

Amended Complaint

IN THE MATTER OF

HEUBLEIN, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT
AND SEC. 7 OF THE CLAYTON ACT

Docket 8904. Amended Complaint, Nov. 16, 1976—Order, Oct. 7, 1980*

This order dismisses the Commission's November 16, 1976 amended complaint which alleged that the effect of Heublein, Inc.'s acquisition of a controlling interest in United Vintners, Inc. substantially lessened competition or tended to create a monopoly in the production, distribution and/or sale of wine in the United States. The Commission, in dismissing the complaint, held that the small lessening of actual competition resulting from the merger and the evidence in the record were insufficient to establish a violation of antitrust law.

Appearances

For the Commission: *Nelson M. Ishiyama, Laurence O. Masson and Mary L. Azcuenaga.*

For the respondent: *George J. Caspar, Farmington, Ct.; Richard E. Walton, San Francisco, Ca.; Lloyd W. McCormick, William H. Armstrong and Warren E. George, McCutchen, Doyle, Brown & Enersen, San Francisco, Ca.; J. Wallace Adair, Ralph J. Savarese, John DeQ. Briggs, III and Raymond A. Jacobsen, Jr., Howrey & Simon, Washington, D.C.*

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Heublein, Inc. (hereinafter "Heublein"), and Heublein Allied Vintners, Inc. (hereinafter "Vintners"), respondents herein, have violated the provisions of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and that the above-named respondents, Allied Grape Growers (hereinafter "Allied"), and United Vintners (hereinafter "United"), respondents herein, have further violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), through the acquisition by Heublein of a controlling interest in United, and that a proceeding in respect thereof would be in the public interest, hereby issues this amended complaint (hereinafter "complaint") pursuant to Section 11 of the amended Clayton Act and

* Original Complaint issued Nov. 27, 1972.

Section 5 of the Federal Trade Commission Act, stating its charges as follows:

I.

DEFINITIONS

1. For purposes of this complaint, the following definitions will apply:

A. *All wine.* All wine is a recognized industry term for expressing total production, distribution and/or sale statistics for table, dessert and sparkling wine. There are recognized statistical subdivisions in the wine industry, for example, imports and domestic wine or premium and standard wine. For simplification, however, the market share percentages used in this complaint are for "all wine" production, distribution or sale. [2]

B. *Table or dinner (hereinafter table) wines.* Table wines are still (non-effervescent) wine products. Their alcohol content is not over 14% by volume.

C. *Dessert or sweet (hereinafter dessert) wines.* Dessert wines are still wine products with over 14% alcohol by volume.

D. *Sparkling wines.* Sparkling wines are effervescent wine products. Their alcohol content usually ranges from 10 to 14% by volume.

II.

ACQUISITION

2. On or about September 17, 1968, as a result of negotiations commenced earlier during 1968, the Board of Directors of Allied and representatives of Heublein reached an agreement in principle whereby Heublein would acquire a controlling interest in United, a wholly-owned production and marketing subsidiary of Allied. The acquisition was approved by Allied's membership in late 1968. On or about February 21, 1969, the acquisition was completed, giving Heublein a controlling interest in United through its control of Vintners.

3. Under the terms of the acquisition agreement, Allied's members received shares of Heublein common stock valued at approximately \$7,521,000, Heublein Series A preferred stock valued at approximately \$20,319,000, and Heublein Series B preferred stock valued at approximately \$5,000,000. Pursuant to the acquisition agreement, United was converted to a corporation with the same name and became a wholly-owned subsidiary of Vintners, a corpora-

tion organized for the purpose of this transaction. The members of Allied received all of the Class B common stock of Vintners, constituting 18% of Vintners' outstanding stock, and Heublein received all of Vintners' Class A common stock, which constituted 82% of Vintners' outstanding stock. The members of Allied formed a second non-profit cooperative association with the same name, succeeding to all assets and liabilities of its predecessor. All outstanding shares of Vintners' Class B common stock were contributed by the members to the new Allied organization.

III.

HEUBLEIN, INC.

4. Respondent Heublein is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 330 New Park Ave., Hartford, Connecticut. At all times relevant herein, Heublein sold and shipped its products in interstate commerce and thus it was engaged in commerce as "commerce" is defined in the Clayton Act, and was engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act. [3]

5. At the time it acquired a controlling interest in United, Heublein was a major industrial corporation, a national leader in the sale of alcoholic beverages and a seller of specialty food products. Net sales for its fiscal years ending June 30 were: \$1,466,095,000 in 1975; \$1,283,002,000 in 1974; \$1,013,115,000 in 1973; \$922,190,000 in 1972; \$629,845,000 in 1971; \$586,295,000 in 1970; \$523,799,000 in 1969 and \$487,767,000 in 1968. In 1969, Heublein was the fifth largest company in the United States selling alcoholic beverages.

6. Notable among Heublein's distilled liquor products are vodka, gin, rum, tequila, Scotch and Canadian whiskey. Its Smirnoff vodka is the largest selling brand of vodka in the country and the second largest selling brand of liquor made in the United States. Heublein originated and continues to dominate the growing domestic market in the production and sale of prepared cocktails.

7. At the time of the acquisition of a controlling interest in United, Heublein was a competitor in the wine industry. Although its sales of wine produced in the United States were small, Heublein was a major wine importer. In 1967, it imported 1,100,000 gallons. This was approximately 5% of all the wine imported into the United States. Lancer's Vin Rose', produced in Portugal, was the nation's leading imported table wine in 1968 and continues to be one of the

nation's leading imported table wines. Heublein has had world distribution rights for this product since 1965. In addition, it was and is the sole importer of Harvey's Sherries & Ports, a line of dessert wines. Harvey's Bristol Cream Sherry was and is the leading imported sherry in the United States. Heublein also imported the Bertani line of wines from Italy, the Vinya and Quinta wines from Portugal and many others.

8. Since purchasing a controlling interest in United in February 1969, Heublein has expanded the company's production facilities, number of wine products and vineyard acreage. In addition, in June 1969, Heublein acquired the Beaulieu Vineyard of Napa, California and its distributor affiliate (hereinafter Beaulieu). Although small, Beaulieu is regarded as one of the nation's best wineries. For the year prior to the acquisition, it had sales of \$1,589,087. Also, in 1969, half of the members of the St. Helena Cooperative of St. Helena, California agreed to divert their grapes from the St. Helena Winery to United. Further, in 1969 Heublein began the annual Premiere National Auction of Rare Wines. In addition to selling rare wines, the auction also sells "futures" in anticipated production of Heublein's wines. Finally, Heublein purchased Regina Grape Products Co. of Etiwanda, California in January 1971. Regina is primarily a producer of wine vinegar.

