

Complaint

IN THE MATTER OF

**NIELSEN HOLDINGS N.V.
AND
ARBITRON INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT.

*Docket No. C-4439; File No. 131 0058
Complaint, February 24, 2014 – Decision, February 24, 2014*

This consent order addresses the \$1.26 billion acquisition by Nielsen Holdings N.V. of certain assets of Arbitron Inc. The complaint alleges that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the market for national syndicated cross-platform audience measurement services. The consent order requires the divestiture of assets related to Arbitron's cross-platform audience measurement business, including data from its representative panel.

Participants

For the *Commission*: Jordan S. Andrew, Erin L. Craig, William Huynh, Stephen A. Mohr, Brian O'Dea, Catherine M. Sanchez, and Aylin M. Skroejer.

For the *Respondents*: Aidan Synnott, Paul, Weiss, Rifkind, Wharton & Garrison, LLP; and Roxann Henry, Morrison and Foerster.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Nielsen Holdings N.V., ("Nielsen"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Arbitron Inc. ("Arbitron"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and

Complaint

Section 5 of the FTC 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. RESPONDENTS

1. Respondent Nielsen 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 85 Broad Street, New York, New York 10004.

2. Respondent Nielsen is engaged in, among other things, the sale of various audience measurement services, including television and cross-platform, to content providers, advertising agencies, and advertisers.

3. Respondent Arbitron is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9705 Patuxent Woods Drive, Columbia, Maryland, 21046-1572.

4. Respondent Arbitron is engaged in, among other things, the sale of various audience measurement services, including radio and cross-platform, to content providers, advertising agencies, and advertisers.

5. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

6. Pursuant to an Agreement and Plan of Merger dated December 17, 2012 (the “Agreement”), Nielsen proposes to acquire Arbitron for approximately \$1.26 billion (the “Acquisition”).

Complaint

III. RELEVANT MARKET

7. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the market for national syndicated cross-platform audience measurement services.

8. For the purposes of this Complaint, the relevant geographic market in which to analyze the effects of the Acquisition is the United States.

IV. STRUCTURE OF THE MARKET

9. Cross-platform audience measurement services report the overall unduplicated audience size (i.e., reach) and frequency of exposure for programming content and advertisements across multiple media platforms, with corresponding individual audience demographic data. Advertisers use audience measurement services to determine which programming content is most likely to deliver audiences within their desired category of potential customers and use such data to make advertising campaign placement and media buying decisions. Similarly, media companies use audience measurement services to assess the value of their own advertising inventory and to inform programming decisions.

10. A national syndicated cross-platform audience measurement service is one that provides all subscribers with the same universe of data, showing the relative national audiences for various programming and advertising. Although there is no commercially available national syndicated cross-platform audience measurement service today, demand for such a service by advertisers and media companies is increasing. Nielsen and Arbitron (in partnership with comScore) have been developing their own national syndicated cross-platform audience measurement services although efforts to date have produced only custom projects or customer-sponsored beta-tests. Nielsen and Arbitron are the best-positioned firms to develop (or partner with others to develop) a national syndicated cross-platform audience measurement service because only Nielsen and Arbitron maintain large, representative panels capable of measuring television with the required individual-level demographics, the data source

Complaint

preferred by advertisers and media companies. Additionally, both Nielsen and Arbitron have important existing audience measurement technology assets. This makes them better positioned to develop a national syndicated cross-platform audience measurement service than companies that lack large representative panels and existing audience measurement technology assets of the quality and character of Nielsen's and Arbitron's.

V. ENTRY CONDITIONS

11. Sufficient and timely entry or expansion into the market for national syndicated cross-platform audience measurement services is unlikely to deter or counteract any anticompetitive effects created by the Acquisition. In order to compete most effectively in the provision of cross-platform audience measurement services, a firm must have access to television audience data with individual demographics. Entry would not take place in a timely manner because of the significant expense and time required to recruit a representative panel of individuals and develop the necessary technology to generate the data needed to provide the television audience measurement component of a national syndicated cross-platform audience measurement service.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the market for national syndicated cross-platform audience measurement services 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, by among other things:

- a. by eliminating future competition between Nielsen and Arbitron for the provision of national syndicated cross-platform audience measurement services;
- b. by increasing the likelihood that Respondent Nielsen would unilaterally exercise market power in the market for national syndicated cross-platform audience measurement services;

Decision and Order

- c. by increasing the likelihood that U.S. customers would be forced to pay higher prices for national syndicated cross-platform audience measurement services.

VII. VIOLATIONS CHARGED

13. The Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 6, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-fourth day of February, 2014, issues its Complaint against said Respondent.

By the Commission, Commissioner Ohlhausen recused, and Commissioner Wright dissenting.

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Nielsen Holdings N.V. (“Nielsen”) of the outstanding voting shares of Respondent Arbitron Inc. (“Arbitron”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for consideration and which, if issued by the Commission, would charge Respondents 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

Decision and Order

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, 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 conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Nielsen 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 85 Broad Street, New York, New York 10004.
2. Respondent Arbitron is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 9705 Patuxent Woods Drive, Columbia, Maryland 21046-1572.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the Respondents, and this proceeding is in the public interest.

Decision and Order

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Nielsen” means Nielsen Holdings N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Nielsen Holdings N.V., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, the term “Nielsen” shall include Arbitron.
- B. “Arbitron” means Arbitron Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Arbitron Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquirer” means a Person approved by the Commission to acquire particular assets or rights that Respondents are required, pursuant to this Order, to assign, grant, license, divest, transfer, deliver, or otherwise convey.
- D. “Acquisition” means Nielsen’s acquisition of Arbitron pursuant to an Agreement and Plan of Merger executed December 17, 2012.
- E. “Arbitron Calibration Panel” means the subset of individuals recruited from the Arbitron PPM Panel that provides single source reach levels and overlaps for television, tablets, smartphones, personal computers, and radio (or any other device that performs similar functions), by asking the panelists in addition to their Arbitron PPM Panel responsibilities to download

Decision and Order

software on their home personal computer, tablets, and smartphones (or any other device that performs similar functions); “Arbitron Calibration Panel” includes the panel of people as expanded pursuant to Paragraph IV. of this Order.

