EXHIBIT A

TUNNEY ACT COMMENT OF THE ATTORNEY GENERAL OF HAWAII
ON THE PROPOSED FINAL JUDGMENT
FILED IN
UNITED STATES OF AMERICA v. ANHEUSER-BUSCH INBEV SA/NV, ET AL.
Civil Action No. 4:20-cv-01282

DEFINITIONS.
The following terms are used in this comment:

- **PV** – means PV Brewing Partners, LLC, the acquirer of the divestiture assets, and includes Kona Brewing LLC.
- **PV Kona Brew** – means Kona Brew products believed to be sold by PV in Hawaii.
- **ABI Kona Brew** – means Kona Brew products made by ABI and sold outside of Hawaii.
- **ABI** – means Defendants Anheuser-Busch InBev SA/NV), Anheuser-Busch Companies, LLC, and Craft Brew Alliance, Inc. ("CBA"), unless otherwise specifically noted.
- **CIS** – means the Competitive Impact Statement.
- **PFJ** - means the proposed Final Judgment.

INTRODUCTION.
The PFJ provides that the intent of the divestiture remedy is:

> [That the] Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii, and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.[1]

The CIS provides additional insight on the intent of the divestiture remedy as follows:

> The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by **establishing** an **independent** and economically viable **competitor** in the market for beer in the [S]tate of Hawaii.[2] (Emphasis added.)

Respectfully, we are concerned that the PFJ does not meet the "public interest" standard. While the PFJ contemplates PV, a newly-formed entity, owning the divestiture assets, ongoing entanglements between ABI and PV raise concerns that: (i) the divestiture remedy will not establish PV to be truly independent of ABI; nor (ii) establish PV to be able to effectively compete with ABI in Hawaii.

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[1] PFJ at ¶ III.D. at p. 8.

[2] CIS at p. 11.

We summarize our concerns as follows:

- PV and ABI will be intertwined as they both will be selling the same branded product in their respective sales territories.
- PV's entanglement with and reliance on ABI's wholly-owned distributor ("WOD") may well mean that ABI will have pricing control and authority over the price-to-retailer (PTR) of PV Kona Brew which could foster:
    - ABI's price leadership and Molson Coors's willingness to follow ABI's announced price increases in Hawaii; and
    - Anticompetitive pricing of the PTR of PV Kona Brew in comparison to other beers sold by ABI in Hawaii.[3]
- PV's entanglement with and reliance on ABI for the performance of critical business functions through the Transition Services Agreement will give ABI influence and if not a measure of control over these business functions.
- By reason of the non-exclusive supply contract, PV will be entangled with ABI for production, packaging and delivery of PV Kona Brew to meet PV's needs:
    - We expect PV to be close to 100% reliant on ABI as its contract brewer until the new brewery is fully operational;
    - We expect PV to be reliant on ABI as long as PV chooses to sell bottled beer;
    - We expect PV to be reliant on ABI if the new brewery is not able to produce PV's entire requirements of PV Kona Brew cans and draught beer of sufficient quality and quantity after 5 years.

DISCUSSION.

Entanglement No. 1: The Common Product.

Post divestiture, PV and ABI will each be parts of a whole and intricately intertwined with the other. The "whole" is the universe of Kona Brew products where **ideally**, ABI and PV will be selling the same product - Kona Brew beer - as follows:

(i) Kona Brew products are to be brewed and packaged in different locations:
   a. PV Kona Brew being brewed and packaged in Hawaii; and

[3] The PTR is the price at which the beer is sold by the distributor to retailers who set the retail price for customers. In this matter, the distributor is ABI's wholly-owned distributor.

b. ABI Kona Brew being brewed and packaged on the U.S. mainland; and

(ii) Kona Brew products are to be sold in different locations:
a. PV Kona Brew will be sold in Hawaii; and
b. ABI Kona Brew will be sold outside of Hawaii throughout the rest of the world. [4]

ABI Kona Brew and PV Kona Brew are both tied to a common "story" of the beer's origins in Hawaii and the advertising and lifestyle niche reflected in the marketing of the beer, e.g., the marketing of the products as "Liquid Aloha" and other Hawaii-themed campaigns. It would not make sense for ABI to disavow the Hawaii-connection nor for PV to now claim a non-Hawaii origin.

