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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ROGER HOEN, et al.,

Defendants, and

WASHINGTON BEER AND WINE  
WHOLESALE ASSOCIATION,

Intervenor-Defendant

No. C04-360P

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter was tried before the Court from March 21 to March 30, 2006. Plaintiff Costco Wholesale Corporation challenges various Washington state laws and regulations regarding the sale and distribution of beer and wine, particularly policies that tend to increase the average cost of beer and wine to retailers. Defendants are members of the Washington State Liquor Control Board (LCB). The Washington Beer and Wine Wholesalers Association (WBWWA) was granted leave to intervene in this matter as an Intervenor-Defendant.

In prior orders, the Court held that most of the restraints challenged by Costco are irreconcilably in conflict with federal antitrust law, as embodied in the Sherman Act of 1890. At trial,

1 the primary issue was whether the challenged restraints may be upheld as a valid exercise of state  
2 power under the Twenty-first Amendment to the United States Constitution, despite their anti-  
3 competitive nature.

4 The Sherman Act reflects a strong federal policy in favor of competition. At the same time,  
5 the Twenty-first Amendment provides each state with broad authority to regulate alcohol products in  
6 order to advance certain “core interests,” such as promoting temperance, ensuring orderly market  
7 conditions, and raising revenue. This case requires the Court to consider whether the challenged  
8 restraints are effective in advancing the state’s core interests under the Twenty-first Amendment and  
9 whether the state’s interests outweigh the federal interests in promoting competition.

10 For the most part, the Court finds that the policies challenged by Costco are not effective in  
11 advancing the state’s core interests under the Twenty-first Amendment. The Court also finds that the  
12 state’s interests do not trump the federal interest in promoting competition even when the restraints  
13 may be minimally effective in advancing the state’s interests.

14 Therefore, having considered the evidence, testimony, and arguments presented by the parties,  
15 the Court finds and concludes as follows:

16 (1) The following state restraints are preempted by the federal Sherman Act and are not  
17 shielded by the Twenty-first Amendment:

- 18 (a) Policies that require beer and wine distributors and manufacturers to “post”  
19 their prices with the state and to “hold” those prices for a full month;
- 20 (b) Policies that require beer and wine distributors to charge uniform prices to all  
21 retailers;
- 22 (c) Prohibitions on selling beer and wine to retailers on credit;
- 23 (d) Prohibitions on volume discounts for beer and wine sales;
- 24 (e) Policies that require beer and wine distributors to charge the same “delivered”  
25 price to all retailers, regardless of the actual delivery costs;

1 (f) Prohibitions on central warehousing of beer and wine by retailers; and

2 (g) Policies that require a 10% minimum mark-up on sales of beer and wine from  
3 producers to wholesalers, as well as a 10% minimum mark-up on sales of beer  
4 and wine from distributors to retailers.

5 (2) Costco also challenges Washington's ban on retailers selling beer and wine to other  
6 retailers. The Court finds that this policy is a unilateral restraint on trade imposed purely by the state  
7 of Washington. As a unilateral restraint, it does not run afoul of the Sherman Act. Therefore, the  
8 Court dismisses Costco's antitrust claims regarding the ban on retailer-to-retailer sales of beer and  
9 wine.

10 (3) The Court will stay the judgment in this matter for a period of 30 days while  
11 Defendants consider whether to file a notice of appeal in this matter. If Defendants decide to pursue  
12 an appeal and wish to seek an extension of the stay pending appeal, they should move promptly for such  
13 an extension.

14 The Court's findings of fact and conclusions of law are set forth below.

### 15 Framework for Analysis

16 Defendants<sup>1</sup> argue that the challenged restraints are permissible exercises of state power under  
17 the Twenty-first Amendment to the United States Constitution. The Fourth Circuit has characterized  
18 the framework for analyzing a Twenty-first Amendment defense as a three-part inquiry:

- 19 (1) First, the court should examine the expressed state interest and the closeness of that  
20 interest to those protected by the Twenty-first Amendment.
- 21 (2) Second, the court should examine whether, and to what extent, the regulatory scheme  
22 serves its stated purpose . . . . Simply put, is the scheme effective?
- 23 (3) Finally, the court should balance the state's interest . . . (to the extent that interest is  
24 actually furthered by the regulatory scheme) against the federal interest in promoting  
25 competition under the Sherman Act.

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<sup>1</sup> For ease of reference, the Court refers to the LCB and WBWWA collectively as "Defendants."

