

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

necessary to effectuate his/her responsibilities pursuant to this Order to Hold Separate.

2. If an Independent Auditor is appointed by the Commission, Respondent shall consent to the following procedures:

a. The Commission shall select the Independent Auditor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Independent Auditor shall be a person with experience necessary to perform his or her duties. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Independent Auditor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Independent Auditor, Respondent shall be deemed to have consented to the selection of the proposed Independent Auditor.

b. Within ten (10) days after appointment of the Independent Auditor, Respondent shall execute an Independent Auditor agreement that, subject to the prior approval of the Commission, transfers to the Independent Auditor all rights and powers necessary to permit the Independent Auditor to perform his/her duties.

c. The Independent Auditor shall have full and complete access to all personnel, books, records, documents and facilities of CMR and VNU or to any other relevant information, as the Independent Auditor may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to CMR. Respondent shall develop such financial or other information as the Independent Auditor may request and shall cooperate with the Independent Auditor. Respondent shall take no action to interfere with or impede the Independent Auditor's ability to perform his/her responsibilities consistent with the terms of this Order to Hold Separate or to monitor Respondent's compliance with this Order to Hold Separate and the Consent Agreement.

d. The Independent Auditor shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are necessary to carry out the Independent Auditor's duties and responsibilities.

e. Respondent may require the Independent Auditor to sign a confidentiality agreement prohibiting the disclosure of any material information gained as a result of his or her role as Independent Auditor to anyone other than the Commission.

3. Respondent shall appoint, subject to the approval of the Independent Auditor, three (3) individuals from among the current employees of CMR or VNU working in the management, sales, marketing, or financial operations of Advertising Expenditure Measurement Services, to manage and maintain CMR. The Management Team, in its capacity as such, shall report directly and exclusively to the Independent Auditor, and shall manage CMR independently of the management of Respondent. The Management Team shall not be involved in any way in the operations of the businesses of Respondent, other than the CMR business, during the Hold Separate Period.

4. Respondent shall not change the composition of the management of CMR, except that the Management Team shall be permitted to remove management employees for cause subject to approval of the Independent Auditor. The Independent Auditor shall have the power to remove members of the Management Team for cause and to require Respondent to appoint replacement members to the Management Team in the same manner as provided in subparagraph II. B. 3. of this Order to Hold Separate.

5. The Independent Auditor shall have responsibility, through the Management Team, for managing CMR consistent with the terms of this Order to Hold Separate; for maintaining the independence of CMR consistent with the terms of this Order to Hold Separate and the Consent Agreement; and for assuring Respondent's compliance with its obligations pursuant to this Order to Hold Separate.

6. CMR shall be staffed with sufficient employees to maintain the viability and competitiveness of CMR. The CMR employees shall include: (i) all personnel employed by CMR as of the date the Commission accepts the Consent Agreement for public comment; and (ii) those persons hired from other sources. The Management Team, with the approval of the Independent Auditor, shall have the authority to replace employees who have otherwise left their positions with CMR since January 1, 1999. To the extent that CMR employees leave CMR prior to the divestiture of CMR, the Management Team, with the approval of the Independent Auditor, may replace the departing CMR employees with persons who have similar experience and expertise.

7. Respondent shall cause the Independent Auditor, each member of the Management Team, and each CMR manager, administrative

and support staff of any CMR management employee, and any other CMR employee who has or has had access to Material Confidential Information must submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Order to Hold Separate. These individuals must retain and maintain all confidential information relating to the held separate business on a confidential basis and, except as is permitted by this Order to Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the CMR business. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of the competing products of Respondent.

8. Respondent shall establish written procedures to be approved by the Independent Auditor covering the management, maintenance, and independence of CMR consistent with the provisions of this Order to Hold Separate.

9. Respondent shall circulate to CMR employees and to Respondent's employees who are responsible for the operation or marketing of Advertising Expenditure Measurement Services in the United States, a notice of this Order to Hold Separate and Consent Agreement, in the form attached as Attachment A.

10. The Independent Auditor, if one is appointed, and the Management Team shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities. Respondent shall indemnify the Independent Auditor and the Management Team, and hold the Independent Auditor and the Management Team harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Independent Auditor's or the Management Team'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 Independent Auditor or the Management Team.

11. Respondent shall provide CMR with sufficient working capital to operate CMR at least at current rates of operation, to meet

all capital calls in respect of CMR, and to carry on, at least at their scheduled pace, all capital projects for CMR that are ongoing, planned, or approved as of January 1, 1999, plus any additional expenditures authorized since that date. During the period this Order to Hold Separate is effective, Respondent shall make available for use by CMR funds sufficient to perform all necessary routine maintenance to, and replacements of, CMR's assets. Respondent shall provide CMR with such funds as are necessary to maintain the viability, competitiveness, and marketability of CMR until the date the divestiture is completed, provided CMR may not assume any new long-term debt except as necessary to meet a competitive threat and as approved by the Independent Auditor.

