

**ENSURING COMPETITION REMAINS ON TAP:
THE AB INBEV/SABMILLER MERGER
AND THE STATE OF COMPETITION
IN THE BEER INDUSTRY**

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
COMPETITION POLICY AND
CONSUMER RIGHTS

OF THE

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TUESDAY, DECEMBER 8, 2015

UNITED STATES SENATE,
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY,
AND CONSUMER RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:01 a.m., in Room 226, Dirksen Senate Office Building, Hon. Michael S. Lee, Chairman of the Subcommittee, presiding.

Present: Senators Lee [presiding], Perdue, Tillis, Grassley, Klobuchar, Coons, Franken, and Blumenthal.

Also present: Senator Patrick J. Leahy.

**OPENING STATEMENT OF HON. MICHAEL S. LEE,
A U.S. SENATOR FROM THE STATE OF UTAH**

Chairman LEE. Welcome to this hearing of the Subcommittee on Antitrust, Competition Policy, and Consumer Rights. The title that we have chosen for this hearing is “Ensuring Competition Remains on Tap: The AB InBev/SABMiller Merger and the State of Competition in the Beer Industry.”

Before we start, I would like to thank Ranking Member Klobuchar and thank her staff for their attention to this issue and their assistance in preparing for today’s hearing. I would also like to thank the Chairman of the Full Committee, Senator Grassley, for supporting this hearing.

A few housekeeping matters before we begin. After, Senator Klobuchar and Senator Leahy give some opening remarks about this hearing, we will hear from our panel of witnesses who I and Senator Grassley will introduce shortly, and then we’ll have a 5-minute—a series of 5-minute question rounds.

The subject of today’s hearing is the proposed acquisition of SABMiller by Anheuser-Busch InBev, the second largest and largest beer producers in the world, respectively. AB InBev announced the acquisition for approximately \$105 billion on November 11th. Concurrent with that transaction, the parties announced a plan to divest SABMiller’s stake in MillerCoors to joint venture partner Molson Coors Brewing Company. That stake represents the entirety of SABMiller’s U.S. presence.

As a result, the parties expect their merger to have little, if any, impact on the American beer market. If true, this will obviate the vast majority of the concerns that would otherwise accompany a merger of this size.

Other market participants, however, have voiced concerns about AB InBev's influence on distribution channels and the market access of small craft brewers, alleging that AB InBev is seeking greater vertical integration and attempting to exclude craft brewers from the market.

As we examine these central questions today and look at the overall state of competition in the beer industry, we must focus that review on how the current competitive dynamics will be impacted by the deal at hand. This analysis must consider both components of the transaction—the acquisition as well as the divestiture of SABMiller's entire U.S. business. Moreover, we will do well to remember that antitrust analysis is extremely fact-intensive and not driven by mere speculation or suggestion.

While legitimate antitrust concerns may exist with respect to AB InBev's relationship with distributors, this hearing is first and foremost about its acquisition of SABMiller. Under the Clayton Act, the relevant inquiry is whether the effects of the deal, quote, "may be substantially to lessen competition or to tend to create a monopoly," close quote, not whether conditions might be attached to the merger's approval to restructure the market to the liking of the Government or private plaintiffs.

When, as is the case here, the acquiring party intends to divest the entirety of the acquired company's U.S. business, the transaction's effects on competition in American markets are likely to be negligible. The American beer market is a more than \$100 billion business and delivers a product that in both its national brand and regional craft brew forms holds a special place in American culture and hospitality. Today's hearing will provide a much needed opportunity to assess competition in the industry as it relates to this particularly historic deal. I look forward to hearing from our esteemed witnesses and the productive discussion that their testimony will no doubt inspire today.

So, Senator Klobuchar will now deliver her opening statement, and then I will swear in and introduce our witnesses after we hear from Senator Leahy following Senator Klobuchar.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR,
A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you. We have worked on this hearing together, as we have on all hearings, and I appreciate the partnership we have in taking on these important antitrust matters. I also want to thank each of the witnesses who have come today to testify.

I do not come to this hearing with a conclusion, but I do have a goal, and that is to protect and foster competition. From one perspective, there has been consistent consolidation in the beer industry. Over the last decade, Anheuser-Busch, Miller, and Coors all have been involved in major acquisitions. Today Anheuser-Busch InBev-ABI—owners of what was Anheuser-Busch, and SABMiller account for 70 percent of beer sales in the United States. Within

the remaining 30 percent, a different phenomenon is occurring. Across the country, craft brewers have brought new competition to the United States beer market. In 1978, there were fewer than 50 brewers in the United States. By one recent count, there are currently over 4,100 craft brewers, and their sales have grown from 1 percent of the beer market to 11 percent in the last 20 years.

In Minnesota, we now have more than 70 breweries, more than the entire country had back in 1978 when I graduated from high school. It was not legal for me to drink beer back then.

Chairman LEE. You were not interested in beer at that point?

Senator KLOBUCHAR. Yes, I just thought it was a good year.

Senator LEAHY. Did you drink it?

Senator KLOBUCHAR. We will not—let's just say you could go to Wisconsin. Our beers—

[Laughter.]

Senator KLOBUCHAR. Our beers stretch from Schell's Goosetown to Finnegans Dead Irish Poet to Surly's Abrasive Ale and everything in between. I will say, that Mr. Chairman, that this was the first official Senate tour I took that was one of our breweries that my husband actually asked to accompany me on.

Craft brewers have succeeded, in part, because of the three-tier distribution system. Brewers brew the beer, wholesalers distribute it, and retailers sell it. Most beer wholesalers are independent but rely primarily on either ABI products or SABMiller products. Because of their independence, wholesalers also distribute a variety of smaller independent brands. As a result, today's beer aisle in any retail outlet is a cornucopia of choice.

Within this context, ABI, the largest brewer in the world, seeks to acquire SABMiller, the second largest brewer in the world. The size of the transaction is not only cause for concern; the Department of Justice, is—in investigating ABI's previous acquisition of Modelo Group, found that larger brewers engage in significant, quote, in "significant levels of coordination, and that coordination has reduced competition and increased prices."

If ABI were simply acquiring SABMiller, the transaction would almost certainly be illegal. The merging parties themselves recognize that fact and have offered to divest SABMiller's stake in the MillerCoors joint venture to Molson Coors. That is why we have asked Molson Coors to testify to understand how it intends to compete in the United States market. I appreciate that ABI and SABMiller have affirmatively offered a solution at the beginning of the process.

The question today, then, is whether the proposed divestiture resolves all competition problems. Because the market is highly concentrated, the divestiture needs to be nearly perfect. If despite the divestiture ABI's market share were to increase even a small amount, the acquisition would likely be presumptively anticompetitive under the Department of Justice and Federal Trade Commission's horizontal merger guidelines.

For the divestiture to be a successful remedy, MillerCoors needs to be as independent from ABI after the merger as it is today. We also need to make sure that nothing in this merger alters either the incentives or the ability for large brewers to foreclose retail access from craft brewers. Unless craft brewers have access to whole-

salers, they will wither on the vine. That's kind of an wine analogy, but it is a good one. Wholesalers make decisions every day on what brands and how much of each brand to put on their trucks. I want to ensure that consumer choice and not producer power drives those decisions.

Mr. Chairman, the beer industry is moving in a good direction. Small, innovative companies are transforming the marketplace from Vermont to Minnesota. Although the craft segment may be beyond its infancy, it is far from mature. We need to ensure this merger does not stunt competition, and that depends on the quality of the divestiture. Thank you, Mr. Chairman.

Chairman LEE. Thank you. Senator Leahy.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman. I want to thank you and Senator Klobuchar for having this hearing. I could legally drink beer in 1978. I am considerably older than my colleague from Minnesota. But I would say that this hearing on the proposed merger of AB InBev and SABMiller is important, as we have pointed out, not only to American consumers, but to craft brewers and independent distributors—not just to brewers but to independent distributors across the country.

Now, Vermont was one of the earliest incubators of craft brewing. We have 40 breweries now. We are a State of only 600,000 people, but we have 40 breweries. Some of them are award-winning beers, world award-winning beers, and people travel from all over the country to visit them. And, of course, they made—they have improved our economy, but I like the fact that it is just one more thing making Vermont a destination State. Now, we want to make sure that these craft brewers and also the brewers of tomorrow in any State can competet and that consumers will have the choice.

The proposed merger we consider today would join the two giants of the beer industry. They are 70 percent of the U.S. market. Seventy percent. The parties have announced that AB InBev will divest ownership of SAB's stake in MillerCoors, selling it to Molson. I welcome that effort; it will address some of the concerns we have. But, I think, when you still look at the size of what is left, we have to take a look at this transaction. I want to know how it is going to operate in practice. Will the merger have other consequences for the beer market, including given the—given the practice of big brewers buying up small craft breweries? But we also have to consider the competition in the market for the hops, the barley, the glass, and the aluminum. Now, these may sound like prosaic things, but you are not going to be able to compete if you can't buy hops, barley, glass, and aluminum because the giants have cornered the market.

I want to hear about concerns in distribution. I want to hear especially the concerns we have that the large brewers' power over distribution is shutting out competitors and undermining consumer choice. I met with a number of the independent brewers in Vermont here recently, and they pointed out that they can only sell their products if a customer can find it. And if they are being squeezed off the shelf because of restrictive behavior by the domi-

nant companies, well, that harms competition and limits consumers' options. So, we have a whole lot of things in here—the basic material of the beers, the distribution of it.

Of course, one way for large brewers to influence distribution is that they buy up the distributors. AB InBev has indicated that, following this merger, it will not increase its ownership of distributors above its current level of 10 percent. Mr. Brito, I will ask you during your testimony to make a formal commitment to that. And Molson has indicated that, after it gains 100 percent ownership of MillerCoors, it will not increase its ownership of distributors, nor change its current practice of giving distributors leeway to showcase competitors' brands. Mr. Hunter, I hope you'll make a formal commitment to that today. It will certainly influence how I'll feel about this merger.

So, the pathway from brewer to buyer is critical if small companies are going to compete. State laws regulating distribution vary dramatically, and many small brewers feel constrained by the current state of distribution. I hope that is going to remain a subject of close review.

But, anyway, as a Vermonter, as one who is so proud of these craft brewers in my State—and I see what their creativity does—I want to make sure they have a level playing field. If they make a bad product, it does not sell. If they make a good product, it should sell. But I do not want them closed out because they cannot distribute or they cannot get the basic parts that they need. So, thank you, Mr. Chairman.

Chairman LEE. Thank you, Senator Leahy.

I will now ask the witnesses to stand and be sworn. Do you affirm that the testimony that you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRITO. I do.

Mr. PEASE. I do.

Mr. PURSER. I do.

Mr. WILSON. I do.

Ms. MOSS. I do.

Mr. HUNTER. I do.

[Witnesses are sworn in.]

Chairman LEE. Thank you. Okay. We will now begin introducing our witnesses. I will start with Mr. Brito.

Carlos Brito is the chief executive officer of AB InBev. Born in 1960, he is a Brazilian citizen and received a degree in mechanical engineering from the University of Federal do Rio de Janeiro and an MBA from Stanford University. He held positions at Shell Oil and Daimler Benz prior to joining Ambev in 1989. At Ambev he had roles in Finance, Operations, and Sales, before being appointed chief executive officer in January 2004. He was appointed zone president of North America at InBev in January 2005 and chief executive officer in December 2005. He is also a member of the Board of Directors of Ambev and Grupo Modelo.

Bob Pease is the president and chief executive officer for the Brewers Association. He assumed the role of CEO in August 2014 after serving for 4 years as the organization's chief operating officer. He worked at the Brewers Association—has worked at the

Brewers Association for over 21 years. Mr. Pease has a degree in political science from the University of Colorado. He is a member of the American Society of Association Executives, a graduate of the Siebel Institute Professional Beer Tasting and Styles course, and is a certified TIPS trainer.

Craig Purser serves as the president and chief executive officer of the National Beer Wholesalers Association. Purser serves as a trustee for the Alcohol Beverage Medical Research Foundation and the Center for Alcohol Policy. He also serves as a member of the U.S. Chamber of Commerce's Association Committee of 100, the ASAE's Key Industry Association Committee, the Association Executives Council of the National Association of Wholesale Distributors, and the Bryce Harlow Foundation's Board of Governors. Purser has served as a guest lecturer at the University of North Carolina and the George Washington University and the University of Oklahoma. A native of Oklahoma, Purser is a graduate of the University of Oklahoma.

And now Senator Grassley would like to introduce the witness from Iowa.

Chairman GRASSLEY. Yes, I am happy to introduce J. Wilson. He is a constituent of mine. Mr. Wilson is from a small community, Prescott, Iowa. He represents the Iowa Brewers Guild, organized to represent the interests of Iowa's craft brewing industry. Mr. Wilson is a certified beer judge and an award-winning home brewer. He's a published author and a freelance writer for several print and online publications. I appreciate the Chairman inviting Mr. Wilson so that he can give a small business perspective on the possible impact of the proposed acquisition on the marketplace and ultimately the American consumer. Thank you.

Chairman LEE. Thank you, Senator Grassley.

Diana Moss became the president of the American Antitrust Institute in January 2015. Her work spans both antitrust and regulation with industry expertise in electricity, petroleum, agriculture, airlines, telecommunications, and health care. Before joining AAI, Dr. Moss was a senior staff economist at the Federal Energy Regulatory Commission where she coordinated competition analysis for electricity mergers. From 1989 to 1994, she consulted in private practice in the areas of regulation and antitrust at the National Economic Research Associates and Putnam Hayes and Bartlett. Dr. Moss has spoken widely on various topics on antitrust and regulation, testified before Congress, appeared before State and Federal regulatory commissions, and made numerous radio and television appearances. She has published articles in a number of economic and legal academic journals, including *American Economic Review*, *Journal of Industrial Organization*, the *Energy Law Journal*, and the *Antitrust Bulletin*. She's editor of *Network Access, Regulation and Antitrust*. Dr. Moss is adjunct faculty in the Department of Economics at the University of Colorado at Boulder. She holds an M.A. degree from the University of Denver and a Ph.D. from the Colorado School of Mines.

Mark Hunter is a graduate of the University of Strathclyde and has spent the last 32 years in a variety of sales, marketing, and general management positions, primarily in Europe and North America. As president and CEO of Molson Coors Brewing Com-

pany, based in Denver, Colorado, Mark leads one of the world's leading beer companies with extraordinary brands such as Coors, Molson, Carling, and Staropramen. The Molson Coors purpose is to delight the world's beer drinkers, and Mark is a passionate believer in championing beer and building respect for the category through responsible drinking.

We will now hear opening statements from the witnesses, beginning with Mr. Brito. Go ahead, Mr. Brito.

**STATEMENT OF CARLOS BRITO, CHIEF EXECUTIVE
OFFICER, ANHEUSER-BUSCH INBEV,
GREENWICH, CONNECTICUT**

Mr. BRITO. Thank you. Chairman Lee, Ranking Member Klobuchar, Chairman Grassley, Ranking Member Leahy, and Members of the Subcommittee, thank you for the opportunity to appear before this Subcommittee. My name is Carlos Brito, and I am CEO of AB InBev.

AB InBev is a global brewer and the parent company of Anheuser-Busch. We have the privilege of continuing Anheuser-Busch's proud history as a brewer in America since 1852. We have more than 16,000 U.S. employees across 49 States, and we committed in June to investing an additional \$1.5 billion by 2018 in our U.S. operations. I am proud to say that 98 percent of our products sold in the U.S. are made in the U.S.

I am here today to discuss AB InBev's proposed acquisition of SABMiller and our agreement with Molson Coors to divest SABMiller's interest in MillerCoors conditioned upon completion of our culmination with SABMiller.

I would like to share with you the rationale for this transaction and the impact—or more precisely, the lack of impact—that this transaction will have on our competitive position in the United States.

The purpose of this transaction is to enhance our ability to serve new markets, particularly in Africa, Asia, and Central and South America. It's about bringing more choices to more consumers around the world, including extending the reach of iconic American brands such as Budweiser to new markets. What this combination is not about is changing the competitive landscape of the U.S. beer market.

The U.S. beer industry is more competitive than ever, with more than 4,000 breweries in all 50 States and, on average, two new breweries opening every day. Just take a walk down the aisle of your local grocery store, and you will see the incredible amount of choice beer drinkers have, more than ever before.

This competition is being driven first and foremost by the growth of craft brewers, which rose from 3.8 percent of the market in 2007 to 11 percent in 2014, and is expected to reach 20 percent market share by 2020.

In addition to robust competition from craft, the beer industry itself faces ever-growing competition from wine and liquor. Nothing in AB InBev's combination with SABMiller will lessen that competition.

The divestiture of MillerCoors ensures that our market share in the U.S. will not change as a result of the combination. Our total

beer production will not increase. Our utilization of beer ingredients and supplies will not change. Our distribution system will not be impacted. And our commitment to the three-tier system will not waver.

Beyond the transaction, let me address two other topics within the industry: distribution, and ingredients and supplies for beer.

I would like to state very clearly that we do not expect any changes to the Anheuser-Busch distribution system as a result of the combination or divestiture. There are approximately 3,300 wholesalers across America, and more than 35 States allow for some form of self-distribution of beer. Together, these distribution options ensure that brewers of all sizes can access the market.

It is our intention that approximately 90 percent of our volume be distributed by independent wholesalers. Around 10 percent of our volume will be distributed by our wholly owned distributorships.

In addition to a strong, independent distribution tier, the industry is supported by broad, responsive markets for the ingredients and supplies that brewers rely upon, including aluminum cans, barley, and hops. These ingredients and supplies are generally produced within large, highly responsive local, national, or global markets. In none of these markets would the combined company be in a position to constrain competitors' access to those ingredients and supplies. The marketplace sets the prices and terms of ingredients and supplies.

In closing, we are proud of our contribution to the highly competitive U.S. beer market and excited for the future of beer—both in the U.S. and around the world. The combination of AB InBev and SABMiller will bring more choices to consumers. We look forward to the day when American travelers can find a cold Budweiser anywhere in the world.

Again, thank you for the opportunity to appear before you. I look forward to answering your questions.

[The prepared statement of Mr. Brito appears as a submission for the record.]

Chairman LEE. Thank you, sir. Mr. Pease.

STATEMENT OF BOB PEASE, CHIEF EXECUTIVE OFFICER, BREWERS ASSOCIATION, BOULDER, COLORADO

Mr. PEASE. Mr. Chairman, Senator Klobuchar, Chairman Grassley, Members of the Subcommittee, good morning. My name is Bob Pease. I am the chief executive officer of the Brewers Association. My organization represents over 2,800 small and independent craft breweries and over 1,100 industry suppliers. My members are located in every State and in virtually every congressional district.

At the outset, I would like to make it perfectly clear that the Brewers Association is not opposed to fair competition. My members have built thousands of successful small and medium-sized business from scratch in a very competitive environment. Many others have failed at great personal loss. My members are the embodiment of the American entrepreneurial spirit. We understand that antitrust laws are designed to protect competition and they are not designed to protect any specific individual company or any segment of the industry.

The proposed acquisition of South African Breweries by Anheuser-Busch InBev must be viewed in light of other developments affecting competition in the beer industry.

To understand the competitive landscape, we need to review the basic beer industry regulatory framework. Federal alcohol laws and the 21st Amendment to the U.S. Constitution authorize each State to regulate beverage sales and distribution within their respective borders. That's important because the beer industry does not operate under the normal principles of interstate commerce. Beer and other alcohol beverages are subject to 50 different State regulatory systems.

State laws in many places effectively mandate the use of beer wholesalers and prevent a brewer from changing wholesalers absent extraordinary circumstances. State laws are generally intended to protect the independence of wholesalers, which is a laudable goal. If the wholesale tier of the beer industry is truly independent of the major brewers, it can then promote competition. But that goal has been thwarted by other developments.

Two of largest international brewers now control over 70 percent of U.S. beer sales. They have also actively fostered the rapid consolidation of the wholesale tier and the evolution of the multistate wholesaler networks under common ownership. Today, the 30 largest wholesalers control almost one-third of all U.S. beer sales to retailers.

Most markets in the U.S. are now served by only two substantial wholesalers—an ABI wholesaler and a MillerCoors wholesaler. While the two primary wholesalers are generally known by the names of their largest suppliers, the wholesalers will also sell other brands. So, for example, an ABI distributor will sell Corona, Sam Adams, and dozens of other smaller brands. But newer craft brewers face significant challenges in gaining access to retailers and consumers.

States have generally failed to respond to changes in the beer industry to the detriment of new competitors and new business models. Over the last three decades, the Federal Trade Commission has consistently, repeatedly called out States for enacting or refusing to change blatantly anticompetitive distribution laws, most of which are still on the books and are aggressively enforced through private and Government action. States have granted exceptions to allow limited self-distribution by craft brewers, but those exceptions are insignificant in terms of the overall market and total and totally inadequate to address the imbalance that currently exists.

In 15 States, large brewers are allowed to own wholesalers. So, at present, Anheuser-Busch InBev is the largest supplier of beer in the United States, and in nine States it is the largest beer distributors. In major population centers in those nine States, Anheuser-Busch InBev effectively controls one of the two routes to market that craft brewers must effectively use to sell their beer to retailers. Moreover, Anheuser-Busch also enjoys the same privileges—licensing privileges and franchise protections that were intended to protect independent wholesalers.

ABI has further diminished the independence of the wholesalers that it does not own through several different strategies. ABI has a subsidiary that finances wholesaler acquisitions and consolida-

tions. ABI also maintains incentive programs that provide millions of dollars to wholesalers that severely limit the sales of brands of competing beers.

As a condition of approving the ABI acquisition of South African Breweries, the BA strongly believes that the Department of Justice should require ABI to divest its company-owned wholesalers and modify its anticompetitive assistance and incentives to wholesalers to refrain from distributing other brands of beer.

Left unchecked, these practices will further restrict competition and access to market for the smallest players. Alternatives such as Government oversight, supervision, and enforcement would take years of effort.

In conclusion, the Department of Justice must also closely scrutinize ABI's activities that affect U.S. and global markets for goods and services used by brewers. ABI is already vertically integrated through ownership of agricultural and packaging subsidiaries. Its increasing global presence creates many opportunities to adversely affect competition for goods and services in the beer industry.

We applaud the Subcommittee for asking the hard questions to support aggressive antitrust enforcement and fair competition in the beer industry. On behalf of the over 4,100 small and independent craft breweries and their 115,000 employees, I thank you for the opportunity to appear before you today.

[The prepared statement of Mr. Pease appears as a submission for the record.]

Chairman LEE. Thank you, sir. Mr. Purser.

**STATEMENT OF CRAIG PURSER,
PRESIDENT AND CHIEF EXECUTIVE OFFICER,
NATIONAL BEER WHOLESALERS ASSOCIATION,
ALEXANDRIA, VIRGINIA**

Mr. PURSER. Thank you. Chairman Grassley, Chairman Lee, Ranking Member Klobuchar, and distinguished Members of the Subcommittee, on behalf of the Nation's independent beer distributors and their 133,000 employees, thank you for the opportunity to testify today.

There is no question that America is in a golden age for beer, with unprecedented variety and quality offered by more than 4,000 breweries, compared to fewer than 50 in the 1980s. Sales by craft brewers grew nearly 18 percent in 2014, representing more than 11 percent of the beer market. You would be hard pressed to identify another industry that has experienced the same explosive growth in such a short period of time.

The true winner is the American consumer, who enjoys a broad spectrum of innovative, independently produced beer products for every taste.

But what makes this consumer choice possible? The answer: a robust and competitive system of independent distribution. Independent distributors, or wholesalers, provide access to market for brewers of all sizes. They create a competitive playing field, and they keep pricing fair for consumers.

A critical issue before this Committee is how to preserve America's golden age of beer and the effective system of independent distribution which delivers benefits to beer lovers everywhere.

Now, consumer advocates, craft brewers, retailers, and independent distributors have all expressed concern about the global transactions around the ABI/SABMiller tie-up and how it could reduce access to distribution—reducing choice and potentially raising prices for consumers. Included with my written testimony is a study by the Boston Consulting Group, which finds that America’s independent beer distribution system is, quote, “open, freely competitive, and driven by consumer choice.”

Independent distributors provide access to capital. They provide access to scale for mid-sized and small brewers. Distributors also take on responsibilities, including warehousing, marketing, promotion, sales, and delivery of a heavy, perishable product. Distributors have solid, time-tested relationships with retailers in their markets, from the corner pub on Main Street to your hometown grocery store. In other words, distributor interests are perfectly aligned with that of the American consumer.

Allow me to provide a snapshot of the value that independent distributors offer and contrast that with other beverages. Think about walking down the beer aisle in your favorite store. Think about the vast choice and selection right on the store shelves, from the most familiar and iconic national brands to imports from around the world and new, innovative American craft beers.

Now, head over to the soft drink aisle. You pretty much have a choice between two suppliers. Quite a contrast between the beer aisle and the soft drink aisle.

There are concerns that the proposed acquisitions could result in less craft beer and fewer imported brands getting to market and on the trucks of independent distributors. For one thing, consider ABI’s recent purchase of some independent distributors. Anheuser-Busch InBev is the fastest growing distributor in the country. The very day that the merger was revealed, it was announced that the Department of Justice and the California Attorney General were investigating some of the recent ABI acquisitions of its independent distributors. Some have suggested that ABI’s business tactics could stifle growth for independent distributors who represent brands that are not approved by ABI.

It’s also worth noting that the Department of Justice placed restrictions on ABI’s previous acquisition of Modelo to protect distributors and consumers. ABI claims that the proposed MillerCoors divestiture solves any competitive problems, yet some have cast doubt that the proposed sale of SAB’s stake in the Molson Coors joint venture would be an effective remedy.

Recent studies have shown that mergers often fail to deliver true consumer benefits, and the Modelo deal actually underscored the limitations even of judicial intervention to reach a reasonable remedy that included vertical restraints. In order to ensure that a combination with the size and scale of this one does not disrupt the American beer market, DOJ needs to do the following:

Number one, protect independent distribution by prohibiting any termination of local distributors as a result of this global combination. Number two, DOJ must make certain that these independent distributors are free to provide their best efforts to all brewers and importers.

Let me say that again: DOJ must ensure that these independent distributors are free to provide their best efforts to all brewers and importers. I look forward to answering your questions, and thank you for the opportunity to join you this morning.

[The prepared statement of Mr. Purser appears as a submission for the record.]

Chairman LEE. Thank you, Mr. Purser. Mr. Wilson.

**STATEMENT OF J. WILSON, MINISTER OF
IOWA BEER, IOWA BREWERS GUILD, PRESCOTT, IOWA**

Mr. WILSON. I would like to thank the Subcommittee as well as my home Senator, Chairman Grassley, for this opportunity. I speak on behalf over 50 IBG members and perhaps thousands more small brewers around the country that share our concern over the proposed Anheuser-Busch InBev, or ABI, acquisition of SABMiller.

Our disquiet is two-fold. If this deal is allowed to proceed, growing craft breweries in Iowa and elsewhere fear difficulty with access to both market and raw materials.

Critical to our success, a licensed and regulated alcohol beverage distribution system was designed following the repeal of Prohibition to curtail overly aggressive sales and marketing practices. With the help of this independent wholesale tier, our members have created new Iowa brands and helped the U.S. craft beer industry grow from 0 to 11 percent of the market since the 1970s.

Our colleagues in the wholesale tier in Iowa and around the country have embraced the diversity that craft beer offers their portfolios in a time when palates are shifting, and consumer knowledge and demand are asking that these beers be made available to them. Like many brewery owners I have spoken to, independent wholesalers have also expressed their apprehension about the power a larger ABI would hold over the market and especially the distribution tier.

With deep pockets already allowing ABI to hold sway over many wholesalers on marketing incentives, the amount of influence a combined company of this magnitude would have over market access is startling. This is especially the case given ABI's past actions toward vertical integration in countries like Brazil and efforts currently to procure wholesalers here in the U.S.

Currently the United States' fastest growing wholesaler, ABI has acquired 12 independent distributors in nine States since 2012. In addition, according to a June 2008 article in the St. Louis Business Journal, Busch family members personally own five additional ABI distributorships in three more States, carving out market shares as high as 74 percent. One of those, Krey Distributing Company, made headlines in the St. Louis Post-Dispatch in March 2013 when it dropped six craft breweries from its portfolio.

While Krey asserted that these brands were underperforming, Wolfbrau House of Beer owner Ryan Wolf indicated in the article that Krey wouldn't deliver the craft beers he had ordered, and I quote: "I have not had a single case of 2nd Shift in here in almost a year despite the fact that I ordered three varieties every week, week after week, for 6 months," end quote.

Due to my proximity and friendship with the owners of one of the affected breweries—Nebraska Brewing Company—I am privy

to how their situation was handled—poorly—and at this time, they no longer sell their award-winning beers in the St. Louis market.

Washington State’s beer market has been hit especially hard by ABI’s aggressive tactics after ABI acquired Anheuser-Busch Sales of Washington, or ABSW.

According to Heather McClung, the Washington Brewers Guild board president, ABSW’s hostile tactics have grown so egregious that they have now drawn the attention of and an investigation by the Washington State Liquor and Cannabis Board. Please refer to my written testimony for specific examples of what is happening in Washington State.

While market access is an ongoing battle that small craft brewers have infiltrated by offering a wide range of locally produced, flavor-forward products, the ability to produce or package them could soon be hindered if the merger is allowed. This megabrewery would have an even greater impact on brewing inputs such as malted barley and hops and packaging materials like bottles and cans. The hop supply is already tenuous, and while malt production can easily be increased, expansion of hop acreage is costly and hop plants take 3 years to reach maturity. If there is a hop shortage, the price per pint will undoubtedly rise for consumers.

As the craft brewing industry continues to represent true job and sales growth in an otherwise flat sector, craft breweries may encounter problems if this acquisition proceeds. I favor healthy competition, but a merger of this magnitude could impact supply access and threaten the wholesale tier of the system. I urge you to protect competition and consumer choice in the beer market by recommending the divestiture of ABI-owned distributors, a halt to incentives designed to push other brands out of ABI distributorships, and a careful monitoring on how the transaction will impact raw materials. Thank you.

[The prepared statement of Mr. Wilson appears as a submission for the record.]

Chairman LEE. Thank you, Mr. Wilson. Dr. Moss.

**STATEMENT OF DIANA L. MOSS, PH.D.,
PRESIDENT, AMERICAN ANTITRUST INSTITUTE,
BOULDER, COLORADO**

Dr. MOSS. I would like to thank Chairman Grassley, Chairman Lee, Ranking Member Senator Klobuchar, and the Members of the Subcommittee for holding this hearing. I appreciate the opportunity to share the American Antitrust Institute’s views on competition in the U.S. beer industry and the proposed merger of ABI and SABMiller.

My final testimony highlights the landscape of the U.S. beer market against which this proposed merger will occur. There have been five major mergers in the last 10 years. ABI and MillerCoors account for over 70c, if over 70 percent of the U.S. market. There is now economic evidence of price increases for beer in the wake of previous mergers even against declining demand for popular, mass market beer.

These developments pose real challenges for competition and consumers, particularly in regard to the downstream part of the supply chain—distribution. For consumers that prefer traditional mass

market beers or the craft beers that have emerged from a growing entrepreneurial business model, the goal should be to ensure competitive prices, choice, innovation, and quality.

We know that the ABI/SABMiller merger would produce a large increase in market concentration. We also know that the merged firm would control wholesale distribution that is critical for smaller rivals to get their products onto retail shelves. If unremedied, the merger would result in stronger incentives to exercise market power.

Given what we know, the debate is here not whether the merger is likely to lessen competition in the U.S. market for beer. Presumably, if the merger were not potentially harmful, the parties would not have offered up front to divest SABMiller's share of the MillerCoors JV. The AAI has, therefore, focused attention on the substantive debate about whether this proposal would make for an effective remedy.

For example, it is unclear—excuse me. An effective remedy fully restores competition lost by a merger. But there are now multiple examples of failed remedies, especially in highly concentrated markets. In both Safeway/Albertson's and Hertz-Dollar/Thrifty, buyers of divested assets proved unviable, filed for bankruptcy protection, and fully or partially exited the market. These cases are warning signs. In an ABI/SABMiller merger, a well-crafted remedy would fully restore competition lost by the merger at the same time it would promote competition moving forward.

The parties may well reveal more of their divestiture proposal to the DOJ when the time comes. Now, based on publicly available information, it is not clear how or whether the current divestiture proposal will accomplish this important objective.

