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DEPARTMENT OF JUSTICE

Antitrust Division

***United States v. Anheuser-Busch InBev SA/NV, et al.*; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Missouri, in *United States v. Anheuser-Busch InBev SA/NV, et al.*, Civil Action No. 4:20-cv-01282-SRC. On September 18, 2020, the United States filed a Complaint alleging that the proposed acquisition by Anheuser-Busch Companies, LLC ("AB Companies"), a minority shareholder in Craft Brew Alliance, Inc. ("CBA"), of the remaining shares of CBA would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. AB Companies is a wholly-owned subsidiary of Anheuser-Busch InBev SA/NV ("ABI"). The proposed Final Judgment, filed at the same time as the Complaint, requires ABI, AB Companies, and CBA to divest Kona Brewery, LLC, which houses CBA's entire Kona brand business in the State of Hawaii, among other related tangible and intangible assets, and to license to the acquirer the Kona brand in Hawaii. The United States has approved PV Brewing Partners, LLC, as the acquirer.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the Eastern District of Missouri. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by

Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the *Federal Register*. Comments should be directed to Robert A. Lepore, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, 450 5th Street NW, Suite 8000, Washington, DC 20530 (telephone: 202-307-6349).

Suzanne Morris,

Chief, Premerger and Division Statistics,

Antitrust Division.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. ANHEUSER-BUSCH INBEV SA/NV, ANHEUSER-BUSCH COMPANIES, LLC, and CRAFT BREW ALLIANCE, INC., *Defendants*.	Civil Action No.: 4:20-cv-01282-SRC Judge Stephen R. Clark

COMPLAINT

1. The United States of America brings this civil antitrust action to enjoin Anheuser-Busch InBev SA/NV ("ABI") and Anheuser-Busch Companies, LLC ("AB Companies"), from acquiring Craft Brew Alliance, Inc. ("CBA"). The United States alleges as follows:

I. NATURE OF THE ACTION

2. On November 11, 2019, ABI, which has been a minority shareholder in CBA, agreed to acquire all of CBA's remaining shares in a transaction valued at approximately $220 million.

3. ABI is a global brewing company with the largest beer sales worldwide and in the United States, including in the state of Hawaii. CBA is a national brewing company with the fifth-largest beer sales in Hawaii. As measured by 2019 revenue,

ABI accounts for approximately 28% of all beer sales in Hawaii, and CBA accounts for approximately 13% of all beer sales in Hawaii.[1]

4. ABI proposes to acquire CBA through ABI's wholly-owned subsidiary AB Companies, a Delaware limited liability company. ABI is already a minority shareholder in CBA, owning approximately 31% of CBA's shares. ABI's proposed acquisition of CBA would give ABI 100% ownership of CBA, resulting in ABI's total control over all aspects of CBA's competitive decision-making, including pricing, marketing, and promotions.

5. As a result, the transaction would eliminate important head-to-head competition between ABI and CBA in Hawaii, and would facilitate price coordination following the transaction. This reduction in competition would likely result in increased prices and reduced innovation for beer consumers in Hawaii.

6. For these reasons, ABI's proposed acquisition of CBA violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be permanently enjoined.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants ABI, AB Companies, and CBA from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

[1] Market share calculations are based on distributor sales in Hawaii.

8. Venue is proper for ABI, a Belgian corporation, under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c). Venue is proper for AB Companies, a Delaware limited liability company headquartered in St. Louis, Missouri, in this judicial district under 28 U.S.C. §§ 1391(b) and (c). Venue is proper for CBA, a Washington corporation, in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c).

9. ABI, AB Companies, and CBA produce and sell beer in the flow of interstate commerce and their production and sale of beer substantially affect interstate commerce. ABI, AB Companies, and CBA have each consented to personal jurisdiction and venue in this judicial district for purposes of this action.

III. THE DEFENDANTS AND THE UNITED STATES BEER INDUSTRY

A. The Defendants

10. ABI is a corporation organized and existing under the laws of Belgium, with its headquarters in Leuven, Belgium. ABI owns numerous major beer brands sold in the United States, including in Hawaii. These brands include Bud Light, Budweiser, Busch Light, Natural Light, Michelob Ultra, Stella Artois, and Golden Road.

11. AB Companies is a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri. On November 11, 2019, it agreed to acquire all of CBA's outstanding shares in a transaction valued at approximately $220 million.

12. CBA is a corporation organized and existing under the laws of Washington, with its headquarters in Portland, Oregon. CBA owns several beer

brands sold in the United States, including Widmer Brothers, Omission, Redhook, and Kona, a brand that originated in Hawaii and is especially popular in that state.

13. ABI currently holds approximately 31% of CBA's outstanding shares, delivers CBA brands of beer to wholesalers throughout the United States, and has a contract with CBA to brew some CBA brands of beer at ABI breweries. ABI also has the right to appoint two of the eight seats on CBA's Board of Directors.

B. Beer Segments and Pricing

14. Beer brands sold in Hawaii, like those sold in the United States in general, are often segmented based on price and quality. ABI groups beer into five segments: value, core, core-plus, premium, and super-premium (listed in order of increasing price and quality).

15. ABI owns beer brands in each beer segment in Hawaii: value (where its brands include Busch Light and Natural Light), core (where its brands include Bud Light and Budweiser), core-plus (where its brands include Michelob Ultra and Bud Light Lime), premium (where its brands include Michelob Ultra Pure Gold), and super-premium (where its brands include Stella Artois and Golden Road).

16. CBA's Kona brand is generally considered a premium beer. Consumers may "trade up" or "trade down" between segments in response to changes in price. For example, as the prices of core-plus brands approach the prices of premium brands, consumers are increasingly willing to "trade up" from core-plus brands to premium brands. Therefore, the competition provided by CBA's Kona in the premium segment serves as an important constraint on the ability of ABI to raise its

beer prices not only in the premium segment, but also in core-plus and other beer segments.

IV. THE RELEVANT MARKET

A. Relevant Product Market

17. The relevant product market for analyzing the effects of the proposed acquisition is beer. Beer is usually made from a malted cereal grain, flavored with hops, and brewed via a fermentation process. Beer's taste, alcohol content, image (e.g., marketing and consumer perception), price, and other factors make it substantially different from other alcoholic beverages.

18. Other alcoholic beverages, such as wine and distilled spirits, are not reasonable substitutes that would discipline a small but significant and non-transitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases or turn to alternatives 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.

B. Relevant Geographic Market

19. The relevant geographic market for analyzing the effects of the proposed acquisition is no larger than the state of Hawaii. The relevant geographic market is best defined by the locations of the customers who purchase beer, rather than by the locations of breweries that produce beer. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and the local strength of different beer brands. Consumers buy beer near their homes and typically do not travel great distances to buy beer even when prices

rise. Consumers in Hawaii are particularly unlikely to travel outside the state to buy beer, as they are located approximately 2,000 miles from the mainland United States.

20. For these reasons, a hypothetical monopolist of beer sold in Hawaii likely would increase its prices in that market by at least a small but significant and non-transitory amount. Therefore, Hawaii is a relevant geographic market and "section of the country" within the meaning of Section 7 of the Clayton Act.

