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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 ABL Concerning the Proposed Final Judgment in United States v. Anheuser-Busch InBev SA/NV and SABMiller plc

Dear Mr. Mucchetti:

American Beverage Licensees ("ABL") appreciates the opportunity to submit these comments pursuant to the United States Department of Justice Antitrust Division ("DOJ") proposed Final Judgment, Stipulation, and Competitive Impact Statement filed with the United States District Court for the District of Columbia in United States of America v. Anheuser Busch InBev SA/NV et al.[1]

ABL is a national trade association that was created in 2002 and represents the interests of on-premise (bars, taverns, nightclubs, restaurants) and off-premise (package liquor, beer and wine stores) beverage alcohol retailers. Retail beverage establishments are primarily licensed by state licensing agencies and operate as part of a three-tier system of suppliers, distributors and retailers that has evolved uniquely in each state since the passage of the 21st amendment ushered in the repeal of Prohibition.

As the largest national association representing the interests of on-premise and off-premise alcohol retailers, some of which were born out of Prohibition's repeal, ABL is uniquely positioned to share its insights on the merger of the world's two largest brewers, Anheuser-Busch InBev SA/NV (''ABI'') and SABMiller plc (''SABMiller''), and its potential consequences on the American beverage alcohol retail marketplace. Specifically, traditional beverage alcohol retailers are concerned that this merger, along with recent actions by ABI and the market reactions they might trigger, could lead to increased vertical integration and tied-house opportunities in the beverage alcohol marketplace. This would be to the detriment of a competitive retail beverage alcohol environment.

For more than eighty years, the three-tier system has served United States consumers well by assuring responsible beverage alcohol commerce and an unparalleled beverage alcohol marketplace built on competition amongst producers, wholesalers and retailers. The system provides a means for the orderly marketing, tax collection and tracking of beverage

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[1] https://www.justice.gov/atr/file/877621/download

alcohol products. It has been validated by the Supreme Court, which in 2005 confirmed the right of states to regulate the sale and distribution of adult beverages within their borders, validating the three-tier system as "unquestionably legitimate."

The three-tier regulatory system has helped produce billions of dollars in revenue for states and municipalities; allowed state and local governments to adapt laws and policies that best reflect the values of their citizens; and, most importantly, introduced millions of consumers of legal drinking age to beer, wine and spirits from different regions of the country and every corner of the world. Perhaps most importantly, it has prevented the United States from reverting to a "tied-house" beverage alcohol system, wherein retailers are controlled by single beverage alcohol producer.

In the United States today, there is great pressure on traditional licensed retail alcohol businesses to succeed with modest margins, a host of regulatory obligations, the challenges of operating a brick-and-mortar business and a highly competitive marketplace. Over 12,000 traditional beer drinking venues – the "neighborhood bar" – have closed over the past 10 years.[2] In the past 6 years alone, the country has seen a consistent decline in traditional drinking establishments. According to the U.S. Bureau of Labor Statistics, there were 46,034 in 2010 and there are now 43,765 as of the end of calendar year 2015.[3]

While retail-on-retail competition is healthy, these declines are concurrent with the increased presence in the retail marketplace of ABI, already the country's largest brewer and largest beer wholesaler. Over the past decade, ABI has encroached on traditional beer retailing establishments across the country, and now has direct brewery control of 30 or more on-premise beer retailing establishments that include thousands of seats with tied-house opportunities.

All of the recent ABI acquisitions of small brewers include on-premise licenses to sell directly to consumers through brewpubs and taprooms.[4] These tied-house establishments limit consumer choice and put traditional on-premise establishments at a competitive disadvantage from a basic cost of goods sold perspective.

Given its size and scope, ABI is a market mover and there is already evidence that other brewers have been compelled to increasingly vertically integrate into the retail business and around three-tier laws that have otherwise created a golden age of value and choice for consumers of beverage alcohol. The resurgence of tied-house breweries has now spread to other major brewers and importers. It is worth noting that both MillerCoors' and Constellation Brands' recent acquisitions came with brewpub and taproom privileges.

