

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry relating to the refusal of Warner Music Canada Ltd. and its affiliates, Warner Music Group Inc. and WEA International Inc. to deal with BMG Direct Ltd.

BETWEEN:

**THE DIRECTOR OF INVESTIGATION
AND RESEARCH**

Applicant

- and -

**WARNER MUSIC CANADA LTD.
WARNER MUSIC GROUP INC.
WEA INTERNATIONAL INC.**

Respondents

NOTICE OF APPLICATION

TAKE NOTICE THAT the Applicant, the Director of Investigation and Research ("Director"), will make an application to the Competition Tribunal ("Tribunal") pursuant to subsection 75(1) of the *Competition Act*, ("Act"), for an Order that:

- (i) the Respondents accept BMG Direct Ltd. ("BMG") as a customer on usual trade terms for the supply of licences to manufacture, advertise, distribute and sell sound recordings made from master recordings owned or controlled by the Respondents or any of their affiliates;
- (ii) the terms of the licences sought in (i) above be at least as favourable in all

respects as the terms of any comparable licence or licences to The Columbia House Company in Canada (“CHC”). For greater certainty, the licences sought in (i) above shall provide BMG with the right to at least an equal number and variety of Warner master recordings as are supplied to CHC by the Respondents or any of their affiliates;

(iii) the licences referred to above be supplied within 30 days of the issuance of the Tribunal’s Order; and

(iv) such further or other Order as the Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within thirty days of the date upon which this Notice of Application and accompanying Grounds are served upon you, the Tribunal may, upon the ex parte application of the Director, make such order as it considers appropriate.

AND TAKE NOTICE that in support of this Application the Director will rely upon the following Statement of Grounds and Material Facts.

STATEMENT OF GROUNDS AND MATERIAL FACTS
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STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW AND GROUNDS FOR THE APPLICATION

A) Overview

1. The Director of Investigation and Research ("Director") submits that:

(a) BMG Direct Ltd. ("BMG") is substantially affected in its mail-order record club business due to its inability to obtain, anywhere in the market on usual trade terms, licences to manufacture, advertise, distribute and sell sound recordings made from Warner master recordings;

(b) BMG is unable to obtain such licences because of insufficient competition among suppliers of the product in the market, Warner Music Canada Ltd., WEA International Inc. and Warner Music Group Inc.;

(c) BMG is willing and able to meet the usual trade terms of the suppliers; and,

(d) the licences are in ample supply.

2. In the Director's view the continued refusal by the Warner Music Canada Ltd., WEA International Inc. and Warner Music Group Inc. to supply BMG will likely result in BMG's imminent exit from Canada. Prior to BMG's entry, The Columbia House Company in Canada ("CHC"), (an entity in which the Respondents have an important economic interest) was the only national mail order record club in Canada. Unless an order to supply is made against the Respondents, their interest in CHC will be enhanced by the restoration of its dominance through the failure of BMG. The existence of substantial barriers to entry into the mail order record club business in Canada is likely to result in the maintenance of that dominance for the foreseeable future, to the detriment of Canadian consumers and other Canadian record companies.

B) Definitions

3. For the purposes of this Application, the following terms have the meanings set out below:

(a) "mail-order record club" means a club which acquires members by direct-to-consumer methods and sells and distributes sound recordings to such members by mail in accordance with the merchandising method known and understood in the mail-order business as the "subscription" or "club" plan;

(b) "master recordings" means the initial or source recordings of artists' performances from which sound recordings are subsequently manufactured for ultimate sale to consumers;

(c) "negative option" means, in respect of a mail-order record club, a club that periodically sends cards to its members that set out a "feature" sound recording that will automatically be sent and billed to the member, unless the member expressly declines the featured selection within a specified time period;

(d) "reproduction and sales licence" means a licence to a mail-order record club to advertise, manufacture, sell and distribute sound recordings from master recordings;

