

**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. 13-127 (RWR)

**PLAINTIFF UNITED STATES OF AMERICA’S MOTION AND
MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed on April 19, 2013, and attached as Exhibit 1.¹ 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 Plaintiff United States’s Response to Public Comments (“Response to Public Comments”)—filed by the United States on April 19, 2013, and September 13, 2013, respectively—explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and

¹ The proposed Final Judgment has four exhibits. Unredacted versions of two of those exhibits, A and D, were filed under seal (*see* Docket Nos. 29-3 and 29-6); redacted versions were filed in the public docket (*see* Docket Nos. 35-1 and 35-2). Exhibits A and D to the proposed Final Judgment attached to this Motion and Memorandum are the redacted versions.

Memorandum a Certificate of Compliance (attached as Exhibit 2) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the sixty-day statutory public comment period has expired.

I. Background

On January 31, 2013, the United States filed a Complaint in this matter, alleging that Defendant Anheuser-Busch InBev SA/NV's ("ABI") proposed purchase of the remaining equity interest in Defendant Grupo Modelo, S.A.B. de C.V. ("Modelo") would lessen competition substantially for the sale of beer in the United States and specifically in 26 local markets 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 and less innovation.

On April 19, 2013, the United States filed the proposed Final Judgment—which is designed to eliminate the anticompetitive effects of the ABI/Modelo transaction—the CIS, and a Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. Under the terms of the Stipulation and Order, Constellation Brands, Inc. ("Constellation") was added as a Defendant for purposes of settlement. Defendant ABI was allowed to consummate its acquisition of Modelo, but it was required to divest Modelo's U.S. business to Constellation or, if the divestiture to Constellation failed to close, to another acquirer capable of replacing the competition that Modelo brought to the United States market. ABI completed its acquisition of Modelo on June 4, 2013, and its divestiture to Constellation of Modelo's U.S. business on June 7, 2013.

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.

II. Compliance with the APPA

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 April 19, 2013; published the proposed Final Judgment and CIS in the *Federal Register* on May 22, 2013, *see* 78 Fed. Reg. 30399-30660 (2013); 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 April 28, 2013, and ending on May 4, 2013. The sixty-day period for public comments ended on July 22, 2013. The United States received five written comments relating to the proposed Final Judgment. On September 13, 2013, the United States filed with the Court its Response to Public Comments. Pursuant to 15 U.S.C. § 16(d) and with the Court's authorization (Docket No. 42), the United States posted on the Antitrust Division's website the five comments and its Response to Public Comments. On September 24, 2013, 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 five public comments are accessible, *see* 78 Fed. Reg. 58559 (2013).

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. 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.

III. Standard of Judicial Review

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 may 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 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).

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. As explained in the CIS and the Response to Public Comments, entry of the proposed Final Judgment is in the public interest.

IV. 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 and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the proposed Final Judgment

be entered at this time.

Dated: September 25, 2013

Respectfully submitted,

/s/ Michelle R. Seltzer

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

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CERTIFICATE OF SERVICE

I, Michelle R. Seltzer, hereby certify that on September 25, 2013, I caused a copy of Plaintiff United States of America's Motion and Memorandum for Entry of the Proposed Final Judgment 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. Additionally, a copy of the foregoing was delivered via e-mail to the duly authorized legal representatives of the defendants, as follows:

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