This new marketplace dynamic effectively places small independent local retailers in direct competition with much larger brewers who have broken the boundaries of independent three-tier regulations. Vertical integration amongst larger brewers also emboldens smaller brewers to insist on increasing their own vertical integration via distribution and retail privileges (which are

[2] Source: Nielsen, TDLinx Store Counts, 2015
[3] Source: BLS, Quarterly Census of Employment and Wages, 2016
[4] https://consumerist.com/2016/04/13/here-are-the-8-u-s-craft-brewers-bought-by-anheuser-busch-since-2011/

already growing each year) and encourages more tied-house opportunities in the beer marketplace.

To date, most of the public review and discussion of the merger has focused on the path to market for small brewers; ABI's growing control of beer distribution in the United States; and the general market power of ABI with the completion of this deal.

At a hearing held by the United States Senate Judiciary Committee's Subcommittee on Antitrust, Competition Policy and Consumer Rights on December 8, 2015, there was just one exchange[5] that dealt directly with retail operations:

> SEN. RICHARD BLUMENTHAL (D-CT):
> And let me ask furthermore, in terms of retail penetration, can you commit that there will be no effort to penetrate the retail market?
>
> CARLOS BRITO (CEO, AB-InBev):
> No -- well, what we've done in terms of retail market, and I thank you for the question. The three-tier system in the U.S. is regulated at the state level. So 50 different states, 50 different sets of regulations.
>
> So in some states for examples, 15 states brewers can own wholesalers. In the others, we can't. In other states, we can own brew pubs. In some others we cannot. So we comply with the law. We've been only wholesalers for more than 100 years, and let me tell you why we do this.
>
> The beauty of this is that if you own a couple of wholesalers, and again its 7 percent to 8 percent of our volume and it's going to be around 10 percent. That's our commitment. You're able to develop people within the company, our colleagues that understands distribution system.
>
> That understands the second tier, and therefore are able to talk to wholesalers on an equal basis because they face their realities, that our wholesalers face on a daily basis, in our company on wholesalers.
>
> So that's the reason why we've been in this business for 100 years because it provided us the knowledge about being closer to the market and being able to talk and understand wholesalers in a much better way.

The DOJ, in its proposed Final Judgement, addresses the concerns that a $100 billion brewer with a publicly-stated interest in expanding its distribution footprint presents to the United States' independent beer distribution system. This is an important recognition of the impact of vertical integration on access to distribution, and the DOJ rightly puts forth reasonable limits for ABI.

However, it is clear from ABI's past acquisitions and public statements that it views vertical integration as penetrating past distribution and down to the retail tier of the beer industry. It is here where the proposed Final Judgement stops at the water's edge and does not wade into concerns that this merger could have future anticompetitive implications for America's independent beverage retailers.

[5] Source: Senate Judiciary Committee

Another fundamental issue that deserves clarification is how the beer market is measured and, in particular, how the DOJ measures market share. After all, an incorrectly measured market calls into question any proposed remedies for preserving a competitive market.

The complaint uses IRI data to define ABI market share, but this appears to be only a partial picture of the beer industry. Nearly all ABL members sell beer, but it is safe to say that only a fraction of those are included in IRI data, which is primarily a measurement tool for the off-premise channel, concentrating on large stores. It is also ABL's understanding that IRI data does not capture 100 percent of on-premise retail and independent off-premise retail outlets. It is unclear if IRI data accurately captures high volume accounts such as stadiums, restaurants, bars and independent retail stores, or whether it correctly captures brewpub and taproom retail sales.

If IRI data does not measure the majority of the beer industry, then it is not a good measurement for beer market share and should at the very least be supplemented to best reflect the market.

The DOJ has exhibited wisdom and prudence in addressing the concerns that small brewers and beer wholesalers have with the merger of ABI and SABMiller, but has not measured the impact this merger will have on traditional beverage alcohol retailers. America's beer, wine and spirits retailers urges the DOJ to consider the implications of the proposed merger on current retail beer operations and determine if any safeguards should be recommended to preserve and encourage competition at the retail tier of the beer industry.

ABL thanks the Department of Justice for considering these comments.

Sincerely,

John D. Bodnovich

John Bodnovich
Executive Director
American Beverage Licensees