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

Office of Policy Planning
Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics

March 22, 2006

The Honorable Eric D. Fingerhut
Ohio Senate Building
Room #049, Ground Floor
Columbus, OH 43215

Re: Comment on Proposed Direct Shipment Legislation

Dear Senator Fingerhut:

The staff of the Federal Trade Commission's ("FTC" or "Commission") Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics[1] is pleased to respond to your invitation for comments on Ohio SB 179,[2] which would allow the direct shipment of wine to Ohio consumers from manufacturers inside or outside of Ohio if certain requirements are met.

We believe that, if enacted, the proposed legislation would enhance consumer welfare and allow Ohio to meet its other public policy goals. By allowing interstate direct shipping, SB 179 likely would allow Ohio residents to purchase both a greater variety of wines and many wines at lower prices. In addition, by requiring manufacturers to comply with certain regulatory requirements, SB 179 would allow Ohio to prevent shipments to minors and to collect taxes on direct shipments.

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1 This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

2 S.B. 179, 126th Gen. Assem., Reg. Sess. (Ohio 2005) (hereinafter referred to as "SB 179 " or "the proposed legislation").

Interest and Experience of the FTC

The FTC enforces laws prohibiting unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[3] Pursuant to this statutory mandate, the Commission seeks to identify and prevent, where possible, business practices and regulations that impede competition without offering countervailing benefits to consumers.[4] The Commission and its staff have considerable experience in analyzing the competitive impact of regulations affecting the alcoholic beverage industry. For example, FTC staff has commented in the past on various restrictions on the vertical relationships between alcoholic beverage producers and wholesalers.[5]

FTC staff also has extensively analyzed the effects of bans on direct wine shipping. In October 2002, the Commission held a workshop to evaluate possible anticompetitive barriers to e-commerce in wine and many other industries ("E-Commerce Workshop").[6] At the workshop, FTC staff heard testimony from several parties with divergent interests, including wineries, wholesalers, and state regulators. The staff also gathered evidence from package delivery companies, the Alcohol and Tobacco Tax and Trade Bureau ("TTB"),[7] and regulators in states that allow direct shipping. In addition, as discussed in more detail below, FTC staff conducted the first empirical study of a wine market in a state that banned interstate direct shipping. In July 2003, FTC staff issued a comprehensive report on the competitive effects of bans on direct shipments of wine ("FTC Wine Report"),[8] and in October 2003, the staff testified at a related

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3 Federal Trade Commission Act, 15 U.S.C. § 45.

4 Specific statutory authority for the FTC's competition advocacy program is found in Section 6 of the FTC Act, under which Congress authorized the FTC "[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce," and "[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest." *Id.* § 46(a), (f).

5 *See, e.g.*, Letter from FTC Staff to Ohio State Rep. Bill Seitz (Dec. 12, 2005), *at* http://www.ftc.gov/os/2005/12/051212cmntohiolegiswinefranchis.pdf; Letter from FTC Staff to Cal. State Sen. Wesley Chesbro (Aug. 24, 2005), *at* http://www.ftc.gov/os/2005/08/050826beerfranchiseact.pdf; Letter from Chicago Regional Office to Ill. State Sen. Dan Cronin (Mar. 31, 1999), *at* http://www.ftc.gov/be/v990005.htm; Letter from Atlanta Regional Office to North Carolina State Sen. Hamilton C. Horton, Jr. (Mar. 22, 1999), *at* http://www.ftc.gov/be/v990003.htm; Statement of Phoebe Morse, Dir., Boston Regional Office to the Mass. Alcoholic Beverages Control Comm'n (June 26, 1996), *at* http://www.ftc.gov/be/v960012.htm.

6 Public Workshop: Possible Anticompetitive Efforts to Restrict Competition on the Internet, 67 Fed. Reg. 48,472 (July 24, 2002). The workshop's homepage is at http://www.ftc.gov/opp/ecommerce/anticompetitive/index.htm.

