ANTITRUST LAW

Unit 14: Merger Antitrust Litigation

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Table of Contents

DOJ Merger Challenges

FEDERAL COURT INJUNCTIONS

CLAYTON ACT

Clayton Act § 15. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof. [15 U.S.C. § 25]

FEDERAL COURT INJUNCTIONS

FEDERAL RULES OF CIVIL PROCEDURE

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the

adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires

(c) *Security*. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) *Other Laws Not Modified*. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. §2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

(3) 28 U.S.C. §2284, which relates to actions that must be heard and decided by a three-judge district court.

(f) *Copyright Impoundment*. This rule applies to copyright-impoundment proceedings.

FTC Merger Challenges

FTC SECTION 13(b) PRELIMINARY INJUNCTIONS

FTC Act § 13. False advertisements; injunctions and restraining orders

(a) *Power of Commission; jurisdiction of courts* [omitted—deals with false and deceptive advertising]

(b) *Temporary restraining orders; preliminary injunctions*. Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: Provided, however, That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: Provided further, That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found. [15 U.S.C. § 53(b)]

(c) *Service of process; proof of service*. Any process of the Commission under this section may be served by any person duly authorized by the Commission—

(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;

(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or

(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.

The verified return by the person serving such process setting forth the manner of such service shall be proof of the same. [15 U.S.C. § 53(c)]

(d) *Exception of periodical publications* [omitted—deals with false and deceptive advertising]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Plaintiff, v. ARDAGH GROUP, S.A., COMPAGNIE DE SAINT-GOBAIN, and SAINT-GOBAIN CONTAINERS, INC., Defendants.	Case No. 1:13-CV-01021 (BJR) **PUBLIC VERSION**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

REDACTED VERSION FOR PUBLIC FILING*

*The Federal Trade Commission files this non-confidential redacted version of its Memorandum of Law in Support of its Motion for Preliminary Injunction, filed August 28, 2013. The Protective Order requires all information designated "Confidential" to be redacted from the public version of the pleading filed with the court. Although Defendants designated all information and documents redacted in this Memorandum as "Confidential," most of the information does not appear to be commercial information, the disclosure of which would cause injury to their businesses.

The Federal Trade Commission ("FTC" or the "Commission") has commenced an action in this Court under Section of 13(b) of the FTC Act seeking to enjoin preliminarily Ardagh Group S.A. ("Ardagh") from completing its acquisition of Saint-Gobain Containers, Inc. ("Saint-Gobain" or "Verallia North America") until the resolution of the Commission's pending administrative case to determine the legality of the proposed acquisition. The Commission respectfully submits this memorandum of law in support of its preliminary injunction motion.

INTRODUCTION

The Commission seeks to halt an acquisition that, if consummated, would dramatically concentrate the glass container industry in the hands of two manufacturers and lead to higher prices for glass beer and spirits bottles. For years, three manufacturers have dominated the $5 billion glass container industry in the United States. The second- and third-largest of these manufacturers, Ardagh and Saint-Gobain, now propose to merge in a transaction that would create a durable duopoly. Under well-settled precedent and the Commission's merger guidelines, this merger to duopoly is presumptively unlawful. Indeed, a top Ardagh sales executive stated in June 2013 that Ardagh believes the transaction "may not get approved" since "it is going from 3 to 2 major suppliers."[1]

The Commission has initiated an administrative proceeding to adjudicate the legality of the proposed transaction under the antitrust laws, and the trial in that proceeding begins on December 2, 2013. Thus, the only issue for this Court is whether to grant interim relief by enjoining the Defendants from consummating the proposed acquisition pending the upcoming merits trial. The Court should do so because such interim relief is necessary to prevent consumer harm and to preserve the possibility of an effective remedy.

[1] PX 1574.

Under Section 13(b) of the FTC Act, the Commission is entitled to a preliminary injunction "[u]pon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest." 15 U.S.C. § 53(b). At this stage, the Commission is *not* required to prove whether the acquisition, is, in fact, illegal under the antitrust laws. "That responsibility lies with the FTC" after a full administrative hearing. *FTC v. Whole Foods Market, Inc*., 548 F.3d 1028, 1035 (D.C. Cir. 2008) (Brown, J.). The FTC creates a strong "presumption in favor of preliminary injunctive relief" by raising "questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation, study, deliberation and determination by the FTC in the first instance and ultimately by the Court of Appeals." *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714-15 (D.C. Cir. 2001). The Commission undoubtedly has met that standard here.

To counter this strong presumption, coupled with the strong "public interest in effective enforcement of the antitrust laws," defendants must show "particularly strong equities" that favor allowing the acquisition to close before trial. *Id*. at 726-27; *Whole Foods*, 548 F.3d at 1035 (Brown, J.). Defendants cannot do so. At best, Defendants' arguments only underscore the "serious, substantial" questions to be resolved in the administrative trial.

This acquisition will likely cause anticompetitive effects in at least two relevant antitrust product markets: the manufacture and sale of glass containers to (1) beer brewers ("Brewers") and (2) spirits distillers ("Distillers"). Both are relevant antitrust markets for the purposes of assessing the acquisition's competitive impact because other types of containers, such as aluminum cans or plastic bottles, are not economically viable substitutes for glass.

The proper delineation of the relevant market is ultimately "a matter of business reality – a matter of how the market is perceived by those who strive to profit in it." *FTC v. Coca-Cola*

Co., 641 F. Supp. 1128, 1132 (D.D.C. 1986), *vacated as moot*, 829 F.2d 191 (D.C. Cir. 1987). On that question, the evidence leaves little doubt.

- Glass container manufacturers refer to the "three majors" of glass container manufacturing, tell the investment community they operate in a glass container market, and calculate market shares based only on glass container sales.

- Aluminum and plastic container manufacturers have testified that they do not compete directly with glass.

- Glass container manufacturers bid for contracts knowing their customers have already excluded aluminum cans or plastic bottles from consideration.

- Brewers and Distillers who sell products in glass bottles want glass – not cans or plastic – because their customers demand it. As one Brewer explained when asked: "Who determines the mix of packaging? Consumers."[2]

- Brewers and Distillers do not change their brands' packaging based on variations in the relative prices of glass, metal, or plastic containers.

Unless enjoined, Ardagh's planned $1.7 billion acquisition of Saint-Gobain would produce a single firm controlling [redacted] percent of the U.S. glass container industry, according to Ardagh's own assessment. The only other major U.S. manufacturer – Owens-Illinois, Inc. ("O-I") – controls roughly [redacted] percent of the industry. The post-acquisition duopolists would collectively control approximately [redacted] percent of the glass container market for Brewers and [redacted] percent for Distillers, easily exceeding the levels required to establish a presumption that the acquisition violates the antitrust laws. The remaining competitors are fringe importers and small-scale or niche manufacturers.

Today, Ardagh, Saint-Gobain, and O-I – the "three majors," to borrow a term from Ardagh's documents – recognize their mutual incentives to avoid excess capacity that could lead to greater price competition. Indeed, Ardagh's North American President described the glass container industry as having "evolved" to be "very disciplined with 'well-balanced' if not tight

[2] [redacted]

supply demand dynamics."[3] [redacted]

Still, Brewers and Distillers today benefit from competition among the major glass manufacturers by encouraging those manufacturers to bid for their business, and those benefits accrue to consumers. The proposed acquisition would end that competition between Ardagh and Saint-Gobain and lead to higher prices for beer and spirits bottles. It would also dramatically increase the ease and likelihood of coordination between the only two remaining Majors in a "highly concentrated market, with stable market shares, low growth rates and significant barriers to entry" – a situation that provides "few incentives to engage in healthy competition." *FTC v. CCC Holdings, Inc.*, 605 F. Supp. 2d 26, 66 (D.D.C. 2009) (Collyer, J.).

The barriers to entry in this market are extraordinarily high. Glass plants cost hundreds of millions of dollars and take years to build. Not surprisingly, Defendants tout the fact that "new market entrants are faced with meaningful barriers to entry, including significant start-up costs (estimated at $200 million for a new plant)," and other barriers.[6] Where, as here, the market is ripe for coordination and new entry is improbable, "no court has ever approved a merger to duopoly." *Heinz*, 246 F.3d at 717.

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[3] PX 1260-004; Fredlake Dep. at 126-27.

[4] [redacted]

[5] [redacted] *see also* Grewe Dep. at 128 [redacted]

[6] PX 1247-008.

Ed.: Statement of Facts omitted

V. The Commission Challenges Ardagh's Acquisition Of Saint-Gobain.

Ardagh and Compagnie de Saint-Gobain, Saint-Gobain's parent company, entered into a Share Purchase Agreement on January 17, 2013, pursuant to which Ardagh proposes to acquire Saint-Gobain for approximately $1.7 billion on or before January 13, 2014. On June 28, 2013, the Commission voted to file an administrative complaint challenging the acquisition and authorized Commission staff to seek a preliminary injunction enjoining the acquisition pending the resolution of the Commission's administrative trial.

ARGUMENT

The question before this Court is whether it is in the public interest to order Defendants to refrain from closing their transaction until the FTC has concluded its ongoing administrative proceeding. Under controlling law, the answer is plainly yes.

I. THE FTC HAS RAISED "SERIOUS, SUBSTANTIAL" ISSUES APPROPRIATE FOR AN ADMINISTRATIVE TRIAL.

The Commission has determined that it has "reason to believe" that Ardagh's proposed acquisition of Saint-Gobain violates Section 7 of the Clayton Act and Section 5 of the FTC Act.

[55] PX 1379 ¶¶ 1, 10-13 (Complaint, *Anchor Glass Container Corp. v. Owens-Illinois, Inc.*, No. 8:01-cv-1849 (M.D. Fla. Sep. 26, 2001)).

In these circumstances, Section 13(b) of the FTC Act authorizes the Commission to seek a preliminary injunction halting the merger until the Commission "has had an opportunity to adjudicate the merger's legality in an administrative proceeding." *CCC Holdings,* 605 F. Supp. 2d at 35 (citing 15 U.S.C. § 53(b)). The merits trial is scheduled to begin on December 2, 2013 before an administrative law judge, and discovery in that action is nearly complete. Although the acquisition agreement permits Defendants to close in early 2014 (and could presumably be extended), Defendants have threatened to close their acquisition before the completion of the administrative trial. Ardagh intends to litigate the merits trial to conclusion regardless of whether this Court grants the Commission injunctive relief. Ardagh's counsel told the administrative law judge: "[i]f the injunction issues, the parties intend to continue on the administrative proceeding. We will continue to litigate. . . .That is not bluster, Your Honor."[56] Thus, the only issue for this Court is whether the Commission is entitled to a preliminary injunction to preserve its ability to obtain effective relief and to prevent consumer harm.

Section 13(b) of the FTC Act enables the Commission to seek to preserve the status quo in this precise situation. The legislation authorizes the Court to issue a preliminary injunction "where such action would be in the public interest—as determined by a weighing of the equities and a consideration of the Commission's likelihood of success on the merits." *Heinz,* 246 F.3d at 714. The Court must balance these two "public interest" considerations on a sliding scale. *See CCC Holdings*, 605 F. Supp. 2d at 35 (citing *Heinz*, 246 F.3d at 714); *Whole Foods*, 548 F.3d at 1035 (Brown, J.); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 903 (7th Cir. 1989) (Posner, J.). The greater the FTC's showing of likelihood of success on the merits, the heavier the

[56] PX 0005 (Initial Scheduling Conference Transcript) at 9.

defendants' burden to show "particularly strong equities" in their favor. *Whole Foods*, 548 F.3d at 1035 (Brown, J.); *Elders Grain*, 868 F.2d at 903.

In Section 13(b), Congress demonstrated its concern that "injunctive relief be broadly available to the FTC." *Heinz*, 246 F.3d at 714 (quoting *FTC v. Exxon Corp*., 636 F.2d 1336, 1343 (D.C. Cir. 1980)). Accordingly, Section 13(b) eases the more stringent injunction standard required of private parties. *Id.*; *see also Whole Foods*, 548 F.3d at 1042 (Tatel, J.) ("[T]he FTC – an expert agency acting on the public's behalf – should be able to obtain injunctive relief more readily than private parties."). Thus, at this stage, the FTC is *not* required to prove, nor is this Court required to find, that the proposed acquisition would violate the antitrust laws. *CCC Holdings*, 605 F. Supp. 2d at 35 (citing *Staples*, 970 F. Supp. at 1070). As the D.C. Circuit recognized in *Heinz*, "[t]hat adjudicatory function is vested in the FTC in the first instance." 246 F.3d at 714 (quoting *FTC v. Food Town Stores, Inc.*, 539 F.2d 1339, 1342 (4th Cir. 1976)).

The Commission has met the standard for showing a likelihood of success on the merits because the evidence here raises "serious, substantial questions meriting further investigation." *Whole Foods*, 548 F.3d at 1049 (Tatel, J.); *id.* at 1035 (Brown, J.); *Heinz*, 246 F.3d at 714-15; *see also CCC Holdings*, 605 F. Supp. 2d at 36. Defendants' admissions alone raise serious questions of illegality surrounding this acquisition. Anchor alleged in its 2001 antitrust lawsuit that the "market for the manufacture and sale of glass containers in the United States is highly concentrated" and "the three largest producers . . . account for in excess of 90% of the domestic volume."[57] The glass container industry remains just as concentrated today as it was then.

The proposed acquisition would create a duopoly in markets with high entry barriers and conditions ripe for coordination – an outcome "no court has ever approved." *Heinz*, 246 F.3d at

[57] PX 1379 ¶ 13.

716-17; *see, e.g.*, *CCC Holdings*, 605 F. Supp. 2d 26 (preliminarily enjoining three-to-two merger of insurance software providers); *FTC v. Swedish Match*, 131 F. Supp. 2d 151 (D.D.C. 2000) (preliminarily enjoining merger of loose-leaf tobacco firms where "the top two firms left. . . will have ninety percent of the market."); *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997) (preliminarily enjoining three-to-two merger of office supply superstores); *United States v. H&R Block, Inc.*, 833 F. Supp. 2d 36 (D.D.C. 2011) (permanently enjoining three-to-two merger of tax software firms). There is no reason for this Court to be the first to bless such a merger.

Under the second prong of the Section 13(b) analysis, there is a general presumption in favor of the FTC in the weighing of the equities because "'the public interest in the effective enforcement of the antitrust laws' was Congress's specific 'public equity consideration' in enacting" Section 13(b). *Whole Foods*, 548 F.3d at 1035 (Brown, J.) (quoting *Heinz*, 246 F.3d at 726). No compelling public equities favor allowing this acquisition to close before the trial. Private equity considerations, such as a risk that a transaction will not occur, are given little weight. *Whole Foods*, 548 F.3d at 1034-35 (Brown, J.); *CCC Holdings*, 605 F. Supp. 2d at 75-76. Here, because Defendants confirmed that they will litigate through trial regardless of this Court's ruling, there is nothing to weigh. Preserving the status quo will protect the public interest and will not harm Defendants, who can close their transaction if they succeed in the ongoing administrative proceeding.

[Remainder of brief omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Plaintiff, v. ARDAGH GROUP, S.A., COMPAGNIE DE SAINT-GOBAIN, and SAINT-GOBAIN CONTAINERS, INC., Defendants.	Case No. 13-CV-1021 (BJR) **PUBLIC (REDACTED)**

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO THE FEDERAL TRADE COMMISSION'S MOTION FOR A PRELIMINARY INJUNCTION

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September 18, 2013

Excerpts--Full version may be found on class web site

Defendants Ardagh Group S.A. ("Ardagh"), Compagnie de Saint-Gobain ("CSG"), and Saint-Gobain Container, Inc. (d/b/a "Verallia" or "VNA") (collectively, "Defendants") respectfully submit this Memorandum of Law in Opposition to the Federal Trade Commission's ("FTC") Motion for a Preliminary Injunction enjoining Ardagh's proposed acquisition of VNA.

PRELIMINARY STATEMENT

The FTC's Motion for a Preliminary Injunction is fundamentally flawed. Ignoring directly on-point precedent, the FTC paints a picture of three powerful glass manufacturers colluding against their stranded customers—beer brewers and liquor distillers—and claims that this Court must act to prevent a merger that will convert an anticompetitive oligopoly to an uncontrollable duopoly. This picture bears no resemblance to reality. The evidence and controlling law make clear that the FTC's motion should be denied.

First, the FTC's alleged relevant product markets—glass containers for beer and for liquor—are legally unsustainable. The FTC's "glass-only" markets ignore the reality that glass container manufacturers are fighting a losing battle against the makers of metal and plastic containers. Glass container manufacturers have struggled in the face of high operating costs, declining demand, and bankruptcies, always one price increase away from losing further volume to alternative packaging. More troubling, the FTC's assertion of "glass-only" product markets ignores controlling legal precedent in which these markets have been explicitly rejected by the Supreme Court, this Court, and the FTC itself. This precedent alone requires rejection of the FTC's market definitions. And developments since the time of this controlling precedent further prove that the relevant markets cannot comprise glass only—today, over 50% of all domestically-packaged beer is packaged in aluminum cans and over 40% of all domestically-packaged spirits is packaged in plastic containers.

Second, the FTC's alleged nationwide geographic market for beer containers ignores the high shipping costs of beer bottles and the testimony of beer customers that distant plants cannot effectively compete for their business. Courts uniformly have held that high transportation costs relative to a product's price typically result in narrow geographic markets. In this case, the geographic market for beer containers is much narrower than the United States.

Third, even if the appropriate relevant markets are glass-only (which they are not), the merger will not have an anticompetitive effect. There is limited competition between Defendants for the sale of beer or spirits containers due to high freight costs, geographically dispersed plants, specialized production lines, and lack of excess capacity, and so there is little meaningful competition that could be impacted by the merger. In addition, both the beer and spirits industries are characterized by a handful of very powerful buyers that are well-equipped to keep glass container prices low. Indeed, [redacted] customers account for almost [redacted]% of Ardagh's beer container revenues, while [redacted] other customers account for over [redacted]% of Ardagh's liquor container revenues. Moreover, these customers are protected by long-term contracts that lock in pricing terms and constrain Ardagh's ability to raise prices after the merger.

Fourth, Ardagh entered into this transaction because it will result in synergies (such as overhead costs savings, reductions in production costs, and manufacturing footprint efficiencies) of at least $95 million annually, which have a present discounted value well in excess of [redacted]. Many of these gains, which will not happen absent this transaction, will be passed on to the customers and others (e.g., lower manufacturing costs) will benefit customers by enabling the combined company to better compete with nonglass packaging, ensuring its long-term survivability.

Fifth, the balance of the equities weighs against the drastic remedy of a preliminary injunction. A preliminary injunction would not simply "preserve the status quo" pending completion of the administrative proceeding; it could effectively doom the merger. While Ardagh is committed to defending the transaction to a final resolution, the merger agreement terminates if the merger is not closed by mid-January, 2014. Thus, if the merger is enjoined, Ardagh may not have the chance to pursue the case to its administrative conclusion.

Finally, Ardagh is restructuring the transaction to further demonstrate that an injunction is not warranted. The restructuring, which is contingent upon the merger closing, has two parts: (1) Ardagh is selling three beer bottle plants and one plant that makes liquor bottles to a capable and well-financed third-party that will be a new and significant competitor, and (2) Ardagh is providing craft beer customers an option to extend their existing supply contracts to 2023, locking in their premerger pricing terms (at the customer's election) for up to ten years. The FTC could not meet its burden to obtain a preliminary injunction against the original transaction and certainly cannot meet its burden against the restructured transaction.

[Background omitted]

APPLICABLE LAW

Section 7 of the Clayton Act bars mergers "'the effect of [which] may be substantially to lessen competition, or to tend to create a monopoly' in 'any line of commerce or in any activity affecting commerce in any section of the country.'" *FTC v. CCC Holdings Inc.*, 605 F. Supp. 2d 26, 35 (D.D.C. 2009) (quoting 15 U.S.C. § 18). The FTC must establish three elements to prove a Section 7 claim: "(1) the relevant product market in which to assess the transaction, (2) the geographic market in which to assess the transaction, and (3) the transaction's probable effect on competition in the relevant product and geographic markets." *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 117 (D.D.C. 2004) (citing *United States v. Marine Bancorporation*, 418 U.S. 602, 618-23 (1974)). The FTC has "the burden on every element of their Section 7 challenge, and a failure of proof in any respect will mean the transaction should not be enjoined." *Id*. at 116.

Under 15 U.S.C. § 53(b), "[t]he FTC has the burden of proof in presenting this motion for a preliminary injunction to show a likelihood of success on the merits" of its Section 7 Clayton Act claim. *FTC v. Owens-Illinois, Inc.*, 681 F. Supp. 27, 33-34 (D.D.C. 1988), *vacated as moot*, 850 F.2d 694 (D.C. Cir. 1988) (per curiam). The FTC may establish a presumption in favor of preliminary injunctive relief by raising questions "so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation." *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714-15 (D.C. Cir. 2001). But the presumption is *rebuttable*, *id.* at 725, *see FTC v. Whole Foods Mkt, Inc.*, 548 F.3d 1028, 1035 (D.C. Cir. 2008), and courts will deny a preliminary injunction where the FTC fails to demonstrate a likelihood of prevailing on the merits.[18] Although the FTC's burden may be somewhat lower than that of a private litigant seeking interim injunctive relief, "the FTC's burden is not insubstantial." *Arch Coal, Inc.*, 329 F. Supp. 2d at 116. It is certainly not the low bar the FTC wishes for itself in its papers. (*See* FTC Br. at 2, 14). A district court may not "simply rubber-stamp an injunction whenever the FTC provides some threshold evidence; it must 'exercise independent judgment' about the questions § 53(b) commits to it." *Whole Foods*, 548 F.3d at 1035 (quoting *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1082 (D.C. Cir. 1981)). Moreover, "'[a] showing of a fair or tenable chance of success on the merits will not suffice for injunctive relief.'" *Arch Coal*, 329 F. Supp. at 116 (quoting *FTC v. Tenet Health Care Corp.*, 186 F.3d 1045, 1051 (8th Cir. 1999)); *see FTC v. Swedish Match*, 131 F. Supp. 2d 151, 156 (D.D.C. 2000) (same); *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1072 (D.D.C. 1997) (same).

[18] *See, e.g.*, *FTC v. Lab. Corp. of Am.*, No. SACV 10–1873 AG (MLGx), 2011 WL 3100372 (C.D. Cal. Mar. 11, 2011) (denying preliminary injunction); *FTC v. Lundbeck, Inc.*, Civ. Nos. 08-6379 (JNE/JJG), 08-6381 (JNE/JJG), 2010 WL 3810015 (D. Minn. Aug. 31, 2010) (same), *aff'd*, 650 F.3d 1236 (8th Cir. 2011); *FTC v. Foster*, No. CIV 07-352 JBACT, 2007 WL 1793441 (D.N.M. May 29, 2007) (same); *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004) (same); *FTC v. Butterworth Heath Corp.*, 946 F. Supp. 1285 (W.D. Mich. 1996) (same), *aff'd*, 121 F.3d 708 (6th Cir. 1997) (unpublished); *Owens-Illinois*, 681 F. Supp. at 27 (same).

A district court must also "balance the likelihood of the FTC's success against the equities." *Whole Foods*, 548 F.3d at 1035.

[Remainder of brief omitted]

FTC SECTION 5

FTC Act § 5. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except [*exceptions omitted*] from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)

(A) For purposes of subsection (a), the term "unfair or deceptive acts or practices" includes such acts or practices involving foreign commerce that—

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or

unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that

(1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and

(2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or

corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Exemption from liability

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either

(a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or

(b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or

(c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if

(i) a petition for review of such order is pending in such court, and

(ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) of this section and of section 57b (a)(2) of this title, if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(h) Modification or setting aside of order by Supreme Court

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals

If the order of the Commission is modified or set aside by the court of appeals, and if

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) Rehearing upon order or remand

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if

(1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or
(2) the petition for certiorari has been denied, or
(3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)

(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent

order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) of this section that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a) of this section.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(n) Standard of proof; public policy considerations

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

“Litigating the Fix”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, **Plaintiff,** **v.** **ARCH COAL, INC., et al.,** **Defendants.**	**Civil Action No. 04-0534 (JDB)**
STATE OF MISSOURI, et al., **Plaintiffs,** **v.** **ARCH COAL, INC., et al.,** **Defendants.**	**Civil Action No. 04-0535 (JDB)** **(Consolidated Cases)**

ORDER

Upon consideration of plaintiff Federal Trade Commission's motion in limine to exclude, for the purposes of the preliminary injunction proceeding, all evidence and argument on the issue of Arch Coal, Inc.'s proposed sale of the Buckskin mine to Peter Kiewit Sons, Inc., the opposition

filed by defendants Arch Coal, Inc., Triton Coal Co., and New Vulcan Coal Holdings, LLC, plaintiff's reply thereto, and the entire record herein, it is this 7th day of July, 2004, hereby

ORDERED that plaintiff's motion is DENIED.

/s/ John D. Bates
JOHN D. BATES
United States District Judge

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United States v. AB Inbev

PRESS RELEASE

Brussels and Mexico City, 29 June 2012 – 1 / 7

The enclosed information constitutes regulated information as defined in the Belgian Royal Decree of 14 November 2007 regarding the duties of issuers of financial instruments which have been admitted for trading on a regulated market.

Anheuser-Busch InBev and Grupo Modelo to Combine, Next Step in Long and Successful Partnership

Corona to join Budweiser as a Global Flagship Brand

Grupo Modelo Holds Leadership Position in Mexico, a Highly Attractive Market

Grupo Modelo's Name and Headquarters in Mexico City to Remain

Combination Expected to Yield Annual Synergies of at Least USD 600 Million

Grupo Modelo to Sell its 50% Stake in Crown Imports LLC to Constellation Brands

Anheuser-Busch InBev (Euronext: ABI)(NYSE: BUD) and Grupo Modelo, S.A.B. de C.V. (BMV: GMODELOC) today announced that they have entered into an agreement under which Anheuser-Busch InBev will acquire the remaining stake in Grupo Modelo that it does not already own for USD 9.15 per share in cash in a transaction valued at USD 20.1 billion or MXN 278.6 billion[1]. The combination will be completed through a series of steps that will simplify Grupo Modelo's corporate structure, followed by an all-cash tender offer by AB InBev for all outstanding Grupo Modelo shares. The tender price represents a premium of approximately 30% to the closing price of Grupo Modelo series C shares on June 22, 2012.

The agreement is a natural next step given AB InBev's existing economic stake of more than 50% in Grupo Modelo and the successful long-term partnership between the two companies. The combined company would lead the global beer industry with roughly 400 million hectoliters of beer volume annually and 2012 estimated revenues of USD 47 billion. Its operations would span 24 countries with enhanced opportunities for 150,000 employees across the globe.

"Grupo Modelo has been one of our most important partners for more than 20 years and we are very pleased to evolve our long and successful relationship into this combination," said Carlos Brito, Chief Executive Officer of Anheuser-Busch InBev. *"There is tremendous opportunity from combining two leading brand portfolios and further expanding Grupo Modelo's brands worldwide through AB InBev's extensive global distribution network. Our admiration for Grupo Modelo's business and brands has only increased with time and we look forward to joining our historic and world-class breweries. We also recognize and appreciate the critical role that Grupo Modelo's shareholders and management have played in the*

[1] Converted at an exchange rate of 13.86 MXN/USD based on Bloomberg as of Friday, June 22, 2012.

company's longstanding success within Mexico and internationally and look forward to their continued contributions."

"We have worked together with Anheuser-Busch InBev in a productive decades-long partnership, and it is time to cement our relationship through this merger," said Carlos Fernández, Chairman and Chief Executive Officer of Grupo Modelo. *"Together we will be the leading global brewer with top brands around the world and positions in some of the fastest growing countries. This is an exciting transaction that will bring our brands and proud heritage to even more consumers internationally while offering an increasing number of AB InBev's brands in Mexico. Grupo Modelo's Board believes that this combination will deliver significant benefits for all stakeholders."*

Combination of Globally Recognized Brands

The combination would create a significant growth opportunity worldwide from combining two leading brand portfolios and distribution networks. It would bring together five of the top six and seven of the top ten most valuable beer brands in the world, each with distinct brand imagery and consumer positioning. The combined company would unite Grupo Modelo's number one position in the world's fourth largest profit pool with AB InBev's leading global position, further increasing AB InBev's exposure to fast-growing developing markets.

Building on its rich tradition and unique brand positioning, Corona would become a global flagship brand alongside Budweiser and join global brands Stella Artois and Beck's. There will be meaningful opportunities to grow Corona globally outside the U.S. and Mexico, given AB InBev's established platform for distribution worldwide and the resources at its disposal as the leading global brewer.

The combination would bring together significant industry expertise and complementary geographic experience. Grupo Modelo has successfully imported and distributed Budweiser and Bud Light in Mexico for more than twenty years and has a strong track record as a leader in Mexico. The company has also developed Corona into the leading import beer in 38 countries around the world and successfully markets the brand in more than 180 countries.

Grupo Modelo's Name and Headquarters in Mexico City to Remain

Grupo Modelo's name, identity, heritage and headquarters in Mexico City will be maintained, and the company will continue to have a local board. Carlos Fernández, María Asunción Aramburuzabala and Valentín Díez Morodo will continue to play an important role on Grupo Modelo's Board of Directors and AB InBev will seek the board's insights and expertise. Two Grupo Modelo board members will join AB InBev's Board of Directors, and they have committed, only upon tender of their shares, to invest USD 1.5 billion of their proceeds from the tender offer into shares of AB InBev to be delivered within five years via a deferred share instrument.

Consumers in Mexico would benefit from the increased choice offered by AB InBev's extensive portfolio. AB InBev will ensure that the integrity and quality of Grupo Modelo's brands are preserved, respecting the great traditions that AB InBev has experienced firsthand over the years.

AB InBev believes that Mexico is an attractive market in which to invest with solid macroeconomic fundamentals and a favorable demographic profile. Mexico is the second largest economy in Latin America and has one of the highest per capita GDPs within developing markets. Beer is the largest alcohol beverage subcategory in the country with 70% of value share, representing about USD 22 billion in retail sales in 2011. A growing middle class, rising urbanization rates and increased consumer spending due to higher disposable incomes are expected to drive category growth. Mexico's economy recorded 4.6% GDP growth in the first quarter of 2012, and strong performance is expected to continue in the long term, driving private consumption.

Key Transaction Terms

The existing partnership between AB InBev and Grupo Modelo, which dates back to 1993, is being enhanced through a series of transactions that will simplify and streamline the corporate structure of Grupo Modelo. As part of these transactions, Diblo, S.A. de C.V., the holding company for Grupo Modelo's operating subsidiaries, and Dirección de Fábricas (DIFA), S.A. de C.V., a leading glass bottle manufacturer in Mexico with output largely dedicated to Grupo Modelo, will merge into parent Grupo Modelo for newly issued Grupo Modelo shares. Immediately after the mergers of Diblo and DIFA, AB InBev will commence an all-cash tender offer for all of the outstanding shares of Grupo Modelo that it will not own at that time for a total consideration of USD 20.1 billion or USD 9.15 per share. Both companies' Boards of Directors have approved the transaction.

The tender price of USD 9.15 per share represents a premium of approximately 30%[2] to MXN 97.95, the closing price of Grupo Modelo series C shares on June 22, 2012. The total enterprise value is estimated to be approximately USD 32.2 billion, composed of the consideration in the tender offer, the value of AB InBev's existing stakes in Grupo Modelo and Diblo as well as cash balances and minority interests. (Note: Please visit www.globalbeerleader.com for a detailed analysis of EBITDA multiple calculations for this transaction.)

AB InBev has fully committed financing for the purchase of Grupo Modelo's outstanding shares. The company has added USD 14 billion of additional bank facilities to existing liquidity through a new facility agreement which provides for an USD 8 billion three-year term facility and a USD 6 billion term facility with a maximum maturity of two years from the funding date. AB InBev now has total liquidity, between cash and long-term committed facilities, in excess of USD 24 billion. AB InBev expects to be below its targeted net debt to normalized EBITDA ratio of 2.0x during the course of 2014.

[2] Converted at the exchange rate as of Friday, June 22, 2012.

Crown Imports LLC to Remain U.S. Importer

In a related transaction announced today, Grupo Modelo will sell its existing 50% stake in Crown Imports, the joint venture that imports and markets Grupo Modelo's brands in the U.S., to Constellation Brands for USD 1.85 billion, giving Constellation Brands 100% ownership and control. As a result, Grupo Modelo's brands will continue to be imported, marketed and distributed independently in the U.S. through Crown Imports on similar economic terms it receives today, while AB InBev will ensure the continuity of supply, quality of products and ability to introduce innovations. Crown Imports will continue to manage all aspects of the business, including making marketing, distribution and pricing decisions.

Combination Offers Significant Synergies and Opportunities for Sharing Best Practices

The companies believe that the synergy potential from the combination would include the expansion of Corona, economies of scale through combined purchasing opportunities, and the sharing of best practices around the world. In addition, AB InBev has a strong track record of successfully completing combinations, integrating businesses and delivering on its financial commitments. The combination is expected to yield annual synergies of at least USD 600 million.

Both companies are leaders in corporate citizenship with a strong commitment to giving back to the communities in which they operate. Together, the combined company would work to mutually enhance their corporate responsibility initiatives for their employees, the environment and consumers. For example, Grupo Modelo's water usage at its breweries is best in class, and AB InBev intends to share these practices across its operations to continue to improve water management at its breweries around the world.

AB InBev looks to learn from the state-of-the-art technology used in Grupo Modelo's newest breweries, which are among the most modern and efficient worldwide.

Grupo Modelo's employees would also benefit from global career development opportunities as well as contribute their skills and experience to the combined organization's continued growth.

The transaction is subject to regulatory approvals in the U.S., Mexico and other countries, the approval of the shareholders of Grupo Modelo in a general meeting and other customary closing conditions. The companies will work proactively with regulators to move through the review process efficiently. It is expected to close during the first quarter of 2013.

Investor and Analyst Webcast Details

There will be a webcast for the investment community on Friday, June 29, 2012 at 7:30 a.m. Mexico City Time (CDT) / 8:30 a.m. EDT / 2:30 p.m. CET.

To register for the webcast click here http://www.media-server.com/m/p/m8jy4yvi.

A replay of the webcast will be also be archived on the investor relations sections of www.ab-inbev.com and www.gmodelo.mx.

Global Media Conference Call Details

There will be a call for media on Friday, June 29, 2012 at 8:45 a.m. Mexico City Time (CDT) / 9:45 a.m. EDT / 3:45 p.m. CET.

The call can be accessed by dialing 1-866-203-3436 in the U.S., 0-1-800-563-0645 in Mexico, and +1-617-213-8849 from international locations and referencing conference code 23945311.

Dutch and French versions of this press release will be posted on www.ab-inbev.com and a Spanish version will be posted on www.gmodelo.mx.

Transaction Website www.globalbeerleader.com

For more information, including a video interview with Carlos Brito, Chief Executive Officer of AB InBev, and Carlos Fernández, Chairman and Chief Executive Officer of Grupo Modelo, please go to www.globalbeerleader.com in English and www.liderglobalencerveza.com in Spanish. High resolution video and images for broadcast and print media can be downloaded from the website.

About Anheuser-Busch InBev

Anheuser-Busch InBev is a publicly traded company (Euronext: ABI) based in Leuven, Belgium, with an American Depositary Receipt secondary listing on the New York Stock Exchange (NYSE: BUD). It is the leading global brewer and one of the world's top five consumer products companies. Beer, the original social network, has been bringing people together for thousands of years and our portfolio of well over 200 beer brands continues to forge strong connections with consumers. We invest the majority of our brand-building resources on our Focus Brands - those with the greatest growth potential such as global brands Budweiser®, Stella Artois® and Beck's®, alongside Leffe®, Hoegaarden®, Bud Light®, Skol®, Brahma®, Antarctica®, Quilmes®, Michelob Ultra®, Harbin®, Sedrin®, Klinskoye®, Sibirskaya Korona®, Chernigivske®, Hasseröder® and Jupiler®. In addition, the company owns a 50 percent equity interest in the operating subsidiary of Grupo Modelo, Mexico's leading brewer and owner of the global Corona® brand. AB InBev's dedication to heritage and quality originates from the Den Hoorn brewery in Leuven, Belgium dating back to 1366 and the pioneering spirit of the Anheuser & Co brewery, with origins in St. Louis, USA since 1852. Geographically diversified with a balanced exposure to developed and developing markets, AB InBev leverages the collective strengths of its approximately 116,000 employees based in 23 countries worldwide. In 2011, AB InBev realized 39.0 billion USD revenue. The company strives to be the *Best Beer Company in a Better World*. For more information, please visit: www.ab-inbev.com.

PRESS RELEASE

Brussels and Mexico City, 29 June 2012 – 6 / 7

About Grupo Modelo
Grupo Modelo, founded in 1925, is the leader in Mexico in beer production, distribution and marketing. It has a total annual installed capacity of 70 million hectoliters. Currently, it brews and distributes 13 brands, including Corona Extra, the number one Mexican beer sold in the world, Modelo Especial, Victoria, Pacífico and Negra Modelo. It exports six brands and is present in more than 180 countries. It is the importer of Anheuser-Busch InBev's products in Mexico, including Budweiser, Bud Light and O'Doul's. It also imports the Chinese Tsingtao brand and the Danish beer Carlsberg. Through a strategic alliance with Nestlé Waters, it produces and distributes in Mexico the bottled water brands Sta. María and Nestlé Pureza Vital, among others. Grupo Modelo trades in the Mexican Stock Exchange since 1994 with the ticker symbol GMODELOC. It also quotes as an ADR under the ticker GPMCY in the OTC markets and in Latibex in Spain as XGMD.

