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THE MISAPPLICATION OF ANTITRUST LAW TO PROFESSIONAL SPORTS LEAGUES

*Donald G. Kempf, Jr.**

The recent stir over the Oakland Raiders' move to Los Angeles has sparked renewed interest in the application of the antitrust laws to professional sports. Resolution of the controversy not only could have a far-reaching impact on professional sports franchises and leagues, but the case's final resolution could also have serious repercussions for the cities and states in which professional sports teams are located. The central issue in the *Raiders* case¹ is whether league rules restricting one team from moving into the home territory of another violate section 1 of the Sherman Act.² As demonstrated below, the decision at the trial level—that such rules violate section 1—rests on a fundamental misapplication of the antitrust laws to professional sports leagues.

The potentially broad impact of the ultimate decision in the *Raiders* litigation is confirmed by the numerous other recent instances—all apparently spawned by the Raiders' experience—of possible moves by one professional sports team into another team's locale. For instance, in May 1982, the Colorado Rockies of the National Hockey League (NHL) transferred from Denver to the Meadowlands sports complex in New Jersey, after asserting initially that, under the *Raiders* decision, the club had the unilateral right to move into the home territory of the NHL's New York teams (the Rangers

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1. The case is currently on appeal in the Ninth Circuit as *Los Angeles Memorial Coliseum Comm'n v. NFL*, *appeal docketed*, Nos. 82-5572, 82-5573, 82-5574, 82-5664, 82-5665 (9th Cir. June 14, 1982) (consolidated appeals on venue and antitrust liability issues); *appeal docketed*, Nos. 83-5907, 83-5908, 83-5909, 83-5938 (9th Cir. May 26, 1983) (consolidated appeals on state law claims and damages issues). Other aspects of the litigation are reported at 634 F.2d 1197 (9th Cir. 1980); 519 F. Supp. 581 (C.D. Cal. 1981); 89 F.R.D. 497 (C.D. Cal. 1981); 89 F.R.D. 489 (C.D. Cal. 1981); 484 F. Supp. 1274 (C.D. Cal. 1980); 468 F. Supp. 154 (C.D. Cal. 1979).

2. 15 U.S.C. § 1 (1982). The relevant provision that regulates the transfer of National Football League (NFL) franchises, Rule 4.3 of the NFL Constitution and By-Laws, provides:

The League shall have exclusive control of the exhibition of football games by member clubs within the home territory of each member. No member club shall have the right to transfer its franchise or playing site to a different city, either within or outside its home territory, without prior approval by the affirmative vote of three-fourths of the existing member clubs of the League.

N.F.L. Const. & By-Laws art. IV, § 4.3 (1976 & Supp. 1982). Rule 3.1(b) declares that a new franchise cannot be granted in an existing franchise's home territory unless three-fourths of the league members approve. N.F.L. Const. & By-Laws art. III, § 3.1(b) (1976 & Supp. 1982). Rule 4.1 defines an existing franchise's home territory as encompassing a seventy-five mile radius from its home city. N.F.L. Const. & By-Laws art. IV, § 4.1 (1976 & Supp. 1982).

and the Islanders) and of the Philadelphia Flyers.³ In June 1982, the San Diego Clippers of the National Basketball Association announced plans (later abandoned) to move to Los Angeles, indicating that the trial court decision in the *Raiders* case had paved the way for such a move.⁴ A month later, the Toronto Maple Leafs of the NHL announced that the club was moving its minor league franchise into an area considered part of the Buffalo Sabres' home territory.⁵ Most recently, when it appeared that the New York Jets intended to play their future home football games in the Meadowlands sports complex in New Jersey unless New York City authorities developed a suitable football stadium, Mayor Koch indicated that he would attempt to persuade another NFL team to replace the Jets in New York. At that time, it was observed that League approval for a third NFL team to move into the New York metropolitan area was not needed in light of the *Raiders* case.⁶ Affirmance of the *Raiders* jury verdict by the Ninth Circuit would undoubtedly lead to still more franchise moves. Due to a recognition of the potentially devastating effects that unrestrained team relocations have upon the stability of professional sports leagues and the communities in which they are located, several bills recently have been introduced in Congress to restrict the relocation of professional sports teams.⁷

