

**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.

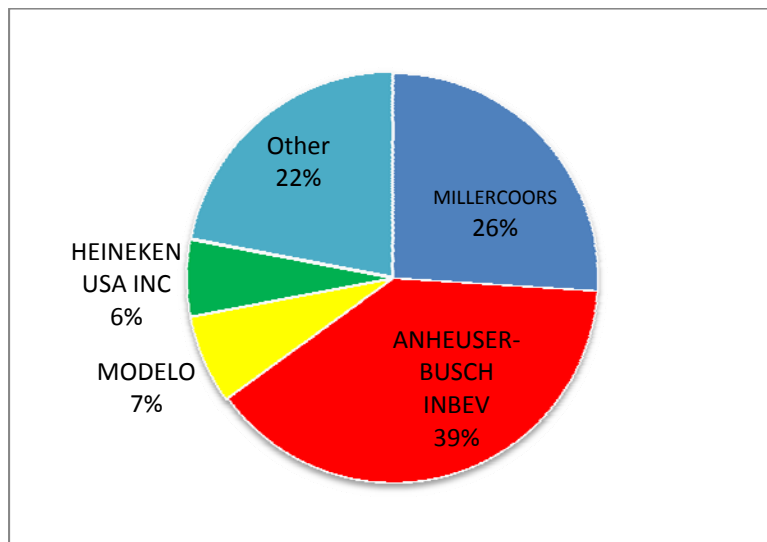
COMPLAINT

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.

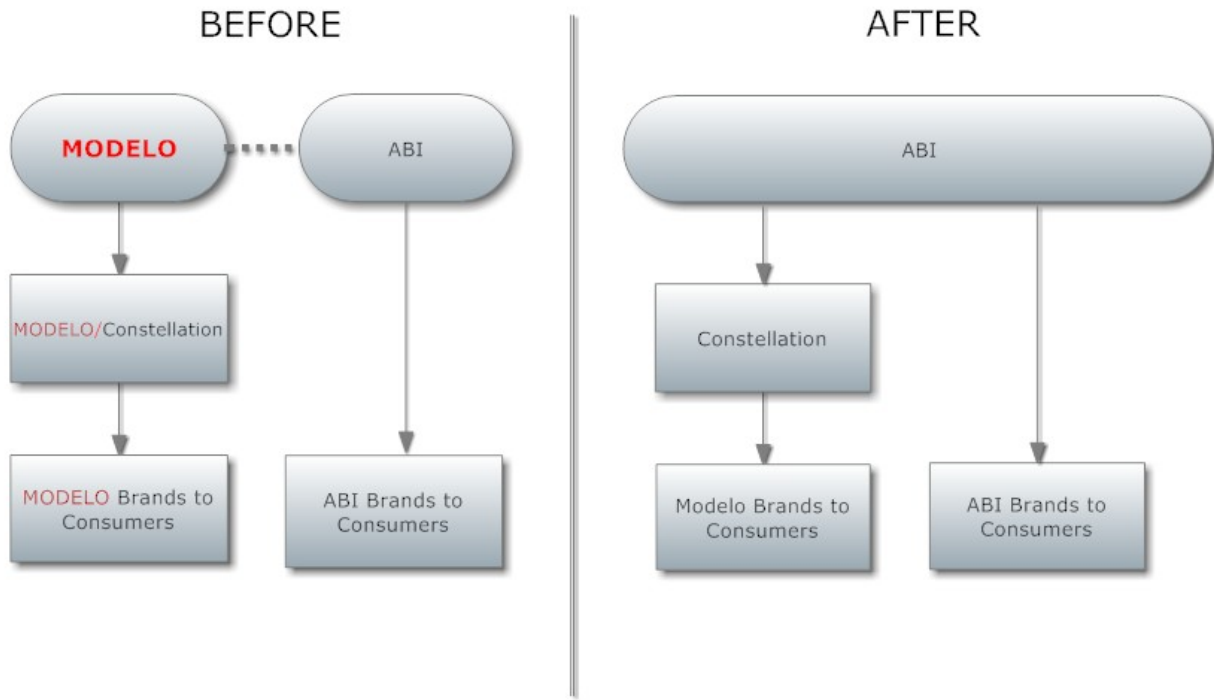
7. Accordingly, ABI's acquisition of the remainder of Modelo would likely substantially lessen competition and is therefore illegal under Section 7 of the Clayton Act, 15 U.S.C. § 18.

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

HHI³ 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;

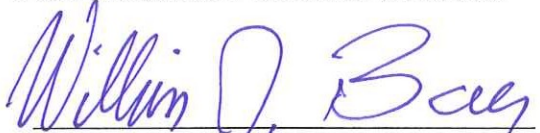
(c) The United States be awarded costs of this action; and

(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:



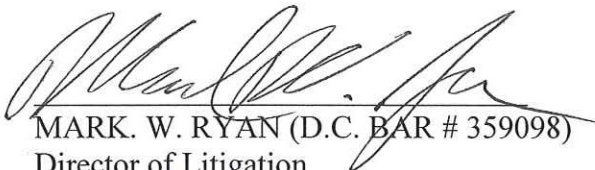
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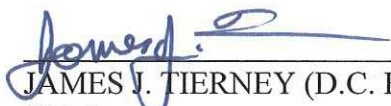
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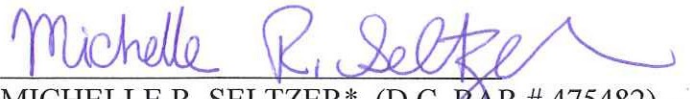


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APPENDIX A

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