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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**ROUNDTABLE ON COMPETITION AND SPORTS**

**Note by the delegation of the United States**

*This note is submitted by the delegation of the United States to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16 - 17 June 2010*

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## ROUNDTABLE ON COMPETITION AND SPORTS

### -- Note by the United States --

1. Section 1 of the Sherman Act prohibits agreements among competitors that unreasonably restrain trade,<sup>1</sup> a prohibition that both the Antitrust Division of the United States Department of Justice and private parties are authorised to enforce. In part because sports leagues and competitions require some agreements among competing, separately operated teams in order to structure on-field competition,<sup>2</sup> United States courts have been routinely required to deal with private antitrust challenges involving sports leagues and sanctioning bodies.<sup>3</sup> All such cases have been brought by private parties, however. Since 1970, the federal enforcement agencies' involvement in sports cases has consisted of filing *amicus* briefs designed to assist, as a "friend of the court," in the adjudication of private disputes.

2. In the United States, competition policy issues in professional sports have arisen mainly with respect to the four most popular leagues—Major League Baseball (MLB), the National Basketball Association (NBA), the National Football League (NFL), and the National Hockey League (NHL). Each of these leagues is organised as a joint venture of separate businesses. Each has a central office responsible for many operating decisions, such as determining the schedule of games for each season, but the individual teams are separately owned and operated and team owners participate in significant decisions made by the league as representatives of their respective teams. The leagues pool revenues to varying degrees, but each team is a separate profit centre and team profitability varies widely within a league.<sup>4</sup>

3. In the United States, some competition policy issues have arisen in non-team professional sports, such as golf and auto racing. These issues typically concern the conduct of sanctioning bodies, such as the PGA TOUR, which governs men's golf, and the National Association for Stock Car Auto Racing (NASCAR). These bodies generally operate much like a sports league's central office in determining the schedule of events and in licensing broadcast rights. In these sports, however, no business entities comparable to the teams in the four major leagues participate in decision making.

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<sup>1</sup> See *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007); *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997).

<sup>2</sup> See generally, *NCAA v. Board of Regents*, 468 U.S. 85, 101 (1984) (noting that an antitrust challenge in the context of college football involved "an industry in which horizontal restraints on competition are essential if the product is to be available at all").

<sup>3</sup> Section 2 of the Sherman Act prohibits the acquisition or maintenance of monopoly power through exclusionary conduct. A few sports cases have involved allegations by one league of exclusionary conduct by a rival league. *E.g.* *United States Football League v. NFL*, 842 F.2d 1335 (2d Cir. 1988); *American Football League v. NFL*, 323 F.2d 124 (4th Cir. 1963); *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462 (E.D. Pa. 1972).

<sup>4</sup> The U.S. professional soccer league, Major League Soccer (MLS), is organised differently. All teams are owned by the league, but substantial control over each is vested in its "operator/investor." Because of this separate control, MLS has been treated much the same as the four major sports leagues under the antitrust laws. See *Fraser v. MLS*, 284 F.3d 47, 53–56 (1st Cir. 2002).

## 1. The Single-Entity Issue with Professional Sports Leagues

4. A critical legal issue in this area is when, if ever, a sports league structured as a joint venture of separately owned teams should be considered a single economic entity for antitrust purposes. Under U.S. Supreme Court precedent, Section 1 of the Sherman Act does not apply to agreements among subsidiaries of a single firm or agreements among any other parties that are considered members of a single economic entity.<sup>5</sup> It is therefore important to decide when, if ever, a sports league (or other form of joint venture) should be treated as a single-entity.<sup>6</sup>

5. On May 24, the Supreme Court addressed this issue in the *American Needle* case.<sup>7</sup> The case arose from the National Football League's decision to grant a single, exclusive license for use on apparel to all the team's logos and trademarks. A hat manufacturer denied a license filed suit, arguing that the exclusive license violated the Sherman Act as an agreement among competing firms (*i.e.* the teams). The complaint was dismissed by the district court. The court of appeals, adopting the approach suggested by its precedent, held that the single entity issue had to be addressed "one facet of a league at a time,"<sup>8</sup> and found that, at least with respect to licensing of team logos and trademarks, the NFL acted as a single economic entity.<sup>9</sup> It therefore affirmed the dismissal of the complaint.

