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FEDERAL TRADE COMMISSION

[File No. 251 0049]

Omnicom Group Inc. ("Omnicom") and The Interpublic Group of Companies, Inc. ("IPG"); Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: "Omnicom/IPG; File No. 251 0049" on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment by overnight service to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex F), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kelse Moen (202-326-3373), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions*.

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "Omnicom/IPG; File No. 251 0049" on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write "Omnicom/IPG; File No. 251 0049" on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex F), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov*, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social

Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov* – as legally required by FTC Rule § 4.9(b) – we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN

THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Omnicom Group, Inc. ("Omnicom") designed to remedy the anticompetitive effects resulting from Omnicom's proposed acquisition of The Interpublic Group of Companies ("IPG"). Under the terms of the proposed Consent Agreement, Omnicom is prohibited from entering or attempting to enter into any agreement with any third party that hinders advertising based on political or ideological viewpoints and to cooperate with any FTC investigation or litigation relating to media buying services.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

Under the terms of the Agreement and Plan of Merger dated December 8, 2024, Omnicom will acquire IPG in exchange for $13.5 billion (the "Acquisition"). The Commission's Complaint alleges the proposed Acquisition, if consummated, would violate 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, by substantially lessening competition or tending to create a monopoly in the relevant market for media buying services. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be lost in these markets as a result of the

proposed Acquisition and eliminates Omnicom's ability to participate in any ongoing or future coordination in the market based on political or ideological viewpoints.

II. The Parties

Headquartered in New York, New York, Omnicom is the parent company of Omnicom Media Group and a network of creative advertising agencies, including BBDO, DDB, TBWA, and the DAS Group of Companies. Omnicom offers additional services, such as public relations, through other subsidiaries.

IPG is a global advertising agency headquartered in New York, New York. IPG is the parent company of IPG Mediabrands and several creative advertising agencies, most notably McCann Worldgroup and MullenLowe. IPG offers additional services, such as public relations, sports marketing, and talent representation, through other subsidiaries.

III. Relevant Product and Market Structure

Advertising agencies, such as Omnicom and IPG, provide a variety of marketing services to advertising entities. As part of these services, advertising agencies negotiate media purchases of advertising inventory across many types of media and make purchases on behalf of, or for later resale to, customers or potential customers (advertisers). There are currently six major global advertising holding companies ("holdcos"): Publicis, WPP, Omnicom, IPG, Dentsu, and Havas. Advertising holdcos are conglomerates of acquired independent agencies.

Advertising agencies' two primary services are creative advertising (e.g., slogans, branding, visual designs, commercial) and media buying (e.g., negotiating with television networks to place advertisements at primetime or buying search ads on Google). Media buying agencies, such as Omnicom's Hearts & Science, represent advertisers in negotiations with media publishers, such as television broadcasters, print, radio, and digital advertisers. The media buying agency negotiates pricing, ad placement, sponsorships, exclusives, and other terms and conditions on behalf of the advertiser. With

its advertiser client's input, the media buying agency will also typically prepare a media buying plan to determine where the advertiser will seek to place advertisements

The market for media buying services in the United States is concentrated due to the historical significance of agency scale in media buying negotiations. Because advertisers tend to view a certain threshold scale as necessary to achieve favorable results in negotiations with media publishers, advertisers seek larger media buying agencies to represent them during media buying negotiations. For global advertisers seeking to reach customers in the United States, the six holdcos possess the scale these advertisers seek to aid their negotiations with media publishers, especially non-digital publishers. Each advertiser typically contracts with a single holdco to handle its media buying needs in the United States.

IV. Competitive Effects of the Acquisition

This market is characterized by a history of coordination. Major advertisers have discussed and ultimately declined to advertise on certain websites and applications. These decisions appear to have been coordinated through one or more associations of advertising industry players, including ad agencies.

A coordinated refusal to deal among media buying services firms provides a direct economic benefit to those firms by ensuring they are not competitively disadvantaged when they decline the opportunity to reach potential audiences on boycotted platforms. These actions can have harmful downstream economic effects on media publishers that need access to advertising and associated revenue. They also harm media consumers, who are deprived of the viewpoints of publishers forced to scale back or eliminate their products due to lack of revenue. Coordination may further distort the advertising market by artificially restricting ad placement and raising the cost of advertising space that is not boycotted.

The proposed acquisition will cause the remaining competitors to face fewer

impediments to furthering and refining the ongoing coordination of placement of advertisements, monitoring any coordinated refusal, and punishing one another for taking actions that disrupt their coordination. The potential for such coordination is increasingly difficult to address if market structure is allowed to consolidate through merger.

V. Entry Conditions

De novo entry in the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed acquisition. Respondents and the other holdcos have dozens of offices across the globe, hundreds of advertiser clients, longstanding relationships with media publishers, and manage multi-billion-dollar portfolios of media spend that would be difficult for any competitor to replicate via entry or expansion.

VI. The Consent Agreement

The proposed Consent Agreement effectively remedies the competitive concerns raised by the Proposed Acquisition. Pursuant to the proposed Consent Agreement, the merged firm would be required to refrain from taking actions that would create or further coordination between Omnicom and any other media buyer. Specifically, Omnicom is barred from, unilaterally or in concert with other companies:

1) directing, because of the political or ideological viewpoints of a Media Publisher or the content running alongside that publisher's advertising inventory, its customers' advertising spend towards or away from that Media Publisher;

2) refusing, because of the political or ideological viewpoints or political content of a Media Publisher, an advertising customer's request to direct advertising to that Media Publisher;

3) refusing, because of an Advertiser's political or ideological viewpoints, to accept that Advertiser as a customer;

4) creating, proposing, or using "exclusion lists," whatever the source, that

differentiate between Media Publishers on the basis of political or ideological viewpoints to determine or direct advertisers advertising placements.

The proposed Consent Agreement provides that none of these prohibitions shall inhibit Omnicom from acting as an agent to carry out the independent wishes of each of its advertising customers. Advertising customers that have specific preferences about which Media Publishers their ads may be placed with may still express those preferences to Omnicom, and Omnicom may carry them out. If an Advertising customer, on its own initiative, wishes to design an exclusion list of its own, Omnicom may implement that exclusion list.

The proposed Consent Agreement also contains provisions to help ensure Omnicom complies with its obligations. It contains appropriate reporting, notice and access requirements, and obligates Omnicom to cooperate with the Commission in any investigation relating to the same industry or Omnicom's compliance with the proposed Consent Agreement.

The proposed Consent Agreement has a term of ten years.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Consent Agreement to aid the Commission in determining whether it should make the proposed Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission, Commissioner Meador recused.

April J. Tabor,

Secretary.

Statement of Chairman Andrew N. Ferguson

The Commission today authorizes the filing of an administrative complaint and

proposed decision and order requiring Omnicom Group Inc. ("Omnicom") and The Interpublic Group of Companies, Inc. ("IPG") to refrain from practices that damage competition in the media-buying services market post-merger. Omnicom is the third-largest provider of media buying services by revenue, and IPG is the fourth-largest.[1] The merger would increase concentration in this market and risk competitive harm.[2] Without the commitments obtained by the Commission, I have reason to believe the effect of Omnicom's proposed acquisition of IPG "may be substantially to lessen competition."[3]

Omnicom and IPG are two of the six major global advertising holding companies ("holdcos").[4] These advertising holdcos are conglomerates of various advertising agencies acquired over time.[5] Advertising agencies play an essential role in linking advertisers with media publishers, including television networks, print publications, websites, and social media platforms.[6] Advertisers understandably do not necessarily possess the in-house expertise to determine where their advertisements should be placed. They therefore hire advertising agencies not only to make many of these decisions for them, but also to represent advertisers in negotiations with media publishers on key terms such as pricing, ad placement, sponsorships, and exclusives.[7] In serving this role, the advertising agencies hold great influence over where advertisers market their products and spend their advertising dollars. The advertising agencies' decisions then are critical to the success and failure of publishers: most publishers would not be economically viable without sufficient advertising revenue. This impact is not limited to behemoth publishers like television networks, social-media platforms, and major websites. It also

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[1] Complaint ¶ 11, *In the Matter of Omnicom Group and The Interpublic Group of Cos.*, Matter No. 2510049 ("Complaint").
[2] *Id*. ¶ 13; see also Omnicom to Acquire Interpublic in Deal that Will Reshape Advertising Industry, Wall St. J. (Dec. 9, 2024), https://www.wsj.com/business/media/omnicom-to-acquire-interpublic-group-in-deal-that-will-reshape-advertising-industry-eed6f1b3.
[3] 15 U.S.C. 18.
[4] Complaint ¶¶ 6, 12.
[5] *Id*. ¶ 6.
[6] *Id*. ¶ 7.
[7] *Ibid*.

includes thousands of small, independent publishers who serve important, unique consumer needs, and are vital to the free exchange of ideas.

Advertising agencies compete on many dimensions, including in the market no broader than media-buying services.[8] "Media-buying services" refers to the purchase of advertising space from publishers for or on behalf of advertisers.[9] Historically, agencies needed scale to achieve favorable results in negotiations with publishers, encouraging consolidation in the market to today's so-called "Big Six."[10]

Omnicom's proposed acquisition of IPG would consolidate the media-buying services market even further. It would bring together the third- and fourth-largest companies in this market to form a new number one, while reducing the number of significant competitors from six to five.[11] As a result, concentration in this market would increase. One of the great dangers of mergers such as this one is they increase the risk of collusion among the remaining firms, which can lead to higher prices, reduced output, and other actions that harm consumers such as degraded quality.[12] This risk is what is often referred to as "coordinated effects"—a merger leads to reduced competition not because of a single firm's unilateral actions, but because a group of firms coordinate their behavior in anticompetitive ways.[13]

The rationale for this longstanding concern about the increased risk of coordinated effects from higher concentration is straightforward. The ease of coordination is inversely related to the number of firms in a market. Collusion and

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[8] *Id*. ¶ 9.
[9] *Ibid*.
[10] *Id*. ¶¶ 8, 12.
[11] *Id*. ¶¶ 11, 13.
[12] Phillip Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their Application ¶ 916 (rev. ed. 2024) ("Areeda & Hovenkamp") ("Today the most orthodox and probably the commonly asserted rationale for challenging mergers is that under appropriate circumstances they can facilitate express collusion or oligopoly interaction among the various firms in the post-merger market, including both those that participated in the merger and those that did not."); see also *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.,* 509 U.S. 209, 229–30 (1993) ("In the § 7 context, it has long been settled that excessive concentration, and the oligopolistic price coordination it portends, may be the injury to competition the Act prohibits.").
[13] Complaint ¶ 15.

coordination are easier in concentrated markets with few participants than in unconcentrated markets with many participants. Collusion, of course, is "the supreme evil of antitrust."[14] Section 7 of the Clayton Act therefore prohibits mergers that "create an appreciable danger of collusive practices in the future."[15] Decades-old precedent establishes that a merger that reduces the number of competitors from six to five, like this one, can, in some circumstances, suffice to establish a section 7 violation.[16] That is not to say a six-to-five merger always violates section 7. This precedent merely establishes that increased consolidation raises antitrust concerns, and the reduction of a market from six to five competitors increases the risk of collusion in that market. Leading antitrust scholars across the spectrum have similarly identified mergers that increased the risks of coordinated effects as suspect.[17] And the antitrust agencies' joint merger guidelines dating back to 1992 have uniformly declared that a merger which increases the risk of coordination can violate section 7.[18] The 2023 Merger Guidelines' similar declaration

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[14] *Verizon Commc'ns v. Law Offs. of Curtis V. Trinko*, 540 U.S. 398, 408 (2004).
[15] *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 719 (D.C. Cir. 2001) (cleaned up).
[16] *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 905 (7th Cir. 1989) (Posner, J.) (affirming preliminary injunction and explaining that "[t]he supply of industrial dry corn was already highly concentrated before the acquisition, with only six firms of any significance. The acquisition has reduced that number to five. This will make it easier for leading members of the industry to collude on price and output….").
[17] See *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986) (Posner, J.) ("When an economic approach is taken in a section 7 case, the ultimate issue is whether the challenged acquisition is likely to facilitate collusion."); D. Daniel Sokol & Sean P. Sullivan, The Decline of Coordinated Effects Enforcement and How to Reverse It, 76 Fla. L. Rev. 265, 268, and 271 (2024) ("The greatest threat today is … *oligopoly* power: the ability of a few competitors to do by coordinated conduct the same things a monopolist would do."; "The need for vigilance against coordinated effects in merger review is a point upon which opposing philosophies have found common ground.") (emphasis in original); Herbert Hovenkamp, Prophylactic Merger Policy, 70 Hastings L.J. 45, 51–55 (2018).
[18] Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines section 2.1 (April 2, 1992) ("It is likely that market conditions are conducive to coordinated interaction when the firms in the market previously have engaged in express collusion and when the salient characteristics of the market have not changed appreciably since the most recent such incident.") ("1992 Merger Guidelines"); Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines section 2.1 (Apr. 8, 1997) (same); Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines section 7.2 (Aug. 19, 2010) ("The Agencies presume that market conditions are conducive to coordinated interaction if firms representing a substantial share in the relevant market appear to have previously engaged in express collusion affecting the relevant market, unless competitive conditions in the market have since changed significantly. … Previous collusion or attempted collusion in another product market may also be given substantial weight if the salient characteristics of that other market at the time of the collusion are closely comparable to those in the relevant market."). The Department of Justice's 1982 Merger Guidelines likewise already declared that "Where only a few firms account for most of the sales of a product, those firms can in some circumstances coordinate, explicitly or implicitly, their actions in order to approximate the performance of a monopolist." Dep't of Justice, Merger Guidelines Part I (June 14, 1982) ("1982 DOJ Merger Guidelines").

that "[m]ergers can violate the law when they increase the risk of coordination," then reiterates what decades of precedent, scholarship, and previous guidelines have long pronounced.[19]

One factor courts, scholars, and the antitrust agencies have long considered in evaluating the risk of coordinated effects resulting from a merger is whether there is a history of actual or attempted collusion in the industry at issue.[20] A history of collusion, explicit or tacit, demonstrates firms have been willing and able to coordinate their actions in the past, making it more likely they will do so again after a merger, particularly if the merger changes market structure in a way that favors further coordination. The Commission must "investigate whether facts suggest a greater risk of coordination than market structure alone would suggest."[21]

Here, the Complaint alleges such a history of market participants coordinating their conduct. In recent years, the advertising industry has been plagued by deliberate, coordinated efforts to steer ad revenue away from certain news organizations, media outlets, and social media networks.[22] This type of coordination risks America's largest

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[19] Dep't. of Justice & Fed. Trade Comm'n, Merger Guidelines at 2.3 (Dec. 18, 2023) ("2023 Merger Guidelines").

[20] *FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278, 313 (D.D.C. 2020) (citing and quoting discussion of past collusion in an industry from section 7.1 of the antitrust agencies' 2010 Horizontal Merger Guidelines in addressing market vulnerability to coordination); *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 234 (S.D.N.Y. 2020) (similar); 2023 Merger Guidelines section 2.3A (outlining three "primary factors" for assessing the increased risk of coordination—1) the existence of a highly concentrated market, 2) prior actual or attempted attempts to coordinate, and 3) elimination of a maverick.); 1992 Merger Guidelines section 2.1 (recognizing that past collusion in an industry can be one of the factors giving rise to concerns that following a merger, the remaining firms may coordinate activities); 1982 DOJ Merger Guidelines Part III ("The Department is more likely to challenge a merger in the following circumstances: [] Firms in the market previously have been found to have engaged in horizontal collusion regarding price, territories, or customers, and the characteristics of the market have not changed appreciably since the most recent finding").

[21] 2023 Merger Guidelines at 3.

[22] Complaint ¶¶ 17–18, 20; see also The mysterious group that's picking Breitbart apart, one tweet at a time, Wash. Post (Sept. 22, 2017), https://www.washingtonpost.com/lifestyle/style/the-mysterious-group-thats-picking-breitbart-apart-one-tweet-at-a-time/2017/09/22/df1ee0c0-9d5c-11e7-9083-fbfddf6804c2_story.html; 20-Plus Brands Have Stopped Advertising on Tucker Carlson Tonight After Immigration Comments, Ad Week (Dec. 20, 2018), https://www.adweek.com/convergent-tv/20-plus-brands-have-stopped-advertising-on-tucker-carlson-tonight-after-immigration-comments/; Snapchat And Pinterest Benefited From The Facebook Boycott – But Can They Keep It Going?, Ad Exchanger (Feb. 9, 2021), https://www.adexchanger.com/social-media/snapchat-and-pinterest-benefited-from-the-facebook-boycott-but-can-they-keep-it-going/; Advertisers continue to flee Twitter as civil rights groups call for a

companies' economic weight unwittingly being enlisted for the political and ideological aims of certain advertising industry groups and political activists who in turn avoid the costs they would incur if they merely refused to deal on their own.[23] Indeed, a Congressional investigation[24] concluded the World Federation of Advertisers' Global Alliance for Responsible Media ("GARM") banded together the most powerful firms in their industry to choke off the vital advertising revenue of those who disagreed with them, disseminated information they believed untrue, or refused to deplatform those who did.[25] The World Federation of Advertisers' members, which include Omnicom and IPG, account for roughly 90 percent of global advertising spending.[26] Both Omnicom and IPG also are founding members of GARM.[27]

GARM has disbanded under a cloud of litigation and congressional investigation.[28] The Commission has not been a party to those actions, and I take no position on any possible violation of the antitrust laws by GARM. The factual allegations, however, if true, paint a troubling picture of a history of coordination—that the group sought to marshal its members into collective boycotts to destroy publishers of content of which they disapproved.[29]

Pre-closing merger analysis is necessarily a prediction of the likelihood the risks

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boycott, Engadget (Nov. 4, 2022), https://www.engadget.com/twitter-losing-advertisers-boycott-193748977.html.

[23] Complaint ¶ 21.

[24] Interim Staff Report of the Comm. on the Judiciary U.S. House of Representatives, GARM's Harm: How the World's Biggest Brands Seek to Control Online Speech (July 10, 2024) ("Interim Staff Report").

[25] Complaint ¶ 18.

[26] *Ibid*.

[27] Global Alliance for Responsible Media Launches to Address Digital Safety, World Federation of Advertisers (June 18, 2019), https://wfanet.org/knowledge/item/2019/06/18/Global-Alliance-for-Responsible-Media-launches-to-address-digital-safety.

[28] Complaint ¶ 19; see also Statement on the Global Alliance for Responsible Media (GARM), World Federation of Advertisers (Aug. 9, 2024), https://wfanet.org/leadership/garm/about-garm ("[R]ecent allegations that unfortunately misconstrue [GARM's] purpose and activities have caused a distraction and significantly drained its resources and finances. WFA therefore is making the difficult decision to discontinue GARM activities.").

[29] See, e.g., Interim Staff Report at 17, 25, 33 (alleging efforts by GARM to drive advertisers away from popular media personalities like Joe Rogan, harm news outlets that reported stories GARM leaders felt were untrue, and coordinate with government agencies to decide which information should be excised from public discourse).

posed by a merger will come to pass.[30] When participants in the industry of a proposed merger have a history of actual or attempted collusion, like alleged for the instant transaction, the Commission must be particularly vigilant.[31] In a market like advertising, where we are presented not only with increasing concentration in the relevant market, but also a troubling history of collusion to the detriment of consumers and the free conduct of American political discourse and elections, that duty is especially pressing.[32]

GARM was neither the beginning nor the end of harmful and potentially unlawful collusion in this industry.[33] Numerous other industry groups and private organizations have publicly sought to use the chokepoint of the advertising industry to effect political or ideological goals.[34] Clandestine pressure campaigns and private dealings among these parties are less well documented but pose the serious risk of harm and illegality. The evidence in this case gives me sufficient "reason to believe"[35] that, in the absence of any intervention, the proposed acquisition is likely to substantially reduce competition and may enhance the vulnerability to coordinated effects that already exists in this particular industry. The history relayed above convinces me that likelihood is of serious concern to the American public.

As already highlighted, the Commission, in reviewing a merger that effects an increase in concentration, is always duty-bound to address the risk of collusion.[36] As a leading antirust treatise makes clear, "evidence of historical attempts at collusion or

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[30] *Brown Shoe Co. v. United States*, 370 U.S. 294, 332–33 (1962) (a court must "predict the probable future consequences of this merger.").
[31] Complaint ¶ 16.
[32] *Id.* ¶¶ 19–22.
[33] *Id.* ¶ 19.
[34] See Interim Staff Report of the H. Comm. on Small Business, Small Business: Instruments and Casualties of the Censorship-Industrial Complex 42 (Sept. 10, 2024), https://smallbusiness.house.gov /uploaded files/house_ committee_on_small_business_cic_report_september_2024.pdf (describing NewsGuard and other organizations' steering of advertising revenue with "an unavoidable partisan lens.").
[35] 15 U.S.C. 45(b); see also *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 241 (1980); *Boise Cascade Corp. v. FTC*, 498 F. Supp. 772, 779 (D. Del. 1980).
[36] Antitrust Law Developments 375 (9th ed. 2022) ("a major goal of the merger laws is to prevent markets from consolidating sufficiently to create or enhance the conditions that permit firms to engage in coordinated interaction"); Complaint ¶ 15.

evidence that collusion is actually occurring in the present could be considered as 'exacerbating' factors sufficient to warrant a merger challenge under circumstances where structural evidence alone would be insufficient."[37] Evidence of past collusion or attempted collusion has played a key role in judicial decisions enjoining mergers under section 7 for many years before the Commission adopted the 2023 Guidelines.[38] And in negotiating settlements, the Commission may impose stringent remedies based on past collusion in the industry.[39]

In this case, to resolve the Commission's concerns, the parties have proposed a remedy in the form of conduct restrictions that will mitigate this merger's anticompetitive effects. The history of collusion in the market for media-buying services, and the increased potential for collusion post-merger, make this a rare instance where the imposition of a behavioral remedy is appropriate.

Specifically, the proposed decision and order prohibits Omnicom and IPG from entering into or maintaining any agreement or practice that would steer advertising dollars away from publishers based on their political or ideological viewpoints. To be sure, coordinated action by advertising agencies against politically disfavored publishers is tantamount to an agreement not to compete on quality—but obtaining such a ruling in litigation could take years. Today's decision and order eliminates the potential for costly litigation while ensuring that Omnicom and IPG abide by the antitrust laws post-merger.

Unlike many conduct remedies, the Commission is well prepared to monitor the ones imposed here. As I pointed out last month, one flaw of conduct remedies is that they can sometimes be difficult to monitor or enforce.[40] Here, however, the Commission can

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[37] Areeda & Hovenkamp ¶ 917.
[38] See, e.g., *FTC v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 65 (D.D.C. 1998) ("Although the Court is not convinced from the record that the Defendants actually engaged in wrongdoing, it is persuaded that in the event of a merger, the Defendants would likely have an increased ability to coordinate their pricing practices.").
[39] See Opinion of the Commission, *In re Coca-Cola Co.*, 117 F.T.C. 903, 946 (June 13, 1994).
[40] Statement of Chairman Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak and Comm'r Mark R. Meador, *In the Matter of Synopsys, Inc./Ansys, Inc.*, Matter No. 2410059, at 7 (May 28, 2025).

monitor Omnicom's and IPG's compliance. Collusion in the advertising industry remains the subject of active investigations.[41] Any future attempts at collusion by Omnicom and IPG are unlikely to remain hidden. Compliance reporting provisions will give the Commission insight into the merged firm's activities. Likewise, advertisement publishers have a powerful incentive to alert the Commission if they believe that they are the object of unlawful collusion. Moreover, this Agreement requires Omnicom and IPG to cooperate with the Commission in any investigation relating to media-buying services[42]—and I have already noted that investigating and policing censorship practices that run afoul of the antitrust laws is a top priority of the Trump-Vance FTC.[43]

Today's settlement does not limit either advertisers' or marketing companies' constitutionally protected right to free speech—the same freedom that the head of GARM, the organization that Omnicom and IPG founded, once described as an "extreme global interpretation of the US Constitution" and "'principles for governance' … from 230 years ago (made by white men exclusively)."[44] The decree goes to great lengths to avoid interfering with the free, regular course of business between marketing firms and their customers. Omnicom-IPG may choose with whom it does business and follow any lawful instruction from its customers as to where and how to advertise.[45] No one will be forced to have their brand or their ads appear in venues and among content they do not wish. The prohibited behavior is limited to "the supreme evil of antitrust"—collusion with other firms and the creation of pre-made "exclusion lists" to encourage advertisers to join *de facto* boycotts coordinated by advertising firms and other third parties.[46]

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[41] See, e.g., Press Release, Attorney General Ken Paxton Opens Investigation Into Possible Conspiracy by Advertising Companies to Boycott Certain Social Media Platforms (Nov. 21, 2024), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-opens-investigation-possible-conspiracy-advertising-companies-boycott.
[42] Decision and Order, *In the Matter of Omnicom Group, Inc. and The Interpublic Group of Companies, Inc.*, Matter No. 2510049, Part VI ("Decision and Order").
[43] Testimony of Chairman Andrew N. Ferguson before the H. Comm. on Appropriations, Subcomm. on Financial Services and General Government, at 26 (May 15, 2025).
[44] Interim Staff Report at 2.
[45] Decision and Order, Part II.
[46] *Ibid*.

Today, Omnicom and IPG have committed themselves to help stop that sort of coordination in their industry. This consent agreement will help mitigate the dangers inherent in a consolidated national advertising market. I hope the conditions imposed on this merger will encourage all advertising firms to adopt similar practices and thereby reduce the temptation to collude to the detriment of their customers, independent journalists, small and independent media companies, consumers, and the American public square.

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