THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, NW - Suite 4000 Washington, DC 20530 Plaintiff, v. INBEV N.V./S.A. Brouwerijplein 1 3000 Leuven Belgium, INBEV USA LLC 50 Fountain Plaza - Suite 900 Buffalo, NY 14202, and ANHEUSER-BUSCH COMPANIES, INC., One Busch Place St. Louis, MO 63118, Defendants.	Case: 1:08-cv-01965 Assigned To : Robertson, James Assign. Date : 11/14/2008 Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Anheuser-Busch Companies, Inc. ("Anheuser-Busch") by InBev N.V./S.A. ("InBev") and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. 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. Anheuser-Busch is the largest brewing company in the United States, accounting for approximately 50 percent of beer sales in the country. Its best selling brands are Bud Light and Budweiser. Belgium-based InBev is the second-largest brewer in the world. InBev's best-selling brands in the United States are Labatt, Stella Artois, and Becks. The proposed acquisition of Anheuser-Busch by InBev would create the world's largest brewing company with annual revenues of over $36 billion.

2. In three regions of upstate New York, the proposed acquisition would significantly increase the level of concentration in the market and substantially reduce competition by combining InBev's Labatt brands and Anheuser-Busch's Budweiser brands.

3. In the Buffalo metropolitan area ("Buffalo") and the Rochester metropolitan area ("Rochester"), the proposed acquisition would increase Anheuser-Busch's share of the beer market from approximately 24 percent to approximately 45 percent, producing a highly concentrated market dominated by two firms – the combined InBev/Anheuser-Busch and MillerCoors (a joint venture between SABMiller and Coors Brewing Co.). MillerCoors has approximately a 26 percent share of the Buffalo and Rochester beer markets and no other firm has more than a five percent share.

4. The proposed acquisition would also create a highly concentrated beer market in the Syracuse metropolitan area ("Syracuse"). In Syracuse, the proposed acquisition would increase Anheuser-Busch's share of the beer market from approximately 28 percent to approximately 41 percent, with MillerCoors controlling approximately 28 percent. As in Buffalo and Rochester, no other firm has more than a five percent share of the beer market in Syracuse.

5. The proposed acquisition would eliminate substantial head-to-head competition between Anheuser-Busch's Budweiser and InBev's Labatt brands in Buffalo, Rochester, and Syracuse.

6. The significant increase in market concentration that the proposed acquisition would produce in the Buffalo, Rochester, and Syracuse 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 for consumers.

II. JURISDICTION AND VENUE

7. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Defendants Anheuser-Busch and InBev produce and sell beer in the flow of interstate commerce, and their production and sale of beer substantially affect interstate commerce. Defendants Anheuser-Busch and InBev transact business and are found in the District of Columbia, through, among other things, selling beer to customers in this District. Venue is proper for Anheuser-Busch in this District under 15 U.S.C. § 22. Venue is proper in the District of Columbia for Defendant InBev, a Belgian corporation, under 28 U.S.C. § 1391(d).

III. THE DEFENDANTS

9. Anheuser-Busch, a Delaware corporation headquartered in St. Louis, Missouri, is the largest brewer in the United States and accounts for approximately 50 percent of beer sales

nationwide. Anheuser-Busch operates 12 breweries in the United States. Anheuser-Busch's best-selling brands are Budweiser and Bud Light.

10. Belgium-based InBev is the second-largest brewer in the world, but does not operate any breweries in the United States. InBev's best-selling brands in the United States are Stella, Becks, Bass, and Labatt. Most of InBev's brands, including Stella, Becks, and Bass, are imported, marketed, and sold in the United States by Anheuser-Busch pursuant to a 2006 import agreement ("Anheuser-Busch/InBev import agreement"). InBev's Labatt brands are excluded from the Anheuser-Busch/InBev import agreement. The Labatt brands are brewed in Canada by InBev's subsidiary, Labatt Brewing Company Limited, and are imported and sold in the United States by InBev's subsidiary, InBev USA d/b/a Labatt USA ("IUSA"). Although InBev's overall market share in the United States is small (approximately two percent), the geographic markets are local, and Labatt brand beers account for a significant portion of the Buffalo, Rochester, and Syracuse beer markets.

11. In Buffalo and Rochester, IUSA accounts for approximately 21 percent of beer sales and Anheuser-Busch accounts for approximately 24 percent of beer sales. In Syracuse, IUSA and Anheuser-Busch account for approximately 13 percent and 28 percent of beer sales, respectively. Combined, Anheuser-Busch and InBev would account for approximately 45 percent of beer sales in Buffalo and Rochester, and over 41 percent of beer sales in Syracuse.

IV. RELEVANT MARKETS

A. Relevant Product Market

12. Beer is an alcoholic beverage that is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image, and price.

13. 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.

14. Beer is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Markets

15. 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 outside their territories.

16. Distributors cannot sell a brewer's products outside their territories without violating their contracts with the brewer. This allows brewers to charge different prices in different locales for the same package and brand of beer, and prevents individual distributors (and retailers) from defeating such price differences through arbitrage.

17. 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.

18. 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.

19. The metropolitan areas of Buffalo, Rochester, and Syracuse constitute three separate, relevant geographic markets for the sale of beer within the meaning of Section 7 of the Clayton Act.

V. LIKELY ANTICOMPETITIVE EFFECTS

20. The relevant beer markets are highly concentrated. In Buffalo and Rochester, the top three brewers – Anheuser-Busch, MillerCoors, and InBev (IUSA) – account for approximately 24 percent, 26 percent, and 21 percent of the beer market, respectively. In Syracuse, Anheuser-Busch, MillerCoors and IUSA account for approximately 28 percent, 28 percent, and 13 percent of the beer market, respectively.

21. If the proposed acquisition is permitted to occur, the beer markets in Buffalo and Rochester would become substantially more concentrated. The combined firm would control at least 45 percent of beer sales. The merged firm and MillerCoors would control over 70 percent of beer sales. Using a standard 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 1020 and a post-acquisition HHI of approximately 2790 in Buffalo and Rochester.

22. If the proposed acquisition is permitted to occur, the Syracuse beer market also would become substantially more concentrated. The combined firm would control approximately 41 percent of the market, and the top two brewers – the merged firm and MillerCoors – would account for approximately 69 percent of beer sales. The proposed acquisition in Syracuse would produce an HHI increase of approximately 750 and a post-acquisition HHI of approximately 2580.

23. In Buffalo, Rochester, and Syracuse, the proposed acquisition would eliminate significant head-to-head competition between InBev's Labatt brands and Anheuser-Busch's Budweiser brands. Currently, InBev (through its IUSA subsidiary) and Anheuser-Busch compete in the relevant geographic markets through price discounts and various forms of promotions.

24. The significant increase in market concentration that the proposed acquisition would produce in the Buffalo, Rochester, and Syracuse 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 for consumers.

VI. ABSENCE OF COUNTERVAILING FACTORS

25. Responses from other competitors or new entry is not likely to prevent the likely anticompetitive effects of the proposed acquisition. 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.

26. The anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies that may be achieved by the acquisition.

VII. VIOLATION ALLEGED

27. The United States hereby incorporates paragraphs 1 through 26.

28. The proposed acquisition of Anheuser-Busch by InBev would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

(a) actual and potential competition between Anheuser-Busch and InBev (through its IUSA subsidiary) for beer sales in the relevant geographic markets would be eliminated; and

(b) competition generally in the relevant geographic markets for beer would be substantially lessened.

PRAYER FOR RELIEF

The United States requests:

1. That the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

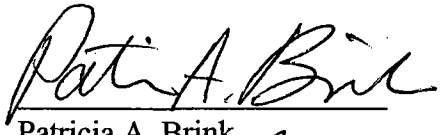
2. That the Defendants be permanently enjoined and restrained from carrying out the proposed acquisition or from entering into or carrying out any other agreement, understanding, or plan by which Anheuser-Busch would acquire, be acquired by, or merge with, any of the other Defendants;

3. That the United States be awarded costs of this action; and

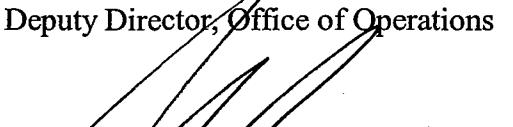
4. That the United States have such other relief as the Court may deem just and proper.

Respectfully submitted,

Deborah A. Garza (DC Bar No. 395259)
Acting Assistant Attorney General



Patricia A. Brink
Deputy Director, Office of Operations



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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.*