EN

Case No COMP/M.3779 - PERNOD RICARD / ALLIED DOMECQ

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.3779 – PERNOD RICARD / ALLIED DOMECQ Notification of 02.05.2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 02.05.2005, the French company Pernod Ricard SA ("Pernod Ricard") notified its intention to acquire control of the English company Allied Domecq Plc ("Allied Domecq"), within the meaning of article 3(1)(b) of the EC Merger Regulation ("the Merger Regulation") by way of public bid.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and, following submission by the parties of undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6 (2) of the Merger Regulation, does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

[1] OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **Pernod Ricard** is a publicly quoted French company active in the production and distribution of alcoholic beverages, mainly spirits and wines, on a world-wide scale. Its main brands, for example, include the aniseed “Ricard” and “Pastis 51”, the Scotch whisky “Chivas Regal”, the rum “Havana Club” and the wine “Jacob’s Creek”. In addition, Pernod Ricard also distributes so-called “agency” brands, that is, brands owned by third parties (for example, some of LVMH’s champagne brands in Portugal).

4. **Allied Domecq** is a publicly listed English company active in the production and distribution of spirits and wines on a world-wide scale. It also owns and operates a quick service restaurant business. Its main spirit brands for example contain the Scotch whiskys “Ballantines” and “Teachers”. Allied Domecq’s agency brands include a.o. the US whisky “Four Roses”.

II. THE OPERATION AND THE CONCENTRATION

5. The operation consists of the acquisition of sole control of Allied Domecq by Pernod Ricard, through its wholly owned subsidiary Goal Acquisitions Limited, by way of a public bid announced on 21.04.2005.

6. On 21 April 2005, Fortune Brands and Pernod Ricard signed a framework agreement pursuant to which Fortune Brands is to acquire the control of various brands and assets of Allied Domecq[2]. On the same day, Fortune Brands and Pernod Ricard signed a separate sale and purchase agreement pursuant to which Fortune Brands will also acquire Pernod Ricard’s Larios brand. The acquisition by Fortune Brands of the Larios brand belonging to Pernod Ricard is part the overall distribution of the Allied Domecq assets between Pernod Ricard and Fortune Brands. This transaction is conditional to the completion of the acquisition by Pernod Ricard of the entire issued and to be issued share capital of Allied Domecq.

7. The acquisition by Fortune Brands of the Allied Domecq and Pernod Ricard’s brands will take place in two stages. First, Fortune Brands will acquire shares in the bidding vehicle that will be created for the acquisition by Pernod Ricard of the whole of Allied Domecq. The purpose of the acquisition of these shares, which will account for approximately 37% of the issued share capital but will not carry any voting rights, is to protect the value of the brands and assets that will be ultimately transferred to Fortune Brands. This will also confer Fortune Brands certain contractual rights to manage and operate immediately the relevant Allied Domecq brands and assets. Then, within a period of six months, the transfer of the relevant Allied Domecq brands and assets will become effective. The Commission cleared this transaction on 10.6.2005 (case No *COMP/M.3813 – Fortune Brands / Allied Domecq*).

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[2] The brands and assets are the following: Teachers, Laphroaig, DYC, Canadian Club, Maker’s Mark (whisky); Sauza (tequila); Courvoisier, Centenario, Fundador, Jacobi (brandy); Castellana (aniseed); Kuemmerling (bitters); Harvey’s (sherry); Cockburn’s (port); Buena Vista, Clos du Bois, Atlas Peak, Callaway, William Hill, Jerry Garcia, Gary Farrell, Haywood Estate, Jakes Fault (US wines) and the distribution assets of Allied Domecq in the UK, Spain (except wine distribution) and Germany.

8. The operation thus constitutes a concentration within the meaning of article 3(1)(b) of the EC Merger Regulation whereby Pernod Ricard acquires control over Allied Domecq.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] (Pernod Ricard: EUR 3,571.7 million; Allied Domecq: EUR 3,814 million). Each of the parties have a Community-wide turnover in excess of EUR 250 million (Pernod Ricard: EUR […] million; Allied Domecq: EUR […] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

10. The concentration relates to spirit and wine markets. On the basis of the *Guinness/Grand Metropolitan*[4] and *Pernod Ricard/Diageo/Seagram*[5] decisions, the parties consider that a relevant product market has to be defined for each of the main spirit categories, i.e. (all) whisky, cognac/armagnac and other brandies, rum, gin, vodka, tequila, aniseed, bitters and liqueurs. The market investigation in the present case has largely confirmed that each of these categories constitute a separate relevant product market, since they are not interchangeable or substitutable from the viewpoint of both final consumers and intermediate customers (retailers, wholesalers and horeca).

11. As far as whiskys are concerned, a further splitting in the following segments could alternatively be considered: Scotch whisky, Irish whisky, US whisky, and Canadian whisky. In its *Guinness/Grand Metropolitan* decision, the Commission had concluded that the whisky market had to be subdivided according to origin at least with regard to the Spanish and the Irish market. In *Pernod Ricard/Diageo/Seagram*, the Commission held that a further segmentation within the whisky market should be made in particular for Scotch whisky.

12. The market investigation in the present case has confirmed that a segmentation of the whisky market according to origin may be appropriate, in particular due to consumer habits and prices. While some respondents to the investigation indicated that a 5 to 10% permanent price increase of for example Scotch whisky would not lead consumers to shift to other whiskies of different origin, others indicated that substitution for whiskies of different origin would likely take place within the whisky category. Therefore based on the results of the investigation, none of the two possible market definitions, that is, all whisky and hypothetical narrower definitions by origin can be excluded in any of the relevant geographic markets (see below paragraph 14). However for the purposes of this

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3 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).

4 Commission decision of 15.10.1997, case No IV/M.938.

5 Commission decision of 9.05.2001, case No COMP/M.2268.

decision, the question whether there exist separate relevant markets for whisky of different origin in the markets concerned by the present transaction can be left open. Namely, in order to remove the serious doubts resulting from the proposed transaction in the hypothetical markets for all whisky in Slovenia, Scotch whisky in Italy, Hungary, the Slovak Republic and Slovenia, as well as Irish whisky in Slovenia, Greece, Hungary, Iceland, The Netherlands, Norway, Portugal, Finland and Germany, Pernod Ricard has submitted undertakings to the Commission pursuant to Article 6(2) of the EC Merger Regulation (see below). As these undertakings are sufficient to eliminate the aforementioned serious doubts regardless the exact definition of the relevant product markets in the whisky category, it is not necessary to reach a definite conclusion on the exact market definition.

13. On the basis of the *Pernod Ricard/Diageo/Seagram* decision, the parties submit that there is no need for further segmentation within the product markets identified above that would be based on quality levels such as premium/secondary brands or private labels. This conclusion is supported by the results of the market investigation in the present case. In the same decision, the Commission also considered the possible existence 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). However the Commission concluded that this delineation would not change the competitive assessment as the transaction would primarily concern wholesalers and large retailers. This conclusion remains valid in the present case as market characteristics that have led to these findings have remained unchanged. Furthermore, the market investigation has not given any different indications in regard to the relevant markets.

B. Relevant geographic markets

14. The parties have submitted that the market for the production and distribution of spirits and wines is national, following the findings in the *Guinness/Grand Metropolitan* and *Pernod Ricard/Diageo/Seagram* decisions. The results of the market investigation in this case do not suggest that the Commission should deviate from its previous practice. Therefore, the markets are considered to be national.

C. Assessment

15. Both Pernod Ricard and Allied Domecq are active in the production and distribution of spirits and wines. In a large number of Member States, there therefore are horizontal overlaps in several spirit and wine markets. However, in relation to spirits, significant overlaps occur only in whisky (in all whisky, Scotch whisky and Irish whisky). In addition, significant overlaps exist in other brandies in Portugal. In relation to wines, a significant overlap only exists as far as champagne in Portugal is concerned.

1. Single dominance

a) <u>Whisky</u>

16. In the all whisky market, and within the Scotch whisky and Irish whisky segments, the parties' combined market shares would range from some 40% up to 100% in a number of Member States. [6] This is due to the fact that Pernod Ricard would acquire Allied Domecq's Scotch whisky brand "Ballantines" as well as Allied Domecq's agency agreement for the distribution of the Irish whisky brand "Tullamore Dew", owned by the C&C group. Pernod Ricard would add these acquired brands to its existing Scotch whisky brands, most importantly "Chivas Regal", "The Glenlivet" and "Clan Campbell", and to its Irish whisky brand "Jameson".

aa) *All whisky*

17. In those Member States which are to be considered affected markets, Pernod Ricard and Allied Domecq would have the following combined market shares, as illustrated by the table below:

Table I Parties' market shares in the all whisky market in 2003 (IWSR 2004 volume data)

Member State	Pernod Ricard pre-merger market share (owned + agency brands)	Allied Domecq pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
Austria	[5-10]%	[10-15]%	[15-20]%
Czech Republic	[5-10]%	[10-15]%	[20-25]%
Finland	[10-15]%	[5-10]%	[20-25]%
France	[15-20]%	[5-10]%	[25-30]%
Germany	[5-10]%	[10-15]%	[15-20]%
Hungary	[0-5]%	[30-35]%	[35-40]%
Iceland	[25-30]%	[15-20]%	[45-50]%
Italy	[30-35]%	[10-15]%	[40-45]%

6 All market shares mentioned are derived from International Wines and Spirits Record Limited ("IWSR"), which is based on sales volume of the preceding year (i.e. IWSR 2005 is based on data of 2004). The market investigation has largely confirmed that IWSR volume data is the most reliable and standard data used to assess the market position of spirit and wine suppliers at wholesale level. For the markets where available, IWSR 2005 data is given in addition to IWSR 2004.

Member State	**Pernod Ricard pre-merger market share (owned + agency brands)**	**Allied Domecq pre-merger market share (owned + agency brands)**	**Combined market share (owned + agency brands)**
The Netherlands	[10-15]%	[5-10]%	[15-20]%
Norway	[10-15]%	[5-10]%	[20-25]%
Poland	[5-10]%	[15-20]%	[20-25]%
Portugal	[5-10]%	[5-10]%	[15-20]%
Slovak Republic	[5-10]%	[10-15]%	[20-25]%
Slovenia	[5-10]%	[50-55]%	[60-65]%
Spain	[5-10]%	[15-20]%	[20-25]%

18. In Slovenia, the parties' combined market share would amount to [60-65]% of the all whisky market.[7] Pernod Ricard would contribute a pre-merger market share of [5-10]% to Allied Domecq's share of [50-55]%, which, in view of its importance, could be evidence of an already existing dominant position held by Allied Domecq.[8] If agency brands were excluded from the market share aggregation and only owned brands were taken into account, the parties combined market share would still amount to [50-55]% (based on IWSR 2004 volume data).

19. The acquisition of Allied Domecq would change Pernod Ricard from a relatively weak supplier into the strongest competitor in the Slovene all whisky market. According to IWSR 2004 volume data (owned brands), it would clearly place Pernod Ricard ahead of Fortune Brands ([10-15]%)[9], Brown Forman ([5-10]%) and Diageo ([5-10]%).

20. With the acquisition of Allied Domecq's Scotch whisky brand "Ballantines finest" (achieving [15-20]% of all sales)[10] and the Canadian whisky brand "Canadian Special Old" (achieving [10-15]%), Pernod Ricard would own the two best-selling brands, while Fortune Brands would hold the third best selling ("Canadian Club Whisky" achieving [5-

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7 According to IWSR 2005 volume data, the parties' combined market share would even reach [60-65]% of the all whisky market.

8 Case T-221/95, *Endermol v Commission*, [1999] ECR II-1299, at paragraph 134, and Case T-102/96, *Gencor v Commission*, [1999] ECR II-753, at paragraph 205.

9 This market position would include the acquisition of Allied Domecq's whiskies "Laphroaig", "Teachers", "Canadian Club", "Makers Mark" and "DYC" (*cf.* Commission decision of 10.6.2005 in Case COMP/M.3813 - *Fortune Brands/Allied Domecq*).

10 Based on IWSR 2004 volume data (owned brands).

10]%) and Brown Forman the fourth best-selling brand (the US whisky "Jack Daniels" achieving [5-10]%). In addition, Pernod Ricard would acquire Allied Domecq's Scotch whisky brands "Braemar" ([5-10]%) and "Old Smuggler" ([0-5]%) ranking in the fifth and seventh position within the best-selling brands.

21. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of Allied Domecq's strong position in the Slovene all whisky market, placing Pernod Ricard well ahead of its competitors, the notified operation is likely to significantly impede effective competition as a result of the strengthening of a dominant position and raises serious doubts as to its compatibility with the common market.

22. In Hungary, the parties' combined market share would account for [35-40]% of the all whisky market[11] (Pernod Ricard [0-5]%; and Allied Domecq [30-35]%). Excluding agency brands from the market share aggregation, the combined market share would only amount to [35-40]%. Although Pernod Ricard would - namely due to the acquisition of Allied Domecq's "Ballantines Finest" - place itself before Diageo in the all whisky market, Diageo as well as other competitors, such as Zwack Unicum ([10-15]%) and Fortune Brands ([10-15]%)[12], would still exercise competitive pressure on Pernod Ricard. However, the undertaking submitted by the parties, eliminating any competition concerns on a hypothetical narrower market for Scotch whisky, also solves any competition concerns on a wider all whisky market. Therefore the existence of serious doubts in the all whisky market in Hungary can be left open for purposes of the present decision.

