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COMMERCE COMMISSION

Decision No. 553

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

PERNOD RICARD S.A.

and

ALLIED DOMECQ PLC

The Commission: P Rebstock
D Bates
P Taylor
G Pickering

Summary of Application: The acquisition by Pernod Ricard S.A. of Allied Domecq plc.

Determination: Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

Date of Determination: 13 July 2005

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EXECUTIVE SUMMARY

1. Pursuant to s66 of the Commerce Act 1986, Pernod Ricard S.A. applied for clearance to acquire the entire share capital of Allied Domecq plc on 10 June 2005. As part of the application Pernod Ricard offered a divestment undertaking to the Commission to sell certain of the Allied Domecq brands that it would acquire. Those brands were: Lindauer; Italiano; Chardon; Aquila; and Chasseur.

2. The Commission concludes that the relevant markets are the national markets for:

   - the importation or production of still white wine for distribution (the white wine market);
   - the importation or production of still red wine for distribution (the red wine market);
   - the importation or production of sparkling wine for distribution (the sparkling wine market);
   - the distribution of wine (the distribution market); and
   - the importation or production of gin for distribution (the gin market).

3. The Commission considers that the appropriate factual scenario is the acquisition of Allied by Pernod and the divestment of the Lindauer, Aquila, Italiano, Chardon and Chasseur brands.

4. The Commission is of the view that the appropriate counterfactual is the status quo.

5. In respect of both the white and red still wine markets, minimal aggregation would occur as a result of the proposed acquisition and the divestment undertakings in respect of the Chasseur brand. Given this consideration, and the degree of existing competition in the market, the Commission is of the view that the acquisition would be unlikely to lead to a substantial lessening of competition in either of these markets in the factual compared to the counterfactual.

6. In the sparkling wine market, the Commission considered the degree of competition that would exist in the market after the acquisition and given the divestment of the Lindauer, Aquila, Chardon and Italiano brands. The Commission is satisfied that there is unlikely to be a substantial lessening of competition in the market as a result of the proposed acquisition in the factual compared to the counterfactual.

7. In the distribution market the aggregation of distributed agency brands is minimal and, given the number of other distributors in the market, the acquisition is unlikely to result in a substantial lessening of competition in this market.

8. The Commission considers that the proposed acquisition does not raise competition issues in regard to the gin market, the aggregation falling within the Commission's safe-harbour guidelines.

9. Accordingly, the Commission grants clearance to Pernod Ricard to acquire the entire share capital of Allied Domecq, subject to the divestment undertakings offered.

THE PROPOSAL

1. On 10 June 2005, the Commerce Commission (the Commission) registered a notice pursuant to s66(1) of the Commerce Act 1986 (the Act), in which clearance was sought by Pernod Ricard S.A. (Pernod) to acquire, through one of its wholly owned subsidiaries Goal Acquisitions Limited, 100% of the share capital of Allied Domecq plc (Allied). Clearance is sought in accordance with s4(3) of the Act which extends the application of s47 (certain acquisitions prohibited) of the Act to acquisitions outside New Zealand which affect a market in New Zealand. Both Pernod and Allied have interconnected bodies corporate which carry on business in New Zealand.
2. The acquisition will be implemented in the United Kingdom pursuant to a public offer to be effected through a scheme of arrangement (pursuant to section 425 of the United Kingdom Companies Act 1985). This acquisition is being considered by a number of other jurisdictions, including the European Union, the United States of America and Australia.
3. As part of the application, Pernod has undertaken to divest all the legal and equitable interests and rights held in specified brands and the associated businesses with those brands. The specified brands are Lindauer, Aquila, Italiano, Chardon and Chasseur. The Commission is satisfied that the applicant will, as a consequence of the acquisition, acquire control over the assets that are the subject of the undertaking and that the undertaking relates to the disposal of assets or shares. Accordingly the Commission is able to accept the undertaking in accordance with section 69A(1) of the Act.
4. On 4 July 2005, the Commission received an amended undertaking from the Applicant. The amended undertaking forms part of the application considered below and is attached as Appendix 1.

PROCEDURE

5. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 13 July 2005.
6. The Applicant sought confidentiality for specific aspects of the Application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
7. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Merger and Acquisition Guidelines.[1]

STATUTORY FRAMEWORK

8. Under s 66 of the Act, the Commission may grant a clearance for an acquisition where it is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in a market. The

[1] Commerce Commission, *Mergers and Acquisition Guidelines*, January 2004.

standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.[2]

9. The Commission considers that it is necessary to identify a real lessening of competition that is not minimal.[3] Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis, the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

10. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and able to be sustained for a period of at least two years.

ANALYTICAL FRAMEWORK

11. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:

    - with the acquisition in question (the factual); and
    - in the absence of the acquisition (the counterfactual).

12. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:

    - existing competition;
    - potential competition; and
    - other competition factors, such as the countervailing market power of buyers or suppliers.

13. Where the Applicant considers that it is appropriate to make a structural undertaking as part of the Application, section 69A of the Act provides that the Commission may accept such undertakings in writing given by, or on behalf, of the Applicant to dispose of assets or shares. An undertaking given to the Commission is deemed to form part of the clearance.[4]

14. In establishing the factual, the Commission assumes the Applicant will be under an obligation to divest the assets or shares, on the terms offered by the Applicant. The comparison between the factual and the counterfactual will test whether the divestment would, of itself, or in combination with other market conditions enable

[2] Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission (1992) 4 TCLR 713-722.
[3] See Fisher & Paykel Limited v Commerce Commission (1996) 2 NZLR 731, 758 and also Port Nelson Limited v Commerce Commission (1996) 3 NZLR 554.
[4] Commerce Act, s69A(3).

the Commission to be satisfied that there is not likely to be a substantial lessening of competition.

