ANTITRUST LAW

Unit 12: Nonhorizontal Mergers

Fall 2014
Yale Law School
Dale Collins

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Elimination of Potential Competition

PRESS RELEASE DETAILS

NIELSEN TO ACQUIRE ARBITRON

12/18/2012

Company Release - 12/18/2012 07:00

NEW YORK--(BUSINESS WIRE)-- Nielsen Holdings N.V. (NYSE: NLSN), a leading global provider of information and insights into what consumers watch and buy, today announced that it has signed a definitive agreement to acquire Arbitron Inc. (NYSE: ARB), an international media and marketing research firm.

Nielsen has agreed to acquire all of the outstanding common stock of Arbitron for $48 per share in cash, representing a premium of approximately 26 percent to Arbitron's closing price on December 17, 2012. Nielsen has a financing commitment for the total transaction amount. The transaction has been approved by the boards of both companies and is subject to customary closing conditions, including regulatory review.

"U.S. consumers spend almost 2 hours a day with radio. It is and will continue to be a vibrant and important advertising medium," said Nielsen Chief Executive Officer David Calhoun. "Arbitron will help Nielsen better solve for unmeasured areas of media consumption, including streaming audio and out-of-home. The high level of engagement with radio and TV among rapidly growing multicultural audiences makes this central to Nielsen's priorities."

With Arbitron assets, Nielsen intends to further expand its "Watch" segment's audience measurement across screens and forms of listening. "These integrated, innovative capabilities will enable broader measurement of consumer media behavior in more markets around the world," said Steve Hasker, Nielsen President of Global Media Products and Advertiser Solutions. "We will also bring local clients greater visibility to empower more precise advertising placement and campaign effectiveness."

"Radio reaches more than 92 percent of all American teens and adults because they love to listen to music, talk, news and information while at home, at work and in their cars," said William T. Kerr, President and Chief Executive Officer of Arbitron. "By combining Nielsen's global capabilities and scale with Arbitron's unique radio measurement and listening information, advertisers and media clients will have better insights into consumer behavior and the return on marketing investments."

Together, Nielsen and Arbitron generated total revenues of $6.0 billion and combined pro forma adjusted EBITDA of $1.7 billion based on the 12 months ended September 30, 2012. The combined assets will support Nielsen's strong cash flow characteristics and will enable continued investment in growth initiatives. Excluding estimated transaction costs and purchase accounting adjustments, the acquisition is expected to be approximately $0.13 accretive to adjusted EPS 12 months after the close and approximately $0.19 accretive to adjusted EPS 24 months after the close. Cost synergies associated with the acquisition are expected to be at least $20 million and will be largely driven by the integration of technology platforms and data acquisition efforts.

Conference Call Information

Nielsen and Arbitron will host a live conference call to discuss the transaction today, December 18, 2012 at 8:30 a.m. Eastern Time. The dial-in number for U.S. participants is 1-888-317-6016. The dial-in number for international callers is 1-412-317-6016. The passcode is Nielsen. A slide presentation and audio webcast of the call can be accessed live on the investor relations section of Nielsen's website at http://ir.nielsen.com. An archive will be available on the site after the call.

About Nielsen

Nielsen (NYSE: NLSN) is a global information and measurement company with leading market positions in marketing and consumer information, television and other media measurement, online intelligence, mobile measurement, trade shows and related properties. Nielsen has a presence in approximately 100 countries, with headquarters in New York, USA and Diemen, the Netherlands. For more information, visit www.nielsen.com.

About Arbitron

Arbitron, Inc. (NYSE: ARB) is an international media and marketing research firm serving the media -- radio, television, cable, and out-of-home -- the mobile industry, as well as advertising agencies and advertisers around the world. Arbitron businesses include: measuring network and local market radio audiences across the United States; surveying the retail, media, and product patterns of U.S. consumers; providing mobile audience measurement and analytics in the United States, Europe, Asia, and Australia; and developing application software used for analyzing media audience and marketing information data.

The Company has developed the Portable People Meter™ (PPM®) and the PPM 360™, new technologies for media and marketing research.

Portable People Meter™, PPM®, and PPM 360™ are marks of Arbitron, Inc.

Additional Information and Where You Can Find It:

In connection with the proposed acquisition by Nielsen Holdings, N.V. ("Nielsen") of Arbitron Inc. ("Arbitron") pursuant to the terms of an Agreement and Plan of Merger by and among Arbitron, Nielsen, and a wholly-owned subsidiary of Nielsen, Arbitron will file a proxy statement with the Securities and Exchange Commission (the "SEC"). Investors are urged to read the proxy statement (including all amendments and supplements to it) because it will contain important information. Investors may obtain free copies of the proxy statement when it becomes available, as well as other filings containing information about Arbitron, without charge, at the SEC's Internet site (http://www.sec.gov). These documents may also be obtained for free from Arbitron's Investor Relations web site (http://www.arbitron.com/investors) or by directing a request to Arbitron at: Arbitron Inc., 9705 Patuxent Woods Drive, Columbia, MD 21046, Attn: Investor Relations.

Arbitron and its directors and executive officers and other members of management and employees are potential participants in the solicitation of proxies from Arbitron's stockholders in respect of the proposed transaction.

Information regarding Arbitron's directors and executive officers is available in Arbitron's proxy statement for its 2012 annual meeting of stockholders, filed with the SEC on April 12, 2012. Additional information regarding the interests of such potential participants in the proposed transaction will be included in the proxy statement to be filed with the SEC in connection with the proposed transaction.

Forward-Looking Statements Disclaimer:

This written communication includes information that could constitute forward-looking statements made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995. These statements may be identified by words such as 'will', 'expect', 'should', 'could', 'shall' and similar expressions. These statements are subject to risks and uncertainties concerning Nielsen's proposed acquisition of Arbitron, Arbitron's expected financial performance, as well as Arbitron's strategic and operational plans and actual results and events could differ materially from what presently is expected. The potential risks and uncertainties include the possibility that the transaction will not close or that the closing may be delayed; the possibility that Arbitron may be unable to obtain stockholder approval as required for the transaction or that the other conditions to the closing of the transaction may not be satisfied; the transaction may involve unexpected costs, liabilities or delays; the outcome of any legal proceedings related to the transaction; the occurrence of any event, change or other circumstances that could give rise to the termination of the transaction agreement; general economic conditions; conditions in the markets Nielsen and Arbitron are engaged in; behavior of customers, suppliers and competitors (including their reaction to the transaction); technological developments; as well as legal and regulatory rules affecting Nielsen's and Arbitron's business and specific risk factors discussed in other releases and public filings made by Nielsen and Arbitron (including the their respective filings with the SEC). This list of factors is not intended to be exhaustive. Such forward-looking statements only speak as of the date of this press release, and we assume no obligation to update any written or oral forward-looking statement made by us or on our behalf as a result of new information, future events, or other factors.

	Last Twelve Months ended September 30, 2012

($ millions)	Nielsen	Arbitron	Elimination/ Adjustments[a]	Total
Revenue	**$5,569**	**$445**	**$29**	**$6,043**
Net income/(loss)	**$329**	**$58**	**($41)**	**$346**
Income from Discontinued Operations, Net	(2)	--	--	(2)
Interest expense, net	424	1	69	494
Provision / (Benefit) for Income Taxes	187	36	(28)	195
Depreciation and Amortization	521	31	--	552
EBITDA	**1,459**	**126**	**--**	**1,585**
Equity in Net (Income)/ Loss of Affiliates	(5)	(7)	15	3
Other non-operating (income)/expense, net	(1)	3	--	2
Restructuring charges	85	--	--	85
Stock-based compensation expense	33	9	--	42
Other items[b]	6	--	--	6
Adjusted EBITDA	**$1,577**	**$131**	**$15**	**$1,723**

(a) Eliminations and adjustments made to reflect pro forma interest, tax and joint venture impact

(b) Other items for Nielsen primarily consist of deal related fees

100 YEARS

PROTECTING AMERICA'S CONSUMERS

MAIN MENU SEARCH

FTC Puts Conditions on Nielsen's Proposed $1.26 billion Acquisition of Arbitron

FTC Order Protects Competition for National Syndicated Cross-platform Audience Measurement Services

FOR RELEASE

September 20, 2013

TAGS: Technology | Bureau of Competition | Competition | Merger | Horizontal

[corrected]

Media research company Nielsen Holdings N.V. has agreed to settle Federal Trade Commission charges that its proposed acquisition of Arbitron Inc. may substantially lessen competition. Nielsen will divest and license assets and intellectual property needed to develop national syndicated cross-platform audience measurement services.

Nielsen and Arbitron are developing national syndicated cross-platform audience measurement services, which allow audiences to be measured accurately across multiple platforms, such as TV and online. According to the FTC's complaint, the elimination of future competition between Nielsen and Arbitron would likely cause advertisers, ad agencies, and programmers to pay more for national syndicated cross-platform audience measurement services.

"Effective merger enforcement requires that we look carefully at likely competitive effects that may be just around the corner," said FTC Chairwoman Edith Ramirez. "In this matter, the evidence provided us with a strong reason to believe that absent a remedy, the deal was likely to harm emerging competition in the area of cross-platform audience measurement."

The proposed order settling the FTC's complaint is designed to address the competitive concerns raised by Nielsen's acquisition of Arbitron. It requires Nielsen to sell and license, for at least eight years, certain assets related to Arbitron's cross-platform audience measurement services to an FTC-approved buyer, within three months. Under the order, the acquirer will get everything it needs to replicate Arbitron's participation in a national syndicated cross-platform audience measurement service. The order also contains terms designed to ensure the success of the acquirer as a viable competitor, such as requiring that Nielsen provide technical assistance and remove barriers that might otherwise keep the acquirer from hiring key Arbitron employees.

Without the assets Nielsen is required to provide under the order, according to the FTC, it is unlikely another company would be able to successfully develop a service to compete with Nielsen's future national syndicated cross-platform audience measurement service.

Nielsen, headquartered in New York, New York, and Diemen, the Netherlands, is a leading provider of global media measurement and research services. In the United States, it provides television, online, mobile, and cross-platform audience measuring services to media companies, advertisers, and advertising agencies. As the dominant provider of television audience measurement services in the United States, Nielsen had global sales of $5.6 billion in 2012.

Arbitron, headquartered in Columbia, Maryland, is a leading media measurement and research firm. Its leading product is its radio ratings service, which estimate the size of listening audiences by demographic category, and is used by radio broadcasters and advertisers to determine the value of radio advertising. In 2012, it had revenue of $449 million. Under a merger plan dated December 17, 2012, Nielsen proposes to acquire Arbitron for approximately $1.26 billion.

The Commission vote to accept the consent agreement containing the proposed consent order for public comment was 2-1, with the Commission issuing a statement and Commissioner Joshua D. Wright issuing a separate dissenting statement. Commissioner Maureen Ohlhausen was recused from participating in this matter.

The FTC will publish a description of the consent agreement package in the Federal Register shortly. The agreement will be subject to public comment for 30 days, beginning today and continuing through October 21, 2013, after which the Commission will decide whether to make the proposed consent order final. Interested parties can submit written comments electronically or in paper form by following the instructions in the "Invitation To Comment" part of the "Supplementary Information" section.

Comments in paper form should be mailed or delivered to: Federal Trade Commission, Office of the Secretary, Room H-113, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form near the end of the public comment period be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments also can be filed electronically.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $16,000.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust{at}ftc{dot}gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., N.W., Room 7117, Washington, DC 20001. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook, follow us on Twitter, and subscribe to press releases for the latest FTC news and resources.

CONTACT INFORMATION

1310058

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of	)	
	)	
Nielsen Holdings N.V.	)	**Docket No. C-**
a corporation;	)	
	)	
and,	)	
	)	
Arbitron Inc.,	)	
a corporation	)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Nielsen Holdings N.V., ("Nielsen"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Arbitron Inc. ("Arbitron"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Nielsen is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at 85 Broad Street, New York, New York 10004.

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

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

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

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

II. THE PROPOSED ACQUISITION

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

III. RELEVANT MARKET

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

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

IV. STRUCTURE OF THE MARKET

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

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

V. ENTRY CONDITIONS

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

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the market for national syndicated cross-platform audience measurement services in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by among other things:

a. by eliminating future competition between Nielsen and Arbitron for the provision of national syndicated cross-platform audience measurement services;

b. by increasing the likelihood that Respondent Nielsen would unilaterally exercise market power in the market for national syndicated cross-platform audience measurement services;

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

VII. VIOLATIONS CHARGED

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

14. The Acquisition described in Paragraph 6, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ________ day of _________, 2013, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

1310058

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Edith Ramirez, Chairwoman** **Julie Brill** **Maureen K. Ohlhausen** **Joshua D. Wright**

In the Matter of **Nielsen Holdings N.V.,** **a corporation;** **and,** **Arbitron Inc.,** **a corporation.**	)	**Docket No. C-**

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Nielsen Holdings N.V. ("Nielsen") of the outstanding voting shares of Respondent Arbitron Inc. ("Arbitron"), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Nielsen is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at 85 Broad Street, New York, New York 10004.

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

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the Respondents, and this proceeding is in the public interest.

ORDER

I.

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

A. "Nielsen" means Nielsen Holdings N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Nielsen Holdings N.V., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, the term "Nielsen" shall include Arbitron.

B. "Arbitron" means Arbitron Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Arbitron Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Acquirer" means a Person approved by the Commission to acquire particular assets or rights that Respondents are required, pursuant to this Order, to assign, grant, license, divest, transfer, deliver, or otherwise convey.

D. "Acquisition" means Nielsen's acquisition of Arbitron pursuant to an Agreement and Plan of Merger executed December 17, 2012.

E. "Arbitron Calibration Panel" means the subset of individuals recruited from the Arbitron PPM Panel that provides single source reach levels and overlaps for television, tablets, smartphones, personal computers, and radio (or any other device that performs similar functions), by asking the panelists in addition to their Arbitron PPM Panel responsibilities to download software on their home personal computer, tablets, and smartphones (or any other device that performs similar functions); "Arbitron Calibration Panel" includes the panel of people as expanded pursuant to Paragraph IV. of this Order.

F. "Arbitron PPM Panel" means the panel of individuals in the U.S. who have been recruited by Arbitron to carry Arbitron's Portable People Meter® ("PPM") device to measure their exposure to encoded audio signals.

G. "Balance of Nation Panel" means a group of individuals recruited to supplement the Arbitron PPM Panel, such that when combined with the Arbitron PPM Panel, national audience projections are possible or enhanced.

H. "Calibration Panel Data" means the data from the Arbitron Calibration Panel or from the expansion of the Arbitron Calibration Panel.

I. "Commission" means Federal Trade Commission.

J. "comScore" means comScore, Inc., a corporation located at 11950 Democracy Drive, Suite 600, Reston, Virginia 20190.

K. "Confidential Information" means information not in the public domain, including, but not limited to, information regarding methodology, encoding share, customer identity, or customer contract details. "Confidential Information" shall not include any information that: (1) is publicly available when provided, disclosed, or otherwise made available; or (2) becomes publicly available after it is provided, disclosed, or otherwise made available by means other than a violation of this Order or Respondents' breach of a confidentiality or non-disclosure agreement.

L. "Cross-Platform Services" means any U.S. service that measures viewing of content, for the purpose of determining the size and composition of the audience of such programming and/or advertising across multiple distribution platforms including, but not limited to, television, online, mobile, radio and tablets (or any other device that performs similar functions), but in all events measuring at least television and online, and related insights and analytics.

M. "Direct Cost" means cost not to exceed the cost of labor, material, equipment, travel, and other expenditures to the extent the costs are directly incurred to provide the assistance or services required by this Order and that would not otherwise be incurred by Respondents. "Direct Cost" to the Acquirer for its use of any of Respondents' employees' labor shall not exceed the then-current average wage rate for such employee, including benefits.

N. "Encoding Equipment" means all equipment relating to the encoding of audio signals for detection by PPMs, including updates thereto.

O. "Encoding Technology" means all intellectual property, rights, know-how, licenses, and agreement related to the encoding of audio signals for detection by PPMs, including updates thereto

P. "ESPN" means the multi-platform media company, ESPN, Inc., a subsidiary of The Walt Disney Company, which focuses on sports-related programming including live and recorded event telecasts, sports talk shows, and other original programming, that distributes its content on multiple platforms including cable and satellite television, online, mobile, and radio.

Q. "Key Arbitron Employees" means the employees listed on Confidential Exhibit A of this Order.

R. "Link Meter Technology" means (1) all software (source code and object code) intended for use in Project Blueprint that enables comScore to synchronize its media measurement data with the panelists in the Arbitron Calibration Panel; and (2) all other rights and interests arising out of, in connection with, or in relation to such software, including, but not limited to, all rights to causes of action and remedies related thereto.

S. "MRC" means the Media Rating Council, which accredits audience measurement services.

T. "Monitor" means the monitor appointed pursuant to Paragraph VI. of this Order.

U. "Panelist Characteristics" means the following information, provided on a non-personally identifiable basis, for a panelist: (1) age; (2) gender; (3) race/ethnicity; (4) presence of children in the household; (5) size of household; (6) time zone; (7) DMA and metro market code; and (8) five-digit zip code .

V. "PPM Equipment" means all equipment related to the operation of, and collection of data from, PPMs, including updates thereto.

W. "PPM Technology" means all intellectual property rights, know-how, licenses, and agreements related to the operation of, and collection of data from, PPMs, including updates thereto.

X. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof.

Y. "Project Blueprint" means the collaboration between Arbitron and comScore for ESPN as contemplated by (1) the Multi-Platform Research Agreement with ESPN between Arbitron, comScore, and ESPN, executed August 8, 2012; and (2) the Collaboration Agreement between Arbitron and comScore, effective August 1, 2012.

Z. "Prospective Acquirer" means the Person that Respondents (or the Divestiture Trustee, if appointed) intend to submit or have submitted to the Commission for the Commission's prior approval pursuant to Paragraph II.A. (or Paragraph VII., if applicable) of this Order.

AA. "Radio Data" means all data from the Arbitron PPM Panel that reflect Panelist Characteristics, dictionary of reported data fields, and records of encoded radio content detected by the panelists' PPMs as reported consistent with the practices Arbitron used for reporting data for Project Blueprint.

BB. "Remedial Agreement" means the agreement between Respondents and the Acquirer that includes the provisions required by this Order and that has been approved by the Commission, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be offered to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

CC. “Television Data” means all data from the Arbitron PPM Panel that reflect Panelist Characteristics, dictionary of reported data fields, and records of encoded video content detected by the panelists’ PPMs as reported consistent with the practices Arbitron used for reporting data for Project Blueprint, and additionally including time shifted viewing data (which shall include video on demand) identified as such, which additional time shifted viewing data shall be provided to the Acquirer at Direct Cost.

II.

IT IS FURTHER ORDERED that:

A. No later than three (3) months after Respondents execute the Agreement Containing Consent Order, Respondents shall divest the Link Meter Technology absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission (including execution of a Remedial Agreement) and shall, pursuant to a Remedial Agreement, license to that Acquirer, on a non-exclusive basis, all know-how related to the Link Meter Technology;

1. Respondents shall obtain, and the Acquirer shall grant to Respondents, a royalty-free right to use the Link Meter Technology, for purposes of complying with the requirements of this Order;

2. *Provided, however,* that both the Acquirer and Respondents shall have unrestricted rights to use the know-how relating to the Link Meter Technology and each shall covenant not to bring litigation against the other to enjoin or seek recompense for the use of the Link Meter Technology or software designed to perform similar functions.

B. No later than the date Respondents divest the Link Meter Technology to the Acquirer pursuant to Paragraph II.A., above, Respondents shall, pursuant to a Remedial Agreement, for a period no less than eight (8) years from the date of the divestiture required by Paragraph II.A., above:

1. License to the Acquirer, on a royalty-free basis, for use in developing and providing a calibration panel and/or Balance of Nation Panel for the provision of Cross-Platform Services:

   a. the Encoding Technology; and

   b. the PPM Technology; and

2. Provide, at Direct Cost to the Acquirer, such technical assistance (including know-how relating to the Link Meter Technology), Encoding Equipment, and/or PPM Equipment, as requested by the Acquirer to enable the Acquirer to:

a. provide Cross-Platform Services, including to encode additional content and/or advertising and developing and managing any panel using the PPM Technology for Cross-Platform Services provided by the Acquirer to its customers, and

b. obtain accreditation by the MRC in connection with the provision of Cross-Platform Services.

C. No later than the date Respondents divest the Link Meter Technology to the Acquirer pursuant to Paragraph II.A., above, Respondents shall, pursuant to a Remedial Agreement and consistent with the requirements of Paragraph IV.B.1., for a period of no less than eight (8) years from the date of the divestiture required by Paragraph II.A., above, provide to the Acquirer for purposes of developing and providing Cross-Platform Services to its customers, and grant to the Acquirer a perpetual, royalty-free license (for data delivered during the term of the Remedial Agreement) for the use of:

1. Television Data;

2. Radio Data; and

3. Calibration Panel Data;

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

D. Respondents shall:

1. Have no authority to, and shall not exercise or attempt to exercise any authority to, market or price the Cross-Platform Services that the Acquirer sells to the Acquirer's customers,

2. Not be entitled to any revenue, or portion thereof, that the Acquirer collects from its customers, or attempt to collect any revenue, or portion thereof, from the Acquirer attributable to revenue that the Acquirer collects from its customers; and

3. Not make any change to the PPM Technology or Encoding Technology that has the effect of eliminating or impairing the ability of the PPM to collect records of encoded video content.

E. The Remedial Agreement shall be incorporated by reference into this Order and made a part hereof. Respondents shall comply with all terms of the Remedial Agreement, and any breach by Respondents of any term of the Remedial Agreement shall constitute a failure to comply with this Order. If any term of the Remedial Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order. No Remedial Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreement.

F. The purpose of this Paragraph II is to ensure that the Acquirer can offer Cross-Platform Services, with the goal of providing a national syndicated cross-platform audience measurement service, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III.

IT IS FURTHERED ORDERED that Respondents shall:

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

1. Name, job title or position, date of hire, and effective service date;

2. A specific description of the employee's responsibilities;

3. The base salary or current wages;

4. The most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus; if any;

5. Employment status (i.e. active or on leave or disability, full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated

employees; and

7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Key Arbitron Employee;

B. No later than ten (10) days after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Key Arbitron Employees, and to make offers of employment to any one or more of the Key Arbitron Employees.

C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Key Arbitron Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Key Arbitron Employees by the Prospective Acquirer;

D. Remove any impediments within the control of Respondents that may deter Key Arbitron Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Key Arbitron Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however,* that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

E. For Key Arbitron Employees who have accepted offers of employment with the Acquirer, not, for a period of one (1) year following the date such Key Arbitron Employee begins employment with the Acquirer, directly or indirectly, solicit or otherwise attempt to induce such Key Arbitron Employees to terminate his or her employment with the Acquirer; *provided, however,* that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Key Arbitron Employees; or

2. Hire Key Arbitron Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Key Arbitron Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

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

IV.

IT IS FURTHER ORDERED that:

A. Respondents shall:

1. Manage and maintain (and expand as required by Paragraph IV.A.2., below) the Arbitron Calibration Panel consistent with Respondents' own business practices and under the following conditions:

    a. Respondents shall assure that the Arbitron Calibration Panel comprises at least two thousand panelists no later than six (6) weeks after the date of the signing of the Remedial Agreement;

    b. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to managing and maintaining the Arbitron Calibration Panel*; provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;

    c. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the Arbitron Calibration Panel; for the avoidance of doubt, Respondents shall retain all right, title and ownership interest in all underlying data from the PPM Panel that is an input into the data generated by the Arbitron Calibration Panel;

    d. at the Acquirer's option, Respondents shall have the right to use the data generated by the Arbitron Calibration Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff;

    e. *provided, however,* that Respondents shall have no obligation to manage and maintain the Arbitron Calibration Panel if the Acquirer requests in writing (with copies to the Commission staff and the Monitor) that it no longer requires that the Arbitron Calibration Panel be maintained; and

    f *provided, further, however* that Respondents shall have no obligation to continue to manage and maintain the Arbitron Calibration Panel if (1) the

Acquirer fails to pay the Direct Costs directly attributable to managing and maintaining the Arbitron Calibration Panel as required by the Remedial Agreement; (2) Respondents notify the Acquirer, the Monitor, and Commission staff of Acquirer's failure to pay Direct Costs and give the Acquirer thirty (30) days from receiving that notice to cure the failure; and (3) the Acquirer fails to cure.

2. At the request of the Acquirer, expand the Arbitron Calibration Panel beyond the two (2) thousand panelists required in Paragraph IV.A.1.a. to enable national projections under the following conditions:

   a. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to the expansion of the Arbitron Calibration Panel; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;

   b. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the expansion of the Arbitron Calibration Panel; and

   c. at the Acquirer's option, Respondents shall have the right to use the data generated by the expansion of the Arbitron Calibration Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff;

B. Respondents shall manage and maintain (and expand as required by Paragraph IV.B.2. below) the Arbitron PPM Panel consistent with Respondents' own practices and under the following conditions:

1. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to the cost of providing the data generated by the Arbitron PPM Panel to the Acquirer; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission; and

2. At the request of the Acquirer, expand the Arbitron PPM Panel to enable national projections under the following conditions:

   a. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to such expansion and to the collection of those data that are provided to and used solely by the Acquirer; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;

   b. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the expansion of the Arbitron PPM Panel; and

c. at the Acquirer’s option, Respondents shall have the right to use the data generated by the expansion of the Arbitron PPM Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff.

V.

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

VI.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that Respondents comply with all obligations and perform all responsibilities required by this Order and the Remedial Agreement.

B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.

C. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents’ compliance with the requirements of this Order and the Remedial Agreement.

D. If a Monitor is appointed by the Commission, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this Order and in consultation with the Commission or Commission staff.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Monitor shall serve until termination of this Order.

4. The Monitor shall report in writing to the Commission every sixty (60) days concerning the Monitor's duties and responsibilities.

5. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order and the Remedial Agreement.

6. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

7. Respondents shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

8. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to, or receiving information from, the Commission.

9. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

10. In the event the Commission determines that the Monitor is no longer willing or able to perform his/her duties under this Order, or has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.

11. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

12. The Monitor appointed pursuant to this Paragraph VI. may be the same person appointed as the Divestiture Trustee pursuant to Paragraph VII. of this Order.
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VII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the divestiture and licensing obligations of Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to perform Respondents' obligations in a manner that satisfies the requirements of this Order, including, but not limited to, Paragraphs II. and IV. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures in the media industry. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

1. No later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.

2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

   a. subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestiture required by, and satisfy the additional obligations imposed by, this Order.

   b. the Divestiture Trustee shall have six (6) months after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six (6) month period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraphs II. and IV. of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period for only an additional three (3) months.

   c. subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph VII. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

   d. the Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously subject to the provisions of Paragraphs II. and IV., including, but not limited to, the requirement that the Acquirer pay Direct Costs as required by Paragraphs IV.A.1.b, IV.A.2.a., IV.B.1., and IV.B.2.a. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.

e. the Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

f. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.

g. the Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

h. the Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

i. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

j. the Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

C. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII.

D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

E. The Divestiture Trustee appointed pursuant to this Paragraph VII. may be the same person appointed as the Monitor pursuant to Paragraph VI. of this Order.

VIII.

IT IS FURTHER ORDERED that:

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

B. One (1) year after this Order is issued, annually for the next seven (7) years on the anniversary of that date, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

IX.

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

A. Any proposed dissolution of such Respondent;

B. Any proposed acquisition, merger, or consolidation of such Respondent; or

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

X.

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

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate eight (8) years after the date this Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Confidential Exhibits A and B

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

Statement of the Federal Trade Commission[1]
In the Matter of Nielsen Holdings N.V. and Arbitron Inc.
File No. 131-0058
September 20, 2013

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

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

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

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

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

Nielsen and Arbitron provide individual demographic data, such as age and gender information, for television and, hence, cross-platform measurement.

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

Arbitron is also developing a cross-platform audience measurement solution. Last year, it began a collaboration with comScore known as "Project Blueprint" to develop a product for ESPN. Arbitron is contributing in-home and out-of-home television audience demographic data sourced from its PPM radio panel, radio audience data, and a "calibration" panel recruited from its PPM panel to measure audience duplication across platforms. comScore is providing online measurement and set-top box data. Arbitron has stated that Project Blueprint is "a major jumping off point" toward a "syndicable type [cross-platform] service," and both ESPN and comScore are enthusiastic about the project. There is considerable industry interest in participating in the next phase of Project Blueprint.

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

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

We agree with Commissioner Wright that the analysis of a merger's competitive effects in any market, including markets where the products are still in the development phase, must always be strongly rooted in the evidence. Where the product at issue is not yet on the market, it can be difficult to develop the evidence necessary to predict accurately the nature and extent of competition. Nevertheless, the 2010 Guidelines specifically indicate that the agencies will consider whether the merging firms have been or likely will become “substantial head-to-head competitors” absent the merger. § 2.1.4.[3]

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

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

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

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

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

Dissenting Statement of Commissioner Joshua D. Wright
In the Matter of Nielsen Holdings N.V. and Arbitron Inc.

FTC File No. 131-0058

September 20, 2013

The Commission has voted to issue a Complaint and Decision & Order ("Order") against Nielsen Holdings N.V. ("Nielsen") to remedy the allegedly anticompetitive effects of Nielsen's proposed acquisition of Arbitron Inc. ("Arbitron"). I dissented from the Commission's decision because the evidence is insufficient to provide reason to believe Nielsen's acquisition will substantially lessen competition in the future market for national syndicated cross-platform audience measurement services in violation of Section 7 of the Clayton Act. I want to commend staff for conducting a thorough investigation. Staff has worked diligently to collect and analyze a substantial quantity of documentary and testimonial evidence, and has provided thoughtful analysis of the transaction's potential effects. Based upon this evidence and analysis, I conclude there is no reason to believe the transaction violates Section 7 of the Clayton Act.[1] It follows, in my view, that the Commission should close the investigation and allow the parties to complete the merger without imposing a remedy.

I. Predicting Competitive Effects in Future Markets

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

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

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

allowing the third party to one day offer national syndicated cross-platform measurement services in competition with Nielsen.

A future market case, such as the one alleged by the Commission today, presents a number of unique challenges not confronted in a typical merger review or even in "actual potential competition" cases. For instance, it is inherently more difficult in future market cases to define properly the relevant product market, to identify likely buyers and sellers, to estimate cross-elasticities of demand or understand on a more qualitative level potential product substitutability, and to ascertain the set of potential entrants and their likely incentives.[3] Although all merger review necessarily is forward looking, it is an exceedingly difficult task to predict the competitive effects of a transaction where there is insufficient evidence to reliably answer these basic questions upon which proper merger analysis is based.[4] Without these critical inputs, our current economic toolkit provides little basis from which to answer accurately the question of whether a merger implicating a future market will result in a substantial lessening of competition.

The Commission of course already routinely engages in predictive merger analysis that seeks to compare present competitive activities to future market conditions.[5] For instance, the Horizontal Merger Guidelines ("Merger Guidelines") call

[3] Somewhere between typical merger cases and future market cases are "actual potential competition" cases. Competitive effects in such cases typically are less difficult to predict than in future market cases because the Commission at least can identify the relevant product market and interview current buyers and sellers. Nevertheless, competitive effects in actual potential competition cases still are more difficult, on balance, to assess than typical merger cases because the agency must predict whether a party is likely to enter the relevant market absent the merger. It is because of this uncertainty and the potential for conjecture that the courts and agencies have cabined the actual potential competition doctrine by, for instance, applying a heightened standard of proof for showing a firm likely would enter the market absent the merger. *See e.g.*, B.A.T. Indus., 104 F.T.C. 852, 926-28 (1984) (applying a "clear proof" standard). The Majority asserts the parties are actual potential entrants under the relevant legal standard. I have not seen evidence sufficient to support the assertion that the parties satisfy even the least stringent standard for evaluating actual potential competition in the alleged national syndicated cross-platform audience measurement services market. The absence of such evidence is unsurprising because, as discussed below, that market does not exist today.

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

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

upon the antitrust agencies to take into account efficiencies claimed by the parties, the likelihood of successful entry, and the possibility of a failing firm defense.[6] Significantly, however, each of these predictions about the evolution of a market is based upon a fact-intensive analysis rather than relying upon a general presumption that economic theory teaches that an increase in market concentration implies a reduced incentive to invest in innovation.[7] For example, when parties seek to show that a proposed transaction has efficiencies that mitigate the anticompetitive concerns, they must provide the agencies with clear evidence showing that the claimed efficiencies are cognizable, merger-specific, and verifiable.[8] Similarly, when assessing whether future entry would counteract a proposed transaction's competitive concerns, the agencies evaluate a number of facts—such as the history of entry in the relevant market and the costs a future entrant would need to incur to be able to compete effectively—to determine whether entry is "timely, likely, and sufficient."[9] Likewise, to prove a failing firm defense successfully, the parties must show several specific facts, such as an inability to meet financial obligations in the near future or to reorganize in bankruptcy, to allow the agencies to predict that the firm would fail absent the merger.[10]

I believe the Commission is at its best when it relies upon such fact-intensive analysis, guided by well-established and empirically grounded economic theory, to predict the competitive effects of a proposed merger.[11] When the Commission's antitrust analysis comes unmoored from such fact-based inquiry, tethered tightly to robust economic theory, there is a more significant risk that non-economic considerations, intuition, and policy preferences influence the outcome of cases.

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

[7] The link between market structure and incentives to innovate remains inconclusive. *See, e.g.*, Ginsburg & Wright, *supra* note 4, at 4-5 ("To this day, the complex relationship between static product market competition and the incentive to innovate is not well understood."); Richard J. Gilbert, *Competition and Innovation*, *in* 1 ABA SECTION OF ANTITRUST LAW, ISSUES IN COMPETITION LAW AND POLICY 577, 583 (W. Dale Collins ed., 2008) ("[E]conomic theory does not provide unambiguous support either for the view that market power generally threatens innovation by lowering the return to innovative efforts nor the Schumpeterian view that concentrated markets generally promote innovation.").

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

[9] *Id.* at § 9.

[10] *Id.* at § 11.

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

Consequently, in merger cases where only limited or ambiguous evidence exists upon which to base our predictive conclusions, I believe the Commission will be best served by acknowledging these institutional limitations rather than challenging the transaction. Although future market cases may warrant investigation under certain circumstances, the inherent difficulties associated with analyzing the competitive effects of a transaction where the market does not yet exist, and the present inability of economic theory and evidence to support confident and reliable prediction, each suggest such cases typically will not warrant an enforcement action.

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

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

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

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

It is true that the same concerns arising from predicting future anticompetitive effects also provide a challenge to predicting any cognizable efficiencies arising from the transaction. However, even assuming away the uncertainty discussed above, the evidence suggests that any anticompetitive effects arising from the transaction would be relatively small. One reason for this is that the alleged relevant market would constitute a small fraction of the value of the overall deal. Indeed, there is no reason to believe the prospect of supracompetitive profits in the national syndicated cross-platform audience measurement services market motivated the transaction. A substantial fraction of the potentially cognizable efficiencies from the transaction arise in markets that already exist—that is, outside the alleged relevant market. While out-of-market efficiencies are generally discounted by the agencies, the Merger Guidelines' analysis rejects the view that form should trump substance when assessing competitive effects. Indeed, the Merger Guidelines suggest that the Commission will consider out-of-market efficiencies when they are "inextricably linked" with the transaction as a whole and are likely to be large relative to any likely anticompetitive effects.[13] This appears to be precisely such a case. To be clear, I do not base my disagreement with the Commission today on the possibility that the potential efficiencies arising from the

[12] Although the Merger Guidelines provide that the agencies need not begin their merger analysis by defining the relevant product market—that is to say, defining the relevant product market before assessing effects, the Merger Guidelines do not dispense with market definition because it is important to understanding where those effects ultimately might occur.
[13] 2010 MERGER GUIDELINES, *supra* note 6, § 10 n. 14.

transaction would offset any anticompetitive effect. As discussed above, I find no reason to believe the transaction is likely to substantially lessen competition because the evidence does not support the conclusion that it is likely to generate anticompetitive effects in the alleged relevant market.

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

III. Ensuring Consent Agreements are in the Public Interest

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

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

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

Consents can and do play an important and productive role in the Commission's competition enforcement mission. Consents can efficiently address competitive concerns arising from a merger by allowing the Commission to reach a resolution more quickly and at less expense than would be possible through litigation. However, consents potentially also can have a detrimental impact upon consumers. The Commission's consents serve as important guidance and inform practitioners and the business community about how the agency is likely to view and remedy certain mergers.[15] Where the Commission has endorsed by way of consent a willingness to challenge transactions where it might not be able to meet its burden of proving harm to competition, and which therefore at best are competitively innocuous, the Commission's actions may alter private parties' behavior in a manner that does not enhance consumer welfare.[16] Because there is no judicial approval of Commission settlements, it is especially important that the Commission take care to ensure its consents are in the public interest.[17]

* * * * *

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

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

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

Vertical Foreclosure

December 3, 2009

COMCAST AND GE TO CREATE LEADING ENTERTAINMENT COMPANY

POSITIONS COMCAST AND NBCU TO LEAD THE NEXT PHASE OF MEDIA INDUSTRY'S EVOLUTION
BUILDS ON DIVERSE CABLE PORTFOLIO, ACCELERATES DIGITAL OFFERINGS AND EXPANDS CUSTOMER CHOICE
ENTITY WILL DELIVER STRONG CASH FLOW WITH CONSERVATIVE CAPITAL STRUCTURE
NBCU BUSINESSES VALUED AT $30 BILLION, COMCAST TO CONTRIBUTE BUSINESSES VALUED AT $7.25 BILLION
COMCAST TO OWN 51%, GE 49% INTEREST IN NBCU
JEFF ZUCKER TO LEAD NEW YORK-BASED VENTURE

PHILADELPHIA & FAIRFIELD, Conn., Dec 03, 2009 (BUSINESS WIRE) -- Comcast (NASDAQ: CMCSA, CMCSK) and General Electric (NYSE: GE) announced today that they have signed a definitive agreement to form a joint venture that will be 51 percent owned by Comcast, 49 percent owned by GE and managed by Comcast. The joint venture, which will consist of the NBC Universal (NBCU) businesses and Comcast's cable networks, regional sports networks and certain digital properties and certain unconsolidated investments, will be well positioned to compete in an increasingly dynamic and competitive media and digital environment.

The combination of assets creates a leading media and entertainment company with the proven capability to provide some of the world's most popular entertainment, news and sports content, movies and film libraries to consumers anytime, anywhere. The joint venture will provide consumers the broadest possible access to content, and support high-quality, award-winning content development across all platforms including film, television, and online. It will be anchored by an outstanding portfolio of cable networks and regional sports networks that will account for about 80 percent of its cash flow, including USA, Bravo, Syfy, E!, Versus, CNBC and MSNBC. The joint venture will be financially strong with a robust cash-flow-generation capability.

Under the terms of the transaction, GE will contribute to the joint venture NBCU's businesses valued at $30 billion, including its cable networks, filmed entertainment, televised entertainment, theme parks, and unconsolidated investments, subject to $9.1 billion in debt to third party lenders. Comcast will contribute its cable networks including E!, Versus and the Golf Channel, its ten regional sports networks, and certain digital media properties, collectively valued at $7.25 billion, and make a payment to GE of approximately $6.5 billion of cash subject to certain adjustments based on various events between signing and closing.

Comcast Chairman and Chief Executive Officer Brian Roberts said, "This deal is a perfect fit for Comcast and will allow us to become a leader in the development and distribution of multiplatform 'anytime, anywhere' media that American consumers are demanding. In particular, NBCU's fast-growing, highly profitable cable networks are a great complement to our industry-leading distribution business. Today's announced transaction will increase our capabilities in content and cable networks. At the same time, it will enhance consumer choice and accelerate the development of new digital products and services. GE has provided NBCU with a great home and has dramatically and positively transformed the business. We are honored that under this agreement Comcast would take over the stewardship of this important collection of assets and are absolutely committed to investing in NBCU and ensuring that it is a vibrant, financially strong company able to thrive in a rapidly evolving marketplace by delivering innovative programming. We are particularly pleased to be creating this new joint venture with GE and Jeff Immelt and to have their continued involvement.

"For Comcast, this transaction is strategically compelling and will generate attractive financial returns and build shareholder value," continued Roberts. "It is also expected to be immediately accretive and will also allow us to maintain our strong commitment to returning capital to shareholders- all while increasing the scale, capabilities and value of our cable distribution, content and digital assets. Significantly, it is entirely consistent with our intense focus on value creation and our disciplined strategy of pursuing profitable growth in areas complementary to our distribution business."

GE Chairman and CEO Jeff Immelt said, "The combination of Comcast's cable and regional sports networks and digital media properties and NBCU will deliver strong returns for GE shareholders and business partners. NBCU has been a great business for GE over the past two decades. We have generated an average annual return of 11 percent, while expanding into cable, movies, parks and international media. We are reducing our ownership stake from 80 percent to 49 percent of a more valuable entity. By doing so, GE gets a good value for NBCU. This transaction will generate approximately $8 billion of cash at closing with an expected small after-tax gain. We have many opportunities to invest in our high-technology infrastructure businesses at attractive returns. I believe that the new NBCU will deliver value for both Comcast and GE in the future. We will give consumers and advertisers more choice and our cable and digital assets will be second to none. I am confident Brian Roberts and his team at Comcast will be great partners."

Comcast also announced the creation of Comcast Entertainment Group (CEG), which will house Comcast's interest in the joint venture and will stand alongside Comcast Cable, which operates the company's traditional cable business.

Comcast Chief Operating Officer Steve Burke said, "Both Comcast and NBCU have excellent track records of integrating and growing multi-billion dollar businesses, including significant content acquisitions. In addition, we have both developed some of the country's most popular programming and built many of the most watched and valued networks in the industry. We are confident that we'll be even stronger together, and look forward to working with Jeff Zucker and the NBCU team to deliver the best consumer experience."

Jeff Zucker, current president and CEO of NBCU, will be CEO of the new joint venture and will report to Burke. Zucker said, "Combining the assets of NBCU, ranging from our suite of cable properties and two broadcast networks to a legendary film studio and global theme park business, with the content assets and resources of Comcast, will enable us to continue to thrive in an ever-changing media landscape. Consumers of all of our products - on screens large and small - will have the benefit of enhanced content and experiences, delivered to them in new and better ways as a result of this transaction. This marks the start of a new era for NBCU, and I'm genuinely excited that I will be leading this wonderful organization, along with the Comcast team, at this important time in our history."

Headquarters for the business will remain in New York. The joint venture board will have three directors nominated by Comcast and two nominated by GE.

Key Elements Of The Transaction:

- NBCU will borrow approximately $9.1 billion from third-party lenders and distribute the cash to GE.
- NBCU, valued at $30 billion, will be contributed to the newly formed joint venture. Comcast will contribute its programming businesses and certain other properties valued at $7.25 billion.
- GE will acquire Vivendi's 20% interest in NBCU for $5.8 billion. GE will purchase approximately 38% of Vivendi's interest (or approximately 7.66% of all outstanding NBCU shares) from Vivendi for $2 billion in September 2010, if the Comcast transaction is not closed by then. GE will acquire the remaining 62% of Vivendi's interest (or approximately 12.34% of all outstanding NBCU shares) for $3.8 billion when the transaction closes.
- Comcast will make a payment to GE of approximately $6.5 billion in cash subject to certain adjustments based on various events between signing and closing.
- The new venture will be 51% owned by Comcast and 49% owned by GE.
- GE expects to realize $9.8 billion pre-tax in cash before debt reduction and transaction fees and after buyout of the Vivendi stake. GE expects to realize approximately $8 billion in cash after paying down the existing NBCU debt and transaction fees.

- GE will be entitled to elect to cause the joint venture to redeem one-half of its interest at year 3 ½ and its remaining interest at year 7. The joint venture's obligations to complete those purchases will be subject to the venture's leverage ratio not exceeding 2.75X EBITDA and the venture continuing to hold investment-grade ratings. Comcast also has certain rights to purchase GE's interest in the venture at specified times. All such transactions would be done at a 20% premium to public market value with 50% sharing of upside above the closing valuation.
- To the extent the joint venture is not required to meet GE's redemption requests, Comcast will provide a backstop up to a maximum of $2.875 billion for the first redemption and a total backstop of $5.750 billion.

The transaction has been approved by the Board of Directors of GE and Comcast. It is subject to receipt of various regulatory approvals, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act, and approvals of the Federal Communications Commission and certain international agencies. The transaction is also subject to other customary closing conditions. NBCU has obtained $9.85 billion of committed financing through a consortium of banks led by J.P. Morgan, Goldman Sachs, Morgan Stanley, BofA Merrill Lynch and Citi. This financing is expected to receive solid investment-grade ratings from S&P and Moody's.

Comcast and GE intend to submit regulatory applications supporting the pro-competitive and strong public interest benefits of the transaction, including how the joint venture will better meet the entertainment, communications and information needs of the American public.

"We are prepared to make affirmative commitments to ensure that the pro-consumer and public interest benefits of the transaction are realized," Roberts said. "Today, we have announced a number of initial commitments that expand on the capabilities that Comcast and NBCU have built over the years, and the new opportunities that this combination makes possible. These commitments address the needs of various audiences and stakeholders, and we will provide additional details on these and other commitments in our public interest filing with the Federal Communications Commission."

Advisors

Morgan Stanley is lead financial advisor to Comcast with UBS and BofA Merrill Lynch acting as co-advisors. Davis Polk & Wardwell LLP is Comcast's legal advisor. J.P. Morgan is lead financial advisor to GE with Goldman Sachs and Citi acting as co-advisors. Weil, Gotshal & Manges LLP is GE's and NBCU's legal advisor.

Teleconference and Webcast

Comcast will host a conference call with the financial community today, December 3, 2009, at 8:30 a.m. Eastern Time (ET) to discuss this morning's announcement with Comcast Chairman and CEO Brian L. Roberts, Comcast Chief Operating Officer Stephen B. Burke and Comcast Chief Financial Officer, Michael J. Angelakis. The conference call will be broadcast live via the Company's Investor Relations website at www.cmcsa.com or www.cmcsk.com. Those parties interested in participating via telephone should dial (800) 263- 8495 with the conference ID number 44380493. A telephone replay of the call will be available on the Investor Relations website starting at 12:30 p.m. Eastern Time on December 3, 2009 and will be available until December 8, 2009 at midnight Eastern Time. To access the rebroadcast, please dial (800) 642-1687 conference ID 44380493.

GE will also host a webcast with the financial community today, December 3, 2009, at 8:30 a.m. Eastern Time / 7:30 a.m. Central Time to discuss this morning's announcement with GE Chairman and CEO Jeff Immelt, GE Chief Financial Officer Keith Sherin and NBCU President and CEO Jeff Zucker. The webcast will be available at www.ge.com/investors. A replay will be available later in the day on the site.

Additional media materials are available at www.ge.com/newnbcu, www.comcast.com/nbcutransaction and https://www.nbcumv.com/mv/.

The description of this transaction included in this press release is qualified in its entirety by, and is subject to, the terms of the definitive documentation for the transaction to be filed by Comcast with the Securities and Exchange Commission on a Current Report on Form 8-K.

About GE

GE (NYSE: GE) is a diversified infrastructure, finance and media company taking on the world's toughest challenges. From aircraft engines and power generation to financial services, medical imaging, and television programming, GE operates in more than 100 countries and employs about 300,000 people worldwide. For more information, visit the company's Web site at www.ge.com.

About Comcast Corporation

Comcast Corporation (Nasdaq: CMCSA, CMCSK) (www.comcast.com) is one of the nation's leading providers of entertainment, information and communication products and services. With 23.8 million cable customers, 15.7 million high-speed Internet customers, and 7.4 million Comcast Digital Voice customers, Comcast is principally involved in the development, management and operation of cable systems and in the delivery of programming content.

Comcast's content networks and investments include E! Entertainment Television, Style Network, Golf Channel, VERSUS, G4, PBS KIDS Sprout, TV One, ten sports networks operated by Comcast Sports Group and Comcast Interactive Media, which develops and operates Comcast's Internet businesses, including Comcast.net (www.comcast.net). Comcast also has a majority ownership in Comcast-Spectacor, whose major holdings include the Philadelphia Flyers NHL hockey team, the Philadelphia 76ers NBA basketball team and two large multipurpose arenas in Philadelphia.

About NBC Universal:

NBC Universal is one of the world's leading media and entertainment companies in the development, production, and marketing of entertainment, news, and information to a global audience. NBC Universal owns and operates a valuable portfolio of news and entertainment networks, a premier motion picture company, significant television production operations, a leading television stations group, and world-renowned theme parks. NBC Universal is 80% owned by General Electric and 20% owned by Vivendi.

Combined Assets/Properties

The assets and properties owned or controlled by the new joint venture will include some of the best known brands in the entertainment industry, including:

- Several of television's most successful cable networks, including USA, Bravo, CNBC, MSNBC, Syfy, E!, Style, Versus and the Golf Channel;
- One of the nation's largest television groups, including:
  - The NBC Television Network;
  - Local broadcast TV stations in ten top U.S. markets including New York, Los Angeles, Chicago and Philadelphia;
  - The national Telemundo Network and 16 Telemundo O&O stations in locations such as Los Angeles, New York, Miami, Houston, Chicago and Dallas/Ft.Worth;
- Preeminent television production operations that produce Emmy Award winning programs like *The Office*, *30 Rock, Law & Order, Heroes, Saturday Night Live* and *The Tonight Show*,as well as syndicate operations through NBC Universal Domestic and International Distribution and a 3,000-title library of television episodes;
- NBC News, the leading source of global news and information in the United States with top-rated programs such as *Nightly News with Brian Williams, Today* and *Meet the Press*;
- A robust sports programming lineup featuring the Olympics (through 2012), NBC Sunday Night Football, NHL/Stanley Cup, PGA Tour, US Open, Ryder Cup, Wimbledon and the Kentucky Derby, Versus, Golf Channel and Comcast's 10 regional sports networks;
- Universal Pictures, which has produced Academy Award winners *Atonement, The Bourne Ultimatum, Brokeback Mountain, Ray* and *A Beautiful Mind*, Focus Features, which recently produced *Away We Go,* and an extensive movie library with more than 4,000 titles through Universal Studios Home Entertainment;
- Fast growing digital media properties including CNBC.com, iVillage, NBC.com, Fandango, and Daily Candy, which together generate more than 40 million unique users each month;
- Ownership of theme parks in Florida (50% interest), California (100% interest) and a financial interest in a theme park in Japan;
- A minority interest in A&E, Biography, The History Channel, The Weather Channel, Lifetime and Hulu.com.

Caution Concerning Forward-Looking Statements

This document contains "forward-looking statements" - that is, statements related to future, not past, events. In this context, forward-looking statements often address expected future business and financial performance and financial condition, and often contain words such as "expect," "anticipate," "intend," "plan," "believe," "seek," "see," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. These statements are made on the basis of the views and assumptions of management.Particular uncertainties that could cause actual results to be materially different than those expressed in these forward-looking statements include: the timing of, or ability to obtain, necessary regulatory and governmental approvals on acceptable terms; the timing and completion of the financing of NBC Universal on contemplated terms before the closing of the proposed joint venture; the receipt of an investment grade rating from the rating agencies of the proposed joint venture between GE and Comcast; adverse developments in the business and operations of NBC Universal, including potential disruption that may make it more difficult to maintain business and operational relationships; and the successful combination, operation and overall performance of the joint venture post closing. For GE, an additional uncertainty includes its ability to redeploy its capital into high-growth technology businesses. For Comcast and NBC Universal, additional uncertainties include the ability to integrate the programming assets of Comcast and NBC Universal in the new joint venture; the ability of the new joint venture to create popular programming, to develop new digital products and services, and to succeed in the highly competitive media industry; the ability of the new joint venture to generate attractive financial returns and strong cash flows; and, the effect of any conditions that regulators may impose in permitting the transaction to proceed. These uncertainties may cause actual future results to be materially different than those expressed in these forward-looking statements. None of GE, Comcast nor NBC Universal undertake to update these forward-looking statements.

SOURCE: General Electric and Comcast

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Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, JANUARY 18, 2011
WWW.JUSTICE.GOV

AT
(202) 514-2007
TDD (202) 514-1888

JUSTICE DEPARTMENT ALLOWS COMCAST-NBCU JOINT VENTURE TO PROCEED WITH CONDITIONS

Companies Agree to License Programming to Online Distributors and Comply with Anti-Retaliation Provisions and Open Internet Requirements

WASHINGTON – The Department of Justice announced today a settlement with Comcast Corp. and General Electric Co.'s subsidiary NBC Universal Inc. (NBCU) that allows their joint venture to proceed conditioned on the parties' agreement to license programming to online competitors to Comcast's cable TV services, subject themselves to anti-retaliation provisions and adhere to Open Internet requirements. The department said that the proposed settlement will preserve new content distribution models that offer more products and greater innovation, and the potential to provide consumers access to their favorite programming on a variety of devices in a wide selection of packages.

The Department of Justice's Antitrust Division, along with five state attorneys general, filed a civil antitrust lawsuit today in U.S. District Court for the District of Columbia, to block the formation of the joint venture, alleging that the transaction would allow Comcast to limit competition from its cable, satellite, telephone and online competitors. At the same time, the department and the states filed a proposed settlement that, if approved by the court, would resolve the competitive concerns in the lawsuit. The participating states are: California, Florida, Missouri, Texas and Washington.

"The Antitrust Division worked in close cooperation and unprecedented coordination with the Federal Communications Commission (FCC) to reach a result that fully protects competition, allowing businesses to bring new and innovative products to the marketplace, providing consumers with more programming choices," said Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The conditions imposed will maintain an open and fair marketplace while at the same time allow the innovative aspects of the transaction to go forward."

Today, the FCC also issued an order approving the proposed transaction subject to conditions, some of which are similar to those in the department's settlement. The department and FCC consulted extensively to coordinate their reviews and create remedies that were both consistent and comprehensive. Consistent with the department's complaint, the FCC order requires the joint venture to license NBCU content to Comcast's cable, satellite and telephone competitors, making it unnecessary for the department to impose the same requirement.

The department's complaint alleges that Comcast's traditional and online rivals need access to NBCU programming, including the NBC broadcast network, to compete effectively against Comcast. The joint venture would have less incentive to distribute NBCU programming to Comcast's video distribution rivals than a stand-alone NBCU, and could cause Comcast's rivals and their customers to face higher prices for that content. The department said that the joint venture, as originally proposed, may have substantially lessened competition for video programming distribution in major portions of the United States. The department also said that the market would experience lower levels of investment, less experimentation with new models of delivering content and less diversity in the types and range of product offerings.

Under the proposed settlement and the FCC order, the joint venture must make available to online video distributors (OVDs) the same package of broadcast and cable channels that it sells to traditional video programming distributors. In addition, the joint venture must offer an OVD broadcast, cable and film content that is similar to, or better than, the content the distributor receives from any of the joint venture's programming peers. These peers are NBC's broadcast competitors (ABC, CBS and FOX), the largest cable programmers (News Corp., Time Warner Inc., Viacom Inc. and The Walt Disney Co.), and the largest video production studios (News Corp., Sony Corporation of America, Time Warner Inc., Viacom Inc. and The Walt Disney Co.).

In the event of a licensing dispute between the joint venture and an online video distributor, the department may seek court enforcement of the settlement or permit, in its sole discretion, the aggrieved online video distributor to pursue a commercial arbitration procedure established under the settlement. The FCC order also requires the joint venture to license content to OVDs on reasonable terms and includes an arbitration mechanism for resolving disputes. If timely arbitration is available for resolution of disputes under the FCC order, the department ordinarily will defer to the FCC's arbitration process to resolve such disputes. The FCC order also allows Comcast's traditional competitors, such as satellite and telephone companies, to invoke arbitration at the FCC to resolve program access and retransmission consent disputes.

The settlement also includes other relief aimed at ensuring that Comcast cannot evade the provisions designed to protect competition. For example:

- Comcast may not retaliate against any broadcast network (or affiliate), cable programmer, production studio or content licensee for licensing content to a competing cable, satellite or telephone company or OVD, or for raising concerns to the department or the FCC;

- Comcast must relinquish its management rights in Hulu, an OVD. Without such a remedy, Comcast could, through its seats on Hulu's board of directors, interfere with the management of Hulu, and, in particular, the development of products that compete with Comcast's video service. Comcast also must continue to make NBCU content available to Hulu that is comparable to the programming Hulu obtains from Disney and News Corp;

- In accordance with recently established Open Internet requirements, Comcast is prohibited from unreasonably discriminating in the transmission of an OVD's lawful network traffic to a Comcast broadband customer. Comcast must also maintain the high-speed Internet service it offers to its customers by continuing to offer download speeds of at least 12 megabits per second in markets where it has upgraded its broadband network. Additionally, Comcast is required to give other firms' content equal treatment under any of its broadband offerings that involve caps, tiers, metering for consumption or other usage-based pricing; and

- Comcast may not, with certain narrow exceptions, require programmers or video distributors to agree to licensing terms that seek to limit online distributors' access to content.

Comcast is a Pennsylvania corporation headquartered in Philadelphia. It is the largest video programming distributor in the nation, with approximately 23 million video subscribers. Comcast wholly owns national cable programming networks (*e.g.*, E! Entertainment, Golf, Style), has partial interests in other networks (*e.g.*, MLB Network, PBS KIDS Sprout), and has controlling interests in regional sports networks. Comcast also owns digital properties such as DailyCandy.com, Fandango.com and Fancast, its online video website. In 2009, Comcast reported total revenues of $32 billion.

GE is a New York corporation with its principal place of business in Fairfield, Conn. GE is a global infrastructure, finance and media company. GE owns 88 percent of NBCU, a Delaware corporation, with its headquarters in New York City. NBCU is principally involved in the production, packaging and marketing of news, sports and entertainment programming. NBCU wholly owns the NBC and Telemundo broadcast networks, as well as 10 local NBC owned and operated television stations (O&Os), 16 Telemundo O&Os and one independent Spanish language television station. In addition, NBCU wholly owns national cable programming networks – Bravo, Chiller, CNBC, CNBC World, MSNBC, mun2, Oxygen, Sleuth, SyFy and USA Network – and partially owns A&E Television Networks (including the Biography, History and Lifetime cable networks), The Weather Channel and ShopNBC. NBCU also owns Universal Pictures, Focus Films and Universal Studios. In 2009, NBCU had total revenues of $15.4 billion.

As required by the Tunney Act, the proposed seven-year settlement, along with the department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 7000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the District of Columbia may enter the proposed settlement upon finding that it is in the public interest.

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11-061

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, United States Department of Justice Antitrust Division 450 Fifth Street, N.W., Suite 7000 Washington, DC 20530 STATE OF CALIFORNIA, Office of the Attorney General CSB No. 184162 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 STATE OF FLORIDA, Antitrust Division PL-01, The Capitol Tallahassee, FL 32399-1050 STATE OF MISSOURI, Missouri Attorney General's Office P.O. Box 899 Jefferson City, MO 65109 STATE OF TEXAS, Office of the Attorney General 300 W. 15th Street, 7th Floor Austin, TX 78701 and STATE OF WASHINGTON, Office of the Attorney General of Washington 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 *Plaintiffs,* v. COMCAST CORP., 1 Comcast Center Philadelphia, PA 19103	Case: 1:11-cv-00106 Assigned To : Leon, Richard J. Assign. Date : 1/18/2011 Description: Antitrust

GENERAL ELECTRIC CO.,
3135 Easton Turnpike
Fairfield, CT 06828

and

NBC UNIVERSAL, INC.,
30 Rockefeller Plaza
New York, NY 10112

Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the States of California, Florida, Missouri, Texas, and Washington, acting under the direction of their respective Attorneys General or other authorized officials ("Plaintiff States") (collectively, "Plaintiffs"), bring this civil action pursuant to the antitrust laws of the United States to permanently enjoin a proposed joint venture ("JV") and related transactions between Comcast Corporation ("Comcast") and General Electric Company ("GE") that would allow Comcast, the largest cable company in the United States, to control some of the most popular video programming among consumers, including the NBC Television Network ("NBC broadcast network") and the cable networks of NBC Universal, Inc. ("NBCU"). If the JV proceeds, tens of millions of U.S. consumers will pay higher prices for video programming distribution services, receive lower-quality services, and enjoy fewer benefits from innovation. To prevent this harm, the United States and the Plaintiff States allege as follows:

I. INTRODUCTION AND BACKGROUND

1. This case is about how, when, from whom, and at what price the vast majority of American consumers will receive and view television and movie content. Increasingly, consumers are demanding new ways of viewing their favorite television shows and movies at

times convenient to them and on devices of their own choosing. Consumers also are demanding alternatives to high monthly prices charged by cable providers, such as Comcast, for hundreds of channels of programming that many of them neither desire nor watch.

2. Today, consumers buy video programming services only from the distributors serving their local areas. Incumbent cable companies continue to serve a majority of customers, offering services consisting of multiple channels of linear or scheduled programming. Beginning in the mid-1990s, cable companies first faced competition from the direct broadcast satellite ("DBS") providers. More recently, firms that traditionally offered only voice telephony services – the telephone companies or "telcos," such as AT&T and Verizon – have emerged as competitors. The video programming offerings of these competitors are similar to the cable incumbents' programming packages, and their increased competition has pushed cable companies to offer new features, including additional channels, digital transmission, video-on-demand ("VOD") offerings, and high-definition ("HD") picture quality.

3. Most recently, online video programming distributors ("OVDs") have begun to provide professional video programming to consumers over the Internet. This programming can be viewed at any time, on a variety of devices, wherever the consumer has high-speed access to the Internet. Cable companies, DBS providers, and telcos have responded to this entry with further innovation, including expanding their VOD offerings and allowing their subscribers to view programming over the Internet under certain conditions.

4. Through the JV, Comcast seeks to gain control of NBCU's programming, a potent tool that would allow it to disadvantage its traditional video programming distribution competitors, such as cable, DBS, and the telcos, and curb nascent OVD competition by denying access to, or raising the cost of, this important content. If Comcast is allowed to exercise control

over this vital programming, innovation in the market for video programming distribution will be diminished, and consumers will pay higher prices for programming and face fewer choices.

5. Attractive content is vital to video programming distribution. Today, consumers subscribe to traditional video programming distributors in order to view their favorite programs (scheduled or on demand), discover new shows and networks, view live sports and news, and watch old and newly available movies. Distributors compete for viewers by marketing the rich array of programming and other features available on their services. This marketing often promotes programming that is exclusive to the distributor or highlights the distributor's rivals' lack of specific programming or features.

6. NBCU content, especially the NBC broadcast network, is important to consumers and video programming distributors' ability to attract and retain customers. Programming is often at the center of disputes between subscription video programming distributors and broadcast and cable network owners. The public outcry when certain programming is unavailable, even temporarily, underscores the damage that can occur when a video distributor loses access to valuable programming. The JV will give Comcast control over access to valuable content, and the terms on which its rivals can purchase it, including the possibility of denying them the programming entirely.

7. NBCU content is especially important to OVDs. NBCU has been an industry leader in making its content available over the Internet. If OVDs cannot gain access to NBCU content, their ability to develop into stronger video programming distribution competitors will be impeded.

8. Comcast itself recognizes the importance of the NBC broadcast network, which it describes as an "American icon." NBC broadcasts such highly rated programming as the

Olympics, *Sunday Night Football*, *NBC Nightly News*, *The Office*, *30 Rock*, and *The Today Show*. NBCU also owns other important programming, including the USA Network, the number-one-rated cable channel; CNBC, the leading cable financial news network; other top-rated cable networks, such as Bravo and SyFy; and The Weather Channel, in which it holds a significant stake and has management rights.

9. Comcast faces little video programming distribution competition in many of the areas it serves. Entry into traditional video programming distribution is expensive, and new entry is unlikely in most areas. OVDs' Internet-based offerings are likely the best hope for additional video programming distribution competition in Comcast's cable franchise areas.

10. Thus, the United States and the Plaintiff States ask this Court to enjoin the proposed JV permanently.

II. JURISDICTION AND VENUE

11. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Comcast, GE, and NBCU from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

12. The Plaintiff States, by and through their respective Attorneys General and other authorized officials, bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Comcast, GE, and NBCU from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Plaintiff States bring this action in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare, and economy of each of the Plaintiff States.

13. In addition to distributing video programming, Comcast owns programming. Comcast and NBCU sell programming to distributors in the flow of interstate commerce. Comcast's and NBCU's activities in selling programming to distributors, as well as Comcast's

activities in distributing video programming to consumers, substantially affect interstate commerce and commerce in each of the Plaintiff States. The Court has subject-matter jurisdiction over this action and these defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

14. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b)(1) and (c). Defendants Comcast, GE, and NBCU transact business and are found within the District of Columbia. Comcast, GE, and NBCU have submitted to personal jurisdiction in this District.

III. DEFENDANTS AND THE PROPOSED JOINT VENTURE

15. Comcast is a Pennsylvania corporation headquartered in Philadelphia, Pennsylvania. It is the largest video programming distributor in the nation, with approximately 23 million video subscribers. Comcast is also the largest high-speed Internet provider, with over 16 million subscribers for this service. Comcast wholly owns national cable programming networks, including E! Entertainment, G4, Golf, Style, and Versus, and has partial interests in Current Media, MLB Network, NHL Network, PBS KIDS Sprout, Retirement Living Television, and TV One. In addition, Comcast has controlling interests in the following regional sports networks ("RSNs"): Comcast SportsNet ("CSN") Bay Area, CSN California, CSN Mid-Atlantic, CSN New England, CSN Northwest, CSN Philadelphia, CSN Southeast, and CSN Southwest; and partial interests in three other RSNs: CSN Chicago, SportsNet New York, and The Mtn. Comcast also owns digital properties such as DailyCandy.com, Fandango.com, and Fancast, its online video website. In 2009, Comcast reported total revenues of $36 billion. Over 94 percent of Comcast's revenues, or $34 billion, were derived from its cable business, including $19 billion from video services, $8 billion from high-speed Internet services, and $1.4 billion

from local advertising on Comcast's cable systems. In contrast, Comcast's cable programming networks earned only about $1.5 billion in revenues from advertising and fees collected from video programming distributors.

16. GE is a New York corporation with its principal place of business in Fairfield, Connecticut. GE is a global infrastructure, finance, and media company. GE owns 88 percent of NBCU, a Delaware corporation, with its headquarters in New York, New York. NBCU is principally involved in the production, packaging, and marketing of news, sports, and entertainment programming. NBCU wholly owns the NBC and Telemundo broadcast networks, as well as ten local NBC owned and operated television stations ("O&Os"), 16 Telemundo O&Os, and one independent Spanish-language television station. Seven of the NBC O&Os are located in areas in which Comcast has incumbent cable systems – Chicago, Hartford/New Haven, Miami, New York, Philadelphia, San Francisco, and Washington, DC. In addition, NBCU wholly owns national cable programming networks – Bravo, Chiller, CNBC, CNBC World, MSNBC, mun2, Oxygen, Sleuth, SyFy, and the USA Network – and partially owns A&E Television Networks (including the Biography, History, and Lifetime cable networks), The Weather Channel, and ShopNBC.

17. NBCU also owns Universal Pictures, Focus Films, and Universal Studios, which produce films for theatrical and digital video disk ("DVD") release, as well as content for NBCU's and other companies' broadcast and cable programming networks. NBCU produces approximately three-quarters of the original, primetime programming shown on the NBC broadcast network and the USA cable network – NBCU's two highest-rated networks. In addition to its programming-related assets, NBCU owns several theme parks and digital

properties, such as iVillage.com. Finally, NBCU is a founding partner and 32 percent owner of Hulu, LLC, an OVD. In 2009, NBCU had total revenues of $15.4 billion.

18. On December 3, 2009, Comcast, GE, NBCU, and Navy, LLC ("Newco"), a Delaware corporation, entered into a Master Agreement, whereby Comcast agreed to pay $6.5 billion in cash to GE, and Comcast and GE each agreed to contribute certain assets to the JV to be called Newco. Specifically, GE agreed to contribute all of the assets of NBCU, including its interest in Hulu and the 12 percent interest in NBCU it does not currently own but has agreed to purchase from Vivendi SA. Comcast agreed to contribute all its cable programming assets, including its national networks as well as its RSNs, and some digital properties, but not its cable systems or its online video website, Fancast. As a result of the content contributions and cash payment by Comcast, Comcast will own 51 percent of the JV, and GE will retain a 49 percent interest. The JV will be managed by a separate board of directors initially consisting of three Comcast-designated directors and two GE-designated directors. Board decisions will be made by majority vote.

19. Comcast is precluded from transferring its interest in the JV for a four-year period, and GE is prohibited from transferring its interest for three and one-half years. Thereafter, either party may sell its respective interest in the JV, subject to Comcast's right to purchase at fair market value any interest that GE proposes to sell. Additionally, three and one-half years after closing, GE will have the right to require the JV to redeem 50 percent of GE's interest; after seven years, GE will have the right to require the JV to redeem all of its remaining interest. If GE elects to exercise its first right of redemption, Comcast will have the contemporaneous right to purchase the remainder of GE's ownership interest once a purchase price is determined. If GE does not exercise its first redemption right, Comcast will have the

right to buy 50 percent of GE's initial ownership interest five years after closing and all of GE's remaining ownership interest eight years after closing. It is expected that Comcast ultimately will own 100 percent of the JV.

IV. THE PROFESSIONAL VIDEO PROGRAMMING INDUSTRY

20. The professional video programming industry has had three different levels: content production, content aggregation or networks, and distribution.

A. Content Production

21. Television production studios produce television shows and license that content to broadcast and cable networks. Content producers typically retain the rights to license their content for syndication (*e.g.*, licensing of series to networks or television stations after the initial run of the programming) as well as for DVD distribution and VOD or pay-per-view ("PPV") services. In addition to first-run rights (*i.e.*, the rights to premiere the content), content producers such as NBCU also license the syndication rights to their own programming to broadcast and cable networks. For example, *House* is produced by NBCU, licensed for its first run on the FOX broadcast network, and then rerun on the USA Network, a cable network owned by NBCU. These content licenses often include ancillary rights to related content (*e.g.*, short segments of programming or clips, extras such as cast interviews, camera angles, and alternative feeds), as well as the right to offer some programming on demand (both online and through traditional cable, satellite, and telco distribution methods).

22. A content owner controls which entity receives its programming and when, through a process known as "windowing." Historically, the first television release window was reserved for broadcast on one of the four major broadcast networks (ABC, CBS, NBC, and FOX), followed by broadcast syndication, and, ultimately, cable syndication. Over the past

couple of years, however, content owners have created new windows and begun to allow their content to be distributed over the Internet on either a catch-up (*e.g.*, next day) or syndicated (*e.g.*, next season) basis.

23. In addition to producing content for television and cable networks, NBCU produces and distributes first-run movies through Universal Pictures, Universal Studios, and Focus Films. Typically, these movies are distributed to theaters before being released on DVD, then licensed to VOD/PPV providers, then to premium cable channels (*e.g.*, Home Box Office ("HBO")), then to regular cable channels, and finally to broadcast networks. As they have with television distribution, over the past several years content owners have experimented with different windows for distributing films over the Internet.

B. Programming Networks

24. Networks aggregate content to provide a 24-hour-per-day service that is attractive to consumers. The most popular networks, by far, are the four broadcast networks. The first cable network was HBO, which launched in the early 1970s. Since then, cable networks have grown in popularity and number. As of the end of 2009, there were an estimated 600 national, plus another 100 regional, cable programming networks. More than 100 of these networks were also available in HD.

1. Broadcast Networks

25. Owners of broadcast network programming or broadcasters (*e.g.*, NBCU) license their broadcast networks (*e.g.*, NBC, Telemundo) either to third-party television stations affiliated with that network ("network affiliates"), or to their owned and operated television stations or O&Os. The network affiliates and O&Os distribute the broadcast network feeds over the air to the public and, importantly, retransmit them to professional video programming

distributors such as cable companies and DBS providers, which in turn distribute the feeds to their subscribers.

26. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992), gave broadcast television stations, whether network affiliates or O&Os, the option to demand "retransmission consent," a process through which a distributor negotiates with the station for the right to carry the station's programming for agreed-upon terms. Alternatively, stations can elect "must carry" status, which involves a process through which the station can demand to be carried without compensation. Stations affiliated with the four major broadcast networks, including the O&Os, all have elected retransmission consent. Historically, these stations negotiated for non-monetary reimbursement (*e.g.*, carriage of new cable channels) in exchange for retransmission consent. Today, most broadcast stations seek fees based on the number of subscribers to the cable, DBS, or telco service distributing their content. Less popular broadcast networks generally have elected must carry status, although recently they also have begun to negotiate retransmission payments.

27. In the past, NBCU has negotiated the retransmission rights only for its O&Os, but it has expressed interest in and made efforts to obtain the rights from its NBC broadcast network affiliates to negotiate retransmission consent agreements on their behalf. NBCU could also seek to renegotiate its agreements with its affiliates to obtain a share of any retransmission consent fees the affiliates are able to command.

2. Cable Networks

28. In addition to the broadcast networks, programmers produce cable networks and sell them to video programming distributors. Most cable networks are based on a dual revenue-stream business model. They derive roughly half their revenues from licensing fees paid by

distributors and the other half from advertising fees. The revenue split varies depending on several factors, including the type of programming (*e.g.*, financial news or general entertainment) and whether the program is established or newly launched.

29. Generally, an owner of a cable network receives a monthly per-subscriber fee that may vary based upon the popularity or ratings of a network's programming, the volume of subscribers served by the distributor, the packages in which the programming is included, the percentage of the distributor's subscribers receiving the programming, and other factors. In addition to the right to carry the network, a distributor of the cable network often receives two to three minutes of advertising time per hour on the network that it can sell to local businesses (*e.g.*, car dealers). A distributor may also receive marketing payments or discounts to encourage greater penetration of its potential consumers. In the case of a completely new cable network, a programmer may pay a distributor to carry the network or offer other discounts.

30. Over time, some video programming distributors, such as Comcast and Cablevision Corp., have purchased or launched their own cable networks. Vertical integration between content and distribution was a reason for the passage of Section 19 of the 1992 Cable Act, 47 U.S.C. § 548. Pursuant to the Act, Congress directed the Federal Communications Commission ("FCC") to promulgate rules that place restrictions on how cable programmers affiliated with a cable company can deal with unaffiliated distributors. These "program access rules" apply to a cable company that owns a cable network, and prohibit both the cable company and the network from engaging in unfair acts or practices, including (1) entering into exclusive agreements for the cable network; (2) selling the cable network to the cable company's competitors on discriminatory terms and conditions; and (3) unduly influencing the cable network in deciding whom, and on what terms and conditions, to sell its programming.

47 C.F.R. §§ 76.1001-76.1002. The prohibition on exclusivity sunsets in October 2012, unless extended by the FCC after a rulemaking proceeding. The program access rules do not apply to online distribution or to retransmission of broadcast station content.

C. Professional Video Programming Distribution

31. Video programming distributors acquire the rights to transmit professional, full-length broadcast and cable programming networks or individual programs or movies, aggregate the content, and distribute it to their subscribers or users.

1. Multichannel Video Programming Distributors ("MVPDs")

32. Traditional video programming distributors offer hundreds of channels of professional video programming to residential customers for a fee. They include incumbent cable companies, DBS providers, cable overbuilders, also known as broadband service providers or "BSPs" (*e.g.*, RCN), and telcos. These distributors are often collectively referred to as MVPDs ("multichannel video programming distributors"). In response to increasing consumer demand to record and view video content at different times, many MVPDs offer services such as digital video recorders ("DVRs") that allow consumers to record programming and view it later, and VOD services that allow viewers to view broadcast or cable network programming or movies on demand at times of their choosing.

2. Online Video Programming Distributors ("OVDs")

33. OVDs offer numerous choices for on-demand professional (as opposed to user-generated, *e.g.*, typical YouTube videos), full-length (as opposed to clips) video programming over the Internet, whether streamed to Internet-connected televisions or other devices, or downloaded for later viewing. Currently, OVDs employ several business models, including free advertiser-supported streaming (*e.g.*, Hulu), á la carte downloads or electronic sell-through

("EST") (*e.g.*, Apple iTunes, Amazon), subscription streaming models (*e.g.*, Hulu Plus, Netflix), per-program rentals (*e.g.*, Apple iTunes, Vudu), and hybrid hardware/subscription models (*e.g.*, Tivo, Apple TV/iTunes).

34. Consumer desire for on-demand viewing and increased broadband speeds that have greatly improved the quality of the viewing experience have led to distribution of more professional content by OVDs. Online video viewing has grown enormously in the last several years and is expected to increase. Today, some consumers regard OVDs as acceptable substitutes for at least a portion of their traditional video programming distribution services. These consumers buy smaller content packages from traditional distributors, decline to take certain premium channels, or purchase fewer VOD offerings, and instead watch that content online, a practice known as "cord-shaving." A smaller but growing number of MVPD customers also are "cutting the cable cord" completely in favor of OVDs. These trends indicate the growing significance of competition between OVDs and MVPDs.

35. OVD services, individually or collectively, are likely to continue to develop into better substitutes for MVPD video services. Evolving consumer demand, improving technology (*e.g.*, higher Internet access speeds, better compression to improve picture quality, improved digital rights management to fight piracy), and advertisers' increasing willingness to place their ads on the Internet, likely will make OVDs stronger competitors to MVPDs for greater numbers of existing and new viewers.

36. Comcast and other MVPDs recognize the impact of OVDs. Their documents consistently portray the emergence of OVDs as a significant competitive threat. MVPDs, including Comcast, have responded by improving existing services and developing new, innovative services for their customers. For example, MVPDs have improved user interfaces

and video search functionality, offered more VOD programming, and begun to offer programming online.

37. GE, through its ownership of NBCU, is a content producer and an owner of broadcast and cable channels. Comcast is primarily a distributor of video programming, although it owns some cable networks. Through the proposed JV, Comcast will control assets that produce and aggregate some of the most significant video content. Comcast also will continue to own the nation's largest distributor of video programming to residential customers.

V. RELEVANT MARKET

38. The relevant product market affected by this transaction is the timely distribution of professional, full-length video programming to residential customers ("video programming distribution"). Both MVPDs and OVDs are participants in this market. Video programming distribution is characterized by the aggregation of professionally produced content, consisting of entire episodes of shows and movies, rather than short clips. This content includes live programming, sports, and general entertainment programming from a mixture of broadcast and cable networks, as well as from movie studios. Video programming distributors typically offer various packages of content (*e.g.,* basic, expanded basic, digital), quality levels (*e.g.*, standard-definition, HD, 3D), and business models (*e.g.*, free ad-supported, subscription). Video programming can be viewed immediately by consumers, whether on demand or as scheduled (*i.e.*, in a cable network's linear stream).

39. A variety of companies distribute video programming – cable, DBS, overbuilder, telco, and online. Cable has remained the dominant distributor even as other companies have entered video programming distribution. In the mid-1990s, DirecTV and DISH Network began offering hundreds of channels using small satellite dishes. Around the same time, firms known

as “overbuilders” began building their own wireline networks, primarily in urban areas, to compete with the incumbent cable operator and offer video, high-speed Internet, and voice telephony services – the “triple-play.” More recently, Verizon and AT&T entered the market with their own networks and also offer the triple-play. Competition from these video programming distributors has provoked incumbent cable operators across the country to upgrade their systems and thereby offer substantially more video programming channels, as well as the triple-play. Now, OVDs are introducing new and innovative business models and services to inject even more competition into the video programming distribution market.

40. Historically, over-the-air (“OTA”) distribution of broadcast network content has not served as a significant competitive constraint on MVPDs because of the limited number of channels offered. In addition, OTA distribution likely will not expand in the future, as no new broadcast networks are likely to be licensed for distribution. This diminishes the possibility that OTA could increase its content package substantially to compete with MVPDs. Thus, OTA is unlikely to become a significant video programming distributor. By contrast, OVDs, though they may offer more limited viewing options than MVPDs currently, are expanding rapidly and have the potential to provide increased and more innovative viewing options in the future.

41. Consumers purchasing video programming distribution services select from among those distributors that can offer such services directly to their home. The DBS operators, DirecTV and DISH, can reach almost any customer in the continental United States who has an unobstructed line of sight to their satellites. OVDs are available to any consumer with a high-speed Internet service sufficient to receive video of an acceptable quality. However, wireline cable distributors such as Comcast and Verizon generally must obtain a franchise from local, municipal, or state authorities in order to construct and operate a wireline network in a specific

area, and then build lines only to homes in that area. A consumer cannot purchase video programming distribution services from a wireline distributor operating outside its area because that firm does not have the facilities to reach the consumer's home. Thus, although the set of video programming distributors able to offer service to individual consumers' residences generally is the same within each local community, that set differs from one local community to another and can vary even within a local community.

42. For ease of analysis, it is useful to aggregate consumers who face the same competitive choices in video programming distribution by, for example, aggregating customers in a county or other jurisdiction served by the same group of distributors. The United States thus comprises numerous local geographic markets for video programming distribution, each consisting of a community whose residents face the same competitive choices. In the vast majority of local markets, customers can choose from among the local cable incumbent and the two DBS operators. Approximately 38 percent of consumers can also buy video services from a telco, and a much smaller percentage live in areas where overbuilders provide service. OVDs are emerging as another viable option for consumers who have access to high-speed Internet services. OVDs rely on other companies' high-speed Internet services to deliver content to consumers.

43. The geographic markets relevant to this transaction are the numerous local markets throughout the United States where Comcast is the incumbent cable operator, covering over 50 million U.S. television households (about 45 percent nationwide), and where Comcast will be able to withhold NBCU programming from, or raise the programming costs to, its rival distributors, both MVPDs and OVDs. Because these competitors serve areas outside Comcast's

cable footprint, other local markets served by these rival distributors may be affected, with the competitive effects of the transaction potentially extending to all Americans.

44. A hypothetical monopolist of video programming distribution in any of these geographic areas could profitably raise prices by a small but not insignificant, non-transitory amount. While consumers naturally look for other options in response to higher prices, the number of consumers that would likely find these other options to be adequate substitutes is insufficient to make the higher prices unprofitable for the hypothetical monopolist. Thus, video programming distribution in any of these geographic areas is a well-defined antitrust market and is susceptible to the exercise of market power.

VI. MARKET CONCENTRATION

45. The incumbent cable companies often dominate any particular market with market shares within their franchise areas well above 50 percent. For example, Comcast has the market shares of 64 percent in Philadelphia, 62 percent in Chicago, 60 percent in Miami, and 58 percent in San Francisco (based on MVPD subscribers). Combined, the DBS providers account for approximately 31 percent of total video programming distribution subscribers nationwide, although their shares vary and may be lower in any particular local market. AT&T and Verizon have had great success and achieved penetration (*i.e.*, the percentage of households to which a provider's service is available that actually buys its service) as high as 40 percent in the selected communities they have entered, although they currently have limited expansion plans. Overbuilders serve only about one percent of U.S. television households nationwide.

46. Today, OVDs have a *de minimis* share of the video programming distribution market in any geographic area. OVD services are available to any consumer who purchases a broadband connection. However, established distributors, such as Comcast, view OVDs as a

growing competitive threat and have taken steps to respond to that threat. OVDs' current market shares, therefore, greatly understate both their future and current competitive significance in terms of the influence they are having on traditional video programming distributors' investment decisions to expand offerings and embrace Internet distribution themselves.

VII. ANTICOMPETITIVE EFFECTS

47. Today, Comcast competes with DBS, overbuilder, and telco competitors by upgrading its existing services (*e.g.*, improving its network, expanding its VOD and HD offerings), and through promotional and other forms of price discounts. In particular, Comcast strives to provide a service that it can promote as better than its rivals' services in terms of variety of programming choices, higher-quality services, and unique features (*e.g.*, unique programming or ease of use). Consumers benefit from this competition by receiving better quality services and, in some cases, lower prices. This competition has also fostered innovation, including the development of digital transmission, HD and 3D programming, and the introduction of DVRs and VOD offerings.

48. The proposed JV would allow Comcast to limit competition from MVPD competitors and from the growing threat of OVDs. The JV would give Comcast control over NBCU content that is important to its competitors. Comcast has long recognized that by withholding certain content from competitors, it can gain additional cable subscribers and limit the growth of emerging competition. Comcast has refused to license one of its RSNs, CSN Philadelphia, to DirecTV or DISH. As a result, DirecTV's and DISH's market shares in Philadelphia are much lower than in other areas where they have access to RSN programming.

49. Control of NBCU programming will give Comcast an even greater ability to disadvantage its competitors. Carriage of NBCU programming, including the NBC broadcast

network, is important for video programming distributors to compete effectively. Out of hundreds of networks, the NBC broadcast network consistently is ranked among the top four in consumer interest surveys. It receives high Nielsen ratings, which distributors and advertisers use as a proxy for a network's value. The importance of the NBC broadcast network to a distributor is underscored by the fact that NBCU has recently negotiated significant retransmission fees with certain distributors that when combined with its advertising revenues, rival the most valuable cable network programming. Economic studies show that distributors that lose important broadcast content for any significant period of time suffer substantial customer losses to their competitors.

50. NBCU's cable networks also are important to consumers and therefore to video programming distributors. USA Network has been the highest-rated cable network the past four years. CNBC is by far the highest-rated financial news cable network, and Bravo and SyFy are top-rated cable networks for their particular demographics. NBCU's cable networks are widely distributed and command high fees.

51. As a result of the JV, Comcast will gain control over the NBC O&Os in local television markets where Comcast is the dominant video programming distributor. The JV will give Comcast the ability to raise the fees for retransmission consent for the NBC O&Os or effectively deny this programming entirely to certain video programming distribution competitors. In addition, Comcast may be able to gain the right to negotiate on behalf of its broadcast network affiliate stations or the ability to influence the affiliates' negotiations with its distribution competitors. In either case, these distributors would be less effective competitors to Comcast. Comcast also will control NBCU's cable networks and film content, increasing the ability of the JV to obtain higher fees for that programming. The JV will have less incentive to

distribute NBCU programming to Comcast's video distribution rivals than a stand-alone NBCU. Faced with weakened competition, Comcast can charge consumers more and will have less incentive to innovate.

52. The impact of the JV on emerging competition from the OVDs is extremely troubling given the nascent stage of OVDs' development and the potential of these distributors to significantly increase competition through the introduction of new and innovative features, packaging, pricing, and delivery methods. NBCU has been one of the content providers most willing to support OVDs and experiment with different methods of online distribution. It was a founding partner in Hulu, the largest OVD today, and prior to the announcement of the transaction entered into several contracts with OVDs, such as Apple iTunes, Amazon, and Netflix.

53. Comcast and other MVPDs have significant concerns over emerging competition by OVDs. To the extent that consumers, now or in the future, view OVDs as substitutes for traditional video programming distributors, they will be able to challenge Comcast's dominant position as a video programming distributor. Comcast has taken several steps to keep its customers from cord-shaving or cord-cutting in favor of OVDs. These efforts include launching its own online video portal (Fancast), improving its VOD library and online interactive interface (in order to compete with, *e.g.*, Netflix and Amazon), and deploying its "authenticated" online, on-demand service. Consumers have benefited from Comcast's competitive responses and, absent the JV, would benefit from increased competition from OVDs.

54. Comcast has an incentive to encumber, through its control of the JV, the development of nascent distribution technologies and the business models that underlie them by denying OVDs access to NBCU content or substantially increasing the cost of obtaining such

content. As a result, Comcast will face less competitive pressure to innovate, and the future evolution of OVDs will likely be muted. Comcast's incentives and ability to raise the cost of or deny NBCU programming to its distribution rivals, especially OVDs, will lessen competition in video programming distribution.

VIII. ABSENCE OF COUNTERVAILING FACTORS

A. Entry

55. Entry or expansion of traditional video programming distributors on a widespread scale or entry of programming networks comparable to NBCU's will not be timely, likely, or sufficient to reverse the competitive harm that would likely result from the proposed JV. OVDs are less likely to develop into significant competitors if denied access to NBCU content.

B. Efficiencies

56. The proposed JV will not generate verifiable, merger-specific efficiencies sufficient to reverse the competitive harm of the proposed JV.

IX. VIOLATIONS ALLEGED

Violation of Section 7 of the Clayton Act By Each Defendant

57. The United States and the Plaintiff States hereby incorporate paragraphs 1 through 56.

58. Pursuant to a Master Agreement dated December 3, 2009, Comcast, GE, and NBCU intend to form a joint venture.

59. The effect of the proposed JV and Comcast's acquisition of 51 percent of it would be to lessen competition substantially in interstate trade and commerce in numerous geographic markets for video programming distribution, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.

60. This proposed JV threatens loss or damage to the general welfare and economies of each of the Plaintiff States, and to the citizens of each of the Plaintiff States. The Plaintiff States and their citizens will be subject to a continuing and substantial threat of irreparable injury to the general welfare and economy, and to competition, in their respective jurisdictions unless the Defendants are enjoined from carrying out this transaction, or from entering into or carrying out any agreement, understanding, or plan by which Comcast would acquire control over NBCU or any of its assets.

61. The proposed JV will likely have the following effects, among others:

a. competition in the development, provision, and sale of video programming distribution services in each of the relevant geographic markets will likely be eliminated or substantially lessened;

b. prices for video programming distribution services will likely increase to levels above those that would prevail absent the JV; and

c. innovation and quality of video programming distribution services will likely decrease to levels below those that would prevail absent the JV.

X. REQUESTED RELIEF

62. The United States and the Plaintiff States request that:

a. the proposed JV be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Comcast, GE, NBCU, and Newco be permanently enjoined from carrying out the proposed JV and related transactions; carrying out any other agreement, understanding, or plan by which Comcast would acquire control over NBCU or any of its assets; or merging;

c. the United States and the Plaintiff States be awarded their costs of this action;

d. the Plaintiff States be awarded their reasonable attorneys' fees; and

e. the United States and the Plaintiff States receive such other and further relief as the case requires and the Court deems just and proper.

Dated: January 18, 2011

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, STATE OF FLORIDA, STATE OF MISSOURI, STATE OF TEXAS, and STATE OF WASHINGTON, *Plaintiffs,* v. COMCAST CORP., GENERAL ELECTRIC CO., and NBC UNIVERSAL, INC., *Defendants.*	Civil Action No.

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the States of California, Florida, Missouri, Texas, and Washington, filed their Complaint on January 18, 2011, alleging that Defendants propose to enter into a joint venture that will empower Defendant Comcast Corporation to block competition from video programming distribution competitors in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Plaintiffs and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Plaintiffs require Defendants to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the actions and conduct restrictions can and will be undertaken and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Defendants, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. "AAA" means the American Arbitration Association.

B. "Affiliated" means directly or indirectly controlling, controlled by, or under common control with a Person.

C. "Broadcast Network" means The Walt Disney Company (ABC), CBS Inc. (CBS), News Corporation (FOX), NBCU (NBC and Telemundo), or any other Person that provides live or recorded Video Programming for broadcast over a group of local television stations.

D. "Broadcast Network Peer" means (1) CBS Inc. (CBS), News Corporation (FOX), or The Walt Disney Company (ABC); or (2) any of the top four Broadcast Networks, measured by the total annual net revenue earned by the Broadcast Network from the broadcast of live or recorded Video Programming over a group of local television stations. Defendants are not Broadcast Network Peers, even if they are one of the top four Broadcast Networks.

E. "Business Model" means the primary method by which Video Programming is monetized (*e.g.*, ad-supported, subscription without ads, subscription with ads, electronic sell through, or pay per view/transactional video on demand).

F. "Cable Programmer" means Time Warner, Inc., The Walt Disney Company, News Corporation, Viacom, Inc., NBCU, or any other Person that provides Video Programming for distribution through MVPDs. A Person that provides Video Programming to MVPDs solely as a Broadcast Network or as a Network Affiliate, O&O, or local television station operating within its licensed territory is not a Cable Programmer.

G. "Cable Programmer Peer" means (1) News Corporation, Time Warner, Inc., Viacom, Inc., or The Walt Disney Company; or (2) any of the top five Cable Programmers, measured by the total annual net revenue earned by the Cable Programmer from its cable networks, as reported by SNL Kagan (or another source commonly relied upon in the television industry), excluding revenues earned from regional sports networks. Defendants are not Cable Programmer Peers, even if they are one of the top five Cable Programmers.

H. "Comcast" means Comcast Corporation, a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania, its successors and assigns, and its Subsidiaries (whether partially or wholly owned), divisions, groups, Partnerships, and Joint Ventures, and their directors, officers, managers, agents, and employees.

I. "Defendants" means Comcast, General Electric, and NBCU, acting individually or collectively, as appropriate. Where the Final Judgment imposes an obligation to engage in or refrain from engaging in certain conduct, that obligation shall apply to each Defendant individually and to any Joint Venture established by any two or more Defendants.

J. "Department of Justice" means the United States Department of Justice Antitrust Division.

K. "Experimental Deal" means an agreement between an OVD and a Peer for a term of six months or less.

L. "Film" means a feature-length motion picture that has been theatrically released.

M. "Final Offer" means a proposed contract identifying the Video Programming Defendants are to provide to OVDs pursuant to Section IV.A or IV.B of this Final Judgment and containing the proposed price, terms, and conditions on which Defendants will provide that Video Programming.

N. "General Electric" means General Electric Company, a New York corporation with its principal place of business in Fairfield, Connecticut, its successors and assigns, and its Subsidiaries (whether partially or wholly owned), divisions, groups, Partnerships, and Joint Ventures, and their directors, officers, managers, agents, and employees.

O. "Hulu" means Hulu, LLC, a Delaware limited liability company with its headquarters in Los Angeles, California, its successors and assigns, and its Subsidiaries (whether partially or wholly owned), divisions, groups, Partnerships, and Joint Ventures, and their directors, officers, managers, agents, and employees.

P. "Internet Access Service" means a mass-market retail communications service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. Internet Access Service does not include virtual private network services, content delivery network services, multichannel video programming services, hosting or data storage services, or Internet backbone services (if those services are separate from Internet Access Services).

Q. "MVPD" means a multichannel video programming distributor as that term is defined on the date of entry of this Final Judgment in 47 C.F.R. § 76.1200(b).

R. "NBCU" means NBC Universal, Inc., a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its Subsidiaries (whether partially or wholly owned), divisions, groups, Partnerships, and Joint Ventures, and their directors, officers, managers, agents, and employees.

S. "Network Affiliate" means a local television station that broadcasts some or all of the Video Programming of Defendants' Broadcast Networks (*i.e.*, NBC or Telemundo). A Network Affiliate is owned and operated by Persons other than Defendants.

T. "O&O" means a local television station owned and operated by Defendants that broadcasts the Video Programming of one of Defendants' Broadcast Networks (*i.e.*, NBC or Telemundo).

U. "OVD" means any Person that distributes Video Programming in the United States by means of the Internet or another IP-based transmission path provided by a Person other than the OVD. This definition (1) includes an MVPD that offers Video Programming by means of the Internet or another IP-based transmission path outside its MVPD footprint as a service separate and independent of an MVPD subscription; and (2) excludes an MVPD that offers

Video Programming by means of the Internet or another IP-based transmission path to homes inside its MVPD footprint as a component of an MVPD subscription.

V. "Peer" means any Broadcast Network Peer, Cable Programmer Peer, or Production Studio Peer, its successors, assigns, and any Person that is managed or controlled by any Broadcast Network Peer, Cable Programmer Peer, or Production Studio Peer. Defendants are not Peers.

W. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

X. "Plaintiff States" means the States of California, Florida, Missouri, Texas, and Washington.

Y. "Production Studio" means Time Warner, Inc. (Warner Bros. Television and Warner Bros. Pictures), News Corporation (20th Century Fox Television and 20th Century Fox), Viacom, Inc. (Viacom's television production subsidiaries and Paramount Pictures), Sony Corporation of America (Sony Pictures Television and Sony Pictures Entertainment), The Walt Disney Company (Disney-ABC Studios and the Walt Disney Motion Pictures Group), NBCU (Universal Pictures, Focus Films, and Universal Studios), and any other Person that produces Video Programming for distribution through Broadcast Networks or Cable Programmers.

Z. "Production Studio Peer" means (1) News Corporation, Viacom, Inc., Sony Corporation of America, Time Warner, Inc., or The Walt Disney Company; or (2) any of the top six Production Studios, measured by the total annual net revenue earned by the Production Studio from the sale or licensing of Video Programming. Defendants are not Production Studio Peers, even if they are one of the top six Production Studios.

AA. “Qualified OVD” means any OVD that has an agreement with a Peer for the license of Video Programming to the OVD (other than an agreement under which an OVD licenses only short programming segments or clips from the Peer), where the OVD is not Affiliated with the Peer.

BB. “Specialized Service” means any service provided over the same last-mile facilities used to deliver Internet Access Service other than (1) Internet Access Services, (2) services regulated either as telecommunications services under Title II of the Communications Act or as MVPD services under Title VI of the Communications Act, or (3) Defendants’ existing VoIP telephony service.

CC. “Subsidiary,” “Partnership,” and “Joint Venture” refer to any Person in which there is partial (25 percent or more) or total ownership or control between the specified Person and any other Person.

DD. “Value” means the economic value of Video Programming based on, among other factors, the Video Programming’s ratings (as measured by The Nielsen Company or other Person commonly relied upon in the television industry for television ratings), affiliate fees, advertising revenues, and the time elapsed since the Video Programming was first distributed to consumers by a Broadcast Network or Cable Programmer.

EE. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a Broadcast Network or Cable Programmer, regardless of the medium or method used for distribution, and includes programming prescheduled by the programming provider (also known as scheduled programming or a linear feed); programming offered to viewers on an on-demand, point-to-point basis (also known as video on demand); pay per view or transactional video on demand; short programming segments related to other full-length programming (also known as clips); programming that includes multiple video sources (also known as feeds, including camera angles); programming that includes video in different qualities or formats (including high-definition and 3D); and Films for which a year or more has elapsed since their theatrical release. For purposes of this Final Judgment, Video Programming shall not include programming over which General Electric possesses ownership or control that is unrelated to its ownership interest in NBCU.

III. APPLICABILITY

This Final Judgment applies to Defendants and all other Persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. REQUIRED CONDUCT

Provision of Economically Equivalent Video Programming Terms to OVDs

A. At the request of any OVD, Defendants shall provide, for distribution to consumers through a linear feed (plus any associated video-on-demand rights), all Video Programming they provide to any MVPD in the United States with more than one million subscribers, on terms that are Economically Equivalent to the terms on which Defendants provide Video Programming to that MVPD.

For purposes of this Section IV.A:

1. "Economically Equivalent" means the price, terms, and conditions that, in the aggregate, reasonably approximate those on which Defendants provide Video Programming to an MVPD, and shall take account of, among other things, any difference in advertising revenues earned by Defendants through OVD distribution and those earned through MVPD distribution; any limitation of Defendants' legal rights to provide Video Programming as a linear

feed over the Internet or other IP-based transmission path; any generally applicable, market-based requirements regarding minimum subscriber and penetration rates; and any other evidence concerning differences in revenues earned by Defendants in connection with the provision of Video Programming to the OVD rather than to an MVPD.

2. Defendants shall provide to any requesting OVD all Video Programming subject to Defendants' management or control and all Video Programming, including Video Programming owned by another Person, over which Defendants possess the power or authority to negotiate content licenses.

3. At the request of the OVD, Defendants shall provide any bundle of channels, and all quality formats (*e.g.*, high definition, 3D) and video-on-demand rights that Defendants provide to any MVPD in the United States with more than one million subscribers.

4. Subject to other provisions of this Section IV.A, Defendants shall not apply to an OVD any terms or conditions contained in Defendants' agreements with MVPDs that would not be technically or economically practicable if applied generally to Video Programming distributed by OVDs (*e.g.*, that the OVD distribute Video Programming over an MVPD system).

5. In any agreement they enter into with an OVD under this Section IV.A, Defendants may require that the OVD not distribute Defendants' Video Programming to consumers (a) if Defendants' Video Programming constitutes more than 45 percent of the OVD's Video Programming (measured by hours available to subscribers), and (b) until at least one Peer has agreed to provide Video Programming to the OVD (including, if the Defendants agree to provide NBC Video Programming to the OVD, at least one Broadcast Network Peer).

6. Defendants may condition their provision of Video Programming to an OVD under this Section IV.A on the OVD's (a) agreement not to distribute the Video

Programming to consumers through a website promoting or communicating the availability or accessibility of pornography, gambling, or unlawful activities; (b) reasonable demonstration of its ability to meet its financial obligations; (c) demonstration of its ability to satisfy reasonable quality and technical requirements for the display and secure protection of Defendants' Video Programming; (d) agreement to limit the distribution of an O&O's Video Programming linear feed solely to that O&O's designated market area or "DMA"; or (e) agreement to limit the distribution of Defendants' Video Programming to the territory of the United States.

<u>Provision of Comparable Video Programming to OVDs</u>

B. At the request of any Qualified OVD, Defendants shall provide Comparable Video Programming to the Qualified OVD on terms that are Economically Equivalent to the price, terms, and conditions on which the Qualified OVD receives Video Programming from a Peer.

For purposes of this Section IV.B:

1. "Economically Equivalent" means price, terms, and conditions that, in the aggregate, reasonably approximate those on which the Peer provides Video Programming to the Qualified OVD, and shall take account of, among other things, any difference between the Value of the Video Programming the Qualified OVD seeks from Defendants and the Value of the Video Programming it receives from a Peer.

2. "Comparable" Video Programming means Defendants' Video Programming that is reasonably similar in kind and amount to the Video Programming provided by the Peer, considering the volume (*i.e.*, number of channels or shows) of Video Programming and its Value.

3. The following, among other types of Video Programming, are not Comparable:

a. first-day Video Programming and Video Programming distributed after Defendants' first-day distribution of that Video Programming to consumers;

b. repeat, prior-season Video Programming and original, first-run Video Programming;

c. non-sports Video Programming and sports Video Programming;

d. broadcast Video Programming and cable Video Programming;

e. Video Programming directed to children and Video Programming not directed to children;

f. local news Video Programming and Video Programming that is not local news;

g. Film and non-Film Video Programming; and

h. Film between one and five years from initial distribution and Film over five years from initial distribution.

4. In any agreement they enter into with an OVD under this Section IV.B, Defendants shall not be required to include exclusivity provisions for Comparable Video Programming even if the Qualified OVD's Peer agreement includes exclusivity provisions, *provided that* the price, terms, and conditions on which Defendants provide Video Programming to the Qualified OVD shall be adjusted so that, in the aggregate, they reasonably approximate the price, terms, and conditions on which the Peer provides Video Programming to the Qualified OVD.

5. If a Qualified OVD receives Video Programming from two or more Peers in any single Peer category (*i.e.*, Broadcast Network Peers, Cable Programmer Peers, or Production Studio Peers) and pursuant to the same Business Model, Defendants shall provide, pursuant to this Section IV.B, Video Programming Comparable to the Video Programming of one Peer in that category selected by the Qualified OVD. If a Qualified OVD receives Video Programming from a Peer in two or more Peer categories, Defendants shall provide Video Programming Comparable to the Peer in both or all categories. If a Qualified OVD receives Video Programming from two or more Peers in the same Peer category but pursuant to different Business Models, Defendants shall provide Video Programming Comparable to each Peer pursuant to the Business Model specified in each Peer contract.

6. In responding to a request from a Qualified OVD to which Defendants have provided Video Programming under this Section IV.B, Defendants shall not be required to provide additional Video Programming unless the Qualified OVD enters into a Video Programming agreement with (a) a Peer in a different Peer category (*i.e.*, Broadcast Network Peers, Cable Programmer Peers, or Production Studio Peers), (b) the same Peer under a different Business Model, or (c) the same Peer for additional Video Programming pursuant to the same Business Model.

7. At the request of an OVD with which Defendants have an agreement to provide Video Programming that subsequently becomes a Qualified OVD, Defendants shall provide additional or different Video Programming so the Video Programming Defendants provide to the Qualified OVD (including any Video Programming the Defendants have previously agreed to provide to the OVD) is Comparable to that which the Qualified OVD receives from the Peer.

8. Defendants may require the Qualified OVD to distribute Video Programming obtained from Defendants pursuant to the Business Model under which the Qualified OVD distributes the Peer's Video Programming.

9. The number of Experimental Deals to which Defendants, at the request of Qualified OVDs, must respond by providing Comparable Video Programming is limited to the maximum number of Experimental Deals any single Peer has entered into with OVDs.

10. If a Cable Programmer Peer provides substantially all of its cable channels to a Qualified OVD for distribution to consumers through a linear feed, Defendants may meet their obligation under this Section IV.B to provide Comparable Video Programming by providing to the Qualified OVD and requiring the Qualified OVD to distribute substantially all of Defendants' channels.

OVD Rights to Commercial Arbitration

C. If, after negotiations, in which Defendants shall participate in good faith and with reasonable diligence, Defendants and any OVD fail to agree on appropriate Economically Equivalent terms on which Defendants must provide Video Programming under Sections IV.A or IV.B of this Final Judgment or on Comparable Video Programming under Section IV.B of this Final Judgment, the OVD may apply to the Department of Justice (but not to the Plaintiff States) for permission to submit its dispute with Defendants to commercial arbitration in accordance with Section VII of this Final Judgment. For so long as commercial arbitration is available for the resolution of such disputes in a timely manner under the Federal Communications Commission's rules and orders, the Department of Justice will ordinarily defer to the Federal Communications Commission's commercial arbitration process to resolve such disputes; *provided that* the Department of Justice reserves the right, in its sole discretion, to permit arbitration under this Final Judgment to advance the competitive objectives of this Final Judgment. Nothing in this Section IV.C shall limit the right of the United States to apply to this Court, pursuant to Section IX of this Final Judgment, either before or in place of commercial arbitration under Section VII of this Final Judgment, for an order enforcing Defendants' compliance or punishing their noncompliance with their obligations under Sections IV.A and IV.B of this Final Judgment.

Disposition of Control Over Hulu

D. Within ten days after entry of this Final Judgment, Defendants shall (1) delegate any voting and other rights they hold pursuant to their ownership interest in Hulu in a manner that directs and authorizes Hulu to cast any votes related to such ownership interest in an amount and manner proportional to the vote of all other votes cast by other Hulu owners; and (2) relinquish any veto right or other right to influence, control, or participate in the governance or management of Hulu; *provided that* such delegation and relinquishment shall terminate upon Defendants' complete divestiture of their ownership interests in Hulu.

E. Defendants shall not read, receive, obtain, or attempt to obtain any confidential or competitively sensitive information concerning Hulu or influence, interfere, or attempt to influence or interfere in the management or operation of Hulu. Notwithstanding the foregoing, Defendants may request and receive from Hulu regularly prepared, aggregated financial statements and information reasonably necessary for Defendants to exercise their rights to purchase advertising inventory from Hulu and to comply with their obligations under Section IV.G of this Final Judgment.

F. Defendants shall not obtain or acquire any ownership interest in Hulu beyond that which it possessed on January 1, 2011. Nothing in this Section IV.F shall prohibit Defendants from receiving a proportional or less than proportional distribution of Hulu equity securities in connection with any future conversion of Hulu into a corporation, *provided that* Defendants' economic share in Hulu may not increase in connection with such distribution.

G. Defendants shall continue to provide Video Programming to Hulu of a type, quantity, ratings, and quality comparable to that of the Broadcast Network owner of Hulu providing the greatest quantity of Video Programming to Hulu. Provided that the other current Broadcast Network owners of Hulu renew their agreements with Hulu, Defendants also either shall continue to provide Video Programming to Hulu on substantially the same terms and conditions as were in place on January 1, 2011, or shall enter into agreements with Hulu on substantially the same terms and conditions as those of the Broadcast Network owner whose renewed agreement is the most economically advantageous to Hulu.

Clear Delineation of Rights

H. Any agreement Defendants enter into with any Production Studio concerning Defendants' distribution of the Production Studio's Video Programming shall include, unless inconsistent with common and reasonable industry practice and subject to any agreements not prohibited by Section V.B of this Final Judgment, either (1) an express grant by the Production Studio to Defendants of the right to provide the Video Programming to OVDs, or (2) an express retention of that right by the Production Studio.

Document Retention and Disclosures

I. Comcast and NBCU shall furnish to the Department of Justice and the Plaintiff States quarterly electronic copies of any communications with any MVPD, OVD, Broadcast Network, Cable Programmer, or Production Studio containing allegations of Defendants' noncompliance with any provision of this Final Judgment.

J. Comcast and NBCU shall collect and maintain one copy of each of the following agreements, currently in effect or established after entry of this Final Judgment:

1. each affiliation agreement between Defendants and any Network Affiliate;

2. each agreement under which a Network Affiliate authorizes Defendants to negotiate on its behalf for carriage or retransmission on MVPDs;

3. each agreement for the carriage or retransmission of an O&O's or a Network Affiliate's (to the extent Defendants possess the power or authority to negotiate on behalf of the Network Affiliate) Video Programming on an MVPD; and

4. each syndication agreement under which Defendants provide Video Programming to an O&O or Network Affiliate for distribution to consumers.

K. Comcast and NBCU shall collect and maintain each document in their possession, custody, or control discussing an O&O's or a Network Affiliate's denial or threat to deny Video Programming to an MVPD or OVD. Defendants shall notify the Department of Justice and the Plaintiff States within 30 days of learning that an O&O or a Network Affiliate has denied or threatened to deny Video Programming to any MVPD or OVD.

L. Comcast and NBCU shall collect and maintain documents sufficient to show the compensation each O&O and each Network Affiliate (about which Comcast or NBCU possesses information) receives from any MVPD or OVD.

M. Comcast and NBCU shall collect and maintain complete copies of any final agreement or unsigned but operative agreement (1) under which Defendants provide Video Programming (other than short programming segments or clips) to any MVPD or OVD, and (2) for Defendants' carriage or retransmission on their MVPD of Video Programming from a Network Affiliate, a local television station, a Broadcast Network, or a Cable Programmer. For any ongoing negotiations that have not yet produced a final or operative agreement, Comcast and NBCU shall also collect and maintain electronic copies of the most recent offer made to Defendants by an MVPD or OVD seeking Video Programming or by a Network Affiliate, local television station, Broadcast Network, or Cable Programmer seeking carriage or retransmission on Defendants' MVPD, and Defendants' most recent response or offer to any such Persons.

N. Comcast and NBCU shall identify for the Department of Justice and the Plaintiff States semiannually

1. the name of each Person that in writing has requested or submitted to Defendants a contractual offer for Video Programming (other than short programming segments or clips) for distribution to consumers, the date of such Person's most recent written request or contractual offer, and the date of Defendants' most recent response or offer to such Person; and

2. the name of each Person that in writing has requested or submitted a contractual offer for carriage or retransmission of the Person's Video Programming on Defendants' MVPD, the date of such Person's most recent written request or contractual offer, and the date of Defendants' most recent response or offer to such Person.

O. Comcast and NBCU shall collect and maintain each document sent to or received from General Electric relating to (1) Defendants' provision of Video Programming to any MVPD or OVD, (2) any OVD's distribution of any Person's Video Programming to consumers, (3) carriage or retransmission of any Person's Video Programming on Defendants' MVPD, or (4) Defendants' compliance or noncompliance with the terms of this Final Judgment.

V. PROHIBITED CONDUCT

Discrimination and Retaliation

A. Defendants shall not discriminate against, retaliate against, or punish (1) any Broadcast Network, Cable Programmer, Production Studio, local television station, or Network Affiliate for providing Video Programming to any MVPD or OVD, or (2) any MVPD or OVD (i) for obtaining Video Programming from any Broadcast Network, Cable Programmer, Production Studio, local television station, or Network Affiliate, (ii) for invoking any provisions of this Final Judgment, (iii) for invoking the provisions of any rules or orders concerning Video Programming adopted by the Federal Communications Commission, or (iv) for furnishing information to the United States or the Plaintiff States concerning Defendants' compliance or noncompliance with this Final Judgment.

Contractual Provisions

B. Defendants shall not enter into any agreement pursuant to which Defendants provide Video Programming to any Person in which Defendants forbid, limit, or create economic incentives to limit the distribution of such Video Programming through OVDs, *provided that*, nothing in this Section V.B shall prohibit Defendants from entering into agreements consistent with common and reasonable industry practice. Evidence relevant to determining common and reasonable industry practice may include, among other things, Defendants' contracting practices prior to December 3, 2009, and the contracting practices of Defendants' Peers. Notwithstanding any other provision in this Section V.B, in providing Comparable Video Programming to a Qualified OVD under Section IV.B of this Final Judgment, Defendants may include exclusivity provisions only to the extent those provisions are no broader than any exclusivity provisions in the Qualified OVD's agreement with a Peer.

C. Defendants shall not enter into or enforce any agreement for Defendants' carriage or retransmission on their MVPD of Video Programming from a local television station, Network Affiliate, Broadcast Network, or Cable Programmer under which Defendants forbid, limit, or create incentives to limit the local television station's, Network Affiliate's, Broadcast Network's, or Cable Programmer's provision of its Video Programming to one or more OVDs, *provided that*, nothing in this Section V.C shall prohibit Defendants from

1. entering into and enforcing an agreement under which Defendants discourage or prohibit a local television station, Network Affiliate, Broadcast Network, or Cable Programmer from making Video Programming for which Defendants pay available to consumers for free over the Internet within the first 30 days after Defendants first distribute the Video Programming to consumers;

2. entering into and enforcing an agreement under which the local television station, Network Affiliate, Broadcast Network, or Cable Programmer provides Video Programming exclusively to Defendants, and to no other MVPD or OVD, for a period of time of not greater than 14 days; or

3. entering into and enforcing an agreement which requires that Defendants are treated in material parity with other similarly situated MVPDs, except to the extent application of other MVPDs' terms would be inconsistent with the purpose of this Final Judgment.

<u>Control or Influence Over Other Persons</u>

D. Except as permitted by Section V.B of this Final Judgment, Defendants shall not require, encourage, unduly influence, or provide incentives to any local television station or Network Affiliate to

1. deny Video Programming to (a) any MVPD that provides Video Programming to consumers in any zip code in which Comcast also provides Video Programming to consumers or (b) any OVD; or

2. provide Video Programming on terms that exceed its Value.

E. Notwithstanding any other provisions of this Final Judgment, including the definitions of “Defendant,” “Comcast,” “NBCU,” “General Electric,” “Subsidiary,” “Partnership,” or “Joint Venture,” unless Comcast, NBCU, or General Electric possesses or acquires control over The Weather Channel, TV One, FearNet, the Pittsburgh Cable News Channel, or Hulu, or the right or ability to negotiate for any of those Persons or to influence negotiations for the provision of any such Person’s Video Programming to MVPDs or OVDs, such Person is not a Defendant subject to the obligations of this Final Judgment.

F. Defendants shall not exercise any rights under any existing management or operating agreement with The Weather Channel to participate in negotiations for the provision of any of The Weather Channel’s Video Programming to any MVPD or OVD, to advise The Weather Channel concerning any such negotiations, or to approve or obtain any information (other than aggregated financial reports) about any agreement between The Weather Channel and any MVPD or OVD. If, in the future, Defendants acquire the right to negotiate for The Weather Channel or to exercise any control or influence over The Weather Channel’s negotiation of agreements with MVPDs or OVDs, Defendants shall provide The Weather Channel Video Programming to OVDs when required to do so under Sections IV.A or IV.B of this Final Judgment.

Practices Concerning Comcast's Internet Facilities

G. Comcast shall abide by the following restrictions on the management and operation of its Internet facilities:

1. Comcast, insofar as it is engaged in the provision of Internet Access Service, shall not unreasonably discriminate in transmitting lawful network traffic over a consumer's Internet Access Service. Reasonable network management shall not constitute unreasonable discrimination. A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the Internet Access Service.

2. If Comcast offers consumers Internet Access Service under a package that includes caps, tiers, metering, or other usage-based pricing, it shall not measure, count, or otherwise treat Defendants' affiliated network traffic differently from unaffiliated network traffic. Comcast shall not prioritize Defendants' Video Programming or other content over other Persons' Video Programming or other content.

3. Comcast shall not offer a Specialized Service that is substantially or entirely comprised of Defendants' affiliated content.

4. If Comcast offers any Specialized Service that makes content from one or more third parties available to (or that otherwise enables the exchange of network traffic between one or more third parties and) its subscribers, Comcast shall allow any other comparable Person to be included in a similar Specialized Service on a nondiscriminatory basis.

5. Comcast shall offer Internet Access Service that is sufficiently provisioned to ensure, in DOCSIS 3.0 or better markets, that an Internet Access Service subscriber can typically achieve download speeds of at least 12 megabits per second. The United States or

Defendants may petition this Court, based upon a showing that comparable Internet Access Service providers (*e.g.*, Persons using hybrid fiber-coax technology to provide service on a mass-market scale) have generally increased or decreased the speed of their services after the entry of this Final Judgment, to modify Comcast's required download speeds. This Section V.G does not restrict Comcast's ability to impose byte caps or consumption-based billing, subject to the other provisions of this Final Judgment.

6. Nothing in this Section V.G

a. supersedes any obligation or authorization Comcast may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits Comcast's ability to do so; or

b. prohibits reasonable efforts by Comcast to address copyright infringement or other unlawful activity.

VI. PERMITTED CONDUCT

Nothing in this Final Judgment prohibits Defendants from refusing to provide to any MVPD or OVD any Video Programming (1) for which Defendants do not possess copyright rights; (2) not subject to Defendants' management or control or over which Defendants do not possess the power or authority to negotiate content licenses; or (3) the provision of which would require Defendants' to breach any contract not prohibited by Sections V.B or V.C of this Final Judgment.

VII. ARBITRATION

A. Defendants shall negotiate in good faith and with reasonable diligence to provide Video Programming sought by an OVD pursuant to Sections IV.A and IV.B of this Final

Judgment and, upon demand by an OVD approved by the Department of Justice pursuant to Section IV.C of this Final Judgment, shall participate in commercial arbitration in accordance with the procedures herein.

B. Defendants and an OVD may, by agreement, modify any time periods specified in this Section VII.

C. Any OVD seeking to invoke commercial arbitration under this Final Judgment must, pursuant to Section IV.C of this Final Judgment, apply to the Department of Justice for permission to do so. If the Department of Justice determines the commercial arbitration should proceed, the OVD shall furnish a written notice to Defendants and the Department of Justice expressly (1) waiving all rights to invoke any dispute resolution process under Federal Communications Commission orders and rules to resolve a dispute with Defendants concerning the same Video Programming; and (2) stating that the OVD consents to be bound by the terms in the Final Offer selected by the arbitrator. Arbitration under this Final Judgment is not available if a dispute between an OVD and Defendants concerning the same Video Programming is the subject of any Federal Communications Commission dispute resolution process. Defendants shall not (a) commence arbitration of any dispute under the arbitration procedures contained in this Final Judgment, or (b) upon receipt of the notice from the OVD that it intends to commence arbitration under this Final Judgment, commence any Federal Communications Commission dispute resolution process to resolve the same dispute with the OVD.

D. Arbitration pursuant to this Final Judgment shall be conducted in accordance with the AAA's Commercial Arbitration Rules and Expedited Procedures, except where inconsistent with specific procedures prescribed by this Final Judgment. As described below in Sections VII.P and VII.Q, the arbitrator shall select the Final Offer of either the OVD or the Defendants and may not alter, or request or demand alteration of, any terms of those Final Offers. The decision of the arbitrator shall be binding on the parties, and Defendants shall abide by the arbitrator's decision.

E. The AAA, in consultation with the United States, shall assemble a list of potential arbitrators, to be furnished to the OVD and Defendants as soon as practicable after commencement of the arbitration. Within five business days after receipt of this list, the OVD and Defendants each may submit to the AAA the names of up to 20 percent of the persons on the list to be excluded from consideration, and shall rank the remaining arbitrators in their orders of preference. The AAA, in consultation with the United States, will appoint as arbitrator the candidate with the highest ranking who is not excluded by the OVD or Defendants.

F. Defendants shall continue to provide Video Programming to an OVD pursuant to the terms of any existing agreement until the arbitration is completed. If the arbitrator's decision changes the financial terms on which Defendants must provide Video Programming to the OVD, Defendants or the OVD, as the case may be, shall compensate the other based on application of the new financial terms for the period dating from expiration of the existing agreement (plus appropriate interest).

G. Within five business days of the commencement of an arbitration, the OVD and the Defendants each shall furnish a writing to the other and to the Department of Justice committing to maintain the confidentiality of the arbitration and of any Final Offers and discovery materials exchanged during the arbitration, and to limit the use of any Final Offers and discovery materials to the arbitration. The writing shall expressly state that all records of the arbitration and any discovery materials may be disclosed to the Department of Justice.

H. Defendants shall not be bound by the provisions of this Section VII if an OVD commences arbitration under this Final Judgment more than 60 days prior to the expiration of an existing Video Programming agreement, or less than 30 days after an OVD first requests Defendants to provide Video Programming under Section IV.A or IV.B of this Final Judgment.

I. After an OVD receives approval from the Department of Justice, pursuant to Section IV.C of this Final Judgment, the OVD may commence arbitration by filing with the AAA and furnishing to Defendants and to the Department of Justice

1. an assertion that Defendants must provide Video Programming to the OVD pursuant to Section IV.A or IV.B of this Final Judgment; and

2. if the Qualified OVD's assertion is based, pursuant to Section IV.B of this Final Judgment, on Comparable Video Programming provided by a Peer or Peers, each agreement with any such Peers.

J. Simultaneously with the commencement of arbitration, the OVD must file with the AAA its Final Offer for the Video Programming it believes Defendants must provide.

K. Within five business days of the commencement of an arbitration, Defendants shall file with the AAA and furnish to the Department of Justice their Final Offer for the Video Programming sought by the OVD.

L. After the AAA has received Final Offers from the OVD and Defendants, it will immediately furnish a copy of each Final Offer to the other party.

M. At any time after the commencement of arbitration, the OVD and Defendants may agree to suspend the arbitration, for periods not to exceed 14 days in the aggregate, to attempt to resolve their dispute through negotiation. The OVD and the Defendants shall effectuate such suspension through a joint writing filed with the AAA and furnished to the Department of

Justice. Either the OVD or the Defendants may terminate the suspension at any time by filing with the AAA and furnishing to the Department of Justice a writing calling for the arbitration to resume.

N. The OVD and the Defendants shall exchange written discovery requests within five business days of receiving the other party's Final Offer, and shall exercise reasonable diligence to respond within 14 days. Discovery shall be limited to the following items in the possession of the parties:

1. previous agreements between the OVD and the Defendants;

2. formal offers to renew previous agreements;

3. current and prior agreements between the Defendants and MVPDs or other OVDs;

4. current and prior agreements between the OVD and other Broadcast Networks, Cable Programmers, or Production Studios;

5. records of past arbitrations pursuant to this Final Judgment;

6. documents reflecting Nielsen or other ratings of the Video Programming at issue or of Comparable Video Programming; and

7. documents reflecting the number of subscribers to the OVD.

There shall be no discovery or use in the arbitration of documents or information not in the possession, custody, or control of the OVD or the Defendants, of draft agreements or other documents concerning negotiations between the OVD and the Defendants (other than formal offers to renew previous agreements, pursuant to Section VII.N.2 of this Final Judgment), or of the costs associated with Defendants' production of their Video Programming.

O. In reaching his or her decision, the arbitrator may consider only documents exchanged in discovery between the parties and the following:

1. testimony explaining the documents and the parties' Final Offers;

2. briefs submitted and arguments made by counsel; and

3. summary exhibits illustrating the terms of Defendants' agreements with MVPDs or other OVDs or of the party OVD's agreements with other Broadcast Networks, Cable Programmers, or Production Studios.

P. Arbitrations under Section IV.A of this Final Judgment shall begin within 30 days of the AAA furnishing to the OVD and to the Defendants, pursuant to Section VII.L of this Final Judgment, each party's Final Offer. The arbitration hearing shall last no longer than ten business days, after which the arbitrator shall have five business days to inform the OVD and the Defendants which Final Offer best reflects the appropriate Economically Equivalent terms under Section IV.A of the Final Judgment.

Q. Arbitrations under Section IV.B of this Final Judgment shall be conducted in two stages, the first of which shall begin within 30 days of the AAA furnishing to the Qualified OVD and to the Defendants, pursuant to Section VII.L of this Final Judgment, each party's Final Offer. The first stage shall last no longer than ten business days, after which the arbitrator shall have five business days to inform the Qualified OVD and the Defendants which Final Offer encompasses the appropriate Comparable Video Programming under Section IV.B of this Final Judgment. Within five business days of the arbitrator's decision, the Qualified OVD and the Defendants shall file with the AAA, furnish to the Department of Justice, and exchange revised Final Offers containing proposed financial terms for the Comparable Video Programming selected by the arbitrator. The second stage of the arbitration shall commence within ten days of the exchange of the revised Final Offers and shall last no longer than ten business days, after which the arbitrator shall have five business days to inform the Qualified OVD and the Defendants which Final Offer best reflects the appropriate Economically Equivalent terms under Section IV.B of this Final Judgment.

VIII. COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department of Justice, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted

1. access during the Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide to the United States and the Plaintiff States hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment, including documents Defendants are required to collect and maintain pursuant to Sections IV.J, IV.K, IV.L, IV.M, or IV.O of this Final Judgment; and

2. to interview, either informally or on the record, the Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States (after consultation with the Plaintiff States), require Defendants to conduct, at their cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of (1) the executive branch of the United States, (2) the Plaintiff States, or (3) the Federal Communications Commission, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a Defendant to the United States and the Plaintiff States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and the Plaintiff States shall give the Defendant ten calendar days notice prior to divulging such material in any civil or administrative proceeding.

IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions. Notwithstanding the foregoing, the Plaintiff States shall have no right to apply to the Court for further orders or directions with respect to Sections IV.C, IV.D, IV.E, IV.F, V.G, or VII of this Final Judgment. In particular, the Plaintiff States shall not be able to apply to this Court to carry out, construe, modify, enforce, or punish violations of Sections IV.C, IV.D, IV.E, IV.F, V.G, or VII of this Final Judgment.

X. NO LIMITATION ON GOVERNMENT RIGHTS

Nothing in this Final Judgment shall limit the right of the United States or the Plaintiff States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any past, present, or future conduct, policy, or practice of the Defendants.

XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry.

XII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ___________________

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

____
United States District Judge

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Investor Relations

Financial News Release

The Coca-Cola Company and Coca-Cola Enterprises Strategically Advance and Strengthen Their Partnership

The Coca-Cola Company to Acquire CCE's North American Bottling Business

CCE Has Agreed in Principle to Buy The Coca-Cola Company's Bottling Operations in Norway and Sweden, and to Obtain the Right to Acquire the German Bottler

ATLANTA, Feb 25, 2010 (BUSINESS WIRE) -- The Coca-Cola Company (NYSE: KO) and Coca-Cola Enterprises Inc. (NYSE: CCE):

- **Advancement fully aligns with the Coca-Cola system's 2020 Vision and drives long-term value for all shareowners**
- **Evolves The Coca-Cola Company's North American business to more profitably deliver the world's greatest brands in the largest NARTD profit pool in the world**
- **CCE shareowners will benefit from the improved financial growth profile and expansion of the Western European business**
- **The Coca-Cola Company will generate immediate efficiencies with expected operational synergies of $350 million over four years, and the transactions, which are substantially cashless, are expected to be accretive to EPS on a fully diluted basis by 2012**
- **CCE shareowners to exchange each CCE share for a share in a new CCE, focused solely on Europe, and $10 per share in cash at closing**

The Coca-Cola Company (NYSE: KO) and Coca-Cola Enterprises Inc. (NYSE: CCE) announce that they have entered into agreements that will strategically advance the Coca-Cola system in North America and drive long-term value for all shareholders. In addition, the parties have an agreement in principle to expand CCE's European business.

"Our 2020 Vision calls for decisive and timely action to continuously improve and evolve our global franchise system to best serve our customers and consumers everywhere. Consistent with the 2020 Vision, our roadmap for winning together, we act today as an aligned system," said The Coca-Cola Company's Chairman and Chief Executive Officer Muhtar Kent. "We are not acquiring CCE, rather we are acquiring their North American operations, and they remain one of our key bottling partners with world-class management, financial and operational capabilities. We have a strong and unrelenting belief in our unique and thriving global bottling system. Our new North American structure will create an unparalleled combination of businesses, which will serve as our passport to winning in the world's largest nonalcoholic ready-to-drink profit pool. This transaction offers compelling value to both The Coca-Cola Company and CCE shareowners and will create substantial and sustainable benefits for both companies' stakeholders."

Mr. Kent continued, "Our North American business structure has remained essentially the same since CCE was founded in 1986, while the market and industry have changed dramatically. With this transaction, we are converting passive capital into active capital, giving us direct control over our investment in North America to accelerate growth and drive long-term profitability. We will work closely with our bottling partners to create an evolved franchise system for the unique needs of the North American market. Additionally, we will reconfigure our manufacturing, supply chain and logistics operations to achieve cost reductions over time. Importantly, the creation of a unified operating system will strategically position us to better market and distribute North America's most preferred nonalcoholic beverage brands. At the same time, in Europe, we are further strengthening our franchise system to provide broader, contiguous geographic coverage and optimizing our marketing and distribution leadership."

CCE's Chairman and Chief Executive Officer John Brock said, "This transformation creates significant near-term shareowner value through the sale of the North American business for fair value, delivering over $4 billion in cash to CCE shareowners, through cash distributions and planned share repurchases. At the same time, this enables our shareowners to retain equity in a sales and distribution company with an improved growth profile. In the future, CCE shareowners will also benefit from the expansion of our European business and our improved financial flexibility."

Mr. Brock added, "CCE remains the preeminent Western European bottler and a key strategic partner with The Coca-Cola Company. Our European business serves an attractive market with growing volumes and profit driven by rising per capita consumption. As such, CCE will have an improved profile with enhanced revenue, margins and EPS growth prospects. Together with The Coca-Cola Company, we will continue to improve the effectiveness of our operations in our expanded presence in Europe. These actions strengthen our ability to compete effectively and sustainably in Europe and represent the beginning of an exciting new era of long-term growth for CCE's business and shareowners."

Mr. Kent concluded, "This is a truly historic day for the Coca-Cola system. As the world's leading beverage Company, we are very excited about the vast opportunities before us and I can say with confidence there is no better business to be in. Over the next several years, the nearly $650 billion dollar global nonalcoholic ready-to-drink beverage industry is expected to grow faster than worldwide GDP and we are best positioned to capitalize on this enormous industry opportunity in North America and Europe. These joint actions further reinforce our confidence in achieving our 2020 Vision to more than double system revenue and double servings to over 3 billion per day. With our system more aligned than ever, the timing is right, and we believe that these actions will usher in a new era of winning for our Coca-Cola system."

Details of the Transactions

The Coca-Cola Company, in a substantially cashless transaction, will acquire CCE's entire North American business, which consists of approximately 75 percent of U.S. bottler-delivered volume and almost 100 percent of Canadian bottler-delivered volume. At the close of the transaction, The Coca-Cola Company will have direct control over approximately 90 percent of the total North America volume, including its current direct businesses. The Coca-Cola Company's acquisition of the assets and liabilities of CCE's North American business includes consideration of The Coca-Cola Company's current 34 percent equity ownership in CCE, valued at $3.4 billion, based upon a thirty day trailing average as of February 24, 2010. In addition, consideration includes the assumption of $8.88 billion of CCE debt and all of the North American assets and liabilities - including CCE's accumulated benefit obligation for North America of $580 million as of December 31, 2009, and certain other one-time costs and benefits.

In a concurrent agreement, The Coca-Cola Company and CCE have agreed in principle that CCE will buy The Coca-Cola Company's bottling operations in Norway and Sweden for $822 million, subject to the signing of definitive agreements, and that CCE will have the right to acquire The Coca-Cola Company's 83 percent equity stake in its German bottling operations 18 to 36 months after closing for fair value.

A new entity, which will retain the name Coca-Cola Enterprises Inc., will be created through a split-off that will hold CCE's European businesses. CCE's public shareowners will exchange each existing CCE share for a share in the new entity and will hold 100 percent of this new entity.

CCE will provide its shareowners, excluding The Coca-Cola Company, with a special one-time cash payment of $10 per share. In connection with the transactions, CCE expects to raise initial debt financing of up to 3.0x EBITDA to pay shareowners $10 per share in cash at closing, to acquire the Norway and Sweden bottlers and to fund the expected share repurchase program. Following completion of the transaction, it is expected that CCE will adopt a program to repurchase up to approximately $1 billion of shares and a policy of paying an expected annual dividend of $0.50 per share subject to the discretion of CCE's Board of Directors and its consideration of various factors.

The Coca-Cola Company and CCE expect the transactions to close in the fourth quarter of 2010.

About CCR-USA and CCRC

At the close, The Coca-Cola Company will rename the sales and operational elements of the North American businesses Coca-Cola Refreshments USA, Inc. ("CCR-USA") and Coca-Cola Refreshments Canada, Ltd. ("CCRC"), which will be wholly-owned subsidiaries of The Coca-Cola Company. Following the close, The Coca-Cola Company will combine the Foodservice business, The Minute Maid Company, the Supply Chain organization, including finished product operations, and our company-owned bottling operations in Philadelphia with CCE's North American business to form CCR-USA and CCRC. In the U.S., CCR-USA will be organized as a unified operating entity with distinct capabilities to include supply chain and logistics, sales and customer service operations. In Canada, CCRC will be a single dedicated production, marketing, sales and distribution organization. The Coca-Cola Company's remaining North American operation will continue to be responsible for brand marketing and franchise support. Details regarding the structure, leadership and integration plans will be forthcoming.

Once completed, the transactions are expected to generate operational synergies of approximately $350 million over four years for The Coca-Cola Company and are expected to be accretive to EPS on a fully diluted basis by 2012. Further, in North America, this will generate system synergies that will increase the growth rate and cash flow on a pro forma basis over time. Pro forma for this acquisition, the North American business, including CCR-USA and CCRC, would have generated approximately $19.2 billion in revenues and $3.6 billion of EBITDA in 2009.

The Coca-Cola Company 2010 Outlook

As a result of these agreements, The Coca-Cola Company has not made any share repurchases during the current fiscal year and will continue to be out of the market until the close of these transactions. However, the Company remains committed to repurchasing $1.5 billion in 2010.

About new CCE

CCE will be The Coca-Cola Company's strategic bottling partner in Western Europe and the third-largest independent bottler globally. Reflecting CCE's position as The Coca-Cola Company's strategic bottling partner in Western Europe, the companies will enter into a 10+10 year bottling agreement and a 5-year incidence pricing agreement. Pro forma, including the contributions of Norway and Sweden, CCE would have generated approximately $7.3 billion in revenues, $850 million in operating income, and $1.2 billion of EBITDA in 2009.

At closing, before planned share repurchases, CCE expects to have net debt of approximately $2 billion. Immediately after closing and before share repurchase, CCE is expected to have approximately 350-360 million outstanding shares on a fully diluted basis, substantially comparable to the publicly owned shares of CCE today.

Shortly after closing, the Board of CCE is expected to announce a planned share repurchase program of approximately $1 billion and an initial annual dividend of $0.50 per share. Payment of cash dividends and stock repurchases by CCE will be at the discretion of CCE's Board of Directors in accordance with applicable law after taking into account various factors, including, but not limited to, CCE's financial condition, operating results, current and anticipated cash needs and plans for growth. Therefore, no assurance can be given that CCE will pay any dividends to its shareowners or make share repurchases, and no assurance can be given to the amount of any such dividends or share repurchases if CCE's Board of Directors determines to do so.

CCE will retain the Coca-Cola Enterprises Inc. corporate name and remain headquartered in Atlanta. CCE will continue to be traded on the NYSE under the CCE ticker. John Brock, Chairman and Chief Executive Officer, Bill Douglas, Chief Financial Officer, Hubert Patricot, President of the European Group, and other members of the CCE corporate management team will continue to lead the company. In addition, the current independent directors will continue to comprise the CCE Board.

CCE 2010 Outlook

As a result of these agreements, CCE has not made any share repurchases during the current fiscal year, and it does not plan to do so before the transactions close. CCE intends to provide additional details on FY 2010 outlook during its upcoming first quarter call.

Additional Information

CCE's independent Affiliated Transaction Committee recommended that CCE's Board approve the transactions. The Boards of Directors of both The Coca-Cola Company and CCE have approved the transactions, which are subject to approval by CCE's public shareowners and customary regulatory approvals.

Allen & Company and Goldman Sachs & Co. acted as financial advisors to The Coca-Cola Company. Skadden, Arps, Slate, Meagher & Flom LLP acted as legal counsel. Cleary Gottlieb Steen & Hamilton LLP and Wilson Sonsini Goodrich & Rosati provided antitrust counsel.

Credit Suisse and Lazard acted as financial advisors to CCE and Cahill Gordon & Reindel LLP acted as legal counsel. Greenhill & Co. acted as financial advisor to the Affiliated Transaction Committee and McKenna Long & Aldridge LLP provided legal counsel.

For more information about the transactions, please access our transaction specific website at: www.KOsystemevolution.com (http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.KOsystemevolution.com&esheet=6193425&lan=en_US&anchor=www.KOsystemevolution.com&index=1&md5=14ad39169d5069741c96fe890c203426).

Conference Call/Webcast

The Coca-Cola Company and Coca-Cola Enterprises are hosting a joint conference call with investors and analysts to discuss our transactions today at 9:30 a.m. (EST). We invite investors to listen to the live audiocast of the conference call at either website, http://www.thecoca-colacompany.com (http://www.thecoca-colacompany.com) or at www.cokecce.com (http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.cokecce.com&esheet=6193425&lan=en_US&anchor=www.cokecce.com&index=3&md5=e2c76070338da1985a46a64f755ec369) in the "Investors" section. Further, the "Investors" section of each website includes a reconciliation of non-GAAP financial measures that may be used periodically by management when discussing their financial results with investors and analysts to our results as reported under GAAP.

The Company reports its financial results in accordance with U.S. generally accepted accounting principles (GAAP). However, management believes that certain non-GAAP financial measures used in managing the business may provide users of this financial information additional meaningful comparisons. Management is providing pro forma financial information for the Company's North American business reflecting the acquisition of the North American business of Coca-Cola Enterprises (CCE), including CCE Corporate. See the table below for the pro forma financial information for the year ended December 31, 2009. Non-GAAP financial measures should be viewed in addition to, and not as an alternative for, the Company's reported results prepared in accordance with GAAP.

THE COCA-COLA COMPANY AND SUBSIDIARIES
Reconciliation of GAAP to Non-GAAP Financial Measures
Net Operating Revenues and EBITDA
(UNAUDITED)
(In millions)

	Year Ended December 31, 2009						
		Items Impacting Comparability					
	North America Operating Segment As Reported (GAAP)	North America Comparability Adjustments (1)	CCE North America As Reported (2)	Estimate of CCE Corporate (2)	CCE Comparability Adjustments (2), (3)	Eliminations	Pro Forma North American Business (Non-GAAP)
Net Operating Revenues	$ 8,271	$ -	$ 15,128	$ -	$ -	$ (4,243)	$ 19,156
Operating Income	$ 1,699	$ 51	$ 1,059	$ (347)	$ 75	$ -	$ 2,537
Depreciation and Amortization	365	-	711	46	(15)	-	1,107
EBITDA (Non-GAAP)	$ 2,064	$ 51	$ 1,770	$ (301)	$ 60	$ -	$ 3,644

(1) Comparability adjustments include restructuring charges, productivity initiatives and compensation expense.
(2) EBITDA for acquired CCE North American business (including CCE Corporate) as adjusted for comparability is $1,529.
(3) Comparability adjustments include restructuring charges and compensation expense.

About The Coca-Cola Company

The Coca-Cola Company (NYSE: KO) is the world's largest beverage company, refreshing consumers with more than 500 sparkling and still brands. Along with Coca-Cola, recognized as the world's most valuable brand, the Company's portfolio includes 12 other billion dollar brands, including Diet Coke, Fanta, Sprite, Coca-Cola Zero, vitaminwater, Powerade, Minute Maid, Simply and Georgia Coffee. Globally, we are the No. 1 provider of sparkling beverages, juices and juice drinks and ready-to-drink teas and coffees. Through the world's largest beverage distribution system, consumers in more than 200 countries enjoy the Company's beverages at a rate of 1.6 billion servings a day. With an enduring commitment to building sustainable communities, our Company is focused on initiatives that protect the environment, conserve resources and enhance the economic development of the communities where we operate. For more information about our Company, please visit our website at http://www.thecoca-colacompany.com (http://www.thecoca-colacompany.com).

The Coca-Cola Company Forward-Looking Statements

This press release may contain statements, estimates or projections that constitute "forward-looking statements" as defined under U.S. federal securities laws. Generally, the words "believe," "expect," "intend," "estimate," "anticipate," "project," "will" and similar expressions identify forward-looking statements, which generally are not historical in nature. Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from The Coca-Cola Company's historical experience and our present expectations or projections. These risks include, but are not limited to, obesity and other health concerns; scarcity and quality of water; changes in the nonalcoholic beverages business environment, including changes in consumer preferences based on health and nutrition considerations and obesity concerns; shifting consumer tastes and needs, changes in lifestyles and competitive product and pricing pressures; impact of the global credit crisis on our liquidity and financial performance; our ability to expand our operations in developing and emerging markets; foreign currency exchange rate fluctuations; increases in interest rates; our ability to maintain good relationships with our bottling partners; the financial condition of our bottling partners; our ability and the ability of our bottling partners to maintain good labor relations, including the ability to renew collective bargaining agreements on satisfactory terms and avoid strikes, work stoppages or labor unrest; increase in the cost, disruption of supply or shortage of energy; increase in cost, disruption of supply or shortage of ingredients or packaging materials; changes in laws and regulations relating to beverage containers and packaging, including container deposit, recycling, eco-tax and/or product stewardship laws or regulations; adoption of significant additional labeling or warning requirements; unfavorable general economic conditions in the United States or other major markets; unfavorable economic and political conditions in international markets, including civil unrest and product boycotts; changes in commercial or market practices and business model within the European Union; litigation uncertainties; adverse weather conditions; our ability to maintain brand image and corporate reputation as well as other product issues such as product recalls; changes in legal and regulatory environments; changes in accounting standards and taxation requirements; our ability to achieve overall long-term goals; our ability to protect our information systems; additional impairment charges; our ability to successfully manage Company-owned bottling operations; the impact of climate change on our business; global or regional catastrophic events; and other risks discussed in our Company's filings with the Securities and Exchange Commission (SEC), including our Annual Report on Form 10-K, which filings are available from the SEC. You should not place undue reliance on forward-looking statements, which speak only as of the date they are made. The Coca-Cola Company undertakes no obligation to publicly update or revise any forward-looking statements.

COCA-COLA ENTERPRISES INC.
RECONCILIATION OF GAAP TO NON-GAAP
(Unaudited; In millions)

	Full Year 2009				
		Items Impacting Comparability			
	Europe Reported (GAAP)	Europe Restructuring Charges	Corporate [b]	Norway / Sweden [c]	**new CCE (non-GAAP)** [a]
Net Operating Revenue	**$ 6,517**	$ -	$ -	$ 741	**$ 7,258**
Operating Income (EBIT)	**$ 963**	$ 7	$ (185)	$ 62	**$ 847**
Depreciation & Amortization	**270**	-	25	37	**332**
EBITDA	**$ 1,233**	$ 7	$ (160)	$ 99	**$ 1,179**

(a) These non-GAAP measures are provided to allow investors to more clearly evaluate the operating performance and business trends. For new CCE, which includes CCE's European operating segment, a preliminary estimate of new CCE Corporate costs and Nordic.

(b) Corporate is a preliminary estimate of new CCE Corporate costs. CCE Corporate costs allocated to new CCE in its Form S-4 may be materially different.

(c) Represents the unaudited 2009 financial results of Norway and Sweden. Acquisition of Norway and Sweden bottlers subject to the signing of definitive agreements

About Coca-Cola Enterprises Inc.

Coca-Cola Enterprises Inc. is the world's largest marketer, distributor, and producer of bottle and can liquid nonalcoholic refreshment. CCE sells approximately 80 percent of The Coca-Cola Company's bottle and can volume in North America and is the sole licensed bottler for products of The Coca-Cola Company in Belgium, continental France, Great Britain, Luxembourg, Monaco, and the Netherlands. For more information about our Company, please visit our website at http://www.cokecce.com (http://www.cokecce.com).

Coca-Cola Enterprises Inc. Forward-Looking Statements

Included in this news release are forward-looking management comments and other statements that reflect management's current outlook for future periods. As always, these expectations are based on currently available competitive, financial, and economic data along with our current operating plans and are subject to risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements. The forward-looking statements in this news release should be read in conjunction with the risks and uncertainties discussed in our filings with the Securities and Exchange Commission, including our most recent annual report on Form 10-K and subsequent SEC filings.

Important Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the proposed transaction. In connection with the proposed transaction and required shareowner approval, Coca-Cola Enterprises Inc. ("Company") will file relevant materials with the Securities and Exchange Commission (the "SEC"), including a proxy statement/prospectus contained in a Form S-4 registration statement, which will be mailed to the shareowners of the Company.

SHAREOWNERS OF THE COMPANY ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC, INCLUDING THE PROXY STATEMENT/PROSPECTUS WHEN IT BECOMES AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.

Shareowners may obtain a free copy of the proxy statement/prospectus, when it becomes available, and other documents filed by the Company at the SEC's web site at www.sec.gov (http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.sec.gov&esheet=6193425&lan=en_US&anchor=www.sec.gov&index=6&md5=3eae721001e24ed079b1918f6d120556).*Copies of the documents filed with the SEC by the Company will be available free of charge on the Company's internet website at www.cokecce.com* (http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.cokecce.com&esheet=6193425&lan=en_US&anchor=www.cokecce.com&index=7&md5=a7a09bb79236de8b4f9a8b9aacee6d95) *under the tab "Investor Relations" or by contacting the Investor Relations Department of Coca-Cola Enterprises at 770-989-3246.*

Participants in the Solicitation

Coca-Cola Enterprises ("Company") and its directors, executive officers and certain other members of its management and employees may be deemed to be participants in the solicitation of proxies from its shareowners in connection with the proposed transaction.Information regarding the interests of such directors and executive officers was included in the Company's Proxy Statement for its 2009 Annual Meeting of Shareowners filed with the SEC March 3, 2009 and a Form 8-K filed on December 18, 2009 and information concerning the participants in the solicitation will be included in the proxy statement/prospectus relating to the proposed transaction when it becomes available.Each of these documents is, or will be, available free of charge at the SEC's website at www.sec.gov (http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.sec.gov&esheet=6193425&lan=en_US&anchor=www.sec.gov&index=8&md5=62f631416e55534716c4ed4a0872a089) *and from the Company on its website or by contacting the Shareowner Relations Department at the telephone number above.*

SOURCE: The Coca-Cola Company and Coca-Cola Enterprises Inc.

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Federal Trade Commission
Protecting America's Consumers

For Release: 9/27/2010

FTC Puts Conditions on Coca-Cola's $12.3 Billion Acquisition of its Largest North American Bottler

Coca-Cola Agrees to Restrictions on its Access to Competitively Sensitive Information of Dr Pepper Snapple Group Subsidiary

The Federal Trade Commission today announced that it will require The Coca-Cola Company to restrict its access to confidential competitive business information of rival Dr Pepper Snapple Group as a condition for completing Coca-Cola's proposed $12.3 billion acquisition of its largest North American bottler, which also distributes Dr Pepper Snapple carbonated soft drinks.

Under a settlement with the FTC, Coca-Cola will set up a "firewall" to ensure that its ownership of the bottling company does not give certain Coca-Cola employees access to commercially sensitive confidential Dr Pepper Snapple marketing information and brand plans. In a complaint filed with the settlement, the FTC charged that access to this information likely would have harmed competition in the U.S. markets for carbonated soft drinks. On February 26, 2010, the FTC approved a proposed settlement order in which PepsiCo agreed to set up a similar information firewall after acquiring its two largest bottlers and distributors (see press release at http://www.ftc.gov/opa/2010/02/pepsi.shtm).

Coca-Cola agreed on February 25, 2010, to acquire the North American operations of Coca-Cola Enterprises Inc., its largest North American bottler, for $12.3 billion. When the agreement was announced, Coca-Cola already owned about 34 percent of Coca-Cola Enterprises. After the acquisition is completed, the North American operations of Coca-Cola Enterprises will be known as Coca-Cola Refreshments USA, Inc.

In a related deal, after Coca-Cola agreed to acquire Coca-Cola Enterprises, it sought a license to continue to bottle and distribute the Dr Pepper Snapple brands that Coca-Cola Enterprises had distributed, including Dr Pepper brand products and Canada Dry products, in specific franchised geographic areas. Coca-Cola paid $715 million for the exclusive 20-year distribution license.

According to the FTC's complaint, Coca-Cola and Dr Pepper Snapple are direct competitors in the highly concentrated and difficult-to-enter markets for branded soft drink concentrate and branded carbonated soft drinks sold in stores. In all, the total sales of soft drink concentrate in the United States are about $9 billion annually, and the total U.S. sales of soft drinks sold by retailers are about $70 billion.

Dr Pepper Snapple will provide the commercially sensitive information about its marketing plans to Coca-Cola Refreshments USA, the newly created Coca-Cola bottling subsidiary. Dr Pepper Snapple currently provides the same sensitive information to Coca-Cola Enterprises to help it perform its bottler and distribution functions, according to the complaint. According to the complaint, Coca-Cola's access to this information could harm consumers by eliminating competition between Coca-Cola and Dr Pepper Snapple.

The FTC's proposed settlement order is designed to remedy these potential problems by requiring Coca-Cola to set up a "firewall" so the sensitive information cannot be accessed by anyone at Coca-Cola who may be in a position to use it against Dr Pepper Snapple. The proposed Coca-Cola order will expire in 20 years.

The FTC vote approving the complaint and proposed consent order was 4-0-1, with Commissioner Edith Ramirez recused. The order will be published in the Federal Register shortly, and will be subject to public comment for 30 days, until October 27, 2010, after which the Commission will decide whether to make it final. Comments can be submitted electronically at the following link: https://ftcpublic.commentworks.com/ftc/coca-cola.

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. A consent order is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $16,000.

Copies of the complaint, consent order, and an analysis to aid public comment are available from the FTC's Web site at http://www.ftc.gov and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 383, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read "Competition Counts" at http://www.ftc.gov/competitioncounts.

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(FTC File No. 101-0107)
(Coke.final.wpd)

E-mail this News Release
If you send this link to someone else, the FTC will not collect any personal information about you or the recipient.

Related Items:

***In the Matter of* The Coca-Cola Company, a corporation**
FTC File No. 101 0107

Last Modified: Tuesday, September 28, 2010

101 0107

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of	)	
The Coca-Cola Company, a corporation.	)	**Docket No. C -**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Respondent The Coca-Cola Company ("TCCC"), a corporation, has entered into agreements to acquire the outstanding voting securities of one its independent bottlers, Coca-Cola Enterprises Inc. ("CCE"), and subsequently obtained a license agreement to continue to produce and distribute carbonated soft drink brands of Dr Pepper Snapple Group, Inc. ("DPSG"), that bottler CCE has produced and distributed, and that the agreements violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the agreements and terms of such agreements, when consummated or satisfied, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. Respondent The Coca-Cola Company

1. Respondent TCCC is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1 Coca-Cola Plaza, Atlanta, Georgia 30313.

2. TCCC is a beverage company that includes Coca-Cola North America ("CCNA"), the company's North American operating company. TCCC produces the concentrate (or flavor ingredient) for the TCCC carbonated soft drink beverage brands that are distributed by its

independent bottlers. One of those independent bottlers is CCE. Some of TCCC's carbonated soft drink brands distributed by CCE are Coke, Diet Coke, and Sprite.

3. TCCC in 2009 had net revenues of about $31 billion. Most of TCCC's revenues are based on concentrate sales.

4. TCCC is, and at all times relevant herein has been, engaged in commerce or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

II. Third Party Dr Pepper Snapple Group, Inc.

5. DPSG is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5301 Legacy Drive, Plano, Texas 75024.

6. Among other things, DPSG produces concentrate for the DPSG carbonated soft drink beverage brands that are marketed, distributed, and sold by independent bottlers. One of those independent bottlers is CCE. Some of the DPSG carbonated soft drink brands distributed by CCE, in at least some territories, are Dr Pepper, Canada Dry, Schweppes, and Squirt.

7. DPSG in 2009 had net revenues from the sales of all products of about $5.5 billion. In 2009, DPSG's net sales in the United States and Canada of carbonated soft drink concentrate were about $1.5 billion.

8. DPSG is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. Coca-Cola Enterprises Inc.

9. CCE is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2500 Windy Ridge Parkway Suite 700, Atlanta, Georgia 30039.

10. CCE is the largest independently owned bottler of the carbonated soft drink brands of TCCC. CCE's North American business contributed 70% of CCE's total sales in 2009 of about $21 billion. CCE accounts for approximately 75% of the United States sales of TCCC's brands of bottled and canned carbonated soft drinks and about 14% of the United States sales of DPSG's brands of carbonated soft drinks.

11. The geographic areas or territories in which CCE is licensed to distribute the carbonated soft drink brands of TCCC include all or a portion of 46 states and the District of Columbia. The principal geographic areas or territories in which CCE is licensed to distribute

some of the carbonated soft drink brands of DPSG include North Texas (Dallas/Fort Worth area); Southern California; Northern California; New York; Arizona; New Mexico; and Nevada.

IV. TCCC's Acquisition of CCE

12. On or about February 25, 2010, TCCC entered into an agreement to acquire 100% of CCE's North American operations. Following the acquisition, TCCC will create a new organization known as Coca-Cola Refreshments USA, Inc. ("CCR"), that will take on the bottling and distribution functions previously performed by CCE.

13. At the time of the agreement, TCCC held about a 34% equity interest in CCE.

14. Under the terms of the license agreements that DPSG (or its predecessor companies) entered into with CCE, a change of ownership of the bottler would, depending on the brand and/or territory involved, either automatically trigger the termination of the license or require that DPSG consent to the acquisition of the license by the bottler's new owner.

15. The proposed acquisition by TCCC of 100% of CCE's North American assets would give TCCC control over CCE. This prospective change in control is the kind of change in ownership of CCE that, upon consummation, would either trigger the automatic termination clause of the license agreement with DPSG or require that DPSG consent to the change.

16. For brand Dr Pepper, DPSG did not consent to the transfer to TCCC of the licenses held by CCE. For certain other DPSG brands, the proposed change in ownership of CCE would, upon consummation of the ownership change, automatically terminate the DPSG licenses.

V. TCCC's Acquisition of DPSG Licenses

17. On or about June 7, 2010, in anticipation of the termination of the DPSG-CCE agreement upon the acquisition by TCCC of CCE, TCCC and DPSG entered into an agreement for TCCC, upon acquiring CCE, to obtain a license to distribute the Dr Pepper and Canada Dry carbonated soft drink brands of DPSG in the former CCE territories. The license agreement will be signed by Dr Pepper-Seven Up, Inc. ("DPSU"), an operating company of DPSG, and CCR.

18. The DPSG-CCR license agreement provides, among other things, that (a) CCR will acquire the exclusive right to sell and distribute the Dr Pepper and Canada Dry carbonated soft drink brands in CCE territories, (b) the license agreement will have a term of twenty (20) years, with a provision that it be "automatically renewed for additional twenty (20) year successive periods" for "no additional payments," (c) CCR will acquire a non-exclusive right to produce the Dr Pepper and Canada Dry carbonated soft drink brands in the CCE territories, and (d) TCCC will pay DPSG $715 million.

19. Pursuant to the DPSG-CCR license agreement, CCR and DPSG entered into additional, associated terms, whereby CCR has undertaken performance obligations to, among

other things, (a) distribute the Dr Pepper brand in all classes of trade based on certain TCCC brands; (b) grow the Dr Pepper brand based in some measure on certain sales criteria of other bottlers; and (c) advertise, promote, and market the Dr Pepper brand and provide sales support for such promotions, based in some measure on CCR's advertising, promotions, and marketing of certain TCCC brands.

20. The DPSG-CCR license agreement will not provide adequate safeguards against the access by TCCC to competitively sensitive and confidential information regarding DPSG carbonated soft drink brands provided to CCR by DPSG pursuant to the license.

VI. Trade and Commerce

A. Relevant Product Markets

21. The relevant product markets in which to assess the effects of the license between DPSG and CCR and the associated performance terms are (a) branded, direct-store-delivered carbonated soft drinks and (b) the branded concentrate used to produce branded, direct-store-delivered carbonated soft drinks.

B. Relevant Geographic Markets

22. The relevant geographic markets in which to assess the effects of the DPSG-CCR license agreement and the associated performance agreement terms are (a) in the branded concentrate relevant product market, the United States as a whole, and (b) in the branded, direct-store-delivered carbonated soft drinks product market, local areas in the CCE territories.

C. Conditions of Entry

23. Entry into each relevant market would not be timely, likely, or sufficient to prevent or mitigate any anticompetitive effect.

24. Effective (price constraining) entry requires that branded carbonated soft drinks be delivered by direct-store delivery. There are generally only three bottlers in the local carbonated soft drink markets that have exclusive rights to distribute their branded carbonated soft drink products, and they do so by direct-store delivery. Bottlers operate under flavor restrictions imposed upon them by concentrate companies TCCC, DPSG, and PepsiCo, Inc. The bottlers therefore are not permitted to carry the new brand of an existing flavor without first dropping the brand of that flavor that they carry. For the cola flavor, the bottlers licensed by TCCC and PepsiCo, Inc., are required to carry Coke and Pepsi, respectively, and no other cola-flavored carbonated soft drink.

25. There is no market for branded concentrate other than for the production of branded carbonated soft drinks.

D. Market Structure

26. Each relevant market is very highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by two-firm and four-firm concentration ratios.

27. The carbonated soft drink brands of TCCC and DPSG are the first and second choices for a substantial number of consumers.

VII. Effects of the Acquisition

28. TCCC's access to competitively sensitive confidential information provided by DPSG to CCR in furtherance of the DPSG-CCR license agreement, or the use by CCR of competitively sensitive information passed to it by DPSG in furtherance of the DPSG-CCR license agreement, may substantially lessen competition in the relevant markets in some or all of the following ways,

(a) by eliminating direct competition between TCCC and DPSG,

(b) by increasing the likelihood that TCCC may unilaterally exercise market power or influence and control DPSG's prices, and

(c) by increasing the likelihood of, or facilitating, coordinated interaction;

each of which may result in higher prices to consumers.

VIII. Violations Charged

29. TCCC's access to competitively sensitive confidential information of DPSG, provided in furtherance of the DPSG-CCR license agreement entered into between Respondent TCCC and DPSG for the sale and distribution by CCR of DPSG's brands of carbonated soft drinks, could lead to anticompetitive conduct and constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and upon consummation, would constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15, U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ______ day of _____________, 2010, issues its Complaint against Respondent TCCC.

By the Commission.

Donald S. Clark
Secretary

SEAL

101 0107

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of **The Coca-Cola Company,** a corporation.	**Docket No. C-4305**

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by The Coca-Cola Company ("TCCC"), of the North American soft drink bottling business of Coca-Cola Enterprises, Inc. ("CCE"), and the subsequent proposed acquisition and associated agreements for TCCC to acquire rights to produce, distribute, market, and sell some of the carbonated soft drink brands of Dr Pepper Snapple Group, Inc. ("DPSG"), that had been distributed by CCE and TCCC, and TCCC (hereinafter sometimes referred to as "Respondent") having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent TCCC is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Coca-Cola Plaza, Atlanta, GA 30313.

2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

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

A. "TCCC" or "Respondent" means The Coca-Cola Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by TCCC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; after the Acquisition, TCCC includes the North American soft drink bottling business of CCE acquired in the Acquisition.

B. "CCE" means Coca-Cola Enterprises Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by CCE, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Acquisition" means the acquisition by TCCC of the North American soft drink bottling business of CCE.

D. "Additional Firewalled TCCC Personnel" means those employees that are identified and approved pursuant to Paragraph II.C. of this Order

E. "Bottler" means an entity licensed by a Concentrate Company to produce, distribute, market, price, and sell carbonated soft drink products under the brands of that Concentrate Company.

F. “Bottler Functions” means the following activities, and no others, of a Bottler, which are typical of a Bottler that no Concentrate Company owns or has a controlling interest in: (1) purchasing concentrate from one or more Concentrate Companies for use in the production of carbonated soft drinks, (2) producing carbonated soft drinks, (3) marketing, advertising, promoting, distributing, pricing, and selling carbonated soft drinks, (4) implementing the marketing, advertising, and promotional programs of the Concentrate Company, (5) determining and coordinating the amount or timing of funding of retail-related promotions of carbonated soft drinks for that retailer’s operations for the brands of carbonated soft drink products of more than one Concentrate Company, and (6) formulating and engaging in marketing, advertising, or promotional activities for the brands of carbonated soft drink products of more than one Concentrate Company within the Territories or across geographic areas broader than the Territories; provided, however, that no Concentrate-Related Functions are included in Bottler Functions. For the avoidance of doubt, for purposes of this Order, Bottler Functions include those of TCCC as a Bottler.

G. “Commission” means the Federal Trade Commission.

H. “Concentrate Company” means a company that formulates concentrate for the production of carbonated soft drink products and other beverages and sells the concentrate to Bottlers. For the avoidance of doubt, for purposes of this Order, TCCC and DPSG are Concentrate Companies.

I. “Concentrate-Related Functions” means the activities of a Concentrate Company that are typical of a Concentrate Company operating separately from and independently of any Bottler in which it may have an interest, including: (1) setting the price of the concentrate sold by the Concentrate Company and selling that concentrate, (2) making decisions with respect to formulating and introducing new brands and flavors to offer to Bottlers, (3) making decisions with respect to introducing new flavors and package sizes of existing brands, (4) formulating and designing marketing and advertising programs of the Concentrate Company, and (5) determining whether, to what extent, and when the Concentrate Company will fund Promotional Activities. For the avoidance of doubt, for purposes of this Order, Concentrate-Related Functions include those of TCCC.

J. "DMA" means the Designated Market Areas or geographic areas defined by Nielsen Media Research Company.

K. “DPSG” means Dr Pepper Snapple Group, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5301 Legacy Drive, Plano, Texas 75024.

L. “DPSG Beverages” means carbonated soft drink products sold by TCCC in the United States under the DPSG brands and all package sizes and flavors sold under those brands, including fountain sales; DPSG Beverages also includes any new sizes and flavors introduced by DPSG and carried by TCCC in the Territories.

M. “DPSG Bottler Functions” means (1) Bottler Functions related to DPSG Beverages, and (2) DPSG Freestyle Functions.

N. “DPSG Commercially Sensitive Information” means all information provided, disclosed, or otherwise made available by DPSG to TCCC relating to DPSG Beverages that is not in the public domain, including but not limited to information related to the research, development, production, marketing, advertising, promotion, pricing, distribution, sales, or after-sales support of DPSG Beverages; DPSG Commercially Sensitive Information includes (1) DPSG Information Relating to Concentrate-Related Functions and (2) DPSG Information Relating to Bottler Functions.

O. “DPSG Concentrate-Related Functions” means Concentrate-Related Functions related to DPSG Beverages.

P. “DPSG Freestyle Functions” means the manufacture, sale, and supply of Freestyle Machine cartridges made from DPSG Beverage concentrate.

Q. “DPSG Freestyle Information” means DPSG Commercially Sensitive Information Relating To DPSG Freestyle Functions.

R. “DPSG Information Relating to Bottler Functions” means DPSG Commercially Sensitive Information Relating To DPSG Bottler Functions; with the exception of DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information, DPSG Information Relating to Bottler Functions includes no more than the type of information that DPSG provided to its Bottlers in the Territories prior to the Acquisition; *provided, however*, that DPSG Information Relating to Bottler Functions may not necessarily include all such information.

S. “DPSG Information Relating to Concentrate Functions” means DPSG Commercially Sensitive Information relating to DPSG Concentrate-Related Functions.

T. “DPSG Information Relating to Independent DPSG Promotions” means DPSG Commercially Sensitive Information relating to planned Promotional Activities for DPSG Beverages that are separate from and independent of planned Promotional Activities for TCCC Beverages.

U. “DPSG National Accounts” means:

1. those retailers that sell DPSG Beverages in the Territories (or those retailers that do not sell DPSG Beverages in the Territories but that DPSG is calling on to persuade them to sell DPSG Beverages in the Territories) to which DPSG makes account calls in support of the DPSG Beverages sold by TCCC in the Territories; and

2. those retailers that sell DPSG Beverages in Freestyle Machines (or those retailers that do not sell DPSG Beverages in Freestyle Machines but that DPSG is calling on to persuade them to sell DPSG Beverages in Freestyle Machines) to which DPSG makes account calls in support of the DPSG Beverages sold in Freestyle Machines.

V. "Freestyle Machine" means TCCC's proprietary Freestyle™ fountain machine.

W. "Legal or Regulatory Functions" means activities necessary to comply with financial or other regulatory requirements, obtain or provide legal advice, or otherwise comply with applicable laws and regulations, including this Order.

X. "License Transaction" means:

1. the agreement between TCCC and DPSG containing a license to produce, distribute, market, price, and sell DPSG Beverages in the United States, the form of which TCCC and DPSG agreed upon on June 7, 2010; and

2. the Freestyle Participation Agreement in the form of which TCCC and DPSG agreed upon on June 7, 2010.

Y. "MSA" means the Metropolitan or Micropolitan Statistical Areas or geographic areas defined by the U.S. Office of Management and Budget.

Z. "Management Documents" means all electronic and computer files and written, recorded, and graphic materials of every kind, including copies of documents that are not identical duplicates of the originals, that were written by, addressed to, or delivered to, officials with managerial, oversight, or reviewing responsibilities.

AA. "Monitor" means the person appointed by the Commission pursuant to Paragraph III. of this Order.

BB. "National Accounts Sales Team" means the TCCC Bottling Operations Personnel who (1) call on DPSG National Accounts and (2) determine and formulate the level and timing of Promotional Activities in support of TCCC Beverages sold by TCCC in the Territories that do not include DPSG Beverages.

CC. "Promotional Activities" means price and non-price promotions, in-store displays, and newspaper inserts.

DD. "Relating To" means discussing, analyzing, summarizing, describing, or constituting, but not merely referring to.

EE. "TCCC Beverages" means TCCC brands of carbonated soft drink products and all package sizes and flavors thereof; TCCC Beverages shall not include DPSG Beverages.

FF. "TCCC Bottling Operations Personnel" means the persons, functions, or positions of or within TCCC that satisfy all of the criteria described in Paragraph II. of this Order; "TCCC Bottling Operations Personnel" as of the date the Agreement Containing Consent Order is executed shall include, but not be limited to, the names, functions, or positions described in Appendix A to this Order ("List") and all people who report (directly or indirectly) to such names, functions, or positions; the List shall indicate those who have limited access under paragraph II.A; all changes to the TCCC Bottling Operations Personnel shall be in accordance with the procedure described in Paragraph II. of this Order.

GG. "Territories" means, for each brand, those territories shown in Appendix B.

II.

IT IS FURTHER ORDERED that:

A. TCCC shall use DPSG Commercially Sensitive Information only under the following conditions:

1. the DPSG Commercially Sensitive Information consists only of DPSG Information Relating to Bottler Functions;

2. the DPSG Commercially Sensitive Information is provided, disclosed, or otherwise made available only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel;

3. TCCC Bottling Operations Personnel shall include only those persons, functions, or positions that:

    a. are responsible for Bottler Functions or Legal or Regulatory Functions only; provided, however, that persons, functions, or positions included within "TCCC Bottling Operations Personnel" because they are responsible for Legal or Regulatory Functions shall have access to and use of such DPSG Commercially Sensitive Information only to the extent such information is necessary to perform such Legal or Regulatory Functions;

b. are not responsible for Concentrate-Related Functions, and if any such person, function, or position reports (directly or indirectly) to a person responsible for Concentrate-Related Functions, that person, function, or position shall not disclose, provide, or otherwise make available DPSG Commercially Sensitive Information to the person responsible (directly or indirectly) for Concentrate-Related Functions; and

c. do not receive bonus or other tangible benefits related to the marginal sale of TCCC Beverages as a disproportionate benefit to any bonus or tangible benefit related to the marginal sale of DPSG Beverages;

4. an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Order, will comply with its terms, and will take all reasonable steps to assure that employees that report to him or her will comply with its terms:

   a. shall be submitted to the staff of the Commission by each person specifically identified in Appendix A no later than twenty (20) days after Respondent executes the Agreement Containing Consent Order; and

   b. by each TCCC Bottling Operations Personnel who replaces any of those specifically identified in Appendix A or who are given responsibilities comparable to those people specifically identified in Appendix A no later than ten (10) days after assuming those responsibilities;

5. the DPSG Commercially Sensitive Information is used only in connection with DPSG Bottler Functions, or solely for the purpose of Legal or Regulatory Functions;

6. the DPSG Commercially Sensitive Information is used only in the Territories; *provided, however,* that with respect to DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information, such information may be used anywhere in the United States;

7. the DPSG Commercially Sensitive Information is not used in connection with Concentrate-Related Functions in any way, such prohibition to include but not be limited to using the information even if the DPSG Commercially Sensitive Information is not itself revealed;

8. all DPSG documents and copies of documents reflecting or containing DPSG Commercially Sensitive Information (whether in the form provided by DPSG or in a form created by TCCC) are maintained as confidential until the earlier

of five (5) years or when DPSG Commercially Sensitive Information becomes public through no act of TCCC; and

9. DPSG Information Relating to DPSG Independent Promotions shall not be provided to the National Accounts Sales Team any time prior to the disclosure of such information to any Bottler other than TCCC.

B. TCCC shall change the TCCC Bottling Operations Personnel only pursuant to the following procedures:

1. replacing or adding individuals who report (directly or indirectly) to the people, functions, or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of TCCC;

2. replacing any of the people specifically identified in Appendix A or re-organizing functions or positions specifically identified in Appendix A shall be in accordance with the usual and customary business practices of TCCC after notification to the Monitor;

3. adding new functions or positions that are not specifically identified in Appendix A shall require prior notification to the Monitor and staff of the Federal Trade Commission in accordance with the following:

   a. the staff shall have ten (10) days from notification to consider the proposed change; and

   b. if the staff does not object, in writing including its reasons for objecting, to the change within ten (10) days of its notification, TCCC shall be permitted to make the change.

C. TCCC shall disclose DPSG Commercially Sensitive Information to Additional Firewalled TCCC Personnel only under the following conditions:

1. such Additional Firewalled TCCC Personnel:

   a. are employees or agents of TCCC; and

   b. are approved by DPSG, receive only the limited information approved by DPSG, for the time period approved by DPSG, all according to the procedure described in ¶ II.C.2. of the Order, below.

2. TCCC shall comply with the following procedure in connection with Additional Firewalled TCCC Personnel:

a. TCCC shall submit the name, position, and function of any proposed Additional Firewalled TCCC Personnel to DPSG, the Monitor, and Commission staff, together with a statement of the reasons for the need to include such person, the specific DPSG Information Relating to Bottler Functions that is necessary to be shared, and the time period during which the information is intended to be shared;

b. DPSG shall notify TCCC, the Monitor (if so appointed), and Commission staff within twenty (20) days whether or not it objects to the proposal;

c. if DPSG does not object within twenty (20) days of receiving notification of the proposal, TCCC shall notify the Commission staff;

d. if Commission staff does not object, in writing including its reasons for objecting, within ten (10) days of its notification that DPSG does not object, the person shall be an Additional Firewalled TCCC Personnel; and

e. TCCC must obtain from each Additional Firewalled TCCC Personnel an executed non-disclosure agreement and a statement attesting that he or she has received a copy of this Order and will comply with its terms.

D. TCCC shall develop and implement procedures with respect to DPSG Commercially Sensitive Information, with the advice and assistance of the Monitor, to comply with the requirements of this Order.

1. such procedures shall assure, without limitation, that DPSG Commercially Sensitive Information is:

    a. disclosed only if it is DPSG Information relating to Bottler Functions;

    b. disclosed only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel;

    c. used solely for DPSG Bottler Functions or Legal or Regulatory Functions in the Territories, or with respect to DPSG Information Relating to Bottler Functions that is DPSG Freestyle Information anywhere in the United States; and not for Concentrate-Related Functions; and

    d. maintained confidentially;

2. such procedures shall include, without limitation:

a. monitoring compliance;

b. enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;

c. distributing information regarding the procedures annually to all employees of TCCC associated with its carbonated soft drink products; and

d. requiring that the TCCC Bottling Operations Personnel and the Additional Firewalled TCCC Personnel comply with the requirements of this Order.

III.

IT IS FURTHER ORDERED that:

A. At any time after TCCC signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that TCCC complies with all obligations and performs all responsibilities required by this Order.

B. The Commission shall select the Monitor, subject to the consent of TCCC, which consent shall not be unreasonably withheld. If TCCC has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to TCCC of the identity of any proposed Monitor, TCCC shall be deemed to have consented to the selection of the proposed Monitor.

C. Not later than ten (10) days after the appointment of the Monitor, TCCC shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor TCCC's compliance with the requirements of this Order.

D. If a Monitor is appointed by the Commission, TCCC shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor TCCC's compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this Order and in consultation with the Commission. In carrying out its functions, the Monitor is authorized (among other appropriate things) to provide specific information to Commission staff as to whether:

a. DPSG Commercially Sensitive Information provided to TCCC is DPSG Information Relating to Bottler Functions;

b. DPSG Information relating to Bottler Functions is conveyed only to TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel; and

c. DPSG Information Relating to Bottler Functions that is conveyed to the TCCC Bottling Operations Personnel or to Additional Firewalled TCCC Personnel is used solely for the purpose of carrying out DPSG Bottler Functions or Legal or Regulatory Functions.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Monitor shall serve until five (5) years after the License Transaction is effective; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purpose of this Order.

4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to TCCC's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to TCCC's compliance with its obligations under this Order. TCCC shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor TCCC's compliance with this Order.

5. The Monitor shall serve, without bond or other security, at the expense of TCCC, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of TCCC, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

6. TCCC shall indemnify the Monitor and hold the Monitor harmless against all losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

7. TCCC shall report to the Monitor in accordance with the requirements of this Order. The Monitor shall evaluate the reports submitted to the Monitor by TCCC. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by TCCC of its obligations under this Order.

8. TCCC may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor (and its representatives) from providing any information to the Commission.

9. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

10. In the event the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.

11. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IV.

IT IS FURTHER ORDERED that, for the term of this Order, if TCCC intends to acquire a Bottler that is licensed to distribute TCCC Beverages anywhere in the United States and is also licensed to distribute DPSG Beverages in geographic areas outside of the Territories ("To-Be-Acquired Bottler"), TCCC may use DPSG Commercially Sensitive Information relating to the specific brand or brands in the geographic areas covered by the To-Be-Acquired Bottler's license for the DPSG Beverages, after TCCC's acquisition of the To-Be-Acquired Bottler, as long as TCCC complies with the obligations of Paragraph II.A. 1. - 5., and 7. - 9. of this Order, and satisfies the following additional conditions:

A. TCCC shall comply with the obligations of this Order with respect to that DPSG Commercially Sensitive Information;

B. For acquisitions of To-Be-Acquired Bottlers that are subject to Section 7A of the Clayton Act, 15 U.S.C. § 18a ("HSR Act"), TCCC shall also comply with the reporting and waiting obligations of the HSR Act and the rules promulgated thereunder, 16 C.F.R. § 800 et seq.;

C. For acquisitions of To-Be-Acquired Bottlers that are not subject to the HSR Act:

1. TCCC shall provide at least forty-five (45) days' advance written notification of the acquisition to the staff of the Commission, such notification to include:

    a. the name, headquarters address, telephone number, and name of contact person of the To-Be-Acquired Bottler;

    b. a description of the proposed acquisition and the assets to be acquired, and the acquisition price;

    c. a copy of all existing and draft licenses and performance obligations entered into or anticipated to be entered into between DPSG, Respondent, and/or the To-Be-Acquired Bottler;

    d. a description of the geographic areas in which the To-Be-Acquired Bottler is licensed, and in which TCCC is anticipated to be licensed, to produce, distribute, market, price, or sell TCCC Beverages, and, to the extent TCCC has such information, a description of the geographic areas in which the To-Be-Acquired Bottler is licensed to produce, distribute, market, price, or sell DPSG Beverages;

    e. the date each license or anticipated license was, or is expected to be, entered into between DPSG, Respondent, and/or the To-Be-Acquired Bottler with respect to:

        (1) TCCC Beverages and

        (2) DPSG Beverages;

    f. for the most recent 12-month period and for each MSA, DMA, city, or other geographic area in which the To-Be-Acquired Bottler bottles, distributes, or sells TCCC Beverages and/or DPSG Beverages,

        (1) for any and all carbonated soft drinks:

            (a) all Nielsen, IRI, or similar data with respect to that MSA, DMA, city, or other geographic area; and

            (b) all market share information, written or otherwise, with respect to that MSA, DMA, city, or other geographic area,

            that TCCC has, and

(2) for the most recent 12-month period for which TCCC has such information, sales in units (in constant case equivalents) and dollars, of

(a) TCCC Beverages, by brand, of the To-Be-Acquired Bottler, and

(b) concentrate, by brand, to the To-Be-Acquired Bottler;

g. all documents Relating To communications between TCCC, DPSG, and the To-Be-Acquired Bottler with respect to the acquisition of the To-Be-Acquired Bottler, the DPSG Beverage licenses, expected licenses, or performance obligations; and

h. all Management Documents Relating To the proposed acquisition;

2. Early termination of the 45-day period described in Paragraph IV.C.1. may be requested and, where appropriate, granted by letter from the Director of the Bureau of Competition; and

3. If, after notification of the proposed transaction (including the information specified in Paragraph IV.C.1. a. - h.), representatives of the Commission make a written request for additional information or documentary material with respect to the acquisition of the To-Be-Acquired Bottler, TCCC shall respond expeditiously and submit all such additional information and documentary material and certify substantial compliance with the request;

provided, however, that a determination that TCCC has complied with the obligations contained in this Paragraph IV. in connection with its acquisition of a To-Be-Acquired Bottler shall not be construed as a determination by the Commission, or its staff, that the acquisition of the To-Be-Acquired Bottler does or does not violate any law enforced by the Commission; and provided further that nothing contained herein shall preclude the Commission or its staff from investigating the acquisition or proposed acquisition by TCCC of any Bottler, including a To-Be-Acquired Bottler, and seeking any relief available under any statute enforced by the Commission.

V.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order becomes final, TCCC shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order.

1. TCCC shall include in its report, among other information that may be required, a list of all Bottlers of TCCC Beverages that, at the time of submission of the list, also bottle DPSG Beverages; for each such Bottler, TCCC shall list:

    a. each brand of TCCC Beverages that such Bottler is licensed to distribute, together with a description of the geographic areas in which each brand is licensed to be distributed; and

    b. each brand of DPSG Beverages that such Bottler is distributing anywhere in each county within each geographic area described in Paragraph V.A.1.a. to the extent that TCCC has this information or can obtain it from industry publications to which it subscribes.]

2. TCCC shall at the same time also provide a copy of its report concerning compliance with this Order to any Monitor that may have been appointed.

B. One (1) year after this Order becomes final, annually for the next nineteen (19) years on the anniversary of that date, and at other times as the Commission may require:

1. TCCC shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied, and is complying, with this Order;

2. TCCC shall also include in each of its annual reports:

    a. any changes to the list of Bottlers of TCCC Beverages submitted under Paragraph IV.A. of this Order, including any deletions, additions, or other changes; and

    b. for all To-Be-Acquired Bottlers acquired by TCCC during the previous year, a description of the geographic areas in which the To-Be-Acquired Bottler is licensed to produce, distribute, market, price, or sell each DPSG Beverage.

VI.

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

A. Any proposed dissolution of TCCC;

B. Any proposed acquisition, merger, or consolidation of TCCC;

C. Any other change in TCCC including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VII.

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

A. Access, during business office hours of TCCC and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of TCCC related to compliance with this Order, which copying services shall be provided by TCCC at the request of the authorized representative(s) of the Commission and at the expense of TCCC.

B. The opportunity to interview officers, directors, or employees of TCCC, who may have counsel present, related to compliance with this Order.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on November 3, 2030.

By the Commission, Commissioner Ramirez recused.

Donald S. Clark
Secretary

SEAL
ISSUED: November 3, 2010