The *Raiders* case illustrates the inherent difficulties in applying traditional antitrust principles to professional sports leagues. Section 1 of the Sherman Act is directed against joint conduct "in restraint of trade."⁸ The United

3. Newark Star-Ledger, May 13, 1982, at 65, 72; see also *Professional Sports Antitrust Immunity: Hearings on S. 2784 and S. 2821 Before the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 248-49 (1982) (statement of Gilbert Stein, vice-president and general counsel, National Hockey League). Ultimately, however, the Rockies reportedly paid a \$16 million indemnification to the New York and Philadelphia NHL teams for relinquishing their home area rights. Rocky Mountain News, May 28, 1982, at 1, 12.

4. Los Angeles Times, June 8, 1982, § 3, at 1, 6.

5. Toronto Globe and Mail, July 6, 1982, at P40.

6. N.Y. Times, Sept. 29, 1983, at B19, col. 5.

7. See S. 1036, 98th Cong., 1st Sess. (1983) (proposing the "Sports Community Protection and Stability Act of 1983," which would clarify the coverage of professional sports leagues by the antitrust laws in order to protect the public's interest in stable professional sports leagues); S. 1078, 98th Cong., 1st Sess. (1983) (similar to S. 1036, but requires notice of relocation plans to affected communities and employees of the franchise); H.R. 2041, 98th Cong., 1st Sess. (1983); H.R. 3841, 98th Cong., 1st Sess. (1983); H.R. 3944, 98th Cong., 1st Sess. (1983). Similar legislation introduced in the Second Session of the 97th Congress during 1982 received wide bipartisan support. H.R. 6467 was, for example, cosponsored by 160 members of the House, including many members of the Judiciary Committee. S. 2784 was cosponsored by more than 20 senators. 128 CONG. REC. H9466 (daily ed. Dec. 10, 1982) (remarks of Rep. Stark). As stated by a member of the Senate Judiciary Committee, these bills "received enormous support from public officials and civic leaders across the Nation," and more than 50 mayors, governors and county executives endorsed the legislation. 128 CONG. REC. S15783 (daily ed. Dec. 20, 1982) (remarks of Sen. Heflin).

8. 15 U.S.C. § 1 (1982). Section 1 of the Sherman Act only prohibits *unreasonable* restraints of trade. Certain acts, such as price-fixing, because of their perceived anticompetitive nature, are conclusively presumed to be unreasonable and are thus deemed to be per se violations of the Sherman Act. If there is a per se violation of the Sherman Act, the court is not required

States Supreme Court has long recognized, however, that not every agreement embodying a restraint of trade violates section 1.⁹ With this recognition, federal courts have held that some agreements in restraint of trade, including ancillary restraints¹⁰ to lawful joint ventures¹¹ and restraints agreed to by businesses recognized as parts of a single entity, do not violate section 1 of the Sherman Act.¹²

In applying traditional antitrust principles, a danger arises that too much attention will be given to superficial matters, such as whether the participating businesses are separately incorporated, and too little attention given to the underlying economic realities of the industry in question, which should be the determinative consideration in antitrust litigation.¹³ The accompanying

to investigate the impact that the restraint will have upon the market. See *Arizona v. Maricopa County Medical Soc'y*, 457 U.S. 332, 342-357 (1982); 54 AM. JUR. 2D *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 32, at 686-87 (1971 & Supp. 1983). The trial court in the *Raiders* case properly rejected the plaintiffs' efforts to characterize NFL Rule 4.3 as a per se violation. *Los Angeles Memorial Coliseum Comm'n v. NFL*, 468 F. Supp. 154, 165-66 (C.D. Cal. 1979). Due to the uniqueness of professional sports, other courts have also consistently refused to apply per se rules where league actions are challenged under the antitrust laws. See, e.g., *Mackey v. NFL*, 543 F.2d 606, 619 (8th Cir. 1976); *Philadelphia World Hockey Club v. Philadelphia Hockey Club*, 351 F. Supp. 462, 503-04 (E.D. Pa. 1972).

9. See, e.g., *Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918) (because every agreement affecting trade is in some manner restrictive, whether the agreement is lawful under section 1 of the Sherman Act depends upon the nature of the industry in question and the competitive condition of that industry before and after the restraint was imposed); *Standard Oil Co. v. United States*, 221 U.S. 1 (1911) (freedom to contract could be hampered if parties could not agree to some restraints).

10. Bork, *Ancillary Restraints and the Sherman Act*, 15 A.B.A. SEC. ANTITRUST L. 211, 211 (1959) ("By 'ancillary' the common law meant subordinate or collateral to another transaction and necessary to make that transaction effective.").

11. Every court of appeals that has reviewed the NFL's operations has concluded that it is a lawful joint venture. See *North Am. Soccer League v. NFL*, 670 F.2d 1249, 1251 (2d Cir. 1982); *Smith v. Pro Football, Inc.*, 593 F.2d 1173, 1179 (D.C. Cir. 1978); *Mackey v. NFL*, 543 F.2d 606, 619 (8th Cir. 1976). Similar conclusions have been reached for other sports leagues. See *Levin v. National Basketball Assoc.*, 385 F. Supp. 149, 152 (S.D.N.Y. 1974); *San Francisco Seals v. National Hockey League*, 379 F. Supp. 966, 969 (C.D. Cal. 1974); *Flood v. Kuhn*, 316 F. Supp. 271, 273 (S.D.N.Y. 1970), *aff'd*, 407 U.S. 258 (1972).

12. See, e.g., *Arizona v. Maricopa County Medical Soc'y*, 457 U.S. 332, 356 (1982) (in certain joint ventures, separate business organizations are "regarded as a single firm competing with other sellers in the market"); *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 282 (6th Cir. 1898), *modified*, 175 U.S. 211 (1899) (agreements in restraint of trade are lawful if "merely ancillary to the main purpose of a lawful contract").

In the *Raiders* case, the trial court ruled against the NFL on the "single entity" issue as a matter of law, thereby foreclosing the NFL from presenting that issue to the jury. *Los Angeles Memorial Coliseum Comm'n v. NFL*, 519 F. Supp. 581, 585 (C.D. Cal. (1981). For a thoughtful analysis of the "single entity" issue, see Grauer, *Recognition of the National Football League as a Single Entity Under Section 1 of the Sherman Act: Implications of the Consumer Welfare Model*, 82 MICH. L. REV. 1 (1983); see also Note, *The N.F.L.'s Final Victory Over Smith v. Pro-Football, Inc.: Single Entity-Interleague Economic Analysis*, 27 CLEV. ST. L. REV. 541 (1978).

13. For an example of reliance upon formalistic distinctions rather than economic analysis in examining professional sports leagues under the antitrust laws, see Blecher & Daniels, *Pro-*

danger is that such superficialities may be erroneously elevated to some sort of litmus test for choosing what label to pin on the particular arrangement in question. Such label-pinning should be deferred until after the court has examined the economic foundations and imperatives that underlie the operation of the particular business. The purpose of this article is to focus on the underlying economics of professional sports leagues.

