including the African Growth and Opportunity Act (19 U.S.C. 3701) and amendments made by that act, to provide incentives to increase investment and other measures to improve the competitiveness of beneficiary SSA countries in the production of yarns, fabrics, and other textile and apparel inputs identified in the Commission's report, including changes to requirements relating to rules of origin under such programs.

The Commission also instituted this investigation pursuant to section 332(g) of the Tariff Act of 1930 to facilitate docketing of submissions and public access to Commission records through the Commission's EDIS electronic records system.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on January 29, 2009. Requests to appear at the public hearing should be filed with the Secretary not later than 5:15 p.m., January 15, 2009, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., January 17, 2009, and all post-hearing briefs and statements responding to matters raised at the hearing should be filed not later than 5:15 p.m., February 12, 2009. In the event that, as of the close of business on January 15, 2009, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Office of the Secretary (202–205–2000) after January 15, 2009, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary and should be received not later than 5:15 p.m., February 24, 2009. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see *Handbook for Electronic Filing Procedures*, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*); persons with questions regarding electronic filing should contact the Secretary at 202–205–2000. Any submission that contains confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary for inspection by interested parties. The Commission anticipates that the report it sends to the committees and the Comptroller General in this investigation will be made available to the public in its entirety. Consequently, the report that the Commission sends to the committees and the Comptroller General will not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing its report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: November 19, 2008.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–27903 Filed 11–24–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Inbev NV/SA; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *InBev NV/SA,* Civ. Action No. 08–cv–01965. On November 14, 2008, the United States filed a Complaint alleging that the proposed acquisition by InBev NV/SA of Anheuser-Busch Companies, Inc., would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition for sale of beer in the Buffalo, Rochester, and Syracuse, New York metropolitan areas. The proposed Final Judgment, filed at the same time as the Complaint, requires InBev to divest Labatt USA and grant a perpetual license to the acquirer to brew and sell Labatt brand beer for consumption throughout the United States.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (202–514–2481), on the Department of Justice Web site (*http://www.usdoj.gov/atr*), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (202–307–0001).

Patricia A. Brink,

Deputy Director, Office of Operations.

United States of America, 1401 H Street, NW.,—Suite 4000, Washington, DC 20530. Plaintiff, v. Inbev N.V./S.A.

Brouwerijplein 1, 3000 Leuven, Belgium, Inbev USA LLC, 50 Fountain Plaza—Suite 900, Buffalo, NY 14202, and Anheuser-Busch Companies, Inc., One Busch Place, St. Louis, MO 63118, Defendants. Case: 1:08–cv–01965, Assigned to: Robertson, James, Assign. Date: 11/14/2008, Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Anheuser-Busch Companies, Inc. (''Anheuser-Busch'') by InBev N.V./S.A. (''InBev'') and to obtain

other equitable relief. The United States alleges as follows:

I. Nature of the Action

1. On July 13, 2008, Anheuser-Busch and InBev entered into an Agreement and Plan of Merger pursuant to which InBev intends to acquire 100 percent of the voting securities of Anheuser-Busch in a transaction valued at approximately $52 billion. Anheuser-Busch is the largest brewing company in the United States, accounting for approximately 50 percent of beer sales in the country. Its best selling brands are Bud Light and Budweiser. Belgium-based InBev is the second-largest brewer in the world. InBev's best-selling brands in the United States are Labatt, Stella Artois, and Becks. The proposed acquisition of Anheuser-Busch by InBev would create the world's largest brewing company with annual revenues of over $36 billion.

2. In three regions of upstate New York, the proposed acquisition would significantly increase the level of concentration in the market and substantially reduce competition by combining InBev's Labatt brands and Anheuser-Busch's Budweiser brands.

3. In the Buffalo metropolitan area (''Buffalo'') and the Rochester metropolitan area (''Rochester''), the proposed acquisition would increase Anheuser-Busch's share of the beer market from approximately 24 percent to approximately 45 percent, producing a highly concentrated market dominated by two firms—the combined InBev/Anheuser-Busch and MillerCoors (a joint venture between SABMiller and Coors Brewing Co.). MillerCoors has approximately a 26 percent share of the Buffalo and Rochester beer markets and no other firm has more than a five percent share.