7 The TTB was formerly known as the Bureau of Alcohol, Tobacco, and Firearms.

8 POSSIBLE ANTICOMPETITIVE BARRIERS TO E-COMMERCE: WINE, FTC STAFF REPORT (2003), *at* http://www.ftc.gov/os/2003/07/winereport2.pdf. A copy of this report is enclosed herewith.

congressional hearing.[9] In 2004, FTC staff commented on proposed New York legislation involving the direct shipment of wine.[10]

The Proposed Legislation

Ohio law currently places several restrictions on the ability of its consumers to purchase wine directly from out-of-state manufacturers. First, consumers must obtain prior consent for such purchases from the Ohio Division of Liquor Control.[11] Second, consumers must pay all relevant taxes to the state at the time that such consent is requested.[12] Third, purchases from out-of-state wine manufacturers are limited to fifteen gallons per family household per three-month period.[13] Finally, consumers are prohibited from purchasing any out-of-state wine that Ohio retailers currently are licensed to sell.[14]

The United States Supreme Court decision in *Granholm v. Heald*,[15] issued on May 16, 2005, held that the laws of Michigan and New York that discriminated against out-of-state wine manufacturers and in favor of in-state wine manufacturers in the sale and shipping of wine within those states violated the Commerce Clause of the United States Constitution. Shortly thereafter, a settlement was reached in litigation challenging Ohio's direct-shipment restrictions.[16] As a result of that settlement, and until a legislative amendment or appropriate rule change is effected, Ohio consumers may purchase wine directly from out-of-state manufacturers.[17]

The proposed legislation, which is designed to bring Ohio law into compliance with the *Granholm* decision, would allow the direct shipment of wine to Ohio consumers from

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9 *See* Prepared Statement of the FTC Concerning "E-Commerce: The Case of Online Wine Sales and Direct Shipment," Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives (Oct. 30, 2003), *at* http://www.ftc.gov/os/2003/10/031030ecommercewine.htm.

10 Letter from FTC Staff to New York State Rep. William Magee *et al.* (Mar. 29, 2004) ("New York Letter"), *at* http://www.ftc.gov/be/v040012.pdf.

11 OHIO REV. CODE § 4303.25; OHIO ADMIN. CODE 4301:1-1-22(A), (C).

12 *Id*. at 4301:1-1-23(A)(4).

13 *Id*. at (A)(5).

14 *Id*. at (A)(3).

15 125 S. Ct. 1885, 1907 (2005).

16 *See Stahl v. Taft*, No. 2:03cv00597 (S.D. Ohio July 19, 2005) (agreed order and injunction).

17 *See* Ohio Division of Liquor Control Web site, *at* http://www.liquorcontrol.ohio.gov/DirectShipping.htm (providing relevant information and required tax form).

manufacturers inside or outside of Ohio if certain requirements are met. First, any manufacturer that ships directly to Ohio consumers must have a valid license or permit in at least one state for the manufacture and sale of wine.[18] Second, the individual ordering the wine to be delivered must be at least twenty-one years of age and personally sign a document acknowledging the wine's receipt at time of delivery.[19] Finally, the manufacturer must either collect from the consumer and pay all applicable taxes or notify the consumer that he or she is liable for the payment of such taxes.[20] Any violation of these requirements would be a first-degree misdemeanor.[21]

Competitive Effects of the Proposed Legislation

Based on extensive research in the area of direct shipping, FTC staff believes that the proposed legislation would enhance consumer welfare. By allowing interstate direct shipping, SB 179 likely would allow Ohio residents to purchase a greater variety of wines, as well as many wines at lower prices. In addition, SB 179 would allow Ohio to meet its other policy goals. States that have addressed the direct shipping issue typically cite underage drinking and tax collection as the primary concerns raised by direct shipping. By requiring manufacturers to comply with certain regulatory requirements, SB 179 would allow Ohio to prevent shipments to minors and to collect taxes on direct shipments.

A. The Proposed Legislation Likely Would Allow Ohio Consumers to Purchase a Greater Variety of Wines

SB 179 likely would substantially increase the variety of wines available to Ohio consumers. Through direct shipping, and particularly through the Internet, consumers can conveniently purchase many wines that are not available in nearby bricks-and-mortar stores. The Internet effectively expands the geographic market by allowing online vendors to compete nationally. Further, an individual online store may feature more products than many bricks-and-mortar retail locations, as bricks-and-mortar retailers may not have the demand or shelf space to justify keeping a large variety of wines in stock.[22] Moreover, smaller wineries may be unable to distribute their wines effectively through the three-tier (*e.g.*, manufacturer/wholesaler/retailer) system that is mandated in most states. As the Supreme Court recently noted in its *Granholm*

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18 SB 179 § 1, at 1-2.

