THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. INBEV N.V./S.A., INBEV USA LLC, and ANHEUSER-BUSCH COMPANIES, INC., Defendants.	Case: 1:08-cv-01965 Assigned To : Robertson, James Assign. Date : 11/14/2008 Description: Antitrust

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On November 14, 2008, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Anheuser-Busch Companies, Inc. ("Anheuser-Busch") by InBev N.V./S.A. ("InBev"). The Complaint alleges that the likely effect of the merger would be to lessen competition substantially in the market for beer in the metropolitan areas of Buffalo, Rochester, and Syracuse, New York, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. In each of these metropolitan areas, the transaction would combine two of the three major

manufacturers of beer, creating a highly concentrated market. The transaction would also eliminate substantial head-to-head competition between InBev and Anheuser-Busch in these regions. This loss of competition likely would result in higher beer prices to consumers in those areas. At the same time that the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Stipulation") and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger.

Under the proposed Final Judgment, which is explained more fully in Section III, Defendants are required to divest InBev USA d/b/a Labatt USA ("IUSA"), a Delaware limited liability company and wholly-owned subsidiary of InBev with its headquarters in Buffalo, New York, and a perpetual, assignable, transferable, and fully-paid-up license and the other rights needed to brew, promote, market, distribute, and sell Labatt brand beer for consumption in the United States (hereafter the "Divestiture Assets"). Under the terms of the Stipulation, Defendants will take certain steps to ensure that the Divestiture Assets are operated as an ongoing, economically viable, and independent competitive business in the brewing, promotion, marketing, distribution, and sale of Labatt brand beer for consumption in the United States.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Defendants and the Proposed Transaction

On July 13, 2008, Anheuser-Busch and InBev entered into an Agreement and Plan of Merger pursuant to which InBev intends to acquire 100 percent of the voting securities of Anheuser-Busch in a transaction valued at approximately $52 billion. The proposed acquisition of Anheuser-Busch by InBev would create the world's largest brewing company with annual revenues of over $36 billion.

Anheuser-Busch, a Delaware corporation headquartered in St. Louis, Missouri, is the largest brewing company in the United States, accounting for approximately 50 percent of beer sales in the country. Anheuser-Busch's best-selling brands are Budweiser and Bud Light. In the Buffalo and Rochester metropolitan areas, Anheuser-Busch accounts for approximately 24 percent of beer sales.[1] In the Syracuse metropolitan area, Anheuser-Busch accounts for approximately 28 percent of beer sales.

Belgium-based InBev is the second-largest brewer in the world. InBev's best-selling brands in the United States are Labatt, Stella Artois, Bass, and Becks. Although InBev's share of beer sales nationwide is small, in the Buffalo, Rochester, and Syracuse metropolitan areas, it is

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[1] The market shares for the Buffalo, Rochester, and Syracuse metropolitan areas are calculated from weekly AC Nielsen grocery store scanner data. This data is not available separately for Buffalo and Rochester, and so the market share calculations are based on a combined Buffalo/Rochester area. Information Resources, Inc. ("IRI") compiles drug store scanner data separately for Buffalo and Rochester, and the IRI data indicates that the AC Nielsen data may underestimate the Defendants' shares of beer sales in Buffalo and Rochester. Based on IRI drug store data, in Buffalo, Anheuser-Busch accounts for 32 percent of beer sales and InBev accounts for 23 percent of beer sales. The IRI drug store data shows that, in Rochester, Anheuser-Busch accounts for 33 percent of beer sales and InBev accounts for 19 percent of beer sales.

substantial. In Buffalo and Rochester, InBev's wholly-owned subsidiary, IUSA, accounts for at least 21 percent of beer sales. In Syracuse, IUSA accounts for approximately 13 percent of beer sales. Combined, IUSA and Anheuser-Busch control at least 45 percent of beer sales in Buffalo and Rochester and approximately 41 percent of beer sales in Syracuse. MillerCoors, the third significant competitor, accounts for approximately 26 percent of sales in Buffalo and Rochester and 28 percent of sales in Syracuse. No other competitor sells more than 5 percent of the beer sold in these areas.

