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# Big Beer Duopoly

## A Primer for Policymakers and Regulators



**Marin Institute Report**

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### Executive Summary

While the U.S. beer industry has been consolidating at a rapid pace for years, 2008 saw the most dramatic changes in industry history to date. With the creation of two new global corporate entities, Anheuser-Busch InBev (ABI) and MillerCoors, how beer is marketed and sold in this country will never be the same. Anheuser-Busch InBev is based in Belgium and largely supported and managed by Brazilian leadership, while MillerCoors is majority-controlled by SABMiller out of London. It is critical for federal and state policymakers, as well as alcohol regulators and control advocates to understand these changes and anticipate forthcoming challenges from this new duopoly.

This report describes the two industry players who now control 80 percent of the U.S. beer market, and offers responses to new policy challenges that are likely to negatively impact public health and safety. The new beer duopoly brings tremendous power to ABI and MillerCoors: power that impacts Congress, the Office of the President, federal agencies, and state lawmakers and regulators.

### Summary of Findings

- Beer industry consolidation has resulted in the concentration of corporate power and beer market control in the hands of two beer giants, Anheuser-Busch InBev (ABI) and MillerCoors LLC.
- The American beer industry is no longer American. Eighty percent of the U.S. beer industry is controlled by one corporation based in Belgium, and another based in England.
- The mergers of ABI and MillerCoors occurred within months of each other, and both were approved much quicker than the usual merger process. MillerCoors was completed in approximately eight months, while the ABI merger was completed in only five.
- Shareholder rights and opportunities to participate in decision making significantly diminished with the two mergers. With both corporations based outside the U.S., shareholders are challenged to attend annual meetings and generate support for shareholder resolutions.
- The power of the duopoly poses great threats to the already weakened three-tier alcohol regulatory system. ABI has stated its interest in controlling up to 50 percent by volume of the beer distribution capacity in various states. Both ABI and MillerCoors have forced egregious and potentially illegal contract provisions upon distributors who often have no choice but to comply.
- The duopoly paralyzes state legislatures with threats of brewery closures and job losses every time an alcohol tax or fee increase is proposed.
- ABI and MillerCoors, their related associations and business partners, have spent tens of millions of dollars lobbying Congress, the Federal Trade Commission, the Department of



Commerce, the White House, the World Trade Organization, and state legislatures opposing alcohol tax and fee increases, among other policies.

- Beer remains the cheapest and most widely used drug in America, despite research that shows higher prices will reduce or prevent alcohol-related harm.

Marin Institute recommends that Congress and the Obama Administration re-open and reconsider the inadequate review of the mega mergers approved in the final year of the Bush administration. In addition, Marin institute recommends strong federal and state legislation to:

- 1) Protect and defend the three-tier alcohol production and distribution system;
- 2) Curb the alcohol industry's undue political influence globally and domestically;
- 3) Raise alcohol taxes and fees to mitigate the damage of alcohol to society and to reduce excessive alcohol consumption and underage drinking.



# Big Beer Duopoly

## A Primer for Policymakers and Regulators

In the multinational world of Big Alcohol, beer is by far the most popular of the three beverage categories, surpassing both spirits and wine. Beer is the beverage of choice among underage youth and binge drinkers (those who consume five or more drinks at one sitting) in the United States. According to one study, 74 percent of binge drinkers predominantly or exclusively consume beer.<sup>1</sup>

As recently as 2004, 64 percent of the global beer market ownership was fragmented among ten beer corporations.<sup>2</sup> In 2008 the merger of Anheuser-Busch (A-B) and global giant InBev created the world's largest brewer: Anheuser-Busch InBev (ABI), followed by SABMiller (second-largest) and Molson Coors Brewing Company (fifth-largest). To better compete with ABI's growing world beer market share, SABMiller and Molson Coors combined their U.S. and Puerto Rico operations to establish their joint venture, MillerCoors LCC.

