

***Case No COMP/M.2268 -
PERNOD RICARD /
DIAGEO / SEAGRAM
SPIRITS***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 08/05/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/05/2001

SG(2001)D/

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.2268 – Pernod Ricard/Diageo/Seagram Spirits

Notification of 20.03.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20.03.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) by which Pernod Ricard S.A. (“Pernod Ricard”), France, and Diageo plc (“Diageo”), United Kingdom, intend to acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the world-wide spirits business of The Seagram Company Ltd, Canada, belonging to the group Vivendi Universal S.A., France, known as the Seagram Spirits & Wines Group, by way of a joint bid.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. The Seagram Company Ltd is a Canadian-based company active within two core segments: entertainment and beverages. Since its beginning in the wine and spirits industry, The Seagram Company Ltd has progressively diversified into cinema, television, music and theme parks and is now active in four global business areas: spirits and wines (Seagram), music (Universal Music Group), film entertainment (Universal Studios) and recreation (theme parks and retail stores). Seagram is the owner

of a number of leading spirits brands, for example, “Chivas Regal”, “Glenlivet” and “Four Roses” whiskies, “Captain Morgan” rum and “Martell” cognac. On 8 December 2000, The Seagram Company Ltd was acquired by the French company Vivendi Universal S.A., which has international activities in the communications industry and utilities. Only the spirits and wine business of The Seagram Company Ltd is the object of this transaction.

4. Pernod Ricard is a publicly quoted French based company group whose main activities are the production and distribution of wines, spirits, ciders, low alcoholic drinks, production and distribution of soft drinks and fruit juices, production of fruit preparations and wholesale distribution. The main spirits brands of Pernod Ricard include “Clan Cambell” Scotch whisky, “Bisquit” brandy and “Ricard”, the leading flavoured spirit in France.
5. Diageo is a company, based in the United Kingdom, which was created in 1997 through the merger of Grand Metropolitan plc and Guinness plc.¹ The company has a global presence in the production, marketing, exporting and importing of spirits and wine. Diageo owns a number of leading spirits brands such as “Johnnie Walker” Scotch whisky, “Smirnoff” vodka, “Baileys” liqueur and “Malibu” flavoured spirit. Diageo also brews, markets and distributes beer on a world-wide basis through its wholly owned subsidiaries and has substantive minority shareholdings in Moët Hennessy, which produces champagnes and cognacs and in Joe Cuervo SA, which produces tequila.

II. THE OPERATION

6. On 11 December 2000, Pernod Ricard and Diageo made a joint bid to purchase the Seagram spirits and wine businesses (“Seagram”). The joint bid was accepted by Vivendi. The commercial rational of the transaction is to enable each of the notifying parties to acquire and retain certain parts of Seagram for integration into their respective businesses. The remaining parts of Seagram, which Pernod Ricard and Diageo do not wish to retain will be disposed of within a defined time limit.
7. On 19 December 2000, Pernod Ricard, Diageo and Vivendi concluded a Stock and Asset Purchase Agreement (the “SAP Agreement”), which requires Pernod Ricard and Diageo to jointly acquire the shares of the companies and the ownership of the assets that comprise Seagram. The SAP Agreement does not specify which parts of Seagram each of Pernod Ricard and Diageo are to ultimately retain.
8. The notifying parties separately concluded the Framework and Implementation Agreement (the “Framework Agreement”), in which Pernod Ricard and Diageo indicate the parts of Seagram which they express to each other the intention to acquire. This Agreement, originally concluded on 4 December 2000, was amended by the notifying parties on 9 February 2001.

III. CONCENTRATION

9. The notified transaction arises out of a joint bid submitted by the notifying parties on 11 December 2000 for the acquisition of Seagram. Section 2.1 of the SAP Agreement

¹ Commission decision of 15 October 1997 in Case IV/M.938 - *Guinness/Grand Metropolitan*.

concluded on 19 December 2000 requires Pernod Ricard and Diageo to jointly purchase the shares of the companies and the assets that comprise Seagram.

10. The concentration consists of the acquisition by Pernod Ricard and Diageo of Seagram. Following the completion of the acquisition, Seagram's assets will be divided between Pernod Ricard and Diageo. It is the parties' intention that certain assets will be acquired by either Pernod Ricard or Diageo and others will be jointly held prior to sale to third parties ("Venture Assets"). These intentions are set out at clause 3.4 of the Framework Agreement. The intention of the parties is to transfer the assets that Diageo will acquire ("The Diageo Assets") to Diageo and those that Pernod Ricard will acquire ("The Pernod Ricard Assets" and "The Pernod Ricard On-Sale Assets") to Diageo. The parties' intention is to assume the responsibility for managing the Venture Assets as soon as reasonably practicable and in any event, within a period of [...]. The Venture Assets will be sold to third parties as soon as reasonably practicable after the acquisition date and in any event, within a period of [...]. The Framework Agreement also makes a provision for a Supervisory Committee, among whose tasks it is to ensure that the intentions of the parties as set out in clause 3.4 are realised on or as soon as reasonably practicable after the completion.
11. In the light of the foregoing, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion²(Pernod Ricard EUR [...], Diageo EUR [...] and Seagram EUR [...] in 1999). Each of Pernod Ricard, Diageo and Seagram have a Community-wide turnover in excess of EUR 250 million (Pernod Ricard EUR [...], Diageo EUR [...] and Seagram EUR [...] in 1999), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The operation constitutes a co-operation case with the EFTA Surveillance Authority under Article 57 of the EEA Agreement in conjunction with Article 2(1)(c) of Protocol 24 to that Agreement.

V. THE RELEVANT MARKETS

Relevant product market

13. Diageo, Pernod Ricard, and Seagram are vertically integrated companies from the production of spirits through the marketing and wholesale distribution of their products. The parties manufacture a range of spirits covering all the main recognised spirits categories, and as part of their competitive strategy, handle directly, through wholly owned subsidiaries, the distribution of their brands within the EEA.³

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ Pernod Ricard handles directly, through wholly owned subsidiaries, the distribution of its brands throughout the EEA. Diageo owns most of its distribution companies within each Member States, except in France where it operate through a joint venture with LVMH; Ireland where part of its portfolio is distributed through a joint venture with Moët Hennessy and Brown-Forman; Iceland and Finland where it

14. In its decision in Case IV/M.938 - *Guinness/Grand Metropolitan*,⁴ the Commission found that the relevant product markets are in general no wider than those for each of the individual internationally-recognized main spirits types (whiskey, gin, vodka, rum etc.) and for each liqueur. Narrower definitions were found to be appropriate within the different geographical areas. In particular, a further segmentation within the whiskey market should be made for Scotch whisky.
15. Several other alternatives can be proposed for product market definitions. Among others separate markets for the supply of spirits depending on whether they are on-trade (i.e: sales to hotels, bars, cafés, etc) or off-trade (i.e: sales to the retail sector); separate markets for “brown” (whiskey, brandy etc.) and “white” (gin, vodka etc.) spirits; or further subdivisions by price/quality within each spirit category. The Commission’s investigation concludes that as the main effects of the operation concern wholesalers and large retailers there is no justification for a separate examination of the supply to on-trade and off-trade. In addition, neither from a supply-side point of view⁵ nor from the demand-side, there is scope for substitution within “brown” or “white” spirit types.
16. Branding is one of the major demand drivers in the spirits industry. However, while it is possible to identify separate segments for different quality levels within each spirit category such as premium, secondary brands, private labels, low price, etc., the Commission has concluded that there is a continuous price spectrum ranging from the most expensive to the cheapest. Furthermore, rebates can change the position of a given brand in the spectrum.
17. In view of the above, the Commission considers that the spirit market has to be segmented by spirit type and can be thus decomposed into whiskey (further segmentation to Scotch whisky), brandy (further segmentation to Cognac/Armagnac), rum, gin, vodka, tequila, and flavoured spirits. The notifying parties consider that Cognac/Armagnac are part of the product market including all brandies. Principally due to price/taste and brand distance between Cognac/Armagnac and the other brandies, the Commission concludes that Cognac/Armagnac constitutes a separate product market than the other brandies. All these conclusions have been largely confirmed by the Commission’s enquiry.

Relevant geographic market

18. In past cases concerning spirits and alcoholic beverages, and in particular in *Guinness/Grand Metropolitan*, the Commission has considered the relevant geographical markets to be essentially national in scope due to differences in consumption patterns, logistic and distribution networks, marketing strategies, taxation and duties, excise duties, legislation, etc. This market definition has been confirmed by the Commission’s investigation.

operates through third party distributors. Seagram owns most of its distribution companies within each Member States, except in Austria, Denmark, Finland, Iceland, Ireland, Norway, and Sweden where it operates through third party distributors. Pernod Ricard, Diageo, Seagram only distribute a limited number of third party brands accounting for a small proportion of their total sales volume.

⁴ Commission decision of 15 October 1997 in Case No. IV/M.938 – Guinness/Grand Metropolitan.

⁵ For instance, manufacturing process differs to produce the different white and brown spirits. From the demand-side, consumers are significantly different within white and brown spirits.

VI. COMPETITIVE ASSESSMENT

19. In its assessment of this case, the Commission has assumed that the intentions of the parties as set out in the Framework Agreement would be achieved. The undertaking given by the parties (See Section VII) ensures that these intentions will be translated into reality.

Single dominance

20. Diageo and Pernod Ricard designed the Framework Agreement so as to divide the Seagram's brands between Diageo and Pernod Ricard in such a way as to avoid competition concerns.
21. This separation appears to be effective. The Commission's examination of the transaction has not identified any situations where overlaps between the parties would create or strengthen a dominant position on any national market for any given category of spirits.

Collective dominance

22. In parallel, and principally due to asymmetries in their portfolios size and in their diversities of offered spirits, the Commission considers that the operation will not create or strengthen a collective dominant position between the parties and the two other majors spirits companies Allied Domecq and Bacardi-Martini on any national market for any given portfolio or category of spirits. For instance in the United Kingdom, *post-merger*, Diageo, Pernod Ricard, Allied Domecq, and Bacardi-Martini will hold very different spirit mixes and portfolio strengths. Diageo will hold a diversified portfolio with non-negligible market positions in gin, tequila, vodka, and flavoured spirits; Pernod Ricard and Bacardi-Martini will be present significantly only in the brandy/Cognac-Armagnac market and the rum market respectively; Allied Domecq will hold positions in each market segment however with very low market shares. In Portugal, Diageo will be significantly present in the gin, tequila, vodka, and the Scotch whisky while Pernod Ricard will be now highly present in the Cognac/Armagnac and whiskey markets. Bacardi-Martini will hold an important diversified portfolio in gin, rum, vodka, and whiskey while Allied as in the United Kingdom will enjoy low market shares in Cognac-Armagnac, flavoured spirits, gin, and whiskey.

Portfolio effects

23. Nevertheless, in certain national markets each of the notifying parties has strong positions in a number of spirit categories. The present situation does not give rise to competition concerns. However, *post-merger*, if one or more additional leading brands are added to an existing range this may strengthen the overall position of the brand owner. Greater diversity of the product range offered including leading brands improves the position of the brand owner by giving him a series of leading products which may be sold together and used to promote his secondary brands. The ownership of a selection of leading brands may allow the brand owner to use secondary brands tactically not as a revenue source but also as a means of competing against other competitors' main brands, by for instance granting non-negligible overall volume rebates. Additionally, the strength of the parties' portfolios *post-merger* may secure the listing opportunities of their weaker brands.

24. Greater portfolio diversity and the subsequent listing of the parties weaker brands reduce the opportunities for competing suppliers whose products may be then delisted by retailers. In theory and, due to a high level of competition to obtain shelf and promotional space, retailers have the power to delist brands. However, delisting is considerably less likely when suppliers offer a wide portfolio of leading brands.
25. Furthermore, portfolio effects can be largely reinforced by substantial entry barriers at the marketing level. The spirits industry is largely fragmented and characterised by a large number of local brands and few truly international brands. Existing spirit markets are maturing and the costs of establishing a new brand with global reach are significant where brand image is important (i.e: premium segment). Due to some limited brand loyalty,⁶ establishing and maintaining leading brands require significant investment in marketing over the medium to long term. Consequently, the barriers to entry remain particularly high into the leading brands segment.
26. To conclude, although there may be no creation of a dominant position for any given spirit category, portfolio effects can give rise to competition concerns in relation to the overall portfolio offered resulting from a concentration.
27. In the proposed operation, *and in theory*, significant portfolio effects may arise in France, Italy, Portugal, Spain, in the relation to the Seagram assets to be acquired by Pernod Ricard and in Iceland, Spain, and the United Kingdom Seagram assets to be acquired by Diageo.⁷
28. The addition of the Venture Assets to the product portfolios of either Pernod Ricard or Diageo would not, in general, give competition concerns. The parties' intention, as expressed in the Framework Agreement, is to sell all the Venture Assets within [...] of the acquisition date. The Agreement, however, has provisions for the allocation of any remaining Venture Assets to the parties. Were either Pernod Ricard or Diageo to acquire the "Four Roses" bourbon whiskey brand portfolio concerns would arise.

Pernod Ricard

France

29. France is the second largest consumer of spirits in the EEA representing thus around 18% of the total spirit demand at EEA level. Pernod Ricard distributes all its brand portfolio through its joint venture and pre-merger market position is the following: all whiskey [10-15%]/Scotch whisky [10-15%], all brandy [0-5%]/Cognac-Armagnac [0-5%], rum [0-5%], gin [5-10%], vodka [0-5%], tequila [0-5%], flavoured spirits [40-45%].⁸ By acquiring "Chivas Regal", "Glenlivet", "Glen Grant", and "Martell", market positions will become respective all whiskey [15-20%]/Scotch whisky [10-15%], all brandy [0-5%]/Cognac-Armagnac [0-5%]. The addition of respectively [0-5%]/[0-5%] to Pernod Ricard's all whiskey/Scotch whisky brands will not, however, be sufficient to enable Pernod Ricard to leverage its other brands positions and in particular in the flavoured spirits market. Similarly, for Cognac-Armagnac, the increase of [0-5%] to [0-5%] currently enjoyed by Pernod Ricard in this sector would

⁶ Principally due to changes in fashion.

⁷ All volumes data examined by the Commission for this proposed notification are derived from International Wines and Spirits Record Limited ("IWSR") 1999.

⁸ In particular through the high market positions of the "Ricard", and "Pastis 51" brands.

not allow any leverage. In addition, the Cognac-Armagnac sales represent a very small part (i.e: 0.003%) of the total French spirit demand.

Italy

30. Italy is the fifth largest consumer of spirits in the European Community and in 1999 accounted for 7.9% of total EEA spirits sales by volume. The total Italian spirit demand can be subdivided into whiskey (further segmentation to Scotch whisky), brandy (further segmentation to Cognac/Armagnac), rum, gin, vodka, tequila, and flavoured spirits. Besides the high strength of flavoured spirits (54.3%), whiskey and brandy represent respectively the third (13%) and the second share (23.9%) of the total spirits demand. Following further segmentation, Scotch whisky and Cognac/Armagnac accounts for respectively 84.8% and 2.97% of all whiskey and all brandy consumed in Italy.
31. Pernod Ricard operates in Italy through its wholly owned production and distribution subsidiary Ramazzotti Italia. Pre-merger, Pernod Ricard holds the following portfolio of spirits: all whiskey [5-10%]/Scotch whisky [0-5%], all brandy [0-5%]/Cognac-Armagnac [0-5%], rum [20-25%], gin [15-20%] and flavoured spirits [0-5%]. By acquiring “Chivas Regal”, “Glenlivet”, “Glen Grant” and “Martell”, the notifying parties’ market shares positions, post-merger, in the scotch whisky and Cognac/Armagnac markets would be [25-30%] and [25-30%] respectively.
32. However, the Commission is of the opinion that *post-merger* the operation would not give rise to range effects in the Italian market that would allow a significant leverage of the parties’ positions in its different spirit categories. Firstly, because the market position in the Scotch whisky would not be sufficient to give rise to significant portfolio effects either in terms of market shares or in terms of sales as Scotch whisky represents only 11% of the total Italian spirit demand.⁹ Secondly, because Cognac/Armagnac are insignificant in terms of sales as its represent 0.007% of the total Italian spirit demand.

Portugal

33. With 1.9%, Portugal represents one of the lowest spirit consumption markets in the EEA. In Portugal, Pernod Ricard holds a portfolio of all whiskey [0-5%]/Scotch whisky [0-5%], rum [10-15%], gin [0-5%] and flavoured spirits [0-5%] and currently distributes it. Post-merger, Pernod Ricard will i) marginally increase its market position in the all whiskey and in the Scotch whisky market by acquiring “Chivas Regal”, “Glenlivet”, and “Glen Grant” to reach respectively [5-10%] and [0-5%]; ii) increase its range diversity by adding all brandy [35-40%]/Cognac-Armagnac [30-35%] to its portfolio by acquiring respectively the cognac “Martell” and other brandies such as “Maceira 5 Star” and “Aldeia Velha & Nova” to its spirit portfolio.
34. However, the proposed transaction would not give rise to significant portfolio effects principally due to the Cognac/Armagnac insignificant sales (Cognac/Armagnac represents only 0.1% of the total spirit demand in Portugal) and hence existing position of the parties in each spirit category could not be significantly leveraged *post-merger*.

⁹ Note also that the Scotch whisky market has fallen by another 9.3% during the last three years.

Spain

35. Spain is the third largest consumer of spirits in the EEA representing thus around 16% of the total spirit demand at EEA level. Pernod Ricard distributes all its brand portfolio and the pre-merger market position is the following: all whiskey [0-5%]/Scotch whisky [0-5%], all brandy [0-5%]/Cognac-Armagnac [0-5%], rum [5-10%], gin [45-50%], vodka [5-10%] and flavoured spirits [20-25%]. By acquiring “100 Pipers”, “Chivas Regal”, “Glenlivet”, “Glen Grant”, and “Martell”, market positions will become respective all whiskey [0-5%]/Scotch whisky [0-5%], all brandy [0-5%]/Cognac-Armagnac [15-20%]. Due to very low market shares in whiskey and insignificant sales in Cognac-Armagnac (0.001% of the total Spanish spirit demand), the transaction cannot give rise to significant leverage of the parties’ market positions in its other spirit categories.

Diageo

Spain

36. Concerning the Diageo transaction in Spain, Diageo will increase its portfolio diversity by adding rum position [15-20%] (“Cacique Gold”, “Cacique 500”, and “Captain Morgan Gold”) to its pre-merger portfolio containing all whiskey [30-35%]/Scotch whisky [40-45%], gin [5-10%], vodka [40-45%], tequila [0-5%] and flavoured spirits [5-10%].¹⁰ However, knowing that there exist other leading brands such as the “Bacardi” rum in the Spanish market, rum position would not be enough, neither in terms of market shares nor in terms of market position *vis-à-vis* the other spirit categories,¹¹ to leverage significantly market positions of the parties’ other spirit categories *post-merger*.

The United Kingdom

37. The United Kingdom is the fourth largest consumer of spirits in the EEA representing 11.7% of the total EEA spirits sales. Diageo will increase its portfolio diversity by adding rum position [10-15%] (“Captain Morgan Black” and “Spiced”, “Myers Gold”) to its pre-merger portfolio containing all whiskey [15-20%]/Scotch whisky [15-20%], gin [45-50%], vodka [40-45%] and flavoured spirits [35-40%].¹² One could argue that Diageo will provide quite complete portfolio of spirits with leading brands in each spirit category. However, and as in Spain, besides the fact that there exist other leading brands in the rum market such as the “Bacardi” rum and “Lambs”, the parties’ rum position would not enough neither in terms of market shares nor in terms of market position *vis-à-vis* the other spirit categories¹³ to give to leverage significantly the other spirit categories of the parties *post-merger*.
38. In the present case, the Commission concludes that portfolio effects could not emerge in France, Italy, Portugal and Spain, in relation to Pernod Ricard and in Spain, and in the United Kingdom in relation to Diageo. However, serious competition concerns could arise in Iceland.

