

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

G. HEILEMAN BREWING COMPANY, INC.,  
and PABST BREWING COMPANY,  
Defendants.

Civil Action No. 82-750

Filed: November 22, 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 November 22, 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 all the assets of Pabst Brewing Company ("Pabst") and Olympia Brewing Company ("Olympia") by G. Heileman Brewing Company, Inc. ("Heileman"), 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 Heileman and Pabst-Olympia 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 United States as a whole. The complaint seeks to enjoin Heileman from retaining

any interest in any breweries or brands of beer owned by Pabst or Olympia as of November 19, 1982, other than the Pabst breweries situated in Pabst, Georgia and Portland, Oregon; the Olympia brewery situated in San Antonio, Texas; and the following brands of beer: Red White & Blue, Burgermeister, Blitz-Weinhard, Henry Weinhard Private Reserve, Bohemian, Lone Star, Lone Star Light and Buckhorn (Texas).

The United States, Heileman and Pabst 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. Defendants have agreed to be bound by the terms of the proposed Final Judgment prior to its entry by the Court.

## II.

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

On or about November 5, 1982, Heileman and Pabst entered into an Agreement in Principle. As contemplated under the Agreement in Principle, on or about November 10, 1982, Heileman, through a wholly-owned subsidiary, commenced a cash tender offer (the "tender offer") for up to 5.5 million shares of Pabst stock representing approximately 67 percent of the common stock of Pabst. Under the tender offer, Heileman's obligation to purchase is contingent upon a minimum tender of 3.8 million shares representing approximately 46 percent of Pabst's common stock. When combined with the 400,005 shares of Pabst common stock that Heileman currently owns, the tender offer, if successful, will result in Heileman owning a minimum of 4,200,005



shares representing approximately 51 percent of the common stock of Pabst. Thereafter, Heileman intends to acquire the remaining common stock of Pabst.

Currently, Pabst owns 1,270,000 shares of Olympia stock representing 49 percent of Olympia's common stock. Heileman owns an additional 57,000 shares representing approximately 2 percent of the Olympia common stock. The Agreement in Principle also contemplates that after completion of Heileman's tender offer for Pabst, Heileman and Pabst will vote their Olympia stock to enable Heileman to acquire the remaining stock of Olympia.

Heileman was the nation's fourth largest brewer with 1981 shipments of 13,965,000 million barrels, accounting for 7.6 percent of total industry shipments. Heileman owns and operates ten breweries with a total production capacity of approximately 17,100,000 barrels. These breweries are located in Phoenix, Arizona; Auburndale, Florida; Belleville, Illinois; Evansville, Indiana; Newport, Kentucky; Baltimore, Maryland; Frankenmuth, Michigan; St. Paul, Minnesota; Seattle, Washington; and LaCrosse, Wisconsin. Heileman markets beer in all 50 states and the District of Columbia under a variety of brand names. Its principle brands include Old Style, Special Export, Blatz, Rainier, Schmidt, Wiedemann, Carling Black Label and Colt 45 malt liquor.

Pabst was the nation's fifth largest brewer in 1981 with shipments of 13,465,000 barrels, representing 7.4 percent of total industry shipments. Pabst owns and operates four breweries with a total production capacity of 16,300,000 barrels. These breweries are located in Pabst, Georgia; Newark, New Jersey; Portland, Oregon; and Milwaukee, Wisconsin. Pabst markets beer in all 50 states and the District of Columbia

under a variety of names. Its principal brands include Pabst Blue Ribbon, Andeker, Pabst Light, Pabst Extra Light, Red White & Blue, Jacob Best, Burgermeister, Blitz-Weinhard, Henry Weinhard Private Reserve, Bohemian and Olde English "800" malt liquor.

Olympia was the nation's eighth largest brewer in 1981 with shipments of 5,700,000 barrels, accounting for 3.1 percent of total industry shipments. Olympia owns and operates three breweries with a total production capacity of approximately 9,500,000 barrels. These breweries are located in St. Paul, Minnesota; San Antonio, Texas; and Tumwater, Washington. Olympia markets beer in 22 western states under a variety of brand names. Its principal brands include Olympia, Olympia Gold (light beer), Hamm's, Hamm's Special Light, Lone Star, Lone Star Light and Buckhorn (Texas and non-Texas).

In 1981, total domestic sales of beer, including imports and excluding exports, are estimated to have been 183,000,000 barrels. The combined national market share of the four largest brewing companies was approximately 67 percent, with the two largest companies alone accounting for approximately 52 percent of the nation's sales.

Since 1981, two consolidations have occurred, further increasing concentration in the brewing industry. In a two-step transaction begun in April 1982, and completed in June 1982, The Stroh Brewery Company of Detroit, Michigan ("Stroh"), acquired all of the common stock of Jos. Schlitz Brewing Co. of Milwaukee, Wisconsin ("Schlitz"). Thereafter, on or about June 29, 1982, Pabst acquired 49 percent of the common stock of Olympia Brewing Company ("Olympia") in what was intended as the first step of Pabst's acquisition of the entire equity interest in Olympia. To date, Pabst has not acquired the remaining outstanding Olympia common stock.