(e) "sound recordings" means all forms of sound reproduction including, without limitation, compact disc(s), tape and/or tape contained in cartridges and/or cassettes manufactured from master recordings by any means, method or device now or hereafter known of a type primarily intended for use as home entertainment, but excluding sight and sound devices in combination and all audio-visual devices, regardless of intended use;

(f) "Warner master recordings" means master recordings owned or controlled by the Respondents or any of their affiliates;

(g) "Warner reproduction and sales licence" means a licence to a mail-order record club to

advertise, manufacture, sell and distribute Warner sound recordings; and

(h) "Warner sound recordings" means sound recordings manufactured from Warner master recordings.

II. THE PARTIES

A) The Director

4. The Director is the officer appointed under section 7 of the *Competition Act* ("Act") and is charged with the administration of the Act. The Senior Deputy Director of Investigation and Research is authorized, pursuant to subsection 8(2) of the Act, and Order in Council P.C. 1994-1449, dated August 30, 1994, to exercise the powers and perform the duties of the Director in respect of this matter.

B) The Respondents

5. The Respondents are:

(a) Warner Music Canada Ltd. ("WMC"), a corporation incorporated pursuant to the laws of the Province of Ontario and having its head office at 3751 Victoria Park Avenue, Scarborough, Ontario, M1W 3Z4;

(b) WEA International Inc. ("WEA"), a Delaware corporation having its head office at 75 Rockefeller Plaza, New York, New York 10019, U.S.A; and

(c) Warner Music Group Inc. ("WMG"), a Delaware corporation having its head office at 75

Rockefeller Plaza, New York, New York 10019, U.S.A.

6. WMC is a wholly-owned subsidiary of WEA which is a wholly-owned subsidiary of Warner Communications Inc. ("WCI"). WMG is also a wholly-owned subsidiary of WCI. WMG is a large, diversified, vertically integrated music company with a competitively significant share of current and back catalogued charted hits. A corporate organization chart is attached as Appendix A.

7. The business of the Respondents and their affiliates, includes contracting with artists to record master recordings, acquiring and supplying Warner reproduction and sales licences and marketing Warner sound recordings. Warner master recordings, and the rights to produce and market sound recordings from Warner master recordings, are owned or controlled exclusively by the Respondents or their affiliates pursuant to contract with the artist or production companies. An artist is typically under exclusive contract with a record company or "label". Performances recorded during the period of the contract are not available through other record companies and the artist normally has no further control over distribution by the record companies.

8. Labels that are owned or controlled by the Respondents or their affiliates include:

(a) Warner Bros. Records: Warner Bros., Reprise, American Recordings, Giant, Maverick, Qwest, Warner Nashville, Reprise Nashville, Warner Alliance, Tommy and Boy;

(b) Atlantic Group: Atlantic, Atlantic Classics, Atlantic Jazz, Atlantic Nashville, Atlantic Theatre, Amphetamine Reptile, Big Beat, Celtic Heartbeat, Code Blue, Curb, Holiday, Lava, Mammoth, Mesa/Bluemoon, Modern, 143, Rhino and Tag;

(c) Elektra Entertainment Group: Elektra, Eastwest, Asylum and Sire; and

(d) Warner Music International: WEA, Eastwest, Teldec, Erato, Nonesuch, Finlandia, CGD Eastwest, DRO Eastwest, WEA Latina, PWL, ZTT , Magneoton, UFO, Fazer, Telegram, Continental and China.

9. Warner sound recordings are produced by WMC from Warner master recordings and marketed to consumers in Canada through retail stores, including record and department stores.
10. Warner sound recordings are also made available to consumers in Canada by means of the supply of Warner reproduction and sales licences to CHC, the dominant national mail-order record club in Canada.
11. The business of WMC includes the supply of Warner reproduction and sales licences in Canada in respect of Warner master recordings of “Canadian” signed artists.
12. The business of WEA includes the supply of Warner reproduction and sales licences in Canada in respect of Warner master recordings of all “non-Canadian” signed artists.
13. The business of WMG includes the negotiation of the supply of Warner reproduction and sales licences on behalf of WMC and WEA. A senior officer of WMG communicated the refusal of the Respondents to deal with BMG.

III. MARKET PARTICIPANTS

A) The Columbia House Company

14. CHC is an equal partnership of WMC and Sony Music Entertainment (Canada) Inc. It is registered under the *Business Names Act* of Ontario, R.S.O. 1990, c.B-17, and conducts business

at 5900 Finch Avenue East, Scarborough, Ontario. CHC reports to The Columbia House Company in the United States, which is an equal partnership between WCI Record Club Inc. and Sony Music Entertainment Inc. The Chief Executive Officer of WMG sits as one of the representatives on the common “Board of Representatives” for CHC and for The Columbia House Company in the United States.

15. CHC is the dominant national mail-order record club in Canada. It operates on a negative-option basis and supplies its members with a wide range of sound recordings across most music categories. CHC commenced business in Canada in 1956, and was for many years, until BMG’s entry in December, 1994, the only significant national mail-order record club operating in Canada.

16. WMC and WEA each supply a non-exclusive Warner reproduction and sales licence to CHC.

B) BMG Direct Ltd.

17. The party with whom the Respondents are refusing to deal is BMG, a company incorporated under the laws of Ontario and its head office is located at 5665 McLaughlin Road, Mississauga, Ontario L5R 3K5.

18. BMG is a wholly-owned subsidiary of BMG Direct Marketing Inc., 1540 Broadway, New York, NY 10036, USA (“BMG-U.S.”), which is, in turn a wholly-owned subsidiary of BMG Entertainment located in New York, N.Y., U.S.A. BMG Entertainment has subsidiary companies in more than 40 countries and it is, like WMG, a very large and diversified competitor in the world wide entertainment industry.

19. BMG commenced a national mail-order record club business in Canada in December,

1994 and, like CHC, operates its club on a negative option basis. Like CHC, BMG is not a specialized or niche club, but offers sound recordings in most music categories. With the entry of BMG, CHC ceased to be the only mail-order record club of this type in Canada. BMG repeatedly sought, but was refused, Warner reproduction and sales licences.

IV. THE MAIL-ORDER RECORD CLUB BUSINESS

20. The mail-order record club business is estimated by the Director to be serving approximately two million Canadian consumers and to have annual sales in Canada in the vicinity of 200 million dollars.

21. Mail-order record clubs typically use extensive advertising and mail solicitation, combined with offers of free sound recordings, to attract new members. After joining a record club, members are regularly sent a catalogue by mail to encourage them to place orders for sound recordings from the club. Members mail back orders and the sound recordings ordered are sent and billed to members by mail. Depending upon the rules of the club, a new member may be obligated to purchase a specific number of sound recordings within a specified time period after joining the club.

22. In a negative option mail-order record club like CHC and BMG, the periodic catalogues mailed to members include a "feature selection", which is automatically sent and billed unless the member responds within a fixed period of time declining the featured selection.

23. Negative option has been, and continues to be, a typical characteristic of mail-order record clubs. The only two mail-order record clubs of any major significance in Canada, namely CHC and BMG, operate on a negative option basis.

24. With multiple catalogue and promotional mailings per year, mail-order record clubs such as CHC and BMG require a wide selection of music to keep members actively purchasing. Previously “charted” hit records are of particular importance because they are most in demand by the largest number of members, and generate a very substantial proportion of total revenues for the clubs. A wide selection of these recordings is therefore a critical factor to the viability of a mail-order record club.

