



**Federal Trade
Commission**
Protecting America's

Consumers 1, 2001

FTC Charges Warner Music and Universal Music

Companies Collaborated to Raise Prices for Three Tenors Albums; Warner Settles Charges, Universal to Face Administrative Trial

The Federal Trade Commission today charged Warner Communications, Inc., and several subsidiaries of Vivendi Universal S.A., with illegally agreeing to fix prices for audio and video products featuring The Three Tenors. A settlement with Warner will bar future agreements to fix prices or restrict advertising. Vivendi faces an administrative trial.

According to the FTC complaint detailing the charges, in 1997, Warner and PolyGram (predecessor to Vivendi Universal), two of the largest music distribution companies in the world, formed a joint venture to distribute compact discs, cassettes, videocassettes, and videodiscs to be derived from the next public performance of The Three Tenors. Warner would distribute the 1998 releases in the United States, and PolyGram would distribute the 1998 releases outside of the United States. As the concert date approached, both companies became concerned that the new products would be neither as original nor as commercially appealing as products already available to consumers. In an effort to shield the new products from competition, Warner and PolyGram agreed not to discount and not to advertise certain of their catalog products for a limited period of time, the complaint says. The FTC alleges that the agreement violated federal law.

"Naked price fixing agreements such as this are bad for consumers and cannot be immunized by mere association with an otherwise lawful joint venture," said Joseph Simons, Director of the FTC's Bureau of Competition. "Participation in a joint venture is not a license to fix prices on products outside of the joint venture. This case is particularly troublesome because the companies involved here are large, sophisticated, and should have known better," Simons said.

Warner, a subsidiary of AOL Time Warner Inc., is based in New York. The other firms charged in the complaint are subsidiaries of Vivendi Universal S.A., a French corporation. Vivendi Universal is the successor corporation to PolyGram following a December 2000 merger.

According to the FTC complaint, The Three Tenors have come together every four years since 1990 at the site of the World Cup soccer finals for a combination live concert and recording session. Distribution rights to the original 1990 Three Tenors recordings, titled The Three Tenors were acquired by PolyGram Music Group. Distribution rights to the follow-up recordings, The Three Tenors in Concert 1994, were acquired by Warner Music Group. The firms 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. The agency alleges that acting on concern that the 1998 recordings would not be as well received as the first two performances, Warner and PolyGram implemented an illegal "moratorium" on competitive activity. With the third Three Tenors album and video scheduled for release in August 1998, the parties agreed that PolyGram would not discount or advertise the 1990 Three Tenors album and video from August 1, 1998 to October 15, 1998. In return, Warner would not discount or advertise the 1994 Three Tenors album and video during this period. The effect of the agreement, "was to restrain competition unreasonably, to increase prices, and to injure consumers," the FTC complaint says.

Warner has agreed to settle the charges. The settlement will bar Warner from entering into any agreements with competitors that fix prices or restrict advertising. Following a trial by an administrative law judge, the FTC is seeking an order that would bar the Vivendi subsidiaries from engaging in similar behavior.

The Commission vote to accept the proposed consent agreement with Warner was 4-0, with Chairman Muris not participating and Commissioner Mozelle Thompson issuing a separate statement. Commissioner Thompson said, "As I said in my statement following the issuance of The Antitrust Guidelines for Collaborations Among Competitors, I believe that joint ventures can enable companies to expand into foreign markets, fund expensive innovation and research efforts, and lower costs to the benefit of industry and consumers alike. But an otherwise legitimate joint venture may not shield price fixing or any other form of anticompetitive restraint if the restraint is not both reasonably related to the venture and reasonably necessary to achieve the venture's procompetitive objectives. The Commission's complaint against Warner Communications and the accompanying consent order that we accepted for public comment today underscore this important principle of joint venture law."

An announcement regarding the proposed consent agreement will be published in the Federal Register shortly. The agreement will be subject to public comment for 30 days, until August 30, 2001, after which the Commission will decide whether to make it final. Comments may be addressed to 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.

The Commission vote to issue the Administrative complaint against the Vivendi subsidiaries was 4-0, with Chairman Muris not participating.

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant actually has violated the law.

Copies of the Vivendi complaint and the Warner complaint, consent agreement and an analysis of the 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.

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Related Documents:

File No. 001 0231

In the Matter of Warner Communications Inc.

Agreement Containing [Consent Order](#), Including the [Decision and Order](#)

[Complaint](#)

[Analysis](#) of Proposed Consent Order to Aid Public Comment

[Statement](#) of Commissioner Thompson

Docket No. 9298

In the Matter of Polygram Holding, Inc.; Decca Music Group Limited; UMG Recordings, Inc.; and Universal Music & Video Distribution Corp.

[Administrative Complaint](#)

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