

**TIME AND DATE:** 11 a.m., Monday, May 22, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:**

Lynn S. Fox, Assistant to the Board;

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<sup>1</sup> BMG's policy differed slightly. Under the BMG MAP provisions, the suspension of all cooperative advertising funding required a finding of two MAP violations. However, BMG MAP provisions also established a suspension of up to a year for repeated violations.

most aggressive retail competitors would stop advertising prices below MAP. The complaints further alleges that by defining advertising broadly enough to include all in-store displays and signs, the MAP policies effectively precluded many retailers from communicating prices below MAP to their customers.

The MAP provisions were implemented with the anticompetitive intent to limit retail price competition and to stabilize the retail prices in this industry. Prior to the adoption of these policies, new retail entrants, especially consumer electronic chains, has sparked a retail "price war" that had resulted in significantly lower compact discs prices to consumers and lower margins for retailers. Some retailers, who could not compete with the newcomers, asked the distributions for discounts or for more

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

**Statement of Chairman Robert Pitofsky  
and Commissioners Sheila F. Anthony,  
Mozelle W. Thompson, Orson Swindle,  
and Thomas B. Leary**

**File No. 971-0070**

The Commission has unanimously found reason to believe that the arrangements entered into by the five 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. A discussion of these violations is spelled out in our Analysis to Aid Public Comments.

The Commission considered carefully whether the anticompetitive vertical restraint should be evaluated under a per se rule or rule of reason. In the past, the Commission has employed the rule of reason to examine cooperative advertising programs that restrict reimbursement of the advertising of discounts, because such programs may be procompetitive or competitively

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<sup>1</sup> In *American Cyanamid*, the manufacturer conditioned financial payments on its dealers' charging a specified minimum price, which the Commission found to be per se unlawful minimum resale price maintenance. By contrast, financial payments under the distributors MAP policies here were conditioned on the price advertised, not on the price charged.

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<sup>2</sup> 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.

<sup>3</sup> In addition, the Commission will continue to consider per se unlawful any cooperative advertising program that is part of a resale price maintenance scheme. Cf. *The Magnavox Co.*, 113 F.T.C. 225,262 (1990) ("Of course, any cooperative advertising program implemented by Magnavox as part of a resale price maintenance scheme would be per se unlawful. \* \* \*").