With these massive consolidations, the two beer giants (ABI and MillerCoors) now have combined control of more than 40 percent of the world beer market and 80 percent of the United States beer market.<sup>3</sup> They represent a classic duopoly: a market formation with two principal sellers of a good or service.

In this report, we highlight troubling effects of this recent duopoly formation, as well as future implications for the impact on public health and safety; immense political influence; disappearing shareholder rights; consolidation of the three-tier system; and most importantly, an unending and ubiquitous supply of cheap beer.

### Anheuser-Busch: A Globalized American Icon

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Anheuser-Busch (A-B) was an independent and dominant U.S. beer corporation for more than 150 years. A-B developed a well-diversified industry portfolio by acquiring substantial ownership in beer markets worldwide. At the time of InBev's acquisition, A-B boasted 27 breweries worldwide (twelve in the U.S., fourteen in China, and one in the United Kingdom), excluding the breweries of its subsidiaries. A-B brewed more than 100 beers, and Budweiser was sold in 80 beer markets worldwide. By 2006, A-B boasted \$18 billion in sales.<sup>4</sup>

Its global infrastructure spanned the U.S., Mexico, China, and India. A-B owns a 50 percent stake in Grupo Modelo, giving it control of 63 percent of the Mexican beer market and 40 percent of the beer import market into the United States, with sales in 159 countries.<sup>5</sup> In India, A-B acquired a 50 percent stake in Crown Beers India Ltd. from its existing joint venture with Crown International.

A-B's investment in the Chinese beer market included ownership in China's largest brewer, Tsingtao Brewery; acquisition of China's oldest brewery and the market share leader in the northeast region of China, Harbin Brewery Group Ltd.; and whole ownership and operation of Budweiser Wuhan International Brewery.<sup>6</sup> A-B also made a commitment to double its distribution in China by 2012, expanding to 100 new cities, reaching as many as 250 million potential new Chinese beer drinkers.<sup>7</sup>

A-B is well positioned to capitalize on the ever-expanding Chinese beer market, which is expected to account for 45 percent of the growth in global beer volume.<sup>8</sup> Ironically, that the beer company most closely associated with America became so globalized is precisely what made it attractive to a takeover.



## InBev Swallows Anheuser-Busch Whole

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Meanwhile, the foreign company InBev grew into a formidable beer giant from the 2004 merger of Belgium-based Interbrew and Brazil's AmBev. At the time, AmBev was among the largest brewing companies in the world, while Interbrew was the third largest brewing company by volume. Eventually InBev became the world's largest brewer by volume, boasting a portfolio of more than 200 brands and operating in 32 countries. Prior to its merger with A-B, InBev already controlled nearly 14 percent of the world beer market, and aspired to be the global beer market leader.

InBev employs more than 86,000 people worldwide,<sup>9</sup> and its brands are ranked first or second in more than 20 global beer markets. InBev controls approximately 70 percent of the beer market in Brazil,<sup>10</sup> but earns 29 percent of its profits from Brazil and 40 percent from the U.S.<sup>11</sup>

At the same time, A-B grew complacent as the great American brewer. It became vulnerable to a takeover for several reasons: its global brand recognition, reduced Busch family and executive stock ownership,<sup>12</sup> and sluggish stock performance. InBev approached the A-B board of directors with a proposal to acquire the company in June 2008. In spite of the far-reaching implications the ABI merger was quickly complete, thanks in part to swift approval by the U.S. Department of Justice (DOJ), the agency charged with antitrust review.

Approximately one month after the proposal, A-B and InBev reached an agreement for the terms of the merger. In November 2008 participating A-B shareholders voted to approve the deal.



Two days after the shareholder vote, the DOJ announced that a condition for approval of the merger required InBev to divest of Labatt USA. The government determined the merger could eliminate competition in western New York between InBev's Labatt brands and A-B's Bud brands.<sup>13</sup> The Labatt sales condition effectively quelled antitrust concerns. Within five months the merger was approved, and the beer behemoth Anheuser-Busch InBev was born.

A-B shareholders voted in favor of the merger receiving \$70 per share,<sup>14</sup> 40 percent more than the approximate \$50 per share value prior to acquisition speculation. In addition, entities such as Goldman Sachs and Citibank were doubly rewarded for assisting in the successful merger. Goldman Sachs received \$40 million for its "services related to the merger,"<sup>15</sup> while Citibank received \$30 million at consummation of the merger, and an additional two million for financial advice.

A-B directors and executive officers, however, received the greatest rewards. August A. Busch IV negotiated a consulting agreement with InBev, for which he received a lump sum cash payment of nearly \$1.04 million at the time of the merger, an additional monthly fee of \$120,000, an office in St. Louis, administrative support, and full medical, dental, vision, and prescription drug benefits. Busch IV also received more than \$88.63 million in compensation for his shares of A-B. August A. Busch III received more than \$103 million for his ownership in A-B equity, while A-B Chairman of the Board Patrick T. Stokes received \$140 million for his shares.

The new entity Anheuser-Busch InBev reported more than \$21.3 billion in revenue for 2008.<sup>16</sup> As assessed by Credit Suisse, ABI has more growth potential over the next three years than that of its peers. ABI will aggressively increase efficiency and profits with its new infrastructure, and has a need



and commitment to debt reduction. ABI has growth potential in China, Russia, and Mexico, growth potential of global brands Budweiser, Corona, and Stella Artois,<sup>17</sup> and portfolio integration of beer and soft drinks. One in four beers around the world will soon be ABI-produced.<sup>18</sup>

While Bud and Bud Light still will be advertised as America's beers produced by American workers, more and more of the brands' profits will pour into Belgium and Brazil. Although MillerCoors' parent company SABMiller is its largest competitor, ABI profits will more than double SABMiller profits. Given the emergence of this new global entity, it was inevitable that A-B's two closest competitors would join forces.

## **SABMiller and Molson Coors Give Birth to MillerCoors**

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SABMiller (SAB) grew out of South African Breweries' whole acquisition of Miller Brewing Company in 2002 from Philip Morris. (Altria Corporation, a descendant of Phillip Morris, still owns 26 percent of SABMiller today.) Prior to the formation of SAB, South African Breweries plc was the world's fourth largest brewer.<sup>19</sup> Miller Brewing Company had grown to be the second-largest brewery in the United States by volume.<sup>20</sup> Currently, SAB is the world's second largest brewer.

SAB's brewing interests and distribution agreements cross six continents, and boast a beverage portfolio of more than 200 brands. In 2008, SAB operated 139 breweries worldwide, eighty-six in Africa and Asia (fifty-nine in China, ten in India), eight in North America, twenty-one in Europe, seventeen in Latin America, and seven in South Africa. Through China Resources Snow Breweries (SAB's joint venture entity), the company purchased Shandong Hupo Brewery, integral in producing China's largest selling beer brand, Snow.<sup>21</sup>

Through its acquisition of Narang Breweries in 2000, SAB established its presence in the Indian market and later acquired a majority ownership in South America's largest brewer, Bavaria S.A., creating India's second largest brewer.<sup>22</sup> Within five years, SAB acquired six breweries in India.<sup>23</sup> Currently SAB is Africa's biggest brewer, with a 90 percent beer market share in South Africa and twenty-seven breweries among ten African countries.<sup>24</sup>

Molson Coors Brewing Company (MCBC) is another beer giant formed by a merger of Canada's Molson Inc. and Colorado-based Coors in 2005. MCBC is presently the world's fifth largest brewer. Prior to the MillerCoors



joint venture MCBC was already a complex corporation, claiming dual executive offices in Denver, Colorado and Montreal, Quebec. MCBC operates eighteen breweries located throughout North America and Europe, and distributes products in more than thirty countries.<sup>25</sup>

With the formation of the MillerCoors joint venture in July 2008, the business interests and liabilities of MCBC became even more convoluted. The percentage interests in the profits are 42 percent for MCBC and 58 percent for SAB. However, voting interests are divided equally between MCBC and SAB, and each has equal board representation. Leo Kiely serves as the CEO of the joint venture.

Although MillerCoors placed its headquarters in Chicago, it is wholly owned and controlled by its parent companies, London-based SABMiller and Molson Coors Brewing Company. Five of the ten directors on the MillerCoors board are members of SAB corporate leadership.



## Speedy Approval of Massive Mergers

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Anheuser-Busch's lobbying efforts may have influenced the expeditious approval of the ABI merger. For example: A-B paid the Hobbs Group \$200,000 in 2008 to lobby the U.S. House of Representatives, the U.S. Senate, the Department of the Treasury, and the Executive Office of the President on "issues relating to international beer operations, trade, and regulatory policy and... [n]otifications regarding the acquisition of Anheuser-Busch by InBev."<sup>26</sup>

The Hobbs Group, LLC is only one of a dozen lobbying entities contracted by A-B in 2008. Additionally, A-B paid the Gephardt Group \$30,000 to lobby the U.S. House of Representatives and the U.S. Senate regarding "issues related to InBev/Anheuser-Busch acquisition."<sup>27</sup> Ultimately, A-B's ongoing lobbying activities could have streamlined and expedited the ABI merger.

The MillerCoors merger was also approved rather quickly, and once again, industry lobbying dollars may have paid off. After just eight months of investigating the potential outcomes from the joint venture, the Department of Justice concluded, "the joint venture is likely to produce substantial and credible savings that will significantly reduce the companies' costs of producing and distributing beer. These savings meet the Division's criteria of [having] a beneficial effect on prices."<sup>28</sup>

MillerCoors spent \$1.18 million on lobbying expenditures in 2008,<sup>29</sup> and its primary lobbying issue was alcohol taxes. In addition, MillerCoors Vice President of Government Affairs Timothy H. Scully, Jr. specifically lobbied on issues regarding the joint venture on at least four occasions. Parent company SABMiller spent an additional \$655,000<sup>30</sup> on lobbying expenditures while parent company Molson Coors spent \$712,000.<sup>31</sup> Both parent companies also lobbied on issues such as alcohol taxes and the joint venture MillerCoors.

## Bigger and Better Political Machines

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The colossal ABI merger approval was expedited concurrently with the end of George W. Bush's presidential term. August Busch III and A-B's Political Action Committee raised prolific amounts of funds and donated generously to President Bush's presidential campaigns. August Busch III was a member of the Bush Rangers, a group engaged in bundling political donations that contributed at least \$200,000 to the President's 2004 re-election.<sup>32</sup> In 2006, A-B raised more than \$1 million through its Political Action Committee, of which 40 percent went to Democrats and 60 percent to Republicans.<sup>33</sup> In the 2008 election cycle, the A-B PAC raised \$1.5 million in political contributions.<sup>34</sup>

In 2008, A-B spent \$3.46 million on lobbying expenditures with 13 different lobbying firms on issues related to alcohol taxes, employment, and trade.<sup>35</sup> A-B lobbyists targeted the Department of the Treasury, the Federal Trade Commission, Congress, and the Department of Commerce,<sup>36</sup> all of which have jurisdiction over matters related to mergers, acquisitions, and antitrust.

Total lobbying expenditures among MillerCoors and its two parent companies exceeded \$2.5 million in 2008. Among the many entities lobbied by the two parent companies were the U.S. House of Representatives, the U.S. Senate, the Department of the Treasury, the Tobacco, Tax, and Trade Bureau, the Federal Trade Commission, the Department of Health and Human Services, and the White House.<sup>37,38</sup>