6. The Supreme Court unanimously reversed the court of appeals on the basis that the NFL teams "compete in the market for intellectual property" so collective licensing decisions "by the NFL teams . . . 'depriv[e] the marketplace of independent centres of decision-making.'"<sup>10</sup> Even if the relevant decisions were not directly made by the teams, but rather the league's licensing entity, NFL Properties, the Court held that its actions were not those of a single economic entity because it acted as an instrumentality of the teams.<sup>11</sup> Consequently, the Court remanded the case to the lower court for further proceedings consistent with the Supreme Court's holding that the collective conduct at issue must be analysed under the rule of reason.

7. The Court also observed, however, that many collective actions by the teams in a sports league would be lawful under the Sherman Act either because the teams "must co-operate in the production and scheduling of games" or because of league interests in maintaining competitive balance.<sup>12</sup> As the Court's observation suggests, sports league cases raise unique issues because, with respect to *on-field* interaction, the separately owned and operated teams have no choice but to agree about the structure of competition between them, and antitrust law must accommodate that reality. Yet the distinction between on-field decisions and business-side decisions can be elusive, and the terms in which courts make that distinction will affect the law regarding other kinds of joint ventures as well. Because competitor collaboration is both

<sup>5</sup> See *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 767 (1984).

<sup>6</sup> With the exception of the lower court decisions in the *American Needle* case discussed in the following paragraphs, no sports league appears to have been found by a court to have acted as a single economic entity. Prior to that case, the NFL was always unsuccessful in arguing that it had acted as a single economic entity. See *Sullivan v. NFL*, 34 F.3d 1091, 1099 (1st Cir. 1994) (restraint on franchise ownership); *Los Angeles Memorial Coliseum Commission v. NFL*, 726 F.2d 1381, 1387–90 (9th Cir. 1984) (franchise location restraints); *McNeil v. NFL*, 790 F. Supp. 871, 878–80 (D. Minn. 1992) (labour market restraint).

<sup>7</sup> *American Needle Inc. v. NFL*, \_\_\_ S. Ct. \_\_\_ (May 24, 2010).

<sup>8</sup> *Chicago Professional Sports Ltd. v. NBA*, 95 F.3d 593, 596 (7th Cir. 1996).

<sup>9</sup> *American Needle Inc. v. NFL*, 38 F.3d 736, 742–44 (7th Cir. 2008).

<sup>10</sup> *American Needle Inc. v. NFL*, \_\_\_ S. Ct. \_\_\_, slip opinion at 12.

<sup>11</sup> *Id.* at 17.

<sup>12</sup> *Id.* at 18–19.

a major source of innovation and efficiencies and a dangerous opportunity for concerted, anticompetitive conduct, this is an area where the careful development of sound rules is essential, and it is thus important to keep in mind the facts that make sports league cases distinct from many others.

## **2. Antitrust Cases Involving Professional Sports under Section 1 of the Sherman Act**

8. As the Supreme Court has recently observed: “The rule of reason is the accepted standard for testing whether a practice restrains trade in violation of § 1. . . . In its design and function the rule distinguishes between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer’s best interest.”<sup>13</sup> Although the United States has experienced a great deal of Section 1 litigation involving sports leagues, the cases have yielded little insight into the unique issues arising in the application of the rule of reason to sports. One appeals court decision noted complexities arising from the fact that co-operation among teams can be procompetitive in markets where the league competes with other forms of entertainment, yet anticompetitive in markets where the scope of competition is much narrower.<sup>14</sup> Another recognised “the need for accommodation among interdependent enterprises” in a sports league.<sup>15</sup>

### **2.1 Intellectual Property Licensing**

9. A recent case similar to *American Needle* involved licensing of team logos and trademarks by MLB. The licensing for all MLB teams is done collectively by the league, which declined to grant a license to a company producing small stuffed bears displaying markings associated with particular teams or players. That company sued, claiming that MLB licensing was properly characterised as a cartel and therefore violated the antitrust laws. That claim was rejected for failure to proffer any admissible evidence in support and because of contrary evidence proffered by MLB that it lacked market power and that its licensing achieved significant efficiencies.<sup>16</sup> One judge wrote a concurring opinion notable for its application of the ancillary restraints doctrine, as well as for the fact that the author—Judge Sotomayor—now sits on the Supreme Court. The opinion characterised MLB’s collective licensing as a legitimate joint venture, rather than merely a cartel, and found that the aspects of the venture resembling price fixing were reasonably necessary to achieve its pro-competitive purposes.<sup>17</sup>

### **2.2 Franchise Location and Ownership**

10. League rules on franchise location and ownership have often been challenged under the antitrust laws. The best known of these cases involved the attempt by the Oakland Raiders NFL team to move to Los Angeles. At the time, an NFL rule required unanimous consent of the team owners, which was not forthcoming. A jury found that the rule, and its application to prevent the Raiders’ move, violated the antitrust laws, and that verdict was upheld on appeal.<sup>18</sup> In a later appeal on damages, however, the same court of appeals held that the opportunity to put an NFL team in Los Angeles belonged to the league and therefore the considerable value of that opportunity had to be deducted from the damages awarded to the

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<sup>13</sup> See *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 885–86 (2007).