¹⁰ In Spain Diageo distributes all its own products.

¹¹ Rum represents only 8.2% of the total spirit consumption in Spain.

¹² In the United Kingdom Diageo distributes all its own products.

¹³ Rum represents only 8.3% of the total spirit consumption in the United Kingdom.

Iceland

39. Iceland represents a very small spirit market in the EEA. Before the merger, Diageo held a portfolio which included all whiskey [15-20%]/Scotch whisky [20-25%], gin [30-35%], vodka [30-35%] and flavoured spirits [15-20%]. In four of these categories (all whiskey, Scotch whisky, vodka and flavoured spirits), Diageo is the largest market player while in the gin market Diageo shares its leading market position with Allied Domecq. By acquiring the whiskey brand “7 Crown” Diageo will improve its market position in all whiskey to [15-20%]. In acquiring the different categories of the “Captain Morgan” rum,¹⁴ Diageo will become the dominant supplier in the rum market with a market share of [60-65%]. Diageo will therefore have a leading position in six of the most important spirits categories with leading brands in rum (“Captain Morgan”), gin (“Gordons Gin” and “Gilbeys Gin”), vodka (“Smirnoff”), and flavoured spirits (“Baileys”, “Malibu”).

[...]

Table 1: Diageo’s Post-merger positions in Iceland

40. The retail market for spirits¹⁵ in Iceland is characterised by a statutory monopoly of the State Alcohol Monopoly (ATVR). ATVR sells 75% of the total annual consumption of alcoholic beverages while the remaining 25% are sold by hotels, restaurants, and bars. Advertising of alcoholic beverages is forbidden by law in Iceland. ATVR’s criteria to carry spirit products is mainly based on sales performances. Indeed, since no automatic rotation are included in the attribution procedure and coupled with the limited marketing possibilities and the limited access to the retail market, the leading brands tend to keep their place in the long run.
41. To conclude, the Commission is of an opinion that the addition of a dominant position in rum to the already strong positions in the other spirit categories might give rise to competition problems in Iceland. Indeed, the ability to provide another leading brand with very high market position will confer Diageo price flexibility to significantly strengthen market positions of its other spirit categories. Such market dominance would be largely reinforced by the above mentioned market rigidity of the Iceland market.

Venture Assets: “Bourbon Four Roses”

42. In Austria and in Denmark, the acquisition by Diageo of “Bourbon Four Roses” could give rise to portfolio concerns. Following the Commission’s market investigation, the “Bourbon Four Roses” has been identified as a leading brand with non-negligible market positions in particular in Austria and in Denmark. Through its acquisition, Diageo may be able to leverage significantly its other spirit categories in particular its gin and vodka positions in Austria and its gin position in Denmark.
43. Furthermore, certain third parties have raised the possibility that bourbon whisky could possibly constitute a separate relevant product market. If this were to be the case, it is likely that competition concerns would arise in a large number of markets on which both Pernod Ricard and Diageo are active.

¹⁴ Captain Morgan Black, Coconut, Spiced, and White.

¹⁵ Also for wine and beer (over 2,25% alcohol per volume).

VII. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTIES

44. On 11 April 2001, the parties offered, pursuant to Article 6(2) of the Merger Regulation, certain commitments to remove the competition concerns identified by the Commission. These commitments were subsequently improved. The full text of the final commitments is annexed and will form an integral part of this decision.

A. Summary of the commitments

45. The commitments offered by the parties, on the one side, crystallise the obligations of the parties, as defined in the Framework Agreement between the parties as amended on 9 February 2001, and, on the other side, propose a solution to remove the competition concerns identified by the Commission in Iceland. Furthermore, the parties have proposed a specific commitment in order to remove the competition concerns as regards the possible acquisition of “Bourbon Four Roses” by either Diageo or Pernod Ricard.

1. Allocation of Seagram Assets between the parties and disposal of the Seagram Venture Assets and Pernod Ricard On-Sale Assets

46. The parties commit that pursuant to the Framework Agreement, on the acquisition date, the Pernod Ricard Assets and the Pernod Ricard On-Sale Assets will be acquired by Pernod Ricard and that the Diageo Assets will be acquired by Diageo.
47. Moreover, the parties undertake to acquire within a defined time period the Seagram Venture Assets. The parties will then endeavour to procure that the Seagram Venture Assets and the Pernod Ricard On-Sale Assets are sold to third parties within a given period of time. Failing such sale, any remaining Seagram Venture Assets (other than “Bourbon Four Roses”) will be acquired by either Diageo or Pernod Ricard and any remaining Pernod Ricard On-Sale Assets will be retained by Pernod Ricard.

2. Commitment concerning the divestment of “Bourbon Four Roses”

48. The Parties commit that the “Bourbon Four Roses” will be sold to third parties within a given period of time. If such a sale should fail, the parties commit to appoint a Divestment Trustee to sell the above-mentioned brand within a short period of time.
49. The proposed purchaser of “Bourbon Four Roses” will be subject to the Commission’s prior written approval. The purchaser should be a viable existing or potential competitor, independent of the parties, and its acquisition of “Bourbon Four Roses” must not be likely to create new competition problems.

3. Management of the Seagram Assets, safeguards and firewalls during the interim period

50. According to the undertakings, Pernod Ricard on the acquisition date will be responsible for the management of Pernod Ricard On-Sale Assets, Pernod Ricard Assets and any other brand identified by the Supervisory Committee, as detailed in the Framework Agreement. The parties will also assume the responsibility for managing all Diageo Assets or all Pernod Ricard Assets (other than the one above-mentioned) and the Seagram Venture Assets within a defined time period.

51. The parties commit to put in place specific safeguards and firewall measures and procedures to avoid any potential competition concerns during the interim period by controlling the flow of information in order to avoid any unlawful disclosure, between the parties, of sensitive information (such as trading volumes and pricing) regarding the business being acquired.

4. Commitment concerning rum in Iceland

52. Within a specified time period, Diageo commits to entrust permanently the distribution of the “Captain Morgan” rum brands in Iceland to a third-party distributor who is independent of both Diageo and Karl K Karlsson Ltd. Diageo also undertake that any proposed change concerning the distribution of Captain Morgan Rum brands in Iceland will be immediately communicated to the Commission.

5. Modalities of the sale

a. Divestment Trustee

53. If any of the Seagram Venture Assets remain unsold (and, in the case of Seagram Venture Assets other than “Bourbon Four Roses”, the matter has not been referred to arbitration) by the end date, the parties undertake to appoint a Divestment Trustee to sell them within a given time period.

b. Review clause

54. The parties have included in their commitments a "review clause", which provides the possibility for the Commission to review the extent of the commitments upon request from the parties showing good cause. This clause is intended to extend the divestment period, to waive one or more of the conditions and obligations of the commitments and to enable the Commission to agree to a divestment which does not include all the parts of the business.

B. Assessment of the commitments

1. Allocation of Seagram Assets between the parties and disposal of the Seagram Venture Assets and Pernod Ricard On-Sale Assets

55. The parties have undertaken to divide between themselves the Seagram Brands, as detailed in the Framework Agreement. If we consider that the spirit market is segmented by spirit type and is national in scope, this separation appears to be effective.
56. The envisaged separation avoids any issue of single dominance and collective dominance and does not give rise to portfolio effects, with the exception of Iceland. Furthermore, the remedies submitted by the parties ensure that this separation actually occurs within a given time period and that there is no unnecessary collaboration between the parties during the interim period.
57. To this purpose, the parties propose to put in place specific safeguards and firewalls measures and procedures. These measures and procedures will put under control the flow of sensitive information to Pernod Ricard and Diageo, eliminating the possibility of collusion between the parties.

58. An independent Trustee will be appointed subject to Commission approval within a given time period (“The Monitoring Trustee”). The Monitoring Trustee will monitor the allocation of the Seagram brands and the operation of the firewalls.

2. Commitment concerning the divestment of “Bourbon Four Roses”

59. The divestment of “Bourbon Four Roses” within a set time period will avoid the possibility for Diageo or Pernod Ricard to acquire “Bourbon Four Roses” in case that one or more of the Seagram Venture Assets will remain unsold. Therefore, the commitments will ensure that the “Bourbon Four Roses” will be sold to third parties, avoiding any portfolio effect.

3. Commitment concerning rum in Iceland

60. Before the merger, Diageo held a portfolio which included gin [30-35%], all whiskey [15-20%] (/Scotch whisky [20-25%]), vodka [30-35%] and flavoured spirits [15-20%]. By acquiring the whiskey brand “7 Crown” and the different categories of the “Captain Morgan” rum, Diageo will significantly increase its market position in all whiskey and rum markets to [15-20%] and [60-65%] respectively. It will therefore have a leading position in six of the most important spirits categories. Furthermore, the ability to add a dominant position in the rum market will significantly strengthen Diageo’s position in its other spirit categories in Iceland.
61. The undertaking submitted by the parties, according to which the distribution of rum in Iceland will be separated from the distribution of their other products, appears to be appropriate to eliminate any competitive concerns. By undertaking to permanently give the distribution of “Captain Morgan” rum to an independent distributor, Diageo will be prevented from offering a wider package of leading brands and therefore its position in Iceland will not be strengthened.
62. The Monitoring Trustee will make sure that the parties will comply with their commitment to give the distribution of Captain Morgan to an independent distributor.

4. Conclusion

63. In the light of the above, the Commission concludes that the commitments given by the parties are sufficient to remove the competition concerns identified by the Commission during its investigation of the proposed operation on condition that the parties comply with the following commitments which are subject to change by the Commission pursuant to paragraph 20 of the Annex:
- (a) the commitment relating to the allocation of the Seagram Assets between the parties set out in paragraph 4 of the Annex;
 - (b) the commitment relating to the disposal of the Seagram Venture Assets and Pernod Ricard On-Sale Assets set out in paragraphs 4, 5 and 6 of the Annex;
 - (c) the commitment relating to the management of the Seagram Assets set out in paragraph 9 of the Annex;
 - (d) the commitment relating to the Safeguards and Firewalls set out in paragraph 11 of the Annex;

- (e) the commitment relating to rum in Iceland set out in paragraph 12 of the Annex;
 - (f) the completion of the divestment procedure as set out in paragraphs 17-19 of the Annex;
 - (g) the divestment of “Four Roses” brand set out in paragraph 5, 17 and 19 of the Annex and its acquisition by a purchaser fulfilling the criteria set out in paragraph 7 of the Annex, and
 - (h) compliance with any measure imposed by the trustee to make the parties comply with their commitment as indicated in paragraph 15 (c) of the Annex.
64. The above aspects of the undertaking constitute conditions, as only by fulfilling them (subject to any change pursuant to paragraph 20 of the Annex), can the structural change on the relevant market be achieved.
65. The remaining aspects of the undertaking constitute obligations (subject to any change pursuant to paragraph 20 of the Annex), as they concern the implementing steps which are necessary to achieve the structural change that is sought. In particular, this relates to:
- (a) the provisions relating to the “Divestment Trustee” with the exception of any measure imposed by the trustee to make the parties comply with their commitment as indicated in paragraph 15 (c) of the Annex;
 - (b) the provisions relating to the “Monitoring Trustee” with the exception of any measure imposed by the trustee to make the parties comply with their commitment as indicated in paragraph 15 (c) of the Annex.

VIII. ANCILLARY RESTRAINTS

66. The notifying parties submitted a number of contractual obligations they wish to be declared ancillary to the present transaction. To this purpose, Diageo, Vivendi and Pernod Ricard claim that contractual provisions listed below are directly related and necessary to the implementation of the concentration. In particular, such restraints focus on distribution agreements, as provided by the SAP Agreement, on intellectual property rights, respectively concerning Seagram’s brands and venture assets, and on non-solicitation clauses as set forth by the Implementation and Framework Agreement.

1. The SAP Agreement

Distribution agreements (Section 6.17)

67. Pernod Ricard and Diageo have agreed to comply with any obligations of the businesses to be acquired under contracts with respect to the distribution of the [...], which is carried out by Seagram on behalf of the brand owner. Vivendi will be entitled to require Pernod Ricard and Diageo to terminate any of the agreements governing the distribution of [...] following closing upon written request of Vivendi. Pernod Ricard and Diageo are obliged to continue distributing [...] until alternative arrangements have been made for the product’s distribution.

68. The notifying parties consider that in so far as these provisions should amount to a restriction of competition, they are directly related to and necessary for the concentration. [...] is a distributed brand being acquired by third parties. This distribution agreement ensures that the acquired businesses continue to meet their existing obligations in relation to the distribution of the [...] until alternative distribution arrangements for this brand are concluded. According to the parties, this is necessary to provide continuity of distribution as was previously assured within the single economic entity of Seagram. The restriction is limited to the period necessary to enable the third party purchasers of [...] to replace their dependence on Seagram with autonomy in the market. The distribution agreements are also limited to existing contractual arrangements.
69. Diageo and Pernod Ricard are under similar obligation in respect to all the other brands, which Seagram currently distributes, on an agency basis, for third parties. These other agency distribution agreements will be treated as Seagram Venture Assets until the third party has taken steps for third party distribution of the brands within [...]. The notifying parties underline again how these arrangements despite they may be considered as being restrictive of competition, are directly related and strictly necessary for the implementation of the transaction in question.
70. The Commission finds that the aforementioned agreements concerning the distribution of the [...] are aimed at protecting the value of the brands by assuring the continuity of their distribution in the market after the break-up of Seagram. In determining whether such restrictions are necessary, elements such as the nature, duration, subject matter and geographical field of application have been considered and they do not exceed what the implementation of the concentration reasonably requires, therefore they are regarded as being ancillary.

