

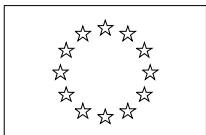
***Case No COMP/M.5232 -
WPP / TNS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)b in conjunction with Article 6(2)
NON-OPPOSITION
Date: 23/09/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23-IX-2008

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH ARTICLE 6(2)

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5232 – WPP/ TNS
Notification of 04.08.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 4 August 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² (the "EC Merger Regulation") by which the undertaking WPP Group plc ("WPP", United Kingdom) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the whole of Taylor Nelson Sofres plc ("TNS", United Kingdom) by way of public bid announced on 9 July 2008. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation.
2. In the course of the proceedings, WPP (the "notifying party") submitted undertakings designed to eliminate the serious doubts identified by the Commission, in accordance with Article 6(2) of the EC Merger Regulation. In the light of these modifications, the Commission has concluded that the notified operation no longer raises serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

² OJ L 24, 29.1.2004 p. 1

I. The Parties

3. **WPP** is an international marketing communications services group. It provides, through a number of operating companies, a comprehensive range of marketing communications services such as advertising, marketing data services (including media management and market research services), insight and consultancy, and public relations and public affairs.
4. WPP is active in market research services in the EEA through its subsidiary, the Kantar Group, the parent company of a number of research subsidiaries. With respect to media measurement services, WPP is active in television audience measurement ("TAM") services via its joint venture with the Nielsen Company, AGB Nielsen Media Research ("AGB Nielsen"), and in radio audience measurement ("RAM") and Print services through the Kantar Group.
5. TNS is a global insight, information and consultancy firm which provides a full range of market research and information services and is listed on the London Stock Exchange. It has offices in more than 80 countries across Africa, the Americas, Asia Pacific, Europe and the Middle East.

II. The Concentration and the Community Dimension

6. The proposed transaction consists of the acquisition of sole control by WPP of TNS by way of a public offer for the entire issued share capital of TNS. The offer is subject to the UK Takeover Code³.
7. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 000 million (WPP EUR 9 132 million, TNS 1 560 million) in 2007. Each of the undertakings concerned has a Community-wide turnover in excess of EUR 250 million (WPP EUR [...] million, TNS turnover in the UK and France amounted to EUR 452 million, no further information on TNS turnover is publicly available). WPP does not achieve more than two thirds of its turnover in any Member State. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.
8. It follows from the above that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. Relevant markets

9. The proposed transaction involves undertakings active in the provision of market research services and media measurement services.

Market research services

Product market

10. Market research services encompass a wide category of services and products. They are aimed at measuring and understanding consumer attitudes and purchasing behavior. In *VNU/ACNielsen*⁴ the Commission considered a possible sub-categorization of the relevant

³ The City Code on takeovers and mergers.

⁴ COMP/M.2291 – VNU/ACNielsen, Annex 1 to the decision.

product market into (i) consumer panel services, (ii) retail measurement services and (iii) customised market research.⁵ However, the final product market definition was left open.

11. The notifying party considers that market research services are best viewed as one broad market, i.e. that the relevant product market is market research services. It submits that any further sub-segmentation would not be appropriate, mainly due to supply-side substitutability.
12. The notifying party submits that syndicated research⁶ (including mainly, but not exclusively consumer panels and retail measurement) and customised research do not constitute distinct product markets, as firms already active in syndicated research can divert resources into customised research almost instantly, to meet the demands of a particular client. It also argues that a sub-segmentation according to particular industry sectors does not appear appropriate as providers of market research services are able to switch between supplying different industry sectors. This is mainly due to the fact that core skills used in providing these services are essentially applicable across sectors, the barriers to entry are low, and suppliers are typically active across a range of segments.
13. The vast majority of the respondents to the market investigation confirmed the sub-categorisation of market research services into (i) consumer panel services, (ii) retail measurement services and (iii) customised market research, as previously contemplated by the Commission.⁷ With respect to a possible distinction of market research services according to certain business areas (in particular health and automotive research), around half of the respondents indicated that such a distinction would be possible.
14. For the purposes of this case, it can be left open whether market research services can be divided into the three sub-categories described in paragraph 13 above or into respective business areas, as the competitive assessment does not change irrespective of the market definition.

Multinational customised market research services provided to international customers

15. Within the market for customised market research services, some respondents to the market investigation identified multi-country customised projects which could constitute a distinct relevant market. The type of services provided for these multi-country projects is broadly similar to those conducted on a national basis. These include fieldwork, methodology, analysis, reporting and project management. However, multi-country projects are more complex. For instance, project management is more elaborate when several national teams (or subcontractors) are involved. Also, the methodological aspects of multi-country projects are complicated and include the need to guarantee a meaningful comparison of data related to different countries which depends, amongst other things, on the way questionnaires are designed or on the way data are collected and (if necessary) cleaned.

⁵ **Consumer panels** obtain the relevant information from a representative group of households that periodically report on their purchases. **Retail measurement services** means tracking consumer purchases at the point of sale through scanning technology and/or manual audit, primarily for fast moving consumer goods sold through retail chains. **Customised market research** is conducted on an exclusive basis for a client and typically seeks to answer specific questions and provides tailor-made marketing solutions.

⁶ **Syndicated research** involves regular collection and analysis of market data and consumer attitudes, beliefs and perceptions and the sale thereof to multiple customers on a non-exclusive basis. Syndicated research includes in particular consumer panels and retail research.

⁷ COMP/M.2291 – VNU/ACNielsen, Annex 1 to the decision.

16. Thus while there is some degree of supply-side substitutability between providing these services on national projects and providing them on multi-country projects, provision of the latter services may be more demanding in certain respects.
17. Approximately one third of all customers who responded to the market investigation (and indeed one third of the subset of responding multinational customers) supported this possible definition of a market for multi-country customised market research services, stressing the value of having an "one-stop shop", i.e. one supplier with multinational presence and a single point of contact.
18. By contrast, the notifying party argues, as do most of its competitors, that multi-country projects do not differ from projects with a narrower geographical scope to such a degree that a separate relevant product market exists. In particular, WPP argues that these contracts are not exclusively procured to global providers (such as WPP, TNS and a few other companies with a virtually global geographic coverage and capability to provide a full range of services) but can be and actually are in many occurrences awarded in full or in part (in case of separate procurement for different tasks) to non-global players.⁸
19. However, for the purposes of this case, it can be left open whether services provided in the framework of multi-country customised market research projects represent a separate product market, as the conclusion does not change irrespective of whether that narrower definition or the broader definition of an overall market for customised market research services is adopted.

Geographic market

20. In its *VNU/ACNielsen*⁹ decision, the Commission left it open whether the geographic market for market research services is national or EEA-wide.
21. The notifying party suggests that the geographic market for market research services is national in scope, although it observes that there are indications that the scope may become European-wide in the near future. WPP submits that the national scope is based mainly on the consumption trends which remain national due to differences between consumers in different countries; moreover the data is obtained on a national basis, certain contracts are awarded nationally, and retail, distribution and media industries are organized at this level.
22. The majority of the respondents to the market investigation stated that the markets are national, with some respondents indicating also the possible future development towards world- and EEA-wide scope. The latter subset of respondents support their view in particular by the significant growth of online market research providers, conducting multi-country projects from a single location (e.g. in the US) and using web interviews and discussion forums. The respondents also refer to the provision of market research services (mainly fieldwork) from "hub" countries which also cover neighbouring areas.
23. Notwithstanding the differing views on the geographic scope of the market for market research services, the final geographic market definition can be left open since irrespective of the market definition, the transaction will not significantly impede effective competition following the remedies submitted by the notifying party.

⁸ See also the LECG report provided by the notifying party as Annex 23 to the Form CO.

⁹ COMP/M.2291 – VNU/ACNielsen para 31.

Media measurement services

Product market

24. Media measurement services are aimed at measuring the audience of specific media. The resulting data, described as "currency"¹⁰, enables a comparison and the pricing of different products (advertising slots on various programs) both for advertisers, media buyers and media owners.
25. Media measurement services normally include several elements including the establishment of the monitoring panel, the installation of data collection equipment, the monitoring and collection of data, the data analysis and the supply of TAM analysis software.¹¹ Usually, these sub-services are supplied as a bundle. However, the establishment of the monitoring panel and the supply of analysis software can be sub-contracted.
26. In previous decisions¹² the Commission identified the following possible categories of media measurement services: (i) internet measurement services; (ii) broadcast data services; (iii) TAM; (iv) entertainment information services; and (v) advertising expenditure measurement (Media ADEX). The Commission has concluded that TAM services form a distinct product market within the broader market of media measurement services.¹³
27. The notifying party submits that for the purpose of analyzing the impact of the current transaction, media measurement services encompass (i) video measurement services, which include the provision of TAM services, set top box ("STB"), online and mobile services; (ii) RAM¹⁴, and (iii) print measurement services ("PRINT").¹⁵ The focus of the assessment in the present case will be on TAM, RAM, Print and Media ADEX. The impact of the transaction on the remaining media measurement services would be very limited.¹⁶

TAM services

28. The market investigation in the current case largely confirms the existence of a distinct relevant market for TAM in accordance with the relevant Commission precedents (see paragraph 26 above).
29. TAM involves the estimation of nationwide or local television audiences and provides information on the percentage of a given population group viewing a channel during a particular time interval.

¹⁰ The "currency" provides a common source of rating for all the market players involved (advertisers, media companies, and related parties).

¹¹ COMP/M.3512 – VNU/WPP/JV, para 10.

¹² COMP/M.2291 – VNU/ACNielsen, paras 25 and 26, Annex 1 to the decision. COMP/M.3512 – VNU/WPP/JV, paras 8 to 11.

¹³ COMP/M.3512 VNU/WPP/JV, para 9.

¹⁴ RAM involves the estimation of radio audiences on a continuous basis.

¹⁵ Audience measurement services for print are designed to assess the readership of newspapers and/or magazines during a particular period.

¹⁶ WPP has a very limited presence in online measurement services as it is active in this area only in Sweden. TNS has a (limited) presence in Belgium and Norway. WPP does not provide broadcast data services. WPP believes that TNS also does not provide these services. WPP and TNS have a very limited presence in entertainment information services.

30. In each EEA country, the provision of TAM services is based on one of the three basic business models: (i) joint industry committees ("JIC"); (ii) media owner ("MO") model; or (iii) proprietary service ("PS").¹⁷ A **JIC** is jointly set up by broadcasters, advertiser associations, advertising agencies and media buyers. The JIC selects a single TAM provider and negotiates specifications and terms of supply of data. The **MO** model is set up by a broadcaster or a group of broadcasters. The MO has the power to select the TAM provider through the organization of a tender. As for the **PS** model, the TAM service provider itself sets up and operates the TAM service on its own account.

Media ADEX

31. Media ADEX involves estimating expenditure on advertising across different media by tracking the occurrence of commercial advertisements and integrating this with other data, such as estimated advertising costs and television ratings.
32. Customers, such as advertising agencies, use Media ADEX to create advertising strategies for their clients and to study and monitor the advertising strategies of their clients' competitors. Media owners will also use the data as market intelligence to determine when a client is advertising with a competitor and to estimate their share of a client's budget.
33. Contrary to the notifying party's submission¹⁸, the market investigation has confirmed that Media ADEX services constitute a separate product market. This finding is based mainly on the lack of substitutability of Media ADEX services by other media measurement services.

Other media measurement services

34. In the case at hand, the Commission has found indications that RAM (radio measurement services) and PRINT (print measurement services) also constitute separate product markets as they are not interchangeable with other media measurement services.
35. Similar indications for further delineations have been given with respect to the TAM analysis software¹⁹ and establishment surveys.²⁰ The market investigation broadly pointed to the fact that these two "ancillary services" to TAM may constitute separate relevant product markets.
36. However, for the purpose of the present case, the precise market definition for RAM, PRINT, software analysis and establishment surveys can be left open as no competition concerns arise irrespective of the market definitions.

17 COMP/M.3512 – VNU/WPP/JV, para 8.

19 TAM analysis software consists of the supply of TAM data through a disaggregated form to users to be used with software applications.

20 An establishment survey is an ad hoc customised market research project which leads to the identification of a list of representative homes from which a sample can be recruited. An establishment survey can help to identify candidate homes to make up a representative TV audience measurement panel.

Geographic market

TAM services

37. In its decision on case *VNU/WPP/JV*²¹ the Commission concluded that the geographic scope of the market for the supply of TAM services is EEA-wide. The notifying party submits that the supply of TAM and other measurement services, such as RAM and PRINT, is international in scope, and that for the purposes of assessing the proposed transaction, it should be considered as being EEA-wide. On the demand side, the market investigation has confirmed that TAM services are provided on a national basis. Even though demand is national in scope, the market investigation confirmed that competition to win a new contract takes place at the EEA-level. It can thus be concluded, in line with precedent²², that the market for the supply of TAM services is EEA-wide.

