

**COMMERCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE**

Date: 3 July 2006

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a potential business acquisition.

EXECUTIVE SUMMARY

- 1.1 Lion Nathan seeks clearance for the potential acquisition of the New Zealand business of Independent Liquor.
- 1.2 Independent Liquor is engaged in the distribution of its own branded spirit-based "ready to drink" products ("RTDs") and spirits, and of beer. It is part of the Independent Liquor group of companies, which comprises entities in New Zealand and Australia. Lion Nathan understands that the majority shareholder in Independent Liquor is the estate of Michael Erceg, which owns 90% of Independent Liquor.
- 1.3 Lion Nathan is listed on the Australian Stock Exchange and the New Zealand Stock Exchange. In the New Zealand market it is engaged in production, production under licence and importation of beer, RTDs and spirits. Relevant New Zealand business activities are carried out by New Zealand Breweries Limited, Lion Nathan Wines and Spirits New Zealand Limited and Lion Liquor Retail Limited.
- 1.4 The Commerce Commission is already familiar with the New Zealand alcoholic beverages markets, which are extremely competitive due to the number and characteristics of the existing competitors, and the low barriers for existing competitors to expand their product ranges into new market segments.
- 1.5 Cross market complementarities are an important element of the competition dynamic in these markets. Market boundaries are not rigidly defined and consumers frequently choose products from across the range of alcoholic beverages depending on the occasion. Consumers therefore have the ability to switch between RTDs and beer, RTDs and spirits and so on.
- 1.6 There are low barriers to expansion in all relevant markets, particularly in RTDs and beer. DB is a good illustration of this having just launched its Barrel 51 RTD, and with it also having excess brewing capacity in beer. Similarly, from Australia, Fosters is a significant competitive constraint with a strong brand and the expertise and capability to grow market share within a short time. It has large and sophisticated plants for the production of both RTDs and beer in Australia which are also understood to have

excess capacity. The announced entry of 42 Below further illustrates that entry is not difficult. The costs of establishing a mixing unit and a bottling and canning line are not significant, and for potential new entrants such as 42 Below or CCA with existing brand awareness and distribution contacts, the route to market is relatively straight forward.

- 1.7 Imports act as a material constraint in the relevant markets, particularly with respect to RTDs with approximately [CONFIDENTIAL] already being imported from Australia. [CONFIDENTIAL] Fosters is also in a credible position to expand with those products already present in New Zealand such as *Cougar* imported from Australia. [CONFIDENTIAL].
- 1.8 [CONFIDENTIAL].
- 1.9 In Lion Nathan's view, the countervailing power of the national retailers will also mean that there can be no substantial lessening of competition. This countervailing power is set to expand into RTDs and spirits through their announced expansion of operations in to liquor outlets. [CONFIDENTIAL]. Some retailers are already importing beer products directly, showing a willingness to expand their successful own brand type strategies into this category.
- 1.10 Lion Nathan therefore does not consider that the potential acquisition would have the effect of substantially lessening competition in any relevant market.

PART I: TRANSACTION DETAILS

2. THE BUSINESS ACQUISITION

- 2.1 Clearance is sought in respect of the possible acquisition by Lion Nathan Limited, or a wholly-owned subsidiary ("**Lion Nathan**"), of up to 100% of the shares and/or assets in Independent Liquor (NZ) Limited ("**Independent Liquor**").
- 2.2 A formal sale process has not yet commenced. Relevant press releases relating to this process will be provided to the Commission in due course.

3. NOTICE GIVEN BY LION NATHAN

- 3.1 This notice is given by:

Lion Nathan Limited
 Level 30, 363 George Street
 Sydney, NSW 2000
 AUSTRALIA
 Telephone: +61 2 9290 6600

Attn: Duncan Makeig, General Counsel

- 3.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Russell McVeagh
 Barristers & Solicitors
 P O Box 8
 Level 30, Vero Centre
 48 Shortland Street
 Auckland

Attn: Andrew Peterson/Sarah Keene
 Ph: (09) 367 8315 / (09) 367 8133
 Fax: (09) 367 8596

4. CONFIDENTIALITY

- 4.1 Confidentiality is sought in respect of all items deleted from the public copy of this application ("**confidential information**"). The items are either indicated in the non-public version in square brackets ("[]"), or contained in **Appendix 1**, the entire contents of which is confidential.
- 4.2 In respect of the confidential information, a confidentiality order is sought under section 100 of the Commerce Act 1986 ("**Act**"), and confidentiality is claimed under section 9(2)(b)(ii) of the Official Information Act 1982, on the grounds that the information is commercially sensitive and valuable information which is confidential to the participants, and disclosure of it is likely to give unfair advantage to competitors of Lion Nathan and/or unreasonably to prejudice the commercial position of the persons involved.

- 4.3 Lion Nathan requests that it be notified of any request made to the Commission under the Official Information Act for release of the confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive, at the time responses to such requests are being considered.

5. DETAILS OF THE PARTICIPANTS

- 5.1 The proposed acquirer is Lion Nathan or one of its wholly owned subsidiaries.
- 5.2 Lion Nathan is an Australian registered company (ACN 093160448) listed on the Australian and New Zealand Stock Exchanges. Lion Nathan's New Zealand business activities are carried out by several wholly-owned subsidiary companies. The subsidiaries relevant to this application are: New Zealand Breweries Limited; Lion Nathan Wines and Spirits New Zealand Limited; New Zealand CBC Limited ("**CBC**") and Lion Liquor Retail Limited, which owns and operates 37 off-premise liquor retail outlets throughout New Zealand under the name "Liquor King".
- 5.3 Lion Nathan is partially owned by Kirin Brewing Company Limited ("**Kirin**"), which has a 46.1% shareholding. The remaining 53.9% of shares in Lion Nathan are owned by institutional and private investors, most of whom are resident in Australia, New Zealand, the United States and the United Kingdom. The most recent corporate structure diagrams for Lion Nathan are attached at **Appendix 1**.
- 5.4 Further information concerning Lion Nathan's New Zealand operations may be found at: <http://www.lion-nathan.nz>.
- 5.5 Independent Liquor is a privately owned company registered in New Zealand under the Companies Act 1993 (company number 354989). Independent Liquor is part of the Independent Liquor group of companies, which comprises entities in New Zealand, Australia, Canada and the United Kingdom. Lion Nathan understands that the majority shareholder in Independent Liquor is currently the estate of Michael Erceg, which owns 90% of Independent Liquor. The balance of Independent Liquor is owned by Trustees in the Independent Group.
- 5.6 The New Zealand operations of Independent Liquor which Lion Nathan understands may be sold are carried out by Independent Beverages (NZ) Limited, which carries out Independent Liquor's RTD and spirit production and distribution and Independent Breweries Limited, which conducts Independent Liquor's beer production and distribution.¹ Each of these companies are wholly owned by Independent Liquor. Contact details for Independent Liquor are:

Independent Liquor (NZ) Limited
35 Hunua Rd
Papakura
Auckland

¹ The Independent Liquor group also comprises a number of other subsidiaries, including Independent Distillers (NZ) Limited, Waihopai Valley Vintners Limited and Phoenix Vintners Limited, but it remains uncertain whether these will be included in any possible sale of Independent Liquor. In any event, for the purposes of the market aggregation analysis in this application the relevant production across the Independent group has been attributed to the two subsidiaries identified in paragraph 5.7 above.

Ph: 09 298 3000
Fax: 09 298 6699

Attn: Warren Hignett

- 5.7 Further information concerning Independent Liquor's New Zealand operations may be found at www.independentliquor.co.nz.

6. INTERCONNECTED AND ASSOCIATED PARTIES

Lion Nathan

- 6.1 Please refer to paragraph 5.2 above as to the corporate structure diagram at **Appendix 1** for details of interconnected and associated parties.

Independent Liquor

- 6.2 Please refer to paragraphs 5.5 and 5.6 above for details of parties interconnected and associated with Independent Liquor.
- 6.3 No other relevant entity is expected to continue to own over 10% of the shares in Independent Liquor after the potential acquisition, although the precise structure of any potential sale of Independent Liquor is still unknown.

7. BENEFICIAL INTERESTS

- 7.1 Neither Lion Nathan nor Independent Liquor holds any relevant beneficial interest.

8. LINKS BETWEEN PARTICIPANTS

- 8.1 There are no links between Lion Nathan and Independent Liquor.

9. BUSINESS ACTIVITIES OF EACH PARTICIPANT

Lion Nathan

- 9.1 Lion Nathan is listed on the Australian and New Zealand stock exchanges and is a manufacturer and distributor of a range of alcoholic beverages. It operates in New Zealand and Australia through its subsidiaries, as set out in paragraph 5.2 above and in the Lion Nathan corporate structure chart attached at **Appendix 1**.
- 9.2 Lion Nathan carries on business in New Zealand through two main subsidiaries:
- (a) *New Zealand Breweries*, which brews Lion Nathan's New Zealand range of beer brands. Many of these brands, such as *Lion Red*, *Speight's* and the *Mac's* range, are owned and distributed by New Zealand Breweries. New Zealand Breweries also distributes a number of brands under license from international brand owners, such as *Guinness*, *Beck's* and *Stella Artois*.
 - (b) *Lion Nathan Wines and Spirits New Zealand Limited*, which produces and distributes a range of wine, spirit and RTD brands in conjunction with Lion Nathan's wholly-owned contract bottling subsidiary, New Zealand CBC Limited

("CBC"). Lion Nathan predominantly distributes (and in some cases produces) spirits and RTD brands under licence, such as *Gordon's* gin, *Smirnoff* vodka, *Coruba* rum and *Bailey's*. A very small number of spirit and RTD brands are owned by Lion Nathan directly. Lion Nathan sells alcoholic beverage products through two business units, Lion Beverages and Distinguished Beverages.

Independent Liquor

- 9.3 Independent Liquor is a brand owner manufacturer and distributor of RTDs, spirits and beer primarily in New Zealand and Australia with some exports to markets in the Asian region. In New Zealand it operates out of a single production facility in Auckland and in Australia, from Melbourne and Sydney. Certain assets of the UK arm of Independent Liquor have been separated from the Australasian business and sold to Halewood International, a UK-based drinks company.

The counterfactual

- 9.4 It is difficult to predict the counterfactual with any degree of certainty. [CONFIDENTIAL.]
- 9.5 Given the difficulties of predicting the outcome of a possible sales process, Lion Nathan submits that the most appropriate counterfactual is the status quo, with Independent Liquor continuing to be managed by the existing management team, but with the potential for the business to be sold in the medium term.

10. THE REASONS FOR THE PROPOSAL

- 10.1 Through this potential acquisition, Lion Nathan seeks to create an even better and more efficient Australian-based liquor business to compete with strong established competitors, such as Foster's, DB, Pernod Ricard/Orlando/Allied Domecq, Diageo and Maxxium.
- 10.2 Specifically, the potential transaction would provide Lion Nathan with the opportunity to:
- (a) [CONFIDENTIAL];
 - (b) [CONFIDENTIAL];
 - (c) [CONFIDENTIAL]; and
 - (d) [CONFIDENTIAL].

