



Department of Justice

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The Department of Justice today filed a civil antitrust suit challenging the proposed merger of the Stroh Brewery Company of Detroit, Michigan, and the Jos. Schlitz Brewing Company of Milwaukee, Wisconsin. The Department of Justice also filed a proposed consent decree that would end the suit.

Assistant Attorney General William F. Baxter said the suit and the proposed consent decree were filed simultaneously in U.S. District Court in Washington, D.C., and that the proposed decree will become final upon approval by the court.

In 1981 Stroh was the nation's seventh largest brewer, operating breweries in Detroit, Michigan, and Allentown, Pennsylvania. Schlitz was the nation's third largest brewer, operating breweries in Winston-Salem, North Carolina; Memphis, Tennessee; Tampa, Florida; Longview, Texas; and Los Angeles, California.

The complaint charges that the proposed merger might substantially lessen competition in the beer industry in a nine-state area in the Southeast in violation of Section 7 of the Clayton Act. The geographic market alleged in the suit consists of the states of Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

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In 1980 Stroh was the fifth largest brewer in that market, with approximately 6.9 percent of total beer sales, and Schlitz was third largest, with approximately 13.4 percent. The combination of the Stroh and Schlitz firms in the market described in the complaint would have increased total seller concentration by 186 points, from 2,345 to 2,531, as measured by the Herfindahl Index. The four-firm concentration ratio of sellers in that market would have been increased by 6.9 percentage points, from 85.2 percent to 92.1 percent, by the merger.

The proposed decree requires Stroh unconditionally to divest itself of the Winston-Salem plant or the Memphis plant that it will acquire in the merger with Schlitz. The divestiture must be made to a purchaser approved by the Department or by the court. Under the terms of the proposed decree, neither of the plants may be sold to Anheuser-Busch Companies, Inc. or Miller Brewing Co., the two largest brewers in the market alleged and in the nation.

The proposed decree further provides that should Stroh fail to sell either plant within one year, a trustee will be appointed to accomplish the sale.

Baxter also said that the Department did not find that the merger would violate the Clayton Act in the market for beer in the nation as a whole. Schlitz's shipments of beer in the United States in 1981 totalled 14.3 million barrels,

or about 7.8 percent of the national market. Stroh's shipments in 1981 totalled 9.1 million barrels, of which about 1 million went to Puerto Rico. Stroh's total shipments accounted for about 5 percent of industry shipments.

Baxter said that Stroh's competitive position in the much smaller nine-state market alleged in the complaint was dependent upon relatively high-cost shipments from production facilities outside of that area. He said that the divestiture sought by the consent decree is the best cure that is feasible for the anticompetitive effects of the merger and also that the proposed relief is the same as the relief which the Department would have sought in a full trial.

Baxter said that in a friendly merger it is almost always true, and in a non-friendly takeover it is sometimes true, that a competitive problem in a relatively small submarket can be cured prior to the merger.

Where the problem can be cured, he said, the Antitrust Division will insist that it be cured prior to consummation. But in a non-friendly takeover such as this one, he said, the only practicable cure may involve assets beyond the control of the acquiring firm.

In such situations the Division, to avoid creating disproportionate obstacles to unfriendly takeovers, may accept arrangements which cure the submarket problem after consummation, Baxter said.

In accordance with the Antitrust Procedures and Penalties Act of 1974, a Competitive Impact Statement regarding the decree has been filed with the court. Copies of this statement and of the proposed decree are available on request in the Legal Procedure Unit, Antitrust Division, Room 7416, Department of Justice, Washington, D.C. 20530. They are also available for inspection in the Office of the Clerk of the U.S. District Court in Washington, D.C.

Comments to the Department and to the court regarding the proposed decree are invited from members of the public within the next 60 days. They should be directed to Anthony V. Nanni, Chief, Trial Section, Antitrust Division, Department of Justice, 10th Street & Constitution Avenue, N.W., Room 3266, Washington, D.C. 20530.

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