

***Case No COMP/M.3512 -
VNU / WPP / JV***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 15/09/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15/09/2004

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.3512 – VNU/WPP/JV
Notification of 11/08/2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 11 August 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings ACNielsen Corporation (“ACNielsen”, USA) - controlled by VNU N.V. (“VNU”, Netherlands) - and AGB Holding S.p.A. (“AGB”, Italy) - controlled by WPP Group plc (“WPP”, UK) - acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking AGB Nielsen Media Research (“JV”) by way of purchase of shares in a newly created company constituting a joint venture. The JV combines most of the parties’ businesses in the television audience measurement (TAM) services outside North America.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. VNU is an international publishing and information company which is active in market research and media measurement services including TAM services (which are ACNielsen's activities) as well as in market information services and directories. ACNielsen provides TAM services in Europe, but also in the USA and Canada, Asia and South Africa.
4. WPP is an international communications service group active in advertising, media investment management, consultancy, public relations, branding, specialist communications, direct promotion, relationship marketing and marketing data services. WPP acquired AGB on 30 June 2004. The operation was cleared by the relevant NCAs. AGB only provides TAM services and is mainly active in Europe, but has also some business in Asia, Middle East and Latin America.

II. THE OPERATION

5. On the basis of a framework agreement, the parties contribute the assets, liabilities and operations of most of their TAM business to the JV. The JV covers the whole TAM services business of the parties except USA and Canada and except VNU's activities in Finland and WPP's activities in Portugal (where they are each engaged in a joint venture with a third party). In the EEA, the JV combines VNU's (=ACNielsen's) operations in Ireland and Sweden with WPP's (=AGB's) activities in Cyprus, Greece, Hungary, Italy, Poland, Slovenia and the UK. The parties also contribute the TAM analysis software which is used at present in VNU's and AGB's business in Europe.

III. CONCENTRATION

6. Each party will own 50% of the JV and have equal representation on the board of the JV (50-50 deadlock). The JV will have its own identity, will be economically independent from its parents, will acquire the necessary resources, know-how and personnel to operate the business and is for an unlimited duration. The JV is therefore jointly controlled and full function.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (VNU: EUR 3,882 million, WPP: EUR 5,934 million). Each of VNU and WPP have a Community-wide turnover in excess of EUR 250 million (VNU: EUR 1,328 million, WPP: EUR 2,414 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

V. RELEVANT MARKETS

A. Relevant product markets

8. The parties suggest that there is a separate market for the provision of TAM services. 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. There are basically two models for the provision of TAM services. (1) The industry concerned sets up an organisation which selects a TAM service provider and negotiates the terms of the supply of data. In general, the organisation has the ownership of the data and sells them to third parties. If the organisation is set up by TV stations, media buyers and advertisers, it is called Joint Industry Committee (JIC). In the JIC model, the TV stations usually hold the majority. Where the organisation is set up only by TV stations, it is called a Media Owner (MO) model. (2) The TAM service provider sets up and operates TAM services on his own account. In this Proprietary Service (PS) model, the service provider retains the ownership of the data and supplies them to several different customers on the basis of individual contracts.
9. In a previous decision³, the Commission defined a market for media measurement services, but left open whether specific media (television, internet, broadcast etc.) form separate markets. From the demand side perspective, there seems to be no substitutability between the different media. TV companies or media buyers need information on television audiences and cannot replace them by information on audiences of other media. The market investigation confirmed that the provision of TAM services forms a separate market within the broader industry of media measurement services. Replies did not suggest substitutability between TAM services and other media measurement services.
10. The provision of TAM services includes several tasks such as the establishment of the monitoring panel, installation of data collection equipment, monitoring and collection of data, data analysis and supply of analysis software. Usually, the tasks are offered in a bundle, but the establishment of the monitoring panel and the supply of analysis software are sometimes sub-contracted. Replies to the market investigation indicate that the supply of analysis software is not perceived as part of the TAM services provision as such, but rather as downstream service. The question can be left open, because no competition concerns arise for the supply of analysis software on the basis of either market definition.
11. A downstream market which requires TAM data as input is the market for media buying. WPP is active in this market. Advertisement expenditure services, which provide an estimate of the number of people who have seen advertisements in a campaign, may use TAM data. In Europe, VNU provides advertisement expenditure services in Germany, Italy, the UK and Norway, WPP only in Sweden.

