evidence before they market a product for children using the name ''A.D.D.'' or any other name that represents that the product can treat or mitigate ADHD. Finally, Part III of the proposed order prohibits Respondents from making any representation about the ability of any food, drug or dietary supplement marketed for children to treat or cure any disease or mental disorder, unless they possess competent and reliable scientific evidence.

Part IV of the proposed order states that Respondents will be permitted to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990, or pursuant to sections 303–304 of the Food and Drug Administration Modernization Act of 1997.

Part V of the proposed order states that nothing in the order constitutes a waiver of Respondents' First Amendment rights.

As set out in Part VI of the proposed order, the proposed consent order will not apply to any product sold or distributed to consumers by third parties under private labeling agreements with Respondents, provided Respondents do not participate in any manner in the funding, preparation or dissemination of the product's advertising.

The remainder of the proposed consent order contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status or employment, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–19724 Filed 8–6–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 001 0231]

Warner Communications Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 2001.

ADDRESSES: Comments should be directed to FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Simons or Geoffrey Green, FTC/H–374, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3667 or 326–2641.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 31, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/07/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from Warner Communications Inc. (''Warner''). Warner is a subsidiary of AOL Time Warner Inc., and has its principal place of business in New York, New York.

The proposed Consent Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Commission has not held an evidentiary hearing concerning the complaint. By accepting this agreement, the Commission is affirming only that it has reason to believe that the allegations in the complaint are well-founded.

The Commission's complaint charges that Warner has violated section 5 of the Federal Trade Commission Act by agreeing with certain subsidiaries of Vivendi Universal S.A. (the ''Universal Respondents'') to fix prices and to forgo advertising. According to the Commission's complaint, the Universal Respondents are the successor firms to PolyGram Music Group.[1] The Universal Respondents have not signed an agreement containing a proposed consent order, and hence the Commission's antitrust claims against the Universal Respondents will be addressed in an administrative trial.

The alleged conspiracy involves audio and video products featuring the renowned opera singers Luciano Pavarotti, Placido Domingo, and Jose Carreras—known collectively as The Three Tenors. Beginning in 1990, The Three Tenors have come together every four years at the site of the World Cup soccer finals for a combination live concert and recording session. According to the complaint, 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 derived from the master recordings.[2] Distribution rights to the original 1990 Three Tenors performance, entitled The Three Tenors, were acquired by PolyGram Music Group. Distribution rights to the follow-up performance, the Three Tenors in Concert 1994, were acquired by Warner Music Group.

The complaint alleges that in 1997, Warner Music Group and PolyGram Music Group agreed to collaborate in the distribution of audio and video

[1] PolyGram N.V. was acquired by The Seagram Company Ltd. in 1998. Two years later, The Seagram Company Ltd. merged with Vivendi S.A. and Canal Plus S.A. to form Vivendi Universal S.A.

[2] The concert promoter is responsible for producing the master recordings.

products derived from the next Three Tenors World Cup concert, scheduled for Paris on July 10, 1998. The parties agreed that Warner Music Group would distribute the 1998 releases in the United States; that PolyGram Music Group would distribute the 1998 releases outside of the United States; and that the firms would share all costs, profits, and losses on a 50/50 basis. The complaint does not challenge the formation or basic structure of the Warner/PolyGram joint venture.

According to the complaint, as the concert approached, Warner Music Group and PolyGram Music Group became concerned that the audio and video products that would be derived from the Paris concert would not be as original or as commercially appealing as the earlier Three Tenors releases. In order to reduce competition from these earlier releases, Warner Music Group and PolyGram Music Group adopted what they called a ''moratorium'' agreement. PolyGram Music Group agreed not to discount and not to advertise the 1990 Three Tenors album and video during a designated time period (from August 1, 1998 through October 15, 1998). In return, Warner Music Group agreed not to discount and not to advertise the 1994 Three Tenors album and video during the same interval.

According to the complaint, the third Three Tenors album and video, both entitled The Three Tenors—Paris 1998, were released on August 18, 1998, and were distributed in the United States by Warner Music Group. During the moratorium period, PolyGram Music Group refrained from discounting or advertising the 1990 Three Tenors album and video. During this period, Warner Music Group likewise refrained from discounting or advertising the 1994 Three Tenors album and video.

