UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. THE STROH BREWERY COMPANY, Defendant.	)	Civil Action No. 82- 1059

APR 16 1982

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties 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 April 16, 1982, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the acquisition of The Jos. Schlitz Brewing Co. ("Schlitz") by The Stroh Brewery Company ("Stroh") as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint alleges that the acquisition eliminates actual and potential competition between Schlitz and Stroh in the production and sale of beer; that competition generally in the production and sale of beer may be substantially lessened; and that concentration in the production and sale of beer may be substantially increased. The complaint alleges that the acquisition will have these effects in "the Southeast Market," consisting of the states of Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. The

complaint seeks divestiture of one of two plants to be acquired by Stroh when it obtains control of Schlitz: either the Schlitz plant located in Memphis, Tennessee or the Schlitz plant located in Winston-Salem, North Carolina.

The United States and Stroh have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify or enforce the proposed Final Judgment. The Stipulation between Stroh and the United States will no longer be in effect upon entry of the proposed Final Judgment.

II.

DESCRIPTION OF PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION IN THE COMPLAINT

On or about March 29, 1982, Stroh announced a cash tender offer to buy 67 percent of Schlitz's common stock at $16 per share for a total consideration of approximately $316 million. On or about April 15, 1982, Stroh and Schlitz announced that they had entered into an Agreement of Merger whereby Stroh's tender offer price was increased to $17 per share for a total consideration of approximately $336 million. By the terms of the tender offer Stroh is precluded from purchasing any Schlitz common stock before April 17, 1982. Once Stroh receives binding tenders for the Schlitz stock, it plans to acquire the remaining 33 percent of the outstanding Schlitz common stock, whereupon the merger will be consummated and Schlitz will become a wholly-owned subsidiary of Stroh.

Stroh was the nation's seventh largest brewer with total shipments of 9.7 million barrels in 1980 (including approximately one million barrels shipped to Puerto Rico) and 9.1 million barrels in 1981 (including approximately 925,000 barrels shipped to Puerto Rico). The Company owns two breweries, one in Detroit, Michigan, which has a capacity of

about 7.2 million barrels, and one in Allentown, Pennsylvania, which has a capacity of about 5 million barrels. The Company also owns a production facility in Ohio where it manufactures aluminum cans for its brewing operations. Stroh markets beer in 28 states, the District of Columbia, Puerto Rico and the Caribbean. Its brands include Stroh's Bohemian, Stroh Light, Schaefer, Schaefer Light, Goebel and Piels.

Schlitz was the nation's third largest brewer in 1981 with shipments of 14.3 million barrels. In 1980 Schlitz was the nation's fourth largest brewer with shipments of 14.9 million barrels. The company operates five breweries located in Los Angeles, California; Tampa, Florida; Longview, Texas; Winston-Salem, North Carolina; and Memphis, Tennessee. The Company has a total operating capacity of about 18.8 million barrels, the Winston-Salem plant accounting for about 5 million barrels and the Memphis plant accounting for about 5.5 million barrels. Schlitz also owns five plants where it manufactures aluminum cans for its brewing operations, one of which is associated with the Winston-Salem brewery. Schlitz's brands include Schlitz, Schlitz Light, Erlanger, Old Milwaukee, Old Milwaukee Light, Schlitz Malt Liquor and Primo. All the Schlitz brands are sold throughout the United States except Primo, which is sold mainly in Hawaii.

In 1980 a total of approximately 31.4 million barrels of beer were sold in the Southeast Market. The six largest brewing companies in this region accounted for approximately 97 percent of total shipments. The two leading brewing companies in the Southeast Market -- Anheuser-Busch Companies, Inc. ("Anheuser-Busch") and Miller Brewing Co., a subsidiary of Phillip Morris, Inc. ("Miller") -- together controlled approximately 63 percent of the market. Stroh was the fifth largest brewer selling approximately 2.2 million barrels and accounting for 6.9 percent of total beer sales; Schlitz was the third largest brewer, selling approximately 4.2 million barrels and accounting for 13.4 percent of total beer sales.

