

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the matter of)
DIAGEO PLC,)
a public limited company,) Docket No. C-4032
and)

17. On or about December 19, 2000, Respondents Diageo and Vivendi, and third party Pernod Ricard, executed their Stock and Asset Purchase Agreement. Under this Agreement, Diageo and Pernod Ricard jointly undertook to acquire Seagram from Vivendi for a total of \$8.15 billion. Pursuant to the Framework Agreement previously entered into between Diageo and Pernod Ricard, Respondent Diageo would contribute \$5 billion and Pernod Ricard would contribute the remaining \$3.15 billion for the acquisition of Seagram.

18. Under the terms of the Stock and Asset Purchase Agreement and the Framework Agreement:

- (a) The Seagram businesses acquired by Diageo through purchases of corporations or assets would hold, among other brands and assets, all Seagram rum assets, including Captain Morgan Original Spiced Rum, Captain Morgan's Parrot Bay Rum, and Myers's Rum;
- (b) The Seagram businesses acquired by Pernod Ricard through purchases of corporations or assets would hold, among other brands and some related assets, Seagram's Gin, Chivas Regal Scotch whisky, The Glenlivet Scotch whisky, and Martell Cognac;
- (c) Diageo would operate the "back office" operation of Joseph E. Seagram & Sons, Inc., and, for up to one year, provide administrative services to , Seagram's theod Ricard through purchases oeagram's Gin,

V. Trade and Commerce

A. Relevant Product Markets

20. The relevant product markets in which it is appropriate to assess the effects of the proposed acquisition are: (a) premium rum, (b) popular gin, (c) deluxe Scotch whisky, (c) single malt Scotch whisky, and (e) Cognac. In addition to these relevant markets, broader or narrower relevant markets may also exist.

a. *Premium Rum*

21. Rum is a distilled spirit made from cane sugar or its byproducts. Premium rum is rum that is generally advertised, promoted, and available throughout the United States, and sold at retail at prices higher than most other rums. The most popular premium rum products sold in the United States include Bacardi Light Rum, Captain Morgan Original Spiced Rum, Captain Morgan's Parrot Bay Rum, and Malibu Rum. Total United States premium rum sales in 2000 were about 12 million 9-liter equivalent cases, which represents about \$1 billion in retail sales.

b. *Popular Gin*

22. Gin is a distilled spirit made from grain and botanicals, primarily juniper. Popular gin is gin that is principally made and bottled in North America, is generally advertised, promoted, and available throughout the United States, and sold at retail at prices that are lower than the premium gins, which are imported from the United Kingdom, but higher than the gins that are not widely advertised and promoted. The most popular gins sold in the United States include Seagram's Gin and Gordon's Gin. Total United States popular gin sales in 2000 were about 5.2 million 9-liter equivalent case, which represents about \$650 million in retail sales.

c. *Deluxe Scotch Whisky*

23. Scotch whisky is a distilled spirit made in Scotland from malt, or malt and barley, and aged a minimum of three years. Deluxe Scotch whisky is a blend of malt and grain Scotch whiskies from many distilleries, typically aged at least 12 years, and bottled in Scotland. Deluxe Scotch whisky is generally advertised, promoted, and available throughout the United States, and sold at retail at

prices higher than premium Scotch whisky products, but lower than single malt Scotch whiskies. The most popular deluxe Scotch whisky products sold in the United States are Chivas Regal Scotch whisky and Johnnie Walker Black Scotch whisky. Total sales of deluxe Scotch in the United States in 2000 were about 1.1 million 9-liter equivalent cases, which represents about \$450 million in retail sales.

d. Single Malt Scotch Whisky

24. Single malt Scotch whisky is a Scotch that is produced from the malt of a single distillery, and is normally bottled in Scotland. The most popular single malt Scotch whiskies sold in the United States include The Glenlivet, Glenfiddich, Oban, Lagavulin, Dalwhinnie, Cardhu, and Talisker. Total sales of single malt Scotch whiskies in the United States in 2000 were about 700,000 9-liter equivalent cases, which represents about \$250 million in retail sales.

e. Cognac

25. Cognac is a brandy, which is distilled wine, that is produced and bottled in southwestern France. The most popular Cognacs sold in the United States are Courvoisier, Hennessy, Martell, and Remy Martin. Total sales of Cognac in the United States in 2000 were about 2.8 million 9-liter equivalent cases, which represents about \$1 billion in retail sales.

B. Relevant Geographic Markets

26. The relevant geographic markets in which it is appropriate to assess the effects of the proposed acquisition in each relevant market are (a) the United States and (b) individual states and territories of the United States.

C. Conditions of Entry

27. Entry into each of the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects from occurring.

VI. Market Structure

28. The relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by two-firm and four-firm concentration ratios.

a. Premium Rum

29. In the national premium rum market, Respondent Diageo and or its subsidiaries have about an 8% share and Respondent Vivendi and or its subsidiaries have about a 33% share. The only other significant seller of premium rum is Bacardi USA, which has about a 54% share. The proposed acquisition would increase the HHI by about 550 points, result in market concentration of about 4,600 points, and create a duopoly.

30. Concentration in many premium rum state and territory markets does not vary significantly from the high concentration in the national premium rum market.

b. Popular Gin

31. In the national popular gin market, Respondent Diageo and or its subsidiaries have about a 34% share and Respondent Vivendi and or its subsidiaries have about a 66% share. If Diageo were to acquire or control the marketing of Seagram's Gin, the HHI would increase by about 4,500 points, result in market concentration of about 10,000 points, and create a monopoly.

32. Concentration in many popular gin state and territory markets does not vary significantly from the high concentration in the national popular gin market.

c. Deluxe Scotch Whisky

33. In the national deluxe Scotch whisky market, Respondent Diageo and or its subsidiaries have about a 51% share and Respondent Vivendi and or its subsidiaries have about a 49% share. If Diageo were to acquire or control the marketing of Chivas Regal Scotch whisky, the HHI would increase by about 5,000 points, result in market concentration of about 10,000 points, and create a monopoly.

34. Concentration in many deluxe Scotch whisky state and territory markets does not vary significantly from the high concentration in the national deluxe Scotch whisky market.

d. Single Malt Scotch Whisky

35. In the national single malt Scotch market whisky, Respondent Diageo and or its subsidiaries have about a 6% share and Respondent Vivendi and or its subsidiaries have about a 26% share. If Diageo were to acquire or control the marketing of The Glenlivet Scotch whisky, the HHI would increase by about 300 points and result in market concentration of about 2,000 points.