15. Divestments are to some extent uncertain as to their eventual impact on the market. If much rests on the divestment, the Commission must be satisfied that the divested business will, on terms offered, be capable of constraining the combined entity at substantially the same level as applies in the counterfactual. If the divested business fails or ends up being an ineffectual competitor, then a substantial lessening of competition may occur, and consumers will be harmed. Thus it is important for the Commission to consider all the relevant risks associated with the divestment proposal.

16. In order to make this assessment, the Commission will consider:

   - **composition risks**: these are risks that the scope of the divestiture package may be too constrained, or not appropriately configured, to attract a suitable purchaser, or may not allow a purchaser to operate effectively and viably in the market;
   - **purchaser risks**: these are risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; and
   - **asset risks**: these are risks that the competitive capability of a divestiture package will deteriorate prior to completion of divestment, for example, through loss of customers or key members of staff.[5]

17. These risk assessments are made and taken into account when establishing the factual, and in the competition assessment.

THE PARTIES

Key Parties

Pernod Ricard S.A (Pernod)

18. Pernod is a publicly listed French company which produces and distributes wine and spirits. Pernod's primary wine brands in New Zealand include Jacob's Creek, Wyndham Estate and Framinghams.

19. Pernod's spirit brands include Ricard, Pernod, Chivas Regal Scotch whisky, Jameson's Irish whiskey and Seagrams gin.

20. Pernod's New Zealand subsidiaries include the Framingham Wine Company Limited, Tylers Stream Wine Company Limited and the Red Hill Wine Company Limited.

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[5] This framework is based on the approach used by the United Kingdom Competition Commission. The Commission recognises that the United Kingdom Competition Commission has greater power to recommend actions (structural and/or behavioural) to be taken by the applicant, to remedy, mitigate or prevent a substantial lessening of competition arising from the acquisition. Nevertheless, the Commission considers that this categorisation of types of risk provides a useful way for the Commission to ensure it has made a thorough assessment of all issues pertinent to the divestment and establishing the factual.

Allied Domecq plc (Allied Domecq)

21. Allied Domecq is a publicly listed English company that produces and distributes wine and spirits. Allied Domecq's wine business in New Zealand is operated by its subsidiary, Allied Domecq Wines (NZ) Limited (Allied). Allied's spirits portfolio is presently distributed in New Zealand by Lion Nathan Wines and Spirits Limited.

22. Allied's primary brands in still wine include Montana, Corbans, Church Road and Chasseur while its spirits brands include Teachers Scotch whisky, Beefeater gin, Seagers gin, and the Tia Maria and Kahlua liqueurs.

23. Allied also produces and distributes a range of sparkling wines including Lindauer, Aquila, Chardon and Italiano.

Other Producers/Importers

Fosters Group Limited (Fosters) and Southcorp Limited (Southcorp)

24. Fosters is an Australian company that produces and distributes a range of beverages including wine and spirits. Fosters brands include Victoria Bitter and Crown Lager in beer, and Wolf Blass and Matua Valley in wine.

25. Southcorp Wines NZ Limited is a subsidiary of Southcorp, an Australian company that manufactures and distributes wine. Its primary wine brands include Penfolds, Lindemans and Rosemount Estate. Presently, Southcorp does not have any domestic manufacturing facilities in New Zealand.

26. In January this year, Fosters announced a takeover offer for Southcorp. Further, Fosters was cleared to purchase Southcorp by the Australian Competition and Consumer Commission in March and subsequently proceeded to acquire 100% of the shares in Southcorp. Accordingly, for the purposes of this report, the Commission will refer to these companies as one entity, Fosters/Southcorp.

Nobilo Wine Group Limited (Nobilo)

27. Nobilo produces and distributes wine in New Zealand. Nobilo's wine portfolio includes its House of Nobilo label, Drylands and Selaks.

28. Nobilo is owned by Constellation Brands, Inc., an international producer and distributor of beer, wine and spirits, headquartered in the United States. Its wine labels include Hardys and Banrock Station.

Villa Maria Limited (Villa Maria)

29. Villa Maria is a privately-owned New Zealand company that produces and distributes wine. It supplies wine primarily under the Villa Maria brand including the Private Bin and Cellar Selection labels as well as the sparkling wine St Aubyns.

Glengarry Hancocks Limited (Glengarry)

30. Glengarry imports, distributes and retails wine and spirits in New Zealand. Its importation and distribution business operates under the 'Hancocks' name and accounts for [ ] of its turnover. It also has 13 'Glengarry' retail outlets in Auckland and Wellington.

Diageo plc (Diageo)

31. Diageo produces and distributes wine, beer and spirits. Its brands include Smirnoff vodka, Johnnie Walker whisky and Tanqueray gin. In New Zealand, the Diageo brands are manufactured and distributed through licensing arrangements.

32. Although Diageo has a number of wine brands internationally, presently it does not import or distribute this wine in New Zealand.

Independent Liquor (NZ) Limited (Independent)

33. Independent is a privately owned and operated producer of alcoholic beverages established in 1987. Independent has a range of wine, beer and ready to drink brands which are consumed domestically and exported worldwide.

Other Relevant Parties

New Zealand Winegrowers

34. New Zealand Winegrowers represents the interests of NZ wineries and grape growers domestically and internationally. It was formed in 2002 as a joint initiative between the New Zealand Grape Growers Council and the Wine Institute of New Zealand.

Distilled Spirits Association of New Zealand (DSA)

35. The DSA represents the interests of manufacturers and distributors of spirits in New Zealand. It currently has 13 members including Pernod, Diageo, and Fosters/Southcorp.

INDUSTRY BACKGROUND

36. Over the past 20 years the New Zealand wine industry has undergone significant growth in terms of production ability and consumption preferences. In particular, New Zealand has built a strong reputation internationally for the quality of the wine it produces. Most notable has been the increased profile of New Zealand's signature grape variety, Sauvignon Blanc.

37. Further information on the wine making process, the most prominent regions in New Zealand and the relevant legislation is covered in Decision 401.[6] The comments and observations in that decision on wine making are relevant to this application.

