



**Before the Senate Judiciary Committee  
Subcommittee on Antitrust, Competition Policy and Consumer Rights**

**“Ensuring Competition Remains on Tap: The AB InBev/SABMiller merger and the  
State of Competition in the Beer Industry”**

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**I. Introduction**

I would like to thank the Chair, Senator Lee, Ranking Member Senator Klobuchar, and the members of the Subcommittee for holding this hearing on the proposed merger of AB InBev and SABMiller, and the state of competition in the U.S. beer industry. I appreciate the opportunity to appear here today. The American Antitrust Institute (AAI) is a non-profit education, research, and advocacy organization. Our mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust laws.<sup>1</sup>

The AAI has produced numerous economic and legal analyses of competition in the beer industry over the last several years.<sup>2</sup> Competition and consumer advocates have long anticipated the near-complete roll-up of the U.S. beer industry that would be accomplished by the combination of AB InBev and SABMiller. Such a deal would put almost 75 percent of the U.S. beer market in the hands of one vertically integrated company. Even a cursory

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<sup>1</sup> The American Antitrust Institute (AAI) is an independent and nonprofit education, research, and advocacy organization devoted to advancing the role of competition in the economy, protecting consumers, and sustaining the vitality of the antitrust laws. See [www.antitrustinstitute.org](http://www.antitrustinstitute.org) for more information.

<sup>2</sup> In November 2014, we preemptively urged the U.S. Department of Justice to closely scrutinize any forthcoming merger proposal from AB InBev and SABMiller. *See* Letter from Am. Antitrust Inst. to William Baer, Assistant Att’y Gen. in re: Anheuser-Busch InBev’s Rumored Acquisition of SABMiller (Nov. 19, 2014).

analysis indicates that the combination would be presumptively illegal under Section 7 of the Clayton Act. If allowed to proceed, the merger would stifle important competition from smaller rivals such as craft brewers that compete with AB InBev and SABMiller brands, further raise beer prices for consumers, reduce choice and diversity, and jeopardize innovation in this important sector.

If the DOJ decides not move to enjoin the merger of AB InBev and SABMiller, it will be imperative to craft a powerfully effective remedy to address its anti-competitive and anti-consumer potential. Anything short of that would fail not only to fully restore competition in a market where AB InBev and SABMiller would operate jointly going forward, but also exacerbate pre-existing competitive problems in the U.S. beer market. It is therefore incumbent on antitrust enforcers to ensure, through a rigorous investigation, that AB InBev and SABMiller's quest for global beer domination does not come at the expense of competition or the American consumer.

## **II. Overview**

My comments today address a number of challenges posed by the proposed merger. They go primarily to the downstream segment of the industry, i.e., the distribution of beer at wholesale and ultimately to the retail consumer. However, the proposed merger could also raise potential questions about its potentially adverse effects on upstream input ingredient markets (e.g., hops). The U.S. Department of Justice's (DOJ's) merger inquiry will likely probe into whether the merger will create or enhance the ability and/or incentive of the new AB InBev-SABMiller to restrict rivals' access to inputs, or to exercise enhanced bargaining power as a more powerful buyer of agricultural inputs. To the extent that the merger poses those concerns—to the detriment of input suppliers, competing brewers, and U.S.

consumers—that should factor significantly into the broader picture of the merger’s potential effects.

Section III explains that the merger would take place in a U.S. beer market that is already highly concentrated and where previous mergers have likely increased prices. Section IV explains that AB InBev already controls important distribution that is vital for smaller competing brewers to ultimately get their products onto retail shelves. Section V describes why the merger is presumptively illegal under U.S. antitrust law and, if unremedied, would raise concerns over the potential exclusion of smaller rivals and harm to consumers. Section VI discusses why the likely absence of any U.S.-related merger efficiencies highlights the imperative of a powerfully effective remedy. Section VII poses a number of critical questions that the DOJ should ask when evaluating the proposed divestiture of SABMiller’s 58 percent share of the MillerCoors joint venture (JV). Section VIII concludes, noting some important features of a remedy that would be required to establish a completely independent market participant in Molson Coors.