Since Defendants and PV are selling the same products in concept as well as in taste and marketing, each will be intricately intertwined with the other which may call for each to be moving with the other in a highly coordinated manner.

Entanglement No. 2: The Role of ABI's Wholly Owned Distributor.
Per the PFJ, at the option of PV, ABI's WOD in Hawaii is required to enter into a distribution agreement with PV.[5] Thus, PV will logistically continue with the pre-transaction arrangement that CBA had where the WOD distributed all of CBA's Kona Brew products in Hawaii.[6] This WOD has distributed other ABI beers in Hawaii in the past. [7] We expect the WOD to continue to distribute other ABI beers post-divestiture.

Since the WOD is wholly-owned by ABI, we are concerned that ABI will have the control and authority over the PTR of PV Kona Brew. Such control by ABI over the PTR is strongly suggested by ¶ 29 of the Complaint which alleges that ABI has a "price leadership" strategy, that ABI seeks to generate "industry-wide price increases," that ABI implements this strategy by pre-announcing its own price increases and purposefully making those price increases, and that ABI tracks its primary competitors:

> 29. Historically, ABI has employed a "price leadership" strategy throughout the United States, including in Hawaii. According to this strategy, ABI, with the largest beer sales in the United States and Hawaii, seeks to generate industry-wide price increases by pre-announcing its own price increases and purposefully

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[4] This ideal world is not what will occur because initially, portions of PV Kona Brew will be produced and packaged on the U.S. mainland and delivered to Hawaii for distribution by ABI's WOD to Hawaii retailers.

[5] See, PFJ at ¶ IV(O) on p. 13.

[6] CIS at p. 16.

[7] See, e.g., https://www.yellowpages.com/aiea-hi/mip/anheuser-busch-sales-of-hawaii-inc-11728049.

> making those price increases transparent to the market so its primary competitors will follow its lead. These announced price increases, which can vary by geography because of different competitive conditions, typically cover a broad range of beer brands and packages (e.g., container and size). After announcing price increases, ABI tracks the degree to which its primary competitors match its price increases. Depending on the competitive response, ABI will either maintain, adjust, or rescind an announced price increase.

The allegations do not mention the authority of the WOD to set the PTR or the WOD's discretion on implementation of the price leadership strategy. In fact, the allegations read as if the WOD does not have any role or involvement with ABI's industry-wide price increases, and in particular, as to price increases applicable to Hawaii.

We are therefore concerned that the entanglement of PV with ABI's WOD will pose at least two (2) anticompetitive pricing problems:

Problem No. 1: Facilitating ABI's Price Leadership viz. Molson Coors.
The CIS at p. 10 describes a concern that through the proposed transaction,"ABI would gain control over Kona's pricing and would likely increase Kona's price, thereby eliminating a significant constraint on Molson Coors's willingness to follow ABI's announced price increases in Hawaii." The Complaint describes the dynamics as follows:

> 30. For many years, Molson Coors Beverage Company ("Molson Coors"), the brewer with the second-largest beer sales in the United States and owner of many brands sold in Hawaii such as Miller Lite, Coors Light, and Blue Moon, has followed ABI's announced price increases in Hawaii to a significant degree. Molson Coors's willingness to follow ABI's announced price increases is constrained, however, by the diversion of sales to other competitors who are seeking to gain share, including CBA and its Kona brand.
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> 31. **By acquiring CBA, ABI would gain control over Kona's pricing and would likely increase Kona's price, thereby eliminating a significant constraint on Molson Coors's willingness to follow ABI's announced price increases in Hawaii.** By reducing Kona's constraint on Molson Coors's willingness to increase prices, the acquisition likely increases the ability of ABI to facilitate price coordination, thereby resulting in higher prices for beer sold in Hawaii. For this reason, ABI's acquisition of CBA likely would substantially lessen competition in Hawaii in violation of Section 7 of the Clayton Act. (Emphasis added.)

The divestiture remedy does not remove nor lessen the prospect of a violation of Section 7 of the Clayton Act. Due to ABI's control and authority over the PTR, ABI will still possess the ability to remove any pricing constraint associated with the PTR of PV Kona Brew and thereby pave the way for Molson Coors to follow any price increases announced by ABI in Hawaii.