38. The number of wineries and the total producing area for grapes has also increased and this trend is expected to continue. There are now over 500 wineries in New Zealand and the total production area has nearly doubled in size since 2000.[7]

39. Nevertheless, New Zealand is still a net importer of wine with the majority of this wine coming from Australia, although South Africa, Chile, France and Italy also supply wine. Approximately 30% of this wine is imported in bulk with a large proportion destined for the budget wine market, such as for cask wine or for carbonated sparkling wine.[8]

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[6] Decision 401, *Montana Group (NZ) Limited/Corban Wines Limited*, September 2000.
[7] New Zealand Winegrowers Annual Report, June 2004.
[8] Ibid.

40. The main producers in New Zealand include Allied, Nobilo, and Villa Maria with Australian producers such as Fosters/Southcorp and Pernod's Jacob's Creek also having a significant share of the market. The substantial growth in wineries has come in the development of 'boutique' wineries. Typically these wineries will grow a proportion of the grapes they require themselves and then purchase their remaining requirements through contacts or on the spot market. Presently, very few wineries in New Zealand are self sufficient in the supply of grapes.

41. The two main supermarket chains account for approximately two thirds of retail sales of wine in New Zealand. This figure has steadily increased since supermarkets were allowed to sell wine. The remaining retail sales are through 'traditional' retail liquor outlets such as bottle stores (often called off-premises outlets); on-premises outlets such as restaurants and bars; and direct distribution e.g. through wine societies.

42. Unlike wine, spirits are not allowed to be sold in supermarkets and are sold only in 'traditional' liquor stores or through on-premise facilities. Most industry participants indicated that this situation is unlikely to change in the foreseeable future. In New Zealand the leading spirits are vodka, gin, and Scotch whisky, with bourbon recently overtaking gin in national retail sales, as being the most popular spirit[9].

43. Typically spirits are imported into New Zealand by a distributor through an agency agreement, or licence, with the brand owner of the particular spirit. Industry participants advised the Commission that all the major international spirit brands have a presence in the New Zealand market. The licence holder will import the spirit pre-bottled or in bulk, although in some instances the licence holder may produce the spirit themselves. Alternatively, there are a number of domestic producers who compete directly with the international spirit labels.

44. In contrast to the wine market, sales in the spirits market have seen declining sales in many categories. Only a few spirit categories are experiencing any significant growth and these include bourbon and certain premium brands of gin and vodka.

PREVIOUS COMMISSION DECISIONS

45. The Commission has previously considered the New Zealand wine industry in 2000 when the Commission cleared the application of Montana Group NZ Ltd to acquire Corban Wines Ltd[10] (Decision 401), and also cleared the application by Lion Nathan Limited to acquire Montana Group NZ Limited[11] (Decision 406). The latter of the two acquisitions did not proceed.

46. In defining the markets the Commission, in Decision 401, had regard to a range of considerations including taste, packaging, price, etc and concluded that the appropriate markets were the national markets for:

- the supply of wine producing grapes;
- the importation or production of red wine for distribution;
- the importation or production of white wine for distribution;
- the importation or production of sparkling wine for distribution;

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[9] DSA Media Release 25 January 2005

[10] Refer above n6.

[11] Decision 406, *Lion Nathan Limited / Montana Group (NZ) Limited*, 8 December 2000.

- the importation or production of fortified wine for distribution; and
- the distribution of wine.

47. These markets were adopted in Decision 406.
48. Having regard to the degree of existing competition in the market and the scope for potential entry into the market the Commission considered that the proposed acquisitions would, in both Decisions, not lead to the acquisition or strengthening of a dominant position in any of the markets.
49. The Commission has previously considered the spirits industry in Decision 306[12]. In that case the Commission defined four markets for the supply to licensed distributors within New Zealand of whisky, gin, vodka and tequila.
50. In Decision 306 the Commission determined that the acquisition would not lead to the acquisition or strengthening of a dominant position due to the degree of existing competition in those markets.

MARKET DEFINITION

51. The Act defines a market as:

    "… a market in New Zealand for goods or services as well as other goods or services that as a matter of fact and commercial common sense, are substitutable for them."[13]

52. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

Product Markets

53. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market.
54. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
55. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.
56. The Applicant has submitted that, in respect of wine, there are two relevant product markets namely still white wine and sparkling wine. In respect of spirits the Applicant has submitted that the only relevant market is that for gin.

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[12] Decision 306, *Guiness PLC / Grand Metropolitan PLC*, 8 September 1997.
[13] s3(1) of the Commerce Act 1986.

Wine

57. The Applicant provided market share information on the basis of distinct markets for still white wine, still red wine and sparkling wine markets. The Applicant submitted that it has provided market share information on the basis that cask wine does not form a distinct market from bottled wine, consistent with the Commission's approach in Decision 401.

58. In the course of its investigation the Commission considered the views of industry participants in respect of whether the market should be segmented into distinct product markets for white wine, red wine, cask wine, sparkling wine, champagne, and fortified wine.

59. Most parties interviewed were of the view that consumers have strict preferences between red and white wine. It was acknowledged that these preferences often change based on climate, time, occasion and other factors, but most consumers will select a product within a range of red wines or a product within a range of white wines depending on which they intend to purchase. Most considered that substitution between red and white wine, even on the application of a ssnip, would be rare. The Commission is of the view that a distinction between red and white wine is appropriate in this case.

60. In Decision 401 the Commission also considered whether it was appropriate to define distinct markets for 'premium' wine and 'budget' wine to reflect their very different quality levels. From a demand perspective it is clear that (say) a premium quality Marlborough Sauvignon Blanc would not closely compete with a cheap imported wine. Notwithstanding this, it is likely that the premium wine would compete with others at its price level and in the immediately adjacent price level. Therefore, if the price were to rise for this premium wine the consumer would be likely to find another Marlborough Sauvignon Blanc of very similar quality and price to be a satisfactory substitute. This overlapping substitutability between wines at adjacent quality/price levels would result in a chain of substitutability stretching from the premium wines to the cheap low quality wines. On this basis, all wines of a particular type would fall within the same product market.

