COMPETITION POLICY IN EUROPEAN SPORTS

AFTER THE BOSMAN CASE: ABSTRACT

by

Roger G. Noll

In the Bosman decision, the European Court of Justice declared that the rules of international football (soccer) governing the player market violated the Maastricht Treaty by preventing international competition for professional athletes. The purpose of this paper is to extend the logic of the Bosman decision to other governance rules of European football, including policies regarding broadcasting, product licensing, and creating and expanding professional leagues. The essence of the argument is that growth in demand for sports and the conversion of European television from nationalized monopoly to privatized competition has vastly increased the financial incentive to create international football leagues comprised of the best teams from the existing national premier leagues. Thus far, national and international football organizations have resisted this movement, but they are unlikely to be successful in doing so. Hence, the relevant question is to identify the various ways these international leagues can be structured, and to apply the principles of competition policy analysis to evaluate them. The main conclusions are that the European Union should, if possible, promote multiple competing leagues rather than a single, monopoly league, or, if this is not feasible, to prevent the single league from monopolizing the sale of broadcasting and licensing rights and the number of premier league teams that will be permitted.
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Roger G. Noll*

Throughout the world, the business operations of professional team sports have long been inconsistent with the principles of competition policy. In virtually all nations and sports, teams develop cooperative rules to diminish competition for players and among "major league teams," i.e., the teams in the highest ranking leagues. Frequently leagues also adopt policies whereby teams pool the sale of rights to broadcast games and to use team names and logos, and prevent growth in the number of teams that play at the highest level of competition in order to maximize the value of incumbent clubs.

In December 1995, a decision by the Court of Europe in a case involving professional football (soccer) ruled that teams and leagues could no longer place restrictions on the free movement of players across national boundaries. In effect, this ruling not only eliminated quotas on the number of foreign players who can play for a team in a national league, but called into question the so-called player reservation system, which is the set of rules and practices that inhibits competition among teams for players who seek to sign their first professional contracts and whose contracts have expired.

The Bosman case certainly will have an important effect on the future of

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1. I will adopt the European convention of using the term "football" to refer to soccer, and refer to the North American games as American or Canadian football.
European sports by introducing more competition into the market for players. In addition, this case is likely to have wider repercussions in many other aspects of the operation of major professional team sports throughout Europe, including league formation and management and the scope of ancillary rights, such as broadcasting and licensing. Whereas part of Bosman was based upon the provision of the Treaty of Maastricht that guarantees free movement of labor, the part of the decision that questions the rules and procedures for player transfers among teams was based on principles of trade policy that protect the right of market entry by foreign firms. Consequently, free trade agreements imply a vigorous competition policy that prevents a domestic monopoly and its national government from measures that inhibit entry by foreign competitors. Whereas these principles thus far have been applied to sports only with respect to player market rules, they easily can be applied far more broadly to other business practices of football and other professional sports.

This essay explores the implications of applying the principles of competition policy in these other areas. The core message is that the logic of the Bosman case leads naturally to a broader set of policies about the legitimate scope of league decisions about their membership, the territorial rights of their members, and the mechanisms that are used to sell broadcasting rights and licenses to use team names and logos in connection with consumer products. Professional sports is undergoing a revolution in its organization and finance due to the growth of privatized, competitive, international broadcasting and sports-related consumer products. If the historical experience in Canada and the United States is a reliable guide, teams and leagues will respond to these opportunities in ways that raise profound competition policy issues that roughly parallel the issues in the Bosman case.

LEAGUE STRUCTURE

The immediate effect of the Bosman case will be to make the best teams in not only football but also basketball and hockey more international in character. The Bosman case will cause a substantial proportion of the best European players from each nation, including stars of national teams for the
World Cup and other international championships, to play outside of their home countries, as is now the case for the best players from countries that are not football powers (like the United States) or that have less lucrative professional leagues (like Brazil and Belgium). This development is likely to increase the demand for consequential matches between club teams from different countries.

Through the development of tournaments and championships involving teams from several nations, European teams already have discovered considerable interest in international matches. Even without the Bosman decision, the growing economic and political integration of Europe, and the parallel increase in population flows across borders, would cause increasing demand for international matches as expatriates contribute to the demand for games between teams in their new home against teams from their places of origin. In the United States, the new Major League Soccer teams, especially those in California, Texas, and Florida, have been popular among immigrants from Latin America. MLS has responded to this demand by inviting some of the best Latin American clubs to the U.S. for "friendly" matches and brief tournaments, frequently attracting very large crowds consisting of mostly immigrant fans.

The Bosman case inevitably will serve to accelerate the growth of international club competition in Europe, as the growth in expatriate players increases interest in local games with foreign teams that feature expatriated national stars. As a result, international leagues, already in the planning stage, are virtually certain to emerge not only in football but in other popular team sports. The main unanswered question is how these leagues will be formed and will operate.

The natural tendency for all leagues in professional team sports is to seek exclusivity. The most important forms of exclusivity are as follows:

* league exclusivity: a single monopoly league at the highest level of competition;

* territorial exclusivity: an exclusive home territory for all or most teams, wherein a team has no competition from teams at the same level
of quality; and

* team exclusivity: scarcity in the total number of teams at the highest levels of quality, thereby allowing a sport to channel growth in demand primarily into increased revenues for incumbent teams rather than growth in their numbers.

Successful pursuit of these three exclusivity objectives produces a series of local monopolies in each sport, as well as a monopoly in designating how many and which teams are "major league" in the sense that they play the best teams.

In Europe, national professional leagues have succeeded in attaining the first and third forms of exclusivity, creating a single premier division with a limited membership; however, European sports leagues generally have not created exclusive territories for teams in the largest cities. In North America, professional leagues have succeeded in attaining the second form of exclusivity, have managed to retain the first form but only with great effort and expense to fend off new leagues, and have failed to attain the third objective of preventing growth in the number of teams in the premier leagues.