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Forward Looking Statement:

This release contains certain forward-looking statements reflecting the current views of the management of AB InBev with respect to, among other things, the proposed transaction described herein as well as AB InBev's strategic objectives, business prospects, future financial condition, budgets, projected levels of production, projected costs and projected levels of revenues and profits, and the synergies it is able to achieve. These statements involve risks and uncertainties. The ability of AB InBev to achieve these objectives and targets or to consummate the proposed transaction is dependent on many factors some of

which may be outside of management's control. In some cases, words such as "believe", "intend", "expect", "anticipate", "plan", "target", "will" and similar expressions to identify forward-looking statements are used. All statements other than statements of historical facts are forward-looking statements. You should not place undue reliance on these forward-looking statements. By their nature, forward-looking statements involve risk and uncertainty because they reflect AB InBev's current expectations and assumptions as to future events and circumstances that may not prove accurate. The actual results could differ materially from those anticipated in the forward-looking statements for many reasons including the risks described under Item 3.D of AB InBev's annual report on Form 20-F filed with the US Securities and Exchange Commission on 13 April 2012, as well as risks associated with the proposed transaction, including uncertainty as whether AB InBev will be able to consummate the transaction on the terms described in this document or in the definitive agreements, the ability to obtain necessary governmental approvals, the availability of financing for the transaction and the ability to consummate the financing on the currently anticipated terms, the ability to realize the anticipated benefits of transaction, including as a result of a delay in completing the transaction or difficulty in integrating the businesses of the companies involved, and the amount and timing of any costs savings and operating synergies. AB InBev cannot assure you that the proposed transaction or the future results, level of activity, performance or achievements of AB InBev will meet the expectations reflected in the forward-looking statements. Moreover, neither AB InBev nor any other person assumes responsibility for the accuracy or completeness of the forward-looking statements. Unless AB InBev is required by law to update these statements, AB InBev will not necessarily update any of these statements after the date hereof, either to confirm the actual results or to report a change in its expectations.

This document shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any offer, solicitation or sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of such jurisdiction.

Constellation Brands Inc. to Acquire Remaining 50 Percent Interest in Crown Imports Joint Venture

--Leading U.S. import beer business to become wholly owned--

VICTOR, N.Y., June 29, 2012 - Constellation Brands, Inc., (NYSE:STZ), which currently owns 50 percent of Crown Imports LLC (Crown), a 50-50 joint venture with Grupo Modelo S.A.B. de C.V. (Modelo), announced today that it has signed a definitive agreement with Anheuser-Busch InBev SA/NV (AB InBev) to purchase the remaining 50 percent interest in Crown as AB InBev completes its proposed acquisition of Modelo. The purchase price is $1.85 billion and represents 50 percent of a multiple of approximately 8.5 times Crown's EBIT. The transaction, which is subject to regulatory approval, is expected to close during the first quarter of calendar 2013.

"This is a significant milestone in the history of Constellation Brands," said Rob Sands, president and chief executive officer, Constellation Brands. "We have been the importer, marketer and seller of the Modelo brands in the U.S. for almost two decades. During this time, the Crown team has successfully built the Modelo portfolio into an enviable position of leadership and growth. Our full ownership of this significant beer business provides an additional strategic lever for driving overall profitable organic growth. We expect this transaction to dramatically enhance the financial profile of our company and it will solidify Constellation Brands' position as the largest multi-category supplier of beverage alcohol and the third largest total beverage alcohol company in the U.S."

Crown's portfolio of brands includes Corona Extra, Corona Light, Modelo Especial, Pacifico, Negra Modelo and Victoria. Corona Extra is the best-selling imported beer and the sixth best-selling beer overall in the industry. Corona Light is the leading imported light beer and Modelo Especial is the third largest and one of the fastest growing major imported beer brands.

"Crown is currently experiencing significant marketplace momentum driven by new products as well as innovation in advertising, marketing, promotions and packaging," Sands added.

"This agreement provides certainty and continuity for Crown and its wholesaler partners," said Bill Hackett, president, Crown Imports. "We look forward to continuing to work with our wholesaler network to further grow the Modelo portfolio of brands across the U.S. marketplace."

Under the terms of the transaction, Constellation Brands and Crown will have complete, independent control of distribution, marketing and pricing for all Modelo brands in the U.S., while AB InBev will ensure continuity of supply, quality of products and the ability to introduce innovations. The new importation agreement will be perpetual and provides AB InBev with the right, but not the obligation, to exercise a call option every 10 years, subject to regulatory approval, at a multiple of 13 times Crown's EBIT from the Modelo brands.

Financial Highlights

Constellation Brands has fully committed bridge financing in place to complete the acquisition. Permanent financing is expected to consist of a combination of revolver borrowings, a new term loan under the company's current senior credit facility and the issuance of senior notes.

"Upon closing, this transaction is expected to increase Constellation's debt to comparable basis EBITDA leverage to the mid-four times range when factoring in a full-year of the additional Crown EBITDA," said Bob Ryder, chief financial officer, Constellation Brands. "Due to the anticipated strong free cash flow generation of Constellation Brands, this leverage ratio should decrease to our targeted range of three to four times within the first 12 months after the close of the transaction. We plan to suspend our current share repurchase program. We currently have approximately $700 million remaining under our one billion share repurchase authorization."

During Constellation's fiscal 2012, Crown sold 164 million cases and generated $2.47 billion of net sales and $431 million of operating income. The company currently accounts for its 50 percent interest in Crown under the equity method and recognized $215 million of equity earnings from Crown in fiscal 2012. Upon completion of the transaction, the company will begin consolidating the full financial results of Crown. As a result, this transaction is expected to be significantly accretive to Constellation's on-going diluted EPS and free cash flow results.

Constellation Brands will discuss this transaction on its first quarter fiscal 2013 earnings conference call scheduled for today at 10:30 a.m. (eastern.) The conference call can be accessed by dialing +973-935-8505 beginning 10 minutes prior to the start of the call.

About Constellation Brands, Inc.

As the world's leader in premium wine, Constellation Brands, Inc. (NYSE: STZ and STZ.B) is a S&P 500 Index and a Fortune 1000® company with 4,400 employees, sales in 125 countries and operations in 40 facilities worldwide. The company manages a broad portfolio of more than 100 wines, beers and spirits that include: Robert Mondavi, Clos du Bois, Kim Crawford, Inniskillin, Franciscan Estate, Ruffino, Simi, Estancia, Corona Extra, Black Velvet Canadian Whisky and SVEDKA Vodka. Learn more at www.cbrands.com.

Forward-Looking Statements

This news release contains forward-looking statements. The words "expect," "anticipate," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. Those statements may relate to Constellation Brands' business strategy, future operations, prospects, plans and objectives of management, as well as information concerning expected actions of third parties. All forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those set forth in or implied by the forward-looking statements. All forward-looking statements speak only as of the date of this news release. Constellation Brands undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

The forward-looking statements are based on management's current expectations and, unless otherwise noted, do not take into account the impact of any future acquisition, merger or any other business combination, divestiture, restructuring or other strategic business realignments, financing or share repurchase that may be completed after the date of this release. The forward-looking statements should not be construed in any manner as a guarantee that such results will in fact occur. There can be no assurance that the transaction between Constellation Brands and Anheuser-Busch InBev SA/NV regarding the purchase by Constellation Brands of the 50% portion of Crown Imports LLC which it does not already own will occur or will occur on the timetable contemplated hereby.

In addition to the risks and uncertainties of ordinary business operations, the forward-looking statements of the company contained in this news release are subject to a number of risks and uncertainties, including:

- completion of the announced transaction regarding the purchase by Constellation Brands of the 50% interest in Crown Imports LLC which it does not already own, and the accuracy of all projections which are expected to impact the company's financial profile;
- the exact elements of permanent financing for the acquisition of the remaining interest in Crown Imports LLC will depend upon market conditions;
- the exact duration of the share repurchase implementation and the amount and timing of any share repurchases;
- ability to achieve expected and target debt leverage ratios due to different financial results from those anticipated and the timeframe in which the target debt leverage ratio will be achieved will depend upon actual financial performance;
- increased competitive activities in the form of pricing, advertising and promotions could adversely impact consumer demand for the company's products and/or result in lower than expected sales or higher than expected expenses;
- general economic, geo-political and regulatory conditions, prolonged downturn in the economic markets in the U.S. and in the company's major markets outside of the U.S., continuing instability in world financial markets, or unanticipated environmental liabilities and costs; and
- other factors and uncertainties disclosed in the company's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the fiscal year ended Feb. 29, 2012, which could cause actual future performance to differ from current expectations.

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HUG#1622893

Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, JANUARY 31, 2013
WWW.JUSTICE.GOV

AT
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JUSTICE DEPARTMENT FILES ANTITRUST LAWSUIT CHALLENGING ANHEUSER-BUSCH INBEV'S PROPOSED ACQUISITION OF GRUPO MODELO

Merger Would Result in U.S. Consumers Paying More for Beer, Less Innovation; Lawsuit Seeks to Maintain Competition in the Beer Industry Nationwide

WASHINGTON – The Department of Justice filed a civil antitrust lawsuit today challenging Anheuser-Busch InBev's (ABI) proposed acquisition of total ownership and control of Grupo Modelo. The department said that the $20.1 billion transaction would substantially lessen competition in the market for beer in the United States as a whole and in 26 metropolitan areas across the United States, resulting in consumers paying more for beer and having fewer new products from which to choose.

Americans spent at least $80 billion on beer last year. According to the department, ABI's Bud Light is the best selling beer in the United States and Modelo's Corona Extra is the best-selling import. Because of the size of the beer market in the United States, even a small increase in the price of beer could result in billions of dollars of harm to American consumers, the department said.

The department's lawsuit, filed in the U.S. District Court for the District of Columbia, seeks to prevent the companies from merging and to preserve the existing head-to-head competition between the firms that the transaction would eliminate.

"The department is taking this action to stop a merger between major beer brewers because it would result in less competition and higher beer prices for American consumers," said Bill Baer, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "If ABI fully owned and controlled Modelo, ABI would be able to increase beer prices to American consumers. This lawsuit seeks to prevent ABI from eliminating Modelo as an important competitive force in the beer industry."

ABI and Modelo–the largest and third largest beer firms, respectively–together control about 46 percent of annual sales in the United States. MillerCoors, the second largest beer firm, accounts for about 29 percent of nationwide sales. Beer is generally grouped into four distinct segments by industry participants–sub-premium, premium, premium plus and high-end. The sub-premium segment includes: Busch (owned by ABI); and Keystone (owned by MillerCoors). The premium segment includes: Bud Light; Coors Light; and MillerLite. The premium plus

segment includes: Michelob (owned by ABI); and Modelo Especial (owned by Modelo). The high-end segment includes: imports such as Corona (owned by Modelo) and Heineken; and a variety of craft beers.

According to the department's complaint, the U.S. beer market is already highly concentrated, and prices are increased by strategic interactions among the largest brewers, including ABI and MillerCoors. ABI generally acts as the price leader, implementing annual price increases in the sub-premium, premium and premium plus segments of the U.S. beer industry. MillerCoors and other brewers have typically joined the ABI price increases, while Modelo has not. By pricing aggressively, Modelo–through its importer, Crown Imports–puts pressure on ABI to maintain or lower prices, especially in certain parts of the country. As a result, Modelo has become a particularly important competitor in the U.S. market.

The complaint quotes internal company documents demonstrating both ABI's determination to maintain its upward price leadership in the U.S. beer industry and Modelo's present-day position as a significant competitive threat to ABI:

- ABI has implemented a "conduct plan," whereby ABI hopes to establish "the highest level of [price] followership" by its large rivals by being as "consistent," "simple" and "transparent" as possible;

- ABI believes that its conduct plan provides the highest possibility of "sustaining a price increase" and "ensuring competition does not believe they can take share through pricing";

- By contrast, Modelo's pricing strategy in the United States is known as the "momentum plan" and aims to narrow the "price gap" between Modelo's imports and domestic premium beers, such as ABI's Bud Light, stealing market share from ABI by enticing consumers to "trade up" to Modelo beer; and

- ABI executives acknowledge that Modelo has "put increasing pressure" on ABI competitively, and that Modelo's strategy is at odds with ABI's well-established practice of leading prices upward with the expectation that its competitors will follow.

The complaint also discusses ABI's efforts to target Corona. ABI considered Corona to be a significant threat, and launched Bud Light Lime in 2008 to compete with Corona. ABI went as far as to mimic Corona's distinctive clear bottle. Ultimately, instead of trying to compete head-to-head with its own product, Bud Light Lime, ABI is thwarting competition by buying Modelo.

The department alleges that ABI's acquisition of total ownership and control of Modelo would eliminate the existing competition between ABI and Modelo, further concentrating the beer industry, enhancing ABI's market power and facilitating coordinated pricing between ABI and the remaining large players. Consumers would, as a result, see higher prices and less innovation.

The department's complaint also alleges that ABI and Modelo efforts to remedy the anticompetitive aspects of their transaction are inadequate. The complaint states that ABI has agreed to sell Modelo's existing 50 percent interest in Crown to its Crown joint venture partner, Constellation. ABI would also enter into an exclusive agreement to supply Constellation with Modelo beer to import into the United States, although ABI can terminate this supply agreement after 10 years and would retain the Modelo brands and its brewing and bottling facilities.

"The companies' attempt to fix this anticompetitive deal through the sale of Modelo's existing interest in Crown and a temporary supply agreement is not sufficient to prevent consumer harm from ABI's acquisition of its competitor, Modelo," said Baer.

The complaint states that the combined effect of the proposed acquisition of Modelo and the proposed fix is to eliminate from the marketplace a sophisticated brewing firm with a long history of success and replace it with an importer which will own no brands or brewing facilities and be totally dependent on ABI for its supply of Corona and other Modelo brands. The documents in the case show that as Crown's CEO wrote to his employees after the acquisition was announced: "our #1 competitor will now be our supplier…it is not currently or will not, going forward, be 'business as usual.'" The department's complaint said that not only will competition be harmed by the loss of Modelo as a competitor, but by removing an independent brewer–Modelo–from the market, strategically coordinated pricing will become easier in the future.

ABI is a Belgian corporation with its principal place of business in Leuven, Belgium. In 2011, ABI had revenues of approximately $39 billion. ABI currently has a 43 percent voting interest and a 50.35 percent economic interest in Modelo. ABI has stated in its annual reports filed with the Securities and Exchange Commission that it does not have voting or other effective control of Modelo. Through the proposed acquisition, ABI would acquire control of, and the remaining economic interest in Modelo.

Modelo is a Mexican corporation with its principal place of business in Mexico City. In 2011, Modelo had revenues of approximately $7 billion.

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13-134

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 7100
Washington, D.C. 20530,

Plaintiff,

v.

ANHEUSER-BUSCH InBEV SA/NV
Brouwerijplein 1
Leuven, Belgium 3000

and

GRUPO MODELO S.A.B de C.V
Javier Barros Sierra No. 555 Piso 3
Col. Zedec, Santa Fe
Mexico D.F.
C.P. 01210

Defendants.

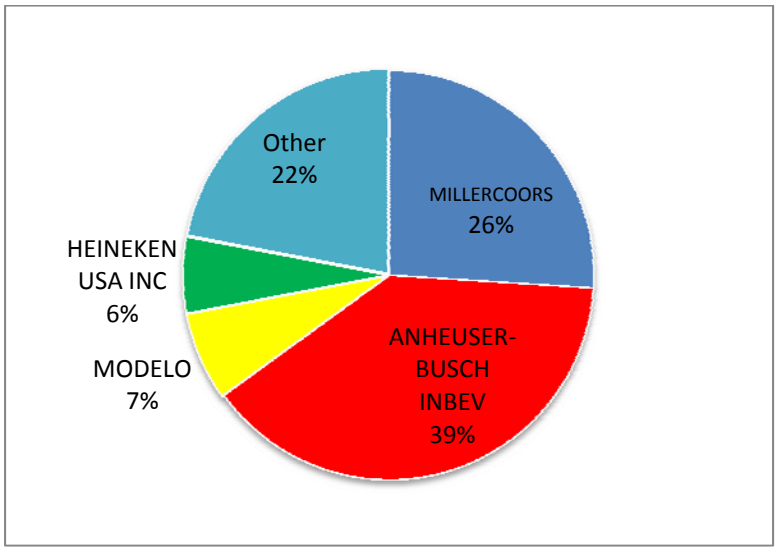
COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action under the antitrust laws of the United States to enjoin the proposed acquisition by Anheuser-Busch InBev SA/NV ("ABI") of the remainder of Grupo Modelo S.A.B. de C.V. ("Modelo") that it does not already own, and to obtain equitable and other relief as appropriate. The United States alleges as follows:

I. INTRODUCTION

1. Fundamental to free markets is the notion that competition works best and consumers benefit most when independent firms battle hard to win business from each other. In industries characterized by a small number of substantial competitors and high barriers to entry, further consolidation is especially problematic and antithetical to the nation's antitrust laws. The U.S. beer industry – which serves tens of millions of consumers at all levels of income – is highly concentrated with just two firms accounting for approximately 65% of all sales nationwide. The transaction that is the subject of this Complaint threatens competition by combining the largest and third-largest brewers of beer sold in the United States. The United States therefore seeks to enjoin this acquisition and prevent a serious violation of Section 7 of the Clayton Act.

2. Today, Modelo aggressively competes head-to-head with ABI in the United States. That competition has resulted in lower prices and product innovations that have benefited consumers across the country. The proposed acquisition would eliminate this competition by further concentrating the beer industry, enhancing ABI's market power, and facilitating coordinated pricing between ABI and the next largest brewer, MillerCoors, LLC. The approximate market shares of U.S. beer sales, by dollars, are illustrated below:



3. Defendants' combined national share actually *understates* the effect that eliminating Modelo would have on competition in the beer industry, both because Modelo's share is substantially higher in many local areas than its national share, and because of the interdependent pricing dynamic that already exists between the largest brewers. As the two largest brewers, ABI and MillerCoors often find it more profitable to follow each other's prices than to compete aggressively for market share by cutting price. Among other things, ABI typically initiates annual price increases in various markets with the expectation that MillerCoors' prices will follow. And they frequently do.

4. In contrast, Modelo has resisted ABI-led price hikes. Modelo's pricing strategy – "The Momentum Plan" – seeks to narrow the "price gap" between Modelo beers and lower-priced premium domestic brands, such as Bud and Bud Light. ABI internal documents acknowledge that Modelo has put "increasing pressure" on ABI by pursuing a competitive strategy *directly at odds* with ABI's well-established practice of leading prices upward.

5. Because Modelo prices have not closely followed ABI's price increases, ABI and MillerCoors have been forced to offer lower prices and discounts for their brands to discourage consumers from "trad[ing] up" to Modelo brands. If ABI were to acquire the remainder of Modelo, this competitive constraint on ABI's and MillerCoors' ability to raise their prices would be eliminated.

6. The acquisition would also eliminate the substantial head-to-head competition that currently exists between ABI and Modelo. The loss of this head-to-head competition would enhance the ability of ABI to unilaterally raise the prices of the brands that it would own post-acquisition, and diminish ABI's incentive to innovate with respect to new brands, products, and packaging.

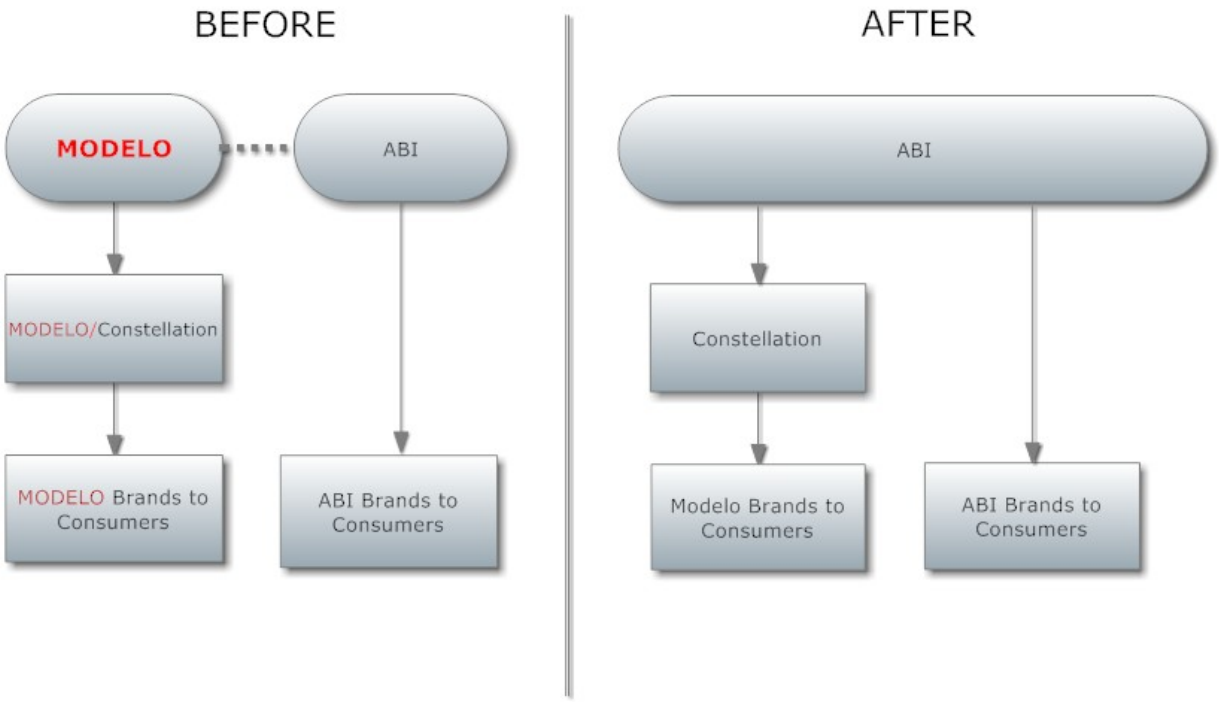
7. Accordingly, ABI's acquisition of the remainder of Modelo would likely substantially lessen competition and is therefore illegal under Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. For no substantial business reason other than to avoid liability under the antitrust laws, ABI has entered into an additional transaction contingent on the approval of its acquisition of the remainder of Modelo. Specifically, ABI has agreed to sell Modelo's existing 50% interest in Crown Imports LLC ("Crown")[1] – which currently imports Modelo beer into the United States – to Crown's other owner, Constellation Brands, Inc. ("Constellation"). ABI and Constellation have also negotiated a proposed Amended and Restated Importer Agreement (the "supply agreement"), giving Constellation the exclusive right to import Modelo beer into the United States for ten years. Constellation, however, would acquire no Modelo brands or brewing facilities under this arrangement – it remains simply an importer, required to depend on ABI for its supply of Modelo-branded beer. At the end of the ten-year period, ABI could unilaterally terminate its agreement with Constellation, thereby giving ABI full control of all aspects of the importation, sale, and distribution of Modelo brands in the United States.

9. The sale of Modelo's 50% interest in Crown to Constellation is designed predominantly to help ABI win antitrust approval for its acquisition of Modelo, creating a façade of competition between ABI and its importer. In reality, Defendants' proposed "remedy" eliminates from the market Modelo – a particularly aggressive competitor – and replaces it with an entity wholly dependent on ABI. As Crown's CEO wrote to his employees after the acquisition was announced: "our #1 competitor will now be our supplier . . . it is not currently or will not, going forward, be 'business as usual.'" The deficiencies of the "remedy" are apparent from the

[1] Headquartered in Chicago, Illinois, Crown is a 50/50 joint venture between Modelo and Constellation. Crown sells and markets Modelo's beers in the United States as the exclusive importer of Modelo beers.

illustrations of the pre- and post-transaction chains of supply below, demonstrating how the "remedy" transforms horizontal competition into vertical dependency:



10. Constellation has already shown through its participation in the Crown joint venture that it does not share Modelo's incentive to thwart ABI's price leadership. In fact, Constellation consistently has urged *following* ABI's price leadership. Given that Constellation was inclined to follow ABI's price leadership *before* the acquisition, it is unlikely to reverse course after – when it would be fully dependent on ABI for its supply of beer, and will effectively be ABI's business partner. In addition, Constellation would need to preserve a strong relationship with ABI to encourage ABI from exercising its option to terminate the agreement after 10 years.

11. For these reasons, as alleged more specifically below, the proposed acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act. The likely anticompetitive effects of the proposed acquisition would not be

prevented or remedied by the sale of Modelo's existing interest in Crown to Constellation and the supply agreement between ABI and Constellation.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

12. 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 ABI and Modelo from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

13. This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337, and 1345.

14. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391.

15. Defendants are engaged in, and their activities substantially affect, interstate commerce. ABI and Modelo annually brew several billion dollars worth of beer, which is then advertised and sold throughout the United States.

16. This Court has personal jurisdiction over each Defendant. Modelo has consented to personal jurisdiction in this judicial district. ABI is found and transacts business in this District through its wholly-owned United States subsidiaries, over which it exercises control.

III. THE DEFENDANTS AND THE TRANSACTIONS

17. ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI is the largest brewer and marketer of beer sold in the United States. ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 beer brands, including Bud Light, the number one brand in the United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island, and Beck's.

18. Modelo is a corporation organized and existing under the laws of Mexico, with headquarters in Mexico City, Mexico. Modelo is the third-largest brewer of beer sold in the United States. Modelo's Corona Extra brand is the top-selling import in the United States. Its other popular brands sold in the United States include Corona Light, Modelo Especial, Negra Modelo, Victoria, and Pacifico.

19. ABI currently holds a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo, S.A. de C.V. ABI's current part-ownership of Modelo gives ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors. However, as ABI stated in its most recent annual report, ABI does "not have voting or other effective control of . . . Grupo Modelo."

20. ABI and Modelo executives agree that there is currently vigorous competition between the ABI and Modelo brands in the United States. Indeed, firewalls are in place to ensure that the ABI members of Modelo's Board do not become privy to information about the pricing, marketing, or distribution of Modelo brands in the United States.

21. Modelo executives run its day-to-day business, including Modelo's relationship and interaction with its U.S. importer, Crown. Modelo owns half of Crown and may exercise an option at the end of 2013, to acquire in 2016, the half of Crown it does not already own. Today, Modelo must approve Crown's general pricing parameters, changes in strategic direction, borrowing activities, and capital investment above certain thresholds. Modelo also sets the global strategic themes for the brands it owns. Essentially, Crown is a group of employees who report to Crown's owners: Modelo and Constellation.

22. The acquisition gives complete control of Modelo to ABI, and gives ABI full access to competitively sensitive information about the sale of the Modelo brands in the United States –

access that ABI does not currently enjoy. ABI presently has no day-to-day role in Modelo's United States business and is walled off from strategic discussions regarding Modelo sales in the United States.

23. On June 28, 2012, ABI agreed to purchase the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for about $20.1 billion.

24. As noted above, in an effective acknowledgement that the acquisition of Modelo raises significant competitive concerns, Defendants simultaneously entered into another transaction in an attempt to "remedy" the competitive harm caused by ABI's acquisition of the remainder of Modelo: ABI has agreed to sell Modelo's existing 50% interest in Crown to Constellation, so that Crown, previously a joint-venture between Modelo and Constellation, would become wholly owned by Constellation. As part of this strategy, ABI and Constellation have negotiated a supply agreement giving Constellation the exclusive right to import Modelo beer into the United States for ten years. These transactions are contingent on the closing of ABI's acquisition of Modelo.

IV. THE RELEVANT MARKET

A. Description of the Product

25. "Beer" is comprised of a wide variety of brands of alcoholic beverages usually made from a malted cereal grain, flavored with hops, and brewed via a process of fermentation. Beer is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image, and price.

26. In addition to brewing, beer producers typically also sell, market, and develop multiple brands. Marketing and brand building take various forms including sports sponsorships, print advertising, national television campaigns, and increasingly, online marketing. For example,

Modelo has recently invested in "more national advertising [and] more national sports" in order to "build the equity of [its] brands."

27. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those end accounts are primarily grocery stores, large retailers such as Target and Walmart, and convenience stores, liquor stores, restaurants, and bars which, in turn, sell beer to the consumer. Beer brewed in foreign countries may be sold to an importer, which then arranges for distribution to retailers.

28. ABI groups beer into four segments: sub-premium, premium, premium plus, and high-end. The sub-premium segment, also referred to as the value segment, generally consists of lager beers, such as Natural and Keystone branded beer, and some ales and malt liquors, which are priced lower than premium beers, made from less expensive ingredients and are generally perceived as being of lower quality than premium beers. The premium segment generally consists of medium-priced American lager beers, such as ABI's Budweiser, and the Miller and Coors brand families, including the "light" varieties. The premium plus segment consists largely of American beers that are priced somewhat higher than premium beers, made from more expensive ingredients and are generally perceived to be of superior quality. Examples of beers in the premium plus category include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita and Michelob Ultra.

29. The high-end category includes craft beers, which are often produced in small-scale breweries, and imported beers. High-end beers sell at a wide variety of price points, most of which are higher than premium and premium plus beers. The high-end segment includes craft beers such as Dogfish Head, Flying Dog, and also imported beers, the best selling of which is Modelo's Corona. ABI also owns high-end beers including Stella Artois and Goose Island.

Brewers with a broad portfolio of brands, such as ABI, seek to maintain "price gaps" between each segment. For example, premium beer is priced above sub-premium beer, but below premium plus beer.

30. Beers compete with one another across segments. Indeed, ABI and Modelo brands are in regular competition with one another. For example, Modelo, acting through Crown in the United States, usually selects "[d]omestic premium" beer, namely, ABI's Bud Light, as its benchmark for its own brands' pricing.

B. Relevant Product Market

31. Beer is a relevant product market and line of commerce under Section 7 of the Clayton Act. Other alcoholic beverages, such as wine and distilled spirits, are not sufficiently substitutable to discipline at least a small but significant and nontransitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

C. Relevant Geographic Market

32. The 26 local markets, defined by Metropolitan Statistical Areas ("MSAs")[2], identified in Appendix A, are relevant geographic markets for antitrust purposes. Each of these local markets currently benefits from head-to-head competition between ABI and Modelo, and in each the acquisition would likely substantially lessen competition.

33. The relevant geographic markets for analyzing the effects of this acquisition are best defined by the locations of the customers who purchase beer, rather than by the locations of breweries. Brewers develop pricing and promotional strategies based on an assessment of local

[2] As defined by the SymphonyIRI Group, a market research firm, whose data is commonly used by industry participants.

demand for their beer, local competitive conditions, and local brand strength. Thus, the price for a brand of beer can vary by local market.

34. Brewers are able to price differently in different locations, in part, because arbitrage across local markets is unlikely to occur. Consumers buy beer near their homes and typically do not travel to other areas to buy beer when prices rise. Also, distributors' contracts with brewers and their importers contain territorial limits and prohibit distributors from reselling beer outside their territories. In addition, each state has different laws and regulations regarding beer distribution and sales that would make arbitrage difficult.

35. Accordingly, a hypothetical monopolist of beer sold into each of the local markets identified in Appendix A would likely increase its prices in that local market by at least a small but significant and non-transitory amount.

36. Therefore, the MSAs identified in Appendix A are relevant geographic markets and "sections of the country" within the meaning of Section 7 of the Clayton Act.

37. There is also competition between brewers on a national level that affects local markets throughout the United States. Decisions about beer brewing, marketing, and brand building typically take place on a national level. In addition, most beer advertising is on national television, and brewers commonly compete for national retail accounts. General pricing strategy also typically originates at a national level. A hypothetical monopolist of beer sold in the United States would likely increase its prices by at least a small but significant and non-transitory amount. Accordingly, the United States is a relevant geographic market under Section 7 of the Clayton Act.

V. ABI'S PROPOSED ACQUISITION IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

A. The Relevant Markets are Highly Concentrated and the Merger Triggers a Presumption of Illegality in Each Relevant Market

38. The relevant markets are highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

39. ABI is the largest brewer of beer sold in the United States. MillerCoors is the second-largest brewer of beer sold in the United States. MillerCoors owns the Miller and Coors brands and also many smaller brands including Blue Moon and Keystone Light. Modelo is the third-largest brewer of beer sold in the United States, with annual U.S. sales of $2.47 billion, 7% market share nationally, and a market share that is nearly 20% in some local markets. Modelo owns the Corona, Modelo, Pacifico, and Victoria brands. The remaining sales of beer in the U.S. are divided among Heineken and fringe competitors, including many craft brewers, which the Defendants characterize as being "fragmented . . . small player[s]."

40. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI"). Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI is in excess of 2,500 points are considered highly concentrated.

41. The beer industry in the United States is highly concentrated and would become substantially more so as a result of this acquisition. Market share estimates demonstrate that in 20 of the 26 local geographic markets identified in Appendix A, the post-acquisition HHI exceeds 2,500 points, in one market is as high as 4,886 points, and there is an increase in the

HHI[3] of at least 472 points in each of those 20 markets. In six of the local geographic markets, the post-merger HHI is at least 1,822, with an increase of the HHI of at least 387 points, and in each of those six markets the parties combined market share is greater than 30%.

42. In the United States, the Defendants will have a combined market share of approximately 46% post-transaction. The post-transaction HHI of the United States beer market will be greater than 2800, with an increase in the HHI of 566.

43. The market concentration measures, coupled with the significant increases in concentration, described above, demonstrate that the acquisition is presumed to be anticompetitive.

B. Beer Prices in the United States Today are Largely Determined by the Strategic Interactions of ABI, MillerCoors, and Modelo

1. ABI's Price Leadership

44. ABI and MillerCoors typically announce annual price increases in late summer for execution in early fall. The increases vary by region, but typically cover a broad range of beer brands and packs. In most local markets, ABI is the market share leader and issues its price announcement first, purposely making its price increases transparent to the market so its competitors will get in line. In the past several years, MillerCoors has followed ABI's price increases to a significant degree.

45. The specifics of ABI's pricing strategy are governed by its "Conduct Plan," a strategic plan for pricing in the United States that reads like a how-to manual for successful price coordination. The goals of the Conduct Plan include: "yielding the highest level of followership in the short-term" and "improving competitor conduct over the long-term."

[3] Even if these concentration measures are modified to reflect ABI's current partial ownership of Modelo, the effective levels of concentration would still support a presumption of illegality.

46. ABI's Conduct Plan emphasizes the importance of being "Transparent – so competitors can clearly see the plan;" "Simple – so competitors can understand the plan;" "Consistent – so competitors can predict the plan;" and "Targeted – consider competition's structure." By pursuing these goals, ABI seeks to "dictate consistent and transparent competitive response." As one ABI executive wrote, a "Front Line Driven Plan sends Clear Signal to Competition and Sets up well for potential conduct plan response." According to ABI, its Conduct Plan "increases the probability of [ABI] sustaining a price increase."

47. The proposed merger would likely increase the ability of ABI and the remaining beer firms to coordinate by eliminating an independent Modelo – which has increasingly inhibited ABI's price leadership – from the market.

2. Modelo Has Constrained ABI's Ability to Lead Prices Higher

48. In the past several years, Modelo, acting through Crown, has disrupted ABI's pricing strategy by declining to match many of the price increases that were led by ABI and frequently joined by MillerCoors.

49. In or around 2008, Crown implemented its "Momentum Plan" with Modelo's enthusiastic support. The Momentum Plan is specifically designed to grow Modelo's market share by shrinking the price gaps between brands owned by Modelo and domestic premium brands. By maintaining steady pricing while the prices of premium beer continues to rise, Modelo has narrowed the price gap between its beers and ABI's premium beers, encouraging consumers to trade up to Modelo brands. These narrowed price gaps frustrate ABI and MillerCoors because they result in Modelo gaining market share at their expense.

50. Under the Momentum Plan, Modelo brand prices essentially remained flat despite price increases from ABI and other competitors, allowing Modelo brands to achieve their targeted

price gaps to premium beers in various markets. After Modelo implemented its price gap strategy, Modelo brands experienced market share growth.

51. Because of the Momentum Plan, prices on the Modelo brands have increased more slowly than ABI has increased premium segment prices. Thus, as ABI has observed, in recent years, the "gap between Premium and High End has been reducing . . . due to non [high-end] increases." Over the same time period, the high-end segment has been gaining market share at the expense of ABI's and MillerCoors' premium domestic brands.

52. In internal strategy documents, ABI has repeatedly complained about pressure resulting from price competition with the Modelo brands: "Recent price actions delivered expected Trade up from Sub Premium, however it created additional share pressure from volume shifting to High End where we under-index;" "Consumers switching to High End accelerated by price gap compression;" "While relative Price to MC [MillerCoors] has remained stable the lack of Price increase in Corona is increasing pressure in Premium." An ABI presentation from November 2011 stated that ABI's strategy was "Short-Term []: We must slow the volume trend of High End Segment and cannot let the industry transform." Owning the Modelo brands will enable ABI to implement that strategy.

53. The competition that Modelo has created by not following ABI price increases has constrained ABI's ability to raise prices and forced ABI to become more competitive by offering innovative brands and packages to limit its share losses and to attract customers.

54. Competition between the ABI and Modelo brands has become increasingly intense throughout the country, particularly in areas with large Latino populations. As the country's Latino population is forecasted to grow over time, ABI anticipates even more rigorous

competition with Modelo. Here are some examples of how the Modelo brands have disciplined the pricing of the market leaders.

a. California

55. Modelo, acting through Crown, has not followed ABI-led price increases in local markets in California. Because of the aggressive pricing of the Modelo brands, ABI's Bud and Bud Light brands have reported "[h]eavy share losses" to Modelo's Corona and Modelo Especial.

56. Consumers in California markets have been the beneficiaries of Modelo's aggressive pricing. ABI rescinded a planned September 2010 price increase because of the share growth of Modelo's Corona brand. ABI also considered launching a new line, "Michelob Especial," – a Modelo brand is "Modelo Especial" – targeted at California's Latino community. ABI recognized that Corona's strength in California meant that "innovation [is] required." Nonetheless, Modelo continued "eating [Budweiser's] lunch" in California to the point where ABI's Vice President of Sales observed that "California is a burning platform" for ABI, which was "losing share" because of "price compression" between ABI and Corona.