25. A number of factors differentiate mail-order record clubs from record stores. Among these factors, retail record stores purchase finished goods (i.e. pre-recorded CDs and cassettes packaged and ready for sale) from wholesalers and typically they have the right to return finished goods on specified conditions. Mail-order record clubs, in contrast, typically pay record companies or record labels for reproduction and sales rights and then manufacture the finished goods themselves or have the finished goods manufactured for them under contract. This particular difference results in mail-order record clubs having finished goods ready for resale at a significant cost advantage over retail stores. However, record clubs are responsible for royalty administration and for the cost of inventory obsolescence, and are not normally permitted to market new sound recordings for a period of time after the sound recordings have been initially introduced for sale through record stores.

26. Another illustration of the difference between the business of mail-order record clubs and retail stores is found in the characteristics of the consumers that can be served. Mail-order record clubs readily provide a supply of sound recordings to consumers who, for a variety of reasons, prefer to buy from record clubs, or who do not have convenient access to retail stores. The industry and the public acknowledge the differences between record clubs and retail record store businesses.

27. While there are several small, specialized or niche mail-order record clubs that operate in Canada, including Musical Heritage Society of Canada (classical music), Integrity Music (gospel) and My First Music Club (children’s music), they are not of competitive significance in this

matter.

V. BACKGROUND AND REFUSAL TO DEAL

A) BMG-U.S. Operations

28. BMG-U.S. has been successfully operating a mail-order record club business in the United States since its acquisition of the RCA Victor Club in 1986, which had been operating since the 1950's. Throughout most of this period, WMG and its affiliates have continuously supplied BMG-U.S. and its predecessor with Warner reproduction and sales licences. A BMG record company affiliate, BMG Music, is supplying reproduction and sales licences to CHC and to The Columbia House Company in the United States.

29. While there are notable differences between record clubs in Europe and North America, affiliates of BMG are supplied by affiliates of the Respondents on the usual trade terms prevailing in a number of European markets and are viable businesses in these markets.

B) Pre-Entry Negotiations between WMG and BMG-U.S.

30. In late 1993, preparations were initiated by BMG to launch a mail order record club in Canada, in the Fall of 1994. In April, 1994 the Chairman and Chief Executive Officer of BMG Entertainment, Michael Dornemann, met with his counterpart at WMG, Robert Morgado, and requested supply of Warner reproduction and sales licenses for the proposed BMG club in Canada. Negotiations between BMG and WMG had begun for the renewal of the Warner license for BMG-US, and as a result of this meeting, BMG believed that WMG would be prepared to negotiate licences for the BMG club in Canada.

31. By the fall of 1994, BMG had obtained reproduction and sales licences for the Canadian operations from a significant number of labels, but delays in the negotiations for the renewal of the Warner licence for BMG-U.S. had the result that BMG was unable to initiate negotiations for Warner reproduction and sales licences for Canada at that time. It is alleged that the inability of BMG to obtain Warner reproduction and sales licences was a significant factor in BMG's decision to postpone its entry into Canada, which had been planned for September 1994.

32. In December 1994, BMG commenced business in Canada without Warner reproduction and sales licences. The decision to proceed at that time was made after a further meeting between Mr. Dornemann and Mr. Morgado. As a result of this meeting the Chairman and Chief Executive Officer of BMG Entertainment believed that Mr. Morgado gave him a further commitment that licences for Canada would be negotiated upon completion of the U.S. licence negotiations.

C) Post-entry Efforts to Obtain Supply

33. BMG-U.S. obtained a new Warner reproduction and sales licence for the United States which, although effective in January 1995, was not signed until February, 1995. Subsequently, in March 1995, WMG denied that any commitment had been made to supply licences to BMG for Canada and declined to negotiate such licences. BMG has alleged that it considered this to be posturing by WMG for the purpose of anticipated negotiations.

34. In May 1995, Mr. Morgado's employment with WMG was terminated. In subsequent conversations with senior WMG officials, senior executives of BMG-U.S. continued to seek Warner reproduction and sales licences for Canada on behalf of BMG.