2. The Framework Agreement

Intellectual property: Seagram's brands (Clause 33.2 A)

71. Prior to the operation the "V.O." and the "7 Crown" brands were marketed as "Seagram's V.O." and "Seagram's 7 Crown". Following the concentration, Diageo will own the "V.O." and "7 Crown" (Canadian whiskies) marks and Pernod Ricard will own the Seagram "Seagram's" mark. Diageo will also acquire certain companies which include the Seagram trademark in their company names.
72. Following the separation of the trademarks, Diageo would be unable to use the "Seagram" brand. Therefore, Pernod Ricard will grant a license to Diageo for the use of the "Seagram" name, 1) for a transitional period of [...] in relation to corporate names of companies acquired by Diageo; and 2) indefinitely in connection with "V.O." and "7 Crown". Pernod Ricard will be prohibited from using the "Seagram" name in relation to Canadian or American whiskey.
73. These arrangements ensure the brands concerned are maintained and that "V.O." and "7 Crown" are not weakened. The licenses may therefore be regarded as an essential part of the operation.

Intellectual property: Seagram Venture Assets (Clause 33.2 B)

74. The Venture Assets include coolers and mixers sold under the "Seagram" name. To ensure that the purchasers of the coolers and mixers can continue to use the

“Seagram” name, Pernod Ricard will grant an exclusive license on normal market terms for an initial period of [...] (renewable for a further [...]). Both Pernod Ricard and Diageo prohibited from using or claiming the right to use the “Seagram” mark for products that compete with coolers and mixers.

75. The Commission considers that these arrangements would be an integral part of the sale of the coolers and mixers business to a third party and cannot therefore be regarded as ancillary to the present operation.

Non-solicitation of employees (Clause 34.3)

76. The notifying parties have agreed that during the period between the acquisition date and the end date neither Pernod Ricard nor Diageo shall, without the prior consent of the other party, solicit or otherwise seek to entice away any transferred employee from the employment of any person in a manner inconsistent with the provisions of Clause 34.1 (this Clause sets out the rules under which each of the parties will have the right to offer employment to employees in the various business).
77. The above clause is reasonable and proportionate to the end of maintaining unchanged the value of the assets transferred. In addition, to the purpose of qualifying the assets to be sold as being a viable and stable entrepreneur or part of the latter, it is essential to maintain the operative link between the key employees and the relative brands. In the complex system in which the present operation of concentration will be implemented the provision of transitory rules seems to be necessary, thus the above clause appears to be an ancillary restraint directly related and necessary to such implementation.

IX. CONCLUSION

78. The Commission concludes that the commitments submitted by the parties during the course of the proceedings are sufficient to address the competition concerns raised by this concentration. Accordingly, subject to full compliance with this undertaking, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

Mario MONTI
Member of the Commission

CASE NO. COMP/M.2268: DIAGEO/PERNOD RICARD/SEAGRAM

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “Merger Regulation”), Pernod Ricard S.A. (“Pernod Ricard”) and Diageo plc (“Diageo”) (together referred to as the “Parties”) hereby give the commitments set out below to the European Commission with respect to the proposed concentration involving their acquisition of the Wine and Spirits Business of Seagram insofar as it concerns the EEA (the “Business”).

These commitments shall take effect upon the date of the Commission’s decision declaring the proposed concentration compatible with the Common Market pursuant to Article 6(1)(b) of the Merger Regulation (the “Effective Date”).

A DEFINITIONS

1 In these commitments, the following expressions will have the following meaning:

1 **Framework Agreement** means the Framework and Implementation Agreement entered into between the Parties as amended and restated on 9 February 2001 and in the form attached to the notification.

The Business means the Wine and Spirits Business of Seagram.

Diageo Assets means those businesses to be acquired and retained long-term by Diageo and comprised of the brands and associated assets set out in Part A of Schedule 1.

Pernod Ricard Assets means those businesses to be acquired and retained long-term by Pernod Ricard comprised of the brands and associated assets set out in Part B of Schedule 1.

Pernod Ricard On-Sale Assets means those businesses to be acquired by Pernod Ricard with the object of those assets being sold to third parties within a maximum period of [...] from the Acquisition Date and comprised of the brands and associated assets set out in Part C of Schedule 1.

Seagram Venture Assets means those businesses to be acquired by Pernod Ricard and/or Diageo with the object of those assets being sold to third parties within a maximum period of [...] from the Acquisition Date and comprised of the brands and associated assets set out in Part D of Schedule 1.

Firewalled Operations means all of the Back-Office Operations and any other part of the Business which was not immediately on the Acquisition Date integrated into the separate business of Diageo or Pernod Ricard.

- 2 Unless otherwise stated, defined terms in these commitments (ie those in upper case) will have the same meaning as set out in the Framework Agreement. Any reference to either Diageo or Pernod Ricard shall be deemed to include a reference to any Affiliate of Diageo or Pernod Ricard (as the case may be).

B THE COMMITMENT RELATING TO THE ALLOCATION OF THE SEAGRAM ASSETS BETWEEN THE PARTIES

- 3 The Stock and Asset Purchase Agreement concluded between Pernod Ricard, Diageo and Vivendi requires Pernod Ricard and Diageo to acquire the shares of the companies and the ownership of the assets that comprise the Seagram Spirits Business. This Agreement does not identify which portions of the Seagram Spirits Business each of Pernod Ricard and Diageo are to ultimately retain. Consequently, the parties have separately executed the Framework Agreement that describes the portions of the Seagram Spirits Business that each of the Parties will acquire and ultimately retain and which portions they will acquire and sell to third parties.

The agreed allocation of the Seagram Spirits Business has been determined in order to avoid potential competition issues. Whilst certain provisions of the Framework Agreement may be amended, these will not have any impact on the agreed allocation.

4 The parties therefore undertake that, save with the consent of the Commission :

(i) On the Acquisition Date:

- * the Pernod Ricard Assets and the Pernod Ricard On-Sale Assets will be acquired by Pernod Ricard; and
- * the Diageo Assets will be acquired by Diageo.

(ii) The parties will endeavour to procure that the Seagram Venture Assets are acquired by Diageo and/or Pernod Ricard as soon as reasonably practicable and in any event within [...] of the Acquisition Date.

C THE COMMITMENT RELATING TO THE DISPOSAL OF THE SEAGRAM VENTURE ASSETS AND PERNOD RICARD ON-SALE ASSETS

5 The parties will endeavour to procure that the seagram venture assets and the pernod ricard on-sale assets are, unless otherwise agreed by the commission, sold to third parties as soon as reasonably practicable after the acquisition date and, in any event, within [...] of that date (the end date). Failing such sale, any remaining seagram venture assets (other than [...]) will be acquired by either Diageo or Pernod Ricard and any remaining Pernod Ricard on-sale assets will be retained by pernod ricard.

