Case No COMP/M.5114 - PERNOD RICARD / V & S

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)b in conjunction with Article 6(2)
Date: 17/07/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/07/2008

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN CONJUNCTION WITH ARTICLE 6(2)

To the notifying party:

Dear Sir,

Subject: Case No COMP/M.5114 - Pernod Ricard/ V&S
Notification of 29 May 2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 29 May 2008, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ('the Merger Regulation') by which the undertaking Pernod Ricard SA ('Pernod Ricard', France), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of 100% of the shares of V&S Vin & Sprit AB (publ) ('V&S', Sweden).

2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate the serious doubts identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In the light of these modifications the Commission has concluded that the notified operation, which falls within the scope 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.

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1 OJ L 24, 29.1.2004, p. 1.

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I. THE PARTIES

3. Pernod Ricard is a publicly quoted French company active in the production and distribution of alcoholic beverages, mainly wines and spirits, on a worldwide basis. Its main brands include: *Ricard* and *Pastis 51* (aniseed), *Chivas Regal*, *Ballantine's*, *The Glenlivet, Clan Campbell* (Scotch whisky), *Wild Turkey* (US whiskey), *Jameson* (Irish whiskey), *Beefeater* (gin), *Havana Club* (rum), *Martell* (cognac), *Wyborowa* (vodka), *Malibu*, *Kahlua* (liqueur), *Jacob's Creek, Montana* (still wines), *Mumm*, *Perrier Jouët* (champagne).

4. V&S is a Swedish state-owned company active in the production and distribution of wines and spirits. The flagship brand of V&S is *Absolut* (vodka). Vodka sales accounted for […] of V&S' net sales 2007 but the company also offers a portfolio of local and regional spirits and wine brands that are sold primarily in northern Europe.

II. THE OPERATION AND CONCENTRATION

5. In June 2007, the Swedish Parliament authorised the Swedish government to proceed with the divestment of V&S. The divestment process was launched in December 2007 with the issuance by the seller of a letter inviting a number of potential purchasers to submit a preliminary offer for the acquisition of V&S. After having submitted an indicative offer in January 2008, Pernod Ricard was selected to participate in the second phase of the selection process. Pernod Ricard was successful in this second phase and a binding Share Purchase Agreement was signed on 30 March 2008.

6. The proposed concentration consists in the acquisition by Pernod Ricard of 100% of the shares of V&S and therefore of sole control of the wine and spirit assets and activities currently belonging to V&S[2]. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Pernod Ricard EUR 6 443 million, V&S EUR 1 067 million[3]). Each of them has a Community-wide turnover in excess of EUR 250 million (Pernod Ricard EUR […] million, V&S 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 within the meaning of Article 1(2) of the Merger Regulation.

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2 The only assets that are excluded from the transaction (defined as Excluded Assets in the Share Purchase Agreement), are the Absolut Art Collection, the rights and assets relating to the foundation Stiftelsen Vin & Sprithistoriska Museet and the 10% stake held by V&S in the US company BGSW.

3 Pernod Ricard's turnover figures relate to its financial year ending 30.6.2007. V&S' turnover is for its financial year ending 31.12.2007.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

1. Spirits other than vodka

General remarks

8. The Commission has considered a number of concentrations in the spirits sector.[4] In *Guinness/Grand Metropolitan,* the Commission found that the relevant product markets are in general no wider than those for each of the individual internationally-recognised spirit types (whiskey, gin, vodka, rum, etc.) and for each liqueur. The Commission nevertheless recognised that narrower definitions may be appropriate to specific product or geographic areas in particular with regard to whisky.

9. In *Pernod Ricard/Diageo/Seagram Spirits,* the Commission confirmed its earlier findings that the spirit market should be segmented by spirit type. It also concluded that a further segmentation within the whisky category should be made in respect of Scotch whisky and that Cognac/Armagnac constitutes a product market that is distinct from other brandies. These market definitions were most recently confirmed in *Pernod Ricard/Allied Domecq,* although for the purposes of that decision, the question whether there exist separate relevant product markets for whisky of different origin was ultimately left open.

10. In the present case, the notifying party submits that a relevant product market has to be defined for each of the main spirit categories, i.e. whisky, brandy, rum, gin, vodka, tequila, aniseed, bitters and liqueurs with a further a segmentation within the brandy market between cognac/Armagnac and other brandies. In the case of whisky, although the notifying party recognises that the Commission has in past decisions made a further segmentation within the all whisky market on the basis of origin (i.e. Scotch, Irish, US and Canadian), it considers that such segmentation may only be appropriate in certain Member States as Scotch whisky represents the major part of total whisky consumption in each Member State with the exception of Ireland. With regard to liqueurs, the notifying party submits that contrary to the conclusion reached in *Guinness/Grand Metropolitan*, it would not be appropriate to consider each flavour as a distinct product market as competition occurs between all types.

11. The notifying party does not consider that additional segmentation by price or quality is relevant for any of the main spirit categories noted above. As far as vodka is concerned, which accounts for the majority of V&S' sales, the notifying party further submits that an additional segmentation on the basis of origin or between flavoured and non-flavoured vodkas is not appropriate. Finally, in view of certain supply and demand side considerations, the notifying party submits that a distinct product market should also be considered for aquavit.

12. The Commission's investigation has broadly confirmed the appropriateness of defining distinct product markets for each main spirit category. With regard to liqueurs, opinions were divided as to whether each flavour of liqueur constitutes a product market in itself or if

[4] See Case IV/M.400, *Allied Lyons/HWE-Pedro Domecq*, decision of 28 April 1994, Case IV/M.938, *Guinness/Grand Metropolitan*, decision of 15 October 1997, Case COMP/M.2268 *Pernod Ricard/Diageo/Seagram*, decision of 8 May 2001, Case COMP/M.2941 *CNP/Taittinger*, decision of 16 October 2002 and Case COMP/M.3779 *Pernod Ricard/Allied Domecq*, decision of 24 June 2005.

all types of liqueur should be considered as forming part of one product market. However, for the purposes of the present case, the exact market definition can be left open as the proposed transaction would not result in any affected market under either alternative market definition.

13. There were indications in the market test that spirits such as aquavit should be viewed as distinct product markets in view of their popularity in some Member States. It is not necessary, however, to conclude on this point as it would not have any impact on the competitive assessment of the notified transaction. In the case of whisky, the relevance of segmenting the overall market on the basis of origin (i.e. Scotland, Ireland, United States, Canada and others) was confirmed by a number of third parties.

14. The Commission also examined whether a *segmentation by price or quality* would be relevant for competition purposes. The findings of the Commission on the relevance of such segmentation for vodka, which is the main spirit impacted by the proposed transaction are detailed below. As regards other spirits, data submitted by the notifying party shows that further segmentation of the other spirits markets would not lead to additional competition concerns. Therefore it can be left open whether a segmentation by price or quality is relevant when defining spirits markets other than vodka.

15. In previous decisions concerning the wines and spirits sectors, the Commission found that it was not necessary to analyse the impact of the transactions on the basis of separate product markets according to the *channel of distribution*, i.e. 'on-trade' (sales to bars, clubs and restaurants etc) and 'off-trade' (sales to retailers etc.).[5]

16. The market investigation in the present case has indicated that a distinction should be made between the two channels. In particular, the investigation has shown that many suppliers have dedicated sales forces for each channel in order to respond to differing customer requirements. In this respect, it should also be noted that in most of the Nordic markets (Finland, Sweden, Norway and Iceland) the retail sale of strong alcohol such as wines and spirits is carried out by state monopolies. Therefore, this distinction will be taken into account for the purpose of the competitive assessment.

Conclusion on the relevant product markets for spirits other than vodka

17. In view of the above, the Commission considers that the relevant product markets in the present case are: whisky (with a possible further segmentation by origin), gin, tequila, rum, brandy (with a further segmentation for cognac/Armagnac), liqueurs, bitters and aniseed with a distinction between the on and off-trade channels.

2. Vodka

Segmentation by price

18. As far as vodka is concerned, the market investigation indicated that price positioning is a very important element in the vodka market. Indeed, all vodka manufacturers appear to segment the market according to price when determining their commercial strategy. This is also the case for the parties themselves. Indeed V&S, in its annual report, indicates that "*the*

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5 See Case IV/M.938, *Guinness/Grand Metropolitan*, paragraph 21, decision of 15 October 1997, Case COMP/M.2268, *Pernod Ricard/Diageo/Seagram*, paragraph 15, decision of 8 May 2001 and Case COMP/M.3779, *Pernod Ricard/Allied Domecq*, paragraph 13, decision of 24 June 2005

business area focuses on three product categories - vodka, rum and gin- and on two price segments - premium and super premium" and "*the main markets are: the global market for premium spirits [...]*". Furthermore, Pernod Ricard submitted to the Commission an internal survey conducted by the consulting company […] on its vodka brand […] In this survey there are clear indications that Pernod Ricard itself considers distinct segments by price when assessing the vodka markets. Indeed each distinct segment is said to have a different growth rate ('*premium and super-premium drive [...] of total growth - super-premium, very attractive market with an expected growth of [...] + p.a., vs. [...] for premium and [...] for standard*') and profitability is given for each segment[6] ."

19. This suggests that a market definition by price segment may better reflect the way the market works. Indeed, some brands that are priced close to each other are more likely to compete for the same customers than brands at the other end of the spectrum. This point was noted by several competitors in the market investigation. Competitors were divided however as to whether vodkas of different qualities and/or price are interchangeable or substitutable from the consumer's perspective although a clear majority considered that consumers would switch from one price category to another if the price of vodka in the former were to increase whilst other prices remained constant.

20. However, a market definition based on price segmentation is contested by the notifying party and by a limited number of other third parties in the Commission's market investigation which claim that only a market definition encompassing all vodkas is meaningful and would therefore be relevant for the purpose of the competitive assessment. The main argument put forward by the notifying party in support of this claim is that vodkas form a price continuum, meaning that there is a continuous distribution of prices with no clear break. The notifying party does acknowledge however that a limited number of brands that are sold at significantly higher prices but in limited quantities may not form part of the price continuum.

21. The notifying party submitted a study of the vodka market in France, Italy, Greece, Belgium/Luxembourg, the Netherlands and the United Kingdom carried out by CRA International on behalf of the notifying party (hereafter "first CRA report"). This study contains a series of charts displaying in each of the above countries vodka brands ranked by price, in which it can be seen that the price increment between one brand and the next is generally very small. However, the picture is less clear when the importance of the brands in terms of volume is taken into account, as several clusters of important brands can clearly be seen in the charts.

22. In any case, the presence of a price continuum would not provide evidence that there is only one relevant market for vodka. Indeed, the absence of a strong price gap between brands does not in itself guarantee that for example the cheapest brands would provide a strong competitive constraint on the most expensive brands and vice-versa. More direct evidence regarding the relative price evolution of brands in different segments or the closeness of competition between different brands would be necessary to reach such a conclusion.

23. The Commission therefore analysed AC Nielsen data provided by the notifying party for these countries and found that price correlations and stationarity tests did not appear informative for the question of defining the market. Indeed, price correlations within one

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6 "value"=[…] €/L, "standard"=[…] €/L, "premium"=[…] €/L, "super premium"=[…] €/L – See page 9 of the survey.

price segment were generally very low, which means that they do not provide a useful benchmark for assessing correlations between brands in different segments. The same conclusion was reached with respect to the stationarity analysis of the relative price of vodka brands belonging to different segments.

24. Using the same Nielsen data, the first CRA report presented the results of two econometric analyses. The first one was described as a "segment demand analysis", which is a demand system estimation on the basis of an Almost Ideal Demand System (AIDS) aggregated at the segment level. The segmentation followed the […] methodology, which defines value, standard and premium segments with reference to the price of the […] brand owned by […]. The report does not calculate a hypothetical monopolist test, which would be the more useful interpretation of the elasticity estimates. But more importantly, the estimation relies on an arbitrary definition of segments, abstracts from the brand-level competition (i.e. by only focusing on aggregate segments it ignores the competitive interactions between specific brands) and does not provide robust and significant estimates (some of the coefficients having implausible signs and magnitudes). It is therefore not possible to conclude, on the basis of this segment analysis, whether the market should be divided by price segments or not.

25. The second econometric analysis presented in the first CRA report ("unilateral effects demand analysis") is a demand system estimation on the basis of an AIDS model aggregated at the brand level. With respect to the previous estimation, this approach has the advantage of trying to capture the competitive interaction between different brands. This does come at a cost however, as this significantly increases the number of parameters to estimate, and a high number of these parameters appeared to take implausible values. In order to reduce the number of parameters to estimate, CRA imposed some structure on the parameters in its subsequent reports (concerning respectively France and Italy). In particular, the model was estimated using seemingly unrelated regression and imposing Slutsky symmetry (instead of OLS and no restriction). However, the results still lead to a high number of implausible parameters and were in many cases not robust to the particular choice of brands included in the model, in particular for Italy.

26. In addition, the additional econometric analysis provided by CRA also suffered from a number of shortcomings present in their first report. For example, although a high number of the underlying coefficients did not appear to be significant, several implausible estimates were significant, which casts doubts on the validity of the result.[7] Although this could be due to an endogeneity problem, the report did not attempt to address this issue, e.g. with the use of instrumental variables. Furthermore, the report does not justify or present a sensitivity analysis with respect to key assumptions, such as the choice of the market elasticity.[8]

27. On this basis, it must be concluded that the econometric analysis provided by the parties is inconclusive, and does not provide solid evidence in favour or against a market definition

7 As the CRA reports did not estimate standard errors for the elasticity parameters it provided, the Commission computed these standard errors using bootstraps.