35. In July 1996, BMG-U.S. was told by a senior executive of WMG that WMG was not willing to supply BMG with Warner reproduction and sales licences for Canada.

D) Impact of BMG's Entry Into Canada

36. In the period immediately following BMG's entry into Canada, it succeeded in attracting more than 800,000 new members. This was achieved with extensive advertising (including television advertising) and incentive offers of up to eleven CDs or tapes for the price of one, with no commitment to purchase additional sound recordings. BMG's incentive offers to attract new members were more generous than the prevailing eight-for-one cent CHC offer. CHC also required new members to purchase a minimum of seven sound recordings within three years of joining CHC: the "commitment" policy of CHC.

37. BMG's "no-commit" strategy and operations closely followed the BMG-U.S. model, which has been used successfully since 1986. That strategy is based upon providing club members with selection, service, and prices that are sufficiently attractive to keep members purchasing without them having a commitment to do so.

38. CHC took measures that deprived BMG of access to key Canadian advertising and promotional vehicles and mailing lists at the time of its entry. This forced BMG to utilize higher-priced and less-focused television advertising to make its presence in Canada known.

39. BMG exceeded its forecasts in attracting new members. However, the distribution of free product associated with the higher than predicted membership response, and the higher than anticipated advertising expenses, resulted in BMG incurring entry costs significantly above its forecasts. BMG was willing to bear these costs because it believed that the supply of Warner reproduction and sales licences was imminent.

40. CHC responded to BMG's entry by matching the greater number of "free goods" contained in BMG's incentive offers for new members. CHC also made it less costly for its members to fulfill their additional purchase obligations to CHC.

41. Following BMG's entry, CHC began emphasizing its product selection in its promotional material. In or about August, 1996, CHC's promotional material began using "red checks" to identify sound recordings that were not available through any other mail-order record club. These sound recordings that were available "exclusively" from CHC were primarily Warner and Sony sound recordings. CHC advertising also introduced the slogan, "Why settle for half a music club? With Columbia House, you can have it all".

E) Importance of Warner Sound Recordings

42. During the period 1993-1996, Warner sound recordings accounted for a substantial proportion of the unit sales of both CHC and BMG-U.S.

43. There is no source of supply other than the Respondents that will enable BMG to be an effective competitor to CHC and a viable business in Canada. This is attributable to the substantial share of charted hits accounted for by Warner sound recordings, the importance of Warner in the supply of "back catalogue" titles and the inability of other record labels to satisfy consumer demand for Warner sound recordings. Significant efficiencies to BMG in such activities as advertising, catalogue printing and inventory management would also flow from having Warner sound recordings in Canada as well as in the United States.

44. The importance of Warner sound recordings to BMG can be inferred by comparing and contrasting the experiences of BMG and its U.S. affiliate, BMG-U.S. The clubs in the U.S. and Canada are very similar in their operations, except that BMG-U.S. is able to offer Warner sound recordings to its members. This enables BMG-U.S. to compete vigorously with The Columbia House Company in the United States and to be a profitable mail-order record club business while BMG is consistently unprofitable, and not viable, due to the lack of selection that it can offer in Canada.

VI. SECTION 75 ELEMENTS AND DISCRETIONARY CONSIDERATIONS

A) Product Being Refused Supply

45. The product that the Respondents have refused to supply to BMG are Warner reproduction and sales licences.

B) Warner Licenses are a Separate Product

46. Warner reproduction and sales licences are differentiated from those of other record companies by much more than a trade-mark or a proprietary name. The differentiation is in the unique recorded performances of individual artists and the rights to the sound recordings of these performances, rather than in the applicable trademark or label name(s). Consumers demand sound recordings of specific artists and titles, not the trademark or proprietary name of the record company, "Warner".