³ M.2291 – VNU/ACNielsen.

B. Relevant geographic markets

12. The parties submit that the market for the contracts to provide TAM services is global in its scope, but note that TAM data are requested on a national basis. In a previous decision⁴, the Commission reported that according to the parties the markets for media measurement services are national, but did not reach a definitive view.
13. The contracts for TAM services are awarded on a national level, the demand side itself is organised on a national level (in particular the TV stations) and the data are needed on a national level because consumption trends still tend to differ from country to country. The market investigation has confirmed that most of the customers ask for data on a national level. However, in the case of tenders to provide TAM services, the conditions for competition to win a new contract are relatively homogenous within Europe. The market test confirmed that all companies currently active in this field in Europe can participate in a bid and are seen as credible suppliers. For the purpose of this case, it can therefore be concluded that the relevant geographic market on which the companies compete to win contracts for the supply of TAM services is European.
14. The parties submit that the market for TAM analysis software is national in scope given that software requirements and licensing conditions vary from country to country. Some replies in the market investigation suggest a wider geographic scope. The exact geographic market of the provision of TAM analysis software can be left open, because in either case no competitive concerns arise.

VI. COMPETITIVE ASSESSMENT

A. Market for the provision of TAM services

15. In each Member State, only one TAM service provider is active, with the exception of Poland where two providers offer their services. The reason for choosing only one provider is according to the parties the preference of the demand side for a common source of rating. Besides VNU and WPP, there are two other important providers of TAM services in Europe: The UK based TNS and the German based GfK. Two further providers are only active in one Member State: Mediametrie in France and Media Research in the Czech Republic. Mediametrie is an entity which was founded by the demand side, it operates both as JIC and TAM provider and uses GfK's technology. There is no indication that it would be able to expand outside of its territory; in any case it would be dependent on GfK technology. Media Research participated in a tender in Slovakia, but has not been identified as a potential competitor by any customer outside this area.
16. None of the respondents considered that TAM service providers which are only active outside Europe would be potential entrants in Europe. The potential competitor from Japan named by the parties has said that it does not intend to extend its activities to Europe. Consequently, the creation of the JV will lead to a reduction of TAM service providers in Europe from four to three.

⁴ M.2291 – VNU/ACNielsen.

Non-coordinated effects

17. According to the parties' estimates, the market shares of the TAM suppliers within the EEA on the basis of the number of (national) contracts or value of (national) contracts are as follows:

Supplier	Share of contracts in JIC/MO model in %	Share of contract value in JIC/MO model in %	Share of contracts in all models in %	Share of contract value in all models in %
GfK	[30-35]	[35-40]	[15-20]	[20-25]
TNS	[25-30]	[10-15]	[35-40]	[25-30]
WPP	[10-15]	[30-35]	[25-30]	[30-35]
VNU	[15-20]	[5-10]	[5-10]	[0-5]
Other	[5-10]	[0-5]	[5-10]	[10-15]
WPP + VNU	[30-35]	[40-45]	[35-40]	[35-40]

18. Most third parties estimated the parties' combined market share slightly lower, generally in the mid-thirty percent range. However, as will be outlined below, the EEA market shares are not a good indicator of the various suppliers' competitive role in this bidding market.
19. The Commission's market investigation shows that VNU, WPP, TNS and GfK all must be considered as credible bidders for TAM contracts in the EEA. All of the four majors have submitted bids in a variety of countries and customers consider them to offer strong and credible technological platforms. In particular, the market investigation has confirmed that ACNielsen is a credible bidder for TAM contracts in Europe, despite its relatively limited presence at present (two countries, plus a 50% stake in Finland). Its very strong position in North America, as well as its presence in related markets (e.g. the provision of advertising expenditure data), provide it with a credible technological platform and reputation to compete in Europe. This assessment is supported by both customers and competitors covered by the market investigation. VNU's "Medium Term Planning" documents confirm its strategy to compete in the European market.
20. The main technological challenges in the future mentioned by the parties, competitors and customers are digital TV, personal viewing, interactive television and a fragmentation due to a higher number of TV channels. In December 2002, ACNielsen was granted a European wide patent for a device that collects audience measurement identification both by reading ancillary codes embedded in the broadcast signal (encoding) and by collecting program data or signals that can subsequently be used to identify non-encoded broadcasts (matching)⁵. Competitors filed oppositions against the