Just six months into 2009, MillerCoors had already spent \$700,000 on lobbying with three different lobbying firms on issues related to alcohol taxes, state-based regulation and the three-tier system, self-regulation, advertising voluntary codes, labor, and antitrust.<sup>39</sup> So far, MillerCoors lobbying targets include the U.S. House of Representatives, the U.S. Senate, the Department of the Treasury, the Department of Justice, the Federal Trade Commission, the Tobacco, Tax and Trade Bureau, and the White House.<sup>40</sup>

In addition to MillerCoors and its parent companies spending an exorbitant amount on lobbying expenditures, they made abundant political contributions. From 2004–2008, Molson Coors, Miller Brewing Company, and Coors Brewing Company contributed nearly \$1.08 million in political donations.<sup>41</sup>

## Shrinking Shareholder Rights

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Shareholder rights and activism are particularly important points of leverage in the U.S., helping to ensure corporate accountability and affect changes in corporate behavior. Thanks to shareholder activism, major corporations have complied with environmental standards, removed dangerous chemicals from their products, ended child labor, and improved general labor standards. With ABI and MillerCoors' parent company SABMiller both headquartered outside of the United States, shareholder accountability is significantly diminished.

ABI is headquartered in Belgium, even though it generates 40 percent of its revenue from the U.S. market.<sup>42</sup> American shareholders will have difficulty attending shareholder meetings and generating support for proposed shareholder resolutions.

Similarly, MillerCoors' parent company SABMiller is headquartered in London, while the company controls 18.7 percent of the U.S. beer market. Moreover, as a limited liability corporation, MillerCoors has no shareholders to which it is directly accountable.

While shareholder rights are challenging enough to assert here in the U.S., they can be even more difficult in Europe. As one experienced shareholder activist (who previously worked on shareholder campaigns and with socially responsible investment firms) noted in an email exchange on the issue: "It is much, much harder to file shareholder resolutions with European corporations and filing resolutions throughout Europe is not just arduous, it is virtually impossible."

## Influencing Global Trade Policy

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Given the global scope of the beer industry, it should come as no surprise that international trade policy is high on its political agenda. Among the most audacious demonstrations of the alcohol industry's influence on trade policy occurred in October 2008, when the WTO reversed its previous ruling that Indian tariffs on U.S. alcohol imports were not discriminatory. This reversal resulted from President George W. Bush's administration issuing a complaint in 2007 that India imposed "excessive" tariffs on imported wine, beer, and spirits.<sup>43</sup>

The alcohol industry guides the President's trade policies by serving in advisory roles to the President's Office of the United States Trade Representative. Some examples include Francis Z. Hellwig, a senior associate and general counsel of Anheuser-Busch Companies, who serves on the Industry Trade Advisory



Committee (ITAC) on Intellectual Property;<sup>44</sup> and Leonard W. Condon, vice president of International Business Relations of Altria Corporate Services, who serves on the ITAC on Consumer Goods.<sup>45</sup>

In contrast, no public health experts from federal agencies, nongovernmental organizations, or research institutions serve in advisory roles to the President's Office of the U.S. Trade Advisory Committees.

## Tax Lobbying Extortion

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Low prices are at the heart of the beer industry's ability to make their products readily available and affordable to the masses, thereby enabling the beer giants to reap great profits. Because raising taxes can result in higher prices, industry is very aggressive at lobbying against any tax increases.

With the A-B InBev merger, aggressive lobbying turned into a form of extortion against workers in beer factories. InBev included the following clause in the ABI merger agreement:

*InBev has made a good faith commitment that it will not close any of Anheuser-Busch's current twelve breweries located in the United States, provided there are no new or increased federal or state excise taxes or other unforeseen extraordinary events which may negatively impact Anheuser-Busch's business.*<sup>46</sup>

While on the surface this may sound like a logical business stance, it really amounts to a thinly veiled threat aimed at garnering worker and union opposition to tax increases, while giving politicians a convenient excuse to oppose tax hikes. In reality, beer taxes are currently so low that relatively minor increases would hardly be felt by a conglomerate the size of ABI.

