



## Federal Trade Commission Protecting America's Consumers

June 28, 2002

### Administrative Law Judge Bars Distributors of Three Tenors Media from Agreeing to "Fix, Raise, or Stabilize" Prices

#### Respondents also Prohibited from Agreements to Limit Ads for Audio or Video Products

In an initial decision filed on June 20, 2002, and announced today, Administrative Law Judge (ALJ) James P. Timony ordered a series of companies, all of which are subsidiaries of French corporation Vivendi Universal S.A., among other things to cease and desist from entering into "any combination, conspiracy, or agreement" - with producers or sellers at wholesale of audio or video products - to "fix, raise, or stabilize prices or price levels" in connection with the sale in or into the United States of any audio or video product. In addition, under the terms of the order, the respondents, which include PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings, Inc.; and Universal Music & Video Distribution Corp., are barred from entering into agreements that prohibit, restrict, regulate, or otherwise place any limitation on "any truthful, nondeceptive advertising or promotion in the United States" for any audio or video product.

The judge's order comes following the conclusion of administrative proceedings conducted to address allegations in an administrative complaint issued against the respondents alleging that they entered into an agreement with Warner Communications, Inc. to fix prices and limit advertising for a certain period of time for the first two of three compact disc and video products developed from a series of concerts by The Three Tenors - Luciano Pavarotti, Placido Domingo, and Jose Carreras. According to the Commission's complaint, which is detailed below, the agreement, while made in association with an otherwise legal joint venture between the companies, violated Section 5 of the FTC Act by illegally reducing competition in the U.S. market for the audio and video products in question. The judge's initial decision is subject to

review by the full Commission on its own motion, or at the request of either party. If an appeal from the initial decision is not perfected within 30 days after it is served, or after a timely notice of appeal is filed, whichever is later, and the Commission does not take certain other actions detailed in its Rules, the initial decision will become the decision of the Commission.

#### Respondents in the Administrative Matter

PolyGram Music Group (PolyGram) originally was comprised of the firms PolyGram Holding, Inc.; Decca Records (predecessor to Decca Music); PolyGram Records, and PolyGram Distribution. In December 1998, PolyGram was acquired by Seagram Company, Ltd., a Canadian Corporation, which, two years later, merged with Vivendi S.A. and Canal Plus S.A. to form Vivendi. PolyGram Records was the predecessor to UMG Recordings, Inc. (UMG), and PolyGram Distribution was the predecessor to Universal Music & Video Distribution Corp. (UMVD).

#### The Commission's Complaint

According to the Commission's complaint, the agreement between Warner Communications Inc. (Warner), which settled the charges, (see press release dated July 31, 2001) and PolyGram involved audio and video products featuring The Three Tenors. Beginning in 1990, The 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 complaint stated that 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 made from the master recordings. The complaint further stated that distribution rights to the original 1990 Three Tenors performance, titled "The Three Tenors," were acquired by PolyGram, and distribution rights to the follow-up performance, "The Three Tenors in Concert 1994," were acquired by Warner.

In 1997, the complaint alleged, Warner and PolyGram agreed to collaborate to distribute the audio and video products derived from the next Three Tenors World Cup concert, scheduled for Paris on July 10, 1998. The complaint alleged that the companies agreed that Warner would distribute the 1998 release in the United States; PolyGram would distribute the 1998 release outside of the United States; and the firms would share all costs, profits, and losses equally. The Commission's complaint did not challenge the formation or basic structure of the Warner/PolyGram joint venture.

As the concert approached, the complaint alleged, Warner and PolyGram became concerned that the audio and video products resulting from the Paris concert would not be as original or as commercially appealing as the earlier Three Tenors releases. To reduce competition from these earlier releases, the companies allegedly adopted what they called a "moratorium" agreement. Through this agreement, the complaint alleged, PolyGram would not discount or advertise the 1990 Three Tenors album and video from August 1, 1998 through October 15, 1998 (the "moratorium period"); in return, Warner would not discount or advertise the 1994 Three Tenors album and video during the same interval.

The third Three Tenors album and video, both titled "The Three Tenors - Paris 1998," were released on August 18, 1998, and distributed in the United States by Warner. The complaint alleged that during the moratorium period, PolyGram refrained from discounting or advertising the 1990 Three Tenors album and video, and Warner likewise refrained from discounting or advertising the 1994 Three Tenors album and video. Finally, the complaint alleged that the moratorium agreement was not reasonably necessary to the formation or to the efficient operation of the joint venture between Warner and PolyGram. Rather, the complaint alleged, the effect of the moratorium agreement was to restrain competition unreasonably, to increase prices, and injure consumers.

#### Additional Order Components

In addition to prohibiting agreements like those alleged in the Commission's complaint, the ALJ's order specifically defines the types of agreements that would not be in violation of its terms. These include: 1) a written agreement to set the price (or price levels) for any audio or video product when such an agreement is "reasonably related" to a lawful joint venture agreement and "reasonably necessary" to achieve its pro-competitive benefits; and 2) a written agreement that regulates or restricts the advertising or promotion of any audio or video product when such an agreement is "reasonably related" to a lawful joint venture agreement and "reasonably necessary" to achieve its pro-competitive benefits.

In addition, it would not be a violation for a respondent and a seller (any other wholesaler) to "enter into, attempt to enter into, or comply with a written agreement to set the prices or price levels" of any *jointly produced* audio or video product or to agree to restrict the advertising or promotion of such a *jointly produced* product. Further, the companies would not be in violation of the order if they entered into, attempted to enter into, or complied with a written agreement, industry code, or industry ethical standard that is: 1) intended to prevent or discourage the advertising, marketing, promotion, or sale to children of audio or video products labeled or rated with a parental advisory or cautionary statement as to content; and 2) "reasonably tailored to such objective." to meet industry codes or ethical standards regarding such advertising. Finally, in any action by the Commission alleging violations of the order, each respondent will bear the burden of proof in demonstrating that its conduct satisfies the conditions specified in certain order provisions.

The order also contains specific terms designed to ensure the respondents' compliance, including the submission of written reports to the Commission detailing the agreements entered into with other sellers that concern the specific behavior alleged in the complaint. The order would terminate 20 years after the date it becomes final. Copies of the Initial Decision by the administrative law judge 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.

**Media Contact:**

Mitchell J. Katz,  
*Office of Public Affairs*  
202-326-2161

(FTC File No. 001-0231)

---

**E-mail this News Release**

If you send this link to someone else, the FTC will not collect any personal information about you or the recipient.

**Related Documents:**

[Polygram Holding, Inc.; Decca Music Group Limited; UMG Recordings, Inc.; and Universal Music & Video Distribution Corp.](#), Docket No. 9298

Last Modified: Monday, 25-Jun-2007 16:14:00 EDT