any Distributor to any other Distributor, ABI shall not give weight to or base any decision upon either Distributor's business relationship with a Third-Party Brewer—including, but not limited to, such Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's beer. These provisions are intended to prevent ABI from using its rights over management or ownership changes to promote alignment by selecting new owners because they have demonstrated a willingness not to carry or promote rival brands.

Section V.G prevents ABI from requesting or requiring an ABI-Affiliated Wholesaler to report to ABI the wholesaler's revenues, profits, margins, costs, sales, volumes, or other financial information associated with the purchase, sale, or distribution of a Third-Party Brewer's beer. ABI, however, is not prohibited from requesting the reporting of general financial information by an ABI-Affiliated Wholesaler to assess the overall financial condition and financial viability of such wholesaler, the percentage of total beer revenues received by the wholesaler associated with ABI's beer, or from conducting ordinary course due diligence in connection with any potential acquisition of an ABI-Affiliated Wholesaler.

Section V.I directs ABI to notify ABI-Affiliated Wholesalers of the changes to ABI's programs or agreements required by the proposed Final Judgment and the ABI-Affiliated Wholesalers' rights to bring to the attention of the Monitoring Trustee or the United States any actions by ABI which the distributor believes may violate Section V of the proposed Final Judgment. ABI must also provide ABI-Affiliated Wholesalers with a copy of the proposed Final Judgment. Further, under Section V.H, ABI may not discriminate against, penalize, or retaliate against a Distributor that brings to the attention of the Monitoring Trustee or the United States a potential violation by ABI of Section V of the Final Judgment.

D. Divestiture Trustee

In the event that ABI does not accomplish the divestiture as prescribed in the proposed Final Judgment, Section VI provides that, upon application of the United States, the Court will appoint a Divestiture Trustee selected by the United States to complete the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that ABI will pay all costs and expenses of the Divestiture Trustee. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture.

E. Monitoring Trustee

Section VIII of the proposed Final Judgment permits the appointment of a Monitoring Trustee by the United States in its sole discretion. The United States intends to appoint a Monitoring Trustee and to seek the Court's approval of such appointment. The Monitoring Trustee will ensure that Defendants expeditiously comply with all of their obligations and perform all of their responsibilities under the proposed Final Judgment and the Hold Separate Stipulation and Order; that the Divestiture Assets remain economically viable, competitive, and ongoing assets; and that competition in the sale of beer in the United States and in all local markets within the United States is maintained. The Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of the proposed Final Judgment and attendant interim supply and transition services agreements. The Monitoring Trustee will also have the authority to investigate complaints that ABI has violated the restrictions related to its distribution practices. The Monitoring Trustee will have access to all personnel, books, records, and information necessary to monitor Defendants' compliance with the proposed Final Judgment, and will serve at the cost and expense of ABI. The Monitoring Trustee will file reports every 90 days with the United States and, as appropriate, the Court setting forth Defendants' efforts to comply with their obligations under the proposed Final Judgment and the Hold Separate Stipulation and Order.

F. Hold Separate Stipulation and Order Provisions

Defendants have entered into the Hold Separate Stipulation and Order attached as an exhibit to the Explanation of Consent Decree Procedures, which was filed simultaneously with the Court, to ensure that, pending the divestiture, the Divestiture Assets are maintained as an ongoing, economically viable, and active business. The Hold Separate Stipulation and Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestiture to be effective.

The Hold Separate Stipulation and Order requires that the Defendants take all steps that are within their power and

consistent with the agreements that govern the operations of MillerCoors to ensure that MillerCoors will be maintained as a completely independent competitor in the brewing and sale of beer in the same manner that it is today. Moreover, SABMiller and ABI will not prevent or interfere with MillerCoors' achieving its ordinary course, previously agreed upon business plan and budget.

The Hold Separate Stipulation and Order further requires the Defendants to maintain and operate the Import Products and business of selling Miller-Branded Products outside of the United States—which are not today standalone businesses—in the same manner as they are currently operated. Defendants are required to use all reasonable efforts to achieve the sales and revenues targets for the Import Products and Miller-Branded Products in accordance with previously agreed upon business plans and budgets and are prohibited from sharing any competitively sensitive information regarding these products with any employee that is not currently involved in their operations or does not have a reasonable need to know such information.

G. Notification Provisions

Section XII of the proposed Final Judgment requires ABI to notify the United States in advance of executing certain transactions that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the ''HSR Act''). The transactions covered by these provisions include the acquisition or license of any interest in non-ABI beer brewing or distribution assets or brands, excluding acquisitions of: (1) Assets that do not generate at least $7.5 million in annual gross revenue from beer sold for resale in the United States; (2) distribution licenses that do not generate at least $3 million in annual gross revenue in the United States; and (3) beer distributors that do not generate at least $3 million in annual gross revenue in the United States. This provision significantly broadens ABI's pre-merger reporting requirements because the $3 million and $7.5 million threshold amounts are significantly less than the HSR Act's ''size of the transaction'' reporting threshold.