9. Heublein is an aggressive merchandiser and distributor of its products. It is one of the nation's major advertisers with an expenditure of approximately \$35,000,000 in 1970 and \$103,700,000 in 1975. In 1970 it was the second largest advertiser among companies in the liquor business. In 1975 it was the largest such advertiser. [4] Heublein's budget for its wine advertising is both substantial and expanding. Heublein distributes its alcoholic beverage products to state liquor agencies in the 18 states that monopolize the sales of such products and to approximately 600 independent wholesale distributors in the remaining 32 states, the District of Columbia and the territories of the United States.

IV.

ALLIED GRAPE GROWERS

10. Respondent Allied is an incorporated agricultural cooperative association organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business in Fresno, California. At the time of the sale of a controlling interest in United, respondent Allied was in the business of acquiring grapes in California and other states and

producing and marketing wines made therefrom through its wholly-owned subsidiary United. Said wines were sold throughout the United States. Since the sale of a controlling interest in United, respondent Allied has been engaged in the business of acquiring grapes in California and other states for sale to United for the production of wine to be sold throughout the United States. Therefore, at all times relevant herein, Allied was engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act.

11. As a result of its agreements with Heublein, Allied retains an 18% interest in United through its ownership of shares in Vintners, the sole shareholder of United.

12. Allied claims the contractual right to designate 8 members or 40% of the authorized number of directors of United, whichever is greater, for whom Vintners is obligated to vote. At the present time, eight members of the United board of directors are designees of Allied.

V.

UNITED VINTNERS, INC.

13. Prior to its acquisition by Heublein, respondent United was a wholly-owned subsidiary of Allied, an incorporated agricultural cooperative association organized, existing and doing business under and by virtue of the laws of the State of California. United is now a corporation organized, existing and doing business under and by virtue of the laws of the State of California. At all times relevant herein, United has had its principal office and place of business at 601 4th St., San Francisco, California. At the time of the acquisition, United was the sole operating entity of Allied, as all of Allied's production and marketing assets were held by United. When control of United was acquired by Heublein, United continued to hold and operate substantially all of said assets. At all times relevant herein, United sold and shipped its products in interstate commerce and thus it was engaged in commerce as "commerce" is defined in the Clayton Act and was engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act. [5]

14. At the time of its acquisition, United was the nation's second largest seller of wine products. Net sales for its fiscal years ending August 31 were: \$96,009,189 in 1968; \$91,026,634 in 1967; and \$86,231,076 in 1966.

15. Prior to its acquisition, United crushed the grapes delivered by Allied's approximately 1,600 members and processed and distrib-

uted the resulting wine. It also purchased some grapes from non-members. Approximately 30% of United's distribution was done through its own wholesale operations. The remainder of its sales were made by about 370 independent wholesale distributors. Allied retained a portion of the proceeds from the wine sales as a part of its capital fund and distributed the remainder to its members in proportion to the market value of the grapes each had delivered. Although the acquisition has caused some change in the procedure for determining grower compensation, United's function of crushing grapes, producing wine and distributing it has remained basically unchanged.

16. At its various wineries, United produces wines of all types, including table, dessert and sparkling. Most of these products are sold under brand names owned by United, for example, Italian Swiss Colony and Inglenook.

17. Subsequent to the acquisition, Heublein has expanded United's assets. A new glass plant near United's winery at Madera, California provides most of United's bottle requirements. In addition, a new plant for producing sparkling wines has been completed at Madera. The new facility doubled United's capacity for producing such wines. Finally, Heublein has delegated responsibility for the distribution of some of its imported wines to United.

VI.

HEUBLEIN ALLIED VINTNERS, INC.

18. Respondent Vintners is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 604 4th St., San Francisco, California. Vintners was organized for the purpose of this acquisition and all of its stock is held by Heublein and Allied. Its sole asset is 100% of the stock of United. Through United, Vintners is in the business of producing and marketing wines throughout the United States. Since its formation, Vintners has been engaged in commerce as "commerce" is defined in the Clayton Act, and has been engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act.

VII.

TRADE AND COMMERCE

19. The product markets affected by Heublein's acquisition of a controlling interest in United are wine production, distribution and/or [6]sale generally, as reflected by "all wine" statistics, and wine's three product subcategories: table, dessert and sparkling; all of which are concentrated and nation-wide in geographic scope.

20. Wine sales in the United States are in the midst of a major expansion. They have increased from 145,186,000 gallons in 1955 to 267,084,000 in 1970 and to 367,574,000 gallons in 1975. Sales of table and sparkling wines by California wineries, wineries in other states and importers have all shared in the expansion. Sales of dessert wines, however, have decreased since 1955.

21. Wine sales in the United States are dominated by two wineries. In 1967-68, E. & J. Gallo Winery (hereinafter Gallo) and United made over 40% of the wine sales in the United States. Gallo's sales were slightly higher than United's. The third largest wine seller, Roma Wine Company (hereafter Roma), had less than 4% of the market.

22. An even higher concentration exists among California wineries that produce over 70% of the wine sold throughout the United States. In 1967-68, Gallo and United's production accounted for almost 60% of the wine produced in California and commercially sold throughout the United States. Roma, the third largest California producer, had less than 5% of California's national wine sales.

23. There are major barriers to entry to any firm wishing to make a significant entrance into the wine business. New winery equipment and the grapes for wine production are expensive. In addition, the return on investment is slow. The high cost of advertising presents a second barrier to any winery wishing to sell on a national or even regional basis. Consumer appeal, created by advertising, is an important element in the marketing of wine products.

24. Distribution represents another barrier to entry. Liquor distributors are selectively licensed, if not directly controlled, by state governments. Each state, the District of Columbia and the federal government have their own laws regulating liquor distribution. Thus, a winery is more limited in the distribution channels it may select than a non-liquor company. In addition, there is always the potential that a liquor company will require an independent wholesaler to carry and/or promote a full line of its liquor and wine

products. A wine company, not possessing such leverage, is at a disadvantage.

VIII.

EFFECT OF THE ACQUISITION

25. The effect of the acquisition by Heublein of a controlling interest in United may be substantially to lessen competition or to tend to create a monopoly in the production, distribution and/or sale of wine and its three product subcategories in the United States, [7] in violation of Section 7 of the Clayton Act, as amended; and the effect of the agreement by which Heublein, Allied and Vintners undertook to eliminate the actual and potential competition between Heublein and United may be to restrain trade unreasonably, and to hinder or have a dangerous tendency to hinder competition unduly, thereby constituting an unfair act and practice in commerce, in violation of Section 5 of the Federal Trade Commission Act. These effects may occur in the following ways:

A. Actual and substantial potential competition in the production, distribution and sale of wine may have been eliminated; high levels of concentration may be increased.

B. The entry and growth of new wineries and the expansion of existing wineries may have been retarded, limited, discouraged or even prevented.

C. Independent wineries may have been retarded, limited, discouraged or even prevented from purchasing better quality wine grapes as well as vineyard acreage for their production.