PART II: IDENTIFICATION OF MARKETS AFFECTED

11. HORIZONTAL AGGREGATION

Market Definition

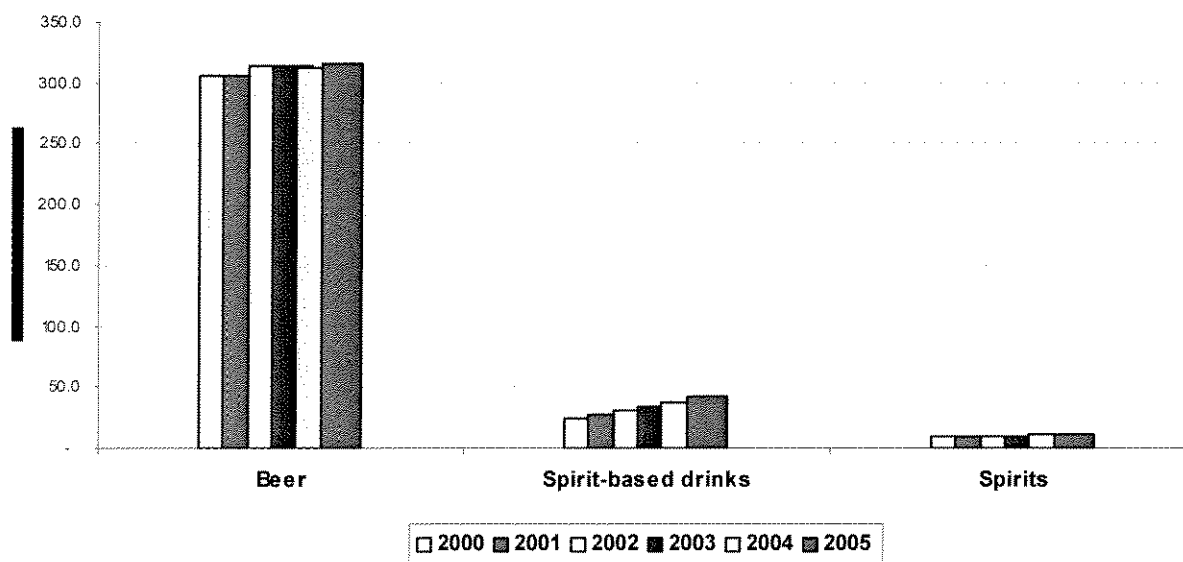
- 11.1 Product overlap exists between Lion Nathan, Independent Liquor and their respective subsidiaries in the production or importation of RTDs and spirits for wholesale supply to general liquor retailers. The parties' activities also overlap in the production and wholesale supply of beer to general liquor retailers and to supermarkets.

Wholesale supply of alcoholic beverages

- 11.2 In the context of any analysis of the wholesale functional level of alcoholic beverages markets, while recognising that the Commission has traditionally defined separate categories of alcoholic beverages as distinct markets for the purposes of competition analysis, it is important to maintain an awareness of the interrelationship between the alcoholic beverage categories. Cross-market complementarities and constraints are an important feature of the competition dynamic in all alcoholic beverages markets in New Zealand and internationally.
- 11.3 By volume, beer is the largest segment in the alcoholic beverages market, followed by wine, RTDs and spirits. However, as shown in **Table 1** below, total beer growth is reasonably stagnant (and declining in per capita consumption, as **Table 3** shows), whereas RTDs² and spirits have shown increased sales volumes.

Table 1

Alcohol Available for Consumption (By Category)
Source: NZ Statistics



² The "spirit-based drinks" category referred to in the NZ statistics material includes all spirit-based products with less than 23% alcohol content. Approximately 85% of the "spirit-based drinks" category is comprised of RTD products, with the balance predominantly made up of low alcoholic spirits and liqueurs. Lion Nathan understands that this proportion has remained constant over the relevant five year period described in Table 1.

11.4 Substitution between beer, RTDs and spirits, in particular, has manifested itself by RTDs being packaged, marketed and promoted in a similar way to beer, including use of a brown bottle or cans for packaging, sports sponsorships (such as sponsorship of rugby in Australia by *Bundaberg Rum*) and through similar pricing and merchandising. Similarly, beer is being produced and marketed in a clear bottle and at higher alcohol levels so that it is a clearer substitute for RTD products.

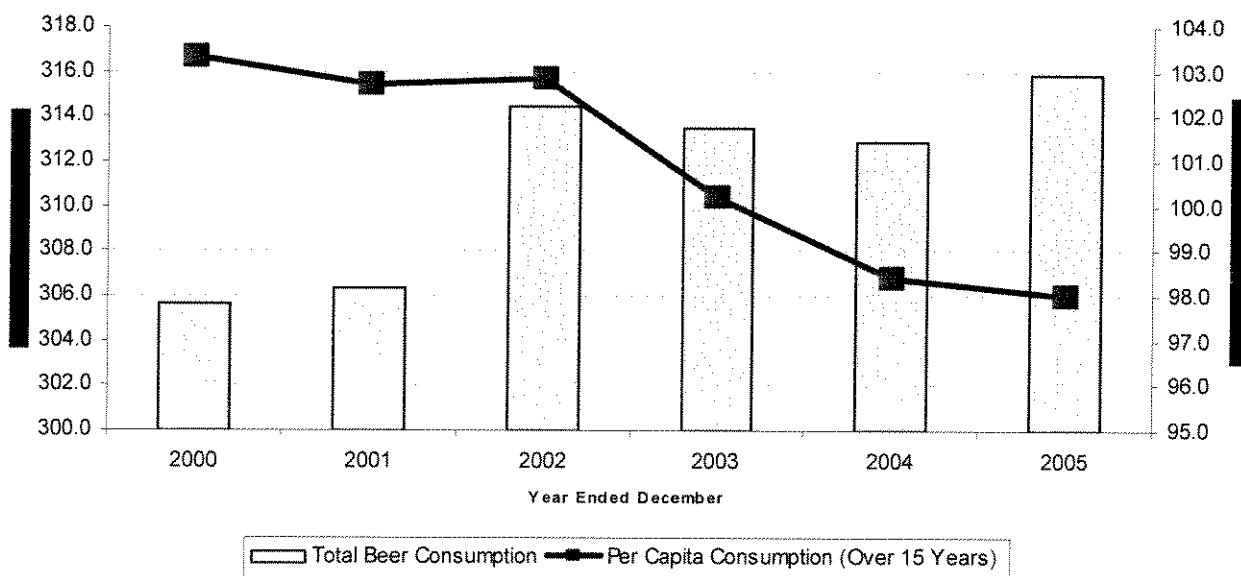
11.5 On the demand-side, a significant degree of overlap can be seen in ultimate consumers for each category of alcoholic beverages. Consumers have a "repertoire" of alcoholic beverages from which they choose their preferred beverage depending on the occasion and the range of beverages which can be consumed on any given occasion. This is illustrated by research undertaken on behalf of Lion Nathan. [CONFIDENTIAL]

[CONFIDENTIAL]

11.6 As a result of the range of alcoholic beverages consumed, short to medium term trends in one alcoholic beverage market will often impact on neighbouring markets, creating competitive constraints outside the limits of defined anti-trust markets. For example, different RTD products show different levels of substitution into other alcoholic beverages - a consumer might substitute an RTD for a spirit plus mixer drink, or a bourbon-based RTD for a beer, or a liquor-based RTD for a glass of wine, and so on. As a consequence, growth in the RTD market will affect the level of sales of spirits and beer. This is in fact an effect seen in the overall declining per capita sales in the New Zealand beer market over the last five years, as compared with the increasing level of per capita sales in spirit-based drinks, revealed in the **Table 3** below.

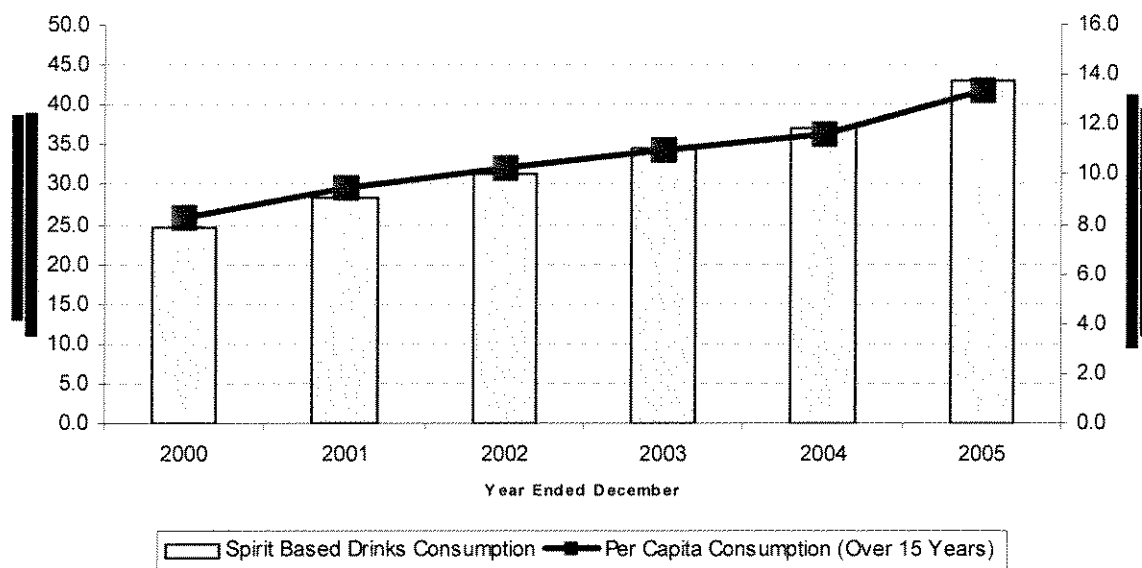
Table 3

Beer Market Volumes



Source: NZ Statistics

Spirit Based Drinks Consumption per Head



- 11.7 A further effect is the commercial complementarity between products in the different markets. At the retail level, liquor retailers carry a range of RTD, spirit and beer products to best meet end-consumer demand. The current exception to this is the sale of liquor in traditional supermarkets, which are limited by their license restrictions. However, Foodstuffs group has already announced that it will open a chain of general liquor retailing outlets this year. Following the acquisition of Progressive by Woolworths, that combined entity is understood to be planning the introduction of a liquor retail chain in New Zealand based on its *Dan Murphy's* chain in Australia which are stand-alone stores based on a "big box" store format.³ It is noted that the Warehouse has recently entered into liquor retailing and Foodstuffs have recently acquired a small strategic equity position in that company.
- 11.8 At the production and distribution level, the commercial complementarity of alcoholic beverage markets results in these markets demonstrating a high degree of supply-side substitution. A competitor's presence in one market allows it to easily expand into other markets through existing distribution relationships, and for example through bundling of new products with existing products. Further, extending supply across a range of products in multiple beverage markets creates economies of scale and scope.⁴
- 11.9 There have been a number of examples of this type of expansion, such as:
- (a) DB's recent expansion into production and distribution of RTDs with the launch of a bourbon and cola product, *Barrel 51*, in March 2006 and its announcement of further RTD products to come,⁵

³ *New Zealand Herald*, "Cheaper by the Liquor Chain", 17 December 2005, C1, C4, a copy of which is attached at Appendix 3.

⁴ The Commission has in the past noted the benefits for a manufacturer wishing to expand into a product market of having a portfolio of complementary products in relation to the fabric softener market in Decision 529, *Colgate Palmolive Company/Campbell Brothers Limited*, 20 July 2004 [para 183].

⁵ *New Zealand Herald*, "DB diversifies from beer with bourbon RTD", 2 March 2006, C16, a copy of which is attached at Appendix 3.

- (b) The announced entry of 42 Below Limited ("**42 Below**") into the RTD market through the introduction of a rum-based and vodka-based RTDs,⁶
 - (c) Independent Liquor's RTD business allowed it to grow its beer business.
- 11.10 DB's expansion, in particular, reveals how quickly and easily an existing competitor with established distribution in one alcoholic beverages sector can expand into other markets. [CONFIDENTIAL.]
- 11.11 Supply-side substitutability was an important issue for the ACCC in defining beer product markets in the Coopers decision in 2005.⁷ The point applies by analogy to the ease with which a brewery owner (like DB) is able, with its existing bottling and canning lines together with its distribution and sales capability, easily to commence production of an RTD product.

RTDs

- 11.12 The Commission has not previously considered whether there is a separate market for RTDs. RTDs are individually packaged pre-mixed spirits, presented in either a can or bottle format. From a demand side perspective, the convenience of their packaging format and their spirit or liquor base may be regarded as setting them apart as a category from substitutes such as other spirits and liqueurs, fortified wines and other wines and beer. From the supply-side, the production techniques used to produce RTDs are not complex, as is described in greater detail at paragraphs 16.8 to 16.15 below. A party which can produce a dark spirit RTD is therefore also able to switch easily to producing a light spirit with no significant extra expense. While still considering the total alcoholic beverages markets context, the Commission may wish to analyse competitive effects on the basis that RTDs are an appropriate product market.
- 11.13 Constraints from other categories of alcoholic beverages are strong in the RTD market. This is primarily due to RTDs' convenience focus, being essentially a spirit and a mixer, with the "look and feel" of a packaged beer. Rapid new product development has occurred and [CONFIDENTIAL].