- F. “Arbitron PPM Panel” means the panel of individuals in the U.S. who have been recruited by Arbitron to carry Arbitron’s Portable People Meter® (“PPM”) device to measure their exposure to encoded audio signals.
- G. “Balance of Nation Panel” means a group of individuals recruited to supplement the Arbitron PPM Panel, such that when combined with the Arbitron PPM Panel, national audience projections are possible or enhanced.
- H. “Calibration Panel Data” means the data from the Arbitron Calibration Panel or from the expansion of the Arbitron Calibration Panel.
- I. “Commission” means Federal Trade Commission.
- J. “comScore” means comScore, Inc., a corporation located at 11950 Democracy Drive, Suite 600, Reston, Virginia 20190.
- K. “Confidential Information” means information not in the public domain, including, but not limited to, information regarding methodology, encoding share, customer identity, or customer contract details. “Confidential Information” shall not include any information that: (1) is publicly available when provided, disclosed, or otherwise made available; or (2) becomes publicly available after it is provided, disclosed, or otherwise made available by means other than a violation of this Order or Respondents’ breach of a confidentiality or non-disclosure agreement.
- L. “Cross-Platform Services” means any U.S. service that measures viewing of content, for the purpose of

Decision and Order

determining the size and composition of the audience of such programming and/or advertising across multiple distribution platforms including, but not limited to, television, online, mobile, radio and tablets (or any other device that performs similar functions), but in all events measuring at least television and online, and related insights and analytics.

- M. “Direct Cost” means cost not to exceed the cost of labor, material, equipment, travel, and other expenditures to the extent the costs are directly incurred to provide the assistance or services required by this Order and that would not otherwise be incurred by Respondents. “Direct Cost” to the Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.
- N. “Encoding Equipment” means all equipment relating to the encoding of audio signals for detection by PPMs, including updates thereto.
- O. “Encoding Technology” means all intellectual property, rights, know-how, licenses, and agreement related to the encoding of audio signals for detection by PPMs, including updates thereto.
- P. “ESPN” means the multi-platform media company, ESPN, Inc., a subsidiary of The Walt Disney Company, which focuses on sports-related programming including live and recorded event telecasts, sports talk shows, and other original programming, that distributes its content on multiple platforms including cable and satellite television, online, mobile, and radio.
- Q. “Key Arbitron Employees” means the employees listed on Confidential Exhibit A of this Order.
- R. “Link Meter Technology” means (1) all software (source code and object code) intended for use in Project Blueprint that enables comScore to

Decision and Order

synchronize its media measurement data with the panelists in the Arbitron Calibration Panel; and (2) all other rights and interests arising out of, in connection with, or in relation to such software, including, but not limited to, all rights to causes of action and remedies related thereto.

- S. “MRC” means the Media Rating Council, which accredits audience measurement services.
- T. “Monitor” means the monitor appointed pursuant to Paragraph VI. of this Order.
- U. “Panelist Characteristics” means the following information, provided on a non-personally identifiable basis, for a panelist: (1) age; (2) gender; (3) race/ethnicity; (4) presence of children in the household; (5) size of household; (6) time zone; (7) DMA and metro market code; and (8) five-digit zip code.
- V. “PPM Equipment” means all equipment related to the operation of, and collection of data from, PPMs, including updates thereto.
- W. “PPM Technology” means all intellectual property rights, know-how, licenses, and agreements related to the operation of, and collection of data from, PPMs, including updates thereto.
- X. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof.
- Y. “Project Blueprint” means the collaboration between Arbitron and comScore for ESPN as contemplated by (1) the Multi-Platform Research Agreement with ESPN between Arbitron, comScore, and ESPN, executed August 8, 2012; and (2) the Collaboration

Decision and Order

Agreement between Arbitron and comScore, effective August 1, 2012.

- Z. “Prospective Acquirer” means the Person that Respondents (or the Divestiture Trustee, if appointed) intend to submit or have submitted to the Commission for the Commission’s prior approval pursuant to Paragraph II.A. (or Paragraph VII., if applicable) of this Order.
- AA. “Radio Data” means all data from the Arbitron PPM Panel that reflect Panelist Characteristics, dictionary of reported data fields, and records of encoded radio content detected by the panelists’ PPMs as reported consistent with the practices Arbitron used for reporting data for Project Blueprint.
- BB. “Remedial Agreement” means the agreement between Respondents and the Acquirer that includes the provisions required by this Order and that has been approved by the Commission, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be offered to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
- CC. “Television Data” means all data from the Arbitron PPM Panel that reflect Panelist Characteristics, dictionary of reported data fields, and records of encoded video content detected by the panelists’ PPMs as reported consistent with the practices Arbitron used for reporting data for Project Blueprint, and additionally including time shifted viewing data (which shall include video on demand) identified as such, which additional time shifted viewing data shall be provided to the Acquirer at Direct Cost.

Decision and Order

II.**IT IS FURTHER ORDERED** that:

- A. No later than three (3) months after Respondents execute the Agreement Containing Consent Order, Respondents shall divest the Link Meter Technology absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission (including execution of a Remedial Agreement) and shall, pursuant to a Remedial Agreement, license to that Acquirer, on a non-exclusive basis, all know-how related to the Link Meter Technology;
 - 1. Respondents shall obtain, and the Acquirer shall grant to Respondents, a royalty-free right to use the Link Meter Technology, for purposes of complying with the requirements of this Order;
 - 2. *Provided, however,* that both the Acquirer and Respondents shall have unrestricted rights to use the know-how relating to the Link Meter Technology and each shall covenant not to bring litigation against the other to enjoin or seek recompense for the use of the Link Meter Technology or software designed to perform similar functions.
- B. No later than the date Respondents divest the Link Meter Technology to the Acquirer pursuant to Paragraph II.A., above, Respondents shall, pursuant to a Remedial Agreement, for a period no less than eight (8) years from the date of the divestiture required by Paragraph II.A., above:
 - 1. License to the Acquirer, on a royalty-free basis, for use in developing and providing a calibration panel

Decision and Order

and/or Balance of Nation Panel for the provision of Cross-Platform Services:

- a. the Encoding Technology; and
 - b. the PPM Technology; and
2. Provide, at Direct Cost to the Acquirer, such technical assistance (including know-how relating to the Link Meter Technology), Encoding Equipment, and/or PPM Equipment, as requested by the Acquirer to enable the Acquirer to:
 - a. provide Cross-Platform Services, including to encode additional content and/or advertising and developing and managing any panel using the PPM Technology for Cross-Platform Services provided by the Acquirer to its customers, and
 - b. obtain accreditation by the MRC in connection with the provision of Cross-Platform Services.
- C. No later than the date Respondents divest the Link Meter Technology to the Acquirer pursuant to Paragraph II.A., above, Respondents shall, pursuant to a Remedial Agreement and consistent with the requirements of Paragraph IV.B.1., for a period of no less than eight (8) years from the date of the divestiture required by Paragraph II.A., above, provide to the Acquirer for purposes of developing and providing Cross-Platform Services to its customers, and grant to the Acquirer a perpetual, royalty-free license (for data delivered during the term of the Remedial Agreement) for the use of:
1. Television Data;
 2. Radio Data; and
 3. Calibration Panel Data;

Decision and Order

Respondents shall provide the Television Data, Radio Data, and Calibration Panel Data (except for five-digit zip code data) to the Acquirer on a respondent-level basis and an aggregated basis by specified customers' stations, networks, websites, and/or other media distribution platforms, as identified by the Acquirer, in such form, at such frequency as reasonably requested by the Acquirer, but in no event less frequent than the frequency Arbitron used for reporting data for Project Blueprint, and according to such metrics as reasonably requested by the Acquirer; *provided, however*, that, with respect to five-digit zip code data, Respondents shall provide the total number of individuals by zip code as reasonably requested by the Acquirer (but at least monthly); and if Respondents make any zip code data, or any segment reporting derived from zip codes, available to its customers of national Cross-Platform Services, then Respondents shall provide five-digit zip code data to the Acquirer sufficient to provide similar information to Acquirer's customers, as reasonably requested by the Acquirer; *provided further, however*, that Respondents shall have and retain full and exclusive right, title, and ownership interest in and to any information provided by Respondents to the Acquirer except that the Acquirer shall have the right to use the information to develop and provide Cross-Platform Services to its customers pursuant to the Remedial Agreement; *provided further, however*, that, with respect to Radio Data, the Acquirer may not disclose Radio Data to any customer of the Acquirer who is not also a subscriber to Arbitron radio ratings.

