Leveling the Playing Field: Relevant Product Market Definition in Sports Franchise Relocation Cases

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Leveling the Playing Field: Relevant Product Market Definition in Sports Franchise Relocation Cases

At the turn of the twenty-first century, reading the sports pages has become more like reading the business pages. Franchise owners uproot popular teams for new stadia and higher revenues elsewhere; professional sports leagues pit cities against each other in the struggle for expansion teams; and players demand unheard-of salaries and lucrative trades—this is the stuff of major league professional sports today. It is no wonder, then, that it seems like athletes and sports teams spend more time in court than on the playing field.\(^1\)

As cities and fans are well aware, sports franchises are valuable commodities.\(^2\) The fact that professional sports leagues have not expanded sufficiently to meet the demand for franchises further enhances their value.\(^3\) Therefore, cities without teams are often willing to make huge concessions in order to lure teams


\(^2\) The New York Yankees, for example, were valued at $362 million and their estimated yearly revenue was $114.7 million in 1997. See <http://www.forbes.com/forbes/98/1214/6213124tab1.htm> (visited Jan 29, 2000). The impact of having a major league professional sports team to a city's economy can be great. See Richard Amoroso, Controlling Professional Sports Team Relocations: The Oakland Raiders' Antitrust Case and Beyond, 17 Rutgers L J 283, 283 (1986) (estimating that in 1984 alone, after Robert Irsay, owner of the [now] Indianapolis Colts, moved the team from Baltimore, Baltimore's economy lost thirty million dollars in revenue, wages and business).


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away from their home cities or to acquire new expansion franchises. Home cities, in response, attempt to meet or surpass any offers made by outsiders. Although not required by any league’s rules, franchise owners who relocate their teams may have to pay a relocation fee to the league. Furthermore, when a franchise owner seeks to relocate to an area occupied by another team, league rules require supermajority approval of the other league franchise owners. Such rules are known as “franchise relocation restrictions.”

The relocation of well-supported teams obviously hurts home cities, their taxpayers and fans. However, leagues do not use franchise relocation restrictions only to protect cities, taxpayers and fans. In addition, relocation restrictions shelter existing fran-

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4 See John Wunderli, Squeeze Play: The Game of Owners, Cities, Leagues and Congress, 5 Marq Sports L J 83, 83–87 (1994) (giving examples of concessions made by home cities). St. Louis, for example, agreed to pay the Los Angeles Rams $15 million for team relocation costs and $30 million to pay off the debt the team owed the City of Anaheim, and to complete unfinished work at the team’s new home stadium, the brand-new $260 million Trans World Dome. Sanjay Jos6 Mullick, Browns to Baltimore: Franchise Free Agency and the New Economics of the NFL, 7 Marq Sports L J 1, 4 (1996).

5 In 1984, Leonard Tose, owner of the Philadelphia Eagles, threatened to relocate the Eagles unless local banks and investors agreed to help him refinance his forty-million-dollar personal debt. See Amoroso, 17 Rutgers L J at 283–84 (cited in note 2). Philadelphia’s mayor orchestrated an agreement to keep the team, which included a commitment from the city to construct fifty luxury skyboxes, a deferral of the Eagles’ rent on the stadium for ten years, and an agreement to increase the percentage of revenues the Eagles receive from food and beverage concessions at the stadium and to provide the Eagles with parking revenues from the stadium. Id at 284 n 7. See also Piraino, 57 Ohio St L J at 1702 n 118 (cited in note 3) (recounting some recent threats of team relocations and home cities’ responses).

6 Some commentators have suggested that the real reason the National Football League (“NFL”) approved the Rams’ move to St. Louis was because the Rams agreed to pay the NFL a $71 million ‘relocation fee.’ See Mullick, 7 Marq Sports L J at 7, 11 n 55 (cited in note 4) (noting that the owners originally voted 21–3 (with five abstentions) against the Rams move, but then voted 23–6 in favor, after securing the relocation fee). See also Quirk and Fort, Hard Ball at 124 (cited in note 3) (stating that Art Modell, owner of the [now] Baltimore Ravens, had to “cough up” some of his gains to the NFL when he moved his Cleveland Browns to Baltimore).

7 See, for example, NFL Const & By-Laws, Art IV, § 4.3 (requiring a 75 percent vote of owners before members can transfer their franchise to a different city); NBA Const § 9(a) (requiring majority vote for franchise move after consideration of various objective factors). League approval, however, can likely be bought when the price is right. Christian M. McBurney, The Legality of Sports Leagues’ Restrictive Admissions Practices, 60 NYU L Rev 925, 927 (1985) (stating that consent to move into another team’s home territory “usually must be purchased” and giving example). Modell’s payment to the NFL is especially revealing because the move relocated his team in close proximity to the Washington Redskins. The NFL’s decision not to block this relocation could arguably have been influenced by Modell’s agreement to give to the League some of the gains he received. Quirk and Fort, Hard Ball at 124 (cited in note 3).

8 See generally Wunderli, 5 Marq Sports L J at 91–96 (cited in note 4) (giving examples of how such moves have harmed cities and taxpayers).
chises from the competition that would ensue if other league
teams moved into their home areas. A major city like Los Ange-
les, for example, could likely support more than one team in any
given league. However, league rules are structured to preclude
relocations into such megalopolis cities. These rules, in turn, dis-
courage investments by individuals or groups seeking to purchase
and relocate existing teams. By imposing constraints on invest-
ment, league rules distort the sports franchise market and im-
pose artificial barriers to competitive forces within that market.

Despite this distortion, judicial and scholarly attention rarely
focuses upon the sports franchise market. Instead, most courts
and commentators evaluate relocation restrictions in terms of
their effects upon fans. Therefore, most evaluations of franchise
relocation restrictions are incomplete. As a result, injured par-
ticipants in the sports franchise market, such as potential buyers
of existing franchises, lack meaningful redress in the antitrust
laws. This Comment attempts to improve the sports franchise
relocation debate by analyzing the impact of relocation restraints
on the sports franchise market.

Part I of this Comment will review why relevant product
market definition is important to antitrust analysis. Part II will
explain the function of antitrust laws in the sports industry and
their application to sports franchise relocation restraints. Part III
will evaluate the three dominant relevant product market defini-
tions that are used in sports-related cases: the entertainment
market, the single-sport market, and the market for sports fran-
chises.

Part IV will demonstrate that the market for sports fran-
chises is the proper product market definition for relocation cases
for two reasons. First, the anticompetitive effects of franchise re-
location restraints directly impact the market for sports fran-
chises. Second, given the harm to consumer interests in the
sports franchise market, those interests deserve protection under
the antitrust laws. Defining the product market as the market for
sports franchises is both consistent with federal court jurispru-
dence and responsive to consumer welfare concerns.

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9 Quirk and Fort, **Hard Ball** at 178 (cited in note 3) (arguing that New York and
similar megalopolis cities could support several teams in any one league).
I. GENERAL ANTITRUST DOCTRINE

As early as the 1920s, courts scrutinized professional sports leagues under the federal antitrust laws.\textsuperscript{10} Although the Supreme Court exempted professional baseball from the antitrust laws,\textsuperscript{11} the Court never extended this protection to the other professional sports leagues.\textsuperscript{12} Indeed, the antitrust laws have been a powerful tool for individuals and groups seeking to challenge major sports leagues’ power and authority.

A. Sherman Act § 1

Section 1 of the Sherman Act\textsuperscript{13} prohibits conspiracies or coordinated group activity designed to restrain trade among those who would otherwise be competitors or sellers.\textsuperscript{14} Since virtually every contract restrains trade to some degree, the Supreme Court has interpreted § 1 as prohibiting only unreasonable restraints of

\begin{footnotesize}
\begin{enumerate}
\item See Federal Baseball Club of Baltimore, Inc v National League of Professional Baseball Clubs, 259 US 200 (1922) (holding baseball exempt from federal antitrust laws).
\item Section 1 of the Sherman Act provides that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in the restraint of trade or commerce among the several states . . . is declared to be illegal.” 15 USC § 1 (1994). Regardless of the nature of the practice challenged, three elements must be established to prove a violation of § 1: (1) the existence of a contract, combination, or conspiracy among two or more separate entities that (2) unreasonably restrains trade and (3) affects interstate or foreign commerce. ABA Section of Antitrust Law, Antitrust Law Developments 2 (ABA 4th ed 1997) (citations omitted).
\end{enumerate}
\end{footnotesize}
In the context of sports leagues, the "rule of reason" usually determines whether a restraint is unreasonable.\textsuperscript{16} The relevant inquiry under the rule of reason is whether the restraint "is one that promotes competition or one that suppresses competition."\textsuperscript{17} If the rule of reason analysis reveals that the restraint has a net procompetitive effect, or an "insubstantial" net anticompetitive effect, the restraint is lawful.\textsuperscript{18} If, however, the restraint's tendency to injure competition outweighs its tendency to enhance competition, the restraint violates the Sherman Act.\textsuperscript{19}

B. Public Policy Concerns

Federal antitrust legislation and Supreme Court antitrust jurisprudence are aimed at enhancing consumer welfare.\textsuperscript{20} The Court has both explicitly and implicitly recognized the importance of maintaining competition\textsuperscript{21} in order to protect consumers.\textsuperscript{22}

\textsuperscript{15} See \textit{Standard Oil Co v United States}, 221 US 1, 60–70 (1911).

\textsuperscript{16} The rule of reason has emerged as the proper test for evaluating sports leagues under § 1. See, for example, \textit{Los Angeles Memorial Coliseum Commission v National Football League}, 726 F2d 1381, 1387 (9th Cir 1984); \textit{Smith v Pro Football, Inc}, 593 F2d 1173, 1179–82 (DC Cir 1978); \textit{Mackey v National Football League}, 543 F2d 606, 618–20 (8th Cir 1976). See also Daniel E. Lazaroff, \textit{The Antitrust Implications of Franchise Relocation Restrictions in Professional Sports}, 53 Fordham L Rev 157, 175–206 (1984) (discussing propriety of the rule of reason versus the rule of per se illegality for sports leagues). The other method available is the per se rule of illegality, which condemns certain categories of restraints such as horizontal price-fixing and market allocation agreements among competitors without inquiry into their actual effect on competition or the purpose for their use. \textit{Antitrust Law Developments} at 40 (cited in note 13).

\textsuperscript{17} \textit{National Society of Professional Engineers v United States}, 435 US 679, 691 (1978).

\textsuperscript{18} \textit{Antitrust Law Developments} at 59 (cited in note 13).

\textsuperscript{19} See \textit{Chicago Board of Trade v United States}, 246 US 231, 238 (1918).


\textsuperscript{21} Robert Bork has argued that for purposes of antitrust analysis, the word "competition" should be used only as a term of art identifying market behavior that enhances consumer welfare. Robert H. Bork, \textit{The Antitrust Paradox: A Policy at War with Itself} 58–61 (Basic 1978).

\textsuperscript{22} See Grauer, 82 Mich L Rev at 7–14 (cited in note 20), discussing \textit{Continental TV, Inc v GTE Sylvania Inc}, 433 US 36, 53 n 21 (1977) and \textit{Broadcast Music, Inc v Columbia Broadcasting System, Inc}, 441 US 1, 8–9 n 13 (1979) ("BM") as indications that the Court recognizes that antitrust law's proper goal is to maximize consumer welfare. Indeed, the Court has explicitly declared that "Congress designed the Sherman Act as a consumer
The antitrust laws condemn restraints of competition, which allow firms to take unfair advantage of consumers by raising prices and reducing output.\(^2\) Thus, in order to qualify as reasonable under the antitrust laws, a restraint of trade must not diminish output.\(^3\)

C. Relevant Product Market Definition

Defining the relevant market is a threshold step in nearly all antitrust cases.\(^2\)\(^5\) A “market” is the group of sellers or producers who have the potential to exert market power; that is, the “actual or potential ability to deprive each other of significant levels of business.”\(^2\)\(^6\) A relevant market has two components: (1) the relevant product market, which identifies the products or services that compete with each other, and (2) the relevant geographic market, which describes the geographic area in which the sellers could act monopolistically if they were to coordinate their actions.\(^2\)\(^7\)

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\(^{23}\) See Robert C. Heintel, The Need for an Alternative to Antitrust Regulation of the National Football League, 46 Case W Res L Rev 1033, 1040 (1996). See also National Collegiate Athletic Association v Board of Regents of University of Oklahoma, 468 US 85, 107 (finding NCAA television restrictions unlawful because “[p]rice is higher and output lower than they would otherwise be, and both are unresponsive to consumer preference”); BMI, 441 US at 19–20 (“[O]ur inquiry must focus on whether . . . the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output . . . or instead one designed to increase economic efficiency and render markets more, rather than less, competitive.”) (quotation marks omitted).

\(^{24}\) Michael S. Jacobs, Professional Sports Leagues, Antitrust, and the Single-Entity Theory: A Defense of the Status Quo, 67 Ind L J 25, 53 (1991) (“Economic theory informs us that with decreased output comes higher prices, and common sense advises that decreased output also brings with it the prospect of a smaller variety of goods, as well as a smaller number, and thus the prospect of diminished consumer choice.”).


\(^{26}\) Thurman Industries v Pay 'N Pak Stores, Inc, 875 F2d 1369, 1374 (9th Cir 1989). See also Eastman Kodak Co v Image Technical Services, Inc, 504 US 451, 464 (1992) (defining market power as “the ability of a single seller to raise prices and restrict output”) (citation omitted).

\(^{27}\) See Antitrust Law Developments at 493 (citations omitted) (cited in note 13); Carvill, 566 PLI/Pat at 67 (cited in note 25).
1. Product market definition.

Generally, two products or services are in the same relevant product market, even though they are not identical to each other, if purchasers of the products view them as being reasonably interchangeable for the purpose for which they are produced. "Reasonable interchangeability of use," also referred to as "demand substitutability" or "cross-elasticity," refers to consumers' practical ability to switch from one product to another. Thus, when the presence of one product acts as a price constraint on another product, the two products are in the same market.

2. Geographic market definition.

A geographic market is defined by identifying the geographic area in which buyers look to purchase products included in the relevant product market. As with relevant product markets, the geographic market determination in a particular case depends upon cross-elasticity of demand. While certain criteria have been proposed to help make the geographic market determination, these factors are not conclusive. Instead, the Supreme

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29 Antitrust Law Developments at 500 (cited in note 13). The cross-elasticity of demand between two products measures the extent to which the quantity demanded of the first product will change in response to a change in the price of the second product. Id at 503. See also FTC v Staples, Inc, 970 F Supp 1066, 1076 (DC Cir 1997) (finding that a slight but significant nontransitory price increase by Staples would not cause a considerable number of Staples customers to purchase consumable office products from nonsuperstore alternatives, but instead would cause customers to turn to another office superstore); Drinkwine v Federated Publications, Inc, 780 F2d 735, 738 n 3 (9th Cir 1985) (noting that display advertisements in daily newspapers were not a relevant market because "door-to-door delivery, direct mail and the weekly papers [were] viable substitutes").
30 See McBurney, 60 NYU L Rev at 934 (cited in note 7). Indicia of substitutability include: "(1) evidence that buyers have shifted or have considered shifting purchases between products in response to relative changes in price or other competitive variables; (2) evidence that sellers base business decisions on the prospect of buyer substitution between products; and (3) the timing and costs of switching products." Seal, 61 Antitrust L J at 738 (cited in note 28).
31 See Carvill, 566 PLI/Pat at 68 (cited in note 25). See also United States v Grinnell Corp, 384 US 563, 570–71 (1966) (defining the relevant geographic market as the "area in which a potential buyer may rationally look for the goods or services he or she seeks").
32 Antitrust Law Developments at 533, 543 n 178 (cited in note 13). The cross-elasticity of demand for a single product between two different geographic areas measures the extent to which the quantity of the product demanded in the first area will change in response to a change in the price of the product in the second area. Id at 533.
33 These factors include actual sales patterns, relationship among prices and price movements between areas, transportation costs, industry practices, and the nature and scope of the anti-competitive effect at issue in a particular case. Id at 533–39.
Court has stated that "Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one. The geographic market selected must therefore both correspond to the commercial realities of the industry and be economically significant."  