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

A. The Transaction Would Increase Market Concentration Significantly

21. The proposed acquisition would increase market concentration significantly for beer in Hawaii. ABI and CBA would have a combined share of approximately 41% in the relevant market following the transaction. 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 the transaction would result in harm to consumers by meaningfully reducing competition.

22. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (or "HHI," defined and explained in Appendix A). Markets in which the HHI is between 1,500 and 2,500 are considered moderately concentrated. Mergers that increase the HHI by more than 100 points and result in a moderately concentrated market potentially raise significant competitive concerns. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 5.3 (revised

Aug. 19, 2010) ("Merger Guidelines"), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

23. The transaction would result in a moderately concentrated market with a post-acquisition HHI of nearly 2,500 points, just below the threshold denoting a highly concentrated market. Moreover, the HHI would increase as a result of the transaction by more than 700 points. Therefore, ABI's proposed acquisition of CBA potentially raises significant competitive concerns. *See* Merger Guidelines § 5.3.

24. These concentration measures likely understate the extent to which the transaction would result in anticompetitive effects such as higher prices and less innovation in the relevant market. As explained in Section V.C., the market for beer in Hawaii shows signs of vulnerability to coordinated conduct, and the transaction is likely to enhance that vulnerability. Those conditions make the transaction more likely to raise significant competitive concerns than the measures of concentration alone would indicate. *See* Merger Guidelines § 7.1.

B. ABI's Acquisition of CBA Would Eliminate Head-to-Head Competition Between ABI and CBA

25. Today, ABI and CBA compete directly against each other in Hawaii. In that state, CBA's Kona brand competes closely with ABI's Stella Artois and Michelob Ultra brands, and also competes with ABI's Bud Light and Budweiser brands. Recent developments and product innovations have further enhanced the degree of competition between ABI and CBA. For example, CBA recently introduced Kona Light, a lower calorie brand similar to ABI's low-calorie offerings like ABI's Michelob Ultra and Bud Light. CBA's share of the beer market in Hawaii has been among the fastest growing in the state over the past seven years. ABI's

proposed acquisition of CBA likely would substantially lessen this current head-to-head competition between ABI and CBA in Hawaii, in violation of Section 7 of the Clayton Act.

26. Moreover, competition between ABI and CBA in Hawaii is poised to increase in the future. CBA is investing in its business in Hawaii, and it has plans to grow its share of beer volume sold in Hawaii by about 25% by 2021. CBA is also constructing a new brewery in Hawaii that is scheduled to become operational in the next few months.

27. ABI has plans to grow its share of beer in the premium segment. In recent years, consumer preferences have shifted toward the premium and super-premium segments. Because ABI's positions in the value, core, and core-plus segments are stronger than its positions in the premium and super-premium segments, this trend toward the premium and super-premium segments has threatened ABI's overall market share of beer and made ABI's plans to expand its share of beer in the premium segment more urgent. These plans include the introduction of new premium brands and other brand innovations. CBA's Kona is positioned as a premium beer in Hawaii. Therefore, ABI's increased focus on the premium segment would increase competition with CBA's Kona.

28. For these reasons, competition between ABI and CBA in Hawaii likely would grow significantly in the absence of the proposed acquisition. ABI's acquisition of CBA, therefore, is likely to substantially lessen this future potential competition between ABI and CBA, also in violation of Section 7 of the Clayton Act.

C. ABI's Acquisition of CBA Would Facilitate Price Coordination

29. Historically, ABI has employed a "price leadership" strategy throughout the United States, including in Hawaii. According to this strategy, ABI, with the largest beer sales in the United States and Hawaii, seeks to generate industry-wide price increases by pre-announcing its own price increases and purposefully making those price increases transparent to the market so its primary competitors will follow its lead. These announced price increases, which can vary by geography because of different competitive conditions, typically cover a broad range of beer brands and packages (e.g., container and size). After announcing price increases, ABI tracks the degree to which its primary competitors match its price increases. Depending on the competitive response, ABI will either maintain, adjust, or rescind an announced price increase.

30. For many years, Molson Coors Beverage Company ("Molson Coors"), the brewer with the second-largest beer sales in the United States and owner of many brands sold in Hawaii such as Miller Lite, Coors Light, and Blue Moon, has followed ABI's announced price increases in Hawaii to a significant degree. Molson Coors's willingness to follow ABI's announced price increases is constrained, however, by the diversion of sales to other competitors who are seeking to gain share, including CBA and its Kona brand.

31. By acquiring CBA, ABI would gain control over Kona's pricing and would likely increase Kona's price, thereby eliminating a significant constraint on Molson Coors's willingness to follow ABI's announced price increases in Hawaii. By reducing Kona's constraint on Molson Coors's willingness to increase

prices, the acquisition likely increases the ability of ABI to facilitate price coordination, thereby resulting in higher prices for beer sold in Hawaii. For this reason, ABI's acquisition of CBA likely would substantially lessen competition in Hawaii in violation of Section 7 of the Clayton Act.

VI. ABSENCE OF COUNTERVAILING FACTORS

32. New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the acquisition's likely anticompetitive effects. Barriers to entry and expansion within Hawaii include: (i) the substantial time and expense required to build a brand's reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer in retail outlets; (iii) the time and cost of building new breweries and other facilities; and (iv) the difficulty of developing an effective network of beer distributors with incentives to promote and expand a new entrant's sales.

33. The anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies the proposed acquisition may achieve.

VII. VIOLATION ALLEGED

34. The United States hereby incorporates the allegations of paragraphs 1 through 33 above as if set forth fully herein.

35. The proposed transaction likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and likely would have the following anticompetitive effects, among others:

(a) head-to-head competition between ABI and CBA for beer in Hawaii would be substantially lessened;

(b) the ability and incentive of ABI to coordinate higher prices for beer in Hawaii would be substantially increased; and

(c) competition generally in the market for beer in Hawaii would be substantially lessened.

REQUESTED RELIEF

The United States requests:

1. That the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
2. That Defendants be permanently enjoined and restrained from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan by which ABI would acquire CBA, be acquired by, or merge with CBA;
3. That the United States be awarded its costs for this action; and
4. That the United States be awarded such other relief as the Court may deem just and proper.

Dated: September 18, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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APPENDIX A

DEFINITION OF THE HERFINDAHL-HIRSCHMAN INDEX

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1,500 and 2,500 are considered to be moderately concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (revised Aug. 19, 2010), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010. Transactions that increase the HHI by more than 100 points in moderately concentrated markets potentially raise significant competitive concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id*.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. ANHEUSER-BUSCH INBEV SA/NV, ANHEUSER-BUSCH COMPANIES, LLC, and CRAFT BREW ALLIANCE, INC., *Defendants*.	Civil Action No.: 4:20-cv-01282-SRC Judge Stephen R. Clark

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 18, 2020;

AND WHEREAS, the United States and Defendants, Anheuser-Busch InBev SA/NV ("ABI"), Anheuser-Busch Companies, LLC ("AB Companies"), and Craft Brew Alliance, Inc. ("CBA"), have consented to entry of this Final Judgment without the taking of testimony, 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 make a divestiture to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The 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 under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Acquirer" means PV Brewing or any other entity to which Defendants divest the Divestiture Assets.