In 1980 the combined Stroh/Schlitz firm would have been the third largest brewer in the Southeast Market with shipments of approximately 6.4 million barrels accounting for 20.3 percent of the market. In this region such a combination would have increased the four-firm concentration ratio of sellers by 6.9 percent from 85.2 percent to 92.1 percent; it would have increased total seller concentration as measured by the Herfindahl Index by 186 points from 2345 to 2531. */

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (1974). The proposed Final Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

A. Divestiture

The proposed Final Judgment requires Stroh to divest its entire interest in the Schlitz Winston-Salem, North Carolina plant or the Schlitz Memphis, Tennessee plant, absolutely and unconditionally, by its own efforts within twelve months from the date of entry of the Final Judgment. The divestiture will be upon terms and conditions approved by the plaintiff or, failing such approval, by the Court. If Stroh cannot accomplish the required divestiture after a year, the proposed Final Judgment provides that plaintiff may petition the Court for the appointment of a trustee who

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*/ The Herfindahl Index is a measure of seller concentration in a market which takes into account the number and size distribution of all sellers in the market. It is computed by squaring the market shares of each firm in the market and then adding them. For example, the index for a market where 10 firms each have 10 percent would be 1000.

The four firm concentration ratio is the sum of the market shares of the four largest firms in the market.

will be given full power and authority to sell either plant. Any divestiture must be to purchaser who intends to brew beer in the facility and who is approved by plaintiff, or failing such approval, by the Court. Under no circumstances will either plant be divested to Anheuser-Busch or Miller, the two dominant companies in the Southeast Market.

If it is necessary to accomplish the required divestiture, the trustee is authorized under the proposed Final Judgment to offer prospective purchasers the option of purchasing the Schlitz Winston-Salem container manufacturing plant in conjunction with the purchase of the Winston-Salem brewery; with the prior approval of the plaintiff, the trustee also may offer prospective purchasers an arrangement whereby the purchaser will produce a specified volume of beer at the divested brewery for defendant for a specified period.

The proposed Final Judgment further provides that Stroh must report periodically to plaintiff regarding the status of its efforts to sell the plants. The details of any proposed sale must be reported to the plaintiff, which is given time to investigate the proposed sale and to seek additional information from Stroh. Should plaintiff object to a proposed sale, it cannot be consummated until plaintiff withdraws its objections or the Court approves the sale.

If a trustee is appointed, the proposed Final Judgment provides that Stroh will pay all costs and expenses of the trustee. The trustee's fee shall be based primarily on a commission contingent upon its causing the sale of the assets. The commission shall also provide an incentive for the trustee to sell the plant as soon as possible and at the best possible price. The trustee will initially serve for six months, but, at the plaintiff's option, its appointment can be extended for another six months. If after a year the trustee has not sold either plant, the trustee and the parties shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate.

B. Miscellaneous Provisions

The proposed Final Judgment provides that Stroh must give plaintiff 45 days notice of any final agreement to buy any brewery in the United States, or to sell any brewery or container facility that it or Schlitz owns on the date of entry of the judgment. Stroh may not sell the container plant associated with the Winston-Salem brewery prior to accomplishing the required divestiture without first obtaining plaintiff's approval.

The Final Judgment also contains a number of provisions which enable the plaintiff to secure and determine compliance.

The Final Judgment will be in effect for five years.

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 actions. 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 defendant.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the Government written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to any comments, and determine whether it should withdraw its consent. The comments and the responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Anthony V. Nanni
Chief, Trial Section
U.S. Department of Justice
Antitrust Division, Room 3266
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

The proposed Final Judgment provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for its modification or enforcement.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered one alternative to the proposed Final Judgment: to conduct a trial on the merits. The proposed Final Judgment achieves the objectives of the lawsuit and also saves the United States the expense of litigation. The anticompetitive effect alleged in the complaint was the lessening of competition in the manufacture and sale of beer in the Southeast Market. In other parts of the country, the merger will be competitively neutral at best and may be procompetitive. This divestiture to a person other

than Anheuser-Busch or Miller, the two largest beer producers in the country, will promote competition in the Southeast Market. Had there been a full trial on the merits, and had the plaintiff prevailed, the prayer for relief would have been substantially similar to the relief in the proposed Final Judgment. Thus, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII.

DETERMINATIVE DOCUMENTS

Pursuant to 15 U.S.C. § 16(b), there are no determinative documents. Consequently none are filed with this Competitive Impact Statement.

Respectfully submitted,

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