8 Although the report does not mention this assumption, the Stata code submitted to the Commission clearly indicates that a market elasticity of minus one was used to calculate brand-level elasticities. Although such an assumption does simplify calculations, the parties did not provide any evidence indicating that it would be an appropriate choice for the vodka market.

by price segment. For the purposes of the present case, however, the issue whether the vodka market should be further sub-divided according to price segment can be left open as competition concerns would not arise under any alternative market definition.

Distinction flavoured/non-flavoured

28. The notifying party submits that it is not relevant to make a distinction between flavoured and non-flavoured vodkas, as flavoured vodkas would represent a very small share of total vodka consumption in the EEA in general (with the exception of Poland) and prices of flavoured vodka would be similar to non-flavoured vodka.

29. However a vast majority of respondents to the market investigation indicated that a distinction should be drawn between flavoured and non-flavoured vodkas as the two types were not seen as substitutes from the consumers' perspective. The market investigation suggested that if the price of flavoured vodkas were to increase by a small but significant amount on a non-transitory basis (the 'SSNIP test'), consumers would not switch to non-flavoured vodkas. Nevertheless, for the purposes of the present case, the question whether distinct product markets exist for flavoured and non-flavoured vodkas can be left open as this would not alter the competitive assessment.

Conclusion on the relevant product market for vodka

30. In view of the above, the Commission considers that vodka constitutes a relevant product market for the assessment of the notified transaction. It is not necessary, however, in the present case to conclude whether vodka should be further segmented by price and flavour as this would not affect the competitive assessment. In addition, in view of the results of the market investigation and for the reasons outlined above relating to other spirits, the Commission considers that a distinction should be drawn between the on and off-trade channels also for vodka.

<u>3. Wines</u>

31. Apart from its Champagne brands (*Mumm* and *Perrier Jouët)*, the wines produced and marketed by Pernod Ricard are mainly still wines (so-called New World wines) produced in Australia, New Zealand, Argentina and South Africa. Pernod Ricard also produces and markets Spanish wines.

32. V&S' activity in the wines sector is concentrated in the Nordic countries and comprises (i) the production and sale of mulled wines and certain fruit wines, (ii) the import of bulk wines which are then packaged and marketed under V&S' brands and (iii) the distribution of third party brands also belonging to the New World wines category and European wines of French, Spanish, German and Italian origin.

33. As far as the wines sector is concerned, the notifying party submits that the relevant product market should be segmented between still wines, sparkling wines (other than champagne), champagne, fortified wines (such as port and sherry) and light aperitifs[9]. With regard to still

[9] The notifying party submits that the light aperitifs category corresponds to one of the product categories used by the International Wines and Spirits Report (IWSR) which is a leading information service in the industry. The IWSR segment of light aperitifs encompasses vermouth, wine aperitifs and fruit based aperitifs. Vermouth and wine aperitifs are drinks obtained from wine products to which alcohol has been added and which are then flavoured with herbs, spices or other flavourings. Fruit based aperitifs are fruit

wines, the notifying party submits that it would not be appropriate to make a further segmentation based on colour or to define product markets on the basis of origin. It further submits that a segmentation according to price is not warranted as there is a price continuum amongst wines with limited price differences between products and between price bands.[10]

34. In a previous case concerning wines[11], in which the notifying party submitted that the relevant product market could be segmented according to the '*appellation*' or origin of the wine, the Commission was able to leave open the exact product market definition as there were no affected markets regardless of the market definition considered. In *Allied Lyons/HWE-Pedro Domecq*, the Commission found that origin could be relevant in the context of defining the product market for sherry, which was considered to be distinct from other fortified wines, although ultimately the issue was left open.[12]

35. In the present case, the market investigation has indicated that it would be appropriate to make a distinction in the still wines category based on colour as wines of different colour are not seen as substitutes by consumers. However, as the market position of the merging parties is similar whether such segmentation is considered or not, the issue can be left open.

36. As regards a possible segmentation according to origin, the Commission has focused its market investigation on the areas where the parties' activities mainly overlap, namely New World wines sold in the Nordic countries. The notifying party considers that wines of different origin, in particular European wines and New World wines compete directly as reflected by the significant variations between the sales of wines of different origin, consumption of New World wines having grown by 9% between 2004 and 2006 in the EEA while consumption of French and Spanish wines declined by 4 and 6% respectively. Furthermore there would be no clear cut preferences for wines by origin as there would be a balance between of different origins, New World and European wines being all well represented in the sales of wines in the Nordic countries.

37. Furthermore the notifying party submits that it is not relevant to define distinct markets within wines according to price. The notifying party submits that a price delineation would be artificial as the only price segments in which the transaction would lead to an hypothetical significant position are in the upper range of the price spectrum which only accounts for a limited part of total consumption. Therefore a limited increase of the price of the products belonging to a given segment would make them move to the upper segment, thus modifying its size and the market shares of the parties. The same would be true in case of a limited decrease in price of certain the products of the parties.

38. The results of the market investigation show that wines of different origin are viewed as substitutes from a demand-side perspective. In addition, the Commission carried out a detailed empirical analysis to determine whether it would be necessary to segment the

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wines obtained by the fermentation of fruits other than grapes, which are sweetened and to which food additives may be added.

10 The price bands referred to by the notifying party are as reported by the IWSR.

11 See Case COMP/M.2941 *CNP/Taittinger*, paragraph 13, decision of 16 October 2002.

12 See Case IV/M.400, *Allied Lyons/HWE-Pedro Domecq*, paragraphs 13-17, decision of 28 April 1994.

wines market by country of origin. If such definition was retained, the proposed transaction would mainly give rise to a significant position and overlap in Australian wines, sold in Sweden and Estonia. Using data from the Swedish retail monopoly, Systembolaget, it was found that although the price of Australian wine declined over the last few years in Sweden, when controlling for a constant product mix, the price of Australian wine was stationary with respect to the price of other wine or other new world wine. Therefore, on the basis of the results of the market investigation and of the empirical analysis, it can be concluded that for the purpose of the present case, it is not relevant to define distinct wines markets on the basis of the origin of wine.

39. The market investigation has shown that price is one of a number of criteria taken into account by the final consumer when selecting their choice of wine. However, on the basis of the information provided by the notifying party, the Commission found no evidence in favour of a segmentation by price. In particular, the Commission's analysis of the Systembolaget data does not allow to exclude that the prices of wines in different price categories tend to move together through time. Therefore, for the purposes of the present case, the Commission considers that it is not appropriate to segment the market for wine according to price.

Conclusion on the relevant product markets for wines

40. In view of the above, the Commission considers that still wines (with a possible segmentation according to colour), sparkling wines (other than champagne), champagne, fortified wines (such as port and sherry) and light aperitifs constitute a relevant product market for the assessment of the notified transaction.

4. Travel retail markets for wines and spirits

41. The Commission acknowledged in *Guinness/Grand Metropolitan* that duty-free sales of spirits constituted a separate market.[13] It did not however address in the same decision whether this market would encompass all wines and spirits or indeed if it could include other goods sold in duty-free outlets. In a similar manner, the Commission has not segmented the travel retail market between the different categories of products sold in this channel or on the basis of the location of such outlets (i.e. at airports, on board aircraft, on board ships) in decisions relating to concentrations between travel retail operators.[14] It should be noted that since the adoption of the *Guinness/Grand Metropolitan* decision, duty-free sales are no longer relevant in the context of travel within the European Union although travellers can still purchase so-called 'travel value' products. The Commission's investigation in the present case has shown that suppliers often have established distinct sales organisations for customers in the travel retail market. In this respect, negotiations between suppliers and their customers typically take place at a centralised level and cover a number of countries. In addition, the market investigation indicated that although the brands offered for sale in travel retail outlets were the same as in other outlets, larger bottle sizes (at least for spirits) and gift packs were more commonly to be found in travel retail outlets. Consequently, the Commission considers that it is appropriate to define a separate market for travel retail sales. For the purposes of the present case, however, it is not necessary to

13 See Case IV/M.938, *Guinness/Grand Metropolitan*, paragraph 23, decision of 15 October 1997.

14 See for example, Case No IV/M.782 *Swissair/Allders International*, decision of 17.7.1996, Case No COMP/M.3728 *Autogrill/Altadis/Aldeasa*, decision of 23.3.2005 and Case No COMP/M.5123 *Autogrill/World Duty Free*, decision of 16.5.2008.

conclude whether distinct product markets exist in respect of each wine and spirit sold in the travel retail channel or if the market is broader so as to encompass other types of goods as it would not alter the competitive assessment.

B. Geographic markets

1. Spirits (including vodka) and wines

42. The notifying party submits that the geographic scope of the markets for the production and distribution of spirits and wines are national in scope. In this regard, it notes that there are strong national preferences and consumption behaviours which vary between countries. The notifying party acknowledges that consumers in some countries purchase a significant part of their requirements outside their home countries. It does not consider however that the existence of such cross border trade flows would lead to a modification of the scope of the relevant geographic market.

43. In the previous Commission decisions *Guinness/Grand Metropolitan*[15], *Pernod Ricard/Diageo/Seagram*[16] and *Pernod Ricard/Allied Domecq*[17], the Commission found the scope of the geographic market to be national, mainly because of strong national preferences and consumption behaviours. Third parties in the market investigation in the present case have confirmed that the markets at issue are national in scope. At the same time, it was acknowledged by a number of parties that some markets, for spirits in particular, could be becoming more international in nature due to the emergence and promotion of brands across many national markets. At the present time, however, the Commission considers that the markets for spirits and wines remain national in scope.

2. Travel retail markets for wines and spirits

44. As regards sales to travel retail operators, the notifying party has submitted that the market is EEA-wide. According to the notifying party, a European dimension of this segment corresponds to the centralized organization of the suppliers and the size and the scope of activities of the main customers. Although some respondents in the market investigation indicated that travel retail outlets adjust prices according to price levels in each national market, other respondents mentioned that negotiations upstream between suppliers and travel retailers were centrally organized covering all outlets regardless of their location in the EEA. Since the market position of the parties would not give rise to competition concerns even if the market is more narrowly defined than the EEA, the exact scope of the geographic market can be left open in the present case.

C. Competitive Assessment

45. Pernod Ricard currently distributes the vodka brands *Stolichnaya* and *Moskovskaya* which belong to the SPI Group ('SPI'). On 13 March 2008, Pernod Ricard and SPI entered into a Transition Agreement according to which within six months of the closing

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15 Case No IV/M.938, Guinness/Grand Metropolitan, decision of 15 October 1997.

16 Case No COMP/M.2268, Pernod Ricard/Diageo/Seagram, decision of 8 May 2001.

17 Case No COMP/M.3779, Pernod Ricard/Allied Domecq, decision of 24 June 2005.

of the acquisition of V&S by Pernod Ricard, the worldwide distribution agreements for *Stolichnaya* and *Moskovskaya* will terminate. In this regard, it should be noted that, as far as Europe is concerned, the Transition Agreement does not provide for any extension of the six month transition period. Moreover, the decision to terminate the distribution of the two brands in the EEA forms part of the undertakings proposed by Pernod Ricard to address the competition concerns arising from the transaction as originally notified. In view of the foregoing, the Commission has assessed the notified transaction on the premise that the distribution agreement is terminated and consequently the market shares of *Stolichnaya* and *Moskovskaya* are not aggregated with those of the parties.

46. With the exception of the United States, the distribution of V&S' brands in most of its major international markets outside the Nordic region is carried out by Maxxium Worldwide BV ('Maxxium'). Maxxium is a Dutch joint venture constituted between V&S, Rémy Cointreau, The Edrington Group and Beam Global Spirits and Wines Inc ('BGSW'), a subsidiary of Fortune Brands Inc. In Europe, Maxxium is present in 13 EEA countries and operates in other markets through distribution arrangements. Pernod Ricard is not a member of Maxxium and its proposed acquisition of V&S will not lead to it becoming one. On the contrary, Pernod Ricard has announced that after the closing of the notified transaction, it intends to withdraw V&S from Maxxium and has committed itself to this course of action as part of the undertakings. The length of time it will take to effect this withdrawal, however, depends on the action of Maxxium's remaining shareholders.[18]

47. Each of Maxxium's shareholders retains control of the marketing and promotion of its brands, the setting of recommended resale prices for its own products and the property and management of its IP rights. Moreover, according to the parties, none of the shareholders has any capacity of controlling or influencing the marketing, sale and pricing policies of any of the other brands distributed by Maxxium on behalf of other brand owners, whether shareholders or third parties.

48. In light of these elements and Pernod Ricard's intention to withdraw from Maxxium, the Commission has assessed the notified transaction on the basis that V&S is no longer a member of Maxxium.

Market share data

49. The notifying party has submitted market share data based on the International Wine and Spirit Report (IWSR). IWSR is a market research company which supplies volume

[18] The Maxxium joint venture is based on two types of agreement: the Shareholders' Agreement (between the shareholders) and an 'umbrella agreement' (between each shareholder and Maxxium that sets the framework for the distribution and sale of the shareholder's products through Maxxium's distribution network). The length of time it would take a party to exit both agreements depends on whether the decision to exit is voluntary or triggered by one of the other shareholders, for example, in the case of the acquisition of the 'exiting' shareholder by a substantial competitor. Where the decision to exit is voluntary, an exiting shareholder must give […] notice to exit the Shareholders' Agreement and […] notice to terminate its umbrella agreement.

data on wine and spirit consumption for a wide range of wine and spirit categories and brands across more than 120 domestic markets and the travel retail segment.

50. According to the notifying party, IWSR volume data is considered to be the leading source of information and the industry standard to which all major market players consistently refer. The market investigation in the present case has confirmed that IWSR is considered a reliable source of data.

51. On the wholesale level where Pernod Ricard and V&S operate, no value data are available according to the notifying party. The only value data available are at the retail level and these data are collected by companies such as AC Nielsen. The notifying party argue that the value data made available by AC Nielsen are less accurate than the IWSR volume data. First, AC Nielsen data are more limited than IWSR, generally tracking consumer purchases only trough larger outlets which have the necessary IT systems. Second, AC Nielsen data coverage can vary significantly between different countries. According to Pernod Ricard, AC Nielsen data covers only around 1/3 of Pernod Ricard's sales in […] but nearly all of its sales in […]. Also, within each country, the coverage varies by brand. Another issue regarding AC Nielsen data is that they are based on supermarket scanner data and do not take factors such as promotional campaigns into account.

52. On basis of the above, the Commission has accepted the use of market shares based on volume data in the present case. However the Commission has asked the notifying party to submit market share data based on value for some of the vodka markets, where price segmentation may be relevant and therefore may lead to some differences between value and volume data.

53. At the time of the notification, the notifying party submitted data based on IWSR 2007 (presenting 2006 market data). During the course of the Commission's investigation, IWSR 2008 (presenting 2007 market data) was made available for a number of countries. This new data has been taken into account in the competitive assessment where relevant.[19]

Agency brands

54. In the spirits and wines sectors, some manufacturers choose to have their brands distributed by a third party in all or certain territories. The distributors of third party brands (so-called 'agency brands') are most commonly also brand owners/manufacturers themselves. Both Pernod Ricard and V&S are active as third party distributors.

55. The distributor is in charge of all contacts, relationships and contracts with the customers. Price setting as well as the definition and negotiation of commercial terms (discounts, rebates, promotions etc.) also fall within the responsibilities of the distributor.

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[19] The IWSR 2008 information submitted by the notifying party during the course of the Commission's investigation results in the identification of one additional affected market (for gin in the Czech Republic). As the merged entity's market share would remain below 25% and the increment arising from the proposed transaction is minimal ([0-5%]), the Commission considers that competition concerns are unlikely to arise in this market.

56. Given that the distributor is the operator which in effect competes with the other players on the market, the market share corresponding to an agency brand should primarily be attributed to its distributor. The notifying party agrees with this. In the presentation of market shares in the competitive assessment, the market share of Pernod Ricard's and V&S' agency brands have therefore been added to the market shares of their owned brands.

1. <u>Spirits other than vodka</u>

57. Pernod Ricard and V&S are active in the production and distribution of a range of spirits other than vodka. The proposed transaction would lead to a considerable number of affected spirit markets in the following Member States bitters in Finland, Germany and Sweden; gin in Estonia, Poland, Spain and Sweden; all whisky in Finland, Norway, Poland and Sweden; rum in Denmark (on-trade), Poland and Sweden; liqueurs in Finland and Sweden; Scotch whisky in Poland; Canadian whisky in Sweden; cognac in Sweden; brandy in Sweden; aniseed in Finland.

Affected markets which do not raise serious doubts

58. For a number of the affected markets listed above, the transaction would lead to limited overlaps of 1% or less. This would be the case for the following markets: Scotch whisky in Poland ([25-35%] + [0-5%]), gin in Estonia ([15-20%]+ [0-5%]) and Spain ([20-30%] + [0-5%]), liqueurs in Finland ([0-5%] + [10-20%]), bitters in Finland ([0-5%] +[20-30%]), Germany ([10-20%] +[0-5%]) and Sweden ([0-5%] + [40-50%]) and brandy in Sweden ([0-5%] + [60-70%]). In these markets, since the merger has minimal effects on the market position of the parties, the Commission considers that the proposed transaction does not raise serious doubts.

59. In eight additional affected markets where the overlap cannot be considered as negligible, the merged entity's market share would remain below or around 25%. These are the markets for all whisky in Finland ([10-20%]+[0-5%]) and Norway ([10-20%] + [5-10%]), liqueurs in Sweden ([5-10%] + [10-20%]) and rum in Poland ([0-5%] + [20-30%]) and Sweden ([0-5%] + [10-20%]) Consequently, the Commission considers that the proposed transaction does not raise serious doubts in these markets.[20]

60. In the case of three additional affected markets (the market for all whisky in Poland and Sweden and rum in the on-trade segment in Denmark) where the merged entity's market share exceeds 25% and the increment arising from the proposed transaction cannot be considered as negligible, the Commission also considers that the proposed transaction is unlikely to raise competition concerns. With regard to Poland, the merged entity would have a market share of [30-40%] with an overlap of [0-5%]. It would continue to face significant competition from players such as Diageo, which has an overall market share of [30-40%] and owns the most sold brand *Johnnie Walker Red*, Brown Forman ([10-20%]) and CEDC ([5-15%]) which distributes brands belonging to Brown Forman, William Grants and Campari. In the case of Sweden, the merged entity would have a market share of [20-30%][21] with an overlap of [5-10%]. It would continue to face

[20] Guidelines on the assessment of horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, paragraph 18.

[21] This market share will be reduced to less than [20-30%] as a result of the notifying party's commitment relating to Canadian whisky which is discussed later in the decision.

competition from a number of other players such as Diageo, which has a market share of [10-20%], Maxxium ([10-20%]) and the Swedish company Berntson ([5-15%]). Concerning rum in the on-trade segment in Denmark, Pernod Ricard would achieve a market share of [25-35%] following the transaction. However, Bacardi-Martini is the clear market leader in this segment with a market share of [40-50%], while Diageo also holds a significant position with a market share of [10-20%]. For these reasons and in the absence of concerns during the market investigation, the Commission concludes that the proposed transaction does not raise serious doubts in the markets for all whisky in Poland and Sweden and the market for rum in the on-trade segment in Denmark.

Markets in which serious doubts were identified

61. In the five remaining affected markets for spirits other than vodka, which are shown in the table below, the merged entity's market share would exceed 40% and the overlaps are significant. The Commission therefore considers, for the reasons detailed below in respect of each market, that the transaction as originally notified raises serious doubts.

Table 1: Parties' market shares in markets with serious doubts

	Pernod Ricard pre-merger	**Pernod Ricard post merger**	**Overlap**
Aniseed in Finland	[25-35%]	[55-65%]	[25-35%]
Gin in Poland	[25-35%]	[75-85%]	[25-35%]
Canadian whisky in Sweden	[0-5%]	[60-70%]	[0-5%]
Cognac in Sweden	[0-5%]	[55-65%]	[0-5%]
Gin in Sweden (on-trade)	[15-25%]	[40-50%]	[15-25%]

Aniseed in Finland

62. In Finland, the combined market share of the parties in the aniseed market is [55-65%]. Pernod Ricard is active with the brands *Pernod 45*, *Ricard* and *Pernod Absinthe*, while V&S is active with the brands *Dry Anis*.

Table 2: Parties' market shares in the aniseed market in Finland

	Pernod Ricard pre-merger market share (owned + agency brands)	**Vin & Sprit's pre-merger market share (owned + agency brands)**	**Combined market share (owned + agency brands)**
Pernod 45	[20-30%]	-	[20-30%]
Ricard	[0-5%]	-	[0-5%]
Pernod Absinthe	[0-5%]	-	[0-5%]
Dry Anis	-	[25-35%]	[25-35%]
Total	**[25-35%]**	**[25-35%]**	**[55-65%]**

63. With the acquisition of V&S, Pernod Ricard would hold four of the six best selling aniseed brands in Finland. In particular, the acquisition of the brand *Dry Anis* (with a market share of [25-35%]) would significantly change the competitive situation in the Finnish aniseed market. Pre-merger, Pernod Ricard, V&S and Altia Corp. (distributor of the brand *Tsantalis Ouzo*, owned by Tsantalis), hold relatively similar market shares of [25-35%], [25-35%] and [20-30%], respectively. After the acquisition, Pernod Ricard would establish itself as the clear market leader with a market share more than twice as large as the closest competitor.

64. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position, its existing range of brands in the Finnish market and its post-merger position relative to its competitors, the notified transaction raises serious doubts as to its compatibility with the common market in the market for aniseed in Finland.

Gin in Poland

65. In Poland, the merged entity would hold a market share of [75-85%]. The proposed transaction would lead to the combination of the first and second most sold brands. V&S own the most sold brand *Lubuski*, while Pernod Ricard owns the second most sold brand, *Seagram Gin*.

Table 3: Parties' market shares in the gin market in Poland

	Pernod Ricard pre-merger market share (owned + agency brands)	**Vin & Sprit's pre-merger market share (owned + agency brands)**	**Combined market share (owned + agency brands)**
Seagram Gin	[20-30%]		[20-30%]
Beefeater	[0-5%]		[0-5%]
Lubuski		[50-60%]	[50-60%]
Total	**[25-35%]**	**[50-60%]**	**[75-85%]**

66. *Lubuski* is by far the best selling brand in Poland with a market share of [50-60%]. No other competitor has a market share of more than 5% in the Polish market. The closest competitor is Diageo with a market share of [0-5%]. In the market investigation, concerns were raised regarding the Polish gin market given the high level of concentration that would follow from the proposed transaction.

67. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position, placing Pernod Ricard well ahead of its competitors, the Commission considers that the notified transaction raises serious doubts as to its compatibility with the common market in the market for gin in Poland.

Canadian whisky in Sweden

68. The parties would have a combined market share of [20-30%] in the all whisky market in Sweden. However, as mentioned above, the market investigation in the present case has indicated that a distinction could be made between whiskies of different origins. In case of segmentation by origin, the parties' combined market share would reach [60-70%] in the segment for Canadian whisky in Sweden.

69. In the segment of Canadian whisky in Sweden, Pernod Ricard distributes the brand *Royal Canadian*, while V&S is active with the owned brands *Lord Calvert* and *Seven Oaks*.

Table 4: Parties' market shares in Canadian whisky in Sweden

	Pernod Ricard pre-merger market share (owned + agency brands)	Vin & Sprit's pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
Royal Canadian	[0-5%]	-	[0-5%]
Lord Calvert	-	[50-60%]	[50-60%]
Seven Oaks	-	[5-10%]	[5-10%]
Total	**[0-5%]**	**[60-70%]**	**[60-70%]**

70. With the acquisition of V&S, Pernod Ricard would hold three of the four best selling Canadian whisky brands in Sweden. Before the merger, Pernod Ricard was a relatively small supplier with [0-5%] of the market, but through the acquisition of V&S' two brands, in particular *Lord Calvert* with a market share of [50-60%], Pernod Ricard would become the strongest player in the market. Constellation Brands holds the second most sold brand, *Black Velvet* (market share of [20-30%]), while other producers hold minor market shares, for example Diageo has a market share of [0-5%].

71. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position, the Commission considers that the notified transaction raises serious doubts as to its compatibility with the common market in the segment of Canadian whisky in Sweden.

Cognac in Sweden

72. In the cognac market, the parties would have a combined market share of [55-65%] in Sweden. Pernod Ricard owns the brands *Martell* and *Renault*, while V&S owns the brand *Grönstedts*.

Table 5: Parties' market shares in the cognac market in Sweden

	Pernod Ricard pre-merger market share (owned + agency brands)	Vin & Sprit's pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
Martell	[0-5%]	-	[0-5%]
Renault Carte Noire	[0-5%]	-	[0-5%]
Grönstedts	-	[50-60%]	[50-60%]
Total	**[0-5%]**	**[50-60%]**	**[55-65%]**

73. By acquiring V&S' very strong market position, Pernod Ricard would position itself well ahead of the other competitors. In particular, with the acquisition of the *Grönstedts* brand, Pernod Ricard would hold the by far the best selling cognac in Sweden. *Grönstedts* is followed in size by *de Luze VS* (owned by Domain Boinaud) with a [5-10%] market share and *Larsen VS* (owned by Larsen) also with a [5-10%] share of the market.

74. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position, placing Pernod Ricard well ahead of its competitors, the Commission considers that the notified transaction raises serious doubts as to its compatibility with the common market in the market for cognac in Sweden.

Gin in Sweden

75. The parties would hold a combined market share of [30-40%] in the overall gin market in Sweden. However, as mentioned previously, the market investigation in the present case has indicated that a distinction should be made between the two distribution channels, on-trade and off-trade. In the Swedish on-trade distribution channel, the combined market share of the parties would reach [40-50%] as shown in the following table.

Table 6: Parties' market shares in the gin market in Sweden (on trade)

	Pernod Ricard pre-merger market share (owned + agency brands)	**Vin & Sprit's pre-merger market share (owned + agency brands)**	**Combined market share (owned + agency brands)**
Beefeater	[15-25%]		[15-25%]
Star Gin		[15-25%]	[15-25%]
Plymouth Gin		[5-10%]	[5-10%]
Total	**[15-25%]**	**[20-30%]**	**[40-50%]**

76. Pernod Ricard's main gin brand in Sweden is *Beefeater* which has a [15-25%] share in the on-trade channel. V&S is active with the brands *Star Gin* and *Plymouth Gin* which have market shares of [15-25%] and [5-10%] respectively. With the acquisition of V&S, Pernod Ricard will control the two leading brands in the on-trade channel, namely *Beefeater* and *Star Gin*. In this respect, it should also be noted that *Star Gin* is also the best selling brand on the overall gin market in Sweden with a [20-30%] market share. With the exception of Diageo's *Gordon's* brand, which has a share of [10-20%] in the on-trade channel, the market shares of all remaining brands are below 10%.

77. Given Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position and its position relative to its competitors post-merger, the Commission considers that the notified transaction raises serious doubts as to its compatibility with the common market in the market for gin in Sweden in the on-trade distribution channel.

2. Vodka

78. The proposed transaction would give rise to a number of affected markets in the market for vodka as shown in the following table. If the overall vodka market were further segmented by price, the merged entity would also enjoy significant market positions in the following national markets and price segments: Belgium/Luxembourg (premium), France (premium), Germany (super premium), Greece (standard), Italy (standard), the Netherlands (premium) and the United Kingdom (premium).