In most industries and professions, each firm's success comes at the expense of other firms. In a professional sports league, however, each team's success is dependent upon the success of the other teams in the league. In the *Raiders* case, the trial court failed to take into account the antitrust implications of this fundamental economic reality. Fortunately, other courts, Congress and many commentators have not overlooked this reality. For example, as Judge Grim explained three decades ago in his landmark decision upholding an NFL rule, analogous to the rule at issue in the *Raiders* case, that prohibited the televising of one team's games into another team's locale when the latter team was playing at home:

Professional football is a unique type of business. Like other professional sports which are organized on a league basis it has problems which no other business has. The ordinary business makes every effort to sell as much of its product or services as it can. In the course of doing this it may and often does put many of its competitors out of business. The ordinary businessman is not troubled by the knowledge that he is doing so well that his competitors are being driven out of business. Professional teams in a league, however, must not compete too well with each other in a business way. On the playing field, of course, they must compete as hard as they can all the time. But it is not necessary and indeed it is unwise for all the teams to compete as hard as they can against each other in a business way. If all the teams should compete as hard as they can in a business way, the stronger teams would be likely to drive the weaker ones into financial failure. If this should happen not only would the weaker teams fail, but eventually the whole league, both the weaker and the stronger teams, would fail, because without a league no team can operate profitably.¹⁴

Professional Sports and the "Single Entity" Defense Under Section One of the Sherman Act, 4 WHITTIER L. REV. 217, 218-23 (1982), where the authors rely upon the intra-enterprise conspiracy concept as controlling the analysis of the sports-league structural issue. That concept itself, however, is under strong attack from academic and other critics, and the Supreme Court will review the intra-enterprise conspiracy concept in a case arising outside the professional sports context, *Copperweld Corp. v. Independence Tube Corp.*, 691 F.2d 310 (7th Cir. 1982), *cert. granted*, 103 S. Ct. 3109 (1983) (No. 83-1260).

14. *United States v. NFL*, 116 F. Supp. 319, 323 (E.D. Pa. 1953). Thus, Judge Grim concluded, "the net effects of allowing unrestricted business competition among the clubs are likely to be, first, the creation of greater and greater inequalities in the strength of the teams; second, the weaker teams being driven out of business; and, third, the destruction of the entire League." *Id.* at 324; *see also* *North Am. Soccer League v. NFL*, 670 F.2d 1249, 1253 (2d Cir.) ("[T]he economic success of each franchise is dependent on the quality of sports competition throughout the league and the economic strength and stability of other league members. Damage to or losses by any league member can adversely affect the stability, success and operations of other members."), *cert. denied*, 103 S. Ct. 499 (1982); *Professional Hockey Corp. v. World Hockey Ass'n*, 143 Cal. App. 3d 410, 415, ___ P.2d ___, ___, 191 Cal. Rptr. 773, 777 (1982) ("the league as a whole will suffer if one team is financially weak").

More recently, this same economic reality was recognized by Judge McGlynn in granting the NFL summary judgment on a claim that its refusal to grant a franchise to a proposed Memphis entry into the NFL violated the antitrust laws.¹⁵ In discussing Judge Grim's earlier decision, the court noted the "differences between the production of professional sporting contests and normal business activity"¹⁶ and acknowledged the widely recognized view that in order for professional sports teams to survive, the teams must make joint decisions off the field.¹⁷

Congress has also recognized the economic interdependence of teams in professional sports leagues. For example, in its report on what is now 15 U.S.C. § 1291 (dealing with network television broadcasting), the Senate stated that if weaker teams were permitted to founder, the structure of the entire league would be weakened and its continued existence threatened.¹⁸

Commentators, too, have long recognized that professional sports league members are not competitors in an economic sense. As former Solicitor General and Professor (now Judge) Bork pointed out nearly a quarter century ago:

The members of a league cannot compete in the way that members of other industries can. It is neither in the interests of the members of the league nor of the public generally that the more efficient teams should drive out the less efficient. If one team goes out of business, all are endangered. This suggests that the concept of business competition may be irrelevant as applied to the relationships between members of a league.¹⁹

Likewise, in their treatise on sports law, Messrs. Weistart and Lowell have stated:

[T]here is a great deal of economic interdependence among the clubs comprising a league. They jointly produce a product which no one of them is capable of producing alone. In addition, the success of the overall venture depends upon the financial stability of each club. The members must, therefore, refrain from direct, interfirm economic competition and, in fact, do utilize various cross-subsidy devices to compensate for the natural inequities arising from differences in the economic potential of various franchise locations.