4. The proposed acquisition would also create a highly concentrated beer market in the Syracuse metropolitan area (''Syracuse''). In Syracuse, the proposed acquisition would increase Anheuser-Busch's share of the beer market from approximately 28 percent to approximately 41 percent, with MillerCoors controlling approximately 28 percent. As in Buffalo and Rochester, no other firm has more than a five percent share of the beer market in Syracuse.

5. The proposed acquisition would eliminate substantial head-to-head competition between Anheuser-Busch's Budweiser and InBev's Labatt brands in Buffalo, Rochester, and Syracuse.

6. The significant increase in market concentration that the proposed acquisition would produce in the Buffalo, Rochester, and Syracuse geographic markets, combined with the loss of head-to-head competition, is likely to substantially lessen competition, in violation of section 7 of the Clayton Act, resulting in higher prices for beer for consumers.

II. Jurisdiction and Venue

7. The United States brings this action under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating section 7 of the Clayton Act, 15 U.S.C. 18. This Court has subject matter jurisdiction over this action pursuant to section 15 of the Clayton Act, 15 U.S.C. 25 and 28 U.S.C. 1331, 1337(a), and 1345.

8. Defendants Anheuser-Busch and InBev produce and sell beer in the flow of interstate commerce, and their production and sale of beer substantially affect interstate commerce. Defendants Anheuser-Busch and InBev transact business and are found in the District of Columbia, through, among other things, selling beer to customers in this District. Venue is proper for Anheuser-Busch in this District under 15 U.S.C. 22. Venue is proper in the District of Columbia for Defendant InBev, a Belgian corporation, under 28 U.S.C. 1391(d).

III. The Defendants

9. Anheuser-Busch, a Delaware corporation headquartered in St. Louis, Missouri, is the largest brewer in the United States and accounts for approximately 50 percent of beer sales nationwide. Anheuser-Busch operates 12 breweries in the United States. Anheuser-Busch's best-selling brands are Budweiser and Bud Light.

10. Belgium-based InBev is the second-largest brewer in the world, but does not operate any breweries in the United States. InBev's best-selling brands in the United States are Stella, Becks, Bass, and Labatt. Most of InBev's brands, including Stella, Becks, and Bass, are imported, marketed, and sold in the United States by Anheuser-Busch pursuant to a 2006 import agreement (''Anheuser-Busch/InBev import agreement''). InBev's Labatt brands are excluded from the Anheuser-Busch/InBev import agreement. The Labatt brands are brewed in Canada by InBev's subsidiary, Labatt Brewing Company Limited, and are imported and sold in the United States by InBev's subsidiary, InBev USA d/b/a Labatt USA (''IUSA''). Although InBev's overall market share in the United States is small (approximately two percent), the geographic markets are local, and Labatt brand beers account for a significant portion of the Buffalo, Rochester, and Syracuse beer markets.

11. In Buffalo and Rochester, IUSA accounts for approximately 21 percent of beer sales and Anheuser-Busch accounts for approximately 24 percent of beer sales. In Syracuse, IUSA and Anheuser-Busch account for approximately 13 percent and 28 percent of beer sales, respectively. Combined, Anheuser-Busch and InBev would account for approximately 45 percent of beer sales in Buffalo and Rochester, and over 41 percent of beer sales in Syracuse.

IV. Relevant Markets

A. Relevant Product Market

12. Beer is an alcoholic beverage that is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image, and price.

13. Neither the price of wine nor the price of spirits significantly influences or constrains the price of beer. Purchasers of beer are unlikely to reduce their purchases of beer in response to a small but significant and non-transitory increase in the price of beer to an extent that would make such a price increase unprofitable.

14. Beer is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

B. Relevant Geographic Markets

15. Beer is sold to consumers in local geographic markets through a three-tier distribution system in New York and throughout the United States. Brewers such as InBev and Anheuser-Busch sell beer to wholesalers (often known as ''distributors''), which, in turn, sell to retailers. In New York and throughout the United States, distributors' contracts with brewers contain territorial limits and prohibit distributors from selling outside their territories.

16. Distributors cannot sell a brewer's products outside their territories without violating their contracts with the brewer. This allows brewers to charge different prices in different locales for the same package and brand of beer, and prevents individual distributors (and retailers) from defeating such price differences through arbitrage.

17. Brewers develop beer pricing and promotion strategies on a ''local'' market basis, based on an assessment of local competitive conditions, local demand for the brewers' beer, and local brand strength.