12. Respondent shall continue to provide the same support services, as listed and as attached hereto as Confidential Appendix III, to CMR as are being provided to CMR as of the date Respondent signs the Consent Agreement for a period not to exceed six (6) months; provided:

a. Respondent may charge CMR the same fees, if any, charged by Respondent for such support services as of the date Respondent signs the Consent Agreement.

b. Respondent shall assure that personnel providing support services retain and maintain all Material Confidential Information of CMR on a confidential basis, and, except as is permitted by this Order to Hold Separate, shall prohibit such persons from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's businesses other than CMR. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of CMR.

c. Respondent shall direct the Management Team to list, within ten (10) days of Respondent's signing the Consent Agreement, which CMR Assets identified in Paragraph I.C.11 are to be maintained by CMR and which CMR Assets identified in Paragraph I.C.11 are to be maintained by Respondent. For all assets identified by the Management Team to be maintained by Respondent, Respondent shall provide all necessary maintenance and service. For all assets identified by the Management Team to be maintained by CMR, Respondent shall grant any access and assistance as is necessary for CMR to maintain the assets.

d. Respondent shall provide all assistance and cooperation necessary to allow CMR to perform the support services identified in Confidential Appendix III. within six (6) months from the date this Consent Agreement is signed.

e. For services being provided by CMR to VNU as of the date this Consent Agreement is signed, CMR and VNU may contract for CMR to provide those services to VNU for a transitional period not to exceed six (6) months from the date this Consent Agreement is signed.

13. Except as provided in this Order to Hold Separate, Respondent shall not employ or make offers of employment to CMR employees during the Hold Separate Period. The acquirer of CMR shall have the option of offering employment to the CMR employees. After the Hold Separate Period, Respondent may offer employment to CMR employees who have not been offered employment or have been terminated by the acquirer of CMR. Respondent shall not interfere with the employment of CMR employees by the acquirer of CMR; shall not offer any incentive to CMR employees to decline employment with the acquirer of CMR or accept other employment with the Respondent; shall remove any impediments that may deter CMR employees from accepting employment with the acquirer of CMR, including but not limited to, any non-compete or confidentiality provisions of employment or other contracts with CMR or VNU that would affect the ability of CMR employees to be employed by the acquirer of CMR; and shall continue the payment of all accrued bonuses, pensions and other accrued benefits to which CMR employees would otherwise have been entitled had they remained in the employment of the Respondent.

14. For a period of one (1) year commencing on the date CMR is divested, Respondent shall not employ or make offers of employment to Key Employees or Senior Staff Employees who have been offered employment with the acquirer of CMR, unless the individual has been terminated by the acquirer of CMR.

15. Notwithstanding subparagraph II.B.13., Respondent may offer a bonus or severance to those CMR employees that continue their employment with CMR until the date that CMR is divested.

16. Respondent shall not exercise direction or control over, or influence directly or indirectly, CMR, the Independent Auditor, the Management Team, or any of its operations; provided, however, that

Respondent may exercise only such direction and control over CMR as is necessary to assure compliance with this Order to Hold Separate or the Consent Agreement, or with all applicable laws.

17. Except for the Management Team and except to the extent provided in subparagraphs II.B.12 and II.B.16., Respondent shall not permit any non-CMR employees, officers, or directors to be involved in the operations of CMR.

18. Respondent shall maintain the viability, competitiveness, and marketability of CMR; shall not sell, transfer, or encumber CMR's assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of CMR.

19. If the Independent Auditor ceases to act or fails to act diligently and consistent with the purposes of this Order to Hold Separate, the Commission may appoint a substitute Independent Auditor in the same manner as provided in Paragraph II.B.1. of this Order to Hold Separate.

20. Respondent shall ensure that CMR employees continue to be paid, until the divestiture of CMR is accomplished, their salaries, all accrued bonuses, pensions and other accrued benefits to which the CMR employees would otherwise have been entitled had they remained in the employment of VNU during the Hold Separate Period.

21. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets pursuant to the Consent Agreement, or complying with this Order to Hold Separate or the Consent Agreement, Respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information, not in the public domain, about CMR. Respondent may receive, on a regular basis, aggregate financial information relating to CMR necessary to allow Respondent to prepare United States consolidated financial reports and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

22. Within thirty (30) days after the date Respondent signs the Consent Agreement and every thirty (30) days thereafter until the

Order to Hold Separate terminates, the Independent Auditor or the Management Team shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Order to Hold Separate. Included within that report shall be the Independent Auditor's or the Management Team's assessment of the extent to which CMR is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

III.

It is further ordered, That Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Hold Separate.

IV.

It is further ordered, That for the purposes of determining or securing compliance with this Order to Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to its principal United States office, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondent relating to compliance with this Order to Hold Separate; and

B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

V.

It is further ordered, That this Order to Hold Separate shall terminate on the earlier of:

