CHAPTER 7
ANTITRUST LAW AND SPORTS: A PRIMER

This is the second of the three primer chapters (contracts, antitrust, and labor). This Chapter should be assigned reading if the professor intends to discuss antitrust issues. As with Chapter 4 (contracts primer), the question is whether there should be classroom discussion of this 45-page Chapter, or whether the students should read it and it will only be discussed as students and the professor draw on its content to inform the discussion of subsequent cases. The authors have both spent some time "teaching" this Chapter in their courses. The easiest way to "teach" this material is a one-hour or two-hour lecture, but the information can be extracted through a classroom discussion in a relatively less efficient, but perhaps more absorbent method. As a practical matter, only the first thirty pages of the Chapter address substantive antitrust law. The last fifteen pages of the Chapter are simply a chronicle of sports antitrust jurisprudence, on a sport-by-sport basis, for three of the major United States team sports, and is more conducive to student review on their own or in a class conducted with a discussion format.

The goal of this Chapter is to provide the substantive legal framework for Chapters 8-13. This Chapter does not address the two primary sports antitrust exemptions (baseball and labor), because an entire Chapter is spent addressing each of those topics (baseball exemption -- Chapter 8, labor exemption -- Chapter 9). Rather, this Chapter primarily focuses on the following topics:

1. An Overview of the Antitrust Laws that Apply to Sports pages 253-255

   This section is intended to introduce the students to a number of the federal and state antitrust provisions: The Sherman Act, the Clayton Act, the Federal Trade Commission Act, the Robinson-Patman Act, State Antitrust Laws, and State "Baby FTC" Acts. There are obviously a number of other federal antitrust provisions (e.g., the McCarran-Ferguson Act, the Hart-Scott-Rodino Antitrust Improvements Act, the Soft Drink Interbrand Competition Act, etc.), but they are not generally even mentioned in introductory antitrust courses, much less in a sports law course.

   After these pages, other than passing references and a brief focus on state antitrust law in general, in the discussion of whether the baseball and labor exemptions also block the application of state antitrust law, the antitrust analysis of the book is limited to Sections 1 and 2

2. An Overview of Sections 1 and 2 of the Sherman Act pages 255-256

   This section is intended to introduce the students to the difference in coverage between Section 1 of the Sherman Act, which focuses on agreements (contract[s], combination[s] . . . , or conspirac[ies]) that restrain trade, and Section 2 of the Sherman Act, which prohibits monopolization, attempts to monopolize, and conspiracies to monopolize. Section 1 requires an "agreement" - - there must be two separate persons or entities engaged in joint conduct for a
violation of Section 1 to occur. On the other hand, with respect to the primary focus of Section 2, monopolization and attempts to monopolize, single firm behavior may violate the statute. However, there is a much greater scope of conduct that can violate Section 1 than the scope of conduct that can violate Section 2. As a result, the initial focus on the existence or non-existence of two or more separate actors and the presence or absence of an agreement between or among them is paramount to antitrust analysis. This is an extremely important, very basic point that the students must grasp to understand the analysis of Chapters 10-13.

3. Analysis of Section 1 of the Sherman Act  

These are probably the most important pages of Chapter 7. They introduce the students to the elements of a Section 1 Sherman Act claim, then address each of the elements, including the agreement requirement and the mode of analysis (per se and Rule of Reason) for determining if an agreement unreasonably restrains trade. The various per se violations are discussed, and the analysis of whether an agreement constitutes "price fixing," "horizontal market division," or a "group boycott" will be a central focus of discussion when the students turn to specific challenged conduct in Chapters 10-13. In particular, the complicated evolution of the per se analysis of group boycotts and the Supreme Court's decision in the Northwest Wholesale Stationers case is very useful to the students in understanding reported decisions in subsequent Chapters.

NOTE: There is a substantive typographical error in the first printing of the casebook on page 267. The first paragraph of section E(1) should be changed as follows:

All conduct challenged under Section 1 of the Sherman Act that is not analyzed under a per se rule will be analyzed under the Rule of Reason. To prove a claim under the Rule of Reason, a plaintiff must establish that: (1) there was an agreement between or among two or more persons or distinct business entities, as explained above; (2) the agreement or the conduct pursuant to the agreement adversely affected competition in a relevant market; and (3) the anticompetitive effects of the agreement exceeded the procompetitive benefits, and or there were no less restrictive alternatives by which the same procompetitive benefits could have been achieved.
4. Analysis of Section 2 of the Sherman Act  

The primary importance of this section is to provide the students the basic mode of analysis under Section 2 of the Sherman Act and to introduce them to the concept and analysis of "relevant markets." As explained in the text, the scope of the relevant market -- both the relevant product market and the relevant geographic market -- is also very important when one is assessing an agreement alleged to restrain trade unreasonably under Section 1 of the Sherman Act. In that context, the scope of the relevant market is a prerequisite to determining whether the challenged agreement adversely affected an overall antitrust market or whether the defendants alleged to have entered into the agreement have "market power," that is power to affect an entire antitrust market as opposed to the power to affect a small portion of the competitors or purchasers in that overall market.

Issues of monopolization in violation of Section 2 of the Sherman Act will be addressed in Chapter 11, and in the discussion of the concept of a single entity league that was started in Chapter 2 and that continues in Chapter 12. Monopolization issues are also presented in Chapter 13 (antitrust analysis of equipment restrictions). You may suggest that the students look back to these pages before the class discussion of Chapter 11.

5. Antitrust Exemptions  

As explained above, the baseball and labor exemptions are left for the next two Chapters. The state action and Noerr-Pennington exemptions or "doctrines" are discussed briefly, but the primary discussion concerns the Sports Broadcasting Act of 1961 and 1966.


These last fifteen (15) pages were included for several reasons. First, they give the students some appreciation of the extent to which antitrust litigation is an ever-present specter hanging over those who operate professional sports teams, leagues, and circuits. Second, they provide a fairly comprehensive reference tool for students and practitioners seeking antitrust decisions related to hockey, basketball, or football (virtually all of the antitrust decisions related to baseball can be found in Chapter 8). Third, they provide some historical background information about those three professional sports. (Historical information about professional tennis can be found in Chapter 10). That background information can be useful to the students in subsequent chapters, when they are discussing
reported decisions about those sports. Finally, it is our view that a casebook about sports law should include information about sports, and a course about sports law should include discussion of sports. These pages should be interesting and informative to all but the most knowledgeable sports fans and can serve as a useful launching point for a wide variety of discussions about such business topics as:

a. Differences and similarities between and among the various professional sports leagues

Do they have teams both inside and outside the United States?

Have they faced competing leagues? With what results? Why?

What are the season differences among the leagues -- how many games do they play each season? What does it take to qualify for post-regular season play?

In what arenas/stadia do they play? Are their stadia/arenas used by other sports or other events? What might the antitrust significance be of alternative use for their facilities -- for example, the fact that the same arenas house NBA and NHL teams (see, e.g., the discussion of the relevant product market in the Los Angeles Memorial Coliseum Commission's case against the NFL in Chapter Twelve)?

b. Why did the NFL and AFL combine their teams through a merger, while the NBA expanded its league to add four former ABA teams and the NHL expanded to add former WHA teams? Answer: because the Sports Broadcasting Act of 1961 and 1966 gave football an antitrust exemption and merging the only two top basketball or hockey leagues would likely have been attached as violative of the antitrust laws.

c. Why has there been more antitrust litigation involving professional team sports, as opposed to individual sports? (In part because (i) it is easier to launch a competing individual sports event rather than an entire competing league, (2) the monopoly position of sports leagues has been easier to establish -- often because individual sports (e.g., golf, tennis, and boxing) tend to be more international
in character, the appropriate forum to remedy anticompetitive conduct was often less apparent or non-existent, and world domination and control of the sport was less frequent, (3) the professional character of the sport may be of more recent vintage (e.g., see the discussion of the history of professional tennis in Chapter 10), and (4) there were fewer situations where people who had invested great amounts of money in the sport found themselves in positions where it was worthwhile to incur the substantial costs of antitrust litigation in order to try to remedy alleged anticompetitive conduct.

d. What steps have the various sports taken over the years to improve their product, to increase fan interest in their product, and to increase the attendance at their games and the size of the audience for their television and radio broadcasts? Have any of those efforts led to antitrust litigation? (E.g., keeping teams from relocating, restricting team broadcasts that compete with league broadcasts, restricting movement of players from team to team, forcing season ticket holders to also purchase tickets to preseason games, blocking the creation of competing leagues, etc.)

These questions can be asked as part of a discussion of Chapter 7, or they can be asked at various points during the discussions of the cases in Chapters 10-13.