

**PUBLIC VERSION.  
REDACTED FOR COMMERCIAL CONFIDENTIALITY REASONS**

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV 2011-404-1664  
[2012] NZHC 2801**

BETWEEN	PERNOD RICARD NEW ZEALAND LIMITED Plaintiff
AND	LION - BEER, SPIRITS & WINE (NZ) LIMITED First Defendant
AND	INDEVIN GROUP LIMITED Second Defendant

Hearing: 23 24, 26 27, 30 April, 1-4, 7-11, 14-18, 21-25 May, 11-14 June 2012

Appearances: A R Galbraith QC, D J Cooper and S V East for plaintiff  
J A Farmer QC, M R Crotty and S P Pope for first defendant  
R A Edwards for second defendant

Judgment: 26 October 2012

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**JUDGMENT OF ALLAN J**

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*In accordance with r 11.5 I direct that the Registrar endorse this judgment  
with the delivery time of 2.30 pm on Friday 26 October 2012*

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## **1. Introduction**

[1] Pernod Ricard (NZ) Ltd (Pernod) is the largest wholesale wine distributor in New Zealand. It is the New Zealand subsidiary of an international wine and liquor company. In 2010 it decided to sell some of its wine related assets. While it originally considered selling 100% of the shares in a proposed stand alone wine company called Lindauer Wine Company (LWC), Pernod later decided to sell certain assets. After protracted negotiations, it entered into a series of agreements with the first defendant (then known as New Zealand Breweries Ltd, but now Lion – Beer, Spirits & Wine (NZ) Ltd (Lion)), a subsidiary of an Australian company, Lion Nathan Pty Ltd. Lion is the leading New Zealand beer distributor. Prior to the transaction, it maintained a relatively small wine distribution business. Now, Lion is in substantial competition with Pernod.

[2] The second defendant, Indevin Group Ltd (Indevin), a purchasing entity formed by Impact Capital Management Ltd to enter into agreements with Pernod and Lion, was also a party to the transaction. It is an independent New Zealand wine infrastructure and supply company.

[3] The parties entered into the principal agreement, the asset sale and purchase agreement (SPA), on 18 October 2010. Under this agreement, Pernod sold wine brands, vineyards, plant and equipment intended to be used in the ongoing manufacture and sale of the wine brands to Lion and Indevin. Indevin would own the infrastructure assets, own and grow fruit, and process the wine; providing these services at arms' length commercial rates to Lion. Indevin was also to assume Pernod's liabilities in relation to employees' salaries, wages, allowances and leave, and contracts with grape growers.

[4] Lion would be responsible for bottling, packaging, marketing and sales of the wine. Under the SPA, Lion was to purchase wine stock from Pernod and