The European system of relegation, whereby teams are promoted and demoted through the hierarchy of leagues if their records are exceptionally poor or strong, slightly undermines territorial exclusivity, but probably enhances league and team exclusivity. The relegation system enables a newly formed team in any geographic market to progress to the monopoly premier league within a few years, assuming that it can dominate the sequence of lesser leagues. The relegation system still retains a very high barrier to entry because several years of fielding teams that are very strong - most likely, too strong (and costly) for the lesser league in which the team must play before it is promoted - are required to attain major league status in the best of circumstances. Nevertheless, the possibility of promotion from lesser leagues does provide a weak competitive threat to a highly successful team with a lucrative local monopoly - certainly more of a threat than the circumstances in North American leagues whereby a team can become a member of an established league only through a super-majority vote of the established franchises, and where one team can not enter the home territory of another
without the incumbent's approval.\(^2\)

The disadvantage of the relegation system is that it tends to make the monopoly position of the premier league more secure. Expansion of European football leagues is far less common than expansion in North American leagues. Rising incomes, growth in broadcasting, and, in some locations, population growth lead to increased effective demand and revenues for major league sports. In Europe, although the formation of new leagues is technically feasible under the rules of national associations and FIFA, the pressure for this form of entry is relieved by the possibility of entry by individual teams. Individual entrepreneurs can respond to growth in demand by forming a new team and working their way up through the league hierarchy. In North America, this form of entry is not possible, so that the only competitive threat is a new league.

In Canada and the United States, leagues have succeeded in securing league and territorial exclusivity, although only at considerable and continuing cost.\(^3\) These countries have four major league team sports: American/Canadian football, baseball, basketball, and hockey. In addition, football and women's basketball arguably have recently achieved major league status. In all of these sports, virtually all teams enjoy local territorial

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2. The absence of a relegation system in the U.S. is something of a puzzle. The organization of baseball seemingly was favorable to the development of a relegation system, for baseball has always had a hierarchical system of teams and leagues. At present, all but a few of these lower leagues consist of teams that, with few exceptions, are owned by or affiliated with a major league team (the so-called "farm system"), so that a relegation system that threatened major league teams easily could be vetoed by the incumbents. But the farm system was invented only around 1930, and did not become the dominant arrangement until the 1950s. In the early years leagues were rather ephemeral entities with unstable membership. In the 19\(^{th}\) Century, teams switched among leagues and between independent ("barnstorming") and league status. Moreover, the present American League was once a high minor league which simply declared itself to be major at the turn of the century. Shortly after World War II, both the Mexican League and the Pacific Coast League sought major league status but failed to attain it. Thus, the failure to develop a relegation system in the earlier, less structured baseball era is a puzzle.

monopolies. Only in women's basketball is there genuine market competition between two major leagues, although their non-overlapping seasons limit this competition to labor inputs (players and coaches), not ticket sales, broadcasting rights, or access to arenas.

In the four established major league team sports, many attempts have been made to form competitive leagues, but most have failed, and those that have succeeded have led to mergers that re-established league monopolies. For example, in the 1990s the Canadian Football League (CFL), historically a substantially lesser league than the National Football League (NFL), attempted to gain major league status by expanding into several American cities and actively competing with the NFL for top players. This experiment failed after two years, when the CFL resumed its old status as an inferior cousin confined to Canada. Indeed, in North America, no attempt to enter any professional team sport in competition with an established league has succeeded since the creation of the World Hockey League in the early 1970s, which later was merged into the incumbent National Hockey League. Since then, in addition to the CFL two American football leagues (the World Football League and the U.S. Football League) have played but failed. Additional leagues in American football (the All-America League) and baseball (the U.S. Baseball League) were organized in the 1990s, but each failed before playing its first game. Most recently, in May 1998, two television networks, CBS and Turner Broadcasting, announced their intention to organize a new American football league, to begin play in 1999 or 2000.

Despite a low success rate, new leagues have been formed with sufficient

4. The exceptions are: the New York metropolitan area has two teams in baseball, two teams in American football, two teams in basketball, and three teams in hockey; the San Francisco metropolitan area has two teams in baseball and American football; the Los Angeles area has two teams in baseball, basketball, and hockey; and Chicago has two teams in baseball.

5. The two leagues are the American Basketball League, which plays in the winter and spring, and the Women's National Basketball Association, which is owned by teams in the men's National Basketball Association and plays during the summer in NBA arenas.

6. Although baseball is organized in two leagues, management of the sport is consolidated into a single organizational structure.
frequency in North America that they have forced the established leagues to add more members. Between 1958 and 1998, baseball grew from 16 to 30 teams, basketball expanded from 8 to 29 teams, American football from 12 to 30 teams, and hockey from six to 24 teams. In every case, some teams in the current incumbent monopoly league originally were part of a rival league, but joined the incumbent when the entrant either failed or merged into the established league. The absence of the possibility of entry through a relegation system, therefore, apparently channels entry into the formation of new leagues instead of simply new teams, which in turn increases the incentive for incumbent monopoly leagues to add more teams.

In addition to the relegation system, the international organization of European sports also contributes to creating barriers against new leagues. In Europe, international competitions among national league champions and among all-star national teams are financially lucrative. Both teams and individual players derive considerable direct financial benefit from these competitions, as well as an indirect benefit from increased demand for national league games that arises from the publicity of international events. Hence, both teams and players have a strong incentive to engage in international competition.

In order to compete internationally, teams and players must satisfy the eligibility rules that have been established by the governing bodies of international sports. Until the Bosman case, these rules strictly limited the mobility of players. Consequently, an attempt to enter football at the premier league level by establishing new teams that signed players who were the "property" of established teams would have caused both these teams and their players to be ineligible for international competition. Hence, the inability to gain access to international events has been a substantial barrier to entry of new leagues in Europe. By contrast, in all North American sports other than football international competition is not very important. Even in basketball and hockey, which are, like football, truly international sports, North American teams and leagues can ignore opportunities for international events without suffering any significant financial loss. As a result, the threat of ineligibility is not a deterrent to entry by new leagues
in North America.