Media ADEX

38. According to the notifying party, even though Media ADEX services are provided on a national basis, the market should be defined as being EEA-wide in scope in this case.

39. The market investigation has confirmed that Media ADEX services are mainly provided on a national basis. Some competitors pointed to the existence of specific demand for ADEX services gathered at a pan-European level. In this context, Media ADEX providers active at this level and which are not present in a given country, can always source data for this country through the incumbent(s).

40. However, for the assessment of this case, the geographic market definition can be left open because the operation is unlikely to result in a significant impediment of effective competition regardless of the geographic market definition.

Other media measurement services

41. With respect to RAM and PRINT, there were indications that, as with TAM, demand is national but competition to supply these services takes place at the EEA level. For TAM sub-segments, such as software analysis and establishment surveys, the findings were similar. However, the precise scope of these markets can be left open as no competition concerns arise irrespective of the market definition.

Vertically Related Markets

42. The transaction gives rise to vertically affected markets due to the activity of WPP as a media buying agency. Media buying companies purchase services such as TAM and Media ADEX (both services are necessary to monitor advertising expenditure across media)²³ for their clients running advertising campaigns. TNS is present in some upstream (national) markets of TAM and Media ADEX where WPP is also present downstream through media buying companies.

21 COMP/M.3512 – VNU/WPP/JV, para 14.

22 COMP/M.3512 VNU/WPP/JV, para 13.

23 Both WPP and TNS are active in Media ADEX in the EEA, however their activities do not overlap at national level in the EEA.

Media Buying

Product and geographic market

43. In previous decisions, the Commission identified a separate market for media buying.²⁴ This is the market for purchasing time and/or space in various types of media, such as broadcast and cable television, newspapers and magazines for clients running advertising campaigns.²⁵
44. With respect to the geographic scope, in *WPP/GREY*,²⁶ the Commission found that the media buying market is national in scope. The rationale for this is that media buying agencies need to gather locally the necessary knowledge of customer patterns as regards the different media channels and of the differing national regulatory frameworks. There is no reason to take a different view in the present case.

IV. Competitive assessment

Market research services

45. The notifying party submits that in relation to the three categories of market research services suggested in *VNU/ACNielsen*²⁷, both WPP and TNS are active solely in customised market research. WPP neither owns nor operates any consumer panels and is not active in retail measurement services in the EEA.
46. Horizontal concerns have been identified regarding the market for customised market research in Ireland (presuming that such a separate market exists) and on the market for the supply of multinational customised market research services to international customers (presuming that such a separate market exists).
47. TNS and WPP belong to the top 10 global market research services providers, ranked at 3rd and 4th positions respectively in 2006.²⁸ On an EEA-wide basis, according to the notifying party, TNS's market share is [10-20]% while WPP has a [5-10]% market share and they are ranked at 1st and 3rd position. GfK is in 2nd position with a [10-20]% market share.
48. On a national level, the notifying party identified the following affected markets for market research services with the following combined market shares: the Czech Republic ([20-30]%), Ireland ([40-50]%), the Netherlands ([20-30]%), Poland ([20-30]%), Spain ([20-30]%), the UK ([20-30]%) and Norway ([20-30]%).
49. Should a narrower market of *customised* market research services be defined, the notifying party submits that the transaction results in the following affected markets: the Czech Republic ([20-30]%), Ireland ([40-50]%), the Netherlands ([20-30]%), Poland ([30-40]%), Spain ([20-30]%), the UK ([20-30]%), Norway ([20-30]%), Hungary ([10-20]%) and Sweden ([10-20]%).

24 COMP/M. 3209-WPP/CORDIANT, para 17; COMP/M.3579- WPP/GREY, para 21.

25 Media buying agencies will also usually provide media planning or strategic advice, i.e. research into target audiences, which media use for monitoring/tracking the success of a campaign.

26 COMP/M.3579- WPP/GREY, para 35 and 48.

27 COMP/M.2291 – VNU/ACNielsen, Annex 1 to the decision.

28 Esomar Global Market Research Report, 2007.

50. For syndicated research, the UK would be the only affected market, where, according to the party, the combined market share in 2007 stood at [20-30]%.
51. The notifying party argues that the proposed transaction does not give rise to any competition concerns in the market research services market. The merged entity would face strong competition both from leading global companies²⁹ and national or regional players. The market would be characterized by low switching costs for the customers as well as by low barriers to entry (and frequent new entry).
52. The market share data provided by the notifying party show that in most of the above identified affected markets, the new entity would be the market leader post-transaction. It would generally be faced by a number of competitors including both other global players, non-global agencies including agencies with a broader than national (i.e. regional) coverage and/or a consolidated reputation at the national level (so-called "boutique" agencies) as well as a number of much smaller players (overall representing in most cases more than 20% and in some cases 35-40% of the market) identified by the notifying party as competitors in the market.
53. The table here below provides the combined WPP/TNS market shares for the narrowest possible market for customised market research services. The columns refer to three alternative scenarios, based on different groups of small agencies considered to exercise competitive pressure on global agencies like WPP and TNS. Scenario (i) is the one submitted by the notifying party, where all agencies identified are effective competitors. Scenarios (ii) and (iii) aim to quantify the market investigation finding that smaller players are actually unlikely to effectively compete against larger agencies for important contracts or value added tasks. The difference between scenarios (i) and (ii) is that scenario (ii) only excludes the smallest players collectively identified by WPP as "others", whereas scenario (iii) excludes an additional group of small agencies that can hardly be defined as regional or "boutique" (and as such able to put some competitive pressure on global players, as indicated by the market investigation)³⁰.

²⁹ The global players include (but are not limited to) the "big six" often identified by respondents to the market investigation, i.e. WPP (or more precisely The Kantar Group including its main brands for market research Millward Brown and Research International), TNS, GfK (especially after its recent acquisition of NOP), Ipsos, Nielsen and Aegis group's subsidiary Synovate. In addition to them, IMS and IRI have been considered.

³⁰ More precisely, these additional small agencies have been identified mainly on the basis of the observation that the market share threshold used by the notifying party to distinguish very small agencies (collectively considered as "others" in the notification) from more significant market players (including both global and non-global companies) is not homogeneous across countries and ranges from 2% to 4%. In other words, the notifying party arbitrarily considered companies with a similar market share (say 3%) as a very small one in some affected countries but not in other countries. It should be observed that the low market share has not always been considered as an indicator of inability to put competitive pressure. On the contrary, global companies have never been dropped even when accounting for very low market shares.

Table 1 - Joint WPP/TNS market shares in the market for **customised** market research services in all the affected EEA countries (different scenarios)

	(i) As submitted by the notifying party	(ii) Excluding the smallest players	(iii) Excluding additional small players
CZ	[20-30]%	[40-50]%	[40-50]%
HU	[10-20]%	[20-30]%	[20-30]%
IE	[40-50]%	[50-60]%	[60-70]%
NL	[20-30]%	[30-40]%	[30-40]%
NO	[20-30]%	[30-40]%	[30-40]%
PL	[30-40]%	[40-50]%	[40-50]%
SP	[20-30]%	[20-30]%	[30-40]%
SW	[10-20]%	[20-30]%	[20-30]%
UK	[20-30]%	[40-50]%	[40-50]%

54. However, the market investigation showed that many customers adopt a multi-sourcing policy for their market research services budget, although on specific projects they seldom have more than one supplier³¹. This consolidated multi-sourcing practice probably represents the reason why switching is generally considered as easy and switching costs relatively low both in financial and non-financial (e.g. time for implementation) terms.
55. The customers responding to the market investigation indicated that the most important factor for the choice of their providers would be know-how. Many of them also mentioned the importance of having a significant presence in (and knowledge of) their respective country. The importance of know-how and significant presence in the respective country has been confirmed by competitors, who consider them as the main barriers to entry, together with investment costs. However, depending on the value of the contract, customers may choose to organise specific tenders for the various service provisions that together constitute customized market research, including field work that can be provided by even the smallest competitors. This allows customers to strengthen the competitive constraints put forward by smaller players over bigger players.
56. For the reasons listed above, and even on the basis of the narrowest possible market definition the concentration does not give rise to horizontal concerns in any of the above listed affected national markets with the exception of Ireland, which is dealt with separately below. In view of the particularities of the Irish market and due to the concerns expressed by the respondents with respect to this market during the market investigation, the Commission has identified serious doubts with regard to the provision of market research services in the Irish market.

Ireland

57. Based on the submission of the notifying party, the new entity would have a combined market share of [40-50]% (TNS [10-20]% and WPP [20-30]%) in the overall market for the supply of

³¹ Multi-sourcing on a same market research project appears more likely to occur for complex high-cost multinational projects, for which sophisticated customers may have an incentive to (a) benchmark separately the various elements of cost even when the whole contract is awarded to one company and (b) to organize specific tenders for each of the various tasks/services included in the market research project (in particular fieldwork services that are local by nature and can be provided even by non-global players, contrary to other management/coordination tasks that these agencies are unlikely to be able to provide. This is further discussed in the section on multinational customized market research projects.

market research services in Ireland. Other competitors such as Nielsen, Behaviour & Attitudes and Amarach would have, according to the notifying party, a [10-20]%, [10-20]% and [5-10]% market share respectively. The concentration ratio, as measured by the HHI, would stand at [2000-2500] with the operation itself leading to an increase ("delta") of [750-850] points. This concentration ratio and the delta are further indicators of *prima facie* competition concerns in this market.

58. WPP is however only active in customised market research and has no activity in syndicated market research in Ireland. If a distinct market of customised research is considered, the new entity would enjoy a [40-50]% market share, while Nielsen, Behaviour & Attitudes and Amarach would, according to the notifying party, command substantially lower market shares of [5-10]%, [10-20]% and [5-10]% respectively.
59. These market shares, provided by the notifying party, are nevertheless likely to underestimate the competitive impact of the transaction. Indeed, if part of the fringe is excluded for the reasons detailed above, the combined market share of the merging parties in the overall market of market research services would be in the range of [40-50]% (under scenario (ii) describes in §51 above) and [50-60]% (under scenario (iii)). It should be also noted that considering the narrower market for customised market research (see Table 1 above), the combined market share post-merger would be higher than in the overall market: [40-50]% (according to the notifying party) and even higher under the alternative scenarios, i.e. in the range of [50-60]% (under scenario (ii)) and [60-70]% (under scenario (iii)). In addition, the market investigation pointed out that the market shares of some of the other competitors on the Irish market had been overestimated.
60. Furthermore, many respondents complained about a reduction of competition among market research service providers which would lead to price increases and degradation in the quality of the service provided. Several competitors expressed concerns with respect to the dominance of the new entity in the market, in particular when competing for larger market research contracts.
61. The Commission therefore informed the notifying party on 26 August 2008 that it had identified *prima facie* serious concerns in the customised market research market in Ireland.
62. In order to resolve the competition concerns raised by this transaction, on 2 September 2008, WPP submitted a remedy in the form of the divestiture of TNS' market research services business in Ireland, Market Research Bureau of Republic of Ireland Limited ("TNS MRBI"). The remedy package was subsequently improved on 16 September 2008 and on 19 September 2008.

Multinational customised market research services provided to international customers

63. The notifying party, despite repeated requests by the Commission, has not been able to provide any estimate of market shares for the potentially narrower market of multi-country customized market research provided to international customers. It submitted that such an evaluation could not be provided due to the range of firms providing international services and its inability to estimate the percentage of these services in competitors' total revenue.

64. Despite the lack of those figures, the notifying party argues that even if a market for multi-country customised market research projects exists, no significant impediment to effective competition arises. The arguments invoked are the following.
65. First, even in a scenario excluding all non-global companies, the transaction would reduce competition from six to five competitors, leaving GfK, Ipsos, Synovate and Nielsen as competitors of the merged company.
66. Secondly, in a number of cases, "boutique" national (or other regional) suppliers would represent a realistic option for customers, in addition to global players. These non-global players can sub-contract fieldwork or use online tools³² to overcome their limited geographic coverage, and compete with global players for non-fieldwork tasks (such as project management and methodology).³³
67. Finally, the notifying party stresses the significant buyer power of large international customers using increasingly sophisticated procurement systems, with multi-country customised market research projects being constructed "bottom-up" and benchmarked on a national basis.
68. Some large multinational customers initially expressed concerns on a possible negative impact of the concentration on prices and on the quality of the services provided, as well as by limiting the choice of market service providers capable of providing a global service through a single contact point.
69. However, the market investigation clearly indicated that these customers generally consider a number of alternatives to WPP and TNS when procuring multi-country customised market research services.
70. First, the majority of respondents appear to consider all global players as viable options. Thus, the merger would only reduce competitors from six to five.³⁴
71. Secondly, many of the large multinational customers indicated that a number of solutions could be or are currently considered as an alternative to the preferred one-stop shop solution provided by global companies. For instance, some customers have introduced sophisticated tendering solutions, involving separate contracting of tasks (in particular of fieldwork and non-fieldwork tasks, but also of e.g. project management and methodology/reporting). Such

32 The emergence of a growing number of successful online agencies is also evidence of this evolution. The growing use of online interviews tends to decrease the number of national teams necessary to cover a given area, lifting the constraint represented by a local presence for fieldwork and thereby decreasing the difficulty in managing and coordinating those teams.