Problem No. 2: Anticompetitive Pricing of PV Kona Brew Versus Other Beers Sold by ABI in Hawaii.

The entanglement between PV and ABI's WOD may negatively impact price competition between PV Kona Brew and other ABI beers sold in Hawaii.

ABI groups beers into five segments and sells beers in each segment in Hawaii:

1. Value (Busch Light and Natural Light);
2. Core (Bud Light and Budweiser);
3. Core-plus (Michelob Ultra and Bud Light Lime);
4. Premium (Michelob Ultra Pure Gold); and
5. Super-premium (Stella Artois and Golden Road).[8]

Importantly, as noted earlier, the WOD has distributed other ABI beers in Hawaii, and we expect it will continue to do so post-divestiture.

We are not aware of any prohibition that would prevent PV from seeking to have PV Kona Brew priced sufficiently low by a distributor independent of ABI to effectively compete with ABI's beers in other segments, such as: (i) the Value segment; (ii) the Core segment; or (iii) the Core-plus segment. [9]

But with the divestiture remedy, through its control and authority over the WOD and the PTR of PV Kona Brew, ABI will have the ability to prevent PV Kona Brew from competing against other beers sold by ABI and substantially lessen competition between PV and ABI to benefit the sales of ABI's other beers. Consider the following:

- ABI has positioned one of its beers in the premium segment - Michelob Ultra Pure Gold. ABI has the motivation to suppress competition from PV Kona Brew to protect its own premium beer in Hawaii and could cause the PTR of PV Kona Brew to be above the PTR of Michelob Ultra Pure Gold.

- ABI, through its control and authority, could increase the PTR of PV Kona Brew to remove a constraint on ABI's ability to raise prices in other segments. The Complaint contains an implicit acknowledgement that the level of PV Kona Brew's price could constrain ABI's ability to raise its beer prices not only in the premium segment but also in core-plus and other beer segments:

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[8] CIS at p.4.

[9] The Complaint at ¶ 16 acknowledges the importance of changes in price in prompting consumers to switch beers or "trade up" or "trade down" between segments:

> Consumers may "trade up" or "trade down" between segments in response to changes in price. For example, as the prices of core-plus brands approach the prices of premium brands, consumers are increasingly willing to "trade up" from core-plus brands to premium brands.

> . . . [T]he competition provided by CBA's Kona in the premium segment [has served] as an **important constraint** on the ability of ABI to raise its beer prices not only in the premium segment, but also in core-plus and other beer segments.[10] (Emphasis added.)

In addition, ABI would likely prevent PV Kona Brew from being priced lower to compete against ABI's value, core, or core-plus beers to avoid eroding sales in Hawaii of ABI's beers in these segments.

ABI and PV may assert that a premium beer such as PV Kona Brew would not be priced to compete with other beers sold by ABI in Hawaii because the other ABI beers appeal to different tastes and customers. That said, the pricing is under the control of ABI. Also, consumers are not strictly prohibited from buying other than their favorite beer, especially if another beer is a premium beer sold at a competitive price. As noted earlier, the Complaint acknowledges that price can cause consumers switch beers or "trade up" or "trade down" in response to changes in price.

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While PV has the option to arrange for a new distributor, pursuit of this option will likely be a daunting task that could impair distribution of PV Kona Brew. As CBA has noted in the past, changing the distribution network is a challenging task:

> **We have a continuing relationship with Anheuser-Busch, LLC and the current distribution network that would be difficult to replace.**
> Most of our products are sold and distributed through A-B's distribution network. If the A-B Distributor Agreement were terminated, we would be faced with a number of operational tasks, including establishing and maintaining direct contracts with the existing wholesaler network or negotiating agreements with replacement wholesalers on an individual basis, and enhancing our credit evaluation, billing and accounts receivable processes. Such an undertaking would require significant effort and substantial time to complete, during which the distribution of our products could be impaired. **We are dependent on our wholesalers for the sale of our products.**[11] (Emphasis added.)

Furthermore, the challenge could be far greater because we are not aware of any publicly available information showing that the principals of PV have: (i) experience in running a Hawaii-based hands-on beer brewing operation; (ii) experience with doing business in Hawaii;

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[10] Complaint at ¶16.

[11] See, Risk Factors" section of CBA's 2018 10-K at pp. 16-17.

or (iii) experience with servicing all the retail connections that purchased Kona Brew beer from the WOD.