The Bosman case definitely makes Europe more like North America with respect to the formation of new leagues. The effect of Bosman is vastly to reduce, if not to eliminate, the extent to which international governing bodies can banish teams and players for creating competitive markets for players or games. Hence, after Bosman, new leagues face lower entry barriers. But this probably will not lead immediately to the formation of national leagues. Instead, the immediate prospect is for international leagues to enter, formed by teams from national premier leagues. If the demand for international leagues is strong, as seems plausible, it is difficult to imagine a national premier league team remaining financially competitive without engaging in international competition. But a single European-wide premier league that is comprised of all existing national premier leagues teams would be extremely large and unwieldy. In such a league, each team could play only a tiny minority of all teams in a single season, thereby undermining the comparability of teams within the league as well as the opportunity to market the league as a coherent product. Most likely, given the number of games that a team can play in a year, the maximum limit on the size of a football league that has an integrated schedule and produces an identifiable champion probably is on the order of forty to fifty teams.

Consequently, European football (and most likely basketball and hockey) face two other evolutionary paths that are far more plausible than a mammoth league that is the sum of existing national leagues. One possible path is to form several international leagues that are composed of different combinations of the members of national premier leagues. The other possibility is a single international league that excludes most of the existing teams in national premier leagues. The former is compatible with the continued existence of national premier leagues (although with a reduced playing schedule to accommodate the international league schedule), but the latter is not. If a single international league emerges, most existing national premier league teams will be excluded. The best plausible arrangement for these teams is
likely to be to form new national leagues that stand between the existing premier leagues and second division national leagues. Because international league members will have greater revenues and will give their players greater media exposure, most excluded premier league teams will be unable to compete for players and to be competitive on the field with the teams that join the international league.

The preceding argument superficially leads to the conclusion that the most likely scenario is multiple international leagues. If one international league is formed by a small proportion of national league teams, the remaining teams plausibly will form other, competing leagues, since failure to do so inevitably would relegate them to minor league status. But this scenario is by no means assured.

One crucial issue is whether the market could sustain enough international leagues to enable all or nearly all existing premier league teams to be part of premier international competition. Of course, because this structure is untested, the available evidence is insufficient to reach a definitive conclusion on this point. One factor favoring multiple leagues is that international competition probably will increase the overall demand for football. But two negative factors also affect the prospect for several international leagues. First, fewer games will be played between teams that are near enough geographically so that the visiting team attracts a significant following to its away games. Second, fans may not be willing to follow in detail a very large number of teams and players in several international leagues. If so, multiple leagues will fragment attention, and hence stand in the way of creating widely recognized "marquee" stars and teams that are closely followed by large numbers of fans.

Even if multiple international leagues are theoretically sustainable, the other crucial issue is whether the historical tendency everywhere for a single league to emerge will be repeated. Teams face a substantial financial incentive to form a single league. If a single league incorporating all or most national premier league teams is not feasible, the strongest existing teams can form an international league that excludes most of their rivals,
hoping that their superior initial drawing power will be self-sustaining. Here the history of North American sports is relevant. In reality, precisely the same arguments could have prevented entry against established leagues in North America, but it has not; however, since the mid-1970s, no entrant has been successful, and some believe that successful entry is extremely unlikely in the future. The positions of the incumbent leagues are now so strong that entry barriers are high, despite the fact that North American sports leagues no longer can use player market restrictions paralleling the pre-Bosman football rules to deter entry.

The important issue for Europe, then, is why a single league appears to be stable in North America. Is the North American market structure simply a reflection of a natural monopoly in sport, or is it the consequence on anti-competitive practices that could be eliminated by vigorous implementation of competition policy? If the former, most likely Europe faces the prospect of a vastly reduced number of premier league teams, with the survivors playing in an international super-league and the losers either sinking to a lower level in the hierarchy, or disappearing altogether through some combination of mergers and dissolutions.

**NATURAL VERSUS ANTI-Helpful competitive MONOPOLIES**

One important aspect of every professional sport is a natural monopoly. The product in the sports industry is a "positional good" in that the demand for a sporting product is related to the rank-ordering of the participants. Only one team (or player) can be the best, and only one team can win a championship. Moreover, for a meaningful championship competition to be staged, all competitors must play by the same rules. Hence, some minimum degree of cooperation among participants is necessary to produce the "sporting championship" product.

To create common playing rules and a system for determining a sport-wide, universal champion requires inherently anti-competitive cooperation among the participants in a sport. Assuming, as seems plausible, that consumers (fans) have a demand for a unique champion, the championship product can be
produced only if all plausible contenders agree to cooperate in participating in the championship system, either by organizing it collectively or by designating another entity as their exclusive agent to perform this function.

A fundamental principle of competition policy is that it makes no sense to prevent the production of a product just because by its nature it must be supplied either by a monopoly or by cooperation among competitors. Consumers are better off if they can buy the product on the terms and conditions imposed by a monopolist than if they are denied the product altogether. Hence, a valid defense against an antitrust complaint - "superior efficiency and foresight" - is that the product would not exist if it were not monopolized.

Nevertheless, an equally important principle of competition policy is that the extent of monopolization should be limited to the aspect of production that is the natural monopoly. Disputes about the business organization of professional sports center around disagreements about the scope of the natural monopoly.

The anticompetitive dangers arising from cooperation in staging a universal championship are that cooperating teams will use the cover of the universal championship to engage in practices that limit competition among themselves in areas that are not a natural monopoly, and will deny entrants access to the championship solely for the purpose of creating monopolistic scarcity in teams and games. The three exclusivities that were defined in the previous section reflect opportunities for increasing the value of established teams by limiting competition among them and by limiting competitive entry against them.

League exclusivity is not inherently anticompetitive. If the only function of a league is to coordinate playing rules and schedules, creating a single league is not anticompetitive. If a league confines itself to these two functions, it may well have the opportunity to derive substantial financial benefits. The league can assert a property right in its name and its championship, and sell these properties exclusively. Entities such as FIFA and the NFL can be conceptualized as contracting with individual teams to play in their championship events (World Cup, Super Bowl), to which they then
sell access to fans and broadcasters as well as license the commercial use of both their names and the names of their events. In principle, both FIFA and the NFL could be organizations that are wholly independent of the teams in their respective sports and that simply keep the difference between these revenues and the fees paid to teams that participate in their championship events. The limit to the profits that this form of league could earn would be determined by the threat of competition. If profits are too great, another entity can offer the same teams a higher fee to participate in a competing championship and displace the original organization.  

Of course, in reality, league organizations rarely take this form. The most common form of league is a joint venture of the member teams, in which each team is independently owned and the league is run by a board of directors consisting primarily of the member teams. A much less common form is the syndicated league, in which the league owns an undivided ownership in all of the teams. Both forms can create the opportunity for a league to pool the sale of team products that would otherwise be competitive and to extend its natural monopoly in a universal championship to create territorial and team exclusivity.

Pooled Sales

Historically the most important form of league pooling is the sale of broadcasting rights. Of course, the building block of broadcasting rights is the individual game. In principle, the categories of broadcasters -- radio, television, cable, and satellite -- all could bid for either exclusive or nonexclusive rights to broadcast each game. A necessary ingredient for this market to develop would be a clear definition of the property right in the game. Until the 1960s, the nature of this property right was regarded as

7. Until the 1990s, post-season college bowl games in American football operated in this fashion, competing with each other for the best teams. In recent years, the governing body for intercollegiate athletics has effectively monopolized participation in the major bowl games by assigning teams and setting the fees paid to participants. This process guarantees that the two best teams will play in a post-season championship game, but in so doing it prevents competition among the top teams for access to bowls.
unambiguous: the home team, by virtue of its control of the playing venue, controlled broadcasting rights in exactly the same way it controlled access by fans. The authority of the home team to sell tickets and concession products was identical to its authority to sell broadcasting rights.

The assignment of broadcasting rights to the home team corresponded well with one feature of the demand for broadcast games. Typically, a game will have a larger share of the broadcast audience in the home territories of the two participants than in other locations, so that in some ways broadcasting is naturally a local product. But another important feature of broadcasting is that it attracts a larger audience and has lower transactions costs if broadcasts are sold as a package of multiple games and the broadcasts adhere to a regular schedule. In principle, a team could sell the rights to its home games to outlets in the cities of its visiting opponents, but in reality the value of broadcasts is maximized if each team sells access to all of its games, home and away, to a single outlet in a given category of broadcasters. This reality led teams to adopt mutual agreements whereby each would allow the other to broadcast away games back home. This practice, of course, is inefficient in that it involves two separate broadcasts of each game by two separate sets of announcers; however, this added cost apparently was more than offset by consumer demand for home-team broadcasts that feature the same announcers (perhaps with their own home-town spin and favoritism).

Despite a localized demand for broadcasts of the home team, the demand for broadcasting is not exhausted by local broadcasts of the home team. In addition, some fans want to watch games involving teams from other locations. Moreover, many fans do not live near any major league team, but nonetheless want access to broadcasts. The logic of the allocation of broadcasting rights to the home team, plus the mutual exchange of rights between the home and visiting team, lead naturally to the formation of regional and even national broadcasts in which a team, or perhaps a few teams, sold their broadcasting rights to a chain of broadcast outlets. If the national broadcasting system provided numerous independent and competing broadcast outlets, teams, or consortia of teams, could broadcast simultaneously into the same area,
competing for audiences. Hence, the feasibility of competition among teams for broadcast audiences depends on whether broadcasting itself is competitive.

Until very recently broadcasting has been a public monopoly in most of the world. Hence, competition among teams or consortia of teams would be likely to affect the price for rights, but not to create genuine competition. Moreover, the role of advertising was minimal in most public broadcasting entities, so that the incentive of broadcasters to acquire rights to sporting events was attenuated. Hence, in most of the world competition for broadcast rights and in broadcasts, driven by the demand for advertising on sports broadcasts, was not a plausible prospect. Nevertheless, two countries, the U.S. and Japan, did not follow the world precedent, but instead organized their broadcasting industries by allowing competitive, private, advertiser-supported systems to flourish. In these countries, multiple simultaneous broadcasts in the same city of games in the same sport not only were feasible, but came to pass.

Because cable and satellite broadcasting are causing the broadcast systems in the rest of the world to resemble the systems in Japan and the U.S., the conditions in these countries are instructive as an indicator of the possible evolutionary paths in other countries. In the U.S., soon after broadcasting became a significant factor in the revenues of sports teams, leagues attempted to restrict team broadcast sales and to pool national rights. The purpose was to limit competition: to protect each team's local market from competition in the broadcasts of games that were played in other localities, and collectively to eliminate multiple game competition in areas with no local team. In the 1950s, these practices became the subject of several antitrust cases, the upshot of which was that monopoly leagues were barred from pooling their sale of national broadcast rights.\(^8\)

Having lost in court, the North American sports leagues turned to the political system for help, and were rewarded by the passage of the *Sports

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Broadcasting Act of 1961. This legislation gave sports leagues exemptions from the antitrust laws to pool the sale of their national broadcasting rights. The effect was an excellent textbook example of the effect of replacing competition with monopoly. The number of games per week that was available to the typical fan fell roughly in half, and the rights fees of the sports with a national television following - American football, baseball, and basketball - approximately tripled.

The recent growth of cable television and satellite broadcasting has undermined the broadcast rights monopoly of all U.S. leagues except the National Football League. Cable gained access to games in two ways. First, cable systems re-transmitted local television stations. Second, cable-only broadcast networks acquired local and regional rights to sports teams. Of course, because league pooling caused scarcity in sports broadcasts, cable systems expressed substantial demand for either re-transmitting games that were televised over stations in distant localities or exhibiting cable broadcasts of those games. In the early 1970s, Ted Turner, the owner of independent television station WTBS in Atlanta, was the first to see this untapped profit potential. He acquired the Atlanta Braves baseball team, broadcast the Braves game on his television station, and allowed cable systems throughout the nation to retransmit his WTBS broadcasts. Other teams followed, and on cable systems (and later direct satellite broadcasting systems) access to multiple games in all sports except football became commonplace.

North American sports leagues have tried to eliminate this competition, and have succeeded to some degree. Leagues have succeeded in enforcing "local blackout" rules, whereby a national or regional cable network can not show the game of a home team if that team's rights holder also is televising the game. In addition, leagues have been able to enforce blackouts of cable games that compete with games sold by the league through its pooled national broadcast sales. But two factors have limited the ability of leagues to stamp out competition altogether. First, to eliminate broadcast competition requires the consent of a large majority of teams, usually two-thirds or three-quarters
of the league members. In the U.S., enough teams perceive that they benefit from the present system to prevent its complete elimination. Second, the antitrust exemption for broadcasting may not apply to cable and satellite broadcasts. An important jurisprudential principle in the United States is that antitrust exemptions should be read as narrowly as is consistent with the statute, and the Sports Broadcasting Act was passed long before cable and satellite broadcasting systems were developed. Hence, the U.S. courts are now deciding whether sports leagues legally may pool the sale of rights to cable and satellite systems without additional legislation.

Even the National Football League may be caught in this last legal trap. The NFL has avoided broadcast competition among teams by selling all television rights nationally. That is, the rights to every single NFL game have been sold to one of four broadcast entities: three over-the-air networks, plus a cable network. In reality, most games are broadcast only locally. For most of the season, the NFL plays all but two of its games on Sunday afternoon, and two over-the-air networks each have purchased the rights to half of these games. When several games are played at the same time, each game is televised in the home cities of the competing teams if all of the tickets to the games have been sold, which is true for most games. And, if a team is being televised at home, no other game is televised in competition with it. Thus, these two "national" over-the-air networks actually televise several local and regional games simultaneously and exclusively to different parts of the country.

The NFL can adopt this practice because American football plays so few games: a sixteen game season in which nearly all games are played one day of the week. Cable and satellite broadcasting have undermined the anticompetitive practices of the other sports because the leagues made no attempt to sell all games nationally, but instead left the rights to most games in the hands of individual teams. Of course, the NFL is threatened

9. The cable network, ESPN, actually is owned by one of the over-the-air networks, ABC.
somewhat by the shaky status of pooled cable and satellite rights. First, it sells a Sunday evening "game of the week" to a cable network. Second, it sells the right to view all of its Sunday afternoon games to customers of a direct satellite broadcast system.

If these contracts eventually are found not to be exempt from antitrust, individual teams may be free to sell cable and satellite rights to their games, thereby making more simultaneous games available, thereby improving the welfare of viewing fans. Alternatively, the courts may rule that the cable and satellite rights are not exempt, but that the exclusive contracts with the over-the-air networks enable the NFL to prevent teams from selling rights to cable and satellite broadcasters. In this case, the NFL simply will eliminate its Sunday night cable telecast and its satellite package, placing all games back in the hands of over-the-air networks. The effect of this outcome on consumers is ambiguous: if the Sunday night game is sold to an over-the-air network, fans will be better off (the audience will not be limited to cable television subscribers), but the elimination of the satellite package will harm its customers but provide no additional benefits to other viewers.

The remaining question about whether pooled broadcasting rights ought to be ruled out by competition policy is whether an efficiency defense exists for this practice. Two such defenses might be offered: the pooling of rights minimizes transactions costs (replacing many bilateral negotiations with one), and rights pooling equalizes revenues among teams and therefore promotes competitive balance.

The counter to the transactions cost argument is that it can explain why, in a non-coercive competitive process, a league (or some other joint venture) might succeed in being the dominant form for selling a substantial portion of the rights. However, if one or more teams prefers to pay the transactions cost and market its own product, this efficiency defense does not work. In practice, in all sports but football teams already market their broadcasting rights separately. Broadcasts have classic "public good" characteristics in which the production cost of a broadcast is independent of how extensively it is telecast. Consequently, once these separate broadcasts
have been arranged, the social costs of extending the geographic scope of the broadcasts is minimal. Indeed, separating national from local and regional broadcast rights imposes an additional unnecessary transactions cost.

The competitive balance argument also is incomplete for three reasons.

First, the uninhibited pursuit of competitive balance is itself inefficient. If fans in one city have a greater demand for a winning team than fans in another city, forcing the teams to be of equal strength is inefficient in that, theoretically, the two sets of fans could engage in a mutually beneficial transaction in which one team became better at the expense of the other. Moreover, balance at the league level implies that the winning team is not distinctly superior to the others, and thereby undermines the opportunity to license a championship team or to market on a national or international level contests between clearly superior league champions. Note that if one nation has a highly balanced national premier league while another has a dominant team, the latter is likely to dominate international competitions, so that the competitive balance in one domain can be inconsistent with competitive balance in the other.

Second, if greater competitive balance is a legitimate objective, monopolizing rights sales still may not be justified. An important principle of competition policy is the notion that the practices adopted to serve an efficiency objective must be the least anticompetitive alternative for achieving that purpose. If pooling of broadcast rights enhances competitive balance, the mechanism is through the equal sharing of revenues. But revenues can be shared regardless of how the rights are sold. Moreover, the most effective mechanism for controlling competitive balance is the "salary cap" — that is, a limitation on a team's total expenditures for team personnel.


11. In North America, salary caps apply only to players, but the more efficient form of salary cap would be on the sum of salaries for players, coaches, and other personnel associated with fielding a team. Capping only player salaries theoretically will cause inefficient overinvestment in coaches, scouts, minor league operations, and player trades.
Third, as is argued more completely below, unequal broadcasting revenues among teams are part of a more general problem of giving territorial exclusivity to teams in the largest markets. Competitive entry into the best media markets would reduce the rights fees each team in that market could earn. Indeed, because a broadcast game is a joint product with a live game, the marginal cost to the team of allowing a game to be broadcast is virtually zero, consisting of the opportunity cost of the space in the stadium that is given over to the broadcasters plus any substitution of viewing for live attendance. Consequently, in a competitive environment, broadcasting rights would be small. The current circumstance in the U.S., where teams in American football and baseball earn more revenues from broadcasting than from in-stadium attendance, is not plausible in a competitive environment.

Another example of pooling is found in the licensing of team names and logos for advertising, sports apparel, and other consumer products. Licensing is among the most rapidly growing components of sports revenues. In the U.S., all sports leagues have pooled at least some aspect of licensing. An obvious distinction needs to be made between pooling team identifiers and selling the league and league championship identifier. The latter can not naturally be divided among competitive suppliers, and so is a natural monopoly. The former can compete, as teams vie to sell an association with a particular product.

In principle, the entity demanding a license may prefer a blanket license for all teams. In this case, a transactions cost argument can be made for allowing the league to negotiate the license. In practice, however, if the fee to a particular team for joining the blanket license is less than the team could acquire on its own, a compulsory blanket license can be inefficient. Moreover, in many cases licensees will not want a blanket license, such as, for example, localized businesses that seek association with the home town team. Precluding the possibility of affiliations between single teams and businesses that are primarily local in character is inefficient, and the fact that leagues do prevent such transactions is evidence that the principle purpose of pooled licenses is anticompetitive.

The lessons for European football from U.S. experience with pooling is
as follows. Most plausibly, as opportunities for such licensing grow in Europe, leagues will seek to pool these rights simply because it is profitable to do so. If a single top level international league emerges, or if the existing system of exclusive premier national leagues continues, the effect will be vastly to increase the revenues of the top league and teams. If, however, the league structure is competitive, the argument that league pooling is undertaken for efficiency reasons will be far stronger. Nevertheless, when the dust settles, if the league structure is substantially less competitive than the structure of teams, pooling is likely to have strong anticompetitive consequences, and to raise new questions of competition policy at the level of the European Union. In the U.S., the general tolerance to date of league pooling has harmed consumers.

**Territorial Exclusivity**

Territorial exclusivity is a means for limiting the number of games that are made available to fans in a given locality. The demand for live attendance at contests is accounted for primarily by fans who live relatively near the stadium where the match is played. Numerous studies of U.S. professional team sports find that a team’s home attendance is accounted for almost entirely by people who live in the metropolitan area where the team plays.\(^{12}\) Hence, teams compete for ticket sales only if they are located relatively near each other. Thus, territorial exclusivity prevents local competition for ticket sales. In a similar fashion, territorial exclusivity also can lead to a similar reduction in the number of games that are broadcast locally.

In principle, these effects do not necessarily harm consumers, for the addition of a team in a local community could lead simply to audience fragmentation, whereby the same total ticket sales and broadcast audience was divided among one more teams. In reality, additional teams typically increase

total ticket sales and broadcast audiences for two reasons. First, because
teams have different players, opponents and stadiums, they are perceived as
differentiated products. Consequently, a new team typically enters a somewhat
different market niche than the incumbent, resulting in an increase in total
ticket sales and game broadcasts even if the prices charged by the incumbents
for tickets and broadcast rights do not change. Second, entry can lead to
price competition, which in turn is likely to cause fans to buy more tickets
and broadcasters to demand more games.

Territorial exclusivity at the league level is far more problematic if
there is little or no competition among leagues. With a single league,
territorial exclusivity gives a team a protected monopoly. These local
monopolies in turn generate the concern for competitive balance, which in turn
is then used by leagues to defend additional anticompetitive practices.
Competitive imbalance arises because one team can generate far more revenue
than another. If teams are profit maximizers, team quality is more profitable
in localities with a larger, richer, more sports-interested population. If
teams are managed by owners who seek to maximize winning, strong teams in
these same areas will generate more revenues, which then can be spent on
further improvements in the team. In either case, without territorial
exclusivity, the best localities would attract more teams, until the expected
profitability or break-even winning prospects were roughly the same as in
other locations. This process might occur quite quickly if teams can change
their home areas without suffering substantial loss of support or other
relocation costs; however, even if law and tradition prevent relocation, this
process can arise through teams entering strong markets and, through
relegation, displacing teams in weaker markets. Of course, the entry process
is not likely to produce a perfectly balanced league, for ingrained fan
loyalties will create impediments against the process proceeding this far.
But free entry is an important check against competitive imbalance.

With competitive leagues, the entry process is likely to be far more
favorable. Competing leagues have a strong incentive to have a presence in
the largest markets, even if each league follows an internal practice of
providing territorial exclusivity. Each league will seek to locate its teams in the localities that generate the most revenue, so that a larger, richer, more sports-conscious city will attract teams from more leagues.

Territorial exclusivity is far more common in the U.S. than in Europe, due to the absence of a relegation system in the U.S. Nevertheless, when leagues in the U.S. have competed, they have tended to compete in the largest markets. When new leagues have entered in the U.S., most have placed teams in the three largest cities (New York, Los Angeles, Chicago), and often have placed additional teams in some other markets. Indeed, were it not for the successful entry of the American Football League, the NFL would not have any two team markets.

Since 1980, the ability of U.S. leagues to control the home locations of their teams has been severely restricted, if not eliminated. Historically, U.S. leagues typically have required that a proposed relocation must be approved by a super-majority of the teams in the league. As a result, a few teams in the league can have the power to prevent a move for purely anticompetitive reasons. For example, a team naturally can be expected to oppose a move by another team into its market area. Or, a team's regular opponents may oppose a move precisely because the new location is superior, and therefore will generate more revenues for the rival, which can be used to strengthen the moving team at the expense of its rivals.

The key U.S. antitrust case arose when the Oakland Raiders of the NFL decided to move to Los Angeles in 1979. The NFL tried to prevent the move, and as a result the Raiders and the City of Los Angeles sought antitrust relief. The ultimate decision was that the Raiders were permitted to move, but the decision was far from a model of clarity for guiding future policy. Leagues were ruled to have a legitimate interest in the location of their teams, and so to establish standards for team movements that protected the league from a decision by one team to abandon a lucrative location in order to move to an area where the team would generate substantially less revenue. This decision implies that leagues can establish a "check list" of conditions for a move, relating to the comparative merits of the two locations, but can
not prevent moves simply to protect the market or the competitive position of other teams.

Since the Raiders decisions, leagues have not been able to stop teams from relocating; however, the NFL has implemented a practice that reduces the ability of a team to improve its financial position by relocating. This practice is to charge a moving team a "relocation fee" that, in theory, reflects the lost opportunity for the league to add a new team in the same location. This rationale, of course, is subject to the counter-claim that the NFL gains another opportunity for expansion when a team moves, and in any case subjects the increased revenues in the new location to revenue sharing. In any case, teams relocate when they experience low revenues, not when they are highly successful. Relocation fees improve the competitiveness of the league by enabling teams in poor locations to improve themselves. Taxing such moves is anticompetitive because it encourages teams to stay in poor locations, and limits the extent to which a poor team can improve itself by moving. Nevertheless, in the first court test of relocation fees, involving the movement of the Los Angeles Rams to St. Louis, the NFL was victorious. If this case is not reversed on appeal, or if other pending cases do not reach a different outcome, the imposition of relocation fees may be the mechanism by which U.S. monopoly sports leagues regain control over territorial rights.

European football is not likely to face a territorial exclusivity problem unless a very limited number of European leagues emerge. In this case, each international league may seek to place only one team in each major city, and some teams in large European capitals may find themselves without an international league. Europeans may not believe that franchise relocation is a plausible eventuality in football, partly because it simply never happens. The argument against its plausibility is that fan loyalties make relocation impossible. But the freedom from relocation in Europe to date is certainly a natural outcome of the structure of football, and in particular the absence of entry restrictions at low classification levels combined with the relegation system.

If one or two international leagues form, and a major metropolis is
accorded only a single team, the old system of placing more teams in the larger market will no longer be in effect. If, in addition, a team in a smaller market is included in the international league but finds that its market is inadequate to enable it to compete with the single teams in London, Rome, Paris, or some other large city, it will have a strong incentive to relocate. The sacrifice of traditional fan loyalties is properly regarded as a cost -- perhaps a major cost -- of moving. When large cities have several teams, this cost, plus the cost of building new loyalties in a competitive environment, can make relocation unattractive, but change the competitive conditions in the large city and the calculation can be reversed. If so, the European Union will be forced to resolve still another competition policy issue: whether leagues should be allowed to prevent team relocation. As before, if leagues are reasonably competitive, team relocation rules present less of a problem. If league competition is absent, territorial exclusivity exacerbates the problem of competitive balance and is inefficient.

Team Exclusivity

Team exclusivity refers to restrictions on the total number of teams that are allowed to join leagues at the highest level of competition. In Europe, football practices strict team exclusivity in that the size of national premier leagues (usually around twenty teams) is highly inflexible compared to the U.S.

The obvious problem with team exclusivity is that established teams have a strong incentive to prevent new teams from being formed. First, fewer teams means scarcity of franchises among prospective owners. If owning a team has consumption value, team scarcity will bid up team values. Second, team scarcity means less competition. In rights markets, this means either less competition in selling broadcast and license rights, or, if these rights are pooled, fewer entities among whom the rights revenues are divided. In local markets, fewer teams means less likelihood that teams will invade an incumbent's territory, and even if territorial exclusivity is in force, fewer teams means more vacant territories that are available to an incumbent should
the local market turn sour.

Team exclusivity also contributes to the bargaining power of teams in negotiating local subsidies. If more cities want major league sports teams than can be accommodated with the restricted number of teams, the winning bid for a team will be higher. If relocation is possible, the mechanism by which the magnitude of subsidies is determined is transparent. The smallest excluded city is larger and has a higher willingness to pay to attract a team if there are fewer teams. If entry into the top league arises due to relegation, the mechanism is more indirect, but similar. Team net revenues determine the money available to improve team quality; the net revenues of the weaker teams are higher if there are fewer teams; hence, cities excluded from the current league will have to bid more to propel their team into the upper echelon.

The preceding argument is incomplete, however, as a guide to whether there are too few or too many teams. To address the efficiency issue regarding team exclusivity requires examining the question of the efficient size of a major league sport and whether a competitive process would produce an inefficient total number of teams. In reality, the number of teams that can be supported is determined by a host of league policies, such as sharing revenues, pooling rights sales, territorial exclusivity, and player market restrictions. To simplify the analysis, imagine a league in which teams can locate anywhere, no revenues are shared, no rights are pooled, and entry is not restricted. In this case, a team enters if it expects to generate more revenues than costs. The revenues will consist of home game in-stadium sales plus broadcasting and licensing fees. Some of these revenues will be siphoned from the revenues of the other teams, but if the other teams have picked the best locations before the new team entered and have at least as good management, the entrant will end up with at best no more revenues than the weakest incumbent. Hence, if its revenues exceed its cost, superficially all successful entry apparently is efficient.

The preceding argument holds even if the supply of "major league" quality athletes is perfectly inelastic - that is, the entrant must stock its
team by recruiting all players from other teams, so that every team is thereby weakened. The reason, of course, is as follows. In competition players will be paid the their marginal revenue product, which will be higher with more teams dividing the same player pool. All teams will face higher player salaries and lower revenues (because team quality has fallen); however, because the entrant, operating in the weakest market, will have the lowest revenues, if the entrant is profitable so will all other teams. Moreover, the relative quality of the other teams will remain unchanged, so that the component of demand determined by relative team quality will be unaffected.

The inefficiency of entry arises because the entrant has an incentive to pay players more than their social value of their revenue product.\(^\text{13}\) That is, the net contribution of a player to total economic welfare is the difference between the revenue that player generates for the team and the reduction in the revenues of other teams that arises because their relative quality has declined. Without revenue sharing, a player's team suffers no consequence if the relative quality of another team declines. Hence, in a competitive market for players, the maximum salary that a team will pay is the player's marginal revenue product, which exceeds the player's marginal revenue product to the league as a whole.

The implication of the preceding analysis is that player salaries will be inefficiently high, which means that entry will be less than is optimal. Given the revenue potential of the marginal location that might attract an entrant, the entrant will be less likely to survive if player salaries are higher. Hence, free entry with all of the other conditions produces too few, not too many, teams.