### **III. The U.S. Beer Market is Already Highly Concentrated and Prices Have Increased in the Aftermath of Previous Mergers**

Economic evidence on the adverse effects of 20 years of intensive consolidation in key U.S. sectors is mounting. Meta-analysis of numerous merger retrospectives indicates that mergers over the last 20 years have, on average, raised prices to consumers.<sup>3</sup> Market concentration has ratcheted up as a result of successive mergers, producing markets with only a few large competitors and scaling up entry barriers to smaller, innovative entrants.

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<sup>3</sup> See John E. Kwoka, *Mergers, Merger Control, and Remedies: A Retrospective Analysis of U.S. Policy* (2014). See also John E. Kwoka, *Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes*, 78 Antitrust L.J. 619, 621 (2013) (“[A] very large fraction of carefully studied mergers shows that those mergers resulted in higher prices, even when a remedy was imposed.”). See also Orley Ashenfelter & Daniel Hosken, *The Effect of Mergers on Consumer Prices: Evidence from Five Mergers on the Enforcement Margin*, 53 J.L. & Econ. 417 (2010) (taking a retrospective look at the efficacy of merger enforcement and concluding that generally, mergers result in higher consumer prices).

Efficiencies claims in many past mergers are also suspect. Managers have encountered problems in implementing projected cost savings and realizing promised consumer benefits, and integration costs are often higher than expected.<sup>4</sup>

The AB InBev-SABMiller merger would take place against the backdrop of a highly concentrated market for beer in the U.S. There have been five major mergers over the last 10 years.<sup>5</sup> In 2005, Coors and Molson merged to form Molson Coors Brewing Company. In 2007, SABMiller and MolsonCoors formed the MillerCoors JV. In 2008, InBev acquired Anheuser-Busch to form AB InBev. In 2012, AB InBev acquired Grupo Modelo.<sup>6</sup> The last two transactions were approved by the DOJ, subject to conditions that addressed increases in concentration and/or control of brewing or distribution that could be used to discriminate against rival brands.

Today two firms, AB InBev and MillerCoors, control almost three-quarters of the U.S. beer market. Data show that prices for beer have increased in the U.S., above the rate of inflation and against the backdrop of declining output.<sup>7</sup> And recent economic analysis indicates that following the formation of the MillerCoors JV, price increases were related to post-merger tacit coordination between AB InBev and MillerCoors.<sup>8</sup>

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<sup>4</sup> See, e.g., Scott A. Christofferson, Robert S. McNish & Diane L. Sias, *Where Mergers Go Wrong*, McKinsey Q. 2–3 (2004), <http://www.ceoexpress.com/asp/mckinseyalls4.asp?id=m0286>. See also Diana L. Moss, Am. Antitrust Inst., *Delivering the Benefits? Efficiencies and Airline Mergers* (Nov. 21, 2013), available at <http://www.antitrustinstitute.org/content/aai-issues-white-paper-delivering-benefits-efficiencies-and-airline-mergers>.

<sup>5</sup> See Bernard Ascher, Am. Antitrust Inst., *Global Beer: The Road to Monopoly* 6–7 (2012).

<sup>6</sup> See Ascher, *supra* note 5, at 56; *Beeropoly: This is What the Family Tree of Beer Companies will Look Like if AB InBev Acquires SABMiller*, Quartz (last visited Dec. 5, 2015), <http://qz.com/503392/this-is-what-the-family-tree-of-beer-companies-will-look-like-if-ab-inbev-acquires-sabmiller/>.

<sup>7</sup> See Ascher, *supra* note 5, at ii, app. II-6 (2012).

<sup>8</sup> See Competitive Impact Statement at 7, *U.S. v. Anheuser-Busch InBev S.A./NV*, No. 13-127 (RWR) (Apr. 19, 2013). See also Nathan H. Miller & Matthew C. Weinberg, *Mergers Facilitate Tacit Collusion: Empirical Evidence from the U.S. Brewing Industry* (Mar. 25, 2015) (finding that while the MillerCoors joint venture resulted in merger-specific cost reductions, average retail prices increased post-consummation, likely because of tacit collusion).

#### **IV. AB InBev Controls Critical Distribution That Rivals Require to Ultimately Get Their Products Onto Retail Shelves**

The timing of the proposed merger highlights the declining demand for mass-market beer in the U.S., at the same time there has been rapid growth of innovative, diverse, high quality craft beers.<sup>9</sup> Outside the brewpub or the microbrewery, craft beer makers depend on independent distribution in order to get products onto retail shelves and into the hands of the consumer. The three-tiered system of beer distribution in the U.S. separates manufacturing, wholesale distribution, and retailing. However, there are material variations in how this system is implemented from state to state. This is particularly important for how brewers such as AB InBev can (or cannot) vertically integrate into distribution.

AB InBev has aggressively pursued control of critical wholesale distribution—the gateway to the retailer. AB InBev has acquired distribution in several states, including Colorado, California, Oregon, and New York. The company currently owns distribution in 13 U.S. cities.<sup>10</sup> AB InBev has recently “swapped” distributorships, for example, by getting out of distribution in Kentucky and expanding its distribution footprint in Colorado.<sup>11</sup>

According to published reports, AB InBev’s attempts to acquire distributorships in

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<sup>9</sup> See Ascher, *supra* note 5. Trefis Team, *Does the Declining U.S. Beer Trend Spell Doom for Brewers?*, Forbes (June 29, 2015, 8:34 AM), <http://www.forbes.com/sites/greatspeculations/2015/06/29/does-the-declining-u-s-beer-trend-spell-doom-for-brewers/>.

<sup>10</sup> See, e.g., Tripp Mickle, *Anheuser Says Regulators Have Questioned Pending Distributor Buyouts*, Wall St. J. (Oct. 12, 2015, 10:09 PM), <http://www.wsj.com/articles/anheuser-says-regulators-have-questioned-pending-distributor-buyouts-1444702179>. *Wholesaler Operations*, Anheuser-Busch Company (last visited Dec. 4, 2015), <http://anheuser-busch.com/index.php/our-company/operations/wholesale-operations/>.

<sup>11</sup> David A. Mann, *Budweiser to Sell Louisville and Owensboro Distributorships*, Louisville Business First (Aug. 4, 2015, 6:02 PM), <http://www.bizjournals.com/louisville/news/2015/08/04/budweiser-sells-louisville-and-owensboro.html>. See also Chris Furnari, *Anheuser-Busch Announces Major Wholesale Moves in Colorado* (Aug. 4, 2015, 8:58 PM), <http://www.brewbound.com/news/anheuser-busch-announces-major-wholesale-moves-in-colorado>.

California are apparently under investigation by both California and U.S. antitrust authorities.<sup>12</sup>

AB InBev contracts with about 500 independent distributors.<sup>13</sup> It has allegedly engaged in potentially anticompetitive contracting practices with distributors that carry competing brands. These practices, investigated by the DOJ, include exclusivity or near-exclusivity and incentives for giving preference to AB InBev brands.<sup>14</sup> This approach shows no signs of abating. Recently, AB InBev rolled out a new “incentive program” that would offer independent distributors financial incentives based on shares of AB InBev brands.<sup>15</sup> Discounts by firms with significant market power—conditioned upon exclusivity or near-exclusivity—are potentially unlawful under Sections 1 and 2 of the Sherman Act.

MillerCoors owns one distribution facility and contracts with 450 independent wholesalers.<sup>16</sup> As compared to AB InBev, MillerCoors has reportedly taken a less adversarial approach to accommodating rivals in their contractual arrangements with independent distributors.