D. Independent wineries may have been deprived of an opportunity to compete for distribution rights and, thereby, ultimate sales to consumers to the detriment of the general purchasing public.

E. Mergers between potential entrants and viable wineries may result from the anticompetitive pressures resulting from Heublein's acquisition of a controlling interest in United.

F. Mergers between actual competitors producing and selling wine may result from the anticompetitive pressures resulting from Heublein's acquisition of a controlling interest in United.

IX.

VIOLATION

By reason of the foregoing, Heublein's acquisition through Vintners of a controlling interest in United, constitutes a violation of

Section 7 of the Clayton Act, as amended, and the agreement among Heublein, Allied and Vintners by which the acquisition was accomplished, constitutes a violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY ALVIN L. BERMAN, ADMINISTRATIVE LAW
JUDGE

JULY 2, 1979

PRELIMINARY STATEMENT

The Commission's amended complaint, issued in November 1976, charged that Heublein, Inc. ("Heublein") and Heublein Allied Vintners, Inc. ("Vintners") violated Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and that Heublein, Vintners, Allied Grape Growers ("Allied") and United Vintners, Inc. ("United") violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) in connection with the acquisition by Heublein of a controlling interest in United.¹

In its complaint, the Commission defined the relevant market as "all wine" which encompassed the total production, distribution and/or sales statistics for "table", "dessert" and "sparkling" wines which, in turn, were alleged to be recognized statistical subdivisions of the "wine industry". Table (or dinner) wines were defined as still (non-effervescent) wine products with alcohol content of not over 14 percent by volume; dessert (or sweet) wines were defined as still wine products with over 14 percent alcohol content by volume; and sparkling wines were defined as effervescent wine products with an alcohol content usually ranging from 10-14 percent by volume.

The challenged acquisition was alleged to have been consummated on or about February 21, 1969. Following is a summation of the specific allegations.

Heublein is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located in Hartford, Connecticut. At all relevant times, it was engaged in commerce or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act.

At the time of the acquisition, Heublein was a major industrial corporation, a national leader in the sale of alcoholic beverages

¹ The original complaint, issued in November 1972, had named only Heublein as a respondent and had charged it only with violation of Section 7 of the Clayton Act by reason of its acquisition of a controlling interest in United.

(being the fifth largest company in the United States so engaged) and a seller of specialty food products. Among its distilled liquor products was Smirnoff Vodka, the largest selling brand of vodka in the country and the second largest brand of liquor produced in the United States. Heublein originated and dominates the growing domestic market in the production and sale of prepared cocktails. In addition to selling a small amount of wine [3]produced in the United States, Heublein was a major wine importer. Its imports included Lancers Vin Rose which was produced in Portugal and was the nation's leading imported table wine in 1968. It continues to be one of the nation's leading imported table wines. Heublein was and is the sole importer of Harveys Sherries and Ports, a line of dessert wines which includes Harveys Bristol Cream Sherry which was and is the leading imported sherry into the United States.

Heublein is an aggressive merchandiser and distributor of its products. It is one of the nation's major advertisers. It was the second largest advertiser among companies in the liquor business in 1970 and the largest such advertiser in 1975. Heublein's budget for wine advertising is both substantial and expanding. It distributes its alcoholic beverage products to state liquor agencies in the 18 states that monopolize the sale of such products and to approximately 600 independent wholesale distributors in the remaining 32 states, in the District of Columbia, and in the territories of the United States.

Allied Grape Growers is an incorporated agricultural cooperative association organized, existing and doing business under and by virtue of the laws of California with its principal office and place of business in Fresno, California. At the time of its sale to Heublein of the controlling interest in United, Allied was in the business of acquiring grapes in California and other states and producing and marketing wines made therefrom through United, its wholly-owned subsidiary. At all times relevant herein, Allied was engaged in commerce or its business affected commerce, as "commerce" is defined in the Federal Trade Commission Act.

Prior to the acquisition of the controlling interest of United by Heublein, United was a wholly-owned subsidiary of Allied. United was the sole operating entity of Allied; all of Allied's production and marketing assets were held by United. At all times relevant herein, United had its principal office and place of business in San Francisco, California, was engaged in commerce as "commerce" is defined in the Clayton Act and was engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act.

At the time of its acquisition, United was the nation's second

largest seller of wine products. United crushed the grapes delivered by Allied's approximately 1,600 members and processed and distributed the resulting wine. It also purchased some grapes from non-members. Approximately 30 percent of United's distribution was accomplished by its own wholesale operations with the remainder through about 370 independent wholesale distributors. Since the merger, United's function of crushing grapes, producing wine and [4] distributing wine products has remained basically unchanged. United produces wines of all types, including table, dessert and sparkling, and sells most of its products under brand names which it owns, for example, Italian Swiss Colony and Inglenook.

Heublein Allied Vintners, Inc. ("Vintners") is a corporation organized, existing and doing business under and by virtue of the laws of California with its principal office and place of business in San Francisco, California. Vintners was organized for the purpose of the acquisition and all of its stock is held by Heublein and Allied. Its sole asset is 100 percent of the stock of United. Through United, Vintners is in the business of producing and marketing wines throughout the United States and since its formation has been engaged in commerce as "commerce" is defined in the Clayton Act and has been engaged in or its business has affected commerce as "commerce" is defined in the Federal Trade Commission Act.

Under the terms of the acquisition agreement, United was converted from an agricultural cooperative association to a corporation with the same name, organized, existing and doing business under and by virtue of the laws of the State of California. It became a wholly-owned subsidiary of Vintners, the corporation organized for purpose of the transaction. Allied's members received all of the class B common stock of Vintners which amounted to 18 percent of Vintners' outstanding stock. Heublein received all of Vintners' class A common stock which constituted 82 percent of Vintners' outstanding stock. The members of Allied formed a second non-profit cooperative association with the same name which succeeded to all assets and liabilities of its predecessor. All outstanding shares of Vintners' class B common stock were contributed by the members to the new Allied organization. In summary, United, which had been a wholly-owned production and marketing subsidiary of Allied was reorganized as a for profit corporation with 100 percent of its stock owned by Vintners; and as a result of the various organizations and reorganizations recited in the complaint, Vintners was created as a corporation owning 100 percent of United with Heublein owning 82 percent of Vintners and Allied owning 18 percent.

Since the acquisition in February 1969, Heublein has expanded

United's assets and production facilities, the number of its wine products and its vineyard acreage. A new glass plant near United's winery at Madera, California, provides most of United's bottle requirements. A new plant for producing sparkling wines has been completed at Madera, doubling United's capacity for producing such wines. Heublein has delegated responsibility for the distribution of some of its imported wines to United. [5]

In June 1969, Heublein acquired the Beaulieu Vineyard of Napa, California ("Beaulieu"), and its distributor affiliate. Although small, Beaulieu is regarded as one of the nation's best wineries. Also in 1969, half of the members of the St. Helena Cooperative of St. Helena, California, agreed to divert their grapes from the St. Helena Winery to United. In 1971, Heublein purchased Regina Grapes Products Company of Etiwanda, California which is primarily a producer of wine vinegar.

The product markets alleged to have been adversely affected by Heublein's acquisition of a controlling interest in United are wine production, distribution and/or sale generally and wine's three product subcategories: table, dessert and sparkling, all of which are concentrated and nationwide in geographic scope. Wine sales are alleged to be in the midst of a major expansion with sales of table and sparkling wines by California wineries and wineries of other states and importers having shared in the expansion. Sales of dessert wines, however, have decreased since 1955.

Wine sales in the United States are alleged to be dominated by two wineries: Gallo Winery ("Gallo") and United. In 1967-68, these two companies accounted for over 40 percent of the wine sales in the United States with Gallo's sales being slightly higher than United's. The third largest wine seller, Roma Wine Company, had less than 4 percent of the market.

It is alleged that there are major barriers to entry to any firm wishing to make a significant entry into the wine business inasmuch as new winery equipment and the grapes for wine production are expensive and the return on investment is slow. A second barrier to any winery wishing to sell on a national or regional basis is the high cost of advertising. Consumer appeal, created by advertising, is an important element in the marketing of wine products. Another barrier to entry is distribution. Liquor distributors are either directly controlled or selectively licensed by state governments. Each state, the District of Columbia, and the federal government have laws regulating liquor distribution. Thus, a winery is more limited in the distribution channels it may select than a non-alcoholic beverage company. Further, there is the potential that a liquor company will

require an independent wholesaler to carry and/or promote a full line of its liquor and wine products to the detriment of competing wineries. Therefore, a wine company not possessing such leverage is at a disadvantage.

The effect of the merger was alleged as follows:

The effect of the acquisition by Heublein of a controlling interest in United may be substantially to lessen [6]competition or to tend to create a monopoly in the production, distribution and/or sale of wine and its three product subcategories in the United States, in violation of Section 7 of the Clayton Act, as amended; and the effect of the agreement by which Heublein, Allied and Vintners undertook to eliminate the actual and potential competition between Heublein and United may be to restrain trade unreasonably, and to hinder or have a dangerous tendency to hinder competition unduly, thereby constituting an unfair act and practice in commerce, in violation of Section 5 of the Federal Trade Commission Act. These effects may occur in the following ways.

A. Actual and substantial potential competition in the production, distribution and sale of wine may have been eliminated; high levels of concentration may be increased.

B. The entry and growth of new wineries and the expansion of existing wineries may have been retarded, limited, discouraged or even prevented.

C. Independent wineries may have been retarded, limited, discouraged or even prevented from purchasing better quality wine grapes as well as vineyard acreage for their production.

D. Independent wineries may have been deprived of an opportunity to compete for distribution rights and, thereby, ultimate sales to consumers to the detriment of the general purchasing public.

E. Mergers between potential entrants and viable wineries may result from the anticompetitive pressures resulting from Heublein's acquisition of a controlling interest in United.

F. Mergers between actual competitors producing and selling wine may result from the anticompetitive pressures resulting from Heublein's acquisition of a controlling interest in United. [7]

Respondents in substance denied the material allegations of the complaint. In addition, Heublein and United alleged that for a number of years competition in several segments of the wine industry has been dominated by Gallo and that prior to the challenged acquisition, United was declining competitively and, but for the acquisition, was destined to remain an ineffective competitor.

As noted above, Allied was not named as a party in the original

complaint. Allied, however, had moved for leave to intervene in order to protect its interest in United in the event divestiture were ordered, particularly in the light of a supply contract that (1) granted Allied the right to supply United's grape requirements for up to 80 years and (2) gave Allied the right of first refusal in the event Heublein were to divest itself of its interest in United. While affirming the administrative law judge's denial of Allied's application to intervene in the matter for all purposes, by order of June 26, 1973, the Commission granted Allied the right to participate in the proceeding with respect to the issue of relief. As also noted above, Allied was named as a party in the amended complaint.

Near the close of presentation of the defense by Heublein, United and Vintners (collectively referred to as "HUV"), Allied formally renounced all claims under the supply contract including the right of first refusal in the event Heublein should be required to divest itself of its interest in United. This resulted from an agreement reached among the respondents following decision in a private suit in a United States district court² in which Allied had sued Heublein for certain relief and Heublein had counterclaimed for, *inter alia*, relief from the supply contract. Following resolution of the private suit in favor of Heublein, Allied determined not to appeal and sold its 18 percent interest in Vintners to Heublein. Heublein then owned 100 percent of Vintners and, through Vintners, 100 percent of United. Allied abandoned all claims formerly made in this case (See RX 1248A-Z4).³ [8]

Relying upon the foregoing, Allied, on September 13, 1978, moved that it be dismissed from the proceeding. On September 25, 1978, ruling was deferred until the initial decision. At CB 3, complaint counsel state that inasmuch as Allied no longer owns an interest in Vintners, it is no [9] longer necessary to retain Allied as a respondent

² *Allied Grape Growers v. Heublein, Inc.*, Civ. No. C-75-0456 (D. Cal., filed July 21, 1978).

³ Among the abbreviations used herein are the following:

- CB - Complaint counsel's brief (post-trial memorandum)
- CP - Complaint Counsel's Proposed Findings of Fact, Conclusions of Law and Order
- CPF - Complaint counsel's proposed finding in CP—followed by its number(s)
- CR - Complaint Counsel's Reply to Respondents' Proposed Findings of Fact and Conclusions of Law
- CRPF - Complaint counsel's proposed finding in CR—followed by its number(s)
- CX - Commission exhibit, followed by its number and the referenced page(s)
- HUV - Collective reference to respondents Heublein, United and Vintners
- RAX - Exhibit of respondent Allied, followed by its number and the referenced page(s)
- RP - HUV respondents' Proposed Findings of Fact, Conclusions of Law and Order
- RPF - HUV respondents' proposed finding in RP—followed by its number(s)
- RR - HUV respondents' Reply To Complaint Counsel's Proposed Findings of Fact, Conclusions of Law and Order
- RRPF - HUV respondents' proposed finding in RR—followed by its number(s)
- RX - Exhibit of HUV respondents followed by its number and the referenced page(s)
- Tr. - Transcript of hearings, followed by the page number(s)

for the purpose of obtaining effective relief. Complaint counsel, therefore, do not oppose Allied's motion to be dismissed as a respondent.

On December 13, 1978, Vintners moved for dismissal of the complaint against it showing that, on November 9, 1978, Vintners merged into Heublein and ceased to exist. By order of January 3, 1979, ruling was deferred until the initial decision. At CB 3, complaint counsel state that, under these changed circumstances, it is no longer necessary to retain Vintners as a respondent for the purpose of obtaining effective relief and they do not oppose Vintners' motion to be dismissed as a respondent.

