

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

ANHEUSER-BUSCH InBEV SA/NV, and

SABMILLER plc,

*Defendants.*

Civil Action No. 1:16-cv-01483 (EGS)  
Judge: Emmet G. Sullivan

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
UNOPPOSED MOTION TO APPROVE THE APPOINTMENT OF  
WILLIAM E. BERLIN AS MONITORING TRUSTEE**

The United States files this Memorandum of Points and Authorities in support of its Unopposed Motion to Approve the Appointment of William E. Berlin as Monitoring Trustee in this case.

Pursuant to the parties' July 20, 2016 stipulation, the Court's July 29, 2016 Order, and Section VIII of the proposed Final Judgment, the United States has the sole discretion to propose to this Court the appointment of a Monitoring Trustee. Accordingly, the United States hereby respectfully moves for the Court's approval to appoint William E. Berlin as the Monitoring Trustee. As described below, Mr. Berlin is well-qualified to monitor and ensure the defendants' compliance with the proposed Final Judgment and the Hold Separate Stipulation and Order ("Stipulation and Order") because he has extensive knowledge of antitrust law, the beer industry, and Defendant Anheuser-Busch InBev SA/NV's business, and he has significant experience

serving as a monitoring trustee in another antitrust case.

**I. Requirements of the Proposed Final Judgment that the Monitoring Trustee Will Oversee**

The United States filed a civil antitrust complaint on July 20, 2016, seeking to enjoin the proposed acquisition of Defendant SABMiller plc (“SABMiller”) by Defendant Anheuser-Busch InBev SA/NV (“ABI”) (collectively, “Defendants”). The Complaint alleges that the proposed acquisition would substantially lessen competition in the beer industry in the United States and 58 local markets within the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would likely result in higher beer prices and less innovation.

On July 20, 2016, the United States filed a Stipulation and Order and a proposed Final Judgment that were agreed to by all parties and which are designed to eliminate the likely anticompetitive effects of the acquisition. The Court entered the Stipulation and Order on July 29, 2016. Section VIII of the proposed Final Judgment provides for the appointment of a Monitoring Trustee with the power and authority to monitor compliance with the terms of the proposed Final Judgment and the Stipulation and Order, and such other powers as the Court deems appropriate, to ensure that Defendants expeditiously comply with all of their ongoing obligations and perform all of their responsibilities under the proposed Final Judgment and the Stipulation and Order; that the Divestiture Assets remain economically viable, competitive, and ongoing assets; and that competition in the sale of beer in the United States and in all local markets within the United States is maintained.

Under the proposed Final Judgment, ABI must divest to Molson Coors Brewing Company (“Molson Coors”) or another buyer acceptable to the United States: (1) SABMiller’s equity and ownership stake in MillerCoors LLC (“MillerCoors”); (2) perpetual, royalty-free licenses to import, manufacture, distribute, market, and sell the Import Products, which are

SABMiller brands that are imported by MillerCoors for sale in the United States; (3) perpetual, royalty-free licenses to manufacture, distribute, market, and sell the Licensed Products, which are brands currently manufactured under contract in the United States by MillerCoors pursuant to royalty-bearing licenses with SABMiller; (4) all rights, title, and interests in Miller-Branded Products outside the United States; and (5) certain tangible and intangible assets related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the United States.<sup>1</sup>

In addition, the proposed Final Judgment requires ABI to enter into one or more Transitional Services Agreements, for up to one year, with Molson Coors (or another acquirer) to provide services with respect to the business of developing, producing, servicing, importing, distributing, marketing, and selling Miller-Branded Products outside the United States that are reasonably necessary to permit Molson Coors (or another acquirer) to operate the Miller International Business. Further, the proposed Final Judgment requires ABI to enter into one or more Interim Supply Agreements, for a period up to three years, to provide Molson Coors (or another acquirer) with the beers to which it is acquiring the rights to import and sell in the United States.