18. Brewers selling beer in a metropolitan area would be able to increase the price of beer by a small but significant and non-transitory amount

without losing sufficient sales to make such a price increase unprofitable.

19. The metropolitan areas of Buffalo, Rochester, and Syracuse constitute three separate, relevant geographic markets for the sale of beer within the meaning of section 7 of the Clayton Act.

V. Likely Anticompetitive Effects

20. The relevant beer markets are highly concentrated. In Buffalo and Rochester, the top three brewers: Anheuser-Busch, MillerCoors, and InBev (IUSA)—account for approximately 24 percent, 26 percent, and 21 percent of the beer market, respectively. In Syracuse, Anheuser-Busch, MillerCoors and IUSA account for approximately 28 percent, 28 percent, and 13 percent of the beer market, respectively.

21. If the proposed acquisition is permitted to occur, the beer markets in Buffalo and Rochester would become substantially more concentrated. The combined firm would control at least 45 percent of beer sales. The merged firm and MillerCoors would control over 70 percent of beer sales. Using a standard concentration measure called the Herfindahl-Herschman Index (or ''HHI,'' defined and explained in Appendix A), the proposed acquisition would produce an HHI increase of approximately 1020 and a post-acquisition HHI of approximately 2790 in Buffalo and Rochester.

22. If the proposed acquisition is permitted to occur, the Syracuse beer market also would become substantially more concentrated. The combined firm would control approximately 41 percent of the market, and the top two brewers—the merged firm and MillerCoors—would account for approximately 69 percent of beer sales. The proposed acquisition in Syracuse would produce an HHI increase of approximately 750 and a post-acquisition HHI of approximately 2580.

23. In Buffalo, Rochester, and Syracuse, the proposed acquisition would eliminate significant head-to-head competition between InBev's Labatt brands and Anheuser-Busch's Budweiser brands. Currently, InBev (through its IUSA subsidiary) and Anheuser-Busch compete in the relevant geographic markets through price discounts and various forms of promotions.

24. The significant increase in market concentration that the proposed acquisition would produce in the Buffalo, Rochester, and Syracuse geographic markets, combined with the loss of head-to-head competition, is likely to substantially lessen competition in violation of section 7 of the Clayton Act, resulting in higher prices for beer for consumers.

VI. Absence of Countervailing Factors

25. Responses from other competitors or new entry is not likely to prevent the likely anticompetitive effects of the proposed acquisition. Competition from other competitors is insufficient to prevent a small but significant and non-transitory price increase implemented by the Defendants in those markets from being profitable. Entry of a significant new competitor into the marketplace is particularly unlikely because a new entrant would not possess the highly-important brand acceptance necessary to succeed.

26. The anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies that may be achieved by the acquisition.

VII. Violation Alleged

27. The United States hereby incorporates paragraphs 1 through 26.

28. The proposed acquisition of Anheuser-Busch by InBev would likely substantially lessen competition in interstate trade and commerce, in violation of section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following effects, among others:

(a) Actual and potential competition between Anheuser-Busch and InBev (through its IUSA subsidiary) for beer sales in the relevant geographic markets would be eliminated; and

(b) Competition generally in the relevant geographic markets for beer would be substantially lessened.

Prayer for Relief

The United States requests:

1. That the proposed acquisition be adjudged to violate section 7 of the Clayton Act, 15 U.S.C. 18;

2. That the Defendants be permanently enjoined and restrained from carrying out the proposed acquisition or from entering into or carrying out any other agreement, understanding, or plan by which Anheuser-Busch would acquire, be acquired by, or merge with, any of the other Defendants;

3. That the United States be awarded costs of this action; and

4. That the United States have such other relief as the Court may deem just and proper.

Respectfully submitted,

____/s/_____
Deborah A. Garza (DC Bar No. 395259),
Acting Assistant Attorney General.

____/s/_____
Patricia A. Brink,
Deputy Director, Office of Operations.

____/s/_____
Joshua H. Soven,
Chief (DC Bar No. 436633).

____/s/_____
Joseph M. Miller,
Assistant Chief (DC Bar No. 439965), Litigation I Section, (202) 307–0827.

____/s/_____
Mitchell H. Glende,
Barry L. Creech (DC Bar No. 421070),
Scott I. Fitzgerald,
Tiffany Joseph-Daniels (DC Bar No. 481878),
Ryan Kantor,
David C. Kelly,
Karl D. Knutsen,
Michael T. Koenig,
Richard Martin,
Michelle Seltzer (DC Bar No. 475482),
Julie Tenney.