On December 13, 1978, United moved that it be dismissed from the proceeding showing that following, and as a consequence of, Heublein's acquisition of 100 percent of Vintners and Vintners' merger into Heublein, Heublein now owns 100 percent of United. By order of January 3, 1979, ruling was deferred until the initial decision. At CB 3, complaint counsel state that under these changed circumstances, it is not necessary to retain United as a respondent for the purpose of obtaining effective relief and they do not oppose United's motion to be dismissed as a respondent.

At RP 138-39, HUV assert that the overall all wine market was not alleged in the amended complaint as a product market but that the term was simply used for purposes of statistical reference; and that this is at odds with "complaint counsel's present theory of the case." I do not so read the complaint. An overall reading shows that it clearly treats "all wine" as a product category or market and "table", "dessert" and "sparkling" wines as submarkets or subcategories. For example, Par. 19 of the amended complaint alleges:

19. The product markets affected by Heublein's acquisition of a controlling interest in United are wine production, distribution and/or sale generally, as reflected by "all wine" statistics, and wine's three product subcategories: table, dessert and sparkling; all of which are concentrated and nation-wide in geographic scope.

The reference to " 'all wine' statistics" does not detract from the clear specification of product markets and submarkets. [10]

Again, Par. 25 of the complaint alleges, in part:

The effect of the acquisition by Heublein of a controlling interest in United may be substantially to lessen competition or to tend to create a monopoly in the production, distribution and/or sale of wine and its three product subcategories in the United States, in violation of Section 7 of the Clayton Act, as amended; . . .

Further, "complaint counsel's present theory of the case" is no different from that presented by complaint counsel and contested by respondents throughout the entire trial of this matter.

Extensive hearings were held during which a large volume of testimony and documentary evidence was received. Official notice was taken of a number of matters at the request of both complaint counsel and respondents.

This initial decision is based upon the entire record including proposed findings of fact and conclusions of law and supporting memoranda filed by the parties, as well as their replies. The undersigned has also taken into account his observation of the witnesses who appeared before him and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters. [11]

FINDINGS OF FACT⁴ AND DISCUSSIONS

I. GROWTH IN WINE CONSUMPTION

1. In 1960 an estimated 158.1 million gallons of wine were consumed in the United States, or 1.46 gallons per adult of legal drinking age. In 1968 total United States consumption had increased to an estimated 205.1 million gallons, or 1.74 gallons per adult. 1969 adult per capita consumption of wines was 1.87 gallons for a total estimated United States consumption of 225.5 million gallons. In 1977 an estimated 390.4 million gallons of wine were consumed in the United States, representing an adult per capita consumption rate of 2.69 gallons (1978 Wine Marketing Handbook, p. 20; officially noticed per order dated September 27, 1978).

2. Consumer expenditures in 1960 for wine in the United States were estimated to be \$751 million, climbing to an estimated \$1,053 million in 1968 and \$1,184 million in 1969. Consumer expenditures in the United States for wine in 1977 reached an estimated \$3 billion dollars (1978 Wine Marketing Handbook, p. 20; officially noticed per order dated September 27, 1978).

3. Wine consumption in the United States is skewed towards individuals under 50 years of age (CX 125Z-42, Z-44). The greatest wine usage level is among households where the household head is 25 to 49 years of age (CX 231V), although there is some evidence that those 21-24 years of age consume 20-50 percent more wine per capita than do their older counterparts (CX 125Z-44).

4. A 1970 Bank of America study forecast that 40 million young

⁴ Findings of fact, for the most part, are made in numbered paragraphs. Discussions and applications of findings, as well as consideration of legal and other matters, appear where deemed appropriate. Some follow particular findings which pertain thereto; others follow all of the numbered findings. Findings which appear in unnumbered paragraphs are, nevertheless, findings.

adults will have reached drinking age during the decade of the 1970's and will make up more than 27 percent of the adult United States population in 1980, and, of the adult population of 145 million in 1980, 70 million will have acquired their wine tastes during the 1960's and 1970's (CX 288B). [12]

5. The American wine drinking public has become more and more attuned to drinking table wine (CX 366J). The 1976 edition of *Impact*, a wine industry trade publication, summarized: "Table wine has come of age in the United States. Americans, particularly those in the 25-35 age group, are beginning to drink wine as an inherent part of their life style" (CX 367N).

6. The Bank of America's 1970 publication stated: "[T]he bank and the industry are in complete agreement that the popularity of wine in American cultural, culinary, and ceremonial tastes and preferences is accelerating unmistakably" (CX 288A).

II. THE PARTIES

A. Heublein

7. Heublein is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at Farmington, Connecticut (Amended Complaint and Heublein's Answer, ¶ 4).

8. Heublein sells its products nationwide (CX 4). At all times relevant herein, Heublein sold and shipped its products in interstate commerce and was thus engaged in commerce as "commerce" is defined in the Clayton Act, and was engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act (Amended Complaint and Heublein's Answer, ¶ 4).

9. Heublein was incorporated under the laws of Connecticut in 1915. It was the successor to a family business founded in the 1860's. It became a public corporation in 1959 (CX 3A, 56Z-4; Tr. 3920, 4022-23).

10. Heublein entered the vodka business in 1939 when it purchased the American Smirnoff Company. At that time, American Smirnoff was selling 6,000 cases of vodka a year in this country (Tr. 3975).

11. In the early 1940's Heublein built a vermouth plant in Hartford, Connecticut (Tr. 3981).

12. In 1957, Heublein obtained the exclusive agency for importing the Harveys line of ports and sherries (CX 48L; Tr. 3985). [13]

1. Heublein, As of the Time of the Acquisition, Was a Major Industrial Corporation and National Leader in the Sale of Alcoholic Beverages and a Seller of Food Products

13. In 1966, Heublein entered the ranks of "Fortune's 500" largest corporations and ranked in the top 100 for its earnings growth rate. By 1967, Heublein had moved up from 371st to 346th place in terms of sales, and it ranked 76th in growth in earnings per share (CX 48E, 49G).

14. In 1968, according to Forbes Magazine's 21st annual report on American industry, Heublein led the 500 largest United States corporations in profitability, defined as a company's return on stockholders' equity. Heublein ranked fifth for its five-year average of profitability and third among the top ten companies that were "the most adroit users of capital." The magazine also noted Heublein's five-year average 21.2 percent return on total capital and 15.8 percent five-year growth in earnings per share (CX 38B).

15. In 1967, Heublein was the largest importer of wines into the United States (CX 48K). At the time of the acquisition, Heublein was the fifth largest domestic producer of alcoholic beverages (CX 55V, 327J, K).