33 The two economic reports submitted by WPP, describe a number of selected examples of multi-country projects awarded to non-global agencies in tenders where global companies also competed. As argued by the authors, the study did not pretend to be statistically representative of a general tendency, but show that non-global companies potentially could, and in some occasions effectively did, succeed in tenders for important multi-country customised market research projects. While it was not possible to check the details of all the examples submitted (and when checked some details turned out to be incorrect), the broad picture provided in the reports was actually confirmed by the market investigation, as reported in the text.

34 In some cases, respondents also add a couple of market service providers particularly specialised in the specific industry to the list of preferred global players (e.g. Adelphi in the health segment). In other cases, it cannot be excluded that a particular global player is excluded because of past bad experiences or contractual relationships with close competitor of the customer, but this appears to occur rarely and in any case, even under these circumstances a reasonable number of alternatives is preserved.

solutions allow smaller players to compete with global ones for the part of the project that does not require an important multinational presence.

72. Further investigation allowed the Commission to identify a number of smaller, non-global agencies to whom contracts were awarded in tenders where global companies also competed. Although these examples do not coincide with those provided by the notifying party they nevertheless validate the notifying party's claim that non-global companies potentially can compete (on occasions successfully) in tenders for important multi-country customised market research projects.
73. In conclusion, credible contenders to supply multi-country customised market research projects are not limited to full-range global players (such as WPP and TNS). It emerged that a continuum of possible situations exist, each of which involves different degrees of geographic coverage and/or complexity. Indeed, the further market investigation indicated there were reasons to award contracts to smaller national boutique agencies under the coordination of another small dynamic agency.
74. It follows that were a distinct market for multinational customised market research services provided to international customers to be defined, the proposed concentration would not raise serious doubts on this market.

Media measurement services

(a) Horizontal Issues

75. At an EEA level, WPP and TNS overlap in the provision of TAM (including TAM software analysis), RAM and PRINT.

TAM

76. In each Member State, there is only one TAM service provider, with the exception of Poland where two providers offer their services. As a consequence, the supply of TAM services takes place on a monopoly basis within 26 EU Member States. This is explained by the nature of the TAM services, which, as the common source of rating, has to constitute shared data for all the market players (“the currency”).

Market Shares in TAM Services at the EEA level in 2007

Company	TAM Services Market Share in %
AGB Nielsen (WPP 50% JV)	[40-50]
TNS	[20-30]
Combined AGB Nielsen + TNS	[60-70]
GfK	[20-30]
Mediametrie (France)	[5-10]
MediaResearch (Czech Republic)	[0-5]
Markttest (Portugal)	[0-5]

Source: WPP

77. Post merger, the new entity would enjoy a [60-70]% market share ([40-50]% AGB Nielsen, [20-30]% TNS). The concentration ratio, as measured by the HHI, would stand at [4500-5000] with the operation itself leading to an increase ("delta") of [1750-2250] points. Only GfK ([20-30]%) would remain as a substantial competitor, next to smaller players such as Mediametrie ([5-10]%) or MediaResearch ([0-5]%).
78. In a previous case *VNU/WPP/JV*³⁵ the credible bidders for TAM contracts identified by the Commission were [AGB Nielsen], TNS and GfK as "they have submitted bids in a variety of countries and customers consider them to offer strong and credible technological platforms". The aforementioned decision also indicated that the rivalry between WPP and TNS was a "main driver of competition in past auctions".³⁶ This initial finding was upheld by the market investigation carried out for this case.³⁷ These are indicators that the current transaction would be effectively a merger from 3 to 2 between close competitors.
79. As mitigating factors, the notifying party points to the fact that a) there would be other competitors left in the market; b) buyer power in the market is substantial and c) due to the structure of the bidding market, the new entity would not be in the position to exercise market power.
80. The market investigation did not confirm the notifying party's views.
81. a) As regards the other players identified by the notifying party as exerting competition in the market, the market investigation showed that, with the exception of GfK, the other TAM suppliers are national/regional oriented and cannot constitute a credible alternative able to exert competitive pressure on the new entity at the EEA level. MediaResearch for instance, is a small player. Although MediaResearch has competed in the past with AGB, TNS and GfK in a number of EEA and non-EEA countries (Russia, Ukraine), it never won a tender and thus there are real doubts as to its ability to constitute a credible competitor in the EEA market. As regards Mediamétrie, it is so far a clearly France-focused market player.
82. More generally, entry and/or expansion on the TAM services market is subject to significant barriers. The technical barriers to entry are high implying substantial investments in acquiring/developing the TAM technology and building up the "infrastructure" e.g. setting up, monitoring and analysing the data from the panels. Reputation is considered an important element, the market respondents indicating that a credible contender has to have an established track record.
83. b) As regards buyer power, the market investigation has shown, contrary to the notifying party's opinion, that the existence of a JIC (joint industry committee) or a MO (media owners, TV stations) i.e. the fact that "*TAM services are normally provided through a regulated monopoly throughout most of the EEA countries*",³⁸ does not ensure that competition will not be altered by the merger. In fact, many of the JICs and MOs and their members (broadcasters, advertisers, media buyers) raised concerns as to the reduction of choice which would situate the merging parties in a very strong position for the future tenders.

35 COMP/M.3512- VNU/WPP/JV, para 19.

36 COMP/M.3512 – VNU/WPP/JV, para 29.

37 One respondent indicated that: "In conversations with the main TAM service providers over the years, there seems to be greater rivalry between TNS and AGB Nielsen compared to any other suppliers. TNS and AGB Nielsen are the two largest players on a global scale, which probably is the key reason for this."

38 LECG Report provided by the notifying party as Annex 23 to the Form CO.

84. As regards the PS model, the notifying party's opinion is that the conjunction of buyer power and the threat of moving to a JIC/MO model are sufficient to ensure competitive conditions. However, the argument regarding buyer power is per se weaker in a PS system where the monopoly faces a multitude of customers when compared to the JIC/MO system, which constitutes a monopoly/monopsony situation. This is further reflected in the fact that margins seem to be higher in PS countries.³⁹ As for the threat to move to a JIC/MO system, this is, indeed, a possibility. However, a JIC/MO system, in absence of sufficient alternatives for the provision of TAM services would not, as such, ensure competitive outcomes.
85. c) The notifying party's argument that any duopoly on this market corresponds to a competitive situation, does not resist a serious analysis. The party's contention that it is sufficient to have two credible bidders to obtain a competitive outcome in a bidding market crucially rests on a series of assumptions. During the first phase investigation, the notifying party has not been able to demonstrate that these assumptions are fulfilled (e.g., absence of incumbency advantages, ease of entry for new players). More importantly, a number of market players complained that the structure and specific features of this market mean that a 3 to 2 merger would raise serious competitive concerns. Finally, the Commission noted in *VNU/WPP/JV* which concerned this market, that a 3 to 2 merger would be particularly problematic.⁴⁰ These concerns have been confirmed by the market investigation, a large number of respondents pointing to the fact that since the number of credible and established TAM operators is so small, any "takeover may restrict competition even further".
86. It results from all the above that:
- the transaction would lead to a concentration from 3 to 2 main suppliers at the EEA level in TAM services;
 - the parties would enjoy high combined market share, in markets with high concentration levels resulting from a merger between close competitors;
 - customers would be left with only one credible alternative for switching suppliers; and
 - the characteristics of this bidding market do not appear to fulfil the criteria for producing competitive outcomes.
87. The Commission therefore informed the notifying party on August 26, 2008 that it had identified prima facie serious concerns in this market.
88. In order to resolve the competition concerns raised by this transaction, on 2 September 2008 WPP submitted a remedy in the form of either divestiture of its AGB Nielsen shareholding or of TNS' TAM services business in the EEA. The remedy package was subsequently improved on 16 September 2008 and on 19 September 2008.

³⁹ Table 2 on p. 15 of the first draft of the LECG Report provided by the notifying party.

⁴⁰ "Potential competitive harm in a bidding context is highly sensitive to the specifics of the market under investigation. In the present case, for example, a reduction in the number of credible competitors from three to two would be likely to raise strong competition concerns, because it would leave only one alternative bidder in cases where the customer has a preference for changing to a new supplier.", COMP/M.3512- VNU/WPP/JV, footnote 7.

Other media measurement services

89. In RAM and PRINT, the market investigation indicated that post merger, there would be enough choice for the provision of these services. In RAM⁴¹ where the combined market share of the parties at the EEA level would stand at [20-30]% (TNS [10-20]%; WPP [5-10]%), there would still be other important players such as IPSOS ([20-30]% market share) and GfK ([10-20]%). In PRINT⁴², the combined EEA-wide market share of the parties would stand at [30-40]% (TNS [20-30]% and WPP [10-20]%). The other active players in PRINT include IPSOS ([20-30]%), GfK ([5-10]%) and Doxa ([5-10]%). The new entity and IPSOS would be the two strongest players on the PRINT market post-transaction. However, they will be constrained by other market players and by strong buyer power.
90. In addition, the market investigation indicated that the (technical) barriers to entry are low compared to TAM. For RAM and PRINT the technology used is less sophisticated and can be easily replicated by other providers.
91. As for the TAM analysis software and establishment surveys, the notifying party submits that there is no public source which provides market size or market share data, either at the EEA or at the national level. The market investigation showed that there are sufficient alternative players in these potential markets/subsegments such as GfK or Donovan Data Systems and other more specialised players such as Telmar/Peaktime (Transmit and Breaktime), Landsberry & James (e-TAM), MMS Sweden (Hot Collection), Mediametrie (Mediamat), Peaktime (Peaktime), TechEdge and Tellyscope (Viewing Figures) – in analysis software and GfK or IPSOS and other regional players such as STEM Mark, IFAK, Media Markt Analysen, Marplan and Amarach Field Research— in establishment surveys.

(b) Vertical issues

TAM-Media Buying

Competitive assessment

92. TNS is the sole provider of TAM services in a number of Member States where WPP is active as a media buyer. Due to the national scope of the media buying market, the transaction would result in a series of vertically affected markets : Denmark ([40-50]% of the media buying market, [90-100]% of the supply of TAM), Finland ([0-5]% of the media buying market, [90-100]% of the supply of TAM), Poland ([20-30]% of the media buying market, [90-100]% of the supply of TAM), Slovakia ([30-40]% of the media buying market, [90-100]% of the supply of TAM), Spain ([20-30]% of the media buying market, [90-100]% of the supply of TAM) and Norway ([20-30]% of the media buying, [90-100]% of the supply of TAM).
93. In this context, some concerns were raised during the market investigation as to the ability and the incentive of the new entity to enter into strategic input foreclosure regarding the supply of TAM services. Such concerns pointed at the risk that the new entity may try to gain substantial

⁴¹ The notifying party notes that there is usually one RAM service provider in each Member State. In some Member States, e.g. Germany, Iceland, Italy, and Spain, two or more providers are active. WPP provides RAM services via the Kantar Group in Poland and Sweden. TNS provides RAM services in Denmark and Norway.

⁴² For Print services, the notifying party submits that in most Member States, only one Print service provider is active. However, in some Member States, two or more providers are on the market. WPP provides Print services via the Kantar Group in Ireland, Poland and Sweden. TNS provides Print services in France, Denmark, Finland and Norway.

advantages over its competitors at media buyer level by supplying data which would either be unreliable and/or which would be provided to competitors with such delay that it would affect competition at media buyer level.