B. "ABI" means Defendant Anheuser-Busch InBev SA/NV, a Belgian corporation with its headquarters in Leuven, Belgium, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "AB Companies" means Defendant Anheuser-Busch Companies, LLC, a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri, its successors and assigns, and its subsidiaries (including the Hawaii WOD), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "CBA" means Defendant Craft Brew Alliance, Inc., a Washington corporation with its headquarters in Portland, Oregon, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Covered Entity" means any Beer brewer, importer, distributor, or brand owner (other than ABI) that derives more than $3.75 million in annual gross revenue from Beer sold for further resale in the State of Hawaii, or from license fees generated by such Beer sales in the State of Hawaii.

F. "Covered Interest" means ownership or control of any Beer brewing assets of, or any Beer brand assets of, or any Beer distribution 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 State of Hawaii that does not generate at least $3.75 million in annual gross revenue from Beer sold for resale in the State of Hawaii; (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $1 million in annual gross revenue in the State of Hawaii; or (iii) a Beer distributor which does not generate at least $1 million in annual gross revenue in the State of Hawaii.

G. "PV Brewing" means PV Brewing Partners, LLC, a Delaware limited liability company with its headquarters in Overland Park, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Kona Hawaii" means Kona Brewery LLC, a Hawaii limited liability company with its headquarters in Kailua-Kona, Hawaii, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. "Divestiture Assets" means all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, related to or used or held for use in connection with Kona Hawaii, including, but not limited to:

1. the following facilities (the "Divestiture Facilities"):

   a. the restaurant located at 7192 Kalaniana'ole Highway, Honolulu, Hawaii 96825 ("Koko Marina Pub");

   b. the brewery and brewpub located at 74-5612 Pawai Place, Kailua-Kona, Hawaii, 96740 (the "Kona Pub and Brewery"); and

   c. the New Kona Brewery;

2. all rights of the Acquirer under the Kona IP License;

3. all tangible personal property, including, but not limited to, machinery and manufacturing equipment, tooling and fixed assets, vehicles, inventory, merchandise, office equipment and furniture, materials, computer hardware and supplies;

4. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings, including, but not limited to, teaming arrangements, leases, certifications, and supply agreements;

5. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

6. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information CBA provides to its own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including, but not limited, to designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

7. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, service names, trade names, and trademark applications; and

8. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

Provided, however, that the assets specified in Paragraphs II.I.1.-8., do not include (a) ownership of the Kona IP; (b) intellectual property associated with the sale of Kona

Products outside the State of Hawaii; (c) Defendants' facilities located outside Hawaii that are used to brew, develop, package, import, distribute, market, promote, or sell Kona Products; or (d) AB Companies' wholly-owned distributor located in the State of Hawaii.

J. "Beer" is defined for purposes herein as any fermented beverage, brewed or produced from malt, wholly or in part, or from rice, grain of any kind, bran, glucose, sugar, and molasses when such items are used as a substitute for malt, or from honey, fruit, fruit juice, fruit concentrate, herbs, spices, or other food materials. For the avoidance of doubt, Beer, as defined herein, does not include any distilled alcoholic beverages (as defined as of September 1, 2020 in 27 C.F.R. Section 5.11) or wine (as defined as of September 1, 2020 in 27 C.F.R. 410, except that irrespective of the foregoing definition, hard cider shall be included within the definition of Beer herein).

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

L. "Hawaii WOD" means Anheuser-Busch Sales of Hawaii, Inc., which is AB Companies' wholly-owned distributor in the State of Hawaii.

M. "Kona Products" means (1) all products produced by Defendants using the "Kona" brand name at any time after November 11, 2019, and (2) all products produced by Acquirer using the "Kona" brand name.

N. "Kona IP" means all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in Hawaii. This includes intellectual property connected to the "Kona" brand name (and all associated trademarks, service marks, and services names) used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in the State of Hawaii.

O. “Kona IP License” means an exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to the Kona IP for use in the State of Hawaii.

P. “New Brewery Completion” means the achievement by Defendants of an average production capacity of 1,500 barrels of saleable Beer each calendar week for three consecutive calendar weeks at the New Kona Brewery.

Q. “New Kona Brewery” means the brewery located at Lot 16 in Kailua-Kona, Hawaii.

R. “Relevant Personnel” means all full-time, part-time, or contract employees of Kona Hawaii, wherever located, whose job responsibilities relate in any way to the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in the State of Hawaii, at any time between November 11, 2019, and the date on which the Divestiture Assets are divested to Acquirer.

S. “Transaction” means AB Companies’ proposed acquisition of the remaining shares of CBA that AB Companies does not already own.

III. APPLICABILITY

A. This Final Judgment applies to ABI, AB Companies, and CBA, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. DIVESTITURE

A. Defendants are ordered and directed, within 10 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to PV Brewing or to another 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 60 calendar days in total and will notify the Court of any extensions.

B. Defendants are ordered and directed, within 180 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to achieve New Brewery Completion in a manner consistent with this Final Judgment to PV Brewing or to another Acquirer acceptable to the United States, in its sole discretion.

C. Defendants must use their best efforts to divest the Divestiture Assets as expeditiously as possible and may not take any action to impede the permitting, operation, or divestiture of the Divestiture Assets. To incentivize Defendants to achieve New Brewery Completion within 180 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, beginning on calendar day 181 Defendants are ordered to pay to the United States $25,000 per day until they achieve New Brewery Completion. If Defendants demonstrate to the United States that unanticipated material difficulties have resulted in unavoidable additional delays to New Brewery Completion, the United States may, in its sole discretion, agree to forgo some or all of the payments.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must 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 Acquirer as part of a viable, ongoing business of the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii, and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

E. The divestiture must be 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 compete effectively in the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii.

F. The divestiture must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

G. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than PV Brewing, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

H. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information; and (3) access to all financial, operational, or other documents and information customarily provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

I. Defendants must cooperate with and assist Acquirer to identify and hire all Relevant Personnel.

1. Within 10 business days following the filing of the Complaint in this matter, Defendants must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, Defendants must provide to Acquirer and the United States the following additional information related to Relevant Personnel: name; job title; current

salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes, but is not limited to, offering to increase the salary or improve the benefits of Relevant Personnel unless the offer is part of a company-wide increase in salary or benefits that was announced prior to November 11, 2019, or has been approved by the United States, in its sole discretion. Defendants' obligations under this Paragraph IV.I.4. will expire six months after the divestiture of the Divestiture Assets pursuant to this Final Judgment.

5. For Relevant Personnel who elect employment with Acquirer within six months of the date on which the Divestiture Assets are divested to Acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Relevant Personnel

otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including, but not limited to, any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the date on which the Divestiture Assets are divested to Acquirer, Defendants may not solicit to rehire Relevant Personnel who were hired by Acquirer within six months of the date on which the Divestiture Assets are divested to Acquirer unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph IV.I.6. prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

J. Defendants must warrant to Acquirer that the New Kona Brewery will be operational and without material defect upon the date of New Brewery Completion.