57. In 2012, ABI's concern about losing market share to Modelo in California caused a full-blown price war. ABI implemented "aggressive price reductions . . ." that were seen as "specifically targeting Corona and Modelo." These aggressive discounts appear to have been taken in support of ABI's expressed desire to discipline Modelo's aggressive pricing with the ultimate goal of "driv[ing] them to go up" in price. Both MillerCoors and Modelo followed ABI's price decrease, and ABI responded by dropping its price even further to stay competitive.

b. Texas

58. Competition between the ABI and Modelo brands in local markets in Texas is also intense. Beginning in or about 2010, some Modelo brands began to be priced competitively with

ABI's Bud Light, the leading domestic brand throughout the state. Modelo brands also benefited from price promotions and regional advertising. By 2011, Modelo had begun gaining market share at ABI's expense. ABI recognized Modelo's aggressive price strategy as an issue contributing to its market share loss.

59. Ultimately, aggressive pricing on some Modelo brands forced ABI to lower its prices in local Texas markets, and adjust its marketing strategy to better respond to competition from the Modelo brands. According to an ABI Regional Vice President of Sales, ABI set "pricing, packaging and retail activity targets to address [Modelo's] Especial" brand. In both Houston and San Antonio, ABI also lowered the price of its Bud Light Lime brand to match Modelo Especial price moves.

c. New York City

60. In the summer of 2011, Modelo, acting through Crown, sought to narrow the gap in price between its brands and those of domestic premiums, including the ABI brands in New York City. ABI became concerned that "price compression on Premiums by imports" would cause premium domestic customers to trade up to the import segment. ABI's Vice President of Sales observed that the price moves on Modelo's Corona brand, and corresponding reductions by MillerCoors and Heineken, meant that ABI would "need to respond in some fashion," and that its planned price increase was "in jeopardy." ABI ultimately chose to respond by delaying a planned price increase to "limit the impact of price compression on our premiums as a result of the Corona . . . deeper discount."

C. The Elimination of Modelo Would Likely Result in Higher Coordinated Pricing by ABI and MillerCoors

61. Competition spurred by Modelo has benefitted consumers through lower beer prices and increased innovation. It has also thwarted ABI's vision of leading industry prices upward with

MillerCoors and others following. As one ABI executive stated in June 2011, "[t]he impact of Crown Imports not increasing price has a significant influence on our volume and share. The case could be made that Crown's lack of increases has a bigger influence on our elasticity than MillerCoors does." ABI's acquisition of full ownership and control of Modelo's brands and brewing assets will facilitate future pricing coordination.

D. The Loss of Head-to-Head Competition Between ABI and Modelo Would Likely Result in Higher Prices on ABI-Owned Brands

62. ABI is intent on moderating price competition. As it has explained internally: "We must defend from value-destroying pricing by: [1] Ensuring competition does not believe they can take share through pricing[,] [and] [2] Building discipline in our teams to prevent unintended initiation or acceleration of value-destroying actions." ABI documents show that it is increasingly worried about the threat of high-end brands, such as Modelo's, constraining its ability to increase premium and sub-premium pricing. In general, ABI, as the price leader, would prefer a market not characterized by aggressive pricing actions to take share because "[t]aking market share this way is unsustainable and results in lower total industry profitability which damages all players long-term."

63. ABI would have strong incentives to raise the prices of its beers were it to acquire Modelo. First, lifting the price of Modelo beers would allow ABI to further increase the prices of its existing brands across all beer segments. Second, as the market leader in the premium and premium-plus segments, and as a brewer with an approximate overall national share of approximately 46% of beer sales post-acquisition, coupled with its newly expanded portfolio of brands, ABI stands to recapture a significant portion of any sales lost due to such a price increase, because a significant percentage of those lost sales will go to other ABI-owned brands.

64. Therefore, ABI likely would unilaterally raise prices on the brands of beer that it owns as a result of the acquisition.

E. The Loss of Head-to-Head Competition Between ABI and Modelo Will Harm Consumers Through Reduced New Product Innovation and Product Variety

65. Modelo's growth in the United States has repeatedly spurred product innovation by ABI. In 2011, ABI decided to "Target Mexican imports" and began planning three related ways of doing so. First, ABI would acquire the U.S. sales rights to Presidente beer, the number one beer in Central America, and greatly expand Presidente's distribution in the United States. Second, ABI would acquire a "Southern US or Mexican craft brand," and use it to compete against Mexican imports. Finally, ABI would license trademarks to another tropical-style beer, in a project that the responsible ABI manager described as a "Corona killer."

66. ABI's Bud Light Lime, launched in 2008, was also targeted at Corona (commonly served with a slice of lime), going so far as to mimic Corona's distinctive clear bottle. As one Modelo executive noted after watching a commercial for Bud Light Lime, the product was "invading aggressively and directly the Corona territory." Another executive commented that the commercial itself was "[v]ery similar" to one Modelo, through Crown, was developing at the same time.

67. The proposed acquisition's harmful effect on product innovation is already evident. If ABI were to acquire Modelo and enter into the supply agreement with Constellation, ABI would be forbidden from launching a "Mexican-style Beer" in the United States. Further, ABI would no longer have the same incentives to introduce new brands to take market share from the Modelo brands.

F. Summary of Competitive Harm from ABI's Acquisition of the Remainder of Modelo

68. The significant increase in market concentration that the proposed acquisition would produce in the relevant markets, combined with the loss of head-to-head competition between ABI and Modelo, is likely to result in unilateral price increases by ABI and to facilitate coordinated pricing between ABI and remaining market participants.

VI. ABSENCE OF COUNTERVAILING FACTORS

69. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Barriers to entry and expansion within each of these harmed markets include: (i) the substantial time and expense required to build a brand reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer products in retail outlets; (iii) the difficulty of securing shelf-space in retail outlets; (iv) the time and cost of building new breweries and other facilities; and (v) the time and cost of developing a network of beer distributors and delivery routes.

70. Although ABI asserts that the acquisition would produce efficiencies, it cannot demonstrate acquisition-specific and cognizable efficiencies that would be passed-through to U.S. consumers, of sufficient size to offset the acquisition's significant anticompetitive effects.

VII. DEFENDANTS' PROFFERED "REMEDY" DOES NOT PREVENT THE ANTICOMPETITIVE EFFECT OF ABI'S ACQUISITION OF MODELO

71. In light of the high market concentration, and substantial likelihood of anticompetitive effects, ABI's acquisition of the remainder of Modelo is illegal. Defendants thus evidently structured their transactions with a purported "remedy" in mind: the sale of Modelo's interest in Crown to Constellation, coupled with a supply agreement that gives Constellation the right to

import Modelo beer into the United States. This proposal is inadequate to remedy Defendants' violation of Section 7 of the Clayton Act.

A. Constellation Has Not Shown Modelo and Crown's Past Willingness to Resist ABI's "Leader-Follower" Industry Plan

72. Constellation has not shown Crown and Modelo's past willingness to thwart ABI's price leadership. While Modelo supported narrowing the gap between the prices of its brands and those of ABI premium brands, Constellation's executives have sought to follow ABI's pricing lead. In August 2011, Constellation's Managing Director wrote to Crown's CEO: "Since ABI has already announced an October general price increase I was wondering if you are considering price increases for the Modelo portfolio? . . . . From a positioning and image perspective I believe it would be a mistake to allow the gaps to be narrowed … I think ABI's announcement gives you the opportunity to increase profitability without having to sacrifice significant volume." Similarly, in December of 2011, Constellation's CFO wrote to his counterpart at Crown that he thought price increases on the Modelo brands were viable "if domestics [i.e. Bud and Bud Light] keep going up" but worried that "Modelo gets a vote as well." And in June of 2012, a Crown executive stated that Constellation's plan for annual price increases "put at risk the relative success" of the Momentum Plan.

73. Crown executives have recognized the differing incentives, as it relates to pricing, of their two owners. As one Crown executive observed in a March 2011 email, "Modelo has a higher interest in building volume so that they can cover manufacturing costs, gain manufacturing profits and build share as the brand owners." Constellation, however, "is interested primarily in the financial return on a short-term or at the most on a mid-term basis."

74. Post-transaction, Constellation would no longer be so constrained. Even if Crown's own executives wanted to continue an aggressive pricing strategy, they would be required to answer to Crown's new sole owner – Constellation.

75. Crown executives were concerned about what would happen if Constellation gained complete control of Crown. Crown's CEO wrote to Constellation's CEO after Defendants' proposed "remedy" was announced: "the Crown team [] is extremely anxious about this change in ownership. This is in no small part the result of Constellation's actions over the term of the joint venture to limit investment in the business in the areas of manpower and marketing." Constellation's CEO responded internally: "[Q]uite something. I see a management issue brewing." In another email, Crown's CEO wrote to his employees that Constellation had been "consistently non supportive of the business through Crown's history . . . seeking to drive profits at all costs."

76. Crown's fears appear well-grounded. In 2010, Modelo sued Constellation for breach of fiduciary duty, after Constellation had refused to invest in marketing the Modelo brands. In its Complaint, Modelo alleged "Constellation [] knew that [Crown] management's plan was in Crown's best interests, but they blocked it anyway in an effort to secure unwarranted benefits for Constellation."

77. Post-acquisition, Constellation would not need to ask Modelo for permission to follow ABI's price-leadership. Instead, Constellation would be free to follow ABI's lead. Moreover, ABI and Constellation will have every incentive to act together on pricing because of the vast profits each would stand to make if beer prices were to increase.

78. The contingent supply relationship between ABI and Constellation would also facilitate joint pricing between the two companies. Post-acquisition, there would be day-to-day interaction

between ABI and Constellation on matters such as volume, packaging, transportation of product, and new product innovation. ABI and Constellation would have countless opportunities that could creatively be exploited, and that no one could predict or control, to allow ABI to reward Constellation (or refrain from punishing Constellation) in exchange for Constellation raising the price of the Modelo brands. The lucrative supply agreement from which Constellation seeks to gain billions of dollars in profits itself incentivizes Constellation to keep ABI happy to avoid terminating Constellation's rights in ten years.

79. ABI and Constellation are more likely to decide on mutually profitable pricing. Unlike ABI and Modelo, which are horizontal competitors, Constellation would be a mere participant in ABI's supply chain under the proposed arrangement.

80. ABI and Modelo have sought to avoid acting together on matters of competitive significance in the relevant markets in the U.S. Accordingly, they have built in several firewalls – including ABI's exclusion from sensitive portions of Modelo board meetings concerning the sale of Modelo beer in the U.S. – to insulate ABI from Modelo's U.S. business. Post-acquisition, those firewalls would be gone.

81. The loss of Modelo also, by itself, facilitates interdependent pricing. Today, ABI would need to reach agreement with both Modelo and Constellation to ensure that pricing for the Modelo brands followed ABI's lead. After the proposed transactions, working together on price would be easier because only Constellation would need to follow or agree with ABI.

B. Constellation Will Not Be an Independent Firm Capable of Restoring Head-To-Head Competition Between ABI and Modelo

82. Even if Constellation wanted to act at odds with ABI post-transaction, it would be unlikely to do so. Constellation will own no brands or brewing or bottling assets of its own. It would be dependent on ABI for its supply. Thus, Defendants' proposed remedy puts

Constellation in a considerably weaker competitive position compared to Modelo, which owns both brands and breweries.

83. ABI could terminate the contingent supply agreement at any time. And if ABI is displeased with Constellation's strategy in the United States, it might simply withhold or delay supply to punish Constellation.

84. The supply agreement may also be renegotiated at any time during the 10-year period. Thus, it provides no guaranteed protection for consumers that any of its terms will be followed if ABI is able to secure antitrust approval for this acquisition.

VIII. VIOLATIONS ALLEGED

85. The United States incorporates the allegations of paragraphs 1 through 84 above as if set forth fully herein.

Violation of Clayton Act § 7, 15 U.S.C. § 18
ABI Agreement to Acquire Remainder of Modelo

86. The proposed acquisition of the remainder of Modelo by ABI would likely substantially lessen competition – even after Defendants' proposed "remedy" – in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The transactions would have the following anticompetitive effects, among others:

(a) Eliminating Modelo as a substantial, independent, and competitive force in the relevant markets, creating a combined firm with reduced incentives to lower price or increase innovation or quality;

(b) Competition generally in the relevant markets would likely be substantially lessened;

(c) Prices of beer would likely increase to levels above those that would

prevail absent the transaction, forcing millions of consumers in the United States to pay higher prices;

(d) Quality and innovation would likely be less than levels that would prevail absent the transaction;

(e) The acquisition would likely promote and facilitate pricing coordination in the relevant markets; and

(f) The acquisition would provide ABI with a greater incentive and ability to increase its pricing unilaterally.

IX. REQUEST FOR RELIEF

87. The United States requests that:

(a) The proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) The Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated June 28, 2012, and the "Transaction Agreement" dated June 28, 2012, between Modelo, Diblo, and ABI, or from entering into or carrying out any agreement, understanding, or plan by which ABI would acquire the remaining interest in Modelo, its stock, or any of its assets;

(c) The United States be awarded costs of this action; and

(d) The United States be awarded such other relief as the Court may deem just and proper.

Dated this 31st day of January 2013.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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APPENDIX A

Relevant Geographic Markets and Concentration Data

Market	Combined Market Share	Post-Merger HHI	Delta HHI
Oklahoma City, OK	64	4886	1000
Salt Lake City, UT	57	3900	739
Tampa/St Petersburg, FL	56	3720	621
Houston, TX	55	3660	840
Jacksonville, FL	56	3544	531
Minneapolis/St Paul, MN	50	3525	733
Denver, CO	47	3510	486
Birmingham/Montgomery, AL	52	3408	503
Memphis, TN	52	3370	482
Las Vegas, NV	49	3332	832
Dallas/Ft Worth, TX	46	3277	643
Orlando, FL	51	3273	570
Los Angeles, CA	51	3265	1207
Phoenix/Tucson, AZ	48	3139	564
Raleigh/Greensboro, NC	50	3121	485
Miami/Ft Lauderdale, FL	48	3067	964
Hartford, CT/Springfield, MA	51	3053	663
Richmond/Norfolk, VA	48	3044	472
Chicago, IL	35	2919	542
New York, NY	43	2504	778
Atlanta, GA	41	2489	433
Sacramento, CA	40	2382	697
Boston, MA	43	2353	387
San Diego, CA	39	2242	651
Baltimore, MD/Washington, DC	36	1944	465
San Francisco/Oakland, CA	34	1822	563
United States	46	2866	566

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH InBEV SA/NV and GRUPO MODELO S.A.B de C.V., Defendants, CONSTELLATION BRANDS, INC., 207 High Point Drive, Building 100, Victor, New York 14564, *Proposed Defendant-Intervenor*, and CROWN IMPORTS LLC, One South Dearborn Street, Suite 1700 Chicago, Illinois 60603, *Proposed Defendant-Intervenor*.	Civil Action No. 13-127 (RWR)

CONSTELLATION BRANDS, INC.'S AND CROWN IMPORTS LLC'S MOTION TO INTERVENE AS DEFENDANTS

Constellation Brands, Inc. and Crown Imports LLC respectfully move to intervene in this case as party defendants under Federal Rule of Civil Procedure 24. Pursuant to Local Civil Rule 7(j), Movants attach as Exhibit 1 to this motion a proposed Answer setting forth the defenses for which intervention is sought.

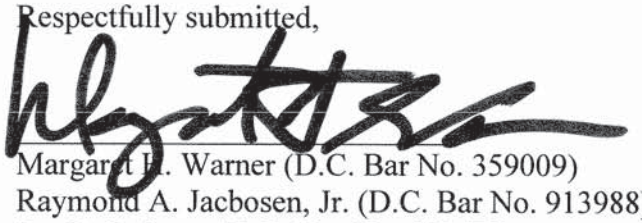
For the reasons set forth in the accompanying Statement of Points and Authorities, Movants are entitled to intervention of right under Federal Rule of Civil Procedure 24(a)(2). Alternatively, this Court should permit Movants to intervene under Federal Rule of Civil Procedure 24(b)(1)(B).

Pursuant to Local Civil Rule 7(m), counsel for Movants have discussed this motion with counsel for Plaintiff and Defendants. Defendants support this Motion to Intervene; Plaintiff does not consent.

Pursuant to Local Civil Rule 78.1, Movants respectfully request an oral hearing. Additionally, Movants respectfully request that the Court grant expedited review of this Motion and set an accelerated briefing schedule. Challenges to mergers by the Department of Justice such as this one are resolved quickly, and it is imperative to resolve this motion on an expedited basis to enable Movants to participate from the early stages of this case.

Dated: February 8, 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jon B. Dubrow, certify that on February 8, 2013, I served the foregoing Motion to Intervene by emailing PDF copies of the same to the following counsel:

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH INBEV SA/NV, GRUPO MODELO S.A.B. de C.V., CONSTELLATION BRANDS, INC., 207 High Point Drive, Building 100, Victor, NY 14564, and CROWN IMPORTS LLC, One South Dearborn Street, Suite 1700, Chicago, Illinois 60603 Defendants.	Civil Action No. 13-127 (RWR)

ANSWER OF DEFENDANTS CONSTELLATION BRANDS, INC. AND CROWN IMPORTS LLC

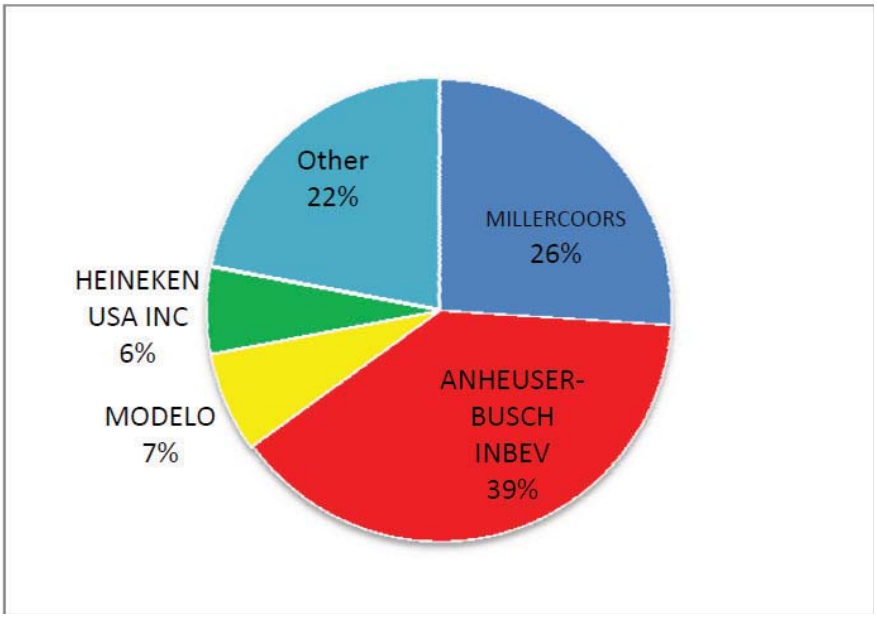
Defendants Constellation Brands, Inc. ("Constellation") and Crown Imports LLC ("Crown") (collectively, "Intervenors"), by and through their undersigned counsel, answer the Complaint as follows:

I. INTRODUCTION

1. Fundamental to free markets is the notion that competition works best and consumers benefit most when independent firms battle hard to win business from each other. In industries characterized by a small number of substantial competitors and high barriers to entry, further consolidation is especially problematic and antithetical to the nation's antitrust laws. The U.S. beer industry – which serves tens of millions of consumers at all levels of income – is highly concentrated with just two firms accounting for approximately 65% of all sales nationwide. The transaction that is the subject of this Complaint threatens competition by combining the largest and third-largest brewers of beer sold in the United States. The United States therefore seeks to enjoin this acquisition and prevent a serious violation of Section 7 of the Clayton Act.

ANSWER: Paragraph 1 states legal conclusions, to which no responsive pleading is required. To the extent Paragraph 1 contains allegations, Intervenors deny them, except that they admit that the United States seeks to enjoin ABI's acquisition of Modelo.

2. Today, Modelo aggressively competes head-to-head with ABI in the United States. That competition has resulted in lower prices and product innovations that have benefited consumers across the country. The proposed acquisition would eliminate this competition by further concentrating the beer industry, enhancing ABI's market power, and facilitating coordinated pricing between ABI and the next largest brewer, MillerCoors, LLC. The approximate market shares of U.S. beer sales, by dollars, are illustrated below:



ANSWER: Intervenors deny the allegations contained in Paragraph 2. Modelo does not compete with ABI in the United States because it does not sell beer in the United States. Rather, Crown, the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

3. Defendants' combined national share actually *understates* the effect that eliminating Modelo would have on competition in the beer industry, both because Modelo's share is substantially higher in many local areas than its national share, and because of the interdependent pricing dynamic that already exists between the largest brewers. As the two largest brewers, ABI and MillerCoors often find it more profitable to follow each other's prices than to compete

aggressively for market share by cutting price. Among other things, ABI typically initiates annual price increases in various markets with the expectation that MillerCoors' prices will follow. And they frequently do.

ANSWER: Intervenors deny the allegations contained in Paragraph 3, except that they admit that ABI and MillerCoors currently are the two largest brewers in the United States. Intervenors lack knowledge or information sufficient to form a belief about the truth of what ABI and MillerCoors find profitable, or what are ABI's expectations following any increase in the price of its products and, therefore, deny those allegations.

4. In contrast, Modelo has resisted ABI-led price hikes. Modelo's pricing strategy – "The Momentum Plan" – seeks to narrow the "price gap" between Modelo beers and lower-priced premium domestic brands, such as Bud and Bud Light. ABI internal documents acknowledge that Modelo has put "increasing pressure" on ABI by pursuing a competitive strategy *directly at odds* with ABI's well-established practice of leading prices upward.

ANSWER: Intervenors deny the allegations contained in the first two sentences of Paragraph 4. Crown, not Modelo, designed and implemented the "Momentum Plan" strategy for a period of time in response to a specific set of market conditions in order to maintain profitable growth of its business. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 4 and, therefore, deny those allegations, but refer to the documents referenced therein for their contents.

5. Because Modelo prices have not closely followed ABI's price increases, ABI and MillerCoors have been forced to offer lower prices and discounts for their brands to discourage consumers from "trad[ing] up" to Modelo brands. If ABI were to acquire the remainder of Modelo, this competitive constraint on ABI's and MillerCoors' ability to raise their prices would be eliminated.

ANSWER: Intervenors deny the allegations contained in Paragraph 5. As stated above, Modelo does not compete with ABI in the United States.

6. The acquisition would also eliminate the substantial head-to-head competition that currently exists between ABI and Modelo. The loss of this head-to-head competition would

enhance the ability of ABI to unilaterally raise the prices of the brands that it would own post-acquisition, and diminish ABI's incentive to innovate with respect to new brands, products, and packaging.

ANSWER: Intervenors deny the allegations contained in Paragraph 6. As stated above, Modelo does not compete with ABI in the United States.

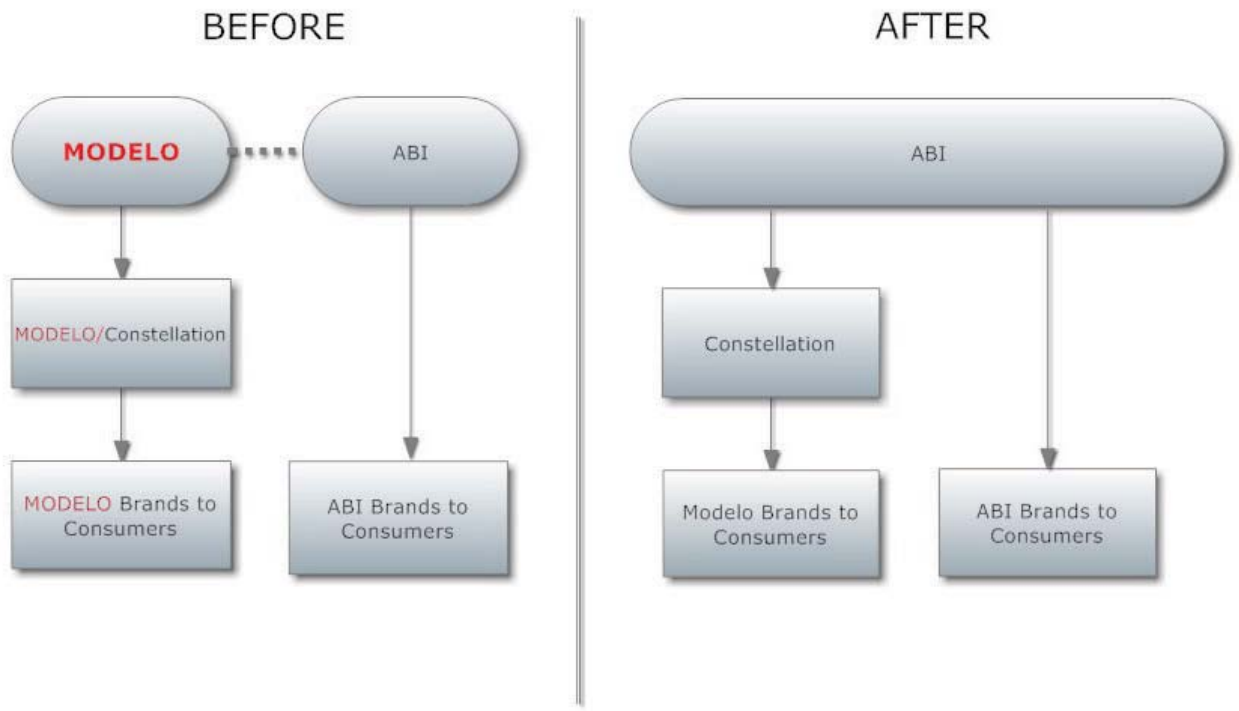
7. Accordingly, ABI's acquisition of the remainder of Modelo would likely substantially lessen competition and is therefore illegal under Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Paragraph 7 states legal conclusions to which no responsive pleading is required. To the extent Paragraph 7 contains allegations, Intervenors deny them.

8. For no substantial business reason other than to avoid liability under the antitrust laws, ABI has entered into an additional transaction contingent on the approval of its acquisition of the remainder of Modelo. Specifically, ABI has agreed to sell Modelo's existing 50% interest in Crown Imports LLC ("Crown") – which currently imports Modelo beer into the United States – to Crown's other owner, Constellation Brands, Inc. ("Constellation"). ABI and Constellation have also negotiated a proposed Amended and Restated Importer Agreement (the "supply agreement"), giving Constellation the exclusive right to import Modelo beer into the United States for ten years. Constellation, however, would acquire no Modelo brands or brewing facilities under this arrangement – it remains simply an importer, required to depend on ABI for its supply of Modelo-branded beer. At the end of the ten-year period, ABI could unilaterally terminate its agreement with Constellation, thereby giving ABI full control of all aspects of the importation, sale, and distribution of Modelo brands in the United States.

ANSWER: Intervenors deny the allegations contained in Paragraph 8 and refer to the agreements referenced for their contents.

9. The sale of Modelo's 50% interest in Crown to Constellation is designed predominantly to help ABI win antitrust approval for its acquisition of Modelo, creating a façade of competition between ABI and its importer. In reality, Defendants' proposed "remedy" eliminates from the market Modelo – a particularly aggressive competitor – and replaces it with an entity wholly dependent on ABI. As Crown's CEO wrote to his employees after the acquisition was announced: "our #1 competitor will now be our supplier . . . it is not currently or will not, going forward, be 'business as usual.'" The deficiencies of the "remedy" are apparent from the illustrations of the pre- and post-transaction chains of supply below, demonstrating how the "remedy" transforms horizontal competition into vertical dependency:



ANSWER: Intervenors deny the allegations contained in Paragraph 9 and refer to the email document referenced for its contents.

10. Constellation has already shown through its participation in the Crown joint venture that it does not share Modelo's incentive to thwart ABI's price leadership. In fact, Constellation consistently has urged *following* ABI's price leadership. Given that Constellation was inclined to follow ABI's price leadership *before* the acquisition, it is unlikely to reverse course after – when it would be fully dependent on ABI for its supply of beer, and will effectively be ABI's business partner. In addition, Constellation would need to preserve a strong relationship with ABI to encourage ABI from exercising its option to terminate the agreement after 10 years.

ANSWER: Intervenors deny the allegations contained in Paragraph 10, except that they admit that ABI would supply Modelo brand beer to Crown for sale in the United States after the transactions.

11. For these reasons, as alleged more specifically below, the proposed acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act. The likely anticompetitive effects of the proposed acquisition would not be prevented or remedied by the sale of Modelo's existing interest in Crown to Constellation and the supply agreement between ABI and Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 11.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

12. 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 ABI and Modelo from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

ANSWER: Intervenors admit that the statutes cited in Paragraph 12 provide a legal basis for the Unites States to bring claims similar to the ones made in the Complaint.

13. This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337, and 1345.

ANSWER: Intervenors admit the allegations contained in Paragraph 13.

14. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391.

ANSWER: Intervenors admit the allegations contained in Paragraph 14.

15. Defendants are engaged in, and their activities substantially affect, interstate commerce. ABI and Modelo annually brew several billion dollars worth of beer, which is then advertised and sold throughout the United States.

ANSWER: Intervenors admit the allegations in Paragraph 15, except that they deny that Modelo sells any beer in the United States.

16. This Court has personal jurisdiction over each Defendant. Modelo has consented to personal jurisdiction in this judicial district. ABI is found and transacts business in this District through its wholly-owned United States subsidiaries, over which it exercises control.

ANSWER: The first sentence of Paragraph 16 states a legal conclusion to which no responsive pleading is required. Intervenors otherwise admit the allegations contained in Paragraph 16 to the extent applicable to the Intervenors.

III. THE DEFENDANTS AND THE TRANSACTIONS

17. ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI is the largest brewer and marketer of beer sold in the United States.

ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 beer brands, including Bud Light, the number one brand in the United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island, and Beck's.

ANSWER: Upon information and belief, Intervenors admit the allegations contained in Paragraph 17.

18. Modelo is a corporation organized and existing under the laws of Mexico, with headquarters in Mexico City, Mexico. Modelo is the third-largest brewer of beer sold in the United States. Modelo's Corona Extra brand is the top-selling import in the United States. Its other popular brands sold in the United States include Corona Light, Modelo Especial, Negra Modelo, Victoria, and Pacifico.

ANSWER: Upon information and belief, Intervenors admit the allegations contained in Paragraph 18, except that they deny that Modelo sells any beer in the United States.

19. ABI currently holds a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo, S.A. de C.V. ABI's current part-ownership of Modelo gives ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors. However, as ABI stated in its most recent annual report, ABI does "not have voting or other effective control of . . . Grupo Modelo."

ANSWER: Upon information and belief, Intervenors admit the allegations contained in Paragraph 19, except that they deny the allegations contained in the final sentence of Paragraph 19 and refer to the annual report referenced therein for its contents.

20. ABI and Modelo executives agree that there is currently vigorous competition between the ABI and Modelo brands in the United States. Indeed, firewalls are in place to ensure that the ABI members of Modelo's Board do not become privy to information about the pricing, marketing, or distribution of Modelo brands in the United States.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 and, therefore, deny those allegations. They deny specifically that there is vigorous competition between the ABI and Modelo brands in the United States.

21. Modelo executives run its day-to-day business, including Modelo's relationship and interaction with its U.S. importer, Crown. Modelo owns half of Crown and may exercise an option at the end of 2013, to acquire in 2016, the half of Crown it does not already own. Today, Modelo must approve Crown's general pricing parameters, changes in strategic direction, borrowing activities, and capital investment above certain thresholds. Modelo also sets the global strategic themes for the brands it owns. Essentially, Crown is a group of employees who report to Crown's owners: Modelo and Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 21, except that they admit, upon information and belief, that Modelo executives run Modelo's day-to-day business, including its relationship and interaction with Crown, and that Modelo owns half of Crown and may exercise a call option in an attempt to acquire the other half of Crown in 2016 over Constellation's objection.

22. The acquisition gives complete control of Modelo to ABI, and gives ABI full access to competitively sensitive information about the sale of the Modelo brands in the United States – access that ABI does not currently enjoy. ABI presently has no day-to-day role in Modelo's United States business and is walled off from strategic discussions regarding Modelo sales in the United States.

ANSWER: Intervenors deny the allegations contained in paragraph 22, except that they admit that the proposed transactions will give ABI control of Modelo and that ABI presently has no day-to-day role in the sale of Modelo brands in the United States. Upon information and belief, Intervenors admit that ABI is "walled off" from strategic discussions regarding Modelo sales in the United States.

23. On June 28, 2012, ABI agreed to purchase the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for about $20.1 billion.

ANSWER: Intervenors admit that ABI agreed to purchase the remaining equity interest from Modelo's owners on June 28, 2012, for approximately $20.1 billion and deny the remaining allegations in Paragraph 23.

24. As noted above, in an effective acknowledgement that the acquisition of Modelo raises significant competitive concerns, Defendants simultaneously entered into another transaction in an attempt to "remedy" the competitive harm caused by ABI's acquisition of the remainder of Modelo: ABI has agreed to sell Modelo's existing 50% interest in Crown to Constellation, so that Crown, previously a joint-venture between Modelo and Constellation, would become wholly owned by Constellation. As part of this strategy, ABI and Constellation have negotiated a supply agreement giving Constellation the exclusive right to import Modelo beer into the United States for ten years. These transactions are contingent on the closing of ABI's acquisition of Modelo.

ANSWER: Intervenors deny the allegations contained in Paragraph 24, except that they admit that: ABI has agreed to sell Modelo's existing 50% interest in Crown to Constellation, resulting in Crown becoming wholly owned by Constellation; ABI and Constellation negotiated a supply agreement giving Constellation the exclusive right to import Modelo beer into the United States for at least ten years; and the ABI/Constellation transaction is contingent upon the closing of the ABI/Modelo transaction.

IV. THE RELEVANT MARKET

A. Description of the Product

25. "Beer" is comprised of a wide variety of brands of alcoholic beverages usually made from a malted cereal grain, flavored with hops, and brewed via a process of fermentation. Beer is substantially differentiated from other alcoholic beverages by taste, quality, alcohol content, image, and price.

ANSWER: Intervenors admit the allegations contained in the first sentence of Paragraph 25. Intervenors deny the allegations contained in the second sentence of Paragraph 25.

26. In addition to brewing, beer producers typically also sell, market, and develop multiple brands. Marketing and brand building take various forms including sports sponsorships, print advertising, national television campaigns, and increasingly, online marketing. For example, Modelo has recently invested in "more national advertising [and] more national sports" in order to "build the equity of [its] brands."

ANSWER: Intervenors deny the allegations of Paragraph 26, except that they admit that beer producers sometimes, but not always, sell, market, and develop multiple brands.

27. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those end accounts are primarily grocery stores, large retailers such as Target and Wal-Mart, and convenience stores, liquor stores, restaurants, and bars which, in turn, sell beer to the consumer. Beer brewed in foreign countries may be sold to an importer, which then arranges for distribution to retailers.

ANSWER: Intervenors deny the allegations contained in Paragraph 27 because, for example, foreign brewers such as Modelo must sell their beer to an importer, like Crown, which then sells it to wholesalers for distribution to retailers.

28. ABI groups beer into four segments: sub-premium, premium, premium plus, and high end. The sub-premium segment, also referred to as the value segment, generally consists of lager beers, such as Natural and Keystone branded beer, and some ales and malt liquors, which are priced lower than premium beers, made from less expensive ingredients and are generally perceived as being of lower quality than premium beers. The premium segment generally consists of medium-priced American lager beers, such as ABI's Budweiser, and the Miller and Coors brand families, including the "light" varieties. The premium plus segment consists largely of American beers that are priced somewhat higher than premium beers, made from more expensive ingredients and are generally perceived to be of superior quality. Examples of beers in the premium plus category include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita and Michelob Ultra.

ANSWER: Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and, therefore, deny those allegations.

29. The high-end category includes craft beers, which are often produced in small-scale breweries, and imported beers. High-end beers sell at a wide variety of price points, most of which are higher than premium and premium plus beers. The high-end segment includes craft beers such as Dogfish Head, Flying Dog, and also imported beers, the best selling of which is Modelo's Corona. ABI also owns high-end beers including Stella Artois and Goose Island. Brewers with a broad portfolio of brands, such as ABI, seek to maintain "price gaps" between each segment. For example, premium beer is priced above sub-premium beer, but below premium plus beer.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of whether brewers with a broad portfolio of brands generally seek to maintain "price gaps" between each segment and, therefore, deny those allegations. Intervenors admit the remaining allegations contained in Paragraph 29.

30. Beers compete with one another across segments. Indeed, ABI and Modelo brands are in regular competition with one another. For example, Modelo, acting through Crown in the United States, usually selects "[d]omestic premium" beer, namely, ABI's Bud Light, as its benchmark for its own brands' pricing.

ANSWER: Intervenors deny the allegations contained in Paragraph 30, except that they admit that ABI and Modelo brands, to some extent, compete with one another and that beers can compete across segments. Modelo does not develop pricing strategy for its beers in the United States. Rather, Crown decides how Corona and the other Modelo brands will be priced and sold in the United States. Crown, not Modelo, employs field personnel and other persons who gather market data and engage in a deliberative, competitive process to formulate a customized pricing decision appropriate for each situation.

B. Relevant Product Market

31. Beer is a relevant product market and line of commerce under Section 7 of the Clayton Act. Other alcoholic beverages, such as wine and distilled spirits, are not sufficiently substitutable to discipline at least a small but significant and nontransitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

ANSWER: Intervenors deny the allegations contained in Paragraph 31.

C. Relevant Geographic Market

32. The 26 local markets, defined by Metropolitan Statistical Areas ("MSAs"), identified in Appendix A, are relevant geographic markets for antitrust purposes. Each of these local markets currently benefits from head-to-head competition between ABI and Modelo, and in each the acquisition would likely substantially lessen competition.

ANSWER: Intervenors deny the allegations contained in Paragraph 32. ABI and Modelo do not compete with one another in the United States.

33. The relevant geographic markets for analyzing the effects of this acquisition are best defined by the locations of the customers who purchase beer, rather than by the locations of breweries. Brewers develop pricing and promotional strategies based on an assessment of local

demand for their beer, local competitive conditions, and local brand strength. Thus, the price for a brand of beer can vary by local market.

ANSWER: Intervenors admit the allegations contained in the first and third sentences of Paragraph 33. Intervenors deny the allegations in the second sentence of Paragraph 33 because Modelo does not develop pricing and promotional strategies for its beer with respect to the United States—Crown does.

