

MERGER ANTITRUST LAW

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Georgetown University Law Center
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Tuesdays and Thursdays, 3:30-4:55 pm
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Links to the required reading and the class notes may be found on the assignments page of Canvas and on the [Merger Antitrust Law](#) page of [AppliedAntitrust.com](#).

Class 19 (November 2): ABInbev/Grupo Modelo (Unit 5)¹

On Thursday we will finish anything that remains in the H&R Block/TaxACT case study. After that, we will turn to the DOJ's challenge to the ABInbev/Grupo Modelo transaction, which reads like a soap opera. There are a lot of pages here—well over 200—but there is no opinion so they are very quick to read. We will spend less than a class on this case study.

Here is set of questions to help focus your reading, which we will go through in class.

1. What was the original transaction that ABI was pursuing? (pp. 5-11) Why do you think that ABI thought the original transaction would pass antitrust muster (or did ABI think this)?
2. What did ABI do with Constellation Brands before filing its HSR forms in an attempt to allay possible DOJ's concerns? Why did ABI do this? (pp. 12-13)
3. What happened between the time of the announcement of the ABI/Modelo (June 29, 2012) and the commencement of the litigation (January 31, 2013)—a period of roughly seven months? (No reading for this)
4. What were the DOJ's concerns about the transaction? What was its formal theory of anticompetitive harm? Why was the fix not enough? (pp. 17-45)
5. Why did Constellation Brands try to intervene in the DOJ litigation? (pp. 46-79—you can skip the reading here and just intuit the answer if you want, although the papers are interesting)
6. What was the revised agreement between ABI and Constellation Brands and in what way did it significantly alleviate the DOJ's concerns? (pp. 80-86)
7. Why all of the motions to stay the proceedings? What was going on here? (pp. 87-106)
8. What was the deal that ultimately resolved the DOJ's concerns? (pp. 107-186). All you really need to read, however, is the press release and the DOJ's competitive impact statement.
9. What procedures must the parties follow to obtain final approval of the court and entry of the negotiated consent decree as a final judgment? (pp. 187-189)

¹ A reasonably set of the most important filings in the litigation may be found [here](#) on AppliedAntitrust.com.

10. When did the ABI/Modelo and the Constellation deals close? Was the consent decree final at the time? (pp. 190-195)
11. What is the role of a monitoring trustee? (pp. 196-199) Go back and look at Section VIII of the Proposed Final Judgment. (pp. 151-153)
12. How did the DOJ respond to the public comments that were submitted in the Tunney Act proceeding? Was the response compelling? Did the consent decree really fix the concerns that the DOJ alleged in the complaint?² (pp. 201-228)
13. How did the court respond to the public comments? (pp. 238)

Overall, try to get a good sense of the path the case took to settlement and the Tunney Act requirements that the DOJ had to satisfy before the court ultimately accepted the settlement.

Enjoy the reading! Email me if you have any questions.

Dale

² If you want to see the public comments themselves, they are on the DOJ web site. Look at <http://www.justice.gov/atr/cases/abimodelo.html>.