

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985 c. C-34, as amended;

AND IN THE MATTER OF the combination of Electronic Television Audience Measurement Services of BBM Canada and Nielsen Media Research Limited;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*;

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	CT-2006-006 JUN 28 2006 CYL
REGISTRAR - REGISTRAIRE	
OTTAWA, ON	#0001

THE COMMISSIONER OF COMPETITION
Applicant
- and -
BBM CANADA and
NIELSEN MEDIA RESEARCH LIMITED
Respondents

Registry of the Competition Tribunal Greffé du Tribunal de la concurrence REGISTERED / ENREGISTRÉ
JUN 28 2006 JUN 28 2006
FOR REGISTRAR / POUR REGISTRAIRE

CONSENT AGREEMENT

WHEREAS BBM Canada and Nielsen Media Research Limited have agreed to combine their respective Canadian Electronic Television Audience Measurement services (except BBM's service in Québec) in a jointly owned company ("Newco") (the "Transaction");

AND WHEREAS the Commissioner of Competition (the "Commissioner") has expressed concerns that, without the specific commitments contained herein, the Transaction, if substantially completed, could lessen competition substantially in respect of Electronic Television Audience Measurement in Canada;

AND WHEREAS BBM Canada and Nielsen Media Research Limited do not admit to any substantial lessening or prevention of competition in any relevant market, but, for the purpose of this Consent Agreement and any proceedings related to the subject matter thereof, except as specifically noted herein, including any proceeding pursuant to section 106 of the *Competition Act* R.S.C. 1985 c.c-34 as amended (the "Act"), do not contest the Commissioner's initial conclusions;

AND WHEREAS the Commissioner is satisfied that, subject to the terms of this Consent Agreement, the actions required to be taken pursuant to this Consent Agreement, will address the Commissioner's concerns that the Transaction is likely to prevent or lessen competition substantially in any relevant geographic or product market;

AND WHEREAS, subject to the terms of this Consent Agreement, with the execution of this Consent Agreement and subject to compliance with the terms therein, the Commissioner will not

oppose the Transaction, in whole or in part, pursuant to sections 92, 100 or 104 of the Act, saving throughout the parties' ability to, if otherwise appropriate, apply under s.106 of the *Act*.

NOW THEREFORE the Respondents and the Commissioner agree as follows:

Definitions

1. For the purposes of this Consent Agreement, the following capitalized terms have the following meanings:

- (a) **"BBM"** means BBM Canada, a not for profit corporation established pursuant to the laws of Canada.
- (b) **"Business Day"** means any day other than a Saturday, a Sunday, any statutory holiday observed in Toronto, Ontario or the following statutory holidays observed in New York State: President's Day, Memorial Day, Independence Day, Columbus Day and Thanksgiving.
- (c) **"Commissioner"** means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (d) **"Consent Agreement"** means this Consent Agreement entered into by the Respondents and the Commissioner together with all Schedules attached hereto;
- (e) **"Electronic TAM"** means television audience measurement undertaken by electronic means (typically some form of meters, for example, Mark II and PPM), rather than by diary or other manual means.
- (f) **"Mark II"** means the Mark II meter electronic TAM system, which is currently used by NMR Canada to measure television audiences in Canada.
- (g) **"New Meter Technology"** means Electronic TAM technology to be used by Newco in Canada, other than Mark II or PPM technology in Québec.
- (h) **"Newco"** means the corporation to be established pursuant to The Transaction, to be owned by NMR Canada (50% of shares, all non-voting) and BBM (50% of shares, all voting).
- (i) **"NMR Canada"** means Nielsen Media Research Limited, a corporation incorporated under the laws of Nova Scotia.
- (j) **"PPM"** means the portable personal meter Electronic TAM system, which is currently used by BBM to measure television audiences in the Province of Quebec.
- (k) **"Person"** means any individual, partnership, firm, corporation, association, trust, unincorporated organization, government, Crown corporation or other entity;

- (l) “**Respondents**” means BBM Canada and Nielsen Research Media Limited;
- (m) “**TAM**” means television audience measurement.
- (n) “**Transaction**” means the series of agreements between, amongst others, BBM and NMR Canada, whereby BBM and NMR Canada agree to establish Newco, and to transfer to Newco their respective electronic TAM businesses in Canada, with the exception, initially, of BBM’s PPM service in Quebec.
- (o) “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985 c. 19 (2nd Supp.) as amended;

Application

2. The Respondents, the sole shareholders of Newco, a company to be incorporated by them will, as part of the Transaction, take all actions within their respective powers to cause Newco to adopt, agree to adhere to and be bound by the terms hereof.

3. The provisions of this Consent Agreement shall apply to:

(a) each of the Respondents, and each officer, director, employee, or other Person acting for or on behalf of the Respondents with respect to any of the matters referred to in this Consent Agreement, and any successors and assigns of either of them; and all other Persons acting in concert or participating with either of them or any successor(s) or assign(s) in respect of the matters referred to in this Consent Agreement;

(b) following the completion of the Transaction, Newco, including each Affiliate or any other Person controlled by Newco and each officer, director, employee, or other Person acting for or on behalf of Newco with respect to any of the matters referred to in this Consent Agreement, and any successors and assigns of Newco; and all other Persons acting in concert or participating with Newco or any successor(s) or assign(s) in respect of the matters referred to in this Consent Agreement; and

(c) the Commissioner.

Technology Audit

4. BBM and Nielsen Canada agree to take all actions within their respective powers to cause Newco, and agree on behalf of Newco, a company to be incorporated, all of whose issued and outstanding shares they will hold, that as and when Newco implements collection of Electronic TAM data from a market in Canada by use of New Meter Technology, Newco shall commission an audit of the choice of such technology and the methodological practices of Newco in operating such system, by an independent third party with appropriate expertise in assessing such systems who is satisfactory to the Commissioner (“Third Party”). Such audit

shall be designed to determine whether the technology functions appropriately; whether the processes employed for collecting TAM data with such technology are appropriate; whether the technology and the processes together create audience estimates with the level of statistical reliability that is usual for the sample size deployed; and whether Newco follows the designed processes. If some aspects of such system have been appropriately audited elsewhere previously (including by or on behalf of the Media Rating Council in the United States) such previous work may be relied upon, as appropriate, as an aspect of the audit. Nothing in this Consent Agreement will require NMR Canada or its affiliates to release any confidential audit information which it is otherwise obligated not to release, and if any audit information is provided to the Third Party, the Third Party may be required by NMR to enter into a reasonable confidentiality agreement, a copy of which shall be provided to the Commissioner. The results of this audit shall be forwarded to BBM, NMR Canada and the Commissioner and available to BBM members upon request. BBM's current process with respect to choosing new technology is outlined in Schedule "A" to the Consent Agreement, but may be modified by BBM from time to time over the years, with notice to the Commissioner.

Major Adjustments to Electronic TAM Protocol Methodology

5. BBM and Nielsen Canada agree to take all actions within their respective powers to cause Newco, and agree on behalf of Newco, that as and when Newco makes major adjustments to its Electronic TAM protocol methodology after implementing New Meter Technology, Newco shall commission an audit of such revisions to its methodology by an independent third party with appropriate expertise who is satisfactory to the Commissioner, in order to determine whether such revised methodology, continues to create audience estimates with the level of statistical reliability that is usual for the sample size deployed, and whether Newco follows such revised methodology. The results of this audit shall be forwarded to BBM, NMR Canada and the Commissioner and available to BBM members upon request.

Metering New Markets

6. BBM agrees that as and when it reviews whether Newco should provide Electronic TAM data for a geographic market in Canada which is not now measured electronically, it will fairly and accurately follow its then established process for deciding whether to proceed with such electronic TAM in the market. Its current process is outlined in Schedule "B" to the Consent Agreement, but may be modified by BBM from time to time over the years, upon notice to the Commissioner. BBM further agrees that it will employ an independent third party, such as its auditor or similar organization who is satisfactory to the Commissioner, to determine whether BBM has accurately followed its processes for determining whether to proceed with such electronic TAM. The results of such audit shall be – forwarded to BBM, NMR Canada and to the Commissioner and available to BBM members upon request.

Members Treated Alike

7. BBM agrees that it will treat all persons eligible for membership in BBM alike, in that the same service(s) shall be available to such persons at a rate and on terms comparable to the rate and terms applicable to other similarly situated BBM members, whether or not they were BBM members prior to the Transaction.

Term of Consent Agreement

8. The Consent Agreement shall remain in force until the earlier of: (a) fifteen years from the date on which it is filed with the Competition Tribunal; and (b) the date on which another person establishes an Electronic TAM operation in Canada, upon which television advertising is bought and sold ,unless the parties agree to rescind or vary it.

General

9. Whenever a provision of this Consent Agreement requires an approval, consent, communication or action of the Commissioner, BBM or NMR Canada, such approval, consent, communication or action shall be, unless otherwise expressly stated herein, not unreasonably withheld or delayed, and words such as “consent” or “approval” or any action of a party indicated by the words “may” or “shall” shall be read together with the words “acting reasonably” immediately thereafter.

10. The Respondents and the Commissioner may agree to amend this Consent Agreement in any manner pursuant to subsection 106(1) of the Act or otherwise pursuant to this Consent Agreement.

11. The Commissioner and the Respondents may agree to extend or abridge any of the time periods for the doing of any thing specified in this Consent Agreement.

12. If the Commissioner's or a Respondent's approval, consent, communication or action is sought pursuant to this Consent Agreement, and such approval, consent, communication or action, is not granted promptly, the party seeking the approval, consent, communication or action, may apply to the Tribunal to determine if the other party is in breach of paragraph 9 hereof. Any alleged breach or failure to perform in accordance with this Consent Agreement may be the subject of an application to the Tribunal by the parties. Such application, shall, unless it is shown that respondent to such application has acted mala fide, contumaciously or in a manner contemptuous of this order, be:

- (a) limited to seeking an order directing compliance with this Agreement;
- (b) not be contested by the Respondent thereto as to the jurisdiction of the Tribunal to deal with such application; and
- (c) not seek an order for costs.

13. Notices, requests and other communications required or permitted pursuant to this Consent Agreement shall be in writing and shall be delivered by registered mail, courier or facsimile transmission to the persons set out in Schedule “C” to this Consent Agreement and shall be deemed to be received upon delivery or, in the case of facsimile transmission, on the next Business Day following transmission. A Respondent or the Commissioner may by written notice to the others change its address for notice purposes under this Consent Agreement but shall always provide a facsimile number.

14. This Consent Agreement constitutes the entire agreement between the Commissioner and the Respondents with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.

15. In the event that the Transaction is not proceeded with for any reason, this Consent Agreement shall be null and void *ab initio*.

16. This Consent Agreement may be executed in counterpart and by facsimile and each such counterpart shall constitute an original and all of which taken together shall constitute one and the same instrument, dated as of the date set forth below.

Senior Deputy ~~Commissioner~~ of Competition

By: (s) Gaston Jorré DATED this 23rd day of June, 2006.

BBM Canada

By: (s) Jim MacLeod DATED this 21 day of June, 2006.
Jim MacLeod

President and Chief Executive Officer

Nielsen Media Research Limited

By: (s) Mike Leahy DATED this 21 day of June, 2006.
Mike Leahy
President

SCHEDULE "A"

Choosing new technology

- RFP Evaluation Process**
- industry needs;
 - cost/benefit
 - expected life; and
 - market acceptance/support.

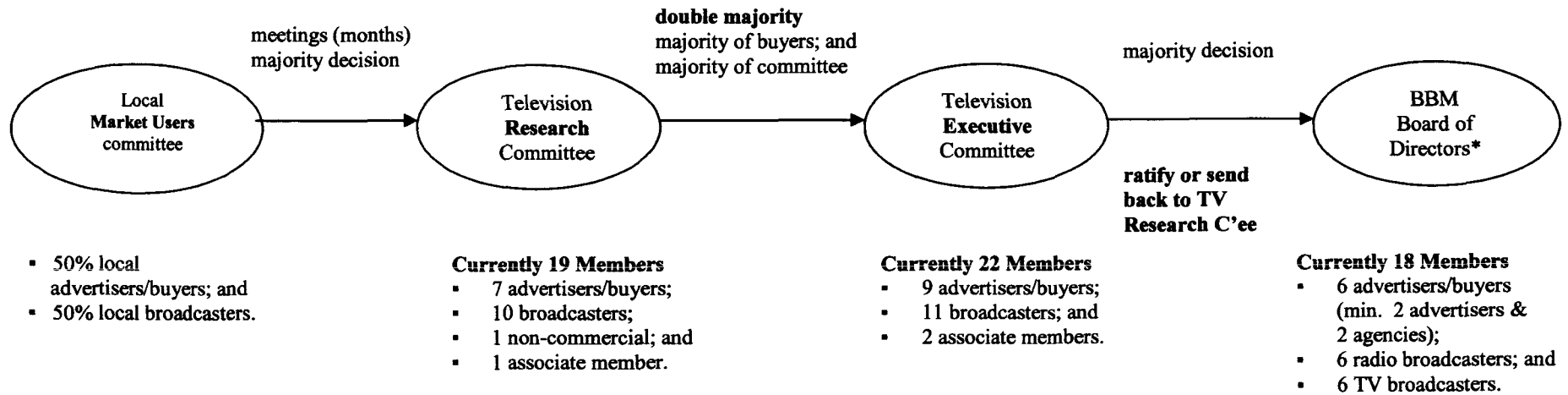


- Composition (to be determined) likely**
- advertisers/buyers;
 - broadcasters; and
 - technical analyst.

- Currently 18 Members**
- 6 advertisers/buyers (min. 2 advertisers & 2 agencies);
 - 6 radio broadcasters; and
 - 6 TV broadcasters.

SCHEDULE "B"

EXAMPLE: Metering new market



- * Board options:**
- first time – ratify or send back to TV Excc C’ee; and
 - second time – ratify or reject:

SCHEDULE "C"

Notices

(A) To the Commissioner:

Senior Deputy Commissioner of Competition (Mergers Branch)
Competition Bureau, Industry Canada
Place du Portage, Phase I, 50 Victoria Street
Gatineau, Quebec K1A 0C9

Facsimile: (819) 994-0998

With a copy to:

Director, Competition Law Division
Department of Justice Canada
Competition Bureau, Industry Canada
Place du Portage, Phase I, 50 Victoria Street
Gatineau, Quebec K1A 0C9

Facsimile: (819) 953-9267

(B) To BBM Canada :

BBM Canada
Suite 305 - 1500 Don Mills Road
Don Mills, Ontario
M3B 3L7

Attention: Jim MacLeod, President and Chief Executive Officer

Facsimile: (416) 445-8644

With a copy to:

Lang Michener LLP
181 Bay Street, Suite 2500
Toronto, ON M5J 2T7

Attention: James Musgrove

Facsimile: (416) 365-1719

(c) To Nielsen Media Research Limited:

160 McNabb Street
Markham, Ontario
L3R 4B8

Attention: President

Telecopier No: 905-475-7296

With a copy to

Fraser Milner Casgrain LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West
Toronto ON
M5X 1B2

Attention: Randal Hughes

Telecopier No: (416) 863-4592

CT - 2006-006

SCHEDULE "D"
COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985 c. C-34, as amended;
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Measurement Services of BBM Canada and Nielsen Media Research Limited;
AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to
section 105 of the *Competition Act*;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**BBM CANADA and
NIELSEN MEDIA RESEARCH LIMITED**

Respondents

CONSENT

THE PARTIES hereby irrevocably consent to the registration of a Consent Agreement pursuant to section 105 of the Competition Act, R.S.C. 1985, c. C-34, as amended, in the form to which this Schedule "C" is attached.

Senior Deputy Commissioner of Competition

By:(s) Gaston Jorré
Gaston Jorré
Senior Deputy Commissioner of Competition

Dated at Gatineau, Quebec
this 23rd day of June, 2006.

Competition Bureau, Industry Canada
Place du Portage, Phase I, 50 Victoria Street
Gatineau, Quebec K1A 0C9

Telephone: (819) 997-5300
Facsimile: (819) 953-5013

BBM Canada

By: (s) Jim MacLeod
Jim MacLeod, President and Chief Executive Officer

Suite 305 - 1500 Don Mills Road
Don Mills, Ontario
M3B 3L7

Telephone: (416) 847-2001
Facsimile: (416) 445-8644

Nielsen Media Research Limited:

160 McNabb Street
Markham, Ontario
L3R 4B8

By: (s) Mike Leahy

Mike Leahy
President

Telephone No.: 905-475-9595
Telecopier No.: 905-475-7296

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**BBM CANADA and
NIELSEN MEDIA RESEARCH LIMITED**

Respondents

CONSENT AGREEMENT
