UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Timothy J. Muris, Chairman**
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of	)	
POLYGRAM HOLDING, INC., **a corporation,**	)	
DECCA MUSIC GROUP LIMITED, **a corporation,**	)	
UMG RECORDINGS, INC., **a corporation,**	)	**Docket No. 9298**
and	)	
UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP., **a corporation.**	)	

OPINION AND ORDER

On August 4, 2003, non-party Sony Music Entertainment, Inc. ("Sony") moved that the Commission strike or amend a paragraph in its July 24, 2003, Opinion in this matter, and to intervene for the limited purpose of seeking this relief. Sony complains that the reference, in Part IV of the Opinion, to a joint venture between Sony and respondent UMG Recordings, Inc. ("UMG") erroneously suggests that the Commission found that Sony engaged in misconduct in connection with that joint venture. Sony also asserts that the statement in the Opinion concerning the UMG-Sony joint venture is unsupported because that joint venture no longer exists. Complaint Counsel has opposed Sony's motion.

We do not believe that the paragraph in question is reasonably interpreted in the manner Sony claims. In referencing the UMG-Sony joint venture to distribute music over the Internet (known as "pressplay"), the Commission was plainly positing a hypothetical scenario: that in UMG's other joint venture activity, UMG and its joint venture partners *may* – not would – have

similar incentives and opportunity to restrain competition as the Commission found occurred in the Three Tenors joint venture at issue. Sony was not a party to this action, and its conduct was not at issue. In this context, it is simply not reasonable to read the cited language as a finding or suggestion by the Commission that Sony has engaged, or intends to engage, in misconduct.

In addition, we are not persuaded that Sony has completely disentangled itself from this venture. In May 2003, UMG and Sony sold 99.6% of their interest in pressplay to Roxio, Inc. ("Roxio"). The SEC filings by the parties to that transaction show that, in consideration for the sale of pressplay to Roxio, Sony and UMG each received an ownership interest in Roxio, a seat on Roxio's board of directors, and the right to earn up to $6.25 million based on positive cash flows from the venture. It is thus apparent that, although ownership of pressplay changed hands, UMG and Sony still retain significant influence over and interest in the financial success of the venture. For this reason, our statement in the Opinion concerning UMG and Sony's *potential* incentive and opportunity to restrain competition from product sold at retail remains valid.

"[B]efore the Commission will allow intervention into its proceedings, it must be demonstrated that (1) the persons seeking such intervention desire to raise substantial issues of law or fact which would not otherwise be properly raised or argued, and (2) the issues they raise are of sufficient importance and immediacy to warrant an additional expenditure of the Commission's limited resources on a necessarily longer and more complicated proceeding in the case, when considered in light of other important matters before the Commission." *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1669 (1970). In view of our discussion above, the Commission finds that Sony has not raised substantial issues of law or fact. Accordingly,

IT IS ORDERED that Sony's motion to intervene and strike or correct a paragraph in the Commission's July 24, 2003, Opinion is DENIED.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: October 14, 2003