Spirits

- 11.14 Several Commission decisions indicate that the relevant market for spirits is no wider than the major spirit types. In Decision 306, *Guinness PLC/Grand Metropolitan PLC* ("**Guinness/Grand Metropolitan**") the Commission noted its earlier decision in *Magnum/DB* but accepted the applicant's submission that separate product markets exist for different types of spirits. In that case, the Commission adopted four narrow product markets, for the production or importation for supply to licensed distributors of whisky, gin, vodka and tequila.⁸
- 11.15 This product market definition was recently confirmed in Decision 553, *Pernod Ricard S.A./Allied Domecq PLC* ("**Pernod Ricard/Allied Domecq**") where the Commission found the relevant spirits market to be the market for gin. The Commission also noted in *Pernod Ricard* that the European Commission in *Pernod Ricard/Diageo* has considered that this segmentation is preferable to other alternatives such as a distinction between

⁶ *New Zealand Herald*, "42 Below adds ready-to-drink cocktails to mix", 22 December 2005, C3, a copy of which is attached at **Appendix 3**.

⁷ Australian Competition and Consumer Commission, *Public Competition Assessment: Lion Nathan Limited/Coopers Brewery Limited*, 21 December 2005 ("**Coopers**"), at paragraph 21.

⁸ The European Commission has similarly found that spirits markets are no wider than the internationally recognised main spirit types in Case No. IV/M. 2268 - *Pernod Ricard/Diageo/Seagram Spirits* ("**Pernod Ricard/Diageo**").

'white' and 'dark' spirits or between quality or grades of spirit.

Beer

- 11.16 The Commission most recently considered an acquisition involving the beer market in Decision 182, *Magnum Corporation/Dominion Breweries*, 25 November 1986, ("**Magnum/DB**"). This was an acquisition in which both parties were involved in the manufacture of beer, importation of spirits and distribution of liquor. The Commission identified the relevant product/functional markets to be the brewing of beer, winemaking and wholesaling of all types of liquor (ie the sale or delivery of liquor to the licensed trade).
- 11.17 This approach is consistent with a number of decisions by the European Commission ("**EC**") in which the EC has found a separate product market for beer. Most recently, in 2004 the EC found in its investigation of the proposed merger of Carlsberg Breweries A/S and Holsten-Breweries, both active in the production, sale, marketing and distribution of beer, that the relevant product market was the market for the production and distribution of beer.⁹
- 11.18 The approach is also consistent with the recent market analysis carried out by the Australian Competition and Consumer Commission ("**ACCC**") in December 2005 in relation to the proposed acquisition of Coopers Brewery Limited by Lion Nathan. Again, in the ACCC's decision, it found a single market for the supply of beer.¹⁰
- 11.19 Lion Nathan considers that any further segmentation of this product market is inappropriate. By analogy in the wine market, in Decision 401, *Montana Group (NZ) Ltd/Corban Wines Ltd*, September 2000 ("**Montana/Corbans**"), the Commission rejected a market definition for wine based on price or quality. The Commission observed that wines of different prices and quality form a chain of substitution across the range of wines available which fall within the same overall market. The Commission also noted that determining which wines are "premium" as opposed to "cheap" is a fairly arbitrary process.
- 11.20 These same considerations make a market definition for beer based on price or impressions of quality inappropriate.¹¹ The ACCC has similarly rejected any further segmentation of the beer market based on price or quality in *Coopers*.
- 11.21 Packaged beer and 'bulk' or 'tap' beer have also consistently been found to comprise a single product market. This was the Commission's previous approach in *Magnum/DB*, where it found that the production of bulk and packaged beer fall within a single product market. More recently, in *Coopers*, the ACCC reached the same conclusion on market definition.¹²

⁹ Comp/M.3372 - Carlsberg/Holsten.

¹⁰ Australian Competition and Consumer Commission, *Public Competition Assessment: Lion Nathan Limited/Coopers Brewery Limited*, 21 December 2005 ("**Coopers**").

¹¹ The EC rejected a market definition for beer based on price or quality for similar reasons in its decision in Comp/M.3289 - *Interbrew/Spaten-Ranzis/Lowenbrau/Dinkelacker*, noting that there are no homogenous criteria for determining a "premium" beer. Similarly, the UK Competition Commission rejected such a definition in *Interbrew SA and Bass PLC: A report on the acquisition by Interbrew SA of the brewing interests of Bass PLC*, 3 January 2001 ("**Interbrew**").

¹² Prior to the *Coopers* decision the Trade Practices Tribunal in *In re Tooth & Co Ltd; In re Tooheys Ltd* (1979) ATPR 40-113 also defined a single market for both tap and packaged beer. More recently, the ACCC stated in its review of a distribution settlement agreement between Boags Brewery and Carlton & United Breweries Limited (1 October 1997) ("**Boags Brewery**") that the relevant product market was that for the sale of tap and packaged beer.

Functional Dimension

- 11.22 Distributors of alcoholic beverages compete through one of four market models. First, a competitor may own and manufacture a particular brand of product (for example, DB's *Barrel 51*). Second, a competitor may hold a license to manufacture and distribute a brand in New Zealand which is owned by a third party company. Third, a competitor may hold a license to import and distribute a brand which is owned and manufactured overseas. Fourth, a competitor may own or licence a brand and have a co-packing agreements with a local bottler (for example Coca-Cola or CBC) to produce the product locally.
- 11.23 The production strategy adopted will vary according to the particular brands and markets in question. For example, all of Lion Nathan's key RTD and spirit brands are produced under license.¹³ By comparison, Foster's markets a mix of brands, some of which it owns, such as the "*Cougar*" brand, some of which are produced under licence.
- 11.24 Previous Commission decisions, in particular, *Guinness/Grand Metropolitan* and *Pernod Ricard/Allied Domecq*, have found that the relevant functional dimension of alcoholic beverages markets to be the production or importation for distribution to licensed retailers.¹⁴ Although Lion Nathan considers this may be a useful reference point for the Commission in relation to this application, the Commission may also wish to consider whether further functional segmentation is necessary.

Geographic Dimension

- 11.25 The geographic market for each product identified above is national with some import competition. This is primarily due to the national purchasing regimes of the major supermarkets (in respect of beer and wine) and other off-premise retail chains (beer, RTDs and spirits), the high value of the products relative to their cost of transport, and the national scope of most major competitors.
- 11.26 This approach is consistent with the Commission's previous decisions in relation to various alcoholic beverage markets, including *Montana* (national markets for importation/production of white wine, red wine and sparkling wine), *Pernod Ricard /Allied Domecq* (national markets for importation/production of white wine, red wine, sparkling wine and gin) and *Fortune Brands* (a national market for importation/production of bourbon).

Current competitors in the markets

- 11.27 There are a number of major participants competing with Lion Nathan and Independent Liquor in the alcoholic beverages markets identified above:
- (a) **DB:** DB is a wholly-owned subsidiary of Asia Pacific Breweries Limited, an international brewing company based in Singapore in which Heineken NV has a material shareholding. In New Zealand DB manufactures and distributes a range of beers including *DB Draught*, *Tui*, *Export Gold*, the *Monteith's* range, *Heineken* and *Tiger*.

DB entered the RTD market in March 2006 with the bourbon and cola product *Barrel 51*. DB has indicated that this is the first of a series of new RTD

¹³ Lion Nathan owns the *Kentucky Rebel* brand RTD, but this has a very low market share. Lion Nathan also owns a small number of spirit brands with insignificant market share.

¹⁴ The Commission in *Magnum* considered the on-premise/off-premise distinction relevant only to competition at the retail level. This approach was also taken by the ACCC in *Boags Brewery* and more recently by the UK Competition Commission in *Interbrew*.

products which it plans to launch throughout 2006.

- (b) **Maxxium New Zealand Limited ("Maxxium"):** Maxxium is a wholly-owned subsidiary of Quatuor International BV, an international spirits distribution joint venture which trades internationally through a number of subsidiaries including Maxxium Worldwide BV (together "**Maxxium Group**"). Maxxium Group was set up by four international spirits brand owners, Jim Beam Brands Worldwide Inc., Remy Cointreau S.A., Edrington Group (which owns Highland Distillers Group) and V&S Group, who each have a 25% shareholding, in order to consolidate their international distribution activities. Currently Maxxium Group is responsible for sales, marketing and distribution of a suite of spirit brands in over 35 countries and employs over 2000 people.

In New Zealand Maxxium distributes a range of spirit brands including *Jim Beam*, *Galliano*, *Absolut*, *Famous Grouse*, *Mount Gay* and *St Remy*. Maxxium also distributes several RTD products including *Jim Beam & Cola* and *Midori*. **[CONFIDENTIAL.]** Maxxium does not distribute beer products in New Zealand. Further information concerning Maxxium can be found at www.Maxxium.com.¹⁵

- (c) **Glengarry Hancock Limited ("Glengarry"):** Glengarry is a wholly-owned subsidiary company of Booze Brothers Limited, which is wholly owned by the Jakicevich family. Glengarry competes in all the markets relevant to this application except the market for beer. Glengarry distributes a number of well known spirit brands including *Jack Daniels*, *Bacardi*, *Jagermeister* and *Dewars*, as well as related RTD products *Jack Daniels & Cola* and *Bacardi Breezer*. Glengarry also has substantial interests in the markets for wine distribution through a wholly-owned subsidiary company, Glengarry Wine Limited.
- (d) **Foster's New Zealand Limited ("Foster's"):** Foster's is a wholly-owned subsidiary of Carlton and United Breweries (NSW) Pty Limited, which is in turn a wholly-owned subsidiary of Foster's Group Limited ("**FGL**"), an Australian-based global beverage company. FGL is the market leader in the Australian beer market and a strong competitor in the spirits, RTD and wine markets. In 2005 FGL recorded sales worth approximately NZD\$4.978 billion worldwide and employs approximately 10,300 staff. FGL distributes a suite of brands in each of the markets in which it competes, including the *Foster's* beer brand, of which 100 million cases are sold annually in over 150 countries.

In New Zealand Foster's competes in all the markets relevant to this application except the market for vodka. Foster's distributes a number of spirits brands in New Zealand including *Cougar*, *Captain Morgan*, and *Jacques Cardin*. In Australia, FGL and its related subsidiaries also distribute a range of RTDs, including *Cougar & Cola*, as well as *Black Douglas*, *SKYY Blue*, *Capri*, *Sass* and *Sub Zero* RTDs. Foster's also imports and distributes *Cougar & Cola* in New Zealand.

- (e) **Orlando Wyndham Group Pty Limited ("PR Orlando"):** PR Orlando is an Australian-based company which is part of a group of companies operating in Australia and New Zealand ultimately owned by *Pernod Ricard* S.A. (together the "**Pernod Group**"), a publicly listed French company which is the second largest distributor of wine and spirits worldwide following its recent purchase of the Allied Domecq group. In 2005 the Pernod Group recorded sales of approximately NZD\$6.64 billion worldwide. The Pernod Group employs approximately 17,500 staff in 80 subsidiaries.

¹⁵ Note, however, that some information on that site is dated, current only to YE 30 June 2003.

Currently the Pernod Group's distribution operations in New Zealand are carried out by PR Orlando and Pernod Ricard New Zealand Limited, as well as Corbans Wines Limited which was acquired as part of the Allied Domecq purchase.¹⁶ PR Orlando competes in the markets for gin, rum, brandy, bourbon, scotch and liqueurs through a strong portfolio of high profile brands including *Beefeater*, *Lamb's*, *Wild Turkey*, *Teacher's*, *Malibu* and *Kahlua*.