61. Furthermore, selecting which wines should be considered as "premium" would be a fairly arbitrary process as there is no industry consensus as to what constitutes a premium wine. Industry sources have advised the Commission that whether a wine is considered to be premium depends very much on public perception and marketing. Although wine awards offer some indication, there is a degree of subjectivity in the judging. The quality of the vintage is also a very important factor in the quality of the wine so wine quality can change significantly from year to year.

Cask wine

62. Some industry participants felt there was justification for defining a separate market for cask wine. This was because cask wine was typically cheaper than other wines and it is obviously packaged differently. However, others were of the view that cask wine simply forms part of a continuum of a broader white or red wine market.

63. The Commission is of the view that many consumers would substitute between a cask wine and a similarly priced bottled wine particularly given the imposition of a ssnip.[14] In this particular case the Commission has not defined cask wine as a separate market, as no aggregation would occur in the cask wine market.[15] Accordingly, the Commission considers it is appropriate for the purposes of comparing competition in the factual with the counterfactual, to define red and white wine markets which include cask wine products.

Sparkling wines

64. Most industry parties spoken to also agreed that a separate market existed for sparkling wines. This was based on the view that sparkling wines were purchased for special occasions. Views were divided in considering whether Champagne formed part of a broad sparkling wine market or was a distinct market on its own. Those parties which held the latter view based it on the substantial price point difference between a standard sparkling wine (roughly $12) and a typical bottle of Champagne (starting from $50). Accordingly, the Commission is of the view that sparkling wine is a distinct product market from Champagne.

Fortified wine

65. Fortified wine is much sweeter than still wines, typically presented differently, and has a much higher alcohol content (on average around 18% compared around 10% for table wine). Again, fortified wines are consumed for very different reasons compared to still and sparkling wines, often as an aperitif or desert wine, rather than during the meal. Industry sources, therefore, were generally of the view fortified wine was in its own market.

Conclusion on wine

66. The Commission concludes that it is appropriate to define distinct product markets for still white wine, still red wine, sparkling wine, fortified wine and Champagne.[16] However, based on the discussion above, the Commission is of the view that the defining of a distinct cask wine market is not necessary or appropriate.

67. As the aggregation that results in the areas of fortified wine and Champagne are insignificant those markets are not considered further.

Spirits

68. In Decision 306 the Commission considered whether a broad market definition, for example an ‘all spirits’ market, was appropriate. The Commission ultimately determined that narrower product markets were appropriate and as such defined markets for whisky, gin, vodka and tequila.

69. The European Commission has also considered the issue of market definition in acquisitions[17] involving spirits determining that the product markets should be no wider than the individual internationally recognised main spirit types, i.e., whisky, vodka, rum, etc. Further, the European Commission has considered that such a

[14] Similarly priced in terms of value for money.
[15] Pernod Ricard has no cask wine product in New Zealand.
[16] Where the still white wine and still red wine markets include cask wine.
[17] European Commission decision of 15 October 1997 in Case No. IV/M.938 – Guiness/Grand Metropolitan, and decision of 8 May 2001 in Case No. IV/M.2268 – Pernod Ricard/Diageo/Seagram Spirits.

segmentation is preferred to other alternatives such as a broad distinction between 'white' and 'dark' spirits. A distinction based on the quality of the product was also deemed as inappropriate in one case[18], the European Commission being of the view that the quality of the product formed part of a continuum from which consumers would make purchase decisions.

70. In terms of spirits the Commission notes that a small level of aggregation occurs in a number of areas such as whisky and vodka.[19] However, as this aggregation is of an insignificant level the Commission is of the view that it is unnecessary to conduct separate market analysis for each of them. The aggregation in gin is of a greater level and the Commission agrees with the Applicant that it is a relevant market in this analysis.

71. Accordingly the Commission is of the view that it is appropriate to define a distinct product market for gin.

Conclusion on Product Markets

72. The Commission concludes that for the purpose of assessing the competition implications of the proposed acquisition, the appropriate product markets are:

- still white wine;
- still red wine;
- sparkling wine; and
- gin.

Functional Markets

73. The Applicant has submitted that a grape growing market was not necessary as Pernod Ricard [ ]. In respect to still white wine and sparkling wine the Applicant submitted that it is appropriate to define the functional market as being the 'importation or production' market, consistent with the determination in Decision 401.

74. The Commission is of the view that it is appropriate to assess the competitive impact of the acquisition at the point the final product is ready to be distributed. As such that product could be produced locally or imported from overseas, with a distinction between the two irrelevant in terms of the final product being ready for distribution. This finding applies equally in respect of the gin market.

75. As Pernod and Allied both distribute their own wine, and wine for third parties through agency agreements, the Commission is of the view that it is appropriate to define a distinct market for the distribution of wine in order to fully assess the effect of the proposed acquisition.

76. In defining a distinct distribution market for wine the Commission has considered that supermarkets account for roughly two-thirds of the entire retail sale of wine, and spirits are not currently distributed through this channel. As such, the Commission is of the view that significant differences in the distribution of spirits

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[18] European Commission decision of 8 May 2001 in Case No. IV/M.2268 – Pernod Ricard/Diageo/Seagram Spirits.
[19] Market share information containing all of the areas where aggregation occurs, even at a de-minimis level, is attached as appendix 1.

may exist, due to the inability to distribute spirits through the supermarket channel. The Commission is also of the view that it is appropriate to define a narrow market in order to assess the competition effects that may result from the proposed acquisition.

77. The Commission concludes that the appropriate functional level in respect of still white wine, red wine, sparkling wine and gin is the importation or production market. As discussed the Commission also considers it necessary to define a distinct market for the distribution of wine.

Geographic Markets

78. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.