Section XII will provide the United States with advance notice of, and an opportunity to evaluate, ABI's acquisition of both beer distributors and craft brewers. Notification of distributor acquisitions allows the United States to evaluate whether ABI's acquisition of a distributor implicates the prohibitions in Section V or is otherwise likely to substantially lessen competition by hindering the effective distribution of the beers of ABI's rivals. Notification of brewer acquisitions allows the United States to evaluate any acquisition by ABI of, among other things, craft breweries. ABI has acquired multiple craft breweries over the past several years, some of which were not reportable under the HSR Act. Acquisitions of this nature, individually or collectively, have the potential to substantially lessen competition, and the proposed Final Judgment gives the United States an opportunity to evaluate such transactions in advance of their closing even if the purchase price is below the HSR Act's thresholds.

The proposed Final Judgment requires ABI to provide such notification to the Antitrust Division of the United States Department of Justice (the ''Antitrust Division'') in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. ABI must provide such notification at least 30 calendar days prior to acquiring any such interest. If within the 30-day period after notification the Antitrust Division makes a written request for additional information, ABI shall be precluded from consummating the proposed transaction or agreement until 30 calendar days after submitting all requested additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

H. Nondisclosure of Information

Section XIII of the proposed Final Judgment requires Defendants to implement and maintain procedures to prevent the disclosure of the confidential commercial information of MillerCoors and Molson Coors by Defendants to any of Defendants' affiliates who are involved in the marketing, distribution, or sale of beer in the United States. Within 10 days of the Court approving the Hold Separate Stipulation and Order described above, Defendants must submit to the United States their planned procedures to effect compliance with their nondisclosure obligations. Additionally, Defendants must provide a briefing as to the obligations required under Section XIII of the proposed Final Judgment to certain of Defendants' officers and employees who will (i) receive the confidential commercial information of MillerCoors or Molson Coors; (ii) be responsible for the transition services and interim supply agreements described above; or (iii) be responsible for making decisions regarding ABI's relationships with, agreements with, or policies regarding distributors. This provision ensures that Defendants cannot improperly use any confidential information that they receive from Molson Coors or from SABMiller concerning MillerCoors in ways that would harm competition in the U.S. beer industry.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damages action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the Antitrust Division's internet Web site

and, in certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any necessary or appropriate modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking preliminary and permanent injunctions against Defendants' proposed transaction and proceeding to a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will preserve competition in the national market and in each local market for beer in the United States. Thus, the proposed Final Judgment will protect competition as effectively as, and will achieve all or substantially all of the relief the United States would have obtained through, litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making such a determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 15–17 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').[10]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[11] In determining whether a proposed settlement is in the public interest, a court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a

[10] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[11] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As a court in this district confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[12] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 20, 2016

Respectfully Submitted,

/s/_____

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Attorney for the United States

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER–BUSCH InBEV SA/NV, and SABMILLER plc, Defendants.

CASE NO.: 1:16–cv–01483

JUDGE: Emmet G. Sullivan

FILED: 07/20/2016

Proposed Final Judgment

Whereas, Plaintiff, United States of America (''United States'') filed its Complaint on July 20, 2016, the United States and Defendants, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt divestiture of certain rights and assets to assure that competition is not substantially lessened;

And whereas, this Final Judgment requires Defendant ABI to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Plaintiff requires Defendants to agree to undertake certain actions and refrain from certain conduct for the purposes of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can (after the Completion of the Transaction) and will be made, and that the actions and conduct restrictions can and will be undertaken, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and each of the parties. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in the Final Judgment:

A. ''ABI'' means Anheuser-Busch InBev SA/NV, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, successors in interest (including any successor in interest to Anheuser-Busch InBev SA/NV following the Completion of the Transaction), and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person.

B. ''ABI Divested Brand'' means any Import Product divested or sold pursuant to commitments offered to the

[12] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

European Commission pursuant to its review of the Transaction.

C. ''ABI-Owned Distributor'' means any Distributor in which ABI owns more than 50% of the outstanding equity interests or more than 50% of the assets.

D. ''Acquirer'' means:

1. Molson Coors; or

2. an alternative purchaser of the Divestiture Assets selected pursuant to the procedures set forth in this Final Judgment.

E. ''Beer'' means any fermented alcoholic beverage that is (1) composed in part of water, a type of malted starch, yeast, and hops or other flavoring, and (2) has undergone the process of brewing. As used herein, the term ''Beer'' shall also include flavored malt beverages, root beers, and ciders.

F. ''Closing'' means consummation of the divestiture of the Divestiture Assets pursuant to the Final Judgment.

G. ''Completion of the Transaction'' means the completion of the Transaction in accordance with its terms.

H. ''Confidential Information'' means confidential commercial information of the Acquirer or MillerCoors that has been obtained from the Acquirer, MillerCoors or SABMiller in connection with, or as a result of, (1) SABMiller's equity and ownership stake in the Divestiture Assets prior to the divestiture of the Divestiture Assets, (2) the divestiture of the Divestiture Assets, or (3) the entry into and performance under the Interim Supply Agreements, the License Agreements, or the Transition Services Agreements, including quantities, units, and prices of items ordered or purchased from Defendant ABI by the Acquirer, and any other competitively sensitive information regarding Defendant ABI's or the Acquirer's performance under the Interim Supply Agreements, the License Agreements, or the Transition Services Agreements.

I. ''Covered Entity'' means any Beer brewer, importer, distributor, or brand owner (other than ABI) that derives more than $7.5 million in annual gross revenue from Beer sold for further resale in the Territory, or from license fees generated by such Beer sales.

J. ''Covered Interest'' means ownership or control of any Beer brewing assets of, or any Beer brand assets of, or any Beer distribution assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the Territory that does not generate at least $7.5 million in annual gross revenue from Beer sold for resale in the Territory; (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $3 million in annual gross revenue in the Territory; or (iii) a Beer distributor which does not generate at least $3 million in annual gross revenue in the Territory.

K. ''Defendants'' means ABI and SABMiller, and any successor or assignee to all or substantially all of the business or assets of ABI or SABMiller, involved in the brewing, development, production, servicing, distribution, marketing, or sale of Beer.

L. ''Distributor'' means a wholesaler in the Territory who acts as an intermediary between a brewer or importer of Beer and a retailer of Beer.

M. ''Divestiture Assets'' means:

1. SABMiller's equity and ownership stake in MillerCoors;

2. All intellectual property of SABMiller (other than MillerCoors) that is primarily related to any Miller-Branded Product, both inside and outside the Territory, including, but not limited to: (i) Patents (including all reissues, divisions, continuations, continuations-in-part, reexaminations, supplemental examinations, foreign counterparts, substitutions and extensions thereof) and patent applications; (ii) copyrights and all applications, registrations, and renewals therefor; (iii) trademarks, trade names, service marks, service names, trade dress, and other indicia of origin and all applications, registrations, and renewals therefor; (iv) technical information, know-how, trade secrets, and other proprietary and confidential information, including such information relating to inventions, technology, product formulations, recipes, production processes, customer lists, and marketing databases; and (v) domain names, social media accounts, and identifiers and registrations therefor;

3. All contracts, commitments, agreements, subcontracts, leases, subleases, licenses, sublicenses, purchase orders, or other legally binding promises or obligations, whether written or oral, to which SABMiller (other than MillerCoors) is a party and that are primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory, in each case other than any real estate leases or employment or independent contractor agreements;

4. All raw material inventory exclusively related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

5. All royalty or equivalent rights of SABMiller in respect of oil and gas deposits at the brewery operated by MillerCoors located at Fort Worth, Texas;

6. All research and development activities primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

7. All licenses, permits, and authorizations issued by any governmental organization primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory, to the extent such licenses, permits, and authorizations are capable of assignment or transfer by SABMiller;

8. All customer lists, contracts, accounts, and credit records primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

9. All repair, performance, and other records primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

10. All intangible assets including computer software and related documentation, safety procedures for the handling of materials and substances, design tools and simulation capability, and research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments, primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

11. All drawings blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, research data concerning historic and current research and development, quality assurance and control procedures, manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments, primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

12. All other assets primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded

Products outside of the Territory, including finished goods and work-in-progress, point-of-sale and advertising materials; and

13. Perpetual, fully paid-up, royalty-free licenses, entered into only with the approval of the United States in its sole discretion, to any intellectual property and any other intangible assets required to permit the Acquirer to manufacture, import, distribute, market, or sell the Import Products and the Licensed Products in the Territory.

With respect to clauses (2) through (13) above, Divestiture Assets excludes (A) cash and cash equivalents, (B) any accounts receivable, (C) subject to the provisions of Section IV.E, any employees or other personnel or benefit obligations with respect thereto, (D) any capital stock or other equity securities, (E) any real property or interests therein (other than certain royalty and equivalent rights in respect of oil and gas deposits referenced in clause (5)), (F) any property, plant or equipment (or any portion thereof), and (G) any of the items enumerated in clauses (2) through (13) above that are owned or controlled by any third party and are therefore not capable of assignment or transfer by Defendant ABI or Defendant SABMiller.

N. ''Hold Separate Stipulation and Order'' means the Hold Separate Stipulation and Order filed by the parties simultaneously herewith, which imposes certain duties on the Defendants with respect to the operation of the Divestiture Assets pending the proposed divestitures.

O. ''Import Products'' means Beer and any other beverages, excluding Miller-Branded Products and Licensed Products, imported, distributed, marketed, or sold in the Territory, under any of the brands or sub-brands set forth on Attachment B hereto and any other sub-brands of such brands.

P. ''Independent Distributor'' means any Distributor that is not an ABI-Owned Distributor and that has an exclusive contractual right to sell Budweiser or Bud Light branded Beer.

Q. ''Interim Supply Agreements'' means supply agreements covering any Miller-Branded Products or Import Products.

R. ''License Agreement'' means any agreement to license intellectual property pursuant to Section II.M.13 of this Final Judgment.

S. ''Licensed Products'' means Beer and any other beverages manufactured, distributed, marketed or sold in the Territory under the Foster's or Redd's brands or any sub-brands of such brands.

T. ''MillerCoors'' means MillerCoors LLC, its divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person. As used herein, the term ''MillerCoors'' shall not include SABMiller or Molson Coors.

U. ''Miller-Branded Products'' means Beer and any other beverages manufactured, distributed, marketed and sold, anywhere in the world, under any of the brands or sub-brands set forth on Attachment A hereto and any other sub-brands of such brands.

V. ''Molson Coors'' means Molson Coors Brewing Company, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person. As used herein, the term ''Molson Coors'' shall not include MillerCoors unless and until Molson Coors acquires the Divestiture Assets pursuant to Section IV or Section VI of this Final Judgment.

W. ''SABMiller'' means SABMiller plc, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person. As used herein in connection with any obligation of SABMiller under this Order with respect to control of MillerCoors, the term SABMiller means SABMiller's non-controlling 58% equity interest and 50% voting rights in MillerCoors, which are subject to the MillerCoors LLC Amended and Restated Operating Agreement, until the Completion of the Transaction pursuant to Section IV or Section VI of this Final Judgment.

X. ''Territory'' means the fifty states of the United States of America, the District of Columbia, Puerto Rico, and all United States military bases located in the fifty states of the United States of America, the District of Columbia, and Puerto Rico.

Y. ''Third-Party Brewer'' means any person (other than Defendants or the Acquirer, including any subsidiaries or joint ventures of the Acquirer), that manufactures, has a third party manufacture, or imports Beer for sale in the Territory.

Z. ''Transaction'' means ABI's proposed acquisition of all of the shares of SABMiller pursuant to the Co-Operation Agreement between Anheuser-Busch Inbev SA/NV and SABMiller plc, the joint announcement by Anheuser-Busch Inbev SA/NV and SABMiller plc in relation to the Transaction pursuant to Rule 2.7 of the UK City Code on Takeovers and Mergers and the letter agreement related to the Co-Operation Agreement between Anheuser-Busch Inbev SA/NV and SABMiller plc, each of which is dated November 11, 2015.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment unless such sale or disposition is pursuant to commitments offered to the European Commission pursuant to its review of the Transaction.

IV. Divestiture

A. Defendant ABI is ordered and directed, within ninety (90) calendar days after the filing of the Hold Separate Stipulation and Order, to divest the Divestiture Assets, if the Completion of the Transaction has occurred, in a manner consistent with this Final Judgment to Molson Coors. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendant ABI agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible. Defendant ABI shall perform all duties and provide any and all services required of Defendant ABI pursuant to the agreements with the Acquirer to effect the divestiture of the Divestiture Assets (including the License Agreements, Transition Services Agreements, and Interim Supply Agreements).

B. In the event Molson Coors is not the Acquirer of the Divestiture Assets,

Defendant ABI or any Monitoring Trustee appointed pursuant to Section VIII of this Final Judgment shall promptly notify the United States of that fact in writing. In such circumstances, within sixty (60) calendar days after the United States receives such notice, Defendant ABI shall divest the Divestiture Assets in a manner consistent with this Final Judgment to an alternative Acquirer(s) acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances.

C. In the event that Molson Coors is not the Acquirer of the Divestiture Assets, Defendant ABI promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendant ABI shall inform any person inquiring about a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

D. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

E. For a period beginning on the date of the filing of the Hold Separate Stipulation and Order and continuing for not less than one (1) year from the date of the divestiture required by Section IV or VI of this Final Judgment, to the extent consistent with applicable law, Defendants shall provide the Acquirer and the United States information relating to the personnel who spend the majority of their time on or are otherwise material to the operation of the Divestiture Assets, including Defendant SABMiller employees who spend the majority of their time on or are otherwise material to the production, manufacture, importation, distribution, marketing, or sale of Miller-Branded Products outside the Territory, to enable the Acquirer to make offers of employment. Beginning as of the date of the filing of the Hold Separate Stipulation and Order, Defendants will not interfere with any negotiations by the Acquirer to retain, employ, or contract with any employee of MillerCoors or any Defendant SABMiller employee whose primary responsibility is the production, manufacture, importation, distribution, marketing, or sale of Miller-Branded Products.

F. In the event that Molson Coors is not the Acquirer of the Divested Assets, Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of MillerCoors; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendant ABI shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale to the extent such assets were operational on the date the Complaint was filed.

H. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. On or before the date of the divestiture pursuant to Section IV or Section VI of this Final Judgment, Defendant ABI shall enter into one or more transitional services agreements (collectively, the ''Transition Services Agreements'') with the Acquirer for a period of up to one (1) year from the date of the divestiture required by Section IV or Section VI of this Final Judgment to provide such services with respect to the business of developing, producing, servicing, importing, distributing, marketing, and selling Miller-Branded Products outside the Territory (the ''Miller International Business'') that are reasonably necessary to allow the Acquirer to operate the Miller International Business in a manner substantially consistent with the operation of such business prior to date of the divestiture of the Divestiture Assets. Defendant ABI shall perform all duties and provide any and all services required of Defendant ABI under the Transition Services Agreements. The Transition Services Agreements, and any amendments or modifications thereto, may be entered into only with the approval of the United States in its sole discretion. Nothing in the foregoing shall apply to any agreements regarding any ABI Divested Brands.

J. On or before the date of the divestiture pursuant to Section IV or Section VI of this Final Judgment, Defendant ABI shall enter into Interim Supply Agreements with the Acquirer for a period of up to three (3) years from the date of the divestiture required by Section IV or Section VI of this Final Judgment. Defendant ABI shall perform all duties and provide any and all services required of Defendant ABI under the Interim Supply Agreements. The Interim Supply Agreements, and any amendments, modifications, or extensions of the Interim Supply Agreements, may be entered into only with the approval of the United States in its sole discretion.

K. If the Acquirer seeks an extension of any of the Interim Supply Agreements covering Import Products, or if Defendant ABI and the Acquirer mutually agree to an extension of any of the Interim Supply Agreements covering Miller-Branded Products, the Acquirer shall so notify the United States in writing at least four (4) months prior to the date the Interim Supply Agreement(s) expires. The total term of the Interim Supply Agreements and any extension(s) so approved shall not exceed five (5) years. Nothing in the foregoing shall apply to any agreements regarding any ABI Divested Brands.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or Section VI shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business, engaged in brewing, developing, producing, distributing, marketing, and selling Beer. The divestiture shall be:

1. Made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete in the business of brewing, developing, producing, and selling Beer;

2. accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of the agreement between an Acquirer and Defendant ABI gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively; and

3. made to an Acquirer who agrees to comply with the provisions of Section V.A of this Final Judgment, in a manner satisfactory to the United States, in its sole discretion.

M. Defendant ABI shall, as soon as possible, but within two (2) business days after completion of the relevant event, notify the United States of: (1) The effective date of the completion of the Transaction; and (2) the effective date of the divestiture of the Divestiture Assets to the Acquirer.

V. Supplemental Relief

A. Defendants agree, and Defendant ABI shall require any Acquirer to agree, that they will not cite the Transaction or the divestiture required by Section IV or VI of this Final Judgment as a basis for modifying, renegotiating, or terminating any contract with any Distributor.

B. Defendant ABI shall not acquire any equity interests in, or any ownership or control of the assets of, a Distributor if (i) such acquisition would transform said Distributor into an ABI-Owned Distributor, and (ii) as measured on the day of entering into an agreement for such acquisition more than ten percent (10%), by volume, of Defendant ABI's Beer sold in the Territory would be sold through ABI-Owned Distributors after such acquisition. Percentages of volume will be calculated using a twelve month trailing average as used in Defendant ABI's ordinary course, described in Attachment C.

C. If Defendants and the Acquirer enter into any new agreement(s) with each other with respect to the brewing, packaging, production, marketing, importing, distribution, or sale of Beer in the Territory, Defendants shall notify the United States of the new agreement(s) at least sixty (60) calendar days in advance of such agreement(s) becoming effective and such agreement(s) may only be entered into with the approval of the United States in its sole discretion.

D. Defendant ABI shall not unilaterally, or pursuant to the terms of any contract or agreement, provide any reward or penalty to, or in any other way condition its relationship with, an Independent Distributor or any employees or agents of that Independent Distributor based upon the amount of sales the Independent Distributor makes of a Third-Party Brewer's Beer or the marketing, advertising, promotion, or retail placement of such Beer. Actions prohibited by this Sub-section include, but are not limited to:

1. Conditioning the availability of Defendant ABI's Beer on an Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer;

2. Conditioning the prices, services, product support, rebates, discounts, buy backs, or other terms and conditions of sale of Defendant ABI's Beer that are offered to an Independent Distributor based on an Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer;

3. Conditioning any agreement or program with an Independent Distributor on the fact that an Independent Distributor sells a Third-Party Brewer's Beer outside of the geographic area in which the Independent Distributor sells Defendant ABI's Beer;

4. Requiring an Independent Distributor to offer any incentive for selling Defendant ABI's Beer in connection with or in response to any incentive that the Independent Distributor offers for selling a Third-Party Brewer's Beer; and

5. Preventing an Independent Distributor from using best efforts to sell, market, advertise, or promote any Third-Party Brewer's Beer, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of the Third Party Brewer's Beer in a geographic area.

Notwithstanding the foregoing, nothing in this Final Judgment shall prohibit Defendant ABI from entering into or enforcing an agreement with any Independent Distributor requiring the Independent Distributor to use best efforts to sell, market, advertise, or promote Defendant ABI's Beer, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of Defendant ABI's Beer in a geographic area. Defendant ABI may condition incentives, programs, or contractual terms based on an Independent Distributor's volume of sales of Defendant ABI's Beer, the retail placement of Defendant ABI's Beer, or on Defendant ABI's percentage of Beer industry sales in a geographic area (such percentage not to be defined by reference to or derived from information obtained from Independent Distributors concerning their sales of any Third-Party Brewer's Beer), provided, however, that any such incentives, programs, or contractual terms may not require or encourage an Independent Distributor to provide less than best efforts to the sale, marketing, advertising, retail placement, or promotion of any Third-Party Brewer's Beer or to discontinue the distribution of a Third-Party Brewer's Beer. Defendant ABI may require an Independent Distributor to allocate to Defendant ABI's Beer a proportion of the Independent Distributor's annual spending on Beer promotions and incentives not to exceed the proportion of revenues that Defendant ABI's Beer constitutes in the Independent Distributor's overall revenue for Beer sales in the preceding year.

E. Defendant ABI shall not disapprove an Independent Distributor's selection of a general manager or successor general manager based on the Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.

F. When exercising any right related to the transfer of control, ownership, or equity in any Distributor to any other Distributor, Defendant ABI shall not give weight to or base any decision to exercise such right upon either Distributor's business relationship with a Third-Party Brewer—including, but not limited to, such Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.

