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The NFL Takes an Antitrust Hit: The *American Needle* Decision and Its Impact on Joint Activities by Competitors

When should a joint venture be treated as a single economic enterprise that is immune from the antitrust laws? That was the question presented to the Supreme Court by the NFL, which argued that the collective exclusive licensing of National Football League logos was protected from antitrust liability because the NFL acted as a single corporate entity. On May 24, 2010, the United States Supreme Court unanimously rejected the NFL's position and concluded that the NFL's granting of exclusive licensing rights to Reebok should be reexamined by the lower court.

Background

In 2000, the NFL granted apparel-maker Reebok the exclusive rights to produce and sell headwear bearing the logos for each of the 32 NFL teams. This changed its longstanding practice of granting non-exclusive licenses to a number of companies to produce this merchandise for the NFL, including American Needle Inc. ("American Needle"), an Illinois-based hat manufacturer.

American Needle sued the NFL, its teams, and its licensing arm, alleging that the defendants engaged in an illegal agreement among competitors, -- the 32 NFL teams and other NFL entities -- in violation of Section 1 of the Sherman Antitrust Act. The NFL countered that the teams "have so integrated their operations that they should be deemed a single entity rather than joint ventures cooperating for a common purpose," and, thus, could not be held liable for an illegal conspiracy among competitors. The district court sided with the NFL and the Seventh Circuit affirmed the lower court's decision, concluding that the teams were not liable under Section 1 when licensing their intellectual property because "only one source of economic power controls the promotion of NFL football."

The Supreme Court's Decision

At the request of both parties, the Supreme Court heard the case this winter. In a unanimous decision authored by Justice John Paul Stevens, the Court reversed the lower court's holding that the NFL should be viewed as a single independent entity because "[a]lthough NFL teams have common interests such as promoting the NFL brand, they are still separate, profit-maximizing entities, and their interests in licensing team trademarks are not necessarily aligned."

In his opinion, Justice Stevens compared football teams to makers of nuts and bolts: "A nut and a bolt can only operate together, but an agreement between nut and bolt manufacturers is still subject" to the Sherman Act. The Court explained that simply because competitors share profits or losses does not necessarily shield the venture from liability under Section 1 or else any cartel "could evade the antitrust law simply by creating a 'joint venture' to serve as the exclusive seller of their competing products."

The Court ultimately rejected the NFL's argument that it should be entitled to blanket immunity under the *Copperweld* doctrine, which holds that separate members of the same corporate entity are unable to conspire in violation of Section 1. Instead, the Court viewed the NFL as a joint venture subject to standard rule of reason antitrust analysis, which requires courts to balance the harm to competition against the potential procompetitive benefits of the conduct. The Court remanded the case to the district court to determine whether the NFL's exclusive licensing agreement was legal under a rule of reason antitrust analysis.

Implications for Joint Activities among Competitors

Although the Court did not settle the ultimate question of whether the NFL's conduct violated the antitrust laws, the case could have broad implications beyond professional sports leagues. The decision reiterates long-standing precedent that requires careful antitrust scrutiny of joint activities by competitors. Whenever competitors come together, be it in a joint venture, association, or other combination, participants must appreciate that their joint conduct may not be immune from the antitrust laws simply because they are economically tied. According to the Court, the key is whether the agreement among competitors joins together "separate economic actors pursuing separate economic interests" that eliminates independent decision-making. If so, parties should carefully analyze the potential impact the agreement has on competition and whether the joint conduct can be justified on procompetitive grounds, such as increasing output, enhancing quality, or making a new product available.

Venable attorneys have significant experience counseling companies, associations, and other organizations involved in joint activities among competitors. We are prepared to advise and assist you to ensure that your conduct adheres to the antitrust laws and that your legal risks are minimized, while also maximizing your economic success.

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