## **V. The Merger is Presumptively Illegal and if Allowed to Proceed, Unremedied, Will Exacerbate AB InBev’s Pre-Existing Ability and Incentive to Exclude Smaller Rivals**

Putting aside the proposed divestiture of SABMiller’s 58 percent share of the MillerCoors JV, the merger would otherwise be presumptively illegal under U.S. antitrust

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<sup>12</sup> *AB InBev Says Talking to DOJ, California AG About Two Planned Distributor Deals*, Reuters (Oct. 12, 2015, 5:11 PM), <http://www.reuters.com/article/abinbev-distribution-talks-idUSL1N12C1GM20151012#1wJfJR785xB8csWl.97>.

<sup>13</sup> See Anheuser-Busch InBev, *Wholesaler Operations* (last visited Dec. 7, 2015), <http://anheuser-busch.com/index.php/our-company/operations/wholesale-operations/>.

<sup>14</sup> Ascher, *supra* note 5.

<sup>15</sup> See, e.g., Tripp Mickle, *Craft Brewers Take Issue With AB InBev Distribution Plan*, Wall St. J. (Dec. 4, 2015), <http://www.wsj.com/articles/craft-brewers-take-issue-with-ab-inbev-distribution-plan-1449227668>.

<sup>16</sup> Molson Coors Brewing Co., *2015 Annual Report on Form 10-K*, at 8 (2015).

law. AB InBev has about a 46 percent market share of the U.S. beer market.<sup>17</sup> The MillerCoors JV has about a 26 percent share. With smaller rivals Constellation, Heineken, and others, total market concentration is about 3,000 HHI. This is a highly concentrated market, according to the U.S. Department of Justice/Federal Trade Commission HORIZONTAL MERGER GUIDELINES.<sup>18</sup> Combining AB InBev and SABMiller would create a single firm with almost a 75 percent share of the U.S. market. Market concentration would increase by over 2,500 HHI points, raising post-merger concentration to over 5,600 HHI. Such a merger would, according to the GUIDELINES, be “presumed to be likely to enhance market power.”<sup>19</sup>

The major competitive concern raised by the AB InBev-SABMiller merger is a pre- to post-merger change in the company’s ability and incentive to use control over wholesale distribution to frustrate or eliminate competition from rivals. As a vertically integrated brewer-distributor with almost 50 percent of the market for beer in the U.S., AB InBev already has the incentive and ability to exclude rival brewers from access to efficient distribution and thus from meaningful access to retail shelf space. The question for antitrust enforcers will be how the merger *changes* this landscape. As discussed in the next section, this concern is not dispelled by the current, proposed divestiture of SABMiller’s share of the MillerCoors JV to Molson Coors. Depending on how a remedy is structured and implemented, there could remain avenues through which the merger potentially enhances the incentive and/or ability of the merged company to harm competition.

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<sup>17</sup> Beer Marketer’s Insights, *Key Industry Data, Major Supplier Shipments and Share: 2014 vs 2013* (last visited Dec. 4, 2015) (follow “Major Supplier Shipments and Share: 2014 vs 2013”), [http://www.beerinsights.com/index.php?option=com\\_content&view=article&id=11&Itemid=14](http://www.beerinsights.com/index.php?option=com_content&view=article&id=11&Itemid=14); see also Tripp Mickle, *MillerCoors Caught in a Downdraft*, Wall St. J. (Mar. 30, 2015, 7:04 PM), <http://www.wsj.com/articles/millercoors-caught-in-a-downdraft-1427756639>.

<sup>18</sup> U.S. Dep’t of Justice & Fed. Trade Comm’n, *Horizontal Merger Guidelines* § 5.3 (2010), available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf> [hereinafter *Horizontal Merger Guidelines*].