79. In Decision 401 the Commission considered that the geographical extent of the relevant markets was nation-wide. The Commission observed that wine is a relatively high value product compared to its freight cost, and therefore it can be economically transported. Further, the Commission stated that it was aware of numerous examples of grapes, juice, and finished wine being transported significant distances for further processing/bottling, citing specific examples.

80. The Commission also considers that, in respect of imported product, it is relatively easy to distribute on a nation-wide basis and direct product shipments to various parts of the country as necessary.

81. The Commission concludes, for the reasons stated in Decision 401, that it is appropriate to define all relevant markets as being national in extent.

Conclusion on Market Definition

82. The Commission concludes that the relevant markets are the national markets for:

- the importation or production of still white wine for distribution (the white wine market);
- the importation or production of still red wine for distribution (the red wine market);
- the importation or production of sparkling wine for distribution (the sparkling wine market);
- the distribution of wine (the distribution market); and
- the importation or production of gin for distribution (the gin market).

COUNTERFACTUAL AND FACTUAL

83. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a "with" and "without" comparison rather than a "before" and "after" comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).[20] The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

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[20] Commerce Commission, *Decision 410: Ruapehu Alpine Lifts/Turoa Ski Resorts Ltd (in receivership), 14 November 2000*, paragraph 240, p 44.

Factual

84. The Commission has to determine the likely factual position assuming the acquisition proceeds. As part of its application, Pernod has given an undertaking to divest certain brands and associated businesses. A copy of the undertaking is attached as Appendix 1.

85. In establishing the factual, the Commission considers the likely state of the market subsequent to the proposed acquisition and divestment. As outlined above, to make this assessment, the Commission has regard to the composition risk, purchaser risk and asset risk.

86. The Commission considers that the risk framework provides a useful way of identifying the risks that are inherent in divestment undertakings and ensures that the Commission has made a thorough analysis of all factors relevant to the factual.

87. The risk framework is used to assess whether the divestment undertaking is viable and likely, and therefore how it is incorporated as part of the factual scenario.

88. Some industry participants considered that the divestment of the Lindauer brand was unnecessary to address any competition concerns. The Commission notes that the divestment undertaking was submitted as part of the clearance application and is deemed to form part of any clearance. In this case therefore, the Commission took account of the undertaking to form a view on the factual.

Composition Risks

89. In examining the composition risks of the proposed divestment undertaking, the Commission has assessed whether the terms of the proposed divestment undertaking contain all the components integral to producing the product or operation being divested.

90. The Commission notes that the undertaking provided by the Applicant is comprehensive, relating to all levels of production and distribution of the brands from production to point of sale, including the supply arrangements for the grapes necessary to produce the grapes.

91. Accordingly, the Commission is satisfied that the divestment undertaking is of a form that enables the identified assets to be divested, due to the detailed identification of the component parts of the divestment. Therefore, the Commission is of the view that there is no appreciable composition risk in this case.

Purchaser Risks

92. Pernod has advised the Commission of an agreement with Diageo plc, which is conditional upon Pernod's acquisition of Allied having taken place. This agreement provides for the sale of The 'Old Bushmills' Distillery Company Limited (including the 'Bushmills" Irish whiskey brand) and the granting of an option to acquire all of Montana's New Zealand wine business with the exception of the Corbans, Stoneleigh and Church Road wine brands and related assets. Diageo has also entered into an exclusivity agreement with Pernod so that it will not enter into discussions with any third party concerning the acquisition of Allied.

93. The Diageo option includes the brands and associated businesses that are the subject of the divestment undertaking to the Commission. Those brands and assets that are excluded from the Diageo option are to be retained by Pernod.

94. In the event that the Diageo option is not exercised, Pernod considers that there are a number of other potential acquirers of the brands and assets.

95. [

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96. Due to the option of Diageo over the assets to be divested and the [ ] the Commission is satisfied that there is no purchaser risk in this case.

Asset Risks

97. The Applicant also considers that it has strong commercial incentives to maintain the value of the brands during the divestment period to ensure their sale at the best possible price.

98. All industry participants interviewed by the Commission stated that Lindauer is the number one sparkling wine in the market with significant brand equity and dominates the category. It was further advised that Lindauer has strong sales at whatever price point it is sold at, but when it is sold on special, often as low as $7.95 through a supermarket promotion, its sales increase dramatically and this is especially noticeable in the summer months. [

].

99. The Applicant further submitted that given the available stock levels of the sparkling wine brands [ ] the scope for depreciating the brands in the pre-divestment period is minimal.

100. The Commission is of the view that there is minimal commercial incentive for the Applicant to run down the brands to be divested, in the pre-divestment period.

101. Given the above findings the Commission will assess the state of competition in the relevant markets on the basis that the undertaking supplied by the Applicant is effective and forms part of the factual scenario.

Conclusion on factual

102. The Commission's enquiries suggest that it can be satisfied that the divestment is viable and likely. Accordingly, the Commission is of the view that, for the purposes of the analysis, the appropriate factual scenario is the acquisition of Allied by Pernod and the divestment of the Lindauer, Aquila, Italiano, Chardon and Chasseur brands to either Diageo or another industry competitor.

Counterfactual

103. Allied informed the Commission, at least in respect of the New Zealand operation, that it is likely Allied would continue to operate in the market as it has done in the absence of the acquisition. [

]

104. Accordingly, the Commission is of the view that the appropriate counterfactual is the status quo.

COMPETITION ANALYSIS

Existing Competition

105. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).

106. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.

107. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of 40% share; or
- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.

108. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market.

The White Wine Market

109. The major competitors in the white wine market include Allied, Pernod, Nobilo, Fosters/Southcorp, Glengarry and Villa Maria, with a number of domestic and international producers also supplying the market.

110. The Applicant submitted that the most appropriate measurement of the white wine market is AC Nielsen supermarket wine data. The Applicant submitted that this data, which it estimates accounts for approximately [ ] of total wine sales in New Zealand, is an accurate reflection of the wine market as a whole. The sales outlets that are not included in the data set include off-premises outlets, such as traditional liquor stores and wine shops, and on-premises outlets, such as restaurants and bars.

