

DOYLE BARLOW & MAZARD FILES AMICUS BRIEF ON BEHALF OF CONSUMERS GROUPS URGING THE COURT TO NOT RUBBER STAMP APPROVAL OF THE PROPOSED FINAL JUDGMENT IN ANHEUSER BUSCH INBEV SA/NV AND SABMILLER

WASHINGTON, D.C. - June 13, 2017 - Doyle Barlow & Mazard PLLC attorney, Andre Barlow, filed an amicus brief on behalf of Consumer Watchdog and Consumer Action in the United States District Court in a case involving the U.S. Department of Justice's ("DOJ") settlement of antitrust concerns raised by Anheuser Busch InBev's ("ABI") acquisition of SABMiller.

Last summer, the DOJ conditionally approved the merger of ABI and SABMiller, which combined the largest and second largest global beer producers. The combination raised serious antitrust concerns in the United States and instead of blocking the merger, the DOJ settled the case.

The DOJ's proposed final judgment ("PFJ") provides for a comprehensive remedy that includes structural and behavioral conditions (restrictions and prohibitions on ABI's future conduct) to resolve wide-ranging competition concerns and protect consumers. The PFJ, however, does not become a final judgment until it is approved by the United States district court of the District of Columbia.

The Tunney Act requires that consent agreements undergo a judicial review process to safeguard the public interest. This process is underway and the public was given a chance to comment on the effectiveness of the PFJ. In October of 2016, consumer groups and industry participants weighed in to raise concerns regarding ambiguities in the PFJ that could be exploited by ABI whereby ABI could break the spirit of the agreement without violating its terms. The DOJ issued summary responses to all filed comments but did not modify the PFJ.

As far as the settlement goes, the DOJ required the divestiture of SABMiller's 58% ownership interest in the MillerCoors Joint Venture to Molson Coors in the United States, which addressed the direct competitive overlap at the supplier level. Nevertheless, there were still concerns that the merger would increase ABI's and MillerCoors' incentive and ability to harm their craft beer rivals and increase their control over independent distribution. Indeed, ABI engaged in a wide variety of anticompetitive conduct for years leading to increased prices and stifling rival brewers' opportunities to distribute their beer. Accordingly, additional behavioral remedies were important to prohibit ABI from continuing its anticompetitive strategies designed to cut off other brewers' access to distribution by acquiring craft and import beers and distributors, implementing exclusive distributor "incentive programs," and imposing restrictions on independent distributors.

To address these concerns, the DOJ's PFJ involves behavioral conditions that provide for the long-term oversight of ABI and strengthen the DOJ's power to prevent ABI from engaging in future anticompetitive conduct. For example, the PFJ prohibits ABI in broad terms from using

its relationship with distributors to disadvantage rival brewers. The PFJ caps the percentage of distribution ABI is allowed to own at 10% on a nationwide basis. It further requires ABI to notify the DOJ of any future acquisitions that might not be large enough to be reportable under the Hart-Scott-Rodino Antitrust Improvements Act, which provides the DOJ the opportunity to review transactions that would otherwise go unnoticed. To ensure ABI's compliance with the consent agreement, a Monitoring Trustee was appointed even though the PFJ has not been approved.

The amicus brief in this case was filed to reply to the DOJ's response to Consumer Watchdog's public comments. The terms of the Final Judgment are important because once approved, they will undoubtedly decide the future course of the beer market in the United States. A confusing and ambiguous Final Judgment could make the Monitoring Trustee's job and future enforcement of the Final Judgment's terms uncertain. ABI pushed the envelope in the past with a multipronged approach to cut off rival brewers' access to distribution. Since the completion of its merger, ABI has continued with its growth strategy through acquisitions.

Consumer Watchdog and Consumer Action contend that consumers will be harmed if the PFJ is entered as drafted. The amicus brief argues the PFJ could be clearer if ABI was simply prohibited from acquiring distributors and craft brewers and included broader protections against any ABI attempts to curb the promotion and distribution of rival beer. The brief argues further that the district court should require an open and public hearing so it can conduct additional fact-finding necessary to carefully consider the PFJ in light of the number of concerns raised by numerous comments that the DOJ summarily dismissed.

The amicus brief was filed on behalf of Consumer Watchdog, a non-profit nonpartisan consumer advocacy organization, dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government and politics; and Consumer Action, a national non-profit organization that has worked to protect consumer rights.

For more information contact Andre Barlow at (202) 589-1838.