Treating Stroh-Schlitz and Pabst-Olympia each as a combined entity in recognition of these consolidations, Heileman was the nation's fifth largest brewer, with 1981 shipments of 13,965,000 barrels and a national market share of approximately 7.6 percent. Collectively, Pabst and Olympia were the nation's fourth largest brewer, with 1981 shipments of 19,165,000 barrels and a national market share of 10.5 percent.

The combination of Heileman with Pabst and Olympia would result in the nation's third largest brewing company, with 1981 shipments of 33,130,000 barrels and a national market share of 18.1 percent. Such a combination would increase total seller concentration in the nation, as measured by the Herfindahl Index, by 163 points, from 1764 to 1927; it would increase the industry four-firm concentration ratio of sellers in the nation by 7.6 percent, from 75.1 percent to 82.7 percent. 1/

### 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

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1/ 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 share 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.

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 permits Heileman to retain only a relatively small portion of the total assets of Pabst and Olympia. These retained assets include the Pabst breweries in Pabst, Georgia and Portland, Oregon; the Olympia brewery in San Antonio, Texas; and the following brands of beer: Red White & Blue, Burgermeister, Blitz-Weinhard, Henry Weinhard Private Reserve, Bohemian, Lone Star, Lone Star Light and Buckhorn (Texas).

The proposed Final Judgment prevents Heileman from retaining any interest in, or exercising any control over, the remaining assets of Pabst and Olympia, which assets constitute the bulk of all of the assets of Pabst and Olympia. The proposed Final Judgment further provides that Heileman and Pabst will cause these non-retained assets to be transferred to an independent Pabst no later than March 31, 1983. Until such a transfer is accomplished, Heileman may vote the Pabst stock it acquires through the tender offer only with the approval of the United States, and is otherwise prohibited from managing or controlling Pabst. Should Heileman and Pabst fail to accomplish such a transfer by March 31, 1983, a trustee will be appointed to effect the transfer.

The proposed Final Judgment provides the trustee with all powers necessary to accomplish the purposes of the trust, including the power to vote the Pabst stock Heileman acquires in the tender offer. The purposes of the trust are as follows:

- (1) to accomplish the transfer of the retained assets to Heileman;



(2) to accomplish the transfer of the non-retained assets as a viable, ongoing business in the brewing industry, (a) to the then shareholders of Pabst and Olympia other than Heileman, or (b) to a purchaser approved by the United States, with the proceeds of such sale going to the then shareholders of Pabst and Olympia other than Heileman in exchange for their Pabst and Olympia shares; and (3) to carry out the parties' intention that Heileman not acquire control, directly or indirectly, over the non-retained assets.

The proposed Final Judgment requires that any divestiture proposed by the trustee must be approved by the Court. If the Court is not satisfied that the trustee's proposed divestiture is fair and equitable to the then shareholders of Pabst, the trustee thereupon is empowered to take all affirmative steps necessary to accomplish its proposed divestiture in a manner approved by the Court and without impairment to the financial condition or viability of the non-retained assets as an ongoing business in the brewing industry. In this event, the Court may require Heileman to provide such additional financial contribution in such form and amount as the Court may reasonably determine to be necessary to proceed with the divestiture on terms that are fair and equitable to the Pabst shareholders.

If a trustee is appointed, the proposed Final Judgment provides that Heileman will pay all costs and expenses of the trustee. The trustee's compensation will be based in significant part on a fee arrangement providing the trustee with an incentive to accomplish divestiture as expeditiously as is possible and, with respect to a sale to a purchaser approved by the United States, to obtain the best possible price. The trustee will serve for six months. If after six months the

divestiture is not accomplished, the trustee and the parties will make recommendations to the Court and the Court may extend the trust or enter such other orders as it deems appropriate to accomplish the purposes of the trust.

B. Miscellaneous Provisions

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

The Final Judgment will expire upon order of the Court after the trust has terminated.

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 defendants.

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 United States 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 anti-competitive effect alleged in the complaint was the lessening of competition in the manufacture and sale of beer in the United States as a whole. By denying the non-retained assets to Heileman, and instead maintaining them as a viable ongoing

concern in the brewing industry, the proposed Final Judgment eliminates this anticompetitive effect. 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.

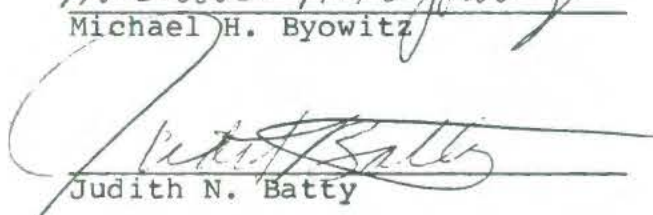
VII.

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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