K. Defendants must warrant to Acquirer that (1) except as provided in Paragraph IV.J. above, the Divestiture Assets will be operational and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets; and (3) Defendants have disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets.

L. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

M. Defendants must make best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate Kona Hawaii, including, but not limited to, the New Kona Brewery. Until Acquirer obtains the necessary licenses, registrations, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

N. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, Defendants must enter into a non-exclusive supply contract or contracts for the production, packaging, and delivery of Beer sufficient to meet Acquirer's needs, as determined by Acquirer, for a period of up to three years, on terms and conditions reasonably related to market conditions for the production, packaging, and delivery of Beer. All amendments to or modifications of any provision of any such supply contract are subject to approval by the United States, in its sole discretion. If the Acquirer is PV

Brewing, the Acquirer, in its sole discretion, may renew any such supply contract for two one-year periods. For any Acquirer that is not PV Brewing, the United States, in its sole discretion, may approve one or more extensions of any such supply contract, for a total of up to an additional two years. If Acquirer seeks an extension of the term of any supply contract, Defendants must notify the United States in writing at least two months prior to the date the supply contract expires.

O. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, the Hawaii WOD must enter into a distribution agreement for distribution of Beer in the State of Hawaii sufficient to meet Acquirer's needs, as determined by Acquirer, for a term determined by Acquirer, on terms and conditions reasonably related to market conditions for the distribution of Beer in the State of Hawaii. Beginning one year after the effective date of such distribution agreement, Acquirer shall have the right, upon 60 days' written notice to the Hawaii WOD, to terminate without cause that distribution agreement. All amendments to or modifications of any provision of such distribution agreement are subject to approval by the United States, in its sole discretion.

P. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, Defendants must enter into a contract to provide transition services for finance and accounting services, human resources services, supply and procurement services, brewpub consulting, on-island merchandising, brewing engineering, and information technology services and support, for a period of up to 18 months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendments to or modifications of any provision of a contract to provide transition services are subject to approval by the United States, in its sole discretion. Acquirer may terminate a transition services agreement, or any portion of a transition services agreement, without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

Q. If any term of an agreement between Defendants and Acquirer, including, but not limited to, an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV.A., Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required under Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, that are approved by the United States.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States may, in its sole discretion, take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the date of the sale of the Divestiture Assets, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants and the trust will then be terminated.

H. Defendants must use their best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants may not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must 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 any interest in the Divestiture Assets and must describe in detail each contact with any such person.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with 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 for completing the divestiture. Following receipt of that report, the United States may make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of a proposed divestiture required by this Final Judgment. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within 15 calendar days of the receipt of the request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A. or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B., whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether or not the United States, in its sole discretion, objects to Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. 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 Paragraph V.C. of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C., a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may 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, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

VIII. ASSET PRESERVATION AND HOLD SEPARATE OBLIGATIONS

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture required by this Final Judgment has been completed, Defendants each must deliver to the United States an affidavit, signed by AB Companies' and CBA's Chief Financial Officer and General Counsel, respectively, describing the fact and manner of Defendants' compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit must include: (1) the name, address, and telephone number of each person who, during the preceding 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, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the divestiture has been completed.

D. Within 20 calendar days of the filing of the Complaint in this matter, Defendants also must each deliver to the United States an affidavit signed by AB Companies' and CBA's Chief Financial Officer and General Counsel, respectively, that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If Defendants make any changes to the efforts and actions outlined in any earlier affidavits provided pursuant to Paragraph IX.D., Defendants must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to preserve the Divestiture Assets until one year after the divestiture has been completed.

G. Within 15 calendar days after New Brewery Completion, Defendants also must each deliver to the United States an affidavit, signed by AB Companies' Chief Financial Officer and General Counsel and CBA's Chief Operating Officer and General Counsel, respectively, describing the fact and manner of Defendants' compliance with (1) New Brewery Completion, and (2) satisfaction of the warranty to Acquirer under Paragraph IV.J., including that the New Kona Brewery is operational and without material defect on the date of New Brewery Completion. The United States, in its sole discretion, may approve different signatories for this affidavit.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation and Hold Separate Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

(1) to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide 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 must 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 for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to this Section X may 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, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the

Federal Rules of Civil Procedure," the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XI. NOTIFICATION

A. Unless a 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"), Defendants may not, without first providing at least thirty (30) calendar days advance notification to the United States, directly or indirectly acquire or license a Covered Interest in or from a Covered Entity.

B. Defendants must provide the notification required by this Section XI in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Beer in the State of Hawaii.

C. Notification must be provided at least 30 calendar days before acquiring any assets or interest, and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the transaction on behalf of each party, and all management or strategic plans discussing the proposed transaction. If, within the 30 calendar days following notification, representatives of the United States make a written request for additional information, Defendants may not consummate the proposed transaction until 30 calendar days after submitting all requested information.

D. Early termination of the waiting periods set forth in this Section XI may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section XI must be broadly construed, and any ambiguity or uncertainty regarding whether to file a notice under this Section XI should be resolved in favor of filing notice.

XII. NO REACQUISITION

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment.

XIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the 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 enforce compliance, and to punish violations of its provisions.

XIV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry , except that after five years from the date of its entry, this Final

Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and the continuation of this Final Judgment is no longer necessary or in the public interest.

XVI. 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 by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and the United States' response 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 Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. ANHEUSER-BUSCH INBEV SA/NV, ANHEUSER-BUSCH COMPANIES, LLC, and CRAFT BREW ALLIANCE, INC., *Defendants*.	Civil Action No.: 4:20-cv-01282-SRC Judge Stephen R. Clark

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the “APPA” or “Tunney Act”), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On November 11, 2019, Defendant Anheuser-Busch Companies, LLC (“AB Companies”), a minority shareholder in Defendant Craft Brew Alliance, Inc. (“CBA”), agreed to acquire all of CBA’s remaining shares in a transaction valued at approximately $220 million. AB Companies is a wholly-owned subsidiary of Defendant Anheuser-Busch InBev SA/NV (“ABI”).

The United States filed a civil antitrust Complaint on September 18, 2020, seeking to enjoin the proposed acquisition. *See* Dkt. No. 1. The Complaint alleges that the proposed acquisition would likely eliminate important head-to-head competition in the state of Hawaii between ABI's beer brands and CBA's beer brands, particularly CBA's Kona brand. The Complaint alleges that the acquisition would also likely facilitate price coordination. This likely reduction in competition would result in increased prices and reduced innovation for beer consumers in Hawaii. The Complaint thus alleges that the likely effect of this acquisition would be to substantially lessen competition for beer in the state of Hawaii in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation and Hold Separate Stipulation and Order ("Stipulation and Order") and proposed Final Judgment, which are designed to address the anticompetitive effects alleged in the Complaint. *See* Dkt. No. 2. On September 25, 2020, the Court entered the Stipulation and Order. *See* Dkt. No. 14.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest Kona Brewery, LLC ("Kona Hawaii"), which houses CBA's entire Kona brand business in the state of Hawaii, as well as other related tangible and intangible assets. Kona Hawaii competes in the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer[1] in the state of Hawaii. Its assets include a restaurant, brewery and brewpub, and a new brewery that is currently under construction and scheduled to become operational in the next few months. As part of the divestiture, Defendants are required to provide an exclusive and perpetual license

[1] In this Competitive Impact Statement, the term "Beer," when capitalized within a sentence, has the same definition as set forth in the proposed Final Judgment at Paragraph II.J. Section III, *infra*, at pgs. 11-12, explains the difference between the terms beer and "Beer."

to all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona products in Hawaii, including the "Kona" brand name. Because the competitive harm alleged in the Complaint is centered in the state of Hawaii, the proposed remedy is also centered in the state of Hawaii. The United States has approved PV Brewing Partners, LLC ("PV Brewing"), as the acquirer.