23. In Italy, the combined market share of Pernod Ricard and Allied Domecq would amount to [40-45]% of the all whisky market,[13] to which Pernod Ricard contributes a pre-merger market share of [30-35]% and Allied Domecq that of [10-15]%. If agency brands were excluded from the market share aggregation, the parties' combined market share would still amount to [40-45]%. Although Pernod Ricard would reinforce its market position in the all whisky market, namely due to the acquisition of "Ballantines Finest", it would still face significant competition from other suppliers, such as Diageo ([20-25]%) and Brown Forman ([10-15]%) However, the undertaking submitted by the parties, eliminating any competition concerns on a hypothetical narrower market for Scotch whisky, also solves any competition concerns on a wider all whisky market. Therefore the existence of serious doubts in the all whisky market in Italy can be left open for purposes of the present decision.

24. Moreover, there are a number of Member States, where the notified operation is unlikely to create or strengthen a dominant position in the all whisky market.

25. Namely in France, the parties' combined market share would amount to [25-30]% (Pernod Ricard, [15-20]% Allied Domecq, [5-10]%). If only the parties' owned brands

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11 According to IWSR 2005 volume data, the parties' combined market share in the Hungarian all whisky market is slightly higher, namely [40-45]%.

12 This market position would include the acquisition of Allied Domecq's whiskies "Laphroig", "Teachers", "Canadian Club" and "Makers Mark" (*cf.* Commission decision of 10.6.2005 in Case COMP/M.3813 - *Fortune Brands/Allied Domecq*).

13 According to IWSR 2005 volume data, the parties' combined market share in the all whisky market would even be slightly higher, i.e. [40-45]%.

were taken into account and agency brands were excluded, the combined market share would amount to [25-30]%. Although Pernod Ricard would become the strongest supplier in this market, there are still considerable competitors, such as La Martiniquaise ([15-20]%), William Pitters ([10-15]%) and Diageo ([10-15]%), which, following Pernod Ricard's brand "Clan Campbell" ([10-15]%), hold the second and third best-selling whisky brands ("William Peel" of William Pitters, [10-15]% of all sales; "Label 5" of La Martiniquaise, [10-15]%). Therefore, in the French all whisky market, the notified operation would clearly not create or strengthen a dominant position.

26. In Iceland, the parties' combined market share would reach [45-50]% (Pernod Ricard, [25-30]%; Allied Domecq, [15-20]%).[14] If only owned brands were taken into account, the parties' combined market share would be somewhat lower ([40-45]%). However, in the all whisky market, Pernod Ricard faces significant competition from Highland Distillers ([15-20]%), Wm Grant ([10-15]%) and CL Financial ([5-10]%). Moreover, the investigation has shown that in the off-trade channel (sales through retailer outlets, such as supermarkets) representing nearly [75-80]% of the total annual consumption of alcoholic beverages in Iceland, the arisal of competition concerns is more unlikely because of the existence of "The State Alcohol and Tobacco Company of Iceland", the Icelandic statutory retail monopoly. In addition, it must be noted that [70-75]% of the total whisky consumption in Iceland is based on Scotch whisky and that, as it is explained below in recital 49, Pernod Ricard's competitors are all well-established Scotch whisky suppliers exercising very considerable competitive pressure on Pernod Ricard in that most important segment of the all whisky market. Therefore, and given that third parties did not raise any concerns in their replies to the Commission's questionnaires, it is unlikely that the notified operation would create or strengthen a dominant position in the Icelandic all whisky market.

27. As illustrates the table above, the parties' combined market shares in the all whisky market would not exceed 25% in a number of Member States, so that the notified operation is not liable to impede effective competition in these Member States.[15] This applies to Austria (Pernod Ricard [5-10]%%; Allied Domecq [10-15]%), Czech Republic (Pernod Ricard [5-10]%; Allied Domecq [10-15]%), Finland (Pernod Ricard [10-15]%; Allied Domecq [5-10]%), Germany (Pernod Ricard [5-10]%; Allied Domecq [10-15]%), the Netherlands (Pernod Ricard [10-15]%; Allied Domecq [5-10]%), Norway (Pernod Ricard [10-15]%; Allied Domecq [5-10]%), Poland (Pernod Ricard [5-10]%; Allied Domecq [15-20]%), Portugal (Pernod Ricard [5-10]%; Allied Domecq [5-10]%), Slovak Republic (Pernod Ricard [5-10]%; Allied Domecq [10-15]%) and Spain (Pernod Ricard [5-10]%; Allied Domecq [15-20]%).

14 According to IWSR 2005 volume data, the parties' combined market share in the Icelandic all whisky market is even lower, namely [45-50]%.

15 Guidelines on the assessment of horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C 31/5, 5.2.2004, at paragraph 18.

bb) *Scotch whisky*

28. As mentioned above, the present investigation confirmed that a further segmentation of whiskies into Scotch whisky and whiskies of other origin may be appropriate. Therefore, the impact of the notified operation on the hypothetical narrower Scotch whisky market is assessed in the following.

29. In those Member States which are to be considered affected markets, Pernod Ricard and Allied Domecq would have the following combined market shares, as illustrated by the table below:

Table II Parties' market shares in a hypothetical Scotch whisky market in 2003 (IWSR 2004 volume data)

Member State	Pernod Ricard pre-merger market share (owned + agency brands)	Allied Domecq pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
Austria	[5-10]%	[20-25]%	[30-35]%
Czech Republic	[0-5]%	[25-30]%	[30-35]%
France	[15-20]%	[10-15]%	[25-30]%
Germany	[5-10]%	[25-30]%	[30-35]%
Hungary	[0-5]%	[50-55]%	[55-60]%
Iceland	[10-15]%	[15-20]%	[25-30]%
Italy	[25-30]%	[15-20]%	[45-50]%
Poland	[5-10]%	[25-30]%	[30-35]%
Portugal	[5-10]%	[10-15]%	[15-20]%
Slovak Republic	[5-10]%	[40-45]%	[45-50]%
Slovenia	[0-5]%	[55-60]%	[55-60]%
Spain	[5-10]%	[15-20]%	[25-30]%

30. There are a number of Member States where the notified operation is likely to create or strengthen a dominant position.

31. Namely in Hungary, the parties' combined market share would reach [55-60]% (Pernod Ricard, [0-5]%; Allied Domecq, [50-55]%) of a hypothetical narrower Scotch whisky market.[16]

32. By incorporating Allied Domecq's very strong market position, Pernod Ricard would place itself well ahead of Diageo ([30-35]%), its closest competitor in a hypothetical narrower Scotch whisky market, followed by William Grant ([0-5]%) and Fortune Brands ([0-5]%)[17].

33. In particular, with the acquisition of Allied Domecq's brand "Ballantines finest", Pernod would hold the top selling brand achieving [35-40]% of all sales and thus exceeding Diageo's brand "Johnnie Walker R." by approx. [5-10] percentage points. The "Old Smuggler" brand, which Pernod Ricard would also acquire from Allied Domecq, would rank on the third position ([10-15]%). William Grant`s brand "Grants" ([0-5]%) and Brown Forman's brand "Teachers" ([0-5]%) would only hold the fourth and fifth position respectively.

34. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of Allied Domecq's strong position in the hypothetical narrower Hungarian Scotch whisky market placing Pernod Ricard well ahead of its competitors, it must be concluded that, the notified operation is likely to significantly impede effective competition as a result of the strengthening of a dominant position and raises serious doubts as to its compatibility with the common market.

35. In Italy, Pernod Ricard's ([25-30]%) and Allied Domecq's ([15-20]%) combined market share would account for [45-50]% of Scotch whisky sales.[18]

36. Pernod Ricard's acquisition of Allied Domecq would significantly widen the gap between Pernod Ricard and Diageo, its closest competitor in a hypothetical narrower Scotch whisky market, from approx. [5-10] percentage points pre-merger to [20-25] percentage points post-merger. After Diageo (achieving a market share of [20-25]%), follow Wm Grant ([5-10]%) and Bacardi Martini ([0-5]%).

37. In terms of brands, the acquisition of Allied Domecq's "Ballantines finest" would lead to a situation where Pernod Ricard holds the first three best-selling brands ("Glen Grant" achieving [10-15]% of all Scotch sales; "Ballantines finest", [10-15]%; "Chivas Regal", [5-10]%). Diageo's competing brands "Johnnie Walker R." ([5-10]%) and "J&B Rare" ([5-10]%) would hold the fourth and fifth position, followed by Wm Grants brand "Wm Grants" ([0-5]%) and Bacardi-Martini's "William Lawson" ([0-5]%). In addition, Pernod Ricard would acquire Allied Domecq's "Long John" ([0-5]%).

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16 According to IWSR 2005 volume data, the parties' combined market share would even reach [55-60]% in the Scotch whisky category.

17 This market position would include the acquisition of Allied Domecq's Scotch whiskies "Laphroig" and "Teachers" (*cf.* Commission decision of 10.6.2005 in Case COMP/M.3813 - *Fortune Brands/Allied Domecq*).

18 According to IWSR 2005 volume data, the parties' combined market share would even reach [55-60]% in the Scotch whisky category.

38. In view of the crucial reinforcement of Pernod Ricard's market position in a hypothetical narrower Scotch whisky market in Italy, leaving its competitors well behind, it must be concluded that the notified operation is likely to significantly impede effective competition as a result of the creation of a dominant position in that market and raises serious doubts as to its compatibility with the common market.

39. In the Slovak Republic, the aggregation of Pernod Ricard's pre-merger market share of only [5-10]% and that of Allied Domecq accounting for [40-45]% would result in a strong combined market position of [45-50]%.[19]

40. The acquisition of Allied Domecq would turn Pernod Ricard into the strongest competitor in the Scotch whisky category. According to IWSR 2004 volume data (owned brands), its closest competitor Diageo accounts for [25-30]% of the Scotch whisky category, followed by Sodiko reaching a market share of [10-15]%.

41. Due to the acquisition of Allied Domecq, Pernod Ricard would hold the best-selling Scotch whisky in the Slovak Republic, that is, "Ballantines Finest" which achieves a share of [30-35]% of all sales (IWSR 2004 volume data). Diageo owns the second best-selling brand, "Johnnie Walker" ([25-30]%), and Sodiko ranks with "Peter Scott Black" in the third position ([10-15]%). The brand "Old Smuggler" ([5-10]%), which Pernod Ricard would also acquire from Allied Domecq, and Pernod Ricard's brand "Chivas Regal" ([5-10]%) rank in the fourth and fifth position respectively.

42. In view of Pernod Ricard's considerable market share increase resulting in a strong market position well ahead of its competitors in a hypothetical narrower Scotch whisky market in the Slovak Republic, the notified operation is likely to significantly impede effective competition as a result of the creation of a dominant position in that market and raises serious doubts as to its compatibility with the common market.

43. In Slovenia, the parties' combined market share would reach [55-60]% (Pernod Ricard, [0-5]%; Allied Domecq, [55-60]%) in a hypothetical narrower Scotch whisky market.[20] By incorporating Allied Domecq's very strong market position, Pernod Ricard would become the leading Scotch whisky supplier exceeding the market position of its closest competitor, Diageo (achieving a market share of [10-15]%), by approx. [45-50] percentage points. After Diageo, follow CL Financial ([5-10]%) and Fortune Brands ([0-5]%)[21]. Due to the acquisition of Allied Domecq's brands "Ballantines Finest" ([30-35]%), "Braemar" ([10-15]%) and "Old Smuggler" ([5-10]%), Pernod Ricard would own the three best-selling Scotch brands in Slovenia. In addition, Pernod Ricard would acquire Allied Domecq's brands "Long John" ([0-5]%) and "Macnair" ([0-5]%). Consequently, the notified operation is likely to significantly impede effective

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[19] According to IWSR 2005 volume data, the parties' combined market share would be [45-50]% of the Scotch whisky category.

[20] According to IWSR 2005 volume data, the parties' combined market share would even account for [60-65]% of the Scotch whisky category.

[21] This market position would include the acquisition of Allied Domecq's Scotch whiskies "Laphroig" and "Teachers" (*cf.* Commission decision of 10.6.2005 in Case COMP/M.3813 - *Fortune Brands/Allied Domecq*).

competition as a result of the strengthening of a dominant position and raises serious doubts as to its compatibility with the common market in a hypothetical narrower Slovene Scotch market by combining Allied Domecq's already existing very strong market position with that of Pernod Ricard.

44. There are a number of Member States where the notified transaction is not likely to create or strengthen a dominant position in a hypothetical Scotch whisky market.