<sup>14</sup> *Sullivan v. NFL*, 34 F.3d 1091, 1112 (1st Cir. 1994).

<sup>15</sup> *Fraser v. MLS*, 284 F.3d 47, 58 (1st Cir. 2002).

<sup>16</sup> *MLB Properties v. Salvino, Inc.*, 542 F.3d 290, 315–21 (2d Cir. 2008).

<sup>17</sup> *Id.* at 337–40 (Sotomayor, J., concurring).

<sup>18</sup> *Los Angeles Memorial Coliseum Commission v. NFL*, 726 F.2d 1381 (9th Cir. 1984); but see *NBA v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir. 1987) (reversing summary judgment against the NBA on its rule requiring league approval before moving a team).

Raiders.<sup>19</sup> At issue in another case were the NFL's rules requiring approval by team owners of all transfers of ownership and the NFL's policy against public ownership. A jury held that the rule and policy violated the antitrust laws. On appellate review, the court rejected most of the NFL's contentions regarding errors of fact and law but found that other trial errors necessitated retrial.<sup>20</sup> The case was then settled.

### 2.3 *League Membership*

11. By way of contrast, teams have been largely unsuccessful when claiming that the major professional sports leagues violated the antitrust laws by refusing their admission into the league. The best-known such case involved a team from the short-lived World Football League, which sought membership in the NFL after its league failed. The court rejected the claim on the grounds that the team was not complaining about a restraint on competition, but rather about the inability to share in the NFL's profits.<sup>21</sup>

### 2.4 *Equipment Standards*

12. Antitrust litigation on equipment standards has been infrequent, although limited success was achieved by a golf club manufacturer in one case. When the PGA TOUR adopted a rule barring certain popular clubs, their manufacturer and several players using the clubs invoked the antitrust laws and obtained a preliminary injunction.<sup>22</sup> In the most recent appeals court decision in this area, which involved decisions on permissible automobile transmissions made by a sanctioning body for auto races, the court held that it need not consider the "fairness of those decisions" and that unless "decisions are corrupted by coercion from competitors of the disadvantaged supplier," any exclusionary effect on that supplier is merely "the incidental result of defining the rules of a particular game."<sup>23</sup>

### 2.5 *Real-Time Data*

13. One final decision of note addressed a media company's attempt to establish that the PGA TOUR violated the antitrust laws in preventing it from disseminating the real-time golf tournament scoring information compiled by the PGA TOUR. The court held that the media company was attempting to free ride off the PGA TOUR's significant investment in providing real-time scoring information to the public.<sup>24</sup>

### 2.6 *Conclusion*

14. These cases demonstrate, again, that the distinction between the rules of play and the rules of business competition can be challenging to identify precisely, making sports cases both difficult and *sui generis*. Enforcers and courts must proceed carefully to ensure that procompetitive collaboration is allowed to go forward while anticompetitive combination is limited, giving consumers the benefit of both on- and off-field competition.

<sup>19</sup> Los Angeles Memorial Coliseum Commission v. NFL, 791 F.2d 1356, 1371–73 (9th Cir. 1986).

<sup>20</sup> Sullivan v. NFL, 34 F.3d 1091 (1st Cir. 1994).

<sup>21</sup> Mid-South Grizzlies v. NFL, 720 F.2d 772, 784–87 (3d Cir. 1983). Similar is Seattle Totems Hockey Club, Inc. v. NHL, 783 F.2d 1347, 1350 (9th Cir. 1986).

<sup>22</sup> Gilder v. PGA TOUR, 727 F. Supp. 1333 (D. Ariz. 1989), affirmed, 936 F.2d 417 (9th Cir. 1991). The district court noted, however, that it "does not substitute its independent judgment for the judgment of the sport's governing body as long as the rule adopted is reasonable, without self-interest or self-dealing among the decision-makers, and where those affected have had some opportunity for input into the decision-making process." Id. at 1336–37.

<sup>23</sup> Brookins v. International Motor Contest Association, 219 F.3d 849, 854 (8th Cir. 2000).

<sup>24</sup> Morris Communications Corp. v. PGA TOUR, Inc., 364 F.3d 1288, 1295–96 (11th Cir. 2004).

### 3. The Relevant Market in Professional Sports

15. Few judicial antitrust decisions involving professional sports have devoted significant attention to the definition of the relevant market. The Supreme Court appears to have addressed sports market definition just twice: a 1959 decision involving the promotion and broadcasting of boxing upheld a lower court's determination that the relevant market was limited to championship boxing matches,<sup>25</sup> and a 1984 decision involving the broadcasting of college football games approved the lower courts' determination that the relevant market was limited to "college football broadcasts."<sup>26</sup>

16. Recent decisions, however, have suggested that a professional sport faces competition from many and varied sources. The appeals court decision in *American Needle* observed that the NFL "competes with other forms of entertainment for an audience of finite (if extremely large) size, and the loss of audience members to alternative forms of entertainment necessarily impacts the individual teams' success."<sup>27</sup> In the case discussed above involving licensing by MLB, the appeals court cited evidence that the league competes with both other sports and with non-sports licensors in licensing team logos.<sup>28</sup> Whether these factors will lead courts to adopt broader market definitions remains an open issue.

17. A very recent decision illustrates the importance of pinpointing the competition issue in a sports case and of defining a market relevant to that issue. Although this lesson is valuable in all of antitrust law (outside the cartel area), it is especially valuable in sports cases.<sup>29</sup> A sports league or sanctioning body is apt to operate in multiple markets with widely varying competitive conditions, and which market or markets are implicated by a particular practice is not always obvious.<sup>30</sup> This particular case involved NASCAR, which sanctions stock car races, including the premier "Sprint Cup" events. A race track that was rejected as a venue for a Sprint Cup race claimed that that rejection violated the antitrust laws. The claim was dismissed for failure to properly assess substitutes for Sprint Cup races from the perspective of fans attending the races,<sup>31</sup> despite the race track's contention that the fan perspective was not appropriate for defining the relevant market because the competition at issue was that among race tracks to host Sprint Car races.<sup>32</sup>

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<sup>25</sup> *International Boxing Club of New York, Inc. v. United States*, 358 U.S. 242, 250–51 (1959).

<sup>26</sup> *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*, 468 U.S. 85, 111–12 (1984).

<sup>27</sup> *American Needle Inc. v. NFL*, 538 F.3d 736, 743 (7th Cir. 2008), reversed on other grounds, \_\_\_ S. Ct. \_\_\_ (May 24, 2010); see also *Chicago Professional Sports Ltd. v. NBA*, 95 F.3d 593, 596 (7th Cir. 1996) (observing that the NBA is "in competition with a thousand other producers of entertainment").

<sup>28</sup> *MLB Properties v. Salvino, Inc.*, 542 F.3d 290, 298–300 (2d Cir. 2008); see also *Henderson Broadcasting Corp. v. Houston Sports Association*, 647 F. Supp. 292, 297 (S.D. Tex. 1986) (rejecting a proposed relevant market limited to radio advertising on Houston Astros baseball games).

<sup>29</sup> Many markets have been involved in sports cases, and some are unique to sports. For example, in analysing the competitive effects of NFL's rule that team owners could not own other professional sports teams, the court defined a distinct market for "sports capital and skill" in which there were relatively few potential competitors. See *North American Soccer League v. NFL*, 670 F.2d 1249, 1260 (2d Cir. 1982).

<sup>30</sup> See *Los Angeles Memorial Coliseum Commission v. NFL*, 726 F.2d 1381, 1392–94 (9th Cir. 1984) (declining to overrule the jury determination that the relevant market was limited to NFL football but observing that "market definition is especially difficult" in professional sports and recognising that NFL football competes with other forms of entertainment).

<sup>31</sup> *Kentucky Speedway, LLC v. NASCAR*, 588 F.3d 908 (6th Cir. 2009).

<sup>32</sup> *Id.* at 914, 917.

## 4 Limitations on the Application of Antitrust Law to Professional Sports

### 4.1 *The Baseball Exemption*

18. Antitrust law is an exercise of the congressional power to regulate “interstate commerce.” Based on the then-prevailing understanding of those words, the Supreme Court in 1922 held that the Sherman Act did not apply to the conduct of a professional baseball league because the exhibition of professional baseball games was neither commerce nor interstate.<sup>33</sup> Within two decades, Supreme Court decisions greatly expanded the definition of “interstate commerce,” and the Court determined that Congress had not “intended to freeze the proscription of the Sherman Act within the mould of then-current judicial decisions defining commerce power.”<sup>34</sup> Uniquely with respect to baseball,<sup>35</sup> however, the Court gave controlling weight to the doctrine of *stare decisis* and declined in 1972 to overturn baseball’s judicially created exemption from the antitrust laws.<sup>36</sup> Eventually, Congress enacted legislation that eliminated the exemption with respect only to the major league player market, so that the antitrust laws now apply in the same way in all major professional sports leagues to disputes between the players and the league.<sup>37</sup>

### 4.2 *The Non-Statutory Labour Exemption*

19. Players in major professional team sports leagues in the United States are represented by unions, which negotiate pay and working condition issues with the team owners. Restraints on pay and working conditions arising in a collective bargaining relationship are subject to the “non-statutory labour exemption” from the antitrust laws.<sup>38</sup> The exemption was crafted by the courts to reflect “a proper accommodation between the congressional policy favouring collective bargaining under [federal labour law] and the congressional policy favouring free competition in business markets.”<sup>39</sup>

20. In the 1970s, several decisions held that the non-statutory labour exemption did not apply to the rules of major professional sports leagues restricting player mobility, and those decisions led to the negotiation of contracts between the owners and the players’ unions providing for substantially greater

<sup>33</sup> Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

<sup>34</sup> United States v. South-Eastern Underwriters Association, 322 U.S. 533, 557 (1944).

<sup>35</sup> The Supreme Court also specifically rejected the extension of the baseball exemption to other professional sports. See Radovich v. NFL, 352 U.S. 445, 449–52 (1957); International Boxing Club of New York, Inc. v. United States, 348 U.S. 236 (1955).

<sup>36</sup> See Flood v. Kuhn, 407 U.S. 258, 282–84 (1972); Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953). The precise scope of the exemption is not entirely settled. One court held that the exemption was limited to restraints in the players market, and hence did not apply in a dispute over franchise relocation. Piazza v. MLB, 831 F. Supp. 420, 433–38 (E.D. Pa. 1993). The view generally taken is that the exemption extends to all of the business of baseball. See, e.g. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978).

<sup>37</sup> Curt Flood Act of 1998, Public Law 105-297, § 3, 112 Stat. 2824 (codified at 15 U.S.C. § 26b).

<sup>38</sup> The antitrust laws do apply to labour agreements outside the collective bargaining relationship with “the potential for restraining competition in the business market in ways that would not follow naturally from elimination of competition over wages and working conditions.” Connell Construction Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616, 635 (1975); see also United Mine Workers of America v. Pennington, 381 U.S. 657, 665–69 (1965); Allen Bradley Co. v. Local Union 3, International Brotherhood of Electrical Workers, 325 U.S. 797, 806–11 (1945).

<sup>39</sup> Connell Construction, 421 U.S. at 622–23; see also Local Union No. 189, Amalgamated Meat Cutters & Butchers Workmen of North America v. Jewel Tea Co., 381 U.S. 657, 692–93 (1965).

player mobility.<sup>40</sup> The best-known case concerned an NFL rule requiring compensation to a team when one of its players is signed by a rival team, and the court of appeals determined that the rule had been imposed on the players union rather than bargained for.<sup>41</sup> In antitrust litigation involving the NBA and NHL, the courts held that the exemption did not apply on the view that it could not be invoked to advantage employers in a dispute with workers.<sup>42</sup>

21. More recent decisions, however, have consistently held that player market restraints are protected by the non-statutory labour exemption whenever they were within agreements negotiated with the players unions.<sup>43</sup> For example, one case held that the exemption applied to the NFL rule barring participation in the player draft for three football seasons after high school graduation.<sup>44</sup>

22. A recurring issue in antitrust litigation between major professional sports leagues and their players is the application of the non-statutory labour exemption after the expiration of the collective bargaining agreement.<sup>45</sup> The rationale of the exemption certainly applies while the players and the league bargain toward a new agreement, but the Supreme Court has held that the exemption continues to apply even after a bargaining impasse is reached.<sup>46</sup> To avoid the application of the non-statutory labour exemption, the union representing NFL players was disbanded in 1989, so the players could pursue antitrust litigation against the league.<sup>47</sup>

### 4.3 *Sports Broadcasting*

23. Also exempt from the antitrust laws are some activities related to broadcasting of professional sports. The Sports Broadcasting Act of 1961 exempted from the antitrust laws the pooling of sponsored broadcast rights for sale as a package by the professional baseball, basketball, football, and hockey leagues.<sup>48</sup> The Act overturned the decision of a district court declaring that the contract between the NFL and a major television network was prohibited under the terms of an injunction entered as a result of an

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<sup>40</sup> See Lawrence M. Kahn, “Sports, Antitrust Enforcement and Collective Bargaining,” 54 *Antitrust Bulletin* 857, 868–76 (2009).

