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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

POLYGRAM HOLDING, INC., a corporation,

DECCA MUSIC GROUP LIMITED, a corporation,

DOCKET NO.

9298

UMG RECORDINGS, INC., a corporation, and

**UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP., a
corporation.**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that PolyGram Holding, Inc., a corporation, Decca Music Group Limited, a corporation, UMG Recordings, Inc., a corporation, and Universal Music & Video Distribution Corp., a corporation, hereinafter sometimes collectively referred to as "respondents," have violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

1. Respondent PolyGram Holding, Inc. ("PolyGram Holding") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 825 Eighth Avenue, New York, New York 10019.
2. Respondent Decca Music Group Limited ("Decca Music") is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 347-353 Chiswick High Road, London, England W4 4HS. Decca Music is successor to, and was formerly named, The Decca Record Company Limited ("Decca Records").
3. Respondent UMG Recordings, Inc. ("UMG") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2220 Colorado Avenue, Santa Monica, California 90404. UMG is successor to, and was formerly named, PolyGram Records, Inc. ("PolyGram Records").
4. Respondent Universal Music & Video Distribution Corp. ("UMVD") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10 Universal City Plaza, Universal City, California 91608. UMVD became the successor corporation to PolyGram Group Distribution, Inc. ("PolyGram Distribution") when PolyGram Distribution merged with UMVD on May 1, 2000. PolyGram Holding, Decca Music, UMG, and UMVD are all subsidiaries or affiliates of Vivendi Universal S.A., a French corporation.

5. Warner Communications Inc. ("Warner") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 75 Rockefeller Plaza, New York, New York 10019. Warner is a subsidiary of AOL Time Warner Inc.

6. Warner, acting directly and through certain subsidiaries (collectively, "Warner Music Group"), has for many years been engaged in the business of producing, marketing, and distributing pre-recorded music and videos in the United States and worldwide.

7. PolyGram N.V. ("PolyGram"), a Netherlands corporation, acting directly and through certain subsidiaries (collectively, "PolyGram Music Group"), was for many years engaged in the business of producing, marketing, and distributing pre-recorded music and videos in the United States and worldwide. Among the firms composing the PolyGram Music Group were PolyGram Holding, Decca Records, PolyGram Records, and PolyGram Distribution. In December 1998, PolyGram was acquired by The Seagram Company Ltd., a Canadian corporation. Two years later, The Seagram Company Ltd. merged with Vivendi S.A. and Canal Plus S.A., to form Vivendi Universal S.A.

8. The acts and practices of Warner, PolyGram Holding, Decca Records (predecessor to Decca Music), PolyGram Records (predecessor to UMG), and PolyGram Distribution (predecessor to UMVD), including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

9. The Three Tenors is a musical joint venture consisting of renowned opera singers Luciano Pavarotti, Placido Domingo, and Jose Carreras. Beginning in 1990, The Three Tenors have come together every four years at the site of the World Cup soccer finals for a combination live concert and recording session. The concert promoter is responsible for producing the master recordings. Prior to each performance, the concert promoter selects one (or more) of the major music/video distribution companies to distribute compact discs, cassettes, videocassettes, and videodiscs derived from the master recordings.

10. Distribution rights to the original 1990 Three Tenors performance, entitled *The Three Tenors*, were acquired by PolyGram Music Group. Distribution rights to the follow-up performance, *The Three Tenors in Concert 1994*, were acquired by Warner Music Group.

11. In a contract dated December 19, 1997, Warner Music Group and PolyGram Music Group agreed to collaborate in the distribution of audio and video products derived from the next Three Tenors World Cup concert, scheduled for Paris on July 10, 1998. Among the important undertakings of the parties were the following:

(a) Warner Music Group would secure from the concert promoter worldwide audio, home video, and television broadcast rights to the 1998 Three Tenors concert (the "Rights");

(b) Warner Music Group would exploit the Rights within the United States;

(c) Warner Music Group would license to PolyGram Music Group the right to exploit the Rights outside of the United States;

(d) Warner Music Group and PolyGram Music Group would each be entitled to 50

percent of the net profits and net losses derived from the worldwide exploitation of the Rights (as well as from the production of a Greatest Hits album and/or a Box Set incorporating the 1990, 1994, and 1998 Three Tenors albums);

(e) PolyGram Music Group would reimburse Warner Music Group for 50 percent of any advance paid to the concert promoter; and

(f) other expenses incurred by either Warner Music Group or PolyGram Music Group in the exploitation of the Rights (*e.g.*, manufacture, advertising, marketing, and distribution) would be deducted from revenues for purposes of calculating net profits (losses).

12. Warner Music Group and PolyGram Music Group were concerned that the audio and video products that would be derived from the upcoming Three Tenors concert in Paris would be neither as original nor as commercially appealing as the earlier Three Tenors releases.

13. In 1998, Warner and certain other members of Warner Music Group, and PolyGram Holding, Decca Records, PolyGram Records, and PolyGram Distribution, entered into an agreement not to compete. PolyGram Holding, Decca Records, PolyGram Records, and PolyGram Distribution agreed not to discount and not to advertise the 1990 Three Tenors album and video from August 1, 1998 through October 15, 1998. In return, Warner and certain other members of Warner Music Group agreed not to discount and not to advertise the 1994 Three Tenors album and video from August 1, 1998 through October 15, 1998. The parties referred to their agreement not to compete worldwide during this period as the "moratorium."

14. The third Three Tenors album and video, entitled *The Three Tenors -- Paris 1998*, were released in the United States on August 18, 1998, and were distributed in the United States by Warner Music Group. During the moratorium period, August 1 through October 15, PolyGram Holding, Decca Records, PolyGram Records, and PolyGram Distribution refrained from discounting or advertising the 1990 Three Tenors album and video in the United States. During this period, Warner and Warner Music Group likewise refrained from discounting or advertising the 1994 Three Tenors album and video in the United States .

15. The moratorium agreement was not reasonably necessary to the formation or to the efficient operation of the joint venture between Warner Music Group and PolyGram Music Group.

16. The effect of the moratorium agreement among Warner, certain other members of Warner Music Group, PolyGram Holding, Decca Records, PolyGram Records, and PolyGram Distribution, as alleged herein, was to restrain competition unreasonably, to increase prices, and to injure consumers.

Violations Alleged

17. As set forth in Paragraph 13 above, Warner, PolyGram Holding, Decca Records (predecessor to Decca Music), PolyGram Records (predecessor to UMG), and PolyGram Distribution (predecessor to UMVD) agreed to restrict price competition, in violation of Section 5 of the Federal Trade Commission Act, as amended.

18. As set forth in Paragraph 13 above, Warner, PolyGram Holding, Decca Records (predecessor to Decca Music), PolyGram Records (predecessor to UMG), and PolyGram Distribution (predecessor to UMVD) agreed to forgo advertising, in violation of Section 5 of the Federal Trade Commission Act, as amended.

19. The acts and practices of respondents, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on October 29, 2001, at 10:00 A.M. in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceeding in this matter that the respondents are in violation of Section 5 of the Federal Trade Commission Act, as amended, as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to, an order that requires the following:

1. Each respondent shall cease and desist, either directly or indirectly, from entering into, seeking to enter into, continuing, or implementing any agreement to fix, raise, or stabilize prices or price levels, or to engage in any other pricing action in connection with the sale of any audio product or any video product.
2. Each respondent shall cease and desist, either directly or indirectly, from entering into, seeking to enter into, continuing, or implementing any agreement that prohibits, restricts, impedes, or places limitations on any truthful, non-deceptive advertising or promotion for any audio product or any video product.
3. Each respondent shall mail a copy of the Commission's complaint and order in this matter, along with a letter from such respondent's chief executive officer stating that it will abide by the terms of this order, to each of its directors, officers, and employees.
4. Each respondent shall file periodic compliance reports with the Commission.
5. Each respondent shall take such other measures as are appropriate to correct or remedy, or to prevent the recurrence of, the anticompetitive practices engaged in by respondents.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of July, 2001, issues its complaint against said respondents.

By the Commission, Chairman Muris recused.

Donald S. Clark
Secretary