16. In 1968, Heublein was principally engaged in the sale of spirits and beer. These products accounted for 52 percent and 39 percent, respectively, of Heublein's total sales (CX 135B, 49T). Heublein's vodka sales accounted for 2/3 of its total spirits sales. The company ranked first in the sale of vodka (CX 9T, U, V, 55T, U, V, 319J; Tr. 9289).

17. In fiscal year ending June 30, 1968, Heublein had net sales of \$383,972,000, net income of \$14,567,000 and earnings per share of \$1.11 (CX 49T). In fiscal year 1969, the year of the acquisition, Heublein had net sales of \$520,855,000, net income of \$16,570,000 and earnings per share of \$1.27, all adjusted to reflect the acquisition (CX 50U). Heublein's assets as of June 30, 1968, were \$141,171,000 (CX 49E, U).

18. In fiscal year 1969, Heublein had record sales and earnings in the established lines of its business for the ninth consecutive year. Total sales exceeded a half billion dollars for the first time in Heublein's history, a year ahead of plan (CX 50E). [14]

19. In 1969, Heublein's stock sold at 20 times net earnings per share, which was very favorable at the time (Tr. 9166).

20. In fiscal year 1969, Heublein had a growing international business spanning more than 100 countries (CX 50E).

21. By 1967, as reported to its stockholders, Heublein had a "full

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line of alcoholic beverages" including well-known whiskey imports (CX 48J).

22. In fiscal year ending June 30, 1969, Heublein spirits were distributed principally under the following brand names:

Vodka

- Smirnoff Vodka*
- Relska Vodka*
- Popov Vodka*
- Arrow Vodka*
- Koskorva Vodka*

Gin

- Milshire Charcoal Filtered Gin*

Whiskies

- Bell's Scotch Whisky
- McMaster's Scotch Whisky
- Black Velvet Canadian Whisky
- McMaster's Canadian Whisky
- Tullamor Dew Irish Whisky

Prepared Cocktails

- Heublein Cocktails*
- Heublein Banquet Cocktails*
- Club Cocktails*

Cordials, Liqueurs and Brandies

- Arrow Cordials & Flavored Brandies*
- Irish Mist Liqueur
- Bisquit Cognacs
- Felipe II Spanish Brandy

Tequila

- Jose Cuervo Tequila
- Matador Tequila

Rum

- Don Q Rum
- Eldorado Rum

Asterisks denote brands produced by Heublein (CX 55T). [15]

23. In its fiscal year ending June 30, 1969, excluding wines of United and Beaulieu, Heublein distributed wines under the following brand names:

Harveys Bristol Cream Sherry
Harveys Other Sherries and Ports
 Amontillado Cocktail Sherry
 Bristol Fino Sherry
 Bristol Milk Sherry
 The Director's Bin Port
 Gold Cap Port
 Hunting Port
 Shooting Sherry
 Tico Cocktail Sherry
Heublein Vermouth Sweet and Dry
Lancers Vin Rose
Quinta Red Table Wine
Vinya Rose Table Wine
Bertani Verona Italian Table Wines
Bouchard Pere & Fils Burgundy and Bordeaux Table Wines
Byrrh Aper
Chateau Bottled Bordeaux Table Wines
 Chateau Bouscaut (Graves)
 Chateau St. Georges (St. Emilion)
Harveys Selection Table Wines (France and Germany)
Hungarian Wines
 Tokay
 Egri Bikaver
Paul Jaboulet Aine Rhone Table Wines
Rheinhof German Table Wines
Valle Freres French Table Wines (CX 50Z-2)

24. Prior to the acquisition, Heublein was importing a number of other wines in limited quantities (Tr. 4319-23, 4339-40).

25. At the time of the acquisition, Heublein's principal beer brand was Hamm's. It also sold Waldech and Buckhorn beer and was introducing a new malt liquor under the Velvet Glove label (CX 55U).

26. At the time of the acquisition, Heublein had a line of specialty food products the principal brands of which were A.1. Sauce, Escoffier brand sauces, Snap-E-Tom tomato cocktail, Ortega sauces and chili products, and Grey Poupon mustard (CX 55V).

27. Heublein's leading alcoholic beverage was and is Smirnoff Vodka. From 6,000 cases at the time of acquisition of American Smirnoff Company in 1939 (Finding 10, *supra*), by 1968, Smirnoff sales approximated 22.4 percent of the United States vodka market.

Heublein's share of the national vodka business, including all of its vodka brands, was approximately 30.2 percent (Tr. 9291). [16]

28. Smirnoff had a record of outstanding success. Vodka consumption increased in little more than a decade from virtually nothing to 10.4 percent of total distilled spirits consumption by 1965. Smirnoff was the leader in making vodka a national favorite and contributed virtually all of the consumer promotion in the early years. By 1966, Smirnoff outsold every brand of scotch, gin and bourbon in the United States and was the fourth largest brand of any type of distilled spirits in the United States (CX 47D).

29. At the time of the acquisition, Smirnoff was the world's largest selling vodka and the second best-selling brand of liquor internationally (CX 43A, 49Q, S). In fiscal year 1968, sales of Smirnoff internationally reached four million cases (CX 49I).

30. By fiscal year 1968, Smirnoff was the third best selling distilled spirits brand in the United States and was gaining on second place (CX 49I).

31. In fiscal year 1969, Smirnoff continued to improve its position in the United States distilled spirits industry (CX 50F) and increased its overseas sales at a rate twice that in the United States (CX 50R).

32. According to the Nielsen Report, Smirnoff was the number one selling brand of all alcoholic beverages in 1977 in the three leading markets of the United States — Los Angeles, Chicago and New York (Tr. 9296-99).

33. Heublein Cocktails, reported by Heublein in 1966 to its stockholders as "undisputed leaders in the marketplace" (CX 47G), had dominated the growing prepared cocktail market since the turn of the century (CX 50I). By fiscal year 1969, they commanded more than twice the sales of the next most popular brand (CX 50J). In 1969, Heublein had approximately 50 percent of the United States market (Tr. 4995).

34. Another of Heublein's leading products was Harveys Bristol Cream Sherry (CX 46E). By fiscal year 1969, Harveys had become the leading imported sherry in the nation, accounting for one-third of all imported sherry (CX 50I). It is one of the most prestigious of all internationally known wines (CX 48K; Tr. 2893).

35. By 1966, Harveys full line of ten sherries and ports were carried in many liquor stores because the line was a "call" item (CX 48L).

36. At the time of the acquisition, Heublein's line of Arrow Cordials was the second best selling line of cordials and brandies in the country (CX 50E). [17]

37. Heublein's Lancers Vin Rose was a light, bubbly wine

packaged in a distinctive crock container, and advertised as a good choice to serve on all occasions. A Portuguese wine, Lancers Vin Rose had become a demand item in almost all restaurants and hotels. It was on more wine lists than any other imported or domestic wine (CX 48K, 49M).

