



**America's Beer Distributors** • [www.nbwa.org](http://www.nbwa.org)

August 25, 2014

Ms. Dana Coomes  
Alcoholic Beverage Control Administrator  
101 East 4<sup>th</sup> Street  
P.O. Box 10003  
Owensboro, Kentucky 42302-9003

Ms. Stephanie Stumbo  
Malt Beverage Administrator  
Kentucky Department of Alcoholic Beverage Control  
1003 Twilight Trail  
Frankfort, Kentucky 40601-8400

Dear Administrators Coomes and Stumbo:

The National Beer Wholesalers Association (NBWA) is writing to protest the application of Anheuser-Busch InBev (ABI) to purchase an independent distribution operation in Owensboro, Kentucky, under Kentucky Revised Statute 243.360.

By way of background, NBWA represents the nation's 3,300 independent beer distribution facilities that employ over 130,000 Americans. NBWA supports the three-tier system of alcohol regulation (brewer/importer, independent distributor and licensed retailer) which balances robust competition with an orderly marketplace; creates a transparent and accountable system that protects consumers; and promotes responsibility in the manufacture, distribution, sale and consumption of alcohol.

NBWA's objection focuses solely on the adverse impact the application could have on Kentucky. This objection has nothing to do with the actual malt beverage products produced by ABI. NBWA member distributors proudly distribute a wide variety of quality and innovative beer products produced by ABI that are enjoyed by millions of consumers.

As a national association, NBWA monitors national and global developments in the beer industry that significantly alter the economic, commercial and regulatory impact of the independent three-tier system in the states and in local communities. Several factors are worth consideration during this application process:

- Anheuser-Busch was purchased by InBev (with international operating headquarters in Leuven, Belgium) in 2008, creating ABI.
- ABI has a market share of nearly 50 percent today, compared to a 23 percent market share in 1977.
- The ownership team that took control of ABI in 2008 has aggressively pursued a practice of combining the manufacturing and distribution tiers of the beer industry in Brazil.
- Since 2000, ABI has increased from 27 percent to 70 percent its sales to vertically-owned distribution in Brazil.
- In 2009, ABI's new CEO noted the company's interest in increasing distribution ownership to as much as 50 percent of its U.S. volume.
- Since 2009, nine states have had laws clarified that prohibit ABI from acquiring additional distribution facilities. Those include several of Kentucky's neighboring states such as Illinois, Missouri and Ohio.
- ABI-owned distribution is designed to sell only brands that it owns or controls. ABI has not focused on building or developing independent beer brands, such as those brewed by local Kentucky brewers.
- Since ABI was formed, thousands of U.S. jobs have been terminated, including some that have moved overseas, according to numerous news reports.

NBWA is concerned that ABI ownership of a Kentucky beer distributorship could eliminate quality jobs that support Kentucky families; adversely impact local economies; inhibit business development by preventing entry to market for small and local brewers; and jeopardize the foundation of Kentucky's time-tested, independent distribution system.

The ABI application impacts many different stakeholders. Providing concrete and transparent responses to stakeholder concerns is an important step in the licensing process. A thorough review of the following areas of consideration will bring to light the adverse economic impact on the local communities, the adverse impact on beer distributors across Kentucky, the barriers to entry created for small brewers and retailers, and the loss of wages and salaries in Kentucky that would result from this proposed transaction.

### **Quality, Local Jobs**

KRS 243.450 highlights areas of concern the administrator may consider such as the issues of future growth and financial potential of an area. There is significant



concern that ownership by a global corporation, instead of a Kentucky-based business, could jeopardize quality, local jobs and harm the financial potential of the area. Beer distributors in Kentucky currently provide over 1,520 direct jobs. These are "Main Street" jobs that include benefits such as health insurance and pay more than \$102 million in wages and salaries. From truck drivers to graphic artists and sales representatives to receptionists, Kentucky's beer distributors offer solid jobs to local workers, proudly supporting local families and ensuring growth in Kentucky communities.