<sup>41</sup> *Mackey v. NFL*, 543 F.2d 606, 615–16 (8th Cir. 1976). In an earlier challenge to the same rule, the court held that the exemption did not apply because the rule was adopted unilaterally by the NFL when no contract was in effect. *Kapp v. NFL*, 390 F. Supp. 73, 85–86 (N.D. Cal. 1974), affirmed, 586 F.2d 644 (9th Cir. 1978).

<sup>42</sup> *Robertson v. NBA*, 389 F. Supp. 867, 884–89 (S.D.N.Y. 1975); *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462, 496-500 (E.D. Pa. 1972).

<sup>43</sup> *E.g.* *Wood v. NBA*, 809 F.2d 954 (2d Cir. 1987); *McCourt v. California Sports, Inc.*, 600 F.2d 1193 (6th Cir. 1986); *Zimmerman v. NFL*, 632 F. Supp. 398 (D.D.C. 1986).

<sup>44</sup> *Clarett v. NFL*, 369 F.3d 124 (2d Cir. 2004).

<sup>45</sup> See, *e.g.* *NBA v. Williams*, 45 F.3d 684 (2d Cir. 1995); *Powell v. NFL*, 888 F.2d 559 (8th Cir. 1989).

<sup>46</sup> *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996).

<sup>47</sup> See *Powell v. NFL*, 764 F. Supp. 1351, 1354 (D. Minn. 1991).

<sup>48</sup> Public Law 87-331, 75 Stat. 732 (codified at 15 U.S.C. § 1291–95). The exemption does not apply if the licensing agreement prohibits televising any games, other than those “within the home territory of a member club of the league on a day when such club is playing a game at home.” 15 U.S.C. § 1292. An amendment to the Act exempted from the antitrust laws the merger of the NFL with the rival American Football League. Public Law 89-800, 80 Stat. 1515 (codified at 15 U.S.C. § 1291).



earlier antitrust suit.<sup>49</sup> Later, individual MLB and NBA teams licensed their games to television “superstations,” which are carried on cable systems throughout the United States, and the NBA’s restriction on the number of games carried was held not to be within the exemption.<sup>50</sup> Direct broadcast satellite television now carries extensive sports programming, including all regular season NFL games, and the exemption does not apply because the games are not sponsored by advertising.<sup>51</sup> Of course, just as conduct that qualifies for a particular antitrust exemption would not necessarily violate the antitrust laws in the absence of the exemption, failing to qualify for an exemption does not mean that particular conduct necessarily violates the law. Thus, even if collective television contracts are subject to Section 1 scrutiny, they may still be permitted because the league is viewed as a single economic entity in marketing the league’s games, or because collective action by the teams is deemed either ancillary to the legitimate aims of the joint venture or otherwise reasonable.

## 5. Conclusion

24. In the U.S., competition issues relating to professional sports have arisen primarily in private litigation under section 1 of the Sherman Act. Although there are some antitrust exemptions described in this paper (e.g., baseball, collective bargaining, pooling of broadcasting rights), conduct not covered by the exemptions remains subject to the antitrust laws, and typically is analysed under the rule of reason. Sports law cases tend to present unique issues and fact patterns because of the necessity for some co-operation among teams to structure the terms of on-field competition. This peculiar aspect of sports law cases should be borne in mind when analogising such cases to other issues in joint venture or competition law.

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<sup>49</sup> See *United States v. NFL*, 196 F. Supp. 445 (E.D. Pa. 1961) (interpreting the prior injunction); *United States v. NFL*, 116 F. Supp. 319 (E.D. Pa. 1953) (finding NFL rules on broadcasting in violation of the antitrust laws).

<sup>50</sup> *Chicago Professional Sports Ltd. v. NBA*, 95 F.3d 593, 596 (7th Cir. 1996).

<sup>51</sup> See *Shaw v. Dallas Cowboys Football Club, Ltd.*, 172 F.3d 299 (3d Cir. 1999).