Under the terms of the Stipulation and Order, until the divestiture required by the proposed Final Judgment was accomplished, Defendants were required to take certain steps to ensure that Kona Hawaii was operated as a competitively independent, economically viable, and ongoing business concern, that remained independent and uninfluenced by Defendants, and that competition was maintained during the pendency of the required divestiture. The required divestiture to PV Brewing occurred on October 6, 2020, as permitted under the terms of the Stipulation and Order, which was entered by the Court on September 25, 2020 (*see* Dkt. No. 14).

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 will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF 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 its headquarters in Leuven, Belgium. ABI owns numerous major beer brands sold in the

United States, including in Hawaii. These brands include Bud Light, Budweiser, Busch Light, Natural Light, Michelob Ultra, Stella Artois, and Golden Road. AB Companies is a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri.

CBA is a corporation organized and existing under the laws of Washington, with its headquarters in Portland, Oregon. CBA owns several beer brands sold in the United States, including Widmer Brothers, Omission, Redhook, and Kona, a brand that originated in Hawaii and is especially popular in that state.

ABI, through its wholly-owned subsidiary AB Companies, currently holds approximately 31% of CBA's outstanding shares, delivers CBA beer brands to wholesalers throughout the United States, and has a contract with CBA to brew some CBA beer brands at ABI breweries. ABI also has the right to appoint two of the eight seats on CBA's Board of Directors.

On November 11, 2019, AB Companies agreed to acquire all of CBA's outstanding shares in a transaction valued at approximately $220 million.

B. Beer Segments and Pricing

Beer brands sold in Hawaii, like those sold in the United States in general, are often segmented based on price and quality. ABI currently groups beer into five segments: value, core, core-plus, premium, and super-premium (listed in order of increasing price and quality). ABI owns beer brands in each beer segment in Hawaii: value (where its brands include Busch Light and Natural Light), core (where its brands include Bud Light and Budweiser), core-plus (where its brands include Michelob Ultra and Bud Light Lime), premium (where its brands include Michelob Ultra Pure Gold), and super-premium (where its brands include Stella Artois and Golden Road). CBA's Kona brand is generally considered a premium beer.

As the Complaint alleges, beer consumers may "trade up" or "trade down" between segments in response to changes in price. For example, as the prices of core-plus brands approach the prices of premium brands, consumers are increasingly willing to "trade up" from core-plus brands to premium brands. Therefore, the Complaint alleges that the competition provided by CBA's Kona in the premium segment serves as an important constraint on the ability of ABI to raise its beer prices not only in the premium segment, but also in core-plus and other beer segments.

C. The Competitive Effects of the Transaction on the Market for Beer in the State of Hawaii

ABI is a global brewing company with the largest beer sales worldwide and in the United States, including in the state of Hawaii. CBA is a national brewing company with the fifth-largest beer sales in Hawaii. As measured by 2019 revenue, ABI accounts for approximately 28% of all beer sales in Hawaii, and CBA accounts for approximately 13% of all beer sales in Hawaii, of which its Kona brand constitutes the vast majority.[2]

ABI's proposed acquisition of CBA would give ABI 100% ownership of CBA, resulting in ABI's total control over all aspects of CBA's competitive decision-making, including pricing, marketing, and promotions. As a result, the Complaint alleges that the transaction would likely eliminate important head-to-head competition between ABI and CBA in Hawaii, and would likely facilitate price coordination following the transaction.

[2] Market share calculations are based on distributor sales in Hawaii.

The Complaint alleges that this likely reduction in competition would result in increased prices and reduced innovation for beer consumers in Hawaii.

1. The Relevant Market

The Complaint alleges that the relevant product market for analyzing the effects of the proposed acquisition is beer. Beer is usually made from a malted cereal grain, flavored with hops, and brewed via a fermentation process. It is packaged in cans, bottles, and kegs (draft beer). Beer's taste, alcohol content, image (*e.g.*, marketing and consumer perception), price, and other factors make it substantially different from other alcoholic beverages.

The Complaint alleges that other alcoholic beverages, such as wine and distilled spirits, are not reasonable substitutes for beer that would discipline a small but significant and non-transitory increase in the price of beer (*e.g.*, five percent), and relatively few consumers would substantially reduce their beer purchases or turn to alternatives in the event of such a price increase. Therefore, the Complaint alleges that a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 4.1.1 (revised Aug. 19, 2010) ("Merger Guidelines"), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

The Complaint alleges that the relevant geographic market for analyzing the effects of the proposed acquisition is no larger than the state of Hawaii. The relevant geographic market is best defined by the locations of the customers who purchase beer, rather than by the locations of breweries that produce beer. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and the local strength of different beer brands. Consumers buy beer near their homes and typically do not travel great distances to buy beer even when prices rise. Consumers in Hawaii are particularly unlikely to travel outside the state to buy beer.

For these reasons, the Complaint alleges that a hypothetical monopolist producer of beer sold in Hawaii likely would find it profitable to increase its prices in that market by at least a small but significant and non-transitory amount because customers could not economically purchase their beer in more distant locations. Therefore, Hawaii is a relevant geographic market and "section of the country" within the meaning of Section 7 of the Clayton Act. Thus, the relevant market is beer in the state of Hawaii.

2. The Transaction Would Increase Market Concentration Significantly

The proposed acquisition would increase market concentration significantly for beer in the state of Hawaii. The Complaint alleges that ABI and CBA would have a combined share of approximately 41% in the relevant market following the transaction. 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 the transaction would result in harm to consumers by meaningfully reducing competition.

Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI"). Markets in which the HHI is between 1,500 and 2,500 are considered moderately concentrated. Mergers that increase the HHI by more than 100 points and result in a moderately concentrated market potentially raise significant competitive concerns. *See* Merger Guidelines § 5.3.

ABI's proposed acquisition of CBA would result in a moderately concentrated market with a post-acquisition HHI of nearly 2,500 points, just below the threshold denoting a highly concentrated market. Moreover, the HHI would increase as a result of the transaction by more than 700 points. These HHI measures potentially raise significant competitive concerns. *See* Merger Guidelines § 5.3.

As the Complaint alleges, these concentration measures likely understate the extent to which the transaction would result in anticompetitive effects such as higher prices and less innovation in the relevant market. As explained in Section II.C.4. below, the Complaint alleges that the market for beer in Hawaii shows signs of vulnerability to coordinated conduct, and the transaction is likely to enhance that vulnerability. Those conditions make the transaction more likely to raise significant competitive concerns than the measures of concentration alone would indicate. *See* Merger Guidelines § 7.1.

3. ABI's Acquisition of CBA Would Eliminate Head-to-Head Competition Between ABI and CBA

The Complaint alleges that ABI and CBA compete directly against each other in Hawaii. In that state, CBA's Kona brand competes closely with ABI's Stella Artois and Michelob Ultra brands, and also competes with ABI's Bud Light and Budweiser brands. Recent developments and product innovations have further enhanced the degree of competition between ABI and CBA. For example, CBA recently introduced Kona Light, a lower calorie brand similar to ABI's low-calorie offerings like Michelob Ultra and Bud Light. CBA's share of the beer market in Hawaii has been among the fastest growing in the state over the past seven years. The Complaint thus alleges that ABI's proposed acquisition of CBA likely would substantially lessen this current head-to-head competition between ABI and CBA in Hawaii, in violation of Section 7 of the Clayton Act.

Moreover, competition between ABI and CBA in Hawaii is poised to increase in the future. The Complaint alleges that CBA is investing in its business in Hawaii, and it has plans to grow its share of beer volume sold in Hawaii by about 25% by 2021. CBA is also constructing a new brewery in Hawaii that is scheduled to become operational in the next few months.

As the Complaint alleges, ABI has plans to grow its share of beer in the premium segment. In recent years, consumer preferences have shifted toward the premium and super-premium segments. Because ABI's positions in the value, core, and core-plus segments are stronger than its positions in the premium and super-premium segments, this trend toward the premium and super-premium segments has threatened ABI's overall market share of beer and made ABI's plans to expand its share of beer in the premium segment more urgent. These plans include the introduction of new premium brands and other brand innovations. CBA's Kona brand is positioned as a premium beer in Hawaii. Therefore, ABI's increased focus on the premium segment would increase competition with CBA's Kona brand.

For these reasons, the Complaint alleges that competition between ABI and CBA in Hawaii likely would grow significantly in the absence of the proposed acquisition. ABI's acquisition of CBA, therefore, is likely to substantially lessen this future potential competition between ABI and CBA, also in violation of Section 7 of the Clayton Act.

4. ABI's Acquisition of CBA Would Facilitate Price Coordination

The Complaint alleges that ABI has historically employed a "price leadership" strategy throughout the United States, including in Hawaii. According to this strategy, ABI, with the largest beer sales in the United States and Hawaii, seeks to generate industry-wide price increases by pre-announcing its own price increases and purposefully making those price increases transparent to the market so its primary competitors are more likely to follow its lead. These announced price increases, which can vary by geography because of different competitive conditions, typically cover a broad range of beer brands and packages (*e.g.*, container and size). After announcing price increases, ABI tracks the degree to which its primary competitors follow its price increases. Depending on the competitive response, ABI will either maintain, adjust, or rescind an announced price increase.

The Complaint alleges that, for many years, Molson Coors Beverage Company ("Molson Coors"), the brewer with the second-largest beer sales in the United States and owner of many brands sold in Hawaii such as Miller Lite, Coors Light, and Blue Moon, has followed ABI's announced price increases in Hawaii to a significant degree. Molson Coors's willingness to follow ABI's announced price increases is constrained, however, by the diversion of sales to other competitors who are seeking to gain share, including CBA and its Kona brand.

As alleged in the Complaint, by acquiring CBA, ABI would gain control over Kona's pricing and would likely increase Kona's price, thereby eliminating a significant constraint on Molson Coors's willingness to follow ABI's announced price increases in Hawaii. By reducing Kona's constraint on Molson Coors's willingness to increase prices, the acquisition likely increases the ability of ABI to facilitate price coordination, thereby resulting in higher prices for beer sold in Hawaii. For these reasons, the Complaint alleges that ABI's acquisition of CBA likely would substantially lessen competition in Hawaii in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry or Expansion

As alleged in the Complaint, new entry and expansion by competitors likely will neither be timely nor sufficient in scope to prevent the acquisition's likely anticompetitive effects. Barriers to entry and expansion within the state of Hawaii include: (i) the significant time and expense required to build a brand's reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer in retail outlets; (iii) the considerable time and cost of building new breweries and other facilities; and (iv) the difficulty of developing an effective network of beer distributors with incentives to promote and expand a new entrant's sales.

The Complaint also alleges that the anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies the proposed acquisition may achieve.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for beer in the state of Hawaii. As described in more detail below, the proposed Final Judgment requires Defendants, within 10 calendar days after the entry of the Stipulation and Order by the Court (to which the United States granted an extension of seven calendar days, *see* Dkt. No. 15), to divest Kona Hawaii, and all tangible and intangible assets related to or used in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the state of Hawaii. The Stipulation and Order was entered by the Court on September 25, 2020 (*see* Dkt. No. 14), and the required divestiture to PV Brewing occurred on October 6, 2020. The divestiture assets also include an exclusive and perpetual license to Kona intellectual property, including the "Kona" brand name. The divestiture will transfer to PV Brewing the brewing capacity, assets, and rights necessary to compete with ABI brands in Hawaii.

In the proposed Final Judgment, "Beer" is defined to include not only brewed products made from malted cereal grain as beer is described in the Complaint, but also "fermented beverages, brewed or produced from malt, wholly or in part, or from rice, grain of any kind, bran, glucose, sugar, and molasses when such items are used as a substitute for malt, or from honey, fruit, fruit juice, fruit concentrate, herbs, spices, or other food materials" (excluding distilled alcoholic beverages and wine). This definition in the proposed Final Judgment is necessary because Kona Hawaii currently produces hard seltzer. To the extent PV Brewing produces hard seltzer or innovates other products that fall within the proposed Final Judgment's definition of "Beer," this broader definition will ensure that Defendants' obligations under the proposed Final Judgment extend to those products (*e.g.*, such products would be subject to a distribution agreement per Paragraph IV.O. of the proposed Final Judgment), thus further establishing PV Brewing as an independent and economically viable competitor in the state of Hawaii.

A. Divestiture Assets

Paragraph IV.A. of the proposed Final Judgment requires Defendants to divest to PV Brewing the Divestiture Assets as defined in Paragraphs II.I.1–8 of the proposed Final Judgment. The Divestiture Assets will provide PV Brewing with the facilities, equipment, materials, and legal rights it needs to compete against Defendants and other brewers in Hawaii.

1. Kona Hawaii and the New Brewery

The Divestiture Assets include Kona Hawaii (including its restaurant located in Honolulu, Hawaii, a brewery (with brewing capacity of 10,000 barrels) and brewpub located in Kailua-Kona, Hawaii, and a new brewery also located in Kailua-Kona, Hawaii, that is currently under construction), and all tangible and intangible assets, as described in Paragraphs II.I.1–8 of the proposed Final Judgment, related to or used in connection with Kona Hawaii. Kona Hawaii comprises CBA's entire Kona brand business in the state of Hawaii.

Kona Hawaii's new brewery encompasses 30,000 square feet and is expected to have a brewing capacity of 100,000 barrels, along with canning operations. Once the new brewery is operational, PV Brewing will be able to brew beer and package beer in both kegs and cans for sale in Hawaii. Although ownership of the new brewery transferred to PV Brewing at the time of the divestiture, the new brewery is not yet fully constructed or capable of producing saleable beer. When fully operational, it is expected that the new brewery will produce enough beer to meet present demand for Kona beer packaged in cans and kegs for sale in Hawaii.