### **Local Economic Contributions**

Kentucky's beer distributor operations impact \$104 million in state, local and federal taxes as well as an additional \$150 million in excise taxes in the Commonwealth. The \$102 million in wages earned by Kentucky's beer distribution employees is earned and spent in Kentucky communities. The Commission is encouraged to consider how a potential ABI ownership would impact a dependable stream of revenue for the Commonwealth.

### **Business Development/ Market Access/ Consumers**

Business development and market access should also be considered when reviewing ABI's application. There is more consumer choice in alcohol beverages than any other product according to the A.C. Nielsen Company, and there are over 13,000 labels of beer available in the United States.

This consumer choice is made possible because the three tiers of the American distribution system work independently; local businesses strive to meet the needs of local consumers demanding new and exciting beers. This independent and open system helps nurture and grow new breweries, which is why craft beer sales increased 18 percent in 2013. The system supports the 3,000 breweries operating in the U.S., including 26 brewery licenses in Kentucky.

By contrast, the ABI-owned distributor in Louisville sells *only* ABI products. Nationally, it is estimated that over 99 percent of ABI's beer distribution volume consists of brands that are owned and controlled by ABI. ABI ownership of an additional Kentucky distribution facility would prevent other breweries from accessing this distributor to get their products to the Owensboro market. This scenario would limit brewers' market access and inhibit their ability to continue to grow their businesses.

Additionally, the impact of this proposed ownership on Kentucky's licensed retailers should be closely reviewed. Under KRS 244.585, the state has expressed a

strong interest in verifying levels of service for licensed retailers from distributors that should be analyzed in this application process.

The proposed transaction could possibly lead to diminished retail service; targeting of only certain, high volume retail accounts; discriminatory pricing issues; loss of availability of new brands; lack of partnership to grow local sales and promote local communities.

Approval of ABI's application could result in serious negative consequences for Kentucky's small brewers, Kentucky's retailers and ultimately Kentucky's consumers.

### **A Regulated Industry**

Alcohol is a socially sensitive product where local views and policies differ, as is reflected by the various wet and dry counties in Kentucky. As a result of the 21<sup>st</sup> Amendment to the U.S. Constitution, each state is the primary regulator of alcohol distribution within the state's borders. State alcohol regulation in Kentucky, like the rest of the United States, is built on industry regulation. The Commonwealth, and indeed the nation, has a long-standing and compelling interest in knowing who is engaged in the alcohol industry and in exercising levers of state control in the supplier, distributor and retailer tiers. The licensing and protest regime in Kentucky law reflects this desire for strong oversight.

The beer industry has recently been the subject of two major investigations by the U.S. Department of Justice (DOJ). The DOJ took an interest in both InBev's purchase of Anheuser-Busch as well as ABI's acquisition of Modelo from the perspective of federal antitrust laws and competition issues. As a result of its own analysis, the DOJ was so concerned with ABI's marketplace practices that it put production and distribution constraints on ABI's dealings with Modelo (e.g. Corona). The DOJ also required that ABI must report any future efforts to expand its ownership of distributorship if the proposed transaction exceeds \$7.5 million.

As part of the review of ABI's application, the Commission is encouraged to examine previous DOJ efforts and coordinate with DOJ as part of a thorough analysis of antitrust concerns for the marketplace related to state and federal antitrust laws.

### **NBWA's Protest**

The issues raised by ABI's proposed transaction will negatively impact Kentucky jobs, tax revenue and business growth; it would also undermine the Commonwealth's effective independent three-tier system and regulatory structure.



Both the Commonwealth of Kentucky and the United States Supreme Court have endorsed the three-tier system, a system that was designed to maintain separation between the alcohol industry tiers and avoid the combining of the production, distribution and retailer tiers.

A complete examination is critical to the effort to balance the state and community interests at stake. Furthermore, NBWA encourages the state to share any protest letters and applicant answers with the public to provide greater transparency in this process.

Accordingly, NBWA protests the pending application and is willing to serve as a resource as the Commission works to understand the true implications of ABI's attempt to collapse the manufacturing and distribution tiers of the beer industry. NBWA would welcome the opportunity to participate in any hearings on this application.

Please do not hesitate to contact NBWA if you have any questions on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paul Pisano".

Paul Pisano

Senior Vice President and General Counsel

Enc.