

**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. C-3900
VNU N.V.,)	ORDER TO HOLD SEPARATE
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

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

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

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

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.

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:

- C. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- D. The day after the divestiture of CMR, as required by the Decision & Order contained in the Consent Agreement, is completed.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: October 22, 1999

ATTACHMENT A
NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

VNU N.V. (“VNU”) has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets.

As used herein, the term "CMR" means VNU’s Competitive Media Reporting Division, as defined in Paragraph I. C. of the Decision & Order. Under the terms of the Consent Agreement, VNU must divest CMR within six (6) months from the date VNU signs the Consent Agreement.

The term "Acquisition" means the acquisition of Nielsen Media Research, Inc. (publicly announced on August 16, 1999).

CMR must be managed and maintained as a separate, ongoing business, independent of all other VNU businesses until it is divested. All competitive information relating to CMR must be retained and maintained by the persons involved in the operation of CMR on a confidential basis, and 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 other VNU business. Similarly, persons involved in similar activities in VNU shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves CMR.

Any violation of the Consent Agreement may subject VNU to civil penalties and other relief as provided by law.