45. Namely in Austria, the parties' combined market share would account for [30-35]% (Pernod Ricard, [5-10]%; Allied Domecq, [20-25]%) of a hypothetical Scotch whisky market. Although Pernod Ricard would acquire Allied Domecq's stronger brand "Ballantines finest", the clear market leader would remain Diageo ([35-40]%). It is therefore unlikely that the notified transaction would create or strengthen a dominant position in a hypothetical narrower Austrian Scotch whisky market.

46. In the Czech Republic, the combined market share of Pernod Ricard ([0-5]%) and Allied Domecq ([25-30]%) would reach [30-35]% in a hypothetical Scotch whisky market. According to IWSR 2005 volume data, the parties' combined market would be even lower, that is, [25-30]%. However, despite a market share increase, namely due to the acquisition of Allied Domecq's "Ballantines Finest" and "Old Smuggler", Pernod Ricard would still face strong competition from a number of competitors, such as Diageo ([25-30]%) and Sodiko ([20-25]%).[22] As a consequence, in the Czech Republic, the notified operation is unlikely to create or strengthen a dominant position in a hypothetical narrower Scotch whisky market.

47. In France, the parties' combined market share would account for [25-30]% (Pernod Ricard, [15-20]%; Allied Domecq, [10-15]%) of a hypothetical Scotch whisky market. Excluding agency brands from the market share aggregation, the combined share would be somewhat lower, that is, [25-30]%. In a hypothetical Scotch whisky market, competitors, such as La Martiniquaise ([15-20]%), William Pitters ([15-20]%) and Diageo ([10-15]%), could still exercise significant competitive pressure on Pernod Ricard, despite of Pernod Ricard's acquisition of Allied Domecq's brands "Ballantines finest" and "Long John". For example, after Pernod Ricard's "Clan Campbell" ([10-15]%), William Pitters and La Martiniquaise hold the second and third best-selling Scotch brands (William Peel, [10-15]%; "Label 5", [10-15]%) respectively. Therefore, it is unlikely that the notified transaction would create or strengthen a dominant position in a hypothetical narrower French Scotch whisky market.

48. In Germany, the parties' combined market position would reach [30-35]% (Pernod Ricard, [5-10]%; Allied Domecq, [25-30]%) in a hypothetical narrower Scotch whisky market, namely due to Pernod Ricard's acquisition of Allied Domecq's brand "Ballantines Finest" which Pernod Ricard would add to its "Glen Grant" brand. However, Pernod Ricard would still be exposed to considerable competition from suppliers, such as Diageo (achieving with owned brands [20-25]%) but also WM Grant

22 Based on IWSR 2004 volume data.

([5-10]%) and Fortune Brands ([0-5]%)[23]. Therefore, the notified operation unlikely leads to the creation or strengthening of a dominant position.

49. In Iceland, the parties' combined market share would only reach [25-30]% (Pernod Ricard, [10-15]%; Allied Domecq, [15-20]%) in a hypothetical narrower Scotch whisky market. This market share would be almost equalled by Highland Distillers already achieving with owned brands only [25-30]%. After the acquisition of Allied Domecq, Pernod Ricard would also continue to be exposed to the competitive pressure from suppliers, such as Wm Grant ([15-20]%) and CL Financial ([10-15]%). In a hypothetical narrower Scotch whisky market, the three mentioned competitors of Pernod Ricard own the three best-selling whisky brands, that is, "Famous Grouse" (with which Highland Distillers achieves [25-30]% of all sales), "Wm Grants" (with which Wm Grant achieves [10-15]%) and "Scottish Leader" (with which CL Financial achieves [10-15]%). As a consequence, in Iceland, the notified operation is not likely to create or strengthen a dominant position in a hypothetical narrower Scotch whisky market.

50. In Poland, the notified operation would improve the parties' position, whose combined market share would reach [30-35]% (Pernod Ricard, [5-10]%; Allied Domecq, [25-30]%) of a hypothetical narrower Scotch market. This market position would however still be much inferior to that of Diageo, controlling [55-60]%[24] of that market. Consequently, in Poland, the notified operation is very unlikely to create or strengthen a dominant position in a hypothetical narrower Scotch market.

51. In Spain, the notified operation would improve the parties' position, whose combined market share would reach [25-30]% (Pernod Ricard, [5-10]%; Allied Domecq, [15-20]%) of a hypothetical narrower Scotch market, which would however still be much inferior to that of Diageo, achieving with owned brands only already a market share [40-45]%. Consequently, in Spain, the notified operation is very unlikely to create or strengthen a dominant position in a hypothetical narrower Scotch market.

52. As illustrates the table above, the parties combined market shares in a Scotch whisky market do not exceed 25% in Portugal (Pernod Ricard [5-10]%; Allied Domecq [10-15]%), so that the concentration is not liable to impede effective competition in that Member State.[25]

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23 This market position would include the acquisition of Allied Domecq's Scotch whiskies "Laphroig" and "Teachers" (*cf.* Commission decision of 10.6.2005 in Case COMP/M.3813 - *Fortune Brands/Allied Domecq*).

24 Including owned brands only.

25 Guidelines on the assessment of horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C 31/5, 5.2.2004, at paragraph 18.

bb) *Irish whisky*

53. If Irish whisky were to be considered a distinct relevant product market, the operation would combine the market position of Pernod Ricard's brands (mainly Jamesons, Bushmills and Paddy) with the distribution of the Tullamore Dew brand, which the brand owner, C&C International ("C&C"), has conferred to Allied Domecq for most Member States[26]. This leads to affected markets with significant overlaps in nine Member States; in all other Member States, the parties' market shares are below 15%, or there are no significant overlaps between the parties' activities.

54. In those Member States which are to be considered affected markets, Pernod Ricard and Allied Domecq would have a combined market share (based on IWSR 2004 volume data) ranging from 75% to 100%, as can be seen from the table below.

Table III Parties' market shares in a hypothetical Irish whisky market in 2003 (IWSR 2004 volume data)

Member State	Pernod Ricard pre-merger	Allied Domecq pre-merger (Tullamore Dew agency)	Pernod Ricard post-merger (own + agency)
Finland	[65-70%	[10-15]%	[80-85]%
Germany	[30-35]%	[45-50]%	[75-80]%
Greece	[90-95]%	[5-10]%	[95-100]%
Hungary	[45-50]%	[50-55]%	100.0%
Iceland	[85-90]%	[10-15]%	[95-100]%
The Netherlands	[80-85]%	[10-15]%	[90-95]%
Norway	[70-75]%	[20-25]%	[95-100]%
Portugal	[95-100]%	[0-5]%	[95-100]%
Slovenia	[85-90]%	[10-15]%	100.0%

55. In Finland, Pernod Ricard already had a dominant position with a [65-70]% market share and the two highly selling Irish whisky brands, Jamesons ([40-45]%) and Old Bushmills ([20-25]%). Through the operation it acquires the distribution of C&C's brand Tullamore Dew from Allied Domecq, which is the second player in the market with a [10-15]% market share, thereby acquiring an undisputable dominant position with a [80-85]% market share.

26 Allied Domecq is the distributor for Tullamore Dew in all Member States except Austria and Spain (distribution by Bacardi-Martini), the Czech and Slovak Republics (Stock), France (Marie Brizard), Italy (Barbero), Poland (Finlandia Polska),

56. In Germany, before the operation C&C, distributed by Allied Domecq, was the market leader with its Tullamore Dew brand ([45-50]% market share), followed by Pernod Ricard ([30-35]%, main brands: Paddy, Jamesons). There is only one other competitor with a market share above 10%, Kilbeggan (distributed by Borco, [10-15]%). By acquiring the distribution of Tullamore Dew, Pernod Ricard would thus become a clearly dominant player with a [75-80]% market share.

57. In Hungary, the leading Irish whisky brand is Tullamore Dew, distributed by Allied Domecq ([50-55]% market share), very closely followed by its only competitor Pernod Ricard with its Jameson brand ([45-50]%). In this Member State, too, the operation would thus lead to the creation of a monopoly.

58. In Greece, Iceland, the Netherlands, Norway, Portugal and Slovenia, Pernod Ricard already had a clear dominant position before the transaction with market shares around or beyond 90%, Tullamore Dew, distributed by Allied Domecq being the only, or the only significant remaining competitor in all these markets. By taking over the distribution of Tullamore Dew, Pernod Ricard therefore would acquire a monopoly or quasi monopoly and, thus, further strengthen its dominant position.

59. Consequently the concentration is likely to significantly impede effective competition as a result of the creation or the strengthening of a dominant position and raises serious doubts as to its compatibility with the common market in the hypothetical narrower markets of Irish whisky in Finland, Germany, Hungary, Greece, Iceland, the Netherlands, Norway, Portugal and Slovenia.

cc) *US whiskey*

60. In the US whiskey category, the only significant overlap between the parties' activities is in Hungary, where Pernod Ricard, which currently distributes the Four Roses brand ([0-5]% market share), will in addition acquire the market shares of Allied Domecq's Ten High brand ([0-5]%) as well as its agency brands Jack Daniels and Early Times ([15-20]%), achieving an overall market share of [15-20]%. The clear market leader will remain Fortune Brands with its Jim Beam brand ([50-55]% market share). Therefore, in a hypothetical narrower market for US whiskey in Hungary, the notified operation would clearly not create or strengthen a dominant position.

dd) *Canadian whisky*

61. No significant overlaps between Pernod Ricard's and Allied Domecq's activities exist in the Canadian whisky category.

b) *Other brandy*

62. Other brandy is the second top selling spirit category in Portugal with a share of [20-25]% of the total spirits sales[27]. With this operation, Pernod Ricard will add to its own main brand "Macieira", the Allied Domecq's brands "1920" and "CR&F".

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[27] Data IWSR 2004.

63. On the other brandy market, the new entity will be the largest player in Portugal with a combined market share of [40-45]% (Pernod Ricard, [30-35]%; Allied Domecq, [5-10]%). The new entity would be far stronger than the closest competitor, Diageo, which has only [15-20]% of the market. Diageo's brand "Croft" is by approx. [15-20] percentage points weaker than Pernod Ricard's "Macieira" ([30-35]%) which represents the top selling brand in the Portuguese other brandy market. Other competitors include Sogrape ([5-10]%), Bacardi-Martini ([0-5]%) and Caves Aliança ([0-5]%). The rest of the market is fragmented into a large number of small players. Moreover, the market investigation showed that there were concerns relating to the new position Pernod Ricard would achieve in the other brandy market in Portugal.

64. On the basis of the above, the Commission concludes that the notified operation is likely to significantly impede effective competition as a result of the creation of a dominant position and raises serious doubts as to its compatibility with the common market in the other brandy market in Portugal.

c) *Champagne*

65. The new entity would achieve a very strong market position in the champagne market in Portugal. Allied Domecq distributes in Portugal its own brand Mumm while Pernod Ricard distributes Dom Perignon and Moët & Chandon under a distribution agreement with LVMH. The new entity's market share would be [75-80]%, with an increment of [5-10]%. The most important competitors are LMVH (distributed by Empor and Vinalda), Remy Cointreau and Tattinger, each with market shares around or below 5%.

66. Some third parties in Portugal have expressed concerns concerning the transaction on this market. On that basis and given the high combined market share of the new entity, the Commission concludes that the notified operation is likely to significantly impede effective competition as a result of the creation of a dominant position and raises serious doubts as to its compatibility with the common market in the champagne market in Portugal.

d) Other spirit categories

67. The only other spirits markets, in which the operation will create significant overlaps between the activities of Pernod Ricard and Allied Domecq, are the gin market in Iceland, the liqueurs market in Portugal and the tequila market in Slovenia. In none of the markets described below will the operation be likely to significantly impede effective competition.

aa) *Gin*

68. In the Gin category, the operation will lead to a significant overlap in Iceland, where Pernod Ricard ([5-10]% market share with its Seagram brand) will become market leader with a [40-45]% market share by taking over Allied Domecq's Beefeater brand ([35-40]%). However, the merged entity will face competition by Diageo's Gordon brand ([35-40]%), a local producer, Egill Skallagrímsson (Dillon's, [5-10]%), who acts also as Diageo's distributor, and other smaller competitors.

bb) *Liqueurs*

69. In the Liqueurs category, the only significantly affected market is Portugal, where Pernod Ricard currently has a [20-25]% market share, almost exclusively consisting of agency brands (in particular Licor Beirao). Allied Domecq's market share is [5-10]% (both own and agency brands). The merged entity will thus become market leader with a [30-35]% market share, but face competition from Diageo ([10-15]% market share), which owns the second best selling brand (Baileys), C&C ([0-5]%), which owns the third best selling brand (Carolans), as well as a number of smaller competitors.

cc) *Tequila*

70. The transaction will bring about an overlap in Tequila in Slovenia with a combined market share of [15-20]% (Pernod Ricard [0-5]%, Allied Domecq own and agency brands [15-20]%). The market leader will remain Borco with its Sierra brand ([35-40]%), followed by Fortune Brands with the brands it will acquire from Allied Domecq ([10-15]%).

2. Collective dominance

71. The Commission does not consider that the operation raises concerns with regard to possible coordinated effects between the merged entity and its main competitors on any national market for any given portfolio or category of spirits or wines, due to the asymmetries in their portfolio size, considerable differences in their market positions, their diversities of offered spirits, and the pressure from competitors.