D. Respondents shall:

1. Have no authority to, and shall not exercise or attempt to exercise any authority to, market or price the Cross-Platform Services that the Acquirer sells to the Acquirer's customers,
2. Not be entitled to any revenue, or portion thereof, that the Acquirer collects from its customers, or attempt to collect any revenue, or portion thereof,

Decision and Order

from the Acquirer attributable to revenue that the Acquirer collects from its customers; and

3. Not make any change to the PPM Technology or Encoding Technology that has the effect of eliminating or impairing the ability of the PPM to collect records of encoded video content.
- E. The Remedial Agreement shall be incorporated by reference into this Order and made a part hereof. Respondents shall comply with all terms of the Remedial Agreement, and any breach by Respondents of any term of the Remedial Agreement shall constitute a failure to comply with this Order. If any term of the Remedial Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order. No Remedial Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreement.
- F. The purpose of this Paragraph II is to ensure that the Acquirer can offer Cross-Platform Services, with the goal of providing a national syndicated cross-platform audience measurement service, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s complaint.

III.

IT IS FURTHERED ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Key Arbitron Employee, as and to the extent permitted by law:

Decision and Order

1. Name, job title or position, date of hire, and effective service date;
 2. A specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. The most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus; if any;
 5. Employment status (i.e. active or on leave or disability, full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Key Arbitron Employee;
- B. No later than ten (10) days after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Key Arbitron Employees, and to make offers of employment to any one or more of the Key Arbitron Employees.
- C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Key Arbitron Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Key Arbitron Employees by the Prospective Acquirer;

Decision and Order

- D. Remove any impediments within the control of Respondents that may deter Key Arbitron Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Key Arbitron Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.
- E. For Key Arbitron Employees who have accepted offers of employment with the Acquirer, not, for a period of one (1) year following the date such Key Arbitron Employee begins employment with the Acquirer, directly or indirectly, solicit or otherwise attempt to induce such Key Arbitron Employees to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Key Arbitron Employees; or
 2. Hire Key Arbitron Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Key Arbitron Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined

Decision and Order

the offer, or where the employee's employment has been terminated by the Acquirer.

- F. For any employees (except those listed on Confidential Exhibit B) who are terminated by Respondents who had responsibilities for or were involved in Project Blueprint or who are engineers knowledgeable about the Encoding Technology, Respondents shall remove any impediments within the control of Respondents that may deter such employee from accepting employment with the Acquirer, including, but not limited to, removal, solely to the extent needed for the Acquirer's provision of Cross-Platform Services, of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to such an employee who receives a written offer of employment from the Acquirer.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Manage and maintain (and expand as required by Paragraph IV.A.2., below) the Arbitron Calibration Panel consistent with Respondents' own business practices and under the following conditions:
 - a. Respondents shall assure that the Arbitron Calibration Panel comprises at least two thousand panelists no later than six (6) weeks after the date of the signing of the Remedial Agreement;
 - b. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to managing and maintaining the Arbitron Calibration Panel; *provided, however*, that Respondents may enter into a Remedial

Decision and Order

Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;

- c. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the Arbitron Calibration Panel; for the avoidance of doubt, Respondents shall retain all right, title and ownership interest in all underlying data from the PPM Panel that is an input into the data generated by the Arbitron Calibration Panel;
- d. at the Acquirer's option, Respondents shall have the right to use the data generated by the Arbitron Calibration Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff;
- e. *provided, however*, that Respondents shall have no obligation to manage and maintain the Arbitron Calibration Panel if the Acquirer requests in writing (with copies to the Commission staff and the Monitor) that it no longer requires that the Arbitron Calibration Panel be maintained; and
- f. *provided, further, however* that Respondents shall have no obligation to continue to manage and maintain the Arbitron Calibration Panel if (1) the Acquirer fails to pay the Direct Costs directly attributable to managing and maintaining the Arbitron Calibration Panel as required by the Remedial Agreement; (2) Respondents notify the Acquirer, the Monitor, and Commission staff of Acquirer's failure to pay Direct Costs and give the Acquirer thirty (30) days from receiving that notice to cure the failure; and (3) the Acquirer fails to cure.

Decision and Order

2. At the request of the Acquirer, expand the Arbitron Calibration Panel beyond the two (2) thousand panelists required in Paragraph IV.A.1.a. to enable national projections under the following conditions:
 - a. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to the expansion of the Arbitron Calibration Panel; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;
 - b. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the expansion of the Arbitron Calibration Panel; and
 - c. at the Acquirer's option, Respondents shall have the right to use the data generated by the expansion of the Arbitron Calibration Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff;
- B. Respondents shall manage and maintain (and expand as required by Paragraph IV.B.2. below) the Arbitron PPM Panel consistent with Respondents' own practices and under the following conditions:
 1. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to the cost of providing the data generated by the Arbitron PPM Panel to the Acquirer; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission; and

Decision and Order

2. At the request of the Acquirer, expand the Arbitron PPM Panel to enable national projections under the following conditions:
 - a. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to such expansion and to the collection of those data that are provided to and used solely by the Acquirer; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;
 - b. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the expansion of the Arbitron PPM Panel; and
 - c. at the Acquirer's option, Respondents shall have the right to use the data generated by the expansion of the Arbitron PPM Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff.

V.

IT IS FURTHER ORDERED that after the date of the divestiture of the Link Meter Technology, Respondents shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish Confidential Information of the Acquirer, directly or indirectly, to or with any of Respondents' employees, officers, directors, agents or representatives with responsibilities relating to Respondents' audience measurement business, except as necessary to comply with the requirements of this Order.