Since the new brewery is not yet operational, the proposed Final Judgment requires Defendants to continue construction of the new brewery and to achieve a specific production milestone within 180 calendar days after the Court's entry of the Stipulation and Order. Specifically, under Paragraph IV.B. of the proposed Final Judgment, Defendants must achieve an average production capacity of 1,500 barrels of saleable Beer each calendar week for three consecutive calendar weeks at the new brewery within 180 calendar days after the Court's entry of the Stipulation and Order. In addition, upon achieving this production milestone, under Paragraph IV.J. of the proposed Final Judgment, Defendants must warrant to PV Brewing that the new brewery is operational and without material defect.

If Defendants fail to achieve this production milestone within the 180-day period, beginning on calendar day 181, Defendants shall pay to the United States $25,000 per day until they achieve the proposed Final Judgment's production milestone. The payments beginning on day 181 are designed to incentivize Defendants to promptly satisfy this metric so that PV Brewing can start using the new brewery to brew Kona products for sale in Hawaii.

Requiring Defendants to make incentive payments if they do not meet the proposed Final Judgment's production milestone is appropriate under the specific set of facts presented here because, in order for PV Brewing to successfully replace CBA as a competitor independent of ABI, the new brewery must be operational soon after the divestiture so that PV Brewing can brew Kona products for sale in Hawaii. At PV Brewing's option, the proposed Final Judgment requires Defendants to brew Kona-branded products for PV Brewing while the new brewery is under construction.

2. Kona IP and Brand License

The Divestiture Assets, as defined in Paragraphs II.I.1–8 of the proposed Final Judgment, also include an exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona products in Hawaii. This Kona license includes intellectual property connected to the "Kona" brand name (and all associated trademarks, service marks, and services names). The license applies to all products produced by Defendants using the "Kona" brand name at any time after November 11, 2019, and all products produced by PV Brewing using the "Kona" brand name at any time in the future. The proposed Final Judgment requires Defendants to license—rather than divest—the Kona intellectual property and brand name because Defendants retain the right to brew, market, and sell Kona-branded products outside of the state of Hawaii.

With this license, PV Brewing will have the exclusive rights to brew, market, and sell Kona products in Hawaii, while Defendants will have those rights outside of Hawaii. For example, with this license, PV Brewing may innovate and develop new beer brand extensions or packages using the Kona brand name and sell them in Hawaii. In addition, at its option, PV Brewing may adopt and sell in Hawaii Kona-branded products that Defendants produce and sell outside of Hawaii. Under the proposed Final Judgment, the license extends beyond Beer. If, for example, PV Brewing wants to sell Kona-branded T-shirts (as CBA does now) to help market and promote its new brewery (or sell Kona-branded salad dressing at its brewpub), it could do so using the license required by the proposed Final Judgment.

The license thus allows PV Brewing to innovate and to adapt to changing market conditions in Hawaii to compete effectively against Defendants in the state of Hawaii.

B. Supply, Distribution, and Transition Services Agreements

As explained below, the proposed Final Judgment also contemplates PV Brewing, at its option, entering into a supply agreement, distribution agreement, and transition services agreement with Defendants to enable it to become an independent and economically viable competitor in the market for beer in the state of Hawaii.

1. Supply Agreement

Until the new brewery in Hawaii is operational, PV Brewing will need to arrange for another brewer to brew its canned and keg beer in order to compete in Hawaii. In addition, CBA does not have the facilities in Hawaii to brew bottled beer; CBA currently brews, or ABI contract brews for CBA, bottled beer outside of Hawaii and ships it to Hawaii. Similarly, post-divestiture, PV Brewing will not have the facilities in Hawaii to brew bottled beer and will need to source bottled beer from outside of Hawaii, to the extent it continues selling bottled beer in Hawaii. Very little beer brewed in Hawaii is bottled in Hawaii because there are no glass beer bottles produced on the islands and importing empty glass bottles is prohibitively expensive.

As a result, at PV Brewing's option, Paragraph IV.N. of the proposed Final Judgment requires Defendants to enter into a non-exclusive supply contract for the production, packaging, and delivery of Beer sufficient to meet PV Brewing's needs, as PV Brewing determines. The supply agreement may be for a period of up to three years and PV Brewing, in its sole discretion, may renew any such supply contract for two one-year periods.

As described in the Complaint, ABI currently contract brews some CBA beer brands, including Kona beer (kegs, cans, and bottles) for CBA to sell in Hawaii. Defendants are thus already familiar with the recipes and brewing processes for Kona brands. Defendants can provide brewing capacity for canned and keg beer until the new brewery in Hawaii is able to produce saleable Beer, and can provide brewing capacity for bottled beer while PV Brewing considers other options.

PV Brewing may contract with other brewers to brew its Beer for sale in Hawaii—in addition to or in lieu of a supply agreement with Defendants. PV Brewing need not purchase minimum or maximum volumes under the supply agreement with Defendants, meaning it can have Defendants brew as little or as much Beer as PV Brewing requires. These provisions give PV Brewing flexibility to source its Kona-branded products from Defendants or from one of several other mainland brewers that offer contract brewing services.

This supply agreement is also time-limited to ensure that PV Brewing will become a fully independent competitor to Defendants. Lastly, to the extent PV Brewing or Defendants seek to amend or modify any supply agreement, the United States must approve any changes.

2. Distribution Agreement

Beer distributors play an important role in marketing and promoting beer with retailers to help grow beer sales. Thus, effective distribution is important for a brewer to be competitive in the beer industry. As described in the Complaint, ABI currently delivers CBA beer brands to distributors throughout the United States. Anheuser-Busch Sales of Hawaii, Inc., which is AB Companies' wholly-owned distributor in the state of

Hawaii ("Hawaii WOD"), currently distributes Kona products, in addition to other CBA products, throughout the state of Hawaii. The Hawaii WOD is the second-largest beer distributor in Hawaii.

At PV Brewing's option, Paragraph IV.O. of the proposed Final Judgment requires the Hawaii WOD to enter into a distribution agreement for distribution of PV Brewing's Beer in the state of Hawaii sufficient to meet PV Brewing's needs, as PV Brewing determines, and for a period of time as determined by PV Brewing. The proposed Final Judgment further requires that under such a distribution agreement, beginning one year after the agreement's effective date, PV Brewing shall have the right, upon 60 days' written notice to the Hawaii WOD, to terminate without cause the distribution agreement.

The proposed Final Judgment thus enables PV Brewing, at its option, to remain with the Hawaii WOD, which has been distributing Kona products throughout the state of Hawaii for some time. It also provides a mechanism by which PV Brewing can terminate the distribution agreement without cause and move to another distributor in Hawaii. With the no-cause-termination provision, the Hawaii WOD will have the incentive to promote and sell Kona products in order to retain the profitable and popular Kona brands in its portfolio. If it fails to perform to PV Brewing's satisfaction, PV Brewing can move its popular Kona products to another distributor in Hawaii.

