ALCOHOL JUSTICE™
The Industry Watchdog

FAX

DATE: July 10, 2013

TO:

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FROM:

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RE:

Opposition to Proposed Final Judgment, United States v. Anheuser-Busch InBev SA/NV, Grupo Modelo S.A.B. de C.V

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July 8, 2013

James Tierney, Chief
Networks and Technology Enforcement Section, Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 7100
Washington, D.C. 20530

RE: Opposition to Proposed Final Judgment, United States v. Anheuser-Busch InBev SA/NV, Grupo Modelo S.A.B. de C.V

Dear Mr. Tierney:

Thank you for the opportunity to submit our comments on this proposed settlement. For over 25 years Alcohol Justice has promoted evidence-based public health policies and organized campaigns with diverse communities and youth against the alcohol industry's harmful practices. We have voiced our ongoing concerns regarding the mergers of multinational beer producers and vertical consolidation since InBev's 2008 acquisition of Anheuser-Bush. Our concerns are described in our 2009 report, "Big Beer Duopoly - A Primer for Policymakers and Regulators."

We urge the Department of Justice to reconsider the proposed settlement with A-B InBev and Grupo Modelo. Although the settlement my be intended to protect consumers by maintaining competitiveness in the U.S. beer market and ensuring lower prices, the public will instead suffer many negative consequences resulting from these low beer prices as well as A-B InBev's increased market share, profits, and control over distribution that will result from allowing this merger.

Low beer prices are contrary to the public interest, as they result in excessive consumption and increased alcohol-related harm, the cost of which is borne primarily by U.S. and state governments.

Despite research that shows higher prices will reduce or prevent alcohol-related harm, beer remains the cheapest and most widely used drug in America. Indeed, beer is the most commonly abused drug in the United States, and the most popular drug among youth. A 2011 CDC report estimates that excessive alcohol consumption costs U.S. governments $93 billion annually, very little of which is mitigated by alcohol excise taxes. Beer should be treated as the drug it is, with consistent oversight and regulation applied to alcohol industry-related issues such as taxation, trade, distribution, production, corporate structure and operations. A deal to keep beer prices low may address anti-competitive concerns, but will likely make excessive consumption and related harm even worse.

The proposed settlement will increase A-B InBev's already undue influence on government legislation and organizations.

A-B InBev and its main competitor, MillerCoors, LCC, already control 80% of the U.S. beer market. The Modelo merger will increase A-B InBev's U.S. volume market share from its current 49% to an estimated 55%. These companies' stranglehold on the U.S. market gives them excessive political and marketing influence. A-B InBev currently spends $474 million annually on advertising, not including unmeasured advertising such as social media and sports sponsorships, accounting for 41% of all beer advertising in the U.S. They aggressively fight any attempt by states, communities, and transit agencies to limit alcohol advertising, and have effectively stymied increases in excise taxes and mitigation fees at the federal and state level through political contributions and lobbying power. The proposed settlement exacerbates the already unbalanced distribution of power by increasing A-B InBev's market share and profits. Rather than helping it grow, the DOJ should be breaking up A-B InBev's near-monopoly.

The proposed settlement allows A-B InBev and other alcohol conglomerates to undermine the three-tier system of alcohol production, distribution and sales in the U.S.

A separate and independent distribution tier is a crucial component of alcohol regulation in the United States. In addition to acting as a buffer between alcohol beverage manufacturers and retailers, distributors also serve as a source of accountability within the alcohol industry. Maintaining the integrity of the three-tier system is necessary for ensuring the health and safety of the public. A-B InBev and other multinational alcohol companies have already weakened the three-tier system, purchasing distributers in every state where they are able to do so, pressuring independent distributors to discontinue relationships with rival brands, and forcing egregious and potentially illegal contract provisions upon distributors who often have no choice but to comply.

The divestiture of the Piedras Negras brewery and Crown Imports eliminates Modelo and concentrates the distribution of Modelo brands solely in the hands of Constellation Brands, another multinational alcohol conglomerate who is consolidating distributor networks and creating new distribution teams exclusive to their products. The company's CEO Robert Sands has remarked, *"As you can imagine, as you're in the process of terminating some distributors and them becoming aware of the fact that they might be terminated they're going to have less focus on our brands."* Under the proposed settlement, Constellation will produce and distribute Modelo brands. This deal makes it easier--in fact, *requires*—the elimination of the distribution tier. Allowing alcohol producers such a high level of control over distributors' businesses and operations ultimately results in detrimental impacts on competition in the industry, particularly to small, independent breweries.

The proposed settlement will allow A-B InBev to increase its market in the U.S., further vertical consolidation, and cause alcohol-related harm without mitigating the economic cost. The bottom line should be more than just pricing; public health, safety, and economic costs should also be considered in the DOJ's determination of what is in the public interest. Alcohol Justice opposes this proposed final judgment.

Respectfully,

Bruce Lee Livingston
Executive Director / CEO