PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of

Nielsen Holdings N.V.,
a corporation,

and

Arbitron Inc.,
a corporation

File No. 131 0058

APPLICATION FOR APPROVAL OF DIVESTITURE OF LINKMETER ASSETS AND RELATED AGREEMENTS

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Introduction

Pursuant to Section 2.41(f) of the Federal Trade Commission (the "Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph II of the Decision and Order (the "Order") included in the Agreement Containing Consent Order (the "Consent Agreement") accepted for public comment in this matter, Nielsen Holdings N.V. and Nielsen Audio, Inc. (formerly "Arbitron Inc.") ("Arbitron" and, together with Nielsen Holdings N.V., "Respondents") hereby respectfully submit this Application for Approval of Divestiture of LinkMeter Assets and Related Agreements ("Application").

This matter arose out of Nielsen Holdings N.V.'s proposed acquisition of Arbitron, which closed on September 30, 2013. On September 12, 2013, Respondents executed the Consent Agreement, which includes the Order requiring Respondents, pursuant to a Remedial Agreement,[1] to divest the LinkMeter Technology, to license certain assets and capabilities and to provide certain equipment and services. On September 20, 2013, the Commission accepted the Consent Agreement and the Order for public comment; that comment period expired on November 12, 2013.

In this Application, Respondents seek approval of the proposed divestiture of the LinkMeter Technology, licensing of certain assets and capabilities and provision of certain equipment and services (together, the "Proposed Divestiture") to comScore Inc. ("comScore"), as set forth in the Master Services and License Agreement, dated January 15, 2014 and as amended by the First Addendum dated as of January 17, 2014, by and between Respondents and comScore (including all attachments, statements of work, exhibits, schedules, annexes and

[1] Capitalized terms not herein defined have the definitions given to them in the Order.

addenda thereto) (the "Remedial Agreement"). The Remedial Agreement is attached hereto as Confidential Exhibit A.

Approval of the Proposed Divestiture is appropriate for the following reasons. First, Respondents identified a suitable buyer, comScore, for the LinkMeter Technology after engaging in a robust and targeted process. Indeed, this process ultimately led to the very same Prospective Acquirer identified as the most likely Acquirer by the Commission staff during the course of its investigation. Second, the Prospective Acquirer, comScore, is a qualified and viable competitor both in the development of Cross-Platform Services generally, as well as more specifically in the development of a national syndicated cross-platform audience measurement service. Third, the Proposed Divestiture satisfies the terms and purposes of the Order. As detailed below, the proposed LinkMeter Technology divestiture, the licensing of certain assets and capabilities, and the provision of certain equipment and services to comScore are each structured to meet the requirements of the Order. In addition, the Proposed Divestiture will accomplish the Order's purposes by "ensuring that the Acquirer can offer Cross-Platform Services, with the goal of providing a national syndicated cross-platform audience measurement service," and by "remedying the lessening of competition resulting from the Acquisition." (Order, ¶ II.F.) Specifically, pursuant to the Remedial Agreement, comScore will continue to have at its disposal the components of the customized cross-platform project called "Project Blueprint," which was developed for ESPN through a collaboration between Arbitron and comScore. comScore will be able to continue to compete in the development of Cross-Platform Services and will be positioned to compete in the development of a national syndicated cross-platform audience measurement service.

I. Respondents Conducted a Robust Search for a Buyer for the LinkMeter Assets

Respondents undertook diligent efforts to divest the LinkMeter Technology and meet their other obligations under the Order promptly after they executed the Consent Agreement. During the period from September 2013 until December 2013, Respondents were in communication with a number of entities, including [redacted] each of which expressed varying degrees of interest in perhaps purchasing the LinkMeter Technology and other assets, capabilities and services that Respondents offered to make available pursuant to the Order. Ultimately, only one entity, comScore—also identified by the Commission staff to be the most likely Acquirer during the course of its investigation—was interested in commencing formal negotiations with Respondents.

Respondents and comScore engaged in extensive negotiations under the supervision of the Monitor and the guidance of Commission staff to divest the LinkMeter Technology, license certain assets and capabilities and provide certain services and equipment to comScore. The Remedial Agreement was executed on January 15, 2014 and amended by the First Addendum dated as of January 17, 2014.

