

IN THE MATTER OF

VNU N.V.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3900. Complaint, Oct. 22, 1999--Decision, Dec. 3, 1999*

This consent order, among other things, requires VNU N.V., a corporation engaged in the research, development, production and sale of media-related products, to divest its competitive media reporting division to a Commission-approved acquirer.

Participants

For the Commission: *Michael Moiseyev, Norman Armstrong, Yolanda Gruendel, Julie McConnell, Randall Long, Ann Malester, Richard Parker, Jeremy Bulow and Malcolm Coate.*

For the respondent: *Kerry Edwards, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, VNU N.V. ("VNU"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all the voting stock of Nielsen Media Research, Inc. ("Nielsen"), a corporation subject to the jurisdiction of the Commission, in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Advertising Expenditure Measurement Services*" means the collection, management, storage, delivery, research, development and sale of advertising occurrence and expenditure information collected from any media source, including but not limited to: (1) national broadcast television; (2) local broadcast television; (3) national syndication; (4) local syndication; (5) national cable; (6) local cable; (7) national radio; (8) local radio; (9) national magazines; (10) local magazines; (11) trade magazines; (12) Sunday magazines; (13)

national newspapers; (14) local newspapers; and (15) outdoor advertising.

2. "*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.

3. "*Monitor Plus*" means the division of Nielsen that collects, manages, stores, delivers, researches, develops and sells, among other things, Advertising Expenditure Measurement Services.

4. "*Merger Agreement*" means the Agreement and Plan of Merger among VNU N.V., through its subsidiary, VNU U.S.A., Inc., and Nielsen Media Research, Inc., dated August 16, 1999.

5. "*Respondent*" means VNU N.V.

II. RESPONDENT

6. 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. Respondent, among other things, is engaged in the research, development, production and sale of media-related products, including Advertising Expenditure Measurement Services through CMR.

7. Pursuant to the Merger Agreement, respondent will make a cash tender offer for 100 percent of the voting securities of Nielsen.

8. Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in, or affects, commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

9. Nielsen is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 299 Park Avenue, New York, New York. Among other media related products, Nielsen offers Advertising Expenditure Measurement Services.

IV. THE ACQUISITION

10. On August 16, 1999, VNU and Nielsen entered into a Merger Agreement under which VNU is to acquire through a cash tender offer 100 percent of the voting securities of Nielsen valued at approximately \$2.5 billion ("Acquisition").

V. THE RELEVANT MARKET

11. For the purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the furnishing of Advertising Expenditure Measurement Services.

12. For the purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

VI. THE STRUCTURE OF THE MARKET

13. The market for Advertising Expenditure Measurement Services is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). CMR, a VNU subsidiary, and Monitor Plus, a division of Nielsen, are the only two suppliers of Advertising Expenditure Measurement Services in the United States. CMR holds a 72 percent market share, while Monitor Plus has a 28 percent market share, resulting in a pre-merger HHI of 5,968. The proposed acquisition would provide VNU with a monopoly position and a post-merger HHI of 10,000.

VII. BARRIERS TO ENTRY

14. Entry into the market for the collection and furnishing of advertising expenditure measurement data is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph 15, because of, among other things, the time and expense necessary to develop effective data collection technology, the time necessary to develop historical data, the prevalence of long term contracts limiting the number of customers available each year, the need to link occurrence data with ratings information, and the importance of an established reputation for accuracy.

VIII. EFFECTS OF THE ACQUISITION

15. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual, direct and substantial competition between respondent, through CMR, and Nielsen, through Monitor Plus, in the relevant market;
- b. By increasing the likelihood that customers of Advertising Expenditure Measurement Services would be forced to pay higher prices; and
- c. By reducing innovation in the relevant market.

IX. VIOLATIONS CHARGED

16. The Acquisition agreement described in paragraph 10 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

17. The Acquisition described in paragraph 10, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

ORDER TO HOLD SEPARATE

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 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 determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate:

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

I.

It is ordered, That, as used in this Order to Hold Separate, 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:

1. All assets, properties, business and goodwill, tangible and intangible;
2. Machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
4. Inventory and storage capacity;
5. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;
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. "*Advertising Expenditure Measurement Services*" means the collection, management, storage, delivery, research, development and sale of advertising occurrence and expenditure information collected from any media source, including, but not limited to: (1) national broadcast television; (2) local broadcast television; (3) national syndication; (4) local syndication; (5) national cable; (6) local cable;

(7) national radio; (8) local radio; (9) national magazines; (10) local magazines; (11) trade magazines; (12) Sunday magazines; (13) national newspapers; (14) local newspapers; (15) outdoor advertising; and (16) Internet.

H. "*Nielsen Ratings Data License Agreement*" means the license agreement dated December 3, 1996 between Nielsen Media Research, Inc. and VNU Advertising Expenditure Corp. through its Competitive Media Reporting Division for the use of Nielsen television ratings data, and attached hereto as Confidential Appendix II.

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.

II.

It is further ordered, That:

A. Respondent shall hold CMR as a separate and independent business, except to the extent that Respondent must exercise direction and control over CMR to assure compliance with this Order to Hold Separate, or with the Consent Agreement, and except as otherwise provided in this Order to Hold Separate, and shall vest CMR with all powers and authorities necessary to conduct its business. The purpose of this Order is to: (i) preserve CMR as a viable, competitive, and ongoing Advertising Expenditure Measurement Services business, independent of Respondent, until divestiture is achieved; (ii) assure that no Material Confidential Information is exchanged between Respondent and CMR; and (iii) prevent interim harm to competition pending divestiture and other relief.

B. Respondent shall hold CMR separate and independent on the following terms and conditions:

1. The Commission at any time may appoint an Independent Auditor to monitor Respondent's compliance with Paragraph II. of this Order to Hold Separate, and Respondent shall give the Independent Auditor, if one is appointed, all powers and authority