19 *Id*. at 2.

20 *Id*.

21 *Id*. at 3.

22 According to a trade association that participated in the E-Commerce Workshop, domestic wineries produce approximately 25,000 wine labels, and even in a large market like Illinois, only slightly more than 500 of these labels are available through bricks-and-mortar stores. *See* FTC Wine Report at 24.

decision, "many small wineries do not produce enough wine or have sufficient consumer demand for their wine to make it economical for wholesalers to carry their products. This has led many small wineries to rely on direct shipping to reach new markets."[23]

More importantly, the total number of varieties available online likely surpasses the total number available in bricks-and-mortar stores that are within a reasonable distance of a particular consumer. Consumers are likely to value having a variety of wines from which to choose. One of the most popular wine magazines, *The Wine Spectator*, reviews over 10,000 different wines annually.[24] Further to this point, a Nobel laureate in economics testified at the E-Commerce Workshop that "the value to consumers of direct wine shipments com[es] primarily from access to wines that are not available in their communities."[25] Thus, direct shipping can give consumers convenient access to many more wines, including popular labels and smaller labels from around the country.

As part of its analysis of the impact on consumers of interstate direct shipping bans, FTC staff conducted a study of wine prices and availability in the McLean, Virginia area ("2002 McLean Study").[26] At the time of the study, Virginia prohibited interstate direct shipping. Using the *Wine and Spirits* annual list of the top fifty most popular wines in America, the 2002 McLean Study found that 15% of the wines in the sample were available online but not in retail wine stores within ten miles of McLean.[27] Moreover, many of these wines were popular labels. Approximately 53% of the wines that were unavailable in the McLean area came from among the twenty most popular labels.[28] As noted in the FTC Wine Report, these quantitative findings likely understated the impact on variety of the interstate shipping ban. Because the sample was

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23 *Granholm*, 125 S. Ct. at 1892 (citation omitted). *See also Dickerson v. Bailey*, 212 F. Supp. 2d 673, 695 (S.D. Tex. 2002) (finding that the three-tier system "may lock most [out-of-state wineries] out of any access to Texas markets, even if they are willing to take on the additional costs. Such discrimination is especially felt by small, family-run wineries with limited production . . . ."), *aff'd*, 336 F.3d 388 (5th Cir. 2003); Gina M. Riekhof & Michael E. Sykuta, *Politics, Economics, and the Regulation of Direct Interstate Shipping in the Wine Industry*, 87 AM. J. AGRIC. ECON. 439, 442 (2005) ("For small wineries seeking to increase their volume, consumer base, and geographic market, direct shipment prohibitions represent a significant obstacle to growth.").

24 *See* David Sloane, E-Commerce Workshop Written Statement 1, *at* http://www.ftc.gov/opp/ecommerce/anticompetitive/panel/sloane.pdf.

25 Daniel L. McFadden, E-Commerce Workshop Written Statement 2, *at* http://www.ftc.gov/opp/ecommerce/anticompetitive/panel/mcfadden.pdf.

26 The 2002 McLean Study, which is attached to the FTC Wine Report at Appendix A, has been published as Alan E. Wiseman and Jerry Ellig, *Market and Nonmarket Barriers to Internet Wine Sales: The Case of Virginia*, BUS. & POL., Vol. 6, No. 2, Art. 4 (2004).

27 FTC Wine Report at 18 (excluding wines that could not be found either online or offline, 12 of 79 wines in sample available only online).

28 *Id*. (8 of 15 wines unavailable offline among 20 most popular wines in *Wine & Spirits* poll).

limited to the most popular labels, it excluded thousands of lesser-known labels that bricks-and-mortar stores may not have carried, as well as those that may not have been known to consumers.[29]

Subsequent research by the authors of the 2002 McLean Study confirms the negative effects on variety caused by interstate direct shipping bans. Following the statutory repeal of Virginia's direct shipping ban in July 2003, the study's authors conducted an analysis in 2004 to determine the impact on availability and prices of such repeal ("2004 McLean Study"),[30] using procedures identical to those used in the 2002 study. The findings of the latter study with respect to availability were similar to those of the previous study. That is, 12.5% (as compared to 15%) of the wines in the sample of popular wines were available online but still not in bricks-and-mortar wine stores within ten miles of McLean at the time of the data collection.[31] As demonstrated by these empirical analyses, online sources provide consumers with access to wines that local retail stores do not carry. Adoption of SB 179, therefore, likely would provide Ohio consumers with access to a greater variety of wines.