34. Brewers are able to price differently in different locations, in part, because arbitrage across local markets is unlikely to occur. Consumers buy beer near their homes and typically do not travel to other areas to buy beer when prices rise. Also, distributors' contracts with brewers and their importers contain territorial limits and prohibit distributors from reselling beer outside their territories. In addition, each state has different laws and regulations regarding beer distribution and sales that would make arbitrage difficult.

ANSWER: Intervenors admit that the same brand and package of beer might be sold at different prices in different locations. Intervenors admit that wholesale distributors typically contract to sell beer within an exclusive territory for any particular brand. Intervenors admit that states have different laws governing the distribution and sale of beer. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second sentence of Paragraph 34 and, therefore, deny those allegations. Intervenors deny all remaining allegations contained in Paragraph 34.

35. Accordingly, a hypothetical monopolist of beer sold into each of the local markets identified in Appendix A would likely increase its prices in that local market by at least a small but significant and non-transitory amount.

ANSWER: Intervenors deny the allegations contained in Paragraph 35.

36. Therefore, the MSAs identified in Appendix A are relevant geographic markets and "sections of the country" within the meaning of Section 7 of the Clayton Act.

ANSWER: Paragraph 36 states legal conclusions, to which no responsive pleading is required. To the extent Paragraph 36 contains allegations, Intervenors deny those allegations.

37. There is also competition between brewers on a national level that affects local markets throughout the United States. Decisions about beer brewing, marketing, and brand building typically take place on a national level. In addition, most beer advertising is on national television, and brewers commonly compete for national retail accounts. General pricing strategy also typically originates at a national level. A hypothetical monopolist of beer sold in the United States would likely increase its prices by at least a small but significant and non-transitory amount. Accordingly, the United States is a relevant geographic market under Section 7 of the Clayton Act.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the final four sentences of Paragraph 37 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 37.

V. ABI'S PROPOSED ACQUISITION IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

A. The Relevant Markets are Highly Concentrated and the Merger Triggers a Presumption of Illegality in Each Relevant Market

38. The relevant markets are highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

ANSWER: Intervenors deny the allegations contained in Paragraph 38.

39. ABI is the largest brewer of beer sold in the United States. MillerCoors is the second largest brewer of beer sold in the United States. MillerCoors owns the Miller and Coors brands and also many smaller brands including Blue Moon and Keystone Light. Modelo is the third largest brewer of beer sold in the United States, with annual U.S. sales of $2.47 billion, 7% market share nationally, and a market share that is nearly 20% in some local markets. Modelo owns the Corona, Modelo, Pacifico, and Victoria brands. The remaining sales of beer in the U.S. are divided among Heineken and fringe competitors, including many craft brewers, which the Defendants characterize as being "fragmented . . . small player[s]."

ANSWER: Upon information and belief, Intervenors admit the allegations contained in the first three and the fifth sentences of Paragraph 39. Intervenors also admit that Modelo is the third largest brewer of beer sold in the United States. Intervenors deny the remaining allegations contained in the fourth sentence of Paragraph 39. Crown, not Modelo, has annual

sales of approximately $2.47 billion and 7% market share. Intervenors admit that Heineken and craft brewers brew beer that is sold in the United States. Intervenors deny the remaining allegations contained in Paragraph 39.

40. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI"). Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI is in excess of 2,500 points are considered highly concentrated.

ANSWER: Intervenors admit that the 2010 Horizontal Merger Guidelines published by the Federal Trade Commission and the Department of Justice Antitrust Division assert the allegations contained in the final sentence of Paragraph 40 but deny that such markets are considered "highly concentrated" in all cases. Intervenors admit the remaining allegations contained in Paragraph 40, except that they deny that the HHI is the appropriate measure of market concentration in all situations.

41. The beer industry in the United States is highly concentrated and would become substantially more so as a result of this acquisition. Market share estimates demonstrate that in 20 of the 26 local geographic markets identified in Appendix A, the post-acquisition HHI exceeds 2,500 points, in one market is as high as 4,886 points, and there is an increase in the HHI[3] of at least 472 points in each of those 20 markets. In six of the local geographic markets, the post-merger HHI is at least 1,822, with an increase of the HHI of at least 387 points, and in each of those six markets the parties combined market share is greater than 30%.

ANSWER: Intervenors deny the allegations contained in Paragraph 41. The transactions described above do not increase concentration in the alleged market for the sale of beer in the United States. Crown—not Modelo—prices, markets, sells, and distributes Modelo brands in the United States and will remain independent after the transactions.

42. In the United States, the Defendants will have a combined market share of approximately 46% post-transaction. The post-transaction HHI of the United States beer market will be greater than 2800, with an increase in the HHI of 566.

ANSWER: Intervenors deny the allegations contained in Paragraph 42. The transactions described above do not increase concentration in the alleged market for the sale of beer in the United States. Crown—not Modelo—prices, markets, sells, and distributes Modelo brands in the United States and will remain independent after the transactions.

43. The market concentration measures, coupled with the significant increases in concentration, described above, demonstrate that the acquisition is presumed to be anticompetitive.

ANSWER: Intervenors deny the allegations contained in Paragraph 43.

B. Beer Prices in the United States Today are Largely Determined by the Strategic Interactions of ABI, MillerCoors, and Modelo

1. ABI's Price Leadership

44. ABI and MillerCoors typically announce annual price increases in late summer for execution in early fall. The increases vary by region, but typically cover a broad range of beer brands and packs. In most local markets, ABI is the market share leader and issues its price announcement first, purposely making its price increases transparent to the market so its competitors will get in line. In the past several years, MillerCoors has followed ABI's price increases to a significant degree.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 44 and, therefore, deny those allegations.

45. The specifics of ABI's pricing strategy are governed by its "Conduct Plan," a strategic plan for pricing in the United States that reads like a how-to manual for successful price coordination. The goals of the Conduct Plan include: "yielding the highest level of followership in the short-term" and "improving competitor conduct over the long-term."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 45 and, therefore, deny those allegations.

46. ABI's Conduct Plan emphasizes the importance of being "Transparent – so competitors can clearly see the plan;" "Simple – so competitors can understand the plan;" "Consistent – so competitors can predict the plan;" and "Targeted – consider competition's structure." By

pursuing these goals, ABI seeks to "dictate consistent and transparent competitive response." As one ABI executive wrote, a "Front Line Driven Plan sends Clear Signal to Competition and Sets up well for potential conduct plan response." According to ABI, its Conduct Plan "increases the probability of [ABI] sustaining a price increase."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 46 and, therefore, deny those allegations.

47. The proposed merger would likely increase the ability of ABI and the remaining beer firms to coordinate by eliminating an independent Modelo – which has increasingly inhibited ABI's price leadership – from the market.

ANSWER: Intervenors deny the allegations contained in Paragraph 47.

2. Modelo Has Constrained ABI's Ability to Lead Prices Higher

48. In the past several years, Modelo, acting through Crown, has disrupted ABI's pricing strategy by declining to match many of the price increases that were led by ABI and frequently joined by MillerCoors.

ANSWER: Intervenors deny the allegations contained in Paragraph 48.

49. In or around 2008, Crown implemented its "Momentum Plan" with Modelo's enthusiastic support. The Momentum Plan is specifically designed to grow Modelo's market share by shrinking the price gaps between brands owned by Modelo and domestic premium brands. By maintaining steady pricing while the prices of premium beer continues to rise, Modelo has narrowed the price gap between its beers and ABI's premium beers, encouraging consumers to trade up to Modelo brands. These narrowed price gaps frustrate ABI and MillerCoors because they result in Modelo gaining market share at their expense.

ANSWER: Intervenors deny the allegations in the first three sentences contained in Paragraph 49. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the last sentence of Paragraph 46 and, therefore, deny those allegations.

50. Under the Momentum Plan, Modelo brand prices essentially remained flat despite price increases from ABI and other competitors, allowing Modelo brands to achieve their targeted price gaps to premium beers in various markets. After Modelo implemented its price gap strategy, Modelo brands experienced market share growth.

ANSWER: Intervenors deny the allegations contained in Paragraph 50.

51. Because of the Momentum Plan, prices on the Modelo brands have increased more slowly than ABI has increased premium segment prices. Thus, as ABI has observed, in recent years, the "gap between Premium and High End has been reducing . . . due to non [high-end] increases." Over the same time period, the high-end segment has been gaining market share at the expense of ABI's and MillerCoors' premium domestic brands.

ANSWER: Intervenors deny the allegations contained in Paragraph 51.

52. In internal strategy documents, ABI has repeatedly complained about pressure resulting from price competition with the Modelo brands: "Recent price actions delivered expected Trade up from Sub Premium, however it created additional share pressure from volume shifting to High End where we under-index;" "Consumers switching to High End accelerated by price gap compression;" "While relative Price to MC [MillerCoors] has remained stable the lack of Price increase in Corona is increasing pressure in Premium." An ABI presentation from November 2011 stated that ABI's strategy was "Short-Term []: We must slow the volume trend of High End Segment and cannot let the industry transform." Owning the Modelo brands will enable ABI to implement that strategy.

ANSWER: Intervenors deny the allegations contained in the final sentence of Paragraph 52. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 52 and, therefore, deny those allegations.

53. The competition that Modelo has created by not following ABI price increases has constrained ABI's ability to raise prices and forced ABI to become more competitive by offering innovative brands and packages to limit its share losses and to attract customers.

ANSWER: Intervenors deny the allegations contained in Paragraph 53. Crown, not Modelo, is responsible for pricing, marketing, selling, and distributing the Modelo brands in the United States.

54. Competition between the ABI and Modelo brands has become increasingly intense throughout the country, particularly in areas with large Latino populations. As the country's Latino population is forecasted to grow over time, ABI anticipates even more rigorous

competition with Modelo. Here are some examples of how the Modelo brands have disciplined the pricing of the market leaders.

ANSWER: Intervenors deny the allegations contained in Paragraph 54. ABI does not compete with Modelo in the United States because Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

a. California

55. Modelo, acting through Crown, has not followed ABI-led price increases in local markets in California. Because of the aggressive pricing of the Modelo brands, ABI's Bud and Bud Light brands have reported "[h]eavy share losses" to Modelo's Corona and Modelo Especial.

ANSWER: Intervenors deny the allegations contained in Paragraph 55. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in California.

56. Consumers in California markets have been the beneficiaries of Modelo's aggressive pricing. ABI rescinded a planned September 2010 price increase because of the share growth of Modelo's Corona brand. ABI also considered launching a new line, "Michelob Especial," – a Modelo brand is "Modelo Especial" – targeted at California's Latino community. ABI recognized that Corona's strength in California meant that "innovation [is] required." Nonetheless, Modelo continued "eating [Budweiser's] lunch" in California to the point where ABI's Vice President of Sales observed that "California is a burning platform" for ABI, which was "losing share" because of "price compression" between ABI and Corona.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second and third sentences of Paragraph 56 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 56. ABI does not compete with Modelo in the United States because Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is

responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in California.

57. In 2012, ABI's concern about losing market share to Modelo in California caused a full-blown price war. ABI implemented "aggressive price reductions . . ." that were seen as "specifically targeting Corona and Modelo." These aggressive discounts appear to have been taken in support of ABI's expressed desire to discipline Modelo's aggressive pricing with the ultimate goal of "driv[ing] them to go up" in price. Both MillerCoors and Modelo followed ABI's price decrease, and ABI responded by dropping its price even further to stay competitive.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations regarding MillerCoors in Paragraph 57 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 57. ABI does not compete with Modelo in the United States because Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in California.

b. Texas

58. Competition between the ABI and Modelo brands in local markets in Texas is also intense. Beginning in or about 2010, some Modelo brands began to be priced competitively with ABI's Bud Light, the leading domestic brand throughout the state. Modelo brands also benefited from price promotions and regional advertising. By 2011, Modelo had begun gaining market share at ABI's expense. ABI recognized Modelo's aggressive price strategy as an issue contributing to its market share loss.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations regarding ABI contained in Paragraph 58 and, therefore, deny those allegations. Intervenors deny all remaining allegations contained in Paragraph 58. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in Texas.

59. Ultimately, aggressive pricing on some Modelo brands forced ABI to lower its prices in local Texas markets, and adjust its marketing strategy to better respond to competition from the Modelo brands. According to an ABI Regional Vice President of Sales, ABI set "pricing, packaging and retail activity targets to address [Modelo's] Especial" brand. In both Houston and San Antonio, ABI also lowered the price of its Bud Light Lime brand to match Modelo Especial price moves.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 59 and, therefore, deny those allegations.

c. New York City

60. In the summer of 2011, Modelo, acting through Crown, sought to narrow the gap in price between its brands and those of domestic premiums, including the ABI brands in New York City. ABI became concerned that "price compression on Premiums by imports" would cause premium domestic customers to trade up to the import segment. ABI's Vice President of Sales observed that the price moves on Modelo's Corona brand, and corresponding reductions by MillerCoors and Heineken, meant that ABI would "need to respond in some fashion," and that its planned price increase was "in jeopardy." ABI ultimately chose to respond by delaying a planned price increase to "limit the impact of price compression on our premiums as a result of the Corona . . . deeper discount."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second, third, and fourth sentences of Paragraph 60 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 60. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States, including in New York City.

C. The Elimination of Modelo Would Likely Result in Higher Coordinated Pricing by ABI and MillerCoors

61. Competition spurred by Modelo has benefitted consumers through lower beer prices and increased innovation. It has also thwarted ABI's vision of leading industry prices upward with MillerCoors and others following. As one ABI executive stated in June 2011, "[t]he impact of Crown Imports not increasing price has a significant influence on our volume and share. The case could be made that Crown's lack of increases has a bigger influence on our elasticity than

MillerCoors does." ABI's acquisition of full ownership and control of Modelo's brands and brewing assets will facilitate future pricing coordination.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in the second and third sentences of Paragraph 61 and, therefore, deny those allegations. Intervenors deny the remaining allegations contained in Paragraph 61. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

D. The Loss of Head-to-Head Competition Between ABI and Modelo Would Likely Result in Higher Prices on ABI-Owned Brands

62. ABI is intent on moderating price competition. As it has explained internally: "We must defend from value-destroying pricing by: [1] Ensuring competition does not believe they can take share through pricing[,] [and] [2] Building discipline in our teams to prevent unintended initiation or acceleration of value-destroying actions." ABI documents show that it is increasingly worried about the threat of high-end brands, such as Modelo's, constraining its ability to increase premium and sub-premium pricing. In general, ABI, as the price leader, would prefer a market not characterized by aggressive pricing actions to take share because "[t]aking market share this way is unsustainable and results in lower total industry profitability which damages all players long-term."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 62 and, therefore, deny those allegations.

63. ABI would have strong incentives to raise the prices of its beers were it to acquire Modelo. First, lifting the price of Modelo beers would allow ABI to further increase the prices of its existing brands across all beer segments. Second, as the market leader in the premium and premium-plus segments, and as a brewer with an approximate overall national share of approximately 46% of beer sales post-acquisition, coupled with its newly expanded portfolio of brands, ABI stands to recapture a significant portion of any sales lost due to such a price increase, because a significant percentage of those lost sales will go to other ABI-owned brands.

ANSWER: Intervenors deny the allegations contained in Paragraph 63. ABI will have no ability to affect the pricing of Modelo brands in the United States after the transactions.

64. Therefore, ABI likely would unilaterally raise prices on the brands of beer that it owns as a result of the acquisition.

ANSWER: Intervenors deny the allegations contained in Paragraph 64. ABI will have no ability to affect the pricing of Modelo brands in the United States after the transactions.

E. The Loss of Head-to-Head Competition Between ABI and Modelo Will Harm Consumers Through Reduced New Product Innovation and Product Variety

65. Modelo's growth in the United States has repeatedly spurred product innovation by ABI. In 2011, ABI decided to "Target Mexican imports" and began planning three related ways of doing so. First, ABI would acquire the U.S. sales rights to Presidente beer, the number one beer in Central America, and greatly expand Presidente's distribution in the United States. Second, ABI would acquire a "Southern US or Mexican craft brand," and use it to compete against Mexican imports. Finally, ABI would license trademarks to another tropical-style beer, in a project that the responsible ABI manager described as a "Corona killer."

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 65 and, therefore, deny those allegations. Intervenors also deny these allegations to the extent they purport to describe competitive activity by Modelo within the United States. Modelo does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

66. ABI's Bud Light Lime, launched in 2008, was also targeted at Corona (commonly served with a slice of lime), going so far as to mimic Corona's distinctive clear bottle. As one Modelo executive noted after watching a commercial for Bud Light Lime, the product was "invading aggressively and directly the Corona territory." Another executive commented that the commercial itself was "[v]ery similar" to one Modelo, through Crown, was developing at the same time.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 66 and, therefore, deny those allegations, except that they admit that Bud Light Lime was sold in a clear bottle and was an innovation that competed with many beer and other alcohol brands, including the Modelo brands.

67. The proposed acquisition's harmful effect on product innovation is already evident. If ABI were to acquire Modelo and enter into the supply agreement with Constellation, ABI would be forbidden from launching a "Mexican-style Beer" in the United States. Further, ABI would no longer have the same incentives to introduce new brands to take market share from the Modelo brands.

ANSWER: Intervenors deny the allegations contained in Paragraph 67 and refer to the agreements referenced for their contents. The proposed transactions would not result in less innovation or new brands in the United States. In fact, immediately upon closing of the transactions, Crown would be entitled to import any of the other six beers produced by Modelo and sold only in Mexico.

F. Summary of Competitive Harm from ABI's Acquisition of the Remainder of Modelo

68. The significant increase in market concentration that the proposed acquisition would produce in the relevant markets, combined with the loss of head-to-head competition between ABI and Modelo, is likely to result in unilateral price increases by ABI and to facilitate coordinated pricing between ABI and remaining market participants.

ANSWER: Intervenors deny the allegations contained in Paragraph 68.

VI. ABSENCE OF COUNTERVAILING FACTORS

69. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Barriers to entry and expansion within each of these harmed markets include: (i) the substantial time and expense required to build a brand reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer products in retail outlets; (iii) the difficulty of securing shelf-space in retail outlets; (iv) the time and cost of building new breweries and other facilities; and (v) the time and cost of developing a network of beer distributors and delivery routes.

ANSWER: Intervenors deny the allegations contained in Paragraph 69.

70. Although ABI asserts that the acquisition would produce efficiencies, it cannot demonstrate acquisition-specific and cognizable efficiencies that would be passed-through to U.S. consumers, of sufficient size to offset the acquisition's significant anticompetitive effects.

ANSWER: Intervenors deny the allegations contained in Paragraph 70.

VII. DEFENDANTS' PROFFERED "REMEDY" DOES NOT PREVENT THE ANTICOMPETITIVE EFFECT OF ABI'S ACQUISITION OF MODELO

71. In light of the high market concentration, and substantial likelihood of anticompetitive effects, ABI's acquisition of the remainder of Modelo is illegal. Defendants thus evidently structured their transactions with a purported "remedy" in mind: the sale of Modelo's interest in Crown to Constellation, coupled with a supply agreement that gives Constellation the right to import Modelo beer into the United States. This proposal is inadequate to remedy Defendants' violation of Section 7 of the Clayton Act.

ANSWER: Intervenors deny the allegations contained in Paragraph 71, except that they admit that ABI has agreed to sell Modelo's interest in Crown to Constellation and enter into a supply agreement that gives Constellation the right to import Modelo beer into the United States.

A. Constellation Has Not Shown Modelo and Crown's Past Willingness to Resist ABI's "Leader-Follower" Industry Plan

72. Constellation has not shown Crown and Modelo's past willingness to thwart ABI's price leadership. While Modelo supported narrowing the gap between the prices of its brands and those of ABI premium brands, Constellation's executives have sought to follow ABI's pricing lead. In August 2011, Constellation's Managing Director wrote to Crown's CEO: "Since ABI has already announced an October general price increase I was wondering if you are considering price increases for the Modelo portfolio? . . . . From a positioning and image perspective I believe it would be a mistake to allow the gaps to be narrowed … I think ABI's announcement gives you the opportunity to increase profitability without having to sacrifice significant volume." Similarly, in December of 2011, Constellation's CFO wrote to his counterpart at Crown that he thought price increases on the Modelo brands were viable "if domestics [i.e. Bud and Bud Light] keep going up" but worried that "Modelo gets a vote as well." And in June of 2012, a Crown executive stated that Constellation's plan for annual price increases "put at risk the relative success" of the Momentum Plan.

ANSWER: Intervenors deny the allegations contained in Paragraph 72 and refer to the documents referenced for their contents.

73. Crown executives have recognized the differing incentives, as it relates to pricing, of their two owners. As one Crown executive observed in a March 2011 email, "Modelo has a higher interest in building volume so that they can cover manufacturing costs, gain manufacturing profits and build share as the brand owners." Constellation, however, "is interested primarily in the financial return on a short-term or at the most on a mid-term basis."

ANSWER: Intervenors admit the allegations contained in the first sentence of Paragraph 73. Intervenors deny the allegations contained in the second sentence of Paragraph 73 and refer to the documents referenced for their contents.

74. Post-transaction, Constellation would no longer be so constrained. Even if Crown's own executives wanted to continue an aggressive pricing strategy, they would be required to answer to Crown's new sole owner – Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 74.

75. Crown executives were concerned about what would happen if Constellation gained complete control of Crown. Crown's CEO wrote to Constellation's CEO after Defendants' proposed "remedy" was announced: "the Crown team [] is extremely anxious about this change in ownership. This is in no small part the result of Constellation's actions over the term of the joint venture to limit investment in the business in the areas of manpower and marketing." Constellation's CEO responded internally: "[Q]uite something. I see a management issue brewing." In another email, Crown's CEO wrote to his employees that Constellation had been "consistently non supportive of the business through Crown's history . . . seeking to drive profits at all costs."

ANSWER: Intervenors deny the allegations contained in Paragraph 75 and refer to the documents referenced for their contents.

76. Crown's fears appear well-grounded. In 2010, Modelo sued Constellation for breach of fiduciary duty, after Constellation had refused to invest in marketing the Modelo brands. In its Complaint, Modelo alleged "Constellation [] knew that [Crown] management's plan was in Crown's best interests, but they blocked it anyway in an effort to secure unwarranted benefits for Constellation."

ANSWER: Intervenors deny the allegations contained in Paragraph 76, except that they admit that Modelo sued Constellation for breach of fiduciary duty and refer to the documents referenced for their contents.

77. Post-acquisition, Constellation would not need to ask Modelo for permission to follow ABI's price-leadership. Instead, Constellation would be free to follow ABI's lead. Moreover, ABI and Constellation will have every incentive to act together on pricing because of the vast profits each would stand to make if beer prices were to increase.

ANSWER: Intervenors deny the allegations contained in Paragraph 77, except that they admit the allegations in the second sentence of Paragraph 77. They specifically deny the implication that such pricing behavior would occur.

78. The contingent supply relationship between ABI and Constellation would also facilitate joint pricing between the two companies. Post-acquisition, there would be day-to-day interaction between ABI and Constellation on matters such as volume, packaging, transportation of product, and new product innovation. ABI and Constellation would have countless opportunities that could creatively be exploited, and that no one could predict or control, to allow ABI to reward Constellation (or refrain from punishing Constellation) in exchange for Constellation raising the price of the Modelo brands. The lucrative supply agreement from which Constellation seeks to gain billions of dollars in profits itself incentivizes Constellation to keep ABI happy to avoid terminating Constellation's rights in ten years.

ANSWER: Intervenors deny the allegations contained in Paragraph 78.

79. ABI and Constellation are more likely to decide on mutually profitable pricing. Unlike ABI and Modelo, which are horizontal competitors, Constellation would be a mere participant in ABI's supply chain under the proposed arrangement.

ANSWER: Intervenors deny the allegations contained in Paragraph 79. ABI does not compete with Modelo in the United States because it does not sell beer in the United States. Rather, Crown, as the exclusive importer of Modelo brands, is responsible for all pricing, sales, marketing, and distribution of the Modelo brands in the United States.

80. ABI and Modelo have sought to avoid acting together on matters of competitive significance in the relevant markets in the U.S. Accordingly, they have built in several firewalls – including ABI's exclusion from sensitive portions of Modelo board meetings concerning the sale of Modelo beer in the U.S. – to insulate ABI from Modelo's U.S. business. Post-acquisition, those firewalls would be gone.

ANSWER: Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 80 and, therefore, deny those allegations.

81. The loss of Modelo also, by itself, facilitates interdependent pricing. Today, ABI would need to reach agreement with both Modelo and Constellation to ensure that pricing for the

Modelo brands followed ABI's lead. After the proposed transactions, working together on price would be easier because only Constellation would need to follow or agree with ABI.

ANSWER: Intervenors deny the allegations contained in Paragraph 81.

B. Constellation Will Not Be an Independent Firm Capable of Restoring Head-To-Head Competition Between ABI and Modelo

82. Even if Constellation wanted to act at odds with ABI post-transaction, it would be unlikely to do so. Constellation will own no brands or brewing or bottling assets of its own. It would be dependent on ABI for its supply. Thus, Defendants' proposed remedy puts Constellation in a considerably weaker competitive position compared to Modelo, which owns both brands and breweries.

ANSWER: Intervenors deny the allegations contained in Paragraph 82, except that they admit that after closing the proposed transactions Constellation will not own brands or brewing or bottling assets and would have a favorable contract for exclusive supply of Modelo beer from ABI.

83. ABI could terminate the contingent supply agreement at any time. And if ABI is displeased with Constellation's strategy in the United States, it might simply withhold or delay supply to punish Constellation.

ANSWER: Intervenors deny the allegations contained in Paragraph 83.

84. The supply agreement may also be renegotiated at any time during the 10-year period. Thus, it provides no guaranteed protection for consumers that any of its terms will be followed if ABI is able to secure antitrust approval for this acquisition.

ANSWER: Intervenors deny the allegations contained in Paragraph 84. The supply agreement referenced in Paragraph 84 could not be renegotiated because the parties have committed that they will not renegotiate that agreement or strike any new agreement between the parties under court order. Further, Constellation would have no desire or incentive to renegotiate that agreement given its favorable terms.

VIII. VIOLATIONS ALLEGED

85. The United States incorporates the allegations of paragraphs 1 through 84 above as if set forth fully herein.

ANSWER: Intervenors incorporate their responses to the incorporated allegations above as if set forth fully herein.

Violation of Clayton Act § 7, 15 U.S.C. § 18

ABI Agreement to Acquire Remainder of Modelo

86. The proposed acquisition of the remainder of Modelo by ABI would likely substantially lessen competition – even after Defendants' proposed "remedy" – in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The transactions would have the following anticompetitive effects, among others:
(a) Eliminating Modelo as a substantial, independent, and competitive force in the relevant markets, creating a combined firm with reduced incentives to lower price or increase innovation or quality;
(b) Competition generally in the relevant markets would likely be substantially lessened;
(c) Prices of beer would likely increase to levels above those that would prevail absent the transaction, forcing millions of consumers in the United States to pay higher prices;
(d) Quality and innovation would likely be less than levels that would prevail absent the transaction;
(e) The acquisition would likely promote and facilitate pricing coordination in the relevant markets; and
(f) The acquisition would provide ABI with a greater incentive and ability to increase its pricing unilaterally.

ANSWER: Paragraph 86 states legal conclusions to which no responsive pleading is required. To the extent Paragraph 86 contains allegations, Intervenors deny those allegations.

IX. REQUEST FOR RELIEF

87. The United States requests that:
(a) The proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
(b) The Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated June 28, 2012, and the "Transaction Agreement" dated June 28, 2012, between Modelo, Diblo, and ABI, or from entering into or carrying out any agreement, understanding, or plan by which ABI would acquire the remaining interest in Modelo, its stock, or any of its assets;
(c) The United States be awarded costs of this action; and
(d) The United States be awarded such other relief as the Court may deem just and proper.

ANSWER: Paragraph 87 states legal conclusions to which no responsive pleading is required. To the extent Paragraph 87 contains allegations, Intervenors deny those allegations.

X. AFFIRMATIVE DEFENSES

The inclusion of any ground within this section does not constitute an admission that ABI, Modelo, or Intervenors bear the burden of proof on each or any of the matters, nor does it excuse Plaintiff from establishing each element of its purported claim for relief.

88. The Complaint fails to state a claim upon which relief may be granted.

89. The Complaint fails to name one or more parties in interest.

90. The contemplated relief would not be in the public interest because it would, among other things, harm consumers.

91. Efficiencies and other pro-competitive benefits of the transaction outweigh any and all proffered anti-competitive effects.

92. Intervenors reserve the right to assert any other defenses as they become known.

WHEREFORE, Intervenors respectfully request the following relief:

(1) judgment in their favor and the favor of the other Defendants;

(2) a declaration that the proposed transactions do not violate Section 7 of the Clayton Act or any other applicable law;

(3) an award of Intervenors' costs of suit, including attorneys' fees; and

(4) for such other relief as may be appropriate under the circumstances.

Dated: February 8, 2013

Respectfully submitted,

By: _____

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CROWN IMPORTS LLC

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH INBEV SA/NV, and GRUPO MODELO S.A.B. de C.V., Defendants.	)	Civil Action No. 13-127 (RWR)

[PROPOSED] ORDER GRANTING MOTION TO INTERVENE OF CONSTELLATION BRANDS, INC. AND CROWN IMPORTS LLC

Upon review of the Motion to Intervene of Constellation Brands, Inc. ("Constellation") and Crown Imports LLC ("Crown"), it is hereby

ORDERED that the Motion is GRANTED with respect to Constellation pursuant to Rule 24(a)(2) [or 24(b)(1)] of the Federal Rules of Civil Procedure; and

ORDERED that the Motion is GRANTED with respect to Crown pursuant to Rule 24(a)(2) [or 24(b)(1)] of the Federal Rules of Civil Procedure.

DATED:

_____
Richard W. Roberts
UNITED STATES DISTRICT JUDGE

The enclosed information constitutes regulated information as defined in the Belgian Royal Decree of 14 November 2007 regarding the duties of issuers of financial instruments which have been admitted for trading on a regulated market.

Anheuser-Busch InBev and Constellation Brands Announce Revised Agreement for Complete Divestiture of U.S. Business of Grupo Modelo

AB InBev to sell Piedras Negras brewery and grant perpetual rights to Constellation for Corona and the Modelo brands in the U.S. for USD 2.9 billion

Constellation to acquire 50% of Crown it does not own for USD 1.85 billion

Terms and merits of combination between AB InBev and Grupo Modelo relating to global deal remain unchanged

AB InBev synergy projection revised to approximately USD 1 billion from USD 600 million

Anheuser-Busch InBev (Euronext: ABI) (NYSE: BUD) and Constellation Brands, Inc. (NYSE: STZ, STZ.B) today announced a revised agreement that establishes Crown Imports as the #3 producer and marketer of beer in the U.S. through a complete divestiture of Grupo Modelo's (BMV: GMODELOC) U.S. business. The transaction establishes Crown as a fully owned entity of Constellation, and provides Constellation with independent brewing operations, Modelo's full profit stream from all U.S. sales, and rights in perpetuity to the Grupo Modelo brands distributed by Crown in the U.S.

As part of AB InBev's acquisition of the 50% of Grupo Modelo it does not already own, AB InBev has agreed to sell Compañía Cervecera de Coahuila, Grupo Modelo's state-of-the-art brewery in Piedras Negras, Mexico, and grant perpetual brand licenses to Constellation for USD 2.9 billion, subject to a post-closing adjustment. This price is based on an assumed 2012 EBITDA of USD 310 million earned from manufacturing and licensing the Modelo brands for sale by the Crown joint venture, with an implied multiple of approximately 9 times. The sale of the brewery, which is located near the Texas border, would ensure independence of supply for Crown and provides Constellation with complete control of the production of the Modelo brands for marketing and distribution in the U.S.

AB InBev and Constellation have agreed to a three-year transition services agreement to ensure the smooth transition of the operation of the world-class brewery, which is fully self-sufficient, utilizes top-of-the-line technology and was built to be readily expanded to increase production capacity. During this 3 year timeframe, Constellation plans to invest approximately USD 400 million to expand the Piedras Negras facility, which will then enable it to supply 100% of Crown's needs for the U.S. marketplace. Today, Piedras Negras fulfills approximately 60% of Crown's current demand.

As previously announced on June 29, 2012, AB InBev has agreed to divest Grupo Modelo's 50% stake in Crown, the joint venture between Modelo and Constellation, that currently imports and markets Modelo's brands in the U.S., to Constellation. The transaction value remains USD 1.85 billion, providing Constellation 100% ownership and control of Crown.

Carlos Brito, Chief Executive Officer of AB InBev, commented, *"The AB InBev and Grupo Modelo transaction has always been about Mexico and making Corona more global in all markets other than the U.S., where the brands will be owned and managed by Constellation. We are pleased to have reached this revised agreement that preserves the merits of the Grupo Modelo transaction while allowing us to move expeditiously to the Modelo integration process and the capture of approximately USD 1 billion of synergies, up from our original estimate of USD 600 million."*

Rob Sands, President and Chief Executive Officer of Constellation Brands, said, *"The revised agreement with AB InBev will make Constellation's Crown beer division a fully independent competitor and the third largest producer and marketer in the U.S. beer industry. This is a transformational acquisition for our company as we will hold perpetual rights to Corona and the Modelo brands distributed by Crown in the U.S. We will have autonomous control of production, distribution, marketing and promotion of these brands in the U.S. Bill Hackett, President of Crown, and his management team have decades of experience in the beer industry with the iconic Modelo brands. I am confident that all Constellation and Crown stakeholders, including our valued wholesalers, shareholders and employees will see the benefits of this amended agreement."*

Constellation's Financing Arrangements

The combined purchase price for the remaining 50% interest in Crown and the Piedras Negras brewery and the perpetual brand licenses is approximately USD 4.75 billion, subject to a post-closing adjustment. Constellation has fully committed bridge financing in place to complete these acquisition activities. Permanent financing is expected to consist of a combination of senior notes and term loans, with the remainder of the funding coming from the company's existing revolving credit facility, accounts receivable securitization facility and available cash.

"Upon closing, this combined transaction is expected to increase Constellation's debt to comparable basis EBITDA leverage to between 5 and 5.5 times when factoring in a full year of the additional Crown, brewery and brand EBITDA," said Bob Ryder, Chief Financial Officer of Constellation Brands. *"After funding this transformational transaction and planned capacity expansion for the brewery, the company expects to utilize its strong free cash flow to delever into its targeted 3 to 4 times leverage range as soon as possible."*

Crown as a Stronger Independent Competitor

Under the revised agreement, Crown would be a fully independent competitor in the U.S. with a Constellation owned state-of-the-art brewery fully supporting its growth. Constellation would also be granted an exclusive perpetual brand license for the import and distribution of Corona and the Modelo brands it currently sells, and the freedom to develop brand extensions and innovations in the U.S. Under the previous agreement announced in June 2012, AB InBev had the right, exercisable every 10 years, but not the obligation, to terminate the importer agreement with Crown. That provision has been removed in the revised agreement.

We believe this revised agreement addresses all of the concerns raised by the U.S. Department of Justice in its lawsuit, leaving no doubt about Constellation's Crown beer division's complete independence and ability to compete.

Acquisition of Piedras Negras Brewery Provides Supply Independence for Crown

Constellation's purchase of the Piedras Negras brewery provides it with complete control over production of Corona and the Modelo brands sold in the U.S. The brewery benefits from its proximity to the U.S., as well as a continuous, high quality water supply from a mountain aquifer. The approximately 600 employees at the Piedras Negras facility will continue to be employed at the brewery by their current employer.

The brewery currently produces Corona, Corona Light and Modelo Especial. The first phase of construction was completed in 2010 and the brewery is designed to be efficiently expanded up to 30 million HL. AB InBev and Constellation have entered into a three-year interim supply agreement for beer production to ensure full supply to U.S. consumers and a smooth, operational transition in Piedras Negras for workers and suppliers.

Terms and Merits of Combination between AB InBev and Grupo Modelo Remain Unchanged

The sale of Grupo Modelo's 50% stake in Crown is related to an agreement between AB InBev and Modelo, under which AB InBev will acquire the remaining stake in Modelo that it does not already own for USD 9.15 per share in cash, plus the acquisition of a glass supplier, in a transaction valued at USD 20.1 billion. These terms between AB InBev and Modelo remain unchanged.

The combination is a natural next step given the long and successful partnership dating back more than 20 years between AB InBev and Grupo Modelo, and would create a significant growth opportunity worldwide from combining two leading brand portfolios and distribution networks. This combination is driven by the growth potential of Modelo brands in Mexico as well as worldwide outside the U.S., and the opportunities to introduce additional AB InBev brands in Mexico through Modelo's distribution network. The Piedras Negras brewery supplies the U.S. exclusively, and its sale would not impact the growth of Modelo brands in Mexico or worldwide outside the U.S.

Since announcing the combination between AB InBev and Modelo, AB InBev has been working on integration planning and reviewing initial synergy forecasts. Based on a more detailed and thorough analysis, AB InBev believes annual synergies will be approximately USD 1 billion, up from the original forecast of USD 600 million estimated when the transaction was announced.

Next Steps

AB InBev's combination with Grupo Modelo remains subject to the existing challenge by the U.S. Department of Justice. The revised agreement with Constellation remains conditioned on the completion of the Modelo transaction, as well as regulatory approvals in the U.S. and Mexico and other customary closing conditions.

French and Dutch versions of this release will be available at www.ab-inbev.com

8:30 a.m. EST: Investor and Analyst Webcast – AB InBev

There will be a webcast for the investment community hosted by Chief Executive Officer Carlos Brito and Chief Financial Officer Felipe Dutra on **Thursday, February 14, 2013 at 8:30 a.m. EST / 2:30 p.m. CET.**

To register for the live listen-only webcast click here http://www.media-server.com/m/p/de7gaqw7

Investors and analysts who wish to ask questions during the Q&A portion of the call should join by dialing 1-866-713-8566 (from the U.S.) or +1-617-597-5325 (international) and reference passcode 33834365.

