

STATEMENT OF COMMISSIONER MOZELLE W. THOMPSON

**Sony Corporation of America/Bertelsmann Music Group Joint Venture,
File No. 041-0054**

The Commission today has closed its investigation into a proposed joint venture¹ between the Sony Corporation of America (“Sony”) and Bertelsmann Music Group (“BMG”) music labels. Although I concur in this determination, my decision was a difficult one, in part because I am particularly concerned about the impact of media mergers on the prices and quantity of media, as well as the diversity of content, available to consumers.

The history of facilitating practices in the music industry, coupled with the elimination of Sony and BMG as independent competitors, causes me concern. The music industry has been scrutinized closely in the past by the Commission in connection with proposed mergers² and with practices ranging from alleged anticompetitive Minimum Advertised Price (“MAP”) programs³ to agreements to fix prices and limit advertising.⁴ The industry is highly concentrated among record labels, and the proposed joint venture will only enhance this concentration. Additionally, the history of parallel MAP policies in particular indicates a propensity for interdependent behavior among the major labels.

I acknowledge, however, that our investigation to date has not unearthed sufficient evidence on which to conclude with reasonable certainty that the proposed venture is likely to facilitate coordination in the relevant market in violation of the antitrust laws. Additionally, the evidence tends to show growing clout among retailers that may be enough to undermine a potential collective exercise of market power on the part of the major labels. For these reasons, I join the Commission’s decision to close the investigation.

¹ The venture excludes CD manufacturing, CD distribution, and music publishing.

² See e.g., *FTC v. Warner Communications, Inc.*, 742 F.2d 1156 (9th Cir.1984).

³ See e.g., *Universal Music & Video Distribution Corp.*, Complaint in Docket No. C-3974 at ¶ 4 (May 10, 2000).

⁴ *In the Matter of Polygram Holding, Inc. et al*, ____F.T.C.__(July 23, 2003).