Table 7: Parties' market shares in the affected markets for all vodka

	Pernod Ricard pre-merger market share (owned + agency brands)	Vin & Sprit's pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
France	[10-20%]	[5-10%]	[20-30%]
Greece	[5-15%]	[35-45%]	[45-55%]
Ireland	[10-20%]	[0-5%]	[15-25%]
Italy	[10-20%]	[10-20%]	[25-35%]
Norway	[0-5%]	[10-20%]	[10-20%]
Spain	[0-5%]	[10-20%]	[15-25%]
Sweden	[0-5%]	[65-75%]	[65-75%]

Affected markets which do not raise serious doubts

79. In Norway and Sweden, the market share increment arising from the proposed transaction is not significant at less than 0.5%. The merger is not expected to bring about any significant change in these markets and therefore does not give rise to concerns. In the case of France, Ireland and Spain, where the increment is more substantial, the merged entity's market share would nonetheless remain well below the figure of 25% and therefore the proposed transaction is not expected to impede effective competition in any of these markets.[22]

80. In Italy, the merged entity would have a market share of [25-35%] with an overlap of [10-20%]. The transaction would bring together Pernod Ricard's *Wyborowa* brand with V&S' *Absolut* which is the only V&S brand distributed in Italy. The merged entity will continue to face strong competition from other players in the market including Stock ([15-25%]) which owns and distributes the market leading brand *Keglevich*, Bacardi ([10-20%]) with its *Eristoff* brand and Diageo ([5-15%]) with *Smirnoff Red*. It should also be noted that the combined shares of the merging parties have been in decline in recent years from approximately [30-40%] in 2004 to [25-35%] according to the latest IWSR 2008 report., *Keglevich* has expanded significantly and a series of other brands have entered the Italian market since 2002 including *Skyy,* which reached a market share of [5-10%] in 2007 according to the latest IWSR data. Moreover, the market investigation has indicated that *Wyborowa* and *Absolut* are not particularly close competitors. In view of the foregoing and in the absence of concerns in the market investigation, the Commission considers that the proposed transaction does not give rise to serious doubts in the vodka market in Italy.

81. As noted above, if the overall vodka market were further segmented according to price, the merged entity would also enjoy significant market positions in the following national markets and price segments: Belgium/Luxembourg (premium), France (premium), Germany (super premium), Greece (standard) Italy (standard), the Netherlands (premium) and the United Kingdom (premium).vodka.

[22] Guidelines on the assessment of horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, paragraph 18.

82. In the case of the Netherlands, the Commission analysed two sets of data[23] in order to classify the different brands present in the market. The analyses gave different results as to which price segment the parties' brands should be allocated. In the worst case scenario, the proposed transaction would lead to an overlap in a small premium segment in which the merged entity would have a market share of [40-50%] in the Netherlands. However, in view of the limited reliability of the segmentation which may vary according to the data set and time period considered, the presence of strong competitors (with the main player *Smirnoff Red* holding [35-45%] of the total vodka market), the small combined market share of the new entity in an overall vodka market of only [5-10%] and the absence of concerns raised during the market investigation, the Commission has concluded that the transaction does not raise serious doubts under any alternative product market for vodka market in the Netherlands.

83. The Commission also analysed two sets of data[24] relating to the United Kingdom in order to classify the different brands present in the market. The analyses gave different results as to which price segment the parties' brands should be allocated. In the worst-case scenario, the proposed transaction would lead to an overlap in a small premium segment in which the merged entity would have a market share of [45-55%]. However, in view of the limited reliability of the segmentation which may vary according to the data set and time period considered, the presence of strong competitors (with the main player *Smirnoff Red* holding more than [40-50%] of the total vodka market), the small combined market share of the new entity in an overall vodka market of only [0-5%]) and the absence of concerns raised during the market investigation, the Commission has concluded that the transaction does not raise serious doubts under any alternative product market for vodka in the United Kingdom.

84. In France, the merging parties would own the only brands in the hypothetical premium segment. However, data analyses have shown that the manner in which this segment is defined seems arbitrary and not robust since it can change according to the time period considered.[25] Most importantly, however, the overlap is caused by the combination of V&S' brand *Absolut* and Pernod Ricard's brand *Zubrowka*. The qualitative evidence gathered during the market investigation indicates that *Zubrowka*, which is a traditional Polish bison grass vodka, is quite different to other classic vodkas and is therefore unlikely to compete closely with *Absolut* for which the closer substitutes are *Smirnoff* and *Eristoff*. Due to these elements, the transaction does not raise serious doubts in the market for premium vodka in France.

85. In Belgium/Luxembourg, the merging parties would have high market shares in the premium segment of [90-100%]. However, data analyses have again shown that the manner in which this segment is defined seems arbitrary and not robust since it can change according to the time period considered.[26] Most importantly, however, the overlap is caused by the combination of V&S' brand *Absolut* and Pernod Ricard's brand

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23 IWSR (International Wines and Spirit Report) and AC Nielsen.

24 IWSR (International Wines and Spirit Report) and AC Nielsen.

25 For example, using AC Nielsen data, *Absolut* would fall within the standard segment and therefore there would be no overlap in the premium segment.

26 For example, using AC Nielsen data, *Absolut* would fall within the standard segment.

Zubrowka. The qualitative evidence gathered during the market investigation indicates that *Zubrowka*, which is a traditional Polish bison grass vodka, is quite different to other classic vodkas and is therefore unlikely to compete closely with *Absolut* for which the closer substitutes are *Smirnoff* and *Eristoff*. Due to these elements, the transaction does not raise serious doubts in the market for premium vodka in Belgium/Luxembourg.

86. In Germany, the proposed transaction would combine two brands *Wyborowa Exquisite* and *Level* which were the only brands reported by IWSR in 2006 as sold in the super premium segment. However since then, a number of other super premium brands such as *Grey Goose* and *Belvedere,* already present in other countries, have entered the German market. Therefore, the notifying party submits that the new entity's market position is now contested by significant competing brands and their 2006 market share no longer accurately reflects the competitive landscape in this market. The market investigation has confirmed that these two brands are present on the market and have gained significant market shares at the expense of the merged entity. The Commission has therefore concluded that the merged entity's position in the super premium vodka category in Germany does not give rise to serious doubts.

87. As shown in table 7 above, the new entity would hold a combined market share of [25-35%] on an overall vodka market in Italy. The parties' brands, *Wyborowa* and *Absolut*, both belong to the standard segment, where the new entity would hold [40-50%] of sales. However, here again, the market segmentation appears very arbitrary. Indeed, *Keglevich,* which is the leading brand in Italy ([15-25%] of overall sales of vodka), is included in the value segment in 2007 data, but is included in the standard segment in 2008 (which would thereby reduce the merged entity's share of this segment to below [35-45%]). In this respect, it should also be noted that the merged entity's share of the total vodka market has been in decline in recent years from [30-40%] in 2004 to [25-35%] in 2007 according to the most recent IWSR data. In addition, the market investigation indicated that *Wyborowa* and *Absolut* do not appear to be particularly close competitors. Finally, *Keglevich* has expanded significantly and a series of other brands have entered the Italian market since 2002 (e.g. *Skyy*). In light of these elements, as well of the absence of concerns raised during the market investigation, the Commission considers that the transaction does not give rise to serious doubts in the market for standard vodka in Italy.

88. The conclusions reached in respect of the markets discussed above would not alter should the markets be segmented by distribution channel (i.e. on and off-trade channel) or according to flavour.

Markets in which serious doubts were identified

Vodka in Greece

89. In Greece, the merged entity would have a share [45-55%] of the vodka market. The positions of Pernod Ricard pre and post merger and the respective market shares of the brands concerned are shown in the following table.

Table 8: Parties' market shares in vodka in Greece

	Pernod Ricard pre-merger market share (owned + agency brands)	Vin & Sprit's pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
Serkova	[5-15%]	-	[5-15%]
Wyborowa	[0-5%]		[0-5%]
Absolut		[35-45%]	[35-45%]
Level		[0-5%]	[0-5%]
Total	**[5-15%]**	**[35-45%]**	**[45-55%]**

90. With the acquisition of V&S, Pernod Ricard would acquire the market leader *Absolut* which has a market share of [35-45%]. It would also own *Serkova* which is the fourth most sold vodka brand in Greece behind Diageo's *Smirnoff Red* ([20-30%]) and *Stolichnaya* ([5-15%]) belonging to SPI. Concerns were expressed by a number of third parties in the market investigation that the proposed transaction would give the merged entity a strong position on the vodka market in Greece which would be to the detriment of competitors and customers.

91. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position, the Commission considers that the notified transaction raises serious doubts as to its compatibility with the common market in the vodka market in Greece. These concerns are also valid should a segmentation by price be considered for Greece as the merged entity would have a strong position in the standard segment (approximately [50-60%]).

3. Wines

92. Both Pernod Ricard and V&S are active in the production and distribution of wines in Denmark, Estonia, Finland, Norway and Sweden. In Denmark, the proposed transaction will not lead to any affected market. In Finland, Norway and Sweden, however, a number of markets would be technically affected. These markets are presented in the table below.

93. As previously noted, a segmentation of still wine on the basis of colour (i.e. between red and white) may be relevant. However, as the parties' positions are similar in the red and white wines segments, respectively, and a segmentation according to colour would not result in any additional affected market for still wines to those already identified in the following table, this issue is not considered further as it does not affect the competitive assessment. As regards the distinction between distribution channels in the affected markets, it should be recalled that in each of Finland, Norway and Sweden, state monopolies exist for the retail sale of strong alcohol including wines. According to the notifying party, the monopolies account for the large majority of overall sales and therefore result in the off-trade channel having a particular significance in these markets. On the basis of the information submitted by the notifying party, the Commission considers that no additional affected markets would result if a distinction is made between distribution channels.

Table 9: Affected wine markets

	Pernod Ricard pre-merger (own & agency brands)	Pernod Ricard post merger (own & agency brands)	Overlap
Sparkling wine in Finland	[0-5%]	[15-25%]	[0-5%]
Still wines in Finland	[0-5%]	[15-25%]	[0-5%]
Sherry in Finland	[0-5%]	[30-40%]	[0-5%]
Port in Finland	[15-25%]	[25-35%]	[5-15%]
Light aperitifs in Finland	[0-5%]	[55-65%]	[0-5%]
Sparkling wines in Norway	[0-5%]	[15-25%]	[5-10%]
Still wines in Sweden	[0-5%]	[15-25%]	[0-5%]
Port in Sweden	[10-20%]	[40-50%]	[10-20%]
Light aperitifs in Sweden	[0-5%]	[25-35%]	[0-5%]

Affected markets which do not give rise to serious doubts

94. In the markets for light aperitifs in Finland and Sweden, the transaction would lead to very limited overlaps of less or around 1% and will not lead to a significant change in the structure of the market. As a result, the Commission considers that the transaction does not raise serious doubts in the market for light aperitifs in Finland and Sweden.

95. For four affected markets (still wines in Finland and Sweden, and sparkling wine in Finland and Norway) the post merger market share of Pernod Ricard would remain below 25%. The Commission therefore considers that the proposed transaction does not raise serious doubts in any of these four markets.[27]

96. Regarding sherry in Finland, Pernod Ricard would achieve a market share of [30-40%] (all agency brands) with an overlap of [0-5%]. Pernod Ricard distributes the brand *Sandeman Sherry*, and would acquire the distribution rights to the second best selling brand, *Valdespino*, and the brand *Marques del real Tesoro*. Following the proposed transaction, Pernod Ricard would still face strong competition from the market leader Altia Corporation (market share of [35-45%]) and Maxxium (market share of [10-20%]). Furthermore, no concerns were raised during the market investigation regarding the sherry market in Finland. In view of these elements, the Commission considers that the transaction does not give rise to serious doubts in the sherry market in Finland.

97. With respect to port in Finland, Pernod Ricard would hold a market share of [25-35%] following the proposed transaction (all agency brands). In Finland, Pernod Ricard distributes the brand *Sandeman Port*. Following the proposed transaction, Pernod Ricard would acquire V&S' agency brand *Ferreira*. Even though these two brands are the most and the fourth most sold brands in Finland, other strong competitors are active on the market and will be able to exert competitive pressure on Pernod Ricard, in particular AMKA and Maxxium both with market shares of approximately [10-20%] and Altia with [5-10%]. No competition concerns were raised by other players on the market. The Commission therefore considers that the transaction does not give rise to serious doubts in the port market in Finland.

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

Market for which serious doubts were identified

98. The combined market share of the parties would reach [40-50%] in the port market in Sweden. Pernod Ricard distributes the brand *Sandeman Port* while V&S owns the brands *Red Port* and *Grådansk*.

Table 10: Parties' market shares in the port market in Sweden

	Pernod Ricard pre-merger market share (owned + agency brands)	Vin & Sprit's pre-merger market share (owned + agency brands)	Combined market share (owned + agency brands)
Sandeman	[10-20%]	-	[10-20%]
Red Port	-	[5-15%]	[5-15%]
Grådansk	-	[15-25%]	[15-25%]
Total	**[10-20%]**	**[15-25%]**	**[40-50%]**

99. Post-merger, Pernod Ricard would hold three of the five best selling port brands in Sweden. In particular, the acquisition of the V&S brand *Red Port*, which is the best selling brand with a market share of [15-25%], would make Pernod Ricard the market leader.

100. During the market investigation, concerns were also raised that Pernod Ricard as a result of the merger would be able to foreclose its competitors, which would result in fewer brands being available to consumers.

101. In view of Pernod Ricard's considerable market share increase resulting from the incorporation of V&S' strong position, the notified transaction raises serious doubts as to its compatibility with the common market in the Swedish port market.