A replay of the webcast will be also be archived on the investor relations section of www.ab-inbev.com.

10:30 a.m. EST: Investor and Analyst Webcast – Constellation

A conference call to discuss the transaction discussed in this news release, will be hosted by President and Chief Executive Officer Rob Sands and Executive Vice President and Chief Financial Officer Bob Ryder on **Thursday, February 14, 2013 at 10:30 a.m. EST / 4:30 p.m. CET.**

The conference call can be accessed by dialing +973-935-8505 beginning 10 minutes prior to the start of the call. A live listen-only webcast of the conference call, together with a copy of this news release (including the attachments) and other financial information that may be discussed during the call will be available on the Internet at the company's website: www.cbrands.com under "Investors," prior to the call.

Transaction Website www.globalbeerleader.com

Disclaimers

Constellation Brands

This news release contains forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. The words "expect," "anticipate," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. Those statements may relate to Constellation Brands' business strategy, future operations, prospects, plans and objectives of management, as well as information concerning expected actions of third parties. All forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those set forth in or implied by the forward-looking statements. All forward-looking statements speak only as of the date of this news release. Constellation Brands undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

The forward-looking statements are based on management's current expectations and, unless otherwise noted, do not take into account the impact of any future acquisition, merger or any other business combination, divestiture, restructuring or other strategic business realignments, financing or share repurchase that may be completed after the date of this release. The forward-looking statements should not be construed in any manner as a guarantee that such results will in fact occur. The transaction between Constellation Brands and Anheuser-Busch InBev SA/NV regarding the purchase by Constellation Brands of the 50% portion of Crown Imports LLC which Constellation Brands does not already own (the “Crown Acquisition”) and the transaction between Constellation Brands and Anheuser-Busch InBev SA/NV regarding the purchase by Constellation Brands of the Piedras Negras Brewery (the “Brewery Acquisition”) are subject to the satisfaction of certain closing conditions, including receipt of necessary regulatory approvals and the consummation of certain transactions between Anheuser-Busch InBev SA/NV and Grupo Modelo, S.A.B. de C.V., and certain of its affiliates (the “Modelo Transaction”). There can be no assurance the Modelo Transaction, the Crown Acquisition or the Brewery Acquisition will occur or will occur on the timetable contemplated hereby. The availability of financing under the company's senior credit facility is subject to satisfaction of the terms and conditions contained in the underlying documents.

In addition to the risks and uncertainties of ordinary business operations, the forward-looking statements of the company contained in this news release are subject to a number of risks and uncertainties, including:

- completion of the Modelo Transaction, the Crown Acquisition and the Brewery Acquisition and associated expansion on the expected terms;
- the availability of financing for the Crown Acquisition and the Brewery Acquisition and associated expansion under the expected terms;
- the accuracy of supply projections regarding the Brewery Acquisition;
- raw material and water supply, production or shipment difficulties could adversely affect Crown Imports' ability to supply its customers;
- the accuracy of all projections which are expected to impact the company's financial profile;
- the exact elements and sources of permanent financing for the Crown Acquisition and the Brewery Acquisition and associated expansion will depend upon market conditions;
- ability to achieve expected and target debt leverage ratios due to different financial results from those anticipated and the timeframe in which the target debt leverage ratio will be achieved will depend upon actual financial performance;
- increased competitive activities in the form of pricing, advertising and promotions could adversely impact consumer demand for the company's products and/or result in lower than expected sales or higher than expected expenses;
- general economic, geo-political and regulatory conditions, prolonged downturn in the economic markets in the U.S. and in the company's major markets outside of the U.S., continuing instability in world financial markets, or unanticipated environmental liabilities and costs; and
- other factors and uncertainties disclosed in the company's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the fiscal year ended Feb. 29, 2012, as supplemented by the company's Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 2012, which could cause actual future performance to differ from current expectations.

Anheuser-Busch InBev

This release contains certain forward-looking statements reflecting the current views of the management of AB InBev with respect to, among other things, the proposed transaction described herein as well as AB InBev's strategic objectives, business prospects, future financial condition, budgets, projected levels of production, projected costs and projected levels of revenues and profits, and the synergies it is able to achieve. These statements involve risks and uncertainties. The ability of AB InBev to achieve these objectives and targets or to consummate the proposed transaction is dependent on many factors some of which may be outside of management's control. In some cases, words such as "believe", "intend", "expect", "anticipate", "plan", "target", "will" and similar expressions to identify forward-looking statements are used. All statements other than statements of historical facts are forward-looking statements. You should not place undue reliance on these forward-looking statements. By their nature, forward-looking statements involve risk and uncertainty because they reflect AB InBev's current expectations and assumptions as to future events and circumstances that may not prove accurate. The actual results could differ materially from those anticipated in the forward-looking statements for many reasons including the risks described under Item 3.D of AB InBev's annual report on Form 20-F filed with the US Securities and Exchange Commission on 13 April 2012, as well as risks associated with the proposed transaction, including uncertainty as whether AB InBev will be able to consummate the transaction on the terms described in this document or in the definitive agreements, the ability to obtain necessary governmental approvals, the availability of financing for the transaction and the ability to consummate the financing on the currently anticipated terms, the ability to realize the anticipated benefits of transaction, including as a result of a delay in completing the transaction or difficulty in integrating the businesses of the companies involved, and the amount and timing of any costs savings and operating synergies. AB InBev cannot assure you that the proposed transaction or the future results, level of activity, performance or achievements of AB InBev will meet the expectations reflected in the forward-looking statements. Moreover, neither AB InBev nor any other person assumes responsibility for the accuracy or completeness of the forward-looking statements. Unless AB InBev is required by law to update these statements, AB InBev will not necessarily update any of these statements after the date hereof, either to confirm the actual results or to report a change in its expectations.

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About Constellation Brands

Constellation Brands is the world's leading premium wine company that achieves success through an unmatched knowledge of wine consumers, storied brands that suit varied lives and tastes, and more than 4,400 talented employees worldwide. With a broad portfolio of widely admired premium products across the wine, beer and spirits categories, Constellation's brand portfolio includes Robert Mondavi, Clos du Bois, Kim Crawford, Inniskillin, Franciscan Estate, Mark West, Ruffino, Simi, Estancia, Corona Extra, Black Velvet Canadian Whisky and SVEDKA Vodka.

Constellation Brands (NYSE: STZ and STZ.B) is a S&P 500 Index and Fortune 1000® company with more than 100 brands in our portfolio, sales in about 100 countries and operations in approximately 40 facilities. The company believes that industry leadership involves a commitment to our brands, to the trade, to the land, to investors and to different people around the world who turn to our products when celebrating big moments or enjoying quiet ones. We express this commitment through our vision: to elevate life with every glass raised. To learn more about Constellation, visit the company's website at www.cbrands.com.

About Anheuser-Busch InBev

Anheuser-Busch InBev is a publicly traded company (Euronext: ABI) based in Leuven, Belgium, with an American Depositary Receipt secondary listing on the New York Stock Exchange (NYSE: BUD). It is the leading global brewer and one of the world's top five consumer products companies. Beer, the original social network, has been bringing people together for thousands of years and our portfolio of well over 200 beer brands continues to forge strong connections with consumers. We invest the majority of our brand-building resources on our Focus Brands - those with the greatest growth potential such as global brands Budweiser®, Stella Artois® and Beck's®, alongside Leffe®, Hoegaarden®, Bud Light®, Skol®, Brahma®, Antarctica®, Quilmes®, Michelob Ultra®, Harbin®, Sedrin®, Klinskoye®, Sibirskaya Korona®, Chernigivske®, Hasseröder® and Jupiler®. In addition, the company owns a 50 percent equity interest in the operating subsidiary of Grupo Modelo, Mexico's leading brewer and owner of the global Corona® brand. AB InBev's dedication to heritage and quality originates from the Den Hoorn brewery in Leuven, Belgium dating back to 1366 and the pioneering spirit of the Anheuser & Co brewery, with origins in St. Louis, USA since 1852. Geographically diversified with a balanced exposure to developed and developing markets, AB InBev leverages the collective strengths of its approximately 116,000 employees based in operations in 23 countries worldwide. In 2011, AB InBev realized 39.0 billion US dollar revenue. The company strives to be the *Best Beer Company in a Better World*. For more information, please visit: www.ab-inbev.com.

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) Judge Richard W. Roberts

JOINT MOTION TO STAY PROCEEDINGS

Plaintiff and Defendants (the "Parties"), with the consent of the Proposed Intervenor Defendants,[1] respectfully move for the entry of the attached proposed Order for a limited stay of this matter until March 19, 2013.

On February 14, 2013, the Defendants announced a revised transaction that relates to the Proposed Acquisition alleged in the Complaint. As part of Defendant Anheuser-Busch InBev's ("ABI") proposed acquisition of the 50% of Grupo Modelo it does not already own, ABI would sell to Constellation Brands, Inc. a brewery that currently produces certain Grupo Modelo beers, and would grant perpetual brand licenses to Constellation for Grupo Modelo brands in the U.S., along with other assets. The Plaintiff is investigating whether the revised transaction resolves the competitive concerns alleged in the Complaint. Defendants' position is that the revised transaction resolves the concerns raised in the Complaint. The Parties agree that a stay of litigation proceedings until March 19, 2013 would be beneficial to the Parties and conserve

[1] On February 8, 2013, non-parties Constellation Brands, Inc. and Crown Imports LLC filed a Motion to Intervene in this litigation as party-defendants. The United States has not yet responded to the Motion. The Proposed Intervenor Defendants have consented to the proposed stay herein, which includes a stay of the briefing on their Motion to Intervene.

efficient use of the Court's resources while this investigation, and the Parties' discussions regarding a potential resolution of this litigation, take place. The Parties will file a joint status report with the Court no later than March 19, 2013 and, if efforts at resolution are unsuccessful, propose a scheduling order to govern the remaining conduct of the litigation.

Points and Authorities

Courts have "broad discretion" to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also* Fed. R. Civ. P. 1. The Parties agree that a stay will help secure the just and efficient resolution of this proceeding.

Dated: February 20, 2013

s/ Mary Strimel
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 13-127 (RWR)**
ANHEUSER-BUSCH InBEV SA/NV, et al.,	)	
Defendants.	)	

ORDER

In light of the parties' representations in their joint motion to stay this case, it is hereby

ORDERED that the parties' joint motion [19] to stay this case be, and hereby is, GRANTED. This case is STAYED and ADMINISTRATIVELY CLOSED through March 19, 2013, and all pending deadlines are tolled. It is further

ORDERED that if this case settles in whole or in part, the plaintiff shall promptly file a notice or stipulation of dismissal. It is further

ORDERED that all parties file by March 19, 2013 a joint status report and proposed scheduling order if the case has not been dismissed before then.

SIGNED this 22nd day of February, 2013.

/s/
RICHARD W. ROBERTS
United States District Judge

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) Judge Richard W. Roberts

JOINT MOTION TO EXTEND THE STAY

Plaintiff and Defendants (the "Parties"), with the consent of the Proposed Intervenor Defendants Constellation Brands, Inc. ("Constellation") and Crown Imports LLC (collectively, "Proposed Intervenor Defendants"), respectfully move for the entry of the attached proposed Order for a limited extension of the stay that is currently in place until April 9, 2013.

On January 31, 2013, the United States filed a Complaint alleging that Defendant Anheuser-Busch InBev's ("ABI") proposed acquisition of Defendant Grupo Modelo, S.A.B. de C.V. ("Grupo Modelo") was likely to lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. On February 14, 2013, the Defendants announced a revised transaction that relates to the proposed acquisition alleged in the Complaint. As part of Defendant ABI's proposed acquisition of the 50% of Grupo Modelo it does not already own, ABI would, along with other assets, sell to Constellation a brewery in Mexico that currently produces certain Grupo Modelo beers for sale in the United States, and would grant perpetual brand licenses to Constellation for Grupo Modelo brands in the United States. On February 22, 2013, the Court ordered a stay of these proceedings [Doc. No. 21] to allow the Plaintiff time to investigate the revised transaction.

Since the February 22, 2013 stay, the Parties and Proposed Intervenor Defendants have made substantial progress toward a resolution of this matter based on the terms of the revised transaction.

The parties request additional time to continue their discussions and, should the parties reach a resolution, complete the necessary court filings pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), which applies to civil antitrust cases brought and settled by the United States.

SETTLEMENT PROCESS:

The APPA requires that the United States and the Court take certain steps before a proposed consent judgment may be entered. Should the parties reach a resolution, that agreement will be filed with the Court as a proposed consent judgment, along with a Competitive Impact Statement that, *inter alia*, sets forth the alleged violation of the antitrust laws, and how the proposed relief eliminates the anticompetitive effects of the acquisition. 15 U.S.C. § 16(b). After a sixty-day period for public comment, the Court may enter the proposed consent judgment if it is found to be "in the public interest." *United States v. Abitibi-Consolidated Inc.*, 584 F. Supp. 2d 162, 164 (D.D.C. 2008).

POINTS AND AUTHORITIES

Courts have "broad discretion" to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also* Fed. R. Civ. P. 1.

An extension of the stay will likely enable the parties to complete their discussions regarding the possibility of a resolution. Further, extending the stay will also enable the parties and nonparties who would likely otherwise receive Rule 45 document subpoenas to avoid incurring substantial litigation expenses that would ultimately prove unnecessary if a settlement were reached. Should the parties agree on a settlement, the Court would have an opportunity to review the settlement pursuant to the APPA, and determine whether the proposed settlement is in the public-interest.

Dated: March 15, 2013

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SEEN AND AGREED:

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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) Judge Richard W. Roberts

[PROPOSED] ORDER

In light of the parties' representations in their joint motion to extend the stay, it is hereby ORDERED that the parties' joint motion [22] to extend the stay in this case be, and hereby is GRANTED. This case is STAYED and ADMINISTRATIVELY CLOSED through April 9, 2013, and all pending deadlines are tolled. It is further

ORDERED that if the parties reach a resolution, that agreement, consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), which applies to civil antitrust cases brought and settled by the United States, will be promptly filed with the Court as a proposed consent judgment, along with a Competitive Impact Statement that, *inter alia*, sets forth the alleged violation of the antitrust laws, and how the proposed relief eliminates the anticompetitive effects of the acquisition. 15 U.S.C. § 16(b). It is further

ORDERED that all parties file by April 9, 2013 a joint status report and proposed scheduling order if the case is not resolved before then.

SIGNED this __ day of March, 2013

_____
RICHARD W. ROBERTS
United States District Judge

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) Judge Richard W. Roberts

~~[PROPOSED]~~ ORDER

In light of the parties' representations in their joint motion to extend the stay, it is hereby ORDERED that the parties' joint motion [22] to extend the stay in this case be, and hereby is GRANTED. This case is STAYED and ADMINISTRATIVELY CLOSED through April 9, 2013, and all pending deadlines are tolled. It is further

ORDERED that if the parties reach a resolution, that agreement, consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), which applies to civil antitrust cases brought and settled by the United States, will be promptly filed with the Court as a proposed consent judgment, along with a Competitive Impact Statement that, *inter alia*, sets forth the alleged violation of the antitrust laws, and how the proposed relief eliminates the anticompetitive effects of the acquisition. 15 U.S.C. § 16(b). It is further

ORDERED that all parties file by April 9, 2013 a joint status report and proposed scheduling order if the case is not resolved before then.

SIGNED this 18th day of March, 2013

RICHARD W. ROBERTS
United States District Judge

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) Judge Richard W. Roberts

JOINT MOTION FOR A LIMITED EXTENSION OF THE STAY

Plaintiff and Defendants (the "Parties"), with the consent of the Proposed Intervenor Defendants Constellation Brands, Inc. ("Constellation") and Crown Imports LLC (collectively, "Proposed Intervenor Defendants"), respectfully move for the entry of the attached proposed Order for a limited extension of the present stay through April 23, 2013.

On January 31, 2013, the United States filed a Complaint alleging that Defendant Anheuser-Busch InBev's ("ABI") proposed acquisition of Defendant Grupo Modelo S.A.B. de C.V. ("Grupo Modelo") was likely to lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. On February 14, 2013, the Defendants announced a revised transaction that relates to the proposed acquisition alleged in the Complaint (the "Revised Transaction"). As part of Defendant ABI's proposed acquisition of the 50% of Grupo Modelo it does not already own, ABI would, along with other assets, sell to Constellation a brewery in Mexico that currently produces certain Grupo Modelo beers for sale in the United States, and would grant perpetual brand licenses to Constellation for Grupo Modelo brands in the United States. On February 22, 2013, the Court ordered a stay of these proceedings [Dkt. No. 21] to allow the Plaintiff time to investigate the Revised Transaction and for the parties to discuss a

resolution of this litigation. On March 18, 2013, the Court extended the stay until April 9, 2013 [Dkt. No. 23] to afford the Parties and Proposed Intervenor Defendants the opportunity to continue their discussions.

At this time, the Parties have reached an agreement in principle on a resolution of this litigation based on the terms of the Revised Transaction. The Parties request this additional stay so that they may finalize the details of a proposed consent judgment and related papers required by the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), which applies to civil antitrust cases brought and settled by the United States. The Parties expect this to be their final request to extend the stay.

SETTLEMENT PROCESS

The APPA requires that the United States and the Court take certain steps before a proposed consent judgment may be entered. Should the parties reach a resolution, that agreement will be filed with the Court as a proposed consent judgment, along with a Competitive Impact Statement that, *inter alia*, sets forth the alleged violation of the antitrust laws and how the proposed relief eliminates the anticompetitive effects of the acquisition. 15 U.S.C. § 16(b). After a sixty-day period for public comment, the Court may enter the proposed consent judgment if it is found to be "in the public interest." *United States v. Abitibi-Consolidated Inc.*, 584 F. Supp. 2d 162, 164 (D.D.C. 2008).

POINTS AND AUTHORITIES

Courts have "broad discretion" to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for

counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also* Fed. R. Civ. P. 1.

Dated: April 5, 2013

Respectfully submitted,

/s/ Michele R. Seltzer
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On behalf of Plaintiff

CRAVATH, SWAINE & MOORE LLP,

by
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Counsel for Anheuser-Busch InBev SA/NV

SEEN AND AGREED:

/s/ Margaret H. Warner
Margaret H. Warner (D.C. Bar No. 359009)
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Counsel for Proposed Intervenor Defendants Constellation Brands, Inc. and Crown Imports LLC

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) Judge Richard W. Roberts

[PROPOSED] ORDER

In light of the parties' representations in their joint motion for a limited extension of the stay, it is hereby ORDERED that the parties' joint motion [24] be, and hereby is GRANTED. This case is STAYED and ADMINISTRATIVELY CLOSED through April 23, 2013, and all pending deadlines are tolled. It is further

ORDERED that if the parties reach a resolution, that agreement, consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), which applies to civil antitrust cases brought and settled by the United States, will be promptly filed with the Court as a proposed consent judgment, along with a Competitive Impact Statement that, *inter alia*, sets forth the alleged violation of the antitrust laws, and how the proposed relief eliminates the anticompetitive effects of the acquisition. 15 U.S.C. § 16(b). It is further

ORDERED that all parties file by April 23, 2013 a joint status report and proposed scheduling order if the case is not resolved before then.

SIGNED this __ day of April, 2013

_____
RICHARD W. ROBERTS
United States District Judge

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) Judge Richard W. Roberts

[PROPOSED] ORDER

UPON CONSIDERATION of the Parties' Joint Motion to Stay Proceedings and for good cause shown, it is hereby ORDERED that the Joint Motion is GRANTED.

It is further ORDERED that litigation deadlines in this matter are STAYED until March 19, 2013 and that all pending deadlines are tolled.

It is further ORDERED that the Parties shall file a joint status report with the Court no later than March 19, 2013 and, if efforts at resolution are unsuccessful, also propose a scheduling order to govern the remaining conduct of the litigation.

SIGNED this _____ day of February, 2013.

_____
RICHARD W. ROBERTS
United States District Judge

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) Judge Richard W. Roberts

[PROPOSED] ORDER

In light of the parties' representations in their joint motion for a limited extension of the stay, it is hereby ORDERED that the parties' joint motion [24] be, and hereby is GRANTED. This case is STAYED and ADMINISTRATIVELY CLOSED through April 23, 2013, and all pending deadlines are tolled. It is further

ORDERED that if the parties reach a resolution, that agreement, consistent with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), which applies to civil antitrust cases brought and settled by the United States, will be promptly filed with the Court as a proposed consent judgment, along with a Competitive Impact Statement that, *inter alia*, sets forth the alleged violation of the antitrust laws, and how the proposed relief eliminates the anticompetitive effects of the acquisition. 15 U.S.C. § 16(b). It is further

ORDERED that all parties file by April 23, 2013 a joint status report and proposed scheduling order if the case is not resolved before then.

SIGNED this 5th day of April, 2013

RICHARD W. ROBERTS
United States District Judge

Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, APRIL 19, 2013
WWW.JUSTICE.GOV

AT
(202) 514-2007
TTY (866) 544-5309

JUSTICE DEPARTMENT REACHES SETTLEMENT WITH ANHEUSER-BUSCH INBEV AND GRUPO MODELO IN BEER CASE

Divestitures of Piedras Negras Brewery, Perpetual Licenses to Modelo Beer Brands, and Other Assets Will Maintain Competition in the Beer Industry Nationwide

WASHINGTON – The Department of Justice announced today that it has reached a settlement with Anheuser-Busch InBev SA/NV (ABI) and Grupo Modelo S.A.B. de C.V. that requires the companies to divest Modelo's entire U.S. business – including licenses of Modelo brand beers, its most advanced brewery, Piedras Negras, its interest in Crown Imports LLC and other assets – to Constellation Brands Inc., in order to go forward with their merger. The department said the proposed settlement will maintain competition in the beer industry nationwide, benefitting consumers.

Today's proposed settlement was filed in the U.S. District Court for the District of Columbia. If approved by the court, the settlement will resolve the department's competitive concerns.

On Jan. 31, 2013, the department filed an antitrust lawsuit against ABI and Modelo alleging that ABI's $20.1 billion acquisition of the remaining interest in Modelo that ABI did not already own, as originally proposed, would substantially lessen competition in the market for beer in the United States as a whole and in at least 26 metropolitan areas across the United States. The department alleged that the transaction would result in consumers paying more for beer and would limit innovation in the beer market.

"Before the merger, there were two competitors – Modelo and ABI – and ABI owned a substantial stake in Modelo. The companies' proposed merger would have reduced those two competitors to one – ABI. The proposed settlement announced today will create an independent, fully integrated and economically viable competitor to ABI. This is a win for the $80 billion U.S. beer market and consumers," said Bill Baer, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "If this settlement makes just a one percent difference in prices, U.S. consumers will save almost $1 billion a year."

The settlement requires ABI and Modelo to divest Modelo's entire U.S. business to Constellation or to an alternative purchaser if for some reason the transaction with Constellation cannot be completed. Specifically, the settlement requires ABI and Modelo to divest: the Piedras Negras brewery, Modelo's newest, most technologically advanced brewery; perpetual

and exclusive licenses of the Modelo brand beers for distribution and sale in the United States; Modelo's current interest in Crown – the joint venture established by Modelo and Constellation to import, market and sell certain Modelo beers into the United States; and other assets, rights and interests necessary to ensure that Constellation is able to compete in the U.S. beer market using the Modelo brand beers, independent of a relationship to ABI and Modelo.

The licensed brands include all seven brands that Modelo currently offers (through its distributor, Crown) in the United States – Corona Extra, Corona Light, Modelo Especial, Negra Modelo, Modelo Light, Pacifico and Victoria – as well as three brands not yet offered in the United States, but currently sold by Modelo in Mexico – Pacifico Light, Barrilito and León. The licenses include rights that will give Constellation the ability to adapt to changing market conditions in the United States.

Constellation has committed to expand the capacity of Piedras Negras in order to meet current and future demand for the Modelo brands in the United States, and that commitment is a condition of the proposed settlement. The settlement also sets milestones for the expansion of the Piedras Negras brewery. In order to enable Constellation to compete in the United States during the time it takes to expand the Piedras Negras brewery's capacity to brew and bottle beer, the settlement requires ABI to enter into interim supply and transition services agreements with Constellation. These agreements are time-limited to ensure that Constellation will become a fully independent competitor to ABI as soon as practicable.

ABI and Modelo originally proposed selling Modelo's stake in Crown to Constellation and entering into a 10-year supply agreement to provide Modelo beer to Constellation to import into the United States. The department rejected that purported fix because it would have eliminated the Modelo brands as an independent competitive force in the United States beer market. Unlike the companies' original proposal, which left Constellation with no brewing assets and beholden to ABI for the supply of beer, the proposed settlement ensures that Constellation, or an alternative purchaser, will have independent brewing assets and the ownership of the Modelo beer brands for sale in the United States in perpetuity. As a result, Constellation will fully replace Modelo as a competitor in the United States.

ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI brews and markets more beer sold in the United States than any other firm, with a 39 percent market share nationally. ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 different beer brands, including Bud Light – the best-selling brand in the United States – and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island and Beck's.

Modelo is a corporation organized and existing under the laws of Mexico, with headquarters in Mexico City. Modelo is the third-largest brewer of beer sold in the United States, with a seven percent market share nationally. Modelo owns Corona Extra–the top-selling beer imported into the United States. Its other popular brands sold in the United States include Corona Light, Modelo Especial, Negra Modelo, Victoria and Pacifico. Crown imports, markets

and sells Modelo's brands into the United States. ABI currently holds a 35.3 percent direct interest in Modelo and a 23.3 percent direct interest in Modelo's operating subsidiary Diblo.

Constellation, headquartered in Victor, N.Y, is a beer, wine and spirits company with a portfolio of more than 100 products, including Robert Mondavi, Clos du Bois, Ruffino and SVEDKA Vodka. It produces wine and distilled spirits, with more than 40 facilities worldwide.

The proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register, consistent with the requirements of the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to James Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 7100, Washington, D.C. 20530. The comments will be published in the Federal Register. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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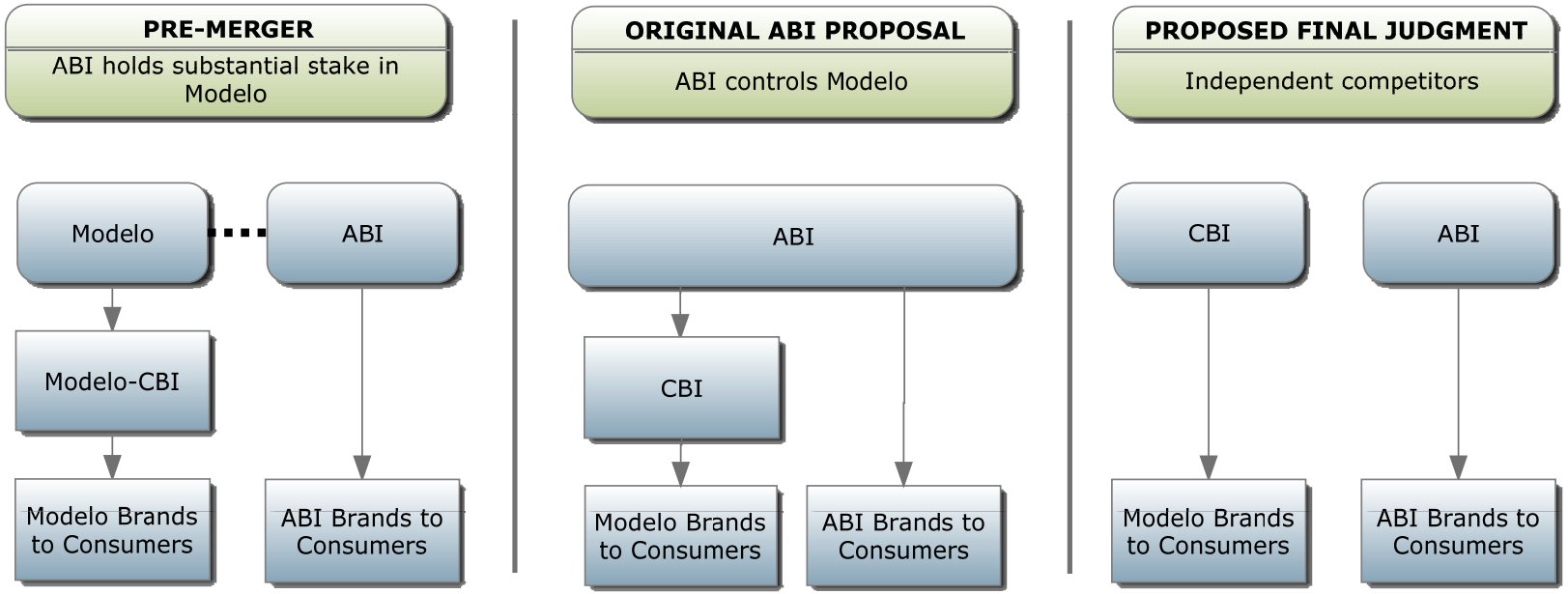
13-452

Beer Merger – U.S. Competition Before and After



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) Judge Richard W. Roberts

STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Stipulation and Order:

A. "**ABI**" means Anheuser-Busch InBev SA/NV, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (excluding Crown, and also excluding, prior to the completion of the Transaction, Modelo), and all directors, officers, employees, agents, and representatives of the foregoing. The terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

B. "**ABI-Owned Distributor**" means any Distributor in which ABI owns more than 50 percent of the outstanding equity interests.

C. **"Acquirer**" means

1. Constellation; or

2. an alternative purchaser of the Divestiture Assets selected pursuant to the procedures set forth in the Final Judgment.

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. "**Brewery Assets**" means the assets, rights and interests to be transferred by the Stock Purchase Agreement.

F. "**Brewery Companies**" means (1) Compañia Cervecera de Coahuila S.A. de C.V., a subsidiary of Modelo with its headquarters in Coahuila, Mexico, and (2) Servicios Modelo de Coahuila, S.A. de C.V., a subsidiary of Modelo with its headquarters in Coahuila, Mexico.

G. "**Constellation**" means Constellation Brands, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing, except that, for the purposes of this Stipulation and Order, "Constellation" shall not include Crown. The terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

H. "**Crown**" means Crown Imports, LLC, the joint venture between Constellation and Modelo that is in the business of importing Modelo Brand Beer into the United States, or any successor thereto.

I. "**Defendants**" means ABI, Modelo, and Constellation, and any successor or assignee to all or substantially all of the business or assets of ABI, Modelo, or Constellation involved in the brewing of Beer.

J. "**Divestiture Assets**" means all tangible and intangible assets, rights and interests necessary to effectuate the purposes of the Final Judgment, as specified by the following agreements attached hereto and labeled as Exhibit A to the proposed Final Judgment: the Stock Purchase Agreement (including the exhibits thereto) and the MIPA (including the exhibits thereto). In addition:

1. In the event that the Acquirer is a buyer other than Constellation, the Divestiture Assets shall also include the Entire Importer Interest, pursuant to ABI's Drag-Along Right to require Constellation to divest such interest, and subject to Constellation's right to receive compensation in the event of such divestiture, as set forth in Section 12.5 of the MIPA, attached to the proposed Final Judgment as Exhibit A; and

    a. in the event that a Divestiture Trustee is appointed, the Divestiture Trustee may, with the consent of the United States pursuant to Section IV.J of the proposed Final Judgment: include in the Divestiture Assets any additional assets, including tangible assets as well as intellectual property interests and other intangible interests or assets that extend beyond the United States, if the

Divestiture Trustee finds the inclusion of such assets necessary to enable the Acquirer to expand the Piedras Negras Brewery to a Nominal Capacity of at least twenty (20) million hectoliters of packaged Beer per year, or to remedy any breach that the Monitoring Trustee has identified pursuant to Section VIII.B.3 of the proposed Final Judgment; or

b. remove from the divestiture package any assets that are not needed by the Acquirer to accomplish the purposes of the Final Judgment, if such removal will facilitate the divestiture of Modelo's United States Beer business as contemplated by the Final Judgment.

K. "**Divested IP Assets**" means the assets, rights, and interests to be transferred by the Amended and Restated Sub-License Agreement between Marcas Modelo, S.A. de C.V. and Constellation, attached as Exhibit A to the Stock Purchase Agreement.

L. "**Drag-Along Right**" means ABI's right, as defined in Section 12.5(b) of the MIPA, to require Constellation to divest Constellation's interest in Crown in the event Constellation is not the Acquirer.

M. "**Entire Importer Interest**" means Constellation's present interest in Crown, as defined in Section 12.5(b) of the MIPA.

N. "**Interim Supply Agreement**" means:

1. the form of agreement between Modelo and Crown, attached as Exhibit A to the MIPA; or

2. in the event the Divestiture Assets are sold to an Acquirer other than Constellation, an agreement between Sellers and the Acquirer to provide

the same types of services under substantially similar terms as provided in Exhibit A to the MIPA, subject to approval by the United States in its sole discretion.

O. "**Joint Venture**" means the joint venture established by Modelo and Constellation to import Modelo's beers into the United States, and any and all agreements and amendments between Constellation and Modelo related to the formation and governance of said joint venture.

P. "**MIPA**" means the Amended and Restated Membership Interest Purchase Agreement among Constellation Beers, Ltd., Constellation Brands Beach Holdings, Inc., Constellation Brands, Inc., and Anheuser-Busch InBev SA/NV dated February 13, 2013, as amended on April 19, 2013, and attached as Exhibit A to the proposed Final Judgment.

Q. "**Modelo**" means Grupo Modelo, S.A.B. de C.V., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (excluding Crown and the entities listed on Exhibit B to the proposed Final Judgment); and all directors, officers, employees, agents, and representatives of the foregoing. The terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

R. "**Modelo Brand Beer**" means any Beer SKU that is part of the Divestiture Assets, and any Beer SKU that may become subject to the agreements giving effect to the divestitures required by Sections IV or VI of the proposed Final Judgment.

S. "**Nominal Capacity**" means a brewery's annual production capacity for packaged Beer, if the brewery were operated at 100% capacity.

T. "**Piedras Negras Brewery**" means all the land and all existing structures, buildings, plants, infrastructure, equipment, fixed assets, inventory, tooling, personal property, titles, leases, office furniture, materials, supplies, and other tangible property located in Nava, Coahuila, Mexico and owned by the Brewery Companies.

U. "**Sellers**" means ABI and Modelo.

V. "**Stock Purchase Agreement**" means the Stock Purchase Agreement between ABI and Constellation dated February 13, 2013, as amended on April 19, 2013, and attached as Exhibit A to the proposed Final Judgment.

W. "**Transaction**" means ABI's proposed acquisition of the remainder of Modelo.

X. "**Transition Services Agreement**" means:

1. the form of agreement between ABI and Constellation attached as Exhibit B to the Stock Purchase Agreement; or

2. in the event the Divestiture Assets are sold to an Acquirer other than Constellation, an agreement between Sellers and such Acquirer to provide the same types of services under substantially similar terms as provided in Exhibit B to the Stock Purchase Agreement, subject to approval by the United States in its sole discretion.

II.

OBJECTIVES

A. The proposed Final Judgment filed in this case is meant to ensure Sellers' prompt divestiture of the Divestiture Assets to Constellation (or other Acquirer), and the necessary and appropriate build-out and capacity expansion of the Piedras Negras Brewery by the Acquirer, for the purpose of establishing a viable competitor in the brewing and sale of Beer. If approved by

the Court, the proposed Final Judgment would fully resolve the United States' claims in this antitrust lawsuit, which sought to enjoin the acquisition by Defendant ABI of the remainder of Defendant Modelo that it does not already own. Under the parties' proposed settlement and Final Judgment, Constellation would acquire from Sellers the Divestiture Assets designed to allow Constellation to compete in the United States market as an integrated brewer, importer, and distributor of Modelo Brand Beers.[1]

B. Central to the relief offered by the proposed Final Judgment is the requirement that Constellation (or other Acquirer) undertake certain actions to improve and expand the divested Brewery Assets, in order to render them sufficient to achieve the competitive objectives of the proposed Final Judgment. Constellation has agreed and wishes to be bound by the Final Judgment as a party-defendant, entry of which is contingent on Constellation's joinder. Constellation shares an interest in the resolution of this litigation and the relief contemplated by the proposed Final Judgment, and shares common issues of law and fact with the other Defendants, such that joinder is proper under Rule 20(a) of the Federal Rules of Civil Procedure.

C. This Stipulation and Order ensures that the relief afforded in the proposed Final Judgment will be effective, by: (1) prior to the proposed divestitures, ensuring that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent of Defendants and uninfluenced by Defendants except as specifically permitted herein, and that competition is maintained during the pendency of the ordered divestitures; and by (2) ensuring that all Defendants, including Constellation, will be bound by

[1] In the event that Constellation fails to complete the acquisition of the Divestiture Assets to which it has committed in the MIPA and the Stock Purchase Agreement, the Divestiture Assets would be sold to another Acquirer for the purpose of competing in the United States market as a brewer, importer, and distributor of Modelo Brand Beer.

the terms of the proposed Final Judgment during the settlement approval process that will occur under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "APPA").

III.

JURISDICTION AND VENUE

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 ABI and Modelo under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18). Pursuant to Section V of this Stipulation and Order filed simultaneously with the proposed Final Judgment, Constellation has consented to this Court's exercise of personal jurisdiction over it. Venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF PROPOSED FINAL JUDGMENT

A. The parties stipulate that a proposed Final Judgment in the form filed simultaneously with this Stipulation and Order may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the APPA, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the

United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the proposed Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section XIV, as though the same were in full force and effect as the Final order of the Court.

C. Defendants shall not consummate the Transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

D. This Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV.A above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures and the build-out and capacity expansion of the Piedras Negras Brewery ordered in the proposed Final Judgment can be, and

Constellation represents that it will be done. Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

JOINDER OF CONSTELLATION AS A DEFENDANT

It is hereby stipulated and agreed by and between Plaintiff, Sellers, and Constellation that, upon approval and entry by the Court, Constellation Brands, Inc. be added as a defendant in this action for purposes of settlement and for entry of the proposed Final Judgment. Constellation Brands, Inc.'s Motion to Intervene, filed on February 7, 2013 (Dkt. 13), is hereby deemed withdrawn without prejudice.