## **VI. The Absence of Merger-Related Efficiencies Highlights the Imperative of a Powerfully Effective Remedy**

The merging parties note that the proposed merger is part of a broader strategy to form a “truly global brewer.”<sup>20</sup> By combining the “complementary” geographical footprints, brand portfolios, and distribution networks of AB InBev and SABMiller, the merger would allow the company to access growing markets for beer in Asia, South America, and Africa.<sup>21</sup> Company documents indicate that projected efficiencies will come primarily from the SABMiller side of integrated supply chain operations, “with approximately 70% of the additional savings . . . coming from procurement and 30% from manufacturing and distribution.”<sup>22</sup>

These broad statements provide no detail on whether the deal would produce any merger-specific and cognizable efficiencies in post-merger U.S. operations. With the proposed divestiture of SABMiller’s share of the MillerCoors JV, any cost-savings or consumer benefits in the U.S. would be unlikely. Without any integration of brewing capacity or distribution, there are no economies of scale, scope, or coordination to be had. While this seems obvious, it is important to highlight because without any merger-related cost savings

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<sup>19</sup> *Id.* at § 2.1.

<sup>20</sup> See Press Release SABMiller, Recommended Acquisition of SABMiller PLC by Anheuser-Busch InBev SA/NV, 93–105 & app. A (Nov. 11 2015), <http://sabmiller.com/docs/default-source/investor-documents/ab-inbev-offer/11-november-2015---recommended-acquisition-of-sabmiller-plc-by-anheuser-busch-inbev-sa-nv.pdf?sfvrsn=10>.

<sup>21</sup> See, e.g., Press Release, Anheuser-Busch InBev, Recommended Acquisition of SABMiller Plc by Anheuser-Busch Inbev Sa/Nv 25–26 (Nov. 11, 2015), <http://sabmiller.com/docs/default-source/investor-documents/ab-inbev-offer/11-november-2015---recommended-acquisition-of-sabmiller-plc-by-anheuser-busch-inbev-sa-nv.pdf?sfvrsn=10>. (“Given the largely complementary geographical footprints and brand portfolios of AB InBev and SABMiller, the combined group would have operations in virtually every major beer market, including key emerging regions with strong growth prospects such as Africa, Asia, and Central and South America.”).

<sup>22</sup> See, e.g., Press Release, Anheuser-Busch InBev, Recommended Acquisition of Sabmiller Plc by Anheuser-Busch Inbev Sa/Nv 102 (Nov. 11, 2015), <http://sabmiller.com/docs/default-source/investor-documents/ab-inbev-offer/11-november-2015---recommended-acquisition-of-sabmiller-plc-by-anheuser-busch-inbev-sa-nv.pdf?sfvrsn=10>.



or consumer benefits, the potential adverse effects of the merger are magnified.<sup>23</sup> As such, and without a remedy that fully restores competition, the merger poses commensurately higher risks to competition and consumers.

## **VII. The DOJ Should Ask Several Major Questions When Evaluating the Proposed Divestiture of SABMiller's Share of the MillerCoors JV**

In a preemptive move to make the proposal more palatable for U.S. antitrust enforcers, the merging parties have proposed a “fix-it-first” remedy to divest SABMiller’s 58 percent share of the MillerCoors JV.<sup>24</sup> The JV would thus revert fully to Molson Coors post-merger, creating the optics of an unchanged market landscape. This story sounds good in theory, but the devil will be in the details. While the parties may well reveal more specifics to the DOJ, the AAI’s analysis based on publicly available information indicates that the divestiture proposal is murky. It leaves unanswered many questions that bear directly on whether the remedy would fully restore competition lost by the merger.<sup>25</sup>

Evidence on ineffective or failed remedies in past merger cases is accumulating. Two recent examples illustrate the difficulty of fashioning effective remedies that fully restore competition lost by a merger—particularly in markets where there is relatively little pre-existing competition. For example, after retail grocers Safeway and Albertson merged, the regional grocery chain (Haggen) that purchased divested stores struggled to stay afloat, began

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<sup>23</sup> See *Horizontal Merger Guidelines*, *supra* note 18, at §10 (stating that “The greater the potential adverse competitive effect of a merger, the greater must be the cognizable efficiencies, and the more they must be passed through to customers, for the Agencies to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly substantial, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

<sup>24</sup> Press Release, Anheuser-Busch InBev, Anheuser-Busch InBev Announces Agreement with Molson Coors for Complete Divestiture of SABMiller’s Interest in MillerCoors (Nov. 11, 2015).

<sup>25</sup> See Andre Barlow, *1 Drink Too Many: Why Consumers Will Lose with Beer Merger*, Law360 (Nov. 12, 2015, 5:21 PM), <http://www.law360.com/articles/726137/1-drink-too-many-why-consumers-will-lose-with-beer-merger> (explaining that, in addition to creating a highly concentrated market, the merger also threatens competition in wholesale beer distribution and input markets).

shuttering operations at recently acquired stores, and filed for bankruptcy.<sup>26</sup> Similarly, the divestiture of Advantage Rent a Car—a condition of the Hertz-Dollar/Thrifty rental car merger—was not a success. Advantage filed for bankruptcy protection.<sup>27</sup> In both of these cases, the purchasers of divested assets struggled to compete in post-merger markets.

In light of this experience, there are a number of major questions that antitrust enforcers should ask in evaluating whether the proposed divestiture of SABMiller's share of the MillerCoors JV to Molson Coors will fully restore competition. One concern centers on the potentially enhanced ability of the merged company to engage in exclusionary conduct with regard to rivals. As noted earlier, MillerCoors distributes their brands largely through independent wholesalers. It is not clear how MillerCoors' contracts with independent distributors will be affected as part of the transfer of assets to Molson Coors. Indeed, it would be dangerous to assume that existing contracts would transfer seamlessly to Molson Coors. When the MillerCoors JV was formed in 2008, for example, there were disputes over the disposition of independent distribution contracts.

“What happens” to the MillerCoors distribution contracts is a critically important question for crafting a remedy in AB InBev-SABMiller. As noted earlier, as compared to AB InBev, MillerCoors has reportedly taken a less adversarial approach to independent distributors that carry rival brands. With the elimination of SABMiller, that dynamic will disappear. Moreover, it is unclear how Molson Coors would approach any renegotiation of contracts with independent distributors. These factors collectively put independent

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<sup>26</sup> See Brent Kendall, *Haggen Struggles After Trying to Digest Albertsons Stores*, Wall St. J. (Oct. 9, 2015, 1:06 PM), <http://www.wsj.com/articles/haggen-struggles-after-trying-to-digest-albertsons-stores-1444410394> (reporting that soon after Haggen acquired 164 stores because of the merger, it filed for bankruptcy and closed 26 stores).

<sup>27</sup> See Press Release, FSNA, Franchise Services of North America Inc. Announces Bankruptcy Filing by Simply Wheelz LLC (Nov. 4, 2013), <http://www.fsna-inc.com/newspdfs/115201391920.PDF>.

distributors at risk. They could be subject to new policies regarding distribution of rival brands that mimic AB InBev's more restrictive approach.

A second question goes to the effect of withdrawing MillerCoors capacity from the market before the merger is consummated. For example, on September 14, 2015 (two days before the announcement of merger talks), MillerCoors announced the closing of the Eden, North Carolina brewery.<sup>28</sup> Citing the objective of “optimizing” their brewery footprint, “streamlining” operations to enhance efficiency across the remaining several MillerCoors breweries, and distribution overlaps with a nearby plant,<sup>29</sup> the brewery is slated to be shuttered by September 2016. It has a capacity of nine million barrels per year, just over 10% of total MillerCoors brewing capacity.<sup>30</sup> MillerCoors describes the facility as “state of the art,” and it has won numerous awards.<sup>31</sup>

