revenue they would achieve in the competitive market. In order for BTV and other independent programmers to survive after the proposed merger, the Commission must impose a condition prohibiting anticompetitive advertising bundling in order to ensure the merger is in the public interest.

Accordingly, the Commission should prohibit from selling advertising on non-Comcast owned Business News Channels[175] such as BTV together with advertising on affiliated[176] Comcast networks as part of a bundled sale of advertising by Comcast without the consent of the competing Business News Channel. Similarly, the Commission should prohibit Comcast from offering discounts or other inducements to advertisers that are tied directly or indirectly to reducing or refraining from advertising purchases on any Business News Channel other than CNBC or any other similar Comcast Business News Channel. Only in this manner can Comcast be prevented from foreclosing competitors to Comcast's programming networks, specifically CNBC, from access to advertisers by eliminating BTV's ability to compete for advertisers on a level playing field.

[175] A "Business News Channel" shall be defined as a video programming network whose programming is focused on business and financial news reporting and analysis during the hours from 6:00 AM through 4:00 PM in the U.S. Eastern Time Zone, whenever U.S. securities and commodities exchanges are open and operating.

[176] Affiliate shall have the meaning set forth in 47 U.S.C. § 522(2).

7. The Commission should prohibit bundling for carriage of programming by Comcast

The Commission has recognized the potential harm from programming available for purchase through programmer-controlled packages.[177] As set forth in the Marx Report, the Transaction will provide Comcast with the incentive to discriminate against BTV by offering programming bundling opportunities involving CNBC. Accordingly, the Commission should prohibit Comcast from offering to any MVPD or requiring any MVPD to accept any combination of NBCU's and Comcast's network programming, as a condition of receiving more favorable licensing terms than Comcast offers on an "a la carte" basis.

[177] Tying Order; see also News Corp.

I. CONCLUSION

Comcast and GE have failed to meet their burden to demonstrate that the Merger serves the public interest. The Commission must deny the Merger or as presently proposed. In the alternative, if it determines to grant the Application, it can only do with the imposition of the conditions set forth in Exhibit 2 to prevent the anti-competitive harm to BTV, the last independent source of news.

Respectfully submitted,

Stephen Díaz Gavin
Kevin J. Martin
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2550 M St., NW
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Dated: June 21, 2010

CERTIFICATE OF SERVICE

I, Jillian Gibson, a legal secretary at Patton Boggs LLP, hereby certify that on this 21st day of June, 2010, I caused true and correct copies of the foregoing Petition to Deny to be served by first-class mail on the following individuals:

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Jillian Gibson

Jillian Gibson

EXHIBIT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications for Consent to the Transfer of Control of Licenses	)	
	)	Docket No. MB 10-56
General Electric Company, Transferor,	)	
	)	
To	)	
	)	
Comcast Corporation, Transferee	)	

DECLARATION UNDER PENALTY OF PERJURY OF ANDREW LACK

I, Andrew Lack, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. I am the Chief Executive Officer of Multimedia of Bloomberg L.P. Bloomberg TV ("BTV") is wholly owned by Bloomberg L.P.

2. BTV is an internationally recognized provider of financial news and information. BTV provides 24 hour business news programming delivered over cable and available online. Although BTV has existed for nearly 15 years, it has invested significantly in the last two years to revitalize its news programming and become a stronger provider of news and information. As a result, BTV is fast becoming a formidable competitor to CNBC, the dominant provider of televised business news.

3. I reside in Bronxville, New York, a city presently served by broadcast stations owned and operated by NBC.

4. Other BTV and Bloomberg L.P. members of management reside in communities presently served by NBC Universal owned-and-operated broadcast stations and/or Comcast Corporation's cable systems.

5. I am familiar with the contents of the foregoing *Petition to Deny*. The factual assertions made in the petition are true to the best of my knowledge and belief.

Dated: June 21, 2010

Andrew Lack

EXHIBIT 2

REMEDIES FOR BUSINESS NEWS CHANNELS

I. Neighborhooding of Business News Channels and other Remedies

A. Carriage Obligations

1. A "Business News Channel" shall be defined as a video programming network whose programming is focused on business and financial news reporting and analysis during the hours from 6:00 AM through 4:00 PM in the U.S. Eastern Time Zone, whenever U.S. securities and commodities exchanges are open and operating.

2. As soon as possible, and in no case later than six months after the Order by the Federal Communications Commission granting approval of this Application and any decree entered into with the Department of Justice, whichever is later (hereafter such regulatory approvals the "Decision"), Comcast must reorganize its channel placement alignment so that other Business News Channels are located contiguous and adjacent to CNBC at each channel position where CNBC is carried (so-called "Neighborhooding")

3. Comcast must carry, or continue to carry, on all its content distribution platforms all Business News Channels, as that term is defined herein, currently carried by Comcast, specifically including Bloomberg and Fox Business ("Existing Business News Channels").

4. All Business News Channels carried on Comcast systems shall be carried on the same tier of service as CNBC at each channel position where CNBC is carried.

5. These obligations in Section A shall be subject to judicial enforcement in the U.S. District Court.

B. Prohibited Practices

1. Comcast is prohibited from selling advertising on non-Comcast owned Business News Channels together with advertising on affiliated[1] Comcast networks as part of a bundled sale of advertising by Comcast without the consent of the owner of the unaffiliated Business News Channel.

2. Comcast is prohibited from offering discounts or other inducements to advertisers that are tied directly or indirectly to reducing or refraining from advertising purchases on any Business News Channel other than CNBC or any other similar Comcast Business News Channel.

3. Comcast is prohibited from offering any discount or other inducement to any MPVD or other distributor of news content by electronic means on condition that said MVPD or distributor provide Business News Channels less favorable terms or conditions of carriage.

4. Comcast is prohibited from imposing any restriction, limitation or disincentive on the ability of competing Business News Channels to offer their content on other platforms, including but not limited to the Internet.

---

[1] Affiliate shall have the meaning set forth in 47 U.S.C. § 522(2).

5. Comcast is prohibited from offering to any MVPD or requiring any MVPD to accept any combination of NBCU's and Comcast's network programming, as a condition of receiving more favorable licensing terms than Comcast offers on an "a la carte" basis.

6. Comcast is prohibited from diminishing or degrading the terms or level of service or quality of signal delivery of any Business News Channel on any of its content-distribution platforms (e.g. cable, Internet, mobile devices) without the consent of the owner of said Business News Channel.

7. These obligations in Section B shall be subject to judicial enforcement in the U.S. District Court.

C. Specific Conditions regarding Terms of Carriage

1. Comcast must provide Business News Channels with non-discriminatory terms of carriage, including the provision of subscription fees.

2. Commercial Arbitration Remedy for Business News Channels

a. An aggrieved Business News Network may submit a dispute over the terms and conditions of carriage on an MVPD (i) that Comcast currently manages or controls or (ii) in which Comcast, on or after the date of adoption of this Order and during the period of this condition, acquires either an attributable interest, an option to purchase an attributable interest, or one that would permit management or control of the MVPD (a "Covered MVPD").

b. Beginning ninety (90) days prior to, and up to five (5) days following, the expiration of any existing contract, or ninety (90) days after a first time request for carriage, a Business News Network may notify the Covered MVPD and Comcast, as appropriate, that it intends to request commercial arbitration to determine the terms of the new carriage agreement ("Notice").

c. Upon receiving timely Notice of the Business News Network's intent to arbitrate, Comcast shall ensure that the Covered MVPD allows continued carriage under the same terms and conditions of the expired affiliation agreement.

d. Carriage of the disputed programming during the period of arbitration is not required for parties that are not Existing Business News Channels.

e. The period following the Covered MVPD's receipt of timely Notice of the Business News Network's intent to arbitrate and before the Business News Network's filing for formal arbitration under the rules of the American Arbitration Association ("AAA"), shall constitute a "cooling off" period during which time negotiations are to continue. The AAA shall name an arbitrator to resolve the dispute.

f. The Business News Network's formal demand for arbitration, which shall include the Business News Network's "final offer," may be filed with the AAA no earlier than the fifteenth business day after the expiration of the Business News Network's contract and no later than the end of the twentieth business day following such Notice. If the News Network makes a timely demand, Comcast shall ensure that the Covered MVPD participates in the arbitration proceeding.

g. The arbitrator will notify the Comcast and the covered MVPD upon receiving the Business News Network's formal filing.

h. Comcast shall ensure that the Covered MVPD files a "final offer" with the arbitrator within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the Business News Network.

i. The Business News Network's final offer may not be disclosed until the arbitrator has received the final offer from the Covered MVPD.

j. A final offer shall be in the form of a contract for the carriage of the programming for a period of at least three years.

3. Rules of Arbitration for Existing Business News Channels

a. The arbitration will be decided by a single arbitrator under the expedited procedures of the commercial arbitration rules, then in effect, of the AAA (the "Rules"), excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth herein. The arbitrator shall issue his decision within 45 days from the date that the parties submit a best and final offer.

b. The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.

c. The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.

d. In all instances where the matter in issue is the subscription fee, the arbitrator is required to choose only between the fee proposed by the complaining Business News Channel and Comcast; there shall be no compromise award.

e. The "baseline" for fair market value of proposed subscription fees, in all matters involving such fees, shall be the price that Comcast/NBC Universal charge other MVPDs for CNBC.

f. Under no circumstances will the arbitrator choose a final offer that does not permit the Business News Network to recover a reasonable share of the costs of acquiring the programming at issue.

g. To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession), including, but not limited to:

i. current or previous contracts between MVPDs and Business News Networks in which Comcast does not have an interest;
ii. evidence of the relative value of such programming compared to the Business News Network programming at issue (e.g., advertising rates, ratings);
iii. contracts between MVPDs and Business News Networks on whose behalf Comcast has negotiated, made before Comcast acquired control of the programming acquired in the NBCU transactions;

iv. internal studies or discussions of the imputed value of Business News Networks programming in bundled agreements;
v. other evidence (including internal discussions) of the value of Business News Network programming;
vi. changes in the value of programming agreements for Business News Networks in which Comcast does not have an attributable interest;
vii. changes in the value or costs of the Business News Network's programming, or in other prices relevant to the relative value of the Business News Network's programming (e.g., advertising rates).

h. The arbitrator may not consider offers prior to the arbitration made by the MVPD and the Business News Networks for the programming at issue in determining the fair market value.

i. If the arbitrator finds that one party's conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party's costs and expenses (including attorney fees) against the offending party.

j. Following resolution of the dispute by the arbitrator, to the extent practicable, the terms of the new affiliation agreement will become retroactive to the expiration date of the previous affiliation agreement.

k. If carriage of the Business News Network's programming has continued uninterrupted during the arbitration process, and if the arbitrator's award requires a higher amount to be paid than was required under the terms of the expired contract, the MVPD will make an additional payment to the Business News Network in an amount representing the difference between the amount that is required to be paid under the arbitrator's award and the amount actually paid under the terms of the expired contract during the period of arbitration. If carriage of the Business News Network's programming has continued uninterrupted during the arbitration process, and if the arbitrator's award requires a smaller amount to be paid than was required under the terms of the expired contract, the News Network will credit the MVPD with an amount representing the difference between the amount actually paid under the terms of the expired contract during the period of arbitration and the amount that is required to be paid under the arbitrator's award.

l. The decision by the arbitrator, including any decision reached pursuant to Section C.4 below, shall be subject to judicial enforcement in the U.S. District Court but not judicial review.

4. Special Provision with Respect to Subscription Fees

a. In the event of a dispute with respect to subscription fees, the arbitrator shall hear and determine such dispute within 90 days of the filing of a complaint with the arbitrator.

b. The arbitrator shall be required in such cases to use "baseball style arbitration," whereby the arbitrator is required to choose only between the fee proposed by the complaining Business News Channel and Comcast; there shall be no compromise award.

c. The "baseline" for consideration of proposed subscription fees, in all matters involving such fees, shall be the price that Comcast/NBC Universal charge other MVPDs for CNBC.

d. Each party shall submit one final and best offer to resolve such subscription fee disputes and the arbitrator shall select the offer that is considered to the proper resolution.

D. Term of Conditions

These conditions set forth in this Section II will expire on that date which is twenty (20) years from the date of the Decision.

II. Alternative Remedy

In the event the remedies outlined in Section I above are not adopted, and specifically in the event that "neighborhooding" of Business News Channels is not required as a condition of the approval of the Merger, outlined in Section I is not ordered, as an alternative condition of the approval of the Merger, Comcast must divest its control of and ownership interest in CNBC within six (6) months after the Decision.

EXHIBIT 3

ECONOMIC REPORT
ON THE PROPOSED
COMCAST–NBC UNIVERSAL TRANSACTION

BY
LESLIE M. MARX
Professor of Economics, Duke University
and former Chief Economist, Federal Communications Commission

June 21, 2010

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A. Executive summary

1) This report provides an economic analysis of the likely competitive effects of the proposed Comcast–NBC Universal joint venture by which Comcast will acquire a controlling interest in NBC Universal ("the Transaction"), particularly those effects related to TV news programming in general and TV business news programming in particular. The report also discusses conditions that could alleviate the anticipated competitive harms associated with the Transaction. Following this executive summary, I describe the markets affected by the Transaction, the manner in which the Transaction adversely affects TV business news, and remedies designed to preserve competition and diversity in this market.

2) It is my conclusion that the Transaction will lessen competition in the market for televised business news. The Transaction creates the incentive and increases the ability for Comcast to reduce the distribution, viewership, and revenue of unaffiliated business news networks that compete with networks that Comcast will control as a result of the Transaction, such as CNBC, the leading TV business news programming network,[1] in order to increase advertising revenues and license fees for its affiliated networks. Absent appropriate conditions, such actions will harm competition in the TV business news market and reduce the diversity and quality of news and information sources available to consumers.

3) The Transaction would integrate the dominant business news network with the dominant video programming distributor in numerous key geographic markets, producing strong incentives for the combined firm to foreclose business news rivals and deprive consumers of TV business news of independent sources of news and information. This would contravene the FCC's commitment to both competition and diversity in the media marketplace.

4) Given the structure of the TV business news industry, the Transaction creates the incentive and increases the ability for actions by Comcast, the nation's leading MVPD, that would have adverse competitive effects on four related, but distinct groups: programmers, MVPD distributors, viewers, and advertisers. Due to Comcast's ownership of the dominant TV business news network, CNBC, non-Comcast business news networks will face the possibility of discrimination in channel location, tiering, or carriage on Comcast systems, restrictions on their ability to distribute programming on other platforms such as the Internet, foreclosure from non-Comcast systems as a result of carriage bundling

[1] The importance of CNBC in the portfolio of NBCU programming is apparent from a comparison of CNBC's operating profit with those of NBCU's other cable networks. In response to the FCC's information request, NBCU reported 2010 operating profit for its cable networks CNBC, USA, Sci Fi, Bravo, Oxygen, A&E, Sleuth, Chiller, Universal HD, MSNBC, and the Weather Channel. {{ [redacted] }}

by Comcast, or foreclosure from advertising revenue as a result of advertising bundling by Comcast. Other MVPD distributors will face increased leverage by Comcast in carriage negotiations because of the additional programming that will come under Comcast's control. Viewers of TV business news will lose diversity of news and information sources if non-Comcast business news networks are foreclosed. Lastly, advertisers who seek to advertise to viewers of TV business news will suffer in negotiations with Comcast if non-Comcast business news networks no longer offer an alternative medium to reach their target audience.

5) Programmers typically receive two sources of revenue for advertising-supported networks such as CNBC and Bloomberg TV: (i) a per-subscriber subscription fee paid by the MVPD to the networks being carried on its systems; and (ii) advertising revenues for the sale of commercial time on the network. These two sources of revenue are interdependent – the inability to attract or maintain adequate viewership, for example, undermines the network's ability to secure both subscription fees from MVPDs and advertising revenue. Moreover, the loss of subscription and/or advertising revenue affects the ability of the network to invest in content that would attract viewers, further diminishing its revenue stream. On-line distribution is an additional, emerging arena for the distribution of TV business news programming. [[ ]]

6) The qualitative and quantitative evidence provided in this report concerning MVPD distribution of TV business news networks in the US confirms that TV business news programming is a stand-alone antitrust market as well as part of the larger general television news market.

7) My review confirms that the Transaction increases the incentive and ability for Comcast to obstruct actual or potential competitors to networks that it owns or operates, including providing poor channel positioning, placing the competitor on a high-price premium tier, refusing carriage, leveraging its control over a large number of networks, including NBCU networks, to cause other MVPDs to discriminate against the competitors, bundling the sale of advertising of programming on its large number of networks with advertising that it obtains as a condition of its contract of carriage with the competitors, and restricting the on-line distribution of competitors' networks, which for business news networks would reduce the availability of these additional sources of news and information to consumers.

8) This report provides empirical evidence and analysis that points to at least five possible avenues through which Comcast and/or the Comcast-NBCU joint venture will have the incentive and ability to harm competition in the TV business news programming market by foreclosing competitors either from adequate distribution or from the ability to generate adequate advertising revenues (see Section C).

9) First, as discussed in Section C.2, the Transaction gives Comcast the incentive and ability to prefer CNBC in channel positioning and to exclude unaffiliated competitors from channel positions close to CNBC, including failing to move these competitors to theme-based channel neighborhoods (or genres) when such reorganizations are made (as is the current trend). CNBC's current market share is estimated in the 85% range.[2] The failure to place Bloomberg TV in a business news neighborhood with CNBC decreases the probability that a CNBC viewer who wishes to examine other TV business news will find Bloomberg TV. [[ ]][3] The value of channel position in terms of increasing viewership is well understood in the industry and has been recognized by Congress.[4] Requiring that business news networks be placed in a channel neighborhood with CNBC using adjacent and contiguous channels increases the likelihood that Bloomberg TV will be able to provide effective competition to CNBC.

10) Second, as discussed in Section C.3, the Transaction gives Comcast the incentive and ability to require that unaffiliated competitors of CNBC be carried only on less widely subscribed tiers or to refuse to carry them on Comcast systems. There is substantial economics literature documenting reduced carriage of unaffiliated competing networks following the vertical integration of an MVPD and programmer. Although the parties have claimed that threshold switching rates are such that *upstream* foreclosure (refusal to license must-have programming to competitive MVPDs) is not a concern, I have performed an analysis based on evidence specific to this case that shows that threshold switching rates are such that *downstream* foreclosure through Comcast's refusal to carry Bloomberg TV in a fair and non-discriminatory manner clearly is a risk to competition posed by the Transaction. In the absence of appropriate conditions or other constraints, including the requirement of carriage of Bloomberg TV by Comcast, the Transaction presents a substantial risk of the foreclosure of Bloomberg TV from distribution on fair, reasonable, and non-discriminatory terms over Comcast systems.

---

[2] Here, market share is defined in terms of advertising revenue for the business news networks CNBC, Bloomberg TV, Fox Business Network, and CNBC World. [[ ]]

[3] See Table 12. As described in Table 12, the regression analyses reported there define a channel neighborhood as plus or minus five channels. Data limitations prevent an analysis of the effects of channel adjacency, which would presumably be larger. This analysis does not imply that a requirement that Bloomberg TV be placed in a five-channel neighborhood, rather than in a business news neighborhood involving adjacent and contiguous channels, would be adequate to address potential harms associated with channel placement.

[4] See the Cable Television Consumer Protection and Competition Act of 1992 at paragraphs 15 and 19. In addition, the UK's regulatory authority, Ofcom, has addressed concerns related to the abuse of channel placement by requiring Sky, the dominant UK MVPD, to place networks in their appropriate genre section of the electronic program guide. (Based on notes of interviews of Lindsey Oliver, Head of International Distribution, Bloomberg TV, April 15, 2010) See also Ofcom's "Code of practice on electronic programme guides," available at http://www.ofcom.org.uk/tv/ifi/codes/EPGcode/epgcode.pdf, accessed April 15, 2010. See also Ofcom's "Guidance on ITC's Bundling Remedies," paragraph 14, available at http://www.ofcom.org.uk/tv/ifi/guidance/bundling_remedies/, accessed April 15, 2010.

11) Comcast currently supplies approximately 24% of the MVPD households in the US and in excess of 50% in many major financial-center DMAs that are particularly important for a business news network. See Tables 1 and 2. [[ ]][5]

12) Third, as discussed in Section C.4, the Transaction increases the incentive and ability of Comcast to place restrictions on the on-line distribution of network programming as a condition of carriage. When applied to news and information programming, including business news programming, such restrictions reduce the diversity and accessibility of on-line news and information. In particular, the Transaction will accelerate current movements towards making certain on-line content available only to MVPD subscribers. Such restrictions on the ability of content providers to distribute their content on-line would deprive Bloomberg TV of a distribution platform for attracting additional viewers and maintaining the loyalty of existing viewers,[6] and would even potentially affect Bloomberg's ability to provide Bloomberg TV to Bloomberg's Professional Service (Terminal) Subscribers.[7] In addition, Comcast will have an incentive to degrade the quality of Bloomberg TV's streaming video so as to negatively affect the experience of viewers visiting Bloomberg TV's website. Accordingly, it is appropriate to prohibit the use by Comcast of restrictions, limitations, or disincentives related to the distribution of news and information programming, including business news, on other platforms, including the Internet, and to prohibit Comcast from diminishing or degrading the quality of signal delivery for news and information programming, including business news, on any of its content-distribution platforms without the consent of the programmer.

13) Fourth, as discussed in Section C.5, the Transaction increases the set of networks that Comcast-NBCU can bundle for carriage by other MVPDs, potentially excluding from carriage networks that are substitutes for Comcast-NBCU networks, such as unaffiliated business news networks.[8] I use regression analyses to show that ownership by a major multi-network owner increases a network's homes passed and that for most major multi-network owners, including Comcast, the carriage effect

[5] [[ ]]

[6] See Israel, M. and M. L. Katz (2010b), "The Comcast/NBCU Transaction and Online Video Distribution," Comments in FCC MB Docket No. 10-56, filed May 4, 2010, at Section II.D.1, providing evidence that on-line distribution of video content is complementary with distribution through traditional MVPDs and that on-line distribution increases viewing through traditional MVPDs.

[7] Subscribers to Bloomberg's Professional Service (Terminal) receive access to "real-time and historical financial news and information for central banks, investment institutions, commercial banks, government offices and agencies, law firms, corporations and news organizations in over 160 countries" over the Internet via a service known as Bloomberg Anywhere. (http://about.bloomberg.com/product.html, accessed May 21, 2010)

[8] Concerns that large programmers can force their less popular networks onto platforms by threatening to withhold their most popular networks, leaving fewer available positions on the platform for independent networks, are recognized in the UK and addressed through Ofcom provisions that prohibit the bundling of networks for carriage. (Based on notes of interviews of Lindsey Oliver, Head of International Distribution, Bloomberg TV, April 15, 2010) See also Ofcom's 1998 Annual Report, "Economic Regulation: Competition Policy," available at http://www.ofcom.org.uk/static/archive/itc/itc_publications/annual_report/1998/economic_regulation.asp.html, accessed June 16,2010. See also Ofcom's "Guidance on ITC's Bundling Remedies," available at http://www.ofcom.org.uk/tv/ifi/guidance/bundling_remedies/, accessed April 15, 2010.

increases with the number of owned networks. Bloomberg TV is likely to be among the networks crowded out of carriage as a result of the Transaction because Bloomberg TV provides viewers and advertisers with a strong substitute for CNBC and CNBC World, and so it is appropriate to restrict such bundling practices.

14) Fifth, as discussed in Section C.6, the Transaction increases the incentive and ability of Comcast-NBCU to injure Bloomberg TV by bundling advertising on networks valued by financial services and other advertisers targeting affluent adult, predominantly males (including CNBC, The Golf Channel, and {{ [redacted] }}, thereby decreasing Bloomberg TV's advertising revenue.[9] {{ [redacted] }} Thus, if the transaction were to be approved, it would be appropriate to restrict Comcast's ability to bundle advertising on non-Comcast-owned networks such as Bloomberg TV together with advertising on affiliated Comcast networks, as well as to restrict Comcast's ability to offer discounts and other incentives to advertisers for refraining from advertising on non-Comcast-owned networks such as Bloomberg TV.

15) Because of the five potential harms described above, action by competition authorities is required to protect competition in the TV business news programming market and preserve the diversity of sources for news and information available to consumers. All of the adverse effects of the Transaction discussed above could be avoided through a requirement that CNBC be divested as a condition of approval. Short of this, these adverse effects could be ameliorated through adoption of the conditions discussed below, although these conditions would require regulatory and/or judicial supervision to ensure compliance.

[9] The UK recognizes concerns related to transactions that increase market power in advertising and has addressed those concerns through a Contract Rights Renewal (CRR) remedy that ensures advertisers' discounts on ad prices were not adversely affected by a 2003 merger that created a dominant network of regional commercial broadcasters. See Ofcom's "Technical background guide to advertisers and buyers' rights under the CRR remedy," available at http://www.ofcom.org.uk/tv/ifi/guidance/ITV_airtime_sales/tech_crr/crr_remedy_pdf.pdf, accessed April 15, 2010.

B. Background and market definition

B.1. General features of the cable TV programming industry

B.1.1. Production of TV video programming

16) TV video programming networks include broadcast networks and cable networks. Broadcast networks are advertising-supported television signals that are broadcast over the air by television stations, including ABC, CBS, NBC, FOX, and other networks. Cable networks are programming networks distributed (typically nationally) through MVPDs. These MVPDs include cable providers, satellite providers, local exchange carriers, and others. For a list of major cable networks, see Table 3. Cable networks can be divided into advertising-supported networks such as those listed in Table 3, advertising-free premium channels, such as HBO and Showtime, and pay-per-view channels that allow on-demand viewing of certain programming.

17) The production of video programming is characterized by significant economies of scale. Programming costs involve fixed costs that can be large for some types of programming, including news programming, and low or zero marginal costs associated with serving an additional viewer.[10] This characterization is confirmed by the applicants, who claim that the provision of video programming is characterized by economies of scale and scope: once a program is produced, the "out of pocket" cost of making it ready for distribution at more times on more platforms is low. Therefore, the incentive to produce more and better programming increases with the availability of distribution to a wider audience.[11] The parties claim that this effect is particularly important for programming in the area of local news and information, among other categories.[12]

18) Given the low marginal cost of distributing television programming, the goal of content providers is to deliver the same content to as many different outlets as possible. This strategy helps share the fixed costs over as many subscribers as possible, increasing the programming's significance and profitability.

19) It follows that an artificial reduction in the distribution or viewership of a cable network can reduce its incentives to invest in program quality, *i.e.*, to incur the fixed costs of production. Thus, placement in a disadvantageous channel position or tier or foreclosure from carriage in certain geographic areas not

[10] See, for example, Waterman, David and Andrew A. Weiss (1997), *Vertical Integration in Cable Television*, Cambridge, MA: MIT Press, especially pp.60-63.

[11] See GE and Comcast's "Applications and Public Interest Statement," January 26, 2010, p.70, available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020394237, accessed May 11, 2010.

[12] See GE and Comcast's "Applications and Public Interest Statement," p.40ff.