Decision and Order

VI.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that Respondents comply with all obligations and perform all responsibilities required by this Order and the Remedial Agreement.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents’ compliance with the requirements of this Order and the Remedial Agreement.
- D. If a Monitor is appointed by the Commission, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this

Decision and Order

Order and in consultation with the Commission or Commission staff.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve until termination of this Order.
4. The Monitor shall report in writing to the Commission every sixty (60) days concerning the Monitor's duties and responsibilities.
5. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order and the Remedial Agreement.
6. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
7. Respondents shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of

Decision and Order

counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

8. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to, or receiving information from, the Commission.
9. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
10. In the event the Commission determines that the Monitor is no longer willing or able to perform his/her duties under this Order, or has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
11. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
12. The Monitor appointed pursuant to this Paragraph VI. may be the same person appointed as the Divestiture Trustee pursuant to Paragraph VII. of this Order.

Decision and Order

VII.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the divestiture and licensing obligations of Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to perform Respondents' obligations in a manner that satisfies the requirements of this Order, including, but not limited to, Paragraphs II. and IV. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures in the media industry. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
 - 1. No later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval

Decision and Order

of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.

2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.
 - b. the Divestiture Trustee shall have six (6) months after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six (6) month period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraphs II. and IV. of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period for only an additional three (3) months.
 - c. subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request.

Decision and Order

Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph VII. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

- d. the Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously subject to the provisions of Paragraphs II. and IV., including, but not limited to, the requirement that the Acquirer pay Direct Costs as required by Paragraphs IV.A.1.b, IV.A.2.a., IV.B.1., and IV.B.2.a. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture 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 Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.
- e. the Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to

Decision and Order

employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

- f. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
- g. the Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
- h. the Divestiture Trustee shall report in writing to Respondents and to the Commission every

Decision and Order

thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

- i. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 - j. the Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- C. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph VII. may be the same person appointed as the Monitor pursuant to Paragraph VI. of this Order.

Decision and Order

VIII.**IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days after the date this Order is issued, and every thirty (30) days thereafter until the Link Meter Technology is divested and the Remedial Agreement entered into pursuant to Paragraph II of this Order is approved by the Commission, Respondents shall submit to the Commission (and a complete copy to the Monitor) a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. For the period covered by this report, the report shall include, but not be limited to, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of this Order, including a description of all substantive contacts or negotiations and the identity and contact information of all parties contacted. Respondents shall include in the reports copies of all material written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. One (1) year after this Order is issued, annually for the next seven (7) years on the anniversary of that date, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;

Decision and Order

- B. Any proposed acquisition, merger, or consolidation of such Respondent; or
- C. Any other change in such Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents made to either Respondents' principal United States office, registered office of its United States subsidiary, or its headquarters address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents 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 Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on February 24, 2022.

By the Commission, Commissioner Ohlhausen recused, and Commissioner Wright dissenting.

Analysis to Aid Public Comment

Confidential Exhibits A and B

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Nielsen Holdings N.V. (“Nielsen”) and Arbitron Inc. (“Arbitron”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Nielsen’s acquisition of Arbitron. Under the terms of the proposed Consent Agreement, Nielsen is required to divest and/or license certain technological assets (including intellectual property) and data to an acquirer approved by the Commission (“Acquirer”), enabling the Acquirer to develop and provide a national syndicated cross-platform audience measurement service.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated December 17, 2012, Nielsen proposes to acquire Arbitron for approximately \$1.26 billion. 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,

Analysis to Aid Public Comment

15 U.S.C. § 45, by lessening competition in the market for national syndicated cross-platform audience measurement services.

The Parties

Nielsen, headquartered in New York, New York and Diemen, the Netherlands, is a leading global media measurement and research company. In the United States, Nielsen provides television, online, mobile, and cross-platform audience measurement services to media companies, advertisers, and advertising agencies. Nielsen is the dominant provider of television audience measurement services¹ in the United States. In 2012, Nielsen generated global sales of \$5.6 billion, about half of which it derived from business in the United States.

Arbitron, headquartered in Columbia, Maryland, is a leading media measurement and research company. Arbitron's radio ratings, which also estimate listenership size and demographic composition, are the standard metric used by radio broadcasters and advertisers to buy and sell radio advertising. Arbitron also offers products that measure television, online, mobile and cross-platform audiences. Almost all of Arbitron's 2012 revenue of \$449 million was derived from business within the United States.

The Relevant Product and Structure of the Market

The proposed acquisition would harm competition for national syndicated cross-platform audience measurement services. The proliferation of personal computers, smartphones and tablets has dramatically changed the way in which U.S. consumers are exposed to advertising and programming. As a result, advertisers and media companies desire cross-platform audience measurement services that measure audiences *across* multiple media platforms, as opposed to services that report audiences for a single media platform, such as television, in isolation. Cross-platform audience measurement services report the overall unduplicated audience size (i.e., reach) and frequency of exposure

1 Nielsen's television audience ratings provide the size and demographic composition of the audiences for television programming, and are the primary currency by which the buying and selling of commercial airtime is negotiated.

Analysis to Aid Public Comment

for programming content and advertisements across multiple media platforms, with corresponding individual-level audience demographic data. A syndicated national cross-platform audience measurement service is one that provides all subscribers with the same universe of data, showing the relative audiences across platforms for various programming content and advertising.

To be competitively viable, a national syndicated cross-platform audience measurement service must include two key features. First, it must have an accurate and widely-accepted television audience measurement component, as television viewing represents the vast majority of media consumption and accounts for the majority of advertising dollars. Second, a national syndicated cross-platform audience measurement service must report individual-level demographic data. Advertisers need individual-level demographic data in order to determine which programming content is most likely to deliver audiences within their desired category of potential customers and to make advertising campaign placement and media buying decisions. Similarly, media companies need individual-level demographic data to assess the value of their own advertising inventory and to inform programming decisions.

Although there is no national syndicated cross-platform audience measurement service today, demand for such a service by advertisers and media companies is increasing rapidly. Nielsen and Arbitron are developing national syndicated cross-platform audience measurement services. Nielsen currently provides Cross-Platform Campaign Ratings on a custom-basis and plans to launch a similar Cross-Platform Program Ratings service in the coming year. Arbitron partnered with comScore Inc. (“comScore”) to provide customized cross-platform audience measurement services to ESPN, widely known as “Project Blueprint” Although these services are currently custom projects and/or customer-sponsored beta tests, Nielsen and Arbitron are developing national syndicated offerings.

Nielsen and Arbitron are the best-positioned firms to develop (or partner with others to develop) a national syndicated cross-platform audience measurement service because of their existing audience measurement panels and proven audience measurement technology assets. Large, representative panels, like those used

Analysis to Aid Public Comment

by Nielsen and Arbitron for their respective television and radio audience measurement businesses, are considered the most accurate and preferred sources of individual-level demographic data for audience measurement purposes. Only Nielsen and Arbitron maintain large, representative panels capable of measuring television with the required individual-level demographics. Other firms working to develop cross-platform audience measurement services are not as well positioned to compete with Nielsen and Arbitron to develop a national syndicated cross-platform audience measurement service because they lack the representative panels, existing audience measurement technology assets of the quality and character of Nielsen's and Arbitron's, and strong brands in audience measurement.