- (f) **Heaven Hill Distilleries (NZ) Ltd:** Heaven Hill is a privately owned New Zealand company. Heaven Hill distributes several brands in the gin, vodka and rum and brandy markets, including *Aristocrat*, *Fighting Cock*, *Burnett's*, and *Christian Brothers*. Heaven Hill is the supplier of bulk bourbon for Independent Liquor's Woodstock bourbon and RTD products. Heaven Hill itself also distributes in New Zealand the full range of Heaven Hill bourbons manufactured by Heaven Hill Distilleries USA and a range of scotch and other whiskey.
- (g) **42 Below:** 42 Below is a publicly traded company listed on the NZX. 42 Below has aggressively targeted the vodka and gin markets through the manufacture and distribution of *42 Below* vodka and *South* gin. 42 Below has also announced that it will soon launch a premium rum brand, *Pacific Rum*, on the New Zealand market.¹⁷ 42 Below is also expected to launch rum-based and vodka-based RTDs this year.

On 22 December 2005, 42 Below announced that it had purchased for \$1.63 million a 4.7 per cent stake in juice manufacturer Charlie's Group ("Charlie's"), owner and distributor of non-alcoholic juice and soft drink products, to leverage Charlie's distribution network to increase spirit sales to licensed cafes and restaurants.¹⁸ 42 Below has also recently appointed to its board of directors Rich Frank, former president of Walt Disney Studios and Paramount Television Group, to oversee its promotional activity.¹⁹

12. DIFFERENTIATED PRODUCT MARKETS

Extent Of Product Differentiation

RTDs

- 12.1 RTDs are differentiated by the nature of the base spirit of the RTD (usually bourbon, rum, vodka, gin or "speciality spirits"), by the mixer used (currently carbonated, fruit-based or milk-based), by packaging (bottle or can), and by brand.
- 12.2 Bourbon-based RTDs are by far the largest category of RTDs. Independent Liquor's *Woodstock* RTD alone has a [CONFIDENTIAL]% share of the RTD market by volume, and *Jim Beam and Cola* alone has a [CONFIDENTIAL]% share of the RTD category.
- 12.3 The RTD category could be broken down further to the sub-segments of white spirit, speciality spirit and dark spirit RTDs (although, as one would imagine from the fact that the total RTD market volume is just [CONFIDENTIAL]% of the size of the beer market,

¹⁶ However, following the acquisition the Pernod Group is restructuring its operations. The New Zealand spirit and RTD operations of Pernod Group are expected to be carried out by Orlando Wyndham New Zealand Limited.

¹⁷ NZPA, "42 Below posts narrower loss on NZD fall", 19 May 2006, a copy of which is attached at **Appendix 3**.

¹⁸ *New Zealand Herald*, "42 Below and Charlie's mix it up in bars and cafes", 22 December 2005, C3, a copy of which is attached at **Appendix 3**.

¹⁹ *Dominion Post*, "42 Below Taps Hollywood", 29 May 2006, C3, a copy of which is attached at **Appendix 3**.

white and specialty spirit RTDs comprise less than [CONFIDENTIAL]% of that market). The white and specialty spirit RTD segments together account for [CONFIDENTIAL]. Each of these categories has a greater or lesser attraction for different segments of the population but are substitutable for the range of RTDs, and, as described at paragraphs 11.2 to 11.10 above, other alcoholic beverages.

Spirits

- 12.4 As the Commission has recognised in previous decisions, (in particular, in the *Guinness* decision) there are a large number of spirit brands available in New Zealand at any given point in time. Lion Nathan currently estimates that, in the New Zealand market, there are approximately 48 brands of gin, 65 brands of rum, 76 brands of vodka, 210 brands of liqueur, 38 brands of tequila, 48 brands of bourbon, 56 brands of brandy and 149 brands of scotch and other whiskey. Spirit type, taste, branding and, to a lesser extent, packaging, represents the means by which suppliers differentiate their product from other products.

Beer

- 12.5 In New Zealand, the proliferation of varieties and brands of beer is extensive. Lion Nathan estimates that there are currently approximately 148 different beer brands in the market. Consumers are faced with a plethora of choice, and while there exist pockets of consumers who are brand loyal, overall there is a high degree of switching between brands, depending on the individual's preferences, location, availability, environment and other circumstances of consumption.
- 12.6 For ease of reference, beer may loosely be characterised into segments, budget or value, mainstream and premium, and into further subcategories such as sub-premium and craft or speciality beers. These segments are best categorised as attributes on a chain of substitution as between the different brand offerings provided by the relevant market participants. Lion Nathan, DB and Foster's compete across the market, with leading brands such as DB's "*Tui*", "*Export Gold*" and "*DB Draught*" brands, Lion Nathan's "*Speights*", "*Lion Red*", "*Waikato Draught*" and "*Canterbury Draught*" brands, and Foster's with its "*Victoria Bitter*", "*Foster's Lager*" and "*Carlton*" brands.
- 12.7 One point of differentiation between beer varieties is taste. For example, consumers tend have distinct preferences as between drinking a dark beer, an ale and a lager or a pilsener. Beer can be low alcohol, low carbohydrate or low calorie as distinct from mainstream lager offerings. Similarly, beer can be cold filtered or unfiltered. Finally, premium and craft beers tend to be niche with a focus on tradition and method. In each case, the wide variety of products available are further differentiated by branding and packaging.
- 12.8 Beer can also be differentiated by its packaging. For example, some beer is supplied to licensed retailers in bulk and some is pre-packaged. Most bulk beer is purchased by retailers for the purposes of on-premise sales, whereas pre-packaged beer is sold to both on- and off-premise retailers. Independent Liquor is not active in the bulk beer segment of the market. In addition, the bulk beer segment itself is small and declining relative to packaged beer.
- 12.9 As described at paragraphs 11.18 to 11.20 above, the Commission and ACCC have consistently found there to be a single national market for beer. Lion Nathan considers that this is the appropriate approach to take for the purposes of the present analysis.

13. VERTICAL INTEGRATION

- 13.1 The potential acquisition will not result in any additional level of vertical integration between firms at different functional levels of any market.

14. PREVIOUS ACQUISITION AND COMMISSION NOTIFICATIONS

- 14.1 There have been no previous acquisitions involving either Lion Nathan or Independent Liquor (or any interconnected body corporate or predecessor thereof) as applicant or target notified to the Commission in the last three years. Set out in **Table 4** is a list of all such acquisitions which have been notified to the Commission prior to 1 January 2003.

Table 4
Commerce Commission Notifications prior to 1 January 2003
involving Lion Nathan or Independent Liquor

Dec'n No	Date	Applicant	Target	Determination	End Result
406	08/12/2002	Lion Nathan Limited	Montana Group (NZ) Limited	Cleared	Did not proceed

- 14.2 Lion Nathan has not undertaken any other acquisition of assets of a business or shares in any markets material to the Commission's present investigation in the last three years.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION
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15. EXISTING COMPETITORS IN MARKET**RTDs**

- 15.1 Independent Liquor owns and distributes a number of RTD brands including *Cruiser*, *Woodstock*, *William Cody's*, *KGB* and *Mudshakes*. It has a market share of [CONFIDENTIAL]%²⁰ of RTDs. Lion Nathan imports, produces and distributes under licence a number of RTD brands owned by Diageo, including *Smirnoff Vodka*, *Bulleit Bourbon*, *Baileys and Milk*, *Archers Aqua* and *Gordon's Gin & Tonic*, and the Rum Company's *Coruba and Cola*. Through these distribution markets, it has a market share of [CONFIDENTIAL]% of RTDs, bringing the combined market share to [CONFIDENTIAL]%. While this appears to be a high share, there are a number of strong existing competitors in RTDs, and barriers to expansion are low.
- 15.2 Other suppliers of RTDs in New Zealand include:
- (a) **DB:** DB commenced entry into the RTD market in March 2006 with the launch of *Barrel 51*, which will compete against other bourbon and cola products such as *Woodstock & Cola* and *Jim Beam & Cola* through DB's existing distribution network. In addition, DB is expected to launch a range of other RTD products throughout the next year. DB has stated that it sees the RTD market as a long term prospect for growth and that its aim is to be a significant player in the market.²¹
 - (b) **Maxxium:** Maxxium distributes *Jim Beam* and *Midori* branded RTD products, and has a market share of [CONFIDENTIAL]%. *Jim Beam* is an extremely strong global bourbon brand, and the strength of consumer preference for the spirit, discussed in paragraph 15.6(d) below, provides Maxxium with significant leverage in the RTD market. [CONFIDENTIAL.]
 - (c) **Glengarry:** Glengarry distributes *Bacardi Breezer* and *Jack Daniels and Cola* branded RTDs, and has a market share of [CONFIDENTIAL]%. It has an established presence in distribution as well as retail, and remains a strong independent distributor in the market.
 - (d) **Foster's:** Foster's has a broad portfolio of RTD brands which it distributes in Australia but currently only distributes in small quantities in New Zealand. For example, it markets a number of strong RTD brands in Australia such as *Cougar & Cola*, *Black Douglas*, and *Skyy Blue*. It has a significant bottling and RTD production base in Australia, so it currently imports its RTDs into New Zealand. It would be in a position readily to increase supply to New Zealand in response to any increase in the price of the merged entity's RTD products, having significantly increased its RTD production capacity in Australia through its acquisition of BCB Beverages Australia Pty Ltd, begun in 2002 and completed in 2005.²² This would make increasing supply to New Zealand a realistic option for Foster's.

²⁰ All references to market share are based on sales volume unless otherwise stated.

²¹ *New Zealand Herald*, "DB diversifies from beer with bourbon RTD", 27 March 2006, C16, a copy of which is attached at **Appendix 3**.

²² "CUB expands RTD capability", 1 May 2002, on Foster's Group website, www.fosters.com.au/mediacentre, a copy of which is attached at **Appendix 3**.

Foster's expansion in the New Zealand market would also be assisted by the complementarity between RTDs and other alcoholic beverages discussed in paragraphs 11.2 to 11.10 above. This would allow Foster's to leverage from its current presence in beer to assist expansion in RTDs (for example, through use of existing distribution networks and bundling of RTD products with established beer brands). Lion Nathan notes that this approach would be in line with Foster's present strategy in the Australian market, which is focussing on providing products across the "repertoire" of alcoholic beverages.²³

- (e) **Pernod Group:** As described above, the merged PR Orlando/Allied Domecq is part of a powerful international liquor wholesale group, with a significant number of strong spirit brands in its repertoire. In New Zealand it's RTDs are *Malibu & Cola*, and *Black Heart & Cola* is an RTD brand owned by Allied Domecq. Although it currently has only a small share of RTDs ([CONFIDENTIAL]%) it would similarly be able to increase its level of imports of RTDs into New Zealand with relative ease. [CONFIDENTIAL.]

- 15.3 In addition to these competitors, 42 Below is shortly expected to launch two RTD products using rum and vodka bases. The Managing Director of 42 Below, Geoff Ross, has observed that the strong growth in the RTD market provides an opportunity for these new products to enter the market.²⁴ This is discussed in more detail below in paragraph 16.3.
- 15.4 A table showing the market shares of all participants in the RTD market is attached at **Appendix 2**. Independent Liquor has the largest share of the market, followed by Lion Nathan (through its distribution arrangements) and Maxxium.
- 15.5 Lion Nathan does not consider that the potential acquisition would give rise to a substantial lessening of competition in any relevant RTD market, due to strong existing competitors and, as described further below, low barriers to expansion.

Spirits

- 15.6 In respect of the relevant spirits markets, the market participants and market shares are described below. A table setting out all market participants and shares for each market is set out at **Appendix 2**.²⁵
- (a) **Gin:** Lion Nathan has a market share of [CONFIDENTIAL]%, through distribution of brands including *Gordon's* and *Tanqueray*. Independent Liquor has a current market share of [CONFIDENTIAL]%, the bulk of which is accounted for through distribution of the *Seagar's* brand. The combined entity would have a market share of [CONFIDENTIAL]%.

