



To the contrary, the briefs filed in this case make clear that the Department does have reason to believe that the overseas conduct of the respondents with which the outstanding CIDs are concerned has had and is continuing to have significant anticompetitive effects on U.S. commerce. United States Mem. of P. & A. in Supp. of Pet. to Enforce CID ("Opening Brief") at 4-11 (identifying exporters and their exports) and 33-37 (describing potential effects on exports). That conduct appears to have increased the price paid by U.S. purchasers and, by increasing their costs, impaired their ability to export from the United States.

Respondents are the five major record companies both in this country and throughout the world. Id. at 4-5. Together, they supply more than 80 percent of the world's music videos, which they license to music programmers, like MTV, in the United States and elsewhere. Id. These programmers, in turn, produce programming for distribution both in this country and in foreign countries. Id. at 5-11.

In the last few years, respondents have entered into various joint efforts throughout the world that may injure U.S. export and domestic commerce as follows:

- The majors have formed performance rights societies in Europe and elsewhere through which they pool or combine the performance rights to use their videos outside the United States and offer programmers, including United States programmers that export their services, only an all-or-nothing collective blanket license. Opening Brief at 13-16. The formation of these societies may have been targeted at U.S. firms. Id. at 14 n.4. Programmers are required to obtain a collective blanket license from the performance rights societies in order to use the majors' videos in their programming, including programming produced in this country that is distributed outside the U.S. Id. at 13-14. By requiring U.S. programmers to take a single blanket license from all the record companies instead of negotiating separately with individual companies, respondents appear jointly and substantially to have increased the prices charged to these programmers for essential inputs into their music programming services. Id. These collaborative price increases by respondents may have increased the costs of U.S. music programmers and handicapped and curtailed exports of U.S.-based music programming services and original (*i.e.*, non-music video) programming. Id. at 15, 36-37.

- The majors have also joined together to form downstream programming services in Europe and Asia (and planned to do so in the U.S.). Opening Brief at 16-18. These jointly-owned, affiliated programming services compete with unaffiliated programmers, most of which are U.S.-based. Id. Respondents may have agreed to boycott these U.S.-based competitors of their joint ventures, thereby denying them access to music videos and reducing the amount of music video programming they are able to export from the U.S. Opening Brief at 36-37; United States Reply in Supp. of Pet. to Enforce CIDs ("Reply Brief") at 5-6 and Exhibit 1F. The collaboration of respondents in forming the programming services, including their planned venture in the U.S., may also have been the occasion for unlawful price-fixing agreements among them, and/or may have unlawfully facilitated tacit collusion among them, to the detriment of U.S. purchasers. Reply Brief at 5.
- In the past, respondents required music programmers to take country-by-country licenses, usually from their collectively controlled performance rights societies, and may have agreed not to provide worldwide licenses to U.S. programmers. Opening Brief at 33. Now, some respondents have separately granted a single license to cover performance rights

worldwide, including in the U.S. The price of these worldwide licenses may have been set at a higher than competitive level and may be, directly or indirectly, artificially elevated by the majors' joint activities abroad, by their planned joint venture in the United States, or by other possible collusion. United States Mem. in Supp. of Mot. to Set Hr'g Date ("Hr'g Date Brief") at 5-7. This would increase the cost of music video performance rights to programmers, including programmers in the United States, and harm U.S. purchasers and exporters. Opening Brief at 33; Reply Brief at 3 and Exhibit 1B; Hr'g Date Brief at 5-7.

- Respondents have formed a performance rights society in Europe that collectively licenses broadcasting rights to digital radio programmers, including U.S. exporters of such programming, and have also formed or joined digital radio programming joint ventures, both here and abroad, that compete directly with unaffiliated radio programmers. Opening Brief at 13-17. These collaborative activities may have raised the price of foreign and domestic broadcasting rights charged to U.S. digital radio programmers, harming U.S. purchasers and reducing U.S. exports of digital radio programming. Id. at 16-18.

All of this conduct may have direct, substantial, and reasonably foreseeable effects on U.S. domestic and export commerce.

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CERTIFICATE OF SERVICE

I certify that I have this day November 8, 1996, caused to be served, by overnight delivery service, a copy of the foregoing Post-Hearing Memorandum on counsel of record for Time Warner, Inc., Sony Corporation of America, PolyGram Holding, Inc., EMI Music Inc. and Bertelsmann, Inc. at the addresses below:

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