4. Travel retail markets

102. The travel retail activities of V&S are operated exclusively by Maxxium all over Europe. Pernod Ricard has two dedicated divisions, one located in London (Pernod Ricard Europe Travel Retail), and one located in Copenhagen (Pernod Ricard Nordic Travel Retail).

103. At EEA level, the proposed transaction would lead to overlaps in seven different spirit categories in the travel retail segment (vodka, bitters, liqueurs, all whisky, cognac, rum and gin). In all seven markets, the combined market share of the merged entity would remain around or below 25%.[28]

104. Regarding wines, the proposed transaction would lead to overlaps at the EEA-level in the markets for light aperitifs, still wines and other sparkling wines. The transaction would not lead to any market shares above 7% in any of these markets.

105. In case the geographic scope of the travel retail market is more narrowly defined than the EEA, the combined market share of the merged entity would remain around or below 35%. Only in two instances (vodka in Germany and the Netherlands), would the transaction lead to market shares around 35%. In both cases, the overlap between the

[28] If the relevant market were to include all types of good sold in travel retail outlets, the notified transaction would not result in any affected market according to the notifying party.

parties' market shares is less than 1%. Also, Pernod Ricard would continue to face strong competition from other players in the markets, in particular Diageo (market share of [20-30%] in Germany and [40-50%] in the Netherlands).

106. On the basis of the above, the proposed transaction does not raise competition concerns in the travel retail market.

5. Coordinated effects in the markets for wines and spirits

107. Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. Three conditions need to be fulfilled for coordination to be sustainable: (i) the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to, (ii) discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected, and (iii) the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.

108. As regards the first condition, it could be argued that the existence of retail price data such as those made available by AC Nielsen and similar organisations would increase price transparency and thereby facilitate monitoring and coordination. However, such retail data do not entail information on prices upstream in the supplier segment, and neither do they list the margins obtained by retailers. It would therefore require publicly available price lists from suppliers in order to facilitate reliable monitoring. Even if such price lists were available, the market investigation in the present case has indicated that a large number of different discount schemes are applied in this sector, which would make the actual prices achieved by suppliers more difficult to estimate.

109. With respect to the second condition, it cannot be excluded that competitors would be able to retaliate against a firm deviating from the coordination by temporarily engaging in a price war or increasing output significantly given that the investigation has not shown that capacity is constrained.

110. The third condition does not appear to be fulfilled in the present case. As mentioned, strong local producers are present in most Member States and they would be able to gain market shares in case of coordinated price increases from large, international players. Furthermore, the Commission's investigations have shown that a significant degree of entry has taken place in several spirit and wine categories in recent years. The threat of further entry would significantly reduce the incentive of large suppliers to increase their prices in a coordinated manner.

111. Considering the above, and the fact that the criteria that have to be fulfilled in order to show coordinated effects are of a cumulative nature, the proposed transaction is unlikely to have coordinated effects on the markets for spirits and wines in the EEA.

6. Conglomerate effects

112. The Commission has considered the possible effects on competition arising from the combination of merging parties' brand portfolios in a number of decisions concerning the

spirits sector.[29] It can be noted that the Commission has recently clarified its view on conglomerate effects in its guidelines on the assessment of non-horizontal mergers.[30]The notifying party submits that the transaction will not give rise to conglomerate effects as the merged entity will not have the ability to foreclose its competitors in one or more spirit categories, notably by engaging in a bundling / tying strategy. It submits that there are numerous alternatives within each spirit category coming from competitors that have a portfolio of brands covering several spirit categories and, that in some cases, these portfolios may be as wide as Pernod Ricard's. It also submits that bundling strategies are not common in the wines and spirits sectors and that in each affected market, the merged entity faces customers with a high bargaining power.

113. The addition of the *Absolut* brand to the range of alcohol brands sold by Pernod Ricard will allow the merged entity to offer a stronger brand portfolio. This point was raised as a concern by a number of third parties during the Commission's investigation. At the same time, it was also recognised by other third parties that the transaction could bring benefits to customers as they would be able to source a wider range of products from the merged entity thereby reducing administrative and logistic costs.

114. The Commission considers that it is very unlikely that the proposed transaction could lead to any anti-competitive effect resulting from the combination of Pernod Ricard and V&S' portfolios. In particular, the merged entity would lack the ability to foreclose its competitors as it would continue to face strong competition in the sale of alcohol products from a large number of established competitors, many of which are active in a number of Member States. In many instances, competitors are able to offer a portfolio of brands covering several spirit categories and, in the case of Diageo, the portfolio can be considered to be as wide as that of the merged entity. Furthermore, although *Absolut* enjoys a high degree of brand recognition and may be considered a “must-stock” brand in certain markets in view of its market share, this is also the case of many other vodka brands not owned by the merged entity.

115. In addition, even supposing that the merged entity had the ability to foreclose its competitors, it is unlikely that it would be able to gain significant additional profits in the sale of other alcohols by bundling it with the sale of *Absolut* vodka and hence would lack the incentive to foreclose. In this regard, the Commission's investigation found that many important customers of the merged entity in the retail sector consider they have the ability to de-list brands and therefore would be able to retaliate against any unjustified change in the terms of supply of the merged entity.

116. Therefore, significant detrimental effects on competition are extremely unlikely to result from the conglomerate effect of the merger.

7. Conclusion

[29] See for example Case IV/M.938, *Guinness/Grand Metropolitan*, paragraphs 38-46, decision of 15 October 1997 and Case COMP/M.3779 *Pernod Ricard/Allied Domecq*, paragraphs 74-79, decision of 24 June 2005.

[30] See Commission Notice "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings" available at http://ec.europa.eu/comm/competition/mergers/legislation/nonhorizontalguidelines.pdf

117. For the reasons noted above, the Commission considers that the notified transaction raises serious doubts as to its compatibility with the common market in the markets for aniseed in Finland, gin in Poland, Canadian whisky, port, cognac and gin (on-trade) in Sweden and vodka in Greece.

V. REMEDIES

A. Procedure

118. As explained in the Commission Notice on remedies[31], where a concentration raises serious doubts about its compatibility with the common market, the parties may seek to modify the concentration in order to resolve the competition concerns identified by the Commission. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure and particular characteristics of the markets in which competition concerns arise. In so doing, the Commission has to assess both, (i) the independence, the viability and the competitiveness of the divested business on the long term and (ii) the effectiveness of the proposed remedy in removing the competition concerns. In order to carry out this assessment, the Commission may seek the views of competitors and customers on the relevant markets.

119. In order to render the concentration compatible with the common market, the notifying party offered commitments pursuant to Article 6(2) of the EC Merger Regulation on 26 June 2008. After examination and market testing of this commitment package, a final commitment package was submitted on 16 July 2008. The Commission considers that the revised commitments would remedy the competition concerns it has identified. These commitments are attached to this decision and form an integral part thereof.

B. Description of the remedies

120. In order to remove the competition concerns described above, the notifying party committed to divest the cognac business conducted under the brand *Grönstedts*, the gin business conducted under the brand *Star Gin*, the port business conducted under the brand *Red Port*, the aniseed business conducted under the brand *Dry Anis*, the vodka business conducted under the brand *Serkova*, the gin business conducted under the brand *Lubuski* (hereafter referred to as the 'divested businesses') and to terminate the distribution by Pernod Ricard in Sweden of the Canadian whisky brand *Royal Canadian*.

121. Each divestment business essentially includes all tangible and intangible assets (including intellectual property rights) which contribute to its current operation or are necessary to ensure its viability and competitiveness, all licences, permits and authorisations issued by any governmental organisation as well as all contracts, leases, commitments and customer orders, all customer, credit and other records of each divested

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[31] Commission Notice on remedies acceptable under Council Regulation (EEC° No 4064/89 and under Commission Regulation (EC) No 447/98, OJ C 68, 2.3.2001.

business. Each divestment brand will notably include full assignment of all rights in each brand and relevant trademarks[32] worldwide.

122. Furthermore the divested businesses include the benefit, for a transitional period of up to 2 years, or alternatively, any longer period as may reasonably be necessary in order for the divested businesses to be fully competitive and viable, of all current arrangements under which the parties supply products or services to the divested businesses as described below in more detail for each divested business.

123. More precisely, the *Serkova* vodka brand is produced in Poland using ethylic alcohol purchased from third party distilleries and then processed by Pernod Ricard before being shipped in bulk to Greece[33] where it is bottled in its facilities. Pernod Ricard commits to use its best efforts to procure that third party distillers currently supplying the ethylic alcohol continue to supply the purchaser of the divested business. Alternatively, Pernod Ricard undertakes to provide, for a transitional period of up to 2 years or any longer period that may be reasonably necessary, on cost-based commercial terms, procurement services[34] to the *Serkova* divested business.

124. The gin brand *Lubuski* is currently produced in a V&S plant, which mainly produces vodka, in Poland which is moreover the only country where it is marketed. The assets transferred include the stocks of finished goods, maturing inventory and other materials used to produce and package *Lubuski*. In addition, the divested business includes the arrangements, for a transitional period of up to 2 years or any longer period that may be reasonably necessary, for the supply of purchasing, producing, warehousing, bottling and shipping services.

125. As regards the cognac *Grönstedts*, it is currently blended and bottled by a third party, […] in France. A written agreement is currently being negotiated and will be signed with […]. The different qualities of eaux de vie which are used are purchased in bulk by V&S from several suppliers pursuant to annual contracts. Pernod Ricard undertakes to use its best efforts to procure that third party distilleries currently supplying V&S continue to supply the purchaser of the divested business. Furthermore Pernod Ricard undertakes to use its best efforts to explore the possibility of concluding a separate agreement relating to *Grönstedts* or, if not possible, to assign to the purchaser of the divested business the part of the contract relating to *Grönstedts*. Alternatively, the divested business includes arrangements, for a transitional period of up to 2 years or any longer period that may be reasonably necessary, for the procurement services as regards the supply of eaux de vie as well as for the supply of blending, maturing, warehousing and/or bottling services.

126. The *Dry Anis* brand is produced and bottled at V&S' site in Finland, where other spirits are produced. The raw materials are purchased from third parties. Pernod Ricard commits to use its best efforts to procure that third parties currently supplying V&S continue to supply

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32 With the exception of the *Dry Anis* brand which is not registered as a trademark. Only the brand names will be transferred.

33 Since 2007, *Serkova* is only sold in Greece.

34 The term 'procurement services' is defined as purchases from third parties other than Pernod Ricard and V&S of raw materials or services such as producing, blending, maturing, bottling, warehousing, shipping, accounting, or IT services that would be requested by the purchaser of a divested business for a transitional period.

to the purchaser of the divested business. Alternatively, Pernod Ricard undertakes to provide, for a transitional period of up to 2 years or any longer period that may be reasonably necessary, on a cost-based commercial term, procurement services to the *Dry Anis* divestment business.

127. The *Red Port* brand is produced and bottled by […], a Portuguese producer of port and then shipped to V&S' logistics centre in Sweden. A specific supply contract is concluded on a yearly basis. In this respect Pernod Ricard commits to use its best efforts to explore whether the supply contract can be concluded with the purchaser of the divested business or alternatively undertakes to provide, for a transitional period of up to 2 years or any longer period that may be reasonably necessary, on cost-based commercial terms, procurement services to the *Red Port* divested business.

128. As regards the *Star Gin* brand, the alcohol is produced at V&S' facility in Denmark, then sent in bulk to Sweden where it is flavoured and bottled. Pernod Ricard commits to use its best efforts to procure that third parties currently supplying V&S continue to supply the purchaser of the divested business. Alternatively, Pernod Ricard undertakes to provide, for a transitional period of up to 2 years or any longer period that may be reasonably necessary, on cost-based commercial terms, procurement services to the *Star Gin* divested business.

129. In addition to the divestments noted above, the notifying party undertakes to implement article 2.4 of the Transition Agreement concluded with SPI on 13 March 2008, according to which, within six (6) months of the Closing of its acquisition of V&S, the worldwide distribution agreement for *Stolichnaya* and *Moskovskaya* will terminate. Moreover, in order to maintain the effect of this commitment, Pernod Ricard has undertaken that it shall not, within the EEA and for a period of ten (10) years after such termination, acquire direct or indirect influence over the whole or part of *Stolichnaya* and *Moskovskaya*, or be appointed as the distributor of such brands, 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 brands is no longer necessary to render the proposed concentration compatible with the common market.

130. Finally, the notifying party has committed itself to take all the necessary steps, in accordance with the existing contractual provisions of the Maxxium Arrangements (being the shareholders agreement concluded between V&S and the other Maxxium's shareholders on 31 May 2001 and the distribution umbrella agreement concluded on the same day between V&S and Maxxium), to withdraw V&S from the Maxxium Arrangements.

131. To this effect, Pernod Ricard undertakes to procure that V&S, immediately after the closing of the proposed transaction, will notify Maxxium that its control has passed to a Substantial Competitor (as defined in the Maxxium Arrangements).

132. In the event that after such notification, no Affected Shareholder of Maxxium (as defined in the Maxxium Arrangements) exercises its rights (i) to give […] notice to terminate V&S' Umbrella Agreement (in accordance with its clause 8.2.1C) and/or (ii) to force the redemption of V&S' shares in Maxxium (in accordance with clause 13.1.3 of the Shareholders Agreement), Pernod Ricard undertakes to procure that V&S will, within the First Divestiture Period, give such notice of termination as may be required to ensure that V&S exits both the Umbrella Agreement and the Shareholders Agreement.

C. Assessment of the remedies

133. As can be seen in the following table, the divestments proposed by the notifying party entirely eliminate the overlap between Pernod Ricard and V&S in the markets where serious doubts were identified, i.e. aniseed in Finland, gin in Poland, Canadian whisky, port, cognac and gin (on-trade) in Sweden and vodka (overall and in the standard segment) in Greece.