G. Defendant ABI shall not request or require an Independent Distributor to report to Defendant ABI, whether in aggregated or disaggregated form, the Independent Distributor's revenues, profits, margins, costs, sales volumes, or other financial information associated with the purchase, sale, or distribution of a Third-Party Brewer's Beer. Nothing in the foregoing sentence shall prohibit Defendant ABI from requesting the reporting of general financial information by an Independent Distributor to assess the overall financial condition and financial viability of such Independent Distributor, or the percentage of total Beer revenues received by the Independent Distributor in the prior year associated with the purchase, sale, or distribution of Defendant ABI's Beer distributed by the Independent Distributor, provided that the requested information does not disclose or enable Defendant ABI to infer the disaggregated revenues, profits, margins, costs, or sales volumes associated with the Independent Distributor's purchase, sale, or distribution of Third-Party Brewers' Beer. Nothing herein shall prevent Defendant ABI from conducting ordinary course due diligence in connection with any potential acquisition of an Independent Distributor.

H. Defendant ABI shall not discriminate against, penalize, or otherwise retaliate against any Distributor because such Distributor raises, alleges, or otherwise brings to the attention of the United States or the Monitoring Trustee an actual, potential, or perceived violation of Section V of this Final Judgment.

I. Within ten (10) business days after entry of this Final Judgment, Defendant ABI shall provide the United States, for the United States to approve in its sole discretion, with a proposed form of written notification to be provided to any Independent Distributor that

distributes Defendant ABI's Beer in the Territory. Such notification shall (1) explain the practices prohibited by Section V of this Final Judgment, (2) describe the changes Defendant ABI is making to any programs, agreements, or any interpretations of agreements required to comply with Section V of this Final Judgment, and (3) inform the Independent Distributor of its right, without fear of retaliation, to bring to the attention of any Monitoring Trustee appointed pursuant to Section VIII of this Final Judgment or the United States any actions by Defendant ABI which the Independent Distributor believes may violate Section V of this Final Judgment. Within ten (10) business days after receiving the approval of the United States, Defendant ABI shall make reasonable efforts to furnish the approved notification described above, together with a paper or electronic copy of this Final Judgment, to any Independent Distributor that distributes Defendant ABI's Beer in the Territory.

VI. Appointment of Trustee to Effect Divestiture

A. If following Completion of the Transaction Defendant ABI has not divested the Divestiture Assets within the time period specified in Section IV.A, Defendant ABI shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section VI.E of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendant ABI any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Defendant ABI shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objection by Defendant ABI must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.A.

E. The Divestiture Trustee shall serve at the cost and expense of Defendant ABI pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendant ABI and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendant ABI are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendant ABI and the United States. Defendant ABI shall use its best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendant ABI shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant ABI shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to Defendant ABI and to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement with an Acquirer other than Molson Coors, Defendant ABI or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendant ABI. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets or, in the case of the Divestiture Trustee, any update of the information required to be provided under Section VI.G above.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendant ABI, the proposed Acquirer, any other third party, or the Divestiture Trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendant ABI and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendant ABI, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendant ABI and the Divestiture Trustee, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant ABI's limited right to object to the sale under Section VI.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section VI shall not be consummated. Upon objection by Defendant ABI under Section VI.D, a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall investigate and report on the Defendants' compliance with their respective obligations under this Final Judgment and Defendants' efforts to effectuate the purposes of this Final Judgment, including but not limited to, reviewing (a) complaints that Defendant ABI has violated Section V of this Final Judgment; (b) the implementation of the compliance plan required by Section XIII.B of this Final Judgment; and (c) any claimed breach of the Transition Services Agreements, License Agreements, Interim Supply Agreements, or other agreement between Defendant ABI and the Acquirer that may affect the accomplishment of the purposes of this Final Judgment. If the Monitoring Trustee determines that any violation of the Final Judgment or breach of any related agreement has occurred, the Monitoring Trustee shall recommend an appropriate remedy to the Antitrust Division of the United States Department of Justice (the ''Antitrust Division''), which, in its sole discretion, can accept, modify, or reject a recommendation to pursue a remedy.

C. Subject to Section VIII.E of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendant ABI, any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities on any ground other than the Monitoring Trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Defendant ABI on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other persons, provide written notice of such hiring and the rate of compensation to Defendant ABI.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their respective obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges, to the extent Defendants have the right to provide such access. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports every ninety (90) days, or more frequently as needed, with the United States and, as appropriate, the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the sale of all the Divestiture Assets is finalized pursuant to either Section IV or Section VI of this Final Judgment and the Transition Services Agreements and the Interim Supply Agreements have expired and all other relief has been completed as defined in Section V unless the United States, in its sole discretion, authorizes the early termination of the Monitoring Trustee's service.

IX. Financing

Defendants shall not finance all or any part of any purchase made pursuant

to Section IV or Section VI of this Final Judgment.

X. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, or the Transaction is abandoned by the Defendants in accordance with the terms of the Co-Operation Agreement between the Defendants dated November 11, 2015 and the United States has notified the Court, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

XI. Affidavits

A. Within twenty (20) calendar days of the filing of this proposed Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section VI, each Defendant shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section VI of this Final Judgment. Each such affidavit on behalf of Defendant ABI shall also include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendant ABI's affidavit shall also include a description of the efforts Defendant ABI has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this proposed Final Judgment, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions it has taken and all steps it has implemented on an ongoing basis to comply with Section X of this Final Judgment. Each Defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in its earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the date of the divestiture.