B. The Proposed Legislation Likely Would Allow Ohio Consumers to Purchase Many Wines at Lower Prices

Depending on the wine's price, the quantity purchased, and the method of delivery, consumers can achieve substantial savings by purchasing wine online. The 2002 McLean Study found that, excluding shipping costs, wines in the sample cost on average 16% less if purchased online.[32] Because shipping costs do not vary with the wine's price, consumers can save more money on more expensive wines, while less expensive wines may be cheaper in bricks-and-mortar stores. The 2002 McLean Study also found that if consumers use the least expensive shipping method, they can save an average of 8-13% on wines costing $20 or more per bottle and an average of 20-21% on wines costing $40 or more per bottle.[33] In addition, direct shipping lets consumers avoid the cost of spending time to travel to bricks-and-mortar stores.[34]

Moreover, even if consumers choose to buy wine from bricks-and-mortar retailers,

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29 *Id.* at 22.

30 *See* Alan E. Wiseman & Jerry Ellig, *Legislative Action and Market Responses: Results of Virginia's Natural Experiment with Direct Wine Shipment* (Dec. 15, 2005) (Mercatus Center working paper), *at* http://www.mercatus.org/pdf/materials/1481.pdf.

31 *Id.* at 12 (9 of 72 wines in sample available only online).

32 FTC Wine Report at 19.

33 *Id.*

34 *See, e.g.*, Clifford Winston, *Conceptual Developments in the Economics of Transportation: An Interpretive Survey*, 23 J. ECON. LIT. 57, 75-77 (1985) (discussing costs of travel time).

direct shipping still encourages price competition between online and offline sources. In states that allow direct shipping, the Internet allows wineries and other merchants[35] across the nation to compete with local bricks-and-mortar retailers. The Internet also helps consumers comparison shop and lets suppliers compete in geographic markets that otherwise may be closed to them, perhaps due to the three-tier system or franchise laws.[36] This competition likely forces down prices. One court found that the ban on interstate direct shipping constituted "economic protectionism, negatively impacting Texas consumers because of more limited wine selection and higher prices."[37] An economist who participated in the E-Commerce Workshop observed:

> [C]onsumers benefit from free markets operated with the minimum government regulation required for consumer protection. . . . The restrictions on direct purchase of premium wines and their interstate shipment that have been adopted by a number of States are, I believe, another example of abuse of the regulatory process to protect concentrated economic interests, going far beyond the minimum regulations needed to maintain the integrity of State taxation and to protect minor consumers.[38]

By allowing direct shipping, SB 179 would increase competition and allow Ohio consumers to find lower wine prices. In fact, that conclusion was confirmed in the case of Virginia, which recently repealed its ban on interstate direct shipping. The 2004 McLean Study found that, following the statutory repeal, online prices were on average 9% lower than offline prices, excluding shipping costs.[39] More importantly, the study found that legalization of direct shipping resulted in a reduction in the differential between online and offline prices, as bricks-and-mortar retailers became more competitive. The differential between average online and offline prices fell by nearly 40% between 2002 and 2004, by one estimate, while the spread

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35 The 2002 McLean Study found that "the lowest online prices overwhelmingly come not from wineries, but from out-of-state retail outlets that have web-accessible inventories." FTC Wine Report App. A at 25 n.22. It appears that SB 179, which limits the privilege of direct shipping to "manufacturers" (*see* SB 179 § 1, at 1-2), would not permit such retail outlets to ship directly to Ohio consumers. As FTC staff indicated in its March 2004 letter to New York legislators (*see* New York Letter, *supra* note 10, at 7), allowing out-of-state retailers, as well as wineries, to ship directly to consumers would provide additional competition that likely would lead to even lower prices for such consumers. New York ultimately enacted legislation permitting (interstate and intrastate) direct shipping of wine to its consumers. *See* N.Y. Alco. Bev. Cont. Law §§ 79-c, 79-d (McKinney 2005).

36 *See generally* American Bar Association, Section of Antitrust Law, E-Commerce Workshop Public Comment (describing various state statutes that may restrict e-commerce), *at* http://www.ftc.gov/opp/ecommerce/anticompetitive/comments/aba.pdf.