Table 11: Market shares of the merged entity pre and post divestments

	Merged entity's market share (owned + agency brands) before divestments	Overlap	Market share of the divested business	Merged entity's market share (owned + agency brands) post divestments
Aniseed in Finland	[55-65%]	[25-35%]	[25-35%]	[25-35%]
Gin in Poland	[80-90[%	[20-30%]	[50-60%]	[25-35%]
Canadian whisky in Sweden	[65-75%]	[0-5%]	[0-5%]	[60-70%]
Port in Sweden	[40-50%]	[10-20%]	[15-25%]	[20-30%]
Cognac in Sweden	[60-70%]	[0-5%]	[50-60%]	[0-5%]
Gin (on trade) in Sweden	[40-50%]	[10-20%]	[10-20%]	[20-30%]
Vodka in Greece	[50-60%]	[10-20%]	[10-20%]	[30-40%]

Source: Notifying party, IWSR 2008 data except aniseed in Finland (IWSR 2007)

134. The Commission has market tested the proposed commitments with the aim of assessing whether each of the divestment businesses constitutes a viable, stand alone entity capable of exerting, post merger, a competitive pressure on the new entity.

135. The market test has confirmed that brands at issue are considered as local but nevertheless well-established and popular brands and that their divestiture would eliminate the change brought about by the proposed transaction in the markets concerned. As regards the provisions included in the remedies, in particular the transitional arrangements for the supply of services related to the production of the spirits, respondents to the market test indicate that it is not likely to raise particular difficulties and that the duration of these arrangements (2 years) is appropriate. Overall, the divested businesses are considered as viable businesses by the majority of respondents and it is expected that the purchaser(s) of the divested businesses will become an independent competitive force on the markets.

136. In addition, the market test confirmed there would be interest from purchasers in the acquisition of the divestment businesses. Potential purchasers were considered most likely to be companies already active in spirits business, either as manufacturer or distributor.

137. In view of the remedies and the results of the market test, the Commission finds that the commitments will remove the serious doubts in the markets concerned.

D. Conclusion on the remedies

138. The Commission therefore considers the commitments would remedy the serious doubts as to the compatibility of the concentration with the common market and with the EEA Agreement, which have been established in the previous sections of this Decision.

VI. CONDITIONS AND OBLIGATIONS

139. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

140. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

141. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Sections B, C, D, E and G of the final version of the Commitments submitted by the notifying party on 16 July 2008.

142. The remaining requirements set out in the other Sections of the Commitments submitted by the parties are considered to constitute obligations.

VII. CONCLUSION

143. For the above reasons the Commission has concluded that the remedies submitted by the notifying party are sufficient to remove the serious doubts raised by the concentration. Consequently, subject to full compliance with the commitments described above, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.

144. The detailed text of the commitments is annexed to this decision and forms an integral part to this decision.

For the Commission
(signed)
Mariann FISCHER BOEL
Member of the Commission

Section A. Definitions

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

Affiliated Undertakings:	undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice;
Closing:	the transfer of the legal title of the relevant Divested Business to the Purchaser(s);
Discontinued Businesses:	the businesses described in Section E and the relevant Schedules that Pernod Ricard commits to discontinue;
Divested Businesses:	the businesses described in Section D 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 of the adoption of the Decision;
First Divestiture Period:	the period of […] months from the Effective Date;
Key Personnel:	all personnel necessary to maintain the viability and competitiveness of the Divestment Business;
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;
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: all personnel currently employed by the Divestment Business, including Key personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the different Schedules;

Procurement Services: purchases from third parties (others than Pernod Ricard and V&S) of raw materials or services such as producing, blending, maturing, bottling, warehousing, shipping, accounting, or IT services that would be requested by the Purchaser of a Divested Business for a transitional period

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 G;

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 distribution agreements related to (i) *Stolichnaya* and *Moskovskaya* and (ii) the Discontinued Business;

Trustee(s): the Monitoring Trustee and the Divestiture Trustee;

Trustee Divestiture Period: the period of […] months from the end of the First Divestiture Period;

SECTION B. IMPLEMENTATION OF THE TRANSITION AGREEMENT WITH SPI

1. Pernod Ricard undertakes to implement article 2.4 of the Transition Agreement concluded with SPI on 13 March 2008, according to which, within six (6) months of the Closing, the worldwide distribution agreement for *Stolichnaya* and *Moskovskaya* will terminate. Notwithstanding the provision of article 2.4 of the Transition Agreement, Pernod Ricard will use its best efforts to ensure that the worldwide distribution agreement for *Stolichnaya* and *Moskovskaya* will terminate within the First Divestiture Period.

2. In order to maintain the effect of this commitment, Pernod Ricard shall not, within the EEA and for a period of ten (10) years after the Termination, acquire direct or indirect influence over the whole or part of *Stolichnaya* and *Moskovskaya*, or be appointed as the distributor of such brands, 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 brands is no longer necessary to render the proposed concentration compatible with the common market.

3. From the Effective Date until termination of the Transition Agreement, Pernod Ricard undertakes, as the parties to the Transition Agreement have undertaken to each other in Article 2.3 of the Transition Agreement, to ensure that appropriate safeguards and firewall measures will be established to prevent the disclosure of competitively sensitive information relating to *Stolichnaya* and *Moskovskaya* to employees or agents of Pernod Ricard and its affiliates who are or may, following the acquisition of V&S, become directly or indirectly responsible for the management and the implementation of sales and marketing of the *Absolut* brand.

4. Pernod Ricard also undertakes that, in accordance with Article 2.3 of the Transition Agreement, appropriate procedures will be applied in order to provide that Pernod Ricard and its Affiliates shall no longer have control over or the authority to make material decisions concerning *Stolichnaya* and *Moskovskaya*, in accordance with Article 2.3 of the Transition Agreement.

SECTION C. WITHDRAWAL FROM MAXXIUM

5. Pernod Ricard undertakes to take all the necessary steps, in accordance with the existing contractual provisions of the Maxxium Arrangements (being the shareholders agreement concluded between V&S and the other Maxxium's shareholders on 31 May 2001 and the distribution umbrella agreement concluded on the same day between V&S and Maxxium), to exit V&S from the Maxxium Arrangements.

6. To this effect, Pernod Ricard undertakes to procure that V&S, immediately after the closing of the proposed transaction, will notify Maxxium that its control has passed to a Substantial Competitor (as defined in the Maxxium Arrangements).

   In the event that after such notification, no Affected Shareholder of Maxxium (as defined in the Maxxium Arrangements) exercises its rights (i) to give […] notice to terminate V&S' Umbrella Agreement (in accordance with its clause 8.2.1C) and/or (ii) to force the redemption of V&S's shares in Maxxium (in accordance with clause 13.1.3 of the Shareholders Agreement), Pernod Ricard undertakes to procure that V&S will, within the First Divestiture Period, give such notice of termination as may be required to ensure that V&S exits both the Umbrella Agreement and the Shareholders Agreement.

SECTION D. COMMITMENTS RELATING TO VODKA IN GREECE, GIN IN POLAND AND SWEDEN, COGNAC IN SWEDEN, ANISEED IN FINLAND AND PORT IN SWEDEN

D.1 Commitment to divest

7. In order to restore 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 G.

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.

9. 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 H.8, during the Trustee Divestiture Period.

10. 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 G and if the Closing(s) take(s) place within a period not exceeding 3 months after the approval of the Purchaser(s) and the terms of sale by the Commission.

11. In order to maintain the structural effect of the Commitments, Pernod Ricard shall not, for a period of 10 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.

D.2 <u>Identification of the Divested Businesses</u>

12. Pernod Ricard agrees to divest:

    (a). the Vodka business currently conducted under the brand *Serkova* in Greece (hereinafter "the *Serkova* Business");

    (b). the Gin business currently conducted under the brand *Lubuski* in Poland (hereinafter "the *Lubuski* Business");

    (c). the Cognac business currently conducted under the brand *Grönstedts* (hereinafter "the *Grönstedts* Business");

    (d). the Aniseed business currently conducted under the brand *Dry Anis* in Finland (hereinafter "the *Dry Anis* Business");

    (e). the Port business currently conducted under the brand *Red Port* in Sweden (hereinafter "the *Red Port* Business");

    (f). the Gin business currently conducted under the brand *Star Gin* (hereinafter the *Star Gin* Business").

13. These Divested Businesses, which are described in more details in Schedules 1 to 6, shall include, when applicable:

    (i) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divested Business;

    (ii) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divested Business;

(iii) all contracts, leases, commitments and customer orders of the Divested Business; all customer, credit and other records of the Divested Business (items referred to under (i)-(iii) hereinafter collectively referred to as "*Assets*");

(iv) the benefit, for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the Divested Businesses to be fully competitive and viable and on terms and conditions equivalent to those at present afforded to the Divested Businesses of all current arrangements under which Pernod Ricard, V&S or their Affiliated Undertakings supply products or services to the Divested Businesses, as detailed in the Schedules, unless otherwise agreed with the Purchaser.

14. In the absence of specific Personnel dedicated to the Divested Businesses, as indicated in the schedules, the Divested Businesses do not include any Personnel or Key Personnel.

15. The Divested Businesses in particular consist of:

(a) ***The Serkova Business***. The present legal and functional structure of the *Serkova* Business, as operated to date, is described in **Schedule 1**. The *Serkova* Business includes full assignment of all rights in the *Serkova* brand and relevant trademarks worldwide and all other assets relating to the Divested Business and existing at Closing. The *Serkova* Business also includes all product formulae and know-how relating to the production of *Serkova* as well as all relevant information concerning the purchase of the ethylic alcohol used for the production of *Serkova*.

Serkova is produced in Poland, shipped in bulk to Greece and then bottled in Pernod Ricard Hellas' facilities in Mythilene. More specifically, the ethylic alcohol which is used for the production of *Serkova* is purchased by Wyborowa from third party distilleries in Poland. Wyborowa only rectifies the grain ethylic alcohol. Pernod Ricard Hellas imports the bulk at 79.9% of pure alcohol per litre, dilutes it at 37.5% and bottles the liquid.

At the request of the Purchaser, Pernod Ricard commits to use its best efforts to procure that third party distilleries currently supplying Wyborowa continue to supply to the Purchaser the ethylic alcohol necessary for the production of *Serkova*. Alternatively, if requested by the Purchaser, Pernod Ricard undertakes to provide, for a renewable transitional period of up to 2 years after Closing or alternatively, any longer period that may be reasonably necessary, on a cost-based commercial term, Procurement Services to the *Serkova* Business.

Apart from a brand manager who dedicates 10% of his time to *Serkova*, there is no Personnel or Key Personnel dedicated within Pernod Ricard to the *Serkova* Business.

(b) ***The Lubuski Business***. The present legal and functional structure of the *Lubuski* Business, as operated to date, is described in **Schedule 2**. The *Lubuski*

Business includes full assignment of all rights in the *Lubuski* brand and relevant trademarks worldwide, all product formulae and know-how relating to its production and all other assets relating to this Divested Business and existing at Closing.

The whole manufacturing process, starting from raw materials purchase through distillation to bottling is performed at V&S' site at Zielona Gora (Poland), which besides Gin mainly produces Vodka.

Apart from a brand manager who dedicates around 50% of his time to the management and promotion of the brand, there is no Personnel or Key Personnel dedicated within V&S to the Lubuski Business.

(c) ***The Grönstedts Business***. The present legal and functional structure of *Grönstedts*, as operated to date, is described in **Schedule 3**. The *Grönstedts* Business includes full assignment of all rights in the *Grönstedts* brand and relevant trademarks worldwide, all product formulae and know-how relating to its production and all other assets relating to this Divested Business and existing at Closing.

The Cognac brand *Grönstedts* is currently blended and bottled along with other V&S products by a third party, […], in France ([…]). The different qualities of eaux de vie which are used in connection with the blending, processing and bottling of the Cognac products are purchased by V&S pursuant to annual contracts for bulk from several suppliers. These bulk supplies are delivered to […] production facility, blended according to V&S' instructions, bottled, packaged and shipped to V&S according to its purchase orders.

At the request of the Purchaser, Pernod Ricard commits to use its best efforts to procure that third parties distilleries currently supplying V&S continue to supply the Purchaser with the *eaux de vie* necessary for the production of *Grönstedts*. Alternatively, if requested by the Purchaser, Pernod Ricard undertakes to provide, for a renewable transitional period of up to 2 years after Closing or alternatively, any longer period that may be reasonably necessary, on cost-based commercial terms, Procurement Services to the *Grönstedts* Business.

As of today, no written agreement exists between V&S and […]. A production agreement with […] is currently being negotiated. Pernod Ricard undertakes to use its best efforts to explore the possibility of concluding a separate agreement relating to *Grönstedts* or, if not possible, to assign to the Purchaser the relevant part of the contract relating to *Grönstedts*.

In addition and if the assignment of the production contract with […] is not possible or if requested by the Purchaser, Pernod Ricard undertakes to provide to the Purchaser for a renewable transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary, on cost-based commercial terms, services under which Pernod Ricard supplies blending, maturing, warehousing and/or bottling services to the *Grönstedts* Divested business.

As regards personnel, two employees are currently involved in the *Gronstedts* Business:

- one person is responsible for the receipt of the product (taste): this person only works part-time for V&S and is also in charge of other products.
- another person is product manager for this brand and devotes around 20 to 25% of its time to this task.

There is no Personnel within V&S dedicated to the *Grönstedts* Business.

