

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANHEUSER-BUSCH InBEV SA/NV, et al.,

Defendants.

Civil Action No. 13-127 (RWR)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION TO APPROVE THE APPOINTMENT OF
WILLIAM E. BERLIN AS MONITORING TRUSTEE**

The United States files this Memorandum in support of its Unopposed Motion to Approve the Appointment of William E. Berlin as Monitoring Trustee in this case. Pursuant to the parties' April 19, 2013, stipulation, the Court's April 22, 2013, Order, and Section VIII of the proposed Final Judgment, the United States may in its sole discretion appoint a Monitoring Trustee, subject to approval by the Court. The United States seeks the Court's approval to appoint William E. Berlin as the Monitoring Trustee. As described below, Mr. Berlin has extensive knowledge of antitrust law and significant experience in the execution of antitrust divestitures, and he is well qualified to monitor Defendants' compliance with the proposed Final Judgment and the Stipulation and Order.

**I. Requirements of the Proposed Final Judgment that
the Monitoring Trustee Will Oversee**

The United States filed a civil antitrust complaint on January 31, 2013, seeking to enjoin the proposed acquisition of Defendant Grupo Modelo, S.A.B. de C.V. ("Modelo")

by Defendant Anheuser-Busch InBev SA/NV (“ABI”). The Complaint alleges that the proposed acquisition would substantially lessen competition for beer in the United States and 26 local markets within the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would likely result in higher beer prices and less innovation.

On April 19, 2013, the United States filed a Stipulation and Order and a proposed Final Judgment agreed to by the parties which are designed to eliminate the anticompetitive effects of the acquisition. The Court entered the Stipulation and Order on April 22, 2013. Under the proposed Final Judgment, ABI must divest Modelo’s United States business, including the Piedras Negras Brewery,¹ to Constellation Brands, Inc. (“Constellation”) or another buyer acceptable to the United States. On June 4, 2013, ABI completed its acquisition of Modelo, and on June 7, 2013, ABI completed the sale of Modelo’s United States business to Constellation. To ensure that Constellation can supply beer to the United States market independently of ABI, the proposed Final Judgment also requires Constellation to expand the Piedras Negras Brewery to be able to produce 20 million hectoliters of packaged beer annually by December 31, 2016, and use its best efforts to adhere to specific construction milestones.

In addition, the proposed Final Judgment requires ABI to provide certain materials and services to Constellation to allow Constellation to compete effectively in the sale of beer in the relevant geographic markets during the expansion of the Piedras Negras Brewery. The Transition Services Agreement requires ABI to provide consulting services with respect to topics such as the management of the Piedras Negras Brewery,

¹ Capitalized terms not defined herein are defined in the proposed Final Judgment.

logistics, material resource planning, and other general administrative services that Modelo formerly provided to the Piedras Negras Brewery. It also requires ABI to supply certain key inputs (such as aluminum cans, glass, malt, yeast, and corn starch) to Constellation for a limited time. The Interim Supply Agreement requires ABI to supply Constellation with sufficient Modelo Brand Beer each year to make up for any difference between the demand for such beers in the United States and the Piedras Negras Brewery's capacity to fulfill that demand.

Section VIII of the proposed Final Judgment provides for the appointment of a Monitoring Trustee with the power and authority to monitor compliance with the terms of the proposed Final Judgment and Stipulation and Order, and such other powers as the Court deems appropriate, to ensure that ABI and Constellation expeditiously comply with all of their ongoing obligations under the proposed Final Judgment and the Stipulation and Order, and that competition in the sale of beer in the relevant geographic markets is maintained until all of the requirements of the proposed Final Judgment and Stipulation and Order have been accomplished.

The Monitoring Trustee will be required to investigate and report on the Defendants' compliance with the proposed Final Judgment and the Stipulation and Order, and the Defendants' progress toward effectuating the purposes of the proposed Final Judgment, including but not limited to: (1) Constellation's attainment of the construction milestones set forth in Section V.A of the proposed Final Judgment, the reasons for any failure to meet such milestones, and recommended remedies for any such failure; (2) any breach or other problem that arises under the Transition Services Agreement, Interim Supply Agreement, or other agreement between ABI and Constellation that may affect

the accomplishment of the purposes of the proposed Final Judgment, the reasons for such breach or problem, and recommended remedies therefor; and (3) any breach or other concern regarding the accuracy of ABI's representations in sections 3.25 and 3.26 of the Stock Purchase Agreement, or successor agreements thereto, and Modelo's representations in Exhibit C to the proposed Final Judgment, and recommended remedies therefor. *See* proposed Final Judgment at VIII.B.

II. Mr. Berlin is Well Qualified to Serve as Monitoring Trustee

The United States moves this Court to approve the appointment of William E. Berlin as Monitoring Trustee. Mr. Berlin has practiced antitrust law for nearly 25 years. He first worked as an associate at Arter & Hadden LLP for almost seven years, and then spent more than eight years as a trial attorney with the Antitrust Division of the United States Department of Justice. Since 2003, Mr. Berlin has been a principal at Ober|Kaler in the Antitrust and Competition and Health Law practice groups, where his practice primarily focuses on representing clients in federal agency investigations of mergers and acquisitions. At Ober|Kaler, he has recently worked directly with a monitoring trustee jointly appointed by the Federal Trade Commission and a federal district court in connection with a divestiture resolving the antitrust investigation and complaint challenging a hospital acquisition of physician groups.²

Mr. Berlin is also an American Health Lawyers Association-certified arbitrator and mediator. As such, he has the skills and experience necessary to help resolve

² The divestiture was required, and the monitoring trustee appointed, pursuant to a Decision and Order of the Federal Trade Commission in *In re. Renown Health*, 2012 WL 618850 (F.T.C. Dec. 4, 2012) (No. 111-0101, C-4366), and a companion suit brought by the Nevada Attorney General, *Nev. ex rel. Masto v. Renown Health*, No. 3:12-cv-00409, 2012 WL 3962657 (D. Nev. Aug. 13, 2012).

potential disagreements between ABI and Constellation regarding their rights and obligations under the proposed Final Judgment and attendant agreements.

Additionally, Mr. Berlin's firm, Ober|Kaler, has a construction law practice group with a national and international practice that will be able to assist in his evaluation of the expansion of the Piedras Negras Brewery.

Mr. Berlin's professional biography is attached as Exhibit A to the Declaration of Michelle R. Seltzer. Based on his nearly 25 years of experience as an antitrust attorney, his familiarity with the Antitrust Division and its mission, his qualifications as an arbitrator and mediator, and his experience in working with a monitoring trustee in connection with an antitrust-related divestiture, Mr. Berlin is well positioned to serve as Monitoring Trustee.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests this Court to approve the appointment of William E. Berlin as Monitoring Trustee pursuant to Section VIII of the proposed Final Judgment.

Dated: June 21, 2013

Respectfully submitted,

/s/ Michelle R. Seltzer

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