A number of other competitors also compete in the market for gin with well recognised brands. These include Maxxium (*Greenalls*), Glengarry (*Bombay Sapphire*) and Pernod Group (*Beefeater*, *Seagrams*).

As the Commission has noted in *Guinness*,²⁶ and most recently in *Pernod*

²³ Foster's Group Strategy briefing, 21 September 2005, available on Foster's Group website, www.fosters.com.au/mediacentre, pp.12 - 14, a copy of which is attached at **Appendix 3**.

²⁴ *New Zealand Herald*, "42 Below adds ready-to-drink cocktails to mix", 2 March 2006, C3, a copy of which is attached at **Appendix 3**.

²⁵ A market share table for the scotch market has not been included in appendix 2 as Lion Nathan understands that Independent's share of this market is [CONFIDENTIAL].

²⁶ *Guinness*, paragraph [95].

*Ricard*²⁷, there are no significant impediments to expansion of production in the white spirits markets in New Zealand.

- (b) **Vodka:** Lion Nathan has a market share of [CONFIDENTIAL]%, through its distribution of various brands including *Smirnoff*, which alone has a market share of [CONFIDENTIAL]%. Independent Liquor has a market share of [CONFIDENTIAL]% through its *Kristov* brand. The combined entity would have a market share of [CONFIDENTIAL]%. Maxxium is the second largest distributor of Vodka with a market share of [CONFIDENTIAL]%. Maxxium distributes *Absolut* and *Vladivar* vodka. Other parties which compete in the vodka market include 42 Below (*42 Below*) and Glengarry (*Finlandia*).
- (c) **Scotch:** Lion Nathan has a market share of [CONFIDENTIAL]% by virtue of its distribution under licence of brands including *Johnnie Walker Red* and *Grant's*. Independent Liquor sells only very small quantities (less than [CONFIDENTIAL]% market share) of scotch, under the *Claymores*, *Squires* and *Glen Nevis* brands.
- (d) **Bourbon:** Maxxium is the leading participant in the market for bourbon with a market share of [CONFIDENTIAL]%. Maxxium distributes a number of bourbon brands, including *Jim Beam* which is the leading brand with a market share of [CONFIDENTIAL]%.

Lion Nathan distributes *Heaven Hill*, *Bulleit* and *Slate* bourbons. Other participants in the bourbon market include Glengarry, which distributes a number of brands including *Jack Daniels*, and has a market share of [CONFIDENTIAL]%, Independent Liquor (*Woodstock, Kentucky*) and Pernod Group (*Canadian Club*) and a number of other competitors each with a market share of less than 1%.

- (e) **Rum:** Lion Nathan has a market share of [CONFIDENTIAL]%, primarily through its distribution of the *Coruba* brand. Independent Liquor distributes *Black Heart* and *Mad Jacks* rum representing [CONFIDENTIAL]% of the rum market. The combined entity would have a market share of [CONFIDENTIAL]%.

Glengarry (*Bacardi*) is the next largest competitor in the rum market, while Maxxium (*Mount Gay*) and Foster's (*Captain Morgan*) will remain as strong independent competitors in this market.

- (f) **Brandy:** Maxxium is currently the market leader in the brandy market, holding a market share of [CONFIDENTIAL]% through its distribution of the *St Remy* brand.

Lion Nathan (*Chatelle*) and Independent Liquor (*Napoleon, St Augustus*) also compete in the brandy market with shares of [CONFIDENTIAL] respectively, bringing the combined entity's share to [CONFIDENTIAL]%.

A number of independent distributors would continue to compete in the brandy market, including Foster's and Pernod Group.

- (g) **Liqueurs:** Lion Nathan has a market share of [CONFIDENTIAL]%, primarily through its distribution of *Bailey's* on behalf of Diageo. Independent Liquor owns and distributes *Canterbury Cream* and *Vodka Twistee Shots* (with a total market share of [CONFIDENTIAL]%), bringing the combined entity's share to

²⁷ *Pernod Ricard*, paragraphs [151 - 152].

[CONFIDENTIAL]%

Maxxium will remain a strong competitor in this market through its *Cointreau*, *Galliano* and *Midori* brands, as will Glengarry, which distributes *Southern Comfort* and *Drambuie*, and Pernod Group which distributes *Kahlua*.

- 15.7 Lion Nathan does not consider that the potential acquisition would give rise to a substantial lessening of competition in any of the relevant spirits markets, due to strong existing competition and low barriers to expansion described further below.

Beer

- 15.8 In beer, Lion Nathan owns, produces or distributes a number of beer products under brands including *Speight's*, *Lion Red*, *Steinlager*, *Stella Artois*, *Beck's*, *Corona* and *Guinness*. It has a market share of [CONFIDENTIAL]%. Independent Liquor has a market share of [CONFIDENTIAL]% and owns, produces or distributes beer under brands including *Ranfurly*, *A Marca Bravara*, *Haagen*, *Carlsberg*, *Kingfisher*, *Grolsch*, *Tuborg* and *New Zealand Lager*.

- 15.9 Other beer suppliers include:

- (a) **DB:** DB is Lion Nathan's largest competitor in the New Zealand market, with a market share of [CONFIDENTIAL]%. DB owns, produces or distributes beer under brands including *Heineken*, *Tiger*, *Monteith's*, *Tui*, *DB Draught* and *Export Gold*.
- (b) **Foster's:** Foster's has a market share of [CONFIDENTIAL]% through the importation of beer produced in Australia. Its brands include *Foster's*, *Crown* and *Victoria Bitter*.
- (c) A number of other 'micro-breweries' compete in the beer market. The combined market share of these smaller participants is [CONFIDENTIAL]%
- 15.10 A table showing market shares for all participants is attached at **Appendix 2**. As Appendix 2 shows, Independent Liquor has only [CONFIDENTIAL]% of the beer market and Lion Nathan [CONFIDENTIAL]% by volume, bringing the combined share of Lion Nathan and Independent Liquor to [CONFIDENTIAL]%. The competition between DB and Lion Nathan will remain the overriding dynamic in the beer market, together with the constraint imposed by the much larger brewer in Australia, Fosters.
- 15.11 For these reasons, Lion Nathan does not consider that the potential acquisition could give rise to a substantial lessening of competition in the beer market in New Zealand.

16. CONDITIONS TO EXPANSION BY EXISTING COMPETITORS

RTDs

- 16.1 The recent entry into the RTD market by DB has added a strong new competitor to the market with the established industry presence, resources and production capability to expand in a short timeframe. Brian Blake, the Managing Director of DB Breweries, has commented that DB is aiming to increase its market share, stating that "*obviously [DB] has an ambition to be a reasonably significant player in [the] market*". Similarly, Radio New Zealand reports that Blake has commented publicly that "*in a crowded market...[DB] has to look at other areas to grow*" aside from its traditional focus on the

beer market.²⁸ The introduction of DB's RTD product, *Barrel 51*, is understood to be the first of a series of RTD products which DB will launch this year in order to establish itself in the market accordingly.

- 16.2 DB's expansion will provide a significant addition to the competition dynamic in the RTD market. Its ambitions in the market indicate that DB will quickly launch new products to counter any attempt by a competitor to increase price.
- 16.3 The announced launch of two RTD products by 42 Below will reinforce the strong competition which is generated by ease of new expansion and market growth. Further expansion of 42 Below's product range in addition to the product launches already announced is also possible following the acquisition by 42 Below of a 4.7% shareholding in Charlie's. As the Sunday Star Times noted on 29 January 2006,²⁹

...it's quite easy to see the potential for a deeper blend [between the two companies]. The ready-to-drink market, for example, looks like an obvious target....Charlie's and 42 Below have been collaborating for some time, seeing shared values in the premium positions their brands aim for, and the vodka maker's promotions have regularly featured Charlie's products.

- 16.4 Other existing participants in bourbon-based RTD's such as Foster's and Maxxium, or neighbouring beer or spirits markets, could also expand with relative ease either by growing current RTD share, or by developing a new RTD product. In order to do so, it would require each of the inputs which are discussed in turn below.

Base spirits

- 16.5 Generic base spirits are available from international and local producers. The availability varies based on the spirit type. While white spirits such as vodka and gin are usually easy to obtain, because of the nature of the production process, bourbon usually requires longer term "take or pay" contracts with a supplier. However, finding a sufficient supply of bourbon to compete in the market is not difficult, as DB's recent entry into the RTD market through the bourbon segment demonstrates. For an existing competitor with a bourbon-based RTD, such as *Jim Beam*, or Foster's with *Cougar and Cola*, this would naturally not be an issue.

Mixers

- 16.6 Mixers, generally in the form of carbonated mixers, fruit juice or emulsified milk, can similarly be obtained locally with relative ease, and represents a relatively small portion of the total cost of the RTD.

Brand

- 16.7 If expansion is not through an existing or new brand, it is possible to purchase base spirits together with a licence to use a brand. Brands can also be developed quickly in the RTD segment. This can be seen, for example, in the recent introduction of *Barrel 51* by DB and also in the rapid expansion of Foster's *Cougar* branded bourbon and cola product in Australia, which last year was the fastest growing RTD product in the Australian market.³⁰ [CONFIDENTIAL]

²⁸ *Radio New Zealand Newswire*, "DB eyes ready-to-drink market", 14 November 2005 (available at www.knowledge-basket.co.nz), a copy of which is attached at **Appendix 3**.

²⁹ *Sunday Star Times*, "Charlie's and 42 Below - the perfect cocktail", 29 January 2006, D1, a copy of which is attached at **Appendix 3**.

³⁰ Foster's Group Strategy Briefing, "Fosters Australia", 21 September 2005, page 5, available on Foster's Group website, www.fosters.com.au/mediacentre, a copy of which is attached at **Appendix 3**.

[CONFIDENTIAL]

Production

- 16.8 All RTDs can be produced using the same equipment, being a mixing unit ('carbonator') and a bottling or canning line. In terms of fixed plant, a new carbonator costs approximately \$350,000, while a second-hand unit costs approximately \$200,000. Both are readily available on the international market, and could be operational within a 12 week timeframe. In addition it would be necessary to invest in design of packaging plates at a cost of approximately \$10,000-\$12,000 per pack. Milk-based RTDs also require a sterilisation unit which sterilises the RTD once it has been bottled. No bottling or canning lines require significant investment and are readily available on the international market.
- 16.9 In relation to packaging requirements, Lion Nathan understands that there is currently significant excess capacity in all New Zealand-based canning facilities. While Lion Nathan understands that bottling lines across the industry are close to capacity, filling lines can be quickly expanded through the addition of another filler or labeller to an existing line. Alternatively it is also possible to import finished product from Australia cost effectively, a strategy discussed further below.
- 16.10 Manufacturers seeking to expand in the RTD market could do so either through expanding a local production base or through increasing volumes of imported product. Currently Lion Nathan, Independent Liquor and DB bottle and can RTDs in New Zealand. Lion Nathan understands that each of these parties, as well as Fosters in Australia, has excess production capacity. In order for other RTD manufacturers to expand through New Zealand-based production, it would be necessary to enter into a toll manufacturing arrangement with either an existing RTD producer or a third party with bottling or canning capacity such as Coca-Cola Amatil Limited ("**CCA**"), or to own or invest in establishing a bottling or canning plant in New Zealand. Any of these options would be feasible for an existing participant to expand its operations, and indeed as indicated above, CCA has indicated its intention to do this, as described further at paragraph 23.5. Because a third party who wished to expand production could choose between these manufacturers, each will constrain the price offered for contract manufacturing by the other.

