COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

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

9 June 2005

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

EXECUTIVE SUMMARY

Proposed Acquisition

This application[1] concerns the proposed acquisition by the applicant, Pernod Ricard S.A. ("Pernod Ricard"), pursuant to a public offer which will be effected by a scheme of arrangement of the entire share capital of Allied Domecq plc ("Allied Domecq"), a public company listed on the London Stock Exchange. Immediately upon the scheme becoming effective[2], Pernod Ricard will sell certain Allied Domecq businesses and assets together with Pernod Ricard's existing *Larios* brands to Fortune Brands, Inc. ("Fortune Brands")[3].

Allied Domecq's wines and spirits production and distribution business and assets include:

a. wine brands in New Zealand that are primarily owned and marketed by its wholly-owned subsidiary, Allied Domecq Wines (New Zealand) Limited[4] ("Allied Domecq (NZ)"); and

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1 A separate application will be submitted by Fortune Brands, Inc. in respect of its acquisition of certain Allied Domecq plc brands and assets. Given that the two transactions are not inter-conditional, it has been accepted in other jurisdictions that two separate applications should be made.

2 The scheme of arrangement is expected to become effective on 26 July 2005.

3 On the date on which the scheme of arrangement becomes effective (the "Effective Date"), Fortune Brands will acquire the economic interest in, and managerial control over, those Allied Domecq brands it will acquire (the "Fortune Assets"), with full title to those brands passing within 6 months. [ ] However, pending transfer of legal title in the Fortune Assets, Fortune Brands will control those assets. Fortune Brands will acquire legal title to *Larios* on the Effective Date.

4 Allied Domecq Wines (New Zealand) Limited is a subsidiary of Montana Group (NZ) Limited, which was the entity involved in Decisions 401 and 406.

b. spirit brands *Ballantine's* and *Teachers* (Scotch Whisky), *Maker's Mark* (US Whiskey), *Canadian Club* (Canadian Whisky), *Beefeater* (Gin*), Courvoisier* (Cognac), *Kahlua*, *Malibu* and *Tia Maria* (Liqueurs), *Sauza* (Tequila) and *Stolichnaya* (Vodka).

The proposed acquisition is described in more detail in paragraph 1 below.

Affected Markets

Pernod Ricard and Allied Domecq are both active in the production, importation and distribution of wines and spirits in New Zealand and internationally. Allied Domecq also operates a quick service restaurant business, an activity in which Pernod Ricard is not currently involved.

This application analyses the effects of the proposed acquisition on the following affected markets in New Zealand:

a. the national market for the importation or production of still white wine for distribution;

b. the national market for the importation or production of sparkling wine for distribution;

c. the national market for the importation or production of gin for distribution; and

d. the national market for the distribution of wine.

We summarise the expected impact of the proposed acquisition on the affected markets below.

Pernod Ricard's proposed acquisition of Allied Domecq will result in the aggregation of Pernod Ricard's existing market shares with those of Allied Domecq, but excluding the market shares of Allied Domecq brands to be sold to Fortune Brands, in the affected New Zealand markets described above.

In three of the affected markets, namely in the production or importation of still white wine, the production or importation of sparkling wine and the distribution of wine, the merged entity's market share will fall outside the Commission's safe harbours.

In the gin production and importation market, it is Pernod Ricard's submission, based on its assessment of the market, that the safe harbour threshold is not exceeded and no competition issue arises. However, Pernod Ricard accepts that its assessment is based on its estimate of the market share of one competitor, which market share affects the calculation of the safe harbour. Accordingly, Pernod Ricard specifically requests that the Commission approach Pernod Ricard as early as possible if the Commission's initial assessment differs from that proposed, or if the Commission wishes to discuss the calculations used in this application to determine the market shares for gin. In any case, Pernod Ricard has made submissions on the competition aspects of that market.

Otherwise, the spirits market shares of either Pernod Ricard or Allied Domecq are negligible or zero and in any case the market aggregations resulting from the proposal would fall within the safe harbours contained in the Commission's current guidelines.

Undertakings

As an integral part of this application, Pernod Ricard proposes to give undertakings to the Commission to divest certain brands in the still white wine and sparkling wine production and importation markets where the safe harbour thresholds are exceeded. These undertakings would have the effect of bringing the merged entity within the safe harbour for still white wine and leaving the merged entity marginally over the safe harbours for sparkling wine and the distribution of wine market. Over and above the divestment undertakings, Pernod Ricard submits that for the reasons set out in this application, the proposed acquisition will not result in a substantial lessening of competition in each of the affected markets.

Diageo Transaction

On 6 June 2005, Pernod Ricard and Diageo plc ("Diageo") announced the granting of an option by Pernod Ricard to Diageo to acquire the majority of Allied Domecq (NZ)'s *Montana* wine business following Pernod Ricard's acquisition of Allied Domecq. In addition, Diageo is to purchase The 'Old Bushmills' Distillery Company Limited including the *Bushmills* Irish Whiskey brand. Diageo has also entered into an exclusivity agreement with Pernod Ricard so that it will not enter into discussions with any third party concerning the acquisition of Allied Domecq. A copy of the media release is attached as Appendix A.

Under its option, Diageo has the right to acquire all of the *Montana* wine business with the exception of the *Corbans*, *Stoneleigh* and *Church Road* wine brands and related assets (the "Montana Assets").

Under that option, Pernod Ricard has the obligation but not the right to sell the Montana Assets to Diageo. The Montana Assets include the brands that are the subject of the divestment undertakings in this application (*Chasseur*, *Lindauer* and other sparkling brands). Accordingly, the option is distinct from the divestment undertakings Pernod Ricard is prepared to give in this application. In this application, Diageo is identified as a potential acquirer of the brands proposed to be divested by Pernod Ricard. If Diageo does not exercise its option in respect of the Montana Assets, Pernod Ricard will remain bound to divest those brands in accordance with the terms of its undertakings.

Diageo is not considered a participant for the purposes of this application.

Wine (still and sparkling)

In relation to sparkling wine, Pernod Ricard acknowledges that due to the significant market share enjoyed by Allied Domecq (NZ)'s *Lindauer* and certain other sparkling brands, a divestment is necessary. The proposed divestment of *Lindauer* and sparkling brands *Aquila, Italiano* and *Chardon* would bring the merged entity's total market share to just outside the Commission's safe harbour. The break-up of Allied Domecq (NZ)'s sparkling brands will generate competition. Pernod Ricard would welcome the opportunity to discuss the proposed divestments in this market with the Commission at an early stage.

In relation to still white wine, the aggregation post-merger slightly exceeds the safe harbour and the divestment of *Chasseur* is proposed. Furthermore, the divestment of *Chasseur* would reduce the merged entity's aggregation by more than the share of the merged entity attributable to Pernod Ricard to within the safe harbour threshold.

These divestments have a consequential effect on the wine distribution market. For those markets, but particularly in relation to sparkling wine, Pernod Ricard makes the following submissions.

In the still white wine and sparkling wine markets, the two major supermarkets groups, Foodstuffs NZ Limited ("Foodstuffs") and Progressive Enterprises Limited ("Progressive"), exert significant countervailing pressures on the market participants.

The potential for new entrants is high and entry and expansion barriers are low.

Existing competitors, including in particular Nobilo Wine Group Limited/Nobilo Holdings Limited ("Nobilo"), Southcorp Limited ("Southcorp") through Southcorp NZ Wines Limited, and Villa Maria Estate Limited ("Villa Maria") have significant resources. Nobilo is ultimately owned by Constellation Brands, Inc ("Constellation"), arguably the number one wine company worldwide. Foster's Group Limited ("Foster's") is in the process of acquiring Southcorp and will become arguably the number two wine company worldwide.

Other market participants have had significant investment and have grown as a result, such as Kim Crawford Wines Limited ("Kim Crawford") and Sacred Hill Wines Limited ("Sacred Hill"). The still white wine market (bottled and casks) is experiencing and will continue through 2006 to experience over-supply. This in turn provides opportunities for greater competition from existing competitors and potential new entrants. Currently, downward pressure on prices is being experienced. The expected trend is for imports, which represented more than half of the 2004 market, to decrease and local consumption of New Zealand produced wine to increase. However, imports, particularly from Australia, continue to provide a significant constraint.

The factors that led to the Commission's conclusions in Decisions 401 and 406 continue to apply and arguably now to a greater degree. The ease of substitution between brands and vigorous competition led by supermarkets with significant countervailing power will mean that the acquisition will not substantially lessen competition.

Notwithstanding these factors, Pernod Ricard proposes to give an undertaking to dispose of *Chasseur* (still white wine), and *Lindauer*, *Aquila, Italiano* and *Chardon*] (sparkling wine).

Gin

Pernod Ricard considers that the proposed acquisition would involve horizontal aggregation of market shares in the gin market, but that the proposed acquisition would neither cross the safe harbour threshold nor in any case lead to the substantial lessening of competition. There are strong competitors in the gin market, particularly Diageo (widely recognised as the worldwide spirits industry leader), Bacardi-Martini and Independent Liquor (NZ) Limited ("Independent Liquor"), a fast growing local competitor with its local gin brands, who will continue to act as a constraint on the merged entity post-acquisition. The barriers to entry for locally produced brands are low due to the availability and low cost of neutral white distilled spirits. *42 Below* has recently entered the gin market.

Further, the applicant adopts the reasons for the Commission's conclusion at paragraph 102 of Decision 306 that a substantial lessening of competition is unlikely to occur where:

a. many consumers are willing to substitute brands;

b. there is a presence of strong international competitors, including Diageo and Bacardi-Martini who have leading brands in the spirits categories and a large number of local competitors led by Independent Liquor;

c. entry of new brands is feasible in any of the spirit categories as the barriers to entry are low, especially for gin; and

d. competitors will continue to have access to other distributors within a comprehensive distribution network.

As all of these factors are prevalent in the gin market, the applicant submits that a substantial lessening of competition will not occur.

As evidenced by the proposed change of distributor by Allied Domecq from Lion Nathan Wines & Spirits ("Lion Nathan") to Independent Liquor and Allied Domecq (NZ) before this acquisition was announced, there is strong competition in the spirits distribution market. While some brand producers also act as distributors, specialised distributors including the large nationwide chains are not exclusive to particular brands (but the brands are exclusive to them) and are largely free to enter into arms length contractual arrangements.

Woolworths Limited of Australia in its recent (25 May 2005) announcement relating to the acquisition of the Foodland New Zealand business (Progressive) said that liquor was a future growth opportunity.

Clearance Sought

Pernod Ricard accordingly seeks clearance, either itself or through its subsidiaries, to acquire the shares of Allied Domecq.

This application and the associated application by Fortune Brands are necessarily closely related.

PART I: TRANSACTION DETAILS

1. What is the business acquisition for which clearance is sought?

1.1 Clearance is sought for the acquisition by Pernod Ricard, through its wholly-owned subsidiary, Goal Acquisitions Limited ("Goal Acquisitions"), of the entire share capital of Allied Domecq.

1.2 The acquisition of the entire share capital of Allied Domecq (the subsidiaries of which include its wholly-owned subsidiary, Allied Domecq (NZ), in New Zealand) is to be effected by way of a scheme of arrangement (pursuant to section 425 of the UK Companies Act 1985) by Pernod Ricard through its wholly-owned subsidiary, Goal Acquisitions.. The public offer was announced on 21 April 2005.

A copy of the scheme of arrangement is available on-line at:

http://www.allieddomecq.com/en/NewsAndMedia/PressReleases/2005/PR25052005ALLIEDDOMECQPLCRECOMMENDEDOFFERBYPERNODRICARDSA.htm

1.3 Upon the scheme of arrangement becoming effective (the "Effective Date"), Pernod Ricard has agreed to sell certain Allied Domecq brands and businesses, together with Pernod Ricard's existing *Larios* brands and associated assets (together the "Fortune Assets"), to Fortune Brands pursuant to a legally binding Framework Agreement dated 21 April 2005 ("Framework Agreement").

1.4 The proposed division of the main Allied Domecq owned brands between Pernod Ricard and Fortune Brands is as follows:

Table 1: Division of Allied Domecq brands

Pernod Ricard	**Fortune Brands**
Spirits brands: *Ballantine's* (Scotch Whisky) *Beefeater* (Gin) *Malibu* (Liqueurs) *Kahlua* (Liqueurs) *Tia Maria* (Liqueurs) *Lamb's* (Rum) Wines: *Mumm* (Champagne) *Perrier-Jouët* (Champagne) *Montana brands* (Still & Sparkling Wine) *Bodegas y Bebidas* brands (Still Wine)	Spirits brands: *Teachers* (Scotch Whisky) *Laphroaig* (Scotch Whisky) *DYC* (Spanish Whisky) *Canadian Club* (Canadian Whisky) *Maker's Mark* (US Whiskey) *Sauza* (Tequila) *Courvoisier* (Cognac) *Centenario* (Other Brandy) *Fundador* (Other Brandy) *Jacobi* (Other Brandy) *Castellana* (Aniseed) *Kuemmerling* (Bitter) Wines: *Harvey's* (fortified Wine/Sherry) *Cockburn's* (fortified Wine/Port) *Buena Vista* (still Wine) *Clos du Bois* (still wine) *Atlas Peak* (still wine) *Callaway* (still wine) *William Hill* (still wine) *Jerry Garcia* (still wine) *Gary Farrell* (still wine) *Haywood Estate* (still wine) *Jakes Fault* (still wine) Distribution: The distribution assets of Allied Domecq in: the UK Spain (except wine distribution) Germany

1.5 None of the Allied Domecq brands to be transferred to Fortune Brands are sold in any significant quantity in New Zealand.

1.6 A Transaction Co-operation Agreement, also dated 21 April 2005, ("Transaction Co-operation Agreement") entered into by Pernod Ricard, Fortune Brands and Goal Acquisitions regulates the conduct of the acquisition of Allied Domecq and governs certain matters concerning Fortune Brands' acquisition of the Fortune Assets. [

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1.7 As explained, Fortune Brands is to acquire the Fortune Assets pursuant to the legally binding Framework Agreement. Pending the transfer over a six month period of the Fortune Assets, Fortune Brands will be issued *"tracker shares"* in Goal Acquisitions. These tracker shares will track the value of the Fortune Assets and carry economic rights intended to protect the Fortune Assets between the Effective Date and the delivery of the Fortune Assets to Fortune Brands, but will not carry rights in the nature of control, such as voting rights (these are only voting rights in relation to matters that would vary the class rights of those shares). The tracker shares will be issued to Fortune Brands on the Effective Date and will effectively be redeemed over time as the Fortune Assets are delivered to Fortune Brands.

1.8 [

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1.9 Attached to this application as Appendix B is a detailed summary of the arrangements between Pernod Ricard and Fortune Brands under the Framework Agreement and the Transaction Co-operation Agreement (the above summary and the detailed summary are the subject of confidentiality orders sought under section 100 of the Commerce Act 1986).

1.10 Conformed copies of the Framework Agreement and the Transaction Co-operation Agreement are attached as Appendix C (both copies are the subject of confidentiality orders sought under section 100 of the Commerce Act 1986).

2. The Person Giving Notice

2.1 This notice is given by:

Laurent Lacassagne
Duly authorised attorney
Pernod Ricard S.A.
12, Place des Etats-Unis
75783 Paris Cedex 16

France

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

Erich Bachmann/Frank Chan
Hesketh Henry
Barristers & Solicitors
Private Bag 92093
Level 11
41 Shortland Street
Auckland

Telephone:	(09) 375 8714
Facsimile:	(09) 375 8774
Email:	erich.bachmann@heskethhenry.co.nz; or frank.chan@heskethhenry.co.nz

3. Confidentiality

3.1 Confidentiality is not sought for the fact of the proposed acquisition.

3.2 Confidentiality is sought for the information identified by, and contained within, square brackets and the Appendices B-E and G-N, the entire contents of which are confidential, in the public version of this application ("Confidential Information").

3.3 The grounds upon which confidentiality is sought are that the Confidential Information might be *"inside information"* in the United Kingdom; the Confidential Information is of a commercially sensitive strategic nature, including market share figures, market research and market sensitive strategic information relating to the applicant's business, all of which is confidential to the applicant or other participants; and some of the Confidential Information was originally obtained in circumstances where there are obligations of confidence owed to third parties. Disclosure of that Confidential Information could result in material financial loss and unreasonably prejudice the commercial position of Pernod Ricard and other parties.

3.4 Specifically, confidentiality orders are sought under section 100 of the Commerce Act 1986 and confidentiality is claimed under section 9(2)(b)(ii) of the Official Information Act 1982 in respect of the Confidential Information including but not limited to the Framework Agreement and the Transaction Co-operation Agreement attached as Appendix C on the grounds set out in paragraph 3.3 above.

3.5 Pernod Ricard requests that the Commission notify Pernod Ricard of any request made to the Commission under the Official Information Act for release of any Confidential Information, and that the Commission seek the views of Pernod Ricard as to whether as at the date of such request the Confidential Information remains confidential and commercially sensitive.

4. Details of the Participants

4.1 **Acquirers:**

a. Goal Acquisitions, a wholly-owned subsidiary of Pernod Ricard (contacts as above); and

b. Fortune Brands, as noted above, is submitting a separate application in respect of the proposed acquisition.

Contact:

Andrew Peterson/Sarah Keene
Russell McVeagh
Barristers & Solicitors
PO Box 8
Level 30
Vero Centre
48 Shortland Street
Auckland

Telephone: (09) 367 8133 or (09) 367 8315
Fax: (09) 367 8596
Email: andrew.peterson@russellmcveagh.com or sarah.keene@russellmcveagh.com

4.2 **Target:**

Allied Domecq

Contact:

Grant David/Jim Sullivan
Chapman Tripp
Barristers & Solicitors
PO Box 993
1-13 Grey Street
Wellington

Telephone: (04) 499 5999
Fax: (04) 472 7111
Email: grant.david@chapmantripp.com or jim.sullivan@chapmantripp.com

5. Participants and interconnected and associated persons

Acquirer group/associates

Pernod Ricard

5.1 Pernod Ricard is a publicly listed French company, active in the production and distribution of alcoholic beverages, mainly wines and spirits. Its shares are quoted on the Paris Stock Exchange. Pernod Ricard's wine brands marketed in New Zealand are primarily the Australian brands *Jacob's Creek* and *Wyndham Estate*. Pernod Ricard's spirit brands in New Zealand include the following:

- *Ricard and Pernod* (Aniseed);
- *Chivas Regal* (Scotch Whisky),
- *Wild Turkey* (US Whiskey);
- *Jameson* (Irish Whiskey);
- *Havana Club* (Rum);
- *Martell* (Cognac);
- *Wyborowa* (Vodka); and
- *Seagrams* (Gin).

5.2 A copy of Pernod Ricard's most recent annual report is available on-line at: http://www.pernod-ricard.com/PERNOD/resources///static/Rapport%20annuel/RA%202003/version%20en/RA2003VENG.pdf

5.3 A complete list of Pernod Ricard's wines and spirits brands marketed within New Zealand is provided in Appendix D.

5.4 Its New Zealand subsidiaries are Pernod Ricard New Zealand Limited, Framingham Wine Company Limited, Tylers Stream Wine Company Limited and Red Hill Wine Company Limited.

Fortune Brands

5.5 Fortune Brands is a publicly listed US company, active in the consumer goods sector, mainly:

- Home and Hardware;
- Spirits and Wines;
- Golf Equipment; and
- Office Products.

5.6 Fortune Brands has recently announced the sale of its office products division.

5.7 A copy of Fortune Brand's most recent annual report is available on-line at: http://www.fortunebrands.com/investor/annualreport.cfm

5.8 Please refer to Fortune Brands' application for a description of Fortune Brands' activities, brands and presence in New Zealand.

Target company group/associates

Allied Domecq

5.9 Allied Domecq is a publicly listed English company also active in the production and distribution of wines and spirits. Allied Domecq's wine brands in New Zealand are primarily the brands owned and marketed by its wholly-owned subsidiary, Allied Domecq (NZ) including *Montana*, *Corbans* and *Stoneleigh*.

5.10 Allied Domecq's main spirit brands in New Zealand are:

- *Ballantine's* and *Teachers* (Scotch Whisky);
- *Maker's Mark* (US Whiskey);
- *Canadian Club* (Canadian Whisky);
- *Beefeater* (Gin);

- *Seagers* (Gin);
- *Black Heart* (Rum);
- *Courvoisier* (Cognac);
- *Kahlua*, *Malibu* and *Tia Maria* (Liqueurs); and
- *Sauza* (Tequila).

5.11 A list of Allied Domecq's wines and spirits brands marketed within New Zealand is provided in Appendix E. Allied Domecq also owns and operates a quick service restaurant business under the Dunkin' Donuts, Baskin-Robbins and Togo's names. This business is carried out mainly in America and in Asia. Neither Pernod Ricard nor Fortune Brands is currently active in this field of activity in New Zealand (or anywhere else in the world).

5.12 Allied Domecq (NZ)'s spirits are currently distributed by Lion Nathan. Allied Domecq (NZ) recently announced that from 1 July 2005 it was changing its spirits distribution from Lion Nathan so that certain brands would be distributed by Allied Domecq (NZ) itself and other brands by Independent Liquor. However, it has subsequently announced that the contract with Lion Nathan is to be extended until 31 December 2005 (source: Allied Domecq (NZ) media releases).

5.13 A copy of Allied Domecq's most recent annual report is available on-line at: http://www.allieddomecq.com/en/Investors/ReportsAndResults/annualAndInterimReports.htm

5.14 Allied Domecq (NZ) is a leading domestic producer and supplier of international wines. It is involved in growing and buying grapes, winemaking, buying wine in New Zealand and internationally and the marketing and distribution of wine. It owns vineyards and purchases wine grapes from growers under contract. It bottles wine in Auckland and distributes wine throughout New Zealand. Allied Domecq (NZ) is ultimately owned by Allied Domecq. According to the published 31 August 2004 financial statements, turnover of the consolidated group comprising Allied Domecq (NZ) and subsidiary companies for 2004 was NZ$396,762,000.

5.15 The subsidiaries of Allied Domecq (NZ), most of which are non-trading companies, are identified in the latest publicly available annual report contained in Appendix F.

6. Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

6.1 Fortune Brands has no shareholding in Pernod Ricard or Allied Domecq. Neither Pernod Ricard nor Allied Domecq has any shareholding in Fortune Brands.

6.2 In the past year, there have been no dealings by Pernod Ricard, Allied Domecq or Fortune Brands in each other's shares.

6.3 As noted above, the acquirer is Goal Acquisitions, a subsidiary of Pernod Ricard. Goal Acquisitions will issue certain *tracker shares* to Fortune Brands to the value of the Fortune Assets. These will not carry voting rights except in relation to matters that would otherwise vary the class rights of those shares. These shares will carry the right to distributions in respect of the Fortune Assets as well as the right to those assets in the event of any winding-up. These arrangements are more fully described in paragraph 1 above and Appendix B. As discussed above, it is considered that this association (if indeed any association exists for the purposes of the Commerce Act) does not impact on this application.

7. Links between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

7.1 As noted above, Pernod Ricard and Fortune Brands have entered into certain arrangements in relation to the acquisition of Allied Domecq.

8. Common Directorships

8.1 As between Pernod Ricard, Allied Domecq and Fortune Brands, there are none.

9. Business activities of each participant

9.1 See paragraph 5 above.

10. Reasons for the proposal and the intentions in respect of the acquired or merged business

10.1 Pernod Ricard has for several years engaged in a policy of refocusing on its core wine and spirits business. The acquisition of Allied Domecq is the next logical step in this strategy. The strategic and economic rationale of this transaction is to permit Pernod Ricard to increase its presence in key markets such as the US, UK and Canada, as well as in some growing markets such as Mexico, China, South Korea, Brazil and Argentina. The transaction will also allow Pernod Ricard to modernise its portfolio and bring it more in line with the tastes of young adult consumers and women, through the acquisition of white spirits and cocktail spirits, such as vodka and liqueurs. Pernod Ricard expects that within three years, it will be able to achieve annual pre-tax gross cost synergies of approximately €300 million. The estimated synergies are expected to result from Pernod Ricard's ability to leverage its purchase, production and distribution strengths.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11. Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition? Please identify for each market the product, functional, geographical and time dimensions, the specific parties involved and the relationship of those parties to the acquirer or target.

Market Share Data

When calculating market shares, Pernod Ricard has principally used volume data from International Wines and Spirits Record Limited ("IWSR"). In the case of wine, Pernod Ricard has used value data collated by AC Nielsen because IWSR does not categorise still wine into still white and red wine. A more detailed explanation of the IWSR and AC Nielsen sources is set out in Appendix G.

Market Definition – Wine

11.1 Consistent with Decisions 401 and 406, for the purposes of this application the applicant submits that the relevant product and functional markets at issue in this case in the wine industry are the markets for:

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

Each of these markets is discussed separately below.

The geographic market is national.

Wine

11.2 The Commission previously considered the wines and spirits markets in New Zealand in 2000. Specifically, the Commission considered the wine markets in Decisions 401 and 406. It is submitted that the Commission's earlier market analysis in those Decisions continues to apply. Effectively, this divides the overall market for the production or importation of wine into still red and still white, sparkling wine and fortified wine. Accordingly, based on that analysis, the two products markets in which there would be aggregation beyond the Commission's safe harbours, are still white wine and sparkling wine. The extent of aggregation is set out in Appendix H for still white wine and Appendix I for sparkling wine.

11.3 [

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11.4 [

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11.5 Pernod Ricard notes that for the purpose of this analysis IWSR does not categorise still wine into white and red wine. AC Nielsen supermarket wine data is used for this purpose. It is believed that supermarkets represent about [ ]% of the total wine market and the market share data is believed to be an accurate representation of the wine market as a whole.

Still white wine

11.6 Pernod Ricard's principal still wine brands are *Jacob's Creek* and *Wyndham Estate*, which are imported into New Zealand from Australia. Pernod Ricard also has *Framingham* and *Tylers Stream* as its locally produced brands.

11.7 Allied Domecq (NZ) has the *Montana*, *Corbans* and *Stoneleigh* still white wine brands (as well as others). Allied Domecq (NZ) also has a significant number of brands packaged in casks, including *Chasseur*.

11.8 In relation to still white wine, using AC Nielsen the combined shares of the largest three competitors, Allied Domecq [ ]%, Nobilo [ ]% and Villa Maria [ ]% represent [ ] of the market (see Appendix H). Pernod Ricard's contribution to the merged entity's market share is [ ], but when aggregated with Allied Domecq's [ ] to total [ ]. It is important to note that *Chasseur* comprises [ ] of the market and that post-divestment, the merged entity would have [ ], which is under the 40% safe harbour threshold[ ].

11.9 Pernod Ricard notes that in Decision 401, the Commission did not accept the argument that there was a separate cask market. Notwithstanding that Pernod Ricard believes that there are good arguments to support a separate cask market, Pernod Ricard for the purposes of this application adopts the Commission's approach in Decision 401 that in relation to still wine, there are separate red and white markets. However, it draws to the Commission's attention that if it was considered that there is a separate cask market or markets, then the proposed acquisition would not give rise to aggregation of market shares beyond the Commission's safe harbours in still white bottled wine and still red bottled wine. Pernod Ricard has no market presence in cask wines.

11.10 Pernod Ricard is prepared to provide data or answer any questions relating to the cask market if the Commission believes it would be helpful or appropriate.

Sparkling wine

11.11 In sparkling wine, Pernod Ricard has grown its market share over the last [ ] years with *Jacob's Creek* sparkling wine. Allied Domecq (NZ) has the *Lindauer* brand.

11.12 [

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11.13 While Pernod Ricard regards champagne as a distinct market and that data is not included in the IWSR calculations, its inclusion is largely academic for present purposes. In either case, whether or not IWSR or AC Nielsen data is used, it is important to note that the divestment of *Lindauer, Aquila, Italiano* and *Chardon* is pro-competitive as it breaks up Allied Domecq's current market share. When considered in the light of the significant share to be acquired by a new or existing competitor or competitors together with the competitive aspects of the market, it is submitted that there will not be a substantial lessening of competition.

Distribution of wine

11.14 The national market for the distribution of wine is, following Decision 401, the intermediary process of marketing the wine produced or imported to the retailer. Both Allied Domecq and Pernod Ricard are engaged in this activity. In addition to their own brands, they each have agencies, which means they undertake distribution on behalf of other wine producers/importers. Arrangements differ about the extent to which the distributors undertake brand promotion. However, typically the importer or producer will undertake brand awareness activity including at the retail outlet, frequently in co-operation with the retail chain involved.

11.15 In the distribution of wine, access to market is relatively straightforward. Supermarkets in effect act as their own wholesalers and represent an estimated [ ] of retail wine sales. There are sales direct from wineries to retail channels.

11.16 This market is, like many distribution markets, characterised by a mix of distributors who are also producers (such as Allied Domecq and Pernod Ricard) or related to retailers (Rattrays and Gilmours) as well as more specialised distributors who are agents of the producers/importers (for example Lion Nathan) and independent wholesalers (for example, Tasman Liquor).

11.17 Lion Nathan has a specialist wine distribution division called Distinguished Vineyards. Another large distributor, Hancocks, distributes *Kim Crawford* and *Sacred Hill*.

11.18 The requirements for entering this market, such as access to transport and logistics systems are not onerous and are widely and readily available, with limited (if any) restrictions as to access. This is seen as a distinct market, separate from other parts of the wine sector. Contract marketing/distribution is readily available from most of the existing participants, despite any other affiliations they have. Greater throughput spreads fixed costs further. Smaller producers therefore shop around.

11.19 Analysis of IWSR data shows that the market share for the merged entity [ ]. [ ]

11.20 [ ]

11.21 We note that on the retail side there is extensive countervailing power from the two supermarket chains (discussed in more detail below) and other national retail chains.

The supermarket chains are supplied directly by the producer/importer. They typically order by container loads, which are delivered to their national distribution centres. In addition to their ability to negotiate wholesale pricing with suppliers and obtain promotional contributions from suppliers, they have various other direct methods of exercising their power. This may come via a change to the allocation of shelf space or shelf placement given to a product or via the repositioning of a product's retail price. A material retail price increase may result in decreased retail sales of that product which in turn may result in reduced turnover. This may lead to the reduction in the allocation of shelf space for that product. They also have the ability to exercise a considerable degree of control over the way retail wine promotions are organised and executed.

11.22 In terms of the other wine producers, we note that there are few barriers to entry to this market. In terms of likely and possible entrants, in addition to the existing wine distributors, there are potential entrants from the ranks of the liquor distributors who have access to most of the skills and other capabilities required, as well as other grocery distributors, who service the same retailers.

Market definition– spirits

11.23 Consistent with the Commission's conclusion in Decision 306 and the European Commission's approach in *Case No. COMP/M.2268- Pernod Ricard/Diageo/Seagram*, the applicant submits that, as far as New Zealand is concerned, the relevant product markets in the spirits industry are the markets for the supply to licensed distributors of:

- whisk(e)y;
- gin;
- vodka;
- tequila;
- rum;
- cognac/brandy;
- aniseed;
- bitters; and
- liqueurs.

11.24 In terms of the whisk(e)y market, a further segmentation may be made between Scotch Whisky, Irish Whiskey, US Whiskey and Canadian Whisky.

11.25 As far as liqueurs are concerned, each liqueur or flavour may constitute a relevant market. On this basis, no market would be affected because Pernod Ricard does not currently hold or distribute liqueurs of the same flavour as the ones to be acquired from Allied Domecq (for example, coffee flavour- *Kahlua*).

Pernod Ricard submits that RTDs – *"ready to drink"* – constitute a separate market. IWSR treats RTDs as a separate category distinct from spirits. The consumers of RTDs are typically under 25 years of age. RTDs are purchased for their convenience and immediate consumption and not for use over a period of time as are typical spirits. They are mostly 5% alcohol content ranging up to 12%. There is believed to be little substitution with spirits, even those which are based on existing brands (brand line extensions, for example Jack Daniels & Cola). The merged entity's combined RTDs market share is [ ] (see Appendix L).

11.26 There are three levels of functional market in the liquor area: producer/importers, distributors and retailers. The producer/importers are brand owners who will either arrange to have the product made locally, or import in bulk and pack here or import in finished packaging. The brand owners or their agents organise marketing of the product. The distributors comprise the agents and wholesalers, who distribute the product to retailers. The retailers carry out the function of providing the products to final consumers. In the gin market, *Seagrams, Bombay Sapphire* and *Beefeater* are imported. Other brands such as *Gordons* and *Seagers* are locally produced. Local gin brands are all locally produced.

11.27 Some distributors act also as producers by organising the production of spirits under brand agency arrangements for overseas brand owners and also for their own brands. The spirits are produced, then distributed via supply contracts to various on-licence and off-licence premises including retail liquor chains, independent liquor outlets, licensing trusts, hotels, pubs, restaurants and so on.

11.28 The New Zealand spirits market is characterised by some vertically integrated participants from the production through to the marketing and wholesale distribution of their products. However, due to a number of producers/importers having contractual non-exclusive distribution arrangements utilising reasonably large specialist distributors (agents such as Lion Nathan, Maxxium and Hancocks and wholesalers such as Tasman) there is an identifiable distinct distribution level. Notwithstanding the existence of vertically integrated participants, a new entrant is able to approach a wholesaler for distribution.

11.29 Pernod Ricard's spirit brands are currently distributed principally through Pernod Ricard New Zealand Limited. Allied Domecq spirit brands are distributed principally through Lion Nathan.

11.30 The significance of brand agencies to local liquor distributors was recognised in Decision 306 and the earlier Decision 182 involving the acquisition by Magnum Corp Limited of Dominion Breweries Limited. The leading brands (within the relevant spirit markets identified above) currently supplied to local distributors by Pernod Ricard, Allied Domecq and others are as follows:

Table 2: Spirits Brands: Pernod Ricard, Allied Domecq and Others

Spirits	Main Brands – Pernod Ricard	Main Brands – Allied Domecq	Main Brands – Others
Whisk(e)y	Chivas Regal Wild Turkey Jameson	Ballantine's Teachers Maker's Mark Canadian Club[1]	Bell's Johnnie Walker J&B Grant's 100 Pipers[2] Black Douglas Jim Beam Jack Daniels Woodstock
Gin	Seagrams	Beefeater Seagers	Gordons Bombay Sapphire Tanqueray Greenalls Gilbeys Plymouth
Vodka	Wyborowa	Stolichnaya	Smirnoff Absolut

Spirits	Main Brands – Pernod Ricard	Main Brands – Allied Domecq	Main Brands – Others
			Cossack Gordons Vladivar Finlandia 42 Below
Tequila	Olmeca	Sauza	Jose Cuervo Pepe Lopez
Rum	Havana Club	Black Heart Lamb's	Bundaberg Coruba Captain Morgan Bacardi
Liqueurs	Lochan Ora	Kahlua Tia Maria Malibu	Bayleys Irish Cream Cointreau Frangelico Galliano Midori

[1] *Teachers, Maker's Mark* and *Canadian Club* are to be transferred to Fortune Brands.
[2] Owned by Pernod Ricard, distributed by Foster's.

11.31 Appendix I shows the respective shares of Pernod Ricard and Allied Domecq for each of the spirits markets for 2004 drawn from IWSR. No relevant aggregation in fact occurs in relation to whisk(e)y[5], vodka, tequila, rum, cognac[6], other brandy, aniseed, bitters and liqueurs.

Gin

11.32 In the case of gin, Pernod Ricard believes that the resulting aggregation would be within the 40% safe harbour limits specified in the Commission's *"Mergers and Acquisitions Guidelines"*.

11.33 Appendix M shows the IWSR volume data for gin for the past 5 years. Significantly, IWSR data does not include any data for Independent Liquor, which is known to be a competitor in the gin market with its various brands such as *Partingtons, Downings* and *Carthews*. There are also some other small competitors that do not participate in IWSR. Pernod Ricard is not aware of the volume figures for Independent Liquor and is not able to discern that commercially sensitive information objectively from any reliable source of which it is aware. Pernod Ricard has estimated the market share of Independent Liquor based on surveys of retail stores, examinations of shelf facings and after allowing for amounts for stock and year by year differences in the NZ Customs total.

11.34 Given that NZ Customs has official data on tax charged as gin leaves the manufacturing area or, when imported, crosses the wharf, that data must be regarded as being more accurate than IWSR as an indicator of the whole market size. However, the NZ Customs total includes stock, which does not constitute actual sales, as well as parallel imports and direct retail. It is difficult to estimate the appropriate deduction for stock. In addition, the annual figure varies as more is produced or as a large import shipment is unloaded on a particular day. Taking these aspects into account, Pernod Ricard believes that based on the information

[5] *Teachers* Scotch Whisky, *Maker's Mark* US Whiskey, *Canadian Club* whisky and *Courvoisier* cognac are to be sold to Fortune Brands as part of the proposal.

available, there are reasonable grounds to conclude that it comes within the safe harbour threshold in respect of the gin market.

11.35 The three largest competitors total [ ] in 2004, comprising [ ] (see Appendix M). Taken as a percentage of the NZ Customs total of 243.22 (000's 9 litre case equivalents), this means that the merged entity's share of[ ] is well within the 40% safe harbour. If the Commission makes an allowance for stock in the total of 243.22, this would not markedly affect each market share. Even allowing for a smoothing of the NZ Customs amount for 2004 based on a declining market average, the aggregation would still be well within the permitted 40%. Finally, even a weighted amount attributed to Pernod Ricard in 2004, when Seagrams sales declined due to a change to a smaller bottle size without a price decrease, would still yield a result within the safe harbour.

11.36 As foreshadowed above, Pernod Ricard requests that the Commission approach Pernod Ricard as early as possible if the Commission's initial assessment differs from that described above, or if the Commission wishes to discuss the calculations used in this application to determine the market shares for gin.

Distribution of liquor

11.37 This market is addressed for the Commission’s information only to illustrate that the safe harbours are not exceeded.

11.38 The distribution market can be analysed as two separate markets. These are the distribution of RTDs, which are premixed blends of various spirits with mixes, and the distribution of unmixed spirits themselves.

11.39 The bulk of the market for the distribution of RTDs is held by Independent Liquor. It is estimated that [ ]% of the RTD market is held by Independent Liquor. The proportion of the market affected by the merged entity is [ ]% post–merger using IWSR.

11.40 The national market for the distribution of liquor (spirits) is concerned with marketing liquor to the retail outlets. Pernod Ricard is engaged in this activity, while the Allied Domecq brands are distributed by Lion Nathan. The market has a variety of participants. Many are connected with the international brand owners or their local counterparts.

11.41 There are a large number of spirits available in New Zealand at the present time from a range of distributors. Shaw's Liquor Directory 2005/06 lists over 100 brands of whisk(e)y, over 30 brands of gin, rum, and vodka, over 10 brands of tequila and over 80 brands of liqueurs. The spirits distribution market is regarded as highly competitive.

11.42 It is a market with low barriers to entry as the capital and skill requirements are not very specialised, and the licensing requirements are not onerous. Changes in market share have occurred in recent years with Independent Liquor taking a significant slice of the market.

11.43 It is apparent from Appendix L that shows the spirits and RTD distribution market that there is a large discrepancy between the IWSR figures and the NZ Customs figures in the spirits market. Given that Independent Liquor is not a participant in IWSR, a reasonable amount of the difference must be attributable to Independent Liquor's market share.

11.44 However, using either IWSR or NZ Customs data, it is clear that whether or not RTDs are included as part of the spirits market, the merged entity will not have a large enough market share to threaten either of the safe harbours. Adopting IWSR for spirits alone (without RTDs), being the higher of the market shares because the NZ Customs total is a larger figure and so the NZ Customs shares are smaller, Allied Domecq has [ ] and Pernod Ricard has [ ], totalling [ ]. In RTDs, the figures are [ ], and for spirits and RTDs together, [ ] (see Appendix L).

11.45 There is thus no competitive problem. This fits comfortably into the Commission's safe harbour definitions.

11.46 Overall this is a lively and competitive market reflecting not only the competitive striving of the diverse set of brands against one another, but the need to keep up with the shifting consumer taste among different spirit types.

12. Differentiated Product Markets

12.1 In Decision 306, the Commission noted that there are different levels within each spirit category, distinguished in terms of price and quality. Pernod Ricard believes that as far as gin is concerned, gin is not a blended or aged product. There is no segmentation based on the type or length of the production process or its geographic association. In other words, the gin market can be looked upon as a series of products that can be arranged in a price spectrum with the prospect of ready substitution.

13. Product Differentiation

13.1 Pernod Ricard draws to the Commission's attention that the European Commission in *Case No. COMP/M. 2268 – Pernod Ricard/Diageo/Seagram spirits* considered separate segments for different quality levels within each spirit category such as premium, secondary brands, private labels, low price, etc, but concluded that *"there is a continuous price spectrum ranging from the most expensive and the cheapest"*.

Vertical Integration

14. Will the proposal result in vertical integration between firms involved at different functional levels?

14.1 Are the *"acquirer"* (or any interconnected or associated company as identified in paragraphs 5.1 to 5.8) and:

- **the business to which the assets relate, or**

- **the *"target company"* (or any interconnected or associated company as identified in paragraph 5.9 to 5.15),**

engaged at different functional levels of the same product market(s)?

14.2 Both are fully vertical integrated entities. No additional issues arise.

14.3 **Please identify for each market:**

a. **product(s), functional level(s), geographic area(s) and (where relevant) timeframes;**

b. **the specific parties involved;**

c. **the relationship of those persons to the *"acquirer"* or *"the target company"* as the case may be.**

14.4 No additional issues arise.

14.5 **If so, in all subsequent questions about markets affected by the proposal, please give details of both (or all) the downstream / upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, e.g. supply agreements, long-term supply contracts.**

14.6 No additional issues arise.

15. In respect of each market identified in paragraphs 11 and/or 14 identify briefly:

15.1 **All proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,**

a. **the outcome of the notification (e.g. cleared, authorised, declined, withdrawn);**

b. **whether the proposed acquisition has occurred.**

15.2 While the participants have not to Pernod Ricard's knowledge undertaken any acquisition that was the subject of any application to the Commission, Pernod Ricard is aware of the following relevant decisions of the Commission (in the last five years) in which Allied Domecq's subsidiary Montana was involved:

a. Decision 401 (Montana/Corbans) in September 2000 cleared and acquisition completed;

b. Decision 406 (Lion Nathan/Montana) in December 2000 cleared and acquisition completed in part. Lion Nathan sold its 43% stake in Montana to Allied Domecq in August 2001.

15.3 **Any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

Pernod Ricard:

15.4 In 2001, apart from the acquisition of part of Seagram's wines and spirits business, Pernod Ricard acquired the Polish vodka company Wyborowa as well as the Czech company Jan Becher which produces bitters.

Since 2001, Pernod Ricard has not made any other acquisitions in the spirits sector.

In the wine sector, Pernod Ricard, through a wholly-owned subsidiary in New Zealand, acquired in 2004 the New Zealand wine company Framingham Wine Company Limited.

Allied Domecq:

15.5 In 2002, Allied Domecq acquired the liqueurs brand *Malibu*;

In 2004, Allied Domecq acquired 33% in MCS, a Belgian distributor;

In 2005, Allied Domecq acquired the white spirit brand *Marskin Ryyppy*;

In 2005, Allied Domecq acquired various Champagne vineyards.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

The market for the importation and production of white wine and sparkling wine for distribution

Existing Competitors

16. In the market or markets, who are the suppliers of competing products, including imports?

Wine (still and sparkling)

16.1 In the overall wine market, the key participants and their main brands are:

Table 3: Wine Market Participants and Brands

Company	Main Brands
Allied Domecq (target)	Montana Corbans Stoneleigh Timara Lindauer Wither Hills[1]
Nobilo (Constellation)	Hardy Nobilo Selak
Southcorp[2]	Penfolds Rosemount Lindemans
Pernod Ricard (applicant)	Jacob's Creek Wyndham Estate Framingham
Villa Maria	Villa Maria Vidals Esk Valley

Company	Main Brands
Foster's[2]	Matua Valley
	Wolf Blass
Agencies:	
Lion Nathan	Riccadonna
	Delegats
	Moet & Chandon
Maxxium	Brown Brothers
	McWilliams
	Heidsieck
Hancocks	Kim Crawford
	De Bortoli
	Pol Roger

Notes:

1 Distributed by Allied Domecq under an agency agreement with Lion Nathan.
2 Foster's is in the process of acquiring Southcorp.

16.2 In still white wine, the main competitors post-merger would be Nobilo [ ], Villa Maria [ ], Hancocks [ ] and Southcorp [ ] (see Appendix H).

16.3 In sparkling wine, the main competitor post-merger (in addition to Lion Nathan and Nobilo) and post-divestment would be the acquirer or acquirers of *Lindauer*, *Aquila*, *Italiano* and *Chardon* (see Appendix J).

Other Considerations

16.4 **Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality (*"near entrants"*).**

16.5 In wine (still and sparkling):

- Diageo, which as discussed above, currently has an option granted by Pernod Ricard;
- Gallo, a large California based wine company;
- other international wine companies.

16.6 **Estimate the productive capacity that such near entrants potentially could bring to the market.**

In both still and sparkling wine as well as gin, as discussed elsewhere, the existence of ready supplies means that an immediate source of productive capacity is available.

16.7 **Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?**

Wine (still and sparkling)

16.8 In 2004, imported wine (still and sparkling) represented 45 million litres, exports 31 million litres and New Zealand wine was 39 million litres.

16.9 Total wine consumption increased by 6% over 2003. New Zealand wine increased by 8%, imports by 2% and exports by 52%. Australian wine represented 33% of total domestic wine consumption.

16.10 Under the current tariff regime, Australian wine is tariff free. As a consequence, Australian wine makers represent a significant actual and continuing threat, acting as a constraint on the merged entity. These include Constellation (Nobilo/Hardys) and Southcorp/Foster's, arguably the top two worldwide wine companies by size. However, the 6.5% of current domestic value tariff on other countries is not seen as a significant barrier to entry for imports.

16.11 The domestic market comprised 84 million litres of which 44% was New Zealand wine and 56% was imported wine. Of the imports share of total wine consumption, 29.1% was imported in bulk and 26.6% was imported as packaged. Imported wine was sourced in 2004 from:

Table 4: Imported Wine Sources

	million litres
Australia	27.6
South Africa	9.7
Chile	2.3
France	1.2
Italy	1.4
Spain	0.7
Argentina	0.7
Other	1.4
Total	**45**

(Source: Wine Institute of New Zealand Incorporated 2004 annual report)

Between 2000 and 2004, total wine imports grew from 33.4 million litres to over 45 million litres.

16.12 Accordingly, it is apparent that imported wine represents a significant source of supply (and in 2004, a majority) of the total New Zealand domestic market. As the New Zealand dollar has recently risen against other currencies, imports have become relatively cheaper. In the past, when local production has been unable to meet demand, imports have provided a ready source of supply. Variable climatic conditions significantly influence the size of the harvest. The impact of transport costs and international price movements are not considered to have a material impact on imports, particularly imports from Australia. It is anticipated that imports will fall in 2005 due to the availability of locally produced wine which will be marketed intensively following the large 2004 harvest. The availability of imports, both bulk and packaged, therefore provides a significant constraint on domestic suppliers.

16.13 In relation to the distribution of wines and spirits, the observed practice of parallel importing presents a real and ready threat to distributors of imported brands.

Exports

Wine (still and sparkling)

16.14 In 2004, 114 million litres of wine (160,000 tonnes crushed) was produced, of which 42 million litres was exported. New Zealand sales were 39 million litres, leaving a surplus of 33 million litres. This surplus must be held as inventory, with some wine varieties being more suited for storage, or sold at a discounted price. For the surplus to be absorbed by exports, exports would need to grow very substantially.

Competitive Constraints

Wine (still and sparkling)

16.15 In summary, the factors that influenced the Commission's conclusions in Decisions 401 and 406 (albeit in the context of the previous dominance test) are more prevalent than they were in 2000:

a. since 2000, the increased competition from existing competitors such as Nobilo and Southcorp, both financed by off-shore investment by Constellation and Foster's respectively, will continue to provide an effective competitive constraint on the merged entity;

b. there continue to be no significant barriers to entry or expansion and potential new competition would continue to provide an effective constraint. The <$8 a bottle market remains the largest sector of the market further illustrating that the entry point is not restricted to premium wine production. Imports, particularly from Australia, represent a significant constraint;

c. the strong countervailing power of the two large supermarket groups (following the 2001 merger of Woolworths and Progressive) in relation to wine continues to be a significant constraint (together with alternative supply sources). To a lesser extent, the non-supermarket suppliers, particularly independent agents and distributors, remain a constraint;

d. the increased availability of the supply of wine following the large 2004 harvest and forecast similarly large 2005 harvest, together with imports of wine under the current tariff regime, provide a constraint.

Together with the divestment undertakings (attached as Appendix N), the applicant submits that the proposal will not substantially lessen competition in the relevant markets. The merged entity would, following implementation of the divestment undertakings Pernod Ricard is prepared to offer, see the level of market share for still white wine brought within the Commission's safe harbour guidelines[

].

The market for the importation or production of gin for distribution

16.16 This section discusses the gin market. While Pernod Ricard has assessed the gin market above carefully based on the fact that IWSR data does not capture all participants (in particular Independent Liquor), it concedes that from Pernod Ricard's perspective, the market share of that competitor is not known. This has the potential to impact on the calculations used by Pernod Ricard. Accordingly, Pernod Ricard makes these submissions on the basis that the Commission will on a confidential basis enquire as to the actual market share of Independent Liquor and that Pernod Ricard's assessment may differ. As discussed above, Pernod Ricard's calculation is shown in Appendix M.

16.17 Pernod Ricard reiterates its request of the Commission that the Commission approach Pernod Ricard as early as possible if the Commission's initial assessment differs from that proposed by Pernod Ricard, or if the Commission wishes to discuss the calculations used in this application to determine the market shares for gin.

16.18 The 2004 IWSR Report indicates that gin is the number two spirit after whisk(e)y, although retail sales declined 3.9% over the previous 5 year period. *Gordons*, *Seagers* (Allied Domecq) and *Seagrams* (Pernod Ricard) have the largest market shares respectively in the gin market. However, the IWSR data does not include the Independent Liquor brands such as *Partingtons, Downings* and *Carthews* and other local market participants.

16.19 The IWSR figures for gin show that, over the period from 2000-2004, Pernod Ricard and Allied Domecq brands have faced significant competition from the market leader *Gordons* [   ], *Bombay Sapphire* [   ] and *Greenalls* [   ] while other brands consistently account for 13% of overall volume.

16.20 Pernod Ricard and Allied Domecq's gin brands face strong competition in the market. Pernod Ricard's gin brand pre-acquisition is *Seagrams*. Allied Domecq's gin brands pre-acquisition are *Beefeater* and *Seagers*.

16.21 Immediately after the acquisition, Pernod Ricard's gin portfolio would include *Seagers*, *Seagrams* and *Beefeater*.

16.22 As discussed above, post-acquisition Pernod Ricard's market share in the gin market would be well below the relevant 40% safe harbour threshold.

16.23 The merged entity's gin brands face strong competition from international competitors Diageo which owns *Gordons* and Bacardi-Martini which owns *Bombay Sapphire*, and from other gin brands such as *Greenalls* (Maxxium) and *Gilbeys* (Diageo). Other brands include those owned by Independent Liquor (with its brands *Partingtons, Downings* and *Carthews*) and other local producers (such as Kings with *London Light* and *Kensington*, *Wilson's Empire* from Foster's and *Stewart's Gin* from Marken) or other imported gin brands (such as *Coldstream* and *Golden Ice* from Federal Geo, *Aristocrat* from Heaven Hill and *Hogarths* from M & M Global).

To what extent is the product exported?

Gin

16.24 Locally made gin brands are primarily made for the New Zealand market. *42 Below* is exported. In the 12 months to the end of 2004, $43.70 million of spirits, predominantly white spirits, was exported including *Gordons Gin* (and *Smirnoff Vodka*) (DSA 2004). The cost in New Zealand of producing and sourcing white spirits required for the manufacture of gin is low.

Conditions of Expansion

17. Market Conditions

17.1 The applicant is of the firm view that there are few, if any, entry or expansion conditions in the affected markets, taking into account the ability to import, that would hinder new entry or further expansion by local or overseas wine or spirit producers or suppliers. More importantly, many of the participants in the wine and spirits industry, some of them international in nature (including Constellation and Foster's in wine and Diageo and Bacardi-Martini in gin) have the ability and capacity to expand their supply in or into the New Zealand markets in accordance with demand (as indeed Allied Domecq did when it acquired Montana in 2000). While the combined market share of Pernod Ricard and Allied Domecq will cross over the safe harbour thresholds in the affected markets, any attempt to impose a *"ssnip"* would meet with an immediate response from incumbents.

17.2 Other wine producers such as Nobilo, Southcorp and Villa Maria export significant quantities of wine, some of which could be easily diverted to the domestic market if Pernod Ricard attempted to impose a *"ssnip"* post-acquisition. The constraint imposed by such an *"export diversion strategy"* was accepted by the Commission in Decision 468, Fletcher Challenge Forests/Central North Island Forest Partnership at paragraph 261.

The applicable import duty excise and ALAC levies are set out below.

Table 5: Import Duty, Excise and ALAC Levies

Import Duty	Australian Wine and Champagne Non Australian Wine Gin and Vodka Other Spirits	Free 7% of FOB[1] 7% of FOB Free
Excise Duty[1]	Spirits Fortified Wine Liqueurs Table Wine RTD (2.5 – 6.0%) RTD (6.0 – 9.6%)	\$41.146 per Lal[2] \$41.146 per Lal \$41.146 per Lal \$2.2592 per Litre \$2.2592 per Litre \$1.8074 per Litre
ALAC Levy	Table Wine Spirits > 23% Spirits < 23%	3.19c per Litre 28.42 c per Litre 5.21c per Litre

[1] Excise duty increased by 2.78% on 1 June 2005
[2] Lal = Litre of alcohol

18. Please name any business which already supplies the market – including overseas firms – which you consider could increase supply of the product concerned in the geographic market by diverting production into the market, increasing utilisation of existing capacity and/or expanding of existing capacity

18.1 All of the participants in the markets identified for the wine market in Table 3 and Appendix H and for the spirits market in Appendix L above have the ability to increase supply to meet demand including, as discussed above, most large wine producers, by diverting exports into the domestic market.

19. **Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?**

19.1 Nil.

20. **How long would you expect it to take for supply to increase in each case?**

20.1 No appreciable delay – the period of manufacture and transportation following receipt of an order for wines or spirits.

21. **In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?**

21.1 Competitive response would be an absolute constraint upon the merged entity. Competitors have availability of supply, distribution in place and retailers able to adjust promotions and presentation of brands.

22. **Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**

Wine (still and sparkling) and spirits

22.1 A number of factors would give rise to existing wine competitors being able to effectively constrain the merged entity. First, there are competitors with sufficient resources to compete with the merged entity. Domestic and international competitors, particularly Australian, are able to constrain the merged entity due to the availability of locally produced and imported wine. Secondly, as discussed in more detail below, the dominant distribution channel (supermarkets) are a countervailing power and there is consequently vigorous competition.

22.2 In the spirits market, particularly in gin, the readily available white spirits required to produce gin, the easy substitution of brands by consumers and their willingness to experiment and try new brands, would mean the merged entity would be sufficiently constrained by existing competitors.

22.3 In 2004, Pernod Ricard changed the size of its *Seagrams* gin bottle from 1125 ml to 1 litre with no change in price. This resulted in a significant drop in sales as consumers (largely an ageing demographic group, which accounts for the decline in overall gin sales) switched to competing gin brands. Competitors were able to meet the increased demand for their product without difficulty. This illustrates that the gin market is highly competitive and price sensitive. Even premium brands are constrained by competition due to the availability of competing product and the willingness of consumers to change brands in the event of a material price increase.

Co-ordinated Market Power

23. **Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.**

23.1 Given the presence of effective competition and due to the asymmetries in their portfolios size and in their diversities of products offered, the acquisition will not give rise to any risk of co-ordination between the merged entity and any of their major competitors for any given portfolio or category.

23.2 The following key factors impede co-ordination in the affected markets:

- the affected markets are characterised by differentiated products (relating primarily to quality of the wines and spirits) and therefore it is more difficult for participants to agree or collude on price. The different cost structure for wines and spirits emphasise this feature;

- new firms, through importation and locally (see Independent Liquor as an example), can enter the affected markets and grow relatively quickly;

- there are a significant number of competitors, such as Nobilo with approximately[ ], Villa Maria with [ ] and Hancocks with [ ] in still white wine (AC Nielsen figures) and Diageo, Bacardi-Martini, Independent Liquor and Foster's (*42 Below*) in gin which could expand their distribution of New Zealand products and importation of competing products with minimal delay, defeating any attempt to tacitly increase price;

- there is no record of either the wine industry or the spirits industry price – fixing or undertaking other forms of collusion;

- on balance, from the factors discussed above, the acquisition is unlikely to materially change the scope for co-ordinated behaviour.

24. Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

24.1 The following characteristics of the affected markets impede the ability of firms to monitor and punish deviations from a hypothetical collusive arrangement between the participants:

- the costs of firms differ according to the manufacture of the different types of wines and spirits;

- Pernod Ricard considers the different cost structures and inputs of market participants (particularly taking into account imports) make it difficult to monitor and punish deviations from a hypothetical collusive arrangement.

25. Indicate whether the markets identified in paragraph 11 above show any evidence of price coordination, price matching or price following by market participants.

25.1 The affected markets are as indicated above very competitive and participants react to competitors' prices. To Pernod Ricard's knowledge, there is no evidence of price co-ordination, price matching or price following by market participants that would suggest the existence of tacit collusion.

26. Please state the reasons why, in your opinion, the transaction will not increase the risk of coordinated behaviour in the relevant market(s).

26.1 The market characteristics identified in paragraph 23 of this application prevent the acquisition from increasing the risk of co-ordinated behaviour in the relevant markets. Market participants, because of differences in portfolio size and diversity, the lack of transparency in pricing to distributors, the presence of imported products, and the threat of new entry and the ease of expansion, are unlikely to reach a collusive arrangement or understanding. Moreover, approximately [ ]% of the retail sales of wines are made through supermarket chains with significant countervailing power.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

27. The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:

27.1 See paragraph 29 below.

28. Please name any businesses which do not currently supply the market but which you consider could supply the relevant market(s).

28.1 See paragraph 29 below.

29. What conditions of entry do you consider would most influence the business decisions to enter in each case?

29.1 See Part III above. Any of the global producers of wines or spirits (including gin) could enter the New Zealand market with minimal delay in response to supra-competitive pricing by the merged entity. The following key wine producers could begin supplying additional brands of wines in New Zealand:

- *Constellation* – arguably the largest wine company in the world. Currently Nobilo in New Zealand produces some wines in New Zealand but this could easily be increased as it has the ability and capacity to produce in large quantities. Constellation's Australian-based Hardy Wine is also actively involved in the New Zealand market;

- *Foster's* – owner of *Matua Valley* and *Shingle Peak* brands in New Zealand. Following the acquisition of Southcorp, it will arguably become the second largest wine company in the world. It has the ability and capacity to increase production. Southcorp's brands include *Penfolds, Lindemans, Queen Adelaide* and *Rosemount.* Foster's is also active in New Zealand with *Wolf Blass*;

- *McWilliams Wines* – Australian (NSW) wine producer;

- *Yalumba* – South Australian wine producer; and

- *McGuigan Wine* – a listed Australian producer.

Approximately [ ]% of the total wine market is sold through supermarket chains which have major countervailing power with the ability to encourage alternative supply arrangements with incumbents and/or potential entrants.

The following key players could increase their supply of gin brands in New Zealand:

- *Diageo* – a significant international entity [ ];
- *Bacardi-Martini* – same comments as above for Diageo;
- *Independent Liquor* – who could produce gin in larger quantities and is able to introduce new brands into the category, having done so in the past;
- *Fortune Brands* – currently only in the whisk(e)y market in New Zealand but could easily expand into gin;
- *42 Below* – originally a participant in the vodka market and has recently expanded into gin with its *South* brand.

The effect on competition of the distributors is discussed above.

Likelihood, Sufficiency and Timeliness of Entry

30. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?

30.1 No appreciable delay. See paragraph 35 below.

31. Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at post-acquisition prices?

31.1 If Pernod Ricard increased prices post-acquisition an entrant would consider entry profitable, particularly if encouraged by the offer of a supermarket contract for wines.

32. Would the threat of entry be at a level and spread of sales that is likely to cause market participants to react in a significant manner?

32.1 Yes, particularly in relation to wines if a contract were offered by one of the supermarket chains.

33. What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, i.e. *de novo* entry?

33.1 See paragraph 35 below.

34. How long would you expect it to take for *de novo* entry to occur?

34.1 See paragraph 35 below.

35. In your opinion, to what extent would the possibility of *de novo* entry constrain the merged entity?

Wine (still and sparkling)

35.1 New entrants in the domestic market face few constraints. Subject to financial investment and lead time for new vines and for any changes in grape variety, entry is relatively straightforward. Winemaking plant and equipment are readily available through distributors in New Zealand. Production aspects such as grape crushing, wine making and bottling, are able to be carried out by contractors.

35.2 The New Zealand producing vineyard area continues to increase (from 10,197 hectares in 2000 to 18,112 hectares in 2004) as does the number of wineries (from 358 in 2000 to 463 in 2004), particularly in the <200,000 litres sales and the between 200,000 and 2,000,000 litres sales sectors. (Source: Wine Institute of New Zealand 2004 annual report).

35.3 Brand reputation and access to a distribution network are not regarded by producers as significant barriers to entry. Consumers tend to experiment with different brands and varieties of wine. This enables new entrants or existing market participants to establish new brands or expand existing brands. While the supermarkets are the largest and fastest growing distribution channel for wine they are able and have begun (Progressive) to promote *"own brands"* in competition with the merged entity and other competitors.

Gin

35.4 The costs of establishing a new brand with global reach are significant where brand image is important in the premium segment. A significant investment in marketing is required to establish and maintain a leading premium international brand. This represents a high barrier to entry in the leading brands segment. However, this has not discouraged *42 Below* from seeking to establish an international premium brand. In the case of lower price segments, a much lower barrier is imposed, as has been evidenced by the growth of Independent Liquor and its gin brands in the local market.

35.5 In the gin market, two factors prevail:

a. low barriers to entry; and

b. the presence of strong competitors and powerful purchasers.

35.6 Labelling requirements and bottling are not significant barriers to entry. At the producer level, transport costs are generally low and at the same level of trade, and duties and taxes do not form a barrier to entry (being paid only when the goods are released for consumption in a domestic market).

35.7 Although exclusive distribution or brand agency arrangements are commonplace, they do not represent a significant barrier because of the existence of a significant number of independent distribution companies. So far as concerns advertising, while it plays a major role in competition in the spirits industry, the resources available to the main competitors of Pernod Ricard and Allied Domecq are such that the need for advertising support cannot be considered to constitute a barrier to trade. Indeed, the cost effectiveness of current and newer forms of advertising (such as viral marketing) in a heavily branded market such as the spirits market operates to facilitate new entry and cross entry from other geographic markets and products. There are numerous examples in New Zealand, facilitated by restricted advertising on television and other forms of media.

35.8 The applicant submits that no onerous entry barriers at the production level exist in relation to gin. Gin is produced from neutral white spirit, supplies of which are readily available to new entrants.

35.9 There are no significant barriers to entry in the gin market (or indeed in any of the other spirits markets) in terms of the labelling or bottling requirements, transport costs, duties and taxes, distribution arrangements or advertising expenditure.

35.10 Further, given the existence of a significant number of independent distribution companies, exclusive distribution or brand agency arrangements do not represent a significant barrier to entry.

35.11 The recent announcement of the acquisition by Woolworths Limited (Australia) of Foodland's New Zealand business contained a statement by its Chief Executive Officer that Woolworths saw liquor as a future growth opportunity in New Zealand. Pernod Ricard points out that in Australia, Woolworths operates stand-alone spirits outlets separate from its supermarkets. (Source: Woolworths Limited news release 25 May 2005).

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

36. Who would be the suppliers of goods or services to the merged entity in each market identified in paragraphs 11 and/or 14?

36.1 In relation to wine, this is discussed in paragraph 11.

In relation to gin, this is discussed in paragraph 11.

37. Who owns them?

37.1 In relation to wine, this is discussed in paragraph 11.

In relation to gin, this is discussed in paragraph 11.

38. In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each relevant market?

38.1 In relation to wine, this is discussed in paragraph 11.

In relation to gin, this is discussed in paragraph 11.

Constraints on Market Power by the Conduct of Acquirers

39. Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in paragraphs 11 and/or 14?

Wine (still and sparkling)

39.1 The wine market is fiercely competitive. This has largely come about due to the growth of the supermarkets as the dominant distribution channel and the effect of three supermarket players becoming two. Supermarkets account for about an estimated [ ]% of the total market sales of wine from about 50% five years ago. This growth trend is expected to continue. In 2004, alcohol was the largest growth sector in groceries showing [ ]% growth. The Commission in the past has acknowledged the significant impact of the countervailing power of supermarkets.

39.2 The reduction of the three major supermarkets players in 2001 into two has resulted in greater competitive pressures on suppliers. The catch phrase used in the industry is *"if you are not in one, you have to be in the other"*. The two largest supermarket groups, Foodstuffs and Progressive, are able to exert countervailing power and constrain competing suppliers. The two supermarket groups are able to dictate terms by requesting that the supplier increase its promotional expenditure on a product, or by requiring the supplier to increase its price support or purchase an allocation of shelf space for a limited period of time, to maintain and grow brands. As a result, competition has intensified.

39.3 The following table illustrates the increase in the trade marketing costs of Pernod Ricard since 2000.

Table 6: Pernod Ricard New Zealand Limited: Impact of intensified competition from the grocery sector

YE 31 December	2000	2001	2002	2003	2004
Sales Volume 9Le cases 000s	[	[ ]	[ ]	[ ]	[ ]
Net sales revenue $NZ000s	[ ]	[ ]	[ ]	[ ]	[ ]
Trade Marketing costs $NZ000s	[ ]	[ ]	[ ]	[ ]	[ ]
Trade marketing costs per case $NZ	[ ]	[ ]	[ ]	[ ]	[ ]

Note: Progressive took over Woolworths NZ in 2002. In the lead up to this, grocery competition began to escalate.

39.4 Supermarkets are led by margins and volume. Supermarkets are experimenting with *"own brands"*. Progressive has its own *"controlled brands"*, which are close to own brands. While overall consumption of wine has grown in New Zealand, there has also been a corresponding decline in average prices. There has also been a degree of consumers trading up in price segments as consumers have become more discerning in response to quality wines becoming cheaper. It is in the interests of the supermarkets to foster competition and to encourage brands to compete against one another, so in turn competing with the competing supermarket group. Brands have been able to grow in this environment. For example, in the sparkling segment, Pernod Ricard itself has grown *Jacob's Creek* sparkling wine from relatively low sales to become a direct competitor for *Lindauer* over the last four years. Brands such as *Kim Crawford* and *Sacred Hill* have experienced significant growth from supermarket sales.

Table 7: Wine Sales in Supermarkets

Wine Sales in Supermarkets			
	2003	2004	% Change
Sales ($ Millions)	[ ]	[ ]	[ ]
Volume (Unit Millions)	[ ]	[ ]	[ ]
Average Price/Pack	[ ]	[ ]	[ ]
White Bottle Wine ($ Millions) Sales	[ ]	[ ]	[ ]
Red Bottle Wine ($ Millions) Sales	[ ]	[ ]	[ ]
Sparkling ($ Millions) Sales	[ ]	[ ]	[ ]
White Cask ($ Millions) Sales	[ ]	[ ]	[ ]
Red Cask ($ Millions) Sales	[ ]	[ ]	[ ]
Fortified ($ Millions) Sales	[ ]	[ ]	[ ]

(Source AC Nielsen)

39.5 The large 2004 harvest (with wine arriving in the market by July/August 2005) and the forecast for a similarly sized 2005 harvest based on plantings and other data will result in increased supply in the domestic market and is likely to exceed any growth in demand. This will lead to pressure on prices and greater competition. This is already in evidence based on lower prices currently advertised vigorously by supermarkets.

Gin

Current Distributors

39.6 Current distributors of spirits are:

a. **Hancocks Wine & Spirits Merchants –** Hancocks has an extensive wine and spirit portfolio, specialising in the sale of brands including:

- Whisk(e)y - *Dewars, Jack Daniels, Southern Comfort*;
- Bourbon – *Southern Comfort, Early Times, Woodford Reserve*;
- Gin – *Bombay Sapphire*;
- RTDs – *Bacardi, Jack Daniels, Southern Comfort*;
- Rum – *Bacardi*;
- Tequila – *Pepe Lopez, El Jimador, Herradura*;
- Vodka – *Finlandia, Grey Goose*.

b. **Foster's Group New Zealand Limited –** FGNZ is a beverage supplier with a portfolio of beer, wines, port, spirits, cider and non-alcoholic beverages including:

- Gin – *South Gin (42 Below), Wilson's Empire*;
- RTDs – *Captain Morgan & Cola*;

- Rum – *Bounty, Captain Morgan*;
- Tequila – *Coyote*;
- Vodka – *42 Below*;
- Whisky – *100 Pipers, Black Douglas, Wilson's*.

c. **Independent Liquor (NZ) Ltd –** Manufacturer, distributor and exporter of RTDs, beers, spirits, liqueurs, spirit mixes, alcoholic sodas, energy drinks, wines and imported beers including:

- Gin – *Downings, Partingtons, Carthews*;
- Liqueurs – *Canterbury Cream*;
- RTDs – *KGB, Mudshakes, Purple Goanna, Tattoo, Vodka Cruiser, Woodstock*;
- Rum – *Wild Bull*;
- Vodka – *Bronski, KGB*;
- Whisky – *Glen Nevis, Claymore, Woodstock (Bourbon)*.

d. **Lion Nathan Wines & Spirits –** agents and importers of international branded spirits, liqueurs, champagne, wine and beer including:

- Gin – *Gordons, Tanqueray*, *Seagers, Beefeater*;
- RTDs – *Archers, Baileys, Black Heart, Coruba, Gordon's, Kahlua, Smirnoff, Stoli*;
- Rum – *Appleton, Blackheart, Bundaberg, Coruba*;
- Tequila – *Jose Cuervo*;
- Vodka – *Christies, Cossack, Smirnoff, Stolichnaya*;
- Whisk(e)y – *Bell's, J & B, Johnnie Walker, McCallum's*, *Ballantine's*, *Teachers*

e. **Maxxium New Zealand –** a distributor of spirits and wines from throughout the world including:

- Gin – *Greenall's, Plymouth*;
- Liqueurs – *Cointreau, Frangelico, Galliano, Midori*;
- RTDs – *Jim Beam, Midori*;
- Rum – *Mount Gay*;

- Vodka – *ABSOLUT, Vladivar*;
- Whisky – *The Famous Grouse, Tullamore, Whyte & Mackay, Jim Beam, Bookers (Bourbon)*.

f. **Pernod Ricard New Zealand Limited –** Pernod Ricard New Zealand Limited is a subsidiary of the applicant, Paris based Pernod Ricard, an international wine and spirit company producing a range of wines, spirits, drinks and other beverages, many of which are distributed by Pernod Ricard New Zealand Limited including:

- Gin – *Seagrams*
- RTDs – *Wild Turkey*
- Rum – *Havana Club*
- Tequila – *Olmeca*
- Vodka – *Wyborowa*
- Whisky – *Chivas Regal, Jameson, Wild Turkey*

(Source: Shaw's Liquor Directory 2005/2006)

39.7 As described in paragraph 11 above, there is vigorous competition in the distribution of spirits market including gin. Despite the absence of a major participant or participants such as the supermarkets in the wine market, there is no doubt that some degree of countervailing power exists because in practice any distributor is able to bypass the merged entity.

40. Who owns them (where appropriate)? Please list as follows:

40.1 In relation to wine, this is discussed in paragraph 11.

In relation to gin, this is discussed in paragraph 11.

41. In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?

42. Constraints provided by divestment undertaking

42.1 Pernod Ricard proposes to execute divestment undertakings ("PR Divestments") by way of deed in favour of the Commission, as set out in Appendix N to this Application (the "Deed"), where such divestments are to be treated as a condition of any clearance granted by the Commission in respect of this application. Pernod Ricard would like to discuss the form of the undertakings with the Commission at its earliest opportunity.

42.2 The PR Divestments will establish a further constraint, post-acquisition on the merged entity.

Market Shares

42.3 The table below shows the market shares of Pernod Ricard and Allied Domecq in the markets affected by the undertaking, namely the sparkling wine and still white wine markets.

Table 8: Market shares post-divestment

	Sparkling wine %	Still white wine %	Distribution of wine %
Pernod Ricard	[ ]	[ ]	[ ]
Allied Domecq	[ ]	[ ]	[ ]
Merged Entity	[ ]	[ ]	[ ]
Post-divestment	[ ]	[ ]	[ ]

* The threshold is 20%.
** The threshold is 40%.

(Source: IWSR. AC Nielsen used for still white wine.)

42.4 As indicated by the table above and as stated earlier, in the sparkling and still white wine market segments, the merged entity's market share will fall outside the Commission's safe harbours contained in the Commission's current *Mergers & Acquisitions Guidelines*.

42.5 As an integral part of the application, Pernod Ricard gives the undertakings set out in the Deed to divest *Lindauer*, *Aquila, Italiano* and *Chardon,* and *Chasseur* in the sparkling wine and still white wine market segments respectively to bring the merged entity within the safe harbours. Given the divestment undertakings, Pernod Ricard submits that the proposed acquisition will not result in the substantial lessening of competition in the relevant markets.

42.6 As set out in the table below, Pernod Ricard is undertaking to divest leading brands in those market segments that could give rise to competition issues. Each of the brands to be divested is a strong brand with market shares large enough to bring the merged entity within the safe harbours upon completion of the PR Divestments.

42.7 Following the PR Divestments, the market share of the merged entity in the relevant market segments is projected to be sparkling wine–[ ]%, still white wine–[ ]% and distribution of wine–[ ]%.

Viability of the PR Divestments

42.8 The applicant considers that the PR Divestments can be achieved within the 12 months timeframe given in the undertaking, and is confident that expressions of interest will be received either from existing competitors or from potential new competitors for the reasons set out below. There is a possibility that the option granted to Diageo may not be exercised, in which case Pernod Ricard would need sufficient time to seek another purchaser for the brands proposed to be divested. To allow for that event, 12 months from the date the scheme of arrangement becomes effective would be required as a minimum.

42.9 As *Lindauer* is a leading brand in the sparkling wine market, the applicant considers it a strategic move to divest *Lindauer* and other sparkling brands *Aquila, Italiano* and *Chardon* together with *Chasseur* (the "Package") so as to obtain the best possible price for the divestment. However, we examine the possible sale of *Lindauer* and the other sparkling brands *Aquila, Italiano* and *Chardon* and *Chasseur* separately below.

***Lindauer* and other sparkling brands**

42.10 *Lindauer* is New Zealand's biggest and most widely exported sparkling wine brand (as well as among the most well known within and outside New Zealand). [ ] *Aquila, Italiano* and *Chardon* are strong brands and continue to generate very good sales in this segment.

42.11 The applicant considers that the following existing competitors may be potential purchasers of *Lindauer* and the other sparkling brands *Aquila, Italiano* and *Chardon*:

a. Diageo, which as discussed above has been granted an option by Pernod Ricard to acquire the Montana Assets, which include *Lindauer*, the other sparkling brands and *Chasseur*;

b. Lion Nathan, which already currently owns or is the agent for a significant portfolio of wines and spirits in New Zealand including sparkling brands;

c. Nobilo, the wholly-owned New Zealand subsidiary of Constellation, one of the largest wine companies in the world, with sparkling wine brands including *Nobilo, Hardy's* and *White Cloud*. Constellation is a major producer of sparkling wines in Australia;

d. Foster's, which is acquiring Southcorp and is the second largest wine company in the world. Foster's is a major producer of sparkling wines in Australia;

e. Villa Maria, a sizeable New Zealand wine company with a well established domestic and export distribution network. It has the sparkling brand *St Aubyns*; and

f. Vincor, which owns Kim Crawford.

Chasseur

42.12 *Chasseur* is a leading cask brand in the still white wine market and has been in the New Zealand market for over 30 years. The brand is well established. The brand was retained by Montana on the acquisition of Corbans, in recognition of its strong brand presence in the market.

42.13 The applicant considers that *Chasseur* would be an attractive acquisition to the following potential purchasers:

a. Diageo, as discussed above in relation to *Lindauer* and other sparkling wine brands;

b. Nobilo/Constellation, active in cask wine in Australia and markets cask wine in New Zealand;

c. Foster's, which has recently acquired Southcorp which is a participant in casks in Australia;

d. Villa Maria, a major producer of wines;

e. Independent Liquor (NZ) Limited, which has two white and one red cask brands under the name *Mystic Ridge* and has the necessary production and manufacturing facilities to produce cask wine. Independent is in addition the purchaser of a large quantity of bulk wine which is converted into cask wine and therefore has the capacity to expand. Further, Independent is strong in the lower end of the wine market;

f. retail liquor chain owners such as Lion Nathan;

g. supermarkets – either Progressive (Woolworths) or Foodstuffs may be potential bidders, with the production agreement contracted out to any of the existing producers, including the merged entity. The brand, however, would be owned by the supermarket company; and

h. any other companies identified as potential purchasers of *Lindauer*, *Aquila*, *Italiano* and *Chardon* in a formal sales process. The production side would be contracted out where the purchaser is not currently active in cask wine in New Zealand.

42.14 Further, as was accepted by the Commission in Decision 401 in relation to wines and in Decision 306 in relation to spirits, barriers to entry in relation to wines and spirits are considered to be low. On this basis, the applicant considers that a stand-alone buyer may well be a potential purchaser of the PR Divestments. The applicant, however, considers that it is more likely that an existing competitor would be the purchaser of the PR Divestments.

42.15 The applicant has considered the risk framework devised by the Commission in Decision 545 in relation to divestment undertakings and addresses the Commission's risk framework analysis as follows:

a. Do any of the proposed divestments require disaggregating a manufacturing/sales operation or are the manufacturing and sales operations of the proposed divestments currently separate?

***Lindauer* and other sparkling brands**

Lindauer is a sparkling white wine made in the tradition of *"champagne"*. It is produced in New Zealand by Allied Domecq (NZ). Lindauer has a very strong brand reputation in New Zealand and overseas, particularly in the UK. [ ] No practical issues in terms of separation are foreseeable. [ ]

Similar comments apply to *Aquila, Italiano* and *Chardon.*

The distributor of *Lindauer, Aquila, Italiano* and *Chardon* is Allied Domecq (NZ). The sales and distribution channel for *Lindauer, Aquila, Italiano* and *Chardon* is as described above in paragraph 11 above.

Chasseur

Chasseur is a still white (and red) cask wine produced in New Zealand by Allied Domecq (NZ). Pernod Ricard proposes to divest the red cask brand *Chasseur* (as noted above, a divestment is not necessary in the red still wine market) together with the white wine cask brand *Chasseur* because they are necessarily tied together as part of the whole brand. *Chasseur* is a long established brand in the New Zealand market. [

]

The primary distributors of Chassuer are supermarkets. The sales and distribution channels for *Chasseur* are as described in paragraph 11 above.

In conclusion, the applicant submits that as the manufacturing and sales operations of *Lindauer*, *Aquila, Italiano, Chardon* and *Chasseur* are separate, a clean and robust separation can occur. The applicant notes the Commission's preference for this approach.

b. Does Pernod Ricard have full control (pre-acquisition) of all the brands it proposes to divest or do some of the divestments relate to brands/assets of Allied Domecq (post-acquisition)?

   i. *Lindauer, Aquila, Italiano* and *Chardon* – are currently owned by Allied Domecq through its wholly-owned subsidiary, Allied Domecq (NZ). However, as set out in this application, the takeover is not a hostile takeover and the parties are co-operating closely to ensure that Pernod Ricard's proposed acquisition of Allied Domecq is consummated. As Pernod Ricard will have full control over the Allied Domecq (NZ) business, separation is not likely to be hampered in this respect. Pernod Ricard is experienced in making sparkling wine with its own brand *Jacob's Creek Sparkling;*

   ii. *Chasseur* – is a white wine cask brand, also owned by Allied Domecq. The same comments as above apply.

c. Are there any limitations in terms of the territory that the divestments will apply to?

   It is intended that the divestments will apply worldwide. Accordingly, the purchaser of *Lindauer* will also acquire the significant export business together with the domestic supply.

d. Will the potential purchaser have access to required technical know-how (if required?

   Yes. Pernod Ricard would offer co-packing arrangements and, if necessary, interim support. The likely purchaser of *Lindauer*, *Aquila, Italiano* and *Chardon* would have an existing presence in the sparkling market and therefore possess the technical knowledge of the production process. Technical expertise would also be generally available in the market place.

e. Will the purchaser have access to all necessary intellectual property (including all trade marks, copyright and patents)?

Yes. It is intended that the divestments will include the sale of *Lindauer, Aquila, Italiano, Chardon* and *Chasseur* together with the intellectual property associated with each of those brands and any manufacturing, production, supply and distribution agreements together with existing inventories and finished goods, and dry goods requisites associated with *Lindauer, Aquila, Italiano* ,*Chardon* and *Chasseur*.

f. Have potential purchasers been identified in terms of the brands disposed of? Is there any certainty over the nature and strength of the potential purchaser of the brands to be divested?

See comments at paragraphs 42.11 and 42.13 above.

g. Is the likely purchaser a complementary buyer (i.e. a new entrant to the wines and spirits market, but currently participating in the industry), or a stand-alone buyer (i.e. a new entrant to the market, not currently participating in the industry)?

The applicant considers that the more likely purchaser would be a complementary buyer. See comments above.

h. Is there the potential for market share to be eroded during the divestment period having regard to the proposed length of time for the brands to be divested?

No. Given the commercial imperative to achieve the best possible sale price, it is in Pernod Ricard's interests to ensure the value of the brands is maintained during the divestment period. The length of time proposed is typical for this type of transaction and is necessary to enable Pernod Ricard to conduct a thorough and orderly process [

].

i. Do issues arise in relation to the retention of key employees?

No.

j. Will Pernod Ricard face conflicting incentives, both to obtain the highest price for each of the brands it proposes to divest, and to sell to a weak competitor?

No. A rigorous and process-driven formal sales process will be undertaken in each case to achieve the best possible sale price. Pernod Ricard will select the final purchaser on the basis that it is seeking the highest possible price.

THIS NOTICE is given by Laurent Lacassagne on behalf of Pernod Ricard S.A.

Pernod Ricard S.A. hereby confirms that:

* all information specified by the Commission has been supplied;
* all information known to the applicant which is relevant to the consideration of this application/notice has been supplied;
* all information supplied is correct as at the date of this application/notice.

Pernod Ricard S.A. undertakes to advise the Commission immediately of any material change in circumstances relating to this application/notice.

Dated this {9} day of {June} 2005.

Signed by Pernod Ricard S.A.:

{Laurent Lacassagne}

Duly authorised attorney

I am duly authorised to make this application/notice.

Appendix
"A"

Pernod Ricard

Not for release, publication or distribution, in whole or in part, in or into or from, Australia, Canada or Japan

Pernod Ricard S.A. announces the sale of Bushmills and the granting of an option to acquire the majority of Montana including an exclusivity agreement with Diageo plc in relation to the acquisition of Allied Domecq plc

Paris, 6 June 2005 – Pernod Ricard S.A. announces the signing of the sale of The "Old Bushmills" Distillery Company Limited ("Bushmills") including the "Bushmills" Irish whiskey brand and the granting of an option to acquire the majority of Montana's New Zealand wine business following Pernod Ricard's acquisition of Allied Domecq plc ("Allied Domecq") including an exclusivity agreement with Diageo plc in relation to the acquisition of Allied Domecq.

The agreed expected purchase price of Bushmills is approximately €295 million, based on 14 x the direct brand contribution ("DBC") of Bushmills for the year to 31 December 2004.
Under the option relating to Montana, Diageo would acquire the majority of Montana's New Zealand wine business. If exercised, Diageo would acquire all of the Montana business with the exception of the Corbans, Stoneleigh and Church Road wine brands and related assets which would be retained by Pernod Ricard. The option has an exercise price equivalent to 11 x DBC of the brands which Diageo is entitled to acquire. The agreed purchase price is, therefore, expected to be approximately €469 million.

The transactions, which are conditional on the completion of Pernod Ricard's proposed acquisition of Allied Domecq, are subject to the approval of the relevant regulatory authorities and other normal conditions. The Bushmills transaction and, if the option is exercised, the Montana transaction are expected to close by the end of 2005 or early 2006.
Diageo has also undertaken to Pernod Ricard not to enter into discussions with any third party in connection with a potential acquisition of shares in, or assets or businesses currently held by, Allied Domecq or a merger of Allied Domecq's group with any other entity.

These undertakings will fall away if Pernod Ricard ceases to pursue its acquisition of Allied Domecq.

Further information on the transaction with Diageo and its impact on Pernod Ricard will be provided in a document to be registered with the French "Autorité des Marchés Financiers" as a supplement to the Document E published by Pernod Ricard on 25 May 2005. In addition, in order to prepare the supplement and to give Pernod Ricard's shareholders sufficient time to review it, the Pernod Ricard Extraordinary General Meeting currently scheduled for 20 June 2005 will be adjourned and reconvened for 30 June 2005.

Pernod Ricard is pleased to have reached agreement on the terms of this transaction which provides Bushmills with the opportunity to grow under the ownership of Diageo while enabling Pernod Ricard to continue to focus on Jameson as its key brand in the Irish whiskey category. Assuming exercise by Diageo of the Montana option, Pernod Ricard will retain attractive New Zealand wine brands which are complementary to its existing wine business.

Patrick Ricard, Chairman and Chief Executive Officer of Pernod Ricard, said:

"I am very pleased with this agreement which is good for the two companies and underpins the confidence which both we and Diageo have in the success of Pernod Ricard's recommended offer for Allied Domecq."

For more information, please contact:

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or visit our web site at www.pernod-ricard.com

The release, publication or distribution of this announcement in certain jurisdictions may be restricted by law and therefore persons in any such jurisdictions into which this announcement is released, published or distributed should inform themselves about, and observe, such restrictions. Any failure to comply with the restrictions may constitute a violation of the securities laws of any such jurisdiction.

This announcement does not constitute an offer for sale of securities or an invitation to purchase or subscribe for any securities or a solicitation of an offer to buy any securities pursuant to the announcement or otherwise in any jurisdiction in which such offer or solicitation is unlawful.

The new Pernod Ricard shares to be issued to the Allied Domecq shareholders pursuant to Allied Domecq's Scheme of Arrangement are not and will not be registered pursuant to the Securities Act of 1933 or any other US regulations applicable to securities. The new Pernod Ricard shares will be issued pursuant to a registration exemption provided by Article 3(a)10 of the Securities Act.

APPENDIX B

CONFIDENTIAL

APPENDIX C

CONFIDENTIAL

APPENDIX D

PERNOD RICARD NEW ZEALAND LIMITED

Brand List (as at 1 June 2005)

1. Wines marketed in New Zealand by Pernod Ricard New Zealand Limited:

Jacob's Creek
Wyndham Estate
Framingham
Tylers Stream
RF
St Helga
St Hilary
St Hugo
Russet Ridge
Gramp’s
Steingarten
Orlando Lawson’s
Centenary Hill
Jacaranda Ridge
Morris of Rutherglen
Richmond Grove
Montrose
Poet’s Corner
Henry Lawson
Carrington
Trilogy
Rio de Plata
Palacio de la Vega
Dubonnet

2. Spirits marketed in New Zealand by Pernod Ricard New Zealand Limited:

Wild Turkey Bourbon
Clan Campbell Scotch Whisky
Aberlour Malt Whisky
Chivas Regal Scotch Whisky
The Glenlivet Malt Whisky
Royal Salute Scotch Whisky
Glen Keith Malt Whisky
Strathisla Malt Whisky
Longmorn Malt Whisky
Lochan Ora Liqueur
Jameson Irish Whiskey
Bushmills Irish Whiskey
Blackbush Irish Whiskey
Powers Irish Whiskey
Redbreast Irish Whiskey
Paddy Irish Whiskey
Midleton Irish Whiskey
Seagram's Gin
Wyborowa Vodka
Soho Liqueur
Havana Club Rum
Dorville Brandy
Olmeca Tequila
Martell Cognac
Marquis de Montesquiou Armagnac
Pernod Anise
Ricard Pastis

3. Ready to Drink marketed in New Zealand by Pernod Ricard New Zealand Limited:

Wild Turkey Pre-Mix

4. Brands subject to agency marketing and distribution arrangements with Pernod Ricard New Zealand Limited:

Heidsieck Monopole Champagne
Pommery Champagne
Terra Andina (wines from Chile)
Sandeman Port, Madeira and Sherry
Zubrowka Vodka

APPENDIX E

ALLIED DOMECQ NEW ZEALAND BRANDS

Ownership of wine brands

1. Allied Domecq's wine brands are owned directly by the subsidiaries of Allied Domecq Wines (New Zealand) Limited (formerly Montana Wines (New Zealand) Limited):

Montana Wines Limited	*Tom*
	Virtu
	Montana Estates
	Montana Reserve
	Triplebank
	Bensen Block
	Boundary Vineyards
	Montana Classic
	Saints
	Five Flax
	Timara
	Jackman Ridge
	Copperfields
	Riverlands
	Deutz
	Lindauer
	Bernadino
	Chardon

Corbans Wines Limited	*Cottage Block*
	Corbans Private Bin
	Huntaway Reserve
	Stoneleigh
	Corbans Varietals
	Longridge
	Robard & Butler
	Corbans White Label
	Verde
	Diva
	Aquila
	Italiano
	Riverlea
Church Road Winery Limited	*Church Road*
Ormond Wines Vineyards and Estates Limited	*Ormond*
Azure Bay Wines Limited	*Azure Bay*
Cask wines	*Azure Bay*
	Ridge Estate
	Velluto Rosso
	Wohnsiedler
	Blenheimer
	Montel
	Liebestraum
	Country
	Chasseur
	Vineyard

Wines and Spirits marketed by Allied Domecq in New Zealand

A. Wines

2. In addition to the wine brands listed above, all of which are marketed by Allied Domecq in New Zealand, the following wine brands are also subject to agency/marketing arrangements with Allied Domecq:

CJ Pask
Delas Freres
Domaines Schlumberger
Gibbston Valley
Grove Mill
Lawson's Dry Hills
Louis Latour
Marchesi de'Frescobaldi, Luce & Danzante
Plantagenet Wines
St Hallett
Tatachilla
Wither Hills (termination date 30 June 2006)
Graffigna (owned by a member of the Allied Domecq PLC group)
Murray Ridge
Champagne Deutz
G.H.Mumm & Cie (owned by a member of the Allied Domecq PLC group)
Perriet-Jouet (owned by a member of the Allied Domecq PLC group)
Barros Port

B. Spirits

3. The following brands are owned by a member of the Allied Domecq PLC group and are sold in New Zealand:

Distributed by Lion Nathan Wines and Spirits at present, but Allied Domecq Wines (New Zealand) Limited will distribute from 1 January 2006:	*Courvoisier Cognac*
	Laphroaig Malt Whisky
	Glendronach Malt Whisky
	Tormore Malt Whisky
	Scapa Malt Whisky
	Maker's Mark Bourbon
	Cockburn's Port
	Harvey's Sherry

Distributed by Diageo at present, but Allied Domecq Wines (New Zealand) Limited will distribute from 4 September 2005:	*Stolichnaya Vodka*

Distributed by Lion Nathan Wines and Spirits at present, but Independent Liquor (New Zealand) Limited will distribute from 1 January 2006:	*Black Heart Rum*
	Seagers Gin
	Kahlua
	Malibu Rum
	Canadian Club Whisky
	Teachers Scotch Whisky
	Ballantines Scotch Whisky
	Beefeater Gin
	Sauza Tequila
	Lamb's Navy Rum
	Tia Maria

Appendix
"F"

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ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED

(FORMERLY MONTANA WINES LIMITED)

AND SUBSIDIARY COMPANIES

CONSOLIDATED FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2004

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ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED

AND SUBSIDIARY COMPANIES

ANNUAL REPORT

FOR THE YEAR ENDED 31 AUGUST 2004

The Board of Directors is pleased to present the Annual Report of Allied Domecq Wines (New Zealand) Limited and Subsidiary Companies incorporating the financial statements and auditors' report, for the year ended 31 August 2004.

With the unanimous agreement of all shareholders, the Company has taken advantage of the reporting concessions available to it under Section 211 (3) of the Companies Act 1993.

On behalf of the Board

Robert Aitken
Director

Brian Johnston
Managing Director

8|12|2004
Date

KPMG

Audit report

To the shareholder of Allied Domecq Wines (New Zealand) Limited

We have audited the financial statements on pages 4 to 12. The financial statements provide information about the past financial performance and financial position of the company and group as at 31 August 2004. This information is stated in accordance with the accounting policies set out on pages 8 to 9.

Directors' responsibilities

The Directors are responsible for the preparation of financial statements which give a true and fair view of the financial position of the company and group as at 31 August 2004 and the results of their operations for the year ended on that date.

Auditors' responsibilities

It is our responsibility to express an independent opinion on the financial statements presented by the Directors and report our opinion to you.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the Directors in the preparation of the financial statements;
- whether the accounting policies are appropriate to the company's and group's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with New Zealand Auditing Standards. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to obtain reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Our firm has also provided other services to the company and group in relation to audit related services. Partners and employees of our firm may also deal with the company on normal terms within the ordinary course of trading activities of the business of the company. These matters have not impaired our independence as auditors of the company and group. The firm has no other relationship with, or interest in, the company or group.

KPMG

Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion:

- proper accounting records have been kept by the company as far as appears from our examination of those records;

- the financial statements on pages 4 to 12:

  - comply with New Zealand generally accepted accounting practice;

  - give a true and fair view of the financial position of the company and group as at 31 August 2004 and the results of their operations for the year ended on that date.

Our audit was completed on 9 December 2004 and our unqualified opinion is expressed as at that date.

KPMG

Auckland

ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED AND SUBSIDIARY COMPANIES
STATEMENTS OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 31 AUGUST 2004

		CONSOLIDATED		PARENT	
	Note	2004 $ 000	2003 $ 000	2004 $ 000	2003 $ 000
TOTAL REVENUE		396,762	397,554	364,565	379,456
OPERATING SURPLUS BEFORE TAXATION		38,855	50,586	40,475	32,939
After Crediting					
Interest Income		610	423	568	392
Sundry Income		102	106	102	106
After Charging					
Interest		21,355	21,706	21,355	21,706
Auditors' Fees		195	170	175	148
Directors' Fees		3	3	-	-
Foreign Exchange Loss		6,373	3,850	6,231	3,680
Leasing and Rental Costs		3,807	4,257	3,161	3,314
Gain on Disposal of Fixed Assets		(791)	(183)	(791)	(183)
Bad Debts Provision & Doubtful Debts Movement		56	186	50	120
Amortisation of Goodwill		1,450	1,450	-	-
Provision against Investment in subsidiary	10	-	-	-	19,000
Depreciation					
Freehold Vineyard Development		2,413	1,775	2,413	1,775
Leasehold Land		160	160	160	160
Leasehold Vineyard Development		873	915	873	915
Buildings		825	825	825	825
Plant, Fittings & Vehicles		9,602	7,789	9,486	7,684
Barrels & Other Assets		6,194	6,713	6,194	6,713
INCOME TAX					
Income Tax Expense		12,735	15,058	12,821	16,341
NET SURPLUS AFTER TAX FOR THE YEAR		$26,120	$35,528	$27,654	$16,598

KPMG

ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED
AND SUBSIDIARY COMPANIES
STATEMENTS OF FINANCIAL POSITION AS AT 31 AUGUST 2004

	Note	CONSOLIDATED 2004 $ 000	CONSOLIDATED 2003 $ 000	PARENT 2004 $ 000	PARENT 2003 $ 000
EQUITY	3	288,839	262,719	265,193	237,539
TOTAL EQUITY		288,839	262,719	265,193	237,539
CURRENT LIABILITIES					
Bank Overdraft	2	1,537	50	1,537	50
Trade Creditors		31,093	30,726	29,006	29,012
Accruals		18,456	19,921	16,151	18,530
Provision for Taxation-due to related party	8	8,419	12,153	8,419	12,153
		59,505	62,850	55,113	59,745
NON CURRENT LIABILITIES					
Deferred Tax Liability		28,196	23,908	29,173	24,706
Owing to Parent Companies	8	292,027	269,724	290,975	275,225
Owing to Subsidiary Companies	8	-	-	79,336	72,921
Bank Loan	2	52,945	63,000	52,945	63,000
		373,168	356,632	452,429	435,852
TOTAL EQUITY & LIABILITIES		$721,512	$682,201	$772,735	$733,136