3. The importance of a narrowly tailored product market definition.

The relevant product market definition in any antitrust case must conform to the antitrust challenge being made. If a court defines a product market without regard to the particulars of the industry, the resulting definition may shed little light on the effects of the restraint under examination. In a case involving alleged harm to distributors of first-run movies, for example, the relevant product market consists of products that distributors consider reasonable substitutes. This is true regardless of moviegoers' or other consumers' preferences.

Relevant product market definition involves identifying the alleged antitrust violation, the actors purportedly harmed by the alleged violation, and the product market within which the injury occurs. Sports franchise relocation cases present special market definition difficulties because sports leagues operate in a variety of different product markets and may be subjected to multiple allegations of antitrust liability in any or all of these various product markets.

II. ANTITRUST AND THE SPORTS INDUSTRY

Professional sports leagues are subject to scrutiny under both §§ 1 and 2 of the Sherman Act. While disagreement abounds

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36 Id at 744–45.
37 *United States v Syufy Enterprises,* 903 F2d 659, 665 n 9 (9th Cir 1990).
38 See Seal, 61 Antitrust L J at 753 (cited in note 28) (explaining that the relevant question in Syufy was whether the distributors viewed theatrical release as a means of distribution interchangeable with video and cable, regardless of the movie patrons' preferences).
39 See Ross, 73 Minn L Rev at 647 (cited in note 3) (citing different markets in which sports leagues operate). See also notes 48–57 and accompanying text.
40 Section 2 of the Sherman Act prohibits monopolization of trade and attempts to monopolize trade. 15 USC § 2 (1994). To demonstrate attempted monopolization, a plaintiff must prove (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power. *Spectrum Sports, Inc v McQuillan,* 506 US 447, 456 (1993). Rival leagues
on substantive liability issues, virtually everyone agrees that professional sports is a unique industry to which traditional antitrust doctrine is not easily applied.42

A. Rule of Reason Versus Per Se Illegality

The rule of reason, rather than the per se rule of illegality, applies to most cases involving sports leagues.43 According to the Supreme Court, the rule of reason is the more appropriate approach to "an industry in which horizontal restraints on competition are essential if the product is to be available at all."44

In order for a league to survive, its member teams must compete on the field while cooperating off the field.45 Such coordination among on-field competitors markedly differs from other
business contexts, in which each company's success comes at the expense of competitor companies. For sports leagues, the demise of a single franchise may be disastrous to the entire league since the quality of the league as a whole depends on the quality of the component teams. Thus, teams engage in a joint effort to promote the strength of individual teams and the league as a whole. Various organizational structures, such as revenue-sharing provisions, and salary and payroll caps, aim to maximize revenue as well as fan interest, thereby ensuring the league's viability.

B. Relevant Market Definition

Sports leagues operate in a variety of markets, such as those for stadia and for television and radio broadcast. These markets are composed of separate and distinct league products, each having its own distinct consumers. Despite this complexity, courts have given insufficient attention to determining exactly what products sports leagues produce.

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47 Id at 178. See also Mid-South Grizzlies v National Football League, 550 F Supp 558, 566 (E D Pa 1982) (“If all the teams [in a league] 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 . . . would fail.”); Gary R. Roberts, Sports Leagues and the Sherman Act: The Use and Abuse of Section 1 to Regulate Restraints on Intraleague Rivalry, 32 UCLA L Rev 219, 262 (1984) (“[E]ach club wants every other club to be economically successful, and no rational club wants any other to be economically injured because such injury will to some extent diminish the quality of the league product as a whole.”).

48 See Heintel, 46 Case W Res L Rev at 1035 (cited in note 23). One of the best examples of cooperation within a sports league is the substantial amount of revenue sharing that occurs. The NFL member clubs, for example, share approximately 90 percent of the total revenues earned by the NFL and its teams. VKK Corp v NFL, 1999 WL 432558, *3 (S D NY). When gate revenues are shared it is in all teams’ best interest for all teams to be strong competitors, thereby increasing ticket sales. Furthermore, the quality and marketability of the league as a whole depends on each team’s financial and social status. Goldman, 63 Tul L Rev at 757–58 (cited in note 41).

49 See Ross, 73 Minn L Rev at 647 (cited in note 3); Roberts, 61 S Cal L Rev at 960–61 (cited in note 42) (“NFL football is in fact marketed through two primary mediums, each of which is more rationally considered separately for antitrust analysis.”).

50 See Piazza v Major League Baseball, 831 F Supp 420, 439–40 (E D Pa 1993) (recognizing that the consumers in the product market for the business of baseball are fans and, perhaps, the broadcast industry, while the consumers in the product market for existing professional sports teams are “those who would like to become team owners”).

51 Heintel, 46 Case W Res L Rev at 1046 (cited in note 23) (“Although [courts] have dealt extensively with what output market for the product is appropriate, they have not defined exactly what the product is.”).
Some of the products that courts and commentators have identified as outputs of sports leagues include games, championship seasons, shares in National Football League ("NFL") teams, and sports franchises. While sports leagues may produce all of these goods, not all will be relevant in a sports franchise relocation case. If a court focuses upon the wrong relevant product market, its antitrust analysis will be skewed and it will fail to accurately assess the competitive effects of the practice in question. Therefore, it is especially important in the sports context to ensure that the relevant market definition accords with the particular antitrust allegation at issue.

C. Identifying the Problem: Franchise Relocation Restraints and § 1

All professional sports leagues have rules, commonly known as franchise relocation restrictions, which restrict owners' ability to move their franchises from their home territories to other locations. Generally, these restrictions prohibit individual teams from moving to a different home site without the prior approval of

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52 See North American Soccer League v National Football League, 670 F2d 1249, 1251 (2nd Cir 1982) (identifying the NFL's business as "providing public entertainment in the form of competitive football games"); Jacobs, 67 Ind L J at 54 n 126 (cited in note 24) (defining the NFL's product as individual games).

53 See Raiders, 726 F2d at 1393 (calling the Super Bowl "the ultimate NFL product"); Roberts, 61 S Cal L Rev at 985 (cited in note 42) ("Using the NFL as the example, the relevant product is NFL football...a single game...is not a separate product for meaningful economic purposes. The product is the league's annual series of 224 regular season games leading to a post-season playoff tournament and ultimately a Super Bowl champion.").


55 See Piazza, 831 F Supp at 430. See also note 50.


57 See Carvill, 566 PLI/Pat at 67 (cited in note 25) ("In almost all antitrust cases, the decision as to whether certain conduct violates the law or not turns in large part on the definition of the market(s) in which the conduct occurs and the effect of that conduct on competition within the market(s). ").

58 For the importance of tailored market definitions, see notes 34–38 and accompanying text.

59 See, for example, NFL Const & By-Laws, Art IV, § 4.3 (requiring 75 percent vote before member can "transfer its franchise or playing site to a different city, either within or outside its home territory"). The NFL defines "Home Territory" as "The city in which a club is located and for which it holds a franchise and plays its home games, and includes the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of such city." Id at § 4.1.
a specified percentage of league members. While restricting owners' ability to move their teams, relocation restrictions simultaneously protect each owner's home territory from encroachment by another team.

Opponents of franchise relocation restraints argue that the restraints "perpetuate exclusive territories" in violation of the Sherman Act. On this view, exclusivity "insulates teams from direct competition with each other and facilitates the establishment of monopoly prices to the detriment of the consuming public." For precisely these reasons, the Ninth Circuit invalidated the NFL's use of its relocation restraint to prevent the Oakland Raiders from moving to Los Angeles, the home territory of the (then) Los Angeles Rams.

Sports leagues contend that exclusive territories are necessary to promote stability and to protect member teams' chances of survival. The NFL, for example, concedes that the purpose of its relocation restriction is to restrain competition among member teams. However, the NFL justifies the restriction as serving other legitimate, procompetitive league needs, such as maintaining fan loyalty.

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60 Lazaroff, 53 Fordham L Rev at 160 (cited in note 16). See, for example, NBA Const § 9(a) (amending § 9 of the National Basketball Association ("NBA") Constitution, which gave a league member the right to prevent a transfer to its home territory, to require majority vote for franchise move after consideration of various objective factors).

61 The NFL's restrictions effectively grant each team an exclusive right to NFL football within a seventy-five-mile radius of the home field of the team. Quirk and Fort, Pay Dirt at 300 (cited in note 3). See also Quirk and Fort, Hard Ball at 118 (cited in note 3) ("Under rules that apply in all leagues, no league team can schedule a game in the territory of another league team without obtaining permission from that team.").

62 Los Angeles Memorial Coliseum Commission v National Football League, 726 F2d 1381, 1395 (9th Cir 1984) ("Raiders"). See also Frank P. Scibilia, Baseball Franchise Stability and Consumer Welfare: An Argument for Reaffirming Baseball's Antitrust Exemption with Regard to Its Franchise Relocation Rules, 6 Seton Hall J Sports L 409, 434–35 (1996) ("Baseball's franchise relocation restrictions can be viewed as agreements to divide markets, and as such, may be considered horizontal restraints among direct competitors.").

63 Raiders, 726 F2d at 1395.

64 See id ("The harm from Rule 4.3 [the NFL's franchise relocation restriction] is especially acute in this case because it prevents a move by a team into another existing team's market. If the transfer is upheld, direct competition between the Rams and Raiders would presumably ensue to the benefit of all who consume the NFL product in the Los Angeles area."). The Court's decision did not render franchise relocation restrictions invalid as a matter of law. See National Basketball Association v SDC Basketball Club, Inc, 815 F2d 562, 567–68 (9th Cir 1987).

65 See Amoroso, 17 Rutgers L J at 303–04 (cited in note 2).

66 See Raiders, 726 F2d at 1395.

67 Id. See also Quirk and Fort, Hard Ball at 119 (cited in note 3) ("Supporters of the leagues argue that [franchise relocation] rules provide the strongest incentives for owners to invest in their teams and to develop fan loyalty within their home cities, while protecting fans from capricious franchise moves.").
A related justification for relocation restrictions is the fear that a particular franchise's relocation may "damage[e] the entire league product." 68 Under this theory, fans in an abandoned city will likely harbor hostility toward the entire league, possibly leading to a decrease in television ratings. 69 When the Ninth Circuit evaluated the NFL's relocation restraint as applied to the Oakland Raiders, it recognized in dicta the League's need to "have some control over the placement of teams to ensure NFL football is popular in a diverse group of markets." 69 Nonetheless, the Ninth Circuit affirmed the jury verdict against the NFL, noting that the League could have achieved that end through other, less restrictive methods. 70

While the precise effects of franchise relocation restrictions are debatable, it is clear that they differ depending upon the market examined. For example, if the relevant product market is defined to include all entertainment products, such that the sports league is competing for fans with other forms of entertainment, the defendant league may properly assert the alleged quality-enhancing benefits of franchise relocation restraints. Ensuring the viability of franchise locations and home ticket sales is arguably an essential part of bolstering league standings vis-à-vis other entertainment products available to consumers. 71 On the other hand, if the market is defined more narrowly, perhaps as NFL football only, then these procompetitive benefits disappear.

69 Id. See also, Michele Cotrupe Curbing Franchise Free Agency: The Professional Sports Franchise Relocation Act of 1998, 9 DePaul-LCA J Art & Enter L 165, 165 (1998) (arguing that recent moves have "separated fans from their National Football League home teams, destroying natural team rivalries and creating fan animosity and distrust towards the League and the individual teams' owners"). But see Lazaroff, 53 Fordham L Rev at 214 (cited in note 16) (suggesting that while some fans may be devastated by a franchise's departure, "[i]t is not inconceivable that fans in the city losing a team will continue to follow that club").
70 Raiders, 726 F2d at 1396. One recent study gives credence to the major sports leagues' arguments in defense of franchise relocation rules generally and to the NFL's defense in Raiders specifically. See Kenneth Lehn and Michael Sykuta, Antitrust and Franchise Relocation in Professional Sports: An Economic Analysis of the Raiders Case, 42 Antitrust Bull 541, 545–63 (1997). The authors' argument relies heavily on two facts: (1) the Los Angeles area does not currently have a football team; and (2) the Rams suffered in Los Angeles while the San Francisco 49ers prospered after the Raiders left the Bay area. Id at 543.
71 See Raiders, 726 F2d at 1396. The court noted that the "possibility of less restrictive alternatives" is a pertinent factor in determining the reasonableness of a particular restraint in all rule of reason cases. Id, quoting National Football League v North American Soccer League, 495 US 1074, 1080 (1982) (Rehnquist, dissenting).
72 See Kennedy, 46 UCLA L Rev at 610 (cited in note 56) ("Teams must be able to reach horizontal agreements for the league . . . to compete in the entertainment market.").
since the NFL has no competition in that market.\textsuperscript{73} Because of its profound effects on the scope of defenses available to the defendant league, relevant product market definition may be dispositive in any given sports franchise relocation case.

III. RELEVANT PRODUCT MARKET DEFINITION IN THE SPORTS INDUSTRY

Participants in the franchise relocation debate tend to advocate one of three product market definitions: (1) the single-sport market, (2) the entertainment market, or (3) the market for sports franchises.\textsuperscript{74} Examining these market definitions in detail helps clarify their contours and their impact on any given franchise relocation case.

A. The Market for the Particular Sport at Issue

The market definition that appears most frequently within sports-related case law is the market for the particular sport at issue—the "single-sport market."\textsuperscript{75} This market definition appears in franchise relocation cases and in commentary regarding relocation restrictions.\textsuperscript{76} Commentators characterize this market

\textsuperscript{73} See Lazaroff, 53 Fordham L Rev at 211 (cited in note 16) ("If the market definition is narrow enough to include, for example, only professional football, with whom is the NFL competing?").

\textsuperscript{74} There is also a possible fourth relevant product market consisting of all professional sports leagues. Indeed, one commentator has recognized a high degree of competition among professional sports leagues. Rosenbaum, 41 U Miami L Rev at 789–90 (cited in note 13) ("Perhaps the real competition that exists among sports leagues is . . . that which requires the selling of professional sports to the consumer."). This Comment, however, considers this market subsumed by the entertainment market. See notes 85–94 and accompanying text.


\textsuperscript{76} Most commentators agree that the jury instructions in Los Angeles Coliseum Commission v National Football League, 468 F Supp 154 (C D Cal 1979), affd 726 F2d 1381 (9th Cir 1984) ("Raiders"), allowed and encouraged the jury to find that the product of NFL football constituted an isolated relevant product market. See Roberts, 61 S Cal L Rev at 960–65 (cited in note 42) (criticizing district court's jury instruction and the Ninth Circuit's affirmance). The Ninth Circuit's determination that NFL football has "limited substitutes from a consumer standpoint" was based on several factors. Raiders, 726 F2d at
definition as “narrow” in contrast to “broad” market definitions, such as the market for all entertainment products.\(^77\)

Proponents of the single-sport market definition maintain that there are no reasonably interchangeable substitutes, for example, for professional football games on Sundays.\(^78\) In a case involving the National Basketball Association ("NBA"), the district court for the Northern District of Illinois approved of the single-sport market definition:

The presentation of professional basketball exhibitions . . . does not directly compete with any other product or service. It is a form of entertainment which is unique in the eyes of the consumer and is without any close substitute. It has its own fans for whom other products and services are not reasonably interchangeable. Furthermore, the demand for professional basketball is not effected [sic] by the existence of other amateur or professional sports or other forms of entertainment.\(^79\)

Such a narrow market definition is controversial because it is disadvantageous to defendant leagues.\(^80\) When the relevant market is defined as NFL football, for example, a court will likely find that the NFL has monopoly power in that market.\(^81\) Even if a case does not involve a § 2 claim, a showing of substantial market power in the relevant market places the defendant at a disadva-

1393. First, the court noted that the Raiders had consistently sold out the Oakland Coliseum despite the fact that Raiders' ticket prices were among the highest in the League. Id. The court further acknowledged the NFL's "extraordinary number of television viewers" and its "importance to the television networks." Id.

\(^77\) See, for example, Jacobs, 67 Ind L J at 58 n 128 (cited in note 24) (comparing the narrow and broad definitions and the implications of each).

\(^78\) Rosenbaum, 41 U Miami L Rev at 784 (cited in note 14). See also Piraino, 57 Ohio St L J at 1693–94 (cited in note 3) ("The fans of each [major professional] sport do not view other forms of entertainment as reasonable substitutes. Fans generally have not switched their allegiance from one professional sport to another when their favorite sport has raised ticket prices, suffered a strike, or experienced other difficulties."); Daniel E. Lazaroff, Antitrust Analysis and Sports Leagues: Re-examining the Threshold Questions, 20 Ariz St L J 953, 977–78 (1988) ("It does not appear that sports fans respond to ticket price increases or decreases in a manner that suggests cross-elasticity of demand between one sport and another or between sports and other forms of entertainment.").

\(^79\) Fishman, 1981-2 Trade Cases (CCH) at 74,741, 74,756.

\(^80\) See, for example, Lazaroff, 53 Fordham L Rev at 215 (cited in note 16) ("It appears that only if broader market definitions are accepted and if the restraints are more carefully tailored can a relocation restriction possibly survive a section 1 challenge."); Jacobs, 67 Ind L J at 58 n 128 (cited in note 24) ("The narrow approach to market definition obviously makes it more difficult for the leagues' practices to pass antitrust muster.").

\(^81\) See Lazaroff, 53 Fordham L Rev at 211 (cited in note 16) (concluding that the NFL is the only competitor in the market for professional football).
A defendant with substantial market power, approaching monopoly power, will have difficulty showing that a restraint's procompetitive benefits outweigh its anticompetitive effects. Thus, league defenders reject the use of the narrow market definition, because courts are more likely to strike down league re-

straints under this approach.

B. The Entertainment Market

Defining the relevant product market as "the entertainment market" is popular with commentators who support sports leagues' freedom to impose internal restraints upon their members. In contrast to supporters of the single-sport market, proponents of the entertainment market definition contend that other entertainment products are adequate substitutes for professional sports leagues' products. As Chief Justice Rehnquist has argued, "[t]he NFL owners are joint venturers who produce a product, professional football, which competes with other sports and other forms of entertainment in the entertainment market. Although individual NFL teams compete with one another on the playing field, they rarely compete in the market place.

Without reliable empirical data, it is difficult to know the extent of cross-elasticity between a particular league's product and other entertainment products. Defenders of single-sport market
definitions argue that avid football fans do not acknowledge any substitutes for NFL football games. In contrast, supporters of the entertainment market definition refuse to attribute such undying loyalty to professional sports fans. On the latter view, the proper approach is to consider the preferences of ordinary consumers who, "realizing the limitations of both financial resources and time within which to enjoy those precious moments of leisure, are much more open minded about the availability of the various entertainment attractions from which to choose." Few of these consumers, according to this view, are "so parochial in [their] tastes as to insist upon only one form of leisure activity to the exclusion of all others."

Using the entertainment market as the relevant product market allows defendant leagues to describe their own market power in reference to a larger group of products. Since the market itself is larger and contains more products, any one participant's
market share is necessarily smaller than it would be under a single-sport market definition. Reduced market power and the presence of substantial competition in the entertainment market would arguably justify internal league restraints. Such restraints would then enhance the league's ability to compete for fans in the entertainment market.

C. The Market for Sports Franchises

The "market for sports franchises" is the least discussed of the three relevant product market definitions, although a handful of courts and commentators have accepted it. While most of these courts were analyzing other team ownership rules, at least one

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93 Lazaroff, 20 Ariz St L J at 975 (cited in note 78) (concluding that the anticompetitive effect of a league's restraint is de minimis if the market is defined broadly as the entertainment market).

94 See Rosenbaum, 41 U Miami L Rev at 748-49 (cited in note 14) ("In light of the intensity of competition within which sports leagues compete, courts should sustain most league devices aimed at enhancing the quality of the product."). See also Roberts, 60 Tul L Rev at 564-65 n 8 (cited in note 90) ("Whatever injury to consumer welfare may result from league relocation of rivalry among the member clubs, assuming there is any, there may very well be a more than offsetting benefit to consumers from the increased efficiency of the league in producing its product."). This view depends upon a rule-of-reason analysis that balances procompetitive effects in one market against anticompetitive effects in other markets. See Continental TV, Inc v GTE Sylvania, Inc, 433 US 36, 51-55 (1977) (adopting inter/intrabrand balancing for nonprice vertical restraints).

95 See Sullivan v National Football League, 34 F3d 1091, 1097 (1st Cir 1994) (noting jury's finding that the relevant market was the "nationwide market for the sale and purchase of ownership interests in the National Football League member clubs, in general, and in the New England Patriots, in particular"); Sullivan v Tagliabue, 25 F3d 43, 49 (1st Cir 1994) (finding that the "market for professional football teams" was the "direct victim of the alleged antitrust violation" where the plaintiff challenged the NFL's rule prohibiting sale of shares in a league franchise to any company not engaged in business of professional football); Murray v National Football League, 1996 WL 363911, *24 (E D Pa) accepting plaintiffs' definition of the "market for the sale and purchase of ownership and control interests in NFL professional football franchises" for purposes of motion to dismiss); Piazza v Major League Baseball, 831 F Supp 420, 430 (E D Pa 1993) (finding relevant product market of "the market for ownership of professional baseball teams, and the market for ownership of the Giants in particular"); Fishman v Estate of Wirtz, 807 F2d 520, 532 n 9 (7th Cir 1986) (recognizing the potential for competition in the market for ownership of teams); National American Soccer League v National Football League, 670 F2d 1249, 1260-61 (2d Cir 1982) ("NASL") (finding market for "sports ownership capital and skill"). See also Piraino, 57 Ohio St L J at 1729 n 29 (cited in note 3) (concluding that the market for the purchase and sale of sports franchises "should be deemed a separate relevant market for antitrust purposes"); Quirk and Fort, Pay Dirt at 23-87 (cited in note 3). But see Roberts, 32 UCLA L Rev at 301 n 249 (cited in note 47) (criticizing the sports capital market found in NASL as "contrived" and not reflective of the consumer interests at stake).

96 See Murray, 1996 WL 363911 at *23 (calling into question the NFL's public financing policy); Sullivan v National Football League, 34 F3d 1091, 1095 (1st Cir 1994) (calling into question NFL's uncodified policy against the sale of ownership interests in an NFL franchise to the public through offerings of publicly traded stock); NASL, 670 F2d at
court adopted the definition in a sports franchise relocation case.\textsuperscript{97}

1. The contours of the market for sports franchises.

According to the sports franchise market definition, sports franchises constitute a league product\textsuperscript{98} and individuals or groups compete to purchase those franchises.\textsuperscript{99} Indeed, a professional sports franchise is an asset that generates a cash flow for the owner through profits from the regular season schedule of games and from playoffs.\textsuperscript{100} Moreover, courts and commentators have found that current team owners compete to maximize the value of their franchises in the market for sports franchises.\textsuperscript{101}

Many potential investors consider owning a professional sports team to be a rare and attractive opportunity. The soaring values and scarce supply of professional sports franchises\textsuperscript{102} further increases demand among a distinct group of potential buy-

\textsuperscript{97} See \textit{Piazza}, 831 F Supp at 430. For discussion of \textit{Piazza}, see notes 108–14 and accompanying text.

\textsuperscript{98} Compare \textit{Sullivan}, 34 F3d at 1101 (acknowledging that the NFL's public ownership policy "restricts the output of a product—a share in a NFL team").

\textsuperscript{99} The number of franchise sales in each of the major professional sports leagues reveals a robust market for sports franchises. There were fifty-six franchise sales in MLB from 1901–1990; fifty-eight franchise sales in the NBA from 1946–1990; forty-five franchise sales in the NFL from 1920–1990; and fifty franchise sales in the NHL from 1917–1990. Quirk and Fort, \textit{Pay Dirt} at 23–38 (cited in note 3).

\textsuperscript{100} Id at 49.

\textsuperscript{101} See, for example, Piraino, 57 Ohio St L J at 1725 (cited in note 3); \textit{Sullivan}, 34 F3d at 1100 (finding that "teams face competitive pressure in selling their ownership interests generally to whoever might buy them" and that "greater access to capital for all teams will put increased pressure on some teams to compete with others for that capital"); \textit{Murray v National Football League}, 1996 WL 363911, *23–24 (E D Pa) (citing plaintiff's allegations that NFL's public financing policy "protect[s] present owners from competing with large conglomerates of corporate or public financiers," "eliminate[s] competition by depriving competitors [of] the use of ordinary methods of financing," "eliminate[s] competitors with access to public financing and other sources of investment capital," and "reduce[s] the availability of ownership interests in NFL professional football franchises" sufficient to withstand motion to dismiss).

\textsuperscript{102} "Since 1990, the average sports franchise's purchase price has risen roughly 13 percent a year." Paul Farhi, \textit{Franchises Don't Come Cheap, But Values Climb}, Seattle Times D7 (Jan 24, 1999). See also, Quirk and Fort, \textit{Pay Dirt} at 23–87 (cited in note 3) (discussing the vast increases in franchise values and presenting relevant data on the franchise market); Piraino, 57 Ohio St L J at 1698 (cited in note 3) ("By keeping the supply of franchises artificially low . . . [t]he owners are guaranteed that, whenever a team is for sale, several potential buyers will drive up the price by competing for the rare opportunity to own a sports franchise.").
Depending upon the specifics of the transaction, there might be several potential buyers competing for the same franchise, whether it is an existing or expansion team. The precise boundaries of the sports franchise market in any given case are fact specific. Absent a factual context, it is hard to determine, for example, whether an investor or group of investors would consider a NFL franchise to be an adequate substitute for a NBA franchise. Nevertheless, at least one court has concluded that the market for investment capital in sports franchises is distinct from the general business capital market.

According to the Second Circuit, the “interdependence of professional sports league members and the unique nature of their business” are such that “the market for and availability of capital investment is limited.” Therefore, it is likely that potential investors do not necessarily consider other capital investments to be adequate substitutes for sports franchise ownership. If this is true, then the market need not be defined broadly enough to include all other investment opportunities.

The geographic market definition is also highly sensitive because some investment groups may only be willing to purchase a team in a particular area or to purchase a team and relocate it. Thus, how to define the relevant product market will be a question of fact for the jury.

103 North American Soccer League v National Football League, 670 F2d 1249, 1253 (2d Cir 1982) (“NASL”) (finding that the conditions of sports ownership “have tended to attract individuals or businesses with distinct characteristics as distinguished from the much larger number of financiers of the type prevailing in most business markets”).

104 See, for example, Piazza v Major League Baseball, 831 F Supp 420, 430 (E D Pa 1993) (“Plaintiffs aver that they were competing in the team franchise market with other potential investors located primarily outside of Major League Baseball for ownership of the Giants”).

105 See NASL, 670 F2d at 1253.

106 Id (citing the risk of investing in a league, the need for reasonable compatibility with other members of the league, the need for sufficient understanding of the business, and the need for interdependence of ownership as support for finding that capital is not fungible in the business of producing major league professional sports).

107 See, for example, Piazza, 831 F Supp at 430, 439 n 25 (suggesting that where plaintiffs sought to purchase and relocate the San Francisco Giants, the relevant product market was the market for ownership of professional baseball teams in general and ownership of the Giants in particular, or even “the market for the purchase and transfer of the Giants only”); New Orleans Pelicans Baseball, Inc v National Association of Professional Baseball Leagues, Inc, 1994 WL 631144, *1–3 (E D La) (reviewing unsuccessful attempt of Pelicans to purchase the AA Southern League’s Charlotte franchise and relocate the club to New Orleans). But see Scibilia, 6 Seton Hall J Sports L at 464 (cited in note 62) (“[M]ost proposed franchise moves do not involve changes in ownership.”).
2. *Piazza v Major League Baseball.*

In *Piazza v Major League Baseball,* the District Court for the Eastern District of Pennsylvania adopted the sports franchise market definition. The plaintiffs in *Piazza* were members of an investment group organized to acquire the San Francisco Giants baseball club and relocate it to Tampa Bay, Florida. Despite having signed a letter of intent with the Giants’ owner, the plaintiffs’ application to purchase and relocate the Giants was rejected, allegedly through improper action by the defendant, Major League Baseball ("MLB"). The thwarted purchase attempt resulted in an antitrust suit in which the plaintiffs identified the relevant product market as the "market for existing American League and National League baseball teams."

The district court defined “the market for ownership of existing major league professional baseball teams” as having the following components: “(1) the product being sold is an ownership interest in professional baseball teams; (2) the sellers are team owners; and (3) the buyers are those who would like to become team owners.” The court found this market relevant for the purpose of analyzing the anticompetitive effects of league governance rules and practices because “if the team owners combined, they could increase the price of teams considerably and control the conditions of sale.”

It is not entirely clear how other sports franchise relocation cases would have been decided had the market been defined as the market for sports franchises. In similar cases involving the market for sports franchises or a variation thereof, courts invalidated or at least called into doubt the sports league’s restraint. This is understandable given that a professional sports league exercises significant market power in the market for sports fran-

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109 Id at 429–31.
110 Id at 421.
111 Id.
112 Piazza, 831 F Supp at 430.
113 Id at 439.
114 Id.
chises. Increased market power, in turn, makes it more difficult for the defendant to demonstrate procompetitive effects flowing from a particular restraint.

IV. THE MARKET FOR EXISTING FRANCHISES IS THE APPROPRIATE MARKET IN A SPORTS FRANCHISE RELOCATION CASE

No product market definition has prevailed as the appropriate market definition for franchise relocation cases. Courts’ inability to consistently identify sports leagues’ output and product market has resulted in legal uncertainty for sports leagues. Resolving this debate in favor of one of the proposed relevant product markets will ensure that all parties involved in future sports antitrust litigation have a fair chance to demonstrate the alleged effects of franchise relocation restraints.

A. Effects of Franchise Relocation Restrictions on the Market for Sports Franchises

Sports franchise relocation restrictions raise antitrust concerns due to their potential anticompetitive effects. Most courts and commentators have focused upon harms to fans flowing from these alleged anticompetitive effects. However, these restrictions also distort the price and availability of franchises and diminish competition for existing franchises. Given that the relevant product market definition must be narrowly tailored to the particular antitrust violation alleged, an allegation of harm to franchise prices, value, and availability should be analyzed in the context of the market for sports franchises.

Franchise relocation restraints resemble refusals to deal, which, outside of the sports industry, are generally considered

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116 But see Roberts, 61 S Cal L Rev at 1016 n 253 (cited in note 42) ("[B]eing the sole producer of a particular sports entertainment product does not necessarily mean that the league possesses substantial or monopoly power in a relevant product market.").

117 See Sullivan, 34 F3d at 1097 (stating that given the jury's finding of a "market for ownership interests in NFL teams," "the NFL faces an uphill battle in its attack on the presence of an injury to competition").

118 See Heintel, 46 Case W Res L Rev at 1048-49 (cited in note 23) ("Inability to define the product of sports leagues such as the NFL has prevented courts from reaching a consensus in defining the appropriate output market of the NFL.").

119 See, for example, Scibilia, 6 Seton Hall J Sports L at 441, 443 (cited in note 62) (arguing that franchise relocation restrictions do not result in an increase in the price consumers pay to watch major league baseball and that franchise relocation rules do not result in a decrease in the output of major league baseball).

120 See notes 35–39 and accompanying text.
illegal per se. This type of refusal to deal is narrow, consisting of refusing to deal with owners or potential investors who seek to relocate a team to an existing franchise's territory—that is, to a "protected" area. Exclusive territory provisions in the major sports leagues' constitutions and by-laws establish these protected areas.122 Given the significance of location in modern sports leagues, protecting current owners from intra-league competition in their home locations is especially pernicious.123

1. The economics of location.

In modern sports leagues, location is everything—at least according to economists. While many variables affect a team's success or failure, economists most often focus on location.124 Economic models, observations of league standings, team performance, and profitability over time reveal the importance of team location.125 Early studies indicate that team quality is dependent upon quality of location,126 because each location's unique attributes, such as income and population, affect revenue-generating ability and thus the profit potential of any team located there.127 Economists have noted that teams in big cities win more champion-
ships and are sold or "abandoned" less often than teams in small cities. A more recent study of the National Hockey League ("NHL") tested this hypothesis, confirming that there is a positive association between team quality and the quality of location. Specifically, the researchers found that having a Canadian location was important to both attendance and team market power in the NHL. Furthermore, the impact of location upon attendance, market power, and long-run team quality factored into decisions concerning League expansion and franchise relocation.

These findings are important for confirming the legitimacy of the location theory, but the point about location can be made without sophisticated economic models. While a great location may not guarantee success, large-market teams do have considerably more profit-making potential than their small-market counterparts. In order to compensate for the disparities among league teams, MLB and the NFL require varying amounts of gate revenue-sharing by member teams. All of the major sports leagues require an equal distribution of national television revenues, although the leagues differ in the extent to which they rely on such revenues. These revenue-sharing rules are essentially "devices by which strong-drawing, big-city teams subsidize weak-drawing, small-city member teams." Even with the revenue-

129 Jones and Gerguson, 36 J Indus Econ at 443–57 (cited in note 124).
130 Id at 445.
131 Id. The validity of this conclusion is in question as NHL teams increasingly move south and relocate in American cities, with little or no resistance from Canadians. See Dean Bonham, Ice Gets Thicker for Canadian Hockey, Rocky Mtn News 16G (May 23, 1999) ("Of the six Canadian cities still hosting NHL franchises . . . it appears that only Toronto and Montreal are not in jeopardy of losing their teams in the near future."). See also, Jim Taylor, Dumb Like the Foxes, Calgary Sun 69 (Dec 10, 1999) (discussing the acquisition by Americans of many Canadian sports franchises).
132 Jones and Gerguson, 36 J Indus Econ at 443 (cited in note 124).
133 See Quirk and Fort, Hard Ball at 100 (cited in note 3) ("Predictably, most of the have-not teams are small market teams."); Quirk and Fort, Pay Dirt at 300 (cited in note 3) (referring to the "disparity in drawing potential among league teams" based at least in part upon population); David Kennedy, National League Report, <http://www.mcz.com/sport/baseball2.htm> (visited Jan 29, 2000) ("[T]here is so much financial disparity between the haves and have-nots that I can sum up in one word who is going to win the AL-Yankees."). But see Piraino, 57 Ohio St L J at 1703, n 121 (cited in note 3) ("Traditionally, the determining factor between the haves and the have-nots has been market size. However, teams with new stadiums now have the upper hand, even if they are located in small markets.").
134 See Quirk and Fort, Pay Dirt at 300 (cited in note 3).
135 Id.
136 Id.
sharing plans, there is still a tendency for teams located in the strong-drawing areas to win, on average, more games and championships than those located in weak-drawing areas.\footnote{137}

2. The importance of protecting location.

Each professional sports league's franchise relocation rules operate on a geographical basis, such that the rules inhibit a team's ability to relocate into another team's territory. As a practical matter, one or a few league members can block league expansion or a franchise relocation, especially into an existing franchise's territory.\footnote{138} Thus, the rules protecting teams' "exclusive territories" permit member franchises to secure a local monopoly on their home territory within the league.\footnote{139}

The history of sports league expansion shows that a league will often pay an existing team when an expansion franchise encroaches upon the team's home territory. For example, when the All-American Football Conference ("AFL") entered the NFL in 1949, the AFL's Baltimore Colts paid the Washington Redskins $150,000 as compensation for moving into their territory.\footnote{140} When the AFL merged with the NFL in 1966, the AFL paid the NFL $18 million over twenty years, which compensated the San Francisco Forty-Niners and New York Giants for occupation of their respective territories.\footnote{141} Such payments further reveal the value of exclusive territories to member teams.

\footnote{137} Id, citing Mohamed El-Hodiri and James Quirk, An Economic Model of a Professional Sports League, 79 J Pol Econ 1302 (1971), and Simon Rottenberg, The Baseball Players' Labor Market, 64 J Pol Econ 253 (1956). The one notable exception is the NFL's Green Bay Packers, who have succeeded in the past despite their small-market location. Their success, however, may not be too surprising, given that they "play in a league with gate- and television-sharing arrangements that are the most favorable to weak franchises of any in professional sports." Quirk and El-Hodiri, Economic Theory at 44 (cited in note 126).

\footnote{138} Quirk and Fort, Pay Dirt at 300 (cited in note 3).

\footnote{139} Quirk and Fort, Hard Ball at 118 (cited in note 3) ("The league franchise is a grant of a local monopoly within the league to the team owning the franchise."). It is important here to note that if there were rival leagues challenging the current leagues' monopoly, then such monopoly profits would not be available to owners. However, due to the significant barriers to entry for new leagues, "no professional sports league has survived for more than a few years in competition with an incumbent league." Piraino, 57 Ohio St L J at 1695 (cited in note 3).

\footnote{140} Quirk and Fort, Hard Ball at 121 (cited in note 3). The League paid the New York Giants as well. Id. See also, Quirk and Fort, Pay Dirt at 378–478 (cited in note 3) (giving ownership histories for all franchises in all major professional leagues, including any payments made to the relevant league upon the franchise's entrance).

\footnote{141} Quirk and Fort, Hard Ball at 121–22 (cited in note 3). This practice is not limited to the NFL. In the context of professional basketball, the New York Nets entered the NBA in 1976 and began playing in the New York Knicks' home territory only after agreeing to pay
3. Location and the profit motive.

In a model of optimal cooperation among owners to further the league's best interests, the issue of exclusive territories might not be so problematic. A relocation into a high-profit, large-drawing location would be allowed if the net result were more beneficial for the league overall. However, the league's best interest rarely supersedes the owners' best interest.

