

Accompanying the Proposed Consent Order is an Asset Maintenance Agreement. Under its terms, Guinness and Grand Met are required to preserve and maintain the competitive viability of all of the assets to be divested in order to insure that the competitive value of these assets will be maintained after the merger but before the assets are actually divested.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Consent Order. It is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms in any way.

Donald S. Clark,
Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Guinness PLC, File No. 971-0081

Today, the Commission accepts for public comment a consent order settling allegations that the merger of Guinness PLC and Grand Metropolitan PLC would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges as antitrust product markets: (1) "premium Scotch," which is defined as "blended Scotch whisky that is made and bottled in Scotland, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of the Johnnie Walker Red, Dewar's White Label, and J&B Rare brands," and (2) "premium gin," which is defined as "gin that is made and bottled in England, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of Tanqueray, Bombay Original, and Bombay Sapphire brands." I cannot support the complaint as written.

Although at first glance the markets may sound wacky (to use the vernacular), the complaint merits our careful attention. For reasons that are not apparent, the proposed product markets exclude brands not marketed throughout the United States, if there are any, that compete head to head with the national brands. By definition, the "premium gin" product market also excludes domestically bottled gin brands, if any, that are sold at prices comparable to Tanqueray and Bombay.

I see no reason for these seemingly arbitrary exclusions.

More importantly, the price limitations in the product markets do not seem justifiable. As recognized in Commission precedent, competition occurs along a continuum of prices as brands compete with products above and below their prices. In *Heublein, Inc.*, 96 F.T.C. 385 (1980), for example, the Commission dismissed the complaint based on findings in an "all wine" market and the table, dessert and sparkling wine submarkets. As then Commissioner Pitofsky stated in the *Heublein* opinion, although the competitive offerings of the wine industry were not altogether homogeneous, "those diverse products nevertheless may 'appropriately be designated as a market' for antitrust analysis," 96 F.T.C. at 576 *quoting* *Coca Cola Bottling Co. of New York, Inc.*, 93 F.T.C. 110 (1979).

Despite my disagreement with the allegations in the complaint, I find reason to believe that the merger of Guinness PLC and Grand Metropolitan PLC would violate the law on the basis of a broader market and that an order to remedy the lessening of competition in the broader market would be appropriate. The divestiture of the Dewar's Scotch and Bombay gin brands will have some remedial effect in the broader market, and for that reason, I have voted to accept the order for public comment. After the public comment period, I will revisit the question whether the order is sufficient or whether the Commission should reject the order and seek additional divestitures in an administrative proceeding.

[FR Doc. 97-33306 Filed 12-19-97; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS

Reports Clearance Officer on (202) 690-6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1

Evaluation of the Proposed Cash and Counseling Demonstration—New—Cash and Counseling is a consumer directed care model for individuals with physical or developmental disabilities. A demonstration project utilizing this model has been proposed. The Office of the Assistant Secretary for Planning and Evaluation is planning to engage in an information collection for the purpose of evaluating this demonstration. Respondents: Individuals or Households; *Burden Information for Baseline Interview*—Number of Respondents: 15,250; Burden per Response: .62 hours; Total Burden for Baseline: 9,455 hours—*Burden Information for Four-Month Treatment Group Interview*— Number of Respondents: 7,245; Burden per Response: .5 hours; Total Burden for Four-Month Treatment Group Interview: 3,622 hours—*Burden Information for Eight-Month Treatment Group Interview*—Number of Respondents: 6,900; Burden per Response: .58 hours; Total Burden for Eight-Month Treatment Group Interview: 4,002 hours—*Burden Information for Nine-Month Followup Interview*—Number of Respondents: 13,800; Burden per Response: .75 hours; Total Burden for Nine-Month Followup: 10,350 hours—Total Burden for Project: 27,429 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 4, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97-33355 Filed 12-19-97; 8:45 am]

BILLING CODE 4150-04-M