For example, it is unclear how the independent distribution contracts currently controlled by MillerCoors will be handled as part of a divestiture proposal. As compared to ABI, SABMiller has reportedly taken a less adversarial approach to distributors that carry rival brands. The loss of this dynamic after the merger is important. It should focus attention on the distribution policies that Molson Coors will adopt when it takes control of all the MillerCoors assets and contracts.

There is also concern that the proposed divestiture not be a moving target. Public announcements regarding the closure of the MillerCoors plant in Eden, North Carolina, raise questions. Is it a preemptive attempt to withdraw capacity from the market? It would change the package of assets that Molson Coors takes control of. Could this affect post-merger incentives and dynamics?

It is also unclear what SABMiller brands not currently imported into the U.S. might be imported after the merger. A changed portfolio of post-merger brands, particularly one that includes more craft beers, could change incentives for strategic conduct by the merged company toward smaller rivals.

These are major sources of uncertainty over the proposed divestiture. Given the magnitude and implications of an ABI/SABMiller merger, the AAI believes more specificity is needed. A fully effective remedy would, at a minimum, address at least a number of issues.

For example, a remedy would create a fully independent Molson Coors. Molson Coors would, therefore, not depend in any way on ABI for contract brewing of former MillerCoors brands or similar supply agreements for any services.

Equally important is to ensure the independence and impartiality of the independent wholesale distribution channel. Policies designed to incentivize independent distributors to be exclusive or to discriminate against smaller rivals would be prohibited.

ABI and Molson Coors should also compete head to head in the independent distribution channel, minimizing any opportunities for tacit coordination. As such, some thought should be given to whether distributors can carry both ABI and MillerCoors brands.

These are just a few considerations that will factor into a remedy that will fully restore competition lost by the merger. There are likely to be other considerations should a merger review proceed to that point. Thank you very much for the opportunity to testify.

[The prepared statement of Dr. Moss appears as a submission for the record.]

Chairman LEE. Thank you, Dr. Moss. Mr. Hunter.

**STATEMENT OF MARK HUNTER, PRESIDENT AND
CHIEF EXECUTIVE OFFICER, MOLSON COORS,
DENVER, COLORADO**

Mr. HUNTER. Good morning, Chairman Lee, Ranking Member Klobuchar, and Members of the Committee. My name is Mark Hunter, and I am the CEO of Molson Coors Brewing Company. We are a U.S.-listed company principally based in Denver, Colorado, with a brewing heritage that goes back well over 200 years, and I appreciate the opportunity to explain our role in serving as the solution to U.S. antitrust concerns related to the proposed AB InBev/SABMiller merger.

Let me say up front that our transaction does not injure competition but enhances it. Molson Coors' purchase of the remaining interest in MillerCoors means ABI gets nothing in the United States. MillerCoors will remain unchanged after the merger. The only difference is that Molson Coors would be the single U.S. owner rather than a partial owner of MillerCoors.

Having played a crucial role in the direction of this business for the past 7 years, there is no company more knowledgeable than Molson Coors to operate it going forward.

Now, before I get into specific comments, I would like to tell you about Molson Coors, the creation of MillerCoors, and how we help support competition in this increasingly dynamic beer industry. Molson Coors was created in 2005 and brought together the family brewing legacies of John Molson in Montreal and Adolph Coors, who set up his first brewery in 1873 in Golden, Colorado.

In 2008, we formed the MillerCoors joint venture with SABMiller to create a more effective number two player in the U.S. beer market. At that point, all of SABMiller's U.S. operations were contributed to the joint venture. We have 50/50 governance rights and split the economic interest, with Molson Coors owning 42 percent and SABMiller owning 58 percent.

MillerCoors has approximately 8,000 U.S.-based employees and pays more than \$1.1 billion in annual compensation and benefits.

We spend more than \$5 billion annually for goods and services and pay more than \$1 billion in Federal excise taxes.

MillerCoors goes to market in the U.S. through an independent network of 569 distributors who know how deeply we value the three-tier system, and we have received positive feedback from these distributors because they also know they can continue to have access to a wide range of beer brands, including craft brands.

By way of example, MillerCoors owns only one distributor, which distributes 625 brands, from 29 suppliers, and almost 67 percent of these brands are craft brands. To be clear, we have no intention of purchasing other distributors. Both MillerCoors and Molson Coors take seriously our role as an economic growth engine for our employees, our communities, and the many businesses that support us. This will only be enhanced through single ownership of the U.S. business.

For example, growth would allow MillerCoors to boost production at its nine U.S. breweries, including the Leinenkugel brewery in Wisconsin. It would open up opportunities to purchase more barley from the four Western States and North Dakota and malt more barley in Minnesota. And it would allow the company to spend more on hops from Washington as well as corn from Iowa and Illinois.

Although we and SABMiller have been successful in building MillerCoors into a strong number two player in the U.S., it's important to note how much the beer industry has changed since we set up the JV.

The craft brewing industry in the United States has grown very rapidly over the past few years. As of June of this year, there were 5,525 active brewery permits registered with the TTB, and the growth of craft has helped create a renaissance in beer and has created a far more diverse and competitive marketplace.

In closing, nothing changes for our consumers, our customers, our distributors, or our communities as a result of our purchase of SABMiller's ownership interest in MillerCoors. It will not change consumer choice, it will not change the competitive pricing environment, and it will not change our market share or our longstanding support for the three-tier system. It will not change our support of U.S. growers and suppliers, and it will certainly not change the explosive growth of craft brewers or their access to the market through the MillerCoors distributor network.

The transaction will allow us to simplify decision-making and reduce the complexities of dual ownership. It will allow us to become a more integrated and efficient brewer. In simple terms, MillerCoors will evolve from two shareholders—SABMiller and Molson Coors—to one shareholder—Molson Coors. Molson Coors is a U.S.-listed and domiciled international brewer. It is still served by our founding families and, despite being the third largest brewer globally, will have 70 percent of its profit generated in the U.S.

On behalf of Molson Coors, I thank the Committee for inviting me to appear and testify today, and I am happy to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Hunter appears as a submission for the record.]

Chairman LEE. Thank you very much. Thanks to all of you for your statements.

I will now start the questioning. I would like to start with Mr. Pease and Mr. Purser. Gentlemen, the two of you have each identified concerns relating to the way that AB InBev interacts with its distributors, suggesting that this acquisition could make that situation worse.

Now, if AB InBev is not acquiring any assets in the U.S., how will this deal have any impact on distribution? And going along with that, can you identify any way in which—in which this transaction in particular will lead to any new problems or any more severe existing problems for distributors? And also going along with that, along the same vein, isn't it true that AB InBev's negotiating leverage will be no greater the day after this deal closes than the day before? We will start with Mr. Pease and then go to Mr. Purser.

Mr. PEASE. Thank you, Senator. Well, I think you have, you know, to examine that question from a variety of perspectives. The combined company that could come out of this merger will now control 58 percent of the global profit pool in the beer industry. This is a \$107 billion deal. This is the fourth largest merger of all time. Our biggest concern will be that the company like this will be able to use its increased market power to even greatly—further greatly influence the independent distributors that ABI interacts with. The Anheuser-Busch incentive programs that currently are in place, while we certainly understand incentivizing your distributors to sell their products, but it seems to us that at some level some of those incentive programs are more designed to encourage their distributors not to sell the products of the independent smaller players, and we feel that is anticompetitive.

Chairman LEE. Mr. Purser.

Mr. PURSER. I would—I would echo the sentiments as it relates to the increase in the global profit pool. By comparison, if you look at the distinction of 57 percent of the global profit pool with a newly combined ABI/SAB compared to its largest American contributor—competitor right at three percent, that's a big disparate competitive disadvantage as it relates to share of the global profit pool.

But I also think you have got to move on and look at recent behaviors. You have got to look at the recent Modelo acquisition and the supplier behavior as it relates to what's being investigated in California. What, I think, you want to do is ensure that the remedy is sufficient to ensure that you don't have additional problems.

There's a lot of talk about carrots and sticks and the whole notion of incentives. There is a very fine line between an incentive program and when that incentive can switch and become actually, you know, a stick that is held over an independent distributor.

Chairman LEE. Mr. Brito, as we have heard, one of the concerns regarding this acquisition is that the deal will have some impact on beer distributors right here in the United States. Can you respond to that concern generally and also answer the question of whether AB InBev's acquisition of SABMiller is likely to trigger the renegotiation of AB InBev's distribution contracts or change those relationships in any way?

Mr. BRITO. Well, thank you, Chairman, for the opportunity to clarify. This transaction is really about the rest of the world. It is not about the U.S., so much so that we sold whatever assets were owned by SABMiller to Molson Coors the same day we announced the global transaction. This transaction is really about getting access to markets where today we have no presence, like Africa, parts of Asia, parts of Latin America. And, again, because of that, there will be no impact on the way we conduct our business in the U.S.

Chairman LEE. Okay. So, your response then to these statements is that with respect to the U.S. market it's not going to have an impact that is significant for U.S. antitrust law purposes.

Mr. BRITO. No.

Chairman LEE. Mr. Pease and Mr. Purser, how do you respond to that?

Mr. PURSER. Well, I think that the acquisition itself could trigger terminations, and that is one of the things that we are seeking, that is one of the things I tried to talk about in my comments, is assurances that because of this global combination, there will be no terminations of either company's independent distributors, because if we all agree that independent distribution facilitates competition, that ought to be at the minimum something that is guaranteed as a condition of approval for this transaction.

Chairman LEE. Okay. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

I think I'll start by following up on that. Both Mr. Brito and Mr. Hunter have stressed that, due to the divestiture, there is no impact on the U.S. market. Dr. Moss raised concerns that under some States' laws a change in ownership structure could create an opportunity to renegotiate or terminate wholesaler relationships. There may be other issues that are raised by the Justice Department with regard to distribution.

If it turns out that the divestiture creates opportunities to alter relationships with wholesalers, are you willing to agree not to take advantage of such relationships? Are there conditions you would agree to that would assuage some of these concerns to the—from the craft brewers and also from the distributors?

Mr. BRITO. Well, Chairman, in terms of our transaction, the company that will change its ownership is SABMiller, because we are going to be acquiring them. There will be no change in ownership for our company, and, therefore, there will be no trigger of any contracts in the U.S. market because, again, this transaction is about the rest of the world, not about the U.S.; therefore, no impact on the way we operate our business in the U.S.

Senator KLOBUCHAR. Okay. Mr. Hunter.

Mr. HUNTER. Senator Klobuchar, I can confirm that certainly from a Molson Coors and a MillerCoors perspective, there are no anticipated changes. It will be very much business as usual at MillerCoors. All that is happening is, as I mentioned in my comments, the ownership of that business moves from two shareholders—SABMiller and Molson Coors—to one shareholder—Molson Coors. And business continues on a business-as-usual basis. All of the brands that are currently available to all of our distributors through the MillerCoors arrangement will continue to be available. And I think it is very important as well to just factor in the

fact if you consider the Molson Coors business, we started as a craft brewer in Colorado. We know what it is like to build your business over the long term in the United States of America. And we have a policy of supporting the three-tier system. We only own one distributor. And we welcome the renaissance in beer that we are seeing through the growth in craft over the course of the last two decades in particular.

Senator KLOBUCHAR. The three of you there in the middle, Mr. Pease, Mr. Purser, and Mr. Wilson, could you—it sounds like a good law firm.

[Laughter.]

Senator KLOBUCHAR. Could you—could you talk through, if the Justice Department decides to approve this merger, what kind of conditions you think would be helpful to you to assure that the craft brewery industry can continue to grow and that distribution is open and free?

Mr. PEASE. Well, as I mentioned in my opening statement, Senator, we believe that ABI should be required to divest its wholesale operations and that they should also be forced to limit these incentive programs which we feel exist now, which already we feel are anticompetitive.

Mr. PURSER. I would reiterate my concerns about ensuring that there are no terminations of local distributors as a result of this global deal, and that independent distributors be guaranteed the freedom to give their best efforts to competing brands. That's part of what competition is all about. And, I think, part of this exercise is so important, and it's very important for the Department of Justice as they review this, but the old adage of "Trust, but verify" comes to mind here. We want to provide assurances to help make certain that we aren't looking a year from now at behavior that is somehow anticompetitive.

Senator KLOBUCHAR. Thank you. Mr. Wilson.

Mr. WILSON. I will come back to my final paragraph here. My three asks were basically to protect competition and consumer choice in the beer market by, you know, the divestiture of the ABI-owned distributors, halt these incentive programs. We saw just last Friday in the Wall Street Journal discussion about some of their incentive programs that feel much less pro-sell more ABI products and much more don't sell any of those, and here's the opportunity, the financial opportunity, that you get in exchange for that. Certainly careful monitoring of how the transaction will impact raw material supplies, which is also a concern.

Senator KLOBUCHAR. Very good. And going back to that, being from Iowa like you are, and as Mr. Hunter noted, there is barley in Minnesota and there is corn in Minnesota and Iowa, and maybe some barley, too, but could you talk about just how—Mr. Hunter made the point he thinks we are going to have expanded need for those raw materials because of the merger, just because of the growth, and just how do you see it impacting those—those products?

Mr. WILSON. Well, I guess maybe I could come back to a comment that Mr. Brito made in his opening statement, mentioning that there would be no increase in ingredient usage, among other things, and to me that sounds like freezing production and being

happy with just exactly where they are in the U.S. market. I guess, I mean, that's delightful if that's the case, but that doesn't sound like somebody looking to compete, I guess. That feels like just a simple statement that comforts you in my view, I think. So, I guess they are expecting us to take market share, and we are happy to do that.

Senator KLOBUCHAR. Okay. You know what I think I will do? Because I want to—I will have a second round here, and I see our colleagues—and we will get back to this hops/barley discussion. I know Mr. Brito wants to respond later in the second round, so thank you very much. I appreciate it.

Chairman LEE. Senator Grassley.

Chairman GRASSLEY. I have a short statement and only one question now that we have had this discussion by my two colleagues.

As a result of the growth of craft breweries throughout the country, Americans are enjoying a tremendous variety of options. Not only has this trend increased choices for consumers, it has created new economic opportunities. In Iowa, for example, the craft industry has grown from just one brewery in 1985 to approximately 60 breweries today, and that expansion has generated new businesses and jobs and also has spurred tourism. So, it is important that we maintain robust and competitive marketplaces.

We've heard concerns voiced by small and independent brewers, as you have heard here today, but also from retailers, independent distributors, and consumer advocates about this merger to adversely impact inputs and supply chains, distribution avenues, competition generally is a vibrant market. Many of the concerns are about the increased leverage that the combined company would enjoy and what that might mean for the thriving industry as well as consumer choice and products.

Obviously, the antitrust regulators will be looking at this deal to determine whether there are any anticompetitive aspects that need to be addressed. But it is important that we, in Congress, have an opportunity to flesh out these concerns.

So, my one question is to Mr. Wilson, which basically gives him an opportunity to expand on some of the things that he can't do in those 5 minutes, and I would ask if they have something to add, Mr. Purser and Mr. Brito, to share a reaction.

Mr. Wilson, you've indicated in your testimony that small and independent brewers are concerned about the proposed merged company's ability to engage in anticompetitive conduct and aggressive practices. Please give us some more specifics than you have already expressed about your concerns with the proposed merged company's ownership of multi-brand beer distributors in some States and how that could impact market access.

Mr. WILSON. Certainly. So, we've seen situations where craft brands have been pushed out of—you know, the St. Louis example that I gave earlier. If I were to scooch on over to Washington State in the Seattle market, what we have seen are some questionable tactics. One, craft breweries are certainly being squeezed out of those distributorships. ABSW had a really vibrant craft portfolio prior to the purchase, and now that has been almost completely diminished, as I understand it.

One of the things that we've seen happen—there is no problem with buying paid advertisement with, say, the football stadium in Seattle, but there is terminology that I guess is better left for somebody at a higher pay grade than me to determine what that means, but no undue influence, and so the number of ABI or ABI-sanctioned or approved brands on sale at the football stadium is awfully skewed toward ABI. There is another similar deal, not exactly, as I understand it, paid advertisement but a, quote-unquote, alignment deal with a large music—most of the large music venues, and they are almost 100 percent ABI products, and that's one that I believe is being investigated out that way.

Chairman GRASSLEY. Mr. Purser and Mr. Brito, do you have anything you want to respond to that?

Mr. BRITO. Yes, sure. I think in terms of supplies, that's a very important issue, and I would like to bring to the attention of this Committee some numbers in terms of supplies.

First, this deal will have no impact in the U.S. business and, therefore, will have no impact on the amount of supplies we purchase and procure today. For example, in hops, we purchase 8 percent of the hops in the U.S. Eight percent. Okay? On cans, we purchase—we manufacture some, but in the open market we purchase 12 percent of the cans available in the marketplace. In barley, we purchase 25 percent of the barley available in the marketplace, and all those figures will remain the same pre- and post-transaction. And in terms of bottles, we purchase in the open market 27 percent of what's out there.

So, all those numbers will remain the same and will have no impact because, again, this transaction is about the rest of the world.

Chairman GRASSLEY. I will yield back my time.

Chairman LEE. Thank you, Senator Grassley. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman, and thank you and Ranking Member Klobuchar for having this hearing on a very profoundly important topic. I want to thank our witnesses for being here today, all of you with diverse and different viewpoints. Mr. Brito, thank you for making the trip from Connecticut today. We welcome you, and thanks for your involvement in our community in Connecticut.

I want to say that I am a nondrinker, so I have to disclose that fact right at the outset, although our four children I think at various points may have imbibed. And I have had the privilege of visiting a number of our brewers in Connecticut—Thomas Hooker Brewing Company, Blackie's Brewing Company—and have hosted here in Washington, DC, a number of others—Two Roads Brewing Company, Shebeen Brewing, Stony Creek Brewery. In fact, I am going to ask, if there is no objection, to enter the list of Connecticut brewers, which is very extensive, into the record because I am very proud of them.

[The information appears as a submission for the record.]

Senator BLUMENTHAL. Let me be very blunt. What we have seen over the past years is a trend toward mammoth beer behemoths in our market, and the result has not been a happy one for many consumers. As you remarked, Dr. Moss, what we have seen as consumers is higher prices. Whatever the complex analyses may be of

the market and the metrics and the legal issues, through the eyes of consumers, the result has been higher prices. These mega mergers may have been good for shareholders, but not so much for beer drinkers.

So, I think we need to be very careful here and to regard with a high degree of skepticism the kind of conventional divestiture that is proposed as a remedy. And I would urge the Department of Justice to think beyond the divestiture that has been proposed to other safeguards for consumers, because I think that this merger has tremendous ramifications for consumers here, despite the representations—and I take them in good faith—that there will be no impact on the U.S. market. Maybe not on day one, but on day two and three and year two and three, the ramifications could be huge. And we have seen this movie before in the airline industry, to take one, and it may not end all that happily for consumers.

So, let me just be very direct, Mr. Brito. You've heard Mr. Purser say that what he is looking for—and I think I am quoting almost directly—is that there be no termination of independent distributors. Will you commit to this Committee that there will be no termination of distributors as a result of this merger?

Mr. BRITO. That is a very good point, Senator, and thank you for the question. Again, this transaction is not about the U.S. It's about the rest of the world, and, therefore, and therefore nothing that relates to the transaction, to this transaction, will impact any distributor.

Senator BLUMENTHAL. And I don't mean to be impolite, but I take that as a "no" answer. You can commit to this Committee there will be no termination of any distributor and no renegotiation that will end contracts with any distributors. Is that correct?

Mr. BRITO. Yes, I can commit as a result of this transaction there will be no such a thing.

Senator BLUMENTHAL. And let me ask you, ABI intends to own, you have said in your testimony, no more than 10 percent of its distribution. Can you commit to maintaining no more than 10 percent?

Mr. BRITO. That's correct. I mean, that is our commitment we have out there in the marketplace with our wholesalers, our investors, our stakeholders in general, around 10 percent. And today, by the way, Senator, if I could expand a little bit, we are between 7 and 8. So, we said 10. It could be 7 or 8; it could be 11 or 12. But it is going to be around 10. That I can commit.

Senator BLUMENTHAL. Well, 11 or 12 is different from 7 to 8. If you—

Mr. BRITO. That is why we said "around 10."

Senator BLUMENTHAL. You said it would be no higher than 10 percent.

Mr. BRITO. That is why we said "around 10."

Senator BLUMENTHAL. And let me ask, furthermore, in terms of retail penetration, can you commit that there will be no effort to penetrate the retail market?

Mr. BRITO. Well, what we have done in terms of the retail market—and I thank you for the question. The three-tiered system in the U.S. is regulated at the State level, so 50 different States, 50 different sets of regulations. So, in some States, for example, 15

States, brewers can own wholesalers. In the others, we can't. In other States, we can own brew pubs. In some others, we cannot. So, we comply with the law. We have been owning wholesalers for more than 100 years, and let me tell you why we do this. The beauty of this is that if you own a couple wholesalers—and, again, it is 7 to 8 percent of our volume, and it is going to be around 10 percent; that is our commitment—you are able to develop people within the company, our colleagues, that understand the distribution system, that understand the second tier, and, therefore, are able to talk to wholesalers on an equal basis because they face their realities that our wholesalers face on a daily basis in our company-owned wholesalers.

So, that's the reason why we have been in this business for 100 years, because it provided us the knowledge about being closer to the market and being able to talk and understand wholesalers in a much better way.

Senator BLUMENTHAL. My time has expired. I thank you for that. Mr. BRITO. Thank you very much.

Senator BLUMENTHAL. And I look forward to the second round. Thanks, Mr. Chairman.

Chairman LEE. Thank you, Senator Blumenthal. Senator Perdue.

Senator PERDUE. Thank you, Mr. Chairman. I appreciate you guys being here. I just have a couple quick questions.

Look, I appreciate the fact that we are here on an information basis talking about antitrust and the consequences on not only consumers but also investors—without one, the other doesn't exist—and also with your employees, really fulfill the three stakeholders that you as CEOs have to deal with. I just have a question for the two people who are going to make this deal happen, possibly, Mr. Brito and Mr. Hunter. I would like both of you to respond.

Why is the 10-percent number, Mr. Brito, important to you? In other words, I know that number just does not come out of the air. And when you look at going vertical, there is balance in your own business when you look at the matrix you have to deal with, going across products and across countries. Talk to me just a little bit about how that calculation—why that is important.

Mr. BRITO. Sure. Thank you. Thank you for the question. Again, if you look at the last few years, Senator, our volume done through our company-owned wholesalers has always been around 7 to 8 percent. So, we said around 10. And the reason for having those wholesalers, company-owned wholesalers, I explained to Senator Blumenthal, is that we can develop people that understand that business.

But the biggest asset we have other than our people and brands is our wholesalers in the U.S. These are savvy business people, independent business people. They carry, by the way, competitive brands. They can carry whichever brands they want. They are non-exclusive, totally open, and they are amazing. They really execute in the marketplace, and they really build brands in the marketplace.

So, our intention is to continue to have the bulk, that is, 90 percent of our volume, being done by the savvy, independent entrepreneurs as opposed to our people. Our people, it is good because

we learn about the business, and we can talk to them and exchange best practices in a more direct way.

Senator PERDUE. Thank you. Mr. Hunter, do you have anything to add to that?

Mr. HUNTER. Senator, the only thing I would add is that currently we own one distributor. It is a local distributor in Denver. And I can commit that certainly at this stage we have no plans to extend our direct ownership and distributor network. We partner with 569 distributors. We rely on them as business partners. They take our brands to market, and they are the face of our company in their local markets. We are strong advocates of the three-tier system, and certainly under Molson Coors ownership there will be no change at MillerCoors.

Senator PERDUE. In one of the recent communications to your shareholders, you talked about the synergies of this deal. Can you explain a little bit more in detail about what those synergies are from your perspective, your shareholder perspective?

Mr. HUNTER. Certainly. Our aspiration is to be a growth business. We want to be a stronger, more assertive competitor in the United States, and we believe that under the ownership of one shareholder, Molson Coors, we can move with more pace, and we can build our business to be a long-term stronger business in the United States.

One of the advantages that we have on the back of this deal is that we can start to look at our network from a North American perspective. We have a big business in Canada, so when it comes to breweries, distribution, procurement, shared services, and our ability to move our brands between markets more quickly, that will make us certainly a more able competitor in the marketplace.

Senator PERDUE. So, one of the most important pieces of your business, as I understand it, is procurement of raw material—the hops, the barley, et cetera. Do you anticipate any impact, both CEOs, on the agricultural business by this transaction? And have you heard from any of your primary suppliers of barley, hops, other agricultural commodity providers? Do you want to start, Mr. Hunter, since your light is on?

Mr. HUNTER. Sure. I would anticipate an impact, if I am successful and the business is successful, when we grow our business on the basis that we go to procure more in the United States. We have longstanding relationships with barley owners in a number of States, and Pete Coors still regularly visits, and we have long-seated personal and business relationships with those barley growers. Interestingly, the National Barley Association has said this deal will have no impact in terms of availability of raw materials.

There is a pinch point at the moment in the hops market. Craft brewers have been growing very successfully. They are about 12 or 13 percent of the market. They are using about 50 percent of some variations of hops because they are very flavor-forward beers. So, clearly, some work needs to be done there to improve some of the supply chain management and procurement and forecasting, but generally there's no issue with availability of hops. And certainly from bottles, as you heard from Mr. Brito, the glass manufacturers have said that there is no issue with supply. And aluminium, or aluminum, is certainly something that is not controlled by us. It is

a much bigger game in the global market, and, interestingly, Bill Coors, who was 99 back in August, the grandson of our founder, invented the aluminum can. So, some things that is close to our heart, but we see no pressure in that part of the market from a supply point of view.

Senator PERDUE. Thank you. Mr. Brito.

Mr. BRITO. Yeah. Since this transaction will have no impact in the U.S. market—it is about the rest of the world—what we procure today in terms of supplies and raw materials will be the same pre- and post-transaction. So, for example, today we procure 8 percent of the hops supply in the U.S. That will not change. Of course, as we grow the business, yes, but as a result of the transaction, it will not change. We procure in the open market 12 percent of the cans because we also self-manufacture cans. That will not change. We procure 25 percent of the barley. That will not change. We procure 27 percent in the open market of the bottles because we also produce some on our own, and that will not change.

So, there will be no change or pressure in any supply system in the U.S. as a result of this transaction.

Senator PERDUE. Thank you. Thank you, Mr. Chairman.

Chairman LEE. Senator Coons.

Senator COONS. Thank you, Chairman Lee and Ranking Member Klobuchar, and thank you to all the witnesses for your presence here today and for testifying on this important subject matter.

Craft breweries are an important part of my home State of Delaware. From Dogfish Head to Twin Lakes to 16 Mile, we have got some great craft brewers that are creating jobs and innovating new products and, frankly, brewing some great beer. And I think we all want to make sure that we have an open marketplace in which they can continue to thrive and grow and where we safeguard their ability to compete on a fair and level playing field and where we also maintain access to distribution options and consumer choice. So, I just want to make sure I have asked some relevant questions on that as we consider this very large merger.

Mr. Brito, in the wake of increased competition from independent brewers, ABI has made an effort to acquire craft breweries and distributors, and some have suggested ABI is using these acquisitions to constrain some of the distribution channels of competitors, including craft breweries.

How do you respond to these questions, these allegations? And will ABI be using profits from the merger to continue the process of acquiring craft brewers and their related distributors?

Mr. BRITO. Well, thank you for the question. I think the facts can help us here.

In terms of the 4,000 breweries that we have in this country and opening two a day, we own five, and we have a minority stake in a sixth one. So, let us say five plus a minority stake. So, the reason we do that, just like we do with our company-owned wholesalers, is that we can learn from those amazing entrepreneurs who created brands and how they connected to local constituencies so that we can learn from that. We build our company by learning from others, so that's one thing.

In terms of—in terms of WODs, out of the 500-plus wholesalers that are so-called AB wholesalers, we own 21, and we do 7 to 8 per-

cent of our volume through those WODs. And the reason for owning those WODs—and we have owned them for more than 100 years—has been always to learn and develop people through the WODs so they understand the marketplace.

But what I can say is that, first, this transaction has no impact on the U.S. market, and the U.S. market has never been so competitive and so open. I mean, never—if you walk down the aisle of your grocery store, I bet you'll find more options than you would 5 or 10 years ago. So, that attests to the fact that this market is very open, very fragmented, and craft beers have no issues in finding ways to get to the shelves. I would like to remind the Committee that 35 States out of the 50 permit or allow some sort of self-distribution of beer. And other than that, in any market you go, you have at least two or three or four wholesalers, one being ours.

So, there are many options to distribute. And wholesalers, let me tell you, 94 percent of our wholesalers carry competitive brands, and what a wholesaler wants at the end is to carry brands that consumers want to buy and customers want to stock. And that's what they do. That's why the craft brewers have been growing.

I would offer one last comment. When you think about it, we have been in the business since 1852, so more than 160 years. And together with our wholesalers, we have built a whole system—trucks, warehouses—to get products from breweries to shelves. And the craft brewers have been enjoying that system that was set by others, and I think that's the beauty of the American market. It's a very open market, and nothing in this transaction will change the competitiveness and the openness of the U.S. market.

Senator COONS. Thank you. Mr. Pease, nobody wants to take a seat at a bar and discover their only choices are between a Bud and a Miller. We want to continue the dramatic growth in craft breweries, in opportunities for consumers, and in the jobs that they create. And I found the testimony of Mr. Brito encouraging, but I would be interested in hearing your view on how these huge international companies and their potential mergers may or may not impact craft breweries, distributors, and the impact on consumers. Have your companies faced competition or challenges due not only to ABI's ownership of distributors but also due to some of their use of market pressure on distributors?

Mr. PEASE. Thank you, Senator. I think there's—you have to, again, look at that question from a variety of different levels. I think fundamentally Mr. Brito and I probably differ on the degree of independence that currently exists at the distribution tier. I think everyone has to keep in mind that my members, by and large, are required by State-based regulation to use a distributor to get their beer effectively to a retailer. Self-distribution is an option in some States, but usually that is very limited.

If you want to grow your business as a craft brewer, if you want to get your beer into a chain store, if you want to get your beer into the stadium, you need to use the Anheuser-Busch distributor or the MillerCoors distributor. Those are the only two options in most markets that have the horsepower to effectively bring your beer to the retail market.

If the ABI distributor is a wholly owned distributor, which it is in nine States, then that option is pretty much effectively shut off for a craft brewer, so then you are down to really just the MillerCoors distributor.

So, at the end of the day, we don't feel the existing playing field is exactly level, and we're very concerned that the increased market power of the combined entity will be able to further influence the distribution tier to the disadvantage of Dogfish Head, 16 Mile, you know, companies like that. Dogfish Head now employs over 200 people in Milton, Delaware, and we just want to make sure that those American success stories are not negatively impacted by this merger.

Senator COONS. Well, thank you. If I might, Mr. Chairman, could Mr. Purser just comment on that same question in closing? I know we are running tight on time, but do you agree with that same assessment about the access to distribution options?

Mr. PURSER. I think that there is a scalability that comes with a more established distribution network, and the MillerCoors and the Anheuser-Busch InBev distribution networks are more established. They have got that access to scale. That is part of the economic reality.

Interestingly, those networks were preceded 50 years ago with different brewers, you know, with Schlitz or Falstaff or built on other brand names that once upon a time were more dominant players. Beer's history was more bifurcated. There were more regional players, a whole host—we could wax poetic and open a couple of cold ones and talk about the history of beer in America. Oh, I see somebody is getting a head start there.

But in all—but in all seriousness, the outlets and the access need to be maintained through these independent channels. And when you do have the presence of a company-owned distributor, that precludes the ability of some of those products to get to market. And sometimes, Senator, even the presence in a State of a small player can limit the ability of some of those brands to get to market because when some of Mr. Pease's members want to go into a new State, when Dogfish Head was growing and getting established, they would decide to go into a State, and they might make an investment or make a decision based on an entire statewide network with one of the legacy brewers. And if one of—some of those legacy brewers are owned by their competitor, they may choose—they may in their mind only have one choice, or they may not choose to enter that State that has a company-owned presence in it.

Senator COONS. Thank you. Dogfish Head is celebrating 20 years, and I recognize that there are other players who are decades older or a century older. What we're just trying to do here, Mr. Chairman, is make sure that we preserve competitiveness, a level playing field, and opportunities for our consumers and constituents.

Thank you all very much.

Chairman LEE. Senator Tillis is next, but I wanted to comment briefly. They're about to call a vote in a few minutes, so I'll be leaving in a few moments to go vote. I'll come back. Senator Klobuchar will chair while I am gone, and we will sort of trade on and off while we continue the hearing. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair. Dr. Moss and gentlemen, thank you for being here as witnesses.

As everybody has bragged on their States, I have to brag on North Carolina. We have got nearly 150 microbrews now. In fact, over about the last 5 or 6 years, we have also added Sierra Nevada, Oskar Blues, and are about to bring New Belgium online. So, this is obviously a very important industry to our State. As a matter of fact, App State is offering now a bachelor's degree in fermentation sciences.

I actually want to go to a more parochial issue for the State of North Carolina. I think my colleagues have done a good job of covering the broader landscape. Mr. Hunter, I would like to maybe start with you. I have got a letter signed by about 115 of the State legislators and a similar letter from the Governor that I am going to submit for the record and provide you with an opportunity to respond to the specific questions. But I do want to go back and ask one that is a consistent theme with some of the people I have heard from back in my State.

They feel like that the decision to close the Eden plant—for those of you who are not familiar, this is a plant that has been in North Carolina for about 30 years, employs about 500 people, that is going to be closed. Many of them believe that there is a curious timing between the announcement of the merger and the announcement of the closing of the plant sometime next year. Can you explain the timing of the announcement of the merger and the decision to close the brewery and when the decision was made to close the Eden plant and whether or not it had anything to do with the merger discussions? And, Mr. Brito, I will ask you, just for the purposes of closing the loop at the ends of the witness stand? But with you, Mr. Hunter?

Mr. HUNTER. Thank you, Senator Tillis, and let me start with your last question first. The merger discussions that emerged between SAB and ABI had absolutely no impact at all on the discussions that had been taking place for a long period of time within the MillerCoors organization with regard to how we manage our brewing network and our brewing infrastructure.

So, to get to the specifics, the board and executive team of MillerCoors had been reviewing our brewing requirements for quite a significant period of time, at least a year, as they have been building through their 2015 plan, so through the middle part and toward the end of 2014 had been discussing and looking at some of the challenges within the MillerCoors business.

Since the MillerCoors business was created in 2008, the business has lost about 10 million barrels in total volume, and if you look at our brewery network, that meant that many of our breweries were underutilized, not performing efficiently or effectively. And the decision was taken that one of the breweries would need to close to take some capacity out of our network to ensure that our network was efficient so we can compete effectively.

As you can imagine, long discussions, because these are probably the last kind of discussion any business wants because it affects our people, and we were faced with a decision that we have a very modern brewery in Shenandoah, about 180 miles away from Eden, which has been well invested. And we had to look at routes to mar-

ket, our geographical footprint and presence, and the decision was made as we came into 2015 to close the Eden brewery. And, clearly, something like that then takes months of planning to ensure that all of our communication and all of the welfare considerations for employees are put in place effectively. And it was nothing more than coincidence, and clearly I am certainly not party to ABI's intent and their approach to SAB. It was pure coincidence that our announcement occurred at roughly the same time that ABI announced that they had approached the board of SAB. It was further, I think, 4 or 6 weeks after that date before ABI and Molson Coors connected to talk about a remedy in the U.S. So, the two events are in no way connected.

Senator TILLIS. Mr. Brito, from your side of the discussions, was there any, to your knowledge, any discussion between the two entities with respect to the disposition of the Eden facility?

Mr. BRITO. No, never.

Senator TILLIS. The only question I would have—and I think it is very important, Mr. Hunter, that I think if you go at least in reference to the letter that I received from the president pro tem, they viewed the Eden plant as a state-of-the-art facility, that it had had some capital improvements in the recent past, and so many of the people down there are wondering what the real differences are between, say, Shenandoah, which would, I guess, take on some of the capacity over time as your demand increases. So, it sounds like that at a minimum there is a disconnect in terms of some of the communications on the ground, and I think it is something that's very important for us to look at. It is a significant economic impact to an area that's already struggling, and as we move forward, I'll pass on some additional questions I've because I believe we are about to move to the vote, and the questions from the legislative leadership, I look forward to your responses.

Thank you. Thank you all for being here.

Senator KLOBUCHAR [presiding]. Thank you very much, Senator.

Senator Franken, from the home of 70 breweries, the State of Minnesota.

Senator FRANKEN. Yes, beer is very important to Minnesotans, and I want to thank you, the Ranking Member, and Chairman Lee for holding this important hearing.

Beer is extremely important to Minnesotans, and nothing illustrates this more than the 2011 State government shutdown. We faced a—we had a 3-week government shutdown that suspended critical State services, including transportation construction, criminal background checks, the issuing of fishing and hunting and boating licenses, and this was during the summer, and it had an effect on our lodges and resorts. But Minnesotans really weren't putting pressure on the State legislature and the Governor to resolve this. But then the State beer licenses expired.

[Laughter.]

Senator FRANKEN. And more than 300 bars and liquor stores were no longer able to sell beer because the license had expired, the alcohol license had expired, and then the public became outraged. And this got settled right away.

[Laughter.]

Senator FRANKEN. So, beer is very important to Minnesota, and this was also obviously about a lot of businesses, too. It was beer. And the beer industry in the United States has evolved in recent years, and we have our craft breweries, great craft breweries in Minnesota. But I want to discuss how, given the importance of beer to Minnesotans, how we can keep a truly competitive landscape in the United States. And we really have to review the impact of this deal at hand.

Now, Mr. Brito, I understand that deals of this size often involve very complex business decisions, especially when companies take on a significant amount of debt to complete the deal. I also understand that you have an obligation to look out for your shareholders and save money wherever possible.

Unfortunately, those decisions can have harsh consequences for American families. In 2008, following InBev's acquisition of Anheuser-Busch, the newly formed entity announced—and a few weeks before Christmas, I might add—that it would be laying off 1,400 U.S. workers and over 400 contractors.

This time around, AB InBev is taking on \$75 billion in debt, over \$20 billion more than last time, and I know you'll be facing some tough decisions about where to cut costs.

So, Mr. Brito, my question is pretty simple: What can Americans expect this time around? Where will you be cutting costs? Will there be job losses, brewery closing, distributor terminations? Or will you face pressure to raise prices to pay back that debt?

Mr. BRITO. Senator, thank you for the opportunity to clarify. This transaction we are proposing here today is about the rest of the world. It is about getting access to new markets like in Africa, parts of Asia, parts of Latin America. This transaction has nothing to do with the U.S. Therefore, it will have no impact in our operations in the U.S. market. That I can guarantee.

Senator FRANKEN. So, basically what you are saying is that this \$75 billion of debt is not going to have any effect on—on decisions that you might have to make in the same way you did last time.

Mr. BRITO. Well, last time, we have to remember, we had an economic crisis, 2008. Last time, we have to remember that the transaction in terms of the size of InBev was a similar size. Today this transaction, as big as it is, is way smaller than AB was at the time. So, what I am saying is that there is no impact—there will be no impact as a result of this transaction in the way we conduct business in the U.S. We are going to produce the same amount of beer. We are going to have the same market share. We are going to carry the same brands, no impact on our distribution system. This transaction is about getting access to new markets.

Senator FRANKEN. Is anybody here skeptical about that answer? Would anyone like to speak to that skepticism?

Mr. PEASE. Senator Franken, I would comment. I do take Mr. Brito at his word that this transaction is more about the rest of the world than it is the United States. The point I want to make is that it is the small and independent craft brewer that is the growth segment of the American beer market. Now, it is the American craft brewer that is creating jobs in every State and in every congressional district. And we just want to make sure that nothing arises or is the result of this transaction that would hinder that.

If the American beer drinker is left to be the deciding force and their access to products from small and independent breweries is unfettered, then we are going to be comfortable. But we have significant concerns about how this deal could impact both access to market for the small craft brewers and access to raw materials.

Senator FRANKEN. Mr. Hunter, could you just respond briefly to my question, the question I asked of Mr. Brito?

Mr. HUNTER. Certainly, Senator. From a MillerCoors perspective, it is business as usual. As I tried to explain earlier, the MillerCoors business currently has two shareholders: Molson Coors and SABMiller. It will have one shareholder going forward, which is Molson Coors, and we will continue to build our business and attempt to be a very assertive competitor in the U.S. beer business. We need to invest more in our business because of the changing nature of the competitive environment. The U.S. beer industry has probably never been as competitive as it currently is.

Senator FRANKEN [presiding]. Thank you. Thank you for your indulgence. Senator Blumenthal, as Chairman, I recognize you.

[Laughter.]

Senator FRANKEN. And I deputize you as Chairman.

Senator BLUMENTHAL. I am the last man sitting. And I know that Senator Lee is going to be returning. I have to leave shortly to vote as well. We have a vote that is going on right now.

Let me just ask, Mr. Brito, I take it by your unequivocal representation to me that there will be no termination of distributors that you would be willing to incorporate that commitment in a consent order as part of the resolution of this merger.

Mr. BRITO. Well, that is for the DOJ to decide. What I am saying is that—

Senator BLUMENTHAL. Well, it is for you to decide whether you would be willing, since a consent order is dependent on the consent of the parties, whether you as the CEO of your company would consent to that condition incorporated in an order that there be no termination of distributors.

Mr. BRITO. Well, what we tried to do here when we draft the contract of the divestiture is we look at the consent decree that we had for the Grupo Modelo deal 2 years ago, and we tried to replicate all the important clauses in that new contract so as to mirror what we had back then negotiated with them. But, again, it is their final decision—

Senator BLUMENTHAL. But in terms of—I take that, I hope, as a yes, because you've made the commitment here, and for it to be enforceable more easily, it should be part of an order that the Justice Department would join. And I would just say I take it at full face value the commitments that you are making here in good faith. But I think the important lesson of many mergers is trust, but verify. And verification and enforcement are critically important in this watershed moment for this industry. And so, I hope that you will be willing to incorporate that commitment as part of a legally binding document. That is essentially what the consent order is.

Mr. BRITO. Yes, we as a company, when we commit, we deliver. And what I would like to remind us here, the fact I think can help us here, this industry has never been more-open-the beer industry in the U.S. has never been more open to new entrants. When you look at

the market share of craft beers in 1997, it was under 4 percent. Last year, it reached 11 percent. And the trajectory points, according to the Brewers Association, that this market share will get to 20 percent, 1 in 5, by 2020. So, this tells you that this is a very—

Senator BLUMENTHAL. That may be little benefit to consumers if the 80 percent of the industry, or the, 85 percent or perhaps larger, if you go into purchasing those craft brewers, as your company has done, is in the hands of a small number of behemoth beer makers and the consumer has, in effect, less choice.

Mr. BRITO. Well, my view here is today we have five micro, you know, beers that we bought out of 4,000, and we have a minority stake in one more, so six. That's it. I think in 4,000, having five, that is, again, more to learn, to have those entrepreneurs join us as partners, and to get us the DNA of what they know that we do not know. That's the beauty of this transaction. The same thing as owning company-owned wholesalers. That is the only reason why we do it.

Senator BLUMENTHAL. In the limited time I have left, I would like to ask Ms. Moss, you raised the concern in one of the papers that I read about the need for a remedy to establish the Molson Coors enterprise as a completely independent company given the evidence of anticompetitive coordination after the MillerCoors JV in 2008. Could you perhaps tell us whether you think that the existing divestiture plan provides sufficient guarantees of the independence of that new competitor?

Dr. MOSS. Thank you, Senator. I think that's the million dollar question. This merger is not over until a remedy is in place. The fact that the companies have stepped forward to offer an up-front fix I think is evidence that this deal does—does have potential anti-competitive implications.

So, the importance of a remedy, a fully effective remedy, I think is critical. And I think there are really open questions about that. The disposition of MillerCoors independent distributor contracts, how those contracts will be renegotiated, any change in the dynamic in the market post-merger would be important.

Miller has taken a reportedly much less adversarial approach to independent distributors than has ABI. We want to make sure that an effective remedy would, in the hands of Molson Coors, would not change—or create a dynamic where independent distributors are pressured to create exclusivity or to discriminate against smaller rivals.

Anything that changes the incentive or the ability of the company post-merger to compete effectively I think would be—would be suspect. These are things that the DOJ I think will have to look very carefully at. And there's quite a bit of murk, or the devil will be in the details, shall we say, about how that remedy is ultimately negotiated. And I think the DOJ had a very good approach in Grupo Modelo. I think that is a template, but it is—it is something that will require very close scrutiny.

Senator BLUMENTHAL. I thank you very much. I thank all the witnesses. I think you have really hit the nail on the head. On its face, this merger would clearly break the law. The divestiture is an effort to avoid that issue. Whether the remedy can be fashioned ef-

fectively I think is, in fact, the million dollar or maybe billion dollar question. Again, my thanks, Mr. Chairman.

Chairman LEE [presiding]. Thank you, Senator Blumenthal.

Mr. Pease, why should AB InBev be required to divest wholesalers when it is not acquiring any wholesalers, let alone any assets at all in the United States?

Mr. PEASE. You are referring to that ABI is not acquiring any distributors through the purchase of South African Breweries.

Chairman LEE. Right.

Mr. PEASE. Because they are acquiring independent AB distributors currently. They have acquired five in the last few months and consolidated those into company-owned distributorships that then reduced the access for my members to get to market. I think we have to keep in mind that, again, my members are required by State-based regulation to use a distributor to get their products to market, and in the States where—in the metropolitan areas where ABI controls that distributor, they have a wholly owned distributor, that effectively shuts off one of the two plausible paths to market for my members.

Chairman LEE. Mr. Brito, what is your response to that?

Mr. BRITO. Well, we have owned wholesalers for more than 100 years. This transaction will have no impact in the U.S. in the way we go to market, in our brand portfolio or anything. We own 21 wholesalers out of a universe of 500-plus AB wholesalers. And it's interesting to see that despite us having owned wholesalers for 100 years, crafts have grown from 4 percent in the 1990s to 11 percent last year, to and the Brewers Association is saying it will get to 20 percent by 2020. And, more interesting, the major wholesalers that we own are in New York, Boston, San Diego, and Denver, one of the, you know, hottest beds for the growth of craft beers in this country.

So, I do not see any link between us owning wholesalers and craft brewers being disadvantaged in the marketplace. The facts prove quite the opposite, and I think the facts can help us here.

Chairman LEE. Dr. Moss, your testimony indicates that the discussion really comes down to the sufficiency of the divestiture and the scope of the divestiture. Given that AB InBev has stated that Molson Coors will acquire 100 percent of SABMiller's, quote, "brands, breweries, intellectual property, and other assets," close quote, doesn't that mean that—that this merger will have little or no effect on the state of competition in the United States?

Dr. MOSS. Senator, thank you for the question. I think you raise sort of the critical point in this case. Were there no remedy in this merger, it would be a presumptively illegal merger—a big increase in concentration, lots of control of really critical distribution.

I would note that this merger is occurring against a relatively troubled backdrop in the U.S. beer market, evidence of coordination in the wake of the MillerCoors JV, lots of control of distribution, but also a growth of a really important segment that provides choice and diversity to consumers.

So, I think getting it right, getting this merger right—and that means getting the remedy right—is really critically important in this case. So, backdrop is important, context is really important, which means, moving forward, whether that transfer of the

MillerCoors assets fully to Molson Coors really is fully effective, that has to be scrutinized very carefully. And so, that means really digging into the details of how that divestiture is going to occur and whether it will, in fact, create a fully independent Molson Coors.

You know, I think this provides a really good opportunity to not only address some of the competitive concerns that are in the industry, at the same time we look at a remedy that fully restores competition. So, I think moving forward there's an opportunity here to make some significant improvements in terms of protecting the independent distribution channel because craft brewers are so dependent on it, and to—to perhaps prohibit certain types of behaviors that have historically been entrenched in the industry that make it more difficult for rivals to compete.

Chairman LEE. So, ultimately the effect of the divestiture will depend on how it is executed, the implementation and the details of how it is actually carried out.

Dr. MOSS. Yes.

Chairman LEE. Mr. Hunter, let's talk about this for a minute. Tell us how the operation of MillerCoors will be expected to change after Molson Coors acquires SABMiller's interest in the joint venture.

Mr. HUNTER. Thank you. Thank you, Chairman Lee, and I think I am probably best placed to talk about the independence of Molson Coors. So, Molson Coors as a business is a U.S.-listed business. We will be the single shareholder, the single owner of the MillerCoors business going forward. Currently, we have 50/50 governance and 42 percent economic interest in the business. And this is an asset transaction, so all of the MillerCoors assets will transfer to Molson Coors, and the MillerCoors business will be run as one of our business units. We have a business unit in Canada, one in Europe, an international business unit, a global office, and the U.S. will be our fifth business unit.

All of the brands are currently available to consumers, to customers, and distributors through MillerCoors will remain in place. For those brands that we do not own—and it is a very, very small percentage of the volume—we have agreed a perpetual, royalty-free license arrangement. So, those brands are basically our brands to do as we see fit and grow those brands in the United States. So, it was very, very important that we could talk to our distributors about the maintenance of the business that they know and have been investing in since the joint venture was formed back in 2008.

So, it really is business as usual, and I am very clear on the independence of Molson Coors. We are a U.S.-listed business, an independent business, and we still have the benefit of the governance from our founding families on our board, which makes us quite unique in the world of beer.

Chairman LEE. Thank you. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. Thank you, all of you. Just a few more questions.

Mr. Hunter, in the consent order resolving ABI's acquisition of Modelo, the buyer of the divested assets, Constellation Brands, was made a party to the order. If the Department of Justice determines

that Molson Coors should be named as a party for the purposes of a remedy, would you have any objections to that?

Mr. HUNTER. Senator Klobuchar, our view at this stage is that there is nothing anticompetitive about this arrangement and our taking full ownership of MillerCoors, and that is something I think we would need to discuss with the DOJ in due course.

Senator KLOBUCHAR. Okay. According to your testimony, you talked about how this will allow you to boost production at MillerCoors' nine U.S. breweries, create the opportunity to increase the barley purchases, which you mentioned about Minnesota. Could you provide a little more detail on how changing from the joint venture to the single ownership will actually boost competitiveness for you, make you a more effective competitor?

Mr. HUNTER. Yes. The challenge for our business is to grow our business, and that is my intent as the CEO of the organization, and it is the intent of the 8,000 people that we have who are beer champions right across the MillerCoors organization. Our business has, since the joint venture was formed, been an effective number two in the U.S. market, but the market has changed pretty significantly, as I think we have heard in detail through the course of this morning. Our intent is to get the business back into a stable position by 2018 and back into volume growth by 2019. That's the ambition we have set for the business. And by being part of the Molson Coors organization, we move from two shareholders to one, simpler and faster from a decision-making perspective. We can utilize our total North American footprint, so our Canadian business and our U.S. business, to drive further operational efficiencies and allow us to invest even more assertively at the front end of our business to compete more assertively. That is what we are about as a business. We have been here for the long term, and we want to be here for the long term.

Senator KLOBUCHAR. Thank you. Mr. Brito, why does ABI want or need this acquisition?

Mr. BRITO. Well, the main reason, Chairman, for this acquisition is really to get access to new markets in Africa, parts of Asia, parts of Latin America, and complement our portfolio. The beauty of this transaction in terms of strategic rationale is that the footprints of both companies are highly complementary, the markets where they operate. So, with this operation, with a few exceptions like the U.S., where we divested the assets, there will be no increase in market concentration in any of our markets around the world on either companies. So, that is the beauty of it.

Senator KLOBUCHAR. All right. Thank you.

Mr. Pease, just one more question on sort of the wholesaler issue. There have been described in your testimonies some allegations about wholesalers being coerced into dropping—dropping craft brew products by the major brewers. Some say there are many ways to distribute beer and that access to wholesalers that also carry ABI or MillerCoors products, not necessary. That is what some people say. I did notice from Exhibit C of your testimony that each of the 30 large—largest beer wholesalers carries either ABI or MillerCoors. So, do you think using non—and these guys are not alleging that is what they want, of course, but using non-ABI or MillerCoors wholesalers, is that even a possibility for the market?

Mr. PEASE. It is a possibility if you only are content to take your brand to a certain level. The true distribution horsepower is with the ABI option or the MillerCoors option. The small, independent option is feasible, again, to a degree, but you are basically going to be constrained to a fairly small geographic footprint. If you want to grow your business, say like a Surly, and you want to get into the chain grocery store or you want to get into the big-box retailer, you want to get into the sports venue, you are pretty much limited to one of those two options. And so, that's why our focus on all of this is just about fair access to market for the smallest players. If nothing negative comes out of this deal that further restricts access to market for small and independent craft brewers, we're going to be more comfortable. But there has been past and even current behavior of the relatively so-called independent ABI distributors that we would call into question.

Senator KLOBUCHAR. Okay. And I will say that—you know, we have mentioned some of our brewers. Everyone has mentioned their own. But I think it is important to note there are big ones like what we have, Schell's and some of the large—Surly's, and then there are ones like Fitger's, which is a restaurant in Duluth, and Canal Brewing, Lake Superior Brewing, and one that I visited called Castle Danger, which is literally in kind of—it is not a garage. That would be more dramatic.

Mr. PEASE. But it is close.

Senator KLOBUCHAR. It is close, in Two Harbors, Minnesota. So, as you know, the distribution is everything for these brewers. So, thank you for acknowledging that.

Dr. Moss, one more question. I will ask you this question—maybe someone else did when I was gone—but as we look at if there is some kind of—if the Justice Department believes there should be conditions on this but approves it, what conditions do you think would be helpful?

Dr. MOSS. Thank you. So, again, I think that is—that is the key question here. I think, as I said earlier, any remedy will have to create a fully independent Molson Coors for it to fully restore competition in the market. And, again, this is a troubled market landscape against which this merger is occurring. So, I think lifting up the Grupo Modelo divestiture package of conditions and moving it over to this particular merger may not be a sufficient approach. I think additional details, additional conditions on post-merger conduct of the companies will be important.

For example, a remedy—a remedy would include at a minimum any prohibitions on contract brewing. Any supply agreements would continue to link the two companies together between Molson Coors and ABI. So, full independence means no supply agreements, no contract brewing.

I think a good remedy would include prohibitions on any—any contracts with independent distributors that created incentives for exclusivity. I think that has been conduct that has greatly troubled this industry. Now, is the time where that conduct can be dealt with effectively through a merger remedy. So, prohibitions on exclusivity provisions.

I also think a remedy would address even preemptively any closures of capacity that are in very close proximity to this merger.

I have to say those types of closures are highly suspect given the proximity to this merger deal.

Senator KLOBUCHAR. What was the last one?

Dr. MOSS. Any preemptive closures of capacity at any existing MillerCoors facilities. And I would emphasize that a fully independent Molson Coors would—would not have incentives to tacitly coordinate with ABI. We have economic evidence that shows that there was tacit coordination and price increases came out of that. So this, again, is an opportunity in creating a fully independent Molson Coors to prevent any further tacit coordination in the industry. So, I think a remedy is going to have to be really carefully thought out.

Senator KLOBUCHAR. Very good. Thank you. Responses, anyone? I think we got through the barley/hops discussion. Mr. Brito, you responded to another Senator. Very good. So, we do not have to go there. All right. Well, I do not have any further questions. Thank you very much, Mr. Chairman.

Chairman LEE. Thank you, Senator Klobuchar. Thanks again to all of our witnesses. This has been an informative hearing. We appreciate your testimony today.

The record will remain open for 1 week. We will be adjourned. Thank you.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Subcommittee Hearing on “Ensuring Competition Remains on Tap: The AB
InBev/SABMiller merger and the State of Competition in the Beer Industry”
December 8, 2015**

Today’s hearing on the proposed merger of AB InBev and SABMiller is important not only to American consumers, but to craft brewers and independent distributors across the country. Vermont was one of the earliest incubators of craft brewing. Our 40 breweries make some of the best, award-winning beers in the world. They contribute to our economy and have helped make Vermont a destination state. We want to ensure that these craft brewers and the brewers of tomorrow can continue to compete—and that consumers continue to have choices.

The proposed merger we consider today would join the two giants of the beer industry, which are together responsible for more than 70 percent of the U.S. market. The parties have announced that AB InBev will divest ownership of SAB’s stake in MillerCoors, selling it to Molson. I welcome that effort to address some concerns about the proposed merger. But given the size of these companies, we need to look closely at this transaction. I want to hear more about how the divestment will operate in practice, and whether the merger will have other consequences for the beer market—including given the practice of big brewers buying up small craft breweries. It is important that we also consider competition in the markets for hops, barley, glass and aluminum. These are essential inputs for any brewer to compete.

I also want to hear more about concerns in distribution: specifically, concerns that the large brewers’ power over distribution is shutting out competitors and undermining consumer choice. A product can only be sold if customers can find it. If craft brewers are being squeezed off the shelf because of restrictive behavior by the dominant companies, that harms competition and limits consumers’ options.

One way for large brewers to influence distribution is by buying up distributors. AB InBev has indicated that, following this merger, it will not increase its ownership of distributors above its current level of ten percent. Mr. Brito, at a minimum, I ask you to make a formal commitment to that today. For its part, Molson has indicated that, after it gains 100 percent ownership of MillerCoors, it will not increase its ownership of distributors—nor change its current practice of giving distributors leeway to showcase competitors’ brands. Mr. Hunter, I ask you to make a formal commitment to that today.

The pathway from brewer to buyer is critical if we want small companies to compete. State laws regulating distribution vary dramatically, and many small brewers feel constrained by the current state of distribution. I hope this issue will remain a subject of close review.

The growth of craft brewing is a success story in Vermont and other states across the country. I know these craft brewers personally, and met with them as recently as last month. Their creativity is shaping our economy, and we should make sure they have a level playing field. I thank Senators Lee and Klobuchar for holding this hearing today.

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WRITTEN STATEMENT BY

**CARLOS BRITO
CHIEF EXECUTIVE OFFICER
AB INBEV**

**TO THE
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER
RIGHTS
U.S. SENATE COMMITTEE ON THE JUDICIARY**

**HEARING ON
“ENSURING COMPETITION REMAINS ON TAP: THE AB INBEV/SABMILLER
MERGER AND THE STATE OF COMPETITION IN THE BEER INDUSTRY”**

DECEMBER 8, 2015

Chairman Lee, Ranking Member Klobuchar and Members of the Subcommittee:

Thank you for the opportunity to appear before this subcommittee. My name is Carlos Brito and I am CEO of AB InBev.

I am here today to discuss AB InBev’s proposed acquisition of SABMiller and our agreement with Molson Coors to divest SABMiller’s interest in MillerCoors, conditioned upon completion of AB InBev’s combination with SABMiller.

In particular, I would like to share with you the business rationale for this transaction and the impact — or more precisely, the lack of impact — that this transaction will have on our competitive position in the United States.

Put simply, the purpose of this transaction is to enhance our ability to serve new markets, particularly in Africa, Asia and Central and South America. It is about bringing more choices to more consumers around the world, including extending the reach of iconic American brands such as Budweiser to new markets.

What this combination is *not* about is changing our competitive position in the U.S. beer market. The agreement we reached with Molson Coors and the divestiture of SABMiller’s interest in MillerCoors ensure that our market share in the U.S. will not change as a result of the

combination. Upon regulatory approval, Molson Coors will acquire 100 percent of SABMiller's interest in MillerCoors, including all brands, breweries, intellectual property and other assets.

Today, the U.S. beer industry is more competitive than ever due to the strong growth of craft beer and increased competition from wine and liquor. If anything, this deal will create an even more competitive landscape in the U.S. by creating a stronger competitor in Molson Coors once it acquires SABMiller's interest in MillerCoors.

The Rationale for the AB InBev/SABMiller Combination

AB InBev is a global brewer and the parent company of Anheuser-Busch. We have the privilege of continuing Anheuser-Busch's proud history as a brewer in America.

Our employees work, live and participate in communities all across the country. We employ more than 16,000 people in the U.S. working in 49 states and approximately 70 facilities. And we committed in June to investing an additional \$1.5 billion by 2018 in our U.S. operations. I am proud to say that 98 percent of our products sold in the U.S. are made in the U.S.

We are pursuing this combination with SABMiller in order to enhance our ability to serve new markets and provide more choice to more consumers around the world.

The geographic footprints of AB InBev and SABMiller are largely complementary, which means the transaction will allow us to reach new markets without significantly raising concentration in any market. In particular, it will strengthen our position in key regions with strong growth prospects — including Africa, Asia and Central and South America. We expect the transaction to close in the second half of 2016, subject to satisfying the relevant regulatory clearances, and we are working proactively with the regulatory authorities around the world to ensure approval.

The Impact — or Lack Thereof — On the U.S. Competitive Landscape

This transaction is about new markets in the rest of the world, not the U.S. AB InBev will not acquire any SABMiller assets or operations in the U.S. The divestiture of SABMiller's interest in MillerCoors to Molson Coors means AB InBev's market share in the U.S. will not change. The other aspects of our operations, including total beer production, our utilization of

beer ingredients and supplies and our commitment to the three-tier system, will remain similarly unchanged as a result of this transaction.

Indeed, we expect that as a result of Molson Coors acquiring SABMiller's interest in MillerCoors, AB InBev will face a more competitive marketplace, similar to what we experienced following the 2013 divestiture of Modelo's entire U.S. business to Constellation. As will be the case with Molson Coors, the Modelo divestiture created an independent, fully integrated and vigorous domestic competitor. To date, Constellation has had 22 consecutive quarters of volume market share growth and represented 45 percent of total U.S. beer industry volume growth during Q2 2016.¹ Constellation's sales of brands such as Corona, Modelo Especial and Pacifico have grown at retail by 12 percent over the past year.²

In testimony before the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Assistant Attorney General William Baer noted that Constellation has "begun offering new products, bringing competition to segments of the market that Grupo Modelo had previously ignored. Constellation is also increasing capacity and, according to its executives, continues to grow its U.S. sales faster than the market as a whole."³

This type of competition and increased consumer choice is good news for U.S. consumers.

Robust Competition in the Beer and Alcohol Beverages Industries

The enhanced competition we expect from the divestiture of SABMiller's interest in MillerCoors will add to what is already perhaps the most competitive era in the history of the U.S. beer industry. Today's U.S. beer market offers a variety of choice to consumers, from iconic American brands such as Budweiser and Bud Light to the offerings of the more than 4,000 breweries currently operating in all 50 states and the District of Columbia.⁴

¹ "Constellation Brands Reports Second Quarter Fiscal 2016 Results" (press release), Constellation Brands, October 7, 2015, <http://www.cbrands.com/news-media/constellation-brands-reports-second-quarter-fiscal-2016-results>

² Tripp Mickle, "Will the Corona Flow Fast Enough to Meet U.S. Demand?" *The Wall Street Journal*, June 15, 2015.

³ *Oversight of the Antitrust Enforcement Agencies: Hearing Before the House Judiciary Committee, Subcommittee on Regulatory Reform, Commercial and Antitrust Law*, 114th Cong. (2015) (statement of Bill Baer, Assistant Attorney General), <http://www.justice.gov/opa/speech/assistant-attorney-general-bill-baer-delivers-testimony-us-house-representatives>

⁴ Bart Watson, "U.S. Passes 4,000 Breweries," *Insights and Analysis* (blog), Brewers Association, September 28, 2015, <https://www.brewersassociation.org/insights/4000-breweries/>

This highly competitive market is being driven first and foremost by the growth of craft beer, which has accelerated over the past five years to offer beers in a wide variety of new styles and flavors to suit the taste and occasion of every beer drinker in the country.

According to the Brewers Association, craft beer rose from 3.8 percent of the market in 2007 to 11 percent in 2014 and is expected to reach 20 percent by 2020.⁵ Bart Watson, chief economist for the Brewers Association, estimates that on average two new breweries open every day in the U.S.⁶

In addition to robust competition from craft, the beer industry itself faces ever-growing competition from wine and liquor. Since 2009, beer sales as a percent of total alcohol sales have declined, while sales of wine and liquor have increased.⁷

Nothing in AB InBev's combination with SABMiller will lessen that competition.

No Change in Distribution

While distribution is a separate topic from our proposed acquisition of SABMiller, I want to state very clearly that we do not expect any changes to the Anheuser-Busch distribution system as a result of the combination or divestiture. Our combination with SABMiller will have no impact on the three-tier system, which we have long supported and will continue to support.

Brewers rely on a vast network of wholesalers to distribute their beers to locations across the country. AB InBev counts on its wholesalers as trusted business partners to help us better serve beer drinkers. Just as there is robust competition among breweries, there is robust competition in the wholesaler system, with approximately 3,300 wholesalers across America.⁸ Additionally, more than 35 states allow for some form of self-distribution of beer. Together these distribution options ensure that brewers across the country can access the market.

More than 500 of the 3,300 wholesalers are Anheuser-Busch distributors, the vast majority of which carry competitive brands. Only 21 are owned and operated by Anheuser-

⁵ "2011 Craft Beer Data Infographic," Brewers Association, March 28, 2012, <https://www.brewersassociation.org/press-releases/2011-craft-beer-data-infographic/>; "Brewers Association Announced 2013 Craft Brewer Growth" (press release), Brewers Association, March 13, 2014, <https://www.brewersassociation.org/category/press-releases/page/3/?date=2014>; "Craft Brewer Volume Share of U.S. Beer Market Reaches Double Digits in 2014" (press release), Brewers Association, March 16, 2015, <https://www.brewersassociation.org/press-releases/craft-brewer-volume-share-of-u-s-beer-market-reaches-double-digits-in-2014/>

⁶ Watson, "U.S. Passes 4,000 Breweries," *Insights and Analysis* (blog), Brewers Association, September 28, 2015

⁷ Beverage Information Group, *2015 Handbook Advance* (Norwalk, CT: Beverage Information Group, 2015).

⁸ "Who Are America's Beer Distributors?" National Beer Wholesalers Association, <https://www.nbwa.org/about/what-beer-distributor>

Busch. Anheuser-Busch's modest footprint in the second tier has existed for over 100 years. As we have previously stated, it is our intention that approximately 90 percent of our volume be distributed by independent wholesalers. Around 10 percent of our volume will be distributed by our wholly owned distributorships.

Our small role in the second tier has not stood in the way of craft's remarkable growth. In fact, several of our owned and operated beer distributorships are in markets that are home to some of this country's most successful craft brewers, including Boston, Denver, New York and San Diego.

No Material Impact on Ingredients or Supplies for Beer Production

In addition to a vibrant independent distribution tier, the competitive landscape in today's beer industry is supported by broad, responsive markets for the ingredients and supplies that brewers rely upon.

These inputs are generally produced within large, highly responsive local, national and global markets. In none of these markets would the combined AB InBev and SABMiller be in a position to constrain competitors' access to those ingredients and supplies. The marketplace sets the prices and terms of ingredients and supplies.

For products like aluminum cans and barley, which are primarily domestically produced and sourced, the fact that our production volume is not expected to change in the U.S. means that this combination will have no impact on competitors' ability to continue to source these ingredients and supplies. Similarly, we expect no material impact on sourcing internationally. Anheuser-Busch uses approximately 1.2M metric tons of barley, representing just 25 percent of the U.S. market. Additionally, the U.S. currently produces close to 90 billion cans each year. Of that, Anheuser-Busch uses about 18 billion cans. It is worth noting that aluminum cans are a minor input for most craft brewers.

For hops, which does operate as a more global market, our footprint in the market is and will remain modest due to the fact that our beers require far less hops than those of our craft competitors. Indeed, the hops industry has already proven itself highly responsive to the needs of craft, more than doubling the acreage used to grow the type of hops most commonly used in craft

brews over the past several years.⁹ AB InBev purchases a total of approximately 2,260 metric tons of U.S.-grown hops from third parties, or approximately 8.1 percent of the total U.S. production.

Conclusion

In closing, we are proud of our contribution to the highly competitive U.S. beer market and excited for the future of beer — both in the U.S. and around the world.

The combination of AB InBev with SABMiller will allow us to bring more choices to consumers around the world and bring some of America’s most iconic brands to markets they have not yet reached. We look forward to the day when American travelers can find a cold Budweiser almost anywhere in the world.

This transaction will deliver that benefit without lessening competition in this country in any way. If anything, our divestiture of SABMiller’s interest in MillerCoors will create an even more competitive marketplace, building upon what is already a golden age of consumer choice in American brewing.

Again, thank you for the opportunity to appear before you. I look forward to answering your questions.

⁹ Bart Watson, “The Hops Market,” *Insights & Analysis* (blog), Brewers Association, May 11, 2015, <https://www.brewersassociation.org/insights/the-hops-market/>.

Privileged and Confidential

“Ensuring Competition Remains on Tap:
The AB InBev/SABMiller Merger and the State of Competition in the Beer Industry”
Senate Committee on Judiciary
Subcommittee on Antitrust, Competition, Policy and Consumer Rights
Statement of Mark Hunter
President and CEO, Molson Coors

December 8, 2015

Good morning Chairman Lee, Ranking member Klobuchar and members of the Committee. My name is Mark Hunter and I am the CEO of Molson Coors Brewing Company. We are a US-listed company principally based in Denver, Colorado with a brewing heritage that goes back over 140 years. I appreciate the opportunity to testify today and explain our role in serving as the solution to US antitrust concerns related to the proposed AB InBev/SABMiller merger.

Let me say right up front that our transaction does not injure competition, but unquestionably enhances it. Molson Coors' purchase of the remaining interest in MillerCoors from SABMiller means that ABI will get nothing in the US. What exists today as MillerCoors will remain unchanged after the merger. (See slide 1) The only difference is that Molson Coors would be the single owner of the US business, rather than a partial owner. Having played a crucial role in the direction of this business for the past seven years, there is no company more knowledgeable than Molson Coors to operate it going forward.

Before I get into specific comments on our proposed transaction, I'd like to tell you about Molson Coors, the creation of MillerCoors and how we help support competition in this increasingly dynamic beer industry.

Molson Coors was created in 2005 and brought together the family brewing legacies of John Molson, who built his first brewery on the banks of the St. Lawrence River in Montreal, Canada in 1786 and Adolph Coors, who set up his first brewery in 1873 on the banks of Clear Creek in Golden, Colorado. We strive to delight the world's beer drinkers.

In 2008, we created the MillerCoors joint venture with SABMiller in order to serve as a more effective number two player in the US beer market. At that point, all of SABMiller's US operations were contributed to the joint venture. We have 50/50 governance rights on the Board and split the economic interest of MillerCoors, with Molson Coors owning 42% and SABMiller owning 58%.

MillerCoors has approximately 8,000 US-based employees and pays more than \$1.1 billion annually in compensation and benefits. We spend more than \$5 billion annually for goods and services and pay more than \$1 billion in federal excise taxes annually to the US Treasury.

MillerCoors goes to market in the US through an independent distribution network. We deeply value our relationships with our more than 569 distributors nationwide because we, and other brewers, rely on them to bring our brands to market.

It's important to recognize that we have received positive feedback from the MillerCoors distributors because they know we support the three tier system and because they can continue to distribute a wide range of beer brands, including craft brands.

By way of example, MillerCoors owns only one distributor, which distributes approximately 625 brands, from 29 suppliers, and nearly 67% of them are craft brands. To be clear, we have no intention of purchasing other distributors. The point is that we support the three-tier system, and that system supports the interest of craft brewers.

Both MillerCoors and Molson Coors take seriously our role as an economic engine for our employees, the communities that we live in and the many businesses that supply and support us. Single ownership of the US business will enhance MillerCoors' ability to achieve these goals. For example, it would allow MillerCoors to boost production at its nine US breweries including the Leinenkugel brewery in Chippewa Falls, WI. It would open up opportunities to purchase more barley from the four western states and North Dakota and malt more barley in Minnesota. It will be able to spend more on other brewing materials like hops from Washington as well as corn from Iowa and Illinois.

Although we and SABMiller have been successful in building MillerCoors into a strong number two player in the US, it's important to note how much the beer industry has changed since we set up the JV.

The craft brewing industry in the United States has grown very rapidly over the past few years. As of June of this year, there were 5,525 active brewery permits registered with the TTB. That represents a 111% increase in just the past five years alone. (See slides 2 and 3)

The growth of craft has helped contribute to a renaissance in the beer category, which we welcome, at the same time it has created a far more diverse and competitive marketplace. Just this week, Fortune magazine ran a story titled, "America Has More Breweries Than Ever Before."

And so with that as background, it's important to return to the fact that nothing changes for our consumers, customers, distributors or our communities as a result of our purchase of SABMiller's ownership interest in MillerCoors.



It will not change consumer choice; it will not change the competitive pricing environment; it will not change our market share or our longstanding support for the three-tier system; it will not change our support of US growers and suppliers; and it will not change the explosive growth of craft brewers or their access to the market through the MillerCoors distributor network.

The transaction will allow us to simplify decision-making and reduce the complexities of dual ownership; it will allow us to become a more integrated and efficient brewer; and it will allow us to become a more effective competitor as a single American-based owner, promoting consumer choice in an increasingly diverse and fast-growing brewing industry.

This transaction affords us the unique opportunity to deliver on that promise by creating a more efficient competitor without impacting the fundamental dynamics of the market.

On behalf of Molson Coors, I thank the Committee for inviting me to appear and testify today. I am happy to answer any questions that you have.

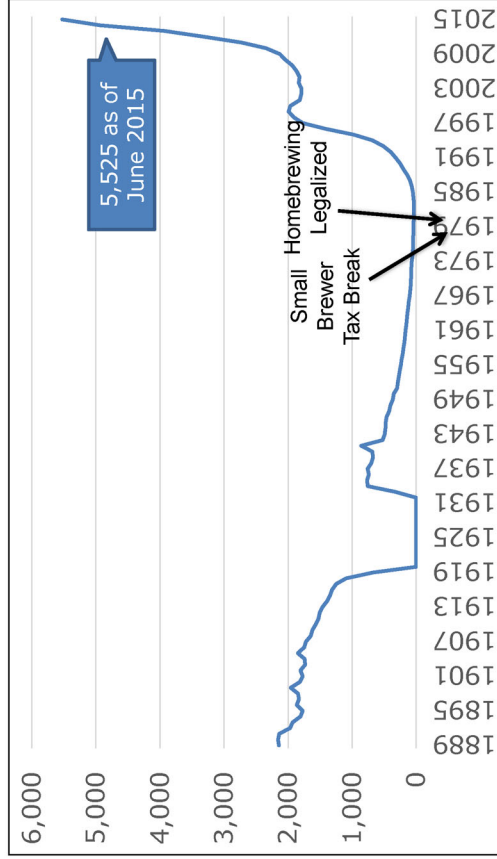
MILLERCOORS STRUCTURE PRE- AND POST-MERGER

	Pre-Acquisition	Post-Acquisition
Governance	50/50 Representation on Board of Directors <ul style="list-style-type: none"> SABMiller: 5 directors Molson Coors: 5 directors 	MillerCoors becomes a wholly-owned subsidiary of Molson Coors <ul style="list-style-type: none"> No Board of Directors Becomes a reporting business unit of Molson Coors
Economic Interest	Split Economic Interest <ul style="list-style-type: none"> SABMiller: 58% Molson Coors: 42% 	Unified Economic Interest <ul style="list-style-type: none"> Molson Coors: 100%
Brand Portfolio		NO CHANGE IN BRANDPORTFOLIO 

5,525 PERMITTED BREWERIES IN US

1887 TO 2015

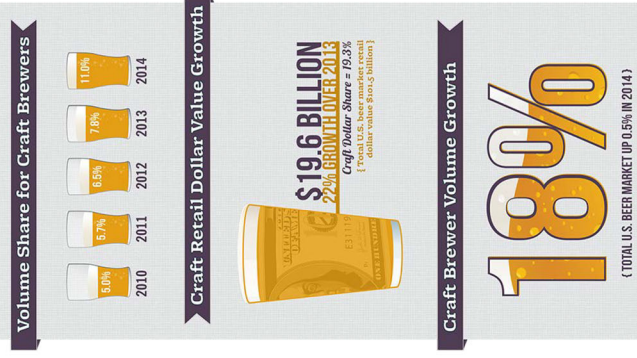
1977 FET break provides a reduced \$7.00 tax rate for brewers that produce no more than 2MM barrels on first 60,000 barrels. 1979 President Carter legalizes home brewing.



Source: Beer Institute and TTB permitted brewery counts, 2013

EXPLOSION OF CRAFT BREWING IN THE US

- Market share among small brewers has more than doubled in the last 4 years.
- Retail sales among small brewers' products increased by +22% in 2014, compared to only +2% on average for the entire beer category.
- Volume growth among small brewers increased by +18% in 2014, compared to only +0.3% for the beer category as a whole.



MOLSON-Coors
Source: Brewers Association



**Before the Senate Judiciary Committee
Subcommittee on Antitrust, Competition Policy and Consumer Rights**

**“Ensuring Competition Remains on Tap: The AB InBev/SABMiller merger and the
State of Competition in the Beer Industry”**

**Testimony of Diana L. Moss, Ph.D.
President, American Antitrust Institute**

**December 8, 2015
Washington, D.C.**

I. Introduction

I would like to thank the Chair, Senator Lee, Ranking Member Senator Klobuchar, and the members of the Subcommittee for holding this hearing on the proposed merger of AB InBev and SABMiller, and the state of competition in the U.S. beer industry. I appreciate the opportunity to appear here today. The American Antitrust Institute (AAI) is a non-profit education, research, and advocacy organization. Our mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust laws.¹

AAI has produced numerous economic and legal analyses of competition in the beer industry over the last several years.² Competition and consumer advocates have long anticipated the near-complete roll-up of the U.S. beer industry that would be accomplished by the combination of AB InBev-SABMiller. Such a deal would put almost 75% of the U.S.

¹ Diana Moss is President, American Antitrust Institute (AAI). AAI is an independent and nonprofit education, research, and advocacy organization devoted to advancing the role of competition in the economy, protecting consumers, and sustaining the vitality of the antitrust laws. See www.antitrustinstitute.org for more information.

² In November 2014, we preemptively urged the U.S. Department of Justice to closely scrutinize any forthcoming merger proposal from AB InBev and SABMiller. See Am. Antitrust Inst., Letter to Assistant Attorney General William Baer in re: Anheuser-Busch InBev’s Rumored Acquisition of SABMiller (Nov. 19, 2014).

beer market in the hands of one vertically integrated company. Even a cursory analysis indicates that the combination would be presumptively illegal under Section 7 of the Clayton Act. If allowed to proceed, the merger would stifle important competition from smaller rivals such as craft brewers that compete with AB InBev-SABMiller brands, further raise beer prices to consumers, reduce choice and diversity, and jeopardize innovation in this important sector.

If the DOJ decides not move to enjoin the merger of AB InBev-SABMiller, it will be imperative to craft a powerfully effective remedy to address its anti-competitive and anti-consumer potential. Anything short of that would fail not only to fully restore competition in a market where AB InBev-SABMiller would operate jointly going forward, but also exacerbate pre-existing competitive problems in the U.S. beer market. It is therefore incumbent on antitrust enforcers to ensure, through a rigorous investigation, that AB InBev-SABMiller's quest for global beer domination does not come at the expense of competition or the American consumer.

II. Overview

My comments today address a number of challenges posed by the proposed merger. They go primarily to the downstream segment of the industry, i.e., the distribution of beer at wholesale and ultimately to the retail consumer. However, the proposed merger could also raise potential questions about its potentially adverse effects on upstream input ingredient markets (e.g., hops). The U.S. Department of Justice's (DOJ's) merger inquiry will likely probe into whether the merger will create or enhance the ability and/or incentive of AB InBev-SABMiller to restrict rivals' access to inputs, or to exercise enhanced bargaining power as a more powerful buyer of agricultural inputs. To the extent that the merger poses those concerns – to the detriment of input suppliers, competing brewers, and U.S.

consumers -- that should factor significantly into the broader picture of the merger's potential effects.

Section III explains that the merger would take place in a U.S. beer market that is already highly concentrated and where previous mergers have likely increased prices. Section IV explains that AB InBev already controls important distribution that is vital for smaller competing brewers to ultimately get their products onto retail shelves. Section V describes why the merger is presumptively illegal under U.S. antitrust law and, if unremedied, would raise concerns over the potential exclusion of smaller rivals and harm to consumers. Section VI discusses why the likely absence of any U.S.-related merger efficiencies highlights the imperative of a powerfully effective remedy. Section VII poses a number of critical questions that the DOJ should ask when evaluating the proposed divestiture of SABMiller's 58% share of the MillerCoors joint venture (JV). Section VIII concludes, noting some important features of a remedy that would be required to establish a completely independent market participant in Molson Coors.

III. The U.S. Beer Market is Already Highly Concentrated and Prices Have Increased in the Aftermath of Previous Mergers

Economic evidence on the adverse effects of 20 years of intensive consolidation in key U.S. sectors is mounting. Meta-analysis of numerous merger retrospectives indicates that mergers over the last 20 years have, on average, raised prices to consumers.³ Market concentration has ratcheted up as a result of successive mergers, producing markets with only a few large competitors and scaling up entry barriers to smaller, innovative entrants.

³ See John E. Kwoka, *Mergers, Merger Control, and Remedies: A Retrospective Analysis of U.S. Policy* (2014). See also John E. Kwoka, *Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes*, 78 Antitrust L.J. 619, 621 (2013) (“[A] very large fraction of carefully studied mergers shows that those mergers resulted in higher prices, even when a remedy was imposed.”). See also Orley Ashenfelter & Daniel Hosken, *The Effect of Mergers on Consumer Prices: Evidence from Five Mergers on the Enforcement Margin*, 53 J.L. & Econ. 417 (2010) (taking a retrospective look at the efficacy of merger enforcement and concluding that generally, mergers result in higher consumer prices).

Efficiencies claims in many past mergers are also suspect. Managers have encountered problems in implementing projected cost savings and realizing promised consumer benefits, and integration costs are often higher than expected.⁴

The AB InBev-SABMiller merger would take place against the backdrop of a highly concentrated market for beer in the U.S. There have been five major mergers over the last 10 years.⁵ In 2005, Coors and Molson merged to form Molson Coors Brewing Company. In 2007, SABMiller and MolsonCoors formed the MillerCoors JV. In 2008, InBev acquired Anheuser-Busch to form AB InBev. In 2012, AB InBev acquired Grupo Modelo.⁶ The last two transactions were approved by the DOJ, subject to conditions that addressed increases in concentration and/or control of brewing or distribution that could be used to discriminate against rival brands.

Today two firms, AB InBev and MillerCoors, control almost three-quarters of the U.S. beer market. Data show that prices for beer have increased in the U.S., above the rate of inflation and against the backdrop of declining output.⁷ And recent economic analysis indicates that following the formation of the MillerCoors JV, price increases were related to post-merger tacit coordination between AB InBev and MillerCoors.⁸

⁴ See, e.g., Scott A. Christofferson, Robert S. McNish, and Diane L. Sias, *Where Mergers Go Wrong*, MCKINSEY ON FINANCE 2004, at 2-3, <http://www.ceoexpress.com/asp/mckinseyalls4.asp?id=m0286>. See also Diana L. Moss, *Delivering the Benefits? Efficiencies and Airline Mergers*, American Antitrust Institute (November 21, 2013), <http://www.antitrustinstitute.org/content/aai-issues-white-paper-delivering-benefits-efficiencies-and-airline-mergers>.

⁵ See Bernard Ascher, Am. Antitrust Inst., *Global Beer: The Road to Monopoly* 6-7 (2012).

⁶ See Bernard Ascher, Am. Antitrust Inst., *Global Beer: The Road To Monopoly* 56 (2012); *Beeropoly: This is What the Family Tree of Beer Companies will Look Like if AB InBev Acquires SABMiller*, Quartz (last visited Dec. 5, 2015), <http://qz.com/503392/this-is-what-the-family-tree-of-beer-companies-will-look-like-if-ab-inbev-acquires-sabmiller/>.

⁷ See Bernard Ascher, Am. Antitrust Inst., *Global Beer: The Road to Monopoly* ii and Appendix II-6 (2012).

⁸ See U.S. v. Anheuser-Busch InBev SA/NV et al., Competitive Impact Statement, Civil Action 13-127 (RWR) (Apr 19, 2013), at 7. See also Nathan H. Miller & Matthew C. Weinberg, *Mergers Facilitate Tacit Collusion: Empirical Evidence from the U.S. Brewing Industry* (Mar. 25, 2015) (finding that while the MillerCoors joint venture resulted in merger-specific cost reductions, average retail prices increased post-consumption, likely because of tacit collusion).

IV. AB InBev Controls Critical Distribution That Rivals Require to Ultimately Get Their Products Onto Retail Shelves

The timing of the proposed merger highlights the declining demand for mass-market beer in the U.S., at the same time there has been rapid growth of innovative, diverse, high quality craft beers.⁹ Outside the brewpub or the microbrewery, craft beer makers depend on independent distribution in order to get products onto retail shelves and into the hands of the consumer. The three-tiered system of beer distribution in the U.S. separates manufacturing, wholesale distribution, and retailing. However, there are material variations in how this system is implemented from state to state. This is particularly important for how brewers such as AB InBev can (or cannot) vertically integrate into distribution.

AB InBev has aggressively pursued control of critical wholesale distribution -- the gateway to the retailer. AB InBev has acquired distribution in several states, including Colorado, California, Oregon, and New York. The company currently owns distribution in 13 U.S. cities.¹⁰ AB InBev has recently “swapped” distributorships, for example, by getting out of distribution in Kentucky and expanding its distribution footprint in Colorado.¹¹ According to published reports, AB InBev’s attempts to acquire distributorships in

⁹ Ascher, *supra* note 2. Trefis Team, *Does the Declining U.S. Beer Trend Spell Doom for Brewers?*, Forbes (June 29, 2015, 8:34 AM), <http://www.forbes.com/sites/greatspeculations/2015/06/29/does-the-declining-u-s-beer-trend-spell-doom-for-brewers/>.

¹⁰ See, e.g., Tripp Mickle, *Anheuser Says Regulators Have Questioned Pending Distributor Buyouts*, Wall St. J. (Oct. 12, 2015, 10:09 PM), <http://www.wsj.com/articles/anheuser-says-regulators-have-questioned-pending-distributor-buyouts-1444702179>. *Wholesaler Operations*, Anheuser-Busch Company (last visited Dec. 4, 2015), <http://anheuser-busch.com/index.php/our-company/operations/wholesale-operations/>.

¹¹ David A. Mann, *Budweiser to Sell Louisville and Owensboro Distributorships*, Louisville Business First (Aug. 4, 2015, 6:02 PM), <http://www.bizjournals.com/louisville/news/2015/08/04/budweiser-sells-louisville-and-owensboro.html>. See also Chris Furnari, *Anheuser-Busch Announces Major Wholesale Moves in Colorado* (Aug. 4, 2015 at 8:58 PM), <http://www.brewbound.com/news/anheuser-busch-announces-major-wholesale-moves-in-colorado>.

California are apparently under investigation by both California and U.S. antitrust authorities.¹²

AB InBev contracts with about 500 independent distributors.¹³ It has allegedly engaged in potentially anticompetitive contracting practices with distributors that carry competing brands. These practices, investigated by the DOJ, include exclusivity or near-exclusivity and incentives for giving preference to AB InBev brands.¹⁴ This approach shows no signs of abating. Recently, AB InBev rolled out a new “incentive program” that would offer independent distributors financial incentives based on shares of AB InBev brands.¹⁵ Discounts by firms with significant market power, and that are conditioned upon exclusivity or near-exclusivity, are potentially unlawful under Sections 1 and 2 of the Sherman Act.

MillerCoors owns one distribution facility and contracts with 450 independent wholesalers.¹⁶ As compared to AB InBev, MillerCoors has reportedly taken a less adversarial approach to accommodating rivals in their contractual arrangements with independent distributors.

V. The Merger is Presumptively Illegal and if Allowed to Proceed, Unremedied, Will Exacerbate AB InBev’s Pre-Existing Ability and Incentive to Exclude Smaller Rivals

Putting aside the proposed divestiture of SABMiller’s 58% share of the MillerCoors JV, the merger would otherwise be presumptively illegal under U.S. antitrust law. AB InBev has about a 46% market share of the U.S. beer market.¹⁷ The MillerCoors JV has about a

¹² *AB InBev Says Talking to DOJ, California AG About Two Planned Distributor Deals*, Reuters (Oct. 12, 2015, 5:11 PM), <http://www.reuters.com/article/abinbev-distribution-talks-idUSL1N12C1GM20151012#1wJFjR785xB8csWl.97>.

¹³ See <http://anheuser-busch.com/index.php/our-company/operations/wholesale-operations/>.

¹⁴ Ascher, *supra* note 2.

¹⁵ See, e.g., Tripp Mickle, *Craft Brewers Take Issue With AB InBev Distribution Plan*, Dec. 4, 2015.

¹⁶ Molson Coors Brewing Co., *2015 Annual Report on Form 10-K*, at 8 (2015).

¹⁷ Beer Marketer’s Insights, *Key Industry Data, Major Supplier Shipments and Share: 2014 vs 2013* (last visited Dec. 4, 2015) (follow “Major Supplier Shipments and Share: 2014 vs 2013”),

26% share. With smaller rivals Constellation, Heineken, and others, total market concentration is about 3,000 HHI. This is a highly concentrated market, according to the U.S. Department of Justice/Federal Trade Commission HORIZONTAL MERGER GUIDELINES.¹⁸ Combining AB InBev and SABMiller would create a single firm with almost a 75% share of the U.S. market. Market concentration would increase by over 2,500 HHI points, raising post-merger concentration to over 5,600 HHI. Such a merger would, according to the GUIDELINES, be “presumed to be likely to enhance market power.”¹⁹

The major competitive concern raised by the AB InBev-SABMiller merger is a pre- to post-merger change in the company’s ability and incentive to use control over wholesale distribution to frustrate or eliminate competition from rivals. As a vertically integrated brewer-distributor with almost 50% of the market for beer in the U.S., AB InBev already has the incentive and ability to exclude rival brewers from access to efficient distribution and thus from meaningful access to retail shelf space. The question for antitrust enforcers will be how the merger *changes* this landscape. As discussed in the next section, this concern is not dispelled by the current, proposed divestiture of SABMiller’s share of the MillerCoors JV to Molson Coors. Depending on how a remedy is structured and implemented, there could remain avenues through which the merger potentially enhances the incentive and/or ability of the merged company to harm competition.

http://www.beerinsights.com/index.php?option=com_content&view=article&id=11&Itemid=14; see also Tripp Mickle, *MillerCoors Caught in a Downdraft*, Wall St. J. (Mar. 30, 2015, 7:04 PM),

<http://www.wsj.com/articles/millercoors-caught-in-a-downdraft-1427756639>.

¹⁸ U.S. Dep’t of Justice & Fed. Trade Comm’n, *Horizontal Merger Guidelines* § 5.3 (2010), available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf> [hereinafter *Horizontal Merger Guidelines*].

¹⁹ *Id.* at § 2.1.

VI. The Absence of Merger-Related Efficiencies Highlights the Imperative of a Powerfully Effective Remedy

The merging parties note that the proposed merger is part of a broader strategy to form a “truly global brewer.”²⁰ By combining the “complementary” geographical footprints, brand portfolios, and distribution networks of AB InBev and SABMiller, the merger would allow the company to access growing markets for beer in Asia, South America, and Africa.²¹ Company documents indicate that projected efficiencies will come primarily from the SABMiller side of integrated supply chain operations, “with approximately 70% of the additional savings ... coming from procurement and 30% from manufacturing and distribution.”²²

These broad statements provide no detail on whether the deal would produce any merger-specific and cognizable efficiencies in post-merger U.S. operations. With the proposed divestiture of SABMiller’s share of the MillerCoors JV, any cost-savings or consumer benefits in the U.S. would be unlikely. Without any integration of brewing capacity or distribution, there are no economies of scale, scope, or coordination to be had. While this seems obvious, it is important to highlight because without any merger-related cost savings or consumer benefits, the potential adverse effects of the merger are magnified.²³ As such,

²⁰ See *Recommended Acquisition of SABMiller PLC by Anheuser-Busch InBev SA/NV*, SABMiller.com, Nov 11 2015, 93-105 and Appendix A, <http://sabmiller.com/docs/default-source/investor-documents/ab-inbev-offer/11-november-2015---recommended-acquisition-of-sabmiller-plc-by-anheuser-busch-inbev-sa-nv.pdf?sfvrsn=10>

²¹ See, e.g., Press Release, Anheuser-Busch InBev, Recommended Acquisition of SABMiller Plc by Anheuser-Busch InBev SA/NV 4 (Nov. 11, 2015), at 25-26, <http://sabmiller.com/docs/default-source/investor-documents/ab-inbev-offer/11-november-2015---recommended-acquisition-of-sabmiller-plc-by-anheuser-busch-inbev-sa-nv.pdf?sfvrsn=10>. (“Given the largely complementary geographical footprints and brand portfolios of AB InBev and SABMiller, the combined group would have operations in virtually every major beer market, including key emerging regions with strong growth prospects such as Africa, Asia, and Central and South America.”).

²² See, e.g., Press Release, Anheuser-Busch InBev, Recommended Acquisition of Sabmiller Plc by Anheuser-Busch InBev SA/NV 4 (Nov. 11, 2015), at 102, <http://sabmiller.com/docs/default-source/investor-documents/ab-inbev-offer/11-november-2015---recommended-acquisition-of-sabmiller-plc-by-anheuser-busch-inbev-sa-nv.pdf?sfvrsn=10>.

²³ See U.S. Dep’t of Justice & Fed. Trade Comm’n, *Horizontal Merger Guidelines* §10 (2010), available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf> (stating that “The

and without a remedy that fully restores competition, the merger poses commensurately higher risks to competition and consumers.

VII. The DOJ Should Ask Several Major Questions When Evaluating the Proposed Divestiture of SABMiller’s Share of the MillerCoors JV

In a pre-emptive move to make the proposal more palatable for U.S. antitrust enforcers, the merging parties have proposed a “fix-it-first” remedy to divest SABMiller’s 58% share of the MillerCoors JV.²⁴ The JV would thus revert fully to Molson Coors post-merger, creating the optics of an unchanged market landscape. This story sounds good in theory, but the devil will be in the details. While the parties may well reveal more specifics to the DOJ, AAI’s analysis based on publicly available information indicates that the divestiture proposal is murky. It leaves unanswered many questions that bear directly on whether the remedy would fully restore competition lost by the merger.²⁵

Evidence on ineffective or failed remedies in past merger cases is accumulating. Two recent examples illustrate the difficulty of fashioning effective remedies that fully restore competition lost by a merger -- particularly in markets where there is relatively little pre-existing competition. For example, after retail grocers Safeway and Albertson merged, the regional grocery chain (Haggen) that purchased divested stores struggled to stay afloat, began shuttering operations at recently acquired stores, and filed for bankruptcy.²⁶ Similarly, the

greater the potential adverse competitive effect of a merger, the greater must be the cognizable efficiencies, and the more they must be passed through to customers, for the Agencies to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly substantial, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”)

²⁴ Press Release, Anheuser-Busch InBev, Anheuser-Busch InBev Announces Agreement with Molson Coors for Complete Divestiture of SABMiller’s Interest in MillerCoors (Nov. 11, 2015).

²⁵ See Andre Barlow, *1 Drink Too Many: Why Consumers Will Lose with Beer Merger*, Law360 (Nov. 12, 2015, 5:21 PM), <http://www.law360.com/articles/726137/1-drink-too-many-why-consumers-will-lose-with-beer-merger> (explaining that, in addition to creating a highly concentrated market, the merger also threatens competition in wholesale beer distribution and input markets).

²⁶ See Brent Kendall, *Haggen Struggles After Trying to Digest Albertsons Stores*, Wall St. J. (Oct. 9, 2015, 1:06 PM), <http://www.wsj.com/articles/haggen-struggles-after-trying-to-digest-albertsons-stores-1444410394> (reporting that soon after Haggen acquired 164 stores because of the merger, it filed for bankruptcy and closed 26 stores).

divestiture of Advantage Rent a Car -- a condition of the Hertz-Dollar/Thrifty rental car merger -- was not a success. Advantage filed for bankruptcy protection.²⁷ In both of these cases, the purchasers of divested assets struggled to compete in post-merger markets.

