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Statement of Craig Wolf, Representing the U.S. Chamber of Commerce and the Wine & Spirits Wholesalers of America, March 14, 2018

Good morning.

I want to thank Assistant Attorney General Delrahim and the Antitrust Division for holding these discussions. The most effective government policies are those that are informed by careful consideration of the competing perspectives of those who would be directly impacted by those policies.

My name is Craig Wolf and I am the President of the Wine & Spirits Wholesalers of America, a trade association whose members distribute more than 80 percent of all wine and spirits sold at wholesale in the U.S. WSWA is a member of the U.S. Chamber of Commerce, and I will be presenting the views of the Chamber as well as those of my association, which has a unique perspective on the issues to be discussed today.

The Chamber believes in market competition that yields self-regulated markets and is generally not supportive of immunities or exemptions from antitrust law. It recognizes that exemptions exist, has no expressed interest in reviewing those exemptions, but is hesitant to support additional exemptions.

With respect to immunities, the Chamber recognizes that the state action doctrine can shield anti-competitive regulation which can lead to market distortions, so it is generally supportive of a narrowing of its interpretation to prevent excessive regulation that could lead to fewer market participants and predetermine market outcomes.

The Chamber also has raised concerns with the interface between U.S. antitrust laws, the Foreign Sovereign Immunity Act (FSIA), the Act of State doctrine, and claims of foreign sovereign compulsion, and generally believes companies operating in foreign markets should be subject to the laws and regulations of the country in which they operate.



The Chamber believes that U.S. antitrust authorities should investigate and, where appropriate, bring cases against any commercial competitor in the market - state-owned, supported, or private - and that the courts need to limit the application of the act of state doctrine and granting of comity where deference results in immunity.

For companies finding themselves under scrutiny in a foreign market, the foreign sovereign compulsion defense may arise. While the Chamber has sympathies for companies caught trying to comply with potentially conflicting legal regimes, the courts must evaluate the assertion of such a defense carefully.

The Chamber also believes that the Foreign Trade and Antitrust Improvements Act (FTAIA) is in need of clarity. Import commerce should fall within the scope of U.S. antitrust laws and the harm to U.S. consumers should be within reach of remedy.

Like the Chamber, WSWA generally supports the long-standing presumption that competition yields the best allocation of economic resources, the lowest prices, the highest quality, and the most innovation.

However, alcohol is unique, and the goal of unrestrained competitive forces to achieve the lowest prices must be balanced with competing public safety concerns. We believe that state-based regulatory systems successfully and effectively balance regulation with competition, promoting a dynamic and diverse purchasing environment while protecting citizens from the potentially harmful effects of alcohol.

The laws and regulations governing the production, distribution, and sale of beverage alcohol do not benefit from any express statutory exemption, nor do they enjoy implied immunities from the antitrust laws.

But the fundamental tenet of primacy of state regulation is strengthened in the context of state beverage alcohol regulations. The adoption of the 21st Amendment reflected recognition by Congress and the states that the difficult problem of regulating alcohol, a socially-controversial product that could be misused, required that states be granted sweeping authority to develop comprehensive, manageable solutions to protect their citizens.



As a result, many state beverage alcohol laws and regulations promote a level playing field by prohibiting below cost pricing, predatory pricing, and price discrimination. Those policy goals are consistent, and do not conflict, with the principles embedded in the federal antitrust laws.

When a state's regulatory requirements directly conflict with express federal policies, those regulations will only prevail when the interests implicated by the state regulation are closely related to the interests reserved to the states under the 21st Amendment.

The state action immunity doctrine, which also rests on principles of federalism and state sovereignty, functions to ensure that state-imposed constraints on competition are the subject of clearly articulated state policies, supervised by state officials who are not, themselves, market participants.

The dormant Commerce Clause limits the states' ability to discriminate between in-state and out-of-state producers, however the Supreme Court has made it clear that the 21st Amendment grants the States virtually complete control over how to structure the liquor distribution system and that a state mandated three-tier system of distribution is unquestionably legitimate.

The regulatory systems developed in the states to manage beverage alcohol have created the most innovative, dynamic and competitive alcohol marketplace in the world today, offering consumers a wide array of brands from across the world. This demonstrates how strong state laws governing production, distribution and retail provide benefits to consumers while satisfying important policy interests of the state in ensuring a level playing field for market participants.

We encourage the Department of Justice to recognize that beverage alcohol is historically and constitutionally unique, and requires a balancing of interests between competition and public safety.