

Exhibit A

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FEDERAL EXPRESS

Trial Attorney Adam Speegle
U.S. Department of Justice
Antitrust Division
Media, Entertainment, and Professional Services Section
450 Fifth Street NW, Suite 400
Washington, D.C. 20530

Re: Comments on Proposed Final Judgment in the Matter of *United States v. Learfield Communications, LLC, et al*, 19 CV 389 (D.D.C.) in Accordance with 15 U.S.C. § 16(b)-(c)

Dear Mr. Speegle:

On behalf of JMI Sports, LLC ("JMIS"), this letter comments on the proposed Final Judgment published by the U.S. Department of Justice – Antitrust Division ("DOJ") in accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act") in the matter of *United States v. Learfield Communications, LLC, et al*, 19 CV 389 (D.D.C.). JMIS has competed and will continue to compete against "Learfield IMG College" (the post-merger entity which encompasses the previously separate companies of Learfield Communications, LLC and IMG College, LLC and A-L Tier, LLC, hereinafter "Learfield IMG") for multimedia rights ("MMR") contracts. Since the publication of DOJ's Tunney Act materials, JMIS has observed significant confusion and upheaval in the MMR marketplace. Schools do not appear to recognize what options are and are not available to them in selecting an MMR provider. MMR providers do not appear to know what market opportunities exist or what options are available to pursue those opportunities. And movement in the MMR labor force appears paralyzed by the lack of understanding of possible restrictive covenants. To provide clarity and for the good of all market participants—schools, MMR providers, and workers in the MMR field—JMIS requests that DOJ's proposed Final Judgment be amended to include any and all conditions of settlement between Learfield IMG and DOJ which were not included in DOJ's February 14, 2019 Tunney Act filings that may have a material effect on the market. In the event that no further conditions or terms were placed upon Learfield IMG, JMIS requests that DOJ amend its proposed Final Judgment to include an affirmative statement that the proposal includes *all* relevant terms.

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I. Background and DOJ's Tunney Act Filing.

In connection with its Tunney Act filing dated February 14, 2019, DOJ published its proposed Final Judgment, ECF No. 2, and a Competitive Impact Statement, ECF No. 3. In summary, DOJ's proposed Final Judgment precludes Learfield IMG from: (1) communicating with any competitor concerning competitively sensitive information; (2) agreeing with any competitor to participate in a bid; (3) agreeing with any competitor not to bid on a MMR contract; and (4) proposing a collaborative bid with any competitor. See ECF No. 2 at pages 9-10. In addition, the proposed Final Judgment requires Learfield IMG to obtain written consent from DOJ prior to entering into, renewing, or extending any joint venture or conducting other business negotiations in conjunction with or on behalf of any competitor relating to multimedia rights. *Id.*

If this list is an accurate and complete recitation of all material terms and conditions of settlement, DOJ should say so. Otherwise, JMIS respectfully submits that the proposed Final Judgment is insufficient to accomplish the core goal of the Tunney Act, exposing consent decrees to "sunlight." See *United States v. Microsoft Corp.*, 231 F. Supp. 2d 144, 152 (D.D.C. 2002). DOJ's silence on critical issues has created widespread speculation and uncertainty in the marketplace that must be remedied.

II. DOJ should use the Tunney Act process to address all material terms of settlement or to clarify that there are no non-public settlement terms.

DOJ's Tunney Act disclosures do not contain the level of guidance necessary for competitors and customers to understand the post-merger marketplace. See, generally, ECF No. 2 at pages 9-18; ECF No. 3 at pages 3-7. As just some examples of omissions, the proposed Final Judgment and Competitive Impact Statement do not provide the market with meaningful guidance on: (1) the potential for early termination of existing Learfield IMG contracts; (2) the ability of Learfield IMG to impair its current and former employees' future employment opportunities; or (3) the process through which DOJ will vet proposed extensions or expansions to existing joint ventures involving Learfield IMG. Without sufficient transparency on these issues and other additional settlement terms and conditions placed upon Learfield IMG in connection with the merger (should such conditions exist), the marketplace—competitors and schools alike—is left to speculate and parse through rumors and unverified statements to determine whether and when contracts may be available for bid and what ground rules exist for competitors to pursue such opportunities.

A. DOJ should disclose all terms related to the early termination of Learfield IMG contracts.

Speculation exists in the marketplace that, as a condition of settlement with the government, Learfield IMG must provide non-"Power 5" conference schools¹ with which Learfield IMG has an existing contractual relationship with the opportunity to test the market and potentially void multimedia rights contracts before the contractual term date.

¹ The "Power 5" conferences are the ACC, Big 10, Big 12, Pac-12, and SEC conferences. "Non-Power 5" conferences include all other athletic conferences.

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Speculation also abounds that Power 5 schools must be granted the same opportunity if the schools are at least 70 percent through a contract with Learfield IMG. Whether these rumors are truth or fiction have profound consequences for the market. DOJ should use the public comment process to clarify whether DOJ's settlement with Learfield IMG included any provisions which provide schools with the option of securing a new MMR provider before the expiration of a current contract or otherwise alters the timing of market opportunities.

B. DOJ should disclose all terms related to post-employment restrictions on Learfield IMG employees.

If DOJ addressed employment issues in settling with Learfield IMG, DOJ should further clarify how the Final Judgment affects the future rights of Learfield IMG's employees. Most, if not all, of the companies in the MMR market use a similar employment model. When a company obtains an MMR contract, it hires additional employees to staff the new contract. Frequently, the new employees have ties to the contracting university (e.g., alumni or past work experience) that provide immediate value to the university because of their existing knowledge. As those employees work on an MMR contract, they become more knowledgeable about the university and its various assets. A university may decide to change MMR providers for a variety of reasons—different pricing, a different management team, a different management strategy—but may still value the knowledge and contributions of employees who have worked on the prior contract. Because the Final Judgment imposes restrictions on the ability of Learfield IMG and its employees/agents to communicate with competitors, it creates incentives for Learfield IMG to impose draconian restrictions on *any* communications between its agents/employees and competitors. Similarly, the Final Judgment is silent as to Learfield IMG's ability to impose post-employment restrictions (i.e., non-compete agreements).

Given Learfield IMG's market share, if it retains the ability to impose post-employment restrictions on current employees, such restrictions have the ability to greatly affect the ability of innocent MMR providers to hire qualified employees and the rights of universities to receive services from valued individual contributors. To avoid penalizing schools through artificial and unnecessary limitations placed on the pool of available workers, DOJ must issue clear guidance on what conditions, if any, exist on Learfield IMG's ability to impose post-employment restrictions or otherwise impede its current employees' future participation in the labor market.²

² If DOJ's settlement with Learfield IMG did address employment issues, in addition to disclosing the existing terms, DOJ should amend its Final Judgment to include a "personal exception" clarifying that IMG Learfield employees may communicate in their personal capacities with other MMR providers about future employment opportunities. Because of the adverse impact that restrictive covenants have on customer schools, DOJ should also reconsider any term of settlement which permits Learfield IMG to impose unnecessary post-employment restrictions on its current employees.

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C. DOJ should disclose all terms related to its process for vetting joint ventures.

The proposed Final Judgment requires DOJ's consent for the extension of any joint ventures involving Learfield IMG; however, the proposed Final Judgment and other Tunney Act disclosures provide no information on how the required approval process will work. DOJ provides no guidance or information on the expected length of the approval process, the criteria for approval/rejection, or whether other non-Learfield IMG joint venture participants may separately request that DOJ approve a continuation of a joint venture. And, because the proposed Final Judgment prohibits Learfield IMG from communicating with competitors about future business opportunities, non-Learfield IMG MMR joint venture partners arguably cannot even ask Learfield IMG to request an extension of a joint venture. DOJ should disclose any terms related to the contemplated process through which market participants who are joint venture partners with Learfield IMG may request an extension of an existing joint venture and should clarify the expected length of time and criteria for approval so that innocent market participants can adequately plan to preserve future business opportunities.³

* * *

JMIS appreciates DOJ's consideration of its concerns. JMIS notes that it has cooperated throughout DOJ's investigation of the proposed merger by providing requested information. DOJ's investigation and requests have imposed significant costs on a small business already facing disadvantages of scale in comparison to the much larger Learfield IMG entity. For these reasons, JMIS respectfully asks that DOJ carefully consider its requests. Thank you for your consideration in this matter and please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/Michael Ferrara

Michael Ferrara

Cc: Patrick Hagan, Esq.
Jason Sims, Esq.
Lisa Tenorio-Kutzkey, Esq.

³ Just as the marketplace is speculating about whether additional conditions exist, there are also questions about whether DOJ considered taking action to limit or terminate contracts in which IMG and Learfield entered into joint ventures with each other before their merger. *Compare* Competitive Impact Statement, ECF No. 3 at page 3 (stating that IMG Learfield's anti-competitive behavior included joint ventures between IMG and Learfield "at specific universities" "to limit competition between one another") *with* Proposed Final Judgment, ECF No. 2-1 at pages 4-5 (limiting remedies to limitations on future conduct relating to new business opportunities). As DOJ has apparently concluded that both universities and innocent market participants were harmed by this anti-competitive conduct, DOJ should explain any relevant conditions or remedies it imposed to unwind the past anti-competitive harm of this conduct in its settlement with Learfield IMG.