B. Competitive Effects of the Proposed Merger

1. Beer is the Relevant Product Market

The Complaint alleges that beer is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. Beer is an alcoholic beverage that is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image and price. Neither the price of wine nor the price of spirits significantly influences or constrains the price of beer. Purchasers of beer are unlikely to reduce their purchases of beer in response to a small but significant and non-transitory increase in the price of beer to an extent that would make such a price increase unprofitable. The manufacture and sale of beer is the relevant product market.

2. The Metropolitan Areas of Buffalo, Rochester, and Syracuse, New York, are Relevant Geographic Markets

As alleged in the Complaint, the metropolitan areas of Buffalo, Rochester, and Syracuse, New York, constitute three separate, relevant geographic markets for the sale of beer within the meaning of the Clayton Act. Beer is sold to consumers in local geographic markets through a

three-tier distribution system in New York and throughout the United States. Brewers such as InBev and Anheuser-Busch sell beer to wholesalers (often known as "distributors"), which, in turn, sell to retailers. In New York and throughout the United States, distributors' contracts with brewers contain territorial limits and prohibit distributors from selling beer outside their respective territories.

Because distributors cannot sell a brewer's products outside their territories without violating their contracts with the brewer, brewers can charge different prices in different locales for the same package and brand of beer, and individual distributors (and retailers) cannot defeat such price differences through arbitrage. Consequently, brewers develop beer pricing and promotion strategies on a "local" market basis, based on an assessment of local competitive conditions, local demand for the brewers' beer, and local brand strength. Brewers selling beer in a metropolitan area would be able to increase the price of beer by a small but significant and non-transitory amount without losing sufficient sales to make such a price increase unprofitable.

3. Anticompetitive Effects of the Proposed Merger

As alleged in the Complaint, the Buffalo, Rochester, and Syracuse beer markets are highly concentrated. The top three brewers – Anheuser-Busch, MillerCoors, and IUSA – respectively possess approximately 24 percent, 26 percent, and 21 percent of the Buffalo and Rochester beer markets. In the Syracuse geographic market, the same three brewers respectively possess approximately 28 percent, 28 percent, and 13 percent of the beer market.

If the proposed acquisition is permitted to occur, the beer markets in the Buffalo, Rochester, and Syracuse geographic markets would become substantially more concentrated. Combined, Defendants would account for at least 45 percent of beer sales in Buffalo and

Rochester and 41 percent in Syracuse, and the top two brewers – Defendants and MillerCoors – would control about 70 percent of sales in each market. No other competitor would account for more than 5 percent of sales in these markets. Using a concentration measure called the Herfindahl-Herschman Index (or "HHI," defined and explained in Appendix A), the proposed acquisition would produce an HHI increase of approximately 1,020 and a post-acquisition HHI of approximately 2,790 in the Buffalo and Rochester markets. In Syracuse, the proposed acquisition would produce an HHI increase of approximately 750 and a post-acquisition HHI of approximately 2,580.

The transaction would also eliminate significant head-to-head pricing and promotion competition between InBev's Labatt brands and Anheuser-Busch's Budweiser brands in each of the three geographic markets. The significant increase in market concentration that the transaction would produce in the three geographic markets, combined with the loss of head-to-head competition, is likely to substantially lessen competition, in violation of Section 7 of the Clayton Act, resulting in higher prices for beer.

4. Neither Supply Responses Nor Entry Would Prevent the Likely Anticompetitive Effects of the Proposed Merger

The Complaint alleges that supply responses from competitors or potential competitors would not likely prevent the anticompetitive effects of the proposed acquisition of Anheuser-Busch by InBev. Competition from other competitors is insufficient to prevent a small but significant and non-transitory price increase implemented by the Defendants in those markets from being profitable. Entry of a significant new competitor into the marketplace is particularly unlikely because a new entrant would not possess the highly-important brand acceptance

necessary to succeed.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to eliminate the anticompetitive effects identified in the Complaint by requiring the Defendants to divest IUSA and all of the real and intellectual property rights required to brew, promote, market, distribute, and sell Labatt brand beer for consumption in the United States. These rights include an exclusive, perpetual, assignable, transferable, and fully-paid-up license that grants the Acquirer the rights to (a) brew Labatt brand beer in Canada and/or the United States, (b) promote, market, distribute, and sell Labatt brand beer for consumption in the United States, and (c) use all of the intellectual property rights associated with the marketing, sale, and distribution of Labatt brand beer for consumption in the United States, including the trade dress, the advertising, the licensed marks, and such molds and designs as are used in the manufacturing process of bottles for the Labatt brand beer. Final Judgment ¶¶ II(F) and IV(A).