KPMG

ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED AND SUBSIDIARY COMPANIES

STATEMENTS OF FINANCIAL POSITION AS AT 31 AUGUST 2004

	Note	CONSOLIDATED 2004 $ 000	CONSOLIDATED 2003 $ 000	PARENT 2004 $ 000	PARENT 2003 $ 000
NON CURRENT ASSETS					
PROPERTY PLANT & EQUIPMENT	4	429,125	419,540	428,835	419,183
INTANGIBLE ASSETS					
Goodwill	11	23,331	24,781	-	-
		23,331	24,781	-	-
INVESTMENTS					
Shares in Subsidiary Companies	10	-	-	78,459	78,459
Shares in External Company		45	35	45	35
		45	35	78,504	78,494
OTHER NON CURRENT ASSETS					
Future Income Tax Benefit		416	583	-	-
CURRENT ASSETS					
Cash		1,655	294	107	17
Debtors		42,576	37,095	33,028	30,684
Prepayments and Other Assets		13,964	13,554	13,911	13,394
Inventories		186,252	159,478	181,753	154,743
Owed by related parties	8	24,148	26,841	36,597	36,621
		268,595	237,262	265,396	235,459
TOTAL ASSETS		$721,512	$682,201	$772,735	$733,136

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ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED
AND SUBSIDIARY COMPANIES
STATEMENTS OF MOVEMENTS IN EQUITY
FOR THE YEAR ENDED 31 AUGUST 2004

	Note	CONSOLIDATED		PARENT	
		2004 $ 000	2003 $ 000	2004 $ 000	2003 $ 000
TOTAL REVENUE & EXPENSES					
Net Surplus after tax for the year		26,120	35,528	27,654	16,598
MOVEMENT IN EQUITY FOR THE YEAR		26,120	35,528	27,654	16,598
EQUITY AT THE START OF THE YEAR		262,719	227,191	237,539	220,941
EQUITY AT THE END OF THE YEAR		$288,839	$262,719	$265,193	$237,539

KPMG

ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED AND SUBSIDIARY COMPANIES NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 AUGUST 2004

NOTE 1 - ACCOUNTING POLICIES

The financial statements presented here are for the reporting entity Allied Domecq Wines (New Zealand) Limited and the group comprising Allied Domecq Wines (New Zealand) Limited and its subsidiaries. The financial statements have been prepared in accordance with the requirements of the Companies Act 1993 and the Financial Reporting Act 1993.
The financial statements have been prepared on the basis of modified historical cost.
Directors resolved to change the name on 25 May 2004 from Montana Wines Limited to Allied Domecq Wines (New Zealand) Limited.

Allied Domecq Wines (New Zealand) Limited, being a wholly owned subsidiary of Montana Group (NZ) Limited, is a qualifying entity within the Institute of Chartered Accountants of New Zealand's differential reporting framework. The group and the holding company are not publicly accountable and there is no separation between the owners and the governing body. The group and the holding company have taken advantage of all differential reporting concessions available to them.

(a) Principles of Consolidation

Subsidiary Companies
The consolidated financial statements are prepared from the audited accounts of the parent company and its subsidiaries as at 31 August 2004 using the purchase method of consolidation. All significant transactions between Group companies have been eliminated on consolidation.

(b) Revenue Recognition

Revenue includes sales net of discounts and goods and services tax but includes excise duty on wine sales.

(c) Foreign Currency Translation

Translation of foreign currency transactions
Foreign currency transactions are recorded in New Zealand currency at the exchange rate ruling on the date of the transaction or where they are hedged by a forward exchange contract or option, at the contract rate.
At settlement date or balance date (if prior to settlement date) unhedged foreign currency monetary items are translated into New Zealand currency at the rates of exchange ruling on that day.
Changes to the unhedged asset and liability values between the transaction date or balance date are taken to the statement of financial performance. Exchange gains and losses and hedging costs arising on contracts entered into as hedges of specific revenue or expense transaction are deferred until the settlement date of such transactions at which time they are included in the determination of such revenue and expenses.

Translation of foreign operations
The financial statements of independent foreign subsidiaries are translated into New Zealand currency using the closing rates for the balance sheet and the average rate for the profit and Loss.

(d) Property Plant & Equipment

As at 30 September 2001, all Land ,Buildings , Winery & Vineyard Equipment were valued by DTZ Darroch Limited with the increment in valuation being taken directly to the revaluation reserve. All other assets at 30 September 2001 and any subsequent additions are valued at cost less accumulated depreciation. The directors have resolved not to carry out any further valuations of fixed assets for the forseeable future.

Costs incurred in developing and replanting vineyards, including finance costs, are capitalised as a cost of the vineyard land and are not subject to amortisation. Subsequent to development all costs in maintaining the vineyards are expensed annually.

(e) Depreciation

Depreciation is charged on a straight line basis so as to write off the cost or valuation of fixed assets to the estimated residual value over their expected economic lives. The estimated economic lives are as follows:
* Vineyard development............. 30 years
* Leasehold land........................ over the term of the lease
* Buildings.................................. 50 years
* Plant, Fittings & Vehicles......... 4-50 years
* Barrels................................ 4 years

(f) Accounts Receivable

Accounts receivable are valued at anticipated realisable value. Bad debts are written off as incurred and provision is made for specific debts considered doubtful.

(g) Inventories

Raw materials, work in progress, finished goods and consumables are valued at the lower of cost and net realisable value with appropriate provision for obsolescence on an item by item basis. Cost has been identified using the weighted average method and, excluding consumables, include a systematic allocation of overheads.

Costs incurred at balance date in relation to the following year's vintage are capitalised, unless an impairment is identified. These are classified within "Other Assets"

(h) Taxation

Taxation is calculated on a group assessment basis. The taxation charged against earnings is the estimated total liability after allowance for permanent differences in respect of those earnings. The provision for deferred taxation is calculated using the comprehensive liability method.

Future income tax benefits are brought to account in the statement of financial position as an asset on the basis that the directors consider that realisation of those benefits is virtually certain to occur.
Future income tax benefits and provisions for deferred tax are not offset if they arise in different tax jurisdictions.

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ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED
AND SUBSIDIARY COMPANIES
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 AUGUST 2004

(i) Investments

Shares in subsidiaries and advances to subsidiaries are recorded at cost unless there is a diminution in value.
Other investments are shown at cost.

(j) Leases

Group companies lease certain plant and equipment and land and buildings.
Finance leases are capitalised to reflect the term borrowing incurred and the cost of the asset acquired. The finance cost portion of lease payments is written off to earnings. The leased asset is depreciated on a straight line basis over the estimated useful life of the asset with due regard to residual values. Assets subject to finance leases are not material and hence have not been separately disclosed in Note 4 to the financial statements.
Operating lease payments are charged against operating surplus in equal instalments over the lease term or capitalised to inventories in the case of operating leases on established vineyards. The cost of improvements to leasehold property, including operating lease costs of vineyards under development, is capitalised and amortised over the unexpired period of the lease or the estimated useful life of the improvements, whichever is the shorter.

(k) Goodwill

The excess of cost over the fair value of the net assets of the subsidiary acquired is recognised as goodwill and will be amortised to the Statement of Financial Performance over twenty years.

(l) Changes in Accounting Policies

There have been no material changes in accounting policies during the period covered by these financial statements.

NOTE 2 - BANK FACILITY

On the 26 August 2003 Allied Domecq Wines (New Zealand) Limited raised under a revolving credit facility with Westpac Banking Corporation $100,000,000 with the facility secured by an Allied Domecq PLC guarantee dated 27 August 2003.

NOTE 3 - EQUITY

Equity comprises 22,600,000 Fully Paid Ordinary shares
(2003: 22,600,000 ordinary shares)

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ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED
AND SUBSIDIARY COMPANIES
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 AUGUST 2004

NOTE 4 - PROPERTY PLANT & EQUIPMENT

	CONSOLIDATED 2004	CONSOLIDATED 2003	PARENT 2004	PARENT 2003
	$'000	$'000	$'000	$'000
Land				
Freehold Land				
At Modified historical cost	99,093	99,093	99,093	99,093
At Cost	16,684	14,818	16,684	14,818
	115,777	113,911	115,777	113,911
Freehold Vineyard Development				
At Modified historical cost	61,970	61,970	61,970	61,970
At Cost	33,863	17,960	33,863	17,960
Accumulated Depreciation	(5,598)	(3,185)	(5,598)	(3,185)
	90,235	76,745	90,235	76,745
Leasehold Land				
At Modified historical cost	3,112	3,112	3,112	3,112
Accumulated Depreciation	(479)	(319)	(479)	(319)
	2,633	2,793	2,633	2,793
Leasehold Vineyard Development				
At Modified historical cost	23,700	23,700	23,700	23,700
At Cost	6,756	6,429	6,756	6,429
Accumulated Depreciation	(2,463)	(1,590)	(2,463)	(1,590)
	27,993	28,539	27,993	28,539
Total Land	236,638	221,988	236,638	221,988
Buildings				
At Modified historical cost	32,588	32,588	32,588	32,588
At Cost	11,779	9,006	11,779	9,006
Accumulated Depreciation	(2,352)	(1,527)	(2,352)	(1,527)
	42,015	40,067	42,015	40,067
Plant,Fittings & Vehicles				
At Modified historical cost	93,000	99,713	92,655	99,713
At Cost	63,399	48,640	63,339	48,071
Accumulated Depreciation	(31,426)	(23,848)	(31,311)	(23,636)
	124,973	124,505	124,683	124,148
Barrels & Other Assets				
At Cost	37,459	30,870	37,459	30,870
Accumulated Depreciation	(15,813)	(9,619)	(15,813)	(9,619)
	21,646	21,251	21,646	21,251
Capital Work In Progress				
At Cost	3,853	11,729	3,853	11,729
Total Fixed Assets	$429,125	$419,540	$428,835	$419,183

Financing costs capitalised during the period were $ 1,565,978 (August 2003 $1,847,111) .

NOTE 5 - CAPITAL COMMITMENTS

Commitments for capital expenditure at 31 August 2004 which have not been provided for in the financial statements, amounted to $1,282,848. (August 2003 $3,990,322) .

NOTE 6 - HOLDING COMPANY

Allied Domecq Wines (New Zealand) Limited is a wholly owned subsidiary of Montana Group (NZ) Limited.
The Group's ultimate holding company is Allied Domecq Plc, a UK listed incorporated company.

NOTE 7-LEASE COMMITMENTS

	CONSOLIDATED 2004	CONSOLIDATED 2003	PARENT 2004	PARENT 2003
	$'000	$'000	$'000	$'000
Current	6,986	5,451	6,176	4,597
Non-Current	66,564	62,361	65,858	61,461
	$73,550	$67,812	$72,034	$66,058

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ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED
AND SUBSIDIARY COMPANIES
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 AUGUST 2004

NOTE 8 - RELATED PARTY DISCLOSURES

A) Identity of Related Parties

Details of the immediate and ultimate holding companies are set out in Note 6.
The company has material balances with the following subsidiary companies;Penfolds Wines (NZ) Limited, Montana Wines (Australia) Pty Ltd and Allied Domecq Wines (UK) Ltd.
The company has limited dealings with other companies owned by Montana Group (NZ) Ltd.
The company has dealings with subsidiaries in the Allied Domecq PLC Group

B) Transactions with Related Parties

Material transactions during the year were:

- Borrowings from Holding Company
- Interest paid to holding company
- Management fee paid to related company
- Sales to subsidiary companies
- Sales to subsidiaries of the ultimate holding company.
- Marketing spend charged by related companies
- Utilisation of group tax losses

C) Balances with Related Parties

Funding has been provided between group companies, and is generally on a long term basis.
Some of the provision for taxation is paid to other members of the New Zealand Group.

NOTE 9 - CONTINGENT LIABILITIES

The company has no contingent liabilities as at 31 August 2004. (August 2003, nil)

NOTE 10 - SUBSIDIARY COMPANIES

All companies are wholly owned by Allied Domecq Wines (New Zealand) Limited and have balance dates of 31 August.

All subsidiaries, are listed below:	Nature of Operations 2004	Nature of Operations 2003
-Averill Estate Limited	Non trading	Non trading
-Montana Wines (Australia) Pty Limited	Wine marketers and distributors	Wine marketers and distributors
-Allied Domecq Wine (UK) Limited	Non trading	Wine marketers and distributors
-Ormond Wines, Vineyards & Estates Limited	Non trading	Non trading
-Penfolds Wines (NZ) Limited	Non trading	Non trading
-Redlock Holdings Limited	Non trading	Non trading
-The Wine Gallery Limited	Non trading	Non trading
-Woodhill Vineyards limited	Non trading	Non trading
-Corbans Wines Limited	Non trading	Non trading
-Cooks NZ Wine Company Limited	Non trading	Non trading
-Huntaway Vintners Limited	Non trading	Non trading
-International Cellars Limited	Non trading	Non trading
-Longridge Wines Limited	Non trading	Non trading
-Riverlea Wines Limited	Non trading	Non trading
-Robard & Butler Limited	Non trading	Non trading
-Stoneleigh Vineyards Limited	Non trading	Non trading
-Sun Country Juices Limited	Non trading	Non trading

KPMG

ALLIED DOMECQ WINES (NEW ZEALAND) LIMITED
AND SUBSIDIARY COMPANIES
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 AUGUST 2004

NOTE 11-GOODWILL

	CONSOLIDATED		PARENT	
	2004	2003	2004	2003
	$'000	$'000	$'000	$'000
Goodwill on acquisition	29,013	29,013	-	-
Accumulated Amortisation	(5,682)	(4,232)	-	-
	23,331	24,781	-	-

KPMG

APPENDIX G

CONFIDENTIAL

APPENDIX H

CONFIDENTIAL

APPENDIX I

CONFIDENTIAL

APPENDIX J

CONFIDENTIAL

APPENDIX K

CONFIDENTIAL

APPENDIX L

CONFIDENTIAL

APPENDIX M

CONFIDENTIAL

APPENDIX N

DEED OF UNDERTAKING

between

Pernod Ricard S.A.

and

The Commerce Commission

Deed Of Undertaking

Date: 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 Commerce Act 1986.

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, Pernod Ricard will sell or procure the sale of all of the following brands and associated businesses:

   Lindauer, *Aquila*, *Italiano* and *Chardon* – sparkling wine; and

   Chasseur – still white wine

   (the "Divestment Brands")

   to a purchaser who is 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") within a period of 12 months from the date the Scheme becomes effective.

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 sale of the Divestment Brands.

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