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Litigation I Section. 1401 H Street, NW., *Suite 4000, Washington, DC 20530, (202) 353–3106.*

Dated: November 14, 2008.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Inbev N.V./S.A., Inbev USA LLC, and Anheuser-Busch Companies, Inc., Defendants. Case: 08-cv-Filed: Deck Type: Antitrust Date Stamp:_____.

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on November 14, 2008, and the United States of America and defendants InBev N.V./S.A., InBev USA LLC d/b/a Labatt USA, and Anheuser-Busch Companies, Inc. (collectively, ''Defendants''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required herein can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged, and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''*Acquirer*'' means the entity or entities to whom Defendants divest the Divestiture Assets.

B. ''*Advertising*'' means all existing advertising and promotional materials owned or Licensed by LBCL, including without limitation all copyrights therein, bearing the Licensed Marks for use in the marketing, sale, and distribution of Labatt Brand Beer in the United States.

C. ''*Anheuser-Busch*'' means defendant Anheuser-Busch Companies, Inc., a Delaware corporation, with its headquarters in St. Louis, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''*Beer*'' means any fermented alcoholic beverage that (1) is composed in part of water, a type of starch, yeast, and a flavoring and (2) has undergone the process of brewing.

E. ''*Defendants*'' means InBev N.V./S.A., InBev USA LLC d/b/a Labatt USA, and Anheuser-Busch Companies, Inc.

F. ''*Divestiture Assets*'' means:

(i) An exclusive, perpetual, assignable, transferable, and fully-paid-up license that grants the Acquirer the right:

(A) To brew Labatt Brand Beer in Canada and/or the United States for sale for consumption in the United States;

(B) To promote, market, distribute, and sell Labatt Brand Beer for sale for consumption in the United States; and

(C) To use all intellectual property rights associated with the brewing, marketing, sale, and distribution of Labatt Brand Beer for sale for consumption in the United States, including, without limitation, the Trade Dress, the Advertising, the Licensed Marks, the Recipes, and such molds and designs as are used in the manufacturing process of bottles for the Labatt Brand Beer;

(ii) All production know-how for Labatt Brand Beer, including, without limitation, all Recipes and packaging, marketing, and distribution know-how and documentation; and

(iii) All of the tangible and intangible assets of IUSA, including, without limitation, (A) all real property (owned or leased), office equipment, office furniture, fixtures, materials, supplies, and other tangible property of IUSA; (B) all contracts and agreements of IUSA except the Existing Import Agreement, including, without limitation, wholesaler and distributor agreements into which InBev or IUSA have entered for the sale or distribution of Labatt Brand Beer within the United States, sponsorship agreements with sports teams and other entities, agreements relating to the placement of advertising, agreements with public relations firms, and agreements with co-packers; (C) all existing inventories of Labatt Brand Beer owned by IUSA; (D) all customer lists, customer accounts, and credit records; (E) all licenses, permits, and authorizations issued by any governmental organization relating to the marketing, sales, and distribution of Labatt Brand Beer in the United States, including, without limitation, brand registrations; and (F) copies of all business, financial and operational books, records and data, both current and historical, that relate to Labatt Brand Beer sold and distributed in the United States; provided, however, that, for books, records, or data that relate to Labatt Brand Beer, but not solely to Labatt Brand Beer sold in the United States, LBCL shall provide only the excerpts of those books, records, or data that relate to the Labatt Brand Beer sold and distributed in the United States;

(iv) Provided, however, that the Acquirer shall have no right to use, and shall not use, the term ''InBev'' or any derivative of the term ''InBev,'' and provided, further, that the Acquirer shall have no rights to market or sell any brands of Beer owned by InBev other than Labatt Brand Beer.

G. ''*Existing Import Agreement*'' means the Exclusive Distributor Agreement dated as of December 1, 1994, among LBCL, Labatt Importers Inc., Labatt's USA Inc., and John Labatt Limited.

H. ''*InBev*'' means defendant InBev N.V./S.A., a public company organized under the laws of Belgium, with its headquarters in Leuven, Belgium, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their respective directors, officers, managers, agents, and employees.

I. ''*IUSA*'' means defendant InBev USA LLC d/b/a Labatt USA, a Delaware limited liability company and wholly-owned, indirect subsidiary of InBev, with its headquarters in Buffalo, New York.

J. ''*Labatt Brand Beer*'' means the following brands of Beer: Labatt Blue, Labatt Blue Light, Labatt's 50, Labatt ICE, Labatt Double Blue, Labatt Nordic, Labatt Select, Labatt Non-Alcoholic, Labatt Holiday, and Max ICE, and any extensions of any one or more of such brands for use in connection with brewing, distributing, promoting, marketing, or selling Beer as may be developed from time to time by the Acquirer.

K. ''*LBCL*'' means Labatt Brewing Company Limited, a Canadian corporation and wholly-owned, indirect subsidiary of Companhia de Bebidas das Américas—AmBev, a Brazilian corporation and majority-owned subsidiary of InBev.

L. ''*Licensed Marks*'' means all trademarks, service marks, or trade names for the Labatt Brand Beer belonging or licensed to LBCL and/or its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures (whether registered or unregistered, or whether the subject of a pending application) used to brew, distribute, market, and sell Labatt Brand Beer in the United States.

M. ''*Recipes*'' means all LBCL's formulae, recipes, processes, and specifications specified by LBCL for use in connection with the production and packaging of Labatt Brand Beer in the United States, including, without limitation, LBCL's yeast, brewing processes, equipment and material specifications, trade and manufacturing secrets, know-how, and scientific and technical information for the Labatt Brand Beer.

N. ''*Supply Agreement*'' means an agreement pursuant to which InBev shall supply to the Acquirer Labatt Brand Beer in quantities and units and at prices agreed to between InBev and the Acquirer subject to the approval of the United States in its sole discretion.

O. ''*Trade Dress*'' means the print, style, color, labels, and other elements of trade dress currently used by LBCL and/or its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures in connection with the marketing, sale, and distribution of Labatt Brand Beer in the United States.

III. Applicability

A. This Final Judgment applies to the Defendants, as defined above, and all other persons in active concert or participation with the Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with sections IV and V of this Final Judgment, Defendants sell, license, or otherwise dispose of all or substantially all of their assets or lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer approved by the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time-period, such extensions not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

D. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

E. Defendants shall not manufacture, market, distribute, introduce, or sell in the United States any Beer under any brand name or trade name that contains the word ''Labatt'' after the date of the execution of the divestiture agreement with the Acquirer, except (i) pursuant to the terms of the Supply Agreement, and (ii) as necessary to satisfy a legal requirement to identify the brewer for and origin of other brands of beer brewed by LBCL and sold in the United States where the corporate identity of the brewer includes the word ''Labatt''; provided, however, that Defendants shall not be in violation of this consent decree if an independent party ships Labatt Brand Beer from Canada to the United States without Defendants' permission or knowledge.

F. Defendants shall provide the Acquirer and the United States information relating to IUSA's personnel involved in the management, operations, or sales activities in the United States relating to the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any efforts by the Acquirer to employ any personnel employed by IUSA having management, operations, or sales responsibilities relating to the Divestiture Assets.

G. Unless the United States otherwise consents in writing, Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make reasonable inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

H. Notwithstanding anything to the contrary in this Final Judgment, at the option of the Acquirer, Defendants shall enter into a transition services agreement for a limited period with respect to information technology support, information technology licensing, computer operations, data processing, logistics support, and such other services as are reasonably necessary to operate the Divestiture Assets, with the scope, terms, and conditions of such agreement being subject to the approval of the United States in its sole discretion. Such an agreement may not exceed twelve (12) months from the date of divestiture.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the sale of Beer; provided that it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to section IV or section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of Beer; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

J. As part of a divestiture, and at the option of the Acquirer, Defendants shall negotiate and consummate a Supply Agreement to supply Labatt Brand Beer in quantities and units and at prices agreed to between InBev and the Acquirer with the approval of the United States. The Supply Agreement shall be no more than three (3) years in length. The terms and conditions of any such Supply Agreement shall be subject to the approval of the United States in its sole discretion. During the term of the Supply Agreement, Defendants shall establish, implement, and maintain procedures and take such other steps that are reasonably necessary to prevent the disclosure of the quantities and units of Labatt Brand Beer ordered or purchased from the Defendants by the Acquirer, the prices paid by the Acquirer, and any other competitively sensitive information regarding the Defendants' or the Acquirer's performance under the Supply Agreement, to any employee of the Defendants that has direct responsibilities for marketing, distributing, or selling Beer in competition with the Acquirer in the United States.

V. Appointment of Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or Section V shall not be consummated. Upon objection by Defendants under section V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section

IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to a prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division (''DOJ'') including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. InBev N.V./S.A., InBev USA LLC, and Anheuser-Busch Companies, Inc., Defendants. Case: 1:08–cv–01965 Assigned To: Robertson, James Assign. Date: 11/14/2008 Description: Antitrust

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 14, 2008, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Anheuser-Busch Companies, Inc. (''Anheuser-Busch'') by InBev N.V./S.A. (''InBev''). The Complaint alleges that the likely effect of the merger would be to lessen competition substantially in the market for beer in the metropolitan areas of Buffalo, Rochester, and Syracuse, New York, in violation of section 7 of the Clayton Act, 15 U.S.C. 18. In each of these metropolitan areas, the transaction would combine two of the three major manufacturers of beer, creating a highly concentrated market. The transaction would also eliminate substantial head-to-head competition between InBev and

Anheuser-Busch in these regions. This loss of competition likely would result in higher beer prices to consumers in those areas. At the same time that the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Stipulation'') and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger.

Under the proposed Final Judgment, which is explained more fully in section III, Defendants are required to divest InBev USA d/b/a Labatt USA (''IUSA''), a Delaware limited liability company and wholly-owned subsidiary of InBev with its headquarters in Buffalo, New York, and a perpetual, assignable, transferable, and fully-paid-up license and the other rights needed to brew, promote, market, distribute, and sell Labatt brand beer for consumption in the United States (hereafter the ''Divestiture Assets''). Under the terms of the Stipulation, Defendants will take certain steps to ensure that the Divestiture Assets are operated as an ongoing, economically viable, and independent competitive business in the brewing, promotion, marketing, distribution, and sale of Labatt brand beer for consumption in the United States.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. Defendants and the Proposed Transaction

On July 13, 2008, Anheuser-Busch and InBev entered into an Agreement and Plan of Merger pursuant to which InBev intends to acquire 100 percent of the voting securities of Anheuser-Busch in a transaction valued at approximately $52 billion. The proposed acquisition of Anheuser-Busch by InBev would create the world's largest brewing company with annual revenues of over $36 billion.

Anheuser-Busch, a Delaware corporation headquartered in St. Louis, Missouri, is the largest brewing company in the United States, accounting for approximately 50 percent of beer sales in the country. Anheuser-Busch's best-selling brands are Budweiser and Bud Light. In the Buffalo and Rochester metropolitan areas, Anheuser-Busch accounts for approximately 24 percent of beer sales.[1] In the Syracuse metropolitan area, Anheuser-Busch accounts for approximately 28 percent of beer sales.

Belgium-based InBev is the second-largest brewer in the world. InBev's best-selling brands in the United States are Labatt, Stella Artois, Bass, and Becks. Although InBev's share of beer sales nationwide is small, in the Buffalo, Rochester, and Syracuse metropolitan areas, it is substantial. In Buffalo and Rochester, InBev's wholly-owned subsidiary, IUSA, accounts for at least 21 percent of beer sales. In Syracuse, IUSA accounts for approximately 13 percent of beer sales. Combined, IUSA and Anheuser-Busch control at least 45 percent of beer sales in Buffalo and Rochester and approximately 41 percent of beer sales in Syracuse. MillerCoors, the third significant competitor, accounts for approximately 26 percent of sales in Buffalo and Rochester and 28 percent of sales in Syracuse. No other competitor sells more than 5 percent of the beer sold in these areas.

B. Competitive Effects of the Proposed Merger

1. Beer Is the Relevant Product Market

The Complaint alleges that beer is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act. Beer is an alcoholic beverage that is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image and price. Neither the price of wine nor the price of spirits significantly influences or constrains the price of beer. Purchasers of beer are unlikely to reduce their purchases of beer in response to a small but significant and non-transitory increase in the price of beer to an extent that would make such a price increase unprofitable. The manufacture and sale of beer is the relevant product market.