94. Such an input foreclosure would, according to some respondents to the market investigation, take place (a) either in the context of bilateral commercial relationships between the TAM services supplier and competitors of the new entity at media buyer level, (b) or in the context of indirect relationships, i.e. when media buyers purchase TAM services through a regulating body such as a JIC.
95. The market investigation has dispelled the possibility that such an input foreclosure strategy could be implemented on a lasting basis.

a- Regarding the direct supply of the "customised" TAM services to media buyers

96. One respondent to the market investigation pointed at the existence of such relationships and expressed concerns regarding the risk that post-merger it would not be able to source customised TAM services from the new entity. According to this respondent, a part of the TAM services it sources in the EEA is directly purchased from the TAM services supplier and not indirectly sourced through a JIC/MO or PS system. These services would be different from the TAM "currency" i.e. they would be "customised" in response to specific demand for TAM data.
97. The market investigation has dispelled the concerns raised by this respondent as to the existence of such a risk of input foreclosure.
98. Firstly, the market investigation did not provide tangible elements regarding the existence of a direct sourcing of TAM services by media buyers. No respondent other than the respondent mentioned above pointed at the existence of direct sourcing of TAM services.
99. Secondly, the fact that other media buyers do not source directly TAM services is consistent with the "currency" characteristic of such data and indicates that should "customised" TAM services be supplied through a direct commercial relationship between the TAM services' supplier and the media buyer, it would not constitute an "indispensable" service for the media buyers. In this context, should the new entity refuse to provide customised TAM services, the market investigation suggests that this will not have any impact on competition at media buyer level.

b- Regarding the indirect supply of the TAM "currency" to media buyers according to the JIC/MO/PS models

100. A few respondents to the market investigation raised concern as regards the risk that regardless of the existence of regulating bodies or monopsonies, vertical integration (i.e. the presence of the same company upstream as a TAM services provider and downstream as a purchaser of TAM services competing with media buyers) could trigger anticompetitive behaviour.
101. Some respondents pointed at a more precise risk, specifically the incentive for the new entity to either provide internally its media buyer agencies with data materially in advance of providing that information to its competitors and/or to provide data to the regulating body (such as the JIC) through a digital format that would ultimately make it easier for the new entity's media buying agencies to integrate such data.

102. These two categories of concerns have not been substantiated and respondents upon further requests did not provide the Commission with tangible elements to back their contentions. Moreover, for reasons explained below, the market investigation has dispelled the ability for the new entity to enter into any input foreclosure strategy regarding the supply of TAM services. In this regard a distinction shall be established between the business model according to which TAM services are provided (JIC/ MO/PS).
103. The notifying party argues that there is no ability for the new entity to discriminate with respect to access to TAM data, especially in JIC and MO countries. The notifying party argues that the TAM "*monopoly supplier is subject to regulation by a JIC or MO in 16 of 27 Member States accounting for 77 percent of the EU population*"...and that "*thus, TAM services are normally provided through a regulated monopoly throughout most of the EU countries*"⁴³.

JIC model countries

104. In 2 Member States where the transaction results in vertically affected markets, the supply of TAM services is organized through a JIC: Finland and Slovakia. The existence of a JIC is likely to undermine any input foreclosure strategy for the following reasons.
105. Firstly, it is unlikely that the entity will have the ability to enter into any input foreclosure strategy. Indeed the existence of a JIC purchasing TAM services and then supplying TAM data on a non discriminatory basis is consistent with the logic that TAM services are meant to constitute a "currency". In this regard any attempt by the new entity to enter into an input foreclosure strategy would be detected by the other players in the market, who form part of the JIC, and who have divergent interests from WPP's media buyers. In response to such a strategy the JIC could organise a new tender for the replacement of the incumbent. The market investigation has confirmed that renegotiation of a contract and/or launching of a new tender could be done relatively easily by JICs should the quality of the TAM services deteriorate.
106. Secondly, the market investigation confirmed that the new entity would have no incentive to enter into an input foreclosure strategy as such a strategy would likely result in significant loss of revenues. The value of the TAM services would be drastically reduced should the players on the market lose confidence in the accuracy and reliability of such data. More importantly, the new entity's reputation would be damaged, thus casting doubt on its ability to provide non discriminatory TAM services. In such circumstances, not only would the new entity lose its credibility as a potential bidder for TAM services tenders at the EEA level, but this damage to reputation would also be likely to generate a loss of revenues in the related markets of media buying and advertising which are the notifying party's core activities.
107. Moreover, any input foreclosure in the market for supply of TAM services will raise competition concerns only if it significantly impedes effective competition in the downstream market i.e. the market of media buying for the case at hand. In this respect, the market investigation did not provide any tangible element showing that effective competition would be significantly impeded in the downstream market.
108. The above is consistent with the fact that although WPP is already partially vertically integrated through AGB Nielsen (which is 50% controlled by WPP), no bias in the supply of TAM services has been reported.

⁴³ LECG Report provided by the notifying party as Annex 23 to the Form CO.

MO model countries

109. In 3 countries (Denmark, Poland and Norway) where the transaction results in vertically affected markets, the supply of TAM services is organized according to a central purchasing system: the MO model. In these countries the parties are unlikely to be able to leverage their market power through a foreclosure strategy for the same reasons as in JIC countries. In particular, the purchaser (the MO) owns the data and has the capacity to change the TAM supplier through the organisation of a tender should it deem it appropriate.

PS model countries

110. The operation also results in vertically affected markets in Spain and to a certain extent in Poland⁴⁴, where the PS model prevails.

111. Despite the absence of a strong regulating body such as the JIC, the market investigation has also dispelled the risk that an input foreclosure strategy would be implemented on a lasting basis in countries where the PS systems prevail.

112. In the specific case of Spain, the provision of TAM services is subject to industry-wide scrutiny and significant oversight by the independent industry body Asociación para la Investigación de Medios de Comunicación ("AIMC") (in charge of the technical audit of TNS service), the Control Council (representing all users of TAM data, which is in charge of overseeing the TAM service – including the quality and controls thereof – and can take decisions on significant alterations to the TAM service) and the Users Committee (that can propose quality standards and mechanisms to ensure that they are met).

113. More generally the market investigation has confirmed the convergence towards the JIC model. A neutral regulating body is indeed more and more generally accepted as the appropriate standard to guarantee the establishment of the most accurate TAM data, and to monitor the supply of TAM data on a non discriminatory basis.

114. Indeed, should the advertisers, broadcasters and the other TAM customers become dissatisfied with the service provided by the TAM provider, then there would be no or little barriers to prevent them placing the service out to tender. The market investigation identified that such a situation recently occurred in Romania, where the incumbent PS supplier, an AGB Nielsen/TNS joint venture was replaced as provider within the space of a year by GfK (the contract starts in 2008).

TAM - Media ADEX

115. On a national basis, the operation results in no horizontally affected markets.⁴⁵

116. The operation nevertheless results in a series of vertically affected markets. The new entity will be present upstream as a Media ADEX services provider (through TNS), and downstream as Media ADEX services purchaser (through WPP, buyer of Media ADEX and in competition with other Media buyers) in 9 countries: Czech Republic ([80-90]% market share on ADEX, [30-40]% on Media buying), Denmark ([90-100]% market share on ADEX, [40-50]% on

⁴⁴ In Poland, where the PS system functions in parallel with the MO system, there are indications that the Polish TV stations and agencies are in the process of establishing a JIC.

⁴⁵ WPP is present as a provider of Media ADEX services in Sweden, a country where TNS is absent as a Media ADEX services provider.

Media buying), Finland ([90-100]% market share on ADEX, [0-5]% on Media buying), France ([80-90]% market share on ADEX, [10-20]% on Media buying), Hungary ([90-100]% market share on ADEX, [20-30]% on Media buying), Poland ([90-100]% market share on ADEX, [20-30]% on Media buying), Slovakia ([90-100]% market share on ADEX, [30-40]% on Media buying) and Spain ([20-30]% market share on ADEX, [20-30]% on Media buying).

117. A number of respondents to the market investigation raised concerns in relation to the risk, should the transaction take place, that the new entity may enter into input foreclosure as regards the supply of Media ADEX, mainly insisting upon the strategic value of any such data. The concerns expressed both pointed at the risk that prices of Media ADEX services would increase and at a possible total foreclosure, i.e. a situation in which the new entity would completely stop supplying its competitors at the media buyer level.
118. While in the very short-run the new entity may, in principle, have the ability to pursue an input foreclosure strategy, this is highly unlikely to occur for the reasons that are exposed below.
119. The Commission has thus evaluated the extent to which the new entity would have the incentive to enter into any such input foreclosure strategy. It also assessed the extent to which input foreclosure would lead to increased prices in the downstream market thereby significantly impeding effective competition at the media buyers' level.
120. Regarding the incentive of the new entity to enter into input foreclosure, this concern can be dispelled for the following reasons.
121. The market investigation has indicated that Media ADEX, despite the relatively small size of the market (estimated at EUR [...] million in 2007 by the notifying party) and its limited weight in media buyers' overall cost structure, is indeed a key input for the latter. However, the new entity will not have the incentive to enter into an input foreclosure strategy, mainly because, such a strategy would in all likelihood lead to the entry/expansion of new competitors, either spontaneously or sponsored by the media buyers.
122. First, to the extent that the new entity may raise prices and/or limit access to Media ADEX, competitors such as Xtreme and Nielsen have resources and would find it economically profitable to enter the market or expand their existing activities. The Commission has received submissions that confirm that existing players in this sector periodically review the opportunity to enter the ADEX market at national level.
123. Should the new entity enter into input foreclosure, competitors such as Xtreme, Nielsen or Yacast (in France) could target the unmet demand from media buyers which would be more willing to rely upon neutral Media ADEX providers than on the new entity. In addition, the presence of multiple suppliers in many European countries shows that, as opposed to TAM services, Media ADEX services do not constitute a "currency" which, per se, would justify the presence of a unique supplier on a national basis.
124. Some competitors raised concerns as regards the competitive advantage that the new entity would derive from its ability to obtain ADEX at cost (as opposed to purchasing it from a third party at market prices). Such an argument does not in itself indicate the existence of competitive concerns. Rather, this conjecture points at the efficiency enhancing effect of vertical integration.

125. Regarding the other potential barriers, they are limited, and mostly consist in the time necessary to start providing the Media ADEX services for competitors entering a market. In particular, the necessary gathering of relevant data would take at least an entire year. According to competitors, entry would be possible within a time period ranging from 14 months (a full year backing data being necessary) to no more than two years from the actual decision to enter.
126. Secondly, in its assessment, the Commission has considered whether there are effective and timely counter-strategies that the rival firms would be likely to deploy, including the possibility of sponsoring the entry of new suppliers upstream.
127. Given that Media ADEX is both a small market with low entry barriers and a key input, it is highly unlikely that competitors of the new entity at media buyer level would accept having their competitive position jeopardized by deteriorated access to Media ADEX data provided by the new entity. Downstream competitors could sponsor entry/expansion of competitors at Media ADEX level. In this regard, Nielsen, a company with an established reputation and a strong position on the EEA market⁴⁶, or Xtreme, may be able to propose an alternative to the new entity.
128. Thirdly, no element other than the importance of the data has been provided to support the argument that the new entity would have an incentive to lose revenues upstream (through input foreclosure) in order to gain market shares downstream (through the competitive advantage gained at the media buyer level).
129. The situation in Sweden is compatible with the conjecture that the new entity would not have the incentive to pursue an input foreclosure strategy. In that country, although WPP is both present upstream ([90-100]% market share on the supply of Media ADEX) and downstream ([30-40]% on Media buying), the market investigation did not reveal any element that would suggest that WPP pursued an input foreclosure strategy, or that foreclosure may constitute a profitable strategy.
130. Regarding the overall impact of an input foreclosure strategy and/or the impact that the presence of a vertically integrated actor may have, the market investigation did not identify any relevant element.
131. Firstly, the presence of an undertaking both upstream (as a Media ADEX provider) and downstream (as a purchaser of Media ADEX) does not appear to represent a key competitive advantage. In the only national market where a vertically integrated player is present (WPP in Sweden), the market share of WPP's downstream media buyers is significant ([30-40]%) but not overwhelming.
132. Secondly, for the reasons stated here above, should difficulties (in relation to price/deteriorated data/missing data) arise from the supply of Media ADEX, competitors at media buyer level would likely prompt entry/expansion of Media ADEX suppliers.

Market for the supply of Media ADEX on a pan European basis

133. Should an EEA market for the supply of media ADEX services be considered, the operation results in a horizontally affected market. However, the overlap is limited, and the new entity,

⁴⁶ Form CO Table 31: Nielsen has a [50-60]% market share at EEA level.

with a market share of [20-30]% (TNS [20-30]%, WPP [0-5]%) will still face strong competitors, including Nielsen ([50-60]% market share) and Xtreme ([10-20]%)⁴⁷.

134. Should a specific product market for media ADEX data covering pan European areas be identified, the operation would not result into any overlap because WPP is not present on any such market.

Conclusion on Media ADEX

135. It is concluded that the transaction will not significantly impede effective competition on the market for the supply of Media ADEX in any EU member states, at pan European as well as at EEA level.

V. Remedies

Procedure

136. In order to address the competition concerns identified by the Commission, WPP submitted commitments on 2 September 2008. These commitments consisted of the divestment of: (a) WPP's 50% shareholdings in the AGB Nielsen joint venture or alternatively of the TNS TAM business in order to address the competition issues in the TAM market; (b) the TNS business in the market research services market in Ireland in order to address the competition issues on that market; and (c) TNS' Media ADEX business in a series of Member States. The Commission carried out a market test to assess the effectiveness of the commitments in removing the competition concerns identified.
137. Given that the market investigation allowed the Commission to discard any vertical concerns with respect to Media ADEX, the Commission informed WPP that the proposed ADEX remedies were no longer necessary and accordingly WPP withdrew them.
138. On 19 September 2008, WPP submitted a revised commitments package with a view to clarifying the conditions of the transfer of some assets in TAM business and improving the viability of the Irish business. The improvements in the commitments package made by WPP take into account all the comments raised in the market test.
139. The Commission has assessed the revised commitments and has concluded that they remove all competition concerns identified and that the divested businesses could constitute independent and economically viable entities able to compete effectively with the combined WPP/TNS entity on the market for the supply of TAM services and on the market for customised market research services in Ireland. The Commission therefore concludes that the final commitments as submitted on 19 September 2008, remove the competition concerns raised by the proposed transaction.

Description of the commitments

TAM remedy

140. In order to address the competition concerns identified by the Commission regarding the horizontal effects of the transaction in the TAM market, WPP submitted on September 2 two alternative commitments as set out below:

⁴⁷ Source – Form CO- Notifying party's estimates.

(a) In the first instance and as its preferred option, WPP would divest its 50% shareholding in the AGB Nielsen Media Research BV joint venture (the "AGB Nielsen Shareholding") to Nielsen.

(b) Should WPP not divest its shareholding in AGB Nielsen to Nielsen within the AGB Nielsen First Divestiture Period⁴⁸, WPP will divest, as an alternative, TNS' TAM business in the EEA (the "TNS Divestment Business").

(a) The AGB Nielsen Shareholding

141. The AGB Nielsen Shareholding commitment consists of the divestiture to Nielsen of the 50% shareholding currently held by WPP in AGB Nielsen.

142. AGB Nielsen currently provides TAM Services in the following Member States in the EEA: Cyprus, Greece, Hungary, Ireland, Italy, Poland, Slovenia, Sweden and the UK.

143. By virtue of acquiring the AGB Nielsen Shareholding, Nielsen would acquire sole control of AGB Nielsen.

(b) TNS Divestment Business

144. The TNS Divestment Business comprises the entire EEA business currently owned and operated by TNS which provides TAM services, with the exception of the set top box business. In the EEA, TNS currently provides TAM services in Belgium Denmark, Estonia, Latvia, Lithuania, Norway, Poland, Slovakia, and Spain. TNS also won the recent UK TAM tender. It is currently undertaking trials and will start providing TAM services in the UK in 2010.

145. The TNS Divestment Business includes the following: (a) the TAM business carried on and services provided by TNS in the above listed countries and the central functions managing the TNS Divestment Business in the EEA; (b) the Meters Centre being the business carried out by TNS which researches, develops, builds and provides the meter technology for the provision of TAM services; (c) Infosys Activities being the business carried out by TNS which researches, develops, licenses, sells and provides support for the television audience measurement analysis software used by TNS and (d) Comtel being the operating system (incorporating relevant hardware, software and firmware).

146. The commitment does not include the assets and personnel strictly necessary for TNS' current monitoring and utilisation of set top boxes (return path data services) ("STB/RPD").⁴⁹

⁴⁸ According to the submitted TAM Commitments, the AGB Nielsen First Divestiture Period is the period of [...] months after the Effective Date, and the TNS First Divestiture Period is the period of [...] months after the TNS Closing.

⁴⁹ The set top boxes constitute a specific service, developed by TNS in relation to satellite TV media measurement which is distinct from the "classical TAM service". The main difference between STB/RPD and "traditional TAM" is that the latter provides information on the individual viewing behaviour of a representative sample of the population, while the former is limited to households who use set-top boxes (i.e. a non-representative sample of the population). In addition, the STB/RPD service only provides information on households' use of satellite TV and not individual viewing behaviour across the entire range of channels.

Market research services remedy

147. In order to address the competition concerns in the Irish market for market research services, on 2 September 2008 WPP submitted undertakings consisting of the divestment of the customised market research business of TNS' Irish subsidiary MRBI (See para 62 above).
148. Some respondents to the market test indicated that the original commitments, which related solely to customised market research services and carved out all syndicated market research services, might raise viability issues. WPP was informed of these concerns. On 19 September 2008, WPP submitted improved commitments including also syndicated market research services (with the exclusion of the TNS Worldpanel).
149. The improved TNS MRBI divestment business includes all TNS's current customised and syndicated market research activities in Ireland. It does not include the consumer panel business operated under the TNS Worldpanel brand and any Media Measurement Services and any media monitoring service (i.e. the tracking and recording of media content, including news monitoring services).

Assessment of the commitments

Introduction

150. As explained in the Commission notice on remedies⁵⁰, the Commission assesses whether the commitments submitted by the notifying party resolve the competition concerns raised by the Commission. In assessing whether or not the commitments will restore effective competition, the Commission considers the type, scale and scope of the commitments by reference to the structure of and particular characteristics of the market in which competition concerns arise.
151. Where a proposed concentration threatens to significantly impede effective competition, a divestiture may be an effective way to restore effective competition. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete with WPP/TNS and others on a lasting basis.
152. The commitments package as submitted by WPP on September, 2 2008 addressed the whole of the overlap between the parties to the concentration in those markets where the Commission had identified serious doubts. However, the market test of the remedies while pointing at the ability of the proposed remedies to remove the identified competition concerns, identified particular issues as regards the viability of the proposed remedies. In particular, specific issues (assessed below in more detail) were raised (i) for the TAM remedy as to the viability of the TNS' TAM business once the STB/RPD business would be carved out and (ii) for the market research remedy as to the viability of the Irish business once the syndicated research business would be carved out.
153. On September 19, 2008, the notifying party took steps to address those shortcomings by submitting revised commitments. Following further investigation, the Commission has been able to endorse the revised commitments. Therefore, the Commission has concluded that the proposed commitments, as amended, would clearly remove all competition concerns brought about by the proposed transaction.

⁵⁰ Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (OJ C 68, 02.03.2001, p. 3).

TAM remedy

1. Independence, viability and competitiveness of the TAM business

154. As regards the divestment of the shareholding in AGB Nielsen to Nielsen, the Commission's investigation has confirmed that the AGB Nielsen business, as wholly owned by Nielsen (or an affiliated undertaking), would constitute an independent and viable business. Indeed, AGB Nielsen is already active as a standalone business. Following the acquisition of WPP's 50% shareholding, Nielsen will control 100% of AGB Nielsen which will thus be independent of the merged entity.
155. Nielsen has (i) *financial resources*: it is a large international supplier active in 100 countries with the requisite financial resources; (ii) *proven expertise*: Nielsen is a leading provider of marketing data services. It currently jointly controls AGB Nielsen and, before this joint venture was formed in 2004, it had sole control of the TAM services business contributed to form AGB Nielsen; and (iii) *an incentive to maintain and develop the business as an active competitive force*: Nielsen is a competitor to the notifying party and therefore it has the incentive to continue the development of AGB Nielsen.
156. The divestment would not lead to competition concerns as Nielsen's EEA activities in TAM services are limited to AGB Nielsen and the change from joint to sole control in AGB Nielsen would not lead to competition concerns arising.
157. Should WPP be unable to reach an agreement with Nielsen within the First Divestiture Period, it will divest the TNS Divestment Business. The market testing of the remedies confirmed that the TNS divestment business is capable of operating as a self-standing business. That business contains the entire TNS TAM businesses in the EEA (with the exception of the STB/RPD business), all tangible and intangible assets, all licences, the necessary technology, the operating system and the personnel needed to continue and further develop a viable business.
158. However, some respondents to the market testing of the (initial) TAM remedy pointed out that as TNS offers measurement services in an integrated manner across several TNS activities, it would be difficult to carve out the STB/RPD from the TNS TAM business without endangering the viability of the divested business. In particular, the respondents indicated possible problems with the allocation of the respective key personnel currently dealing with both "traditional TAM" and set top boxes at the same time.
159. A deeper investigation into the structure of the TNS' TAM and STB/RPD businesses indicated that the STB/RPD business can be carved out without endangering the viability of the TNS' TAM business. There is a (very) limited number of persons responsible for the STB/RPD business and their exclusion from the personnel allocated to the TNS' TAM business would not affect the viability of the entire TNS TAM business. However, in addressing any potential issues as to the allocation of the personnel to the TNS' TAM business, the notifying party has submitted on September 19, 2008, improved commitments containing a provision [...] with respect to the allocation and inclusion of any assets, technologies and personnel [...] to determine these issues.
160. In light of the above, the carve-out of the set-top box business does not endanger the viability of the TNS TAM business.

2. Effectiveness of the commitments in removing the competition concerns

161. Each of the two proposed commitments entirely eliminates the overlap between TNS and WPP in TAM in the EEA. In the market investigation, the majority of respondents indicate that either of the divestments in TAM would be sufficient to remove the identified competition concerns in the TAM market.
162. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the common market and the EEA with respect to TAM markets, which have been established in the previous sections of this Decision.

Customised market research services remedy

1. Independence, viability and competitiveness of MRBI

163. MRBI is structured as an existing stand-alone business with a market presence in Ireland, operating under a separate and distinct management with an independent budget and organisational structure.
164. The market investigation confirms that almost all respondents consider the divestment business would be a viable stand-alone business. Possible concerns of some respondents to the market test on the influence of the non-inclusion of syndicated market research services in the MRBI divestment business were removed by the submission of the improved remedy. Also, should any disputes arise regarding the allocation and inclusion of any assets, technologies and personnel in the MRBI divestment business, these issues will be decided by the Monitoring Trustee. With respect to the future acquirer of MRBI, the respondents consider that its previous experience and activity in the market research services sector is considered essential for the further success of the divestment business as a competitive force on the relevant markets.

2. Effectiveness of the commitments in removing the competition concerns

165. The revised commitments entirely eliminate the overlap between TNS and WPP in customised market research services in Ireland. In the market investigation, the majority of respondents indicate that the divestment of MRBI will be sufficient to remove the identified competition concerns in the market for customised market research services in Ireland.
166. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the common market and the EEA with respect to the Irish market for customised market research services, which have been established in the previous sections of this Decision.

Conditions and obligations

167. Under the first sentence of the second subparagraph of Article 6(2) of the EC Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

168. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the EC Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the EC Merger Regulation. In accordance with the basic distinction described above, the Decision in this case is conditioned on the full compliance with Part II Section A and the corresponding Schedule and Part III Sections A and C and the corresponding Schedule of the TAM Commitment and full compliance with Sections B and D and the corresponding Schedule of the market research services remedy submitted by the notifying party on 19 September 2008.
169. The remaining requirements set out in the other Sections of the Commitments submitted by the notifying party on 19 September 2008 constitute obligations.

CONCLUSION

170. The Commission concludes that the revised commitments are sufficient to address the competition concerns raised by the present transaction. Therefore, 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
(signed)
Neelie KROES
Member of the Commission

By hand and by fax: 00 32 2 296 4301
European Commission – Merger Task Force
DG Competition
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Case COMP/M. 5232 – WPP / TNS

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 as amended (the **Merger Regulation**), WPP Group plc (**WPP**) hereby provides the following Commitments (the **TAM Commitments**) in order to enable the European Commission (the **Commission**) to declare the acquisition by WPP of Taylor Nelson Sofres plc (**TNS** and, together with WPP, the **Parties**) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the **Decision**).

The TAM Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the TAM Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No 802/2004.

PART I - INTERPRETATION

For the purpose of the TAM Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: in relation to a person, undertakings under the Control of that person and/or by the ultimate parent undertakings of that person.

AGB Nielsen: AGB Nielsen Media Research BV

AGB Nielsen Business: the business operated by AGB Nielsen which provides TAM Services.

AGB Nielsen Key Personnel: all personnel necessary to maintain the viability and competitiveness of the AGB Nielsen Business as listed in the Schedule to Part II.

AGB Nielsen Shareholding: the shareholding consisting of WPP's fifty per cent. shareholdings in AGB Nielsen, a joint venture with Nielsen, and all subsidiary companies operated by AGB Nielsen. The present legal and functional structure of the AGB Nielsen Shareholding is described in the Schedule to Part II.

AGB Nielsen Shareholding Closing: the transfer of the legal title of the AGB Nielsen Shareholding to the Nielsen Company (**Nielsen**) or to an Affiliated Undertaking of Nielsen.

Control: shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by WPP and who has received from WPP the exclusive Trustee Mandate to sell the TNS Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: in relation to the divestment of the AGB Nielsen Shareholding described in Part II below the period of [...] months after the Effective Date (the **AGB Nielsen First Divestiture Period**) and in relation to the divestment of the TNS Divestment Business described in Part III below the period of [...] months after the TNS Closing (the **TNS First Divestiture Period**).

Hold Separate Manager: the person appointed by WPP to manage the day-to-day operation of the TNS Divestment Business under the supervision of the Monitoring Trustee.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by WPP, and who has the duty to monitor WPP's compliance with the conditions and obligations attached to the Decision.

Purchaser: the entity approved by the Commission as acquirer of the TNS Divestment Business in accordance with the criteria set out in Section D of Part III.

TAM Services: any services to the extent they comprise or relate to the measurement, for the primary purpose of establishing audience size, and/or composition of audiences for television programming based on viewing activity (in any medium and through any device) by a panel or other sample selected to represent the viewing of the universe from which the panel is selected.

TNS Closing: the date on which the offer made by WPP under the UK Takeover Code for TNS becomes or is declared unconditional in all respects on the basis of the Offer Document dated 1 August 2008.

TNS Divestment Business: the EEA TAM Services business currently owned and operated by TNS as defined in the Schedule to Part III that WPP commits to divest.

TNS Divestment Business Closing: the transfer of the legal title of the TNS Divestment Business to the Purchaser.

TNS Divestment Business Key Personnel: all personnel necessary to maintain the viability and competitiveness of the TNS Divestment Business as defined in the Schedule to Part III.

TNS Trade Marks: the name "TNS" and any other Trade Mark that includes the name "TNS".

Trade Marks: trade marks, service marks, brand names, certification marks, collective marks, logos, symbols, corporate names, trade names and all other indicia of origin, and all associated goodwill.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] months after the end of the TNS First Divestiture Period.

WPP: WPP Group plc, a company incorporated under the laws of England and Wales, with registered number 05537577 and whose registered office is at Pennypot Industrial Estate, Hythe, Kent, CT21 6PE.

PART II

DIVESTMENT OF WPP'S SHAREHOLDING IN AGB NIELSEN

Section A. The AGB Nielsen Shareholding

Commitment to Divest

1. In order to restore effective competition, WPP commits to enter into an agreement to divest the AGB Nielsen Shareholding to Nielsen or an Affiliated Undertaking of Nielsen on or before the end of the First Divestiture Period.
2. WPP shall be deemed to have complied with the TAM Commitments if, by the end of the AGB Nielsen First Divestiture Period, WPP has entered into a final binding sale and purchase agreement with Nielsen, has communicated this to the Commission and if the AGB Nielsen Shareholding Closing takes place within a period not exceeding [...] months after the date of the agreement with Nielsen.
3. In order to maintain the structural effect of this Commitment to divest the AGB Nielsen Shareholding, WPP shall, for a period of [...] years after the Effective Date,
 - (a) not acquire a direct or indirect shareholding in AGB Nielsen; and
 - (b) not acquire direct or indirect influence over the whole or part of the AGB Nielsen Business in the EEA,

unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over (a) and (b) above is no longer necessary to render the proposed concentration compatible with the common market. For the avoidance of doubt these TAM Commitments do not prevent WPP and AGB Nielsen (or any Affiliated Undertakings of either company) from entering into any agreement which relates to the operation of a business outside of the EEA.

Section B. Related commitments

Preservation of Viability, Marketability and Competitiveness

4. If WPP has not completed the divestiture of the AGB Nielsen Shareholding to Nielsen on or prior to the Effective Date, from the Effective Date until the AGB Nielsen Shareholding Closing, WPP shall preserve the economic viability, marketability and competitiveness of the AGB Nielsen Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the AGB Nielsen Business. In particular WPP undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the AGB Nielsen Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the AGB Nielsen Business;
 - (b) to make available sufficient resources for the development of the AGB Nielsen Business, on the basis and continuation of the existing business plans; and
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all AGB Nielsen Key Personnel to remain with the AGB Nielsen Business.

Hold-separate obligations of Parties

5. WPP commits, from the Effective Date until the AGB Nielsen Shareholding Closing or the approval of the Purchaser by the Commission, to keep the AGB Nielsen Business separate from the businesses it is retaining and to ensure that the AGB Nielsen Key Personnel have no involvement in any business retained and vice versa. WPP shall also ensure after the Effective Date that the personnel which form part of the AGB Nielsen Business do not report to any individual outside the AGB Nielsen Business.
6. From the Effective Date until the AGB Nielsen Shareholding Closing or the approval of the Purchaser by the Commission, WPP shall assist the Monitoring Trustee in ensuring that the AGB Nielsen Business is managed as a distinct and saleable entity separate from the businesses WPP is retaining.
7. To ensure that the AGB Nielsen Business is held and managed as a separate entity the Monitoring Trustee shall exercise WPP's rights as shareholder in the AGB Nielsen Business (except for its rights for dividends that are due before the AGB Nielsen Shareholding Closing), with the aim of acting in the best interest of the business, determined on a stand alone basis, as an independent financial investor, and with a view to fulfilling WPP's obligations under the TAM Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of WPP. Upon request of the Monitoring Trustee, WPP shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

8. WPP shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the AGB Nielsen Business. In particular, the participation of the AGB Nielsen Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the AGB Nielsen Business. WPP may obtain information relating to the AGB Nielsen Business which is reasonably necessary for the divestiture of the AGB Nielsen Shareholding or whose disclosure to WPP is required by law or regulatory requirement (e.g. accountancy).

Non-Solicitation Clause

9. WPP undertakes that it will not solicit, and will procure that its Affiliated Undertakings will not solicit the AGB Nielsen Key Personnel for a period of at least [...] months after the AGB Nielsen Shareholding Closing.

PART II - SCHEDULE

AGB Nielsen Shareholding

- (a) The divestiture of the AGB Nielsen Shareholding consists of the fifty per cent. shareholding held by Cavendish Square Holding B.V. (an Affiliated Undertaking of WPP) in AGB Nielsen Media Research BV (referred to throughout as the AGB Nielsen Shareholding) to Nielsen or an Affiliated Undertaking of Nielsen on or before the end of the First Divestiture Period.
- (b) AGB Nielsen Media Research BV is a joint venture between WPP and Nielsen. Currently, WPP has an equal 50 per cent. share in AGB Nielsen Media Research BV with Nielsen and WPP also has the right to appoint an equal number of directors as Nielsen. By virtue of acquiring the AGB Nielsen Shareholding, Nielsen would acquire sole Control of AGB Nielsen Media Research BV.
- (c) AGB Nielsen Media Research BV is the parent company of the AGB Nielsen group. The business of AGB Nielsen Media Research BV and its subsidiaries (referred to throughout as the AGB Nielsen Business) is the provision of TAM Services: TAM Services are those services which comprise or relate to the measurement, for the primary purpose of establishing audience size, and/or composition of audiences, for television programming based on viewing activity (in any medium and through any device) by a panel or other sample selected to represent the viewing of the universe from which the panel is selected. The AGB Nielsen Business currently provides TAM Services in the following countries in the EEA including through the following subsidiaries:
 - (i) Cyprus - AGB (Cyprus) Ltd
 - (ii) Greece - AGB Nielsen Media Research sa
 - (iii) Hungary - AGB Nielsen Mediakutato Kft.
 - (iv) Ireland - AGB Nielsen Media Research (Ireland) Ltd
 - (v) Italy - AGB Nielsen Media Research Holding SpA, AGB Nielsen Media Research Srl, AGB Nielsen Media Research TAM Srl and Media Instruments Italia Srl
 - (vi) Poland - AGB Nielsen Media Research Sp.z.o.o
 - (vii) Slovenia - AGB LAB d.o.o. and AGB Nielsen, Medijske Raziskave, d.o.o.
 - (viii) Sweden - AGB Nielsen Media Research (Sweden) AB
 - (ix) UK - AGB Nielsen Media Research Ltd
- (d) The AGB Nielsen Key Personnel identified by WPP and to be agreed with Nielsen include:
 - (i) [...]

PART III

DIVESTMENT OF TNS' TAM SERVICES BUSINESS IN THE EEA

Section A. The TNS Divestment Business

Commitment to Divest

10. Should WPP not fulfil the Commitment set out in Part II above within the AGB Nielsen First Divestment Period, in order to restore effective competition, WPP commits, as an alternative, to divest, or procure the divestiture of the TNS Divestment Business by the end of the TNS First Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 23. To carry out the divestiture, WPP commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the TNS Divestment Business within the TNS First Divestiture Period. If WPP has not entered into such an agreement at the end of the TNS First Divestiture Period, WPP shall grant the Divestiture Trustee an exclusive mandate to sell the TNS Divestment Business within the Trustee Divestiture Period in accordance with the procedure described in paragraph 32.
11. WPP shall be deemed to have complied with these TAM Commitments if, by the end of the Trustee Divestiture Period, WPP has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 23 and if the closing of the sale of the TNS Divestment Business takes place within a period not exceeding [...] months after the approval of the Purchaser and the terms of sale by the Commission. [Divestment terms]
12. In order to maintain the structural effect of the TAM Commitments, WPP shall, for a period of [...] years after the Effective Date, not acquire direct or indirect influence over the whole or part of the TNS Divestment Business unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the TNS Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the TNS Divestment Business

13. The TNS Divestment Business consists of the business currently operated by TNS and its Affiliated Undertakings which provides TAM Services in the EEA. The present legal and functional structure of the TNS Divestment Business as operated to date is described in the Schedule to Part III. The TNS Divestment Business, described in more detail in the Schedule to Part III, includes:
 - (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the TNS Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the TNS Divestment Business;
 - (c) all contracts, commitments and customer orders of the TNS Divestment Business; all customer, credit and other records of the TNS Divestment Business (items referred to under (a) to (c) hereinafter collectively referred to as **Assets**); and
 - (d) the personnel (as described in the Schedule to Part III).

Section B. Related commitments

Preservation of Viability, Marketability and Competitiveness

14. From the TNS Closing until the TNS Divestment Business Closing, WPP shall preserve the economic viability, marketability and competitiveness of the TNS Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the TNS Divestment Business. In particular WPP undertakes:
- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the TNS Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the TNS Divestment Business;
 - (b) to make available sufficient resources for the development of the TNS Divestment Business, on the basis and continuation of the existing business plans; and
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all TNS Divestment Business Key Personnel to remain with the TNS Divestment Business.

Hold-separate obligations of Parties

15. WPP commits, from the TNS Closing until the TNS Divestment Business Closing, to keep the TNS Divestment Business separate from the businesses WPP is retaining and to ensure that the TNS Divestment Business Key Personnel including the Hold Separate Manager – have no involvement in any business retained and vice versa. WPP shall also ensure after the TNS Closing that the personnel (as described in the Schedule to Part III) do not report to any individual outside the TNS Divestment Business.
16. From the TNS Closing until the TNS Divestment Business Closing, WPP shall assist the Monitoring Trustee in ensuring that the TNS Divestment Business is managed as a distinct and saleable entity separate from the businesses WPP is retaining. WPP shall appoint a Hold Separate Manager who shall be responsible for the management of the TNS Divestment Business and who shall be under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the TNS Divestment Business independently and in the best interests of the TNS Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by WPP.

Ring-fencing

17. WPP shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the TNS Divestment Business. In particular, the participation of the TNS Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the TNS Divestment Business. WPP may obtain information relating to the TNS Divestment Business which is reasonably necessary for the divestiture of the TNS Divestment Business or whose disclosure to WPP is required by law or regulatory requirement (e.g. accountancy).

Non-solicitation clause

18. WPP undertakes, subject to customary limitations, not to solicit, and to procure that its Affiliated Undertakings do not solicit, the TNS Divestment Business Key Personnel transferred with the TNS Divestment Business for a period of [...] months after the TNS Divestment Business Closing.

Due Diligence

19. In order to enable potential purchasers to carry out a reasonable due diligence of the TNS Divestment Business, WPP shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers identified by WPP sufficient information as regards the TNS Divestment Business; and
 - (b) provide to potential purchasers identified by WPP sufficient information relating to the personnel (as described in the Schedule to Part III) and allow them reasonable access to such personnel.

