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Record Companies Settle FTC Charges of Restraining Competition in CD Music Market

All Five Major Distributors Agree to Abandon Advertising Pricing Policies

FOR RELEASE

May 10, 2000

The Federal Trade Commission announced today that it has reached separate settlement agreements with Universal Music and Video Distribution, Sony Corp. of America, Time-Warner Inc., EMI Music Distribution and Bertelsmann Music Group (BMG), the five largest distributors of recorded music who sell approximately 85 percent of all compact discs (CDs) purchased in the United States to end their allegedly illegal advertising policies that affected prices for CDs. The proposed agreements would settle FTC charges that all five companies illegally modified their existing cooperative advertising programs to induce retailers into charging consumers higher prices for CDs, allowing the distributors to raise their own prices. The complaints are the culmination of an extensive industry-wide investigation by the FTC of these practices. The FTC's orders would require all the companies to discontinue their "Minimum Advertised Price" (MAP) programs in their entirety for seven years. The orders contain additional provisions to preclude the companies from maintaining the anticompetitive status quo.

"The FTC estimates that U.S. consumers may have paid as much as \$480 million more than they should have for CDs and other music because of these policies over the last three years. These settlements will eliminate these policies and should help restore much-needed competition to the retail music market, consisting of \$15 billion in annual sales. Today's news should be sweet music to the ears of all CD purchasers," said Chairman Robert Pitofsky.

According to the FTC's complaints, the companies required retailers to advertise CDs at or above the MAP set by the distribution company in exchange for substantial cooperative advertising payments. The restrictions applied to all advertising, including television, radio, newspaper and signs and banners within the retailers' own stores. The restrictions even applied to advertising funded entirely by the retailer. Under the policies, large music retailers would lose millions of dollars a year if they failed to follow the MAP restrictions.

The complaints detail how MAP policies were adopted to squelch discount music retailing. In the early 1990s, many new music retailers, including major consumer electronics stores, started to sell CDs at low prices to gain customers and market share. The more traditional music retailers also lowered their prices to compete.

This retail "price war" led to lower CD prices for U.S. consumers as prices for popular CDs fell as low as \$9.99. The record companies adopted the MAP policies in 1995-96 to extinguish this "price war," the Commission contends.

The FTC alleges these MAP policies achieved their unlawful objective. The "price war" ended shortly after the policies were adopted and the retail price of CDs increased. The distributors then increased their own prices, and since 1997, wholesale prices for music have increased.

The FTC's complaints state that the MAP policies imposed by each distributor violated Section 5 of the FTC Act, as unreasonable restraints of trade under the so-called "Rule of Reason," and that the MAP policies together were unlawful "facilitating practices" which increase the risk of collusion or interdependent conduct by the market participants.

The proposed settlements would prohibit all five companies from linking any promotional funds to the advertised prices of their retailer customers for the next seven years. For the next 13 years after that, the companies would be prohibited from conditioning promotional money on the prices contained in advertisements they do not pay for. The agreements also would prohibit the companies from terminating relationships with any retailer based on that retailer's prices.

The Commission vote to accept the proposed consent agreements was 5-0. The five Commissioners issued a [statement](#) in which they said: "The Commission has unanimously found reason to believe that the arrangements entered into by the five largest distributors of prerecorded music violate the antitrust laws in two respects. First, when considered together, the arrangements constitute practices that facilitate horizontal collusion among the distributors, in violation of Section 5 of the Federal Trade Commission Act. Second, when viewed individually, each distributor's arrangement constitutes an unreasonable vertical restraint of trade under the rule of reason.

"In the future, the Commission will view with great skepticism cooperative advertising programs that effectively eliminate the ability of dealers to sell product at a discount. The Commission will, of course, consider per se unlawful⁽¹⁾ any arrangement between a manufacturer and its dealers that includes an explicit or implied agreement on minimum price or price levels, and it will henceforth consider unlawful arrangements that have the same practical effect of such an agreement without a detailed market analysis, even if adopted by a manufacturer that lacks substantial market power."

An announcement regarding the proposed consent agreements will be published in the Federal Register shortly. These agreements will be subject to public comment for 30 days, until June 9, after which the Commission will decide whether to make them final. Comments should be addressed to the FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

[Copies](#) of the complaints, consent agreements, the Commissioners' separate statement and an analysis of each agreement to aid public comment are available from the FTC's web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; toll free at 877-FTC-HELP (877-382-4357); TDD for the hearing impaired 1-866-653-4261. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.

Endnote:

1. Commissioners Swindle and Leary have previously stated that the Supreme Court should reassess the applicability of the per se rule to the practice when the appropriate case arises. *Nine West Group Inc.*, Dkt. No. C-3937 (Statement of Commissioners Orson Swindle and Thomas B. Leary). However, they agree that, so long as this per se rule is the law, summary treatment is appropriate for resale price agreements and other agreements with the same practical effect.

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Related Cases

[Sony Music Entertainment, Inc.](#)

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[Universal Music & Video Distribution Corp.and UMG Recordings, Inc.](#)

[BMG Music, d/b/a BMG Entertainment, In the Matter of](#)

[Capitol Records, Inc., d/b/a EMI Music Distribution, et al., In the Matter of](#)

Related Actions

[Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony, Mozelle W. Thompson, Orson Swindle, and Thomas B. Leary - Concerning the Market for Prerecorded Music in the United States](#)

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