ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Omnicom Group, Inc. and The Interpublic Group of Companies, Inc.
File No. 251-0049

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Omnicom Group, Inc. ("Omnicom") designed to remedy the anticompetitive effects resulting from Omnicom's proposed acquisition of The Interpublic Group of Companies ("IPG"). Under the terms of the proposed Consent Agreement, Omnicom is prohibited from entering or attempting to enter into any agreement with any third party that hinders advertising based on political or ideological viewpoints and to cooperate with any FTC investigation or litigation relating to media buying services.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

Under the terms of the Agreement and Plan of Merger dated December 8, 2024, Omnicom will acquire IPG in exchange for $13.5 billion (the "Acquisition"). The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate 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, by substantially lessening competition or tending to create a monopoly in the relevant market for media buying services. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be lost in these markets as a result of the proposed Acquisition and eliminates Omnicom's ability to participate in any ongoing or future coordination in the market based on political or ideological viewpoints.

THE PARTIES

Headquartered in New York, New York, Omnicom is the parent company of Omnicom Media Group and a network of creative advertising agencies, including BBDO, DDB, TBWA, and the DAS Group of Companies. Omnicom offers additional services, such as public relations, through other subsidiaries.

IPG is a global advertising agency headquartered in New York, New York. IPG is the parent company of IPG Mediabrands and several creative advertising agencies, most notably

McCann Worldgroup and MullenLowe. IPG offers additional services, such as public relations, sports marketing, and talent representation, through other subsidiaries.

RELEVANT PRODUCT AND MARKET STRUCTURE

Advertising agencies, such as Omnicom and IPG, provide a variety of marketing services to advertising entities. As part of these services, advertising agencies negotiate media purchases of advertising inventory across many types of media and make purchases on behalf of, or for later resale to, customers or potential customers (advertisers). There are currently six major global advertising holding companies ("holdcos"): Publicis, WPP, Omnicom, IPG, Dentsu, and Havas. Advertising holdcos are conglomerates of acquired independent agencies.

Advertising agencies' two primary services are creative advertising (e.g., slogans, branding, visual designs, commercial) and media buying (e.g., negotiating with television networks to place advertisements at primetime or buying search ads on Google). Media buying agencies, such as Omnicom's Hearts & Science, represent advertisers in negotiations with media publishers, such as television broadcasters, print, radio, and digital advertisers. The media buying agency negotiates pricing, ad placement, sponsorships, exclusives, and other terms and conditions on behalf of the advertiser. With its advertiser client's input, the media buying agency will also typically prepare a media buying plan to determine where the advertiser will seek to place advertisements

The market for media buying services in the United States is concentrated due to the historical significance of agency scale in media buying negotiations. Because advertisers tend to view a certain threshold scale as necessary to achieve favorable results in negotiations with media publishers, advertisers seek larger media buying agencies to represent them during media buying negotiations. For global advertisers seeking to reach customers in the United States, the six holdcos possess the scale that these advertisers seek to aid their negotiations with media publishers, especially non-digital publishers. Each advertiser typically contracts with a single holdco to handle its media buying needs in the United States.

COMPETITIVE EFFECTS OF THE ACQUISITION

This market is characterized by a history of coordination. Major advertisers have discussed and ultimately declined to advertise on certain websites and applications. These decisions appear to have been coordinated through one or more associations of advertising industry players, including ad agencies.

A coordinated refusal to deal among media buying services firms provides a direct economic benefit to those firms by ensuring that they are not competitively disadvantaged when they decline the opportunity to reach potential audiences on boycotted platforms. These actions can have harmful downstream economic effects on media publishers that need access to advertising and associated revenue. They also harm media consumers, who are deprived of the viewpoints of publishers that are forced to scale back or eliminate their products due to lack of revenue. Coordination may further distort the advertising market by artificially restricting ad placement and raising the cost of advertising space that is not boycotted.

The proposed acquisition will cause the remaining competitors to face fewer impediments to furthering and refining the ongoing coordination of placement of advertisements, monitoring any coordinated refusal, and punishing one another for taking actions that disrupt their coordination. The potential for such coordination is increasingly difficult to address if market structure is allowed to consolidate through merger.

ENTRY CONDITIONS

De novo entry in the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed acquisition. Respondents and the other holdcos have dozens of offices across the globe, hundreds of advertiser clients, longstanding relationships with media publishers, and manage multi-billion-dollar portfolios of media spend that would be difficult for any competitor to replicate via entry or expansion.

THE CONSENT AGREEMENT

The proposed Consent Agreement effectively remedies the competitive concerns raised by the Proposed Acquisition. Pursuant to the proposed Consent Agreement, the merged firm would be required to refrain from taking actions that would create or further coordination between Omnicom and any other media buyer. Specifically, Omnicom is barred from, unilaterally or in concert with other companies:

(1) directing, because of the political or ideological viewpoints of a Media Publisher or the content running alongside that publisher's advertising inventory, its customers' advertising spend towards or away from that Media Publisher;

(2) refusing, because of the political or ideological viewpoints or political content of a Media Publisher, an advertising customer's request to direct advertising to that Media Publisher;

(3) refusing, because of an Advertiser's political or ideological viewpoints, to accept that Advertiser as a customer;

(4) creating, proposing, or using "exclusion lists," whatever the source, that differentiate between Media Publishers on the basis of political or ideological viewpoints to determine or direct advertisers advertising placements.

The proposed Consent Agreement provides that none of these prohibitions shall inhibit Omnicom from acting as an agent to carry out the independent wishes of each of its advertising customers. Advertising customers that have specific preferences about which Media Publishers their ads may be placed with may still express those preferences to Omnicom, and Omnicom may carry them out. If an Advertising customer, on its own initiative, wishes to design an exclusion list of its own, Omnicom may implement that exclusion list.

The proposed Consent Agreement also contains provisions to help ensure that Omnicom complies with its obligations. It contains appropriate reporting, notice and access requirements, and obligates Omnicom to cooperate with the Commission in any investigation relating to the same industry or Omnicom's compliance with the proposed Consent Agreement.

The proposed Consent Agreement has a term of ten years.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Consent Agreement to aid the Commission in determining whether it should make the proposed Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.