The United States is the appropriate geographic market in which to analyze the competitive effects of the proposed transaction. Purchasers of U.S. cross-platform audience measurement services require these services to assist them in making decision about buying and selling advertising inventory aimed at U.S. consumers. National U.S. cross-platform audience measurement services provide U.S. customers with data on U.S. audiences and require a significant presence in the United States to gather such audience data.

Entry

Sufficient and timely entry or expansion into the market for national syndicated cross-platform audience measurement services is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. In order to offer national syndicated cross-platform audience measurements, a firm must have access to television audience data with individual-level demographic data. Establishing the infrastructure to recruit and maintain a representative panel of individuals needed to provide the television audience measurement component of a national syndicated cross-platform audience measurement service requires substantial upfront and on-going investments. New entrants would also have to develop or license technology capable of collecting and generating the underlying data needed to provide a national syndicated cross-platform audience measurement service. Further, in order to attract customers, a new entrant must establish

Analysis to Aid Public Comment

a strong reputation for quality and reliability in audience measurement. These significant barriers ensure that entry would not be timely, likely, or sufficient to counteract the anticompetitive effects of the proposed acquisition for several years at a minimum.

Effects of the Acquisition

The acquisition is likely to cause significant competitive harm in the market for national syndicated cross-platform audience measurement services. Nielsen and Arbitron are the best-positioned firms to develop (or partner with others to develop) national syndicated cross-platform audience measurement services. Both companies expect their respective cross-platform audience measurement services to become national syndicated offerings. The elimination of future competition between Nielsen and Arbitron would likely cause U.S. customers to pay higher prices for national syndicated cross-platform audience measurement services and result in less innovation for cross platform measurement services.

The Consent Agreement

The proposed Consent Agreement resolves the Acquisition's likely anticompetitive effects in the market for national syndicated cross-platform audience measurement services by requiring the divestiture of assets related to Arbitron's cross-platform audience measurement business, including data from its representative panel, to an Acquirer within three months of executing the consent agreement.

Pursuant to the proposed Consent Agreement, the Acquirer will receive the assets necessary to replicate Arbitron's participation in the development of a national syndicated cross-platform audience measurement service. Among other things, the Consent Agreement requires Nielsen to provide the Acquirer with a perpetual, royalty-free license to data, including individual-level demographic data, and technology related to Arbitron's cross-platform audience measurement business for a period of no less than eight years. Nielsen will also be required to make improvements and enhancements to the Arbitron panels at the request and expense of the Acquirer that will further the

Analysis to Aid Public Comment

Acquirer's ability to offer a national syndicated cross-platform audience measurement service. With respect to Arbitron personnel involved in cross-platform services, the Consent Agreement removes impediments that might otherwise deter certain Key Arbitron Employees from accepting employment with the Acquirer. It also requires that Nielsen provide the Acquirer with certain technical assistance, at the request of the Acquirer to facilitate the Acquirer's ability to replicate Arbitron's position in the cross-platform audience measurement market. Collectively, these provisions are intended to enable the Acquirer to develop and provide a national syndicated cross-platform audience measurement service to its customers. The Consent Agreement is designed to ensure that the benefits of competition that would have been realized from Arbitron's provision of cross-platform audience measurement services, are not lost as a result of the acquisition.

The Commission has appointed a monitor to oversee Nielsen's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order (the "Order"). The monitor is required to file periodic reports with the Commission to ensure that the Commission remains informed about efforts to accomplish the divestiture and Nielsen's compliance with its ongoing obligations and responsibilities pursuant to the Order until the Order terminates.

Finally, the proposed Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee if any or all of the above remedies are not accomplished within the time frames required by the Consent Agreement. The divestiture trustee may be appointed to accomplish any and all of the remedies required by the proposed Consent Agreement that have not yet been fulfilled upon expiration of the time period allotted.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

Statement of the Commission

STATEMENT OF THE FEDERAL TRADE COMMISSION¹

Today, the Commission is taking remedial action concerning the proposed acquisition of Arbitron Inc. by Nielsen Holdings N.V. We believe Nielsen's acquisition of Arbitron is likely to deprive media companies and advertisers of the benefits of competition between two firms that are currently developing, and are most likely to be effective suppliers of, syndicated cross-platform audience measurement services.² Our remedy is tailored to counteract the likely anticompetitive effects of the proposed acquisition while leaving intact any efficiencies that might be gained from the combination of the two companies. The remedy is consistent with the analytical framework through which we evaluate the effects of all mergers that come before us, whether those effects are likely to occur immediately or in the foreseeable future.

Nielsen and Arbitron are best known for their respective single-platform TV and radio audience measurement services. Nielsen ratings are the industry benchmark for determining the size and demographics of television audiences. Nielsen maintains a national panel of 20,000 households, comprising nearly 50,000 individuals whose television programming consumption is monitored on a continual basis. Arbitron provides radio ratings for traditional, or "terrestrial," radio that are similar to Nielsen's television ratings. Arbitron's panel covers 48 local markets and consists of approximately 70,000 people whose exposure to programming is captured by its proprietary Personal People Meter ("PPM") technology. In addition to measuring radio consumption, Arbitron measures panelists' television consumption and provides out-of-home audience measurement data to television broadcasters.

As television viewership has shifted from traditional television screens to mobile devices, tablets, and personal computers,

1 This statement reflects the majority view of Chairwoman Ramirez and Commissioner Brill. Commissioner Ohlhausen is recused and took no part in the decision on this matter.

2 A syndicated cross-platform audience measurement product is one that provides all subscribers with each programmer's unduplicated audience across platforms.

Statement of the Commission

traditional television measurement is capturing a decreasing portion of the total viewing audience. As a result, media companies and advertisers are now seeking measurement services that account for the entire audience. Specifically, they seek a cross-platform solution that measures audiences across multiple platforms as well as determines the extent of audience duplication (e.g., whether the same individual is watching a program on both traditional TV and on the Internet). Media companies and advertisers would then use those measurements to determine the relative value of advertising inventory. This type of cross-platform measurement product has yet to be developed and marketed. But there is wide consensus among media companies and advertisers that Nielsen and Arbitron are best-positioned to provide this service because they are the only two companies that operate large and demographically representative panels that are capable of reporting television programming viewership, which is critical to developing a cross-platform product that meets likely customer demand. While other companies provide estimates of aggregate cross-platform viewership, only Nielsen and Arbitron provide individual demographic data, such as age and gender information, for television and, hence, cross-platform measurement.

The Commission also has reason to believe that Nielsen and Arbitron are the best-positioned firms to develop (or partner with others to develop) such a service. Nielsen already offers several products that provide audience measurement across different media platforms, including its Extended Screen and Cross-Platform Campaign Ratings (“XCR”) products. Extended Screen measures television and online viewing for a subset of its national panel. XCR is an advertising campaign measurement tool that combines online viewership data with Nielsen’s national television measurement product. Nielsen is in the process of introducing a product targeted at programmers, called Digital Program Ratings, that will measure the audiences for television programs that appear on line, and plans to launch a cross-platform measurement product, Cross-Platform Program Ratings, next year.