Nevertheless, the scare tactic already appears to be working. ABI repeatedly announced the possibility of brewery closures to quash attempts to increase beer taxes in various states during the 2009 legislative session. With at least twenty-five bills introduced in eighteen states to raise beer taxes that year, ABI had plenty of opportunity to sound its alarmist horn.

For example, in New Hampshire House Bill 166 would have raised the state excise tax on beer from thirty to forty cents per gallon. Legislators voted it down. More than one politician commented that they were afraid the tax increase would cause an ABI brewery located in their state to close.<sup>47</sup>

Same story, different state: In New York, ABI lobbied against a beer tax increase while local ABI brewery plant managers, the Teamsters local president, and county and state elected officials were quoted in multiple news stories that they feared brewery closures and job losses from a tax hike. The local ABI brewery even halted operations for employees to attend a news conference blasting the proposed tax increase.<sup>48</sup> In the end, the beer tax increase signed by the governor was a paltry three cents per gallon, despite the state's looming budget deficit.

## Labor Beware

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In addition to their lobbying practices, ABI's reputation for how it treats its workforce is less than stellar. Morningstar analyst Ann Gilpin described InBev in 2003 as "run by a bunch of machete-



wielding investment bankers who go around and cut costs wherever they can.”<sup>49</sup> Below are just a few examples of InBev’s questionable business practices:

- In 2005, worker strikes and lawsuits ignited against InBev based on allegations of harassing employees and hazing “underperforming” workers. The strikes and protests continued in 2006 after InBev announced a “restructure” of its Belgium operations, complete with layoffs.<sup>50</sup>
- Union leaders representing InBev workers in Brazil, Canada, and Europe have warned Anheuser-Busch employees that the new company will drastically reduce the workforce. Siderlie Oliveira, president of Brazil’s massive food union, warned A-B employees that “they should worry, because the production is going to be concentrated and the workforce reduced,” citing a reduction in the company’s Brazil brewery workers from 23,000 to 13,000 since the 1990s as evidence.<sup>51</sup>
- Cam Nelson, president of the service employees union at InBev’s Labatt plant, confirmed that the relationship with InBev was marked by years of strikes, lockouts, layoffs, and plant closures.<sup>52</sup>
- Although ABI initially promised it would cut no jobs, just three weeks after the merger approval, the company announced plans to cut 1,400 salaried workers in the U.S., eliminate 415 contractor positions, and leave 250 U.S. positions vacant.<sup>53</sup> Most of the U.S.-based job losses are in St. Louis, where A-B and its employees were responsible for \$22 million of the city’s operating revenues.<sup>54</sup>
- In an effort to meet its goal to cut at least \$1.5 billion annually by 2011,<sup>55</sup> ABI recently slowed down its payment to suppliers, taking as long as 120 days to pay, four times longer than when A-B traditionally paid its suppliers. Suppliers unable to accommodate ABI’s new payment policy were forced to sever ties with the company.<sup>56</sup>

## Disappearing Distributors

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The 21st Amendment to the U.S. Constitution gives states unique regulatory authority over the sale and distribution of alcohol. After the repeal of Prohibition, most states created a three-tier system of alcohol sales and distribution to maintain order in the marketplace. This system consists of three distinct tiers: alcohol producers (who make the beverages), wholesalers (who distribute the beverages to outlets), and retailers (who sell the beverages to the public). The structure helps ensure that the state has adequate oversight of alcohol sales, and helps prevent aggressive marketing and sales tactics.

The distribution tier is a vital component of the three-tier system. Distributors help act as a buffer between potentially overzealous producers and retailers. Publicly traded alcohol producers and increasingly, big box retailers, care more about turning a profit than placing limits on the sale of a potentially dangerous product.

Moreover, distributors are part of the communities in which they are based and have a vested interest in addressing alcohol industry concerns that arise locally. This also means that distributorships are accessible to hear concerns from the general public and government entities, unlike the foreign-based beer giants.