XII. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendant ABI, without providing at least thirty (30) calendar days advance notification to the United States, shall not directly or indirectly acquire or license a Covered Interest in or from a Covered Entity.

B. Any such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendant ABI shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

C. All references to the HSR Act in this Final Judgment refer to the HSR Act as it exists at the time of the transaction or agreement and incorporate any subsequent amendments to the HSR Act. This Section XII shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section XII shall be resolved in favor of filing notice.

XIII. Nondisclosure of Information

A. Each Defendant shall implement and maintain procedures to prevent the disclosure of Confidential Information by or through Defendants to Defendants' respective affiliates who are involved in the marketing, distribution, or sale of Beer or other beverages in the Territory, or to any other person who does not have a need to know the information.

B. Each Defendant shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the United States a compliance plan setting forth in detail the procedures implemented to effect compliance with Section XIII.A of this Final Judgment. In the event that the United States rejects a Defendant's compliance plan, that Defendant shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the United States and a Defendant cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether the Defendant's proposed compliance plan is reasonable.

C. Each Defendant may submit to the United States evidence relating to the actual operation of its respective compliance plan in support of a request to modify such compliance plan set forth in this Section XIII. In determining whether it would be appropriate to consent to modify the compliance plan, the United States, in its sole discretion, shall consider the need to protect Confidential Information and the impact the compliance plan has had on Defendant ABI's ability to efficiently provide services, supplies, and products under the Transition Services Agreements, the License Agreements, the Interim Supply Agreements, and any agreements entered into between Defendant ABI and the Acquirer subject to Section V.C.

D. Defendants shall prior to the Completion of the Transaction, and Defendant ABI shall following Closing:

1. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) days of entry of the Final Judgment to (a) each officer, director, and any other employee that will receive Confidential Information; (b) each officer, director, and any other employee that is involved in (i) any contact with the Acquirer or MillerCoors, (ii) making decisions under the Transition Services Agreements, the License Agreements, the Interim Supply Agreements, and any agreements entered into between Defendants and the Acquirer subject to Section V.C, or (iii) making decisions regarding Defendant ABI's relationships with, agreements with, or policies regarding Distributors; and (c) any successor to a person designated in Section XIII.D.1(a) or (b);

2. annually brief each person designated in Section XIII.D.1 on the meaning and requirements of this Final Judgment and the antitrust laws; and

3. obtain from each person designated in Section XIII.D.1, within sixty (60) days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide

by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the company; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against that Defendant and/or any person who violates this Final Judgment.

XIV. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under the Protective Order, then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XV. No Reacquisition

Defendant ABI may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XVI. Bankruptcy

The failure of any party to any agreement entered into to comply with this Final Judgment to perform any remaining obligations of such party under the agreement shall not excuse performance by the other party of its obligations thereunder. Accordingly, for purposes of Section 365(n) of the Bankruptcy Reform Act of 1978, as amended, and codified as 11 U.S.C. 101 *et. seq.* (the ''Bankruptcy Code'') or any analogous provision under any law of any foreign or domestic, federal, state, provincial, local, municipal or other governmental jurisdiction relating to bankruptcy, insolvency or reorganization (''Foreign Bankruptcy Law''), (a) the agreement will not be deemed to be an executory contract, and (b) if for any reason a License Agreement is deemed to be an executory contract, the licenses granted under the License Agreement shall be deemed to be licenses to rights in ''intellectual property'' as defined in Section 101 of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law and the Acquirer shall be protected in the continued enjoyment of its right under the License Agreement including, without limitation, the Acquirer so elects, the protection conferred upon licensees under 11 U.S.C. Section 365(n) of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law.

XVII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to ensure and enforce compliance, and to punish violations of its provisions.

XVIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Attachment A—Miller Brands

1. Hamm's
   - A. Hamm's
   - B. Hamm's Golden Draft
   - C. Hamm's Special Light
2. Icehouse
   - A. Icehouse 5.0
   - B. Icehouse 5.5
   - C. Icehouse Light
3. Magnum Malt Liquor
4. Mickey's
   - A. Mickey's
   - B. Mickey's Ice
5. Miller
   - A. Miller Chill
   - B. Miller Dark
   - C. Miller Genuine Draft
   - D. Miller Genuine Draft Light
   - E. Miller Genuine Draft 64
   - F. Miller High Life
   - G. Miller High Life Light
   - H. Miller Lite
   - I. Miller Mac's Light
   - J. Miller Pilsner
   - K. Miller Special
6. Milwaukee's
   - A. Milwaukee's Best
   - B. Milwaukee's Best Dry
   - C. Milwaukee's Best Ice
   - D. Milwaukee's Best Light
7. Olde English
   - A. Olde English 800
   - B. Olde English 800 7.5
   - C. Olde English High Gravity 800
8. Red Dog
9. Sharp's (Non-Alcohol)
10. Southpaw Light
11. Steel
    - A. Steel Reserve Triple Export 8.1%
    - B. Steel Reserve High Gravity
    - C. Steel Reserve High Gravity 6.0
    - D. Steel Six
12. Frederick Miller Classic Chocolate Lager

