**ANALYSIS OF AGREEMENT CONTAINING**
**CONSENT ORDER TO AID PUBLIC COMMENT**
*In the Matter of Valassis Communications, Inc., File No. 051 0008*

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Valassis Communications, Inc. ("Valassis" or "Respondent"), a publisher of co-operative free-standing inserts ("FSIs") with its principal place of business located at 19975 Victor Parkway, Livonia, Michigan 48152. The agreement settles charges that Valassis violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by inviting its only FSI rival to collude so as to eliminate competition. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed order. The analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

## I. The Complaint

The allegations of the complaint are summarized below:

FSIs are multi-page coupon booklets commonly found in Sunday newspapers across the country. FSIs are an efficient means for consumer packaged goods manufacturers and other firms to distribute coupons on a mass scale. For more than a decade, there have been only two U.S. publishers of FSIs: Valassis and News America Marketing ("News America"). On a typical Sunday, both Valassis FSIs and News America FSIs are distributed by hundreds of newspapers to over 50 million households.

### A. The FSI Price War

Between 1998 and 2001, Valassis and News America each published approximately 50 percent of FSI pages. In June 2001, Valassis notified its clients of a five percent price increase, bringing Valassis' floo90In June 2001, Vn.7600 151000 TD(ges. In om $6T7fe 2)Tjull2.4g278.r thousAmerinse

### B. Valassis Invites its Competitor to Collude

In mid-2004, Valassis determined that its aggressive pursuit of greater market share was no longer serving the company's interests. Company executives developed a new strategy. Valassis decided to communicate to News America an offer to cease competing for News America customers, provided that News America ceased competing for Valassis customers. Valassis intended this offer to enable the firms to raise FSI prices within their respective uncontested domains and to end the FSI price war.

As a publicly traded corporation, Valassis holds a conference call with securities analysts on a quarterly basis. Any person may listen to the call live over the Internet or obtain a transcript of the call from the Valassis website. Valassis held its second quarter analyst call on July 22, 2004.[1] Valassis executives were aware that News America representatives would be monitoring the call, and they determined to use this conference call as the vehicle to communicate Valassis' offer to News America. To ensure that News America clearly understood the terms of the Valassis offer, including what Valassis expected in return f

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[1]     A transcript of the earnings conference call is annexed to the complaint as Exhibit A.

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[2]       Evidence reviewed in the course of the Commission's investigation did not support a charge that the anticompetitive ag

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[6]    *See generally* P. Areeda & H. Hovenkamp, VI ANTITRUS

information about company strategy.  The proposed order also includes a safe harbor provision permitting Valassis to communicate publicly any information the public disclosure of which is required by the federal securities laws.

The proposed order will expire in 20 years.