

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)		
)		
VNU N.V. ,)		File No. 991-0319
a corporation.)		
)		

AGREEMENT CONTAINING CONSENT ORDERS

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by VNU N.V. ("VNU") of 100 percent of the voting securities of Nielsen Media Research, Inc. ("Nielsen"), and it now appearing that VNU, hereinafter sometimes referred to as "Respondent," is willing to enter into this Agreement Containing Consent Orders ("Consent Agreement") to divest certain assets and providing for other relief:

IT IS HEREBY AGREED by and between Respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Respondent VNU is a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business

4. Respondent shall submit within thirty (30) days of the date this Consent Agreement is signed by Respondent an initial report, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, signed by Respondent, setting forth in detail the manner in which Respondent has complied and will comply with the Order to Hold Separate and with Paragraphs II. through IV. of the Decision & Order. Such report will not become part of the public record unless and until the accompanying Consent Agreement and Decision & Order are accepted by the Commission for public comment.
5. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or amend its complaint if circumstances so require and issue its Decision & Order, in disposition of the proceeding.
6. This Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
7. Because there may be interim competitive harm, and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy, the Commission may issue an Order to Hold Separate in this matter.
8. Respondent has read the Order to Hold Separate contemplated hereby. Respondent agrees to comply with the terms of the attached Order to Hold Separate from the date the Order to Hold Separate is served on Respondents. The Order to Hold Separate shall become final upon service. Delivery of this Order to Hold Separate to Respondent's United States counsel named in the Consent Agreement by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.14(a), shall constitute service. The Respondent waives any right it might have to any other manner of service. When final, this Order to Hold Separate shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. Respondent may be liable for civil penalties in the amount provided by law for each violation of this Order to Hold Separate after it becomes final.
9. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (1) issue its Complaint corresponding in form and substance with the draft Complaint here attached, and its Order to Hold Separate, and (2) make information

public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Respondent, issue the attached Decision & Order containing an order to divest in disposition of the proceeding. When so entered, the Decision & Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision & Order shall become final upon service. Delivery of the Complaint and the Decision & Order to Respondent's United States counsel named in this Consent Agreement by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.14(a), shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Decision & Order, and no agreement, understanding, representation, or interpretation not contained in the Decision & Order or the Consent Agreement may be used to vary or contradict the terms of the Decision & Order.

10. By signing this Consent Agreement, Respondent represents that it can accomplish the full relief contemplated by the attached Order to Hold Separate and Decision & Order.
11. Respondent has read the Complaint and Decision & Order contemplated hereby. Respondent understands that once the Decision & Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Decision & Order. Respondent agrees to comply with the terms of the Decision & Order from the date it signs this Consent Agreement. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision & Order after it becomes final.

12. If the Commission accepts the Consent Agreement for public comment, it will excuse Respondent from its obligation to comply with all outstanding information requests and terminate the waiting period established by Section 7A of the Clayton Act, 15 U.S.C. § 18a.

Signed this _____ day of _____, 1999.

VNU N.V.

Gerald Hobbs
Chairman VNU USA

James A. Ross

FEDERAL TRADE COMMISSION

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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle

In the Matter of)		
))	Docket No.
VNU N.V. ,)		DECISION AND ORDER
a corporation.)		
)		

The Federal Trade Commission having initiated an investigation of the proposed acquisition by Respondent VNU N.V. of 100 percent of the voting securities of Nielsen Media Research, Inc., and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent VNU is a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Ceylonspoort 5-25, 2003 E.A. Haarlem, The Netherlands.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

XIII.

IT IS ORDERED that, as used in this order, the following definitions shall apply:

- A. "Respondent" or "VNU" means VNU N.V., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by VNU, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Commission" means the Federal Trade Commission.
- C. "Competitive Media Reporting Division" or "CMR" means the division of VNU that collects, manages, stores, delivers, researches, develops, and sells, among other things, Advertising Expenditure Measurement Services, including, but not limited to, the following assets used in any of CMR's businesses:

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6. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
 7. all rights under warranties and guarantees, express or implied;
 8. all books, records, and files;
 9. all items of prepaid expense;
 10. all rights under the Nielsen Ratings Data License Agreement; and
 11. satellite dish receivers, taping equipment for network and satellite feeds, television data collection equipment, local radio and data collection equipment, and local field monitoring equipment.
- D. “Key Employees” means the key employees listed in Confidential Appendix I.
- E. “Senior Staff Employees” means the senior staff employees listed in Confidential Appendix I.
- F. “Acquisition” means the proposed acquisition of 100 percent of the voting securities of Nielsen Media Research, Inc. by VNU pursuant to the Agreement and Plan of Merger dated August 16, 1999.
- G.

- I. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.
- J. “Hold Separate Period” means the time period during which the Order to Hold Separate is in effect.

XIV.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest CMR at no minimum price, absolutely and in good faith, within six (6) months from the date the Agreement Containing Consent Orders is signed by Respondent.
- B. Respondent shall divest CMR only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of CMR is to ensure the continued use of CMR in the same business in which CMR is engaged at the time of the proposed acquisition, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.
- C. Pending divestiture of CMR, Respondent shall take such actions as are necessary to maintain the viability and marketability of CMR and to prevent the destruction, removal, wasting, deterioration, or impairment of any of CMR's assets, except for ordinary wear and tear.
- D. No later than the time of the execution of a purchase agreement between Respondent and a proposed acquirer of CMR, Respondent shall provide the proposed acquirer with a complete list of all non-clerical, salaried employees of CMR who have been involved in the collection, management, storage, delivery, research, development and sale of Advertising Expenditure Measurement Services at any time from January 1, 1999 until the date of the purchase agreement. Respondent shall also provide the proposed acquirer with a complete list of all independent contractors to CMR involved in the collection, management, storage, delivery, research, development and sale of Advertising Expenditure Measurement Services at any time from January 1, 1999 until the date of the

research, development and sale of Advertising Expenditure Measurement Services.

- E. Respondent shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to individuals identified in Paragraph II. D. of this order to the extent permissible under applicable laws, at the request of the proposed acquirer any time after the execution of the purchase agreement.
- F. Respondent shall provide to all CMR employees during the Hold Separate Period a continuation of all employee benefits currently offered to such employees. In addition, Respondent shall provide to Key Employees of CMR incentives to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include a bonus for each Key Employee, equal to 20 percent of the employee's annual salary and commissions (including any other bonuses) as of the date this order becomes final, who agrees to accept an offer of employment from the Commission-approved acquirer, payable by Respondent upon the beginning of the employee's employment by the Commission-approved acquirer. In addition, Respondent shall provide to Senior Staff Employees of CMR incentives to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include a bonus for each Senior Staff Employee, equal to 25 percent of the employee's annual salary and commissions (including any other bonuses) as of the date this order becomes final, who agrees to accept an offer of employment from the Commission-approved acquirer, payable by Respondent upon the beginning of the employee's employment by the Commission-approved acquirer.
- G. For a period of one (1) year commencing on the date of the individual's employment by the Commission-approved acquirer, Respondent shall not employ any of the Key Employees who have been offered employment with the Commission-approved acquirer, unless the individual's employment has been terminated by the acquirer.

XV.

IT IS FURTHER ORDERED that:

- A. If VNU has not divested, absolutely and in good faith and with the Commission's prior approval, CMR within six (6) months from the date Respondent signs the Consent Agreement, the Commission may appoint a trustee to divest CMR. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other

statute enforced by the Commission, VNU shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this order.

- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.

other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such entity within five (5) business days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting CMR.
8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

XVII.

IT IS FURTHER ORDERED that:

