



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

“Miller Time” for Anheuser-Busch Inbev? Sort of.

BY ROBERT G. YOUNG • JULY 22, 2016

The United States Department of Justice (“DOJ”) has given its consent to the proposed merger of Anheuser-Busch InBev (“ABI”) and SABMiller. The DOJ challenged the approximately \$100 billion merger on antitrust grounds, and on July 20, 2016 the DOJ announced that it had [reached an agreement](#) with ABI to permit the merger to move forward.

Among the core terms of the agreement is that the new ABI/SABMiller must sell off its entire interest in MillerCoors. That is, the new company will not be making or selling any Miller-branded products going forward.

In addition, the DOJ placed limits on ABI’s ability to control the distribution market. Under the terms of the agreement, ABI cannot acquire any distributor if, as a result of the acquisition, more than 10% of ABI’s beer sold in the United States would be by ABI-owned distributors.

The DOJ also required ABI to restrict its distributor incentives in ways that could harm smaller craft brewers. In particular, ABI is prohibited from offering rewards or imposing penalties on any independent distributor based on that independent distributor’s sales, marketing, advertising, promotion or retail placement of non-ABI beer, and ABI cannot limit an independent distributor’s ability to use “best efforts” to sell non-ABI beer. ABI remains able to offer rewards and incentives to independent distributors to sell and market ABI beer.

Finally, ABI must notify the DOJ if it intends to acquire another brewer, importer or distributor, subject to certain revenue limits.

With this permission from the DOJ, the ABI/SABMiller merger is one step closer to completion (the DOJ agreement is subject to a 60-day public comment period and court approval, and ABI still must receive approval from China for the merger), and ABI has stated that it plans to close the merger by the end of 2016. The limits imposed on the resultant ABI/SABMiller entity with respect to distribution and branding, however, suggest that the DOJ is acutely aware of the potential market effects brought by the emergence of such a massive company within an industry that is increasingly composed of small artisan brewers. Only time will tell how thoroughly the DOJ will enforce its proposed limitations.