

October 4, 2016

Peter J. Mucchetti  
Chief, Litigation I, Antitrust Division  
United States Department of Justice  
450 Fifth Street, N.W.  
Suite 4100  
Washington, DC 20530

Re: Comments from the Ninkasi Brewing Concerning the Proposed Final Judgment in  
United States v. Anheuser-Busch InBev SA/NV and SABMiller plc

Dear Mr. Mucchetti,

I am the CEO of Ninkasi Brewing Company, based in Eugene, OR. We are the 36<sup>th</sup> largest craft brewery in the United States, producing just over 100,000 bbls in 2015. We employ 105 people, and have grown to our current size, from the original 2 founders, myself and Jamie Floyd, over the last 10 years. In that time we have seen dramatic changes in the beer landscape, including significant consolidation of the brewery and wholesale tiers. We have been distribution partners with 3 distributors that have been taken over directly by Anheuser Busch/InBev (ABI), whom we subsequently left in all cases due to our experience with their treatment of our brands post transaction. We have also seen the impacts of the Elysian and 10 Barrel brewery purchases by ABI, both of which have had impacts in our core territory of Oregon and Washington.

While we appreciate the Department of Justice's (DOJ) attempts to curb ABI's anti-competitive treatment of rival brands and distributors, we provide this comment to express ongoing concerns unlikely to be remedied by the Proposed Final Judgment.

#### **Background of the Oregon Market**

Oregon now is one of few markets where ABI owns not only multiple wholesalers, but also - a craft brewery and several retail locations as well, eradicating much of the three-tier system. We have seen significant changes to the landscape in Oregon as a result, including the loss of our partnership with the formerly independent ABI distributorship, and the aggressive promotion, targeted incentives and shelf set strategies built to undermine independent breweries to favor ABI owned brands such as 10 Barrel. We elected to end the relationship with our formerly independent wholesalers when we saw our trends deteriorating, both with regards to historical performance, as well as with regard to other wholesalers in our network who remained independent. After having this experience in OR and WA over the years post transaction, we elected to switch immediately when we encountered the same situation with the purchase of Horizon Beverage by ABI in northern CA. In this instance it was difficult for us to find a new independent wholesale partner in the region and as a result of the transition lost sales in the territory, negatively impacting our overall momentum and business.

Independence of the tiers, especially when related to huge organizations with global reach and resources, is vital for us to be able to reach our consumers. When ABI acquires a distributor or

influences a distributor's decision on whether or not to carry our beer, wields its incredible financial power to reduce rationality at retail, or engages in aggressive tactics targeting smaller companies, we are left without the ability to put our product in front of our customers. If our customers can't buy our beer, then they will look elsewhere even if they prefer our beer to all other options. As a result, we recommend the DOJ cap ABI's ownership of distribution at its current level, without allowing to acquire any more distributors, and work to understand the impacts of allowing ABI owned wholesalers to directly influence retailers, and potentially limit those powers as well. Additionally we feel there could be benefit to providing guidance on fair representation to consumers with regards to brand ownership.

Given ABI's dominance in the U.S. beer market, coupled with its influence over the distribution tier, we have the following specific concerns:

#### **Shelf Sets By ABI Owned Wholesalers**

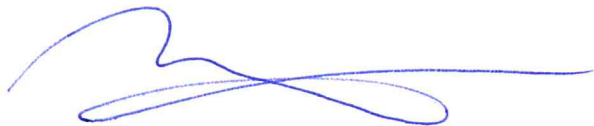
In many cases in a territory, the largest wholesaler will act as the shelf set captain for retailers in the region, particularly chains, but independents as well. An independent wholesaler has a rational self interest in setting the products on the shelf, in a layout that will maximize the volume of sales of all brands, regardless of their affiliation with ABI (or MillerCoors). The independent wholesaler has an interest to sell as much beer as possible to generate as much revenue as possible for themselves, hence a market interest to rationalize the shelves they set in favor of the consumer. When ABI owns the wholesaler in a market and also functions as a shelf set captain, their incentives are aligned differently than an independent wholesaler. Not only do they typically not even carry any rival, non-ABI brands, but they work to set the shelves in a way in all cases to maximize the sales of ABI brands, over any rational set that would otherwise better serve the retail customer and consumer. I would suggest that any ABI owned wholesaler not be allowed to make recommendations or manage the schematics of any shelf sets in their territory.

#### **ABI Ownership of "Craft Beers"**

ABI has recently purchased many smaller craft brewers in territories where craft beer sales are strong or growing. Once a craft brewer is acquired by ABI they have a hugely competitive advantage in cost of goods and may be priced much lower on the shelf. While lower pricing is not itself a concern, the fact that ABI does nothing to, and is not required to indicate ownership of "Craft Beers" that it owns, is likely to mislead customers and hurt other smaller brewers. If a customer sees an ABI brand on the shelf next to an independent craft brand, but nothing indicates that the ABI owned brand is anything other than a small craft brewer (take a look at the packaging of any ABI owned craft brand and note the intentional lack of actual origin), and the price of the ABI owned brand is significantly less on the shelf, it will change the perception of craft beer and value. A consumer who may elect to support small brewers and who understands that independent breweries have higher costs would likely be interested to know if a brewery is owned by a large macro brewer and if that is the reason for the price discrepancy. I would recommend that all breweries should show their origin of ownership so customers can choose to support and pay prices that they feel reflect the costs associated with what they are purchasing and help them to better understand the actual choice they are making. If you think you are supporting an industry you love by supporting what you believe based on the marketing and packaging is a small brewer, but that in fact is owned by ABI, you are being misled as a consumer. ABI's unwillingness to indicate origin of craft beers is a very good indication of their own belief that customers would potentially make a different choice if they were informed.

Thank you for your consideration of the above.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Nikos Ridge

Ninkasi Brewing Company