13. Henry Weinhard's
    A. Henry Weinhard's Blonde Lager
    B. Henry Weinhard's Blue Boar
    C. Henry Weinhard's Classic Dark Lager
    D. Henry Weinhard's Hefeweizen
    E. Henry Weinhard's Private Reserve
    F. Henry Weinhard's Belgian Style Wheat
    G. Henry Weinhard's Root Beer
    H. Henry Weinhard's Black Cherry
    I. Henry Weinhard's Vanilla Cream
    J. Henry Weinhard's Orange Cream
14. Leinenkugel's
    A. Leinenkugel's Apple Spice
    B. Leinenkugel's Berry Weiss
    C. Leinenkugel's BIG BUTT
    D. Leinenkugel's Creamy Dark
    E. Leinenkugel's Honey Weiss
    F. Leinenkugel's Light
    G. Leinenkugel's Oktoberfest
    H. Leinenkugel's Original Lager
    I. Leinenkugel's Red Lager
    J. Leinenkugel's Sunset Wheat
15. Sparks
    A. Sparks
    B. Sparks Light
    C. Sparks Plus 6%
    D. Sparks Plus 7%

Attachment B—Import Brands

1. Pilsner Urquell
2. Peroni
3. Grolsch
4. Tyskie
5. Lech
6. Cerveza Aguila
7. Cristal
8. Cusquena
9. Sheaf Stout
10. Castle Lager
11. Victoria Bitter
12. Crown Lager
13. Pure Blonde
14. Carlton Draught and Carlton Dry
15. Matilda Bay Brewing Company products described in the Exploitation of Rights Agreement between MBBC Pty Ltd (ACN 009 077 703) and MillerCoors LLC dated as of March 31, 2013
16. Cascade Brewery Company products described in the Exploitation of Rights Agreement between Cascade Brewery Company Pty Ltd (ACN 058 152 195) and MillerCoors LLC dated as of March 31, 2013
17. Caguama
18. Cantina
19. Pilsener
20. Regia
21. Suprema
22. Taurino
23. Barena
24. Port Royal
25. Salva Vida
26. Santiago
27. Haywards 5000
28. Arriba
29. Caballo
30. Cabana
31. Del Mar
32. San Lucas
33. Tocayo
34. Rialto
35. to the extent not otherwise listed herein, La Constancia S.A. de C.V. products described in the Supplier-Importer Agreement, dated as of July 11, 2005 between La Constancia S. S.A. de C.V. and Winery Exchange, Inc.

Attachment C—Defendant ABI's Calculation Beer Volume Sold Through ABI-Owned Distributors

For purposes of Section V.B., the percentage of Defendant ABI's Beer sold by ABI-Owned Distributors in the Territory will be calculated according to the following formula:

$$Percentage = \frac{X}{Y} \times 100$$

Where X and Y are defined as:

X = volume of Defendant ABI's Beer that was sold by ABI-Owned Distributors to retailers in the Territory, as indicated by the most comprehensive data then used by ABI (currently, ABI's BudNet system), during the Relevant Period. The Relevant Period, for purposes of this Attachment C, shall be the 12 month period ending at the month-end immediately prior to the execution of the acquisition agreement governing the acquisition by ABI of the assets or equity interest, as applicable, of a Distributor. For the avoidance of doubt, X will include the volume of Defendants' Beer that was sold during the Relevant Period to retailers in the territory by the Distributor whose assets or equity interests are the subject of the acquisition agreement.

Y = volume of Defendant ABI's Beer that was sold to retailers in the Territory during the Relevant Period, as indicated by the most comprehensive data then used by ABI (currently, ABI's BudNet system).

[FR Doc. 2016–18504 Filed 8–3–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Filing of Notice of Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

On July 28, 2016, a Notice of Settlement Among EFH Properties Company and the United States on behalf of the U.S. Environmental Protection Agency (''EPA'') and the U.S. Department of the Interior (''DOI'') was filed with the United States Bankruptcy Court for the District of Delaware in the bankruptcy proceeding entitled *In re Energy Future Holdings Corp., et al.,* Case No. 14–10979 (CSS). The proposed Settlement Agreement is attached to the Notice of Settlement as Exhibit A.

The Settlement Agreement resolves a claim against EFH Properties Company (''EFH Properties''), as the alleged corporate successor to former mine operators, asserted by the United States on behalf of the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA''). The claim sought to recover costs incurred and expected to be incurred in the future by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Faith, Hope, Doris, and Isabella Uranium Mine Sites, located in McKinley County, New Mexico (''New Mexico Sites'').

Under the Settlement Agreement, EPA will receive $4,000,000.00. The Settlement Agreement contains covenants not to sue by the United States on behalf of EPA in favor of EFH Properties and its predecessors, Chaco Energy Company, TXU Industries Company LLC, and EFH Properties Company LLC (the ''Covenant Beneficiaries''), under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607 and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, with respect to the EPA claim or the New Mexico Sites. The Settlement Agreement also contains a covenant not to sue by the United States on behalf of DOI in favor of the Covenant Beneficiaries, for natural resources damages claims under Sections 107 of CERCLA, 42 U.S.C. 9607, with respect to the EPA claim or the New Mexico Sites.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Energy Future Holdings Corp., et al.,* Case No. 14–10979 (CSS), D.J. Ref. No. 90–5–2–1–09894/2. All comments must be submitted no later than fifteen (15) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written