Further, to ensure that the Acquirer can brew Labatt beer without any loss of quality or consistency, the proposed Final Judgment requires Defendants to sell to the Acquirer all production know-how for Labatt brand beer, including recipes, packaging and marketing and distribution know-how and documentation. Final Judgment ¶¶ II(F) and IV(A). The recipes required to be divested include all "formulae, recipes, processes and specifications specified . . . for use in connection with the production and packaging of Labatt Brand Beer in the United States, including . . . yeast, brewing processes, equipment and material specifications, trade and

manufacturing secrets, know-how and scientific and technical information . . . ." Final Judgment II(M).

The proposed Final Judgment ensures the uninterrupted sale of Labatt brand beer in the United States by requiring Defendants to divest all rights pursuant to distributor contracts and, at the option of the Acquirer, to negotiate a transition services agreement of up to one year in length, and to enter into a supply contract for Labatt brand beer sufficient to meet all or part of the Acquirer's needs for a period of up to three years. Final Judgment ¶¶ II(F)(iv) and IV(H). If the Defendants and the Acquirer enter into such a supply contract, the proposed Final Judgment will prevent the exchange of competitively sensitive information between them; the Defendants are required to implement procedures that will prevent the disclosure of the quantities and units of Labatt brand beer ordered or purchased from the Defendants by the Acquirer, the prices paid by the Acquirer, and any other competitively sensitive information regarding the Defendants' or the Acquirer's performance under the Supply Agreement, to any employee of the Defendants who has direct responsibilities for marketing, distributing, or selling beer in competition with the Acquirer in the United States. Final Judgment ¶ IV(J).

To ensure that the Acquirer can continue to develop, grow, and improve the Labatt brand, the proposed Final Judgment requires Defendants to grant to the Acquirer a perpetual license that will allow the Acquirer to brew, distribute, market, and sell "extensions" of Labatt brand beer (e.g., a "Light" or "Ice" version). The extension of beer brands has constituted a significant form of competition among beer brewers in recent years.

The divestiture remedies the anticompetitive effects of the merger by requiring InBev to divest the Divestiture Assets to an independent, viable acquirer that can compete with the merged

Anheuser-Busch/InBev. Defendants are required to satisfy the United States in its sole discretion that the Divestiture Assets will be operated as a viable, ongoing business that will compete effectively in the relevant markets, and that the divestiture will successfully remedy the otherwise anticipated anticompetitive effects of the proposed merger. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective acquirers.

The proposed Final Judgment requires Defendants, within ninety (90) days after the filing of the Complaint or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets, which will be used by the acquirer as part of a viable, ongoing business of brewing, promoting, marketing, distributing and selling Labatt brand beer for consumption in the United States.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the speed with which the divestiture is accomplished and the price and terms obtained. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. If the requisite divestiture has not been accomplished at the end of the trustee's term, the trustee and the United States will make recommendations to the Court, which shall enter such orders as

appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Until the divestiture under the proposed Final Judgment has been accomplished, Defendants are required to comply with a Hold Separate Stipulation and Order. Pursuant to this Stipulation and Order, the Defendants are required to preserve, maintain, and operate the Divestiture Assets as an ongoing business, and prohibited from taking any action that would jeopardize the divestiture required by the proposed Final Judgment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to:

Joshua H. Soven
Chief, Litigation I Section
1401 H Street NW, Suite 4000
Antitrust Division
U.S. Department of Justice
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have sought preliminary and permanent injunctions against the proposed merger. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for

the provision of beer in the relevant markets identified by the United States. Thus the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d

1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

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[2] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3]

In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a

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[3] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the

discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[4]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 14, 2008

Respectfully submitted,

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[4] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

APPENDIX A

DEFINITION OF HERFINDAHL-HIRSCHMAN INDEX ("HHI")

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*