Thus, we remain concerned that the entanglement of PV with ABI's WOD poses anticompetitive pricing problems.

Entanglement No. 3: ABI's Provisioning of Transition Services.
Per the PFJ, at the option of PV, Defendants are required to enter into a contract to provide transition services to PV.[12] PV will be entangled with and reliant upon ABI for the performance of critical business functions through the Transition Services Agreement which will give ABI influence if not a measure of control over these functions. These functions are:

- Finance and accounting services;
- Human resources services;
- Supply and procurement services;
- Brewpub consulting;
- On-island merchandising;
- Brewing engineering; and
- Information technology services and support.[13]

The CIS describes the brewing engineering function as "particularly important to PV Brewing to ensure that it can run the new brewery and produce saleable Beer—which is critical to PV Brewing competing effectively in Hawaii."[14]

Per the CIS:

- "Any transition Services agreement may last for a period of up to 18 months;"

- The transition services agreement contemplates "employees of Defendants" being "tasked with supporting the transition services agreement;" and

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[12] See, PFJ at ¶ IV(P) on pp. 13-14.

[13] CIS at p. 17.

[14] CIS at p. 17.

- "Any transition services agreement must be time-limited to incentivize [PV] to become a fully independent competitor of [ABI]."[15]

But consider that a complete termination of services via the Transition Services Agreement will likely occur only if PV has acquired employees sufficient and capable of substantially performing the myriad functions **without** the assistance of Defendants.

While there is an intent to limit the term of the agreement to 18 months, we are not aware of an absolute prohibition on an amendment to extend the term beyond 18 months to address any employment shortcomings experienced by PV. We also note that the CIS contemplates changes and provides on p. 18 that "to the extent PV Brewing or Defendants seek to amend or modify any transition services agreement, the United States must approve any changes."

Thus, we remain concerned that PV will remain entangled with ABI for critical services beyond 18 months.

Entanglement No. 4: Contract Brewing of PV Kona Brew by ABI.
Per the PFJ, at the option of PV, Defendants are required to enter into a non-exclusive supply contract for the production, packaging, and delivery of beer.[16]

We understand the logic of the contract brewing arrangement given: (i) the history of ABI brewing Kona Brew beer for years due to the absence of a fully operational brewery in Hawaii capable of handling CBA's production requirements; and (ii) the fact that ABI and PV will both selling a common product such that the quality of PV Kona Brew must be commensurate with ABI Kona Brew.

PV will be acquiring a new brewery that has been under construction since as far back as 2018 if not earlier.[17] The exact timing of when the brewery will be certified as being fully operational is unknown. But we do know that Defendants will be deemed to have complied with their PFJ obligation on the new brewery if:

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[15] CIS at pp. 17 & 18. Interestingly, the CIS does not express the sentiment that PV be incentivized to become a "fully independent competitor" with respect to the distributor agreement with the WOD nor the non-exclusive supply contract with Defendants discussed later.

[16] See, PFJ at ¶ IV(N) on pp. 12-13.

The movement of PV Kona Brew from the mainland brewery to the WOD appears to be a continuous flow with title to the beer remaining with ABI.

[17] The CBA 2017 10-K report at p. 23 stated that "In 2016, we held a groundbreaking ceremony for a new brewery near our existing brewery and pub in Kona. The new brewery, which is being built with sustainability in mind, is scheduled to go online in the first quarter of 2019." The CBA 2018 10-K report at p. 7 stated that that the brewery was scheduled to go online in the latter half of 2019.

(i) The new brewery achieves an average production capacity of 1,500 barrels of saleable Beer each calendar week for three consecutive calendar weeks within 180 calendar days after the Court's entry of the Stipulation and Order; [18] and

(ii) If Defendants warrant to PV that the new brewery is operational and without material defect.[19]

If these metrics are not met, then Defendants will be required to pay $25,000 per day until they achieve compliance per the PFJ. [20]

At the moment, until the brewery is fully operational, there is uncertainty as to the true capability of the new brewery to produce the entire product spectrum and quantity of PV Kona Brew cans and draught beer. We therefore expect PV will remain reliant on ABI for the production, packaging, and delivery of beer sufficient to meet PV's immediate needs via the non-exclusive supply contract with ABI.

