

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANHEUSER-BUSCH InBEV SA/NV, et al.,

Defendants.

Civil Action No. 16-1483 (EGS)

**UNITED STATES' UNOPPOSED MOTION AND SUPPORTING MEMORANDUM
FOR AUTHORIZATION TO EXCUSE *FEDERAL REGISTER* PUBLICATION OF
COMMENTS AND ATTACHMENTS**

The United States hereby moves this Court, for good cause, pursuant to 15 U.S.C. § 16(d), for authorization to excuse *Federal Register* publication of the comments and their respective attachments received in this case and instead authorize electronic publication of those comments and attachments. The United States proposes to meet its statutory obligations by posting the public comments and attachments on the Antitrust Division's publicly available website, and publishing the relevant internet address for those comments and attachments in the *Federal Register*. Defendants Anheuser-Busch InBev SA/NV and SABMiller plc do not object to this motion.

On July 20, 2016, the United States filed a proposed Final Judgment. As required by the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ (b)-(h) (the "Tunney Act"), the United States published the proposed Final Judgment in the *Federal Register* on August 4, 2016, *see* 81 Fed. Reg. 51465, and had summaries of the terms of the proposed Final Judgment, together with directions for the submission of written comments relating to the proposed Final Judgment,

published in *The Washington Post* on August 3, 4, 5, 6, 7, 8, and 9, 2016. Twelve individuals or entities submitted public comments on the proposed Final Judgment. In compliance with the Tunney Act, the United States will shortly file with the Court and serve on all parties to this action a Response to Comments, which will include the public comments and their attachments. The Response to Comments (but not the comments) will be published in the *Federal Register* along with the location of a publicly available internet address on the Antitrust Division's website. Electronic versions of the public comments and their respective attachments will be published on that internet address.

I. Argument

The Tunney Act requires the United States to publish the comments it received in this matter and its Response in the *Federal Register* prior to moving the Court for entry of the proposed Final Judgment. 15 U.S.C. § 16(d). In 2004, the Tunney Act was amended in light of the benefits of electronic publication and the costs of publication in the *Federal Register*. The amendment authorizes the Court to order an alternative publication method when the expense involved exceeds the public interest benefits to be gained:

Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.

15 U.S.C. § 16(d).¹

¹ At the Senate hearing on the 2004 Tunney Act amendment, Senator Leahy of the Judiciary Committee noted that *Federal Register* publication can offer “little benefit, because those materials are, if anything, more accessible on the Web than in a library.” 150 CONG. REC. 6,328 (2004). Senator Kohl echoed those comments, stating, “[t]his provision is intended to avoid unnecessary expense in publishing proposed consent decrees if alternative means are available, such as, for example, posting the proposed decrees electronically, which are sufficient to inform interested persons of the proposed consent decree.” *Id.* at 6,332 (2004).

In connection with the proposed Final Judgment, the 12 commenters submitted, in total, 135 pages of public comments and attachments. The United States would incur expenses of approximately \$70,000 to publish these documents in the *Federal Register*.

Since the 2004 amendment of 15 U.S.C. § 16(d), courts have uniformly granted motions by the Department of Justice to excuse *Federal Register* publication of Tunney Act comments and/or their attachments where, as here, such publication would involve significant expenses that exceed the public interest benefits of publication in the *Federal Register*.² The United States proposes to post the 12 public comments and their attachments on the Antitrust Division's website and publish in the *Federal Register* the internet address at which the comments and attachments can be read and downloaded. This alternative would save the expense of full *Federal Register* publication while preserving the public interest benefits associated with public access to the materials. Given that the 12 public comments and their attachments will be readily available to the public and that notice will be provided in the *Federal Register*, any public interest benefit associated with publishing the comments and their attachments in full in the *Federal Register* is far exceeded by the expense of such publication.

II. Conclusion

The United States respectfully requests that the Court enter the Proposed Order authorizing an alternative method of public dissemination of the public comments received in this matter, namely, the publication in the *Federal Register* of a link to the Antitrust Division's website, where those comments and attachments can be viewed and downloaded.

² Courts in this district have repeatedly found good cause to excuse *Federal Register* publication under 15 U.S.C. § 16(d)(2). See, e.g., *United States v. Anheuser-Busch InBev SA/NV, et al.*, No. 1:13-cv-00127-RWR (D.D.C. Sep. 12, 2013) (attached as Exhibit 1); *United States v. United Techs. Corp.*, No. 1:12-cv-1230-RC (D.D.C. Mar. 25, 2013) (attached as Exhibit 2); *United States v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139-RMC (D.D.C. Jun. 15, 2010) (attached as Exhibit 3).

Dated: January 12, 2017

Respectfully submitted.

 /s/ David C. Kelly

David C. Kelly

U.S. Department of Justice

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CERTIFICATE OF SERVICE

I, David C. Kelly, hereby certify that on January 12, 2017, I caused a copy of the United States' Unopposed Motion and Supporting Memorandum for Authorization to Excuse *Federal Register* Publication of Comments and Attachments, and a Proposed Order, to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia.

 /s/ David C. Kelly

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