C) Inability to Obtain Adequate Supplies

47. BMG is unable to obtain anywhere in the market on usual trade terms Warner reproduction and sales licences because the only source of supply for such licences are the Respondents. The purchase of finished goods (i.e. pre-recorded CDs and cassettes packaged and ready for sale) from distributors supplying retailers on the usual terms of supply to such retailers is not an economically or competitively viable alternative for BMG in its mail-order record club business.

D) Business Substantially Affected

48. As a result of BMG's inability to offer an adequate range of sound recordings, due to the Respondent's refusal, BMG has been substantially and adversely affected in its mail order record

club business. During the 1993-1996 time period, Warner sound recordings accounted for a substantial proportion of the unit sales of both CHC and BMG-U.S. The impact on BMG can be inferred from the proportion of Warner sound recordings sold by mail-order record clubs that are able to offer these sound recordings. Sound recordings of other record companies cannot be adequately substituted for Warner sound recordings.

49. The substantial adverse effect on the business of BMG is shown by the following:

(a) because BMG cannot offer Warner sound recordings and thus an adequate product selection, it has not been able to retain its members. For the same reasons, BMG is not able to sell its members a sufficient volume of sound recordings to be sustainable;

(b) the ability to retain members is weakened in particular by the fact that its major competitor, CHC, is able to offer Warner sound recordings, a fact that CHC has capitalized upon in its advertising;

(c) BMG's membership has declined substantially from its high of more than 800,000 shortly following its entry into Canada;

d) BMG has been forced to lay-off staff and the uncertainty surrounding the future of its business has jeopardized its ability to retain key employees; and

e) BMG has suffered cumulative operating losses that total in the tens of millions of dollars.

E) Insufficient Competition Among Suppliers

50. Apart from the Respondents, there is no other source from which Warner reproduction and sales licences can be obtained.

51. The refusal of the Respondents to supply BMG with Warner reproduction and sales licences significantly limits BMG's ability to compete effectively with CHC, and thereby protects the dominance of CHC in mail-order record club business in Canada.

52. BMG is unable to obtain adequate supplies of Warner reproduction and sales licences because of insufficient competition among suppliers of the product in the market.

F) Willing and Able to Meet Usual Trade Terms

53. BMG is willing and able to meet the trade terms generally applicable for the supply of reproduction and sales licences to mail-order record clubs.

54. BMG has met, and continues to meet, the terms of supply of all record companies from which it has obtained supply of reproduction and sales licences.

55. There is no evidence or suggestion that BMG has been denied the product because of any inability to meet the "usual trade terms" of the Respondents in respect of their supply of the product. The ability of BMG to meet its financial obligations, given its access to capital, is apparent.

56. There is no evidence or suggestion that BMG has been denied the product because of any inability to meet any technical or servicing requirements.

G) Product in Ample Supply

57. The availability of supply of licences is not a factor constraining the ability of the Respondents to deal with BMG.

H) Discretionary Considerations

58. The following considerations support the issuance of the Order requested.

59. BMG's entry into Canada has had the following beneficial competitive impact on the mail-order record club business and Canadian consumers:

(a) in the fall of 1994, in anticipation of BMG's entry into Canada, CHC increased its new member incentive offer from seven to eight sound recordings for one cent;

(b) responding in March, 1995 to BMG's entry, CHC increased its incentive offer for new members from eight to ten sound recordings for one cent, and then in early 1996 raised the incentive to eleven sound recordings. This had the effect of substantially decreasing the effective price of sound recordings to new CHC members; and

(c) prior to BMG's entry, consumers in Canada were paying significantly more than their counterparts in the U.S. to purchase sound recordings from CHC and to fulfill the obligations of a CHC membership. In response to competition from BMG, CHC significantly reduced the effective cost for its members to purchase sound recordings and fulfill their obligations to CHC.