Section V of the proposed Final Judgment places restrictions on ABI, including restrictions on ABI's ability to incentivize its distributors to promote ABI brands at the expense of competing beers, including high-end craft and import beers. Section V also requires ABI to agree not to cite the Transaction or the required divestiture as a basis for modifying, renegotiating, or terminating any contract with a distributor, and it prohibits ABI from acquiring any interest in, or ownership or control of, a distributor if such acquisition would result in more

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<sup>1</sup> Capitalized terms not defined herein are defined in the proposed Final Judgment. For purposes of this Memorandum, the United States includes the fifty states of the United States of America, the District of Columbia, Puerto Rico, and all United States military bases located therein.

than ten percent, by volume, of ABI's beer in the United States being sold through ABI-owned distributors.

The Monitoring Trustee will be required to investigate and report on Defendants' compliance with the proposed Final Judgment and the Stipulation and Order, and Defendants' progress toward effectuating the purposes of the proposed Final Judgment, including but not limited to (1) any breach or other problem that arises under any Interim Supply Agreement or Transition Service Agreement, or other agreement between ABI and Molson Coors, and (2) any breach or other concern regarding ABI's compliance with the proposed Final Judgment or Stipulation and Order, the reasons for such breach or problem, and recommended remedies, including investigating complaints that, and recommending potential resolutions in response to, allegations that ABI has violated any of the restrictions placed on its distribution practices by Section V of the proposed Final Judgment.

## **II. Mr. Berlin is Well-Qualified to Serve as Monitoring Trustee**

The United States moves this Court to approve the appointment of William E. Berlin as Monitoring Trustee. Mr. Berlin has practiced law for over 28 years and specialized in antitrust law for 22 years. He first worked as an associate at Arter & Hadden LLP for almost seven years, and then spent more than eight years as a trial attorney with the Antitrust Division of the United States Department of Justice. From 2003 to 2014, Mr. Berlin was a principal at Ober|Kaler in the Antitrust and Competition and Health Law practice groups, and he is now a principal at Hall, Render, Killian, Heath & Lyman, P.C., where his practice focuses on representing clients in federal agency investigations of mergers and acquisitions and counseling clients regarding antitrust issues. Since 2013, he has served as the monitoring trustee overseeing the enforcement of the Final Judgment in *United States v. Anheuser-Busch InBev et al.*, No. 1:13-cv-00127

(D.D.C. 2013) (Mehta, J.), relating to the merger of ABI and Grupo Modelo S.A.B. de C.V. (“Grupo Modelo”). In that role, Mr. Berlin has overseen the implementation and administration of multi-year interim supply and transitional services agreements between ABI and Constellation Brands, Inc. (“Constellation”). Mr. Berlin also has overseen Constellation’s expansion of a brewery in Piedras Negras that Constellation was required to expand under the final judgment in that case. In addition, Mr. Berlin was charged with resolving any disputes regarding ABI’s compliance with the distribution-related mandates in the final judgment in that case. During the three years that he has served as the monitoring trustee in the *ABI/Grupo Modelo* case, Mr. Berlin has consistently performed his duties in an effective and efficient manner.

Mr. Berlin is also an American Health Lawyers Association-certified arbitrator and mediator. As such, he has the skills and experience necessary to help resolve potential disagreements between ABI and other industry participants regarding the requirements of the proposed Final Judgment, and he has utilized those skills and that experience to mediate disputes in the *ABI/Grupo Modelo* case.

Mr. Berlin’s professional biography is attached as Exhibit A to the Declaration of Michelle R. Seltzer. Based on his having practiced antitrust law – both as a government attorney and private practitioner – for 22 years, his familiarity with the Antitrust Division and its mission, his three years of experience as the monitoring trustee charged with ensuring ABI’s compliance with the final judgment in the *ABI/Grupo Modelo* case, and his qualifications as an arbitrator and mediator, Mr. Berlin is well-positioned to serve as Monitoring Trustee.

**III. Conclusion**

For the foregoing reasons, the United States respectfully requests this Court to approve the appointment of William E. Berlin as Monitoring Trustee pursuant to Section VIII of the proposed Final Judgment.

Dated: August 10, 2016

Respectfully submitted,

/s/ Michelle R. Seltzer

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