6 In the event that one or several seagram venture assets remain unsold [...] before the end date, the parties will meet as often as necessary in order to agree a final allocation between them of these remaining assets (other than [...]). In the absence of agreement between the parties on this final allocation before the end date, the parties undertake, either to give the divestment trustee (to be appointed pursuant to Part H of this commitment) an irrevocable authority to sell such assets within [...] of such instruction at no minimum price, or (save in the case of “[...]”) to refer the matter to arbitration, giving the arbitrator an irrevocable instruction to conclude such arbitration proceedings within [...] of the end date.

- 7 The identity of any proposed third-party purchaser of [...] shall be subject to the prior written approval of the Commission. The Parties recognise that for a proposed purchaser of [...] to meet with the Commission's approval, it shall be a viable existing or potential competitor, independent of the Parties, possessing the financial resources, proven expertise and having the incentive to maintain and develop [...] as an active competitive force. In addition, the acquisition of [...] by a particular proposed purchaser must not be likely to create new competition problems. The Commission shall indicate whether a particular prospective purchaser is approved, or otherwise, within a reasonable period of being given details of one or more prospective purchasers with adequate information for the Commission to clarify whether such prospective purchaser meets the above conditions."

D THE COMMITMENT RELATING TO THE MANAGEMENT OF THE SEAGRAM ASSETS

- 8 The framework agreement contains detailed contractual provisions relating to the management of the seagram assets to avoid completely any potential competition issues during the interim period during which the business is to be divided between Pernod Ricard and Diageo or on-sold to third parties.

- 9 The Parties therefore undertake that :

- (i) Responsibility for managing the following Seagram Assets will be assumed by Pernod Ricard on the Acquisition Date:

- * the Pernod Ricard On-Sale Assets;
- * the Pernod Ricard Assets which are either gin, Scotch whisky or cognac brands; and
- * any other brand which has been identified by the Supervisory Committee as being anti-trust sensitive.

“Management” of Assets shall mean responsibility for the adoption of all strategic decisions relating to the pricing, sale, marketing and, more generally, the commercial policy in relation to these Assets.

- (ii) Each of the Parties will use its reasonable endeavours to assume responsibility for managing all Diageo Assets or all Pernod Ricard Assets (other than those referred to at point (i) above) (as the case may be) as soon as reasonably practicable after the Acquisition Date and, in any event, within [...] of such date.
- (iii) Diageo or Pernod Ricard will assume responsibility for managing the Seagram Venture Assets as soon as reasonably practicable after the Acquisition Date and, in any event, within [...] of such date.

E THE COMMITMENT RELATING TO THE SAFEGUARDS AND FIREWALLS

- 10 In order to put in place the arrangements to implement the framework agreement in practice, the parties will set up specific safeguards and firewall measures and procedures to avoid any potential competition issue during the interim period by controlling the flow of information to each of Diageo and Pernod Ricard out of each part of the business being acquired.
- 11 To provide the Commission with a high level of legal certainty in relation to these safeguards and firewalls and, save to the extent otherwise agreed with the Commission, the parties undertake that:
 - (i) they will put in place a combination of procedural and systems techniques to control the flow of information out of the firewalled operations to diageo or pernod ricard such that:
 - (a) any commercially sensitive information on matters such as current trading volumes and pricing in respect of:
 - * Pernod Ricard Assets and Pernod Ricard On-Sale Assets is only accessible to, or received by, Pernod Ricard or Pernod Ricard employees;
 - * Diageo Assets is only accessible to, or received by, Diageo or Diageo employees; and

- * Seagram Venture Assets is only accessible to, or received by, the Diageo or Pernod Ricard company with responsibility for managing those Assets in the territory in question; and
- (b) for reporting purposes, any information which is brand-specific relating to sales and marketing etc is only accessible to, or received by, appropriate parties: i.e.
- * if relating to Diageo Assets, only Diageo or Diageo employees;
 - * if relating to Pernod Ricard Assets, only Pernod Ricard or Pernod Ricard employees;
 - * if relating to Pernod Ricard On-Sale Assets, only Pernod Ricard or Pernod Ricard employees or, if agreed by the Parties and necessary to achieve the sale of such assets, the team established by Diageo and Pernod Ricard with responsibility for selling those Assets which neither Diageo nor Pernod Ricard intend to acquire and hold long-term (hereafter the “Disposals Team”); and
 - * if relating to the Seagram Venture Assets, only the aforesaid Disposals Team, the Diageo or Pernod Ricard employees managing the Assets in question, and the senior executive responsible for overseeing the integration process in the territory in question (hereafter the “Transition Director”);

For the avoidance of doubt, nothing in this paragraph 10 shall be understood as preventing the Disposals Team seeing information on the Seagram Venture Assets or Pernod Ricard On-Sale Assets which is properly required to evaluate and prepare such Assets for sale.

- (ii) any Firewalled Operation is placed under the day to day management and control of senior managers with responsibility for ensuring that the procedures described in paragraph (i) above are strictly complied with. The Firewalled Operations managers shall have no other operational or strategic management responsibilities for Diageo or Pernod Ricard in the territory(ies) to which the information relates;

- (iii) the Disposals Team consists only of employees which have no current and direct involvement with the selling or marketing of either Diageo or Pernod Ricard spirits brands;
- (iv) appropriate procedures are put in place to ensure that no member of the Disposals Team should pass on any information received on Seagram Venture Assets or Pernod Ricard On-Sale Assets to anyone within either Diageo or Pernod Ricard with such current and direct involvement with the selling or marketing of either Diageo or Pernod Ricard spirits brands; and
- (v) the Transition Directors, when reporting to the Supervisory Committee, do not pass on commercially sensitive brand-specific information but only report generally on the progress of the integration in the territory for which they are each responsible, on the performance of the Firewalled Operations insofar as it concerns that territory, and on the performance and value of the Seagram Assets to be sold to third parties.

F COMMITMENT RELATING TO RUM IN ICELAND

- 12 Diageo shall, within [...], entrust [...] the distribution of the Captain Morgan rum brands in Iceland to a third-party distributor who is independent of both Diageo and Karl K Karlsson Ltd, on reasonable arm's length commercial terms. If it is subsequently proposed to change such third-party distributor, the Commission shall immediately be notified in writing.

G THE COMMITMENT RELATING TO THE APPOINTMENT OF A MONITORING TRUSTEE

- 13 The parties shall appoint an independent trustee (the "Monitoring Trustee"), such as an investment bank or auditor, subject to approval by the Commission. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. The Parties shall propose a Monitoring Trustee and the terms of the mandate for formal approval to the Commission with adequate information for the Commission to verify that the monitoring trustee fulfils these requirements. This proposal shall be made no later than one week after the Effective Date. The Monitoring Trustee will be remunerated in such a way as not to impede its independence and effectiveness in fulfilling the mandate. The mandate must

include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under the commitments accepted by the Commission.

14 The Monitoring Trustee shall assume its specified duties in order to ensure compliance in good faith with the Commitments on behalf of the Commission and taking into account the legitimate interests of the Parties.

15 The Monitoring Trustee shall, following its appointment:

- (a) monitor that the Parties comply with the Commitments set out at Parts B to F above;
- (b) verify that the Parties are taking reasonable steps to preserve the overall economic viability, marketability and competitiveness of the Seagram Venture Assets (and, in the case of Pernod Ricard, the Pernod On Sale Assets) taken together, pending divestiture, in accordance with good commercial practice;
- (c) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure compliance with the conditions and obligations under these commitments, and the Monitoring Trustee shall be entitled to impose such measures (with the approval of the Commission) in the event that the Parties do not comply with the Monitoring Trustee's proposals within the timeframe set by the Trustee;
- (d) provide to the Commission, with a simultaneous non-confidential copy to Diageo and Pernod Ricard, a written report within ten days after the end of every month concerning the compliance of the Parties with the above Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission if the Monitoring Trustee concludes on reasonable grounds that the Parties are failing to comply with any of the conditions or obligations under these Commitments. The Parties shall receive a simultaneous non-confidential copy of any such additional report; and
- (e) the Monitoring Trustee shall cease to act as a Monitoring Trustee only after the Commission has discharged it from its duties, following a request from the Monitoring Trustee made after all the Commitments with which it has been entrusted have all been implemented. However, the Commission may at any time require the re-appointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and promptly implemented.

- 16 The Parties shall provide the Monitoring Trustee with all such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require to monitor compliance with the conditions and obligations under these Commitments. The Parties shall make available to the Monitoring Trustee one or several offices on the premises of either the Business or the premises of Diageo or Pernod Ricard as the Monitoring Trustee may from time to time reasonably require. Each of the Parties shall be available for regular meetings with the Monitoring Trustee, according to a timetable agreed between them, in order to provide the Monitoring Trustee, either orally or in document form, with all information necessary for the completion of its task. At the request of the Monitoring Trustee, the Parties shall provide the Monitoring Trustee with access to any part of the Business which the Monitoring Trustee may reasonably require.

G DIVESTMENT TRUSTEE

- 17 As provided in paragraph 6 above, if any of the Seagram Venture Assets remain unsold by the End Date (the “Remaining Assets”) (and, in the case of Seagram Venture Assets other than [...], the matter has not been referred to arbitration), then the Parties shall appoint a divestment trustee to sell them (the “Divestment Trustee”).
- 18 Such Divestment Trustee shall be independent of the Parties and, to the extent consistent with the performance of these duties as a Divestment Trustee, the provisions of paragraphs 13, 15(c), (d) and (e) and 16 shall apply to his appointment (save that the Parties’ proposal for the Divestment Trustee shall be made within one week of the End Date, rather than the Effective Date).
- 19 Within [...] of the End Date, the Divestment Trustee shall sell any Remaining Assets to one or more third parties independent of the Parties (provided that the Commission has not objected to any such third party in accordance with procedures laid down by the Commission).

H THE REVIEW CLAUSE

- 20 The Commission may, upon request from the Parties, showing good cause and after hearing the relevant Trustee, and where relevant, allow for:

- (a) an extension of the periods allowed to the Parties (pursuant to paragraphs 5 and 6 above) to sell or acquire the Seagram Venture Assets or Pernod Ricard On-Sale Assets; or
- (b) a waiver of one or more of the conditions and obligations in these Commitments.

The Parties shall address any request for an extension of time periods no later than one month prior to the expiring of any relevant time period, showing good cause. Only in exceptional circumstances will the Parties be entitled to request an extension within the last month of any such period.

Date: 11 April 2001

.....

[...]

Date: 11 April 2001

.....

[...]

Schedule 1
Assets ultimately to be acquired by the parties
(both companies and assets acquisitions)

Part A
Diageo Assets

1. BRANDS

- (1) BARTON & GUESTIER
- (2) CACIQUE
- (3) CAPTAIN MORGAN
- (4) CHÂTEAU AND ESTATE AGENCY WINES
- (5) CROWN ROYAL
- (6) CUESTA DEL MADERO
- (7) DON JULIO
- (8) MUMM CUVÉE NAPA
- (9) MYERS'S
- (10) SAN TELMO
- (11) SEAGRAM'S 5 STAR
- (12) SEAGRAM'S 7 CROWN
- (13) SEAGRAM'S 83
- (14) SEAGRAM'S VO
- (15) STERLING VINEYARDS
- (16) TESSERA
- (17) THE MONTEREY VINEYARD
- (18) TRES MAGUEYES
- (19) WINDSOR PREMIER

2. PRODUCTION ASSETS

[...]

Part B
Pernod Ricard Assets

1. BRANDS

- (1) 100 PIPERS
- (2) ALDEIA VELHA & NOVA
- (3) BENRIACH
- (4) BLENDERS PRIDE
- (5) BOODLES
- (6) CENTURY OF MALTS and THE CENTURY OF MALTS
- (7) CHIVAS
- (8) CHIVAS REGAL
- (9) CORDON ARGENT
- (10) CORDON ROSES
- (11) DE VALCOURT
- (12) DUNBAR
- (13) GALLEON
- (14) GLEN GRANT
- (15) GLEN KEITH
- (16) GLENLIVET
- (17) HERITAGE SELECTION
- (18) HIGHLAND CLAN
- (19) IMPERIAL BLUE
- (20) JULES ROBIN
- (21) L'OR
- (22) LICOR BEIRAO
- (23) LONGMORN
- (24) MACIEIRA

- (25) MACIEIRA 5 ESTRELLAS
- (26) MARTELL
- (27) MARTELL & CO.
- (28) MARTELL CORDON BLEU
- (29) MASTER BLEND
- (30) MEDAILLONS
- (31) MONTILLA
- (32) MONTILLA CARTA
- (33) NATU NOBILIS
- (34) NOBLIGE
- (35) OAKEN GLOW
- (36) ORLOFF
- (37) ROBIN PINEAU DES CHARENTES
- (38) RON CABANA
- (39) ROYAL SALUTE
- (40) ROYAL STAG
- (41) SEAGRAM; SEAGRAM'S
- (42) SEAGRAMS GIN
- (43) SOMETHING SPECIAL
- (44) STRATHISLA

2. PRODUCTION ASSETS

[...]

Part C Pernod Ricard On-sale Assets

1. BRANDS

[...]

2. PRODUCTION ASSETS

[...]

Part D
Seagram Venture Assets

1. BRANDS

[...]

2. PRODUCTION ASSETS

[...]