VI.

HOLD SEPARATE AND PRESERVATION OBLIGATIONS

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. During the period between entry of the Stipulation and Order and the completion of the Transaction, (i) Modelo, without influence from ABI, shall continue to manage and operate the Brewery Assets and Divested IP Assets in accordance with past practice and shall do nothing that would impair, delay, or prevent their sale, or the build-out and capacity expansion of the Piedras Negras Brewery by Constellation or another Acquirer, in accordance with the proposed Final Judgment, and (ii) Modelo and Constellation, each without influence by ABI, shall continue to manage Crown in accordance with past practice, and shall do nothing that would impair, delay, or prevent the sale of Crown in accordance with the proposed Final Judgment. Defendants shall ensure that the books, records, competitively sensitive sales, marketing, and pricing information, and decision-making associated with the Brewery Assets,

Divested IP Assets, and Crown will not be disclosed to or shared in any way with ABI; provided, however, that Crown may share with an ABI-Owned Distributor information consistent with past practice and necessary for the sale of Modelo Brand Beer by that ABI-Owned Distributor. ABI shall implement and maintain reasonable procedures to prevent the further disclosure of such information by the ABI-Owned Distributor to any person who does not have a need to know the information for that purpose.

B. Within ten (10) days after the completion of the Transaction, Defendants shall take all reasonable steps necessary to ensure that, as further set forth in Sections VI - IX, (1) the Brewery Assets, Divested IP Assets, and Crown, respectively, will be maintained and operated as independent, ongoing and economically viable assets; (2) management will be provided for the Brewery Assets, Divested IP Assets, and Crown (including the Crown Board of Directors) that is separate from the management of ABI's other operations; (3) the management of the Brewery Assets, Divested IP Assets, and Crown will not be influenced by ABI; and (4) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Brewery Assets, Divested IP Assets, and Crown will be kept separate and apart from ABI's other operations; provided, however, that Crown may share with an ABI-Owned Distributor information consistent with past practice and necessary for the sale of Modelo Brand Beer by that ABI-Owned Distributor. ABI shall treat any information so received in accordance with the last sentence of Section VI.A herein. Within twenty (20) days after the completion of the Transaction, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

C. The obligations in Paragraphs D through J below shall take effect upon the entry of this Stipulation and Order.

D. Defendants shall use all reasonable efforts to maintain and increase the sales, revenues, shelf-space, and distribution in the United States of Modelo Brand Beer, and shall maintain at calendar year 2012 or previously approved levels for calendar year 2013, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for Modelo Brand Beer for consumption in the United States. Defendants shall also ensure that all plans and efforts to improve current products sold in the United States or to introduce new products for sale and consumption in the United States using the Brewery Assets, Divested IP Assets, and Crown are continued.

E. Defendants shall not coordinate the pricing, sale, marketing, distribution, operation, production, or any other component of the operation or management of the Brewery Assets, the Divested IP Assets, or Crown with any of ABI's operations or products, except to the extent such coordination would occur pursuant to the Sub-License Agreement, Transition Services Agreement, or Interim Supply Agreement, or as required by the MIPA or the Stock Purchase Agreement. For the purpose of this Paragraph, Crown's sales of Beer to an ABI-Owned Distributor, and the communications necessary to such sales and consistent with past practice, shall not constitute coordination, provided ABI has implemented the procedures set forth in Paragraph VI.A.

F. Defendants shall use their best efforts to preserve existing relationships with each of the suppliers, distributors, wholesalers, customers and other business entities related to the manufacture, importation, distribution, marketing, and sale of Modelo Brand Beer for consumption in the United States, in the ordinary course of business and in accordance with past practice.

G. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Brewery Assets, Divested IP Assets, or Crown, other than the sale of Beer inventory.

H. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Brewery Assets, Divested IP Assets, and Crown.

I. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Brewery Assets, Divested IP Assets, and Crown, or the build-out and capacity expansion of the Piedras Negras Brewery by Constellation or another Acquirer, in accordance with the proposed Final Judgment.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer acceptable to the United States.

VII.

ADDITIONAL HOLD SEPARATE AND PRESERVATION OBLIGATIONS WITH RESPECT TO THE BREWERY ASSETS

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Prior to the completion of the Transaction, Modelo shall manage and operate the Brewery Assets consistent with the requirements of Section VI.A.

B. After the completion of the Transaction and subject to the approval of the United States in its sole discretion, Sellers shall appoint a person or persons to oversee the Brewery

Assets who will be responsible for Sellers' compliance with this Stipulation and Order with respect to such assets. Such person or persons shall have complete managerial responsibility for the Brewery Assets, subject to the provisions of the proposed Final Judgment. In the event such person or persons are unable to perform their duties, Sellers shall appoint, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Sellers fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

C. The obligations in Paragraphs D through G below shall take effect upon the entry of this Stipulation and Order.

D. Sellers shall take all steps necessary to assure that the Brewery Assets are maintained as separate, distinct, and saleable assets, apart from other assets of Sellers. Sellers shall preserve the documents, books, and records relating to the Brewery Assets until the date of divestiture.

E. Sellers shall take all steps necessary to ensure that the Brewery Assets are fully maintained in operable condition at no less than their current Nominal Capacity and shall maintain and adhere to normal repair and maintenance schedules for such assets.

F. Sellers shall provide sufficient working capital and lines and sources of credit to continue (1) to maintain the Brewery Assets as economically viable and competitive, ongoing facilities, and (2) to produce and sell Modelo Brand Beer to Crown for distribution, marketing and consumption in the United States at calendar year 2012 volumes or previously approved volumes for calendar year 2013, whichever are higher, consistent with the requirements of Sections VI.B, VI.D, and VII.D.

G. Sellers' employees assigned to the Brewery Assets shall not be transferred or reassigned to other areas within Sellers' business, except for transfer bids initiated by employees pursuant to Sellers' regular, established job posting policy. Sellers shall provide the United States with ten (10) calendar days notice of such transfer.

VIII.

ADDITIONAL HOLD SEPARATE AND PRESERVATION OBLIGATIONS WITH RESPECT TO THE DIVESTED IP ASSETS

A. Prior to the completion of the Transaction, Modelo shall manage and operate the Divested IP Assets consistent with the requirements of Section VI.A.

B. After the completion of the Transaction, and subject to the approval of the United States in its sole discretion, Sellers shall appoint a person or persons to oversee the Divested IP Assets, and who will be responsible for Sellers' compliance with this Stipulation and Order with respect to such assets. Such person or persons shall have complete managerial responsibility for the Divested IP Assets, subject to the provisions of the proposed Final Judgment. In the event such person or persons are unable to perform their duties, Sellers shall appoint, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Sellers fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

C. Upon entry of this Stipulation and Order, Sellers shall take all steps necessary to preserve and maintain the value and goodwill of the Divested IP Assets.

IX.

ADDITIONAL HOLD SEPARATE AND PRESERVATION OBLIGATIONS WITH RESPECT TO CROWN

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Prior to the completion of the Transaction, Crown will continue to be operated in accordance with past practice. For the avoidance of doubt, Modelo will ensure that its managers and appointees to Crown's Board of Directors will have no contact with, and will remain uninfluenced by, ABI regarding Crown during this period.

B. After the completion of the Transaction, and subject to the approval of the United States in its sole discretion, Defendants shall appoint the President of Crown (the "President") to oversee Crown's day-to-day business, and shall maintain Crown (including its current President and Board of Directors) as an independent company uninfluenced by Modelo and Constellation in the conduct of its day-to-day business. Modelo's and Constellation's appointees to the Crown Board of Directors may continue to carry out their Board-level responsibilities and functions during this time subject to the other requirements of this Order, but Defendants shall continue to ensure that Modelo's appointees to Crown's Board of Directors shall have no communications with, nor be influenced by, ABI's United States business. Defendants shall delegate to the President all authority necessary for the President to manage Crown in compliance with Defendants' responsibilities under this Stipulation and Order and the proposed Final Judgment. The President shall have complete managerial responsibility for Crown's day-to-day business, subject to the provisions of the proposed Final Judgment. In the event the President is unable to perform his or her duties, Defendants shall appoint, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

C. The obligations in Paragraphs D through I below shall take effect upon the entry of this Stipulation and Order.

D. Defendants shall preserve, maintain, and continue to operate Crown as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Defendants' other operations.

E. ABI shall not influence or attempt to influence any operational or financial decision of Crown, and Sellers shall not obtain, directly or indirectly, any competitively sensitive information including, but not limited to, information relating to pricing, marketing, and sales of Modelo Brand Beer except (1) information that is clearly necessary for Sellers to comply with federal, state, or local laws and regulations, and (2) information that is clearly necessary for Defendants to carry out their obligations under the Joint Venture or under any agreement with Crown or Constellation, including without limitation agreements with ABI-Owned Distributors for the distribution of Modelo Brand Beer, the Transition Services Agreement and the Interim Supply Agreement.

F. Defendants shall provide sufficient working capital and lines and sources of credit to continue (1) to maintain Crown as an economically viable and competitive, ongoing business, and (2) to continue to import, distribute, market, and sell Modelo Brand Beer for consumption in the United States at calendar year 2012 volumes or previously approved volumes for calendar year 2013, whichever are higher, consistent with the requirements of Sections VI.B, VI.D, and IX.D.

G. Defendants shall take all steps necessary to ensure that tangible Crown assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for such assets. Defendants

shall take all steps necessary to preserve and maintain the value and goodwill of intangible Crown assets.

H. Crown employees with primary responsibility for distribution, sale, marketing, promotion, and advertising shall not be transferred or reassigned to other areas within Crown's business, or employed by Defendants, except for transfer bids initiated by employees pursuant to Crown's or Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer. Defendants shall otherwise make no offer of employment to any employee of Crown.

I. In the event that it becomes apparent to Sellers that a sale of the Divestiture Assets to Constellation will not be completed, Sellers shall promptly notify the United States and the Court in writing of such, and shall provide a copy of the notice to Constellation. Upon receipt of such notice, Constellation shall undertake the obligations of Sellers or ABI, as the case may be, in this Section IX.

X.

DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section VI, VII, VIII and IX of this Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Stipulation and Order.

Dated: April 19, 2013

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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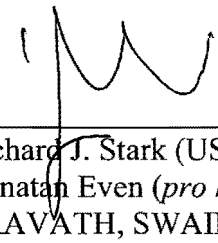

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ORDER

IT IS SO ORDERED by the Court, this ____ day of April, 2013.

Hon. Richard W. Roberts
United States District Judge

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) Judge Richard W. Roberts

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff United States of America ("United States") filed its Complaint against Defendants Anheuser-Busch InBev SA/NV ("ABI") and Grupo Modelo, S.A.B. de C.V. ("Modelo") on January 31, 2013;

AND WHEREAS, pursuant to a Stipulation among Plaintiff and the Defendants including Defendant Constellation Brands, Inc., ("Constellation"), the Court has joined Constellation as a Defendant to this action for the purposes of settlement and for the entry of this Final Judgment;

AND WHEREAS, the United States and Defendants ABI, Modelo, and Constellation, by their respective attorneys, have consented to 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 the Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is (a) the prompt and certain divestiture of certain rights and assets held by Defendants ABI and Modelo to Defendant Constellation (or other firm) as an Acquirer, to assure that competition is not substantially lessened; and (b) the necessary and appropriate build-out and capacity expansion of the Piedras Negras Brewery by the Acquirer over time to ensure that the Acquirer is able to compete in the United States independent of a relationship to the Sellers;

AND WHEREAS, this Final Judgment requires Defendants ABI and Modelo to make certain divestitures to Defendant Constellation (or other Acquirer) for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants ABI and Modelo intend for the divestiture of certain rights and assets to Constellation (or other Acquirer) to be permanent;

AND WHEREAS, this Final Judgment requires Defendant Constellation (or other Acquirer) to make certain investments for the purpose of expanding the capacity of the Piedras Negras Brewery;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made, and Defendant Constellation has represented that the Piedras Negras Brewery investments and expansion can and will be accomplished, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the 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 ABI and Modelo under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18). Pursuant to the Stipulation filed simultaneously with this Final Judgment joining Constellation as a Defendant to this action for the purpose of this Final Judgment, Constellation has consented to this Court's exercise of personal jurisdiction over it.

II. DEFINITIONS

As used in the Final Judgment:

A. "ABI" means Anheuser-Busch InBev SA/NV, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (excluding Crown, and, prior to the completion of the Transaction, Modelo); and all directors, officers, employees, agents, and representatives of the foregoing. The terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

B. "ABI-Owned Distributor" means any Distributor in which ABI owns more than 50 percent of the outstanding equity interests as of the date of the divestiture of the Divestiture Assets.

C. "Acquirer" means:

1. Constellation; or

2. an alternative purchaser of the Divestiture Assets selected pursuant to the procedures set forth in this Final Judgment.

D. "Acquirer Confidential Information" means:

1. confidential commercial information of Constellation (or other Acquirer) that has been obtained from such entity, including quantities, units, and prices of items ordered or purchased from the Sellers by the Acquirer, and any other competitively sensitive information regarding the Sellers' or the Acquirer's performance under the Interim Supply Agreement or the Transition Services Agreement; and

2. confidential unit sales data, non-public pricing strategies and plans, or any other confidential commercial information of the Acquirer that either an ABI-Owned Distributor, or any other Distributor in which ABI acquires a majority interest after the date of the divestiture contemplated herein, obtains from the Acquirer by virtue of its relationship with the Acquirer.

E. "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.

F. "Brewery Companies" means (1) Compañia Cervecera de Coahuila S.A. de C.V., a subsidiary of Grupo Modelo with its headquarters in Coahuila, Mexico, and (2) Servicios Modelo de Coahuila, S.A. de C.V., a subsidiary of Grupo Modelo with its headquarters in Coahuila, Mexico.

G. "Constellation" means Constellation Brands, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, including but not limited to, Crown, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

H. "Covered Entity" means any Beer brewer, importer, or brand owner (other than ABI) that derives more than $7.5 million in annual gross revenue from Beer sold for further resale in the United States, or from license fees generated by such Beer sales.

I. "Covered Interest" means any non-ABI Beer brewing assets or any non-ABI Beer brand assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the United States that does not generate at least $7.5 million in annual gross revenue from Beer sold for resale in the United States; or (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $3 million in annual gross revenue in the United States.

J. "Crown" means Crown Imports, LLC, the joint venture between Constellation and Modelo that is in the business of importing Modelo Brand Beer into the United States, or any successor thereto.

K. "Defendants" means ABI, Modelo, and Constellation, and any successor or assignee to all or substantially all of the business or assets of ABI, Modelo, or Constellation involved in the brewing of Beer.

L. "Distributor" means a wholesaler in the Territory who acts as an intermediary between a brewer or importer of Beer and a retailer of Beer.

M. "Distributor Incentive Program" means the Anheuser-Busch Voluntary Alignment Incentive Program and any other policy or program, either currently in effect or implemented hereafter, that offers some type of benefit to a Distributor based on the Distributor's sales performance, its loyalty in supporting any brand or brands of Beer, or its commercial support for

any brand or brands of Beer, including decisions of which brands to carry or the sales volume of each.

N. "Divestiture Assets" means all tangible and intangible assets, rights and interests necessary to effectuate the purposes of this Final Judgment, as specified by the following agreements attached hereto and labeled as Exhibit A to this Final Judgment: the Stock Purchase Agreement (including the exhibits thereto) and the MIPA (including the exhibits thereto). In addition:

1. In the event that the Acquirer is a buyer other than Constellation, the Divestiture Assets shall also include the Entire Importer Interest, pursuant to ABI's Drag-Along Right to require Constellation to divest such interest, and subject to Constellation's right to receive compensation in the event of such divestiture, as set forth in Section 12.5 of the MIPA, attached hereto in Exhibit A; and

   a. in the event that a Divestiture Trustee is appointed, the Divestiture Trustee may, with the consent of the United States pursuant to Section IV.J herein: include in the Divestiture Assets any additional assets, including tangible assets as well as intellectual property interests and other intangible interests or assets that extend beyond the United States, if the Divestiture Trustee finds the inclusion of such assets necessary to enable the Acquirer to expand the Piedras Negras Brewery to a Nominal Capacity of at least twenty (20) million hectoliters of packaged Beer per year, or

to remedy any breach that the Monitoring Trustee has identified pursuant to Section VIII.B.3 herein; or

b. remove from the divestiture package any assets that are not needed by the Acquirer to accomplish the purposes of this Final Judgment, if such removal will facilitate the divestiture of Modelo's United States Beer business as contemplated by this Final Judgment.

O. "Drag-Along Right" means ABI's right, as defined in Section 12.5(b) of the MIPA, attached hereto in Exhibit A, to require Constellation to divest Constellation's interest in Crown in the event Constellation is not the Acquirer.

P. "Entire Importer Interest" means Constellation's present interest in Crown, as defined in Section 12.5(b) of the MIPA, attached hereto in Exhibit A.

Q. "Hold Separate Stipulation and Order" means the Stipulation and Order filed by the parties simultaneously herewith, which imposes certain duties on the Defendants with respect to the operation of the Divestiture Assets pending the proposed divestitures, and also adds Constellation as a Defendant in this action.

R. "Interim Supply Agreement" means:

1. the form of agreement between Modelo and Crown, attached as Exhibit A to the MIPA, attached hereto, and incorporated herein, or

2. in the event the Divestiture Assets are sold to an Acquirer other than Constellation, an agreement between Sellers and the Acquirer to provide the same types of services under substantially similar terms as provided in Exhibit A to the MIPA incorporated hereto, subject to approval by the United States in its sole discretion.

S. "MIPA" means the Amended and Restated Membership Interest Purchase Agreement among Constellation Beers Ltd., Constellation Brands Beach Holdings, Inc., Constellation Brands, Inc., and Anheuser-Busch InBev SA/NV dated February 13, 2013, as amended on April 19, 2013, and attached hereto in Exhibit A.

T. "Modelo" means Grupo Modelo, S.A.B. de C.V., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (excluding Crown and the entities listed on Exhibit B hereto); and all directors, officers, employees, agents, and representatives of the foregoing. The terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person in which there is majority (greater than 50 percent) or total ownership or control between the company and any other person.

U. "Modelo Brand Beer" means any Beer SKU that is part of the Divestiture Assets, and any Beer SKU that may become subject to the agreements giving effect to the divestitures required by Sections IV or VI of this Final Judgment.

V. "Nominal Capacity" means a brewery's annual production capacity for packaged Beer, if the brewery were operated at 100% capacity.

W. "Piedras Negras Brewery" means all the land and all existing structures, buildings, plants, infrastructure, equipment, fixed assets, inventory, tooling, personal property, titles, leases, office furniture, materials, supplies, and other tangible property located in Nava, Coahuila, Mexico and owned by the Brewery Companies.

X. "Sellers" means ABI and Modelo.

Y. "Stock Purchase Agreement" means the Stock Purchase Agreement between Anheuser-Busch InBev SA/NV and Constellation Brands, Inc. dated February 13, 2013, as amended on April 19, 2013, and attached hereto in Exhibit A.

Z. "Sub-License Agreement" means the Amended and Restated Sub-License Agreement between Marcas Modelo, S.A. de C.V. and Constellation Beers Ltd., attached as Exhibit A to the Stock Purchase Agreement.

AA. "Territory" means the fifty states of the United States of America, the District of Columbia, and Guam.

BB. "Transaction" means ABI's proposed acquisition of the remainder of Modelo.

CC. "Transition Services Agreement" means:

1. the form of agreement between ABI and Constellation attached as Exhibit B to the Stock Purchase Agreement, and incorporated herein; or

2. in the event the Divestiture Assets are sold to an Acquirer other than Constellation, an agreement between Sellers and such Acquirer to provide the same types of services under substantially similar terms as provided in Exhibit B to the Stock Purchase Agreement incorporated hereto, subject to approval by the United States in its sole discretion.

III. APPLICABILITY

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

B. If, prior to complying with Section IV and VI of this Final Judgment, Sellers sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment.

IV. DIVESTITURE

A. The Court orders the divestitures set forth in this Section IV, having accepted the following representations made by the parties as of the date of filing this Final Judgment:

1. by ABI, the certain representations contained in Section 3.25 of the Stock Purchase Agreement attached in Exhibit A hereto regarding the sufficiency of the assets to be divested;
2. by ABI, the certain representations contained in Section 3.26 of the Stock Purchase Agreement attached in Exhibit A hereto regarding the absence of present knowledge of impediments to the expansion of capacity of the Piedras Negras Brewery;
3. by Modelo, the representations set forth in the Letter of Grupo Modelo, S.A.B. de C.V., dated April 17, 2013, attached hereto as Exhibit C, regarding the issues described in subparagraphs A.1 and A.2 above; and
4. by Modelo, the representations set forth in the Letter of Grupo Modelo, S.A.B. de C.V., dated April 17, 2013, attached hereto as Exhibit C, regarding the sufficiency of the assets being divested for the importation, marketing, distribution and sale of Modelo Brand Beer in the United States.

B. ABI is ordered and directed, upon the later of (1) the completion of the Transaction or (2) ninety (90) calendar days after the filing of this proposed Final Judgment, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to 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 not to exceed sixty (60) calendar days in

total, and shall notify the Court in such circumstances. ABI agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

C. In the event Sellers are attempting to divest the Divestiture Assets to an Acquirer other than Constellation, in accomplishing the divestiture ordered by this Final Judgment, Sellers promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Sellers 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. Sellers 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 privileges or work-product doctrine. Sellers shall make available such information to the United States at the same time that such information is made available to any other person.

D. Sellers shall provide the Acquirer and the United States information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. Sellers will not interfere with any negotiations by the Acquirer to retain, employ or contract with any employee of the Brewery Companies. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses, solicitation of employment with ABI or Modelo, offers to transfer to another facility of ABI or Modelo, and offers to increase salary or other benefits apart from those offered company-wide.

E. In the event the Sellers are attempting to divest the Divestiture Assets to an Acquirer other than Constellation, Sellers shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities

of the Piedras Negras Brewery; 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.

F. Defendants shall, as soon as possible, but within two (2) business days after completion of the relevant event, notify the United States of: (1) the effective date of the completion of the Transaction; and (2) the effective date of the sale of the Divestiture Assets to the Acquirer.

G. Any amendment or modification of any of the agreements in Exhibit A, or any similar agreements entered with an Acquirer pursuant to Section IV.B, may only be entered into with the approval of the United States in its sole discretion. Sellers and the Acquirer shall enter into a Transition Services Agreement for a period up to three (3) years from the date of the divestiture to enable the Acquirer to compete effectively in providing Beer in the United States. Sellers shall perform all duties and provide any and all services required of Sellers under the Transition Services Agreement. Any amendments or modifications of the Transition Services Agreement may only be entered into with the approval of the United States in its sole discretion.

H. Sellers and the Acquirer shall enter into an Interim Supply Agreement for a period up to three (3) years from the execution date of the divestiture to enable the Acquirer to compete effectively in providing Beer in the United States. Sellers shall perform all duties and provide any and all services required of Sellers under the Interim Supply Agreement. Any amendments, modifications, or extensions of the Interim Supply Agreement beyond three (3) years may only be entered into with the approval of the United States in its sole discretion.

I. If the Acquirer seeks an extension of the Interim Supply Agreement, the Acquirer shall so notify the United States in writing at least four (4) months prior to the date the Interim

Supply Agreement expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least three (3) months prior to the date the Interim Supply Agreement expires. The total term of the Interim Supply Agreement and any extension(s) so approved shall not exceed five (5) years.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or VI 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 providing Beer in the United States. The divestiture shall be:

1. made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to complete the expansion of the Piedras Negras Brewery as contemplated herein, and to compete in the business of providing Beer; and

2. accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of the agreement between an Acquirer and Sellers gives Sellers 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.

V. REQUIRED EXPANSION AND OTHER PROVISIONS DESIGNED TO PROMOTE COMPETITION

A. Acquirer shall accomplish the expansion of the Piedras Negras Brewery to a Nominal Capacity of at least twenty (20) million hectoliters of packaged Beer annually, to include the ability to produce commercially reasonable quantities of each Modelo Brand Beer

offered by Crown for sale in the United States as of the date of filing this proposed Final Judgment. Acquirer shall complete the above expansion by December 31, 2016. As part of the expansion of the Piedras Negras Brewery, Defendant Constellation shall use its best efforts to complete the following construction milestones by the specified deadlines:

1. Within six (6) months from the date of divestiture, the appointment of, and contracts executed with, design and engineering firms;
2. Within twelve (12) months from the date of divestiture, the completion of the design and engineering (including specifications and rated capacities) of the brewhouse, packaging hall, and warehouse;
3. Within twelve (12) months from the date of divestiture, the obtainment of all necessary permits;
4. Within twelve (12) months from the date of divestiture, the commencement of construction of the brewhouse, packaging hall, and warehouse;
5. Within twenty-four (24) months from the date of divestiture, the completion of the construction of the warehouse and completion of the installation of equipment in the warehouse;
6. Within thirty (30) months from the date of divestiture, the completion of the construction of the brewhouse and completion of the installation of equipment in the brewhouse;
7. Within thirty-six (36) months from the date of divestiture, the completion of the construction of the packaging hall and the completion of the installation of equipment in the packaging hall; and

8. Within thirty-six (36) months from the date of divestiture, Constellation determines in its discretion that it is able to obtain its supply requirements from the Piedras Negras Brewery and is no longer dependent on supply under the Interim Supply Agreement.

B. For a period of thirty-six (36) months after the date of the divestiture, (i) ABI shall not make any change to its Distributor Incentive Program that would cause any Modelo Brand Beer to count against a Distributor's level of alignment, nor implement a new Distributor Incentive Program that would have a similar effect; and (ii) additionally, any Distributor's carrying of Modelo Brand Beer shall not be considered by ABI to be an adverse factor or circumstance when determining whether or not to approve such Distributor's purchase of any other Distributor.

C. For a period of two (2) years beginning one (1) year after filing of this proposed Final Judgment, as to any ABI-Owned Distributor that has rights to distribute Modelo Brand Beer in the Territory, the Acquirer shall have the right, upon sixty (60) days notice to ABI, to direct the ABI-Owned Distributor to sell those rights to another Distributor identified by Acquirer, subject to the terms for such sales set forth in Exhibit D hereto, and incorporated herein. At least thirty (30) days before ABI acquires a majority of the equity interests in any additional Distributors after divestiture of the Divestiture Assets, and such Distributors have rights to distribute Modelo Brand Beer in the Territory, ABI shall notify the Acquirer of any such planned acquisition and the Acquirer shall have thirty (30) days from the date of such notice to provide notice to ABI that the Acquirer intends to exercise the rights outlined in Exhibit D hereto.

D. If Sellers and the Acquirer enter into any new agreement(s) with each other with respect to the brewing, packaging, production, marketing, importing, distribution, or sale of Beer in the United States or elsewhere, Sellers and the Acquirer shall notify the United States of the new agreement(s) at least sixty (60) calendar days in advance of such agreement(s) becoming effective and such agreement(s) may only be entered into with the approval of the United States in its sole discretion.

VI. APPOINTMENT OF TRUSTEE TO EFFECT DIVESTITURE

A. If Sellers have not divested the Divestiture Assets within the time period specified in Section IV.B, Sellers shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture 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 Divestiture Trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section VI.E of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Sellers any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be

conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.A.

E. The Divestiture Trustee shall serve at the cost and expense of Sellers, pursuant to a written agreement with Sellers 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 Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Sellers and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture 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.

F. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture 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 Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

G. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the

divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture 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 the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the Defendants and 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 the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VII. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement with an Acquirer other than Constellation, the Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United

States of any proposed divestiture required by Section IV of this Final Judgment. If the Divestiture 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 who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets or, in the case of the Divestiture Trustee, any update of the information required to be provided under Section VI.G above.

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 Divestiture Trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture 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 Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, 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 VI.D 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 VI shall not be consummated. Upon objection by Defendants under Section VI.D, a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. MONITORING TRUSTEE

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to:

1. the attainment of the construction milestones by the Acquirer as set forth in Section V.A, 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 Sellers and Acquirer that may affect the accomplishment of the purposes of this Final Judgment, the reasons for such breach or problem, and recommended remedies therefor; and
3. any breach or other concern regarding the accuracy of the representations made by ABI in sections 3.25 and 3.26 of the Stock Purchase Agreement, incorporated herein, or successor agreements thereto, and by Modelo in the Letter of Grupo Modelo, S.A.B. de C.V., incorporated herein as Exhibit C, and recommended remedies therefor.

C. Subject to Section VIII.E of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of ABI, any consultants, accountants, attorneys, or other persons, who

shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of ABI on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other persons, provide written notice of such hiring and the rate of compensation to ABI.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other

confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports every ninety (90) days, or more frequently as needed, with the United States, the Defendants and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. 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.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section VI of this Final Judgment and the Transition Services Agreement and the Interim Supply Agreement have expired and all other relief has been completed as defined in Section V.A.

IX. FINANCING

Sellers shall not finance all or any part of any purchase made pursuant to Section IV or VI of this Final Judgment.

X. 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.

XI. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this proposed Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under

Section IV or VI, each Seller shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or VI 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 Sellers have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, 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 Sellers, 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 this proposed Final Judgment, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions it has taken and all steps it has implemented on an ongoing basis to comply with Section X of this Final Judgment. Each Defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in its 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.

XII. NOTIFICATION OF FUTURE TRANSACTIONS

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15

U.S.C. § 18a (the "HSR Act"), ABI, without providing at least sixty (60) calendar days advance notification to the United States, shall not directly or indirectly acquire or license a Covered Interest in or from a Covered Entity; provided, however, that advance notification shall not be required for acquisitions of the type addressed in 16 C.F.R. §§ 802.1 and 802.9.

B. Any notification pursuant to Section XII.A above shall be provided to the United States in letter format, and shall identify the parties to the transaction, the assets being acquired or licensed, the value of the transaction, the seller's annual gross revenue from each brand or asset being acquired, and the identity of the current importer for any Beer being acquired that is brewed outside the United States.

C. All references to the HSR Act in this Final Judgment refer to the HSR Act as it exists at the time of the transaction or agreement and incorporate any subsequent amendments to the Act.

XIII. FIREWALL

A. During the term of the Transition Services Agreement and the Interim Supply Agreement, Sellers shall implement and maintain reasonable procedures to prevent Acquirer Confidential Information from being disclosed by or through Sellers to those of Sellers' affiliates who are involved in the marketing, distribution, or sale of Beer in the United States, or to any other person who does not have a need to know the information.

B. Sellers shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the United States a document setting forth in detail the procedures implemented to effect compliance with Section XIII.A of this Final Judgment. The United States shall notify Sellers within five (5) business days whether it approves of or rejects Sellers' compliance plan, in its sole discretion. In the event that Sellers' compliance plan is rejected, the reasons for the rejection shall be provided to Sellers and Sellers shall be given the

opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether Sellers' proposed compliance plan is reasonable.

C. Defendants may at any time submit to the United States evidence relating to the actual operation of the firewall in support of a request to modify the firewall set forth in this Section XIII. In determining whether it would be appropriate for the United States to consent to modify the firewall, the United States, in its sole discretion, shall consider the need to protect Acquirer Confidential Information and the impact the firewall has had on Sellers' ability to efficiently provide services, supplies and products under the Transition Services Agreement and the Interim Supply Agreement.

D. Sellers and the Acquirer shall:

1. furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) days of entry of the Final Judgment to (a) each officer, director, and any other employee that will receive Acquirer Confidential Information; (b) each officer, director, and any other employee that is involved in (i) any contact with the other companies that are parties to the Transition Services Agreement and Interim Supply Agreement, (ii) making decisions under the Transition Services Agreement or the Interim Supply Agreement, (iii) making decisions regarding ABI's Distributor Incentive Programs, or (iv) making decisions regarding the treatment of Crown by either ABI-Owned Distributors, or by any other Distributor in which ABI acquires a majority interest after the

date of the divestiture contemplated herein; and (c) any successor to a person designated in Section XIII.D.1(a) or (b);

2. annually brief each person designated in Section XIII.D.1 on the meaning and requirements of this Final Judgment and the antitrust laws; and

3. obtain from each person designated in Section XIII.D.1, within sixty (60) days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the company; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Defendant and/or any person who violates this Final Judgment.

XIV. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the 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 ("Antitrust Division"), 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. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

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 the Protective Order, 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).

XV. NO REACQUISITION

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

XVI. BANKRUPTCY

The failure of any party to the Sub-License Agreement to perform any remaining obligations of such party under the Sub-License Agreement shall not excuse performance by the other party of its obligations thereunder. Accordingly, for purposes of Section 365(n) of the Bankruptcy Reform Act of 1978, as amended, and codified as 11 U.S.C. §§ 101 *et. seq.* (the "Bankruptcy Code") or any analogous provision under any law of any foreign or domestic, federal, state, provincial, local, municipal or other governmental jurisdiction relating to bankruptcy, insolvency or reorganization ("Foreign Bankruptcy Law"), (a) the Sub-License Agreement will not be deemed to be an executory contract, and (b) if for any reason the Sub-License Agreement is deemed to be an executory contract, the licenses granted under the Sub-License Agreement shall be deemed to be licenses to rights in "intellectual property" as defined in Section 101 of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law and Constellation or any other Acquirer shall be protected in the continued enjoyment of its right under the Sub-License Agreement including, without limitation, if Constellation or another Acquirer so elects, the protection conferred upon licensees under 11 U.S.C. Section 365(n) of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law.

XVII. 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 ensure and enforce compliance, and to punish violations of its provisions.

XVIII. EXPIRATION OF FINAL JUDGMENT

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

XIX. 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' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____
United States District Judge

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) Judge Richard W. Roberts

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), Plaintiff United States of America ("United States") files this Competitive Impact Statement relating to the proposed Final Judgment submitted on April 19, 2013, for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On June 28, 2012, Defendant Anheuser-Busch InBev SA/NV ("ABI") agreed to purchase the remaining equity interest in Defendant Grupo Modelo, S.A.B. de C.V. ("Modelo") for approximately $20.1 billion. The United States filed a civil antitrust Complaint against ABI and Modelo on January 31, 2013, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for beer in the United States and specifically in twenty-six local markets 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 an Explanation of Consent Decree Procedures, which included a Stipulation and Order and a proposed Final Judgment as exhibits that are collectively designed to eliminate the anticompetitive effects that the acquisition would have otherwise caused. The proposed Final Judgment, which is explained more fully below, will accomplish the complete divestiture of Modelo's U.S. business to Modelo's current joint venture partner, Constellation Brands, Inc. ("Constellation"), or, if that transaction fails to close, to another acquirer capable of replacing the competition that Modelo currently brings to the United States market. This structural fix will maintain Modelo Brand Beers[1] as independent competitors to ABI's flagship brands in the United States and will eliminate the existing entanglements between ABI and Modelo vis-à-vis the beer market in the United States.

Specifically, under the proposed Final Judgment, ABI is required to divest and/or license to Constellation (or to an alternative purchaser if the sale to Constellation for some reason does not close) certain tangible and intangible assets (hereafter the "Divestiture Assets"), including:

- A perpetual and exclusive United States license to Corona Extra, this country's best-selling imported beer and #5 brand overall, and to nine other Modelo Brand Beers including Corona Light, Modelo Especial, Negra Modelo, and Pacifico;

- Modelo's newest, most technologically advanced brewery (the "Piedras Negras Brewery"), which is located in Mexico near the Texas border, and the assets and companies associated with it;[2]

[1] Capitalized terms in this Competitive Impact Statement are defined in the proposed Final Judgment.

[2] The Piedras Negras Brewery is owned by a subsidiary of Modelo - Compañia Cervecera de Coahuila S.A. de C.V., which will be transferred as part of the divestiture.

- Modelo's limited liability membership interest in Crown Imports, LLC ("Crown"), the joint venture established by Modelo and Constellation to import, market, and sell certain Modelo beers into the United States; and

- Other assets, rights, and interests necessary to ensure that Constellation (or an alternative purchaser) is able to compete in the beer market in the United States using the Modelo Brand Beers, independent of a relationship with ABI and Modelo.

Under the terms of the Stipulation and Order, Constellation will be added as a Defendant for purposes of settlement,[3] and ABI, Modelo, and Constellation will take certain steps to operate Crown, the Piedras Negras Brewery, and the other Divestiture Assets as competitively independent, economically viable, and ongoing assets whose commercial activities will remain uninfluenced by ABI until the sale to Constellation has closed.

In order to guarantee that the acquirer of the Divestiture Assets will be able to supply Modelo Brand Beer to the United States market independent of ABI, the proposed Final Judgment contains provisions designed to ensure that Constellation (or an alternative acquirer) will have sufficient brewing capacity to meet current and future demand for Modelo Brand Beer in the United States. Because the Piedras Negras Brewery currently produces enough Modelo Brand Beer to serve only approximately 60% of present U.S. demand, Constellation has committed to build out and expand the Piedras Negras Brewery to brew and package sufficient quantities of Corona, Modelo Especial, and other Modelo Brand Beer to meet the large and growing demand for these beers in the United States. This expansion is included as a direct requirement under the proposed Final Judgment and will assure Constellation's future independence as a self-supplied brewer and seller in the United States beer market.

[3] As discussed further below and in Section III.B herein, Constellation will be joined as a settling Defendant because it will be required, as a condition of acquiring the Divestiture Assets, to complete an expansion of the Piedras Negras Brewery to serve current and future United States demand.

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.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. *The Defendants and the Proposed Transaction*

ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI brews and markets more beer sold in the United States than any other firm, with a 39% market share nationally. ABI owns and operates 125 breweries worldwide, including 12 in the United States. It owns more than 200 different beer brands, including Bud Light, the highest selling brand in the United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Goose Island, and Beck's.

Modelo is a corporation organized and existing under the laws of Mexico, with headquarters in Mexico City, Mexico. Modelo is the third-largest brewer of beer sold in the United States, with a 7% market share nationally. Modelo owns the top-selling beer imported into the United States, Corona Extra. Its other popular brands sold in the United States include Corona Light, Modelo Especial, Negra Modelo, Victoria, and Pacifico. Crown, the joint venture established by Modelo and Constellation, imports, markets, and sells certain Modelo's brands into the United States.