This conclusion is in stark contrast to pundits who worry about "diluting" the playing talent in a league by allowing "too many" teams to enter. Obviously, dilution harms consumers in areas that already have teams, but preventing dilution harms consumers who do not have a team because entry was prevented to thwart dilution. Markets are one mechanism for balancing

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13. See the chapter by Michael Canes in Noll, op. cit.
these interests, and the mistake that unfettered markets make is to have too few teams, not too many, even in the absence on anticompetitive restrictions against the formation of new teams.

Once leagues introduce revenue sharing, entry can be too great, too little, or just right! Revenue sharing is a tax on team quality, since part of the incremental revenue arising from greater quality goes to other teams. This tax corrects for the natural incentive for teams to overpay players, and so makes additional entrants possible by reducing entry costs. But if revenue sharing is so extensive that it more than compensates for the overpayment effect, it can induce too much entry. For example, in the extreme, suppose teams in a league pool all revenue. This case presents something of a problem, of course, for it is not clear how teams would behave in a world in which their revenues were independent of team quality. Economic theory predicts that they would all field the cheapest possible team in order to earn average revenues with minimal costs.14 But to make the model more interesting, assume optimistically that teams do as well as they can on the playing field with these revenues. In this case, teams would continue to enter a sport if the average revenue per team exceeded the cost of fielding a team. If the marginal revenue of a team exceeds the average revenue, more entry benefits all teams, and the entrant and all incumbents will receive more revenue per team than teams did before entry. Under this condition, if the league is viable with fewer teams, it will be even viable with more teams until, eventually, at some point marginal revenue per team must fall below average revenue. If entry then proceeds until average revenues equal average cost, too many teams will enter. Average cost will equal average revenue, and both will exceed the marginal revenue created by the entrant. Hence, incremental costs exceed incremental revenues, and the entry of the last team is inefficient.

The dilemma introduced by this argument is that it seems to imply extensive public regulation of sports. A league must share revenue to be

14. See the chapter by El Hodiri and Quirk in Noll, op. cit.
efficient, but this can cause excessive entry, so a league must be allowed to limit entry as well. But, in a system of self-regulation, a league has an incentive to limit entry to a greater extent than just the efficient level. Instead, it has an incentive to make teams scarce in order to bid up their value and to increase the bidding among cities to provide subsidies. Hence, proactive government intervention is required to assure that entry is "just right."

Fortunately, this argument is incomplete, for it implicitly assumes that leagues are too few to be competitive. If the locus of decision making about team entry is a league, and leagues compete, leagues will add teams on the basis of the net profitability of doing so. If a site exists in which net profits are positive, leagues will compete to enter, bidding down the subsidy that is obtained from the local government. The problem here is that competitive leagues will be disinclined to share revenues among themselves, for then, as a league, they will pay lower salaries and field weaker teams. This effect will undermine their ability to compete in interleague (sport wide) championships. Facing an incentive to be more effective in these matches, leagues will adopt less than optimal revenue sharing, and hence will have fewer than the optimal number of teams. As a practical matter, however, no sport approaches the circumstances that would transpire with competitive leagues that operated under a loose federation to schedule post-season interleague championships.

The implication for competition policy again leads to promoting multiple leagues. Most likely, the danger in multiple leagues is still too few teams, and most likely this problem can not be solved without proactive intervention, and probably is not worth trying to solve.

CONCLUSION

The internationalization of football is a natural consequence of two much broader economic phenomena over which football authorities have no control. The first is the privatization and de-monopolization of television. The second is internationalization of the economy, as manifest in both
international private broadcast entities and freer international migration of labor (both athletes and their fans). Both forces are giving rise to a growing demand for international sports competition among fans and broadcasters. National and international sports governance authorities are unlikely to resist this development, and indeed it is not in their financial interests to do so even if they could.

As a result, the system of national premier leagues is likely to transform itself into a system in which the most important form of competition is international. This transition enables both governmental entities and sports authorities to rethink the structure of leagues, and in particular whether a regional monopoly league -- say, a single football league for the European Union -- is necessary and desirable. The core problem is that teams (especially the for-profit teams and, especially, the teams that are traded on stock exchanges) have a strong financial incentive to form a single league for the purpose of monopolizing the number and location of teams and the sale of broadcasting and licensing rights.

Multiple leagues solve most of the anticompetitive problems that can emerge from the internationalization of football. The best outcome is a permissive policy about multiple leagues that prohibits explicit entry barriers against them, such as a refusal by a world governing body to make teams and players in a second league ineligible for international competition. If multiple leagues develop, the other aspects of league structure, such as territorial exclusivity, team exclusivity, and rights pooling, are far less significant due to the salutary effect of interleague competition.

If a single international league emerges, it almost surely will produce fewer than the optimal number of teams, and will seek to pool rights sales that are best decentralized in a single-league environment. In this circumstance, the major mistake of U.S. policy -- exempting pooled broadcast sales from competition laws -- should be avoided. In addition, despite its apparent irrelevance in the contemporary structure, Europe would be well advised to prevent leagues from restricting team relocations. Despite the outcry when fans lose their club, the reality is that this process is better
than the alternative. Relocation moves teams towards higher revenues (which is a reasonable measure of the economic welfare generated in different locations) and equalizes revenue potential among teams, thereby making leagues more competitive (and closer to the efficient degree of competitive balance). Moreover, freedom to relocate reduces the ability of leagues to leverage the natural monopoly in championships to anticompetitive practices elsewhere.

The circumstance in which a single monopoly league is unavoidable creates the most favorable case for proactive government intervention with respect to the operating practices of leagues, including the number of teams that are admitted. In addition to prohibiting pooling and territorial exclusivity, a good case can be made to insist upon regular expansion of the single monopoly league. How this can be accomplished without creating an administrative and political nightmare, tied up in the excessive emotionalism that surrounds all sports, is surely an unsolved problem. But experience around the world teaches the same lesson: monopoly major leagues expand more slowly than is justified by growth in the popularity of sports. Entry of new leagues or through a relegation system is simply too weak a check on the incentive for monopoly leagues to contrive scarcity in teams. The cure may be horrific, but the disease is also serious, so the problem of regulating expansion by monopoly leagues -- should the problem arise -- is worth serious attention.