Since a league's member-clubs do not compete with one another, it seems

15. *Mid-South Grizzlies v. NFL*, 550 F. Supp. 558 (E.D. Pa. 1982), *aff'd*, 1982-3 Trade Cas. (CCH) ¶ 65,695 (3d Cir. 1983).

16. 550 F. Supp. at 566.

17. *Id.*

18. S. REP. NO. 1087, 87th Cong., 1st Sess., *reprinted in* 1961 U.S. CODE CONG. & AD. NEWS 3042, 3043. Similarly, in 1964 the Senate Judiciary Committee stated that

[t]he uniqueness of the business of competitive team sports grows out of the public interest in teams which are as competitively equal as possible, and the responsibility of the "league" of teams in maintaining both competitive balance and geographic balance. Without competitive and geographic balance, the leagues and their weak teams are unable to attract and hold the public interest which is necessary for their survival.

S. REP. NO. 1303, 88th Cong., 2d Sess. 6 (1964).

19. Bork, *supra* note 10, at 233.

inappropriate to make them subject to legal principles designed to control the behavior of firms which are fundamentally different. In its basic nature, a league-firm is not a conspiracy. To treat it as such is to force results which are unlikely to achieve any purpose intended by Congress.²⁰

In sum, for firms in most industries, economic competition provides an opportunity to become "king of the hill." For professional sports teams it does not. While individual manufacturers of food, steel, aluminum and the like may prosper increasingly as other members of their industries go out of business, the opposite is true of a professional sports league; each league member is itself jeopardized when other teams go out of business. Thus, the Raiders' brief to the Ninth Circuit is clearly incorrect when it states that the way competition works among "'businessmen who sell food, steel, aluminum, or anything else people need or want' . . . fit[s] professional football clubs" as well.²¹ And the Los Angeles Memorial Coliseum Commission is similarly incorrect when it states in its Ninth Circuit brief that "the only difference between the NFL firms and competitors in any other industry is that the NFL firms must agree upon certain mechanical matters, such as hiring referees. . . ."²²

Ironically, the essence of the important economic difference between sports leagues and other industries is even reflected in the testimony of the Raiders' principal owner and managing general partner, Al Davis, at the *Raiders* trial. He testified that the Buffalo Bills' owner had invested heavily in the Raiders throughout the 1960s to keep the Raiders afloat financially because "[h]e had to have an opponent to get the most out of his franchise so that he wanted to promote his franchise, the Buffalo Bills. . . . He needed opponents on the field."²³ In short, fans will not come to the football stadium unless *two* teams are playing. As one federal court has succinctly observed, "by the nature of a sports contest, there must always be an adversary. By analogy, who would enjoy Vida Blue blazing strikes across home plate when the bat-

20. J. WEISTART & C. LOWELL, *THE LAW OF SPORTS* § 5.1, at 757-58 (1979); see also J. MARKHAM & P. TEPLITZ, *BASEBALL ECONOMICS AND PUBLIC POLICY* (1981); L. SULLIVAN, *HANDBOOK OF THE LAW OF ANTITRUST* § 88, at 252 (1977); Rivkin, *Sports Leagues and Antitrust Laws*, in *GOVERNMENT AND THE SPORTS BUSINESS* 387 (R. Noll ed. 1974).

