

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANHEUSER-BUSCH InBEV SA/NV, et al.,

Defendants.

Civil Action No. 16-1483 (EGS)

**PLAINTIFF UNITED STATES' RESPONSE TO
YUENGLING'S SUPPLEMENTAL AMICUS CURIAE BRIEF**

The United States responds to correct two inaccurate assertions made by D.G. Yuengling & Son, Inc. ("Yuengling") in its supplemental amicus curiae brief.¹

First, contrary to Yuengling's assertion, the Modified Proposed Final Judgment would not "permit DOJ to terminate all of the provisions in the Modified Proposed Final Judgment in July 2021, about 3 years from now."² Section XIX of the Modified Proposed Final Judgment states that "after five (5) years *from the date of its entry*, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public

¹ See Memorandum of Points and Authorities in Support of Yuengling's Motion for Leave to File this Supplemental *Amicus Curiae* Brief Pursuant to the Tunney Act and in Opposition to the United States' and ABI's Joint Motion for Entry of Modified Proposed Final Judgment. ("Yuengling Supplemental Brief") (Dkt. 35-2).

² Yuengling Supplemental Brief at 3.

interest.”³ Accordingly, under the express terms of the Modified Proposed Final Judgment, the earliest the United States could terminate it is five years after the date the Court enters it as the Final Judgment in this matter, not five years after the complaint was filed. In addition, the Final Judgment, once entered, would terminate only if the United States were to determine that the Final Judgment no longer would be necessary or in the public interest. Otherwise, the Final Judgment would terminate in July 2026.

Second, contrary to Yuengling’s suggestion, the United States and the Monitoring Trustee conducted an extensive investigation into whether ABI violated the Proposed Final Judgment when it redirected the sale of an Independent Distributor⁴ in Mississippi. Yuengling lacks complete information and is aware of only a portion of that investigation. Yuengling’s suggestion that the United States “extensively relied upon ABI’s self-serving explanation of its contractual rights,” but otherwise “conducted only cursory telephone interviews” of parties impacted by ABI’s action,⁵ is therefore incorrect. The United States strives to keep various aspects of its investigations confidential in order to protect third parties’ incentives to cooperate with the United States in its investigations and to protect competitively sensitive information from disclosure to third parties, among other reasons.

Contrary to Yuengling’s uninformed criticism of the investigation, the United States and the Monitoring Trustee collectively interviewed multiple industry participants, including beer brewers and independent distributors. The United States and the Monitoring Trustee each issued multiple requests for documents and other information and reviewed thousands of pages of

³ See Modified Proposed Final Judgment (Dkt. 34-2) at Section XIX (emphasis added).

⁴ Capitalized terms not defined herein have the meanings ascribed to them in the Proposed Final Judgment.

⁵ See Yuengling Supplemental Brief at 4-5.

documents and other information produced in response to those requests. The United States also discussed with the Monitoring Trustee, and was informed of, aspects of the latter's investigation in which the United States did not participate directly.

As the United States has explained in the Competitive Impact Statement, the Response to Public Comments, and the Response to Briefs filed by Amici Curiae, and as the United States and ABI have explained in the Joint Motion and Memorandum for Entry of Modified Proposed Final Judgment, it is appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Modified Proposed Final Judgment as in the public interest.

Dated: May 11, 2018

Respectfully submitted,

/s/ Michelle R. Seltzer

Michelle R. Seltzer (D.C. Bar No. 475482)

U.S. Department of Justice

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CERTIFICATE OF SERVICE

I, Michelle R. Seltzer, hereby certify that on May 11, 2018, I caused a copy of Plaintiff United States' Response to Yuengling's Supplemental Amicus Curiae Brief to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia.

/s/ Michelle R. Seltzer

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