The parties were delayed in executing a Remedial Agreement by the original deadline in the Order, December 12, 2013, for divesting the LinkMeter Technology and meeting other requirements because of ongoing negotiations between Respondents and comScore and comScore's desire to continue discussing various issues with Commission staff. When it became clear that negotiations between Respondents and comScore would not be completed by December 12, 2013, Respondents filed a Request for Extension of Time to extend the deadline in the Order to February 12, 2014 to try to complete negotiations with comScore. Once comScore's discussions with Commission staff about the various issues were completed in early January 2014, Respondents promptly finalized negotiations with comScore and executed the Remedial Agreement.

II. comScore Is a Qualified and Viable Competitor in the Development Both of Cross-Platform Services Generally and of National Syndicated Cross-Platform Audience Measurement Services More Specifically

Commission staff identified comScore to be the most suitable and viable acquirer of the LinkMeter Technology and related assets and capabilities because of (i) comScore's experience in and assets related to providing and developing online audience measurement services and Cross-Platform Services, (ii) its senior management's experience in these industries and (iii) its financial resources.

The information in this Section of this Application was taken from comScore's website. Additional publicly available information about comScore can be found at www.comscore.com.[2]

A. comScore Is in the Business of Providing Audience Measurement Services

Since 1999, comScore has been a provider of digital measurement and analytics, delivering insights on online, mobile and television consumer behavior. comScore is publicly listed on NASDAQ and is headquartered in 11950 Democracy Drive, Suite 600, Reston, Virginia 20190. It currently has over 1,000 employees in 32 locations around the world.

comScore is a provider of audience measurement for a number of platforms through its Media Metrix product family. comScore's Media Metrix provides syndicated online audience measurement services by blending website metrics with panel data from an opt-in panel

[2] Commission staff should contact Christiana Lin, comScore's General Counsel and Chief Privacy Officer, to obtain information confidential to comScore.

consisting of approximately one million panelists in the United States. In addition to online audience measurement, Video Metrix provides audience ratings for streaming video, Mobile Metrix measures audiences on mobile apps and mobile sites and Ad Metrix measures viewing of online advertisements.

comScore has also become a developer of audience measurement services across multiple distribution platforms. comScore's Media Metrix Multi-Platform provides unduplicated digital audience measurement across computers, smartphones and tablets. comScore has also launched a validated Campaign Essentials Multi-Platform Beta program, which comScore is developing to measure unduplicated reach and frequency of advertisement campaigns across television, online (display and video), and mobile (smartphone and tablet).

In September 2012, ESPN began a pilot with comScore and Arbitron to measure ESPN audiences for online, mobile (smartphone and tablet), television and radio, the so-called "Project Blueprint." The majority of the assets, capabilities and services, including the LinkMeter Technology, being made available by Respondents pursuant to the Order were developed or enhanced for Project Blueprint and in partnership with comScore. As such, comScore already has experience deploying these assets, capabilities and services, plans to continue to use them for the development of Cross-Platform Services and is now positioned to utilize them to develop a national, syndicated cross-platform audience measurement service.

B. comScore's Senior Management Has Experience in the Audience Measurement Industry and Is Qualified to Develop National Syndicated Cross-Platform Audience Measurement Services

As described on comScore's website, comScore's senior executives are experienced in providing audience measurement services and qualified to continue to develop Cross-Platform Services. They have spent decades leading companies in the audience measurement, market research and information technology industries. These executives include Magid M. Abraham, President, Chief Executive Officer, Director and co-founder; Gian M. Fulgoni, Executive Chairman, Director and co-founder; Kenneth Tarpey, Chief Financial Officer since 2009; Serge Matta, President of comScore's Commercial Solutions, who joined the company in 2000; Cameron Meierhoefer, Chief Operating Officer at comScore, responsible for Technology, Analytic Operations and Product Management; Christiana Lin, Executive Vice President, General Counsel and Chief Privacy Officer; and Joan FitzGerald, Vice President of Television and Cross-Media Solutions.

Additional information about the experience and qualifications of comScore's senior management, as well as its Board of Directors, can be found at www.comScore.com.