38. By 1969, Lancers Vin Rose was the best selling imported wine in the United States and its sales were increasing (CX 50F).

39. In fiscal year 1969, Heublein's Jose Cuervo Tequila and Matador Tequila together accounted for more than 50 percent of the tequila market (CX 50I).

40. In fiscal year ending June 30, 1969, Heublein reported that its Consumer Products Division, formerly the Food Division (CX 49 O), had had an unusually good year with all its specialty foods (CX 50E). A.1. Sauce, for example, continued to dominate the meat sauce market (CX 50J).

2. Heublein, a Growth Company

41. Heublein at the time of the merger was described as a "growth company" by its Chief Executive Officer, Stuart Watson:

It's been said that truly innovative growth companies are few indeed. These are the ones distinguished by a three-fold capacity. They are able to increase the growth of their existing products, and to underwrite the costs of new products and acquisitions, while increasing their over-all sales and earnings (CX 34D).

42. Heublein was able to plan what Mr. Watson termed "a major acquisition," the acquisition of United, while increasing the forward momentum of its existing business. In 1968, Heublein considered itself to be in a "unique position" to capitalize on opportunities for future growth with its line of products that included some of the fastest growing categories of foods and spirits, its expanding plants and facilities and its planning capability (CX 34G).

43. As noted in its 1968 Annual Report, "Heublein's steady growth over the years has derived from the progress of its established business and from the acquisition of others with good potential" (CX 49G). [18]

44. Heublein represented itself as a growth company. For the five-year period up to 1968, Heublein had an average annual growth rate in sales of 10 percent and an average annual growth rate in profits of 12 percent. The price per share of its common stock had risen from \$8 5/8—\$11 (adjusted for splits) in 1963 to \$26—\$40 1/4 in 1968 (CX 263; Tr. 2697).

45. Heublein's case sales of Harveys Bristol Cream Sherry had

increased 84 percent during the five-year period through 1968 and its sales of Lancers had gone up 294 percent (CX 264; Tr. 2463).

46. In the period from 1963 through 1968, Heublein had the following successes with what it termed "*new ventures*": case sales of Arrow cordials increased 62 percent; barrel sales of Hamm's Beer increased 9 percent; dollar sales of Coastal Valley Products increased 89 percent; and case sales of Lancers wine increased 294 percent (CX 265; Tr. 2476-77).

47. Heublein's case sales of Smirnoff increased 43 percent from 1963 to 1968 and the volume sales of A.1. Sauce increased 73 percent during the same period (CX 267; Tr. 2699).

48. During the same period, Heublein's dollar sales increased 52 percent, its earnings per share increased 103 percent, the market price of its stock increased 254 percent and its dividends per share increased 250 percent (CX 266; Tr. 2477, 2699, 2700).

49. As reported in Heublein's 1969 annual report, covering the fiscal year in which the acquisition took place, Heublein's Spirits and Wine Division increased "case sales and dollar volume as much as 17 percent" (CX 50F). Smirnoff Vodka set new records and continued "to exceed the growth rate of the distilled spirits industry by some 33 per cent" and to enjoy a major share of the growing United States vodka market in the face of toughening competition (CX 50F). Lancers case sales increased again and demand outstripped production (CX 50E, F). Arrow cordials and brandies "made important advances in [Heublein's] drive to overtake first place in this growing after-dinner drink category" (CX 50F). Heublein's recently introduced line of Club Cocktails, in its first full year in the national market had doubled Heublein's consumer cocktail business (CX 50E). Black Velvet, Don Q Rum and Jose Cuervo Tequila all increased in sales (CX 50E). Jose Cuervo's rate of growth tripled that of the total distilled spirits market, and Don Q sales had increased by 28 percent since that brand was acquired by Heublein (CX 50I). Harveys increased in unit sales some 22 percent (CX 50I). Heublein's sales to the transportation business grew (CX 50J), with sales of Smirnoff and Heublein Cocktails on international air carriers up 21 percent (CX 50R). Sales to the military increased 25 percent in response to an aggressive marketing effort by Heublein (CX 50J). In the Consumer Products Division, which [19]grew 20 percent in case sales (CX 50J), A.1. Sauce grew in dollar sales 20 percent over the last year, its growth over the preceding decade having been an "exceptional" 300 percent (CX 50J). Escoffier brand sauces also showed gains and Snap-E-Tom Tomato Cocktail increased 40 percent over the previous year (CX 50J, M). Grey Poupon Dijon Mustard had

increased its share of the mustard market some 33 percent in three years (CX 50M).

(a) Growth through New Products and Lines

50. Prior to the merger, Heublein had extensive research and development projects under way in food and liquor. These included the constant testing of new products of its own and of its competitors, and the development of new products (CX 46H).

51. Heublein originated the prepared cocktail at the turn of the century (CX 50I; Tr. 4994, 4995).

52. Heublein developed a new full-flavored cocktail with an alcoholic content between the Heublein full-strength cocktail and beer. It was the first pre-mixed cocktail to be packaged in a can. The product gained immediate consumer acceptance in the four states in which it was test-marketed and was introduced in the national market in fiscal year 1969. Heublein started with six flavors and introduced three more in fiscal year 1969 (CX 48I, 50I).

53. Based upon the success of Club Cocktails, Heublein introduced eight flavors of its full-strength cocktails in 8-ounce cans in fiscal year 1969 (CX 50J).

54. In fiscal year 1968, the year before the acquisition, Heublein marketed twenty new products (CX 49F).

55. Heublein introduced Smirnoff Silver to upgrade its price line and to top some of the recently imported vodkas (Tr. 4431-32).

(b) Expansions in Capacity

56. In 1969, Heublein announced that it had entered into a joint venture to build a new winery near Lisbon, Portugal (CX 50F). The agreement had been signed on October 11, 1968, when Heublein and Fonseca (Jose Maria da Fonseca Sucrs.,—Vinhos, S.A.R.L.), the supplier to Heublein of Lancers, Vinya and Quinta wines, entered into a joint venture under the name Internacional (J.S. da Fonseca Internacional—Vinhos, Limitada), to secure land and construct and operate a wine production facility capable of producing a minimum of 750,000 cases of wine per year (CX 63, [20]65E). The \$1.6 million plant was capable of being expanded further as needed (CX 34G). Under a separate management agreement, Fonseca assumed the management duties of the joint venture with responsibility for production and related matters such as locating, developing and maintaining an adequate supply of grapes and wine (CX 64A-E). Heublein joined in the venture to assure an adequate supply of Lancers and to help the FONSECAS with financing (Tr. 4330). The wine

is produced by various wineries in Portugal, then finished and bottled at the Fonseca facilities (Tr. 4332). Heublein's initial investment in the facility was approximately \$500,000 (Tr. 4492).