Constellation, headquartered in Victor, New York, is a beer, wine, and spirits company with a portfolio of more than 100 products, including Robert Mondavi, Clos du Bois, Ruffino,

and SVEDKA Vodka. It produces wine and distilled spirits, with more than forty facilities worldwide. Constellation is not currently a beer brewer; Constellation's only involvement in the beer market in the United States is through its interest in Crown, although it actively participates in the management of that joint venture. Constellation is a Defendant to this action for the purpose of assuring the satisfaction of the objectives of the proposed Final Judgment, including the expansion of the Piedras Negras Brewery.

ABI currently holds a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo S.A. de C.V ("Diblo"). ABI's current stake in Modelo gives ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors.[4]

On June 28, 2012, ABI agreed to purchase, through an Agreement and Plan of Merger, along with a Transaction Agreement between ABI, Modelo and Diblo, the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for approximately $20.1 billion.

At the time, Defendants also proposed to sell Modelo's stake in Crown to Constellation and enter into a ten-year supply agreement to provide Modelo beer to Constellation to import into the United States. The United States rejected this proposed vertical "fix" to a horizontal merger as inadequate to address the likely harm to competition that would result from the proposed transaction. Most importantly, the proposed supply agreement would not have alleviated the potential harm to competition that the proposed transaction created: It did not create an independent, fully-integrated brewer with permanent control of Modelo Brand Beer in

[4] The sale of the Divestiture Assets to Constellation (or another acquirer) will eliminate ABI's minority right and sharing of profits in Modelo's U.S. business.

the United States. The United States therefore filed a Complaint to enjoin this proposed acquisition on January 31, 2013.

B. The Competitive Effects of the Transaction on the Market for Beer in the United States

1. Relevant Markets

Beer is a relevant product market under Section 7. Wine, distilled liquor, and other alcoholic or non-alcoholic beverages do not substantially constrain the prices of beer, and a hypothetical monopolist in the beer market could profitably raise prices. ABI and other brewers generally categorize beers internally into different tiers based primarily on price, including sub-premium, premium, premium plus, and high-end. However, beers in different categories compete with each other, particularly when in adjacent tiers. For example, Modelo's Corona Extra—usually considered a high-end beer—regularly targets ABI's Bud Light, a premium light beer, as its primary competitor.

Both national and local geographic markets exist in this industry. The proposed merger would likely result in increased prices for beer in the United States market as a whole and in at least 26 Metropolitan Statistical Areas ("MSAs"). Large beer companies make competitive decisions and develop strategies regarding product development, marketing, and brand-building on a national level. Further, large beer brewers typically create and implement national pricing strategies.

However, beer brewers make many pricing and promotional decisions at the local level, reflecting local brand preferences, demographics, and other factors, which can vary significantly from one local market to another. The 26 MSAs alleged in the Complaint are areas in which beer purchasers are particularly vulnerable to targeted price increases.

2. Competitive Effects

The beer industry in the United States is highly concentrated and would become more so if ABI were allowed to acquire all of the remaining Modelo assets required to compete in the United States, as the transaction was originally proposed. ABI and MillerCoors, the two largest beer brewers in the United States, account for more than 65% of beer sold in the United States. Modelo is the third largest beer brewer, constituting approximately 7% of national sales, and in certain MSAs its market share approaches 20%. Heineken and hundreds of smaller fringe competitors comprise the remainder of the beer market. In the 26 MSAs alleged in the Complaint, ABI and Modelo control an even larger share of the market, creating a presumption under the Clayton Act that the merger of the two firms would result in harm to competition in those markets.

Even so, the market shares of ABI and Modelo understate the potential anticompetitive effect of the proposed merger. The United States determined through its investigation that large brewers engage in significant levels of tacit coordination and that coordination has reduced competition and increased prices. In most regions of the United States, major brewers implement price increases on an annual basis in the fall. ABI is usually first to announce its annual price increases, setting forth recommended wholesale price increases designed to be transparent and to encourage others to follow. MillerCoors typically announces its price increases after ABI has publicized its price increases, and largely matches ABI's price increases. As a result, although ABI and MillerCoors have highly visible competing advertising and product innovation programs, they do not substantially constrain each other's annual price increases.

The third largest brewer, Modelo, has increasingly constrained ABI's and MillerCoors's ability to raise prices. To build its market share, Modelo (through its importer Crown) has tended not to follow the announced price increases of ABI and MillerCoors. This competitive strategy narrowed the price gap between Modelo's high-end brands and ABI's and MillerCoors's premium and premium plus brands, allowing Modelo to build market share at the expense of ABI and MillerCoors. By compressing the price gap between high-end and premium brands, Modelo's actions have increasingly limited ABI's ability to lead beer prices higher. Therefore, ABI's acquisition of Modelo, as originally proposed, would have been likely to lead to higher beer prices in the United States by eliminating a competitor that resisted coordinated price increases initiated by the market share leader, ABI.

ABI and Modelo compete aggressively. Modelo brands compete with ABI brands in numerous venues and occasions, appealing to similar sets of consumers in terms of taste, quality, consumer perception, and value. As a result, Modelo (through its importer Crown) often sets its prices in particular markets with reference to the price of the leading ABI products, and engages in price competition through promotional activity designed to take share from the market leaders. Because a significant number of consumers regard the ABI brands and Modelo brands as substitutes, the merger, absent the divestiture, would create an incentive for ABI to raise the prices of some or all of the merged firm's brands and profitably recapture sales that result from consumers switching between the ABI brands and Modelo brands.

Further, competition from Modelo has spurred additional significant product innovation from ABI, including the introduction of Bud Light Lime, the introduction of new packages such

as "Azulitas,"[5] and the expansion of Landshark Lager. The merger of the two firms, as originally proposed, would have been likely to negatively affect ABI's incentive to innovate, bring new products to market, and otherwise invest in attracting consumers away from the unique Modelo brands.

3. Entry and Expansion

Neither entry into the beer market, nor any repositioning of existing brewers, would undo the anticompetitive harm from ABI's acquisition of Modelo, as originally proposed. Modelo's brands compete well against ABI due to their brand positioning and reputation, their well-established marketing and broad acceptance by a wide range of consumers, and their robust distribution network resulting in the near-ubiquity of Corona Extra in the establishments where consumers purchase and consume beer. Any entrant would face enormous costs in attempting to replicate these assets, and would take many years to succeed. Building nationally recognized and accepted brands, which retailers will support with feature and display activity, is difficult, expensive, and time consuming. While consumers have undoubtedly benefited from the launch of many individual craft and specialty beers in the United States, the multiplicity of such brands does not replace the nature, scale, and scope of competition that Modelo provides today, and that would otherwise be eliminated by the proposed transaction.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment contains a clean, structural remedy that eliminates the likely anticompetitive effects of the acquisition in the market for beer in the United States and

[5] Azulitas are 8 ounce cans of Bud Light that compete directly with Modelo's "Coronitas."

the 26 local markets identified in the Complaint. The divestitures required by the proposed Final Judgment will create an independent and economically viable competitor that will stand in the shoes of Modelo in the United States. Specifically, the divestiture of the Piedras Negras Brewery and Modelo's interest in Crown, and the perpetual brand licenses required by the proposed Final Judgment, will vest in Constellation (or an alternative purchaser, should ABI's divestiture to Constellation not be completed) the brewing capacity, the assets, and the other rights needed to produce, market, and sell Modelo Brand Beer in a manner similar to that which we see today. In short, the divestiture preserves the current structure of the beer market in the United States by maintaining an independent brewer with an incentive to resist following ABI's price leadership in order to expand share. Furthermore, the proposed Final Judgment puts an end to the existing entanglements between ABI and Modelo with respect to the United States beer market. Finally, the proposed Final Judgment also provides for supervision by this Court and the United States of the transition services necessary to allow Constellation or another acquirer to compete effectively while the divestiture and expansion of the Piedras Negras Brewery are completed.

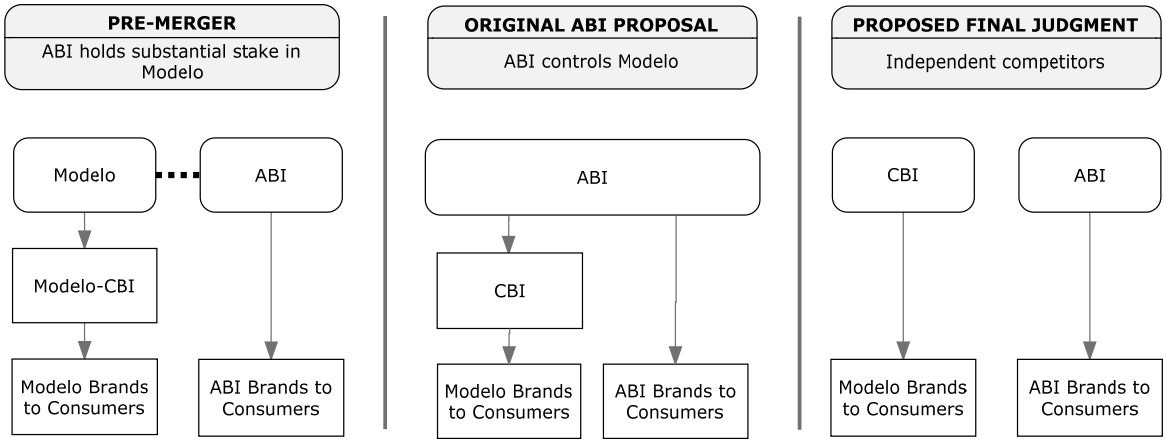
A. *The Divestiture*

The proposed Final Judgment requires ABI, within 90 days after entry of the Stipulation and Order by the Court, to (1) divest to Constellation Modelo's current interest in Crown, along with the Piedras Negras Brewery and associated assets, and (2) grant to Constellation a perpetual, assignable license to ten of the most popular Modelo Brand Beers, including Corona and Modelo Especial, for sale in the United States.[6] The rights, assets, and interests to be

[6] The licensed brands include all the brands that Modelo currently offers (through its

divested to Constellation are set forth in the transaction agreements that are attached as exhibits to the proposed Final Judgment. If the divestiture to Constellation should fail to close, ABI would be required to make those same divestitures, and grant the same licenses, to another acquirer acceptable to the United States for the purpose of enabling that alternative acquirer to brew Modelo Brand Beer, and to market and distribute them in the United States market.

The proposed Final Judgment differs significantly from the deal that ABI sought unilaterally to impose and that is described in the Complaint. It vertically integrates the production and sale of Modelo Brand Beer in the United States and eliminates ABI's control of Modelo Brand Beer in the United States, as illustrated below:



The proposed Final Judgment requires ABI to license rather than divest the brands because ABI retains the right to brew and market Modelo's brands throughout the rest of the world. The structure of the licenses provides Constellation all the rights and abilities it needs to compete in the United States as Modelo did before the merger, including the opportunity to

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distributor Crown) in the United States: Corona, Corona Light, Modelo Especial, Negra Modelo, Modelo Light, Pacifico, and Victoria. The license also includes certain brands not yet offered in the United States, but that Constellation would be free to launch here: Pacifico Light, Barrilito, and León.

introduce new brands in the United States that Modelo already markets in Mexico, such as León. The licenses are perpetual and assignable and cannot be terminated by ABI for any reason. They include the right to develop and launch new brand extensions and packages, to update brand recipes in response to consumer demand, and to adopt, or decline to adopt, any updated recipes for any of the licensed brands that ABI may choose to use outside the United States. This flexibility allows Constellation to adapt to changing market conditions in the United States to compete effectively in the future, and reduces ABI's ability to interfere with those adaptations.

The assets must be divested and/or licensed in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants ABI and Modelo must take all reasonable steps necessary to accomplish the divestiture quickly. In the event that ABI does not accomplish the divestiture within 90 days as prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to complete the divestiture.[7]

B. *Mandatory Expansion of the Piedras Negras Brewery*

For the divestiture to be successful in replacing Modelo as a competitor, Constellation must expand the Piedras Negras Brewery's production capabilities. Section V.A of the proposed Final Judgment requires Constellation (or an alternative purchaser) to expand the Piedras Negras Brewery to be able to produce 20 million hectoliters of packaged beer annually by December 31, 2016. Such expansion will allow Constellation to produce, independently from ABI, enough Modelo Brand Beer to replicate Modelo's current competitive role in the United States. The

[7] The proposed Final Judgment also provides that the United States may extend the time for ABI to accomplish the divestiture by up to 60 days, in its sole discretion.

required expansion also allows for expected future growth in sales of the licensed brands. In carrying out the expansion, Constellation is required to use its best efforts to adhere to specific construction milestones delineated in Sections V.A.1-8 of the proposed Final Judgment. A Monitoring Trustee will be appointed who will have the responsibility to observe the expansion and to report to the United States and the Court on whether the expansion is on track to be completed in the required timeframe.

Requiring the buyer of divested assets to improve those assets for the purposes of competing against the seller is an exceptional remedy that the United States found appropriate under the specific set of facts presented here. The recently constructed Piedras Negras Brewery is an ideal brewery for divestiture because it is near the United States border, is highly efficient, and features modular construction that was designed and equipped specifically to allow for economical expansion. No other combination of Modelo's brewing assets would have properly addressed the competitive harm caused by the proposed merger and allowed the acquirer of the Divestiture Assets to compete as effectively and economically with ABI as Modelo does today.

C. *Employee Retention Provisions; Transitional Support and Supply Agreements*

The proposed Final Judgment provides for or incorporates agreements protecting Constellation's ability to operate and expand the Piedras Negras Brewery while actively competing in the United States.

As part of the asset purchase, Constellation (or an alternative purchaser) will become the owner of the company that employs personnel who currently operate the Piedras Negras

Brewery.[8] Section IV.D of the proposed Final Judgment prevents ABI or Modelo from interfering with Constellation's retention of those employees as part of the asset transfer. Together with the transition services, this provides Constellation with the specific knowledge necessary to operate the Piedras Negras Brewery.

Sections IV.G-I of the proposed Final Judgment require the parties to enter into transition services and interim supply agreements. The transition services agreement (Section IV.G) requires ABI to provide consulting services with respect to topics such as the management of the Piedras Negras Brewery, logistics, material resource planning, and other general administrative services that Modelo currently provides to the Piedras Negras Brewery. The transition services agreement also requires ABI to supply certain key inputs (such as aluminum cans, glass, malt, yeast, and corn starch) for a limited time. The interim supply agreement (Section IV.H-I) 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.

The transition services and interim supply agreements are necessary to allow Constellation (or an alternative purchaser) to continue to compete in the United States during the time it takes to expand the Piedras Negras Brewery's capacity to brew and bottle beer, but are time-limited to assure that Constellation will become a fully independent competitor to ABI as soon as practicable. As such, in conjunction with the firewall provisions described below, they prevent the vertical supply arrangement from causing competitive harm in the near term. The proposed Final Judgment subjects these agreements, including any extensions, to monitoring by

[8] The company is Servicios Modelo de Coahuila, S.A. de C.V., a subsidiary of Grupo Modelo with its headquarters in Coahuila, Mexico.

a court-appointed trustee and, in the event that a firm other than Constellation acquires the assets, the acquisition requires approval by the United States.

D. *Distribution of Modelo Brand Beer*

Effective distribution is important for a brewer to be competitive in the beer industry. The proposed Final Judgment imposes two requirements on ABI regarding its distribution network that are designed to limit ABI's ability to interfere with Constellation's effective distribution of Modelo Brand Beer. These requirements ensure that Constellation can reduce the threat of discrimination in distribution at the hands of ABI-owned distributors or ABI-sponsored distributor incentive programs, in recognition of the influence ABI already exercises in the concentrated beer distribution markets.

First, Section V.C of the proposed Final Judgment provides that, for ABI's majority-owned distributors ("ABI-Owned Distributors") that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-owned distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights.

Second, the proposed Final Judgment prevents ABI for 36 months from downgrading a distributor's ranking in ABI's distributor incentive programs by virtue of the distributor's decision to carry Modelo Brand Beer. The 36-month time period tracks the initial term of the transition service and interim supply agreements, and thus allows Constellation to maintain a status quo position for the Modelo Brand Beer in ABI's distribution incentive programs until Constellation can operate independently of ABI.

E. *Divestiture Trustee*

In the event that Defendants do not accomplish the divestiture as prescribed in the proposed Final Judgment, either to Constellation or to an alternative buyer, Section VI of the proposed Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States to complete the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that ABI will pay all costs and expenses of the Divestiture Trustee. Under the proposed Final Judgment, the Divestiture Trustee shall have the ability to modify the package of assets to be divested, should such modification become necessary to enable an acquirer to expand and operate the Piedras Negras Brewery or if there has been a breach in the representations made by ABI and Modelo regarding the completeness of the assets. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture.

F. *Monitoring Trustee*

Section VIII of the proposed Final Judgment permits the appointment of a Monitoring Trustee by the United States in its sole discretion and the United States intends to appoint one and seek the Court's approval. The Monitoring Trustee will ensure that Defendants expeditiously comply with all of their obligations and perform all of their responsibilities under the proposed Final Judgment and the Stipulation and Order; that the Divestiture Assets remain economically viable, competitive, and ongoing assets; and that competition in the sale of beer in the United States in the relevant markets is maintained until the required divestitures and other requirements of the proposed Final Judgment have been accomplished. The Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of the Final

Judgment and attendant interim supply and services contracts. The Monitoring Trustee will have access to all personnel, books, records, and information necessary to monitor such compliance, and will serve at the cost and expense of ABI. The Monitoring Trustee will file reports every 90 days with the United States and the Court setting forth Defendants' efforts to comply with their obligations under the proposed Final Judgment and the Stipulation and Order.

G. *Stipulation and Order Provisions*

Defendants have entered into the Stipulation and Order attached as an exhibit to the Explanation of Consent Decree Procedures, which was filed simultaneously with the Court, to ensure that, pending the divestitures, the Divestiture Assets are maintained as an ongoing, economically viable, and active business. The Stipulation and Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestitures to be effective. The Stipulation and Order also adds Constellation as a Defendant for purposes of entering the Final Judgment.

H. *Notification Provisions*

Section XII of the proposed Final Judgment requires ABI to notify the United States in advance of executing certain transactions that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The transactions covered by these provisions include the acquisition or license of any interest in non-ABI brewing assets or brands, excluding acquisitions of: (1) foreign-located assets that do not generate at least $7.5 million in annual gross revenue from beer sold for resale in the United States; (2) certain ordinary-course asset purchases and passive investments; and (3) distribution licenses that do not generate at least $3 million in annual gross revenue in the United States. This provision ensures that the United

States will have the ability to take action in advance of any transactions that could potentially impact competition in the United States beer market.

I. *Firewall*

Section XIII of the proposed Final Judgment requires ABI and Modelo to implement firewall procedures to prevent Constellation's (or an alternative acquirer's) confidential business information from being used within ABI or Modelo for any purpose that could harm competition or provide an unfair competitive advantage to ABI based on its role as a temporary supplier to Constellation under either the transition services or interim supply agreements. Within ten days of the Court approving the Stipulation and Order described above, ABI and Modelo must submit their planned procedures for maintaining a firewall. Additionally, ABI and Modelo must brief certain officers of the company and business personnel who have responsibility for commercial interactions with Constellation as to their required treatment of Constellation's confidential business information. This provision ensures that ABI and Modelo cannot improperly use any confidential information they receive from Constellation in ways that would harm competition in the beer industry or impair Constellation's competitive prospects.

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 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. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and published in the Federal Register.

Written comments should be submitted to:

James Tierney
Chief, Networks and Technology Enforcement Section
Antitrust Division
United States Department of Justice
450 5th Street NW; Suite 7100
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, before initiating this lawsuit to enjoin the proposed merger, the Defendants' proposal of selling Modelo's stake in Crown to Constellation and entering into a ten-year supply agreement. The United States ultimately rejected this proposal as inadequate to address the merger's likely anticompetitive effects. The settlement embodied within the proposed Final Judgment differs significantly from the Defendants' original solution. Most importantly, the proposed Final Judgment ensures that Modelo Brand Beer sold in the United States will be brewed, imported, and sold by a firm that is vertically integrated and completely independent from ABI. Unlike the Defendants' original proposal, which left Constellation with no brewing assets, beholden to ABI for the supply of beer, and was terminable after ten years, the proposed Final Judgment ensures Constellation will have independent brewing assets and the ownership of the Modelo Brand Beer for sale in the United States in perpetuity.

The United States also considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants ABI and Modelo. The United States could have

continued the litigation and sought preliminary and permanent injunctions against ABI's acquisition of Modelo. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment, and concomitant expansion of the brewery assets, will preserve competition for the provision of beer in the relevant market 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); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[9]

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));

[9] 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).

see also Microsoft, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. 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).[10] 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

[10] *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 inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

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; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). 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. *Microsoft*, 56 F.3d at 1459-60. As this court 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.[11]

VIII.

DETERMINATIVE DOCUMENTS

The following determinative materials or documents within the meaning of the APPA were considered by the United States in formulating the proposed Final Judgment:

[11] *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.").

- The Stock Purchase Agreement attached and labeled as Exhibit A to the proposed Final Judgment;
- The Amended and Restated Membership Interest Purchase Agreement attached and labeled as Exhibit A to the proposed Final Judgment;
- The Amended and Restated Sub-License Agreement attached and labeled as Exhibit A to the Stock Purchase Agreement;
- The Transition Services Agreement attached and labeled as Exhibit B to the Stock Purchase Agreement; and
- The Interim Supply Agreement attached and labeled as Exhibit A to the Amended and Restated Membership Interest Purchase Agreement.

Dated: April 19, 2013

Respectfully submitted,

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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) Judge Richard W. Roberts

UNITED STATES' EXPLANATION OF CONSENT DECREE PROCEDURES

The United States submits this short memorandum summarizing the procedures regarding the Court's entry of the proposed Final Judgment. This Judgment would settle this case pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "APPA"), which applies to civil antitrust cases brought and settled by the United States.

1. Today, the United States has filed this Explanation of Consent Decree Procedures, a proposed Final Judgment and a Stipulation and Order between the parties by which they have agreed that the Court may enter the proposed Final Judgment after the United States has complied with the APPA. The United States has also filed a Competitive Impact Statement relating to the proposed Final Judgment.

2. The Stipulation and Order is a document that has been agreed to by both the United States and the Defendants. The United States and the Defendants ask that the Court sign this Order, which ensures that the Defendants preserve competition by complying with the provisions of the proposed Final Judgment during the pendency of

the proceedings required by the Tunney Act. *See* 15 U.S.C. § 16(b)-(h). Additionally, the Stipulation and Order adds Constellation Brands, Inc. as a Defendant for purposes of entering the Final Judgment.

3. The APPA requires that the United States publish the proposed Final Judgment and the Competitive Impact Statement in the Federal Register and cause to be published a summary of the terms of the proposed Final Judgment and the Competitive Impact Statement in certain newspapers at least sixty (60) days prior to entry of the proposed Final Judgment. Defendants in this matter have agreed to arrange and bear the costs for the newspaper notices. The notice will inform members of the public that they may submit comments about the proposed Final Judgment to the United States Department of Justice, Antitrust Division, 15 U.S.C. § 16(b)-(c).

4. During the sixty-day period, the United States will consider, and at the close of that period respond to, any comments that it has received, and it will publish the comments and the United States' responses in the Federal Register.

5. After the expiration of the sixty-day period, the United States will file with the Court the comments and the United States' responses, and it may ask the Court to enter the proposed Final Judgment (unless the United States has decided to withdraw its consent to entry of the Final Judgment, as permitted by Section IV.A of the Stipulation, *see* 15 U.S.C. § 16(d)).

6. If the United States requests that the Court enter the proposed Final Judgment after compliance with the APPA, 15 U.S.C. § 16(e)-(f), then the Court may enter the Final Judgment without a hearing, provided that it concludes that the Final Judgment is in the public interest.

Dated: April 19, 2013

Respectfully submitted,

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PRESS RELEASE

Brussels, 4 June 2013 – 1 / 4

The enclosed information constitutes regulated information as defined in the Belgian Royal Decree of 14 November 2007 regarding the duties of issuers of financial instruments which have been admitted for trading on a regulated market.

Anheuser-Busch InBev Completes Combination with Grupo Modelo

Announces Settlement of Tender Offer

Anheuser-Busch InBev (Euronext: ABI; NYSE: BUD) and Grupo Modelo, S.A.B. de C.V. (BMV: GMODELOC) today announced that AB InBev has successfully completed its combination with Grupo Modelo in a transaction valued at USD 20.1 billion.

The combination is a natural next step given the successful long-term partnership between AB InBev and Grupo Modelo, which started more than 20 years ago. The combined company will benefit from the significant growth potential that Modelo brands such as Corona have globally outside of the U.S., as well as locally in Mexico, where there will also be opportunities to introduce AB InBev brands through Modelo's distribution network.

The combined company will lead the global beer industry with roughly 400 million hectoliters of beer volume annually, bringing together five of the top six most valuable beer brands in the world. Mexico is the world's fourth largest profit pool for beer and a very attractive market due to its projected growth. The combination is also expected to generate approximately USD 1 billion in cost synergies.

Carlos Brito, CEO of Anheuser-Busch InBev, said, *"We have tremendous respect for Grupo Modelo and its brands, and we are thrilled to welcome our Grupo Modelo colleagues to the global team. We look forward to realizing our opportunities for growth and bringing our beers to more consumers around the world as we join two world-class brewers."*

Local Management and Board

As previously announced, Ricardo Tadeu will serve as Zone President Mexico and Chief Executive Officer of Grupo Modelo, effective immediately. Mexico will become AB InBev's seventh Zone. Grupo Modelo's headquarters will remain in Mexico City, and it will continue to have a local board, which will be appointed by AB InBev at the next shareholders meeting of the company. Carlos Fernández, María Asunción Aramburuzabala and Valentín Díez Morodo have been invited to continue to play an important role on Grupo Modelo's Board of Directors.

María Asunción Aramburuzabala and Valentín Díez Morodo will also join AB InBev's Board of Directors, subject to the approval of AB InBev's shareholders at the next shareholders meeting.

Tender Offer Settlement

In connection with the completion of the combination, AB InBev announced the successful settlement of the all-cash tender offer for the remaining shares of Grupo Modelo that it did not already own for USD 9.15 per share. As of May 31, 2013, approximately 89% of Grupo Modelo's outstanding Series C common shares were validly tendered and acquired in the tender offer by a subsidiary of AB InBev. AB InBev now owns approximately 95% of Grupo Modelo's outstanding common shares.

Grupo Modelo will be fully consolidated in the AB InBev financial reporting as of June 4, 2013. Later today, AB InBev will establish and fund a trust that will accept further tender of shares by Grupo Modelo shareholders at a price of USD 9.15 per share over a period of up to 25 months, during which time Grupo Modelo shares will continue to be quoted on the Mexican Stock Exchange. AB InBev will recognize in its financial reports the amount deposited with the trust as restricted cash and will recognize a liability for the Grupo Modelo shares it did not acquire by the end of the MTO.

International Financial Reporting Standards (IFRS) Reporting Impact

AB InBev is in the process of preparing the allocation of the purchase price to the individual assets and liabilities acquired in compliance with IFRS3 and plans to publish a preliminary opening balance sheet in its 2013 half year unaudited condensed financial statements. As part of this exercise, AB InBev will re-value its initial stake in Grupo Modelo at its deemed fair value in line with the applicable accounting standards under IFRS and resulting in a non-recurring, non-cash gain estimated at approximately USD 6 billion. The opening balance sheet will report the Crown Imports and Grupo Modelo U.S. business being disposed to Constellation Brands as assets held for sale. These assets will be recognized at their after-tax net realizable value.

Investment in AB InBev by Grupo Modelo Shareholders

In a transaction related to the combination with Grupo Modelo, select Grupo Modelo shareholders have committed, upon tender of their shares, to acquire the equivalent of approximately 23.1 million AB InBev shares, to be delivered within five years via a deferred share instrument, for a consideration of approximately USD 1.5 billion. This investment will occur on June 5, 2013. AB InBev will include the weighted average number of the shares promised via the deferred share instruments outstanding on a time-apportioned basis as of June 5, 2013 in the calculation of its basic and diluted earnings per share, until the underlying shares have been delivered to the investors. By May 31, 2013, approximately 80% of the shares promised in the deferred share instruments had been hedged.

Reference Base

Given the transformational nature of the transaction with Grupo Modelo, and to facilitate the understanding of AB InBev's underlying performance, AB InBev will present its results going forward in comparison to a 2012 Reference base. The Reference base will include the Grupo

Modelo results as from June 4, 2012 for comparative purposes. The 2012 Reference base that will be used in the results announcements going forward and that will be used by management to assess the underlying performance of the business will be published in the coming weeks.

U.S. Divestiture

The related transaction with Constellation Brands, including the sale of Grupo Modelo's Piedras Negras brewery, Grupo Modelo's 50% stake in Crown Imports and perpetual rights to Grupo Modelo's brands in the U.S., is expected to close on June 7, 2013.

Transaction Website: www.globalbeerleader.com.

Disclaimer

This release contains certain forward-looking statements reflecting the current views of the management of AB InBev with respect to, among other things, the proposed transaction described herein as well as AB InBev's strategic objectives, business prospects, future financial condition, budgets, projected levels of production, projected costs and projected levels of revenues and profits, and the synergies it is able to achieve. These statements involve risks and uncertainties. The ability of AB InBev to achieve these objectives and targets or to consummate the proposed transaction is dependent on many factors some of which may be outside of management's control. In some cases, words such as "believe", "intend", "expect", "anticipate", "plan", "target", "will" and similar expressions to identify forward-looking statements are used. All statements other than statements of historical facts are forward-looking statements. You should not place undue reliance on these forward-looking statements. By their nature, forward-looking statements involve risk and uncertainty because they reflect AB InBev's current expectations and assumptions as to future events and circumstances that may not prove accurate. The actual results could differ materially from those anticipated in the forward-looking statements for many reasons including the risks described under Item 3.D of AB InBev's annual report on Form 20-F filed with the U.S. Securities and Exchange Commission on 13 April 2012, as well as risks associated with the proposed transaction, including uncertainty as whether AB InBev will be able to consummate the transaction on the terms described in this document or in the definitive agreements, the ability to obtain necessary governmental approvals, the availability of financing for the transaction and the ability to consummate the financing on the currently anticipated terms, the ability to realize the anticipated benefits of transaction, including as a result of a delay in completing the transaction or difficulty in integrating the businesses of the companies involved, and the amount and timing of any costs savings and operating synergies. AB InBev cannot assure you that the proposed transaction or the future results, level of activity, performance or achievements of AB InBev will meet the expectations reflected in the forward-looking statements. Moreover, neither AB InBev nor any other person assumes responsibility for the accuracy or completeness of the forward-looking statements. Unless AB InBev is required by law to update these statements, AB InBev will not necessarily update any of these statements after the date hereof, either to confirm the actual results or to report a change in its expectations.

PRESS RELEASE

Brussels, 4 June 2013 – 4 / 4

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About Anheuser-Busch InBev

Anheuser-Busch InBev is a publicly traded company (Euronext: ABI) based in Leuven, Belgium, with American Depositary Receipts on the New York Stock Exchange (NYSE: BUD). It is the leading global brewer, one of the world's top five consumer products companies and recognized as first in the beverage industry on FORTUNE Magazine's "World's Most Admired" companies list. Beer, the original social network, has been bringing people together for thousands of years and our portfolio of well over 200 beer brands continues to forge strong connections with consumers. We invest the majority of our brand-building resources on our Focus Brands - those with the greatest growth potential such as global brands Budweiser®, Corona®, Stella Artois® and Beck's®, alongside Leffe®, Hoegaarden®, Bud Light®, Skol®, Brahma®, Antarctica®, Quilmes®, Michelob Ultra®, Harbin®, Sedrin®, Klinskoye®, Sibirskaya Korona®, Chernigivske®, Hasseröder® and Jupiler®. Anheuser-Busch InBev's dedication to heritage and quality originates from the Den Hoorn brewery in Leuven, Belgium dating back to 1366 and the pioneering spirit of the Anheuser & Co brewery, with origins in St. Louis, USA since 1852. Geographically diversified with a balanced exposure to developed and developing markets, Anheuser Busch InBev leverages the collective strengths of its approximately 150,000 employees based in 24 countries worldwide. In 2012, AB InBev realized 39.8 billion USD revenue. The company strives to be the Best Beer Company in a Better World. For more information, please visit: www.ab-inbev.com.

Constellation Brands Completes Acquisition of Grupo Modelo's U.S. Beer Business

~Acquisition nearly doubles company's sales and significantly increases EBIT and free cash flow; Solidifies Constellation's position as the #1 multi-category supplier for beer, wine and spirits in the U.S~

VICTOR, N.Y., June 7, 2013 - Constellation Brands, Inc. (NYSE: STZ and STZ.B), a leading beverage alcohol company, announced today that it has completed its acquisition of Grupo Modelo's U.S. beer business from Anheuser-Busch InBev for approximately $4.75 billion. The transaction includes full ownership of Crown Imports LLC which provides Constellation with complete, independent control of all aspects of the U.S. commercial business; a state-of-the-art brewery in Nava (Piedras Negras), Mexico; exclusive perpetual brand license in the U.S. to import, market and sell Corona and the Modelo brands Crown currently sells and the freedom to develop brand extensions and innovations for the U.S. market.

"Today begins a new chapter in Constellation's history," said Rob Sands, president and chief executive officer, Constellation Brands. "We are now the proud owners of six of the top 20 imported beer brands in the U.S. and a coveted portfolio of premium brands in the growing U.S. imported beer category. We are committed to successfully running and investing in the world-class Mexican brewery and are very excited about the potential for developing new products and line extensions within the portfolio of brands in the U.S."

The Crown portfolio includes Corona Extra, Corona Light, Modelo Especial, Negra Modelo, Pacifico and Victoria from Mexico and Tsingtao from China. In fiscal year 2012, Crown outperformed the import and total U.S. beer categories for the third consecutive year as Corona Extra exceeded the 100-million case mark for the year. It was the only imported brand in the U.S. to achieve this sales milestone. Modelo Especial also achieved a significant milestone selling more than 40 million cases in depletions for the year.

With the close of the acquisition, Constellation begins to operate as one company with two divisions: a beer division and a wine and spirits division. A brewery operations group has also been established to manage the expansion and integration of the Nava brewery. Constellation plans to invest $500-$600 million during the next three years to expand the facility to double its current capacity to meet projected demand for products in the U.S. Paul Hetterich, executive vice president for Business Development and Corporate Strategy, leads this team.

Bill Hackett, president of the beer division, retains his current responsibilities for importing, marketing and selling the Modelo brands in the U.S. Hackett joins the company's executive management committee and reports directly to Sands.

Constellation's wine and spirits division is led by Jay Wright, president, who will continue to report to Sands.

"I am very pleased to welcome the Crown and the Nava employees to the Constellation family and I would like to thank everyone who has worked tirelessly during the last year to make this transaction a reality. This is an exciting time for our people and for our company," said Sands.

About Constellation Brands

Constellation Brands is a leading wine, beer and spirits company with a broad portfolio of premium brands. Constellation is the world leader in premium wine, the number one beer importer and the number three beer company in the U.S. The company's brand portfolio includes Arbor Mist, Black Box, Blackstone, Clos du Bois, Estancia, Franciscan Estate, Inniskillin, Kim Crawford, Mark West, Mount Veeder, Nobilo, Ravenswood, Rex Goliath, Robert Mondavi, Ruffino, SIMI, Toasted Head, Wild Horse, Corona Extra, Corona Light, Modelo Especial, Negra Modelo, Pacifico, Black Velvet Canadian Whisky and SVEDKA Vodka.

Constellation Brands (NYSE: STZ and STZ.B) is an S&P 500 Index and Fortune 1000® company with more than 100 brands in our portfolio, sales in approximately 100 countries and operations in approximately 40 facilities. The company believes that industry leadership involves a commitment to our brands, to the trade, to the land, to investors and to different people around the world who turn to our products when celebrating big moments or enjoying quiet ones. We express this commitment through our vision: ***to elevate life with every glass raised***. To learn more about Constellation, visit the company's website at www.cbrands.com.

Forward-Looking Statements

This news release contains forward-looking statements. All statements other than statements of historical fact are forward-looking statements. The word "expect" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These statements may relate to business strategy, future operations, prospects, plans and objectives of management, as well as information concerning expected actions of third parties. All forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those set forth in, or implied by, such forward-looking statements. All forward-looking statements speak only as of the date of this news release and Constellation Brands undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. The forward-looking statements are based on management's current expectations should not be construed in any manner as a guarantee that such results will in fact occur or will occur on the timetable contemplated hereby.

In addition to the risks and uncertainties of ordinary business operations, the forward-looking statements of Constellation Brands contained in this news release are subject to a number of risks and uncertainties, including completion of the brewery expansion by the expected completion date and on the expected terms, and other factors and uncertainties disclosed in the company's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the fiscal year ended February 28, 2013, which could cause future performance to differ from current expectations.

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HUG#1708115

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)

UNOPPOSED MOTION TO APPROVE THE APPOINTMENT OF WILLIAM E. BERLIN AS MONITORING TRUSTEE

Plaintiff United States hereby moves this Court for entry of an order approving the United States's appointment of William E. Berlin as Monitoring Trustee pursuant to Section VIII of the proposed Final Judgment in this matter. The United States has informed defendants Anheuser-Busch InBeV, SA/NV ("ABI"), Grupo Modelo, S.A.B. de C.V. ("Modelo"), and Constellation Brands, Inc. ("Constellation") that it is filing this motion, which, pursuant to the terms of the proposed Final Judgment the defendants may not oppose. In support of its motion, the United States files herewith a Memorandum of Points and Authorities in Support of Unopposed Motion to Approve the Appointment of William E. Berlin as Monitoring Trustee, and the Declaration of Michelle R. Seltzer.