60. BMG's entry has also been of competitive benefit to record companies or labels and to artists in Canada. BMG provides them with an alternative mail-order record club through which their

sound recordings can be distributed. Having two major record clubs provides Canadian record companies and labels a more favourable negotiating environment and better market access than they enjoyed prior to BMG's entry. These competitive benefits to Canada will be lost if BMG withdraws from the mail-order record club business in Canada due to the refusal of the Respondents to supply.

61. Unless it obtains a supply of Warner reproduction and sales licences on usual trade terms, BMG will be precluded from carrying on business in Canada and the direct benefits to Canadian consumers and other record companies in Canada that stem from BMG's competitive presence will be lost.

62. By virtue of the Respondents' interest in CHC, they stand to benefit from any reduction in competition in the mail-order record club business in Canada. By refusing to deal with BMG, the Respondents will prevent BMG from being able to carry on business in Canada, thereby eliminating CHC's major competitor and restoring CHC to its previous position as the only major national mail-order record club in Canada. This, in turn, will restore and enhance the dominance of CHC.

63. There are significant barriers to entry to the mail-order record club business. It is critical to have access to a sufficient scope of sound recordings to generate viable membership and sales. Other barriers include substantial capital requirements, specialized expertise and technology, and for non-Canadian owned companies, regulatory requirements. Given the financial capability of BMG's affiliates, its extensive experience in operating mail-order record clubs and its access to the specialized know-how and marketing skills in this particular business, it is unlikely that there will be future entry on a competitively significant scale into the mail-order record club business in Canada, if BMG is forced to exit.

VII. CONCLUSION

64. BMG cannot obtain Warner reproduction and sales licences except from the Respondents and their refusal to deal is having a substantial adverse effect on the business of BMG and on competition in the mail-order record club business and on Canadian consumers.

65. The Order requested would be consistent with the purpose of the *Competition Act*, in that it would maintain and encourage competition in Canada and provide Canadian consumers with competitive prices and product choices.

66. The Order requested would also be consistent with meeting the objectives of section 75 of the Act, which are to deal with refusal to supply in cases having anti-competitive effects and to promote or preserve competition.

VIII. ORDER SOUGHT

67. The Director therefore requests an order pursuant to subsection 75(1) of the Act requiring that:

(i) the Respondents accept BMG Direct Ltd. (“BMG”) as a customer on usual trade terms for the supply of licences to manufacture, advertise, distribute and sell sound recordings made from master recordings owned or controlled by the Respondents or any of their affiliates;

(ii) the terms of the licences sought in (i) above be at least as favourable in all respects as the terms of any comparable licence or licences to The Columbia House Company in Canada (“CHC”). For greater certainty, the licences sought in (i) above

shall provide BMG with the right to at least an equal number and variety of Warner master recordings as are supplied to CHC by the Respondents or any of their affiliates;

(iii) the licences referred to above be supplied within 30 days of the issuance of the Tribunal's Order; and

(iv) such further or other Order as the Tribunal may consider appropriate.

IX. PROCEDURE

68. The Director requests that the Application be heard in the English language in Ottawa.

DATED at the City of Hull,
in the Province of Quebec,
on this 30th day of September, 1997.

Francine Matte, Q.C.
Senior Deputy Director of Investigation
and Research

The name and address of the Respondents against whom an Order is sought are listed below.

Warner Music Canada Ltd.
3571 Victoria Park Avenue
Scarborough, Ontario
M1W 3Z4

WEA International Inc.
75 Rockefeller Plaza,
New York, New York
10019, U.S.A.

Warner Music Group Inc.
75 Rockefeller Plaza,
New York, New York
10019, U.S.A.

