EN

Case No COMP/M.3579 - WPP / GREY

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 24/01/2005

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.3579-WPP/GREY
Notification of 20.10.2004 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 20.10.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking WPP Group plc ("WPP", UK) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Grey Global Group Inc. ("Grey", USA).

2. This notification was declared incomplete on 22.11.2004 due to missing information with respect to the media buying sector. The notification became complete within the meaning of Article 10 (1) of the Council Regulation (EC) No 139/2004 on 10.12.2004.

I. THE PARTIES

3. WPP is an international marketing communications services group. It provides, through a number of operating companies, services such as advertising, media investment management, information, insight and consultancy, public relations and public affairs. In addition, it owns a wide range of specialised communications companies which operate in such areas as branding and corporate identity, healthcare communications and interactive marketing.

4. Grey was founded in 1917 as an advertising agency in New York and has grown to become a full service advertising and marketing services company with operations in 83 countries. Grey provides its clients with services and expertise over a broad range of communications disciplines, including mass market advertising, media planning and buying, direct marketing, healthcare marketing, public relations and public affairs, sales promotion, graphic design, corporate communications, event marketing,

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[1] OJ L 24, 29.1.2004 p. 1.

interactive communication, channel marketing and retail advertising support, and product branding.

II. THE OPERATION

5. The transaction is structured as a merger of Grey with and into Abbey Merger Corporation ("Abbey"), a wholly owned subsidiary of WPP. After the merger, Abbey will continue as the surviving corporation in the merger. Accordingly, WPP will own 100% of the outstanding stock of Abbey and will control Abbey in its capacity as sole stockholder with the right to elect the entire Board of Directors of Abbey.

III. CONCENTRATION

6. WPP acquires sole control over Grey; therefore the operation constitutes a concentration within the meaning of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (WPP 5,934 million euro, Grey 1,155 million euro). Each of WPP and Grey have a Community-wide turnover in excess of EUR 250 million (WPP […] million euro, Grey […] million euro), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

1. RELEVANT MARKETS

8. The concentration will have an impact on the communications services sector, including marketing communications services and media buying.

(1) Marketing communications services

Relevant product market

Types of services

9. The parties state that the relevant market for the provision of marketing communications services encompasses all of the following activities: advertising; insight and consultancy; public relations; consumer relationship management; branding, identity and design; and other areas of specialist communications. Following the parties all these services fall within the scope of the same relevant market definition on the basis that they all represent different methods for a business to communicate with a group of people, be they consumers/customers, the press, industry, other companies, government, regulatory or other interested bodies. Clients can either use such services on a stand-alone basis for a particular project or issue, or as part of a wider strategy or campaign and instruct either individual agencies or a number of agencies. Such services are provided through all types of media, including the Internet.

10. In particular, it is argued that in the same way that agencies' advice will not necessarily be restricted to one particular area, the advice and solution that a client needs from an agency for a particular issue can be found in a range of different services, be it an

advertising campaign, a public relations exercise to raise the public profile of such an issue, direct mailing customers or sponsorship, such as sponsorship of a conference concerning a particular issue. It may also include rebranding/identity promotions and providing literature to the target audience on the issue. Therefore, WPP argues that the distinction between the segments of this market is meaningless.

11. The parties contend that there is, moreover, a high degree of supply-side substitutability between different types of marketing communications services. In general, all agencies can offer the whole range of services to the clients even though some are specialised in particular fields. It is, however, claimed as being rather unusual for an agency to specialise in providing only one particular type of service focused on one segment. According to the parties this can be inferred from the significant blurring of the lines of division between these various activities, as many agencies, which focus on different segments of the market, can be considered to be in direct competition with each other. It is argued that both advertising agencies and PR agencies will advise clients on sponsorship and promotions opportunities, and can carry out strategic planning, branding, direct mailing and other types of marketing communications services. Likewise, there would be no reason to distinguish the provision of specialist communications advice, such as in the healthcare sector or for internet based services.

12. The Commission has accepted or provided indications in previous decisions that all the marketing communications services can be regarded as a relevant market[2]. In these cases, the Commission felt that a narrower market definition would not be appropriate.

13. In general the market investigation in this case supported the views of the parties and has shown that the different types of marketing communications services are substitutable to a sufficient extent and that most agencies are able to offer all types of services. Customers normally aim at communicating in the most effective way with their targeted audiences and choose one or several types of communications services among a range of available services accordingly.

Types of media

14. Furthermore, the parties contend that no distinction should be made between different types of media (including the Internet). In this respect it is purported that all agencies are able to choose which would be the most appropriate media to communicate their client's message. Supply-side arguments would demonstrate that such a distinction would not have a bearing: campaigns will often be developed to use either a combination of media or one particular type of media, depending on factors such as the intended audience for the campaign and the budget allocated by a client to it. On the demand side, it is stated that all types of media can satisfy a client's need to communicate its message to its target audience. All segments of the market would have significant competitive constraints on the others. Therefore, the parties contend that to divide the relevant market for marketing communications services into separate sub-markets by reference to different media/activities would be meaningless.

15. The market investigation has not provided clear evidence that the marketing communications market should be further segmented by type of media. From such investigations, it rather appears that different media types are complementary rather

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[2] Case M3209-WPP/Cordiant, decision 25.07.2003; Case M.2000-WPP/Young&Rubicam, decision 24.08.2000.

than interchangeable, since different media can address different audiences in different ways. In any event, in the present case the question of whether marketing communications services should be subdivided by type of media can be left open, as no competition concerns would arise under such a narrower market definition.

Relevant geographic market

16. The parties submit that the relevant geographic market for marketing communications services remains largely national. This is on account of language differences, different media conditions in different countries, pricing differences between countries and the need to inform the public, government or other institutions and therefore plan a campaign on a national basis. The market investigation has in general supported the views of the parties. In previous decisions the Commission has decided that these markets are national or that there were indications of national markets.

17. In the previous decisions[3] the Commission has left open the issue as to whether there could be a separate market for multi-national customers which could be wider than national in scope. Such a market would serve multinational customers, as they develop international advertising budgets and campaigns and may wish to access a network of marketing agencies through a single contact point. In previous decisions[4], the Commission's market investigation had not provided strong evidence that a distinct market exists for the provision of international services. The market investigation concerning this notification has confirmed that that there are no elements to conclude for the existence of a distinct market for the provision of international services.

18. On the basis of the above, the market for marketing communication services will be considered as national in scope.

(2) Media buying

19. With regard to media buying, a distinction should be made between the sales market, in which media buying agencies act as suppliers of media buying services to final customers (advertisers), and the procurement market, in which media buying agencies buy (usually on behalf of their clients) advertising time or space in the media from the media owners (e.g. TV broadcasters, publishing houses).

Sales market

Relevant product market

Marketing communication services vs. media buying services

20. The parties consider that there is a substantial degree of overlap between media buying and marketing communications services and that both segments exert a competitive constraint on each other. Media buying usually encompasses media planning, which according to the parties blurs the boundaries between marketing communication services and media buying.

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3 Case M3209-WPP/Cordiant, decision 25.07.2003; Case M.2601- WPP/Tempus, decision 22.10.2001

4 see case IV/M. 2785 Publicis/Bcom3, M3209-WPP/Cordiant

21. In previous decisions in the advertising sector, the Commission has identified a separate market for “media buying”. This is considered to be a market which includes purchasing time and/or space in various types of media, such as broadcast and cable television, newspapers and magazines for clients running advertising campaigns. Media buying agencies will also usually provide media planning or strategic advice, i.e. research into target audiences, which media to use and monitoring/tracking the success of a campaign.

22. The market investigation has broadly supported the view that while there is some inter-changeability between the differing marketing communications services, media buying services clearly have to be regarded as a separate field of activity. Advertisers use marketing communications services to *create* a message and they use media buying to *deliver* that message to the target group. While a key competitive parameter in marketing communication services is creativity, the media buying business is run by negotiation power and skills as well as know-how about media planning and monitoring – characteristics which are of rather technical nature. The parties have confirmed that a large majority of advertisers use different agencies for marketing communication services and for media buying.

Large-scale / small-scale media buying

23. The Commission has also investigated whether the media buying market has to be sub-divided into (i) large-scale media buying services for big advertisers pursuing mostly extensive and costly nation-wide advertising campaigns (“large-scale media buying”) on the one hand and (ii) small-scale media buying services for small advertisers pursuing predominantly local/regional advertising campaigns (“small scale media buying”) on the other hand.

24. The parties believe that it is not possible to distinguish between small-scale and large-scale media buying and that all media buying (which forms a spectrum from relatively small, local campaigns, to much more expensive, national campaigns) forms part of a single market.

25. In the previous Commission decisions no such distinction between large-scale and small-scale business was made. The market investigation has in general not provided evidence that would justify a further distinction of the general media buying market. However, with regard to Germany, the Commission has received strong indications that such a segmentation is appropriate.

26. The vast majority of responses of the group of German large-scale advertisers stated that they could not switch to any agency which does not form part of the big seven international groups, i.e. WPP, Grey, Publicis, Interpublic, Omnicom, Aegis and Havas. Most of these advertisers explained to have needs which require a minimum size on part of the media agencies. Being asked which agencies would be able to satisfy these needs the vast majority indicated only agencies which belong to the big seven.

27. It appears that one main requirement is an adequate capacity to handle huge media budgets and big volumes of media buying orders. One advertiser, for example, described to have an account of more than 4000 TV bookings with approximately five re-schedulings for each booking per year. An agency would have to have the number of qualified staff and the necessary up-to-date (software) tools to handle and optimize such an account.

28. The distinction of a large-scale market appears in particular applicable to the German market, as the German market is considered to be large in geographical as well as in economic respect. If advertisers wish to reach with their advertising campaign all relevant target audiences all over Germany, a significant number of media with wide dispersion have to be used which in tendency is more costly and encompasses a higher volume of media buying than in an economically and geographically smaller country.

29. These findings go in line with the fact that the German market is to a comparably higher extent volume-driven […].

30. Only the big international media buying agencies are able to negotiate high client-specific rebates with the TV-broadcasters. In fact, overall 90% of the gross billings for TV advertising time are made by the big seven international agencies. […]. This is different in many other countries where apparently smaller media buying agencies and even direct advertisers can obtain comparable conditions from media owners as the big international groups.

31. As a consequence, it is difficult to enter the large-scale media buying segment in Germany since a minimum entry size is required which can hardly be achieved by a start-up company. (This is not the case for small-scale media buying or marketing communication services where even very small companies are regarded as adequate alternative suppliers.) In Germany, direct purchasing of TV advertising time by the customer is not seen as a feasible alternative as it is difficult to obtain comparable conditions. Since most large-scale advertisers require a media-mix, mostly containing TV and print, and at the same time prefer to use only one media agency to manage their complete media budget, the specific volume-related advantages that a large agency can provide with respect to TV also encompass the print segment, even though comparable agency agreements do not exist there. A large-scale advertiser who wants to use TV will not use the services of a small-scale agency – neither for the purchasing of TV advertising time nor for the purchasing of advertising pages in print.

32. In the light of these arguments two potentially separate markets for large-scale media buying and for small-scale media buying have to be considered with respect to Germany.

Types of media

33. The Commission found in a previous case[5] that the sale of media buying services cannot be divided in several markets according to the media in question, because media buying agencies are not specialised in one media segment, but normally carry out buying services for all media channels. Most advertisers buy multiple media types and want central coordination and oversight of their media planning. The market investigation to this case has not brought up any countervailing indications.

Relevant geographic market

34. The parties submit that most, if not all media buying remains national and therefore there are limited opportunities for the provision of such services on a multi-national basis.

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5 See case IV/M. 1529 Havas Advertising/Media Planning

35. The market investigation has confirmed the national scope of the market. Only few multinational advertisers point towards a global strategy for media buying, most of which, however, acknowledge at the same time the necessity of local presence. Media buying agencies need to gather the necessary knowledge of customer patterns as regards the different media channels and of the differing national regulatory frameworks locally. Media owners are themselves strictly organised at a national level. Also European or even global contracts with media buying agencies were only indicated by very few advertisers. The Commission's definition of the market in a previous case[6] is therefore confirmed.

Procurement market

Relevant product market

36. In the procurement market media buying agencies buy (usually on behalf of their clients (advertisers)) advertising time or space from the media owners, such as TV-broadcasters and publishers. It has to be assessed whether the purchasing of advertising time/space has to be divided according to media and whether different markets have to be assumed for large-scale and small-scale purchasing.

Types of media

37. With respect to the procurement of advertising time/space the critical factors are on the one hand (i) the media owners' flexibility in changing from the supply of one media segment to the supply of another and on the other hand (ii) the advertisers' flexibility in demand between advertising time on TV and advertising space in print or other media.

38. Media owners are generally active in only one of the main media segments – TV or print - and are usually unable to switch readily to the other media segment. It is obvious that a TV broadcaster, for instance, cannot produce newspapers or magazines without substantial investment and additional know-how and vice-versa.

39. The market investigation confirmed that from the advertisers' perspective the different media segments are in general not substitutable with respect to the type of advertising they can offer. The degree of flexibility across media (inter-media flexibility) depends to a large extent on the individual advertiser and the specific target groups to be reached. All media segments have specific characteristics with regard to the effects of advertisement. Generally, in order to reach a high and broad recognition in a comparably short period of time, advertisement on TV is indispensable. Most manufacturers of brand products which are mainly sold on grounds of their "image" cannot do without advertisement on TV and would mostly not be able to completely switch to print advertisement. On the other hand, some target groups can hardly be reached by TV, such as high-ranking business people, who rather read national newspapers.

40. Being asked to estimate the *overall* inter-media flexibility between TV and print, media owners indicated ranges between 10% and 24% of their sales. From this, it can be concluded that a broad substitutability does not exist. Taking also into account the

6 See case IV/M.1529 Havas Advertising/Media Planning.

media owners' inability to switch to the supply of other media, different procurement markets for TV and print have to be assumed.

41. The question whether print has to be further divided into different markets for advertising in magazines, national newspapers and regional newspapers can be left open in this case since the main effect of the concentration is on the magazines segment. Even with respect to this segment no competition problems arise – therefore the exact market definition with regard to a further subdivision of the print segment can be left open.

Large-scale vs. small-scale business

42. The question arises whether the markets for advertising on TV and advertising for print have to be further sub-divided into a large-scale and a small-scale business.

43. Advertisers of different size in tendency demand different types of media. Large-scale advertisers will overall place more advertisement in nation-wide media such as TV, national magazines and national newspapers. Small-scale advertisers on the other hand will not or only to a smaller extent be able to use the most expensive nation-wide types of media. This in particular applies to TV.

44. The market investigation has confirmed that national magazines on average make two third of their advertisement sales with the large international groups and one third (between 31% and 40%) with small agencies. (The small-scale share appears to be even higher for national newspapers.) This also applies to magazines with comparably expensive advertisement space. It shows that at least one third of the publishers' advertisement sales are made with small advertisers since small agencies generally do not serve large-scale advertisers.

45. The TV broadcasters on average make 90% of their advertisement sales with the big international agency groups. Since TV advertisement is widely inaccessible for small-scale advertisers due to the high costs connected to it, national magazines and national newspapers appear to be a viable instrument for these companies to achieve a national coverage. Regional newspapers on the other hand make a bigger share of their advertisement sales with small-scale customers.

46. A distinction between large- and small-scale business would be without effect to the outcome for the TV market, since TV is obviously almost completely a "large-scale media segment". In the other segments both customer groups are apparently equally accessible for the publishers. The product which the publishers offer to the agencies – advertisement space – does not change with respect to the size of the client. There is no indication that advertisement space that had been previously sold to small agencies/advertisers could not equally be sold to large customers and vice-versa.

47. Generally, in the assessment of purchasing power on the procurement market, the question has to be examined whether a very strong customer would be able to put pressure on its suppliers with the effect of virtually controlling their business. In an extreme case, this customer could even force dependent suppliers out of the market by withdrawing demand from him. It becomes clear that a publisher could not be forced out of a market for advertisement space for large clients separately but only out of a market for advertisement space for one media segment in total which would here

correspond to the segment of magazines. A further differentiation of the media segments into small-scale and large-scale clients would therefore be artificial.[7]

48. The Commission therefore proceeds on the assumption that the procurement market may be subdivided into a TV and a print market. The main concerns with respect to the effects of the concentration on the procurement market for advertisement space on print media relate to the magazine segment. Therefore, the further analysis will focus on this print segment and on TV.

Relevant geographic market

49. The Commission's investigation has revealed that the procurement market is national. As most advertisers and media buying agencies need to advertise in the national media, they require their media buying agencies to purchase time or space with national TV broadcasters or publishers. This view has been supported by the market investigation.

2. ANALYSIS

(1) Marketing communications services

Methodology

50. The parties explained to the Commission that there is a general lack of market share data for the marketing communications services market. The last years it has become even more difficult to source reliable market share data since several of the leading global advertising agencies are owned by holding companies which shares are listed in the United States. The generally accepted view is that the Sarbanes-Oxley Act of 2002 has resulted in less disclosure of financial details to trade publications.

51. On the basis of that, the parties have used the following methodology for calculating market sizes and market shares for marketing communications services. They have taken the 2001 figures published by Advertising Age as their starting point. They have then multiplied the 2001 Advertising Age market size figures by 1.25 to compensate for the over-inflated market shares for the largest agencies and groups. They then applied the year-on-year changes in Advertising Expenditure by Zenith Optimedia, published in July 2004, to estimate the way in which the revenues numbers produced for 2001 are likely to have been affected in 2002 and 2003. These figures were then used to calculate the parties' market shares, based on their own information on their revenues. In the absence of any information on their competitors' revenues for 2002 and 2003, the parties provided estimates of competitors' market shares for 2003 which

[7] This goes in line with the initial submissions made by the publishers' side in this case. Initially, the publishers depicted their degree of dependency mainly with respect to the print media segment "magazines" as a whole without using any further distinction between large-scale and small-scale clients within this segment. At that stage of the proceedings, a distinction between large-scale and small-scale business was suggested in particular for the sales market of advertising on national magazines/newspapers on the one hand versus regional newspapers on the other hand, for which significantly different market conditions exist. A further distinction between large-scale and small-scale clients within the magazines segment was only introduced by the publishers later during the market investigation by transferring the potential market definition for the sales market to the procurement market. Such a procedure is, however, not appropriate since the procurement market is different from the sales market and exhibits different characteristics. As a result, the methodology used by the publishers' side later in the proceedings does not reflect the real market conditions.

are based upon the 2001 Advertising Age figures, to which they have applied the year-on-year changes forecast by Zenith Optimedia.

52. The market investigation has in general confirmed that the methodology used by the parties has no significant bias regarding the positioning of the various market players. However, the competitive assessment has also been carried out on the basis of an alternative calculation of market size and shares put forward by the parties, at the request of the Commission. It can be concluded that under all different scenarios the figures were not substantially different, are below the threshold for a significant impediment to effective competition and did not call for a material change of assessment.