Lastly, as with the supply agreement, to the extent PV Brewing or Defendants seek to amend or modify any distribution agreement, the United States must approve any changes.

3. Transition Services Agreement

At PV Brewing's option, Paragraph IV.P. of the proposed Final Judgment requires Defendants to enter into a transition services agreement. Under such an agreement, Defendants will provide to PV Brewing transition services for finance and accounting services, human resources services, supply and procurement services, brewpub consulting, on-island merchandising, brewing engineering, and information technology services and support. Transition services as to brewing engineering are particularly important to PV Brewing to ensure that it can run the new brewery and produce saleable Beer—which is critical to PV Brewing competing effectively in Hawaii. Any transition services agreement may last for a period of up to 18 months. PV Brewing may terminate such a transition services agreement (or any portion), without cost or penalty, at any time upon notice to Defendants. This paragraph further provides that employees of Defendants tasked with supporting any transition services agreement must not share any competitively sensitive information of PV Brewing with any other employees of Defendants. Any transition services agreement must be time-limited to incentivize PV Brewing to become a fully independent competitor of Defendants.

Lastly, as with the supply and distribution agreements, to the extent PV Brewing or Defendants seek to amend or modify any transition services agreement, the United States must approve any changes.

C. Other Provisions

In order to preserve competition and facilitate the success of PV Brewing, the proposed Final Judgment contains additional obligations for Defendants.

With the divestiture, PV Brewing will become the owner of Kona Hawaii, which employs personnel that currently operate Kona Hawaii's restaurant and brewery and brewpub, and will also operate the new brewery that is currently under construction. Paragraph IV.I. of the proposed Final Judgment requires Defendants to cooperate with and assist PV Brewing to identify and hire all full-time, part-time, or contract employees of Kona Hawaii, wherever located, whose job responsibilities relate in any way to the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona products in the state of Hawaii.

In particular, the proposed Final Judgment requires that Defendants provide PV Brewing and the United States with organization charts and information relating to the employees and make employees available for interviews. It also provides that Defendants must not interfere with PV Brewing's retention of those employees. For employees who elect to continue employment with Kona Hawaii, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally have been provided if the employees had continued employment with Defendants. In addition, Paragraph IV.I.6. further provides that the Defendants may not solicit to rehire any employee of Kona Hawaii who was hired by PV Brewing within six months of the divestiture, unless that individual is terminated or laid off by PV Brewing or PV Brewing agrees in writing that the Defendants may solicit to rehire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. These provisions will help ensure that PV Brewing will be able to retain qualified employees for Kona Hawaii.

Section XI of the proposed Final Judgment requires Defendants 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, as amended, 15 U.S.C. § 18a ("HSR Act"). The transactions covered by these provisions include the acquisition or license of any interest in non-ABI Beer brewing or distribution assets or brands, excluding acquisitions of: (1) a Beer brewery or brand located outside of the state of Hawaii that does not generate at least \$3.75 million in annual gross revenue from Beer sold for resale in the state of Hawaii; (2) distribution licenses for non-ABI Beer brands that do not generate at least \$1 million in annual gross revenue in the state of Hawaii; and (3) Beer distributors that do not generate at least \$1 million in annual gross revenue in the state of Hawaii. This provision significantly broadens Defendants' pre-merger reporting requirements because the \$1 million and \$3.75 million threshold amounts are significantly lower than the HSR Act's "size of the transaction" reporting threshold. Section XI will provide the United States with advance notice of, and an opportunity to evaluate, Defendants' acquisition of both Beer distributors and Beer brewers in the state of Hawaii.

Notification of distributor acquisitions in Hawaii allows the United States to evaluate changes to the Hawaii beer market, including potential implications for PV Brewing's distribution agreement with Defendants. Similarly, notification of brewer acquisitions in Hawaii allows the United States to evaluate any acquisition by ABI of, among other things, craft breweries. ABI has acquired multiple craft breweries over the past several years; some of these acquisitions were not reportable under the HSR Act. Acquisitions of this nature, individually or collectively, have the potential to substantially lessen competition, and the proposed Final Judgment gives the United States an opportunity to evaluate such transactions in advance of their closing even if the purchase price is below the HSR Act's thresholds.[3]

Paragraph XI.B. of the proposed Final Judgment requires Defendants to provide such notification to the Antitrust Division of the United States Department of Justice ("Antitrust Division") in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Pursuant to Paragraph XI.C. of the proposed Final Judgment, Defendants must provide such notification at least 30 calendar days prior to acquiring any such interest. If, within the 30-day period after notification, the Antitrust Division makes a written request for additional information, Defendants shall be precluded from consummating the proposed transaction or agreement until 30 calendar days after submitting all requested additional information. Early termination of these waiting periods may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

Section XII of the proposed Final Judgment prevents Defendants from reacquiring any part of or interest in the Divestiture Assets during the term of the Final Judgment. Thus, ABI may not seek to reacquire the Kona brand in the state of Hawaii.

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[3] The Division notes that similar notification obligations apply to ABI by virtue of the Modified Final Judgment in *United States v. Anheuser-Busch InBev SA/NV*, No. 1:16-cv-01483-EGS (D.D.C. 2016), which involved ABI's prior transaction with brewer SABMiller. Under the ABI-SABMiller consent decree, ABI must provide notice of certain distributor and brewer transactions in the United States. The monetary thresholds are higher in the ABI-SABMiller consent decree than in the instant proposed Final Judgment, and the ABI-SABMiller consent decree is set to expire in 2026.

Additionally, the proposed Final Judgment also contains provisions designed to promote compliance and make enforcement of the Final Judgment as effective as possible. Paragraph XIV.A. provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV.B. provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV.C. of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate

American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV.C. provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XIV.D. states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

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 neither impairs nor assists 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 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 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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final 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, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Robert A. Lepore,
Chief, Transportation, Energy, and Agriculture Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW, Suite 8000
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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against AB Companies' acquisition of all of CBA's remaining shares. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for beer in the state of Hawaii. Thus, the proposed Final Judgment achieves 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 60-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); *United States v. Associated Milk Producers, Inc.*, 534 F.2d 113, 117 (8th Cir. 1976) ("It is axiomatic that the Attorney General must retain considerable discretion in controlling government litigation and in determining what is in the public interest."); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a 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").

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "'make de novo determination of facts and issues.'" *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quoting *United States v. Mid-Am. Dairymen, Inc.*, No. 73 CV 681-W-1, 1977 WL 4352, at *9 (W.D. Mo. May 17, 1977)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[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." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted).

"The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Id.* at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*; *see also United States v. Mid-Am. Dairymen, Inc*., No. 73 CV 681-W-1, 1977 WL 4352, at *9 (W.D. Mo. May 17, 1977) ("It was the intention of Congress in enacting [the] APPA to preserve consent decrees as a viable enforcement option in antitrust cases.").

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case"); *see also Mid-Am. Dairymen*, 1977 WL 4352, at *9 ("The APPA codifies the case law which established that the Department of Justice has a range of discretion in deciding the terms upon which an antitrust case will be settled"). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

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 U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he '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.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added 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); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first 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 Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 26, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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