⁵ European Patent EP 0 669 070 – Program Signal Identification Data Collector.

patent. Program identification by encoding or matching – as opposed to “channel-based” approach which relies on determining which channel is tuned-in at which time – appear to become important in the changing TV environment, in particular digital viewing. The patent does not protect encoding or matching technologies individually, but only the combination of these technologies. The patent is not specific to the creation of the JV, but could be exploited by VNU independently from the JV. Furthermore, all major suppliers of TAM services in Europe offer solutions for the audience measurement of digital TV. The market investigation indicates that all four major players are perceived as strong in the technological field. However, the patent underlines further that VNU must be considered as a strong and credible competitor.

21. Similarly, GfK is considered as a credible competitor with strong technological capabilities, even though it has traditionally focussed on Germany, Austria and the Benelux countries, where it holds strong incumbency positions. Its contracts in Germany and Austria appear to have been extended without competitive tenders. However, GfK has regularly participated in tenders outside its incumbent markets.
22. The notified transaction will, thus, decrease from four to three the number of credible bidders for TAM contracts in Europe. While a horizontal merger reducing the number of credible competitors from four to three may in many settings raise competition concerns⁶, the characteristics of the European TAM market contain a number of mitigating factors that indicate that three competitors will be sufficient to generate competitive outcomes in this specific market setting.
23. In particular, the tenders organised by the JICs tend to produce competitive outcomes, provided the auction is well adapted to the prevailing market setting and intended to attract competitive bids. In these winner-take-all auctions, competitors submit bids to become the sole supplier of TAM data in a given country for a period of five to seven years (with possible extensions). A JIC, thus, exercises significant buyer power as far as its territory is concerned. Due to the relatively long contract term, tenders occur infrequently. The market investigation found that less than 15 such tenders have taken place in the past 12 years. There exists, therefore, a strong incentive for each competitor to win these auctions.
24. The main factor that discourages aggressive bids is the cost advantage enjoyed by the incumbent supplier. The cost advantage arises from the fact that a large proportion of costs involved in TAM services, such as panel selection, installation of “people meters” in the viewers’ homes, software development etc., is up-front (and largely sunk). Competitors may, thus, be discouraged from bidding against an incumbent because they know that their bids are unlikely to succeed, except if they have underestimated (overestimated) the costs (potential revenue) from the contract (the “winner’s curse”). However, JICs can declare whether an incumbency advantage exists in a given auction and the evidence suggests that this has had a strong impact on the outcome of TAM auctions. For example, BARB, the UK JIC, in its 2000 auction had indicated that it wished to restructure its TAM system and that a change of supplier would be welcomed, leading to a very aggressive winning bid. By contrast, the Dutch and Belgian auctions generated little interest from new bidders because they were perceived as intended mainly to put pressure on the incumbent.

⁶ For example, if the HHI thresholds set out the Horizontal Merger Guidelines are met.

25. The Commission has investigated, further, whether the elimination of competition between AGB and VNU would have a significant competitive effect, for example because they are closest substitutes in terms of costs or technology, or because VNU may be a particularly aggressive bidder.
26. However, there are no indications that ACNielsen and AGB may be particularly close substitutes. ACNielsen is only active in JIC/MO models in the northern part of Europe, whereas AGB covers all models in the whole of Europe. ACNielsen and AGB were only in a limited number of tenders as direct competitors ([...]). By contrast, the market investigation confirmed that AGB and TNS are close competitors. They are present in all models and took part in a number of tenders as direct competitors ([...]). Their bids are perceived by customers as competitive. TNS also competes with ACNielsen (even though ACNielsen only covers parts of TNS' activities). In several tenders it was in direct competition with ACNielsen ([...]). Hence, TNS, and not VNU, appears to be AGB's most direct competitor.
27. VNU, in view of its to date limited presence in Europe, might be expected to act as a particularly aggressive competitor in order to win additional TAM contracts. However, the market investigation does not support this hypothesis. VNU appears to have focused on tenders in mature northern European markets. For about ten years, VNU has not expanded its presence beyond two profitable contracts in Ireland and Sweden and a JV in Finland. [...] This assessment is confirmed by customers and competitors, none of which has identified VNU as a particularly aggressive competitor.
28. Competition in countries where TAM services are supplied under the PS system differs from JIC market in so far as no infrastructure exists at present for customers to tender jointly for TAM services. As parallel TAM services are generally not viable because customers prefer a "single currency", the supplier who first entered a market not served by TAM (mostly Central and East European countries) typically continues to enjoy a monopoly position. The most likely route to replace an incumbent supplier is either through formation of a JIC or by initiative of a large national TV station (i.e. effectively formation of an MO model). The notified transaction does not alter this competitive situation.
29. In conclusion, although the transaction reduces from four to three the number of credible suppliers of TAM services in Europe, the market investigation indicates that three competitors will be sufficient in this specific bidding market structure to produce competitive outcomes.⁷ Rivalry between WPP and TNS (and not VNU) has been the main driver of competition in past auctions. JIC customers, who combine the entire demand in a given country, have significant power to structure auctions so as to encourage competitive bids.

Coordinated effects

30. The reduction of suppliers from four to three may enable competitors to tacitly coordinate their bidding behaviour in future tenders. Because of the incumbency

⁷ 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.

advantage described above, TAM suppliers could, in particular, adopt a strategy whereby they defend their existing incumbent markets while refraining from bidding aggressively in markets outside their incumbent territory. However, such co-ordination is complicated by the fact that tenders occur infrequently and contract values vary widely (due to country size and technology). Winning a new contract is, thus, a relatively rare and valuable opportunity, whereas opportunities for competitors to retaliate against an aggressive bidder are equally rare. Further uncertainty is added by the fact that the timing of future tenders is difficult to anticipate, as contracts are often extended for one or two years without new tender. In view of these circumstances, serious doubts cannot be established with respect to the potential creation of a collective dominance situation in this case.

B. Market for the supply of TAM analysis software

31. The market investigation has shown that TAM analysis software may be offered by the JIC itself (e.g. Sweden), provided as part of the TAM services package (e.g. Ireland, PS models) or the JIC/MO determines the conditions under which companies can supply TAM analysis software to those who receive the data (e.g. UK). The agreement between the parties permits the JV, VNU and WPP to offer TAM analysis software in competition with each other. To date, VNU has not been active in selling its own TAM analysis software in Europe, with the exception of its TV Dynamics software which it contributes to the JV and which is currently being introduced in Ireland to replace licensed WPP software. Under the assumption of national markets, an overlap only occurs in Ireland. However, given that TAM analysis software is provided as part of VNU's TAM service in Ireland, the JV has no impact on the competitive situation in Ireland. Under the assumption of a European market, WPP's turnover in this market is relatively low⁸. There is a large range of providers active in this market⁹. Consequently neither the contribution of AGB's software and VNU's TV Dynamics software to the JV nor WPP remaining active (and VNU potentially entering with another software) in the market for the supply of data analysis software, leads to an appreciable restriction of competition in this market.

C. Vertical and conglomerate issues

32. Some media buyers and advertisers were concerned about the fact that WPP also owns advertising and media agencies and could privilege the companies of its group in the distribution of TAM data. This concern only applies to models in which the TAM service providers own the data, in particular PS models. VNU does not own the data in the two EEA countries in which it holds the TAM contract. Consequently, the creation of the JV has no impact on this vertical issue. Furthermore, the need to maintain the common currency, which was confirmed by the market investigation, limits the possibilities to privilege certain customers.
33. Some responses in the market investigation raised the concern that the JV could bundle TAM services with ACNielsen's internet audience measurement ratings and advertising expenditure services, because the customers of the services would be the

⁸ Turnover in Europe in 2003 was EUR 1,4 Mio (without AGB).

⁹ E.g. TNS (Infosys), GfK (pc#tv), Telmar (Transmit), Landsberry & James (e-TAM), MMS Sweden (Hot Collection), Mediametrie (Mediamat) and others.

same. However, in a previous merger decision the Commission came to the conclusion that customers usually purchase each category of services separately¹⁰. The market investigation in this case has confirmed it. Furthermore, nothing suggests that this type of bundling will happen given that ACNielsen provides the internet audience measurement ratings and advertising expenditure services outside the JV and neither WPP nor VNU are prevented from offering their own data analysis software in competition to the JV.

VII. CONCLUSION

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

For the Commission

(Signed)

Mario MONTI
Member of the Commission

¹⁰ M.2291 – VNU/ACNielsen.