C. comScore Has the Financial Ability to Pay for the Proposed Divestiture and Is Financially Capable of Continuing as a Viable Competitor in Cross-Platform Services

According to publicly available information,[3] comScore is a financially sound company. It has a current market capitalization of over $931 million. comScore's reported 2012 revenue was over $255 million and reported year to date revenues for 2013 were $209 million. [redacted]

[3] comScore's most recent Annual Report, Form 10-K, Form 10-K/A and Form 10-Q, including financial statements and schedules, are available at http://ir.comscore.com/sec.cfm?SortOrder=Type%20Ascending&DocType=&DocTypeExclude=&Year=.

[redacted] Thus, comScore has sufficient financial resources and is positioned to ensure its continued competition in the development of Cross-Platform Services and national syndicated cross-platform audience measurement services.

III. The Proposed Divestiture Is Consistent with the Terms and Purposes of the Order

A. The Proposed Divestiture Is Consistent with the Terms of the Order

As required by the Order and detailed below, the Remedial Agreement complies with the terms of the Order by providing for (i) the absolute divestiture of the LinkMeter Technology; and (ii) the licensing of a number of assets and capabilities and the provision of services and equipment to the Prospective Acquirer, comScore, for a term of eight (8) years from the date of divestiture of the LinkMeter Technology.

1. Divestiture of the LinkMeter Technology to comScore

In accordance with Paragraph II.A.1. of the Order, subject to the Commission's approval, Arbitron has entered into a LinkMeter Transfer Agreement, executed on January 15, 2014 (the "Transfer Agreement"), with comScore, Exhibit B to the Remedial Agreement (attached to this Application as Confidential Exhibit A), which conveys all assets required by the Order to be divested to comScore. Pursuant to the Transfer Agreement, Respondents have transferred all of Respondents' rights, title and interest to and under the LinkMeter Technology, except the know-how relating to the LinkMeter Technology, to comScore. Pursuant to Sections 2.2 and 2.3 of the Transfer Agreement, comScore has granted to Arbitron a royalty-free right to use the LinkMeter Technology and any and all improvements to the LinkMeter Technology for the purposes of complying with the requirements of the Order.

In accordance with Paragraph II.A.2. of the Order, under Section 2.2 of the Transfer Agreement, Arbitron has retained any know-how relating to the LinkMeter Technology and may use such know-how in an unrestricted manner. Moreover, under Section 2.2.4 of the Remedial Agreement and Section 4 of the Statement of Work, effective as of October 11, 2013 (the "SOW"), entered by and between Arbitron and comScore, Exhibit A to the Remedial Agreement (attached to this Application as Confidential Exhibit A), at comScore's request, Arbitron will provide such know-how to comScore on a non-exclusive basis, to reasonably help facilitate comScore's provision of Cross-Platform Services.

Additionally, as required by Paragraph II.A.2. of the Order, Section 2.5 of the Transfer Agreement provides that comScore and Arbitron each covenant not to bring litigation against the other for the use of the LinkMeter Technology or software designed to perform similar functions.

2. Encoding Technology and PPM Technology to Be Licensed to comScore

Paragraph II.B.1. of the Order provides that Respondents will grant to the Acquirer a limited, royalty-free license to use the Encoding Technology and the PPM Technology for the purpose of developing and providing a Calibration Panel and/or Balance of Nation Panel for the provision of Cross-Platform Services. Under Section 3.2 of the Remedial Agreement, Respondents have provided such a license to comScore.

3. Technical Assistance, Encoding Equipment or PPM Equipment to Be Provided to comScore

As required by Paragraph II.B.2. of the Order, pursuant to Sections 2.2.4 and 2.2.5 of the Remedial Agreement and Sections 4 and 5 of the SOW, upon written request of comScore, Respondents have agreed to provide technical assistance to comScore to facilitate its use of the Encoding Technology and PPM Technology as necessary for comScore to provide Cross-Platform Services and potentially seek Media Rating Council accreditation for its provision of those services. Pursuant to Section 3.1 of the Remedial Agreement, at comScore's request, Respondents will also provide Encoding Equipment and other PPM Equipment to comScore at Direct Cost in connection with comScore providing customers with Cross-Platform Services.