21. Brief for Appellee Los Angeles Raiders (formerly Oakland Raiders) at 26, Los Angeles Memorial Coliseum Comm'n v. NFL, *appeal docketed*, Nos. 82-5564, 82-5565, 82-5572, 82-5573, 82-5574 (9th Cir. June 14, 1982) (quoting *Associated Press v. United States*, 326 U.S. 1, 7 (1945)). It is noteworthy that the Raiders themselves have relied upon the economic interdependence of league members in the eminent domain litigation brought against the Raiders by the City of Oakland. In that litigation, far from asserting that league members are like businesses selling food, steel, or aluminum, the Raiders argued that a sports franchise is inherently part of a web or "network" of intangible contractual rights having little in common with traditional forms of independent business enterprises. See *City of Oakland v. Oakland Raiders*, 30 Cal. 3d 60, 64, 646 P.2d 835, 837, 183 Cal. Rptr. 673, 675 (1982).

22. Brief for Appellee Los Angeles Memorial Coliseum Commission at 11, Los Angeles Memorial Coliseum Comm'n v. NFL, *appeal docketed*, Nos. 82-5664, 82-5665, 82-5572, 82-5573, 82-5574 (9th Cir. June 14, 1982).

23. Second Liability Record, Vol. 25, at 5347.

ter's box was empty, or Mark Spitz' triumphs, if he were the only one in the pool."²⁴

In light of the economic interdependence of league members, athletic competition on the playing field necessarily entails joint economic action off the field. Agreements limiting economic competition "are essential to the effectiveness and sometimes to the existence of many wholly beneficial economic activities."²⁵ League rules restricting team movement fall squarely into this category of essential joint agreements. Thus, in *San Francisco Seals, Ltd. v. National Hockey League*,²⁶ Judge Curtis granted the NHL summary judgment against a claim that its rule requiring unanimous approval of franchise relocations violated the antitrust laws:

[T]he organizational scheme of the National Hockey League, by which all its members are bound, imposes no restraint upon trade or commerce in [the] relevant market, but rather makes possible a segment of commercial activity which could hardly exist without it. . . . *Topco* and the long line of cases cited therein are not applicable here for they all deal with combinations of independent business enterprises competing economically with each other and with other businesses not included in the combination. . . . In the case before us the parties are not economic competitors, and the territorial restraints of which the plaintiff complains have no effect upon trade or commerce in this relevant market.²⁷

Thus, it is critical to recognize that in order to survive and prosper, members of professional sports leagues must act jointly, not separately. As the *San Francisco Seals* court recognized, this economic reality renders inapplicable *United States v. Topco Associates, Inc.*²⁸ and other cases that hold horizontal agreements creating geographic territories to be per se unlawful. In *Topco*,

24. *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462, 503-04 (E.D. Pa. 1972); see also L. KOPPETT, *SPORTS ILLUSION, SPORTS REALITY* 285 (1981); Neale, *The Peculiar Economics of Professional Sports*, 78 Q.J. ECON. 1 (1964).

25. R. BORK, *THE ANTITRUST PARADOX* 332 (1978) (emphasizing that boycotts or refusals to deal may be essential to the survival of sports leagues); see also J. MARKHAM & P. TEPLITZ, *supra* note 20, at 19 ("the 'product' of baseball—the game—necessitates cooperative rather than 'independent action.'") (emphasis in original); 16E J. VON KALINOWSKI, *BUSINESS ORGANIZATIONS: ANTITRUST LAWS AND TRADE REGULATIONS* § 50.01, at 50-52 (1983) ("rules and regulations concerning the conduct of league affairs . . . are essential in order to guarantee that each team will remain in a strong competitive position").

26. 379 F. Supp. 966 (C.D. Cal. 1974).

27. *Id.* at 970. Weistart and Lowell agree with the *San Francisco Seals* result:

[T]he realities of the major sports leagues' operations would seem to lend support to the conclusion reached in *San Francisco Seals*. The primary goal of section 1 of the Sherman Act is to insure that true economic competitors maintain a healthy distance from one another. The section was not intended to condemn all cooperative efforts in the business world. If a particular group of entrepreneurs are joint investors in a common venture which could not be carried on by any one of them alone, the cooperation which results hardly seems improper. In these instances, it is proper that the "agreements" in question are viewed as essentially internal marketing decisions.

J. WEISTART & C. LOWELL, *supra* note 20, § 5.11, at 701 (footnote omitted).

28. 405 U.S. 596 (1972).

absent the joint marketing program, each member in a cooperative association of independent supermarkets would have benefited had other members been driven out of business.²⁹ Professional sports leagues present the other side of the coin: league members do not benefit if other teams are driven out of business, and it would be economically irrational for teams to drive one another out of business.

A professional sports league is a coproduction business in which joint gate receipts and television contracts are the key factors determining the economic strength of all clubs.³⁰ If the potential consumers of NFL football in a local area are inadequate to support multiple teams, the ability of at least some (and perhaps all) of those teams in that local market to secure needed local gate receipts and revenues will be severely hampered. Moreover, there will be adverse effects not only on the teams directly involved, but on *all* the teams in the league. Should one of the teams fail, the adverse impact on that team and on those other teams scheduled to play it would be obvious. But even short of that, any decreases in crowd size resulting from such local area competition would have adverse consequences throughout the league. For example, visiting teams, which receive forty percent of gate proceeds in the NFL,³¹ would suffer a direct decline in revenues. Furthermore, less-than-capacity crowds would lead to television blackouts,³² thus threatening the lucrative television contracts that benefit *all* NFL teams. In short, it makes no sense to suggest that there should be forced competition between NFL teams in local markets for fans, ticket sales, and the like. The league's product, and its ability to compete with other forms of entertainment at the gate and on television, would be greatly—and senselessly—damaged with two or more teams struggling to capture a limited market.

Finally, if permitted to stand, the *Raiders* verdict may well have anticompetitive consequences for the entire entertainment industry. Healthy professional sports leagues have procompetitive effects on other forms of entertainment. So long as professional sports leagues remain strong contenders for the entertainment dollar, they exert competitive pressure on other entertainment forms. By jeopardizing the viability of professional sports league members, the *Raiders* decision could undermine the teams' abilities to compete effectively with other entertainment outlets.³³ Such anticompetitive consequences are manifestly contrary to the purpose of the antitrust laws.

29. *Id.* at 602.

30. Shared revenues from attendance and television account for more than 90% of the NFL clubs' average revenues. See N.Y. Times, May 2, 1982, § 5, at 8, col. 1. In 1982, the NFL signed a five-year network television contract worth approximately \$2 billion. See N.Y. Times, Mar. 23, 1982, at 23, col. 6. Average yearly income to each team under this contract will exceed \$10 million, making it the most lucrative contract in sports and, indeed, in "show-business history." *Id.*

31. N.F.L. Const. & By-Laws art. XIX, § 19.1 (1976 & Supp. 1982).

32. 15 U.S.C. §§ 1291, 1292 (1982).

33. As Justice Rehnquist noted in another NFL case, the NFL owners "produce a product, professional football, which competes with other forms of entertainment in the entertainment

In sum, an examination of the economic imperatives operating on professional sports leagues shows that location controls, including rules that prevent one team from moving into the home territory of another team, should not be held to violate section 1 of the Sherman Act. The relevant cases, statutes, and commentary consistently support this conclusion. The contrary decision at the trial level in the *Raiders* case represents a misapplication of the antitrust laws resulting from a failure to take proper account of the underlying economic realities of professional sports leagues. An analysis of the significant economic differences between sports leagues and other industries makes it clear that clubs of a common sports league should not be treated under the antitrust laws as if they were independent business competitors and that Section 1 condemnation of sports league rules restricting franchise movement is unsound antitrust policy.

market. Although individual NFL teams compete with one another on the playing field, they rarely compete in the marketplace." *NFL v. North Am. Soccer League*, 103 S. Ct. 499, 500 (1982) (Rehnquist, J., dissenting from denial of certiorari).