72. As the market investigation has confirmed, competition in the spirits and wines sector primarily takes place between large international players offering a wide portfolio of products, such as Diageo, the merged entity Pernod Ricard/Allied Domecq, Brown Foreman and Fortune Brands (including the former Allied Domecq assets acquired by it), and is to a large extent driven by brands. However, as can be seen from the market share data provided in the previous paragraphs, the market position of the leading international players varies considerably between Member States, and between product categories within the same Member State. For example, whilst in a number of Member States the merged entity will have a considerably stronger position in Scotch whisky as compared to all whisky (e.g. in Germany, Hungary, Poland or Spain), its share of the Scotch whisky market is lower compared to all whisky in Iceland, Portugal or Slovenia. In addition, local spirit types (such as grappa in Italy, jenever in the Netherlands, pálinka in Hungary, or Korn in Germany) and local producers (such as Zwack Unicum in Hungary or the major vodka manufacturers in Poland) also play an important role and retain considerable market shares in a number of Member States.

73. Under these circumstances, even if in some relevant product and geographic markets the operation may lead to a relatively balanced distribution of market shares among the largest competitors, this situation appears coincidental and unlikely to provide any incentive to engage in anti competitive parallel behaviour, in view of the overall portfolio asymmetries, the diversities of offered spirits and the competitive pressure from other suppliers described just above. Therefore, the conditions as defined in the

Commission's Horizontal Merger Guidelines[28] and by the case law of the Community Courts[29], are not met and it is unlikely that a mechanism for coordination can profitably be established and sustained over time.

3. Portfolio effects

74. In their own assessment, the parties have followed the approach in the *SEB/Moulinex* case (Case No COMP/M.2621 - *SEB/Moulinex*)[30] and concluded that the portfolio of the new entity does not give rise to adverse competition effects. In that case, the Commission considered that the risk of creating market power over the entire product range can be ruled out where the product markets in which the combined entity has a market share exceeding 40% do not represent more than 35% of the parties' aggregate turnover.

75. The Commission has investigated which possible factors may affect the analysis of portfolio power. In this respect, the investigation suggests that customers' buying decisions are not only based on the range of products but also on a number of other factors, such as consumer demand, brand image, product promotion and marketing support.

76. In their replies to the Commission's questionnaires, third parties in general indicated that a diversified portfolio may be an advantage for the supplier and enhance the competitiveness of that supplier, provided that the brands within the portfolio are leading brands. Such a portfolio may lead to lower fixed costs across a range of products and may be sold under more advantageous terms and conditions. In a number of replies, third parties indicated that synergies, cost savings and efficiencies could benefit also the customers.

77. Some third parties, however, voiced concerns that the new entity would be able to "push" certain secondary products in advantageous package deals for example by offering better conditions for joint purchases of must-stock and secondary brands. Concerns were raised that minor suppliers would be de-listed and replaced by stronger brands with higher advertising budgets. Concerns were also raised that some smaller producers would be blocked from efficient distribution following the transaction.

78. Following the investigation, the Commission considers that the transaction is unlikely to lead to adverse competition effects stemming from the portfolio of the new entity. First, the Commission has found no evidence that the new entity is likely to engage in anti-competitive practices, e.g. by refusing to supply certain products if the customer is not

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28 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5 February 2004, p. 5), paragraphs 39-60.

29 Court of First Instance, case T-342/99, *Airtours v. Commission*, [2002] ECJH II-2585.

30 See also Court of First Instance, case T-114/02, *Babyliss v. Commission*. In that judgement, Court of First Instance referred to case No IV/M.938 – Guinness/Grand Metropolitan. It is to be noted that the market setting in that case is different from the present case notably in terms of existing competition. The notified transaction creates a number two European spirits supplier behind Diageo, who is the owner and distributor of a number of branded products.

willing to take a certain range of products. In this respect, the Commission notes that the new entity continues to face strong competitors, most importantly Diageo, who can offer an equally - or even better - range of products. Diageo is generally considered as the market leader and the transaction is widely seen as enhancing Pernod Ricard's ability to compete against Diageo. Second, most smaller spirits producers, who replied to the Commission's questionnaires, have not indicated that they would be foreclosed from distribution.

79. For all the foregoing reasons, the Commission considers that the product portfolio of the new entity is unlikely to give rise to competition concerns on the investigated markets.

4. Position of buyers

80. The market investigation has shown that if larger retailers may represent valuable customers for spirit and wine suppliers[31], important suppliers offering appealing international brands enjoy significant negotiation power *vis-à-vis* these retailers.

5. Overall conclusion

81. On the basis of the foregoing, the Commission considers that the notified operation may significantly impede effective competition as a result of the creation or strengthening of a dominant position in the following Member States and product markets stemming from the parties' horizontally overlapping activities: in the all whisky category in Slovenia; in the Scotch whisky category in Hungary, Italy, Slovak Republic and Slovenia; in the Irish whisky category in Finland, Germany, Greece, Hungary, Iceland, The Netherlands, Norway, Portugal, Slovak Republic and Slovenia, and in the other brandy and champagne categories in Portugal. Therefore, the operation raises serious doubts as to its compatibility with the common market and the EEA.

V. MODIFICATION TO THE ORIGINAL CONCENTRATION

82. In order to remove the serious doubts raised by the proposed concentration Pernod Ricard has submitted undertakings pursuant to Article 6(2) of the EC Merger Regulation, which are intended to remove the competitive concerns identified above. The undertakings are attached to this decision and form an integral part thereof.

83. In order to address the competition concerns raised by the Commission, Pernod Ricard has undertaken the following:

- to divest the following spirits brands and the associated assets the whisky businesses of *Glen Grant*, *Old Smuggler* and *Braemar*, and the brandy businesses of *1920* and *CR&F*;

- to discontinue the agency agreement existing between Allied Domecq and the company Cantrell and Cochrane concerning the distribution of *Tullamore Dew*; and

[31] According to the parties, their largest customer for all spirits represents at most between 5 and 20% of their total sales in the relevant geographic markets (excluding Finland, Iceland and Norway).

- to terminate the agency agreement existing between its Portuguese subsidiary PR Somagnum and Champagne Moët & Chandon.

84. As concerns the whisky businesses of *Glen Grant*, *Old Smuggler* and *Braemar*, and the brandy businesses of *1920* and *CR&F,* the divestment of the businesses include full assignment of all rights in the divestment brands and relevant trademarks worldwide, all product formulae and know-how necessary for and relating exclusively to the production, all intellectual property rights relating exclusively to the businesses, commercial contracts as Pernod Ricard is able to transfer, all unfulfilled customer orders, all customer, credit and other records and all inventories (raw materials and finished products) relating exclusively to the businesses and existing at the closing of the notified transaction.

85. In addition, as concerns *Glen Grant*, the divestment includes the production facilities together with all production equipment, tooling and fixed assets, office furniture, fixtures, licences, permits and authorisations together with the personnel. Finally, if requested by the purchaser, Pernod Ricard undertakings to enter into a supply contract for various services at arms' length commercial terms.

86. Following the market test, the Commission considers that the undertakings are sufficient to restore competitive conditions in all those markets where serious doubts arise. More particularly, the divestments of the Scotch whiskies *Glen Grant*, *Old Smuggler* and *Braemar* will eliminate any doubt as to the compatibility of the proposed concentration on the all whisky/Scotch whisky categories in Italy, Hungary, Slovak Republic and Slovenia, where the market shares are reduced to below 40% or to levels comparable to that pre-merger.

87. The Commission notes that *Glen Grant* is the top selling Scotch whisky brand in Italy and it has even increased its sales in 2004. The Commission further notes that *Old Smuggler* and *Braemar* are among the four best selling Scotch whisky brands in Hungary, Slovak Republic and Slovenia ahead of brands such as *Chivas Regal*.

88. As concerns *Tullamore Dew*, this commitment will suppress any overlap on the Irish whisky segment within the EEA thereby eliminating the concerns identified in relation to Finland, Germany, Greece, Hungary, Iceland, the Netherlands, Norway, Portugal and Slovenia. As for the "Other Brandy" category, the divestments of the *CR&F* and *1920* brands will eliminate the overlap, and, therefore, any competition issue in Portugal. Finally, the commitment concerning Champagne will suppress any overlap on the champagne market in Portugal.

89. In order to ensure that Pernod Ricard complies with these undertakings, the Commission attaches conditions and obligations to this decision. The undertakings set out in sections C through D of the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

90. The Commission takes note of the fact that, in a separate transaction, Pernod Ricard will sell to Fortune Brands the brands and associated assets related to a number of businesses (see footnote 2 for details). Pernod Ricard will also sell to Fortune Brands the distribution businesses of Allied Domecq in Germany, Spain (except for wine

distribution) and the United Kingdom (case No *COMP/M.3813 – Fortune Brands / Allied Domecq*).

VI. CONCLUSION

91. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to the condition of full compliance with sections C through D of the commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said commitments. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004.

For the Commission
signed
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Member of the Commission

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Brussels, 3 June 2005

By hand

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 (the "Merger Regulation"), Pernod Ricard SA (herein after Pernod Ricard) hereby provides the following Commitments (the "Commitments") in order to enable the European Commission (the "Commission") to declare the acquisition by Pernod Ricard of certain brands and assets of Allied Domecq compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "Decision").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. <u>Definitions</u>

For the purpose of the Commitments, the following terms shall have the following meanings:

Closing:	the transfer of the legal title of the relevant Divested Business to the Purchaser(s).
Discontinued Businesses:	the businesses described in Section D that Pernod Ricard commits to discontinue.
Divested Businesses:	the businesses described in Section C and the relevant Schedules that Pernod Ricard commits to divest.
Divestiture Trustee:	one or more natural or legal person(s), independent from Pernod Ricard, who is approved by the Commission and appointed by Pernod Ricard and who has received from Pernod Ricard the exclusive Trustee Mandate to sell the Divested Business to (a) Purchaser(s) at no minimum price.
Effective Date:	the date on which the Scheme of arrangements agreed between Pernod Ricard and Allied Domecq becomes effective.
First Divestiture Period:	the period of [***CONFIDENTIAL***] months from the Effective Date.
Framework Agreement:	The Framework Agreement entered into on April 21 2005 between Pernod Ricard and Fortune Brands relating to the sale of certain Allied Domecq brands and businesses together with Pernod Ricard's *Larios* brand to Fortune Brands.
Hold Separate Manager:	the person appointed by Pernod Ricard to manage on a day-to-day basis the Divested and Discontinued Businesses under the supervision of the Monitoring Trustee.
Interim Period:	a period of [***CONFIDENTIAL***] months following the Effective Date.
Monitoring Trustee:	one or more natural or legal person(s), independent from Pernod Ricard, who are approved by the Commission and appointed by Pernod Ricard, and who have the duty to monitor Pernod Ricard's compliance with the conditions and obligations contained in the Decision.

Personnel:	the personnel necessary for the proper and continuous operation of the Divested Business.
Purchaser(s):	the entity or entities approved by the Commission as acquirer of one or more of the Divested Businesses in accordance with the criteria set out in Section F.
Sensitive Information:	all commercially sensitive or confidential information relating to any business and that is not in the public domain, including prices, volumes, sales and marketing data, budget, advertising and marketing plans.
Termination:	the termination of the agency agreement related to the Discontinued Businesses.
Trustee(s):	the Monitoring Trustee and the Divestiture Trustee.
Trustee Divestiture Period:	the period of [***CONFIDENTIAL***] months from the end of the First Divestiture Period.

Section B. Implementation of the Framework Agreement

B.1 Assets to be sold to Fortune Brands

1. Pernod Ricard undertakes to implement the provisions of the Framework Agreement concluded with Fortune Brands and more particularly to sell to Fortune Brands the brands and associated assets related to the following businesses:

   - the US Whiskey *Maker's Mark*;
   - the Scotch Whiskies *Teachers* and *Laphroaig*
   - the Canadian Whisky *Canadian Club*;
   - the Spanish Whisky *DYC*;
   - the Cognac *Courvoisier*;
   - the Other Brandies *Centenario*, *Fundador* and *Jacobi*;
   - the Aniseed *Castellana*;
   - the Tequila *Sauza*;
   - the Bitter *Kuemmerling*;
   - the Port *Cockburn*;
   - the Sherry *Harvey's*;
   - the Still Wines *Clos du Bois* and *Callaway*.

   Pernod Ricard will also sell to Fortune Brands the distribution businesses of Allied Domecq in Germany, Spain (except for wine distribution) and the United Kingdom.

2. In accordance with Article 3.15 of the Framework Agreement, Pernod Ricard undertakes to implement the Larios Asset Purchase Agreement which has been entered into on 21 April 2005 and, as a result, to sell to Fortune Brands the following brands and associated assets:

- the Gin *Larios*;
- the Liqueurs *Larios*;
- the Vodka *Larios*;
- the Malaga Wines *Larios*;
- the RTD Loop Larios

The business transferred to Fortune Brands will include intellectual property rights, all contracts exclusively relating to the *Larios* brands concerned and the inventory of all manufactured goods and raw materials. Pernod Ricard and Fortune Brands have also agreed on the conclusion of transitional arrangements enabling Fortune Brands to operate the business as previously operated. These arrangements may concern distillation, bottling, manufacturing and packing services as well as logistic, during a maximum period of [***CONFIDENTIAL***] years.

B.2 Commitments during the Interim Period

3. Pernod Ricard endeavours to procure that, save with the consent of the Commission and of Fortune Brands, legal title to the above mentioned brands and associated assets will be transferred to Fortune Brands no later than [***CONFIDENTIAL***] months after the Effective Date, in accordance with the provisions of Article 3.2.1 of the Framework Agreement.

4. During the Interim Period, Pernod Ricard undertakes, as the parties to the Framework Agreement have undertaken to each other in Article 10.4 of the Framework Agreement, to ensure that appropriate safeguards and firewall measures will be established to control the flow of Sensitive Information to each of Pernod Ricard and Fortune Brands.

5. Pernod Ricard undertakes to procure that Fortune Brands will have, from the Effective Date, responsibility and day-to-day management of the brands and assets it will acquire, including the right for Fortune Brands to be issued with "B" shares in the main companies holding and operating the brands and assets it will acquire, as well as the right to appoint directors to the boards of those companies, in accordance with Article 10.1 of the Framework Agreement.

B.3 Supervision by the Monitoring Trustee

6. Pernod Ricard undertakes that the above mentioned provisions of the Framework Agreement will be implemented under the supervision of the Monitoring Trustee.

Section C. The Divested Businesses

C.1 Commitment to divest

7. In order to maintain effective competition, Pernod Ricard commits to divest, or procure the divestiture of the Divested Businesses by the end of the Trustee Divestiture Period to one or several Purchasers and on terms approved by the Commission in accordance with the procedure described in Section F.

8. To carry out such divestiture, Pernod Ricard commits to find such Purchaser(s) and to enter into binding sale and purchase agreement(s) for the sale of the Divested Businesses within the First Divestiture Period.

   If Pernod Ricard has not entered into such binding agreement(s) at the end of the First Divestiture Period in respect of any part of the Divested Businesses, Pernod Ricard shall grant the Divestiture Trustee an exclusive mandate to sell such of the Divested Businesses, in accordance with the procedure described in section G 8, during the Trustee Divestiture Period.

9. Pernod Ricard shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Pernod Ricard has entered into binding sale and purchase agreement(s), if the Commission has approved the Purchaser(s) and the terms in accordance with the procedure described in Section F and if the Closing(s) take(s) place within a period not exceeding [***CONFIDENTIAL***] months after the approval of the Purchaser(s) and the terms of sale by the Commission.

10. In order to maintain the structural effect of the Commitments, Pernod Ricard shall not, for a period of [***CONFIDENTIAL***] years after the Effective Date, acquire direct or indirect influence over the whole or part of the Divested Businesses, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Businesses is no longer necessary to render the proposed concentration compatible with the common market.

C.2 Identification of the Divested Businesses

11. Pernod Ricard commits to divest to one or several Purchasers the following spirits brands and the associated assets:

    (a) The Scotch Whisky business currently conducted under the brand *Glen Grant*.

    Details on the production and sales of the Scotch Whisky brand *Glen Grant* are provided in **Schedule 1**.

    This Divested Business will include full assignment of all rights in the *Glen Grant* brand and relevant trademarks worldwide, all intellectual property rights relating to the Divested Business, commercial contracts as Pernod Ricard is able to transfer, all unfulfilled customer orders, all customer, credit and other records and all inventories (raw materials and finished products) relating to the Divested Business and existing at Closing.

    This Divested Business will also include all product formulae and know-how relating to the production of the *Glen Grant* malt whisky. It is specified that the malt whisky produced at the Glen Grant distillery is also used by Pernod Ricard for the production of some of its blended whiskies (among which *Chivas*), and that it therefore appears in other formulae and know-how relating to other whisky brands retained by Pernod Ricard. Those other formulae and know-how will not be included in the Divested Business.

The Divested Business will also comprise the Glen Grant malt distillery located in Rothes (Speyside, Scotland), including all production equipment, tooling and fixed assets, office furniture, fixtures, licences, permits and authorisations together with the Personnel.

In addition and if requested by the Purchaser, Pernod Ricard also undertakes to provide to the Purchaser for a transitional period after the Closing and on reasonable arms' length commercial terms, services under which Pernod Ricard supplies maturing warehousing and/or bottling services to the *Glen Grant* Divested Business. The duration of such transitional arrangements will be subject to the Commission's prior approval.

(b) The Scotch Whisky business currently conducted under the brand *Old Smuggler*.

Details on the production and sales of the Scotch Whisky brand *Old Smuggler* are provided in **Schedule 2**.

This Divested Business will include full assignment of all rights in the *Old Smuggler* brand and relevant trademarks worldwide, all product formulae and know-how relating to its production, all intellectual property rights relating to this Divested Business, commercial contracts as Pernod Ricard is able to transfer, all unfulfilled customer orders, all customer, credit and other records and all inventories (raw materials and finished products) relating to this Divested Business and existing at Closing.

The whisky marketed under the brand *Old Smuggler* is mainly a Scotch Whisky (EEA, US) and, in certain countries, a Local Whisky (Argentina, India)

<u>As far as the Scotch Whisky *Old Smuggler* is concerned</u>, it is not produced in a dedicated distillery. It is produced from grain whisky coming from the Strathclyde distillery and a mixture of malt either produced at Allied Domecq's own malt distilleries or purchased on the open market.

<u>As far as the *Old Smuggler* Local Whisky is concerned</u>, it is produced [***CONFIDENTIAL***].

In both cases, Pernod Ricard undertakes, insofar as the whisky required for the blending of the *Old Smuggler* Scotch Whisky and Local Whisky can only be sourced from distilleries or facilities under its ownership, to continue to supply such whisky to the Purchaser, if requested, on reasonable arms' length commercial terms.

In addition and if requested by the Purchaser, Pernod Ricard also undertakes to provide to the Purchaser for a transitional period after the Closing and on reasonable arms' length commercial terms, services under which Pernod Ricard supplies maturing warehousing and/or bottling services to the *Old Smuggler* Divested Business. The duration of such transitional arrangements will be subject to the Commission's prior approval.

(c) The Scotch Whisky business currently conducted under the brand *Braemar*.

Details on the production and sales of the Scotch Whisky brand *Braemar* are provided in **Schedule 3**.

This Divested Business will include full assignment of all rights in the *Braemar* brand and relevant trademarks worldwide, all product formulae and know-how relating to its production, all intellectual property rights relating to this Divested Business, commercial contracts as Pernod Ricard is able to transfer, all unfulfilled customer orders, all customer, credit and other records and all inventories (raw materials and finished products) relating to this Divested Business and existing at Closing.

The Scotch Whisky *Braemar* is produced from grain whisky coming from the Strathclyde distillery and a mixture of malt either produced at Allied Domecq's own malt distilleries or purchased on the open market.

Pernod Ricard undertakes, insofar as the whisky indispensable to the blending of the *Braemar* Scotch Whisky can only be sourced from distilleries under its ownership, to continue to supply such whisky to the Purchaser, if requested, at reasonable arms' length commercial terms.

In addition and if requested by the Purchaser, Pernod Ricard also undertakes to provide to the Purchaser for a transitional period after the Closing and on reasonable arms' length commercial terms, services under which Pernod Ricard supplies maturing warehousing and/or bottling services to the *Braemar* Divested Business. The duration of such transitional arrangements will be subject to the Commission's prior approval.

(d) The Brandy business currently conducted under the brands *1920* and *CR & F*.

Details on the production and sales of the Brandy *1920* and *CR & F* are provided in **Schedule 4**.

This Divested Business , which is only operated in Portugal, will include full assignment of all rights in the *CR&F and 1920* brands and relevant trademarks, all product formulae and know-how relating to its production, all intellectual property rights relating to this Divested Business, commercial contracts as Pernod Ricard is able to transfer, all unfulfilled customer orders, all customer, credit and other records and all inventories (raw materials and finished products) relating to this Divested Businesses and existing at Closing.

As explained in **Schedule 4**, both *1920* and *CR & F* are made from wine alcohol [***CONFIDENTIAL***]

Pernod Ricard undertakes, insofar as the brandy required for the production of *CR & F* and *1920* brands can only be sourced from facilities under its ownership, to continue to supply such brandy to the Purchaser, if requested, on reasonable arms' length commercial terms.

In addition and if requested by the Purchaser, Pernod Ricard also undertakes to provide to the Purchaser for a transitional period after the Closing and on reasonable arms' length commercial terms, services under which Pernod Ricard supplies maturing warehousing and/or bottling services to the *CR&F* and *1920* Divested Businesses. The duration of such transitional arrangements will be subject to the Commission's prior approval.

12. As explained in **Schedule 5**, these divestments will eliminate any doubts as to the compatibility with the Common market of the proposed concentration, more particularly in the All Whisky/Scotch Whisky markets in Italy, the Slovak Republic, Slovenia, Hungary and in the Other Brandy market in Portugal. These divestments will also contribute to the maintenance of effective competition in other Member States.

Section D. <u>Discontinued Businesses</u>

D.1 <u>The *Tullamore Dew* Agency Agreement</u>

13. In order to maintain effective competition, Pernod Ricard commits to discontinue the agency agreement existing between Allied Domecq and the company C&C International as it relates to the distribution of the Irish Whiskey brand *Tullamore Dew* (hereafter, "the *Tullamore Dew* Agency Agreement").

14. The contractual term of the *Tullamore Dew* Agency Agreement is [***CONFIDENTIAL***]. However, pursuant to its Article 9.4, C&C International has the right to terminate the agreement on [***CONFIDENTIAL***] notice if there is a change of control of Allied Domecq. C&C International shall take its decision within [***CONFIDENTIAL***] of the later of it becoming aware of the change of control or being served with the notice pursuant to Article 9.6.a.

    On 2nd June 2005, C&C International has expressly confirmed to Pernod Ricard that, should its bid for Allied Domecq succeed, it has already decided to discontinue the *Tullamore Dew* Agency Agreement pursuant to the above mentioned Article 9.4. A copy of this letter has been provided to the Commission.

15. [***CONFIDENTIAL***].

16. Upon the termination of the *Tullamore Dew* Agency Agreement, Pernod Ricard undertakes to transfer to C&C International or to the new distributor appointed by it, all commercial contracts as Pernod Ricard is able to transfer, commitments and customer orders, all customer, credit and other records and all inventories (provided such inventories are paid for) relating to the *Tullamore Dew* Agency Agreement and in Pernod Ricard's possession at the Termination date.

17. In order to maintain the effect of this commitment, Pernod Ricard shall not, for a period of [***CONFIDENTIAL***] after the Termination, acquire direct or indirect influence over the whole or part of the *Tullamore Dew* Discontinued Business, or be appointed as the distributor of such Discontinued Business in the EEA, unless the Commission has previously found that the structure of the market has changed to such an extent that the

absence of influence over such Discontinued Business is no longer necessary to render the proposed concentration compatible with the common market.

18. This commitment will suppress any overlap on the Irish Whiskey segment within the EEA and, therefore, contributes to eliminate any doubt as to the compatibility with the Common market of the proposed concentration.

D.2 The Champagne Moët & Chandon Agency Agreement

19. In order to maintain effective competition, Pernod Ricard commits to discontinue the agency agreement existing between its Portuguese subsidiary PR Somagnum and the company Champagne Moët & Chandon in relation to the distribution of the Champagne brands *Moët & Chandon* and *Dom Perignon* (hereafter, "the Champagne Moët & Chandon Agency Agreement").

20. The agreement is of an indefinite duration. The termination of the Champagne Moët & Chandon Agency Agreement will be effected in accordance with the terms of Article 3 §3 pursuant to which each party is entitled to terminate the agreement subject to [***CONFIDENTIAL***] months notice.

    Pernod Ricard undertakes to serve the notice provided for in Article 3 §3 immediately after the Effective Date.

21. Should Champagne Moët & Chandon request:

    (a) To terminate the Champagne Moët & Chandon Agency Agreement within a notice period shorter than [***CONFIDENTIAL***] months on reasonable terms, Pernod Ricard undertakes to agree with such a request;

    (b) To benefit from an extended notice period , in particular in order for Champagne Moët & Chandon to set up a new distribution organization for the contractual goods, Pernod Ricard undertakes to agree with such a request, provided that this extended period shall not exceed [***CONFIDENTIAL***] additional months.

22. Upon the termination of the Champagne Moët & Chandon Agency Agreement, Pernod Ricard undertakes to transfer to Champagne Moët & Chandon or to the new distributor appointed by it, all commercial contracts as Pernod Ricard is able to transfer, commitments and customer orders, all customer, credit and other records and all inventories (provided such inventories are paid for) relating to the Champagne Moët & Chandon Agency Agreement and in Pernod Ricard's possession at the Termination date.

23. In order to maintain the effect of this commitment, Pernod Ricard shall not, for a period of [***CONFIDENTIAL***] after the Termination, acquire direct or indirect influence over the whole or part of the Champagne Moët & Chandon Discontinued Business, or be appointed as the distributor of such Discontinued Business in Portugal, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over such Discontinued Business is no longer necessary to render the proposed concentration compatible with the common market.

24. This commitment will suppress any overlap on the Champagne market in Portugal and, therefore, contributes to eliminate any doubt as to the compatibility with the common market of the proposed concentration.

Section E. Related commitments

E.1 Preservation of Viability, Marketability and Competitiveness

25. From the Effective Date until Closing, Pernod Ricard shall preserve the economic viability, marketability and competitiveness of the Divested and Discontinued Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divested and Discontinued Businesses. In particular, Pernod Ricard undertakes:

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divested and Discontinued Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divested and Discontinued Businesses;

(b) to make available sufficient resources for the development of the Divested and Discontinued Businesses, on the basis and continuation of the existing business plans.

(c) to take all reasonable steps, to encourage the Personnel of the Glen Grant distillery to remain with this Divested Business.

E.2 Hold-separate obligations of Pernod Ricard

26. Pernod Ricard notes that the Businesses it is committing to divest or discontinue are very much intermingled with the businesses it will retain and that they cannot be separated upon the Effective Date without causing them a serious damage. As a consequence, Pernod Ricard commits, from the Effective Date, to separate the Divested and Discontinued Businesses from the businesses it will retain, as soon as possible. Until they have been separated, Pernod Ricard commits to firewall these Businesses. Once the separation has been made, Pernod Ricard commits to keep the Divested and Discontinued Businesses separate from the businesses it is retaining.

27. Until Closing or Termination, Pernod Ricard shall assist the Monitoring Trustee in ensuring that the Divested and Discontinued Businesses are managed separately from the businesses retained by Pernod Ricard. Pernod Ricard shall appoint a Hold Separate Manager who shall be responsible for the management of the Divested and Discontinued Businesses, under the supervision of the Monitoring Trustee.

The Hold Separate Manager shall manage the Divested and Discontinued Businesses independently and in the best interests of the Divested and Discontinued Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses being retained by Pernod Ricard.

E.3 Ring-fencing

28. Pernod Ricard shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested and Discontinued Businesses.

E.4 Non-solicitation clause

29. Pernod Ricard undertakes, subject to customary limitations, not to solicit the Personnel transferred with the Divested Businesses for a period of [***CONFIDENTIAL***] after Closing.

E.5 Due Diligence

30. In order to enable potential purchasers to carry out a reasonable due diligence of the Divested Business, Pernod Ricard shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divested Businesses; and

(b) when applicable, provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

E.6 Reporting

31. Pernod Ricard shall submit written reports on potential purchasers of the Divested Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee on a quarterly basis.

32. Pernod Ricard shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of the information memorandum sent to potential purchasers to the Commission and the Monitoring Trustee.

Section F. The Purchaser(s)

33. In order to ensure the maintenance of effective competition, the Purchaser(s), in order to be approved by the Commission, must:

(a) be independent of and unconnected to Pernod Ricard;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divested Businesses as a viable and active competitive force in competition with Pernod Ricard and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divested Businesses.

The above mentioned criteria constitute the "Purchaser Requirements".

34. The final binding sale and purchase agreement(s) shall be conditional on the Commission's approval. When Pernod Ricard has reached agreement(s) with Purchaser(s), it shall submit a fully documented and reasoned proposal, including a copy of the final draft agreement(s), to the Commission and the Monitoring Trustee.

Pernod Ricard must be able to demonstrate to the Commission that the Purchaser(s) meet(s) the Purchaser Requirements and that the Divested Business(es) is(are) being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser(s) fulfil(s) the Purchaser Requirements and that the Divested Business(es) is(are) being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divested Business(es) without one or more related assets or members of the Personnel, if this does not affect the viability and competitiveness of the Divested Business(es) after the sale, taking account of the proposed Purchaser(s).

Section G. <u>Trustees</u>

G.1 <u>Appointment Procedure</u>

35. Pernod Ricard shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments in relation to the Monitoring Trustee.

If Pernod Ricard has not entered into binding sales and purchase agreement(s) [***CONFIDENTIAL***] before the end of the First Divestiture Period, or if the Commission has rejected the Purchasers proposed by Pernod Ricard at that time or thereafter, Pernod Ricard shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

36. The Trustee shall be independent of Pernod Ricard, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Pernod Ricard in a way that does not impede the independent and effective fulfillment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the relevant Divested Business(es), the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

G.2 <u>Proposal by Pernod Ricard</u>

37. No later than [***CONFIDENTIAL***] after the adoption of the Decision, Pernod Ricard shall submit a list of one or more persons whom Pernod Ricard proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than [***CONFIDENTIAL***] before the end of the First Divestiture Period, Pernod Ricard shall submit a list of one or

more persons whom Pernod Ricard proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed persons fulfil the requirements set out in Section G 1 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different Trustees are proposed for the two functions.

G.3 Approval or rejection by the Commission

38. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustees to fulfill their obligations. If only one name is approved, Pernod Ricard shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Pernod Ricard shall be free to choose the Trustees to be appointed from among the names approved. The Trustees shall be appointed within [***CONFIDENTIAL***] of the Commission's approval, in accordance with the mandate approved by the Commission.

G.4 New proposal by Pernod Ricard

39. If all the proposed Trustees are rejected, Pernod Ricard shall submit the names of at least two more individuals or institutions within [***CONFIDENTIAL***] of being informed of the rejection, in accordance with the requirements and the procedure set out in Sections G 1 and G 3.

G.5 Trustee nominated by the Commission

40. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Pernod Ricard shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

G.6 Functions of the Trustee

41. The Trustees shall assume their specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Pernod Ricard, give any orders or instructions to the Trustees in order to ensure compliance with the conditions and obligations attached to the Decision.

G.7 Duties and obligations of the Monitoring Trustee

42. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) supervise the implementation by Pernod Ricard of its commitments relating to the Interim Period.

(iii) oversee the on-going management of the Divested and Discontinued Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Pernod Ricard with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divested and Discontinued Businesses, and the keeping separate of the Divested and Discontinued Businesses from the businesses being retained by Pernod Ricard, in accordance with Section E;

(b) supervise the separate management of the Divested and Discontinued Businesses, in accordance with Section E;

(c) (i) in consultation with Pernod Ricard, determine all necessary measures to ensure that Pernod Ricard does not after the Effective Date obtain any business secret, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested and Discontinued Businesses, and in particular shall seek to ensure the severing of the Divested and Discontinued Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divested and Discontinued Businesses, and (ii) decide whether such information may be disclosed to Pernod Ricard in light of whether the disclosure is reasonably necessary to allow Pernod Ricard to carry out the divestiture or if such disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divested Businesses;

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to Pernod Ricard such measures as the Monitoring Trustee considers necessary to ensure Pernod Ricard's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divested and Discontinued Businesses, the holding separate of the Divested and Discontinued Businesses and the non-disclosure of competitively sensitive information;

(v) monitor the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential Purchasers receive sufficient information relating to the Divested Businesses in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential Purchasers are granted reasonable access to the relevant Personnel;

(vi) provide to the Commission, sending Pernod Ricard a non-confidential copy at the same time, a written report within [***CONFIDENTIAL***]. The report shall cover the operation and management of the Divested and Discontinued Businesses so that the Commission can assess whether the Divested and Discontinued businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential Purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Pernod Ricard a non-confidential copy at the same time, if it concludes on reasonable grounds that Pernod Ricard is failing to comply with these Commitments;

(vii) within [***CONFIDENTIAL***] after receipt of the documented proposal referred to in Section F, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed Purchaser(s) and the viability of the relevant Divested Business after the Closing and as to whether the Divested Business is sold in a manner consistent with the conditions and obligations attached to the Decision.

G.8 Duties and obligations of the Divestiture Trustee

43. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divested Business to Purchaser(s), provided that the Commission has approved both the Purchaser(s) and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in Section F.

The Divestiture Trustee shall include in the sale and purchase agreement(s) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Pernod Ricard, subject to Pernod Ricard's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

44. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive [***CONFIDENTIAL***] report on the progress of the divestiture process. Such reports shall be submitted within [***CONFIDENTIAL***] with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Pernod Ricard.

G.9 Duties and obligations of Pernod Ricard

45. Pernod Ricard shall provide and shall cause its advisors to provide the Trustees with all such cooperation, assistance and information as the Trustees may reasonably require to perform its tasks. The Trustees shall have full and complete access to any of Pernod Ricard's or the Divested and Discontinued Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments, and Pernod Ricard and the Divested and Discontinued Businesses shall provide the Trustees upon request with copies of any document. Pernod Ricard and the Divested Business shall make available to the Trustees one or more offices on their premises and shall be available for meetings in order to provide the Trustees with all information necessary for the performance of its tasks.

46. Pernod Ricard shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divested and Discontinued Businesses. This shall include all administrative support functions relating to the Divested and Discontinued Businesses which are currently carried out at headquarters level. Pernod Ricard shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure.

Pernod Ricard shall inform the Monitoring Trustee as to possible Purchasers, submit a list of potential Purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

47. Pernod Ricard shall grant or procure affiliated undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Pernod Ricard shall cause the documents required for effecting the sale and the Closing to be duly executed.

48. Pernod Ricard shall indemnify each of the Trustees and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Pernod Ricard for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, breach of the terms of appointment, recklessness, gross negligence or bad faith of the Trustees, its employees, agents or advisors.

49. At the expense of Pernod Ricard, each of the Trustees may appoint advisors (in particular for corporate finance or legal advice), subject to Pernod Ricard's approval (this approval not to be unreasonably withheld or delayed) if such Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the relevant Trustee are reasonable. Should Pernod Ricard refuse to approve the advisors proposed by such Trustee the Commission may approve the appointment of its advisors instead, after having heard Pernod Ricard. Only the relevant Trustee shall be entitled to issue instructions to the advisors. Paragraph 48 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Pernod Ricard during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

G.10 Replacement, discharge and reappointment of the Trustee

50. If a Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of relevant Trustee to a conflict of interest:

(a) the Commission may, after hearing such Trustee, require Pernod Ricard to replace such Trustee; or

(b) Pernod Ricard, with the prior approval of the Commission, may replace such Trustee.

51. If a Trustee is removed according to paragraph 50, such Trustee may be required to continue in its function until a new Trustee is in place to whom removed Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to Sections G 1 to G 5.

52. Other than in the case of removal according to paragraph 50, a Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section H. The Review Clause

53. The Commission may, where appropriate, in response to a request from Pernod Ricard showing good cause and accompanied by a report from the Monitoring Trustee:

(i) grant an extension of the time periods foreseen in the Commitments, or

(ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

54. Where Pernod Ricard seeks an extension of a time period, it shall submit a request to the Commission no later than [***CONFIDENTIAL***] before the expiry of that period, showing good cause. Only in exceptional circumstances shall Pernod Ricard be entitled to request an extension within [***CONFIDENTIAL***] of any period.

Stéphane Hautbourg | Antoine Choffel

duly authorized for and on behalf of Pernod Ricard SA

SCHEDULE 1

Details on the *Glen Grant* business

1. Sales volumes and Turnover

The sales volumes of *Glen Grant* in 2003 were as follows:

Volumes in 9L. cases	**2003**
Worldwide	384,600
EEA	376,610

The turnover achieved by Pernod Ricard with the sales of *Glen Grant* in the main five markets where it is sold (Italy, Germany, France, Spain, The Netherlands) amounted to [***CONFIDENTIAL***] in 2003.

2. Countries where *Glen Grant* is marketed

Within the EEA, the Scotch Whisky *Glen Grant* is marketed in 14 countries:

- Italy (where it is the 1st best selling Scotch Whisky brand),
- Germany (where its is the 3rd best selling Scotch Whisky brand),

as well as:

- France
- Greece
- Austria
- The Netherlands
- Portugal
- Slovenia
- Spain
- Belgium/Luxembourg
- Sweden
- UK
- Denmark
- Finland

Outside the EEA, *Glen Grant* is also marketed in a number of countries such as:

- Switzerland
- Bulgaria
- Albania
- Macedonia
- Egypt
- South Africa
- Israel
- The Caribbean
- The Philippines

3. Information on production

Glen Grant is a malt Scotch Whisky produced at the Glen Grant malt distillery.

This distillery has a production capacity of [*CONFIDENTIAL*] litres of alcohol and represents 2.7% of the total industry capacities. Currently, [*CONFIDENTIAL*]% of the Glen Grant malt distillery production is utilized in the *Glen Grant* brand, the remainder being used by Chivas Brothers either to produce other blended Whiskies, or to supply the industry.

The Glen Grant distillery will be divested with the *Glen Grant* Divested Business.

The warehousing and bottling of *Glen Grant* are undertaken in facilities belonging to Pernod Ricard and which are also used for the warehousing and bottling of other Pernod Ricard Scotch Whiskies.

4. Information on the structure of the *Glen Grant* business

1. The Divested Business as operated to date has the following legal and functional structure:

   The Divested Business is currently intermingled with the retained and larger Chivas Brothers business.

   The various tangible and intangible assets related to the *Glen Grant* Divested Business are held in different separate group companies of Pernod Ricard, together with other assets.

   The sale could be structured as the sale of a company. In such a case, Pernod Ricard would unite all of the assets related to the *Glen Grant* Business in a separate company, which would then be sold to the Purchaser.

2. Following paragraph 11 (a) of these Commitments, the Divested Business includes, but is not limited to:

   (a) the following main tangible assets:

   - The Glen Grant distillery located in Rothes, (Speyside, Scotland), which includes the land and buildings (the distillery and gardens, Heritage Centre), the plant and equipment, the fixtures and fittings, the IT equipment.

   - Stocks of finished goods for resale, maturing inventory and other materials used to produce and package the Scotch Whisky *Glen Grant*.

   - Point of sale and other promotional materials, to the extent they exist.

   (b) the following main intangible assets:

   All *Glen Grant* brand names, product formulae and other intellectual property rights owned by Pernod Ricard; all market, consumer and other studies and brand marketing plans, to the extent that they do not contain confidential information on other Pernod Ricard brands.

(c) the following main licenses, permits and authorizations:

All those required to produce and/or sell *Glen Grant*, to the extent that they are unique to this brand and that they are assignable.

More specifically, Chivas Brothers Ltd holds a distillery operating licence for the Glen Grant distillery. In addition, there is an off sales licence in respect of the retail shop at the distillery and a public house licence with Sunday opening in respect of the visitor centre at the distillery.

HM Revenue and Customs has granted approval for the distillery to operate as a tax warehouse and have approved the distillery as a distiller's warehouse and as a general storage and distribution warehouse.

Pernod Ricard will use its best efforts to transfer these licences and approvals to the Purchaser.

(d) the following main contracts, agreements, leases and commitments:

All those required to produce and/or sell *Glen Grant*, to the extent that they are unique to this brand and that they are assignable.

(e) the following customer, credit and other records:

Customer lists for *Glen Grant*, showing quantities purchased by each customer in each market in the past two years

(f) the following Personnel:

Within Chivas Brothers Ltd, there are 9 employees dedicated to the Glen Grant distillery.

The visitor center located on the Glen Grant distillery property in Rothes also employs 1 person full time and 10 persons on a seasonal basis.

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period to be approved by the Commission:

Warehousing, bottling, shipping and IT/finance support can be provided by Pernod Ricard (through its subsidiary Chivas Brothers Ltd) for a limited agreed period of time with a Purchaser at agreed rates, as indicated in Section C.

(h) the arrangements for the supply by the Purchaser of products or services to Pernod Ricard:

Given that Pernod Ricard's subsidiary, Chivas Brothers Ltd, utilises part of the malt whisky produced at the Glen Grant distillery for the production of its blended whiskies, the sale and purchase agreement of the Glen Grant Divested Business will include a long-term supply agreement relating to the supply to Chivas Brothers Ltd by the Purchaser of malt whisky produced at the Glen Grant distillery and the provision of corresponding maturation services. Pursuant to this long term supply agreement, the Purchaser will undertake to reserve and supply to Chivas Brothers Ltd up to a minimum annual volume of malt whisky produced at the Glen Grant distillery. The minimum annual volume of such malt whisky will be no greater than [***CONFIDENTIAL***]. Should Chivas Brothers Ltd require additional volumes of such malt whisky, it will enter into a normal commercial negotiation with the Purchaser in order to determine the terms and conditions of such additional supplies.

3. The Divested Business shall not include:

(i) The currently maturing stocks of *Glen Grant* malt whisky produced at the Glen Grant distillery that is required for Chivas Brothers to produce its other blended Whiskies. It is foreseen that these maturing stocks will represent around [***CONFIDENTIAL***] lpa out of the total existing maturing stocks of approximately [***CONFIDENTIAL***] lpa of malt whisky held at the Glen Grant Distillery.

(ii) Any other assets that Pernod Ricard can demonstrate, under the supervision of the Monitoring Trustee, as not being related to the Glen Grant business.

(iii) Monies owed to Pernod Ricard by customers for the purchase of, and monies owed by Pernod Ricard to suppliers for materials used in the production of *Glen Grant*.

SCHEDULE 2

Details on the *Old Smuggler* business

1. Sales volumes and Turnover

The sales volumes of *Old Smuggler* in 2003 were as follows:

Volumes in 000 9L. cases	2003
Worldwide	502,550
EEA	95,250

The turnover achieved by Allied Domecq with the sales of *Old Smuggler* is as follows:

Turnover in 000. €	2003
Worldwide	[***CONFIDENTIAL***]
EEA	[***CONFIDENTIAL***]

2. Countries where *Old Smuggler* is marketed

Within the EEA, the Scotch Whisky *Old Smuggler* is marketed in 10 countries:

- Hungary (where it is the 3rd best selling Scotch Whisky brand)
- Slovenia (where it is the 3rd best selling Scotch Whisky brand)
- Slovak Republic (where it is the 4th best selling Scotch Whisky brand)
- Czech Republic (where it is the 4th best selling Scotch Whisky brand)
- Poland (where it is the 5th best selling Scotch Whisky brand)

as well as

- Germany
- The Netherlands
- Belgium/Luxembourg
- Greece
- Italy

Outside the EEA, *Old Smuggler* is also marketed in a number of countries such as:

- USA
- India
- Argentina
- Bulgaria
- Australia
- Malaysia
- Croatia
- Bosnia
- Romania
- Macedonia
- Japan

3. Information on production

Old Smuggler is a blended Scotch Whisky made from grain Whisky produced at the Allied Domecq Strathclyde distillery, and a mixture of malt Whiskies which are either produced at Allied Domecq's own malt distilleries, or purchased on the open market on a spot basis.

Within the EEA, *Old Smuggler* accounts for around [***CONFIDENTIAL***]% of Allied Domecq's grain distillery output and around [***CONFIDENTIAL***]% of its bottling activity in Scotland.

Maturation, blending and bottling of *Old Smuggler* for most markets are performed at Allied Domecq's own facilities in Scotland. The exceptions are the USA, India and Argentina.

Bulk supplies of *Old Smuggler* for the US market are shipped from Scotland to Allied Domecq's facility in Fort Smith (Arkansas, USA), where it is bottled. It accounts for less than [***CONFIDENTIAL***]% of Fort Smith's activity.

Old Smuggler is also produced in India and Argentina and sold on the local markets as a Local Whisky. [***CONFIDENTIAL***].

4. Information on the structure of the *Old Smuggler* business

1. The Divested Business as operated to date has the following legal and functional structure:

   Not applicable

2. Following paragraph 11 (b) of these Commitments, the Divested Business includes, but is not limited to:

   (a) the following main tangible assets:

   - Stocks of finished goods for resale, maturing inventory and other materials used to produce and package *Old Smuggler*. However, should the Purchaser enter into a product supply arrangement in accordance with paragraph (g) below, then it is expected that maturing inventory and materials would be retained by Pernod Ricard to enable the supply arrangements to be fulfilled.

   - Point of sale and other promotional materials, to the extent they exist.

(b) the following main intangible assets:

All *Old Smuggler* brand names, product formulae and other intellectual property rights owned by Allied Domecq; all market, consumer and other studies, and brand marketing plans, to the extent that they do not contain confidential information on other Allied Domecq or Pernod Ricard brands.

(c) the following main licenses, permits and authorizations:

All those required to produce and/or sell *Old Smuggler*, to the extent that they are unique to this brand and that they are assignable (although it is believed that there are none).

(d) the following main contracts, agreements, leases and commitments:

All those required to produce and/or sell *Old Smuggler*, to the extent that they are unique to this brand and that they are assignable (although it is believed that there are none).

(e) the following customer, credit and other records:

Customer lists for *Old Smuggler*, showing quantities purchased by each customer in each market in the past two years.

(f) the following Personnel:

Not applicable

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period to be approved by the Commission:

Warehousing, bottling and shipping can be provided by Pernod Ricard for a limited agreed period of time with a Purchaser at agreed rates, as indicated in Section C.

3. The Divested Business shall not include:

(i) Any Allied Domecq plant, machinery or other fixed assets which are not unique to the *Old Smuggler* production processes.

(ii) Monies owed to Allied Domecq by customers for the purchase of, and monies owed by Allied Domecq to suppliers for materials used in the production of *Old Smuggler.*

SCHEDULE 3

Details on the *Braemar* business

1. Sales volumes and Turnover

The sales volumes of *Braemar* in 2003 were as follows:

Volumes in 000 9L. cases	2003
Worldwide	35,550
EEA	7,900

The turnover achieved by Allied Domecq with the sales of *Braemar* is as follows:

Turnover in 000. €	2003
Worldwide	[***CONFIDENTIAL***]
EEA	[***CONFIDENTIAL***]

2. Countries where *Braemar* is marketed

Within the EEA, the Scotch Whisky *Braemar* is marketed in 3 countries:

- Slovenia (where it is the 2nd best selling Scotch Whisky brand)
- Cyprus
- Greece

Outside the EEA, *Braemar* is also marketed in a number of countries such as:

- Thailand
- Croatia
- Turkey
- Bulgaria
- Serbia

3. Information on production

Braemar is a blended Scotch Whisky made from grain Whisky produced at the Allied Domecq Strathclyde distillery, and a mixture of malt Whiskies which are either produced at Allied Domecq's own malt distilleries, or purchased on the open market on a spot basis.

Within the EEA, *Braemar* accounts for less than [***CONFIDENTIAL***]% of Allied Domecq's grain distillery output and bottling activity in Scotland.

Maturation, blending and bottling of *Braemar* for all markets are performed at Allied Domecq's own facilities in Scotland.

4. __Information on the structure of the *Braemar* business__

1. The Divested Business as operated to date has the following legal and functional structure:

   Not applicable

2. Following paragraph 11 (c) of these Commitments, the Divested Business includes, but is not limited to:

   (a) the following main tangible assets:

   - Stocks of finished goods for resale, maturing inventory and other materials used to produce and package *Braemar*. However, should the Purchaser enter into a product supply arrangement in accordance with paragraph (g) below, then it is expected that maturing inventory and materials would be retained by Pernod Ricard to enable the supply arrangements to be fulfilled.

   - Point of sale and other promotional materials, to the extent they exist.

   (b) the following main intangible assets:

   All *Braemar* brand names, product formulae and other intellectual property rights owned by Allied Domecq; all market, consumer and other studies and brand marketing plans, to the extent that they do not contain confidential information on other Allied Domecq or Pernod Ricard brands.

   (c) the following main licenses, permits and authorizations:

   All those required to produce and/or sell *Braemar*, to the extent that they are unique to this brand and that they are assignable (although it is believed that there are none).

   (d) the following main contracts, agreements, leases and commitments:

   All those required to produce and/or sell *Braemar*, to the extent that they are unique to this brand and that they are assignable (although it is believed that there are none).

   (e) the following customer, credit and other records:

   Customer lists for *Braemar*, showing quantities purchased by each customer in each market in the past two years.

   (f) the following Personnel:

Not applicable

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period to be approved by the Commission:

Warehousing, bottling and shipping can be provided by Pernod Ricard for a limited agreed period of time with a Purchaser at agreed rates, as indicated in Section C.

3. The Divested Business shall not include:

(i) Any Allied Domecq plant, machinery or other fixed assets which are not unique to the *Braemar* production processes;

(ii) Monies owed to Allied Domecq by customers for the purchase of, and monies owed by Allied Domecq to suppliers for materials used in the production of *Braemar*.

SCHEDULE 4

Details on the *CR & F* and *1920* businesses

1. Sales volumes and Turnover

The sales volumes of *CR & F* and *1920* in 2003 and 2004 are as follows:

Volumes in 000 9L. cases	2003
Worldwide	57,400
EEA	57,400

The turnover achieved by Pernod Ricard with the sales of *CR & F* and *1920* is as follows:

Turnover in 000. €	2003
Worldwide	[***CONFIDENTIAL***]
EEA	[***CONFIDENTIAL***]

2. Countries where *CR & F* and *1920* is marketed

The Other Brandies *CR & F* and *1920* are exclusively marketed in Portugal.

3. Information on production

Both *CR&F* and *1920* are made in an identical manner. [***CONFIDENTIAL***].

These two brands account for around [***CONFIDENTIAL***]% of the total output of this plant.

[***CONFIDENTIAL***].

4. Information on structure of the *CR & F* and *1920* business

1. The Divested Business as operated to date has the following legal and functional structure:

   Not applicable

2. Following paragraph 11 (d) of these Commitments, the Divested Business includes, but is not limited to:

(a) the following main tangible assets:

- Stocks of finished goods for resale, maturing inventory and other materials used to produce and package *CR&F* and *1920*. However, should the Purchaser enter into a product supply arrangement in accordance with paragraph (g) below, then it is expected that maturing inventory and materials would be retained by Pernod Ricard to enable the supply arrangements to be fulfilled.

- Point of sale and other promotional material, to the extent they exist.

(b) the following main intangible assets:

All *CR&F* and *1920* brand names, product formulae and other intellectual property rights owned by Allied Domecq; all market, consumer and other studies and brand marketing plans, to the extent that they do not contain confidential information on other Allied Domecq or Pernod Ricard brands.

(c) the following main licenses, permits and authorizations:

All those required to produce and/or sell the *CR&F* and *1920* brands, to the extent that they are unique to these brands and that they are assignable (although it is believed that there are none).

(d) the following main contracts, agreements, leases, commitments:

All those required to produce and/or sell the *CR&F* and *1920* brands, to the extent that they are unique to these brands and that they are assignable (although it is believed that there are none).

(e) the following customer, credit and other records:

Customer lists for *CR&F* and *1920*, showing quantities purchased by each customer in the past two years.

(f) the following Personnel:

Not applicable

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period to be approved by the Commission:

Warehousing, bottling and shipping can be provided by Pernod Ricard for a limited agreed period of time with a Purchaser at agreed rates, as indicated in Section C.

3. The Divested Business shall not include:

(i) Any Allied Domecq plant, machinery or other fixed assets which are not unique to the *CR&F* and *1920* production processes.

(ii) Monies owed to Allied Domecq by customers for the purchase of, and monies owed by Allied Domecq to suppliers for materials used in the production of, *CR&F* and *1920* brandies.

SCHEDULE 5

Effectiveness of the remedies

1. The divestments of the Scotch Whiskies *Glen Grant*, *Old Smuggler* and *Braemar* will eliminate any doubt as to the compatibility of the proposed concentration on the All Whisky / Scotch Whisky markets in Italy, Hungary, Slovak Republic and Slovenia.

- **Italy**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[25-30]%	[25-30]%		[30-35]%	[30-35]%
Allied Domecq					
All brands	[10-15]%	[10-15]%		[10-15]%	[10-15]%
Acquired brands	[10-15]%	[10-15]%		[10-15]%	[10-15]%
New Pernod Ricard					
Before divestments	[40-45]%	[40-45]%		[40-45]%	[40-45]%
*divested brands**	[10-15]%	[10-15]%		[10-15]%	[10-15]%
After divestments	[25-30]%	[25-30]%		[30-35]%	[30-35]%

Source IWSR ** Glen Grant*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004**(IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[25-30]%	[30-35]%		[25-30]%	[30-35]%
Allied Domecq					
All brands	[15-20]%	[15-20]%		[15-20]%	[15-20]%
Acquired brands	[15-20]%	[15-20]%		[15-20]%	[15-20]%
New Pernod Ricard					
Before divestments	[45-50]%	[45-50]%		[45-50]%	[45-50]%
*divested brands**	[10-15]%	[15-20]%		[10-15]%	[15-20]%
After divestments	[30-35]%	[30-35]%		[30-35]%	[30-35]%

Source IWSR ** Glen Grant*

- **Hungary**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[0-5]%	[0-5]%		[0-5]%	[0-5]%
Allied Domecq					
All brands	[30-35]%	[35-40]%		[35-40]%	[40-45]%
Acquired brands	[30-35]%	[30-35]%		[30-35]%	[35-40]%
New Pernod Ricard					
Before divestments	[30-35]%	[35-40]%		[35-40]%	[40-45]%
*divested / discontinued brands**	[0-5]%	[0-5]%		[0-5]%	[0-5]%
After divestments	[25-30]%	[30-35]%		[30-35]%	[35-40]%

Source IWSR ** Tullamore Dew and Old Smuggler*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[0-5]%	[0-5]%		[0-5]%	[0-5]%
Allied Domecq					
All brands	[55-60]%	[55-60]%		[55-60]%	[55-60]%
Acquired brands	[50-55]%	[50-55]%		[50-55]%	[50-55]%
New Pernod Ricard					
Before divestments	[55-60]%	[55-60]%		[55-60]%	[55-60]%
*divested brands**	[10-15]%	[5-10]%		[10-15]%	[5-10]%
After divestments	[45-50]%	[50-55]%		[45-50]%	[50-55]%

Source IWSR ** Old Smuggler*

- **Slovak Republic**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[0-5]%	[0-5]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[10-15]%	[10-15]%		[10-15]%	[10-15]%
Acquired brands	[10-15]%	[10-15]%		[10-15]%	[10-15]%
New Pernod Ricard					
Before divestments	[15-20]%	[15-20]%		[20-25]%	[20-25]%
*divested brands**	[0-5]%	[0-5]%		[0-5]%	[0-5]%
After divestments	[15-20]%	[15-20]%		[15-20]	[15-20]%

Source IWSR ** Old Smuggler*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[40-45]%	[35-40]%		[40-45]%	[35-40]%
Acquired brands	[40-45]%	[35-40]%		[40-45]%	[35-40]%
New Pernod Ricard					
Before divestments	[45-50]%	[40-45]%		[45-50]%	[40-45]%
*divested brands**	[5-10]%	[5-10]%		[5-10]%	[5-10]%
After divestments	[35-40]%	[35-40]%		[35-40]%	[35-40]%

Source IWSR ** Old Smuggler*

- **Slovenia**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[55-60]%	[60-65]%		[65-70]%	[65-70]%
Acquired brands	[45-50]%	[45-50]%		[50-55]%	[55-60]%
New Pernod Ricard					
Before divestments	[50-55]%	[55-60]%		[60-65]%	[60-65]%
*divested brands**	[10-15]%	[10-15]%		[10-15]%	[10-15]%
After divestments	[40-45]%	[40-45]%		[50-55]%	[45-50]%

Source IWSR ** Old Smuggler, Braemar and Glen Grant*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[0-5]%	[0-5]%		[0-5]%	[0-5]%
Allied Domecq					
All brands	[55-60]%	[60-65]%		[55-60]%	[60-65]%
Acquired brands	[55-60]%	[60-65]%		[55-60]%	[60-65]%
New Pernod Ricard					
Before divestments	[55-60]%	[60-65]%		[55-60]%	[60-65]%
*divested brands**	[15-20]%	[20-25]%		[15-20]%	[20-25]%
After divestments	[40-45]%	[40-45]%		[40-45]%	[40-45]%

Source IWSR ** Old Smuggler, Braemar and Glen Grant*

2. Furthermore, the divestments of these three Scotch Whisky brands will reduce the post merger position of Pernod Ricard in other countries such as Belux, Czech Republic, France, Germany, Poland and Spain.

- **Belgium /Luxembourg**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	N/A		[5-10]%	N/A
Allied Domecq					
All brands	[5-10]%			[5-10]%	
Acquired brands	[5-10]%			[5-10]%	
New Pernod Ricard					
Before divestments	[10-15]%			[10-15]%	
*divested / discontinued brands**	[0-5]%			[0-5]%	
After divestments	[5-10]%			[5-10]%	

Source IWSR   ** Tullamore Dew, Old Smuggler and Glen Grant*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[0-5]%	N/A		[0-5]%	N/A
Allied Domecq					
All brands	[5-10]%			[5-10]%	
Acquired brands	[5-10]%			[5-10]%	
New Pernod Ricard					
Before divestments	[10-15]%			[10-15]%	
*divested brands**	[0-5]%			[0-5]%	
After divestments	[5-10]%			[5-10]%	

Source IWSR   ** Old Smuggler and Glen Grant*

- **Czech Republic**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[10-15]%
Allied Domecq					
All brands	[10-15]%	[10-15]%		[15-20]%	[15-20]%
Acquired brands	[10-15]%	[5-10]%		[10-15]%	[5-10]%
New Pernod Ricard					
Before divestments	[15-20]%	[15-20]%		[20-25]%	[20-25]%
*divested brands**	[0-5]%	[0-5]%		[0-5]%	[0-5]%
After divestments	[15-20]%	[15-20]%		[15-20]%	[15-20]%

Source IWSR ** Old Smuggler*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[0-5]%	[5-10]%		[0-5]%	[5-10]%
Allied Domecq					
All Brands	[25-30]%	[20-25]%		[25-30]%	[20-25]%
Acquired brands	[25-30]%	[20-25]%		[25-30]%	[20-25]%
New Pernod Ricard					
Before divestments	[30-35]%	[25-30]%		[30-35]%	[25-30]%
*divested brands**	[5-10]%	[5-10]%		[5-10]%	[5-10]%
After divestments	[20-25]%	[15-20]%		[20-25]%	[15-20]%

Source IWSR ** Old Smuggler*

- **France**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[15-20]%			[15-20]%	
Allied Domecq					
All brands	[5-10]%			[5-10]%	
Acquired brands	[5-10]%			[5-10]%	
		N/A			N/A
New Pernod Ricard					
Before divestments	[25-30]%			[25-30]%	
*divested brands**	[0-5]%			[0-5]%	
After divestments	[25-30]%			[25-30]%	

Source IWSR ** Glen Grant*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[15-20]%			[15-20]%	
Allied Domecq					
All brands	[10-15]%			[10-15]%	
Acquired brands	[10-15]%			[10-15]%	
		N/A			N/A
New Pernod Ricard					
Before divestments	[25-30]%			[25-30]%	
*divested brands**	[0-5]%			[0-5]%	
After divestments	[25-30]%			[25-30]%	

Source IWSR ** Glen Grant*

- **<u>Germany</u>**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	N/A		[5-10]%	N/A
Allied Domecq					
All brands	[10-15]%			[15-20]%	
Acquired brands	[10-15]%			[10-15]%	
New Pernod Ricard					
Before divestments	[15-20]%			[15-20]%	
*divested / discontinued brands**	[0-5]%			[0-5]%	
After divestments	[15-20]%			[15-20]%	

Source IWSR ** Tullamore Dew, Old Smuggler and Glen Grant*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	N/A		[5-10]%	N/A
Allied Domecq					
All brands	[25-30]%			[25-30]%	
Acquired brands	[25-30]%			[25-30]%	
New Pernod Ricard					
Before divestments	[30-35]%			[30-35]%	
*divested brands**	[0-5]%			[0-5]%	
After divestments	[25-30]%			[25-30]%	

Source IWSR ** Old Smuggler and Glen Grant*

- **<u>Poland</u>**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	2004 (IWSR 2005)		2003 (IWSR 2004)	2004 (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[20-25]%	[20-25]%		[20-25]%	[20-25]%
Acquired brands	[15-20]%	[20-25]%		[15-20]%	[20-25]%
New Pernod Ricard					
Before divestments	[25-30]%	[30-35]%		[25-30]%	[30-35]%
*divested brands**	[0-5]%	[5-10]%		[0-5]%	[5-10]%
After divestments	[20-25]%	[25-30]%		[20-25]%	[25-30]%

Source IWSR ** Old Smuggler*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[25-30]%	[30-35]%		[25-30]%	[30-35]%
Acquired brands	[25-30]%	[25-30]%		[25-30]%	[25-30]%
New Pernod Ricard					
Before divestments	[30-35]%	[35-40]%		[30-35]%	[35-40]%
*divested brands**	[0-5]%	[5-10]%		[0-5]%	[5-10]%
After divestments	[25-30]%	[25-30]%		[25-30]%	[25-30]%

Source IWSR * *Old Smuggler*

- **<u>Spain</u>**

All Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[30-35]%	[30-35]%		[30-35]%	[30-35]%
Acquired brands	[15-20]%	[15-20]%		[15-20]%	[15-20]%
New Pernod Ricard					
Before divestments	[20-25]%	[20-25]%		[20-25]%	[20-25]%
*divested brands**	[0-5]%	[0-5]%		[0-5]%	[0-5]%
After divestments	[20-25]%	[20-25]%		[20-25]%	[20-25]%

Source IWSR * *Glen Grant*

Scotch Whisky	Own brands			Own & Agency brands	
	2003 (IWSR 2004)	**2004** (IWSR 2005)		**2003** (IWSR 2004)	**2004** (IWSR 2005)
Pernod Ricard	[5-10]%	[5-10]%		[5-10]%	[5-10]%
Allied Domecq					
All brands	[15-20]%	[20-25]%		[15-20]%	[20-25]%
Acquired brands	[15-20]%	[20-25]%		[15-20]%	[20-25]%
New Pernod Ricard					
Before divestments	[25-30]%	[25-30]%		[25-30]%	[25-30]%
*divested brands**	[0-5]%	[0-5]%		[0-5]%	[0-5]%
After divestments	[25-30]%	[25-30]%		[25-30]%	[25-30]%

Source IWSR * *Glen Grant*

3. As far as the Other Brandy is concerned, the divestments of the *CR&F* and *1920* brands will eliminate the overlap, and, therefore, any competition issue in Portugal

- **Portugal**

Other Brandies	Own brands			Own & Agency brands	
	2003 **(IWSR 2004)**	**2004** **(IWSR 2005)**		**2003** **(IWSR 2004)**	**2004** **(IWSR 2005)**
Pernod Ricard	[30-35]%	N/A		[30-35]%	N/A
Allied Domecq					
All brands	[5-10]%			[5-10]%	
Acquired brands	[5-10]%			[5-10]%	
New Pernod Ricard					
Before divestments	[40-45]%			[40-45]%	
divested brands	[5-10]%			[5-10]%	
After divestments	[30-35]%			[30-35]%	

Source IWSR