37 *Dickerson v. Bailey*, 87 F. Supp. 2d 691, 709 (S.D. Tex. 2000).

38 Daniel L. McFadden, E-Commerce Workshop Written Statement 1, *at* http://www.ftc.gov/opp/ecommerce/anticompetitive/panel/mcfadden.pdf.

39 2004 McLean Study at 15. Consistent with the 2002 findings, online savings were smallest for wines priced below $20 (7.6%) and largest for wines priced at or above $40 (21%). *Id.*

between the lowest online and average offline prices fell by 26% during that time, according to another estimate.[40]

C. States That Permit Interstate Direct Shipping of Wine Generally Report Few or No Problems with Direct Shipments to Minors

Although direct shipping can provide consumers with important benefits, policymakers have expressed concern that direct shipping might exacerbate the problem of underage drinking. As FTC staff has recognized in its Wine Report and in other documents, underage alcohol use is a significant national concern.[41] In the context of the direct shipping of wine, however, the evidence shows that states that permit such shipping generally report few or no problems with shipments to minors.

FTC staff contacted officials from several states that allow interstate direct shipping and asked them whether they had experienced problems with shipping to minors. These states generally reported few, if any, problems with direct shipping to minors.[42] Most of them did not believe that interstate direct shipment of wine to minors was a serious problem, although several of them believed that it is possible for minors to buy wine online.[43] None of the states reported more than isolated instances of minors buying or even attempting to buy wine online.[44] State regulators uniformly expressed greater concern about underage access to alcohol through traditional avenues.[45]

The state officials offered many possible explanations for their experiences. New Hampshire concluded that minors are less likely to purchase wine online because of the extra expense of ordering over the Internet.[46] This conclusion is consistent with the 2002 McLean

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[40] *Id.* at 17-19. This latter comparison reflects the assumption that, given available Internet search capabilities, a consumer can more readily find the lowest online price for a particular wine than the lowest offline price for such wine. *See id.* at 18 n.38.

[41] *See, e.g.*, FTC Wine Report at 26-38; FTC, *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers* App. A (Sept. 1999), *at* http://www.ftc.gov/reports/alcohol/alcoholreport.htm.

[42] *See* FTC Wine Report at 31.

[43] *See id.*

[44] *See id.* at 33.

[45] *See id.* at 32-33 (chart summarizing state responses).

[46] *Id.* App. B (New Hampshire letter). *See also* Editorial, *The Carafe is Half Full*, WALL ST. J., July 3, 2003, at A10 (arguing that teenagers are not interested in expensive wines, and that "[t]hirty states allow wine shipments within their borders without a surge in teen drinking").

Study, which found that when transportation costs are included, lower-end wines – those most likely to be purchased by minors, to the extent that they seek to purchase wine – are more expensive when purchased over the Internet than through offline stores.[47] Similarly, several state officials also commented that, based on their experience, minors were much more likely to buy alcohol through offline sources than over the Internet.[48] Further, in *Granholm*, the Supreme Court rejected the arguments of New York and Michigan that their interstate direct shipping bans were justified by their concerns over underage drinking. Citing the FTC Wine Report, the Court found it unsurprising that "[s]tates currently allowing direct shipments report no problems with minors' increased access to wine," reasoning that (1) minors are less likely to consume wine, as opposed to other forms of alcohol; (2) minors who decide to disobey the law have more direct means of doing so; and (3) direct shipping is an imperfect avenue of obtaining alcohol for minors, who generally want instant gratification.[49]

Of course, efforts should be made to prevent underage purchases of alcohol, both online and offline, and SB 179 incorporates safeguards against direct shipping to minors. SB 179 would require the recipient of any direct wine shipment to be at least twenty-one years of age and to sign personally for the product when it is received. Any violation of such requirement would be a first-degree misdemeanor. As a result, SB 179 would allow Ohio to prevent the direct shipment of wine to minors.

D. States That Permit Interstate Direct Shipping of Wine Generally Report Few or No Problems with Tax Collection

SB 179 would require either manufacturers or consumers to pay all applicable taxes on direct shipments of wine to Ohio consumers. Of the states permitting direct shipping and collecting taxes therefrom, most report few, if any, problems with such tax collection. Nebraska,

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47 *See* FTC Wine Report at 19, 21.

48 *See id.* App. B (California testimony; letters from New Hampshire and Wisconsin).

