

**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)

**PLAINTIFF UNITED STATES’ MOTION AND MEMORANDUM IN
SUPPORT OF ENTERING THE PROPOSED FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h) (“APPA”), plaintiff United States (“United States”) moves for entry of the proposed Final Judgment filed on July 20, 2016, and [attached as Exhibit 1](#).

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) and Response of Plaintiff United States to Public Comments on the Proposed Final Judgment (“Response to Public Comments”)—filed by the United States on July 20, 2016 (Dkt. 3), and January 13, 2017 (Dkt. 16), respectively—explain why entry of the proposed Final Judgment is in the public interest. With this motion, the United States is also filing a Certification of Compliance ([attached as Exhibit 2](#)) showing that the parties have complied with all applicable provisions of the APPA and certifying that the sixty-day statutory public comment period has expired.

I. Background

On July 20, 2016, the United States filed a Complaint in this matter alleging that Defendant Anheuser-Busch InBev SA/NV's proposed acquisition of Defendant SABMiller plc would lessen competition substantially for the sale of beer both nationally and in every local market in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would likely have resulted in higher beer prices for U.S. consumers. The loss of competition would likely also have resulted in less innovation, leading to a reduced variety of beers and fewer choices for U.S. beer drinkers.

Simultaneously with the filing of the Complaint, the United States filed the proposed Final Judgment—which is designed to eliminate the anticompetitive effects of the ABI/SABMiller transaction—the CIS, and a Hold Separate Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. ABI was allowed to acquire SABMiller, but it was required to divest SABMiller's equity and ownership stake in MillerCoors LLC, the joint venture through which SABMiller conducted substantially all of its operations in the United States. ABI was also required to divest certain other assets related to the business of MillerCoors and Miller-branded beer products outside of the United States. The proposed Final Judgment also restricts how ABI may interact with the independent distributors that sell ABI's beers. The restrictions are designed to ensure that the distributors can promote competition among the brewers that they serve.

ABI completed its acquisition of SABMiller on October 10, 2016, and divested the assets described above to Molson Coors Brewing Company on October 11, 2016.

II. The Court should enter the Final Judgment

A. The requirements of the APPA have been satisfied

The APPA requires a sixty-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on July 20, 2016; published the proposed Final Judgment and CIS in the *Federal Register* on August 4, 2016, *see* 81 Fed. Reg. 51465 (2016); and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for seven consecutive days beginning on August 3, 2016, and ending on August 9, 2016. The sixty-day period for public comments ended on October 4, 2016. The United States received twelve written comments relating to the proposed Final Judgment. On January 13, 2017, the United States filed with the Court its Response to Public Comments. The United States posted on the Antitrust Division's website the twelve comments and its Response to Public Comments. Pursuant to 15 U.S.C. § 16(d) and with the Court's authorization (*see* Jan. 19, 2017 Minute Order), on February 15, 2017, the United States published in the *Federal Register* its Response to Public Comments and the location on the Antitrust Division's website at which the twelve public comments are accessible, *see* 82 Fed. Reg. 10782 (2017).

The Certification of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied.¹ The parties have stipulated that, upon the

¹ Section V.I. of the proposed Final Judgment requires that within ten business days of the entry of the Final Judgment, ABI must provide to the United States a proposed written notification to Independent Distributors describing changes ABI is making to comply with Section V of the Final Judgment. The United States did not move to enter the proposed Final Judgment before now because it was discussing with ABI modifications to ABI's policies governing Independent Distributors that will be necessary for ABI to comply with the Final Judgment. For example, ABI and the United States have agreed that, once the Final Judgment has been entered, ABI will

motion of any party or upon the Court's own motion, the proposed Final Judgment may be entered by the Court at any time after compliance with the requirements of the APPA and without further notice to any party or other proceedings. Hold Separate Stipulation and Order, Section IV.A. (Dkt. 2, attachment). It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

B. Standard of judicial review under the APPA

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging

include in the notification to Independent Distributors the following language: "Independent Distributors are required to provide best efforts to achieve and maintain the highest practicable sales volume and retail placement of ABI's Beer. Consistent with this requirement, an Independent Distributor may on occasion, and without violating best efforts to ABI, make unsolicited recommendations to individual retailers, specific to each such individual retailer's location(s), to convert a particular ABI retail placement to that Independent Distributor's Third-Party Brewer's Beer when such recommendations are made for the express purpose of increasing such retailer's sales of Beer, including Third-Party Brewers' Beer or ABI's Beer, so long as such unsolicited recommendation does not result in more than a de minimis decrease in the sales volume or retail placement of ABI Beer in the Independent Distributor's assigned geographic area."

specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. §§ 16(e)(1)(A), (B).

The Court can make the public interest determination based on the CIS and the Response to Public Comments alone. Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.”

In its CIS, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law.² As explained in the CIS and the Response to Public Comments, entry of the proposed Final Judgment is in the public interest.

III. Conclusion

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comments, the Court should find that the proposed Final Judgment is in the public interest. The United States respectfully requests that the proposed Final Judgment be entered at this time.

² In addition to the public comments submitted to the United States, the International Brotherhood of Teamsters (Dkt. No. 20), D.G. Yuengling & Son, Inc. (Dkt. No. 22), and Consumer Action and Consumer Watchdog (Dkt. No. 25) each have filed Amicus Curiae briefs. The Teamsters, Yuengling, and Consumer Watchdog also filed public comments, to which the United States responded.

Dated: September 15, 2017

Respectfully submitted,

/s/ Michelle R. Seltzer

Michelle R. Seltzer (D.C. Bar No. 475482)

U.S. Department of Justice

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CERTIFICATE OF SERVICE

I, Michelle R. Seltzer, hereby certify that on September 15, 2017, I caused a copy of Plaintiff United States' Motion and Memorandum in Support of Entering the Proposed Final Judgment, with Exhibits, 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/ Michelle R. Seltzer

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