In light of this experience, there are a number of major questions that antitrust enforcers should ask in evaluating whether the proposed divestiture of SABMiller's share of the MillerCoors JV to Molson Coors will fully restore competition. One concern centers on the potentially enhanced ability of the merged company to engage in exclusionary conduct with regard to rivals. As noted earlier, MillerCoors distributes their brands largely through independent wholesalers. It is not clear how MillerCoors' contracts with independent distributors will be affected as part of the transfer of assets to Molson Coors. Indeed, it would be dangerous to assume that existing contracts would transfer seamlessly to Molson Coors. When the MillerCoors JV was formed in 2008, for example, there were disputes over the disposition of independent distribution contracts.

"What happens" to the MillerCoors distribution contracts is a critically important question for crafting a remedy in AB InBev-SABMiller. As noted earlier, as compared to AB InBev, MillerCoors has reportedly taken a less adversarial approach to independent distributors that carry rival brands. With the elimination of SABMiller, that dynamic will disappear. Moreover, it is unclear how Molson Coors would approach any renegotiation of contracts with independent distributors. These factors collectively put independent distributors at risk. They could be subject to new policies regarding distribution of rival brands that mimic AB InBev's more restrictive approach.

A second question goes to the effect of withdrawing MillerCoors capacity from the market before the merger is consummated. For example, on September 14, 2015 (two days

²⁷ See Press Release, FSNA, Franchise Services of North America Inc. Announces Bankruptcy Filing by Simply

before the announcement of merger talks), MillerCoors announced the closing of the Eden, North Carolina brewery.²⁸ Citing the objective of “optimizing” their brewery footprint, “streamlining” operations to enhance efficiency across the remaining several MillerCoors breweries, and distribution overlaps with a nearby plant,²⁹ the brewery is slated to be shuttered by September 2016. It has a capacity of nine million barrels per year, just over 10% of total MillerCoors brewing capacity.³⁰ MillerCoors describes the facility as “state of the art,” and it has won numerous awards.³¹

The planned closure of the Eden, NC brewing facility raises fundamental questions about strategic intent. An announcement that capacity will be withdrawn from the market in close proximity to the AB InBev-SABMiller merger negotiations could be viewed as a merger-related, anticompetitive reduction in capacity. This kind of “gun-jumping” before the DOJ weighs in on the proposed transaction should be carefully scrutinized. Moreover, shedding capacity before the SABMiller share of the JV is sold means that Molson Coors will be acquiring less capacity. Holding other market participants’ capacity constant, closure of the facility will reduce Molson Coors’ market share of total brewing capacity in the U.S. and increase other participants’ shares, including AB InBev. This increase in share could enhance the merged company’s incentive to foreclose smaller rivals from access to effective distribution and retail shelf space.

A final question focuses on how a merged AB InBev-SABMiller would be operating in the U.S. as an even more powerful importer of brands. It is unclear whether AB InBev-

Wheelz LLC (Nov. 4, 2013), <http://www.fsna-inc.com/newspdfs/115201391920.PDF>.

²⁸ Jay Brooks, *MillerCoors to Close North Carolina Brewery*, brookstonbeerbulletin.com, Sep. 14, 2015, <http://brookstonbeerbulletin.com/millercoors-to-close-north-carolina-brewery/>.

²⁹ *Id.*

³⁰ See <http://www.millercoors.com/Who-We-Are/Locations.aspx>

³¹ See <http://www.millercoors.com/Who-We-Are/Locations.aspx>. See also MillerCoors Eden Brewery 2013 AME Manufacturing Excellence Award Recipient (Apr. 17, 2014), <https://www.youtube.com/watch?v=Zl2ZDRY4AsI>

SABMiller would import brands from SABMiller's international portfolio that are not already sold in the U.S. Such a development could be problematic if any new, post-merger imports include brands that compete against rival craft beers in the U.S. This could also increase the incentives for the merged company to foreclose smaller rivals.

VIII. A Remedy Should Address Merger-Specific Concerns at the Same Time it Promotes Competition Moving Forward

AB InBev and SABMiller bear a heavy burden in demonstrating that their merger would not be harmful to competition and consumers. Concerns over the exclusion of smaller rival brewers, the absence of merger-specific efficiencies, and an ill-defined remedy proposal all raise red flags for antitrust review. If the DOJ does not move to enjoin the merger, it will be in a position of devising a remedy that fully restores competition lost by the merger. In doing just this in AB InBev-Grupo Modelo, the agency gave high priority to creating an "independent" market player. In light of the already troubled competitive landscape in U.S. beer, and the importance of preserving the choice, diversity, quality, and innovation offered to consumer by smaller rivals, a strong remedy should address merger-specific concerns, at the same time it promotes competition moving forward. Such a remedy would include both structural components (i.e., divestiture), as well as conduct components (i.e., enforceable requirements governing post-merger operations).

For example, a remedy would need to establish a Molson Coors enterprise that would be a completely independent competitor. This is a particularly tall order given evidence of anticompetitive coordination after the MillerCoors JV was formed in 2008. Corporate culture, strategic competitive approach, and the fact that Molson Coors is a smaller North American brewer, as compared to a global giant like SABMiller, could affect the extent to which Molson Coors is able to operate completely independently in a U.S. market where AB InBev and SABMiller operate jointly.

To create an independent market player, a remedy would, among other things: (1) prohibit any dependence by Molson Coors on AB InBev for contract brewing of former MillerCoors brands or other services; (2) address situations where AB InBev-SABMiller and Molson Coors brands are both carried by independent distributors; and (3) promote the role of independent distributors in ensuring that distributors (and hence consumers) have access to rival brands by prohibiting AB-InBev conduct that creates incentives for distributors to discriminate against smaller rivals.

Thank you for this opportunity to testify.

Respectfully,

A handwritten signature in black ink, appearing to read "Dm", is placed over a rectangular area with a light gray dotted background.

Diana Moss

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Written Testimony of Bob Pease
Chief Executive Officer of the Brewers Association
Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

December 8, 2015

Mr. Chairman, Senator Klobuchar, Chairman Grassley, and members of the Subcommittee, my name is Bob Pease. I am the Chief Executive Officer of the Brewers Association, which represents more than 2,800 craft brewers and 1,100 industry suppliers of agricultural commodities, brewing equipment, packaging, and other goods and services required by modern breweries. I appreciate the opportunity to testify today.

At the outset, I want to make clear that the Brewers Association is not opposed to fair competition. Our members have built thousands of successful small and medium sized business from scratch in a highly competitive environment. Many others have failed in their efforts at great personal loss. We also understand that the antitrust laws are designed to protect competition, and that they are not designed to protect individual companies or industry segments from competition.

The proposed acquisition of South Africa Breweries by Anheuser-Busch InBev (ABI) must be viewed in light of other developments affecting competition in the beer industry.

To understand the competitive landscape, we need to review the basic beer industry regulatory framework. Federal alcohol laws and the Twenty-first Amendment to the U.S. Constitution authorize each state to regulate alcohol beverage sales and distribution within their respective borders. The legal framework for the alcohol beverage industry provides each state with significant latitude to regulate distribution and sale of beer, wine, and spirits. Section 2 of the Twenty-first Amendment is a limited exception to the Commerce Clause of the U.S. Constitution:

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The Webb-Kenyon Act was signed into law in 1913, before national Prohibition. It prohibits shipment or transportation of alcohol beverages into a state in violation of the laws of that state. 27 U.S.C. § 122. The law was essentially moot during Prohibition and was reenacted by Congress in 1935. Congress strengthened the Webb-Kenyon Act in 2000 by establishing a cause of action in federal court so that a state attorney general can enjoin violations of state alcohol beverage laws. 27 U.S.C. § 122a. Numerous U.S. Supreme Court and lower court cases have grappled with the tension between federal and state regulation of alcohol beverages over the last 140 years, but state authority is clearly established in federal statutes and in the Constitution.

So the beer industry does not operate under normal principles of interstate commerce. Beer and other alcohol beverages are subject to 50 different state regulatory systems.

Over the last 30-40 years one major regulatory trend has significantly affected competition in the beer industry. That is the evolution of state licensing laws and special beer franchise protections for beer wholesalers.

State laws in many places effectively mandate the use of beer wholesalers and prevent a brewer from changing wholesalers absent extraordinary circumstances. 48 states have some form of special franchise protection for beer wholesalers that makes it difficult or virtually impossible for a brewer to change wholesalers without establishing good cause, providing lengthy notice and cure periods, and risking protracted litigation, arbitration, and/or substantial compensation or payments to settle litigation. Examples of special wholesaler protections from several state beer franchise laws are provided in Exhibit A attached to this testimony. State beer franchise laws were generally intended to protect the independence of wholesalers, which is a laudable goal. If the wholesale tier of the beer industry is truly independent of the major brewers, it can promote fair competition. But that goal has been thwarted by other developments.

Two of largest international brewers now control more than 70 percent of U.S. beer sales. Exhibit B provides a breakdown of the 2014 market shares of the larger brewers and the craft segment of the beer industry. They also actively fostered rapid consolidation of the wholesale tier and the evolution of multistate wholesaler networks under common ownership. Today, the 30 largest beer wholesalers control almost a third of all U.S. beer sales to retailers. Exhibit C is a list of the largest U.S. beer wholesalers with information on their respective sales and recent acquisitions. The raw numbers mask the true effects of wholesaler consolidation. Based on current trends the Brewers Association believes that by the year 2020, only about 200-250 full-service beer wholesalers will exist in the U.S. if you count commonly owned wholesalers as one. I will submit an analysis of the wholesale tier by the Brewers Association's economist.

Most markets in the U.S. are now served by only two substantial wholesalers, an ABI wholesaler and a MillerCoors wholesaler. While the two primary wholesalers are generally known by the names of the largest brewers, the wholesalers also sell other brands. For example, an ABI wholesaler may also sell Corona, Sam Adams, and dozens of smaller brands.

States generally fail to respond to changes in the beer industry to the detriment of new competitors and new business models. Over the last three decades, the Federal Trade Commission (FTC) has repeatedly called out states for enacting or refusing to change blatantly anticompetitive distribution laws, most of which are still on the books and are aggressively enforced through private and government action. Exhibit D lists several FTC critiques of state alcohol beverage laws and proposed legislation over the last three decades. States have granted exceptions to allow limited self-distribution by craft brewers, but those exceptions are insignificant in terms of the overall market and totally inadequate to address the imbalance that currently exists.

In fifteen states, large brewers such as Anheuser-Busch InBev are allowed to own wholesalers. At present, ABI is the largest beer supplier and one of the largest beer wholesalers

in nine states. The states where ABI is currently a major wholesaler include California, Colorado, Hawaii, Massachusetts, New York, Ohio, Oklahoma Oregon, and Washington. Exhibit E lists the cities and states where ABI owns wholesale operations. In major population centers of those states, ABI controls one of the two routes to market that craft brewers must use to effectively sell beer to retailers. Moreover, ABI also enjoys the same licensing privileges and franchise protections that were intended to protect independent wholesalers.

Over the last several months, ABI demonstrated its ability to expand control of the wholesale tier by leveraging its company-owned wholesalers and relationships with favored wholesalers. While other examples exist, the most recent ABI activity in this regard occurred in Kentucky, Colorado, and California.

During its 2015 session, the Kentucky Legislature enacted legislation to prevent ABI from expanding its company-owned wholesaler in Kentucky. KRS § 243.110. In response, ABI engineered a tax-free transaction by exchanging its Kentucky wholesale operations with a large “independent ABI wholesaler” with operations in Texas and Colorado. ABI exchanged its Kentucky wholesale operation in return for three Colorado locations. Simultaneously, ABI purchased a fourth independent Colorado wholesaler and combined that business with the three others to significantly diminish the number of independent wholesalers in Colorado.

In California, ABI purchased the rights to its own brands from two independent wholesalers in Oakland and San Jose without purchasing the non-ABI brands. Most other brewers served by the two previously independent wholesalers, including the most substantial craft and import brands, were forced into the remaining MillerCoors wholesalers that served the Oakland and San Jose territories. Enormous disruption occurred in the market as the brewers had to abandon long-term business relationships and scramble to establish new sales and distribution operations in a very short time period.

In July, 2015, ABI purchased a significant independent New York City distributor that serves the borough of Staten Island. ABI already owned a large distributor in the Bronx.

If ABI is permitted to maintain ownership of wholesalers, ABI can continue to systematically sell parts of its wholesaler network to other favored wholesalers that ABI effectively controls. Simultaneously, ABI will continue to purchase additional independent wholesalers and discontinue sales of competing brands that the independent wholesalers currently sell. Craft brands will then be forced into the MillerCoors network or to small specialty distributors that lack the ability to fully serve a territory.

ABI’s massive economic presence and control over wholesalers allows ABI to engage in these disruptive and harmful tactics. The Colorado and California transactions involved assets worth hundreds of millions of dollars and both involved many subtle tactics to disrupt sales of competing brands totaling hundreds of millions of dollars to independent wholesalers that reduce sales of competing brands. The ABI system is based on a sliding scale with the largest financial rewards to those who limit sales of competing brands to 2 percent, 5 percent, and 10 percent. Anything less than 90 percent gets a “C” rating in the tight AB grading scale. Exhibit F includes

a detailed account of the November 2015 meeting where ABI executives described the incentive program to its wholesalers.

While exclusive dealing by a manufacturer is not unusual in other markets for consumer goods, those markets are not subject to the state-mandated distribution system. For beer, that is a critical difference. In communities where ABI or a closely-related wholesaler is one of two choices for a brewer to access the retail market, the wholesale tier is simply not competitive.

Other historic tactics remain a significant factor in ABI's ability to control the wholesale tier of the beer industry in several states. For many years, ABI's predecessor frequently rewarded top executives and their family members with wholesalerships, creating another group of intensely loyal wholesalers, many of whom are also significant shareholders in ABI to this day. So those wholesalers have exclusive territories for ABI and other beer brands, while they are also benefiting from significant investments in ABI. Exhibit G includes links to two detailed descriptions of these special relationships between ABI and certain wholesalers. ABI also used its political acumen in several states and successfully lobbied for laws authorizing ABI to finance the consolidation of wholesalers. *See, e.g.* Florida Statutes § 563.022(14)(c)(3) and Ohio Revised Statutes § 4301.24(G). ABI has a subsidiary called the Wholesaler Equity Development Corporation (WEDCO) that provides attractive financing to its favored wholesalers so that they can purchase neighboring independent distributors and further consolidate ABI's wholesale network.

As a result of these strategic economic maneuvers, ABI has furthered its economic reach into the wholesale tier of the industry through direct ownership, direct financial support of consolidation, and a variety of direct and indirect financial incentives to encourage wholesalers to deal exclusively in ABI products.

We do not expect a Constitutional amendment to regulate beer in the same manner as other consumer products. The Brewers Association and individual state brewers guilds will fight state-by-state battles as we do every year to seek greater equity in state laws. The Brewers Association and individual state brewers guilds must deal with these issues every year and we can provide the Subcommittee with current examples in multiple states.

The federal government does have the ability to limit ABI's ability to engage in anticompetitive tactics in the beer market. The recently-announced ABI acquisition of South Africa Breweries requires Justice Department antitrust review. ABI has already tried to anticipate that review through the sale of South Africa Breweries interest in the number two U.S. brewer, MillerCoors. That action is not sufficient to protect competition in the U.S. beer industry.

As a condition of approving the ABI acquisition of South Africa Breweries, the Brewers Association strongly believes that the Department of Justice should require ABI to—

Divest its company-owned wholesalers; and

Modify its anticompetitive financial assistance and incentives to wholesalers to refrain from distributing other brands of beer.

Left unchecked, these practices will further restrict competition. Alternatives, such as government oversight, supervision and enforcement would take years of effort. The immediate damage to competition that we have already seen in ABI's recent tactics cannot be remedied by relief provided years after competition is destroyed.

The Department of Justice must also closely scrutinize ABI's activities that affect U.S. and global markets goods and services used by brewers. ABI is already vertically integrated through ownership of agricultural and packaging subsidiaries. Its increasing global presence creates many opportunities to adversely affect competition for goods and services in the beer industry.

We applaud the Subcommittee for asking the hard questions to support aggressive antitrust enforcement and fair competition in the beer industry.

Thank you again for the opportunity to appear before the Subcommittee.

EXHIBIT A

Examples of special state protections granted to beer wholesalers in “beer franchise laws”:

Alabama: Brewer must have “good cause” for termination of a distribution agreement. Ala. Code § 28-9-6(a)(3). A wholesaler may seek (1) actual damages, (2) costs and attorney’s fees, (3) declaratory judgment, (4) exemplary or punitive damages for failure to act in good faith or unreasonably withholding consent to the any transfer, and (5) injunctive relief. These remedies are not exclusive. Ala. Code § 28-9-11.

Arkansas: Brewer must have “good cause” for termination of a distribution agreement. The brewer bears the burden of establishing that it acted with “good cause.” Ark. Code Ann § 3-5-1111. A wholesaler can seek (1) actual damages, (2) costs and (in the court’s discretion) attorney’s fees, (3) declaratory judgment, and (4) injunctive relief. Ark. Code Ann § 3-5-1106.

California: Brewer cannot terminate a wholesaler “solely for a beer wholesaler’s failure to meet a sales goal or quota that is not commercially reasonable under prevailing market conditions.” Cal. Bus. & Prof. Code § 25000.7. A brewer “who unreasonably withholds consent or unreasonably denies approval of a sale, transfer or assignment of any ownership interest in a beer wholesaler’s business with respect to that manufacturer’s brands or brands” to liability for damages not exceeding “the compensatory damages sustained by the wholesaler and the wholesaler’s costs of suit.” Cal. Bus. & Prof. Code § 25000.9.

Florida: A brewer must demonstrate “good cause” prior to termination. The brewer has the burden of establishing “good cause.” Fla. Stats. § 563.022. A wholesaler has 30 days after receipt of written termination notification to submit a plan of corrective action, and an additional 90 days after the submission of the plan to cure any alleged deficiencies. *Id.* A court may grant a wholesaler (1) injunctive relief, (2) damages, (3) costs and attorney’s fees, (4) declaratory judgment, and (5) punitive damages (if the court determines that the brewer “acted maliciously”). *Id.*

Georgia: A brewer seeking to terminate a wholesaler or change wholesalers with respect to any brand, or change a wholesaler’s territory must file a Notice of Intention with the Commissioner of Revenue and the wholesaler, providing, among other things, the business reasons for the requested change. The Commissioner will hold a hearing to determine whether “cause” exists to support the termination or change. If the wholesaler fails to file an objection to the change in territory within 30 days, then the Commission will automatically approve the change. Ga. Comp. R. & Regs. r. 560-2-4-.02(5)-(8).

Idaho: A brewer has the burden of establishing “good cause” to terminate a distribution agreement. Idaho Code § 23-1107(3). A wholesaler may seek actual damages, court costs, and attorney’s fees, as well as to file an action for declaratory judgment or injunctive relief. The statutory remedies do “not abolish any other cause of action or remedy available to the . . . distributor.” Idaho Code § 23-1112.

Illinois: A brewer must have “good cause” and have made good faith efforts to resolve disagreements prior to termination. 815 Ill. Comp. Stat. § 720/4. The brewer has the burden of proving the existence of “good cause” if the wholesaler first makes a prima facie showing that “good cause” does not exist. 815 Ill. Comp. Stat. § 720/9(1). An alternative termination process exists for brewers whose brands constitute less than 10 percent of a wholesaler’s portfolio. The brewer must offer compensation and an arbitration process is required if the parties cannot agree on the value of the distribution rights. 815 Ill. Comp. Stat. § 720/7(1.5).

Maine: A brewer must demonstrate “good cause” prior to termination. Me. Rev. Stat. Ann. tit. 28-A, § 1454. A brewer must provide a wholesaler with written notice of any alleged deficiencies, and a “reasonable time” (90 days) to cure such deficiencies prior to issuing written notice of intent to terminate. Me. Rev. Stat. Ann. tit. 28-A, § 1455. A wholesaler may seek (1) equitable relief (declaratory judgment and injunctive relief), or (2) punitive damages, costs, and attorney’s fees (upon a finding of bad faith or unreasonably withheld consent). Me. Rev. Stat. Ann. tit. 28-A, § 1458.

Michigan: A brewer bears the burden of establishing that it acted with “good cause” in terminating a wholesaler. Mich. Comp. Laws §§ 436.1403(7) & (9). Upon providing written notice of its intent to terminate, a brewer must provide the wholesaler 30 days to submit a plan for correcting the alleged deficiencies, and an additional 90 days to cure such deficiencies. Mich. Comp. Laws § 436.1403(8)(e). A wholesaler may seek (1) actual damages, (2) costs and attorney’s fees, (3) declaratory judgment, (4) exemplary damages for failure to act in good faith and (5) injunctive relief. Mich. Comp. Laws §§ 436.1403(28)-(32).

Nebraska: A brewer bears the burden of establishing that it acted with “good cause” in terminating a wholesaler. Neb. Rev. Stat. §§ 53-218(1) & (2). A brewer must give a wholesaler 30 days after receipt of written termination notification to submit a plan of corrective action, and an additional 90 days after the submission of the plan to cure the noncompliance. Neb. Rev. Stat. § 53-218(4)(e). A wholesaler may seek (1) actual damages, (2) costs and attorneys fees, (3) declaratory judgment, and (4) injunctive relief. These remedies are “not exclusive.” Neb. Rev. Stat. § 53-223.

New York: A brewer must demonstrate “good cause” prior to termination. N.Y. Alco. Bev. Cont. Law §§ 55-c(2)(e), (3)-(4). The brewer bears the burden of proving “good cause,” but the wholesaler retains the burden of proof in all other respects. N.Y. Alco. Bev. Cont. Law § 55-c(6). N.Y. Alco. Bev. Cont. Law § 55-c(2)(e)(i)(c). A wholesaler has 15 days after receipt of written termination notification to submit a plan of corrective action, and an additional 15 days after the submission of the plan to cure any alleged deficiencies. A court may increase or reduce the cure period to a “commercially reasonable period.” N.Y. Alco. Bev. Cont. Law § 55-c(2)(e)(i)(c). A special process exists for small brewers to terminate by paying fair market value compensation with arbitration required if the parties cannot agree on valuation of the distribution rights. N.Y. Alco. Bev. Cont. Law § 55-c(4)(c).

Ohio: A brewer must demonstrate “just cause” prior to terminating a wholesaler. Ohio Rev. Code Ann. § 1333.84(A). A brew must provide 60 days’ written notice prior to termination.

Ohio Rev. Code Ann. §§ 1333.85. Available remedies include reasonable damages. Ohio Rev. Code Ann. § 1333.87.

Pennsylvania: A brewer must demonstrate “good cause” prior to termination. 47 Pa. Cons. Stat. § 4-431(d)(1). A supplier must provide 90 days’ written notice of its intent to terminate and 90 days to cure any alleged deficiencies. 47 Pa. Cons. Stat. §§ 4-492(19). Available remedies include injunctive relief. 47 Pa. Cons. Stat. § 4-431(d)(4).

Tennessee: A brewer must demonstrate “good cause” prior to terminating a wholesaler and the brewer has the burden of establishing that it acted with “good cause.” Tenn. Code Ann. § 57-5-507(3). Prior to termination, a wholesaler has 30 days after receipt of written termination notification to submit a plan of corrective action, and an additional 90 days after the submission of the plan to cure any alleged deficiencies. Tenn. Code Ann. § 57-507(3)(D). A wholesaler’s remedies include (1) actual damages, including damage to ancillary businesses, (2) costs and, at court’s discretion, attorney’s fees, (3) declaratory judgment, and (4) injunctive relief. Tenn. Code Ann. § 57-5-510(a)-(c).

Texas: A brewer must demonstrate “good cause” prior to terminating a wholesaler. Tex. Alco. Bev. Code Ann. §§ 102.73, 102.74. A brewer must provide a wholesaler with 90 days’ prior written notification of its intent to terminate a wholesaler. Tex. Alco. Bev. Code Ann. §§ 102.73(b). A wholesaler may seek (1) all “necessary and appropriate” relief, (2) actual damages, including the value of the distributor’s business, (2) court costs, and (3) reasonable attorney’s fees. Tex. Alco. Bev. Code Ann. § 102.79.

Washington: If a brewer terminates a wholesaler “for any reason other than for cause,” the wholesaler is entitled to compensation. Wash Rev. Code § 19.126.040(4). A supplier must provide 60 days’ notice of its intent to terminate, and provide the wholesaler 60 days from receipt of such notice to cure any alleged deficiencies. Wash. Rev. Code § 19.126.040(20). A wholesaler may seek (1) injunctive relief, and (2) costs and attorney’s fees. Wash Rev. Code §§ 19.126.060 & 19.126.080.

EXHIBIT B**U.S. Market Share of Brewers and Importers in 2014**

Name of Brewer or Beer Importer	2014 Shipments to Beer Wholesalers Millions of 31 gal. barrels	U.S. Market Share 2014
Anheuser Busch InBev (ABI)	96,000	44.7
MillerCoors	55,780	26.0
Constellation	14,415	6.7
Heineken USA	8,425	3.9
Pabst	5,330	2.5
Boston Beer (Sam Adams)*	4,093	1.9
Yuengling	2,920	1.4
North American Breweries	2,450	1.1
Diageo Guinness USA	2,275	1.1
Mark Anthony Brands	1,600	0.7
All Other Brewers and Importers*	21,368	10.0
Total	214,656	100.0

Source: Beer Marketer's Insights 2015 Beer Industry Update, available at http://www.beerinsights.com/index.php?option=com_content&view=article&id=11&Itemid=14, last accessed December 6, 2015.

* **Notes on Market Share of Craft Beer in 2014:**

Craft beer share includes production of Boston Beer, and a part of the “All Other Brewers and Importers” category totaling 11 percent of the market in 2014.

Approximately 3,000 craft brewers that package beer for sale to wholesalers produced 21,000,000 barrels in 2014.

Approximately 1,400 brewpubs, which are breweries with restaurants that produce and sell their products on site produced 1,170,935 barrels in 2014.

EXHIBIT C

List of top-30 beer distributors in the U.S. with volume estimates and recent developments:



March 17, 2014

Top 30 Distributor Ranking

Dear Client:

It's been two years since we've published our top list of beer distributors by volume, and the theme seems to be that the big get even bigger. Several distributors have lost organic volume although many grew by acquisition of both territories and brands. A-B again tops our list, and we estimate that its WOD division lost some organic volume, along with their 30% stake in City Beverage but also gained cases through acquisitions. So without further ado, here are the top 30 distributors by our estimation, with notes.

1. Anheuser-Busch, Inc.

St. Louis, Missouri

Case Volume: 135 million (est.)

Dollar Sales: \$3 billion (est.)

Principals: ABI Management

Notes: A-B still tops our list of U.S. beer distributors. After our last Top Distributors article ran in May 2012, A-B officially acquired 5 million case K&L Distributors in Renton, Washington, that July. Other recent acquisitions had included Eugene's Western Beverage earlier in 2012, Oklahoma City's Premium Beers of Oklahoma in 2011, C&G Distributing in Lima, OH in 2013, as well as a bid for Portland, Oregon's Morgan Distributing, which will be worth an extra 2 million cases. While A-B has purchased cases, it has also shed its stake in City Beverage.

2. Reyes Beverage Group

Chicago, Illinois

Case Volume: 102 million

Dollar Sales: \$2.2 billion

Principals: Reyes family

Major Suppliers: MillerCoors, Crown, HUSA

Notes: Acquisitive Reyes has been in BBD most recently for its bid to acquire Coca-Cola franchise in the Chicago-Midwest for an estimated \$300 million. Earlier this year Reyes closed on its purchase of 13-million case Allied in SoCal for an amount believed to be around \$230 million. And it's been a little over a year now since Reyes purchased Chicago craft beer distributor Windy City for an estimated \$50-\$70 million.

3. Silver Eagle Distributors

Houston, Texas

Case Volume: 48.2 million

Dollar Sales: \$987.7 million

Principals: John Nau III

Major Suppliers: ABI, Crown, NAB

Notes: Last year Silver Eagle announced intentions to open a new facility in Pasadena, Texas, the distributor's eighth facility in the state. Silver Eagle is up nearly \$125 million from our 2012 list after adding 2 million cases.

4. Ben E. Keith Beverages

Dallas/Fort Worth, Texas

Case Volume: 39 million

Dollar Sales: \$780 million

Principals: Hallam family

Major Suppliers: A-B

Notes: Late last year Ben E. Keith Company's Board of Directors announced changes in executive management, electing John Howard Hallam president and Robert Hallam Jr. executive vice president. Howard Hallam, who served as president for 33 years, was elected vice chairman of the board.

5. Hand Family Co.

Clarksville, Tennessee

Case Volume: 39 million

Dollar Sales: \$650 million in revenues

Principals: J.R. Hand

Major Suppliers: ABI

Notes: The Hand Family Co. recently purchased A-B's 30% stake in City Beverage in Chicago. BDT Capital is the 70% owner of City Beverage. Hand also partnered with BDT Capital to purchase River North, Yusef Jackson's former Chicago A-B outfit, to combine with City. Post-deal, BDT and Hand will control over 20 million cases of A-B and some crafts/imports in the Chicago market.

6. L. Knife & Son

Multistate

Case Volume: 35 million (est)

Dollar Sales: \$750 million (est)

Principals: Timothy Sheehan

Major Suppliers: A-B, Craft division

Notes: Recall, secured \$1.7 million in government incentives to help purchase and renovate an abandoned, industrial building in Everett, Mass. for a new distribution facility to house their Craft Brewers Guild distributor of Boston and central Massachusetts. The Boston unit is part of the "Guild" contingent of L. Knife, whose total companies now operate across roughly 14 states and 21 locations. They also opened a Los Angeles operation last year. Recall that L. Knife recently acquired some of Yuenglings hybrid footprint in Massachusetts in its Seabord Products and A-B territories, but also in Boston with Knife's craft/import only division.

7. Columbia Distributing

Kent, Washington

Case Volume: 35 million

Dollar Sales: \$675 million

Principals: Gregg Christiansen

Major Suppliers: MillerCoors, Crown, HUSA, Pabst

Notes: Recall after our 2012 list Columbia was acquired by investment firm Meritage Group LP for an undisclosed amount (estimates ran north of \$500 million).

8. Manhattan Beer Distributors

New York

Case Volume: 34,210,000

Dollar Sales: \$735 million

Principals: Simon Bergson

Major Suppliers: MillerCoors, Crown, Boston Beer

Notes: MBD moved into a new HQ located in South Bronx in May of last year. The move represented a \$65 million investment, with 350,000 square feet of warehouse space including over 100,000 square feet of refrigerated space, and with a goal of reaching the highest level of LEED certification.

9. Glazer's Family of Cos.

Dallas, Texas

Case Volume: 31 million

Dollar Sales: \$560 million

Principals: Bennet Glazer

Major Suppliers: MillerCoors, Crown, HUSA

Notes: Glazer's EVP malt beverages Phil Meacham told BBD last year that beer has become increasingly important to their operations. But that's on a market-by-market basis. Recently, the distributor struck a deal to sell about a half-million cases of craft and cider brands that it sells statewide in Missouri (through its wine and spirits house there) to blue-silver Missouri distributor Heart of America, which is then negotiating to

sell the brand rights to other beer distributors throughout the state outside of its territory. Other transactions include Glazer's having sold some craft and import beer brands to A-B house Southern Eagle in NOLA in early 2013.

In October of 2013, Glazer's opened its new \$30 million 518,000-square-foot facility in San Antonio, the company's largest space. (Note: our 2012 list did not include Glazer's purchase of Halo Distributing in San Antonio.)

Dallas Business Journal reported last year that more recent leadership from former investment banker Shelly Stein has brought Glazer's, a top five alcohol wholesaler, more into the green - they reportedly finished 2012 with \$3.8 billion in sales overall. Shelly had overseen about nine acquisitions and joint ventures as of January 2013.

10. L&F Distributors, LTD
The Rio Grand Valley, Texas
Case Volume: 30 million (est)
Dollar Sales: \$480 million (est)
Principals: LaMantia family
Major Suppliers: ABI

11. Crescent Crown Distributing
Phoenix, AZ / New Orleans, LA
Case Volume: 28 million
Dollar Sales: \$520 million
Principals: James R. Moffett Jr.
Major Suppliers: MillerCoors, Crown, HUSA

12. Gold Coast Beverage Distributors Inc.
Miami, Florida
Case Volume: 27 million
Dollar Sales: \$648 million
Principals: Frank Schwiep
Major Suppliers: MillerCoors, Crown, HUSA

13. Andrews Distributing Cos.
Dallas, Texas
Case Volume: 26,635,145
Dollar Sales: \$587,102,371
Principals: Barry Andrews
Major Suppliers: MillerCoors, Crown, HUSA
Notes: Andrews has an agreement to acquire Coors distributing out of Fort Worth. The deal is believed to be north of \$100 million.

14. JJ Taylor Companies
Jupiter, Florida
Case Volume: 26.5 million
Dollar Sales: \$495 million
Principals: John J. Taylor III

Major Suppliers: MillerCoors, HUSA, Boston Beer
 Notes: In late 2012 J.J. Taylor Minnesota announced an agreement to acquire Chisago Lakes Distributing.

15. DBI Beverage
 San Francisco, CA
 Case Volume: 25,979,763
 Dollar Sales: \$497,321,075
 Principals: Jeff Skinner
 Major Suppliers: MillerCoors, HUSA, Boston Beer

16. Topa Equities, Inc. (Anderson)
 Los Angeles, California
 Case Volume: 20 million (est.)
 Dollar Sales: \$420 million (est.)
 Principals: John Anderson
 Major Suppliers: ABI, Crown, Boston Beer

17. RA Jeffreys
 North Carolina
 Case Volume: 20 million (est.)
 Dollar Sales: \$360 million (est.)
 Principals: Robert A. Jeffreys
 Major Suppliers: A-B

18. Hensley Beverage Co.
 Phoenix, AZ
 Case Volume: 19,978,123
 Dollar Sales: \$372 million
 Principals: Robert Delgado, the McCain family
 Major Suppliers: A-B
 Notes: Early last year New York-based Angelo, Gordon & Co., a hedge fund, paid \$76 million to acquire three of Hensley's distribution centers in a lease-back arrangement. That's an average of \$131.68 per square foot. Hensley is just shy of a 20 million case distributorship.

19. Origlio Beverage
 Philadelphia, PA
 Case Volume: 19 million
 Dollar Sales: \$365 million
 Principals: Origlio/Honickman
 Major Suppliers: MillerCoors, Yuengling, Pabst
 Notes: These numbers are representative of the acquisition of All Star Distributing in September 2013.

20. Superior Beverage Group

Columbus, Ohio

Case Volume: 18 million

Dollar Sales: \$339 million

Principals: John M. Antonucci

Major Suppliers: MillerCoors, Crown, HUSA

Notes: Same case volume but a \$30 million increase in sales.

21. The Banko Family

New Jersey

Case Volume: 17 million (est)

Dollar Sales: \$240 million (est)

Principals: Mary Ellen (Banko) Racz

Major Suppliers: MillerCoors, Crown, HUSA

Notes: Invested \$7 million last year to nearly double the size of its old headquarters and expects to move into new HQ in March.

22. Heidelberg Distributing

Midwest

Case Volume: 16,614,779

Dollar Sales: \$296,193,860

Principals: Vail Miller Jr.

Major Suppliers: ABI, Crown, HUSA

23. Standard Sales Co., LP

Colorado Springs, CO

Case Volume: 15.6 million

Dollar Sales: \$310 million

Principals: Lanny Layman

Major Suppliers: A-B

Notes: Recently broke ground on a \$20 million, 150,000-square-foot facility in Odessa, Texas.

24. Frank B. Fuhrer Wholesale Co.

Pittsburgh, PA

Case Volume: 15,460,439

Dollar Sales: \$242,378,905

Principals: Frank Fuhrer II

Major Suppliers: A-B, Boston Beer, Crown

Notes: Fuhrer sued MillerCoors in August 2013, condemning the brewer's refusal to consider the wholesaler for MillerCoors craft brands simply because Fuhrer sells A-B heavy hitters from Bud Light to Black Crown. The case was dismissed.

25. Monarch Beverage
 Indianapolis, Indiana
 Case Volume: 15,056,274
 Dollar Sales: \$254 million
 Principals: Phillip A. Terry
 Major Suppliers: MillerCoors, Crown, HUSA
 Notes: Down 500,000 cases in volume and \$25 million decrease from sales last year in a tough market.

26. West Side Beer Distributing
 Grand Rapids, Michigan
 Case Volume: 15 million (est.)
 Dollar Sales: \$290 million (est.)
 Principals: Don and Keith Klopocic
 Major Suppliers: A-B, Boston Beer, NAB

27. Gulf Distributing Holdings
 Alabama
 Case Volume: 13,574,000
 Dollar Sales: \$249.5 million
 Principals: Elliot Maisel
 Major Suppliers: MillerCoors, HUSA, Crown

28. The House of LaRose
 Brecksville, Ohio
 Case Volume: 11.8 million
 Dollar Sales: 182 million
 Principals: LaRose family
 Major Suppliers: ABI

29. Houston Distributing Co.
 Houston, Texas
 Case volume: 11 million
 Dollar sales: \$210 million
 Major Suppliers: MillerCoors, HUSA, Gambrinus
 Principal: Bo Huggins

30. Clare Rose
 East Yaphank, New York
 Case Volume: 10,950,000
 Dollar Sales: \$210 million
 Principals: Sean Rose
 Major Suppliers: ABI, HUSA

Source: Beer Business Daily, March 17, 2015.

EXHIBIT D**Federal Trade Commission Critiques of State Alcohol Beverage Laws**

FTC Staff Comment Before the Council of the District of Columbia Concerning C.B. 6-442, The Wine, Beer, and Spirits Franchise Act of 1986, August 1986, a bill that was ultimately defeated, but it mirrors many franchise laws summarized in Exhibit A and in many other states. Full FTC comment is available at

https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-council-district-columbia-concerning-c.b.6-442-wine-beer-and-spirits-franchise-act-1986/p864665.pdf

<https://www.ftc.gov/policy/policy-actions/advocacy-filings/1986/08/ftc-staff-comment-council-district-columbia>

FTC Staff Comment to the Hon. Tom Alley Concerning Michigan H.B. 5236 to Allow Beer Manufacturers to Sell Beer at Retail in Limited Instances, February 1990, available at:

<https://www.ftc.gov/policy/policy-actions/advocacy-filings/1990/02/ftc-staff-comment-hon-tom-alley-concerning-michigan>

FTC Staff Comment to the Honorable Wesley Chesbro Concerning the Proposed California Franchise Act to Govern Contractual Relationships Between Beer Manufacturers and Wholesalers, August 2005, available at:

<https://www.ftc.gov/policy/policy-actions/advocacy-filings/2005/08/ftc-staff-comment-honorable-wesley-chesbro-concerning>

James C. Cooper, Joshua D. Wright, Federal Trade Commission Bureau of Economics, State Regulation of Alcohol Distribution: The Effects of Post & Hold Laws on Consumption and Social Harms, Working Paper: 304, August 2010

The Twenty-first Amendment repealed prohibition, but granted the states broad power to regulate the distribution and sale of alcohol to consumers within their borders. Pursuant to this authority, states have established a complex web of regulations that limit the ability of beer, wine, and liquor producers to control the distribution of their product. From a consumer welfare perspective, one of the most potentially harmful state alcohol distribution regulations are “post and hold laws (“PH laws”). PH laws require that alcohol distributors share future prices with rivals by “posting” them in advance, and then “hold” these prices for a specified period of time. Economic theory would suggest that PH laws reduce unilateral incentives for distributors to reduce prices and may facilitate tacit or explicit collusion, both to the detriment of consumers. Consistent with economic theory, we show that the PH laws reduce consumption by 2-8 percent. We also test whether, by reducing consumption, PH laws provide offsetting societal benefits in the form of reducing drunk driving accidents and underage drinking. We find no measurable relationship between PH laws and these social harms. These results suggest a socially beneficial

role for antitrust challenges to PH laws and similar anticompetitive state regulation. If states wish to reduce the social ills associated with drinking, our results also suggest that directly targeting social harms with zero tolerance laws and lower drunk driving thresholds are superior policy instruments to PH laws.

Full paper available at <https://www.ftc.gov/reports/state-regulation-alcohol-distribution-effects-post-hold-laws-consumption-social-harms>

FTC Staff Comment to the Hon. Alice H. Peisch, Massachusetts House of Representatives, Concerning Legislation Imposing Additional Restrictions on Malt Beverage Suppliers and Supplier-Wholesaler Relationships, May 2011, available at:

https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-hon-alice-h-peisch-massachusetts-house-representatives-concerning-legislation-imposing-additional-restrictions/1105alcoholwholesaler.pdf

EXHIBIT E

States and Communities in which ABI owns beer distributors:

Alamosa, CO
Colorado Springs, CO
Denver, CO
Durango, CO
Loveland, CO
Los Angeles, CA
Oakland, CA
Pomona, CA
Riverside, CA
San Diego, CA
San Jose, CA
Oahu, HI
Boston, MA
New York, NY
Canton, OH
Oklahoma City, OK
Tulsa, OK
Eugene, OR
Renton, WA

Source: <http://anheuser-busch.com/index.php/our-company/operations/wholesale-operations/>
and Anheuser-Busch InBev corporate filings and press releases.

EXHIBIT F

Beer Industry Trade Press Account of 2015 ABI Incentive Program to Encourage Wholesalers to Reduce Sales of Competing Brands:

AB Unveils 3 Yr “Win Together” Plan Developed With Distribs: A “Turning Point,” Sez João

AB’s Nov 17 “Win Together” meeting with distribs in St Louis is “a turning point in our relationship,” said AB ceo João Castro Neves, adding it’s “a new beginning” and “a chance for change.” Those were João’s opening words as he intro’d 3 yr plan developed jointly with AB wholesaler panel. AB “worked closely” with panel to “build our future together,” João said. During q&a session, several distribs on panel spoke of the depth of give-and-take and how AB and its distribs jointly developed plan in close, collaborative process that involved 12 long working sessions over last 8 mos. Immediate past-panel chairman Don Klopoc described his initial “skepticism” and how he gradually developed “hope that we’ve made a turn in our relationship.”

\$150+ Mil Incremental Spending in 2016 Next yr, AB’s focus will be on four pillars of its commercial strategy: “elevate the core,” “win the high end,” “evolve the innovation model” and “win together attitude.” In effort to “win together,” and execute against those other objectives, AB will bring lotsa incremental resources to bear in 2016. Indeed, AB will spend an incremental \$150 mil on mktg and sales next yr. It will spend an incremental \$100 mil on mktg, including 17% more on core brands, 4% more on innovations and brands like the Ritas, and 20% more against its growing high end. AB will also spend \$50 mil more on sales investments, including doubling its investments on premise. AB has gained share in tuff on-premise channel for last 9 months.

Revamped VAIP; Voluntary Incentive for Performance A major component of the meeting was a new more “inclusive” VAIP, or voluntary Anheuser Busch incentive for performance program. AB is trying to get more “focus” and “performance” on its brands, said veep Bob Tallett. The current VAIP has become “outdated,” AB acknowledged. Only 38% of distribs participate, down from 61% just 3 yrs ago. AB used to fund \$15 mil, but that’s now down to \$7 mil. And the average distrib only gets \$30,000. To get the incentives under old program, a distrib had to be either 100% AB volume or greater than 97% AB volume. That “doesn’t reflect the realities of the marketplace.” Unlike in old 100% share of mind days, the word “exclusive” wasn’t used once.

Broader Reach; Increased Funds Available With the new VAIP, “there is something for everyone,” said João. AB expects that 70% or more of distribs will participate and they will get benefits that average \$200,000. How does it work? The program will be simplified so that wholesalers who qualify will simply get reimbursed from their minimum marketing spend commitments. The value varies per wholesaler. So if a distrib is 98% or greater aligned (A+), it will get 75% reimbursement of its minimum marketing spend on an annual basis. If distrib is “A” level, at 95%, it’s eligible for 50% reimbursement. And even those who are 90% aligned, would still get 10% reimbursement. That 3d level is new.

Relaxed Restrictions; Accommodating Local Craft In addition to those enhanced elements of VAIP, AB tried in several ways to make funds available even to distributors whose portfolios are less than 90% aligned. For distributors who score 850 on AB's Ambassadors of Excellence program, the benefit is a 25% reimbursement of their minimum marketing spend. That's available regardless of % of volume that's AB. Incidentally, CBA brands are aligned and Constellation aligned but only through Jun 2016. AB also will give 50% reimbursement to distributors who have separate sales force for AB brands regardless of alignment. And in concession to importance of small craft at the A+ level, wholesalers can sell all the small craft brewers they want provided they are 15,000 bbls or less or if they only sell beer in 1 state. And they won't be counted against their % of aligned volume.

In another change, wine, spirits, NAs, don't affect a distributor's standing. But selling other brands outside AB territorial footprint disqualifies a distributor from getting any of these incentives. So a number of AB's larger distributors won't get VAIP benefits. A number of others are only 60% or so AB and unlikely to participate. Same for most who sell Constellation after June 2016. Etc. Yet AB did try to craft the VAIP to appeal to a much larger # of distributors.

Facilitating Consolidation AB also implemented several new incentives to facilitate consolidation. It will help finance deals where allowed. It will double the minimum marketing spend investment to consolidating wholesalers for 2 yrs. And at its discretion, it will allow distributors to have equity agreement managers with less than 25% ownership for a period of time.

"Encouraging" New Direction; Resetting the Relationship All of these moves taken together with an improved tone and enhanced dialogue showed AB headed in a new direction. Several distributors called this "encouraging" and "positive" during Q&A at the end. And another e-mailed: "At least they're trying to build a relationship." Privately, some distributors complained of high inventories again, but nobody brought that up during Q&A as if they didn't want to rain on parade. Interestingly, very little said about actual business trends at this meeting. It was more about resetting the relationship, and offering a "framework" that can be built upon through the 3-yr plan. And tho there's still mistrust in the network, and many statements along the lines of "proof will be in the pudding," AB did take an early but significant step in improving its relationships and dialogue with wholesalers through this "Winning Together" platform.

Source: Beer Marketer's Insights, Insights Express, Vol 17, No 185, November 19, 2015.

EXHIBIT G

Two stories from independent media describing A-B's special relationships with certain wholesalers:

The link below is to a good article on the A-B dynamic with its wholesalers written by a St. Louis business reporter who has a solid understanding of A-B:

http://www.stltoday.com/business/local/beer-battle-between-wholesalers-brewers/article_d7985f04-96d5-11e1-920a-001a4bcf6878.html

This link show how Busch family members and former senior executives (who also still hold thousands or even millions of share of Anheuser-Busch InBev stock) are still heavily involved in the wholesale tier:

<http://www.bizjournals.com/stlouis/stories/2008/06/23/story7.html>

Statement
of
Craig Purser
President and CEO
National Beer Wholesalers Association
Before the
Senate Judiciary Subcommittee on Antitrust,
Competition Policy, and Consumer Rights

Ensuring Competition Remains on Tap:
The AB InBev/SABMiller Merger and the State
of Competition in the Beer Industry
Hearing
December 8, 2015

Chairman Lee, Ranking Member Klobuchar and distinguished members of the Subcommittee, on behalf of the nation's independent beer distributors (wholesalers) and their 130,000 employees, thank you for the opportunity to testify today.

I am here to discuss the proposed acquisition of SABMiller (SAB) by Anheuser-Busch InBev (ABI) – the number one and number two brewers in the world – as well as the sale of the MillerCoors joint venture to Molson Coors.

I will provide insight into how these two business deals could have competitive implications for the American independent beer distribution system, today's competitive marketplace and the vast choice and variety of beer available to consumers.

There's no question that America has entered a new golden age for beer, with unprecedented variety and quality offered by more than 4,000 breweries, compared to less than 50 in the 1980s. Sales by craft brewers grew nearly 18 percent in 2014, representing more than 11 percent of the overall beer market. You would be hard pressed to identify another industry that has experienced the same explosive growth in such a relatively short period of time.

But the true winner is the American consumer, who now enjoys an incredibly broad spectrum of innovative, independently produced beer products for every taste.

What makes this consumer choice possible? The evidence points to a robust and competitive system of *independent* distribution which reduces barriers to market for brewers of all sizes, creates a competitive playing field for brewers of all sizes and keeps pricing competitive for consumers.

A critical issue before this Subcommittee, and the full Judiciary Committee, as you consider these transactions is how to preserve America's golden age of beer – which is fueled by the *independent* beer distribution system.

The Proposed Transactions Lead to Further Industry Concentration

Consumer advocates, craft breweries, retailers and independent distributors have expressed concern that ABI's increased leverage and anticompetitive aspects of the proposed MillerCoors divestiture may reduce access to distribution – reducing choice and raising prices for consumers.

One understandable source of this concern is the sheer magnitude of the two transactions being proposed, which cannot be ignored. ABI, the largest brewer in the world, is attempting to acquire SAB, the second largest. Additionally, in the U.S., Molson Coors has agreed to purchase, from ABI, SABMiller's 58 percent stake in the MillerCoors joint venture and the global rights to both Miller and Coors legacy brands. Currently, ABI and the MillerCoors joint venture account for nearly 71 percent of beer sold in the U.S.

If the proposed deal closes, 57 percent of the world's global beer profit would fall within the ABI and SAB combination. By comparison, Heineken, the next largest *global competitor*, is at 11 percent, and Molson Coors, the largest *U.S. competitor* to ABI-SABMiller, would be just under 3 percent of that same global profit pool.¹

The resulting concentration could upset the equilibrium of the current U.S. beer market, which today can be fairly characterized as a "consumer pull" marketplace, where the consumer possesses the power to create market demand for popular beer brands. Through coordination with local retailers and local, independent beer distributors, the market responds to that demand.

The scale and market power being proposed in this merger could lead to a "supplier push" method, where brewers possess the scale and market power to dictate brand choices and beer sales. The most likely way this happens is if the large brewers exert pressure on independent distributors not to carry rival brands and on retailers to design their shelves to disfavor or remove rival brands. Just a few days ago, the *Wall Street Journal* reported on distributor incentive deals that could greatly disadvantage craft and other brewers.

The Role of Independent Beer Distributors in the American Marketplace

In particular, these transactions could disrupt a critical component to the success of the industry: the combination of an open and independent distribution system with a state-based regulatory system that has worked so well for so many over the years.

The U.S. beer market is thriving because of a robust and competitive system of independent distribution that reduces barriers to entry, reduces brewer and consumer costs, and fosters the explosion of choice and variety desired by consumers.

¹ <http://www.businessinsider.com/sabmiller-ab-inbev-would-dominate-the-beer-market-2015-9>

The Justice Department noted in its most recent beer merger review that, “Effective distribution is important for a brewer to be competitive in the beer industry.”²

A study by the Boston Consulting Group [attachment] underscores that the current system of beer distribution in the U.S. is “open, freely competitive, and driven by consumer choice.”

In the most general terms, independent beer distributors purchase beer from a variety of breweries and then sell and deliver beer products to local, licensed retail accounts.³ Getting a new beer to market is something that beer distributors do every day with tremendous success.

In the current marketplace, independent beer distributors build brands by working with their licensed retail customers to meet consumer demand for choice and variety in products ranging from imported beer from around the world to new American craft beers and other malt-based products and ciders.

Beer distributors provide access to capital and scale for brewers and importers as they can purchase larger quantities of product and also offer warehousing, marketing, promotion, sales and delivery of a heavy, climate-sensitive, perishable product. In addition to these economies of scale, beer distributors also invest in labor, transportation, energy, product integrity and take on other relevant responsibilities related to the selling and transporting of beer.

Independent beer distributors also invest considerable time, energy and resources in developing relationships with both large and small “on-premise” retailers (like restaurants and entertainment venues) and “off-premise” retailers (like grocery stores and convenience stores) in their markets.

² <http://www.justice.gov/atr/case-document/file/486551/download>

³ Alcohol is regulated by the states under the 21st Amendment. As a result of this regulation most states have set up a three tier distribution of beer where the brewery sells to a local beer distributors who sells it to local, state licensed alcohol retailers. The United States Supreme Court has repeatedly upheld this system: “States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system. We have previously recognized that the three-tier system itself is unquestionably legitimate.” *Granholm v. Heald*, 544 U.S. 460 (2005)

These distributor investments and relationships are an intangible value to brewers of all sizes by allowing them to receive the market attention that is necessary to compete, prosper and grow.

The photographs below illustrate the value of the existing system of beer distribution by highlighting the marked distinction between the consumer choice and variety in the beer industry and the state of affairs in the soft drink industry. As reflected in the “on-premise” soft drink photograph, a consumer in a restaurant usually has access to either Coca-Cola or Pepsi products, but not both, while a beer consumer in a restaurant or bar is typically met with a wide variety of brand choices on tap or on the menu.

The same holds true with an “off-premise” retailer account, where the soft drink aisle reflects Coca-Cola products and Pepsi products, whereas often hundreds of brands are found on the beer aisle. This variety is made possible by the independent sales and logistics work of local distributors.

On-premise



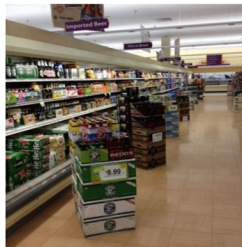
On-premise



Off-premise



Off-premise



The result of this open and independent system of distribution has been a beer industry renaissance – the new golden age – where breweries enjoy unrivaled access to market and consumers enjoy unprecedented choice and variety.

ABI/SAB Acquisition: Maintaining Independent Distribution & Consumer Choice

One of several threats the transactions pose to this successful system relates to ABI's relationships with distributors. Concerns have been raised that ABI is seeking to create competitive roadblocks by trying to impose exclusivity, either explicitly or coercively by discouraging its distributors from doing business with competing brands or raising their distribution costs.

Critics have suggested that ABI is pursuing two methods for preventing craft or imported beer brands from getting on a beer distributor's truck and achieving the same economy-of-scale advantages that ABI and MillerCoors enjoy.

First, ABI is purchasing independent beer distributors at such a rapid rate that it is currently the fastest growing beer distributor in the country. Since 2012, ABI has purchased 12 independent distributors in nine states, and ABI-owned distributors are in states that currently represent more than 30 percent of the American beer market. These brewery-owned distribution operations (as opposed to *independent* distributors) limit the access to market for other beer suppliers, particularly independent craft brewers and importers, by imposing limitations on their options for distribution.

Recently, ABI has recognized the competitive concerns raised by these acquisitions. ABI has made several public statements about not increasing its ownership of distribution and acquisition of independent distributors. Several media accounts at the time of the merger announcement quoted North American Zone President Joao Castro-Neves as being comfortable with ABI's current ownership of "around 10 percent" of distribution volume in the U.S. However, the details and nature of this statement remain undetermined.

Concerned parties also note ABI has been purchasing smaller competitors in the craft segment. Since 2014, ABI has purchased five popular craft breweries: 10 Barrel Brewing Co., Blue Point Brewing Co., Elysian Brewing Company, Golden Road Brewing and Virtue Cider. This followed ABI's purchase of Goose Island Brewery in 2011. ABI's purchases of craft breweries have included retail privileges in the form of taprooms, brewpubs and tasting rooms. Many of these

retail privileges were granted as “tied-house” exemptions to help smaller brewers get established, yet are now extending ABI’s market power.

ABI’s justification for owning distributors is to better serve the market, but competitors argue that its purchase of competitors, combined with its distributor ownership, allow ABI to favor its own brands – craft labels and otherwise – compromising competition in the marketplace.

For obvious reasons, most brewers prefer to be represented by a distribution operation that is independent and not owned by a competitor; ABI-owned distribution operations focus on selling ABI-owned brands. In addition, it’s been charged that ABI pressures its independent distributors to sell its own brands, such as 10 Barrel, rather than independent, non-ABI products such as Deschutes, Yuengling, Dogfish Head or other growing beers.

Additionally, industry sources charge ABI with various “carrot-and-stick” business tactics that stifle the growth and future business opportunities of an ABI distributor that agrees to sell non-ABI brands or brands that ABI does not approve. These practices can increase costs for brewers and importers who then are forced to find less efficient distribution alternatives. That, in turn, can result in higher prices for consumers.

These practices were the subject of the Department of Justice’s 2013 lawsuit to block the planned merger of ABI and Grupo Modelo. ABI and Modelo’s original proposal called for a third party, Constellation Beer Brands, to hold the importing rights for a period of 10 years. This was an attempt to address market share concerns; at the time, Modelo brands represented only 4 percent of the U.S. market, significantly less than the combined market share reflected by the current merger proposal.

The DOJ investigation in the Modelo case reinforced concerns related to horizontal issues (i.e. increased direct market shares) for Constellation as well as efforts at that time by ABI to use vertical influence (i.e. influence at the distribution and retail levels) to reduce competition.

To resolve the DOJ litigation, the parties agreed to permanently sell the U.S. rights to Modelo, including its newest brewery in Mexico, to Constellation Beer Division. Additionally, out of concern that ABI would use distribution to curb competition by reducing access to market for other brands, the final order also prohibited ABI from discriminating against any distributor that carries the Modelo

brands for three years. Specifically, when exercising its contractual right to approve or disapprove a proposed sale of a distributor operation, ABI is prohibited from weighing a distributor's Modelo distribution rights as an "adverse factor." The DOJ also increased oversight of ABI acquisitions of independent beer distributors by substantially lowering the Hart-Scott-Rodino reporting thresholds for new transactions. Finally, the DOJ required that both a divestiture trustee and a monitoring trustee be appointed to oversee the competitive impact and progress of the deal, demonstrating the DOJ's continuing interest in ensuring independence between the parties.

Current Investigations of Alleged Anticompetitive Practices

Given the potential negative impact on competition in the beer marketplace and on consumers, various ABI acquisitions and practices are currently being investigated by the California attorney general as well as the Department of Justice.

According to numerous [media accounts](#), these investigations include claims that ABI penalizes independent distributors that carry non-ABI brands or puts pressure on those distributors to sever existing relationships with competing brewers. DOJ also is investigating non-compliance with the final order of the Modelo case.

Potential Control of Commodity Access and Cost

An additional concern among many brewers and importers is that ABI's increased global market power could position the new, larger company to have increased control over critical commodities markets worldwide. The acquisition could lead to increased market pressure for essential materials like hops, barley, rice and corn, as well as the aluminum and glass commodities, resulting in higher prices for consumers. A brewer with a relationship with ABI recently acknowledged a current hop shortage as well as strains on global commodities used to make beer.⁴

Limitations of the MillerCoors Joint Venture Divestiture

Many in the industry also have cast doubt on ABI's assertions that the proposed sale of SABMiller's 58 percent stake in the MillerCoors joint venture would alleviate any competitive problems. Recent studies have shown that mergers often fail to deliver true consumer benefits, and the Modelo deal underscored the

⁴ <http://www.brewsnews.com.au/2015/11/malts-time-to-shine-says-brewer/>

limitations even of judicial intervention to reach a reasonable remedy that included vertical restraints. The law requires that any merger remedy “fully restore competition” in order to permit an otherwise anticompetitive merger to go forward. A remedy must be simple to administer and prevent any future anticompetitive conduct.

Several reasons have been raised explaining why the divestiture of the joint venture by itself may fail to serve as an effective remedy.

1. The New Molson Coors’ Potential Weakness as a Competitor

It has been suggested that MillerCoors may be a less effective U.S. competitor when owned by Molson Coors, as the smaller second-largest brewer in the U.S. may be at a significant disadvantage in areas such as marketing, distribution, cost of goods produced and other scale-related business issues.

SABMiller currently is a major force as part of an international system that provides substantial economies of scale and a structure fostering long-term investment and innovation. The combined ABI-SABMiller entity would control 58 percent of the global profit pool, Molson Coors would have only 2.9 percent. The new number one brewer would be 20 times more profitable than Molson Coors, which will be paying off debt from a few markets. Additionally, important details about the transaction between ABI and Molson Coors remain unknown with regard to the specific beers imported into the U.S. by MillerCoors, such as the identity of the brands, country of production and how independent production will be maintained in the future, as was required in the ABI-Modelo merger.

2. Concerns to Independent Distribution

In addition to the competitive threats already discussed to independent distribution on the part of an even larger ABI, the industry will need assurance that Molson Coors will not replicate ABI’s actions to compromise distributor independence either through vertical integration (brewery ownership of distribution) or programs that would restrict independent distributors from carrying the beers of other brewers.

3. Lack of Protection for Innovation

Independent distribution has been vital to the explosion of innovation in the market. With 4,000 breweries in the U.S. and more opening on a daily basis, a

single entity in the market with significantly disproportionate power may stifle further growth and innovation in a dynamic and robust U.S. beer industry.

4. Lack of Protection of Consumer Choice and Price

Academic studies have reported that the past beer mergers have resulted in higher prices to the consumer. More power at the top levels of the beer industry heightens this concern. Due to its increased global market power, critics of the merger have charged that ABI will be in an even more dominant position to continue to increase prices and stifle choice. Molson Coors could follow in the wake of any price increase instituted by ABI.

5. Failure to Address Commodity Access and Cost

The proposed divestiture in and of itself will not address the concerns that ABI's increased global market power will allow it to control access to commodities and products needed in the U.S. beer market.

What Should Congress and the Department of Justice Do?

For reasons that have been stated above, regulators and policymakers should ensure that the American market renaissance – and in particular, the independent distribution system that enabled it – is not adversely affected by an increase in global market power created by a combination of the two largest brewers.

To achieve that goal, we encourage this Subcommittee and the full Committee to conduct a thoughtful and careful review of the proposed transactions, with the objectives of preventing anticompetitive conduct in the beer market and providing insight and information to the Department of Justice. Likewise, the DOJ should conduct a thorough document review, including making available those documents and materials that have not yet been made available to the public.

Specifically, the Department of Justice should consider the following:

1. Restrictions on Termination of Beer Distributors by ABI, Molson Coors, MillerCoors Joint Venture, or NEWCO (successor entity)

With the number of breweries in America reaching historic levels, not only is the need for strong, independent distributors of scale greater than ever, but so are the economic incentives to make it difficult for new entrants to access the open

distribution system. DOJ should seek to ensure that the successful American system of open and independent distribution is not undermined by efforts on the part of ABI, Molson Coors, or their successor entities to use these proposed transactions to reshuffle or eliminate distributors. The parties have asserted that this merger would have no effect on the American marketplace. Ensuring that the parties cannot utilize this global transaction to make American distribution changes as a statement under oath, as part of a consent decree or final order would provide additional stability in the marketplace.

2. Vertical Restraints on ABI-Owned Distribution and Retail Expansion

The Department of Justice has acknowledged the importance of an independent distribution system to a robust beer marketplace, and already is investigating whether ABI's increasingly aggressive efforts to acquire distribution operations is being implemented to foreclose their competitors' distribution options and limit their access to market. Having identified concerns with ABI-owned distribution in the Grupo Modelo/Constellation transaction, the DOJ should consider whether various restraints on vertical integration are needed to support an open and independent distribution system including:

Limitation of Ownership of ABI Distribution Assets

ABI has recently indicated a willingness to sell some assets, including Peroni and Grolsch, to satisfy concerns in the European Union. In a similar fashion, exiting ownership of distribution should be considered as a remedy in the U.S. Limiting ownership of distributor operations by ABI could help maintain access to market as well as scale for other brewers while promoting competition for all market participants.

The DOJ put provisions into the ABI-Modelo order to require more oversight and notice for ABI expansion of distribution via a lower Hart-Scott-Rodino filing threshold. The DOJ should consider going further and preventing further distributor purchases by ABI.

Prevention of Expansion into Retail

ABI's recent purchases of craft breweries have included retail privileges in the form of taprooms, brewpubs, and tasting rooms. As a result the power of ABI reaches into greater levels of market penetration when the consumer facing aspect of beer sales is also controlled by the ABI.

3. Prevention of Exclusivity Mandates

The proposed transactions represent an opportunity for DOJ and Congress to further consider the effect of exclusivity mandates on the marketplace and consumers and whether their use by a dominant competitor should be allowed to derail the goals of the other breweries and the system that has effectively served the consumer, the marketplace, brewers large and small, importers, distributors and retailers.

4. Prohibiting Interference in Distributors' Sales of Competing Brands

The Justice Department should review business practices that penalize independent distributors from carrying different beer companies' beer and thereby threaten their role in a healthy beer marketplace.

5. Disclosure of All Aspects of the Proposed Acquisition, Including a Potential Divestiture of the MillerCoors Joint Venture

Important questions remain regarding the future of brands, not yet revealed or identified, that are currently sold by distributors in the U.S. For example, Exhibit 3 of the agreement between Molson Coors and ABI has been redacted. Policymakers, regulators and the public should know the specific impact of the proposed deal on all beer brands that will be affected.

Conclusion

Any time the number one and number two global market leaders in any industry combine, it is incumbent on policymakers to ask questions and seek assurances for adequate protections for the marketplace and consumers.