Finally, the complaint alleges that the moratorium agreement was not reasonably necessary to the formation or to the efficient operation of the joint venture between Warner Music Group and PolyGram Music Group. Rather, the effect of the moratorium agreement was to restrain competition unreasonably, to increase prices, and to injure consumers.

Warner has signed a consent agreement containing the proposed Consent Order. The proposed Consent Order would prohibit Warner from: (i) Agreeing with a competitor to fix, raise, or stabilize prices for any audio product, or (ii) agreeing with a competitor to prohibit, restrict, or limit truthful, non-deceptive advertising and promotion for any audio product.[3]

The Federal Trade Commission is aware that there is a great deal of collaborative activity among companies in the music industry (*e.g.,* joint ventures, intellectual property licenses, sharing of artist rights and compositions). The proposed Consent Order re-affirms the Commission's view that participation in a joint venture is often pro-competitive, but that it is not a blanket excuse for price fixing or other serious restraints on competition. In this regard, The Antitrust Guidelines for Collaborations Among Competitors, issued by the Federal Trade Commission and the U.S. Department of Justice in April 2000, should not be read to suggest that all agreements ''related to'' a joint venture will be analyzed under the full rule of reason.

There are, however, situations in which horizontal restraints on price competition and advertising are permissible. Thus, the proposed Consent Order contains exceptions to the above-described prohibitions that are intended to permit Warner to engage in certain lawful and procompetitive conduct. First, when Warner and a competing seller jointly produce a new audio product, the Order does not bar the firms from jointly setting the selling price and jointly directing the advertising campaign for that product. See *Broadcast Music, Inc.* v. *CBS,* 441 U.S. 1 (1979).[4] Second, when Warner and a competing seller enter into a legitimate joint venture agreement, the order does not bar the firms from entering into ancillary restraints both reasonably related to the venture and reasonably necessary to achieve the pro-competitive benefits of the venture. See *NCAA* v. *Board of Regents,* 468 U.S. 85 (1984); *Massachusetts Board of Registration in Optometry,* 110 F.T.C. 549 (1988).

The Commission's complaint alleges that the Warner/PolyGram moratorium agreement was not a lawful restraint on competition. Of critical importance is the allegation that the parties' restrictions on competitive activity were not limited to jointly produced products. Instead, the complaint charges that Warner Music Group and PolyGram Music Group agreed to fix the prices of the pre-existing Three Tenors releases—products that were separately produced and separately distributed. Restraints that operate on products outside of a joint venture will be scrutinized by the Commission with great care,[5] particularly if the restraints are directed at price. Here the Commission has reason to believe that the alleged agreement between Warner and PolyGram is not reasonably related to the joint venture or reasonably necessary to achieve procompetitive benefits of the joint venture and is therefore per se unlawful.

One specific question involved in this proceeding is whether the moratorium agreement was reasonably necessary in order to address a free-rider problem.[6] Suppose, hypothetically, that Warner Music Group's investment in advertising the 1998 Three Tenors album in the United States brings consumers into the record stores. Suppose further that many such consumers then opt to purchase, at a lower price, the 1990 album distributed by PolyGram Music Group. The result may be that Polygram Music Group benefits from Warner Music Group's investment, leaving Warner Music Group (arguably) with less incentive to invest resources in promoting the 1998 Three Tenors album.[7]

The Commission has reason to believe that this hypothetical scenario does not justify the restraints on competition alleged in the complaint. According to the compliant, Warner Music Group and PolyGram Music Group agreed to share the cost of advertising the 1998 Three Tenors album. It follows that, with regard to such advertising, PolyGram Music Group need not be characterized as a free rider. In the words of Judge Easterbrook: ''Free-riding is the diversion of value from a business

[3] These Order provisions would also apply to video products that feature the Three Tenors. The proposed Order generally does not cover vertical restraints.

[4] In order to fall within this proviso, the collaborating parties must each contribute significant assets toward production of the audio product so as to achieve pro-competitive benefits. Sham collaborations will not shield an agreement on price. Cf. *Palmer* v. *BRG of Georgia, Inc.,* 498 U.S. 46 (1990).