2. The Metropolitan Areas of Buffalo, Rochester, and Syracuse, New York, Are Relevant Geographic Markets

As alleged in the Complaint, the metropolitan areas of Buffalo, Rochester, and Syracuse, New York, constitute three separate, relevant geographic markets for the sale of beer within the meaning of the Clayton Act. Beer is sold to consumers in local geographic markets through a three-tier distribution system in New York and throughout the United States. Brewers such as InBev and Anheuser-Busch sell beer to wholesalers (often known as ''distributors''), which, in turn, sell to retailers. In New York and throughout the United States, distributors' contracts with brewers contain territorial limits and prohibit distributors from selling beer outside their respective territories.

Because distributors cannot sell a brewer's products outside their territories without violating their contracts with the brewer, brewers can charge different prices in different locales for the same package and brand of beer, and individual distributors (and retailers) cannot defeat such price differences through arbitrage. Consequently, brewers develop beer pricing and promotion strategies on a ''local'' market basis, based on an assessment of local competitive conditions, local demand for the brewers' beer, and local brand strength. Brewers selling beer in a metropolitan area would be able to increase the price of beer by a small but significant and non-transitory amount without losing sufficient sales to make such a price increase unprofitable.

3. Anticompetitive Effects of the Proposed Merger

As alleged in the Complaint, the Buffalo, Rochester, and Syracuse beer markets are highly concentrated. The top three brewers—Anheuser-Busch, MillerCoors, and IUSA—respectively possess approximately 24 percent, 26 percent, and 21 percent of the Buffalo and Rochester beer markets. In the Syracuse geographic market, the same three brewers respectively possess approximately 28 percent, 28 percent, and 13 percent of the beer market.

If the proposed acquisition is permitted to occur, the beer markets in the Buffalo, Rochester, and Syracuse geographic markets would become substantially more concentrated. Combined, Defendants would account for at least 45 percent of beer sales in Buffalo and Rochester and 41 percent in Syracuse, and the top two brewers—Defendants and MillerCoors—would control about 70 percent of sales in each

[1] The market shares for the Buffalo, Rochester, and Syracuse metropolitan areas are calculated from weekly AC Nielsen grocery store scanner data. This data is not available separately for Buffalo and Rochester, and so the market share calculations are based on a combined Buffalo/Rochester area. Information Resources, Inc. (''IRI'') compiles drug store scanner data separately for Buffalo and Rochester, and the IRI data indicates that the AC Nielsen data may underestimate the Defendants' shares of beer sales in Buffalo and Rochester. Based on IRI drug store data, in Buffalo, Anheuser-Busch accounts for 32 percent of beer sales and InBev accounts for 23 percent of beer sales. The IRI drug store data shows that, in Rochester, Anheuser-Busch accounts for 33 percent of beer sales and InBev accounts for 19 percent of beer sales.

market. No other competitor would account for more than 5 percent of sales in these markets. Using a concentration measure called the Herfindahl-Herschman Index (or ''HHI'', defined and explained in Appendix A), the proposed acquisition would produce an HHI increase of approximately 1,020 and a post-acquisition HHI of approximately 2,790 in the Buffalo and Rochester markets. In Syracuse, the proposed acquisition would produce an HHI increase of approximately 750 and a post-acquisition HHI of approximately 2,580.

The transaction would also eliminate significant head-to-head pricing and promotion competition between InBev's Labatt brands and Anheuser-Busch's Budweiser brands in each of the three geographic markets. The significant increase in market concentration that the transaction would produce in the three geographic markets, combined with the loss of head-to-head competition, is likely to substantially lessen competition, in violation of section 7 of the Clayton Act, resulting in higher prices for beer.

