

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Anheuser-Busch InBev SA/NV and ABI Australia Financing Pty Ltd ACN 615 290 830

Contents

1. Person giving the Undertaking	1
2. Background	1
3. Commencement of this Undertaking	3
4. Cessation of Ongoing Obligations	3
5. Obligations with respect to disposal of the Divestiture Businesses	3
6. Notification of key dates and ACCC requests for information	4
7. Disclosure of this Undertaking	4
8. Obligation to procure	4
9. No Derogation	5
10. Change of Control	5
11. Costs	5
12. Jurisdiction	5
13. Notices	5
14. Defined terms and interpretation	6
Schedule 1 – Dictionary and interpretation	9

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Anheuser-Busch InBev SA/NV (**ABI SA/NV**) and its subsidiary ABI Australia Financing Pty Ltd ACN 615 290 830 (**ABI Australia**) (together referred to as **ABI** in this Undertaking).

2. Background

The parties to the Proposed Acquisition

- 2.1. *Acquirer:* The Acquirer is Asahi Holdings (Australia) Pty Ltd ACN 135 315 767 (**AHA**), a private company incorporated in Victoria, Australia, which is the entity through which Asahi Group Holdings, Ltd. (**AGH**) and its wholly-owned subsidiaries operate its Australian business. AGH, a corporation organised under the laws of Japan, manufactures and sells alcoholic beverages, soft drinks and food products in Japan and internationally (together referred to as **Asahi** in this Undertaking). Asahi operates in the alcohol sector in Australia through its subsidiary Asahi Premium Beverages Pty Ltd, which manufactures and supplies a range of beer, cider and spirits products.
- 2.2. *Target:* The target entity is ABI Australia Holding Pty Ltd (**ABIH**), which is the wholly owned subsidiary of Anheuser-Busch InBev SA/NV (**ABI**), a multinational brewing company incorporated in Belgium. ABI SA/NV also owns ABI Australia. Through ABIH, ABI operates Carlton United Breweries (**CUB**), an Australian brewing company which manufactures and supplies a range of beer, cider brands and spirits products. ABI owns ABI Australia.

The Proposed Acquisition

- 2.3. AGH proposes, subject to obtaining regulatory approvals, to acquire the entire business of ABI in Australia, including CUB, through an acquisition of 100% of the shares in ABIH (the **Proposed Acquisition**).

The ACCC's review

- 2.4. On 23 August 2019, the ACCC commenced its public review of the Proposed Acquisition.
- 2.5. The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.6. The ACCC has concluded that, in the absence of an undertaking provided by Asahi pursuant to section 87B of the Act (**Asahi Undertaking**) and this Undertaking by ABI, the Proposed Acquisition:
- (a) would lead to a significant consolidation in the market for the supply of cider products in Australia (**Cider Market**), whereby there would be a lessening of competitive constraints and the worsening of market outcomes for consumers; and

- (b) would remove Asahi as a vigorous and effective competitor in the concentrated market for the supply of beer products in Australia (**Beer Market**).

The Asahi Undertaking remedy

- 2.7. Asahi does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. However, to address the ACCC's competition concerns, Asahi has offered the Asahi Undertaking pursuant to section 87B of the Act.
- 2.8. The objective of the Asahi Undertaking is to address the ACCC's competition concerns, as set out above, that would otherwise arise as a consequence of the Proposed Acquisition. The Asahi Undertaking aims to achieve this objective by placing obligations on Asahi:
 - (a) to ensure that the Divestiture Businesses are sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor(s) in the Cider Market and Beer Market;
 - (b) to ensure the purchaser(s) of the Divestiture Businesses has all the necessary associated assets and rights to compete effectively with Asahi in the Cider Market and/or Beer Market;
 - (c) to maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Businesses prior to divestiture; and
 - (d) to provide for the effective oversight of Asahi's compliance with the Asahi Undertaking.

The ABI Undertaking remedy

- 2.9. The ACCC is concerned that, in the absence of the ABI Undertaking, ABI may not provide its consent to the transfer of the rights and obligations to an Approved Purchaser that are otherwise held by Asahi in relation to the Divestiture Businesses. This would prevent Asahi from completing the sale of the Divestiture Business pursuant to the Asahi Undertaking.
- 2.10. ABI does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. ABI also does not consider that there is any risk it would not provide its consent to the transfer of rights and obligations to an Approved Purchaser that are otherwise held by Asahi in relation to the Divestiture Business. However, to address the ACCC's competition concerns, ABI has offered an undertaking pursuant to section 87B of the Act (**ABI Undertaking**).
- 2.11. For the avoidance of doubt, all assets, rights and obligations in respect of the Divestiture Businesses transferred to Asahi upon completion of the proposed acquisition are regulated under and the subject of obligations upon Asahi under the Asahi Undertaking. The ABI Undertaking only applies to the extent that any relevant rights or powers of consent continue to be held by ABI in respect of the Divestiture Businesses.
- 2.12. The objective of the ABI Undertaking is to address the ACCC's concerns, as set out in clause 2.9 by requiring ABI to promptly facilitate, and not unreasonably withhold its consent to, the disposal of the Divestiture Businesses to an Approved

Purchaser pursuant to the Asahi Undertaking, and for the Approved Purchaser to enjoy the same terms in relation to the Divestiture Businesses as those that would have been enjoyed by Asahi if the Divestiture Businesses had not been so divested.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) the Asahi Undertaking is executed by Asahi;
 - (b) the ABI Undertaking is executed by ABI; and
 - (c) the Asahi Undertaking and the ABI Undertaking so executed are accepted by the ACCC
- (the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. ABI may request withdrawal of the ABI Undertaking pursuant to section 87B of the Act at any time. The ABI Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of the ABI Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in the ABI Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4. Unless and until the ABI Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 survive completion of the obligations in clause 5.

5. Obligations with respect to disposal of the Divestiture Businesses

- 5.1. ABI must promptly facilitate the disposal (whether by assignment, novation or any other means) of all of Asahi's rights, and obligations, in relation to the Divestiture Businesses to any Approved Purchaser in order to complete the divestment required by the Asahi Undertaking.
- 5.2. In meeting its obligation under clause 5.1, ABI must ensure that the Approved Purchaser enjoys the same terms in relation to the Divestiture Businesses as

those that would have been enjoyed by Asahi if the Divestiture Businesses had not been divested.

- 5.3. Without limiting the operation of clauses 5.1 or 5.2, ABI will not unreasonably withhold consent to the transfer of rights and obligations under any Agreement in relation to the Divestiture Businesses, being consent necessary or convenient for the timely completion of the divestiture required by the Asahi Undertaking.
- 5.4. The obligations set in clauses 5.1, 5.2 and 5.3 shall only apply if and to the extent that ABI retains any such rights post-completion of the Proposed Acquisition, and that the terms of such rights or obligations are the same as those that would have been enjoyed by Asahi if the Divestiture Businesses had not been divested.

6. Notification of key dates and ACCC requests for information

- 6.1. ABI must notify the ACCC in writing of ABI's response to any request for it to provide its consent to any disposal of rights and obligations in relation to the Divestiture Businesses to an Approved Purchaser within five business days of ABI's response.
- 6.2. The ACCC may direct ABI in respect of its compliance with the ABI Undertaking to, and ABI must:
 - (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within ABI's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 6.3. Any direction made by the ACCC under clause 6.2 will be notified to ABI, in accordance with clause 13.2.
- 6.4. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 6 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 6.5. Nothing in this clause 6 requires the provision of information or documents in respect of which ABI has a claim of legal professional or other privilege.

7. Disclosure of this Undertaking

- 7.1. ABI acknowledges that the ACCC may:
 - (a) make the ABI Undertaking publicly available;
 - (b) publish the ABI Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to the ABI Undertaking.

8. Obligation to procure

- 8.1. Where the performance of an obligation under the ABI Undertaking requires a Related Body Corporate of ABI to take or refrain from taking some action, ABI will procure that Related Body Corporate to take or refrain from taking that action.

9. No Derogation

- 9.1. The ABI Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by ABI of any term of the ABI Undertaking.
- 9.2. Nothing in this ABI Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that ABI does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

10. Change of Control

- 10.1. In the event that a Change of Control is reasonably expected to occur, ABI must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on ABI pursuant to the ABI Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified ABI in writing that a section 87B undertaking under this clause is not required.

11. Costs

- 11.1. ABI must pay all of its own costs incurred in relation to the ABI Undertaking.

12. Jurisdiction

- 12.1. ABI irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 12.2. Unless and until notified in writing by ABI to the ACCC of the appointment of another person as agent within Australia, ABI appoints ABI Australia, as its agent for the purposes of service of process in relation to the ABI Undertaking.

13. Notices

Giving Notices

- 13.1. Any notice or communication to the ACCC pursuant to the ABI Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger and Authorisation Review Division

With a copy sent to: mergersru@accc.gov.au
Attention: Director, Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

13.2. Any notice or communication to ABI pursuant to this Undertaking must be sent to:

Name: Margot Miller

Address: 250 Park Avenue, New York, NY 10177

Email Address: Margot.Miller@ab-inbev.com

With a copy sent to:

Name: Gilbert + Tobin

Address: L35, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Barangaroo NSW 2000

Email Address: GCass-Gottlieb@gtlaw.com.au

EAvery@gtlaw.com.au

Attention: Gina Cass-Gottlieb, Elizabeth Avery

13.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

13.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

13.5. ABI must notify the ACCC of a change to its contact details within three Business Days.

13.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 13.3 and 13.4, will be taken to be received.

14. Defined terms and interpretation

Definitions in the Dictionary

14.1. A term or expression starting with a capital letter:



- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation


14.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by ABI Australia Financing Pty Ltd ACN 615 290 830 pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
ADAM FORSYTH	ZOE SOLOMON
Name of director (print)	Name of director/company secretary (print)
26 March 2020	26 March 2020
Date	Date

Executed for and on behalf of Anheuser-Busch InBev SA/NV by its authorised signatory:


Signature
Margot Miller Authorized Signatory
Name and title
26 March 2020
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

31st March 2020

Date

and signed on behalf of the Commission:



Chair

31st March 2020

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ABI means Anheuser-Busch InBev SA/NV

ABI Australia means ABI Australia Financing Pty Ltd (ACN 615 290 830)

ABIH means the entity referred to in clause 2.2 of this Undertaking.

ACCC means the Australian Competition and Consumer Commission.

Acquirer means the entity referred to in clause 2.1 of this Undertaking.

AGH means the entity referred to in clause 2.1 of this Undertaking.

AHA means the entity referred to in clause 2.1 of this Undertaking.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreement means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Purchaser means any person approved by the ACCC under the Asahi Undertaking.

Asahi means the entity referred to in clause 2.1 of this Undertaking.

Asahi Undertaking has the meaning given to it in clause 2.6 of this Undertaking.

Beer Market has the meaning given to it in clause 2.6.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of ABI to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable ABI to continue to comply with this Undertaking in its entirety.

Cider Market has the meaning given to it in clause 2.6.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Corporations Act means the *Corporations Act 2001* (Cth).

CUB means the entity referred to in clause 2.2 of this Undertaking.

Divestiture Business means each of the businesses described in Schedule 4 to the Asahi Undertaking.

Proposed Acquisition has the meaning given to it in clause 2.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
 - (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
 - (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;

- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, ABI will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.