The planned closure of the Eden, NC brewing facility raises fundamental questions about strategic intent. An announcement that capacity will be withdrawn from the market in close proximity to the AB InBev-SABMiller merger negotiations could be viewed as a merger-related, anticompetitive reduction in capacity. This kind of “gun-jumping” before the DOJ weighs in on the proposed transaction should be carefully scrutinized. Moreover, shedding capacity before the SABMiller share of the JV is sold means that Molson Coors will be acquiring less capacity. Holding other market participants' capacity constant, closure of the facility will reduce Molson Coors' market share of total brewing capacity in the U.S. and increase other participants' shares, including AB InBev. This increase in share could

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<sup>28</sup> Jay Brooks, *MillerCoors to Close North Carolina Brewery*, Brookston Beer Bull. (Sept. 14, 2015), <http://brookstonbeerbulletin.com/millercoors-to-close-north-carolina-brewery/>.

<sup>29</sup> *Id.*

<sup>30</sup> See MillerCoors, *Locations* (last visited Dec. 7, 2015), <http://www.millercoors.com/Who-We-Are/Locations.aspx>.

<sup>31</sup> See *id.* See also TheAMEConnect, *MillerCoors Eden Brewery 2013 AME Manufacturing Excellence Award Recipient*, YouTube (Apr. 17, 2014), <https://www.youtube.com/watch?v=Zl2ZDRY4AsI>.

enhance the merged company's incentive to foreclose smaller rivals from access to effective distribution and retail shelf space.

A final question focuses on how a merged AB InBev-SABMiller would be operating in the U.S. as an even more powerful importer of brands. It is unclear whether AB InBev-SABMiller would import brands from SABMiller's international portfolio that are not already sold in the U.S. Such a development could be problematic if any new, post-merger imports include brands that compete against rival craft beers in the U.S. This could also increase the incentives for the merged company to foreclose smaller rivals.

### **VIII. A Remedy Should Address Merger-Specific Concerns at the Same Time it Promotes Competition Moving Forward**

AB InBev and SABMiller bear a heavy burden in demonstrating that their merger would not be harmful to competition and consumers. Concerns over the exclusion of smaller rival brewers, the absence of merger-specific efficiencies, and an ill-defined remedy proposal all raise red flags for antitrust review. If the DOJ does not move to enjoin the merger, it will be in a position of devising a remedy that fully restores competition lost by the merger. In doing just this in AB InBev-Grupo Modelo, the agency gave high priority to creating an "independent" market player. In light of the already troubled competitive landscape in U.S. beer, and the importance of preserving the choice, diversity, quality, and innovation offered to consumer by smaller rivals, a strong remedy should address merger-specific concerns, at the same time it promotes competition moving forward. Such a remedy would include both structural components (i.e., divestiture), as well as conduct components (i.e., enforceable requirements governing post-merger operations).

For example, a remedy would need to establish a Molson Coors enterprise that would be a completely independent competitor. This is a particularly tall order given evidence of anticompetitive coordination after the MillerCoors JV was formed in 2008.

Corporate culture, strategic competitive approach, and the fact that Molson Coors is a smaller North American brewer, as compared to a global giant like SABMiller, could affect the extent to which Molson Coors is able to operate completely independently in a U.S. market where AB InBev and SABMiller operate jointly.

To create an independent market player, a remedy would, among other things: (1) prohibit any dependence by Molson Coors on AB InBev for contract brewing of former MillerCoors brands or other services; (2) address situations where AB InBev-SABMiller and Molson Coors brands are both carried by independent distributors; and (3) promote the role of independent distributors in ensuring that distributors (and hence consumers) have access to rival brands by prohibiting AB-InBev conduct that creates incentives for distributors to discriminate against smaller rivals.

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Thank you for this opportunity to testify.

Respectfully,

A handwritten signature in black ink, appearing to read 'Dm' with a stylized flourish.

Diana Moss

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