Imports

- 16.11 A manufacturer could also expand by importing RTD products. A number of participants in the market already import RTD products. For example, Fosters imports its RTD products from Australia (which includes the *Cougar* and *Black Heart* brands), Lion Nathan imports *Bulleit & Cola*, *Archers Aqua*, *Smirnoff*, *Baileys*, *Bundaberg*, *Johnnie Walker* and *Ruski* RTDs from Australia, Independent has in the past imported some of its *Woodstock* branded RTDs, and Glengarry imports its *Bacardi* and *Jack Daniels* RTDs. Combined imports amount to approximately [CONFIDENTIAL]% of the RTD market.
- 16.12 In addition to *Cougar*, Fosters also has a number of established RTD brands in Australia which it could easily expand to New Zealand distribution, including *Black Douglas*, *Skyy* (Blue and Platinum), *Capri*, *Sass* and *Sub Zero*.
- 16.13 In relation to RTDs presented in can format, there is excess canning capacity in both New Zealand and Australia, which would permit easy expansion in the RTD market for a product in that format. RTDs are also imported in cans, for example, as mentioned

above, Independent has from time to time imported *Woodstock Blue* RTDs into New Zealand from Australia.

- 16.14 In relation to RTDs presented in a glass bottle format, the bottles are imported into New Zealand and are readily available on the international market. [CONFIDENTIAL].
- 16.15 Other participants in the non-alcoholic beverages markets in New Zealand and Australia would also to have the ability to expand RTD production, either on their own account or providing contract bottling services.

Spirits

- 16.16 As noted above, the Commission has previously commented on the ease of expansion in white spirits markets. In relation to both the relevant spirit markets, Lion Nathan considers that strong existing competition would prevent any attempt to exercise market power after the merger, combined with the strong countervailing power which international brand owners would continue to exercise, as described in more detail in section 25 below.

Beer

- 16.17 If the merged entity were to attempt to increase price, DB and Fosters are in a position to expand production quickly through their existing beer brands. Lion Nathan understands that most participants in the market have significant excess production capacity.
- 16.18 In addition, Foster's could expand its presence in New Zealand from its strong base in Australia. Foster's is the Australian market beer leader in bulk and packaged beer, with over [CONFIDENTIAL]% of the total Australian national beer market. Given the advantages of scale and hence low cost of production offered by Australian brewery assets and the existing excess capacity of Foster's plants in Australia, Foster's is most likely to meet this additional volume opportunity based on their existing importation business model.
- 16.19 A smaller scale local brewer could also expand to pick up a proportion of the market share which would become available on any attempted increase in price. [CONFIDENTIAL].
- 16.20 The supermarkets and independent distributors could facilitate expansion by a small brewer with a proven local brand. This is described further at section 25 below.

17. EXAMPLES OF EXPANSION BY EXISTING COMPETITORS

RTDs

- 17.1 Recent examples of expansion include DB's recent introduction of *Barrel 51*, which demonstrates that entry and expansion in the RTD market is possible and even likely given current market conditions. Attached at **Appendix 3** are some recent media articles describing DB's entry into this market.

Spirits

- 17.2 Recent examples of expansion include Lion Nathan's introduction of the *Smirnoff Flavours* range, and *Crown Royal Canadian Whiskey*. Other examples of locally-based expansion include 42 Below's entry into Vodka and Gin markets in New Zealand.

Beer

- 17.3 A number of international beer brands have undergone recent expansion due to the growing popularity of this segment. Recent examples include *Heineken* (produced by DB), *Stella Artois* (produced by Lion Nathan), *Carlsberg* (produced by Independent) and Foster's *Pure Blonde*.

18. CONCLUSIONS ON CONSTRAINT BY EXISTING COMPETITION ON EXERCISE OF UNILATERAL MARKET POWER

- 18.1 Lion Nathan is currently constrained in all of the markets in which it competes and will remain constrained. None of the factors that generate that intensity of competition would be altered as a result of Lion Nathan acquiring Independent Liquor. In summary, these factors are:

- (a) **High likelihood of growth and expansion in RTDs:** In the RTD market, although the parties will have a high combined market share, DB's announced intentions to expand its presence would materially restrict the merged entity from attempting to exercise market power in this already price-sensitive market. The entry of 42 Below will also have a constraining influence on existing competitors. Maxxium's *Jim Beam* will remain the second most popular RTD in the market with that brand alone holding [CONFIDENTIAL]% of the total RTD market and possible expansion by Foster's using the *Cougar* brand will continue to remain a threat. Other existing competitors could also potentially expand production through contract manufacturing agreements with Lion Nathan, DB or CCA, or by importing product from Australia.
- (b) **Ease of entry and expansion in the spirits market:** Spirits markets have low barriers to entry and expansion, coupled with strong existing international competitors. These neighbouring markets act as a constraint on RTD pricing, along with the level of imports in the market and the countervailing power exercised by brand owners over distributors, such as Lion Nathan. All these factors mean that the merged spirit entity would not be able to exercise market power in any of the relevant spirit markets post-merger.
- (c) **There are strong existing competitors in beer:** Competition between DB and Lion Nathan represents the overriding competition dynamic in the New Zealand beer market. DB has excess capacity and a brand portfolio covering the entire beer spectrum, which would allow it to react quickly to any attempted price increase by the merged entity. In addition, Lion Nathan and DB are subject to competition from Foster's.

19. MARKET CHARACTERISTICS FACILITATING OR IMPEDING COORDINATION

No co-ordination in any relevant market

- 19.1 All of the potentially relevant alcoholic beverage markets have a number of characteristics which would impede co-ordination effects post-acquisition, including:

- (a) the level of differentiation between products: In particular there is a proliferation of brands in the beer and RTD markets, making agreement on price or monitoring extremely difficult. Such behaviour is further constrained by different cost structures of the relevant participants;
- (b) the low barriers to entry and expansion;
- (c) the presence of fringe and niche competitors;
- (d) the current flow of imports and the threat for this to increase; and
- (e) the countervailing power of the national retailers. [CONFIDENTIAL.]

19.2 **Tables 6, 7 and 8** below comment on each of the market characteristics set out in the Commission's *Mergers and Acquisitions Guidelines*:

Table 6
Scope for co-ordinated market power

Feature	Comment
<i>High seller concentration</i>	Yes, but see previous Commission comments in <i>Magnum</i> in relation to beer. Also, the merger would make the market shares in the relevant RTD, spirits and beer markets even more asymmetric.
<i>Differentiated product</i>	Yes, proliferation of different products and brands as recognised by the Commission in <i>Magnum</i> and in <i>Pernod Ricard</i> .
<i>Static production technology</i>	Production technology is simple, but it is straightforward to improve capacity from time to time as required.
<i>Speed of new entry</i>	Imports or fringe competition could expand quickly.
<i>Fringe competitors</i>	There are a number of fringe competitors including international brand owners such as Pernod Group, Brown Foreman, Foster's and the shareholders in Maxxium, and in beer, there are micro-breweries and new micro-breweries which could be established with ease.
<i>Acquisition of an unusually vigorous or effective competitor</i>	No, Independent Liquor in the counterfactual is not an unusually vigorous or effective competitor.
<i>Price elastic market demand</i>	Market demand appears to be reasonably elastic.
<i>History of co-ordinated conduct</i>	No.
<i>Countervailing power of acquirers</i>	Yes, in supermarkets and also in stand alone liquor retail outlets including those operated, and to be operated, by The Warehouse, Progressive and Foodstuffs.
<i>Existence of excess capacity</i>	Yes, excess capacity in DB, imports and manufacturers of non-alcoholic beverages.
<i>Industry associations/fora</i>	Yes.

Table 7
Detection of deviation from co-ordination

Feature	Comment
<i>Seller concentration</i>	Reasonably high on the basis of conservative market definitions, but in the overall alcoholic beverages market, shares are more widely dispersed.
<i>Frequent sales</i>	Yes.
<i>Vertical integration</i>	Lion Nathan is vertically integrated.
<i>Growth in demand</i>	High in RTDs and moderate in beer and spirits.
<i>Cost similarities</i>	There are some similarities in the business models as between Lion Nathan and DB, but not across any conservative or broader alcoholic beverages market, given Foster's and others' import-based model. Moreover in beer Lion Nathan and DB's production facilities are of different sizes in different locations leading to likely cost asymmetries.
<i>Multi market contact</i>	Asymmetric as DB currently only competes in RTDs and beer.
<i>Price transparency</i>	Medium to low, due to the wide variety of products and the diverse nature of the retailers of RTDs, spirits and beer.

Table 8
Ability to retaliate

Feature	Comment
<i>Credibility of threats to abandon collusion</i>	High, as the markets are constantly evolving and expanding.
<i>Availability of excess capacity</i>	Reasonably high.
<i>Profit incentive from collusion</i>	Low, again due to constantly shifting consumer preferences and the presence of fringe competition and significant levels of imports.
<i>Ability to disadvantage by dumping in deviator's allocated section of market</i>	Although there is excess capacity, due to proliferation of brands and shifting consumer preferences it would be impossible to allocate markets.

20. NO EVIDENCE OF PRICE CO-ORDINATION, PRICE MATCHING OR PRICE FOLLOWING

20.1 Lion Nathan is not aware of any past or current co-ordination of its activities with DB, or any other competitor in the New Zealand alcoholic beverages market.

21. NO RISK OF CO-ORDINATED BEHAVIOUR

- 21.1 In summary, Lion Nathan currently competes vigorously with all of its competitors and will continue to do so if it were to purchase Independent Liquor. In particular, the asymmetric cost structures of the market participants, the presence of fringe competitors, significant excess capacity, the presence of a substantial level of imports including by Fosters, which has a significant market presence in Australia, and the ability of the national retailers to monitor and react to any attempt at co-ordination, all indicate that the exercise of coordinated market power is unlikely to occur.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

22. CONDITIONS OF ENTRY

- 22.1 The conditions of entry into RTD and beer markets are as described in paragraphs 16.3 to 16.15, and 16.19 above.

23. POTENTIAL NEW ENTRANTS:**RTDs**

- 23.1 As described at paragraphs 16.1 and 16.2 above, DB has recently entered the RTD market and has the facilities, the distribution structures, the experience and the demonstrated motivation to quickly expand its market share.
- 23.2 As discussed at paragraph 16.3 above 42 Below will also enter the market in the short term with two RTD products. 42 Below's acquisition of a 4.7% shareholding in Charlie's and the distribution of its new brand of bottled water, "420", by Charlie's shows there are close operational links between the two companies which positions 42 Below as a strong potential competitor in the RTD market.
- 23.3 Foster's also has the Australian production capacity and existing New Zealand distribution capability to compete in the New Zealand market through imported RTD products. As described in more detail in paragraph 16.12 above, Foster's also has established RTD brands in the Australian market which it could quickly launch in New Zealand in the event of a price increase.
- 23.4 International manufacturers of RTDs could commence supply to the New Zealand market without material impediment, as described at paragraphs 16.13 to 16.15 above. A new or existing competitor without domestic production capacity could enter into contract manufacturing arrangements with Lion Nathan or DB, or a third party packaging operator such as CCA, in order to commence production at relatively low cost.
- 23.5 In addition, recent business media indicates that CCA, the Australian arm of the Coca Cola group, is likely to enter the RTD market. *The Australian* reports that CCA's chief executive Terry Davis has stated publicly³¹:

Given the strength of our distribution capability, the strength of our sales force capability and new product development, I would think over the next three to five years, [the RTD market] is a fairly logical move for us.

Spirits

- 23.6 As noted above and in the Commission's decision in *Guinness*, entry into white spirit markets can be achieved with relative ease.
- 23.7 Independent Liquor itself has shown entry and expansion in the bourbon market is possible in a short time frame and without an international brand. **[CONFIDENTIAL.]**
- 23.8 Similarly, 42 Below's announced entry into the rum market through its own *Pacific Rum*

³¹ *The Australian*, "Alcohol on Coke's horizon", 29 May 2006.

brand also demonstrates that market entry can be achieved without difficulty.³²

- 23.9 In addition, Foster's also have a number of vodka brands in the Australian market which could be easily introduced to New Zealand through existing distribution channels in the event of a price rise, such as *Kirov* and *Karloff*.

Beer

- 23.10 In beer, potential entrants might include international manufacturers of beer such as Carlsberg, Scottish Courage, Coors Brewing, SAB Miller, Inbev, Tsingtao, United Breweries and Anheuser Busch which are currently distributed by local distributors but could elect to switch distributors or could commence their own distribution in the New Zealand market without material impediment.

24. CONCLUSION ON POTENTIAL ENTRY

- 24.1 In summary, in relation to potential entry:
- (a) In RTDs, the entry and expansion of DB and the potential entry of other competitors, as well as the expected entry of 42 Below, will provide a powerful constraint on the post-acquisition behaviour of Lion Nathan.
 - (b) In the spirits markets, barriers to expansion are also low for existing participants in the Australasian alcoholic beverages markets.
 - (c) In the beer market, there remain a number of strong international brands which are not yet marketed in New Zealand which could be marketed by Foster's or other participants in the alcoholic beverages markets.

³² NZPA, "42 Below posts narrower loss on NZD fall", 19 May 2006, a copy of which is attached at **Appendix 3**.

PART V: OTHER POTENTIAL CONSTRAINTS
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25. CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS**RTDs and Spirits**

- 25.1 While purchasers of RTDs and spirits do not currently exercise the same level of countervailing buyer power as for the beer market, this will change in both the factual and counterfactual in light of the entry of supermarkets and "big box" retailers into liquor retailing.
- 25.2 **[CONFIDENTIAL.]** The Warehouse retail chain is in the process of expanding into this market through an independent joint venture company together with Reliance Wines Limited, with "Warehouse Cellars" stores expected to open in up to half of the Warehouse's 85 retail outlets. Foodstuffs South Island is also understood to be developing a new chain of liquor retail outlets under the name "Duffy & Finn's". Following the successful takeover of Progressive Enterprises, Woolworths Australia is also expected to introduce the liquor retail chain "Dan Murphy's" into New Zealand.³³
- 25.3 **[CONFIDENTIAL.]** As the Managing Director of The Mill Liquor Save, Chris Simkin, has recently commented to the *New Zealand Herald*, "there [is] no doubt that new entrants would drive down prices".³⁴
- 25.4 Moreover, although Lion Nathan owns Liquor King, it estimates that Liquor King's share of national distribution of RTDs is approximately **[CONFIDENTIAL]**%, behind The Mill and Super Liquor at an estimated **[CONFIDENTIAL]** respectively. In addition, analogous to the situation described by the High Court in *Air New Zealand v Commerce Commission*, the upstream entity of a vertically integrated operator is not likely to have an incentive to restrict distribution of its product downstream.

Beer

- 25.5 Beer is acquired for sale on and off-premise. The acquirers of beer for sale off-premise include supermarkets, national wholesale chains, such as Liquorland and independent retail outlets. Amongst these, the supermarkets exercise the greatest degree of countervailing power.
- 25.6 The national retailers are each the largest individual purchasers of beer in New Zealand with Foodstuffs sales representing **[CONFIDENTIAL]**% of all off-premise beer sales, and Progressive Enterprises sales at **[CONFIDENTIAL]**%, giving the large multiple retailers a combined share of **[CONFIDENTIAL]**% of the off-premise retail segment. The next largest single purchaser is **[CONFIDENTIAL.]** Independent retailers account for a further **[CONFIDENTIAL]**% of beer sales, through which distribution could also be obtained with relative ease.
- 25.7 The national retail chains provide countervailing power in the market. **[CONFIDENTIAL]:**
- (a) **[CONFIDENTIAL];**

³³ "Cheaper by the liquor chain", *New Zealand Herald*, 17 December 2005, C1, C4, a copy of which is attached at Appendix 3.

³⁴ "Cheaper by the liquor chain", C1.

(b) [CONFIDENTIAL],³⁵ [CONFIDENTIAL].

- 25.8 Woolworths Limited ("**Woolworths Australia**") announced on 22 May 2005 that it had entered into an agreement with Foodland Associated Limited ("**Foodland**") and Metcash Trading Limited ("**Metcash**") under which Woolworths has agreed to acquire Foodland's New Zealand business and selected Australian sites for a total value of approximately A\$2.5 billion following a demerger of those businesses by Foodland.³⁶ [CONFIDENTIAL.]
- 25.9 In addition, supermarkets in Australia themselves purchase imported beer. In New Zealand, Progressive already import a brand called *Amsterdam* and Foodstuffs similarly already imports the *Hollandia* and *Bavaria* brands.

26. CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

RTDs

- 26.1 Lion Nathan considers that third party brand owners provide an important constraining influence on competitors in the RTD market.
- 26.2 A number of the leading RTD products currently on the market are based on branded spirits, such as *Gordon's Gin & Tonic*, *Jim Beam & Cola* and *Smirnoff Ice*. Lion Nathan notes that, with the exception of *Kentucky Rebel*, all its current RTD brands are based on established spirit brands. The spirit brand which is associated with an RTD product gives the RTD itself additional recognition in the market and can be a competitive advantage. A competitor in the RTD market is able to utilise the spirit brand either by obtaining a distribution license for the finished RTD product, or by obtaining a licence to use the spirit itself and the brand in the production and supply of the product. In either case the distributor will be required to pay the brand owner for use of the brand as well as the spirit, for example through revenue-sharing arrangements.
- 26.3 Under these arrangements the brand owner has a strong profit incentive to ensure that the distributor operates efficiently and competitively in order to avoid losing market share to other brands.³⁷ For the brand owner, the possibility that the distributor will use market power to increase price (and therefore decrease sales volume) is an externality which must be internalised if the brand owner is to maximise profits. In the market for RTDs (as well as the spirits markets) this can be achieved by brand owners switching distribution rights to a new entrant or an existing competitor in the market, to ensure that closely competing brands are not all distributed by a single party. Lion Nathan considers that a brand owner would have a number of parties to which it could turn to distribute branded RTD products, including Glengarry, Maxxium or PR Orlando locally or Foster's, which could also import RTDs manufactured in Australia.³⁸
- 26.4 The usual method adopted by an international brand owner is to develop the brand recognition through distribution. [CONFIDENTIAL.]

³⁵ [CONFIDENTIAL].

³⁶ Available at: <http://www.woolworthslimited.com.au>

³⁷ The Commission has previously considered the important constraining influence which suppliers can have on distributors or agents in Decision 508, *South Pacific Seeds Pty Limited/Yates Limited*, in which the Commission found that, despite the post-merger entity having a 100% share of the capsicum seed market, the influence of suppliers of seeds on the behaviour of existing distributors, and their ability to encourage potential new entry by switching supply to a new distributor, ensured that the sole distributor in the market would remain competitive.

³⁸ "Foster's to produce Diageo RTDs", *Food & Drink Europe.com*, 26/3/2003 (available at www.foodanddrinkurope.com/news), a copy of which is attached at **Appendix 3**.

Spirits

- 26.5 The constraining influence which brand owners exert on competitors in the RTD market also applies to spirits markets. In the gin market, while the combined entity would have a market share of [CONFIDENTIAL] of this market share (or [CONFIDENTIAL]% of the total market) would be held through products distributed by the combined entity on behalf of a brand owner. Similarly, in the market for rum the combined entity would have a market share of [CONFIDENTIAL]%, but with [CONFIDENTIAL]% of this market share (or [CONFIDENTIAL]% of the total market) comprised of products distributed on behalf of a brand owner. Lion Nathan considers that, post-merger, it would remain constrained in the spirits markets by the influence of these brand owners, who could easily switch to a competing distributor.

Beer

- 26.6 As for RTD and spirit brands, Lion Nathan and other distributors of international beer brands are often subject to the threat of switching to a competing distributor by a brand owner.

27. SUMMARY OF OTHER CONSTRAINTS

- 27.1 Further to the conclusion in relation to unilateral market power at paragraph 18.1 above, Lion Nathan is and will continue to be constrained in all of the markets in which it competes if it were to acquire Independent Liquor. In addition to those mentioned above, these factors include:
- (a) **High likelihood of entry and expansion in RTDs:** The investment necessary to enter and expand in RTDs is not significant, and there are a number of existing and potential competitors, with both new and well established brands, which could expand through local production or by importing product from Australia.
 - (b) **National retailers exercise countervailing market power in beer and that is set to intensify and expand into other markets:** The national retailers provide countervailing power in the market. [CONFIDENTIAL.]
 - (c) **Brand owners will continue to exercise countervailing power:** A significant proportion of Lion Nathan's RTD and spirit products are distributed under licence from international brand owners. Lion Nathan, both before and after the potential acquisition would not be able to exercise market power in respect of those brands, due to the ability of the brand owner to switch distributors, or to enter the market itself, [CONFIDENTIAL.]

This Notice is given by Lion Nathan Limited

The company hereby confirms that:

all information specified by the Commission has been supplied;

all information known to the applicant/s which is relevant to the consideration of this application/notice has been supplied; and

all information supplied is correct as at the date of this application/notice.

The company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated 3 July 2006

Signed by Lion Nathan Limited

Duncan Makeig, General Counsel

I am an officer of the company and am duly authorised to make this application/notice.

Note

This declaration is to be made only by the applicant. It may not be made by a solicitor or other adviser acting on the applicant's behalf.

The wording of this declaration may not be varied by the applicant.

If this declaration is not completed, the Commission may decline to register the notice/application.

Registration may be effected on receipt of a facsimile copy of a completed application or notice together with the confirmation of deposit of the appropriate fee to the Commission's account. The original documentation must be forwarded to the Registrar, Business Acquisitions & Authorisations, Wellington, within 3 working days of registration.

Confidential Appendix 1
[CONFIDENTIAL]

Appendix 2

Market share information for existing competitors³⁹

RTD market

Distributor	Brand	Brand Owner	Market Share (Volume)
LION	Coruba & Cola	The Rum Company	[CONF]%
	Smirnoff RTD (imported)	Diageo	[CONF]%
	Archers Aqua (imported)	Diageo	[CONF]%
	Rebel (Lion Breweries)	Lion Breweries	[CONF]%
	Gordon's G&T	Diageo	[CONF]%
	Bulleit & Cola (imported)	Diageo	[CONF]%
	Baileys RTD (imported)	Diageo	[CONF]%
	Stoli Ruski	Diageo	[CONF]%
	HH & Cola	Heaven Hill Distillers	[CONF]%
	JW & RTD (imported)	Diageo	[CONF]%
	Bundaberg RTD (imported)	Diageo	[CONF]%
	Kahlua & Milk	Pernod Group	[CONF]%
	Lemon Ruski	SPI	[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Woodstock (Bourbon and Cola, Blue Bourbon and Cola) (partially imported)	Independent Liquor	[CONF]%
	Vodka Cruiser Range	Independent Liquor	[CONF]%
	KGB (Vodka Lemon, White Russian, Black Russian)	Independent Liquor	[CONF]%
	William Cody's Bourbon and Cola	Independent Liquor	[CONF]%
	Other IL RTDs, including: Vodka Vivo Purple Goanna Tatoo Vodka and Cranberry Rattlesnake Tequila and Lime	Independent Liquor	[CONF]%
	Black Heart & Cola	Pernod Group	[CONF]%
	Vodka Mudshake	Independent Liquor	[CONF]%
	Fighting Cock	Independent Liquor	[CONF]%
	TOTAL INDEPENDENT LIQUOR		
TOTAL COMBINED ENTITY			[CONF]%
GLENGARRY	JD & Cola (imported)	Brown Forman	[CONF]%
	Bacardi Breezer (imported)	Bacardi Martini	[CONF]%
	Southern Comfort	Brown Forman	[CONF]%
TOTAL GLENGARRY			[CONF]%
MAXXIUM	Jim Beam RTD	Jim Beam Distilling	[CONF]%
	Midori RTD	Suntory Aust Ltd	[CONF]%
TOTAL MAXXIUM			[CONF]%
PERNOD GROUP	K&M	Pernod Group	[CONF]%
	Malibu RTD	Pernod Group	[CONF]%
TOTAL PERNOD GROUP			[CONF]%
FOSTERS	Cougar & Cola (imported)	Fosters	[CONF]%
TOTAL FOSTERS			[CONF]%
MARKET TOTAL			100%

³⁹ All market share figures are based on NZ Stats, BWSC, DSA, NZ Wine, AC Nielsen, Lion Internal Data and Lion estimates. Market share data for spirits and RTD markets is based on MAT up to December 2005. Market share data for beer is based on MAT up to April 2006. (As the Commission noted in *Pernod Ricard* (paragraph 144), the IWLRS market share data for the relevant markets is incomplete as a number of industry participants choose not to participate in market share surveys and data collection.)

Relevant spirits markets:

Distributor	Brand	Brand Owner	Market Share (Volume)
GIN			
LION	Gordon's	Diageo	[CONF]%
	Gilbey's	Diageo	[CONF]%
	Tanqueray	Diageo	[CONF]%
	Christies Gin	Lion	[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Seagar's	Pernod Group	[CONF]%
	Carthew's	Independent	[CONF]%
	Downings	Independent	[CONF]%
	Parthington	Independent	[CONF]%
TOTAL INDEPENDENT LIQUOR			[CONF]%
TOTAL COMBINED ENTITY			[CONF]%
MAXXIUM	Greenalls	NZ Spirit Merchants	[CONF]%
	Plymouth	V & S Group	[CONF]%
TOTAL MAXXIUM			[CONF]%
GLENGARRY	Bombay	Bacardi Martini	[CONF]%
TOTAL GLENGARRY			[CONF]%
FOSTERS	Wilson's Gin	Fosters Group	[CONF]
TOTAL FOSTERS			[CONF]
PERNOD GROUP	Seagrams	Pernod Group	[CONF]%
	Beefeater	Pernod Group	[CONF]%
TOTAL PERNOD GROUP			[CONF]%
42 BELOW	South	42 Below	[CONF]
TOTAL 42 BELOW			[CONF]
OTHER	Other Gin		[CONF]%
TOTAL OTHER			[CONF]%
MARKET TOTAL			100%

Distributor	Brand	Brand Owner	Market Share (Volume)
VODKA			
LION	Smirnoff	Diageo	[CONF]%
	Cossack	Lion	[CONF]%
	Stolichnaya	Diageo	[CONF]%
	Christies Vodka	Lion	[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Kristov	Independent	[CONF]%
	Bronski	Independent	[CONF]%
	Ivanov	Independent	[CONF]%
TOTAL INDEPENDENT LIQUOR			[CONF]%
TOTAL COMBINED ENTITY			[CONF]%
MAXXIUM	Absolut	VS & Vin	[CONF]%
	Vladivar	NZ Spirit Merchants	[CONF]%
	Danzka	Belvedere SA	[CONF]%
TOTAL MAXXIUM			[CONF]%
GLENGARRY	Finlandia	Brown Forman	[CONF]%
TOTAL GLENGARRY			[CONF]%
42 BELOW	42 Below	42 Below	[CONF]%
TOTAL 42 BELOW			[CONF]%
OTHER	Other Vodka		[CONF]%
TOTAL OTHER			[CONF]%
MARKET TOTAL			100%

Distributor	Brand	Brand Owner	Market Share (Volume)
BOURBON			
LION	Heaven Hill	Heaven Hill Distillers Diageo	[CONF]%
	Bulleit		[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Kentucky (including Gold)	Independent	[CONF]%
	Woodstock	Independent	[CONF]%
TOTAL INDEPENDENT LIQUOR			[CONF]%
TOTAL COMBINED ENTITY			[CONF]%
MAXXIUM	Jim Beam	Jim Beam Trading	[CONF]%
	Canadian Club ⁴⁰	Pernod Group/Fortune Brands	[CONF]%
	Old Crow	Old Crow	[CONF]%
	Jim Beam Blk	Jim Beam Trading	[CONF]%
	Batch Bourbons	Pernod Group/Fortune Brands	[CONF]%
Makers Mark ⁴¹	[CONF]%		
TOTAL MAXXIUM			[CONF]%
GLENGARRY	Jack Daniels	Brown Forman	[CONF]%
	Early Times	Brown Forman	[CONF]%
	Old Forrester	Brown Forman	[CONF]%
	Woodford Reserve	Brown Forman	[CONF]%
TOTAL GLENGARRY			[CONF]%
FOSTERS	Cougar	Fosters	[CONF]%
TOTAL FOSTERS			[CONF]%
PERNOD GROUP	Wild Turkey	Austin Nichols	[CONF]%
TOTAL PERNOD GROUP			[CONF]%
HEAVEN HILL	HH Bourbon Brands	Heaven Hill	[CONF]%
TOTAL HEAVEN HILL			[CONF]%
MARKET TOTAL			100%

⁴⁰ Canadian Club is to be distributed by Maxxium following completion of an asset sale between the Pernod Group and Fortune Brands.

⁴¹ Makers Mark is to be distributed by Maxxium following completion of an asset sale between the Pernod Group and Fortune Brands.

Distributor	Brand	Brand Owner	Market Share (Volume)
RUM			
LION	Coruba	Rum Company	[CONF]%
	Appleton Estate (V/X, 8YO, 12YO)	Rum Company	[CONF]%
	Bundaberg	Diageo	[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Black Heart	Pernod Group	[CONF]%
	Mad Jacks	Independent	[CONF]%
	Inner Circle	Independent	[CONF]%
	Wild Bill	Independent	[CONF]%
	Bounty	Independent	[CONF]%
TOTAL INDEPENDENT LIQUOR			[CONF]%
TOTAL COMBINED ENTITY			[CONF]%
MAXXIUM	Mount Gay	Mount Gay	[CONF]%
TOTAL MAXXIUM			[CONF]%
GLENGARRY	Bacardi	Bacardi Martini	[CONF]%
	Bacardi Blk	Bacardi Martini	[CONF]%
TOTAL GLENGARRY			[CONF]%
FOSTERS	Captain Morgan	Diageo	[CONF]%
TOTAL FOSTERS			[CONF]%
PERNOD GROUP	Havana	Pernod Group	[CONF]%
	Lamb's	Pernod Group	[CONF]%
TOTAL PERNOD GROUP			[CONF]%
OTHER	Other Dark Rum		[CONF]%
	Other Light Rum		[CONF]%
TOTAL OTHER			[CONF]%
MARKET TOTAL			100%

Distributor	Brand	Brand Owner	Market Share (Volume)
BRANDY			
LION	Chatelle	CDGF	[CONF]%
	Hennessy	LMVH	[CONF]%
	Jules Laine	CDGF	[CONF]%
	Camus	CDGF	[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Napoleon	Independent	[CONF]%
	St Augustus	Independent	[CONF]%
TOTAL INDEPENDENT LIQUOR			[CONF]%
TOTAL COMBINED ENTITY			[CONF]%
MAXXIUM	St Remy	Maxxium	[CONF]%
TOTAL MAXXIUM			[CONF]%
GLENGARRY	Otard	Bacardi Martini	
TOTAL GLENGARRY			[CONF]%
FOSTERS	Jacques Cardin	Seagram NZ	[CONF]%
TOTAL FOSTERS			[CONF]%
PERNOD GROUP	Martineau	Pernod Group	[CONF]%
	Courvoisier	Pernod Group	[CONF]%
TOTAL PERNOD GROUP			[CONF]%
OTHER	Other Brandy		[CONF]%
TOTAL OTHER			[CONF]%
MARKET TOTAL			100%

Distributor	Brand	Brand Owner	Market Share (Volume)
LIQUEURS			
LION	Baileys	Diageo	[CONF]%
	Opal (Nera, Bianca)	Fratelli Francoli	[CONF]%
	Vok	Vok Beverages	[CONF]%
	Pimm's	Diageo	[CONF]%
	Archers	Diageo	[CONF]%
	Campari	Campari Group	[CONF]%
	Olympus	other	[CONF]%
TOTAL LION			[CONF]%
INDEPENDENT LIQUOR	Canterbury Cream	Independent	[CONF]%
	Vodka Twistee Shots	Independent	[CONF]%
	Everglades	Independent	[CONF]%
TOTAL INDEPENDENT LIQUOR			[CONF]%
TOTAL COMBINED ENTITY			[CONF]%
MAXXIUM	Galliano	Remy Cointreau	[CONF]%
	Midori	Suntory Aust.	[CONF]%
	Cointreau	Cointreau France	[CONF]%
	Glavya	Ronald Morrison	[CONF]%
	After Shock	Jim Beam Brands	[CONF]%
	Amaretto Galliano	Remy Cointreau	[CONF]%
	Frangelico	Cantrall & Cochrane	[CONF]%
TOTAL MAXXIUM			[CONF]%
GLENGARRY	Southern Comfort	Brown Forman	[CONF]%
	Drambuie	Drambuie Liquor	[CONF]%
	Jagermeister	Jagermeister	[CONF]%
	Cadbury	Cadbury	[CONF]%
	Benedictine	Bacardi Martini	[CONF]
TOTAL GLENGARRY			[CONF]%
FOSTERS	Seagrams Liquer	Seagram NZ	[CONF]%
TOTAL FOSTERS			[CONF]%
PERNOD GROUP	Kahlua	Pernod Group	[CONF]%
	Malibu	Pernod Group	[CONF]%
	Tia Maria	Pernod Group	[CONF]%
TOTAL PERNOD GROUP			[CONF]%
OTHER	Other Liguers		[CONF]%
TOTAL OTHER			[CONF]%
MARKET TOTAL			100%

Beer market

Distributor	Brand	Market Share (Volume)
LION	Beck's	[CONF]%
	Belgium Craft Beers	[CONF]%
	Boddingtons / Bass / Tennants	[CONF]%
	Canterbury Draught	[CONF]%
	Corona	[CONF]%
	Guinness	[CONF]%
	Hahn	[CONF]%
	House Brands	[CONF]%
	Kilkenny	[CONF]%
	Kirin	[CONF]%
	Light Ice	[CONF]%
	Lion Brown	[CONF]%
	Lion Ice	[CONF]%
	Lion Pils	[CONF]%
	Lion Red	[CONF]%
	Mac's	[CONF]%
	Rheineck	[CONF]%
	Speight's	[CONF]%
	Steinlager	[CONF]%
	Steinlager Premium Light	[CONF]%
Stella Artois	[CONF]%	
Tasman	[CONF]%	
Waikato Draught	[CONF]%	
TOTAL LION		[CONF]%
INDEPENDENT LIQUOR	Marca Bravara	[CONF]%
	Grolsch	[CONF]%
	Haagen	[CONF]%
	Haagen Gold	[CONF]%
	New Zealand Lager	[CONF]%
	Ranfury Draught	[CONF]%
	Carling	[CONF]%
	Carlsberg	[CONF]%
	Kingfisher	[CONF]%
	Tuborg Pilsner	[CONF]%
Bean Rock	[CONF]%	
TOTAL INDEPENDENT LIQUOR		[CONF]%
TOTAL COMBINED ENTITY		[CONF]%
DB	Amstel Light	[CONF]%
	Black Draught	[CONF]%
	Budejovicky Budvar	[CONF]%
	Bulls Eye	[CONF]%
	D B Bitter	[CONF]%
	D B Draught	[CONF]%
	Double Brown	[CONF]%
	Export Dry	[CONF]%
	Export Gold	[CONF]%
	Flame	[CONF]%
	Heineken	[CONF]%
	Monteith's	[CONF]%
	Murphy's	[CONF]%
	Sol	[CONF]%
	Tiger	[CONF]%
	Tui	[CONF]%
Vita Stout	[CONF]%	
TOTAL DB		[CONF]%
FOSTERS	Other	[CONF]%
	Carlton Gold	[CONF]%
	Reschs	[CONF]%
	Cascade Premium	[CONF]%
	Crown Lager	[CONF]%
	Fosters Lager	[CONF]%
Victoria Bitter	[CONF]%	
TOTAL FOSTERS		[CONF]%
OTHER		[CONF]%
MARKET TOTAL		100%

Appendix 3
Media reports