This entanglement of PV with ABI through the non-exclusive supply contract should provide the products needed by PV and promote consistency between PV Kona Brew and ABI Kona Brew until the new brewery is fully operational. The supply agreement may be for a period of five (5) years as contemplated by the PFJ – an initial three year period plus two one-year periods.

We remain concerned, however, that PV's entanglement with ABI via the non-exclusive supply contract will continue beyond five (5) years for three reasons. **First,** it is unclear whether and to what extent the new brewery will be able to brew all the canned beer and draught beer needed by PV.

Second, we are not aware of an absolute prohibition on an amendment to extend the term of the non-exclusive supply contract beyond five (5) years months to address production shortcomings experienced by PV. Here, we note that the CIS contemplates changes and provides on p. 16 that "to the extent PV Brewing or Defendants seek to amend or modify any supply agreement, the United States must approve any changes."

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[18] It is not clear what "1,500 barrels of saleable beer" represents in terms of PV's production requirements nor clear as to the extent 1,500 barrels will free PV from ABI's contract brewing role.

[19] CIS at p. 13 referring to PFJ at ¶ IV.B and J.

[20] CIS at p. 13.

Third, PV does not have the facilities in Hawaii to brew bottled beer. [21] PV will therefore be reliant on the non-exclusive supply contract with ABI as long as PV decides to sell PV Kona Brew in bottles.

Admittedly, PV will have the option to contract with other brewers to brew its PV Kona Brew in bottles as well as in cans and draught. But the fact that PV may pursue a non-ABI brewing option does not mean the option is viable due to: (i) the intricacies of switching to a new brewery; (ii) the need to ensure quality control and consistency between the multiple PV Kona Brew products and ABI Kona Brew products; and (iii) the need to ensure sufficient production quantities. That "Defendants are already familiar with the recipes and brewing processes for Kona brands" and have the brewing capacity provides much comfort if not inertia against pursuing a non-ABI brewing option.[22]

We are concerned that this entanglement between PV and ABI via the non-exclusive supply contract with ABI will continue **beyond** 5 years as long as PV chooses to sell bottled beer **and/or** if the new brewery is not able to produce PV's entire requirements of PV Kona Brew cans and draught beer of sufficient quality and quantity after 5 years.[23]

Summary.

Based on the above, we are concerned that the PFJ does not meet the "public interest" standard. Ongoing entanglements between ABI and PV raise concerns that the divestiture remedy will not establish PV to be: (i) truly independent of ABI; and (ii) able to effectively compete with ABI in Hawaii:

- PV and ABI will be intertwined as they both will be selling the same branded product in their respective sales territories.

- PV's entanglement with and reliance on ABI's wholly-owned distributor may well mean that ABI will have pricing control and authority over the price-to-retailer of PV Kona Brew which could foster:

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[21] CIS at p. 15.

[22] CIS at p. 15.

[23] We also remain concerned over the potential customer confusion that could be caused by: (i) "locally-made" PV Kona Brew cans being comingled with cans and bottles produced and packaged for PV by ABI on the U.S. mainland under contract; and/or (ii) mainland-brewed beer being poured in bars and restaurants in Hawaii without any signage. One solution is packaging and notice to clearly and conspicuously inform consumers of where the particular PV Kona Brew was brewed. The notice provided by ABI on packaging used to date has not been as clear and conspicuous to inform consumers of where the beer was brewed.

  - ABI's price leadership and Molson Coors's willingness to follow ABI's announced price increases in Hawaii; and

  - Anticompetitive pricing of the PTR of PV Kona Brew in comparison to other beers sold by ABI in Hawaii.

- PV's entanglement with and reliance on ABI for the performance of critical business functions through the Transition Services Agreement will give ABI influence and if not a measure of control over these business functions.

- By reason of the non-exclusive supply contract, PV will be entangled with ABI for production, packaging and delivery of PV Kona Brew:

  - We expect PV to be close to 100% reliant on ABI as its contract brewer until the new brewery is fully operational;

  - We expect PV to be reliant on ABI as long as PV chooses to sell bottled beer; and

  - We expect PV to be reliant on ABI if the new brewery is not able to produce PV's entire requirements of PV Kona Brew cans and draught beer of sufficient quality and quantity after 5 years.