Arbitron is also developing a cross-platform audience measurement solution. Last year, it began a collaboration with comScore known as “Project Blueprint” to develop a product for

Statement of the Commission

ESPN. Arbitron is contributing in-home and out-of-home television audience demographic data sourced from its PPM radio panel, radio audience data, and a “calibration” panel recruited from its PPM panel to measure audience duplication across platforms. comScore is providing online measurement and set-top box data. Arbitron has stated that Project Blueprint is “a major jumping off point” toward a “syndicable type [cross-platform] service,” and both ESPN and comScore are enthusiastic about the project. There is considerable industry interest in participating in the next phase of Project Blueprint.

Networks and advertisers believe that any syndicated cross-platform measurement services of Nielsen and Arbitron would compete directly. The proposed transaction would eliminate that competition. Although this is a future market, with an amount of concomitant uncertainty, effective merger enforcement always requires a forward-looking analysis of likely competitive effects. On the evidence here, the Commission has reason to believe that the proposed remedy is necessary to address the likely competitive harm that would result from the acquisition.

The proposed Consent Order is designed to address these specific competitive concerns by requiring divestiture of assets relating to Arbitron’s cross-platform audience measurement services business, including audience data with individual-level demographic information and related technology, software, and intellectual property. The Consent Agreement also requires that the combined firm provide the acquirer with any needed technical assistance, and provide the acquirer with the tools and ability to expand the PPM panel to obtain additional data it deems necessary. With the divested assets, the acquirer will be well-positioned to step into Arbitron’s shoes and replace the future competition between Nielsen and Arbitron that will be lost as a result of the proposed acquisition.

We agree with Commissioner Wright that the analysis of a merger’s competitive effects in any market, including markets where the products are still in the development phase, must always be strongly rooted in the evidence. Where the product at issue is not yet on the market, it can be difficult to develop the evidence necessary to predict accurately the nature and extent of competition. Nevertheless, the 2010 Guidelines specifically

Statement of the Commission

indicate that the agencies will consider whether the merging firms have been or likely will become “substantial head-to-head competitors” absent the merger. § 2.1.4.³

Here, there is considerable evidence from which to predict that an anticompetitive effect is likely to occur if these two companies are allowed to merge without a remedy. Both companies meet the standard to be considered actual potential entrants.⁴ As evidenced in both internal documents and statements they have made publicly and to potential customers, Nielsen and Arbitron (with comScore) both have invested significant time and resources to develop a national syndicated cross-platform audience measurement service. There is extensive evidence from customers that Nielsen and Arbitron are best positioned to compete in this area given their ability to provide individual-level demographic data. This forms the basis for our concern that there would be anticompetitive consequences from the combination, despite the fact that others are trying to develop cross-platform measurement services of their own. Customer views that Nielsen and Arbitron would be by far the two strongest competitors are supported by Nielsen and Arbitron statements about the products they are each developing and, in some cases, already beta testing with customers.

As with any transaction, the Commission does not merely accept a remedy because it is able to obtain one. We have accepted this consent because we have reason to believe that the transaction will harm competition, and because it is in the public interest to do so.

3 In particular, the 2010 Horizontal Merger Guidelines explain that “[m]ost merger analysis is necessarily predictive, requiring an assessment of what will likely happen if a merger proceeds as compared to what will likely happen if it does not. Given this inherent need for prediction, these Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipency, and that certainty about anticompetitive effect is seldom possible and not required for a merger to be illegal.” § 1.

4 Commissioner Wright cites *B.A.T Indus.*, 104 F.T.C. 852 (1984), as the applicable standard for actual potential entry. Most federal courts have applied a less stringent standard.

Dissenting Statement

We recognize that the overall combination of Nielsen and Arbitron could yield efficiencies outside of the market that concerns us. The proposed consent does not affect those efficiencies. We also took into account the parties' predictions that national syndicated cross-platform measurement services were likely to have relatively modest sales for some time. Weighing these considerations and the evidence of likely harm, we have concluded that the public interest is best served by allowing the transaction to proceed while remedying the competitive concerns. The remedy proposed in this matter does just that.

Dissenting Statement of Commissioner Joshua D. Wright

The Commission has voted to issue a Complaint and Decision & Order ("Order") against Nielsen Holdings N.V. ("Nielsen") to remedy the allegedly anticompetitive effects of Nielsen's proposed acquisition of Arbitron Inc. ("Arbitron"). I dissented from the Commission's decision because the evidence is insufficient to provide reason to believe Nielsen's acquisition will substantially lessen competition in the future market for national syndicated cross-platform audience measurement services in violation of Section 7 of the Clayton Act. I want to commend staff for conducting a thorough investigation. Staff has worked diligently to collect and analyze a substantial quantity of documentary and testimonial evidence, and has provided thoughtful analysis of the transaction's potential effects. Based upon this evidence and analysis, I conclude there is no reason to believe the transaction violates Section 7 of the Clayton Act.¹ It follows, in my view, that the Commission should close the

¹ 15 U.S.C. § 21(b) (2006) ("Whenever the Commission . . . vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect . . .").

Dissenting Statement

investigation and allow the parties to complete the merger without imposing a remedy.

I. Predicting Competitive Effects in Future Markets

Nielsen and Arbitron do not currently compete in the sale of national syndicated cross-platform audience measurement services. In fact, there is no commercially available national syndicated cross-platform audience measurement service today.² The Commission thus challenges the proposed transaction based upon what must be acknowledged as a novel theory—that is, that the merger will substantially lessen competition in a market that does not today exist. The Commission asserts that, in the absence of the merger, Nielsen and Arbitron would invest heavily in the development of national syndicated cross-platform audience measurement services, and that the products ultimately yielded by those efforts would compete directly against one another to the benefit of consumers. The Commission therefore has required Nielsen to license Arbitron’s television audience measurement service to a third party in hopes of allowing the third party to one day offer national syndicated cross-platform measurement services in competition with Nielsen.

A future market case, such as the one alleged by the Commission today, presents a number of unique challenges not confronted in a typical merger review or even in “actual potential competition” cases. For instance, it is inherently more difficult in future market cases to define properly the relevant product market, to identify likely buyers and sellers, to estimate cross-elasticities of demand or understand on a more qualitative level potential product substitutability, and to ascertain the set of potential entrants and their likely incentives.³ Although all

2 Complaint ¶ 10, Nielsen Holdings N.V., FTC File No. 131-0058 (Sept. 20, 2013).

3 Somewhere between typical merger cases and future market cases are “actual potential competition” cases. Competitive effects in such cases typically are less difficult to predict than in future market cases because the Commission at least can identify the relevant product market and interview current buyers and sellers. Nevertheless, competitive effects in actual potential competition cases still are more difficult, on balance, to assess than typical merger cases because the agency must predict whether a party is likely to enter the relevant market absent the merger. It is because of this uncertainty and the

Dissenting Statement

merger review necessarily is forward looking, it is an exceedingly difficult task to predict the competitive effects of a transaction where there is insufficient evidence to reliably answer these basic questions upon which proper merger analysis is based.⁴ Without these critical inputs, our current economic toolkit provides little basis from which to answer accurately the question of whether a merger implicating a future market will result in a substantial lessening of competition.

The Commission of course already routinely engages in predictive merger analysis that seeks to compare present competitive activities to future market conditions.⁵ For instance, the Horizontal Merger Guidelines (“Merger Guidelines”) call upon the antitrust agencies to take into account efficiencies claimed by the parties, the likelihood of successful entry, and the possibility of a failing firm defense.⁶ Significantly, however, each of these predictions about the evolution of a market is based upon a fact-intensive analysis rather than relying upon a general presumption that economic theory teaches that an increase in market concentration implies a reduced incentive to invest in innovation.⁷ For example, when parties seek to show that a

potential for conjecture that the courts and agencies have cabined the actual potential competition doctrine by, for instance, applying a heightened standard of proof for showing a firm likely would enter the market absent the merger. See e.g., *B.A.T. Indus.*, 104 F.T.C. 852, 926-28 (1984) (applying a “clear proof” standard).

4 See Douglas H. Ginsburg & Joshua D. Wright, *Dynamic Analysis and The Limits of Antitrust Institutions*, 78 ANTITRUST L.J. 1, 15-17 (2012) (describing some difficulties associated with further incorporating dynamic analysis into merger review).

5 See *id.* at 8-10 (identifying areas in the merger context where the antitrust agencies have been able to predict confidently effects on future competition).

6 U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES §§ 9-11 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html> [hereinafter 2010 MERGER GUIDELINES].

7 The link between market structure and incentives to innovate remains inconclusive. See, e.g., Ginsburg & Wright, *supra* note 4, at 4-5 (“To this day, the complex relationship between static product market competition and the incentive to innovate is not well understood.”); Richard J. Gilbert, *Competition and Innovation*, in 1 ABA SECTION OF ANTITRUST LAW, ISSUES IN COMPETITION LAW AND POLICY 577, 583 (W. Dale Collins ed., 2008).

Dissenting Statement

proposed transaction has efficiencies that mitigate the anticompetitive concerns, they must provide the agencies with clear evidence showing that the claimed efficiencies are cognizable, merger-specific, and verifiable.⁸ Similarly, when assessing whether future entry would counteract a proposed transaction's competitive concerns, the agencies evaluate a number of facts—such as the history of entry in the relevant market and the costs a future entrant would need to incur to be able to compete effectively—to determine whether entry is “timely, likely, and sufficient.”⁹ Likewise, to prove a failing firm defense successfully, the parties must show several specific facts, such as an inability to meet financial obligations in the near future or to reorganize in bankruptcy, to allow the agencies to predict that the firm would fail absent the merger.¹⁰

I believe the Commission is at its best when it relies upon such fact-intensive analysis, guided by well-established and empirically grounded economic theory, to predict the competitive effects of a proposed merger.¹¹ When the Commission's antitrust analysis comes unmoored from such fact-based inquiry, tethered tightly to robust economic theory, there is a more significant risk that non-economic considerations, intuition, and policy preferences influence the outcome of cases. Consequently, in merger cases where only limited or ambiguous evidence exists upon which to base our predictive conclusions, I believe the Commission will be best served by acknowledging these institutional limitations rather than challenging the transaction.

(“[E]conomic theory does not provide unambiguous support either for the view that market power generally threatens innovation by lowering the return to innovative efforts nor the Schumpeterian view that concentrated markets generally promote innovation.”).

8 2010 MERGER GUIDELINES, *supra* note 6, at § 10.

9 *Id.* at § 9.

10 *Id.* at § 11.

11 See generally Joshua D. Wright, Comm'r, Fed. Trade Comm'n, Evidence-Based Antitrust Enforcement in the Technology Sector (Feb. 23, 2013), Remarks at the Competition Law Center available at <http://www.ftc.gov/speeches/wright/130223chinaevidence.pdf>.

Dissenting Statement

Although future market cases may warrant investigation under certain circumstances, the inherent difficulties associated with analyzing the competitive effects of a transaction where the market does not yet exist, and the present inability of economic theory and evidence to support confident and reliable prediction, each suggest such cases typically will not warrant an enforcement action.

II. The Evidence Does Not Provide a Reason to Believe the Transaction Will Result in a Substantial Lessening of Competition in the National Syndicated Cross-Platform Audience Measurement Market

At the outset, it is important to recognize that our task is not simply to assess whether Nielsen and Arbitron are the firms best positioned today to develop national syndicated cross-platform audience measurement services. They very well may be when compared to other options available today. However, our task is decidedly different and requires us to evaluate instead whether the merger will result in a substantial lessening of competition in a relevant product market. I have not been presented evidence sufficient to provide a reason to believe the proposed merger will substantially reduce future competition in the sale of national syndicated cross-platform audience measurement services. My decision is based primarily upon the absence of answers to key questions that are necessary to draw reliable conclusions about the merger's likely competitive effects.

For example, we do not know whether each of the parties could and would develop a cross-platform product for the relevant market (however defined) absent the merger. For instance, if syndication ultimately is required for a successful cross-platform service, we do not know whether this is something both parties could offer. Furthermore, if the parties were to develop cross-platform products, we do not know the ultimate attributes of these products and whether, and to what extent, they would be substitutable by consumers. For example, we do not know if the parties would offer daily ratings or monthly ratings, and whether consumers would consider monthly and daily ratings to be complements or substitutes. Finally, we also do not know how the market will evolve, what other potential competitors might

Dissenting Statement

exist, and whether and to what extent these competitors might impose competitive constraints upon the parties.

Further, because cross-platform products are at best at the nascent stages of development, it is difficult even to define the relevant product market.¹² Indeed, the investigation has uncovered that “cross-platform services” means very different things to different industry participants. As with likely competitive effects from the transaction, there are also a number of questions we simply cannot reliably answer at this time with respect to defining the future market in which the competitive effects will allegedly occur. For example, across how many platforms must the product provide audience measurement in order to be competitive? Does the product need to be syndicated or do cross-platform products impose competitive constraints upon one another irrespective of syndication? Does the product truly need to be national and to what extent? Will customers require Nielsen’s “currency” measurement to be a component or will something less suffice? Will radio audience measurement be a necessary component for a cross-platform audience measurement service to be successful? Depending upon the answers to these questions, the proper relevant product market unsurprisingly may be defined quite differently than it is defined in the Commission’s Complaint.