[5] *See General Motors Corp.,* 103 F.T.C. 374 (1984) (consent order) (manufacturing joint venture between General Motors and Toyota approved by the Commission, subject to conditions aimed at reducing the likelihood of collusion between the competitors with regard to both joint venture products and products outside the joint venture).

[6] *See Chicago Pro. Sports Ltd. Partnership* v. *NBA,* 961 F.2d 667, 674 (7th Cir.), cert. denied, 506 U.S. 954 (1992):

> It costs money to make a product attractive against other contenders for consumers' favor. Firms that take advantage of costly efforts without paying for them, that reap where they have not sown, reduce the payoff that the firms making the investment receive. This makes investments in design and distribution of products less attractive, to the ultimate detriment of consumers. Control of free-riding is accordingly an accepted justification for cooperation.

[7] Note that this is a hypothetical example. It is not apparent, *inter alia,* that an advertising campaign promoting the 1998 Three Tenors album would necessarily lead a significant number of consumers to purchase the 1990 Three Tenors album.

rival's efforts without payment * * *. When payment is possible, free-riding is not a problem because the 'ride' is not free.'' *Chicago Pro. Sports Ltd. Partnership* v. *NBA,* 961 F.2d 667, 675 (7th Cir.), cert. denied, 506 U.S. 954 (1992).[8] More generally, when faced with a potential free-rider problem, firms should consider whether there are practical, less-restrictive alternatives than price-fixing.

The proposed Consent Order includes a third proviso that is designed to ensure that the Order does not impede Warner's ability to participate in industry efforts to discourage the promotion of violent or otherwise inappropriate audio and video products to children. Although Warner is generally prohibited from agreeing with a competitor to restrict truthful and non-deceptive advertising, Warner is expressly permitted under the Order to join with other sellers to prevent the advertising, marketing or sale to children of audio products or video products labeled or rated with a parental advisory or cautionary statement as to content.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way its terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Mozelle W. Thompson

Warner Communications Inc. File No. 001–0231

As I said in my statement [1] following the issuance of the Antitrust Guidelines for Collaborations Among Competitors,[2] 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.

[8] *Accord High Technology Careers* v. *San Jose Mercury News,* 996 F.2d 987, 992 (9th Cir. 1993); Toys R Us, Inc. _ F.T.C. _ (1998), 1998 FTC LEXIS 119, 131–35 (1998), aff'd, 221 F.3d 928, 938 (7th Cir. 2000); H. Hovenkamp, XIII Antitrust Law at 334 ¶ 2223b (1999) (''[F]ree rider defenses should be rejected when the firm that controls the input is able to sell, rather than give away, the good or service that is subject to the free ride.'').

[1] http://www.ftc.gov/os/2000/04/antitrustguidethompson.htm

[2] The Federal Trade Commission and the U.S. Department of Justice issued the Guidelines in April 2000. http://www.ftc.gov/bc/guidelin.htm

[FR Doc. 01–19723 Filed 8–6–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13¼ percent for the quarter ended June 30, 2001. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 26, 2001.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 01–19651 Filed 8–6–01; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Times and Dates: 9:00 a.m. to 5:00 p.m., August 20, 2001; and 8:30 a.m. to 12:00 noon, August 21, 2001.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC.

Status: Open.

Purpose: At this working session, the Subcommittee on Standards and Security will obtain public input into the Committee process for uniform patient medical record information from a panel of invited speakers.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: July 31, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–19649 Filed 8–6–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee, Workgroup on Health Statistics for the 21st Century, Subcommittee on Populations.

Times and Dates: 8:30 a.m to 5:30 p.m., August 14, 2001; and 8:30 a.m. to 3:45 p.m., August 15, 2001.

Place: The Westin O'Hare, 6100 River Road, Rosemont, IL 60018, (847) 698–6000.

Status: Open.

Purpose: The Executive Subcommittee will use the first day as a retreat for Committee planning purposes. The Subcommittee will plan future Committee meetings and review work plans for 2001 and early 2002. Strategic planning will include organizing and integrating agenda issues across priorities, reviewing the efficiency and effectiveness of the current Committee structure and meeting schedule, and positioning the Committee to address new and emerging topics.