

Objection to Proposed Settlement of AB InBev/Modelo Merger

As the Division is aware, there is an ongoing conspiracy to fix retail alcohol prices in scores of communities in North America and elsewhere. The single conspiracy began in the early 1980s and is conducted under the guise of promoting public health, reducing liability insurance premiums, and creating “vibrant” communities. The Division has known about the conspiracy since at least 2005, but has refused to investigate.

As discussed below, AB InBev and AB InBev distributors are active conspirators, and the existence of the conspiracy thus is relevant to whether the proposed settlement is in the public interest. Further, DOJ has provided support for the conspiracy (Ex. 17), calling into question its motives and impartiality.

A. Documentation of Conspiracy

The Responsible Hospitality Institute, founded in 1983, has provided organizational expertise to institutionalize the conspiracy in over 200 communities. RHI is governed by all three tiers of the alcohol industry. Diageo, the world’s largest alcohol producer, sits on its board, as does the National Beer Wholesaler’s Association, which represents over 600 beer distributors, including many owned or controlled by AB InBev.

The alcohol industry works hand in glove with public health organization and local government agencies in organizing the local price agreements. These entities both provide resources and allow the bars to pretend they are fixing prices under external pressure and contrary to their financial interests. (See, e.g., Ex. 1, 8, 9, 11.) The primary public health organizations involved are the Robert Wood Johnson Foundation, the American Medical Association, the Harvard School of Public Health, the University of Minnesota Alcohol Epidemiology Program, the Marin Institute for the Prevention of Alcohol and Other Drug Problems, and the Pacific Institute for Research and Evaluation.

Because of the conspiracy’s vast scope and the fact that it is conducted in part in public, there is abundant irrefutable evidence of its existence, including the following:

Exhibit 1: “Responsible Beverage Service” video, which was provided to the Division and uploaded to YouTube. See <http://www.youtube.com/watch?v=KvwyO9Qw410>. This video was distributed to restaurant trade association throughout the United States and outlines the basic steps that should be followed to institutionalize a sustainable price-fixing agreement under the guise of promoting public health. The Center for Disease Control funded the video’s production.

Exhibit 2: “Alcohol Risk Management” video, which was provided to the Division and uploaded to YouTube. See <http://www.youtube.com/watch?v=vwjO8TBPIPU>. This video illustrates how to fix prices under the guise of reducing liability insurance premiums. The price-fixing agreement appears at 6:39.

Exhibit 3: 2006 RHI presentation to the U Street Neighborhood Association in Washington D.C. See links at <http://ustreet-dc.org/index.php/living-here/neighborhood-news/business-development/85-hospitality-resource-partnership-at-9th-a-u-streets-launch-and-community-policing-forum>.

Exhibit 4: 2003 A Matter of Degree (“AMOD”) webcast designed to show non-AMOD schools how to develop “community coalitions” to control drink promotions. The webcast is found at http://www.slp3d2.com/bss_1088/.

Exhibit 5: A Matter of Degree Advocacy Initiative Report.

Exhibit 6: 2005 RHI memo encouraging bar owners to “collaborat[e]” and form “community covenants” to “curb” price wars and “discourage” drink specials. This document was a “tool” on RHI’s website. This document alone proves the over-arching conspiracy.

Exhibit 7: 1996 and 2006 press releases announcing “community covenants” by bars and restaurants in San Diego to establish minimum prices and eliminate drink specials. The 2006 agreement was spearheaded by a local business association “Discover Pacific Beach.” The Division told me that these documents “do not raise antitrust issues.”

Exhibit 8: 2002 press releases announcing agreement by bars and beer distributors in Madison, Wisconsin to eliminate drink specials on Friday and Saturday after 8 P.M. The bars contended were forced to do so under threat of legislation that would outlaw drink specials 24/7. The University of Wisconsin helped facilitate the agreement pursuant to an AMOD grant. The Division told me that these documents “do not raise antitrust issues.”

Exhibit 9: 2002 solicitation to bars in Madison, Wisconsin to agree to output restrictions at beer gardens.

Exhibit 10: News article detailing price-fixing agreement among pubs in Newquay, Great Britain. The Division told me that this agreement “does not raise antitrust issues.” The UK Office of Fair Trade takes a similar position.

Exhibit 11: Complaint to the Division regarding a price-fixing agreement among bars in College Park, Maryland. The Division did not investigate.

Exhibit 12: 2011, 2012, and 2013 “community covenants” to eliminate drink promotions in Davis, California. The language is virtually identical to the 1996 San Diego agreement. The Davis agreements were “spearheaded” by the Davis Chamber of Commerce and the Davis Downtown Business Association. Approximately 60 businesses signed the covenant each year. The Division informed me that these agreements do not raise significant antitrust concerns.

Exhibit 13: 2008 agreement among approximately 20 bars in Breckenridge, Colorado to not offer drink promotions after midnight and shot specials below \$3.00. The Division informed me that this agreement does not raise significant antitrust concerns.

Exhibit 14: 1995 letter from Milwaukee City Attorney outlining agreement among grocers on the city's near west side to set floor prices on beer singles. The Division told me the letter is "interesting" but the alleged conduct is old and a local concern more appropriately investigated by the State AG. (The Wisconsin AG has a conflict given its prior representation of the University of Wisconsin in litigation involving the 2002 Madison agreement (Exhibit 8). See *Eichenseer v. Madison-Dane County Tavern League, Inc., et al*, 748 N.W.2d 154 (Wis. 2008)).

Exhibit 15: 2012 Responsible Retailing Forum presentation states that alcohol producers (including AB InBev) support RHI's activities.

Exhibit 16: Screenshot of RHI website stating that RHI received a grant from the U.S. National Highway and Traffic Safety Administration.

Exhibit 17: Presentation showing the connection between RHI and the U.S. Department of Justice's Office of Community Oriented Policing Services.

Exhibit 18: RHI reports on its activities in Columbia, SC, Milwaukee, San Jose, CA., Springfield, MO, Mount Pleasant (D.C.), and New Orleans. Beer wholesalers are involved in some communities, including Columbia and New Orleans. Beer producers are involved in some communities, including Milwaukee.

B. Conspiracy's Relevance to Public Interest Analysis

The proposed merger substantially increases concentration in the world beer market. This enhances the conspiracy's efficiency, may increase the resources available to operate the conspiracy, and reduces the likelihood of a defection by an upstream producer. The conspiracy is international in scope and thus allowing the merger, even with the proposed domestic "fix," is contrary to the interests of U.S. beer consumers.

Further, the Division's impartiality is in question. The Division says the merger will "maintain" competition for beer consumers, though it knows that in many communities there is little if any competition to maintain. And the Division inexplicably contends that unambiguous per se price fixing agreements (e.g., Exhibits 7-8) "raise no antitrust issues."

These representations are particularly problematic given the role of the U.S. government, including the Department of Justice, in facilitating the conspiracy. See Ex. 1, 16-17. Given these apparent conflicts, the Court should carefully scrutinize the Division's claims that the market presently is competitive, the proposed fix is in the public interest, and further litigation is a waste of resources.

Steven E. Uhr
8160 Curtis Lane
Eden Prairie, MN 55347
952.239.0346
seuhr@uhrlawoffice.com