4. Neither Supply Responses Nor Entry Would Prevent the Likely Anticompetitive Effects of the Proposed Merger

The Complaint alleges that supply responses from competitors or potential competitors would not likely prevent the anticompetitive effects of the proposed acquisition of Anheuser-Busch by InBev. Competition from other competitors is insufficient to prevent a small but significant and non-transitory price increase implemented by the Defendants in those markets from being profitable. Entry of a significant new competitor into the marketplace is particularly unlikely because a new entrant would not possess the highly-important brand acceptance necessary to succeed.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects identified in the Complaint by requiring the Defendants to divest IUSA and all of the real and intellectual property rights required to brew, promote, market, distribute, and sell Labatt brand beer for consumption in the United States. These rights include an exclusive, perpetual, assignable, transferable, and fully-paid-up license that grants the Acquirer the rights to (a) brew Labatt brand beer in Canada and/or the United States, (b) promote, market, distribute, and sell Labatt brand beer for consumption in the United States, and (c) use all of the intellectual property rights associated with the marketing, sale, and distribution of Labatt brand beer for consumption in the United States, including the trade dress, the advertising, the licensed marks, and such molds and designs as are used in the manufacturing process of bottles for the Labatt brand beer. Final Judgment II(F) and IV(A).

Further, to ensure that the Acquirer can brew Labatt beer without any loss of quality or consistency, the proposed Final Judgment requires Defendants to sell to the Acquirer all production know-how for Labatt brand beer, including recipes, packaging and marketing and distribution know-how and documentation. Final Judgment III(F) and IV(A). The recipes required to be divested include all formulae, recipes, processes and specifications specified * * * for use in connection with the production and packaging of Labatt Brand Beer in the United States, including * * * yeast, brewing processes, equipment and material specifications, trade and manufacturing secrets, know-how and scientific and technical information * * *. Final Judgment II(M).

The proposed Final Judgment ensures the uninterrupted sale of Labatt brand beer in the United States by requiring Defendants to divest all rights pursuant to distributor contracts and, at the option of the Acquirer, to negotiate a transition services agreement of up to one year in length, and to enter into a supply contract for Labatt brand beer sufficient to meet all or part of the Acquirer's needs for a period of up to three years. Final Judgment III(F)(iv) and IV(H). If the Defendants and the Acquirer enter into such a supply contract, the proposed Final Judgment will prevent the exchange of competitively sensitive information between them; the Defendants are required to implement procedures that will prevent the disclosure of the quantities and units of Labatt brand beer ordered or purchased from the Defendants by the Acquirer, the prices paid by the Acquirer, and any other competitively sensitive information regarding the Defendants' or the Acquirer's performance under the Supply Agreement, to any employee of the Defendants who has direct responsibilities for marketing, distributing, or selling beer in competition with the Acquirer in the United States. Final Judgment IV(J).

To ensure that the Acquirer can continue to develop, grow, and improve the Labatt brand, the proposed Final Judgment requires Defendants to grant to the Acquirer a perpetual license that will allow the Acquirer to brew, distribute, market, and sell ''extensions'' of Labatt brand beer (e.g., a ''Light'' or ''Ice'' version). The extension of beer brands has constituted a significant form of competition among beer brewers in recent years.

The divestiture remedies the anticompetitive effects of the merger by requiring InBev to divest the Divestiture Assets to an independent, viable acquirer that can compete with the merged Anheuser-Busch/InBev. Defendants are required to satisfy the United States in its sole discretion that the Divestiture Assets will be operated as a viable, ongoing business that will compete effectively in the relevant markets, and that the divestiture will successfully remedy the otherwise anticipated anticompetitive effects of the proposed merger. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective acquirers.

The proposed Final Judgment requires Defendants, within ninety (90) days after the filing of the Complaint or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets, which will be used by the acquirer as part of a viable, ongoing business of brewing, promoting, marketing, distributing and selling Labatt brand beer for consumption in the United States.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the speed with which the divestiture is accomplished and the price and terms obtained. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. If the requisite divestiture has not been accomplished at the end of the trustee's term, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Until the divestiture under the proposed Final Judgment has been

accomplished, Defendants are required to comply with a Hold Separate Stipulation and Order. Pursuant to this Stipulation and Order, the Defendants are required to preserve, maintain, and operate the Divestiture Assets as an ongoing business, and prohibited from taking any action that would jeopardize the divestiture required by the proposed Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Joshua H. Soven, Chief, Litigation I Section, 1401 H Street, NW., Suite 4000, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have sought preliminary and permanent injunctions against the proposed merger. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of beer in the relevant markets identified by the United States. Thus the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA For the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3]

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so

Continued

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 14, 2008.

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Appendix A

Definition of Herfindahl-Hirschman Index (''HHI'')

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

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inconsonant with the allegations charged as to fall outside of the ''reaches of the public interest'').

[4] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) '61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 21, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/*e-mail: DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:*