4. PPM Television, Radio and Calibration Panel Data to Be Provided to comScore

As required by Paragraph II.C. of the Order, Section 2.3 of the Remedial Agreement provides that Respondents will grant to comScore a perpetual, royalty-free, non-exclusive license to access and use PPM Television Data, Radio Data and Calibration Panel Data solely for the provision of Cross-Platform Services. Additionally, pursuant to Section 2.2.3 of the Remedial Agreement and Section 3 of the SOW, Respondents will provide such data to comScore on a respondent-level and weekly basis and in a processed, anonymous and de-identified form. The Radio Data will only be used by comScore with Respondents' subscribers of such data.

5. Certain Obligations to comScore Regarding Arbitron Calibration Panel and Arbitron PPM Panel

In accordance with Paragraph IV. of the Order, Section 2.2.1 of the Remedial Agreement and Section 1 of the SOW provide that Respondents shall manage and maintain the

Arbitron Calibration Panel (including assuring that the Arbitron Calibration Panel comprises at least two thousand panelists) according to Respondents' own business practices. Respondents will also manage and maintain the Arbitron PPM Panel according to their own business practices. In Section 11.12 of the Remedial Agreement, however, comScore acknowledges the priority of Arbitron's business practices and that Respondents will not be required to modify the recruitment or maintenance of the Arbitron PPM Panel. Under Section 2.2.2 of the Remedial Agreement and as further detailed in Section 2 of the SOW, at the request of comScore, Respondents will also create a Balance of Nation Panel or expand the Arbitron Calibration Panel to enable or enhance national audience projections at Direct Cost. Moreover, pursuant to Section 2.2 of the SOW, comScore shall have the full and exclusive right, title and ownership interest in the processed data created from the Balance of Nation Panel that comScore funds.

B. The Proposed Divestiture Will Achieve the Remedial Purposes of the Order

Paragraph II.F. of the Order provides that the Order's purposes are "to ensure that the Acquirer can offer Cross-Platform Services, with the goal of providing a national syndicated cross-platform audience measurement service, and to remedy the lessening of competition resulting from the Acquisition."

The Proposed Divestiture will promote competition in the development of Cross-Platform Services and a national syndicated cross-platform audience measurement service. The Proposed Divestiture will continue to provide comScore with the components of the cross-platform audience measurement project called "Project Blueprint," *i.e,* the assets relating to Arbitron's contribution to that project, including audience data with individual-level demographic information and related technology, software, intellectual property and technical assistance. It will also provide comScore with the ability to create a Balance of Nation Panel and/or expand the Arbitron Calibration Panel to enable national audience projections. As a result, comScore will be able to continue to compete in the development of Cross-Platform Services and will be well positioned to compete in the development of a national syndicated cross-platform audience measurement service.

Request for Confidential Treatment

This Application contains confidential and competitively sensitive information relating to Respondents, comScore and their agreements relating to the Proposed Divestiture. The disclosure of this information would prejudice Respondents and comScore, cause harm to the ongoing competitiveness of the LinkMeter Technology and Respondents' other assets and capabilities and impair Respondents' ability to comply with its obligations under the Order. Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c), and Sections 2.4l(f)(4), 4.9(c) and 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4), 4.9(c) and 4.10(a)(2), Respondents therefore request that nonpublic, commercially or competitively sensitive information contained in this Application be treated by the Commission as strictly confidential and not be made available to the public. Further, the confidential portions of this Application and accompanying Confidential Exhibit are exempt from disclosure under the Freedom of Information Act and the Hart Scott Rodino Act. *See* 5 U.S.C. § 552; 15 U.S.C. § 18a(h).

Pursuant to Section 4.2(d)(4) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.2(d)(4), Respondents are submitting two versions of this Application. The confidential version contains the information necessary to enable the Commission to assess the Application. The public version redacts confidential information.

Conclusion

Because the Proposed Divestiture is pro-competitive, in the public interest and addresses the competitive concerns raised in the Order, and for the additional reasons set forth above, Respondents respectfully request that the Commission approve the Proposed Divestiture, as detailed in the Remedial Agreement.

Dated: New York, New York
January 17, 2014

Respectfully submitted,

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CONFIDENTIAL EXHIBIT A
TO THIS APPLICATION

REDACTED