It is true that the same concerns arising from predicting future anticompetitive effects also provide a challenge to predicting any cognizable efficiencies arising from the transaction. However, even assuming away the uncertainty discussed above, the evidence suggests that any anticompetitive effects arising from the transaction would be relatively small. One reason for this is that the alleged relevant market would constitute a small fraction of the value of the overall deal. Indeed, there is no reason to believe the prospect of supracompetitive profits in the national syndicated cross-platform audience measurement services market motivated the transaction. A substantial fraction of the potentially

12 Although the Merger Guidelines provide that the agencies need not begin their merger analysis by defining the relevant product market—that is to say, defining the relevant product market before assessing effects, the Merger Guidelines do not dispense with market definition because it is important to understanding where those effects ultimately might occur.

Dissenting Statement

cognizable efficiencies from the transaction arise in markets that already exist—that is, outside the alleged relevant market. While out-of-market efficiencies are generally discounted by the agencies, the Merger Guidelines’ analysis rejects the view that form should trump substance when assessing competitive effects. Indeed, the Merger Guidelines suggest that the Commission will consider out-of-market efficiencies when they are “inextricably linked” with the transaction as a whole and are likely to be large relative to any likely anticompetitive effects.¹³ This appears to be precisely such a case. To be clear, I do not base my disagreement with the Commission today on the possibility that the potential efficiencies arising from the transaction would offset any anticompetitive effect. As discussed above, I find no reason to believe the transaction is likely to substantially lessen competition because the evidence does not support the conclusion that it is likely to generate anticompetitive effects in the alleged relevant market.

For these reasons, I dissent from the Commission’s conclusion that there is reason to believe the proposed transaction will substantially lessen competition in the alleged relevant market.

III. Ensuring Consent Agreements are in the Public Interest

Nielsen and Arbitron have agreed to certain concessions in a Consent Agreement with the Commission despite the lack of evidence supporting the conclusion that the proposed transaction will result in a substantial lessening of competition in the market for national syndicated cross-platform audience measurement services. Some may conclude that there can be no harm in the Commission entering into a consent agreement and issuing a Complaint and Order imposing a remedy with sophisticated and willing parties. That of course need not be true. Nor does that view logically follow from the Commission’s mission to prevent anticompetitive conduct and to promote consumer welfare.

13 2010 MERGER GUIDELINES, *supra* note 6, § 10 n. 14.

Dissenting Statement

Whether parties to a transaction are willing to enter into a consent agreement will often have little to do with whether the agreed upon remedy actually promotes consumer welfare. The Commission's ability to obtain concessions instead reflects the weighing by the parties of the private costs and private benefits of delaying the transaction and potentially litigating the merger against the private costs and private benefits of acquiescing to the proposed terms.¹⁴ Indeed, one can imagine that where, as here, the alleged relevant product market is small relative to the overall deal size, the parties would be happy to agree to concessions that cost very little and finally permit the deal to close. Put simply, where there is no reason to believe a transaction violates the antitrust laws, a sincerely held view that a consent decree will improve upon the post-merger competitive outcome or have other beneficial effects does not justify imposing those conditions. Instead, entering into such agreements subtly, and in my view harmfully, shifts the Commission's mission from that of antitrust enforcer to a much broader mandate of "fixing" a variety of perceived economic welfare-reducing arrangements.

Consents can and do play an important and productive role in the Commission's competition enforcement mission. Consents can efficiently address competitive concerns arising from a merger by allowing the Commission to reach a resolution more quickly and at less expense than would be possible through litigation. However, consents potentially also can have a detrimental impact upon consumers. The Commission's consents serve as important guidance and inform practitioners and the business community about how the agency is likely to view and remedy certain mergers.¹⁵ Where the Commission has endorsed by way of consent a willingness to challenge transactions where it might not be able to meet its burden of proving harm to

14 See Douglas H. Ginsburg & Joshua D. Wright, *Antitrust Settlements: The Culture of Consent*, in 1 WILLIAM E. KOVACIC: AN ANTITRUST TRIBUTE – LIBER AMICORUM 177, 179-80 (2012).

15 See, e.g., Deborah L. Feinstein, Bureau of Competition Dir., Fed. Trade Comm'n, *The Significance of Consent Orders in the Federal Trade Commission's Competition Enforcement Efforts*, Remarks at GCR Live, 4-5 (Sept. 17, 2013), available at <http://www.ftc.gov/speeches/dfeinstein/130917gcrspeech.pdf>.

Dissenting Statement

competition, and which therefore at best are competitively innocuous, the Commission's actions may alter private parties' behavior in a manner that does not enhance consumer welfare.¹⁶ Because there is no judicial approval of Commission settlements, it is especially important that the Commission take care to ensure its consents are in the public interest.¹⁷

* * * * *

16 See Ginsburg & Wright, *supra* note 14, at 179.

17 15 U.S.C. § 45(b) (2006); *see also* J. Thomas Rosch, Comm'r, Fed. Trade Comm'n, Consent Decrees: Is the Public Getting Its Money's Worth (Apr. 7, 2011), Remarks at the XVIIIth St. Gallen International Competition Law Forum, available at <http://www.ftc.gov/speeches/rosch/110407roschconsentdecrees.pdf> (stating that "we at the Commission are responsible for conducting our own public interest inquiry before accepting proposed consent decrees, and this inquiry operates as a check on the 'wide discretion' that we otherwise wield to combat methods, acts and practices that violate the antitrust and consumer protection laws").

Complaint

IN THE MATTER OF

NISSAN OF SOUTH ATLANTA, LLC
D/B/A
NISSAN SOUTHCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT, THE TRUTH
IN LENDING ACT AND REGULATION Z

Docket No. C-4441; File No. 132 3163
Complaint, February 28, 2014 – Decision, February 28, 2014

This consent order addresses Nissan of South Atlanta, LLC also d/b/a Nissan South's advertisements for automobiles and failure to clearly and conspicuously disclose required information concerning costs and credit terms. The complaint alleges that respondent has advertised that consumers can finance the purchase of vehicles by paying \$99 per month with a \$0 down payment however; consumers will pay \$99 per month for only the first two months of an 84-month period. The complaint further alleges that the advertisements fail to state the amount of each payment beyond the first two months of financing. The consent order requires clear and conspicuous Truth in Lending Act and Regulation Z disclosures when advertising any of the relevant triggering terms with regard to issuing consumer credit. It also requires that if any finance charge is advertised, the rate be stated as an "annual percentage rate" using that term or the abbreviation "APR." Additionally, the order prohibits the respondent from misrepresenting any other material fact about the price, sale, financing, or leasing of any vehicle.

Participants

For the *Commission: Sana Chriss, Mark Glassman, John Jacobs, Carole Reynolds, Jason Schall, Christina Tusan, and Katherine Worthman.*

For the *Respondent: Stephen H. Block, Barrett, Daffin, Frappier, Levine & Block, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nissan of South Atlanta, LLC, also doing business as Nissan South ("respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), the Truth in Lending Act ("TILA"), and its implementing Regulation Z, and it appearing to