The address for service on the Applicant is:

D. Martin Low, Q.C.
André Dorion
Department of Justice
Legal Services, Industry Canada
Competition and Consumer Law Division
Place du Portage, Phase I
50 Victoria Street
Hull, Québec
K1A 0C9

Counsel for the **Director of Investigation and Research**

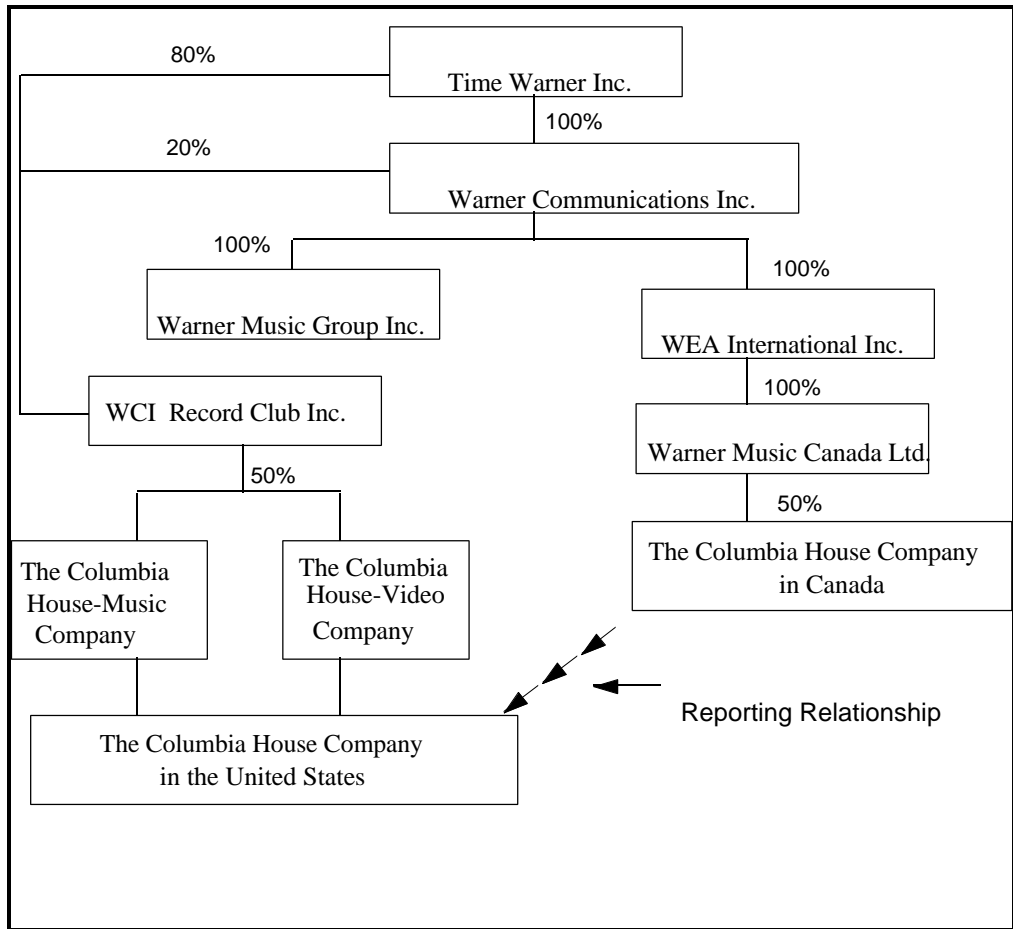
TO: THE REGISTRAR
Competition Tribunal
600-90 Sparks Street
Ottawa, Ontario
K1P 5B4

AND TO: Warner Music Canada Ltd.
3571 Victoria Park Avenue
Scarborough, Ontario
M1W 3Z4

AND TO: WEA International Inc.
75 Rockefeller Plaza,
New York, New York
10019, U.S.A.

AND TO: **Warner Music Group Inc.**
75 Rockefeller Plaza,
New York, New York
10019, U.S.A.

Appendix A



Notes:

Sony Music Entertainment Inc., through its 50% interest in The Columbia House-Music Company and The Columbia House-Video Company, effectively owns 50% of The Columbia House Company in the United States.

Sony Music Entertainment (Canada) Inc. owns 50% of The Columbia House Company in Canada.