49 *Granholm*, 125 S. Ct. at 1905 (citing FTC Wine Report at 12, 33, 34 & n.137). 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. FTC staff cannot rule out the possibility that minors are buying wine online undetected by state officials. Nevertheless, the staff is aware of no systematic study assessing whether direct shipping increases alcohol consumption by minors. FTC staff has found only one study that addresses the impact of "home delivery" of alcohol on underage drinking. *See* Linda A. Fletcher *et al.*, *Alcohol Home Delivery Services: A Source of Alcohol for Underage Drinkers*, J. STUD. ALCOHOL 61: 81-84 (2000). This study, however, examines the impact of home delivery of keg beer and other alcohol on underage drinking from such traditional retailers as local liquor stores. Although the study raises important issues of concern, it provides little information upon which to assess interstate direct shipping of wine. The study does not specifically address online sales, interstate direct shipment via package delivery companies, or wine. Moreover, the study itself states that "data presented here do not reveal the frequency of delivery use or whether delivery purchases served as a primary source of alcohol," and the study does not assess whether home delivery or direct shipping increases underage alcohol consumption above the level that would occur without those channels. *Id.* at 84.

for example, reports that they "have also not, as yet, had any problems with the collection of excise tax[es]."[50] North Dakota reports that "[t]axes are collected. [There are n]o problems to date that we are aware of."[51] To the extent that states have problems with out-of-state suppliers, they have addressed such problems in less restrictive ways than banning all interstate direct shipping.[52]

Furthermore, as discussed in both the FTC Wine Report[53] and the *Granholm* opinion,[54] to the extent that out-of-state manufacturers fail to comply voluntarily with tax (or any other) regulations, states can report problems to TTB, which has the authority to revoke a manufacturer's federal license – necessary to operate in any state – for violating state law, or utilize the Twenty-First Amendment Enforcement Act,[55] which provides state attorneys general the power to bring civil actions in federal court for injunctive relief against out-of-state manufacturers that violate state liquor laws.

Finally, regardless of whether a state permits or prohibits interstate direct shipping, there is no reason to believe that legalizing direct shipping would increase tax evasion. It is unlikely that states would increase illegal interstate direct shipping by creating procedures that would allow out-of-state suppliers to ship legally and pay taxes. If suppliers who currently ship illegally continue to ship illegally, then the level of tax evasion would remain unchanged; however, if some suppliers who currently ship illegally decide to ship legally, then tax evasion would fall. Moreover, if interstate direct shipping increases overall commerce in wine, overall tax revenue likely would rise.[56]

Conclusion

The Internet lets consumers purchase an unprecedented array of goods and services from

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50 FTC Wine Report App. B (Nebraska letter).

51 *Id.* (North Dakota letter).

52 *See, e.g.*, *id.* (New Hampshire letter) ("[New Hampshire] collects an 8% fee on all shipments into the [state]. When the NH Liquor Commission discovers an improper shipment we contact the company and inform them of the laws in NH. Once the company learns of NH laws they normally get a permit or stop shipping into NH. The NH Liquor Commission is working with out-of-state supplier[s] and encouraging them to obtain a permit.").

53 *See id.* at 39.

54 *See Granholm*, 125 S. Ct. at 1906. The Supreme Court in *Granholm* found the states' tax collection justification for banning interstate direct shipping as unconvincing as the proffered underage drinking justification. *See id.* at 1906-07.

55 27 U.S.C. § 122a (2000).

56 *See* FTC Wine Report at 39-40.

the convenience of their homes. Consumers can find thousands of goods, from thousands of suppliers around the country, and have those goods delivered to their doors. State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine.[57] In states that ban interstate direct shipping, the bans prevent consumers from conveniently and less expensively purchasing wine from suppliers around the country.

Based on our review, FTC staff believes that, if enacted, SB 179 would enhance consumer welfare and allow Ohio to meet its other public policy goals. By allowing interstate direct shipping, SB 179 likely would allow Ohio residents to purchase both a greater variety of wines and many wines at lower prices. In addition, by requiring manufacturers to comply with certain regulatory requirements, SB 179 would allow Ohio to prevent shipments to minors and to collect taxes on direct shipments. We urge the Ohio Legislature to take into account these likely effects on consumers when considering SB 179.

Respectfully submitted,

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57 *Id*. at 14.