Consumer advocates, craft breweries, independent beer distributors, retailers and others have expressed concern that ABI's proposed acquisition of SABMiller could increase ABI's leverage on the American beer industry. Additionally, questions exist about Molson Coors' plans for distribution in the U.S. and whether ABI or Molson Coors could compromise competition by reducing access to market for other brewers and importers, controlling more distribution, and impacting consumers who may have less choice and pay higher prices as a result of this combination.

Congress and the Department of Justice are encouraged to consider various vertical restraints, such as a requirement that ABI sell some or all of the ABI-owned distribution operations; prohibitions on additional ownership of distribution; and a prohibition against interference with an independent distributor's efforts to sell competing brands.

Maintaining the strength and integrity of the existing open and independent system of beer distribution – that provides access to market for brewers large and small; generates enormous consumer choice; balances the cost to consumers; and generates robust marketplace competition – should be the priority to ensure that America's golden age of beer continues to generate excitement across the country.

On behalf of the nation's 133,000 beer distribution employees, thank you for your interest in the role of independent beer distributors and for your efforts to examine the potential effects these historic transactions could have on brewers, distributors, the marketplace and the consumer.

For Small and Large Brewers, the U.S. Market Is Open

JUNE 19, 2014 by Neil Houghton, Jr. and Marin Gjaja

• IN THIS ARTICLE

- Demand for craft beers, and the rise of small brewers, is fundamentally driven by consumer preference.
- The open distribution system for beer in the U.S. has helped small brewers gain access to the market because they do not have to build their own networks.
- Given the open distribution system, both small and large brewers must compete for consumers in order to survive.

The U.S. beer market is open, freely competitive, and driven by consumer choice. Brewers who capture the hearts of consumers are the most likely to succeed. Those who miss shifts in consumer identities, norms, attitudes, and tastes will suffer.

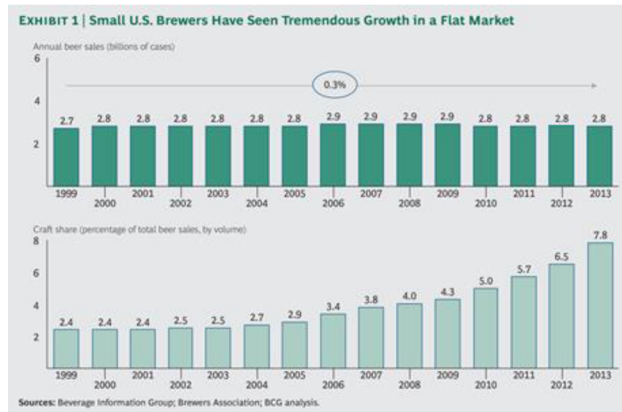
The success of small brewers making craft beers is proof of these points. Despite fears that small brewers can't compete against the scale and reach of large, mass-market brewers, the opposite has proved to be true. The popularity of craft beers supplied by small brewers has exploded, rising on the strength of consumer demand. Ironically, small brewers' ability to reach more drinkers has been enabled by the open U.S. beer-distribution system—a system that was once thought to lock out smaller players.

The economics of the U.S. beer business conveys significant advantages to those with scale. But, as it turns out, subscale small brewers are also (unexpectedly) the beneficiaries of the advantages afforded major domestic brewers. The reason: they can leverage an effective route-to-market distribution system that was built by distributors and larger brewers over the decades. This open distribution system enables small brewers to avoid significant, if not prohibitive, costs to entry, while also gaining deep access to large and small retailers.

Our findings have implications for all U.S. brewers. All brewers need to attract consumers, of course. Even incumbents with strong distribution networks are not insulated from the changing tastes and demands of consumers and retailers. Small brewers seeking to break into the market must recognize that they ultimately depend on consumer loyalty and that the distribution costs are not the impediment they seem to think they are. In fact, thanks to piggybacking on independent distribution networks supported largely by the economics of large domestic and import brewers, small brewers avoid much higher distribution costs. And regulators need not worry about the barriers to entry for market newcomers given their recent success and ability to leverage the industry distribution system.

The Rise of Small Brewers

Consumption of imported and domestic beer in the U.S. has remained relatively flat since 1999. Total U.S. sales volumes rose just 0.3 percent year-over-year over the full period, with a mild decline during the past five years. (See Exhibit 1.)



Within that market, the U.S. craft beer segment has seen tremendous growth. According to the Brewers Association, craft beer production increased more than 80 percent in just the past five years, from 117 million cases in 2008 to 215 million cases in 2013. During that same period, small brewers' volume share of the overall beer market rose from 4.0 percent to 7.8 percent. In addition, according to the National Beer Wholesalers Association, the total number of craft breweries in the U.S. has now reached historic levels—growing from 350 in 1991, to 1,499 in 2001, to more than 2,500 today.

Clearly, consumer preferences have been the main engine driving this growth. Craft beers are riding a wave in which consumers are “trading up” across all consumer categories to brands and products that are perceived as having strong authenticity and higher quality, and as being more relevant to specific consumers' attitudes, values, and lifestyle. This preference for trading up persisted even during the most recent recession.

The Dynamics of Distribution

Demand without distribution, of course, would leave small brewers without sales. Thanks to the open structure of the three-tier distribution system, small brewers can satisfy consumer demand.

The Boston Consulting Group has studied direct store delivery (DSD) across multiple categories for more than 20 years, often in conjunction with the Grocery Manufacturers Association. We have consistently seen that in U.S. categories with supplier-owned DSD systems—such as ice cream, soda, and snacks—suppliers enjoy significant benefits of local scale. And large players have multiple advantages, such as being able to make more frequent

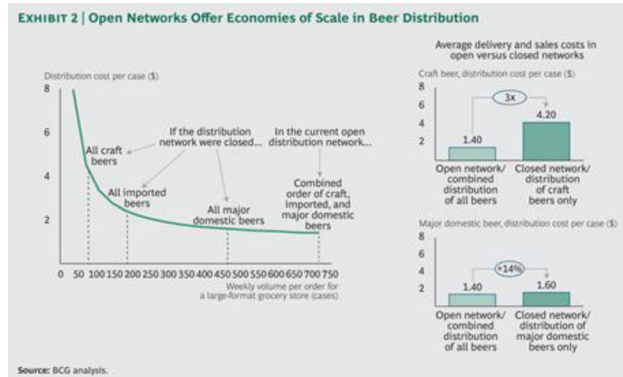
deliveries, reach smaller stores, introduce new products more quickly, and set up in-store displays, to name just a few. All these benefits combine into significant competitive advantage for the larger players in DSD categories. When it comes to beer, however, distributors are independent from brewers. A brewery can demand certain quality standards from its distributors, but it cannot demand absolute product loyalty. In fact, distributors are more than independent—they have certain franchise rights in perpetuity, protected by the state, for the brands they distribute. These protections prevent breweries from using their scale to extract advantages from the distribution system the way that DSD suppliers do.

At the same time, the independence of the distributors creates the opportunity for smaller brewers to "get on trucks" and achieve distribution at a much lower cost per unit than they would otherwise have to pay. These distribution costs are considerable. A recent economic impact report from the National Beer Wholesalers Association estimates that the cost of wages and salaries associated with operating the entire U.S. beer distribution system is approximately \$10 billion in annual expenses. In total, U.S. beer distributors employ more than 130,000 full-time equivalents and service more than 500,000 retail outlets.

The Value of Open Distribution

The ability of small brewers to gain access to the marketplace through independent distributors is a major reason that small brewers are able to exist at all. Considering that only the top ten small brewers generate more than \$20 million in revenues annually, according to the Craft Brew Alliance, building a stand-alone distribution system would be cost prohibitive. Without independent distributors, most small brewers would have to cope with far less access to the market and consumers, and far lower growth rates.

How valuable is this access, economically speaking? To illustrate the economics, we applied BCG's proprietary DSD economic modeling approach to the costs of distributing beer to large-format grocery stores. (See Exhibit 2.) Using an economic model of the costs of distributing and servicing a set of like stores, we estimated the costs for different types of breweries under today's open distribution system. Then we compared that result to what the costs would be if the distribution system were not open—that is, a system that restricted the types of products permitted on trucks to those produced or sanctioned by a major brewer.



We found that in today's open distribution system, the average delivery and sales cost for a distributor supplying craft beers, imported beers, and a major national beer company's portfolio to a large-format grocery store is \$1.40 a case. If the major national brewer were to build a dedicated closed distribution system, its delivery and sales costs would only increase 14 percent—from \$1.40 per case to \$1.60 per case.

On the other hand, if craft beer suppliers did not have the benefits of scale afforded by combined distribution of their craft beers with imported beers and the domestic beers of a large national brewer, their distribution costs would be triple what they are today—that is, \$4.20 per case. And that's not even including costs such as warehousing, administration, and distributor margin. Given the moderate margins of small brewers, this cost disadvantage would likely get passed through to the consumer—making many craft beers far more expensive and small breweries less competitive.

Ongoing Challenges

This is not to say that all is rosy for small brewers. Open marketplaces, in which consumer choice is king, can be brutal. Small brewers are challenged when their own success invites more entrants. Most consumers aren't looking for the fifteenth version of a strong-tasting hoppy India pale ale. In fact, it is not uncommon for sales to drop off precipitously after the arrival of the first few brands in a particular style or position. This means that most of the me-too craft products deliver low velocity (while taking up valuable shelf space) at retail outlets and low revenues at bars. Once the excitement and newness wears off, retailers, restaurants, and bars may cut their craft beer offerings. Further, with such an abundance of craft beer options, me-too small brewers face challenges engaging retailers and distributors. Retailers don't want to carry what distributors don't carry—and vice versa. Without a differentiated position, small brewers will find it hard to create the coordinated momentum required to break through. Distributors are also increasingly challenged by the complexity and costs inherent in handling low-performing items that don't have a meaningful consumer following. In 2007, the average beer distributor carried 262 different SKUs, according to the National Beer Wholesalers Association; by 2013, the average beer distributor carried 657 SKUs.

Beer distributors are starting to be more demanding in terms of what they bring into their warehouses, add to their computer systems, and support in the marketplace.

The Implications

Our view is that success in the beer industry still rests fundamentally with consumer demand. Further, the current open structure of the three-tier distribution system has been a fundamental enabler of growth in the craft beer segment.

Several other key findings also emerged for major players in the industry:

Regulators of the beer industry, which is one of the most highly regulated industries in the U.S., should recognize that the marketplace is working. And they should be skeptical of complaints (legal and otherwise) that the marketplace favors only large players.

Large brewers are also at the mercy of the consumer and retailer. With all the options available, if the brands in large brewers' sizable portfolios don't hit the mark perfectly with today's consumer, sales will decline. History is replete with examples of once-large brands and brewers that have fallen by the wayside because they couldn't keep up with the market.

Small brewers must build their brands in order to generate sufficient demand to win (and retain) the space they occupy in stores and justify the complexity they add to the work of retailers and distributors. Doing so requires strengthening local demand and also offering products that are differentiated enough to cut through the clutter and compelling enough to convert trial drinkers to loyal ones. If they can do that, small brewers—aided by an open distribution system—will continue to enjoy success.

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**Written Testimony of J. Wilson
Minister of Iowa Beer
Iowa Brewers Guild**

**United States Senate Committee on the Judiciary
Subcommittee on Antitrust, Competitive Policy, and Consumer Rights**

**“Ensuring Competition Remains on Tap:
The ABInBev/SABMiller Merger and the State
Of Competition in the Beer Industry”**

December 8, 2015

On behalf of the Iowa Brewers Guild, the 54-member strong trade organization of commercial breweries in Iowa, I would like to express my concern over the proposed Anheuser-Busch InBev (ABI) acquisition of SABMiller that is currently under the review of the Senate Judiciary Committee's Subcommittee on Antitrust, Competitive Policy, and Consumer Rights.

Our disquiet is twofold. If this \$106 billion dollar deal—the largest brewery merger of all time—is allowed to proceed, growing craft breweries in Iowa and across the United States fear difficulty with access to both market and raw materials.

A licensed and regulated alcohol beverage distribution system was designed following the repeal of Prohibition to curtail overly aggressive sales and marketing practices. Our guild members have created new Iowa brands and helped the U.S. craft beer industry grow from zero to 11% of the market (and over 4,000 breweries) since the 1970s, and access to market via an independent wholesale tier has been and will continue to be absolutely vital to the success of the craft beer industry.

From 1961 until 1985, Iowa only possessed one brewery; today, there are roughly 60 breweries creating jobs and driving tourism in our state. While the Iowa brewing scene has grown in recent years, our 60 breweries only possess around one percent of Iowa's market share while ABI possesses nearly 60 percent of the Iowa beer market. Nationwide, craft beer now represents 11% of the market, while in Iowa the total craft beer share (which includes out-of-state craft beers) is around six percent.

Our colleagues in the wholesale tier in Iowa and around the country have embraced the diversity that craft beer offers their portfolios in a time when palates are shifting, and consumer knowledge and demand are asking that these beers be made available to them. Like many brewery owners I have spoken to, independent wholesalers have also expressed their apprehension about the power a larger ABI would hold over the market and especially the distribution tier.

Market Access

With deep pockets already allowing ABI to hold sway over many wholesalers and economies of scale that allow no craft brewer to compete on price or marketing incentive, the amount of influence a combined company of this magnitude would have over market access is particularly startling. This is especially the case given ABI's past actions toward vertical integration in countries like Brazil and current efforts to procure wholesalers here in the U.S.

Currently the United States' fastest growing wholesaler, ABI has acquired 12 independent distributors in nine states since 2012. (California, Colorado, Hawaii, Massachusetts, New York, Ohio, Oklahoma, Oregon, and Washington). In addition, according to a June 2008 article in the St. Louis Business Journal, Busch family members personally own additional ABI distributorships in Florida, Texas, and Missouri. One of the three Florida wholesalers boasts 74% market share, while Krey Distributing

Company maintains 72% market share in Missouri's St. Charles and Lincoln counties. The latter made headlines in the St. Louis Post-Dispatch in March of 2013 when it dropped six craft breweries from its portfolio—the craft brands had come into Krey hands a year prior when Krey took control of the Grey Eagle and Lohr distributorships in a so-called “alignment” deal.

While Krey asserted that these brands were underperforming, Wolfbrau House of Beer owner Ryan Wolf indicated in the article that Krey wouldn't deliver the craft beers he ordered. “I haven't had a single case of 2nd Shift [Brewing Company's beers] in here in almost a year despite the fact that I ordered three varieties every week, week after week, for six months,” he told the Post-Dispatch. “I eventually gave up.”

Due to my proximity and friendship with the owners of Nebraska Brewing Company (one of the affected breweries), I'm privy to how their situation was handled—poorly—and at this time, they no longer sell their award-winning beers in the St. Louis market.

Ninkasi Brewing Company of Eugene, Oregon is another example of a craft producer who saw their sales plummet when ABI took over two of their distributors. Ninkasi managed to correct the problem by signing on with new wholesalers, but franchise laws make this type of move both difficult and expensive.

Washington state's beer market has been hit especially hard by ABI's aggressive tactics after it acquired Anheuser-Busch Sales of Washington (ABSW). ABSW once had a vibrant craft portfolio in one of the nation's lowest market share areas for ABI products, Seattle, but under its new ownership today, that portfolio has been eroded of virtually all non-ABI-owned craft beer producers, as well as larger players like Corona.

According to Heather McClung, the Washington Brewers Guild board president, ABSW is alleged to have shut out competition through (an illegal) paid “alliance” with a major entertainment group to ensure that only ABI beers or ABI-sanctioned beers be served at the majority of concert venues in greater Seattle, while a (legal) paid sponsorship of the football stadium has resulted in allegedly (illegal) “undue influence” in the selection of beers offered at the stadium.

McClung indicated to me that ABSW's aggressive tactics have grown so egregious that they have now drawn the attention of and an investigation by the Washington State Liquor and Cannabis Board.

Truly independent wholesalers have taken notice of the rise of the craft beer segment and have worked to shed exclusivity agreements with ABI, and to partner with craft breweries on distribution. While wholesalers profit on ABI and SABMiller brands by selling high volume, they have discovered that diversifying their portfolio with craft brands helps them to capture income from higher profit margins. As National Beer Wholesalers Association (NBWA) Senior Vice President Paul Pisana mentioned to me last week: “They [ABI] are not buying distributors to sell more craft beer. Whereas independent distributors are trying to sell more craft beer.”

Just as my organization has concerns about this buyout and the aggressive behavior against which our licensed and regulated distribution system was put in place to protect, so do wholesalers around the country.

In Iowa, the executive committee of the Iowa Wholesale Beer Distributors Association (IWBDAs) allowed me to relay their message to this committee:

"The primary mission of the IWBDAs is to advocate for Iowa's independent beer distributors and Iowa's three-tier system of alcohol distribution, which has provided market access, wide distribution, and exceptional promotion of domestic, import, and craft beer in Iowa and across the country.

IWBDAs is proud of the sustained growth of beer in Iowa and the incredible beer selection available to Iowa consumers.

Therefore, IWBDAs urges state and federal officials to thoroughly review any consolidation that may impact the Iowa and U.S. beer market for production, distribution, and retail sale. Exceptions to the three-tier system should be resisted, and any approval of consolidations should require assurances that the independence of distributors will be maintained in order to ensure market access, fair promotion, and responsible sale of beer in Iowa."

In addition to your committee's investigation into this proposed purchase, state regulators in California are examining ABI's announcement in September that it was purchasing two wholesalers in San Jose and Oakland. And just last week, I was contacted by the Iowa Attorney General's office, as they are also scrutinizing *this* proposal's impact within our state.

The IBG is pleased to see this additional oversight, as we've seen that the "independent" middle tier of the three-tier system isn't always fully independent when it comes to large and dominant suppliers such as ABI.

Raw Materials

While market access is an ongoing battle that small craft brewers have infiltrated by offering a wide range of locally-produced, flavor-forward products, the ability to produce or package them could soon be hindered if the merger is allowed. This megabrewery would have an even greater impact on brewing inputs such as malted barley, hops, and packaging materials like bottles and cans.

If this buyout proceeds, ABI's profits from 56% of the global beer market could allow ABI to buy up an entire year's hop crop (or simply a key varietal or two) and kill the craft sector in one fell swoop. This could actually happen inadvertently if ABI were to significantly increase production of a hop-forward beer such as Goose Island IPA. ABI breweries such as Craft Brew Alliance's (CBA) family of Widmer Brothers Brewing

Company, Redhook Brewery, and Kona Brewing Company are already experiencing difficulty in sourcing necessary hop quantities for the beers they produce.

"We've had contracts for years on Simcoe, and that hop [variety is] becoming wildly difficult for us to get, so some recipes are going to have to change," said CBA Head of Innovation Brewing Ben Dobler, in an Australian Brews News article published on November 25 of this year.

While malt production can easily be increased, it is a costly per-acre investment (and three years for the hops to reach maturity) to establish new hop acreage. This year, we saw a 52.4% increase in hop acres harvested over 2012 numbers, but the rapid growth of the industry, the time it takes for the acreage to mature, weather variables for this agricultural product, and the fact that craft brewers use approximately 10 times more hops compared to industrial lagers primarily produced by ABI and SABMiller, the future of hop supplies for beer are tenuous without an aggressive player seeking to wipe out a growing sector of the market.

In addition to the ingredients used in making beer, small brewers face additional raw material access issues, and, unfortunately, this is nothing new. Decades before our present craft brewing industry existed, small brewers collaborated in the interest of procuring raw materials. Way back in 1942, the Small Brewers Committee, a precursor to the Brewers Association of America, met for the first time in Chicago to discuss the raw materials supply and other common concerns. One of the earliest issues the committee fought for was for access to tin crowns to seal beer bottles.

Seventy-three years later, similar worries exist, as many small brewers have struggled to maintain a supply of aluminum cans for packaging their product.

As the craft brewing industry grows in Iowa, (a recent economic impact study has projected that it will triple in five years), Iowa breweries may run into problems as they look to grow their businesses if this acquisition proceeds. As an organization, the Iowa Brewers Guild values healthy competition, but a merger of this magnitude could impact supply access and threaten the independent wholesaler tier of the system, and I don't think that's an accident. There's a difference between a snowball and an avalanche, and if this merger proceeds, it could represent the snowball thrown from atop the mountain that leaves destruction in its wake further down the mountainside.

With the craft brewing industry representing true job and sales growth in an otherwise flat sector, I'd like to urge this committee to protect the United States' craft brewing industry, the jobs it has created, and the economic growth it has brought to Main Streets across Iowa and the rest of the United States by recommending aggressive antitrust oversight of the ABI acquisition by the Department of Justice.

**Carlos Brito's Responses on Behalf of AB InBev to
Questions for the Record from Senator Thom Tillis**

Question 1:

At several points in the hearing, it was noted that this deal is more about other countries and that the United States beer market will remain relatively unchanged. However, representatives of the distributor sector are concerned that the merger will drastically impact their industry, as the new entity will control the distribution of a significantly greater volume of product than what either entity currently controls. Will this not result in changes to the beer market within the United States?

Response to Question 1

Anheuser-Busch supports a strong, independent distribution tier and values our independent distributors. Any concerns expressed to your office regarding changes to our company's distribution, total volume of product sold in the U.S. or any other changes to the marketplace as a result of this transaction are simply misplaced and not grounded in fact.

AB InBev will not acquire any new brands in the U.S., and its production of beer, sales volume and market share in the U.S. change will also not change as a result of this transaction. AB InBev will not acquire any rights to distribute any additional products in the U.S., nor will we acquire any new distributorships as result of this transaction.

Indeed, the *only* change to the U.S. beer market resulting from this transaction is that the MillerCoors joint venture will be solely owned by Molson Coors. The CEO of Molson Coors testified at the hearing that he expects this will make MillerCoors a more efficient and effective competitor in the U.S.

Question 2:

At present, do you have any expectation that the entity will add wholly-owned distributorships?

Response to Question 2

No, Anheuser-Busch will not acquire any new distributorships as a result of this transaction. In the future Anheuser-Busch may, under the appropriate circumstances, consider an acquisition of a distributorship that is for sale, just as it may under certain circumstances consider divesting part or all of a distributorship that it already owns. For example, we recently announced the divestiture of company-owned territories in Colorado and New Jersey to independent Anheuser-Busch wholesalers. However, in this regard two things are certain. First, we will abide by our commitment to distribute approximately 90 percent of our volume through independent wholesalers and approximately ten percent of our volume through our wholly owned distributorships. Second, any future decision to acquire or divest a distributorship will have nothing whatsoever to do with this transaction.

Question 3:

Concerns have been raised about ABI's business incentive programs that could stifle the growth and future business opportunities of an ABI distributor that agrees to sell non-ABI brands or brands that ABI does not otherwise approve. In the alternative, under the same incentive programs, a distributor that agrees to sell exclusively ABI products – thereby reducing avenues to market for other brewers and undermining a competitive marketplace – is rewarded in a variety of ways that serve to help that distributor grow its business. Both of these business practices arguably work to disadvantage competing brands, including craft beers and imports, undermining competition in the marketplace and restricting consumer access and choice.

Does ABI currently maintain or is ABI or the successor company considering or planning for the implementation of a distributor incentive program that will either directly or indirectly impact an independent ABI distributor's decision to represent and sell non-ABI brands, including craft beers and imports? If so, please provide the Committee with a detailed description and explanation of that program, including any written materials, explanations or descriptions of the criteria of the program that have either been provided or presented to ABI distributors or of any incentive program that is currently under consideration. In addition, has ABI ever directly or indirectly instructed or encouraged an independent distributor to decline to represent, carry or sell a non-ABI brand, including craft and imports? Is there any penalty or loss of opportunity for a distributor that agrees to represent, carry or sell a non-ABI brand, including craft and imports?

Response to Question 3

- Yes, Anheuser-Busch does have a voluntary incentive program for our distributors. This program has existed for over 15 years. During this period, the market share of craft beers increased from less than 4 percent to over 11 percent in 2014. The market share of competitors from Mexico owned by Constellation has similarly risen sharply, while Anheuser-Busch's sales and market share have declined. Clearly, Anheuser-Busch's incentive programs have *not* restricted the ability of other brands to compete.
- In response to your request, we are providing here communications sent out to our distributors explaining the Voluntary Anheuser-Busch Incentive for Performance (VAIP) program.
- No, Anheuser-Busch has never instructed one of our independent wholesalers not to carry non-Anheuser-Busch brands. In fact, Anheuser-Busch's contracts with each of its wholesalers *expressly recognizes their right to carry competitive brands*. Today, 94 percent of our independent wholesalers carry non-Anheuser-Busch brands. We do encourage our wholesalers to focus on our products, just as we believe other beer makers encourage their wholesalers to do the same.

- No, there is no penalty or loss of opportunity for a wholesaler that carries non-AB brands. Indeed, under the newly revised voluntary incentive program wholesalers that participate are eligible to receive benefits regardless of how many competitive brands they carry.

The bottom line is that Anheuser-Busch depends on the strength of our distributors. Over 90 percent of our products in the United States are distributed by independent wholesalers, each of which have an exclusive sales territory in which they are our sole route to market. In those markets we rely entirely upon their efforts to promote, sell, merchandise and protect the quality of our products. Therefore, it is in our business interest to see their businesses thrive. That has been our approach to our independent distributors for decades. That approach will not change in any way as a consequence of this deal, and history has proven that it is entirely consistent with a robustly competitive beer marketplace.

**Carlos Brito's Responses on Behalf of AB InBev to
Questions for the Record from Senator Patrick Leahy**

Question 1:

In your testimony, you indicated AB InBev's support for a "strong, independent distribution tier." Yet just two days before the hearing, news outlets reported that a new incentive program launched by AB InBev will offer independent distributors in the U.S. annual reimbursements of as much as \$1.5 million if 98 percent of the beers they sell are AB InBev brands. There are also reports that a distributor will not be approved for purchasing another wholesaler if under 90 percent of the beers they sell are AB InBev brands. What is your response to concerns that, given the large number of distributors who participate in the AB InBev network, incentive programs like these severely restrict the ability of other brands to compete?

Response to Question 1

AB InBev does indeed support a strong, independent distribution tier. Our business practices, including our voluntary incentive programs, are entirely consistent with that position.

Here are the relevant facts:

- Anheuser-Busch has had voluntary incentive programs for over 15 years. During that period, the market share of craft beers increased from 2.4 percent to over 11 percent in 2014. The market share of competitors from Mexico owned by Constellation has similarly risen sharply, while Anheuser-Busch's sales and market share have declined. Clearly, Anheuser-Busch's incentive programs have *not* restricted the ability of other brands to compete.
- The revisions to the Voluntary Anheuser-Busch Incentive for Performance (VAIP) program announced on November 18th, which was the specific focus of the news report referenced in your question, was developed with input from an advisory panel made up of independent wholesalers. Their participation helped ensure that the program reflects their interest in preserving a strong, independent distribution tier.
- Participation in VAIP is purely voluntary. The program is intended to encourage wholesalers to focus on our brands and enhance performance. At a time when Anheuser-Busch's sales and market share are declining, it is natural and appropriate that we work with our wholesalers to strengthen our shared ability to compete more effectively.
- The new VAIP incentive takes into account wholesalers' interest in distributing craft brands. Wholesalers that choose to participate at the highest level of benefit in the program can distribute brands from 93 percent of all craft brewers in America in any quantity.
- The new VAIP incentive provides for benefits based upon performance scores and are available *regardless* of how many competitive brands a wholesaler carries. Wholesalers

that have a significant percentage of competitive volume have the option to qualify for benefits by establishing a separate sales force.

Senator Tillis requested a copy of our recent communication to our wholesalers on VAIP. That communication provides greater detail on the program and we are including it with this response to your question.

Finally, we would note that any reports that a wholesaler will not be approved for purchasing another Anheuser-Busch wholesaler if Anheuser-Busch brands are under 90 percent of the beers it sells are simply false.

The bottom line is that Anheuser-Busch depends on the strength of our wholesalers. Over 90 percent of our products in the United States are distributed by independent wholesalers, each of which have an exclusive sales territory in which they are our sole route to market. In those markets, we rely upon their efforts to promote, sell, merchandise and protect the quality of our products. Therefore, it is in our business interest to see their businesses thrive. That has been our approach to our independent wholesalers for decades. That approach will not change in any way as a consequence of this transaction, and history has proven that it is entirely consistent with a robustly competitive beer marketplace.

Question 2:

Some have raised concerns that the creation of a new entity (Newco) that AB InBev is partner to, or any transfer in legal ownership of AB InBev that occurs in the course of this transaction, could expose independent distributors to termination or renegotiation of their contracts with AB InBev or Newco, especially in those states that do not address the “successor owner” scenario in state law. During the hearing, you were asked to provide reassurance that AB InBev would not terminate any distributor or seek to renegotiate existing distribution contracts as a result of the merger. I appreciated your response, “Yes, I can commit, as a result of the transaction there will be no such thing.”

- a. Is your testimony under oath on this point binding in the future on behalf of AB InBev and Newco, the successor entity that will result from the transaction?
- b. Will you stipulate as part of a consent order with the Department of Justice that there will be no terminations of independent distributors or renegotiations of their contracts due to the “successor owner” scenario referenced above, or as a result of the proposed merger?

Response to Question 2

Part A

As I testified on December 8th, I can commit that this transaction will not affect Anheuser-Busch’s distribution system in the United States — no independent wholesalers will be terminated and our distribution contract will not be amended or renegotiated as a result of this transaction. It is important to note that the independent distributor contracts referred to in your question are with Anheuser-Busch, not Newco. Therefore, Newco is not in a position to

terminate or amend contracts held by Anheuser-Busch in the United States. This applies equally to states whose laws do not address the “successor owner” scenario.

Part B

We are optimistic that we have proactively addressed any regulatory considerations arising from the transaction in the United States. As stated in my answer to Part A above, our distributor relationships will not change as a result of the combination with SABMiller. The distribution agreements of independent wholesalers are with Anheuser-Busch, not with Newco, and will continue to be with Anheuser-Busch post-transaction. Therefore, Newco would not be in a position to terminate or amend contracts held by Anheuser-Busch in the United States. Because Anheuser-Busch’s distribution contract is unrelated to and unaffected by the transaction, I respectfully decline to stipulate that any Department of Justice consent decree should contain a provision relating to the termination of Anheuser-Busch independent wholesalers or the renegotiation of their contracts with Anheuser-Busch.

Question 3:

During my opening statement, I asked you to commit that, if the proposed merger is approved, AB InBev will not increase its ownership of distributors above its current level of “10 percent of volume.”

- a. Can you affirm that commitment in writing?
- b. Is your commitment binding on behalf of Newco, the successor entity to AB InBev that will result from the transaction?
- c. Can you please explain what you mean by “10 percent of volume?” How is volume defined? What is that number today, and what was it five years ago?
- d. Will you stipulate as part of a consent order with the Department of Justice that AB InBev’s ownership of distribution operations will not exceed 10 percent of volume?

Response to Question 3

Part A

I can confirm what I testified to on December 8th. It is our intention that approximately 90 percent of our volume be distributed by independent wholesalers and approximately 10 percent of our volume by our wholly owned distributorships. This policy was also communicated this past fall to the National Beer Wholesalers Association and its members at its annual convention, and to all Anheuser-Busch wholesalers at our November 18th meeting in St. Louis.

Part B

Newco is not the successor entity to AB InBev. Rather it is a holding company for the combined AB InBev-SABMiller entity. Our commitment to having no more than approximately 10 percent

of our volume distributed by company-owned wholesalers will not be affected by Newco becoming the holding company.

Part C

“Volume” is the quantity of beer produced or sold that in the U.S. is generally expressed in terms of barrels or case equivalents. Here “volume” includes the total of all AB InBev brands that we produce and sell in the United States through independent distributors and our wholly owned distributorships.

Currently we distribute approximately 7.8 percent of our volume through our company-owned wholesalers. Five years ago that percentage was 6.37 percent.

Part D

Anheuser-Busch’s ownership of distributors will not be affected by this transaction. As such, we do not expect any DOJ consent decree to address this topic, as it is unrelated to and outside the scope of the transaction, and respectfully decline to stipulate that it should.

In addition to being irrelevant to the transaction, any such provision based on a “hard cap” on the percentage of volume would be largely unworkable given the realities of our industry.

As I stated in response to Part C above, the percent of Anheuser-Busch’s volume sold by company-owned wholesalers has varied over time. These variations are driven partly by factors outside of our control.

