



June 1, 2000  
 Federal Trade Commission  
 600 Pennsylvania Avenue NW  
 Washington, DC 20580

Re: Restraining Competition in CD Music Market  
 File No. 971-0070

Dear Chairman Pitofsky and Commissioners,

After reviewing the documents I would like to plead with you to reconsider your position on MAP and its components. As a second-generation owner of a family business, I fear that another price war has the ability to ruin our business as well as hundreds like it. We currently operate an eleven-store music retail chain in Pennsylvania. We are discounters. We also employ nearly 100 people. We are known as a place where you can get a wide selection of titles and great prices. We sell many titles at MAP and we can sell below MAP if we choose.

MAP has always been a choice. Accept co-op advertising and play by certain rules or do not accept co-op advertising and price CDs at any price you choose. It seems that the industry giants in "big box" consumer electronics retailing, Best Buy \$11.4 billion sales in 1999 and Circuit City \$8.48 billion sales in 1999, cried foul when the record companies chose not to fund a below cost price war. Why are you protecting the predatory price practices of these retailers? If selling CDs below cost is so great for business, the acceptance of co-op funding should be irrelevant. But it is not. Co-op funding becomes a profit center for many retailers, to fund low ball pricing. Their only motive is to destroy their competition in a predatory pricing strategy

There is no economic model that has sustained across the board below cost pricing. Sure, on the surface it looks like the consumer is winning, but in the long run if the thousands of independent and chain music only retailers go out of business, where will their choice and selection come from? This is not a wild assumption. History shows that before the imposition of MAP hundreds of stores closed and eleven music chains filed for bankruptcy protection. Do we need an encore? Choice will not come from the big box electronic stores or the major discounters (Wal-Mart, Kmart, etc.).

It is a fact that independent retail and dedicated music retailers develop new artists, the lifeblood of a healthy music industry. It is also true that the deep catalogs of some of the classic artists are only available at specialty music retailers. We develop new artists so the mass merchants can sell millions. Without a farm system the dynamics of the industry are destroyed. We need to be able to compete. We only have music to sell. The MAP prices were no means price gouging. Here is a table of the average cost and MAP structure:

Suggested List Price	Cost	MAP	Gross Profit	Gross Margin
\$16.98	\$10.70	\$11.88	\$1.18	9.93%
\$17.98	\$11.41	\$12.88	\$1.47	11.41%
\$18.98	\$12.04	\$13.88	\$1.84	13.26%

Based on my reading of your findings, you are angered by the policies and practices of the five named major distributors. You point at the rise in wholesale prices and the tactics used enforcing rules outside of the intention of MAP. I agree with many of your issues. My problem is you are punishing the wrong side. Eliminating MAP will not affect the bottom line of any distributor. Their wholesale prices do not have to change. Please find a way to end the threat of collusion and higher CD prices. If record company profits are too high, why should I, as a retailer, be part of the fallout?

Please reconsider whom you are punishing with the elimination of MAP. I think you will find that retail music stores both independent and chains have the most to lose in this ruling, not the distributors.

With or without MAP the distributors still have the power to charge whatever they want for their copyrighted material. How will the elimination of MAP bring the wholesale price of music down? Not just short-term retail price reductions fueled by predatory pricing, but long term price reductions. History proves that once the retail competition is eliminated prices will rise to their previous or higher levels. There is no incentive for the distributors to lower wholesale prices.

The consumer will not ultimately win in this scenario. They will have less choice and possibly the same or higher prices. I plead that you reconsider your position on this matter and at least postpone your decision until you can judge the long and short-term effects to my livelihood, music retailing, and the music consumer.

Sincerely  


Joe Nardone II  
Gallery of Sound