

Senator Christopher A. Coons

William J. Baer

Nominee, Assistant Attorney General (Antitrust), U.S. Department of Justice

Questions for the Record

1. The U.S. brewing industry is undergoing a period of consolidation. At the same time, large brewers have implemented a number of business strategies designed to increase their leverage in the marketplace (such as by acquiring its own distribution network), and apply that leverage to gain market share (such as by rewarding distributors not to carry competitor products by means of so-called "loyalty" agreements).

- a. What pro-competitive purposes do three-tiered distribution models serve?

Response: I have limited experience with antitrust issues involving distribution in the beer industry. I do appreciate that, under the Twenty-First Amendment to the Constitution, the regulation of alcohol is largely a matter of state authority. See, e.g., Granholm v. Heald, 544 U.S. 460, 493 (2005). This includes whether and how to implement a three-tiered distribution system. See id. at 466. If confirmed, I will make it a priority to better understand the brewing sector in order to make sure the Division is positioned appropriately to address any antitrust concerns raised by current or potential future conduct.

- b. How well is the three-tiered system at use in the beer industry serving those purposes?

Response: Please see my answer above to Question 1.a.

- c. If confirmed, what will be your approach to ensuring market access for small brewers?

Response: Please see my answer above to Question 1.a.

2. In 2010, the DOJ and USDA held a series of joint workshops on agriculture and antitrust enforcement issues. One of those workshops was focused on competitive dynamics in the seed industry. If confirmed, what will be your plan for addressing the concerns raised in this workshop as well as the other issues that were considered during the course of the workshops?

Response: I applaud the joint workshops conducted by the Justice Department and the Department of Agriculture. I have read the Justice Department report on those workshops, as well as public remarks by DOJ officials. See, e.g., Sharis A. Pozen, Agriculture and Antitrust: Dispatches and Learning from the Workshops on Competition in Agriculture, ANTITRUST, Spring 2012 at 8 ("A clear message from the workshops is that antitrust enforcement has a crucial role to play in fostering such a healthy and competitive agriculture sector."). I support the Division's "commitment to vigorous

antitrust enforcement in the agricultural sector”, id., and will continue that commitment if confirmed, subject, of course, to the appropriate recusal requirements.