111. The Commission surveyed various industry participants to provide their own estimates of the market based on their sales data and industry experience. All industry participants stated that AC Nielsen data was the best available data source and is commonly used in the industry to deduce estimated market share information.

112. The divestment undertaking of the Chasseur brand by Pernod would reduce the combined entity's share, post-divestment. In the white wine market, Chasseur accounts for approximately [ ]. Table 1 shows the estimated market shares for the importation or production of white wine inclusive of the proposed divestment undertaking.

Table 1: Estimated Market shares of the White Wine Market

Manufacturer	Retail Sales (2004)	Market Share
Pernod	[ ]	[ ]
Allied	[ ]	[ ]
Combined Entity	*[ ]*	*[ ]*
Nobilo	[ ]	[ ]
Fosters/Southcorp	[ ]	[ ]
Villa Maria	[ ]	[ ]
Glengarry	[ ]	[ ]
Other (including divested assets)	[ ]	[ ]
Total	**[ ]**	**100%**

Source: Supplied by industry participants.

113. Post-divestment, the combined entity would have a market share of [ ] and the three firm concentration ratio would be [ ]. This is inside the Commission's safe harbour guidelines.

114. Given the small market share of Pernod and the presence of a number of other strong competitors with international connections, the impact of the acquisition on the factual compared to the counterfactual is likely to be minimal. Further, industry participants did not express any concerns regarding the proposed acquisition in this market.

115. The Commission considers that, post-acquisition, Nobilo, Fosters/Southcorp, Villa Maria and Glengarry would continue to be significant competitors in this market.

Conclusion on the white wine market

116. Accordingly, given the minimal aggregation that would occur as a result of the proposed acquisition and the strength of the existing competitors, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition.

The Red Wine Market

117. The major competitors in the red wine market included Allied, Pernod, Nobilo, Fosters/Southcorp and Glengarry, with a number of domestic and international manufacturers also supplying the market.

118. As for the white wine market, the Commission has based its market share analysis on AC Nielsen data and surveys of industry participants.

119. The divestment undertaking of the Chasseur brand by Pernod would reduce the combined entity's share, post-divestment. In the red wine market, Chasseur

accounts for approximately [ ]. Table 2 shows the estimated market shares for the importation or production of red wine inclusive of the proposed divestment undertaking.

Table 2: Estimated Market share of the Red Wine Market

Manufacturer	Retail Sales (2004)	Market Share
Pernod	[ ]	[ ]
Allied	[ ]	[ ]
Combined Entity	*[ ]*	*[ ]*
Nobilo	[ ]	[ ]
Fosters/Southcorp	[ ]	[ ]
Villa Maria	[ ]	[ ]
Glengarry	[ ]	[ ]
Other (including divested assets)	[ ]	[ ]
Total	**[ ]**	**100%**

Source: Supplied by industry participants.

120. Table 2 indicates that, post-acquisition, the combined entity would have a market share of [ ] and the three firm concentration ratio would be [ ]. This is outside the Commission's safe harbours.

121. Again, the level of aggregation that results in this market is minimal as a result of the acquisition and a number of strong competitors exist in the market such as Nobilo and Foster/Southcorp.

Conclusion on the red wine market

122. Accordingly, given the minimal aggregation that would occur as a result of the proposed acquisition and the strength of the existing competition, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition.

The Sparkling Wine Market

123. The major competitors in the sparkling wine market are Allied and Pernod with a number of domestic and international manufacturers also supplying the market.

124. The Applicant submitted International Wine and Spirits Record (IWSR) volume data as an estimation of the market shares of the competitors in this market. This differs from the AC Nielsen retail data previously used to estimate still wine[21]. However, the Applicant advised the Commission that regardless of which data is used the divestment undertakings that it proposes will alleviate any competition concerns.

[21] IWSR data estimates volume while AC Nielsen tracks retail sales, primarily through the two supermarket chains. Also IWSR data measures champagne volumes seperately in New Zealand whereas AC Nielsen incorporates champagne in a wider sparkling category.

125. The Commission surveyed various industry participants to provide their own estimates of the market based on their sales and volume data and industry experience. Industry participants advised the Commission that because of the strength of Allied's Lindauer brand in this category and because of the level of promotional sales, volume data would more accurately reflect the current state of the market.[22] This is consistent with previous Commission estimates of this market[23]. The standard measurement unit in this industry is to measure volume in terms of nine litre equivalent (9le) cases where one case equals twelve 750ml bottles.

126. Table 3 shows the market share information for the four divested allied brands in the sparkling wine market for the 2004 year.

Table 3: Estimated Market Shares for the Divested Allied Brands for 2004

Manufacturer	Brands	Volume (9le) 2004	Market Share
Divested Allied Brands	Lindauer	[ ]	[ ]
	Aquila	[ ]	[ ]
	Chardon	[ ]	[ ]
	Italiano	[ ]	[ ]
	Total Divested Brands	*[ ]*	*[ ]*
Remaining Allied brands	Includes Diva,	[ ]	[ ]
Pernod	Jacob's Creek etc	[ ]	[ ]
All Other Competitors		[ ]	[ ]
Total		**[ ]**	**100%**

Source: Supplied by industry participants.

127. The divestment undertakings of the Lindauer, Aquila, Italiano and Chardon brands by Pernod would reduce the combined entity's share, post-divestment. In the sparkling wine market, these four brands account for approximately [ ] of the market.

128. Table 4 shows the estimated market shares for the importation or production of sparkling wine, inclusive of the divestment undertakings proposed by the Applicant. As indicated in the market definition, champagne has been excluded.

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[22] Industry participants advised the Commission that the majority of retail sales in the sparkling wine category are at the lower end of the market such that the use of turnover figure may skew market share analysis.

[23] Decision 401.

Table 4: Estimated Market Shares for the Sparkling Wine Market

Manufacturer	Brands	Volume (9le) 2004	Market Share
Pernod	Jacob's Creek, Wyndham	[ ]	[ ]
Allied	Includes Verde and Diva	[ ]	[ ]
Combined Entity		*[ ]*	*[ ]*
Nobilo	White Cloud, Hardy's	[ ]	[ ]
Fosters/Southcorp	Seaview	[ ]	[ ]
Villa Maria	St Aubyns	[ ]	[ ]
Divested brands		[ ]	[ ]
Other NZ		[ ]	[ ]
Other Australian		[ ]	[ ]
Other International		[ ]	[ ]
Total		**[ ]**	**100%**

Source: Supplied by industry participants.

129. Table 4 indicates that, post-acquisition, the combined entity would have a market share of [ ] and the three firm concentration ratio would be [ ][24]. This is outside the Commission's safe harbours.

130. The Applicant submits that the divestment of the four Allied brands will be pro-competitive by breaking up the current market share of the largest competitor in the market, Allied. Industry participants [ ] but, stressed that the divestment of Lindauer would significantly reallocate the market shares in this category.

131. The new owner of the Lindauer brand would become the combined entity's largest competitor, with Lindauer having a market share of [ ]. It is likely that the purchaser of Lindauer, through the divestment, would also acquire the other Allied sparkling brands to be divested equating in total to [ ] of the market.

132. Accordingly, given the level of aggregation that would occur as a result of the proposed acquisition (given the divestment undertaking), the Commission is satisfied that there is unlikely to be a substantial lessening of competition in the market as a result of the proposed acquisition.

Conclusion on the sparkling market

133. The Commission considers that, post-acquisition, with the proposed divestment of Lindauer, Aquila, Chardon and Italiano the proposed acquisition is not likely to result in a substantial lessening of competition in this market.

[24] [ ]

The Distribution Market

134. The major competitors in the distribution market include Allied, Pernod, Nobilo and Fosters/Southcorp with a number of other distributors wholesaling wine to various retail outlets.

135. As for the sparkling wine market, the Commission has based its market share analysis on IWSR data and surveys of industry participants.

136. The divestment undertakings in the white, red and sparkling wine markets by Pernod would reduce the combined entity's share, post-divestment. In the distribution market, the divested brands account for approximately [ ] of all wine.

137. Table 5 indicates the estimated market shares for the distribution of wine.

Table 5: Estimated Market Shares for the Distribution Market

Distributor	Volume (9le) 2004	Market Share
Pernod	[ ]	[ ]
Allied	[ ]	[ ]
Combined Entity	*[ ]*	*[ ]*
Nobilo	[ ]	[ ]
Fosters/Southcorp	[ ]	[ ]
Villa Maria	[ ]	[ ]
Other (including divested brands)	[ ]	[ ]
Total	**[ ]**	**100%**

Source: Supplied by industry participants.

138. Table 5 illustrates that the combined entity would have a market share of [ ] and the three firm concentration ratio would be [ ][25]. This is outside the Commission's safe harbour guidelines.

139. The Commission notes that, typically, Allied and Pernod both distribute their own wine brands directly to the retail level. However, Allied, and to a lesser extent Pernod, market and distribute a number of wine brands in New Zealand for which they have agency arrangements with the producers. For example, Allied distributes for CJ Pask, Grove Mill, Gibbston Valley and Barros Port.

140. However, these agency arrangements held by Allied and Pernod account for [ ] of the total wine distribution market and the aggregation, post-acquisition, is negligible.

141. Accordingly, given the proposed divestment undertakings, the minimal level of aggregation, the minimal quantities of agency brands distributed by either Allied or Pernod, and the availability of distribution services from other industry competitors the Commission is satisfied that there is unlikely to be a substantial lessening of competition in the market as a result of the proposed acquisition.

[25] Should an existing competitor purchase the divested brand the ratio could be as high as the [ ] indicated in the previous paragraph.

Conclusion on Distribution market

142. The Commission considers that, post-acquisition, with the proposed divestment of the Allied brands, the proposed acquisition is unlikely to result in a substantial lessening of competition in the distribution market.

The Gin Market

143. The major competitors in the gin market include Allied, Pernod, Diageo, and Independent Liquor with a number of other importers and producers also supplying the gin market.

144. Industry participants were unclear on the total size of the gin market. Industry surveys, such as those conducted by the Distilled Spirits Association, are seen to be incomplete as several competitors choose not to contribute. The Applicant submitted estimated data based on the official tax collected by New Zealand Customs. However, this data is also incomplete as it does not indicate actual sales, and because spirits have an extended shelf life, the figures can vary depending on the production date or the shipment date.

145. The Commission surveyed various industry participants to provide an estimate of the size of the gin market based on their own sales data and industry experience. All industry participants stated that volume data was the most appropriate measurement of market share in this market. Based on these estimates, the Commission has estimated the gin market to be approximately 170,000 nine litre equivalent (9le) cases.

146. Table 7 indicates the estimated market shares for the importation or production of gin for distribution for the 2004 year.

Table 7: Estimated Market Shares for the Gin Market for 2004

Manufacturer	Brands	Volume (9le) 2004	Market Share
Pernod	Seagrams	[ ]	[ ]
Allied	Seagers, Beefeater	[ ]	[ ]
Combined Entity		*[ ]*	*[ ]*
Diageo	Gordons, Gilbeys, Tanqueray	[ ]	[ ]
Independent	Partingtons, Downings	[ ]	[ ]
Bacardi & Company Ltd	Bombay Sapphire	[ ]	[ ]
42 Below	South	[ ]	[ ]
Other		[ ]	[ ]
Total		**170,000**	**100%**

Source: Supplied by industry participants.

147. Table 7 indicates that, post-acquisition, the combined entity would have a market share of [ ] and the three firm concentration ratio would be [ ]. This is outside the Commission's safe harbours.