Affected markets

53. On the basis of the market share calculations explained by the parties, there will be 11 national markets on which the transaction will result in the parties' share being 15% or more. These markets are the following: Belgium [15-25]% (WPP: [10-20]%; Grey: [0-10]%), Czech Republic [15-25]% (WPP: [10-20]%; Grey: [0-10]%), Denmark [15-25]% (WPP: [5-15]%; Grey [5-15]%), Germany [15-25]% (WPP: [10-20]%; Grey: [0-10]%), Ireland [15-25]% (WPP: [10-20]%; Grey: [0-10]%), Italy [15-25]% (WPP: [15-25]%; Grey: [0-10]%), Netherlands [15-25]% (WPP: [10-20]%; Grey: [0-10]%), Portugal [15-25]% (WPP [15-25]%; Grey: [0-10]%), Spain [15-25]% (WPP: [15-25]%; Grey: [0-10]%), Sweden [25-35]% (WPP: [10-20]%; Grey: [5-15]%), United Kingdom [15-25]% (WPP: [15-25]%; Grey: [0-10]%).

54. Therefore, only in Sweden the combined market share of the parties ([25-35]%) is above 25%. On this market other important competitors such as Interpublic ([20-30]%), Omnicom ([5-15]%), Publicis ([5-15]%), Havas ([0-10]%) and others are active.

55. In all the other affected markets the parties' combined market share is largely below the threshold for dominance and a number of very strong competitors are also active . The parties underline that barriers to entry in the market for marketing communications services and its various segments are very low. Creative personnel can fairly easily start-up own companies and acquire even large customers. It moreover appears that agencies are able to expand their businesses rather easily and quickly either through the recruitment of new personnel or the development of the business into new fields of activities. The market investigation has confirmed this and revealed also that in general local and international agencies compete with each other.

56. If the market for communication services is split up by type of media used, the information put forward by the parties suggests that the positions of the parties and competitors would not substantially differ. Furthermore, the market investigation has shown no elements that the parties would have particularly strong positions in individual type of media as opposed to the overall market for marketing communications services.

57. The market investigation has not revealed any serious competition concerns with regard to the above mentioned national marketing communications markets. Therefore the operation does not raise competition concerns in any affected marketing communications services markets.

(2) Media buying

Methodology

58. The methodology used by the parties to calculate market shares in the media buying markets is as follows: the starting point for the price of advertising is the "rate card" price published by the media owner. However advertisers almost always actually pay a reduced amount after taking into account a variety of available discounts off the rate card which include discounts available on the face of the rate card and discounts individually negotiated with the media owner. The advertiser will also pay a commission or fee (usually a proportion of its advertising spend) to the media buying agency. The application of discounts to the rate card figure, and the payment of commission, means that it is hard to find any consistent measure of billings used by both operators in the market and market analysts and research agencies.

59. The total market size estimations are generally taken from the World Advertising Research Center (**WARC**) 2004 Reports. WARC estimates the total size of the market from reports given by the media sellers. However, WARC's estimates for the EU countries are based on rate card billings, and do not therefore take into account discounts applied to achieve the actual advertising spend. Because this figure differs from the actual amount of advertising spend the parties have sought other local, reliable sources and where these were these local sources were used. In the absence of such a source, the local WARC-produced figure was used, and then scaled down appropriately to account for the level of discounts which would be (on average) expected against the rate card figures.

60. As regards competitor market shares the parties have used the estimates of the French "Research Company specialising in Media Agencies" (**RECMA**) which is in fact the only source available. However RECMA only estimates the individual billings of the top media buying agencies in the relevant national markets and does not take account of the presence of independent agencies. Also RECMA's estimates in some cases only reflect its own opinion (rather than actual billings figures), which may overestimate the individual billings of the agencies. The parties consider that the RECMA estimates of their business are not accurate and that they typically are overstated. The parties have generally used RECMA's estimates of individual agency billings of competitors to calculate these competitors' market shares. However, the parties have used their own actual gross billings figures to calculate their own market shares and have turned to other comparable data produced in specific local jurisdictions in order to obtain the most accurate information possible in relation to the size of other (independent) competitors on the market.

61. The Commission's market investigation has in general found that this method of calculation of market shares is reasonable. Most competitors confirmed that this methodology was relatively plausible.

Affected Markets

62. The following table sets out the parties' market shares in the media buying sales market, according to data provided by the parties. All figures, unless otherwise stated are for 2003.

	Total media buying					
	Excluding direct sales			Including direct sales		
	WPP	**Grey**	**Combined**	**WPP**	**Grey**	**Combined**
Austria	[5-15]%	[5-15]%	[20-30]%	[5-15]%	[5-15]%	[15-25]%
Belgium	[10-20]%	[0-10]%	[15-25]%	[10-20]%	[0-10]%	[5-15]%
Czech Republic	[20-30]%	[0-10]%	[25-35]%	[15-25]%	[0-10]%	[20-30]%
Denmark	[20-30]%	[20-30]%	[40-50]%	[5-15]%	[5-15]%	[15-25]%
Germany	[10-20]%	[5-15]%	[20-30]%	[10-20]%	[5-15]%	[20-30]%
Hungary	[15-25]%	[0-10]%	[20-30]%	[10-20]%	[0-10]%	[15-25]%
Italy	[20-30]%	[0-10]%	[25-35]%	[15-25]%	[0-10]%	[20-30]%
Netherlands	[10-20]%	[0-10]%	[15-25]%	[5-15]%	[0-10]%	[15-25]%
Norway	[5-15]%	[10-20]%	[20-30]%	[0-10]%	[5-15]%	[15-25]%
Poland	[5-15]%	[5-15]%	[15-25]%	[5-15]%	[0-10]%	[5-15]%
Portugal	[20-30]%	[5-15]%	[30-40]%	[10-20]%	[5-15]%	[20-30]%
Slovakia	[20-30]%	[0-10]%	[25-35]%	[15-25]%	[0-10]%	[20-30]%
Spain	[10-20]%	[0-10]%	[15-25]%	[5-15]%	[0-10]%	[5-15]%
Sweden	[25-35]%	[10-20]%	[40-50]%	[10-20]%	[5-15]%	[15-25]%
United Kingdom	[5-15]%	[0-10]%	[15-25]%	[5-15]%	[0-10]%	[5-15]%

Source: WPP

63. It can be seen from this table therefore that in the market for media buying, affected markets (overlap and combined market share in excess of 15%) arise in Austria, Belgium, the Czech Republic, Denmark, Germany, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden and United Kingdom if direct sales are excluded. If direct sales are included there are affected markets in Austria, the Czech Republic, Denmark, Germany, Hungary, Italy, Netherlands, Norway, Portugal, Slovakia and Sweden.

64. The following is an assessment of the effects of the transaction on each of the affected media buying markets. Most concerns in this case were raised with respect to the German media buying market.

Germany

65. In Germany, different markets are assumed for large-scale and small-scale media buying on the sales market, and for TV and print (with a focus on magazines) on the procurement market. The small-scale media buying market is not affected by the merger (parties' combined market share: [5-15]%) and will not be regarded any further.

<u>Sales market for large-scale media buying</u>

Market shares

66. On the German large-scale sales market for media buying the parties achieve according to their own estimations a combined market share of [25-35]%. During the market investigation the other media buying agencies were asked to provide market share estimates for the large-scale market. All except for one of these agencies submitted estimates for WPP/Grey's combined market share which range between 34% and 40%. The parties have included some small local media buying agencies as players on the large-scale market. Based on the market definition of the large-scale market these have to be taken out since they regularly will not be regarded as reasonable alternatives by most large advertisers. The market share for WPP/Grey based on the accordingly adjusted parties' estimates ([30-40]%) is covered by the range of estimates submitted

by the competitors and moreover goes broadly in line with a calculation made on grounds of gross billings.

67. The parties' estimations - adjusted with respect to the small media buying agencies which cannot be counted to the large-scale market - are the following:

Market shares large-scale media buying - Germany	
WPP	[15-25]%
Grey	[10-20]%
combined	[25-35]%
Aegis	[15-25]%
Omnicom	[5-15]%
Publicis	[10-20]%
Interpublic	[5-15]%
Havas	[0-10]%

Market conditions

68. The transaction can be regarded as a "seven to six merger". After the merger, six major international players with considerable financial strength will remain active on the large-scale media buying market. The merged group will face competition from the other five multinational competitors, which are Aegis, Omnicom, Publicis, Interpublic and Havas. All players are - as WPP and Grey - active in different countries in Europe as well as worldwide each with an international network of individual agencies operating under the roof of a holding. (Except for Aegis, all of them are also active in marketing communications services.) Havas is not a big player in Germany, but a competitor with comparable strengths on the international level, which makes it a credible force also on the German market.

69. The Commission has not received many negative comments by customers with regard to the proposed transaction. Advertisers who use media buying services from large-scale media buying agencies are typically large companies and are able to switch without any major obstacles (except for some loss of continuity and experience) between media agencies. In addition, discounts received from media owners are often portable when an advertiser switches to another media buying agency. Furthermore the tender-driven nature (pitches) of the provision of media buying facilitates switching between media buying agencies and strengthens the negotiating power of the advertiser vis-à-vis the media buying agency. In addition, the loyalty of customers to remain with their media buyer is less high in the large-scale than in the small-scale media buying market. The parties state that there are no significant capacity constraints to raise the level of the media buying services by the merged entity's competitors. This has been confirmed by the market investigation.

70. Some customers have expressed some concerns that the transaction could lead to lower quality in media buying, whereby media buyers would not chose the media which are optimal for the advertiser but those which offer the highest rebates. However, the market investigation has revealed that these potential quality problems will not be created or increased as a result of the proposed transaction. Furthermore, due to the increasing importance of media auditors, which many advertisers use to evaluate the media buying services provided by their agency, the quality of media buying can be controlled.

71. Some competitors forecast a further increase in the market share of the merged entity due to the better conditions it could offer to its customers. As a result of this, it could attract new customers, therefore increase its market share again and lower the competitiveness of the other media buying agencies. However, the market investigation has revealed that this possibility is considered to be limited by potential conflicts of interest. Advertisers in general require that their agency does not in parallel provide services to their main competitors since they do not want their competitors to benefit from the same expertise and market weight by dealing with the same media buying agency. Moreover, advertisers are concerned about their communication strategy being disclosed to competitors. The agency might, in addition, be faced with choosing between two advertisers in a critical time-slot on TV (e.g. World-Cup) or with respect to a highly demanded magazine page. The advertisers therefore in most cases insert exclusivity clauses into their contracts with their agency. A number of customers indicated that the parties with the merger not only acquire the possibility to gain additional customers, but also run some risk of loosing actual or potential customers due to conflict of interest issues.

72. On the basis of the above, it can be concluded that the merged entity would not be able to profitably increase its prices (fees or commission) because customers would be able to switch to other large-scale media buying agencies and there is still a sufficient number of other large-scale media buying agencies present on the German market. In addition, only a few customers think an increase in prices might occur post-merger (a number of customers even expects a decrease in prices), either in the form of rebates which are passed on to a lower extent or in the form of higher fees. A potential tendency to ever increasing market shares will find its limit due to conflict of interest issues.

<u>*Procurement market*</u>

Market shares

73. The parties estimate that in Germany they hold a combined share of the TV broadcasters' sales of [40-50]%. Other market participants provided similar estimates. The calculations based on the gross billings submitted by the TV broadcasters point towards a slightly lower average share for the parties.

74. The parties have also provided estimates as to their share of the advertising sales which are made by the print media. They indicate a combined share for WPP/Grey of [15-25]%. The estimates of other market participants range between 31% and 38%. However, these latter figures were calculated on the basis of an assumed market for the procurement of magazine advertising space by large-scale clients. Such a distinction is, however, not appropriate. Looking at a market for the procurement of advertising space in magazines - without further differentiation between large-scale and small-scale clients - on the basis of the sales figures submitted by the publishers, the parties' combined share reaches 23% and therefore, goes broadly in line with the parties' estimate.

75. While the main private TV owners are completely dependent on the revenues made by the sale of advertising space[8], the publishers in addition receive a large share of

[8] The public TV broadcasters receive additional revenues by fees. They are, however, with respect to the advertising market of minor importance.

revenues from the sale of their magazines/newspapers to the readers. The market investigation showed that overall one third of the publishing houses' total turnover is made with sales to readers. Based on the turnover figures received by the publishers, it can be concluded that such a share of sales to readers is common in the print market. Even though these revenues are not part of the market as defined, they nevertheless are a factor to be taken into account in the interpretation of the indicated shares with regard to the really existing dependency which is apparently lower than the share of 23% indicates.

Control over demand

76. The parties claim that the media agencies do not have own power vis-à-vis the media owners since it is the individual advertiser who decides on the booking of advertising time/space and not the media buying agency. The market shares on part of WPP/Grey would subsequently not reflect any own market strength.

77. This view was not supported by the market investigation. Generally, the media buying agencies do not only act as mere intermediaries between media owners and advertisers. They fulfil two main functions: they advise the advertisers as to their media-mix and the optimal allocation of their media budget to the individual shows and magazine titles in order to reach the advertisers' target audiences (media planning, media consultancy) and they negotiate with the media owners and book the advertising time/space on behalf of their clients (media purchasing).

78. For media planning specific know-how of the media and the tools to evaluate them with respect to the effects of advertising is needed. Due to this superior knowledge, the media buyer can significantly influence the advertiser's decision. However, this influence appears to exist to a larger extent with respect to the detailed allocation of the media budget to specific TV-time slots or magazine pages within a media segment and not so much to the rough allocation of the advertiser's budget between media segments.

79. Most large-scale advertisers require a broad media-mix which in the large majority of cases contains TV as a must-carry product. It appears that the broad media-mix is to a significant extent pre-determined by the requirements of the individual advertiser. The market investigation has confirmed that the media-mix usually emanates from a discussion process between agency and advertiser. In many cases the agency submits a recommendation which has to be approved by the advertiser. The large-scale advertisers are to a substantial degree capable of assessing the media buyers' advice at least with respect to the mix of different media segments - either by using own in-house media experts or independent media auditors. Being asked for the share of advertisers who use the support of media auditors to control the media buyers work, estimates mostly ranged between 50 and 60%.

80. For a decision to shift major parts of an advertiser's media budget between the different media segments the media buyers will, therefore, in most cases have to achieve the consent of the advertiser. The situation, however, is different with respect to the detailed planning as to the allocation of the media budget within a media segment. In fact, the advertiser in some cases does not order a specific time-slot on TV or a page in a magazine, but a pre-determined number/share of the target group the advertiser want to reach on the basis of an agreed media-mix. This gives the media buying agencies substantial own control over the media budgets they manage.

81. […[9]].

82. […].

83. It therefore can be concluded that the media buying agencies to a large extent exert direct purchasing power on the media owners with respect to the allocation of media budgets […]. This means that the shares, that WPP/Grey on average cover of the media owners' sales, broadly reflect the real degree of power exerted by WPP/Grey. With regard to more far-reaching decisions, where the advertiser's consent is required, it has to be acknowledged, that the agencies' control over their managed demand is not as direct and unlimited as it is in the case of direct customers.

Market shares on the media owners' side

84. Overall, the media owners' side exhibits a degree of concentration which is very similar (print) or even higher (TV) than the one that will be reached on the agency side after the merger.

85. In Germany, the market for the supply of TV-advertising time is divided between four TV-broadcasters: two public TV-broadcasters (ARD, ZDF) and two private groups (RTL, Sat1). A very strong position on the market for advertising time is taken by the two private broadcasters RTL and Sat1. Since advertising on the public channels ARD and ZDF is legally restricted to a maximum of 20 minutes per day the public broadcasters only play a minor role in the sale of airtime. Approximately 90% of all TV advertising expenditures are made with the two private broadcasters which are of comparable strength each.

86. In the print market, the main publishing houses for magazines are Gruner + Jahr ("G+J") and Der Spiegel (which is jointly controlled by G+J and a company representing the staff of Der Spiegel), Axel Springer, Bauer and Burda. The four biggest publishing houses reach a combined market share with respect to advertising in magazines for the broad public of approximately 65%. G+J (Spiegel included) leads in this group with 23%.

87. The media owners' market side therefore exhibits a degree of concentration similar or higher than the agency side. […]. On the print side WPP/Grey take a significantly smaller share of the media owners' sales. […].

88. […]. However, as discussed, the future development of market shares is not totally clear. While competitors fear WPP/Grey's further increase in market share, a number of customers also indicate a decrease due to arising conflicts of interests (i.e. competitors being served by the same agency).

89. As a consequence, the customers' assessment that both sides – media owners and media agencies – are developing into-comparable degrees of concentration and power appears to be true in this case. (Especially for TV, most of the advertisers see the market power in rough balance as compared to the situation that prevailed some years ago when the agency market was less concentrated and the balance of power was clearly more in favour of the TV-broadcasters.) It seems, not only the media owners are to some extent dependent on WPP/Grey, but the agencies are also dependent on the

[9] […].

biggest media owners to a similar extent. The power that WPP/Grey gain through the merger will face sufficient countervailing power by the media owners.

90. Based on the above, it can be concluded that the merger does not lead to a significant impediment of effective competition on the procurement market for advertising time on TV and advertising space in magazines and newspapers. Even though the parties will represent an important share of the media owners' sales, the countervailing power on the media owners' side is also significant and can offset to a sufficient extent the increase in negotiation power on the part of WPP/Grey.

Overall conclusion on the German media buying (sales and procurement) market

91. WPP can with this merger substantially increase its market share in Germany. Due to five remaining large competitors, no serious competition concerns can be assumed on the sales market. WPP also increases its purchasing power vis-à-vis the media owners. Given similar or even higher levels of concentration on the media owners' side and based on the fact that the real power of WPP/Grey is due to the incomplete control over the managed demand slightly lower than its shares indicate, a significant impediment of effective competition by WPP/Grey on the procurement market can be excluded in spite of high market shares.

Other countries

General assessment

Sales Markets

92. The parties submit that the transaction will not significantly impede effective competition in any of the affected media buying markets inter alia because advertisers can easily switch to one of the other five "global" media buying agencies or one of the major independent agencies which are regarded as credible alternative providers; and because there are no capacity constraints which would prevent the merger group's competitors from supplying media buying services to customers who had switched. In particular the parties have submitted that in the media buying market advertisers are highly sophisticated customers who are able readily to switch between media buying agencies as a result of (i) low switching costs for advertisers; (ii) portability of discounts; (iii) tenders are relatively frequent. In general the market investigation has confirmed the parties' claims with regard to ease of switching and capacity constraints in these markets.

93. The parties also submit that there are very low barriers to entry in this market and between the various segments of the market. They claim that agencies are generally able to expand their businesses easily and quickly into different segments of the market. Brand name and the positioning of an agency are not the only factors other criteria include the identity and ability of the individuals who work in an agency and the ability of an agency to provide services based on local expertise. Agencies can therefore expand their activities into new segments of the market either through the recruitment of new personnel or the development of the business of the agency into new fields. They claim that the ease with which a prospective new entrant can obtain media buying personnel with the necessary skills and experience from existing agencies mean that start up time is limited and there are a large number of potential entrants into the market. Also they claim that new entrants are able to obtain access to research and statistical data to the extent required from third parties. The

Commission's market investigation has largely confirmed the parties' claims in that, for most affected markets, there is no insurmountable barrier to prevent a new entrant from obtaining a large client account and thus expanding his business.

Procurement Markets

94. The parties submit that the merger will not lead to an increase in the merger group's bargaining power, in any of the affected markets since the media owner's side of the market is also highly concentrated, and since media owners have generally other sales' outlets available to them. In general the Commission's market investigation has confirmed the parties' claims in this regard. The transaction is therefore not likely to lead to a significant impediment to effective competition on any of the affected media buying procurement markets.

Country-specific analysis

Austria

95. In Austria the parties combined market shares in the media buying sales market would amount to [20-30]% (WPP [5-15]%, Grey [5-15]%) if direct sales are excluded. If direct sales are included the combined shares would be [15-25]% (WPP [5-15]%, Grey [5-15]%). A considerable number of strong competitors will remain in this market – Zenith Optimedia ([10-20]%), Aegis Media Group (Carat +Vizeum) ([5-15]%), Omnicom ([10-20]%), Interpublic with 3 separate agencies Panmedia Western ([5-15]%) Universal McCann ([0-10]%), Initiative Media ([0-10]%), Media 1 ([5-15]%) and Reichl und Partner ([0-10]%).

96. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Belgium

97. The parties would have a combined share post-merger in the total Belgian media-buying sales market of [15-25]% if direct sales are excluded (and [5-15]% if direct sales are included. These market shares are considered to be below a level which might give rise to concerns in relation to the merger. Furthermore the addition to WPP's market share is approximately [0-10]% which is insignificant. In addition within Belgium there are a considerable number of other strong competitors.

98. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Czech Republic

99. In the Czech Republic WPP/Grey's combined market share in the media buying sales market will amount to [25-35]% (WPP [20-30]%, Grey [0-10]%) post-merger excluding direct sales (and [20-30]% if direct sales are included). Although the notified transaction may strengthen WPP's market leadership in this country several other competitors remain. These include Publicis Groupe ([15-25]%), Interpublic's two agencies Initiative and Universal McCann with [10-20]%, Omnicom with [10-20]% and Havas with [5-15]% and Aegis with [5-15]%.

100. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Denmark

101. In the media buying sales market WPP/Grey's combined market share in Denmark post-merger will amount to [40-50]% (WPP [20-30]%, Grey [20-30]%) excluding direct sales (and [15-25]% if direct sales are included). However several other strong competitors remain in this market. These include Omnicom with its two agencies OMD ([10-20]%) and MediaWise with ([0-10]%), Interpublic's Initiative Universal with [10-20]% and Aegis with [5-15]%. The parties submit that there are also over 50 competitors operating in relation to large-scale advertising in Denmark, which also provide extensive competition to the parties. The five largest of these competitors are: Advance A/S; Dafolo Marketing A/S; Par No. 1 A/S; Republica A/S; and Sylvester Hvid & Co A/S.

102. The parties claim that the Danish market is characterised by a substantial volume of advertising which is placed directly by advertisers with media owners (59% of the overall market, 32% of the large-scale segment and 91% of the small-scale segment). In view of this high proportion the parties have argued that the assessment of the market in Denmark should take into account these direct sales made by media owners to advertisers. The Commission considers that in the light of this high proportion of direct sales, as well as other characteristics of the Danish market such as the prohibition of agency-specific rebates and the absence of agency volume deals (see below), it is reasonable to expect that the threat of actual or prospective clients opting to bypass the services of a media-buying agency may act as a competitive constraint on the media buying agencies and that therefore these direct sales should be taken into account in the assessment.

103. As regards the procurement market and the contractual relationship and terms between media owners and agencies in Denmark the parties have informed the Commission that agency volume deals on behalf of multiple clients are not the normal practice and would not be accepted by media owners i.e. bookings are generally made on behalf of individual clients. Where this is not so and exceptionally an agency volume deal leads to better prices it is a legal requirement in Denmark that the benefit of this superior price is passed on to clients. In addition there are no free spots provided to media buying agencies in Denmark.

104. In addition in Denmark, the media buying market is regulated by the Danish media buying body (**DRRB**) which has a code of conduct for its members. This body sets certain industry standards as well as providing information to advertisers where needed. Although membership of the body is voluntary, the body has power to provide rulings in the event that a media buying agency is alleged to be in breach of the code. The code is designed to assist media buying agencies, but also to govern ethical standards in the industry. The code has rules preventing media buying agencies from receiving free spots or rebates for themselves (as agencies) and states that the benefit of any agency volume deals made on behalf of multiple clients should be passed on to clients.

105. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Hungary

106. In the media buying sales market WPP/Grey's combined market share post-merger in Hungary will amount to [20-30]% (WPP [15-25]%, Grey [0-10]%) excluding direct sales ([15-25]% if direct sales are included). However several other strong competitors remain in this market. These include Interpublic's Universal agency as market leader with [25-35]%, Omnicom with [15-25]% as well as Publicis' Starcom agency with [5-15]% and Aegis' Carat agency with [0-10]%.

107. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Italy

108. In Italy the parties will have a combined share of the total media-buying market of [25-35]% (WPP [20-30]%, Grey [0-10]%). The increment to WPP's share of the market represented by the transaction is thus quite marginal in percentage terms ([0-10]%). Moreover there are many other strong competitors remaining in this market – Publicis ([15-25]%), Aegis ([15-25]%), Omnicom ([5-15]%), Interpublic ([5-15]%) In addition there are a number of other agencies such as Havas Advenna & Montangero, Calzolari Muraglia & Associati, Creative Media, Diaframma, In Adv who are able to compete with the merger entity. Therefore although the notified transaction may add to WPP's market leadership in Italy this minor addition in terms of market share ([0-10]%) cannot be expected to give rise to serious competition concerns

109. In addition the parties have claimed that the Italian market is characterised by certain other factors: these include the fact that all terms and conditions negotiated by or together with the media agency remain with the client; advertisers can switch between agencies relatively easily; media buying contracts are of short duration generally; almost all of the business obtained by the media buying agencies is obtained through competitive tender; and there is an increasing use of extensive audits which are contained in the contracts between media buying agencies and their advertiser clients; there are also numerous examples of advertisers switching to alternative media buying agencies and some examples of new entry into this market in recent years.

110. The market investigation has in general confirmed the submissions of the parties. In particular competitors and customers have not raised major competition concerns with regard to the Italian market. There has been no indication from the investigation that competition may be significantly impeded as a result of the notified transaction.

Netherlands

111. In the media buying sales market WPP/Grey's combined market share post-merger in the Netherlands will amount to [15-25]% (WPP [10-20]%, Grey [0-10]%) excluding direct sales ([15-25]% if direct sales are included). However several other strong competitors remain in this market. These include the Kobalt agency as market leader with [15-25]%, Interpublic's Magna Global Initiative, Universal McCann and Brand Connection with [10-20]%, Omnicom's OMD agency with [0-10]%, Publicis' ZOG

and Starcom agencies with [0-10]% as well as Aegis' Carat and Vizeum agencies with [5-15]%.

112. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Norway

113. In Norway the parties' combined market share in the media buying sales market will amount to [20-30]% (WPP [5-15]%, Grey [10-20]%) if direct sales are excluded. If direct sales are included the combined shares would be [15-25]% (WPP [0-10]%, Grey [5-15]%). A considerable number of strong competitors will remain in this market – Aegis Media Group (Carat +Vizeum) with [15-25]%, Omnicom with [5-15]%, Interpublic (Initiative Universal) with [5-15]% and Publicis with [0-10]%.

114. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Poland

115. In Poland the parties' combined market share post-merger in the media buying sales market will amount to [15-25]% (WPP [5-15]%, Grey [5-15]%) (and [5-15]% if direct sales are included). A considerable number of strong competitors will remain in this market – Interpublic's Initiative agency with [10-20]%, Universal Mc Cann with [10-20]%, and Pan Media Western with [0-10]%, Publicis' Starcom at [5-15]%, Optimedia at [0-10]% and Zenith at [0-10]%, Omnicom's OMD Optimum Media with [5-15]% and OMD Media Direction at [0-10]%.

116. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Portugal

117. In Portugal WPP/Grey's combined market share post-merger. In the media buying sales market will amount to [30-40]% (WPP [20-30]%, Grey [5-15]%) excluding direct sales (and [20-30]% if direct sales are included). However several other strong competitors remain in this market. These include Interpublic's Universal with [15-25]%, Havas' Media Planning and Arena agencies with [10-20]%, Omnicom's tempoOMD & EspaçoOMD with [10-20]%, Publicis' Starcom agency with [0-10]% as well as Aegis' Carat agency with [0-10]%.

118. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Slovakia

119. In Slovakia the parties' combined market share post-merger in the media buying sales market will amount to [25-35]% (WPP [20-30]%, Grey [0-10]%) and [20-30]% if direct sales are included. A considerable number of strong competitors will remain in

this market – Havas with [15-25]%, Interpublic's UMC and Panmedia Western with [10-20]%, Omnicom with [5-15]%, and Publicis' Starcom and Media House with [5-15]%, Aegis' Carat with [0-10]%.

120. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Spain

121. In Spain the parties' combined market share post-merger in the media buying sales market will amount to [15-25]% (WPP [10-20]%, Grey [0-10]%) and [5-15]% if direct sales are included. A considerable number of strong competitors will remain in this market – Havas' MPG with [15-25]%, Aegis' Carat with [5-15]%, Publicis' ZOG with [5-15]% and Starcom with [0-10]%, Interpublic's Universal with [5-15]% and Omnicom's OMD with [0-10]%.

122. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

Sweden

123. In Sweden the parties' combined market share post-merger in the media buying sales market will amount to [40-50]% (WPP [25-35]%, Grey [10-20]%) excluding direct sales and [15-25]% if direct sales are included. A considerable number of strong competitors will remain in this market – Publicis' Starcom with [5-15]%, and ZenithOptimedia with [0-10]%, Aegis' Carat with [5-15]% and Vizeum with [0-10]%, Interpublic's Universal Initiative with [5-15]% and Omnicom's OMD ([0-10]%).

124. In Sweden, according to estimates made by the parties, 53.4% of total advertising expenditure is accounted for by direct purchases. (and roughly comparable amounts of the large-scale and small-scale segments). The parties have indicated that in Sweden there are a considerable number of substantial clients that purchase direct. In view of this high proportion the parties have argued that the assessment of the market in Sweden should take into account these direct sales made by media owners to advertisers. The Commission considers that in the light of this high proportion of direct sales, as well as other characteristics of the Swedish market such as the prohibition of volume discounts and the absence of agency volume deals (see below), the threat of actual or prospective clients opting to bypass entirely the services of a media-buying agency may act as a competitive constraint on the media buying agencies.

125. Furthermore, the Swedish media buying market is characterised by the presence of a significant number of independent suppliers, including Ad-On Media, Barholm, Go Bizkit, Bright Media, Scream and TBS. In total, these independents – who are active in relation to both large-scale and small-scale advertising – together enjoy market shares of approximately [0-10] per cent. on the overall market.

126. Also the parties have indicated that there is some evidence of new entry - of the six independent suppliers listed above, three have entered the media buying market during the last three years (Ad on Media, Bright Media and Go Bizkit).

127. As regards the contractual terms between media owners and agencies the parties claim that there are no agency volume deals on behalf of multiple clients made by media buying agencies in Sweden; that the Swedish Advertising Association's Code of Conduct (referred to below) prohibits media buying agencies from negotiating prices based on the volume achieved by the agency as a whole – instead, prices (including prices reflecting volume discounts) must be determined on the basis of individual client purchases; that media buying agencies do not receive any rebates or free spots for themselves as agencies (any discounts negotiated are client specific and are always passed back in full to the client); and that there is a high level of transparency in relation to the agreements reached between media buying agencies and clients: frequently, such agreements will actually be signed by clients (who will therefore have full knowledge of the terms).

128. Although the Swedish code of conduct is not compulsory for media buying agencies, in practice, most advertisers require that media buying agencies are a member of the Swedish Advertising Association (**SAA**) and, in order to gain membership of the SAA, media buying agencies are required to sign up to the code of conduct. The code of conduct regulates various aspects of the advertising industry in Sweden and provides inter alia that media agencies should always, if so requested by the client, offer full visibility in relation to media buying. Also media agencies are permitted to buy media space only on behalf of a specific client – bulk-buying is not allowed. There is an active investigation procedure for alleged infringement of these provisions of the code of conduct, with expulsion from the SAA as a potential penalty in the event of sufficiently serious or repeated violations of the rules.

129. The market investigation showed no evidence that would suggest that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

United Kingdom

130. The parties would have a combined share post-merger in the total UK media-buying sales market of [15-25]% excluding direct sales (and [5-15]% if direct sales are included). In a hypothetical large-scale segment the parties' market share would be [10-20]% and in the small-scale segment [5-15]%. These market shares are considered to be below a level which might give rise to concerns in relation to the merger. In addition to this within the UK there are a large number of significant independent operators who include: Walker Media; Mediavest (Manchester); Brandconnection; Tap the Almond Partnership; Brilliant Media; Feathers Brooksbank; Universal McCann Manchester; and John Ayling.

131. The market investigation has in general confirmed this picture. A majority of customers anticipate either that the merger will have no effect or that it will have some benefit in terms of price reduction.

132. Therefore no evidence suggests that the transaction may significantly impede effective competition in this country in the media buying sales market or in the media buying procurement market.

VI. CONCLUSION

133. In view of all the elements of assessment described above, the Commission has concluded that the notified transaction does not give rise to competition concerns in the marketing communication services and media buying markets and that as a result it does not significantly impede effective competition in the common market or in a substantial part of it.

134. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
Markos KYPRIANOU, signed
Member of the Commission