Reporting

20. WPP shall submit written reports in English on potential purchasers of the TNS Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
21. WPP shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section C. The Purchaser

22. In order to ensure the immediate restoration of effective competition, the Purchaser of the TNS Divestment Business, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the TNS Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the TAM Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the TNS Divestment Business (the before-mentioned criteria for the purchaser hereafter the **Purchaser Requirements**).
23. The sale and purchase of the TNS Divestment Business shall be conditional on the Commission's approval. When WPP has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. WPP must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the TNS Divestment Business is being sold in a manner

consistent with the TAM Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the TNS Divestment Business is being sold in a manner consistent with the TAM Commitments. The Commission may approve the sale of the TNS Divestment Business without one or more assets of the TNS Divestment Business or parts of the personnel (as described in the Schedule to Part III), if this does not affect the viability and competitiveness of the TNS Divestment Business after the sale, taking account of the proposed purchaser.

PART III - SCHEDULE

TNS Divestment Business

- (a) The TNS Divestment Business comprises the entire EEA business currently owned and operated by TNS which provides TAM Services in the EEA except those assets, technologies and personnel which are strictly necessary for the monitoring and utilisation of set top boxes (also known as return path data).⁵¹ TAM Services are those services which comprise or relate to the measurement, for the primary purpose of establishing audience size, and/or composition of audiences, for television programming based on viewing activity (in any medium and through any device) by a panel or other sample selected to represent the viewing of the universe from which the panel is selected.
- (b) Following paragraph 10 and 13 of these TAM Commitments, and subject to the exclusions set out in paragraph (c) of this Schedule below, the TNS Divestment Business includes:⁵²
- (i) the business carried on and services provided by TNS in any of Denmark, Estonia, Latvia, Lithuania, Slovakia, Poland, Spain, Norway, Belgium and the UK, to the extent that it comprises or relates to the measurement, for the primary purpose of establishing audience size, and/or composition of audiences for television and/or radio programming based on viewing or activity (in any medium and through any device) by a panel or other sample selected to represent the viewing of the universe from which the panel is selected. For the avoidance of doubt, the TNS Divestment Business includes (a) the business carried on and the services provided by TNS in the UK to the extent that it comprises or relates to the recruitment of TAM panel members and (b) those central functions located in the UK (or elsewhere) which manage the TNS Divestment Business in the EEA;
 - (ii) Meters Centre being the business carried on by TNS which researches, develops, builds and provides the meter technology for the provision of the services identified in (a) above including but not limited to the TNS People Meters and intellectual property rights together with employees who spend more than 50 per cent. of their time within the Meters Centre;
 - (iii) Infosys Activities being the business carried on by TNS globally, but developed, run and coordinated in Spain and the UK, which researches, develops, licenses, sells and provides support for the television audience measurement analysis software used by TNS;
 - (iv) Comtel being the operating system (incorporating relevant hardware, software and firmware) used (i) to poll the television metered panel households/individuals and process the data to the point where it can be exported to analysis tools to allow users the ability to analyse the data; (ii) to provide diagnostic analysis of the performance of the metering of individual panel homes; and (iii) used for panel management;
 - (v) any software owned by TNS that is used in Infosys Activities, the Meters Centre, Comtel or the business identified in (a) above generally;
 - (vi) the TNS Divestment Business Key Personnel including:

⁵¹ Given the unsolicited nature of its bid, WPP has not had access to TNS' proprietary information in preparing these TAM Commitments. Unless data was publicly available WPP has where possible estimated TNS' activities to the best of its ability.

⁵² Given the unsolicited nature of its bid, WPP has not had access to detailed information on the Divestment Business. WPP will provide this information to the Monitoring Trustee as soon as practicable possible following the TNS Closing.

- (A) the Sector Team being the employees of TNS who are wholly or mainly assigned, or whose principal purpose is, to provide services to the business described in (a) above but who are not allocated to a specific country;⁵³ and
 - (B) the BARB Team being the employees of TNS who are wholly or mainly assigned, or whose principal purpose is, to provide services relating to the contract entered into between a subsidiary of TNS and BARB in the UK;
- (vii) the personnel including all employees of TNS who spend more than 50 per cent. of their time working for the TNS Divestment Business;
 - (viii) all the intangible assets (including all Trade Marks and all intellectual property rights relating to TAM metering activities) currently used to operate TNS' TAM Services in the EEA;
 - (ix) the main licences, permits and authorisations currently used to operate TNS' TAM Services in the EEA;
 - (x) the contracts, agreements, leases (other than property leases), commitments and understandings which remain (in whole or in part) to be performed by or which are currently used to operate the business in (a) above;
 - (xi) the customer, credit and other records currently used to operate TNS' TAM Services in the EEA;
 - (xii) liabilities of the TNS Divestment Business;
 - (xiii) the arrangements for the supply for a transitional period of up to one year after the TNS Divestment Business Closing and on terms and conditions equivalent to those at present afforded to the TNS Divestment Business, of all current arrangements under which TNS or Affiliated Undertakings supply products or services to the TNS Divestment Business or lease office space, required to maintain the viability and competitiveness of the TNS Divestment Business, unless otherwise agreed with the Purchaser; and
 - (xiv) to the extent that any information required in relation to items (i) to (xii) listed above is currently not available to WPP, WPP shall submit to and agree with the Monitoring Trustee a full list of such information within one month of the TNS Closing.
- (c) The TNS Divestment Business shall not include:
- (i) Any Trade Marks used mainly in the TNS Divestment Business to the extent they include "TNS" or "Taylor Nelson Sofres";
 - (ii) those assets, technologies and personnel which are strictly necessary for the monitoring and utilisation of set top boxes (also known as return path data);
 - (iii) any Assets or Personnel in relation to:
 - (A) the measurement of internet activity;
 - (B) any customised media research (i.e. the provision of marketing research services on an exclusive basis to a client to meet the requirements of that particular client); and

⁵³ The inclusion within the Sector Team of individual TNS employees will be decided by the Monitoring Trustee.

(C) any advertising expenditure and media monitoring (i.e. the tracking and recording of media content e.g. tracking when and on what media a particular item of news or an entertainment program or advertisement was shown or aired).

(d) [Dispute resolution clause]

PART IV – COMMON PROVISIONS

Section A. Trustee

I. Appointment Procedure

24. WPP shall appoint a Monitoring Trustee to carry out the functions specified in these TAM Commitments for a Monitoring Trustee. If WPP has not entered into a binding sales and purchase agreement relating to the TNS Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser of the TNS Divestment Business proposed by WPP at that time or thereafter, WPP shall appoint a Divestiture Trustee to carry out the functions specified in the TAM Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
25. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the TNS Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by WPP

26. No later than one week after the Effective Date, WPP shall submit a list of one or more persons whom WPP proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, WPP shall submit a list of one or more persons whom WPP proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 25 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these TAM Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

27. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, WPP shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, WPP shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by WPP

28. If all the proposed Trustees are rejected, WPP shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 24 and 27.

Trustee nominated by the Commission

29. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom WPP shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

30. The Trustee shall assume its specified duties in order to ensure compliance with the TAM Commitments. The Commission may, on its own initiative or at the request of the Trustee or WPP, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

31. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the AGB Nielsen Divestment Business and the TNS Divestment Business with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by WPP with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the AGB Nielsen Business and the TNS Divestment Business, and the keeping separate of the AGB Nielsen Business and the TNS Divestment Business from the businesses retained by WPP, in accordance with paragraphs 4, 5, 14 and 15 of the TAM Commitments;
 - (b) supervise the management of the TNS Divestment Business as a distinct and saleable entity, in accordance with paragraph 16 of the TAM Commitments;
 - (c)
 - (i) in consultation with WPP, determine all necessary measures to ensure that WPP does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the TNS Divestment Business, and in particular strive for the severing of the TNS Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the TNS Divestment Business; and
 - (ii) decide whether such information may be disclosed to WPP to allow WPP as the disclosure is reasonably necessary to carry out the divestiture of the TNS Divestment Business or as the disclosure is required by law;

- (d) monitor the splitting of assets and the allocation of personnel (as described in the Schedule to Part III) between the TNS Divestment Business and WPP or its Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to WPP such measures as the Monitoring Trustee considers necessary to ensure WPP's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the AGB Nielsen Business and the TNS Divestment Business, the holding separate of the TNS Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the TNS Divestment Business and the personnel (as described in the Schedule to Part III) in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to such personnel;
- (vi) provide to the Commission, sending WPP a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the TNS Divestment Business and the AGB Nielsen Business so that the Commission can assess whether the businesses are held in a manner consistent with the TAM Commitments and in relation to the TNS Divestment Business only the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending WPP a non-confidential copy at the same time, if it concludes on reasonable grounds that WPP is failing to comply with these TAM Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 23, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser, the viability of the TNS Divestment Business after the proposed sale and as to whether the TNS Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision; in particular if relevant, whether the sale of the TNS Divestment Business without one or more Assets or not all of the personnel (as described in the Schedule to Part III) will affect the viability of the TNS Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the TNS Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 23. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of WPP, subject to WPP's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of

every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to WPP.

III. Duties and obligations of WPP

34. WPP shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of WPP's or the TNS Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the TAM Commitments and WPP and the TNS Divestment Business shall provide the Trustee upon request with copies of any document. WPP and the TNS Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
35. WPP shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the TNS Divestment Business. This shall include all administrative support functions relating to the TNS Divestment Business which are currently carried out at headquarters level. WPP shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. WPP shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. WPP shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale of the TNS Divestment Business, the TNS Divestment Business Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the TNS Divestment Business Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, WPP shall cause the documents required for effecting the sale of the TNS Divestment Business and the TNS Divestment Business Closing to be duly executed.
37. WPP shall indemnify the Trustee and its employees and agents (each an **Indemnified Party**) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to WPP for any liabilities arising out of the performance of the Trustee's duties under the TAM Commitments, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of WPP, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to WPP's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should WPP refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served WPP during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

39. If the Trustee ceases to perform its functions under the TAM Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require WPP to replace the Trustee; or
 - (b) WPP, with the prior approval of the Commission, may replace the Trustee.
40. If the Trustee is removed according to paragraph 39, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 24 to 29.
41. Beside the removal according to paragraph 39, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the TAM Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section B. The Review Clause

42. The Commission may, where appropriate, in response to a request from WPP showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) grant an extension of the time periods foreseen in the TAM Commitments, or
 - (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these TAM Commitments.

Where WPP seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall WPP be entitled to request an extension within the last month of any period.

SIGNATORIES

.....
duly authorised for and on behalf of
WPP Group plc

By hand and by fax: 00 32 2 296 4301
European Commission – Merger Task Force
DG Competition
Rue Joseph II / 70 Jozef-II straat
B-1000 BRUSSELS

Case COMP/M.5232 – WPP / TNS

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 as amended (the **Merger Regulation**), WPP Group plc (**WPP**) hereby provides the following Commitments in relation to the Republic of Ireland (the **RoI Commitments**) in order to enable the European Commission (the **Commission**) to declare the acquisition by WPP of Taylor Nelson Sofres plc (**TNS** and, together with WPP, the **Parties**) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the **Decision**).

The RoI Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the RoI Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

For the purpose of the RoI Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: in relation to a person, undertakings under the Control of that person and/or by the ultimate parent undertakings of that person.

Control: shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by WPP and who has received from WPP the exclusive Trustee Mandate to sell the Divestment RoI Business to a MRBI Purchaser at no minimum price.

Divestment RoI Business: the marketing research business in the Republic of Ireland currently owned and operated by Market Research Bureau of Ireland Limited, a subsidiary of TNS (**MRBI**) as defined in the Schedule to these RoI Commitments.

Divestment RoI Business Closing: the transfer of the legal title of the Divestment RoI Business to the MRBI Purchaser.

Divestment RoI Business Key MRBI Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment RoI Business as defined in the Schedule.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months after the TNS Closing.

Hold Separate Manager: the person appointed by WPP to manage the day-to-day operation of the Divestment RoI Business under the supervision of the Monitoring Trustee.

Media Measurement Services: any services which measure the audiences for any of TV, radio, print, online, mobile, set top box, cinema and outdoor media as well as advertising expenditure services (also known as Media Adex).

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by WPP, and who has the duty to monitor WPP's compliance with the conditions and obligations attached to the Decision.

MRBI Personnel: all personnel currently employed by MRBI and who are wholly or mainly assigned, or whose principal purpose is, to provide services to the Divestment RoI Business, including Divestment RoI Business Key MRBI Personnel (as defined in the Schedule), staff seconded to the Divestment RoI Business and shared personnel.

MRBI Purchaser: the entity approved by the Commission as acquirer of the Divestment RoI Business in accordance with the criteria set out in Section C.

Syndicated Marketing Research Services: the provision of marketing research on a regular basis (eg quarterly; semi-annually; annually; bi-annually) to multiple clients (and which is not customised to the requirements of individual clients). These include but are not limited to any services relating to consumer panels and retail measurement services.

TNS Closing: the date on which the offer made by WPP for TNS under the UK Takeover Code becomes or is declared unconditional in all respects on the basis of the Offer Document dated 1 August 2008.

TNS Trade Marks: the name "TNS" and any other Trade Mark that includes the name "TNS".

Trade Marks: trade marks, service marks, brand names, certification marks, collective marks, logos, symbols, corporate names, trade names and all other indicia of origin, and all associated goodwill.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] months after the end of the First Divestiture Period.

WPP: WPP Group plc, a company incorporated under the laws of England and Wales, with registered number 05537577 and whose registered office is at Pennypot Industrial Estate, Hythe, Kent, CT21 6PE.

Section B. The Divestment RoI Business

Commitment to Divest

1. In order to restore effective competition, WPP commits to divest, or procure the divestiture of the Divestment RoI Business by the end of the First Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 23. The divestment of the Divestment RoI Business addresses the concern identified by the Commission that the Proposed Transaction may lead to a significant impediment to effective competition in relation to the provision of marketing research services in the Republic of Ireland (and in particular in relation to customised marketing research which constitutes the only area of overlap between WPP and TNS within marketing research services in the Republic of Ireland). To carry out the divestiture, WPP commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment RoI Business within the First Divestiture Period. If WPP has not entered into such an agreement at the end of the First Divestiture Period, WPP shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment RoI Business within the Trustee Divestiture Period in accordance with the procedure described in Section E.

2. WPP shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, WPP has entered into a final binding sale and purchase agreement, if the Commission approves the MRBI Purchaser and the terms in accordance with the procedure described in paragraph 23 and if the closing of the sale of the Divestment RoI Business takes place within a period not exceeding [...] months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the RoI Commitments, WPP shall, for a period of [...] years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment RoI Business unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment RoI Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment RoI Business

4. The Divestment RoI Business consists of the business currently operated by MRBI which provides marketing research services in the Republic of Ireland. The present legal and functional structure of the Divestment RoI Business as operated to date is described in the Schedule. The Divestment RoI Business, described in more detail in the Schedule, includes:
 - (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment RoI Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment RoI Business;
 - (c) all contracts, commitments and customer orders of the Divestment RoI Business; all customer, credit and other records of the Divestment RoI Business (items referred to under (a) to (c) hereinafter collectively referred to as **Assets**); and
 - (d) the MRBI Personnel.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the TNS Closing until the Divestment RoI Business Closing WPP shall preserve the economic viability, marketability and competitiveness of the Divestment RoI Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment RoI Business. In particular WPP undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment RoI Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment RoI Business;
 - (b) to make available sufficient resources for the development of the Divestment RoI Business, on the basis and continuation of the existing business plans; and
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Divestment RoI Business Key MRBI Personnel to remain with the Divestment RoI Business.

Hold-separate obligations of Parties

6. WPP commits, from the TNS Closing until the Divestment RoI Business Closing, to keep the Divestment RoI Business separate from the businesses WPP is retaining and to ensure that the Divestment RoI Business Key MRBI Personnel including the Hold Separate Manager – have no involvement in any business retained and vice versa. WPP shall also ensure after the TNS Closing that the MRBI Personnel do not report to any individual outside the Divestment RoI Business.
7. From the TNS Closing until the Divestment RoI Business Closing, WPP shall assist the Monitoring Trustee in ensuring that the Divestment RoI Business is managed as a distinct and saleable entity separate from the businesses WPP is retaining. WPP shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment RoI Business and who shall be under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment RoI Business independently and in the best interests of the Divestment RoI Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from any businesses retained by WPP.

Ring-fencing

8. WPP shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment RoI Business. In particular, the participation of the Divestment RoI Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment RoI Business. WPP may obtain information relating to the Divestment RoI Business which is reasonably necessary for the divestiture of the Divestment RoI Business or whose disclosure to WPP is required by law or regulatory requirement (e.g. accountancy).

Non-solicitation clause

9. WPP undertakes, subject to customary limitations, not to solicit, and to procure that its Affiliated Undertakings do not solicit, the Divestment RoI Business Key MRBI Personnel transferred with the Divestment RoI Business for a period of [...] months after the Divestment RoI Business Closing.

Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment RoI Business, WPP shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment RoI Business; and
 - (b) provide to potential purchasers sufficient information relating to the MRBI Personnel and allow them reasonable access to the MRBI Personnel.

Reporting

11. WPP shall submit written reports in English on potential purchasers of the Divestment RoI Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

12. WPP shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The MRBI Purchaser

13. In order to ensure the immediate restoration of effective competition, the MRBI Purchaser of the Divestment RoI Business, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment RoI Business as a viable and active competitive force in competition with the Parties and other competitors; and
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the RoI Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment RoI Business (the before-mentioned criteria for the purchaser hereafter the **MRBI Purchaser Requirements**).
14. The final binding sale and purchase agreement relating to the Divestment RoI Business shall be conditional on the Commission's approval. When WPP has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. WPP must be able to demonstrate to the Commission that the purchaser meets the MRBI Purchaser Requirements and that the Divestment RoI Business is being sold in a manner consistent with the RoI Commitments. For the approval, the Commission shall verify that the purchaser fulfils the MRBI Purchaser Requirements and that the Divestment RoI Business is being sold in a manner consistent with the RoI Commitments.
15. The Commission may approve the sale of the Divestment RoI Business without one or more assets of the Divestment RoI Business or parts of the MRBI Personnel, if this does not affect the viability and competitiveness of the Divestment RoI Business after the sale, taking account of the proposed purchaser. [Divestment terms]

Section E. Trustee

I. Appointment Procedure

16. WPP shall appoint a Monitoring Trustee to carry out the functions specified in these RoI Commitments for a Monitoring Trustee. If WPP has not entered into a binding sale and purchase agreement relating to the Divestment RoI Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser of the Divestment RoI Business proposed by WPP at that time or thereafter, WPP shall appoint a Divestiture Trustee to carry out the functions specified in these RoI Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
17. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final

sale value of the Divestment RoI Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by WPP

18. No later than one week after the Effective Date, WPP shall submit a list of one or more persons whom WPP proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, WPP shall submit a list of one or more persons whom WPP proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 25 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these RoI Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, WPP shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, WPP shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by WPP

20. If all the proposed Trustees are rejected, WPP shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 24 and 27.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom WPP shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the RoI Commitments. The Commission may, on its own initiative or at the request of the Trustee or WPP, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment RoI Business with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by WPP with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (b) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment RoI Business, and the keeping separate of the Divestment RoI Business from the businesses retained by WPP, in accordance with paragraphs 14 and 15 of the RoI Commitments;
 - (c) supervise the management of the Divestment RoI Business as a distinct and saleable entity, in accordance with paragraph 16 of the RoI Commitments;
 - (d)
 - (i) in consultation with WPP, determine all necessary measures to ensure that WPP does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment RoI Business, and in particular strive for the severing of the Divestment RoI Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment RoI Business; and
 - (ii) decide whether such information may be disclosed to WPP as the disclosure is reasonably necessary to allow WPP to carry out the divestiture or as the disclosure is required by law;
 - (e) monitor the splitting of assets and the allocation of MRBI Personnel between the Divestment RoI Business and WPP or its Affiliated Undertakings;
- (i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (ii) propose to WPP such measures as the Monitoring Trustee considers necessary to ensure WPP's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment RoI Business, the holding separate of the Divestment RoI Business and the non-disclosure of competitively sensitive information;
- (iii) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment RoI Business and the MRBI Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to such MRBI Personnel;
- (iv) provide to the Commission, sending WPP a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment RoI Business so that the Commission can assess whether the businesses are held in a manner consistent with the RoI Commitments and in relation to the Divestment RoI Business only the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending WPP a non-confidential copy at the

same time, if it concludes on reasonable grounds that WPP is failing to comply with these RoI Commitments;

- (v) within one week after receipt of the documented proposal referred to in paragraph 23, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser, the viability of the Divestment RoI Business after the proposed sale and as to whether the Divestment RoI Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment RoI Business without one or more Assets or not all of the MRBI Personnel will affect the viability of the Divestment RoI Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment RoI Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 23. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of WPP, subject to WPP's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to WPP.

III. Duties and obligations of WPP

- 26. WPP shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of WPP's or the Divestment RoI Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the RoI Commitments and WPP and the Divestment RoI Business shall provide the Trustee upon request with copies of any document. WPP and the Divestment RoI Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 27. WPP shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment RoI Business. This shall include all administrative support functions relating to the Divestment RoI Business which are currently carried out at headquarters level. WPP shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. WPP shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- 28. WPP shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale of the Divestment RoI Business, the

Divestment RoI Business Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Divestment RoI Business, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, WPP shall cause the documents required for effecting the sale of the Divestment RoI Business and the Divestment RoI Business Closing to be duly executed.

29. WPP shall indemnify the Trustee and its employees and agents (each an **Indemnified Party**) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to WPP for any liabilities arising out of the performance of the Trustee's duties under the RoI Commitments, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Trustee, its employees, agents or advisors.
30. At the expense of WPP, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to WPP's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should WPP refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served WPP during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the RoI Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require WPP to replace the Trustee; or
 - (b) WPP, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 39, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 24 to 29.
33. Beside the removal according to paragraph 39, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the RoI Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from WPP showing good cause and accompanied by a report from the Monitoring Trustee:
 - (i) grant an extension of the time periods foreseen in the RoI Commitments, or
 - (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these RoI Commitments.

Where WPP seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall WPP be entitled to request an extension within the last month of any period.

SCHEDULE

Divestment RoI Business

1. The Divestment RoI Business comprises the customised marketing research business and, subject to paragraph 15 above and paragraph 3 of the Schedule to the RoI Commitments below, the Syndicated Marketing Research business each located in the Republic of Ireland and each currently owned and operated by Market Research Bureau of Ireland Limited, a subsidiary of TNS (referred to as MRBI throughout). Customised marketing research services are the provision of marketing research services on an exclusive basis to a client to meet the requirements of that particular client. WPP understands that MRBI has a full-time staff of over [...] (including [...] senior executives) and a team of over [...] experienced interviewers across Ireland.
2. Following paragraph 4 of these RoI Commitments, and subject to the exclusions set out in paragraph 3 of this Schedule below, the Divestment RoI Business includes:⁵⁴
 - (a) the tangible assets currently used to operate MRBI in the Republic of Ireland;
 - (b) the intangible assets (including Trade Marks) currently used to operate MRBI in the Republic of Ireland, including, subject to paragraph 2 below, any intellectual property rights currently used to operate MRBI in the Republic of Ireland including but not limited to the trade marks "MRBI" and "Marketing Research Bureau of Ireland" (which shall be made available to the RoI Purchaser either by way of assignment where such intellectual property rights are owned by WPP or by way of licence);
 - (c) the licences, permits and authorisations currently used to operate MRBI in the Republic of Ireland;
 - (d) the contracts, agreements, leases, commitments and understandings currently used to operate MRBI in the Republic of Ireland;
 - (e) the customer, credit and other records currently used to operate MRBI in the Republic of Ireland;
 - (f) MRBI Personnel;
 - (g) the Divestment RoI Business Key MRBI Personnel including the Managing Director, Director of Finance, Director of Operations (including IT), Human Resources Director, Research Director and equivalent positions;
 - (h) the arrangements for the supply for a transitional period of up to one year after the Divestment RoI Business Closing and on terms and conditions equivalent to those at present afforded to the Divestment RoI Business, of all current arrangements under which TNS or Affiliated Undertakings supply products or services to the Divestment RoI Business, required to maintain the viability and competitiveness of the Divestment RoI Business, unless otherwise agreed with the MRBI Purchaser; and

⁵⁴ Given the unsolicited nature of its bid, WPP has not had access to detailed information on the Divestment RoI Business. WPP will provide this information to the Monitoring Trustee as soon as practicable possible following the TNS Closing.

- (i) to the extent that any information required in relation to items (a) to (h) listed above is currently not available to WPP, WPP shall submit to and agree with the Monitoring Trustee a full list of such information within one month of the TNS Closing.

3. The Divestment RoI Business shall not include:

- (a) TNS Trade Marks and those Trade Marks which are used mainly by the businesses retained by WPP;
- (b) the consumer panel business operated under the TNS Worldpanel brand, and
- (c) any Media Measurement Services and any media monitoring service (i.e. the tracking and recording of media content, including news monitoring services, e.g. tracking when and on what media a particular item of news or entertainment was shown or aired).

4. [Dispute resolution clause]

SIGNATORIES

.....
duly authorised for and on behalf of
WPP Group plc