148. The Applicant submitted that the combined entity would face strong competition from Diageo and from Bacardi. In particular, the combined entity would face competition from Diageo's brand, Gordon's, which is the market leader with approximately [ ] market share.

149. Industry participants informed the Commission that the New Zealand gin market has been in decline. Thomas Chin, Chief Executive, Distilled Spirits Association, stated that gin, traditionally the most popular spirit in New Zealand by volume, has now been overtaken by bourbon. This has followed a trend which has seen the sales of gin decline for a number of years. Industry participants stated that the primary reason for this decline was the majority of gin consumers form part of an ageing, and declining, demographic group.

150. Further, Pernod recently downsized its Seagrams gin bottle from the traditional 1125ml bottle to a one litre bottle, without changing the unit price. The Applicant submitted that this resulted in a significant decline in Seagrams sales (over and above any market decline) and is indicative of a competitive and price sensitive nature of the gin market.

151. The Applicant also submitted that there are no onerous barriers to expansion with regard to the importation of gin. Typically, gin is produced from a neutral white spirit and industry participants informed the Commission that this neutral spirit was readily available to existing producers. [ ] informed the Commission that it was not constrained by its current production facilities and could increase its production if it desired to. It further advised that any brand owner could contract out the manufacturing process, or the bottling facilities, in New Zealand relatively easily.

152. Industry participants did not express any concern regarding the proposed acquisition and the impact on the gin market and the Commission considers that Diageo would continue to be a strong competitor in this market. Accordingly, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition.

Conclusion on Existing Competition

153. The Commission considers that the proposed acquisition is unlikely to result in a substantial lessening of competition in the gin market.

OVERALL CONCLUSION

154. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the following markets:

- the importation or production of still white wine for distribution;
- the importation or production of still red wine for distribution;
- the importation or production of sparkling wine for distribution;
- the distribution of wine; and
- the importation or production of gin for distribution.

155. The Commission considers that the appropriate factual scenario in this case is the acquisition of Allied and the divestment of certain brands and assets as specified in the divestment undertaking attached as appendix 1.

156. The Commission considers that the counterfactual is the status quo with Pernod and Allied operating as separate entities.

157. In respect of all of the relevant markets the Commission is of the view that given the minimal aggregation that would occur as a result of the proposed acquisition and the strength of the existing competition in the market, the proposed acquisition is unlikely to result in a substantial lessening of competition in the factual scenario compared to the counterfactual scenario.

DETERMINATION ON NOTICE SEEKING CLEARANCE

158. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Pernod Ricard S.A. of the entire share capital of Allied Domecq plc, subject to the Deed of Undertaking between Pernod Ricard S.A. and the Commission dated 12 July 2005.

Dated this 13th day of July 2005

Paula Rebstock
Chair
Commerce Commission

APPENDIX 1

DEED OF UNDERTAKING

between

Pernod Ricard S.A.

and

The Commerce Commission

Deed Of Undertaking

Date: 12 July 2005 2005

Parties

1 **Pernod Ricard S.A.** a French société anonyme having its registered office at 12, Place des Etats Unis, 75783 Paris Cedex 16, France ("Pernod Ricard").

2. **The Commerce Commission** a body corporate established by section 8 of the Commerce Act 1986 ("the Commission").

Background

A. On 9 June 2005, Pernod Ricard gave notice to the Commission pursuant to section 66(1) of the Commerce Act 1986 ("Act") seeking clearance for the proposed acquisition by Pernod Ricard of the shares of Allied Domecq plc (the "Clearance Application").

B. Pernod Ricard gives notice as part of the Clearance Application offering the Commission the divestment undertakings in the form of this deed, pursuant to section 69A of the Act.

This deed records

1 Subject to the scheme of arrangement (the "Scheme") relating to the acquisition that is the subject of the Clearance Application becoming effective, in relation to *Lindauer*, *Aquila*, *Italiano* and *Chardon* – sparkling wine and *Chasseur* – still wine (together the "Divestment Brands"), Pernod Ricard will, within a period of 12 months from the date the Scheme becomes effective:

a. sell or procure the sale to a purchaser or purchasers of those dedicated assets, including vineyards, fixed assets, inventories, brands, trade marks and other intellectual property, and, to the extent they exist, sales and marketing plans, point of sale and promotional materials relating to the Divestment Brands to the extent necessary to enable a purchaser or purchasers to immediately operate the business of the production, including grape supply, winemaking and packaging capacity, and the distribution of the Divestment Brands; and/or

b. procure the amendment, assignment, sublicence, transfer, novation or termination of those dedicated contracts between the merged entity and any third party to the extent possible and necessary to enable a purchaser or purchasers to immediately operate the business of the production, including grape supply, winemaking and packaging capacity, and the distribution of the Divestment Brands; and/or

c. if requested by a purchaser, provide to that purchaser, on reasonable arm's length commercial terms, services under which the merged entity would supply warehousing and/or bottling and/or distribution services relating to the Divestment Brands for a transitional period of a maximum of 3 years from the settlement date of that purchase,

where the purchaser is, or purchasers are, not an interconnected body corporate (as defined by section 2(7) of the Act) or an associated person (as defined by section 47(3) of the Act) of Pernod Ricard (an "Unrelated Purchaser").

2. The divestment of the Divestment Brands shall be an unreserved divestment of all of the legal and equitable interests and rights held by or on behalf of Pernod Ricard in the Divestment Brands.

3. Pernod Ricard will advise the Commission of the completion of the divestment of the Divestment Brands to an Unrelated Purchaser or Purchasers.

4. Pernod Ricard confirms that in entering into the obligations recorded in this deed it intends to create binding and enforceable legal obligations for the benefit of the Commission.

5. This deed is governed by New Zealand law and the parties accept the exclusive jurisdiction of the New Zealand Courts and any Court which may hear appeals from those Courts.

EXECUTED as a deed

Pernod Ricard S.A. by its duly authorised attorney:

L Lacassagne

APPENDIX 2

CONFIDENTIAL