57. Heublein's ownership interest in the production facility joint venture with Fonseca is 49 percent. Its interest in the marketing joint venture with Fonseca is 51 percent (CX 56Z-10, Z-13). Heublein owns the Lancers trademark (RPF 149).

58. In fiscal year 1965, Heublein began construction of a \$4,500,000 plant in Allen Park, Michigan with a 2,500,000 case per year capacity. The plant began producing Heublein spirits in 1966 and, in 1968, Heublein invested \$600,000 to expand it to service growing markets (CX 38B, 46G, 47C).

59. In 1967, Heublein reported a planned multi-million dollar expansion of the Hamm's brewery in Los Angeles that would increase its capacity to 840,000 barrels per year (CX 48E). In fiscal year 1969, a 72,000 square foot loading area was added to the Hamm's St. Paul plant, and Hamm's entered into a joint venture with Continental Can to build a \$1,950,000 can-producing facility (CX 50E, N, Q).

60. In fiscal year 1968, Heublein spent nearly \$8 million to increase production capacity at major plants (CX 49F, G).

61. Almost immediately after acquiring United, Heublein announced plans for a new production facility for sparkling wine to be completed in 1971 (CX 50Q).

62. Heublein in 1969 engaged in an \$18 million joint venture with the Indian Head Company to build a glass plant, the Madera Glass Company, to serve United. Heublein and Indian Head each contributed \$2 million in equity and \$1 million in operating capital. Heublein arranged for a \$5 million loan from the Aetna Insurance Company and, by giving certain guarantees, was able to arrange for \$6 million in additional loans from a group of banks (Tr. 9219-24, 9304). An additional \$3 million was borrowed from the government (Tr. 9305). Heublein was to contribute any additional operating capital that might be needed (Tr. 9223). See Findings 217-20, *infra*, for additional details. [21]

63. The glass plant joint venture resulted in savings for United in the cost of glass (Tr. 9224). By 1972, the Madera Glass Company made a \$1.8 million profit (Tr. 9226).

(c) External Growth

64. Heublein acquired a majority interest in Arrow Liqueurs Corporation in April 1964 for \$6 million, and it acquired the

remaining minority interest in Arrow in June 1965. Arrow distributes Scotch and Canadian whiskeys, cordials and brandies (CX 12, 460, 47H).

65. In January 1965, Heublein, in accordance with its self-described "active acquisition program" (CX 46G), purchased Vintage Wines, Inc. for \$2,125,000 (CX 61). At that time, Vintage Wines had numerous arrangements with suppliers from several foreign countries for distribution and sale in the United States of a variety of wines and certain distilled spirits (CX 62A, C, U-V), in addition to having several registered trademarks of its own (CX 62A, B, J-K). Heublein acquired the right to import these wines under a contract agreement (Tr. 4424-25). In addition, Vintage Wines had arrangements to import wines for certain retailers under the retailers' private labels (Tr. 4426-27). Lancers Vin Rose was the leading product of Vintage Wines (CX 46E, G, 351). Heublein purchased the Lancers trademark (Tr. 4289). Excluding Lancers, Vintage Wines sold about 100,000 cases of wine in 1969 (Tr. 4443). In 1968, the year prior to the acquisition of United, sales of Lancers Rose in the United States rose to approximately 360,000 cases (some 879,000 gallons) (RX 17I; Tr. 8703-04). In March of 1970, a white Lancers known as Lancers Vinho Bronco was introduced. A red Lancers, Lancers Rubio, was added in Heublein's fiscal 1974 (RPF 147).

66. In November 1965, Heublein acquired all of the common stock of the Theo. Hamm Brewing Co. (CX 47Q). Heublein's Hamm's beer operation performed well for several years (CX 47E, I, 48G, 49G, M, O). In fiscal year 1971, Hamm's was still profitable and expanding into new markets (CX 52N). Hamm's first loss was reported in fiscal year 1972 (CX 53F). Hamm's was sold in fiscal year 1974 (CX 359Y).

67. During the 1966 fiscal year, Heublein became the exclusive United States importer and distributor of Bertani Italian Wines (CX 47C).

68. During the 1966 fiscal year, Heublein secured United States rights to Grey Poupon Dijon Mustard, which it had previously manufactured and marketed under a licensing agreement (CX 48E). [22]

69. In 1966, Heublein acquired the exclusive United States rights to import and distribute Jose Cuervo, S.A., the world's largest selling brand of tequila (CX 47C, 48I).

70. In June 1967, Heublein became the sole United States distributor of Chateau St. Georges bottled Bordeaux table wines (CX 71).

71. Effective January 1, 1968, Heublein acquired, for \$150,000, all of the outstanding common stock of Don Q Imports, Inc., the sole

United States distributor for the leading rum brand in Puerto Rico (CX 49K, T).

72. In October 1968, Heublein entered into a joint venture marketing company with the Fonseca family in which Heublein had a 51 percent interest (Tr. 4328). The venture was to market and sell wines worldwide (CX 67).

73. In October 1968, Heublein also entered into a formal agreement with Internacional whereunder the two companies would work together to develop and produce new Portuguese wines under trademarks originated or acquired by Heublein for sale by Heublein in the United States (CX 65H).

74. The Fonseca joint venture was very successful and the Fonseca Winery capacity has been enlarged to one or one-and-a-half million cases per year (Tr. 3957, 4333). The expansion was self-financed from the cash flow of the enterprise (Tr. 4492).

75. In fiscal year 1968, Heublein acquired exclusive long-term rights to United States sales of Black Velvet Canadian Whisky by agreement with Gilbeys (Canada) Ltd. (CX 49G, K).

76. In fiscal year 1968, Heublein acquired the United States distribution rights for Kiku-Masamune Sake, Japan's leading brand of sake (CX 49M).

77. On February 21, 1969, Heublein acquired a controlling interest in United, the acquisition challenged by the complaint in this case.

78. This was followed on June 5, 1969, by the acquisition of Beaulieu Vineyard (Tr. 331).

79. In fiscal year 1970, Heublein acquired all of the outstanding common stock of Grape Factors, Inc. (CX 52Z-3).

80. In January 1971, Heublein acquired Regina Grape Products Co., a producer of wine vinegar products (CX 52K, Z-3). [23]

81. In fiscal year 1971, Heublein merged with Kentucky Fried Chicken Corporation, whereby that company became a subsidiary of Heublein. Heublein thus obtained a strong position in the expanding fast foods market (CX 52C, Z-3).

82. In 1973, Heublein made two acquisitions in Brazil. First it acquired Drury's, an alcoholic beverage company and six months later it acquired a brandy company called Dreher (Tr. 9167).

83. In August 1973, Heublein acquired Davis Food Service, Inc. (CX 360Z-8).

84. In fiscal year 1974, Heublein Wines International was established as a unit within the Smirnoff Beverage and Import Co. In the same year, it became the exclusive United States distributor of