Dated: June 21, 2013

Respectfully submitted,

/s/ Michelle R. Seltzer

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CERTIFICATE OF SERVICE

I, Michelle R. Seltzer, hereby certify that on June 21, 2013, I caused a copy of the foregoing Unopposed Motion of the United States to Approve the Appointment of William E. Berlin as Monitoring Trustee, Memorandum of Points and Authorities in Support of Unopposed Motion of the United States to Approve the Appointment of William E. Berlin as Monitoring Trustee, Declaration of Michelle R. Seltzer, and Proposed Order to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia. Additionally, a copy of the foregoing was delivered via e-mail to the duly authorized legal representatives of the defendants, as follows:

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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)

FILED: June 21, 2013

~~[PROPOSED]~~ ORDER

WHEREAS plaintiff United States filed an unopposed motion with this Court on June 21, 2013, to approve the appointment of William E. Berlin as Monitoring Trustee pursuant to Section VIII of the proposed Final Judgment herein, and in consideration of the motion and the supporting materials,

IT IS HEREBY ORDERED THAT:

1. The United States's appointment of William E. Berlin as Monitoring Trustee, pursuant to Section VIII of the proposed Final Judgment is approved.

2. The Monitoring Trustee shall have the power and authority to monitor defendants' compliance with the proposed Final Judgment and the Stipulation and Order, and as set forth in Section VIII of the proposed Final Judgment.

RWRoberts

Hon. Richard W. Roberts U.S.D.J.

Entered, June 24, 2013

Ed. note: Copies of the public comments submitted in this proceeding may be found at http://www.justice.gov/atr/cases/abimodelo.html

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)

PLAINTIFF UNITED STATES'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States's response to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court, pursuant to 15 U.S.C. § 16(b)-(h), to enter the proposed Final Judgment after the United States has posted all public comments and this response on the Antitrust Division website and published in the Federal Register this response and the website address at which the public comments may be viewed and downloaded, as set forth in the Court's order dated August 2, 2013.[1] (Doc. 42).

[1] Commenter Steven Uhr has submitted 18 exhibits in support of his Tunney Act comment. Two of those exhibits are videos for which he provided only written internet links. Another two are

I. Procedural History

On January 31, 2013, the United States filed a Complaint in this matter, alleging that Defendant Anheuser-Busch InBev SA/NV's ("ABI") proposed purchase of the remaining equity interest in Defendant Grupo Modelo, S.A.B. de C.V. ("Modelo") would lessen competition substantially for the sale of beer in the United States and specifically in 26 local markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

On April 19, 2013, the United States filed a Competitive Impact Statement ("CIS"), a proposed Final Judgment, and a Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. Under the terms of the Stipulation and Order, Constellation Brands, Inc. ("Constellation") was added as a Defendant for purposes of settlement. Pursuant to the requirements of the APPA, the United States published the proposed Final Judgment and CIS in the *Federal Register* on May 22, 2013, *see* 78 Fed. Reg. 30399-30660, and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for seven days beginning on April 28, 2013, and ending on May 4, 2013. The Defendants filed the statement required by 15 U.S.C. § 16(g) on May 3, 2013. The 60-day period for public comments ended on July 22, 2013. The United States received five comments, as described below and attached hereto.

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videos which he provided on a DVD and for which he also provided internet links. The Tunney Act requires the Department to "receive and consider any *written* comments relating to the proposal for the consent judgment," 15 U.S.C § 16(d) (emphasis added). However, the Department considered the entirety of Mr. Uhr's submission and will publish the written links he provided. It has informed Mr. Uhr that it does not intend to post the videos themselves on the Department's public website, and publication in the *Federal Register* would be impossible.

II. The Investigation and the Proposed Resolution

A. Investigation

As of June 28, 2012, ABI held a 35.3% direct interest in Modelo, and a 23.3% direct interest in Modelo's operating subsidiary Diblo S.A. de C.V. That ownership interest gave ABI certain minority voting rights and the right to appoint nine members of Modelo's 19-member Board of Directors. On June 28, 2012, ABI agreed to purchase the remaining equity interest from Modelo's owners, thereby obtaining full ownership and control of Modelo, for approximately $20.1 billion (the "ABI/Modelo transaction"). At the time, Defendants ABI and Modelo also proposed to sell Modelo's stake in Crown Imports, LLC ("Crown") to Constellation. Crown was the joint venture established by Modelo and Constellation to import, market, and sell certain Modelo beers into the United States. In an attempt to address harm to competition that the ABI/Modelo transaction likely would cause, ABI also proposed to enter into a ten-year supply agreement to provide Constellation with Modelo beer to import into the United States.

The Antitrust Division of the United States Department of Justice ("Department") investigated the likely effect of the ABI/Modelo transaction and the vertical "fix" proposed by the parties. As part of its investigation, the Department conducted dozens of interviews with the parties' distributor customers, beer brewer competitors, and other interested third parties. The Department obtained testimony from the Defendants' officers and employees and required the Defendants to respond to interrogatories and produce large quantities of documents. The Department carefully analyzed the information obtained and thoroughly considered all of the relevant issues.

As a result of the investigation, the Department filed a Complaint on January 31, 2013, alleging that ABI's acquisition of the remainder of Modelo likely would substantially lessen competition for the sale of beer in the United States market as a whole and specifically in 26 local markets in violation of Section 7 of Clayton Act, 15 U.S.C. § 18. This loss of competition would likely result in higher beer prices and less innovation. Defendants' proposed sale of Modelo's interest in Crown and ten-year supply agreement would not have alleviated the potential harm to competition that the proposed ABI/Modelo transaction created: it did not create an independent, fully-integrated brewer with permanent control of Modelo brand beer in the United States. On April 19, 2013, the Department filed a proposed Final Judgment that, if entered by the Court, would resolve the litigation by remedying the violation alleged in the Complaint.

B. The Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the United States and 26 local beer markets. As explained more fully in the CIS, the beer industry in the United States is highly concentrated and would become more so if ABI acquired all of the remaining Modelo assets, as the ABI/Modelo transaction originally proposed.

The Department determined through its investigation that large brewers engage in significant levels of tacit coordination, and that coordination has reduced competition and increased prices. In most regions of the United States, ABI and MillerCoors LLC, the second largest beer brewer in the United States, do not substantially constrain each other's annual price increases. The third largest brewer, Modelo, had increasingly constrained ABI's and MillerCoors's ability to raise prices. Therefore, ABI's acquisition of Modelo, as originally proposed, likely would have led to higher beer prices in the

United States by eliminating a competitor that resisted coordinated price increases initiated by the market share leader, ABI.

Further, competition from Modelo had spurred significant product innovation and price concessions from ABI. The merger of the two firms, as originally proposed, likely would have reduced ABI's incentive to innovate, bring new products to market, make price concessions, and otherwise invest in attracting consumers away from the unique Modelo brands.

The proposed Final Judgment will accomplish the complete divestiture of Modelo's U.S. business to Constellation.[2] This structural fix will maintain Modelo Brand Beers[3] as independent competitors to ABI's flagship brands in the United States. Specifically, the proposed Final Judgment required ABI and Modelo[4] to divest and/or license to Constellation certain tangible and intangible assets, including: a perpetual and exclusive license to ten Modelo Brand Beers, including Corona Extra, this country's bestselling imported beer and fifth-bestselling brand overall; Modelo's newest, most technologically advanced brewery (the "Piedras Negras Brewery"), which is located in Mexico near the Texas border, and the assets and companies associated with it; Modelo's limited liability membership interest in Crown; and other assets, rights, and interests necessary to ensure that Constellation is able to compete in the beer market in the United States using the Modelo Brand Beers, independent of a relationship with ABI.

[2] The proposed Final Judgment required ABI, if the divestiture to Constellation failed to close, to divest Modelo's U.S. business to another acquirer capable of replacing the competition that Modelo brought to the United States market. But the divestiture to Constellation closed on June 7, 2013. Accordingly, this response refers only to Constellation, not to another potential acquirer.
[3] Capitalized terms not defined in this response are defined in the proposed Final Judgment.
[4] On June 4, 2013, ABI completed its acquisition of Modelo. Accordingly, this response refers to ABI's and Modelo's obligations under the proposed Final Judgment as ABI's obligations.

To guarantee that Constellation will be able to supply Modelo Brand Beer to the United States market independent of ABI, Section V.A of the proposed Final Judgment requires Constellation to expand the Piedras Negras Brewery to be able to produce 20 million hectoliters of packaged beer annually by December 31, 2016. Such expansion will allow Constellation to produce, independently from ABI, enough Modelo Brand Beer to replicate Modelo's competitive role in the United States. This expansion assures Constellation's future independence as a self-supplied brewer and seller in the United States beer market.

Sections IV.G-I of the proposed Final Judgment also require ABI and Constellation to enter into transition services and interim supply agreements. The Transition Services Agreement (Section IV.G) requires ABI to provide consulting services with respect to topics such as the management of the Piedras Negras Brewery, logistics, material resource planning, and other general administrative services that Modelo had 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 (Section IV.H-I) 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. The transition services and interim supply agreements are necessary to allow Constellation to continue to compete in the United States during the time it takes to expand the Piedras Negras Brewery's capacity to brew and bottle beer, but are time-limited to assure that Constellation will become a fully independent competitor to ABI as soon as practicable.

The proposed Final Judgment imposes two requirements on ABI regarding its distribution network that are designed to limit ABI's ability to interfere with Constellation's effective distribution of Modelo Brand Beer. First, Section V.C of the proposed Final Judgment provides that, for ABI's majority-owned distributors ("ABI-Owned Distributors") that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-Owned Distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights. Second, Section V.B of the proposed Final Judgment prevents ABI for 36 months from downgrading a distributor's ranking in any ABI distributor incentive program by virtue of the distributor's decision to carry Modelo Brand Beer. The 36-month time period tracks the initial term of the transition service and interim supply agreements, and thus allows Constellation to maintain a status quo position for the Modelo Brand Beer in ABI's distribution incentive programs until Constellation can operate independently of ABI.

Finally, Section XIII of the proposed Final Judgment requires ABI to implement firewall procedures to prevent Constellation's confidential business information from being used within ABI for any purpose that could harm competition or provide an unfair competitive advantage to ABI based on its role as a temporary supplier to Constellation under either the transition services or interim supply agreements.

III. Standard of Judicial Review

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 also United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia 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 United States'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; *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3; *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).[5] 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.*

[5] *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 inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

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's "prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case").

As courts have noted, "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; *see also InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). 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. *Microsoft*, 56 F.3d at 1459–60. As the United States District Court for the District of Columbia 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 to the Tunney Act,[6] Congress made clear its intent to preserve the practical benefits of using 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). This language effectuates 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.[7]

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[6] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts 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).

[7] *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

IV. Summary of Public Comments and the United States's Response

During the 60-day public comment period, the United States received comments from the following individuals and entities:

- Steven Uhr, a Minnesota resident;
- Joseph M. Alioto, an attorney practicing in California who represents a group of private plaintiffs challenging the ABI/Modelo transaction;
- National Beer Wholesalers Association, a trade association representing more than 3,300 licensed, independent U.S. beer distributors;
- Food & Water Watch, a non-profit consumer advocacy organization; and
- Alcohol Justice, a self-described alcohol "industry watchdog."

This section summarizes the issues raised by the commenters and provides the United States's responses to those issues. Part A addresses issues raised by more than one commenter; Part B addresses issues raised by individual commenters.

A. Response to Issues Raised by Multiple Commenters

1. Comments Concerning the Effectiveness of Constellation as a Competitor

a. Summary of Comments

Two commenters argue that Constellation will not be an effective competitor. Commenter Food & Water Watch argues that it "has little confidence" that requiring ABI to grant a perpetual license to Modelo Brand Beer and divest the Piedras Negras Brewery and Modelo's interest in Crown to Constellation will maintain Modelo's role as a price competitor with ABI and MillerCoors LLC. Food & Water Watch Comment at 1.

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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 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.").

Specifically, Food & Water Watch argues that Constellation lacks experience in the brewery industry and will depend on ABI for essential inputs and 40 percent of its beer production until Constellation expands the Piedras Negras Brewery, and that Constellation likely will not be a dynamic price competitor because it is a "novice market entrant" that "depends on the benevolence" of ABI. *Id.* at 2. Similarly, commenter Joseph M. Alioto argues that Constellation will source its total supply of beer products from ABI, and that "it is naïve to believe that Crown will not be controlled by ABI" because "Constellation has neither the experience, the money nor the will to compete vigorously against ABI." Alioto Comment at 2.

b. Response: The Proposed Final Judgment and Constellation's Experience and Assets Will Enable Constellation to Compete Effectively

As described in section II.B of this response and in the CIS, the proposed Final Judgment contains multiple provisions that will enable Constellation to compete effectively with Modelo Brand Beer in the United States. Most significantly, the proposed Final Judgment required ABI to divest Modelo's entire U.S. business. Furthermore, the proposed Final Judgment has provided Constellation with Modelo's newest and most advanced brewery, the Piedras Negras Brewery. With the required expansion of this facility, Constellation will become a fully independent and self-supplied beer brewer.

The proposed Final Judgment also gives Constellation the incentive and ability to price Modelo Brand Beer independently of ABI. Prior to acquiring Modelo's U.S. business, Constellation, through its 50-percent interest in Crown, shared with Modelo the responsibility for importing, marketing, and selling Modelo-brand beers in the United

States. The divestiture of Modelo's U.S. business has given Constellation full and permanent control of Modelo Brand Beer in the United States and made Constellation an independent beer brewer. These changes give Constellation an incentive to resist following ABI's price leadership in order to expand Constellation's market share.

Before approving Constellation as the purchaser of Modelo's U.S. beer business, the Department conducted an extensive two-month investigation into the proposed transaction and Constellation's suitability as the buyer. As part of this investigation, the Department considered Constellation's financial resources and business plans to ensure that Constellation will maintain Modelo's U.S. beer business as a long-term independent competitive force in the U.S. beer market. The Department carefully reviewed the proposed transactional and transitional agreements between ABI and Constellation, which agreements have been incorporated into the proposed Final Judgment,[8] and interviewed representatives of the Defendants to ensure that Constellation would receive what it needed to be an effective competitor with Modelo Brand Beer in the United States.

Furthermore, the proposed Final Judgment ensures that Constellation will have a reliable source of beer supply that does not depend on ABI's "benevolence" and that is not subject to ABI's control. The proposed Final Judgment has already resulted in Constellation's owning the Piedras Negras Brewery, which produces 60 percent of Modelo Brand Beer's U.S. sales. Furthermore, while Constellation expands the Piedras Negras Brewery, the proposed Final Judgment requires ABI to meet Constellation's

[8] Section IV.G of the proposed Final Judgment requires the Department to approve any amendments or modifications to the agreements incorporated into the proposed Final Judgment. The proposed Final Judgment subjects these agreements, including any extensions, to monitoring by a Monitoring Trustee, whose appointment by the Department was approved by the Court on June 24, 2013. (Doc. 40).

remaining beer demands on pre-established terms that ABI may not change. These agreements are time-limited, however, to assure that Constellation will become a fully independent brewer as soon as practicable.[9]

The proposed Final Judgment also seeks to minimize the potential competitive risks of Constellation's interactions with ABI by including time limits on the expansion of the Piedras Negras Brewery (Section V) and by requiring ABI to implement firewall procedures to prevent Constellation's confidential business information from being used within ABI for any purpose that could harm competition or provide an unfair competitive advantage to ABI (Section XIII).

Finally, the proposed Final Judgment provides Constellation with the assets necessary to be a successful beer brewer. In addition to acquiring the Piedras Negras Brewery, Constellation has acquired Servicios Modelo de Coahuila, S.A. de C.V. ("Servicios Modelo"), a Modelo entity that employed Piedras Negras Brewery employees. Constellation's counsel has informed the Department that all individuals employed by Servicios Modelo on the closing date of the ABI/Constellation transaction remain Constellation employees as of the filing of this response. Together with the transition services provided by ABI and monitored by the Monitoring Trustee, these employees provide Constellation with the specific knowledge necessary to operate the Piedras Negras Brewery.

In addition, from 1993 to 2002, Constellation owned and operated a beer brewery in Stevens Point, Wisconsin.[10] While it owned the brewery, Constellation expanded

[9] ABI and Constellation have informed the Department that Constellation already has ceased purchasing certain transitional services from ABI under the Transitional Services Agreement.

[10] *See* Constellation Brands, Inc., Annual Report (Form 10-K) at 15 (Nov. 29, 1994) (Barton acquired the Stevens Point Brewery in September 1992); Constellation Brands, Inc., Annual

brewing and warehousing capacity, added new beer products to its portfolio, and acted as a contract brewer for third parties.[11] Thus, Constellation has experience owning and expanding a brewery in the U.S. beer market, and creating innovative beer products. Constellation additionally has significant experience in the production of alcoholic beverages through its past and present ownership of cider breweries, wineries, and spirits distilleries around the world.[12]

2. Arguments Concerning ABI's Market Power

a. Summary of Comments

Two commenters argue that the proposed Final Judgment does not adequately address ABI's market power in the beer industry. Commenter Food & Water Watch argues that the proposed settlement is inadequate to "address the increased and overwhelming market power" of ABI and "to prevent the growing consolidation and increased market power inside the supermarket." Similarly, Commenter Alcohol Justice argues that the proposed settlement increases ABI's market share and profits in the United States, thus increasing ABI's political and marketing influence in the United

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Report (Form 10-K) at 47 (May 21, 2002) (Constellation sold the Stevens Point Brewery in March 2002).

[11] *See* Constellation Brands, Inc., Annual Report (Form 10-K) at 16 (May 29, 1997) (at the Stevens Point Brewery, Constellation brews and packages beer on a contract basis for third parties); Eric Decker, *Point Beverage sale part of brand strategy*, BizTimes.com (Mar. 15, 2002), http://www.biztimes.com/article/20020315/MAGAZINE03/303159984/0/SEARCH (describing introduction of Point Classic Amber in 1994, Point Pale Ale in 1995, a Maple Wheat brew in 1996, and a light beer in 1997); Stevens Point Brewery, http://www.pointbeer.com/history/ (describing 40 percent expansion of Steven Point Brewery in 1994 and construction of a 15,000 square foot warehouse for finished goods in 1997).

[12] According to its 2013 Annual Report, Constellation operates 18 wineries in the United States, nine in Canada, four in New Zealand, and five in Italy. It also operates a whisky distillery in Canada. *See* Constellation Brands, Inc., Annual Report (Form 10-K) at 6 (Apr. 29, 2013). According to earlier S.E.C. filings, Constellation previously owned and operated the second-largest cider brewery in the United Kingdom. *See* Constellation Brands, Inc., Annual Report (Form 10-K) at 5 (Apr. 29, 2009). Constellation sold its U.K. cider business in January 2010. *See* Constellation Brands, Inc., Annual Report (Form 10-K) at 2 (Apr. 29, 2010).

States.

b. Response: The Proposed Final Judgment Prevents ABI From Obtaining Additional Market Power in the United States

The proposed Final Judgment requires ABI to divest Modelo's entire U.S. beer business, which ABI did on June 7, 2013. Accordingly, the proposed Final Judgment prevents ABI from obtaining any additional market power or market share in the United States, and prevents the U.S. beer market from becoming further consolidated, as a result of the ABI/Modelo transaction.

B. Responses to Comments Made by Individual Commenters

1. Comments from Joseph M. Alioto

a. Summary of Comments

Commenter Joseph M. Alioto argues that the Court should reject the proposed Final Judgment because it embodies a "sham," and that the effect of the ABI/Modelo transaction "will be the very same as what it would have been" absent the remedies contained therein. Specifically, Mr. Alioto argues that the proposed Final Judgment "is not sufficient to prevent Constellation from opening the floodgates and allowing ABI to collect profits that it would not otherwise receive because of the former competition on Crown." Alioto Comment at 2.

b. Response: The Proposed Final Judgment Is Not a Sham But Rather Requires ABI to Divest Modelo's Entire U.S. Beer Business

The proposed Final Judgment is not a sham because it creates an independent competitor to ABI. Constellation has paid approximately $4.75 billion to purchase Modelo's entire U.S. beer business, and it has announced plans to invest an additional

$500-$600 million during the next three years to expand the Piedras Negras Brewery.[13] Pursuant to the proposed Final Judgment, Constellation will become an independent and economically viable brewer that replaces Modelo as a competitor in the United States.

ABI's divestiture to Constellation of the Piedras Negras Brewery, Modelo's interest in Crown, and the perpetual brand licenses required by the proposed Final Judgment, have vested in Constellation the brewing capacity, assets, and other rights needed to produce, market, and sell Modelo Brand Beer in a manner similar to that of Modelo before ABI acquired Modelo.

2. Comments from Food & Water Watch

a. Comments Regarding Markets Outside of the United States

Commenter Food & Water Watch argues that the proposed settlement should be rejected because it does not prevent ABI from acquiring Modelo's business outside of the United States. Food & Water Watch argues that the proposed settlement effectively gives ABI greater control over the world's beer markets, especially the Latin American marketplace, and ensures that ABI "keeps the Modelo brands outside of the U.S. market."

b. Response: The Harms Alleged in the Complaint Do Not Justify Food & Water Watch's Desired Remedies Outside of the United States

Food & Water Watch's desire for remedies outside of the United States is not a valid basis for the Court to reject a proposed remedy during a Tunney Act review. As discussed above, in a Tunney Act proceeding, the task before the court "is to compare the complaint filed by the United States with the proposed consent decree and determine whether the proposed decree clearly and effectively addresses the anticompetitive harms

[13] *See* June 7, 2013, Constellation press release, available at http://www.cbrands.com/news-media/constellation-brands-completes-acquisition-grupo-modelos-us-beer-business.

initially identified." *United States v. Thomson Corp.*, 949 F. Supp. 907, 913 (D.D.C. 1996); *accord Microsoft*, 56 F.3d at 1459 (in APPA proceeding, "district court is not empowered to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself"); *BNS*, 858 F.2d at 462-63 ("the APPA does not authorize a district court to base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint.") This Court has held that "a district court is not permitted to 'reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made.'" *SBC Commc'ns*, 489 F. Supp. 2d at 14 (quoting *Microsoft*, 56 F.3d at 1459); *see also InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged").

In this case, the Department did not allege that ABI's acquisition of the remainder of Modelo would result in anticompetitive harm outside of the United States. Absent such allegation, there is no justification for a remedy relating to non-U.S. beer markets. Furthermore, if the ABI-Modelo transaction were to result in anticompetitive harm outside of the United States, it would be up to the competition authority in the relevant jurisdiction—not the Department—to remedy such harm.

c. Comments Regarding Distribution and Retail Issues

Commenter Food & Water Watch also argues that the proposed settlement should be rejected because (1) it "does nothing to constrain the collusive vertical control" that ABI exerts through its beer distribution networks, and (2) ABI prevents new market entrants from obtaining retail space and constrains consumer choice.

d. Response: Additional Remedies Concerning Distribution and Retail Issues Are Not Justified Based on the Harms Alleged in the Complaint

The Department alleged in the Complaint that the proposed ABI/Modelo transaction would likely substantially lessen competition in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and that it would have the following anticompetitive effects:

> (a) eliminate Modelo as a substantial, independent, and competitive force in the relevant markets;
>
> (b) raise beer prices to levels above those that would prevail absent the transaction;
>
> (c) lower quality and innovation to less than levels that would prevail absent the transaction;
>
> (d) promote and facilitate pricing coordination in the relevant markets; and
>
> (e) provide ABI with a greater incentive and ability to increase its pricing unilaterally.

See Complaint ¶86.

As described in Section II.B above, the proposed Final Judgment requires ABI to divest Modelo's entire U.S. business. ABI must divest and/or license to Constellation tangible and intangible assets, including: a perpetual and exclusive license to ten Modelo Brand Beers, the Piedras Negras Brewery and the assets and companies associated with it; Modelo's limited liability membership interest in Crown; and other assets, rights, and interests necessary to ensure that Constellation is able to compete in the beer market in the United States using the Modelo Brand Beers, independent of a relationship with ABI. The proposed Final Judgment thus eliminates the anticompetitive effects of the

ABI/Modelo transaction and positions Constellation to compete vigorously as a brewer of beer sold in the United States.

In addition, Sections V.B and V.C of the proposed Final Judgment limit ABI's ability to interfere with Constellation's distribution of Modelo Brand Beer to improve Constellation's ability to compete with ABI and other brewers. Section V.C provides that, for ABI-Owned Distributors that distribute Modelo Brand Beer, Constellation will have a window of opportunity to terminate that distribution relationship and direct the ABI-Owned Distributor to sell the distribution rights to another distributor. Similarly, should ABI subsequently acquire any distributors that have contractual rights to distribute Modelo Brand Beer, Constellation may require ABI to sell those rights. Section V.B of the proposed Final Judgment prevents ABI for 36 months from downgrading a distributor's ranking in any ABI distributor incentive program by virtue of the distributor's decision to carry Modelo Brand Beer. The 36-month time period allows Constellation to maintain a status quo position for the Modelo Brand Beer in ABI's distribution incentive programs until Constellation can operate independently of ABI.

Commenter Food & Water Watch's desire for additional remedies relating to beer distribution and retail sales is not a valid basis for rejecting the proposed Final Judgment because those additional remedies are not needed to remedy the antitrust violations alleged in the Complaint. Rather, the proposed Final Judgment is in the public interest because it is properly designed to eliminate the anticompetitive effects alleged in the Complaint. As discussed in Section III of this response, the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *Microsoft*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also SBC*

Commc'ns, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *InBev*, 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.").

In short, the additional remedies Food & Water Watch proposes concerning distribution and allocation of retail shelf space are not needed to remedy the violations alleged in the Complaint, and thus are not needed to preserve the public interest. The Department has determined that the remedies in the proposed Final Judgment are sufficient to allow Constellation to be an effective competitor and maintain competition in the U.S. beer market and the local markets alleged in the Complaint.

3. Comments from Steven Uhr

a. Summary of Comments

Commenter Steven Uhr argues that "there is an ongoing conspiracy to fix retail alcohol prices in scores of communities in North America and elsewhere," in which ABI and its beer distributors are "active conspirators." Uhr Comment at 1. Mr. Uhr argues that the proposed Final Judgment is contrary to the interest of U.S. beer consumers because allowing ABI to acquire Modelo's beer business outside of the United States enhances the conspiracy's efficiency by substantially increasing concentration in the world beer market. *Id*. at 3. Finally, Mr. Uhr states that the impartiality of the

Department is in question,[14] and urges the Court to "carefully scrutinize the [Department's] claims that the [U.S. beer] market presently is competitive, the proposed fix is in the public interest, and further litigation is a waste of resources." *Id*. In essence, Mr. Uhr asserts that the Department should have pleaded and remedied anticompetitive effects related to an alleged worldwide alcohol price-fixing conspiracy.

b. Response: The Harms Alleged in the Complaint Do Not Justify Mr. Uhr's Desired Remedies Outside of the United States

Mr. Uhr's assertion that the Department should have alleged a worldwide alcohol price-fixing conspiracy concerns matters that are outside the scope of this APPA proceeding because the harm that he claims—making the conspiracy more efficient—does not relate to the harms alleged in the Department's Complaint. Because the United States did not allege the existence of a worldwide alcohol price-fixing conspiracy, the Court need not and should not examine the effect of the proposed Final Judgment on such an alleged conspiracy. Moreover, the Department does not have evidence of a world-wide conspiracy to fix alcohol prices. If the Department had evidence that such a conspiracy existed and affected consumers in the United States, it would take appropriate action.

4. Comments from Alcohol Justice

a. Comment Concerning Lower Beer Prices

Commenter Alcohol Justice acknowledges that the proposed Final Judgment is "intended to protect consumers by maintaining competitiveness in the U.S. beer market and ensuring lower prices," but argues that low beer prices are "contrary to the public

[14] The Department disagrees with Mr. Uhr's assertion that the Department "contends that unambiguous per se price fixing agreements" "raise no antitrust issues." *See* Uhr Comment at 3.

interest" because beer is a drug that is widely used and commonly abused. Alcohol Justice Comment at 1. Alcohol Justice argues that a "deal to keep beer prices low may address anti-competitive concerns, but will likely make excessive consumption and related harm even worse." *Id.*

b. Response: The Effect of Lower Beer Prices on Beer Consumption Is Not A Valid Basis For Rejecting the Proposed Final Judgment

Alcohol Justice's argument against lower beer prices is not a valid basis for rejecting the proposed Final Judgment. The Tunney Act requires the Court to evaluate the effect of the proposed Final Judgment "upon competition" as alleged in the Complaint. Alcohol Justice's argument does not criticize the efficacy of the relief contained in the proposed Final Judgment to remedy the competitive harm alleged in the Complaint. Accordingly, Alcohol Justice's comment does not provide an appropriate rationale for rejecting the proposed Final Judgment.

c. Comment Concerning the Distribution Tier

Commenter Alcohol Justice also argues that "the divestiture of the Piedras Negras brewery and Crown Imports eliminates Modelo and concentrates the distribution of Modelo brands solely in the hands of" Constellation, that the proposed Final Judgment "requires" the elimination of the distribution tier, and that under the proposed Final Judgment, "Constellation will produce and distribute Modelo brands." Alcohol Justice Comment at 2.

d. Response: The Proposed Final Judgment Does Not Eliminate the Beer Distribution Tier in the United States

Contrary to Alcohol Justice's assertions, the proposed Final Judgment does not

eliminate the beer distribution tier in the United States, and Constellation will not distribute Modelo Brand Beer directly to retailers. Constellation will sell Modelo Brand Beer to distributors in the U.S. beer market just as Crown, Constellation's prior joint venture with Modelo, sold Modelo brands of beer to U.S. distributors pre-divestiture.

5. National Beer Wholesalers Association's Request for Clarification

a. Summary of Request

Commenter National Beer Wholesalers Association has requested clarification that the 60-day notification requirements of Section XII.A of the proposed Final Judgment apply when ABI acquires, directly or indirectly, a beer distributor (1) that is licensed to distribute a non-ABI beer brand from a brewer, importer, or brand owner—other than ABI—that derives more than $7.5 million in annual gross revenue from beer sales in the United States, and (2) whose license to distribute the non-ABI beer brand generates at least $3 million in actual gross revenue in the United States.

b. Response: The Notice Provision Contained in Section XII.A of the Proposed Final Judgment Applies to Certain Acquisitions by ABI of Beer Distributors

The Department confirms Commenter National Beer Wholesalers Association's reading of Section XII.A, which is clear when Section XII.A is read in conjunction with the defined terms Covered Interest and Covered Entity. Section XII.A of the proposed Final Judgment states:

> Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), ABI, without providing at least sixty (60) calendar days advance notification to the United States, shall not directly or indirectly acquire or license a Covered Interest in or from a Covered Entity; provided, however, that advance

> notification shall not be required for acquisitions of the type addressed in 16 C.F.R. §§ 802.1 and 802.9.

As defined in Section II.I of the proposed Final Judgment, a Covered Interest "means any non-ABI Beer brewing assets or any non-ABI Beer brand assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the United States that does not generate at least $7.5 million in annual gross revenue from Beer sold for resale in the United States; or (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $3 million in annual gross revenue in the United States." As defined in Section II.H of the proposed Final Judgment, a Covered Entity "means any Beer brewer, importer, or brand owner (other than ABI) that derives more than $7.5 million in annual gross revenue from Beer sold for further resale in the United States, or from license fees generated by such Beer sales."

Accordingly, if by acquiring a beer distributor, (1) ABI were to acquire a license to distribute a non-ABI beer brand from a brewer, importer, or brand owner that derives more than $7.5 million in annual gross revenue from beer sales (sold for further resale) in the United States, and (2) the license to distribute the non-ABI beer brand generates at least $3 million in actual gross revenue in the United States, ABI will have acquired a Covered Interest in a Covered Entity, thus triggering the notice provisions of Section XII.

The Department notes that Commenter National Beer Wholesalers Association has requested that the Department provide its requested clarification in this response to public comments and has not requested that the proposed Final Judgment be modified in

any respect. The Department agrees that modification of the proposed Final Judgment is unnecessary.

V. Conclusion

After reviewing the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after it has posted all public comments and this response on the Antitrust Division website and published in the *Federal Register* this response and the website address at which the public comments will be posted.

Dated: September 13, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle R. Seltzer, hereby certify that on September 13, 2013, I caused a copy of Plaintiff United States's Response to Public Comments to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia. Additionally, a copy of the foregoing was delivered via e-mail to the duly authorized legal representatives of the defendants, as follows:

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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)

PLAINTIFF UNITED STATES OF AMERICA'S MOTION AND MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment filed on April 19, 2013, and attached as Exhibit 1.[1] The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement ("CIS") and Plaintiff United States's Response to Public Comments ("Response to Public Comments")—filed by the United States on April 19, 2013, and September 13, 2013, respectively—explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and

[1] The proposed Final Judgment has four exhibits. Unredacted versions of two of those exhibits, A and D, were filed under seal (*see* Docket Nos. 29-3 and 29-6); redacted versions were filed in the public docket (*see* Docket Nos. 35-1 and 35-2). Exhibits A and D to the proposed Final Judgment attached to this Motion and Memorandum are the redacted versions.

Memorandum a Certificate of Compliance (attached as Exhibit 2) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the sixty-day statutory public comment period has expired.

I. Background

On January 31, 2013, the United States filed a Complaint in this matter, alleging that Defendant Anheuser-Busch InBev SA/NV's ("ABI") proposed purchase of the remaining equity interest in Defendant Grupo Modelo, S.A.B. de C.V. ("Modelo") would lessen competition substantially for the sale of beer in the United States and specifically in 26 local markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would likely have resulted in higher beer prices and less innovation.

On April 19, 2013, the United States filed the proposed Final Judgment—which is designed to eliminate the anticompetitive effects of the ABI/Modelo transaction—the CIS, and a Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. Under the terms of the Stipulation and Order, Constellation Brands, Inc. ("Constellation") was added as a Defendant for purposes of settlement. Defendant ABI was allowed to consummate its acquisition of Modelo, but it was required to divest Modelo's U.S. business to Constellation or, if the divestiture to Constellation failed to close, to another acquirer capable of replacing the competition that Modelo brought to the United States market. ABI completed its acquisition of Modelo on June 4, 2013, and its divestiture to Constellation of Modelo's U.S. business on June 7, 2013.

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 Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of written comments relating to the proposed Final Judgment, 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on April 19, 2013; published the proposed Final Judgment and CIS in the *Federal Register* on May 22, 2013, *see* 78 Fed. Reg. 30399-30660 (2013); and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for seven consecutive days beginning on April 28, 2013, and ending on May 4, 2013. The sixty-day period for public comments ended on July 22, 2013. The United States received five written comments relating to the proposed Final Judgment. On September 13, 2013, the United States filed with the Court its Response to Public Comments. Pursuant to 15 U.S.C. § 16(d) and with the Court's authorization (Docket No. 42), the United States posted on the Antitrust Division's website the five comments and its Response to Public Comments. On September 24, 2013, the United States published in the *Federal Register* its Response to Public Comments and the location on the Antitrust Division's website at which the five public comments are accessible, *see* 78 Fed. Reg. 58559 (2013).

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to

enter the proposed Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court may 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)(l)(A),(B).

In its CIS, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS and the Response to Public Comments, entry of the proposed Final Judgment is in the public interest.

IV. Conclusion

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comments, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the proposed Final Judgment

be entered at this time.

Dated: September 25, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle R. Seltzer, hereby certify that on September 25, 2013, I caused a copy of Plaintiff United States of America's Motion and Memorandum for Entry of the Proposed Final Judgment to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia. Additionally, a copy of the foregoing was delivered via e-mail to the duly authorized legal representatives of the defendants, as follows:

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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)

CERTIFICATE OF COMPLIANCE WITH PROVISIONS OF THE ANTITRUST PROCEDURES AND PENALTIES ACT

Plaintiff United States of America, by the undersigned attorney, certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), and states:

1. The proposed Final Judgment and Competitive Impact Statement were filed on April 19, 2013;
2. Pursuant to 15 U.S.C. § 16(b), the proposed Final Judgment and Competitive Impact Statement were published in the *Federal Register* on May 22, 2013, *see* 78 Fed. Reg. 30399-30660 (2013);
3. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Final Judgment and Competitive Impact Statement was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, for seven consecutive days beginning on April 28, 2013, and ending on May 4, 2013;

4. Pursuant to 15 U.S.C. § 16(g), Defendants filed with the Court on May 3, 2013, a description of communications by or on behalf of Defendant with any officer or employee of the United States concerning or relevant to the proposed Final Judgment;
5. The sixty-day comment period specified in 15 U.S.C. § 16(b) commenced on May 22, 2013, and ended on July 22, 2013;
6. The United States received five public comments on the proposed Final Judgment;
7. On September 13, 2013, the United States filed with the Court the five comments and its response. Pursuant to 15 U.S.C. § 16(d) and with the Court's authorization (Docket No. 42), the United States posted on the Antitrust Division's website at http://www.justice.gov/atr/cases/abimodelo.html the five comments and its response;
8. On September 24, 2013, the United States published in the *Federal Register* its response and the above location on the Antitrust Division's website at which the five public comments are accessible, *see* 78 Fed. Reg. 58559 (2013);
9. Pursuant to the Stipulation and Order filed on April 19, 2013, and 15 U.S.C. § 16(e), the Court may enter the proposed Final Judgment after it determines that the proposed Final Judgment serves the public interest;
10. The United States's Competitive Impact Statement and Response to Public Comments demonstrate that the proposed Final Judgment satisfies the public interest standard of 15 U.S.C. § 16(e); and

11. The parties have now satisfied all the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), as a condition for entering the proposed Final Judgment, and it is now appropriate for the Court to make the necessary public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

Dated: September 25, 2013

Respectfully submitted,

*/s/ Michelle R. Seltzer*_____

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UNITED STATES V. ANHEUSER-BUSCH INBEV SA/NV,
No. 1:13-cv-00127 (D.D.C. Oct. 24, 2013)

On October 24, 2013, Judge Richard W. Roberts entered the final judgment as originally proposed by the Department of Justice on April 19, 2013.