(d) ***The Dry Anis Business***. The present legal and functional structure of the *Dry Anis* Business, as operated to date, is described in **Schedule 4**. The *Dry Anis* Business includes full assignment of all rights in the *Dry Anis* brand name, all product formulae and know-how relating to its production and all other assets relating to this Divested Business and existing at Closing.

Since the *Dry Anis* brand name is not registered as a trademark, Pernod Ricard commits not to oppose to the registration by the Purchaser of the brand name *Dry Anis* as a trademark and to provide the Purchaser with the information that may be reasonably necessary in this regard.

Dry Anis is produced and bottled at V&S' site at Turku in Finland, where Vodka, Fruit Wines, Liqueurs and Glögg are also produced. The raw materials used for the production of the product are purchased from third parties.

At the request of the Purchaser, Pernod Ricard commits to use its best efforts to procure that third parties currently supplying V&S continue to supply the Purchaser with the raw materials necessary for the production of *Dry Anis*. Alternatively, if requested by the Purchaser, Pernod Ricard undertakes to provide, for a renewable transitional period of up to 2 years after Closing or alternatively, any longer period that may be reasonably necessary, on cost-based commercial terms, Procurement Services to the *Dry Anis* Business.

As regards personnel, a brand manager devotes 2% of its time to the management and promotion of the brand. There is no Personnel fully dedicated within V&S to the *Dry Anis* Business

(e) ***The Red Port Business***. The present legal and functional structure of the *Red Port* Business, as operated to date, is described in **Schedule 5**. The *Red Port* Business includes full assignment of all rights in the *Red Port* brand and relevant trademarks worldwide, all product formulae and know-how relating to its production and all other assets relating to this Divested Business and existing at Closing.

Red Port is produced and bottled by […], a Portuguese producer of Port, according to V&S' specifications and then shipped to V&S' logistics centre in Sweden. A specific supply contract is concluded on a yearly basis. In this respect, Pernod Ricard undertakes to use its best efforts to explore whether the supply contract can be concluded with the Purchaser of the Divested Business.

Alternatively, if requested by the Purchaser, Pernod Ricard undertakes to provide, for a renewable transitional period of up to 2 years after Closing or alternatively, any longer period that may be reasonably necessary, on cost-based commercial terms, Procurement Services to the *Red Port* Business.

There is currently no Personnel within V&S dedicated to the brand *Red Port*.

(f). ***The Star Gin Business***. The present legal and functional structure of the Star *Gin* Business, as operated to date, is described in **Schedule 6**. The *Star Gin* Business includes full assignment of all rights in the *Star Gin* brand and relevant trademarks worldwide, all product formulae and know-how relating to its production and all other assets relating to this Divested Business and existing at Closing.

The alcohol is produced at V&S's facility in Aalborg (Denmark), then sent in bulk to V&S's facility in Svendborg (Sweden) where it is flavoured and bottled. Both of these sites also produce Aquavit, Bitters, Vodka and, for Svendbord, Fruit Wines and Liqueurs. The flavouring ingredients are purchased from independent suppliers.

At the request of the Purchaser, Pernod Ricard commits to use its best efforts to procure that third parties currently supplying V&S continue to supply the Purchaser with the flavouring ingredients necessary for the production of *Star Gin*. Alternatively, if requested by the Purchaser, Pernod Ricard undertakes to provide, for a renewable transitional period of up to 2 years after Closing or alternatively, any longer period that may be reasonably necessary, on cost-based commercial terms, Procurement Services to the *Star Gin* Business.

As regards personnel, a brand manager devotes 3% of its time to the management and promotion of the Star Gin brand. There is currently no Personnel within V&S dedicated to this brand.

16. As explained in **Schedule 7**, these divestments will eliminate any doubts as to the compatibility with the Common market of the proposed concentration, more particularly in the Gin market in Poland, in the Cognac market in Sweden, in the Vodka market in Greece, in the Aniseed market in Finland, in the Port market in Sweden and in the Gin market in Sweden.

SECTION E. COMMITMENT RELATING TO CANADIAN WHISKY

17. Pernod Ricard commits to discontinue the distribution agreement existing between Pernod Ricard and the company Sazerac as it relates to the distribution of the Canadian Whisky brand *Royal Canadian* in Sweden (the Discontinued Business).

18. The *Royal Canadian* brand was sold by Pernod Ricard to Sazerac in September 2006. Since then, Pernod Ricard Sweden distributes *Royal Canadian* in Sweden. No written agreement exists between Pernod Ricard Sweden and Sazerac. Accordingly, no assignment or transfer of this distribution relationship is possible. This tacit distribution relationship is deemed of an indefinite duration and can thus be terminated at any time on reasonable notice.

19. Pernod Ricard undertakes, immediately after the Effective Date, to send to Sazerac a letter to terminate this existing tacit distribution relationship in Sweden.

20. Pernod Ricard undertakes to take all the necessary steps to terminate the tacit distribution of this brand within the First Divestiture Period.

21. Upon the termination of the *Royal Canadian* distribution agreement, Pernod Ricard undertakes to transfer to Sazerac or to the new distributor appointed by it, all commercial contracts, commitments and customer orders, all customer, credit and other records and all inventories (provided such inventories are paid for) relating to the Discontinued Business and in Pernod Ricard's possession at the Termination date.

22. In order to maintain the effect of this commitment, Pernod Ricard shall not, for a period of 10 years after the Termination, acquire direct or indirect influence over the whole or part of the Discontinued Business, or be appointed as the distributor of such Discontinued Business in Sweden, 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.

23. The termination of this distribution agreement will eliminate any doubt as to the compatibility of the concentration since it will suppress the overlap between the parties in the Canadian Whisky segment in Sweden.

SECTION F. RELATED COMMITMENTS

F.1 Preservation of Viability, Marketability and Competitiveness

24. 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.

    As explained above, none of the Divested Businesses presented in Section D have dedicated Personnel which could be transferred to the Purchaser(s) together with the Divested Businesses.

F.2 Hold-separate obligations of Pernod Ricard

25. 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 ring-fence 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.

26. 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.

27. 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.

F.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.

F.4 Due Diligence

29. In order to enable potential purchasers to carry out a reasonable due diligence of the Divested Businesses, 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.

F.5 Reporting

30. Pernod Ricard shall submit written reports on potential purchasers of the Divested Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

31. 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, before it is sent to potential purchasers, to the Commission and the Monitoring Trustee.

SECTION G. THE PURCHASER(S)

32. In order to ensure the immediate restoration 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".

33. 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 agreement(s), to the Commission and the Monitoring Trustee.

34. 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, 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 H. TRUSTEES

H.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.

36. If Pernod Ricard has not entered into binding sales and purchase agreement(s) one month 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.

37. 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 fulfilment 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.

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

38. No later than one week 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 one month 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 H.1 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil 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.

H.3 <u>Approval or rejection by the Commission</u>

39. 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 fulfil 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 one week of the Commission's approval, in accordance with the mandate approved by the Commission.

H.4 <u>New proposal by Pernod Ricard</u>

40. If all the proposed Trustees are rejected, Pernod Ricard shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in Sections H.1 and H.3.

H.5 <u>Trustee nominated by the Commission</u>

41. 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.

H.6 Functions of the Trustee

42. 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.

H.7 Duties and obligations of the Monitoring Trustee

43. 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 First Divestiture Period;

(iii) supervise the implementation by Pernod Ricard of its commitments relating to the Implementation of the Transition Agreement and the withdrawal from Maxxium;

(iv) 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 F;

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

(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) if applicable, monitor the splitting of assets between the Divested Businesses and Pernod Ricard of Affiliated Undertakings;

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

(vi) 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;

(vii) review and assess potential purchasers as well as 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) if applicable, potential Purchasers are granted reasonable access to the relevant Personnel;

(viii) provide to the Commission, sending Pernod Ricard a non-confidential copy at the same time, a written report within 15 days after the end of every month. 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;

(ix) within one week after receipt of the documented proposal referred to in Section G, 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, in particular, if relevant, whether the Sale of the Divested Businesses without one or more Assets or not all of the Personnel affects the viability of the Divested Businesses after the sale, taking account of the proposed purchaser.

H.8 Duties and obligations of the Divestiture Trustee

44. 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 G.

45. 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.

46. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Pernod Ricard.

H.9 Duties and obligations of Pernod Ricard

47. 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 performing 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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. 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.

H.10. <u>Replacement, discharge and reappointment of the Trustee</u>

54. 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.

55. If a Trustee is removed according to paragraph 54, 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 H.1 to H.5.

56. Other than in the case of removal according to paragraph 54, 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 I. THE REVIEW CLAUSE

57. 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.

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

Stéphane Hautbourg   Antoine Choffel

duly authorized for and on behalf of Pernod Ricard SA

SCHEDULE 1

Details on the *Serkova* Business

1. Sales volumes and Turnover

The sales volumes of *Serkova* in 2006/2007 were as follows:

Volumes in 9L cases	2006/2007
Worldwide	87.200
EEA	87.200

The turnover achieved by Pernod Ricard in sales of *Serkova* in Greece amounted to € 3.253.000 (excluding taxes) in 2006/2007.

2. Countries where *Serkova* is marketed

Since 2007, *Serkova* is only sold in Greece. Prior to 2007, marginal volumes were marketed in Hungary and in Czech Republic.

3. Information on production

Before December 2006, *Serkova* was produced by Chivas Brothers Limited (CBL), one of Pernod Ricard's subsidiary based in the UK. The production volumes were 96,905 9litre cases for 2005 and 64,508 9litre cases in 2006.

Serkova is today produced in Poland by Pernod Ricard's subsidiary Wyborowa, shipped in bulk to Greece and then bottled in Pernod Ricard Hellas' facilities in Mythilene. The label of *Serkova* indicates that it is an imported Vodka and not a "Polish Vodka".

More specifically, the ethylic alcohol which is used for the production of *Serkova* is purchased by Wyborowa from third party distilleries in Poland. Wyborowa only rectifies the grain ethylic alcohol. The rectification of *Serkova* only represents a very small fraction of Wyborowa's industrial operations (less than 2%).

Pernod Ricard Hellas imports the bulk at 79.9% of pure alcohol per litre, dilutes it at 37.5%, and bottles the liquid.

There are two facilities in Greece: Pireus, where Pernod Ricard produces *Top vinegar* and Mythilene, where Pernod Ricard produces *Ouzo Mini*, Liqueur *Eoliki*, and bottles *Serkova*.

Serkova represents 11% of all volumes bottled in Greece by Pernod Ricard, but 26% of the volumes bottled in Mythilene.

4. Information on the structure of the *Serkova* business

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

The Divested Business is currently intermingled with the larger Pernod Ricard Hellas business. As explained above, *Serkova* is bottled in Pernod Ricard's facility in Greece which also produces and bottles other products (such as *Ouzo Mini* and *Eoliki*) which represent most of its activity. There is no production line exclusively dedicated to the bottling of *Serkova*.

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

2. The Divested Business includes, but is not limited to:

(a) the following main tangible assets:

- Stocks of finished goods for resale, inventory and other materials used to produce and package the Vodka *Serkova*;

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

(b) the following main intangible assets:

All *Serkova* brand names, registered trademarks, 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 *Serkova*, to the extent that they are unique to this brand and that they are assignable.

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 *Serkova*, 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 *Serkova*, showing quantities purchased by each customer in each market in the past two years.

(f) the following Personnel:

As regards personnel, a brand manager devotes only 10% of its time to the management and promotion of the brand.

There is no Personnel or Key Personnel dedicated to the *Serkova* Business that could be transferred to the Purchaser.

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period of 2 years, renewable:

Purchasing, producing, warehousing, bottling and shipping services can be provided by Pernod Ricard (through its subsidiaries Pernod Ricard Hellas and Wyborowa) for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the *Serkova* Divested Business to be fully competitive and viable.

3. The Divested Business shall not include:

(i) Any Pernod Ricard plant, machinery or other fixed assets which are not unique to the *Serkova* production process;

(ii) 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 *Serkova*.

SCHEDULE 2

Details on the *Lubuski* Business

1. Sales volumes and Turnover

The sales volumes of *Lubuski* in June 2007 to May 2008 were as follows:

Volumes in 9L cases	2007/2008
Worldwide	102 964,75
EEA	102 964,75

The turnover achieved by V&S in sales of *Lubuski* is as follows:

Turnover in PLN	2007/2008
Worldwide	27 585 302,03
EEA	27 585 302,03

2. Countries where *Lubuski* is marketed

The Gin brand *Lubuski* is only marketed in Poland.

3. Information on production

Besides the standard production equipment which is used in production of other products by V&S in its facility of Zielona Gora, the production process of the Gin *Lubuski* requires distillation apparatus for simple fractional distillation.

4. Information on the structure of the *Lubuski* business

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

Whole manufacturing process, starting from raw materials purchase through distillation to bottling is performed in Zielona Gora which mainly produces Vodka.

The Divested Business is currently intermingled with the retained and larger V&S Luksusowa business. Gin production represents a limited part of the total activity of the site of Zielona Gora.

2. 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 *Lubuski*.

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

(b) the following main intangible assets:

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

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

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

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

All those required to produce and/or sell the *Lubuski* brand, 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 *Lubuski*, showing quantities purchased by each customer in the past two years.

(f) the following Personnel:

As regards personnel, a brand manager devotes around 50% of his time to the management and promotion of the brand.

Consequently, there is no Personnel or Key Personnel that could be transferred with the brand *Lubuski*.

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period of 2 years, renewable:

Purchasing, producing, warehousing, bottling and shipping services can be provided by Pernod Ricard, for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the *Lubuski* Divested Business to be fully competitive and viable.

3. The Divested Business shall not include:

(i) Any V&S plant, machinery or other fixed assets which are not unique to the *Lubuski* production process;

(ii) Monies owed to V&S by customers for the purchase of, and monies owed by V&S to suppliers for materials used in the production of *Lubuski*.

SCHEDULE 3

Details on the *Grönstedts* Business

1. Sales volumes and Turnover

The sales volumes of *Grönstedts* in 2007 were as follows:

Volumes in 9L cases	2007
Worldwide	35 516
EEA	35 516

The turnover achieved by V&S in sales of *Grönstedts* is as follows*:*

Turnover in SEK	2007
Worldwide	38 259 000
EEA	38 259 000

2. Countries where *Grönstedt* is marketed

Within the EEA, the Cognac brand *Grönstedts* is marketed in the following countries.

- Sweden,
- Finland,
- Germany,
- Estonia,
- Denmark and
- Belgium.

Grönstedts is also marketed in the Travel retail market in the Nordic Countries.

3. Information on production

V&S used to produce and bottle *Grönstedts* in its facility in Sundsvall (Sweden). This activity was discontinued during the autumn 2007.

The Cognac brand *Grönstedts* is currently blended and bottled by a third party, […], in France ([…]). The different qualities of eaux de vie which are used in connection with the blending, processing and bottling of the Cognac products are purchased by V&S in bulk from several suppliers pursuant to annual contracts. These bulk supplies are delivered to […] production facility, blended according to V&S' instructions, bottled, packaged and shipped to V&S according to its purchased orders.

As of today, no written agreement exists between V&S and […]. An agreement with […] is currently being negotiated and will be signed shortly. Pernod Ricard undertakes to use its best efforts to assign to the purchaser the part of this production contract relating to the blending and bottling of *Grönstedts*.

4. <u>Information on the structure of the *Grönstedts* business</u>

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

   Not applicable

2. The Divested Business includes, but is not limited to:

   (a) the following main tangible assets:

   - Equipment currently belonging to V&S and installed in […] production site in France.

   - Stocks of finished goods for resale, maturing inventory and other materials used to produce and package *Grönstedts*.

     For information, the stocks are currently split between the premises of V&S in Stockholm and those of […] in France. This stocks consist of finished bottled products (for a value of around 10 Million Skr) and maturing bulk Cognac (for a value of around 10-15 Million Skr).

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

   (b) the following main intangible assets:

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

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

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

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

All those required to produce and/or sell the *Grönstedts* brand, 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 *Grönstedts*, showing quantities purchased by each customer in the past two years.

(f) the following Personnel:

As regards personnel, two employees are currently involved in the brand *Gronstedts*:

- one person is responsible for the receipt of the product (taste). This person, who works only part time for V&S and is near retiring age, is also in charge of other products.

- another person is product manager for this brand and devotes around 20 to 25% of his time to this task.

Consequently, there is no Personnel or Key Personnel dedicated to the *Grönstedts* Business that would have to be transferred with the brand.

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period of 2 years, renewable:

Purchasing, blending, bottling, warehousing and shipping services can be provided by Pernod Ricard ,for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the *Grönstedts* Divested Business to be fully competitive and viable.

3. The Divested Business shall not include:

(i) Any V&S plant, machinery or other fixed assets which are not unique to the *Grönstedts* production process;

(ii) Monies owed to V&S by customers for the purchase of, and monies owed by V&S to suppliers for materials used in the production of *Grönstedts*.

SCHEDULE 4

Details on the *Dry Anis* Business

1. Sales volumes and Turnover

The sales volumes of *Dry Anis* in 2006 were as follows:

Volumes in 000 9L cases	2006
Worldwide	4,4
EEA	4,4

The turnover achieved by V&S in sales of *Dry Anis* is as follows:

Turnover in 000.€	2006
Worldwide	111.9
EEA	111.9

2. Countries where *Dry Anis* is marketed

The Aniseed brand *Dry Anis* is exclusively marketed in Finland.

3. Information on production

Dry Anis is produced at V&S' facility in Turku, on the same production line and by the same personnel as for other Spirits products.

No dedicated asset is needed for the production of *Dry Anis*.

This brand accounts for 0.1% of total production at Turku site.

4. Information on structure of the *Dry Anis* 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 V&S Turku business, which also produces Vodka, Fruit Wines, Liqueurs and Glögg.

2. 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 *Dry Anis*.

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

(b) the following main intangible assets:

The brand *Dry Anis* is not registered as a trademark. Only the brand names will be transferred to the purchaser. Pernod Ricard commits not to oppose to the registration by the Purchaser of the brand name *Dry Anis* as a trademark and to provide the Purchaser with the information that may be reasonably necessary in this regard.

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

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

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

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

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

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

Alko is the only customer of this product which is included on Alko's base list. Alko purchases directly from V&S.

(f) the following Personnel:

As regards personnel, a brand manager devotes 2% of his time to the management and promotion of the brand.

Consequently, there is no Personnel or Key Personnel dedicated to the *Dry Anis* Business that would have to be transferred with the brand.

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period of 2 years, renewable:

Purchasing, producing, warehousing, bottling and shipping services can be provided by Pernod Ricard for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the *Dry Anis* Divested Business to be fully competitive and viable.

3. The Divested Business shall not include:

(i) Any V&S plant, machinery or other fixed assets which are not unique to the *Dry Anis* production process;

(ii) Monies owed to V&S by customers for the purchase of, and monies owed by V&S to suppliers for materials used in the production of *Dry Anis*.

SCHEDULE 5

Details on the *Red Port* Business

1. Sales volumes and Turnover

The sales volumes of *Red Port* in 2007 were as follows:

Volumes in 000 9L cases	2007
Worldwide	~85
EEA	~85

The turnover achieved by V&S in sales of *Red Port* is as follows:

Turnover in 000.SEK	2007
Worldwide	4 190
EEA	4 190

2. Countries where *Red Port* is marketed

The Port brand *Red Port* is exclusively marketed in Sweden.

3. Information on production

Red Port is produced and bottled by […], a Portuguese producer of Port, according to V&S' specifications and then shipped to V&S logistics centre in Sweden**.** A specific supply contract is concluded on a yearly basis.

4. Information on structure of the *Red Port* business

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

   Not applicable

2. 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 *Red Port*.

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

(b) the following main intangible assets:

All *Red Port* brand names, registered trademarks, product formulae and other intellectual property rights owned by V&S; all market, consumer and other studies and brand marketing plans, to the extent that they do not contain confidential information on other V&S or Pernod Ricard brands.

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

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

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

All those required to produce and/or sell the *Red Port* brand, 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 *Red Port,* showing quantities purchased by each customer in the past two years.

(f) the following Personnel:

There is currently no Personnel within V&S dedicated to the brand *Red Port*.

Consequently, there is no Personnel or Key Personnel dedicated to the *Red Port* Business that would have to be transferred with the brand.

(g) the arrangements for the supply with the following products or services by Pernod Ricard or affiliated undertakings for a transitional period of 2 years renewable:

Purchasing services can be provided by Pernod Ricard for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the *Red Port* Divested Business to be fully competitive and viable.

3. The Divested Business shall not include:

(i) Any V&S plant, machinery or other fixed assets which are not unique to the *Red Port* production process;

(ii) Monies owed to V&S by customers for the purchase of, and monies owed by V&S to suppliers for materials used in the production of *Red Port*.

SCHEDULE 6

Details on the *Star Gin* Business

1. **Sales volumes and Turnover**

The sales volumes of *Star Gin* in 2007 were as follows:

Volumes in 9L cases	2007
Worldwide	33 614
EEA	33 614

The turnover achieved by V&S in sales of *Star Gin* is as follows:

Turnover in Skr	2007
Worldwide	10 203 000
EEA	10 203 000

2. **Countries where *Star Gin* is marketed**

In 2007, the Gin brand *Star Gin* was marketed in Sweden, Germany, Norway and Finland.

3. **Information on production**

The alcohol used in the production of *Star Gin* is produced at V&S's facility in Aalborg (Denmark) and then sent in bulk to V&S's bottling facility in Svendborg (Denmark), where flavouring ingredients are added.

4. **Information on the structure of the *Star Gin* business**

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

The alcohol used in the production of *Star Gin* is produced in Aalborg; the alcohol is sent in bulk and then flavoured and bottled at the bottling facility of Svendborg.

The Divested Business is currently intermingled with the retained and larger V&S Denmark businesses. The production of *Star Gin* represent a very limited part of activity of both sites which also produce Aquavit, Vodka and other products.

2. 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 *Star Gin*.

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

(b) the following main intangible assets:

All *Star Gin* brand names, registered trademarks, product formulae and other intellectual property rights owned by V&S; all market, consumer and other studies and brand marketing plans, to the extent that they do not contain confidential information on other V&S or Pernod Ricard brands.

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

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

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

All those required to produce and/or sell the *Star Gin* brand, 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 *Star Gin*, showing quantities purchased by each customer in the past two years.

(f) the following Personnel:

As regards personnel, a brand manager devotes 3% of his time to the management and promotion of the brand.

Consequently, there is no Personnel or Key Personnel dedicated to the *Star Gin* Business that would have to be transferred with the brand.

(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:

Purchasing, producing, warehousing, bottling and shipping services can be provided by Pernod Ricard for a transitional period of up to 2 years after Closing or, alternatively, any longer period as may reasonably be necessary in order for the *Star Gin* Business to be fully competitive and viable.

3. The Divested Business shall not include:

(i) Any V&S plant, machinery or other fixed assets which are not unique to the *Star Gin* production process;

(ii) Monies owed to V&S by customers for the purchase of, and monies owed by V&S to suppliers for materials used in the production of *Star Gin*.

SCHEDULE 7

Effectiveness of the remedies

1. The divestiture commitments presented by Pernod Ricard will eliminate any doubt as to the compatibility of the proposed transaction in the following markets:

- the divestiture of the *Lubuski* Business eliminates any competition difficulty on the Gin market in Poland;
- the divestiture of the *Serkova* Business eliminates any competition difficulty on the Vodka market in Greece whatever is the possible segmentation of this market;
- the divestiture of the *Dry Anis* Gin Business eliminates any competition difficulty on the Aniseed market in Finland;
- the divestiture of the *Grönstedts* Business eliminates any competition difficulty on the Cognac market in Sweden;
- the divestiture of the *Red Port* Business eliminates any competition difficulty on the Port market in Sweden;
- the divestiture of the *Star Gin* Business eliminates any competition difficulty on the on-trade channel of the Gin market in Sweden.

- ***Gin in Poland***

Gin	**Own brands**		**Own and agency brands**	
	2006 (IWSR 2007)	**2007 (IWSR 2008)**	**2006 (IWSR 2007)**	**2007 (IWSR 2008)**
Pernod Ricard	[20-30%]	[25-35%]	[20-30%]	[25-35%]
V&S	[50-60%]	[50-60%]	[50-60%]	[50-60%]
New Pernod Ricard				
Before Divestment	[80-90%]	[80-90%]	[80-90%]	[80-90%]
After Divestment*	[20-30%]	[25-35%]	[20-30%]	[25-35%]

Source: IWSR

- ***Vodka in Greece***

Vodka	**Own brands**		**Own and agency brands**	
	2006 (IWSR 2007)	**2007 (IWSR 2008)**	**2006 (IWSR 2007)**	**2007 (IWSR 2008)**
Pernod Ricard	[10-20%]	[10-20%]	[10-20%]	[10-20%]
V&S	[30-40%]	[30-40%]	[30-40%]	[30-40%]
New Pernod Ricard				
Before Divestment	[45-55%]	[45-55%]	[45-55%]	[45-55%]
After Divestment*	[30-40%]	[30-40%]	[30-40%]	[30-40%]

Source: IWSR

- ***Aniseed in Finland***

Aniseed	Own brands		Own and agency brands	
	2006 (IWSR 2007)	**2007 (IWSR 2008)**	**2006 (IWSR 2007)**	**2007 (IWSR 2008)**
Pernod Ricard	[25-35%]	na	[25-35%]	na
V&S	[25-35%]	na	[25-35%]	na
New Pernod Ricard				
Before Divestment	[55-65%]	na	[55-65%]	na
After Divestment*	[25-35%]	na	[25-35%]	na

Source: IWSR

- ***Cognac in Sweden***

Cognac	Own brands		Own and agency brands	
	2006 (IWSR 2007)	**2007 (IWSR 2008)**	**2006 (IWSR 2007)**	**2007 (IWSR 2008)**
Pernod Ricard	[5-10%]	[5-10%]	[5-10%]	[5-10%]
V&S	[50-60%]	[50-60%]	[50-60%]	[50-60%]
New Pernod Ricard				
Before Divestment	[55-65%]	[55-65%]	[55-65%]	[55-65%]
After Divestment	[5-10%]	[5-10%]	[5-10%]	[5-10%]

Source: IWSR

- ***Port in Sweden***

Port	Own brands		Own and agency brands	
	2006 (IWSR 2007)	**2007 (IWSR 2008)**	**2006 (IWSR 2007)**	**2007 (IWSR 2008)**
Pernod Ricard	-	-	[10-20%]	[10-20%]
V&S	[25-35%]	[25-35%]	[25-35%]	[25-35%]
New Pernod Ricard				
Before Divestment	[25-35%]	[25-35%]	[40-50%]	[40-50%]
After Divestment	[5-10%]	[5-15%]	[20-30%]	[20-30%]

- ***Gin in Sweden***

Gin	On-trade market share
Pernod Ricard	[15-25%]
V&S	[20-30%]
New Pernod Ricard	
Before Divestment	[40-50%]
After Divestment*	[20-30%]

** Following the Divestment of Star Gin*

2. The termination of the distribution agreement existing between Pernod Ricard and the company Sazerac relating to the distribution of the Canadian Whisky brand *Royal Canadian* in Sweden will eliminate any doubt as to the compatibility of the

concentration since it will suppress the overlap between the parties in the Canadian Whisky segment in Sweden.

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