

**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 located at Ceylonspoort 5-25, 2003 E.A. Haarlem, The Netherlands. VNU owns and operates, among other things, the Competitive Media Reporting Division.
2. Respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.
3. Respondent waives:
 - a. any further procedural steps;
 - b. the requirement that the Commission's Order to Hold Separate and Decision & Order, here attached and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order to Hold Separate or Decision & Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.

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
Vice-President and General Counsel

FEDERAL TRADE COMMISSION
Michael R. Moiseyev
Norman A. Armstrong, Jr.
Yolanda R. Gruendel
Julie K. McConnell
Attorneys

Randall Long
Law Clerk

By: _____
Michael R. Moiseyev

APPROVED:

Ann Malester
Assistant Director

Molly S. Boast
Acting Senior Deputy Director

Richard G. Parker
Director
Bureau of Competition

**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:
 - 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.

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 purchase agreement. The lists shall state each individual's name, position or positions held from January 1, 1999 until the date of the purchase agreement, address, telephone number, and a description of the duties and work performed by the individual in connection with the collection, management, storage, delivery,

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. A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest CMR.
 3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.
 4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
 5. The trustee shall have full and complete access to the personnel, books, records and facilities related to CMR or to any other relevant information, as the trustee may request. Respondent shall develop such financial or

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.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.
11. In the event that the trustee determines that he or she is unable to divest CMR in a manner consistent with the Commission's purpose as described in Paragraph II. of this order, the trustee may divest additional ancillary assets of Respondent related to CMR and effect such arrangements as are necessary to satisfy the requirements of this order.
12. The trustee shall have no obligation or authority to operate or maintain CMR.
13. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

XVI.

IT IS FURTHER ORDERED that Respondent shall, no later than the date on which it accomplishes the divestiture, extend the Nielsen Ratings Data License Agreement, attached hereto as Confidential Appendix II, for a minimum period of five (5) years commencing on the date CMR is divested, and shall not terminate or suspend the Nielsen Ratings License Agreement, or suspend performance under that Agreement, for any reason prior to the expiration of the five (5) year minimum period. The Nielsen Ratings data referred to in the Nielsen Ratings Data License Agreement shall include all Nielsen Ratings data provided to any third party licensed to process and redistribute Nielsen Ratings data. **Provided, however,** that Respondent may only charge CMR the annual license fee specified in Paragraphs V. A. 1(a)(ii), V. A. 1(b)(ii) and V. A. 1(c)(ii) of the Nielsen Ratings Data License Agreement, and may not charge any license fees that are based on CMR's revenues. It is further ordered that Respondent shall not receive any Material Confidential Information from CMR pursuant to the Nielsen Ratings Data License Agreement.

XVII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. and III. of this order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this order and with the Order to Hold Separate. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture. The final compliance report required by this Paragraph V. A. shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

- B. One year from the date of divestiture of CMR and annually thereafter until the order terminates, Respondent shall file a verified written report to the Commission setting forth in detail the manner in which it has complied and is complying with this order.

XVIII.

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.

XIX.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this order, 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; 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.

XX.

IT IS FURTHER ORDERED that this order shall terminate five (5) years after the divestiture required in Paragraph II. A. of this order has been accomplished.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: