



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

**Prepared Statement of
the Federal Trade Commission**

Before the

**Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives**

Washington, D.C.

October 30, 2003

I. Introduction

Mr. Chairman, I am Todd Zywicki, Director of the Federal Trade Commission's Office of Policy Planning.⁽¹⁾ I am pleased to appear before the Subcommittee today to testify on behalf of the Commission regarding "E-Commerce: The Case of Online Wine Sales and Direct Shipment." The wine issue is the subject of a recent staff report entitled "Possible Anticompetitive Barriers to E-commerce: Wine,"⁽²⁾ and is representative of the types of policies that are impacting e-commerce in many different industries across the nation. The Commission would like to thank Chairman Stearns for his excellent leadership in this area and for his efforts to promote e-commerce and consumer welfare. The Commission would also like to thank the Subcommittee for its continued interest in studying potential anticompetitive barriers to e-commerce. Last September, this Subcommittee held a hearing entitled "State Impediments to E-Commerce: Consumer Protection or Veiled Protectionism?" that focused on the e-commerce issues in three industries: auctions, contact lenses, and wine.

auctions; automobiles; caskets; contact lenses; cyber-charter schools; online legal services; real estate, mortgages, and financial services; retailing; telemedicine and online pharmaceutical sales; and wine. For each industry, Commission staff gathered evidence from many different perspectives, including online companies, bricks-and-mortar businesses, consumer groups, academics, state officials, and others. The staff also invited and received comments from the public at large.⁽⁴⁾

As part of the process of examining possible barriers to e-commerce, the Commission has strongly encouraged policymakers to adopt rules that encourage e-commerce. For example, the Commission filed a joint comment with the Department of Justice before the North Carolina State Bar opposing two new opinio

in wine. The report also surveys the alternative policies adopted by many of the states that permit their citizens to order and receive wine from out-of-state sources.

1. Benefits of E-Commerce

The report concludes that states could significantly enhance consumer welfare by allowing the direct shipment of wine to consumers. Through direct shipping, consumers can purchase many wines online that are not available in nearby bricks-and-mortar stores. The McLean study found that 15% of a sample of wines available online were not available from retail wine stores within ten miles of McLean. Similarly, testimony unambiguously reveals that, by

(Tjr4y brof wines

premium, from 33-83%, to purchase a bottle of wine costing less than \$20 online and have it delivered to them via 2nd Day Air.

Several state officials commented that, based on their experience, minors were much more likely to buy alcohol through offline sources than over the Internet.⁽¹⁹⁾ In a 2002 survey, large percentages of high school students, from 68-95%, said that it is "fairly easy" or "very easy" to get alcohol.⁽²⁰⁾ In examining offline and online stings, there are not enough data from which to conclude that minors can buy wine more easily or less easily online than offline (among other reasons, there is far more sting data about offline sales). In the absence of such information, it is difficult to ascertain whether online wine sellers are, or would be, a significant source of alcohol for minors.

Of course, the fact that states have received few complaints about direct shipments to minors does not establish that minors are not purchasing wine online. As noted by a Michigan Assistant Attorney General, minors who buy wine online are unlikely to report their purchases to the authorities, and neither the package delivery company nor the supplier may know or care that they are delivering wine to a minor.⁽²¹⁾ The FTC cannot rule out the possibility that minors are buying wine online undetected by state officials.

The report, however, finds two clear results. First, several states that permit interstate direct shipping have adopted various procedural safeguards and enforcement mechanisms to prevent sales to minors. New Hampshire, for example, requires an adult signature at the time of delivery, permanently revokes the direct shipping permit of anyone who ships wine to minors, and declares him guilty of a class B felony.⁽²²⁾ Second, states that allow interstate direct shipping generally say that direct shipping to minors currently is not a serious problem, and that they have received few or no complaints about direct shipping to minors.

4. Tax Collection

discriminating against a group of suppliers, a pro-consumer approach would attempt to achieve policy neutrality by expanding consumer choice.

Thank you for this opportunity to share the Commission's views. The Commission looks forward to working with the public and with the Subcommittee to help give consumers the full benefits of online commerce.

Endnotes:

1. The views expressed in this statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and do not necessarily reflect those of the Commission or any individual Commissioner.
2. FTC Staff Report, *Possible Anticompetitive Barriers to E-Commerce: Wine* (July 2003), available at <<http://www.ftc.gov/os/2003/07/winereport2.pdf>> (hereinafter "Wine Report").
3. *State Impediments to E-Commerce: Consumer Protection or Veiled Protectionism?: Hearing Before the Subcomm. on Commerce, Trade, and Consumer Protection of the House Comm. on Energy and Commerce*, 107th Cong. (2002), available at <<http://energycommerce.house.gov/107/hearings/09262002Hearing732/hearing.htm>>.
4. Public Workshop: Possible Anticompetitive Efforts to Restrict Competition on the Internet, 67 Fed. Reg. 48,472 (2002). More information is available at the workshop's homepage, at <<http://www.ftc.gov/opp/e-commerce/anticompetitive/index.htm>>.
5. FTC/DOJ Letter to the Ethics Committee of the North Carolina State Bar re: State Bar Opinions Restricting Involvement of Non-Attorneys in Real Estate Closings and Refinancing Transactions (Dec. 14, 2001), available at <<http://www.ftc.gov/be/V020006.htm>>.
6. FTC/DOJ Letter to the Rhode Island House of Representatives re: Bill Restricting Competition from Non-Attorneys in Real Estate Closing Activities (Mar. 29, 2002), available at <<http://www.ftc.gov/be/v020013.pdf>> FTC/DOJ Letter to the Georgia State Bar re: Comments On Potential Unlicensed Practice Of Law Opinion Regarding Real Estate Closing Activity (Mar. 20, 2003), available at <<http://www.ftc.gov/be/v030007.htm>>.
7. FTC Staff Comment Before the Connecticut Board of Examiners for Opticians (Mar. 27, 2002), available at <<http://www.ftc.gov/be/v020007.htm>>.
8. Memorandum of Law of *Amicus Curiae* Federal Trade Commission, Powers v. Harris, Case No. CIV-01-445-F (W.D. Okla. Sept. 5, 2002), available at <<http://www.ftc.gov/os/2002/09/okamicus.pdf>>.
9. Alix M. Freedman & John R. Emshwiller, *Vintage System: Big Liquor Wholesaler Finds Change Stalking Its Very Private World*, Wall St. J., Oct. 4, 1999, at A1. See also Vijay Shanker, Note, *Alcohol Direct Shipment Laws, the Commerce Clause, and the Twenty-First Amendment*, 85 Va. L. Rev. 353, 353 n.5 (Mar. 1999) (discussing other estimates).
10. Mark Swartzberg & Jennifer F. Solomon, Salomon Smith Barney, *Clicking on Wine: Will E-Commerce and Other*