U.S. beer distributors, industry experts, and control advocates are bracing themselves for ABI’s attempts to consolidate and circumvent the three-tier system that uniquely defines U.S. alcohol sales. Concerns about ABI circumventing the authority and role of distributorships are justified. Prior to the AmBev-Interbrew merger in 2005, AmBev CEO Carlos Brito cut costs by increasing the amount



of beer shipped directly to retailers, forcing distributors out of business. InBev-owned Brahma consolidated 1,500 distributors to fewer than 200 in less than four years.<sup>57</sup> The plight of the U.S. beer distributors is predicted to worsen as ABI expands its control of the world beer market, while tightening its belt to pay down the massive \$52 billion InBev borrowed to buy A-B.

According to one market analyst, ABI will move to consolidate beer wholesalers one by one, working in the long-term towards one chief wholesaler for all of their brands in each market.<sup>58</sup> Indeed, the new ABI is already considering plans to increase the amount of beer it sells directly to retailers through its own distributors, from the current 7 percent to at least half. According to an industry analyst, “ABI now believes in theory that 50 percent of volumes could ultimately be sold through direct distribution,” as a way to save costs and boost profitability.<sup>59</sup>

Similarly, MillerCoors is also working to bypass the middle-tier distribution mechanism. Since the consummation of the MillerCoors joint venture, “MillerCoors has made the consolidation of its distributor network one of its highest priorities,”<sup>60</sup> according to Tim Owston, a MillerCoors vice president.

Soon after the joint venture deal was inked, MillerCoors found itself in the midst of several lawsuits in Ohio and Colorado because of its attempts to consolidate beer distributorships or to prematurely cancel distribution contracts. By fall 2008, MillerCoors had already told more than ten of its beer distributors in Ohio that it was ending their franchise relationships.<sup>61</sup>

Some distributors have retained counsel and filed lawsuits to prevent MillerCoors from breaking their franchise agreements. For example, a lawsuit by AFP Distributors Inc. in Ohio contends that “[The company has] attempted to use the creation of MillerCoors for the improper and unlawful purpose of changing the existing distribution network for the Miller Brands and circumventing franchise protection statutes in the United States, including Ohio law.”<sup>62</sup>

In addition, MillerCoors’ new distribution agreement has come under scrutiny by the California Attorney General (AG). In a June 2009 letter to MillerCoors, the AG’s office expressed the following concerns regarding contract provisions that aim to give MillerCoors unprecedented control over distributors:

*If MillerCoors were to exercise these provisions of the Agreement with respect to any distributor entertaining a change in its ownership structure, MillerCoors would have such far-reaching leverage over the distributor that MillerCoors would effectively control that distributor's business. MillerCoors' ability to drag out the sales process for six to eight months or more, and to impose itself between the distributor and any-third party purchaser, gives MillerCoors effective control of the distributor during that process through a variety of mechanisms....*

*MillerCoors is not licensed as a distributor, and MillerCoors is not permitted to exercise virtually unfettered control over who can own a distribution business and how that business is run day-to-day. The State of California regulates these distributors as licensees, and for MillerCoors to control such licensees, who in fact distribute non-MillerCoors products that are in direct competition with MillerCoors' own products, violates California's alcoholic beverage control laws and the spirit of openness that the People of California require of this closely regulated industry.*

*This office has a particular concern that the coercive effect of this Agreement, which gives MillerCoors a high level of control over the distributors' businesses and operations, could ultimately result in a detrimental impact upon competition in this industry, particularly as to small and craft breweries, and we intend to monitor that issue closely.*<sup>63</sup>



The letter also notes similar concerns over the MillerCoors contract that have been expressed, and in some cases acted upon, by a number of other states, including Nevada, Michigan, and Virginia.

This should come as no surprise, as SABMiller has been especially aggressive in its attempts to deregulate existing controls of the alcohol industry abroad. It has employed litigation tactics to overturn India's pricing controls and disassemble wholesaler monopolies. If SABMiller's lawsuit succeeds, the company may gain the majority beer market share in India and double its sales.<sup>64</sup>

A separate and independent distribution tier is a crucial component of alcohol control in the United States. In addition to acting as a buffer between alcohol beverage manufacturers and retailers, distributors also serve as a source of accountability within the alcohol industry. Maintaining the integrity of the three-tier system is necessary for ensuring the health and safety of the public.

## **The Race to the Bottom**

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America has the second lowest tax rates in the world, due to Big Alcohol's political influence on lawmakers and regulators. The average cost of a twelve-ounce can of beer in the U.S. is seventy-three cents, while some brands are as cheap as forty-five cents per can.

The most worrisome outcome of Big Beer's industry consolidation is the price of beer, which continues to remain dangerously cheap. Low beer prices are an invitation for both underage and adult over-consumption. From a public health perspective, increasing the price of beer in the U.S. is the most cost-effective harm reduction and prevention strategy that could be implemented.

Meanwhile, the Department of Justice (DOJ) seems to believe that beer is an ordinary product like soda or tissues or masking tape. The DOJ's position of approving industry consolidation as long as the price of beer remains low is a woefully misguided standard to apply to the beer industry.

Beer is not harmless. Indeed, beer is the most commonly abused drug in the United States, and the most popular drug among youth.<sup>65</sup> Beer should be treated as the drug it is, with stringent guidelines applied when addressing alcohol industry-related issues such as taxation, trade, distribution, production, and corporate structure and industry operations. With respect to merger approvals and industry consolidation, the federal government should prevent the Big Beer duopoly from controlling close to the entire U.S. beer market.



## Recommendations

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**In summary, the recent consolidation of the beer industry has resulted in:**

- rapid federal government approval for both mergers;
- diminished opportunities for shareholders to exercise their rights;
- threats to the three-tier alcohol control system in the U.S.;
- stepped-up political scare tactics to thwart alcohol tax increases;
- millions of dollars spent on lobbying and political donations; and
- escalated global production and sale of cheap beer.

**Marin Institute recommends that Congress and relevant agencies of the Obama Administration re-open and investigate the ABI and MillerCoors mergers approved expeditiously during the final year of the previous administration, with specific examination of:**

- Potential Sherman Antitrust Act violations;
- Diminishment of shareholder rights;
- Job losses and other community impacts;
- Undue pressure and illegal contract provisions forced on beer distributors.

**Congress and the Obama Administration should consider legislation to:**

- Change the criteria for which alcohol corporations are subject to antitrust review to emphasize public health and safety over low prices;
- Protect and strengthen the distributor tier of the U.S. alcohol regulatory system, emphasizing state control under the 21st Amendment;
- Curb the alcohol industry's undue political influence by significantly limiting political contributions and monitoring lobbying activities;
- Use criteria that includes protection of public health from alcohol-related harm to analyze policies for the World Trade Organization and other global trade negotiations;
- Exclude alcohol companies from any negotiations related to the World Health Organization's global strategy on alcohol;
- Raise federal alcohol taxes to mitigate the damage of alcohol to society and to reduce alcohol consumption and underage drinking.



**Given the authority of states under the 21st Amendment, state-level policymakers and regulators bear a special responsibility to guard against further erosion of the state-based regulatory system. Marin Institute recommends that states:**

- Curb the alcohol industry's undue political influence by significantly limiting political contributions and monitoring lobbying activities;
- Maintain the integrity of the three-tier system by rejecting industry-driven attempts to “chip away” at the distinction between the tiers;
- Attorneys general be vigilant in publicly rejecting potentially illegal contract clauses and end-runs of state franchise laws;
- Ensure that public health advocates are present at all times where industry representatives are being heard on policy matters;
- Create more opportunities for public health voices to be heard at state regulator meetings, such as those held by the National Conference of State Liquor Administrators and the National Alcohol Beverage Control Association.

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*This report was prepared by Charisse Ma Lebron and Michele Simon, with assistance from Sarah Mart and Bruce Livingston.*



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