For example, the volume of products distributed by any particular wholesaler will go up or down from year-to-year based on their performance and the dynamics of their markets. If wholesalers owned by Anheuser-Busch perform particularly well in a given year, the percentage of total volume distributed by those wholesalers would tick up. Given the fact that these owned distributorships deliver less than 10 percent of total volume, such outperformance in their markets would likely cause only a small increase in their percentage of volume distributed. However, even that slight uptick could conceivably put Anheuser-Busch above a “hard cap” without Anheuser-Busch having changed our distribution footprint at all.

Similarly, the volume sold by company-owned wholesalers can vary due to the timing of acquisitions and divestitures.

For example, today approximately 7.8 percent of our volume is distributed by company-owned wholesalers. It is conceivable that at some point in the future due to the timing of an acquisition or divestiture that that percentage could tick up or down, and could conceivably go slightly past the 10 percent threshold. Again, were that to happen it would reflect nothing more than circumstance and would in no way contradict the commitment provided under oath to the committee, affirmed in writing here and stated repeatedly in various public forums.



From: A Message from Bob Tallett
To: EAMs
CC: Management and Field Sales Team
Subject: Voluntary Anheuser-Busch Incentive for Performance Program

To All A-B Equity Agreement Managers,

As a follow up to our 3YP meeting in St. Louis on Nov. 18, we are excited about our improved incentive program—developed with input from the Panel—to strengthen our and *your* ability to compete, and deliver against our Win Together platform.

For many months, we worked with the Panel to create an incentive program that better reflects today's industry and offers more options for more wholesalers. Our improved performance incentive is more inclusive and beneficial, and offers something for everyone. VAIP is linked to our AOE program and is designed to reward focus and performance that will enable you to go to market with a portfolio tailored to your territory.

We lowered the threshold for participation, added a small craft beer provision—which includes 93% of craft breweries in America, at the highest level of benefit—and enhanced the benefits to our wholesaler partners. All wholesalers, regardless of A-B volume percentage, can be eligible to receive benefits.

Additional details and a breakout of benefits can be found on [ABMarketing.com](#). Click [here](#) to review the information. Please keep confidential.

In the near future, we will also make available upon request an individualized tool to measure potential benefits.

Again, we are excited about this improved Voluntary Anheuser-Busch Incentive for Performance Program. We are eager to meet and hear from you directly and discuss how we can win together.

We are investing heavily in this program to better equip you to compete in the future. The Wholesaler Advisory Panel helped shape VAIP from the beginning, and we are excited about this “work together, win together” initiative. We hope you will give this program the serious consideration that it deserves. Of course, the decision on whether to participate and on what level is up to you.


Please work with your RVPs to learn more. Our field sales teams will be in your markets in January to answer questions.

Happy holidays and good selling!

A handwritten signature in black ink that reads 'Bob Tallett'.

Thanks,
Bob Tallett
VP, Business and Wholesaler Development

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2016 H1 VAIP Program Details

Confidential

TREATMENT OF CONSTELLATION BRANDS WITHIN THIS PRESENTATION

Throughout this presentation, any and all references or proposals that may involve the treatment of Constellation Brands' products shall treat them as "aligned" through June 7, 2016. By being "aligned", a wholesaler's carrying of Constellation Brands products will not be considered adverse in any proposed wholesaler incentive program nor will it be considered to be an adverse factor in determining whether to allow a wholesaler to acquire another wholesaler.

Voluntary AB Incentive for Performance

	Aligned Brand % (AB + CBA + Crown*)	Alternative Path	Min Marketing Spend Benefit	Benefit if AOE >850
(A*)	98%	All Non AB is small Craft	75%	100%
(A)	95%	Incremental Sales Forces options to be announced	50%	75%
(B)	90%	(Not available in H1)	10%	35%
(C)	<90%	NA	0%	25%

All measurements done at WEA territory level

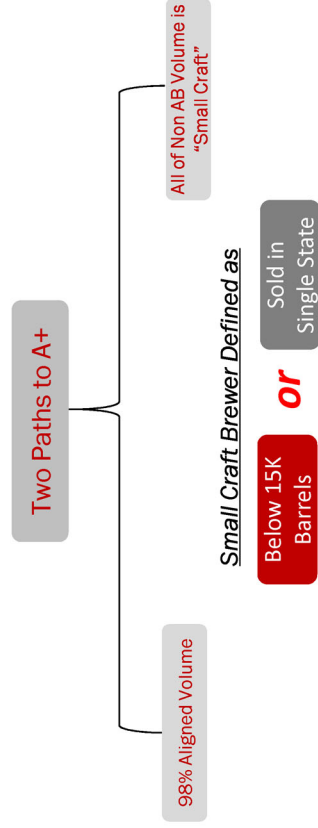
Program Criteria (All for the duration of measurement period)

- Must not sell any beer product outside EA territory or own an interest in a distributor who does
 - If a wholesaler acquires a business that sells outside EA, the acquiring business still receives VAP benefits for 2 years after close date. Acquired business remains ineligible
- Sell AB & Alliance brands as requested
- Notify AB of any portfolio changes post acquisition
- Wholesaler/Management does not participate in competitive beer wholesalers outside EA territory
- Benefit is a reimbursement as % of base min marketing spend (excludes new brands and CSR)

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*Crown brands considered aligned for H1, 2016 only

Small Craft Brewer Application

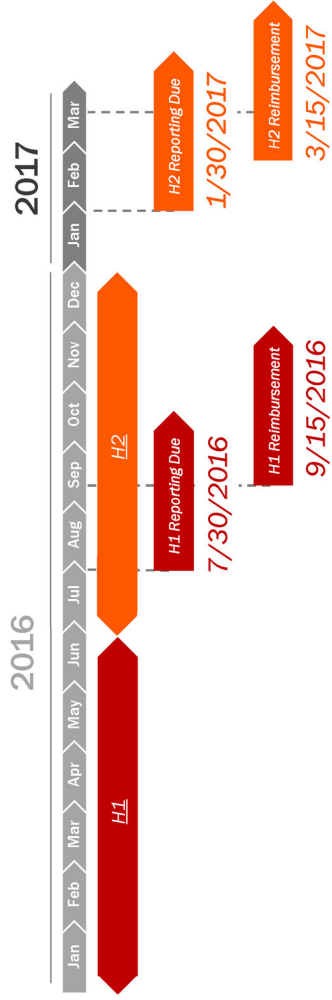


Small Craft Brewer Guidelines

- Volume levels and craft designation are based on previous year third party release
 - i.e. if a brewer comes off of the third party craft list due to change in ownership, they are no longer considered "small craft"
- All brewers currently in house and under 15K per the 2014 third party release will be grandfathered
 - i.e. if a brewer is below 15K in 2015, but then grows to 17K in 2016:
 - Considered small craft in all houses that carried in 2015
 - Not considered small craft in houses that did not carry in 2015
- List is posted on AB Marketing in the new VAIP section

Confidential

VAIP | Timing of Implementation



Program Criteria
Effective January 1, 2016
2 Reimbursement Windows
AOE Score Calculated after second reimbursement window for full year
Separate/incremental sales force options not available in H1

Confidential

**Carlos Brito's Responses on Behalf of AB InBev to
Questions for the Record from Senator Patrick Leahy**

Question 1:

In your testimony, you indicated AB InBev's support for a "strong, independent distribution tier." Yet just two days before the hearing, news outlets reported that a new incentive program launched by AB InBev will offer independent distributors in the U.S. annual reimbursements of as much as \$1.5 million if 98 percent of the beers they sell are AB InBev brands. There are also reports that a distributor will not be approved for purchasing another wholesaler if under 90 percent of the beers they sell are AB InBev brands. What is your response to concerns that, given the large number of distributors who participate in the AB InBev network, incentive programs like these severely restrict the ability of other brands to compete?

Response to Question 1

AB InBev does indeed support a strong, independent distribution tier. Our business practices, including our voluntary incentive programs, are entirely consistent with that position.

Here are the relevant facts:

- Anheuser-Busch has had voluntary incentive programs for over 15 years. During that period, the market share of craft beers increased from 2.4 percent to over 11 percent in 2014. The market share of competitors from Mexico owned by Constellation has similarly risen sharply, while Anheuser-Busch's sales and market share have declined. Clearly, Anheuser-Busch's incentive programs have *not* restricted the ability of other brands to compete.
- The revisions to the Voluntary Anheuser-Busch Incentive for Performance (VAIP) program announced on November 18th, which was the specific focus of the news report referenced in your question, was developed with input from an advisory panel made up of independent wholesalers. Their participation helped ensure that the program reflects their interest in preserving a strong, independent distribution tier.
- Participation in VAIP is purely voluntary. The program is intended to encourage wholesalers to focus on our brands and enhance performance. At a time when Anheuser-Busch's sales and market share are declining, it is natural and appropriate that we work with our wholesalers to strengthen our shared ability to compete more effectively.
- The new VAIP incentive takes into account wholesalers' interest in distributing craft brands. Wholesalers that choose to participate at the highest level of benefit in the program can distribute brands from 93 percent of all craft brewers in America in any quantity.
- The new VAIP incentive provides for benefits based upon performance scores and are available *regardless* of how many competitive brands a wholesaler carries. Wholesalers

that have a significant percentage of competitive volume have the option to qualify for benefits by establishing a separate sales force.

Senator Tillis requested a copy of our recent communication to our wholesalers on VAIP. That communication provides greater detail on the program and we are including it with this response to your question.

Finally, we would note that any reports that a wholesaler will not be approved for purchasing another Anheuser-Busch wholesaler if Anheuser-Busch brands are under 90 percent of the beers it sells are simply false.

The bottom line is that Anheuser-Busch depends on the strength of our wholesalers. Over 90 percent of our products in the United States are distributed by independent wholesalers, each of which have an exclusive sales territory in which they are our sole route to market. In those markets, we rely upon their efforts to promote, sell, merchandise and protect the quality of our products. Therefore, it is in our business interest to see their businesses thrive. That has been our approach to our independent wholesalers for decades. That approach will not change in any way as a consequence of this transaction, and history has proven that it is entirely consistent with a robustly competitive beer marketplace.

Question 2:

Some have raised concerns that the creation of a new entity (Newco) that AB InBev is partner to, or any transfer in legal ownership of AB InBev that occurs in the course of this transaction, could expose independent distributors to termination or renegotiation of their contracts with AB InBev or Newco, especially in those states that do not address the “successor owner” scenario in state law. During the hearing, you were asked to provide reassurance that AB InBev would not terminate any distributor or seek to renegotiate existing distribution contracts as a result of the merger. I appreciated your response, “Yes, I can commit, as a result of the transaction there will be no such thing.”

- a. Is your testimony under oath on this point binding in the future on behalf of AB InBev and Newco, the successor entity that will result from the transaction?
- b. Will you stipulate as part of a consent order with the Department of Justice that there will be no terminations of independent distributors or renegotiations of their contracts due to the “successor owner” scenario referenced above, or as a result of the proposed merger?

Response to Question 2

Part A

As I testified on December 8th, I can commit that this transaction will not affect Anheuser-Busch’s distribution system in the United States — no independent wholesalers will be terminated and our distribution contract will not be amended or renegotiated as a result of this transaction. It is important to note that the independent distributor contracts referred to in your question are with Anheuser-Busch, not Newco. Therefore, Newco is not in a position to

terminate or amend contracts held by Anheuser-Busch in the United States. This applies equally to states whose laws do not address the “successor owner” scenario.

Part B

We are optimistic that we have proactively addressed any regulatory considerations arising from the transaction in the United States. As stated in my answer to Part A above, our distributor relationships will not change as a result of the combination with SABMiller. The distribution agreements of independent wholesalers are with Anheuser-Busch, not with Newco, and will continue to be with Anheuser-Busch post-transaction. Therefore, Newco would not be in a position to terminate or amend contracts held by Anheuser-Busch in the United States. Because Anheuser-Busch’s distribution contract is unrelated to and unaffected by the transaction, I respectfully decline to stipulate that any Department of Justice consent decree should contain a provision relating to the termination of Anheuser-Busch independent wholesalers or the renegotiation of their contracts with Anheuser-Busch.

Question 3:

During my opening statement, I asked you to commit that, if the proposed merger is approved, AB InBev will not increase its ownership of distributors above its current level of “10 percent of volume.”

- a. Can you affirm that commitment in writing?
- b. Is your commitment binding on behalf of Newco, the successor entity to AB InBev that will result from the transaction?
- c. Can you please explain what you mean by “10 percent of volume?” How is volume defined? What is that number today, and what was it five years ago?
- d. Will you stipulate as part of a consent order with the Department of Justice that AB InBev’s ownership of distribution operations will not exceed 10 percent of volume?

Response to Question 3

Part A

I can confirm what I testified to on December 8th. It is our intention that approximately 90 percent of our volume be distributed by independent wholesalers and approximately 10 percent of our volume by our wholly owned distributorships. This policy was also communicated this past fall to the National Beer Wholesalers Association and its members at its annual convention, and to all Anheuser-Busch wholesalers at our November 18th meeting in St. Louis.

Part B

Newco is not the successor entity to AB InBev. Rather it is a holding company for the combined AB InBev-SABMiller entity. Our commitment to having no more than approximately 10 percent

of our volume distributed by company-owned wholesalers will not be affected by Newco becoming the holding company.

Part C

“Volume” is the quantity of beer produced or sold that in the U.S. is generally expressed in terms of barrels or case equivalents. Here “volume” includes the total of all AB InBev brands that we produce and sell in the United States through independent distributors and our wholly owned distributorships.

Currently we distribute approximately 7.8 percent of our volume through our company-owned wholesalers. Five years ago that percentage was 6.37 percent.

Part D

Anheuser-Busch’s ownership of distributors will not be affected by this transaction. As such, we do not expect any DOJ consent decree to address this topic, as it is unrelated to and outside the scope of the transaction, and respectfully decline to stipulate that it should.

In addition to being irrelevant to the transaction, any such provision based on a “hard cap” on the percentage of volume would be largely unworkable given the realities of our industry.

As I stated in response to Part C above, the percent of Anheuser-Busch’s volume sold by company-owned wholesalers has varied over time. These variations are driven partly by factors outside of our control.

For example, the volume of products distributed by any particular wholesaler will go up or down from year-to-year based on their performance and the dynamics of their markets. If wholesalers owned by Anheuser-Busch perform particularly well in a given year, the percentage of total volume distributed by those wholesalers would tick up. Given the fact that these owned distributorships deliver less than 10 percent of total volume, such outperformance in their markets would likely cause only a small increase in their percentage of volume distributed. However, even that slight uptick could conceivably put Anheuser-Busch above a “hard cap” without Anheuser-Busch having changed our distribution footprint at all.

Similarly, the volume sold by company-owned wholesalers can vary due to the timing of acquisitions and divestitures.

For example, today approximately 7.8 percent of our volume is distributed by company-owned wholesalers. It is conceivable that at some point in the future due to the timing of an acquisition or divestiture that that percentage could tick up or down, and could conceivably go slightly past the 10 percent threshold. Again, were that to happen it would reflect nothing more than circumstance and would in no way contradict the commitment provided under oath to the committee, affirmed in writing here and stated repeatedly in various public forums.

**Questions Of Senator Patrick Leahy (D-VT),
Ranking Member, Senate Judiciary Committee
Subcommittee Hearing on "Ensuring Competition Remains on Tap: The AB
InBev/SABMiller merger and the State of Competition in the Beer Industry"
December 9, 2015**

Questions for the Record for Mark Hunter:

1. Some have raised concerns that any transfer in legal ownership of MillerCoors that occurs in the course of this transaction (by Molson Coors' acquisition of a 100 percent stake) could expose independent distributors to termination or renegotiation of their contracts with MillerCoors, especially in those states that do not address the "successor owner" scenario in state law.
 - a. Will you commit that Molson Coors will not terminate any distributor or seek to renegotiate existing distribution contracts as a result of the proposed transaction, including any transfer of or change in the legal ownership of MillerCoors?

Molson Coors will not terminate or renegotiate existing distribution contracts on the basis of the change in legal ownership of MillerCoors.
 - b. Is your testimony under oath on this point binding on behalf of Molson Coors subsequent to the finalization of this transaction, should it be approved?

As CEO of Molson Coors, I am authorized to speak on its behalf.
 - c. Will you stipulate as part of the consent order with the Department of Justice that there will be no terminations of independent distributors or renegotiations of their contracts due to the "successor owner" scenario referenced above, or as a result of the proposed merger, should Molson Coors' role in the proposed transaction be approved by the Department of Justice as part of the remedy?

As I mentioned above, Molson Coors will not terminate or renegotiate existing distribution contracts on the basis of the change in legal ownership of MillerCoors. If the DOJ raises this issue, we will discuss it with them at the appropriate time.
2. During my opening statement, I asked you to commit that, if the proposed transaction is approved and Molson Coors gains 100 percent ownership of MillerCoors, the resulting company: (i) will not increase its ownership of distributors above MillerCoors' current ownership levels, and (ii) will not change its current practice of encouraging distributors to sell competitors' brands.

- a. Can you affirm those commitments in writing?

As I testified, at this stage we have no plans to expand our distributor ownership. I cannot promise this in perpetuity, because I do not know what the future holds. But the history of our company and MillerCoors over the past 15 years has been to contract rather than to expand ownership of distributors.

- b. Is your testimony under oath on this point binding on behalf of Molson Coors subsequent to the finalization of this transaction, should it be approved?

As CEO of Molson Coors, I am authorized to speak on its behalf.

- c. Specifically with respect to commitment (ii), will Molson Coors continue to support the ability of independent craft brewers to access MillerCoors distributors?

Yes. MillerCoors does not currently nor does it intend to institute any incentive or other programs that discourage our distributors from selling the brands of independent craft brewers. We will always work to develop our brands so that they are the first choice of our distributors, retailers and consumers.

- d. Should the proposed transaction be approved, will Molson Coors institute any programs that seek to limit, or result in the limitation of, craft brewer access to independent distribution options?

No. MillerCoors does not currently nor does it intend to institute any programs that seek to limit, or result in the limitation of, craft brewer access to our distributors. We will always work to develop our brands so that they are the first choice of our distributors, retailers and consumers.

Senator Thom Tillis
Questions for the Record
Subcommittee on Antitrust, Competition Policy, and Consumer Rights

On

"Ensuring Competition Remains on Tap: The AB InBev/SABMiller merger and the State of Competition in the Beer Industry"

Questions about Eden Facility

1. As I stated in the subcommittee hearing, the following questions are provided on behalf of a number of state legislators in North Carolina and are directed towards Mr. Hunter, President and Chief Executive Officer of Molson Coors. Other witnesses should feel free to respond:

- a. Did you know, suspect, or have any expectation that a merger between Anheuser Busch InBev and SABMiller would result in the divestiture of any interest in MillerCoors?

Molson Coors Brewing Company did not know about the possible Anheuser Busch InBev (ABI)-SABMiller merger until September 16, 2015, the day that ABI issued a press release about its approach to SABMiller. The decision of the MillerCoors board to close the Eden brewery occurred before that event, and had nothing to do with the possible ABI-SABMiller combination. To the extent that there was previous speculation about an ABI-SABMiller combination, Molson Coors was confident that it had contractual rights to acquire SABMiller's interest in MillerCoors as a result of any change of control of SABMiller.

Was the Eden facility closed to avoid handing over a prized asset to a competitor?

No. Molson Coors was confident that it had a contractual rights to acquire SABMiller's interest in MillerCoors as a result of any change of control of SABMiller. Molson Coors has never been concerned that ABI could own, in whole or in part, the Eden brewery or any other MillerCoors brewery.

In advance of the divestiture discussions, did Molson Coors communicate that they did not want or intend to operate the Eden facility?

After a thorough analysis of its brewing requirements and brewery infrastructure, the MillerCoors board of directors made its decision to close the Eden brewery on August 3, 2015, in the face of a continued deterioration of volume. Molson Coors did not engage with ABI about acquiring SABMiller's interest until mid-October 2015. The two events were in no way connected.

- b. In the last few years alone, MillerCoors ratified new contracts for brewery workers in Eden, signed a 25-year agreement with the town for payment in lieu of annexation, and made substantial investments in the physical plant, including a 70,000 square foot expansion. Given these major and ongoing investments, why does it now make sense to shut down the Eden brewery?

The MillerCoors board made the decision on August 3, 2015 to close the Eden brewery. The board made that decision because MillerCoors volume had declined nearly 10 million barrels since 2008. As a result of this lost volume, the MillerCoors brewery network was not operating in an efficient and effective manner. Further, the analysis of the MillerCoors management team was that the volume declines were likely to persist in the near term.

- i. What metrics or measurements did you use in making this decision?

MillerCoors conducted a thorough analysis of its brewery network. The factors used in this analysis were: total company volume, projections of volume into the future, efficiency of the entire brewery network, location of existing breweries, freight costs, material costs, fixed costs and on-going capital costs to keep each brewery open.

2. This question is for Mr. Hunter, President and Chief Executive Officer of Molson Coors. Other witnesses should feel free to respond. Testimony given during the hearing seemed to indicate that this merger would enhance the market and increase beer production. If production is expected to increase in the United States after the merger, why does it now make sense to close the Eden facility?

MillerCoors projects to have more volume declines in the near term with a focus on growth in 2019. With the nearly 10 million barrel decline in the last 7 years, a significant overcapacity had developed in the brewery network.

3. This question is for Mr. Hunter, President and Chief Executive Officer of Molson Coors. Other witnesses should feel free to respond. What was the date of the MillerCoors board's decision to close the Eden Brewery?

August 3, 2015.

4. This question is for Mr. Hunter, President and Chief Executive Officer of Molson Coors. Other witnesses should feel free to respond. There was testimony that the Shenandoah brewery will be better positioned to service customers in the Northeast. Which brewery(ies) will service North Carolina customers after the Eden facility's closure?

MillerCoors will transition Eden's volume to its breweries in Shenandoah, Virginia, Trenton, Ohio, Fort Worth, Texas, Albany, Georgia, and Milwaukee, Wisconsin. We expect all of these breweries to produce at least some beer for consumers in North Carolina based on unique brands, package types and sizes that are only produced in one or a couple of breweries. We expect that the Shenandoah brewery will produce the majority of the beer shipped to North Carolina.

5. This question is for Mr. Hunter, President and Chief Executive Officer of Molson Coors. Other witnesses should feel free to respond. Is it likely that the closure of the Miller plant in Eden, N.C. will result in a price increase for Miller products in North Carolina based on increased transportation costs?

We do not have plans to increase beer pricing in North Carolina based on transportation costs. However, we do not control the pricing from our independent distributors to retailers.

6. This question is for Mr. Hunter, President and Chief Executive Officer of Molson Coors, and Mr. Carlos Brito, Chief Executive Officer of Anheuser-Busch InBev. Is the decision to close the Eden plant a sign of things to come if the SAB/Miller AB InBev merger and divestment to Molson Coors is completed?

The decision to close the Eden brewery was made before any discussion between Molson Coors and ABI and was unrelated to ABI's acquisition of SABMiller.

Are there other production plants that the consolidated company plans to close if the merger is successful?

Molson Coors does not have any plans at this time to close another brewery as a result of the merger. We will continue to regularly evaluate our brewery network to ensure it is operating efficiently.

7. This question is for Mr. Hunter, President and Chief Executive Officer of Molson Coors. What are Molson Coors plans for the facility? Will Molson Coors attest on the record that it would be willing to sell, rather than close, the Eden facility?

MillerCoors has not decided what to do with the Eden brewery. If any such decision is made before Molson Coors's acquisition of SABMiller's share in MillerCoors, it will be made by the MillerCoors board. Accordingly, Molson Coors is not prepared to attest on the record to what will happen to the Eden brewery because no decision has been made.

Responses to Questions for the Record for Bob Pease**Chief Executive Officer of the Brewers Association****Senate Committee on the Judiciary****Subcommittee on Antitrust, Competition Policy and Consumer Rights****Submitted December 28, 2015**

- 1. News outlets have reported a new incentive program launched by AB InBev that will offer independent distributors in the U.S. annual reimbursements of as much as \$1.5 million if 98 percent of the beers they sell are AB InBev brands. I am concerned that this will negatively impact the ability of craft brewers to access the market. Do you have concerns about the impact of this type of incentive program on the ability of craft brewers to compete?**

The recently announced ABI incentive program is a new, more aggressive, and better-funded effort to discourage “independent ABI wholesalers” from selling competing brands. The incentives are based primarily on the proportion of *competing brands* sold by a wholesaler, not on increases in sales of *ABI brands*. In mid-December, ABI announced changes in its incentive program, although full details are not public. From information provided to industry trade publications, the modified incentives appear to be designed to accommodate small local breweries whose products are distributed by independent ABI distributors. The incentives still appear to be intended to slow or disrupt the growth of regional or national brands produced by successful craft brewers.

These tactics are especially effective in the heavily regulated beer industry. As discussed at length in the Brewers Association (BA) written testimony, the state-by-state regulatory structure of the beer industry was designed to ensure that truly independent and competitive wholesalers provide market access to all brewers. Consolidation of the largest brewers and the fact that only two full-service wholesalers now serve most communities have severely undermined the goals of state lawmakers.

The ABI incentive program is likely to lead to two outcomes:

ABI company-owned and independent wholesalers can simply reduce efforts to sell competing brands to meet the eligibility criteria for ABI’s financial incentives. Under beer franchise laws in 48 states, failure to make best efforts on behalf of brands requires a brewer to terminate a wholesaler for cause. Those special protections conferred by state law on beer wholesalers force brewers to spend months or even years and huge sums to regain control of the distribution rights to their brands in each market. (*See*, Exhibit A of BA written testimony.) During the prolonged period that a brewer must fight to regain its distribution rights, that brewer’s brands get no attention in the market from the wholesaler that the brewer is trying to terminate.

Alternatively, ABI wholesalers can sell the competing brands to another wholesaler, often the sole remaining full-service wholesaler in that market. A brewer is forced to

Responses to Questions for the Record for Bob Pease

spend enormous time and effort to establish a relationship with a new wholesaler that already sells dozens of competing brands. ABI understands that competition in the wholesale tier no longer exists in many U.S. beer markets. ABI is uniquely positioned to take advantage of that fact and to slow and disrupt progress of competing brewers. Again, most state beer franchise laws play a role in this scenario. Most beer franchise laws protect a wholesaler's ability to sell distribution rights to a competing wholesaler unless a brewer has a reasonable objection to withhold consent to the sale. In a market served by two full-service wholesalers, no alternative wholesaler exists. If a viable third option does exist, the franchise law is significant. A brewer that objects to the sale of the distribution rights to its brands to a particular wholesaler is often forced into protracted negotiations and settlement payments to select its preferred wholesaler or to self-distribute its brands.

Both scenarios cause immediate harm to competing brewers whose brands are distributed by independent ABI wholesalers. We have directed the Subcommittee to very recent examples of these tactics in California, Missouri, and Vermont.

These are not imaginary business scenarios. In the late 1990s, ABI's predecessor company adopted similar incentives that significantly disrupted the growth of leading craft brewers. While some of those brewers recovered, they lost the benefits of innumerable commercial relationships and were forced to "start over" in many markets with new wholesalers. Today, that type of competitive dynamic would be far more difficult for craft brewers because the number of competitive wholesalers is far lower than it was in 1995.

When given the choice about which beer to purchase, American consumers are increasingly choosing the beer produced by America's craft brewers. In fact, the evidence of this is demonstrable. Sales of hundreds of small brands produced by craft brewers are increasing year over year while ABI's sales are decreasing. ABI knows that it cannot control the decisions made by individual American consumers who purchase beer, but ABI can utilize its market power and the industry regulatory structure to control the choices available to those consumers through its acquisition of craft breweries, influence on the wholesaler tier, and sophisticated understanding of the beer industry regulatory structure. We believe ABI's influence on and power over the wholesaler tier is intimately connected to its larger strategy to limit the development of competitive regional and national craft brands.

The BA reiterates its request that the Subcommittee urge the Department of Justice to take an aggressive stand against the existing ABI incentive program and any similar future initiative.

2. **Much of the hearing focused on issues surrounding distribution, yet several participants noted that those issues may not relate directly to the proposed merger. In your view, what is the justification for considering distribution issues in connection with the antitrust authorities' review of the proposed merger of AB InBev and SAB Miller?**

The Brewers Association (BA) testimony urged the Subcommittee to review the proposed Anheuser-Busch InBev (ABI) acquisition of SAB Miller in tandem with the dynamics of the

Responses to Questions for the Record for Bob Pease

current U.S. beer market. The written and oral hearing testimony of ABI Chief Executive Officer Carlos Brito repeatedly indicated that ABI is paying well over \$100 billion for enhanced opportunities to do business in Africa, Asia, and Latin America, three areas of the world with great potential for growth and enormous economic and political risks. Senators were assured several times that the deal would have no effect on the U.S. market.

A venture of this magnitude and risk will certainly affect all of ABI's strategies in the United States, which is a highly profitable national market. The BA is not surprised by ABI's aggressive stance in the market. Prior to the public announcement of ABI's intent to acquire SAB-Miller, ABI's management aggressively utilized its dominant market power to achieve greater consolidation of the wholesale tier of the beer industry. Again, the state-mandated wholesale tier is the primary and only effective means of access to retailers and consumers in the beer industry. ABI's tactics diminish competition within the wholesale tier and create many opportunities for ABI to expand its dominant market share to pay down its debt and reduce risk. With an estimated 57 percent of the global profit pool for beer and \$64 billion in annual revenues, ABI will have ample resources to continue its path toward monopolization of the U.S. beer industry.

The BA testimony laid out the fact that the regulatory structure for the beer industry reasons that distribution effectively creates fifty separate heavily-regulated markets in the United States. Each market is subject to economic pressure that Anheuser-Busch InBev (ABI) is uniquely able to exert through its direct ownership of wholesalers in several of the largest states and effective control of most of its "independent wholesalers" throughout the nation. All ABI wholesalers possess enormous market power in their respective exclusive territories as most have well over a 50 percent market share. In states where ABI is both the brewer and the wholesaler, ABI's market power is significantly magnified and will grow if unchecked by antitrust enforcement. Many subtle strategies can be utilized to disrupt or diminish competition. For example, ABI's acquisition of local craft breweries in several states over the last two years gives ABI wholesalers the opportunity to focus solely on the brands acquired by ABI at the expense of the non-ABI brands. For the ABI-owned wholesalers, that step is easy. For the independent wholesalers, the incentives to reduce sales of non-ABI brands are substantial. The decisions to focus exclusively on ABI brands at the expense of competing brands are generally protected by state beer franchise laws.

Four of the five craft brewers purchased by ABI over the last two years are in states where ABI is also a substantial wholesaler, and the fifth is in Arizona, a state where one ABI wholesaler has consolidated an exclusive territory that includes most of the state's population:

Blue Point Brewing Co. (New York), February 2014;
10 Barrel Brewing (Oregon), November 2014;
Elysian Brewing (Washington), January 2015;
Four Peaks (Arizona), December 2015;
Breckenridge (Colorado), December 2015.

Responses to Questions for the Record for Bob Pease

The BA supplemented the hearing record with additional background to challenge ABI's assertions about the level of competition in the wholesale tier of the 50-state markets. Significant concentration has occurred in the wholesale tier over time. By far, the largest wholesaler is ABI itself. (*See*, Exhibit C of BA written testimony.) ABI should not be permitted to operate its own wholesale operations. Wholesaler decisions to sit on brands or to sell them are immunized by beer franchise laws in all nine of the states where ABI is a major wholesaler. The acquisition of SAB Miller will heighten the pressure on ABI to use its market power and all available levers to reduce competition in those states. We believe economic pressures generated by the SAB Miller acquisition will lead ABI to accelerate its efforts to dominate the wholesale tier of the U.S. beer industry and to limit opportunities for competing brewers to effectively access retailers and consumers in the United States. Again, the Department of Justice should look at the adverse impact on competition in the United States if ABI's strategic and tactical moves continue in the absence of intervention based on federal antitrust laws.

A P P E N D I X
to
ENSURING COMPETITION REMAINS ON TAP:
THE AB INBEV/SABMILLER MERGER AND
THE STATE OF COMPETITION IN
THE BEER INDUSTRY

The following submissions are available at:

<https://www.govinfo.gov/content/pkg/CHRG-114shrg52545/pdf/CHRG-114shrg52545-add1.pdf>

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