Even though leagues are still essentially joint ventures consisting of cooperative and interdependent entities, individual member teams may find it advantageous to vote against the best interests of the league in order to enhance their own welfare. Such egocentrism hinders teams' ability to cooperate and pursue the best interests of the entire league.

the Knicks a $4 million indemnity fee. See McBurney, 60 NYU L Rev at 927 (cited in note 7). See also, Ross, 73 Minn L Rev at 657-58 (cited in note 3) (citing study that concluded "franchises sharing a local market can expect revenues to fall nearly $3.8 billion below their monopolistic counterparts").

Commentators have even argued that allowing entry of a franchise into those big-city locations in which another franchise currently resides "might well increase profits for small-city league teams... because of the league-wide benefits from more teams in the big cities." Quirk and Fort, Pay Dirt at 301 (cited in note 3). This is unlikely to happen, however, due to the profit-minded motivations behind franchise relocation restrictions. Id. See also Ross, 73 Minn L Rev at 657-58 (cited in note 3) (citing study that concluded "franchises sharing a local market can expect revenues to fall nearly $3.8 billion below their monopolistic counterparts").

See Piraino, 57 Ohio St L J at 1684 (cited in note 3) ("Like the owners of any other business, team owners are primarily interested in maximizing the return on their investment."). This is not to deny that there are other non-profit-related explanations for much of franchise owners' decisions and that some owners are noticeably less affected by the bottom line than others. See, for example, Quirk and El-Hodiri, Economic Theory at 42-43 (cited in note 126) (qualifying their previous assertions about the profit-maximization motive among franchise owners).

For example, Art Modell, the owner of the Cleveland Browns, who later moved his team to Baltimore, was "reportedly very vocal in his opposition to the NFL granting an expansion franchise to Baltimore." Piraino, 57 Ohio St L J at 1697 n 91 (cited in note 3), citing Thomas George, Modell Joins Newest Game in Football, NY Times B9 (Nov 7, 1995). See also, Mullick, 7 Marq Sports L J at 2 (cited in note 4) ("Both the increased cost and profit of... football have intensified competition for the dollar. This pits League members against each other."); Roberts, 32 UCLA L Rev at 259-60 (cited in note 47) ("The peculiar nature of the league product requires revenue-dividing incentives that on infrequent, yet significant, occasions give individual clubs a strong financial motive to vote contrary to the league's best economic interests... Some important league decisions cannot be assumed automatically to have been made in the best interests of the league."); Quirk and Fort, Pay Dirt at 299 (cited in note 3) ("League decisions are not made on the basis of maximizing total league profits, but rather on the basis of individual team profit maximization, and the two do not necessarily always coincide with each other.").

Quirk and Fort, Hard Ball at 114-15 (cited in note 3). See also Piraino, 57 Ohio St L J at 1686 (cited in note 3) ("In the NFL, the Dallas Cowboys have been the most aggressive in asserting their individual interests over those of the league as a whole. The Cowboys, in fact, have openly defied the NFL’s rules on revenue sharing.").
The events that gave rise to *Piazza* demonstrate franchise owners' ability to stymie any threats to their monopoly profits. A Tampa Bay investment group secured the contractual right to purchase the San Francisco Giants and relocate the team to Tampa Bay, but the deal fell through. According to some, Wayne Huizenga, owner of the Florida Marlins, was partly responsible for thwarting the move. Huizenga allegedly engaged in behind-closed-doors negotiations to prevent the Tampa Bay purchase and resisted the relocation unless the investment group was willing to pay a large transfer fee.

Huizenga's alleged motivation for opposing the deal was to protect his franchise from the adverse financial impact of a second team in Florida. Obviously this is not the kind of cooperation and interdependence that league planners of the past hoped for. Whether or not the relocation was in the League's best interest, a single owner was able to protect his exclusive territory. Sports leagues sanction such protectionism through relocation restrictions and, when combined with owner's monopolistic tendencies, these restrictions may harm the league as a whole.

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148 See id (“[Huizenga] had just paid $95 million for the privilege of spending $50 million more to field a team that is expected to lose one hundred games in 1994. He was not about to stand idly by and watch an established team move to Florida and dilute his potential cable market.”) (citation omitted).
149 Id (citing various newspaper reports and letters).
150 Id. The conflict between Huizenga and the Tampa Bay investors resembles the recent situation in the Washington, D.C. area. Washington was one of the cities competing to host the Montreal Expos if they left Montreal. See Richard Justice, *D.C. Presents Case to the Commissioner's Office*, Wash Post D1 (Sept 28, 1999). However, Peter Angelos, owner of the Baltimore Orioles, strongly opposed the relocation, arguing that having a team in such close proximity would significantly hurt his ticket sales and broadcast revenues. See id; Richard Justice, *Gilmore Makes a Strong Pitch*, Wash Post D3 (July 14, 1999) (“Washington faces stiff opposition from Baltimore Orioles owner Peter Angelos, who says he has staked out the area as his own.”). Although the Expos never left Montreal, Angelos' position raised the potential for "bitter legal and legislative confrontation involving the Orioles, Major League Baseball, Congress and supporters in the Washington area." Thom Loverro, *Can Angelos Keep Baseball From Coming to Town?*, Wash Times A1 (May 23, 1999). See also, Peter Perl, *The Pitch*, Wash Post W10 (Mar 28, 1999) (describing the Angelos-Washington situation).
151 See, for example, Mullick, 7 Marq Sports L J at 1 (cited in note 4) (describing Pete Rozelle, perhaps the NFL's most well-known Commissioner, and his ideology of collectivism, or "League Think," by which the owners could act with a unified purpose of benefiting the whole League).
4. The effects of protecting location.

Rules restricting relocation shelter teams in the best-drawing locations from competition, even though these teams derive their higher profits by virtue of their favorable location.\(^{152}\) Exclusive territory provisions also increase the selling price of any given franchise because the franchise's value reflects expected monopoly rents.\(^{153}\) Thus, when combined with the artificial scarcity of league teams, franchise relocation restrictions allow team owners to enjoy an undivided share of the local monopoly profits\(^{154}\) and to enjoy an inflated market price for their franchises.\(^{155}\)

Potential buyers of protected franchises suffer two harms: increased prices for franchises and fewer opportunities to purchase an undervalued team and relocate it to a more profitable area.\(^{156}\)

\(^{152}\) See Lazaroff, 53 Fordham L Rev at 160 (cited in note 16) (arguing that “prevention of relocation [into an existing team's territory] . . . eliminates the potential for significant direct economic competition between teams in the same league”); Scibilia, 6 Seton Hall J Sports L at 445 (cited in note 62) (“The only way a franchise relocation decision could be anti-competitive would be if a team was blocked in an effort to move into a city in which there already was a franchise.”); Mid-South Grizzlies v National Football League, 720 F2d 772, 787 (3d Cir 1983) (“Conceivably within certain geographic submarkets two league members compete with one another for ticket buyers, for local broadcast revenue, and for sale of the concession items like food and beverages and team paraphernalia.”).

\(^{153}\) See Quirk and Fort, Hard Ball at 174 (cited in note 3). It is, of course, possible that the franchise relocation restrictions may depress franchise prices to a certain degree because of the restriction upon a buyer's ability to move the team to a better, more profitable location. Despite this potential balancing effect, courts have emphasized that overall consumer preferences in setting output and prices are more important than higher prices and lower output, per se, in determining whether there has been an injury to competition. See Sullivan v National Football League, 34 F3d 1091, 1101 (1st Cir 1994), citing National Collegiate Athletic Association v Board of Regents of University of Oklahoma, 468 US 85, 107 (1984) (“NCAA”) (finding NCAA television restrictions unlawful because “price is higher and output lower than they would otherwise be, and both are unresponsive to consumer preference.”). Unresponsiveness to consumer demand, therefore, can support a finding of anticompetitive effect. See also Sullivan, 34 F3d at 1101 (“[R]egardless of the exact price effects of the NFL's policy, the overall market effects of the policy are plainly unresponsive to consumer demand for ownership interests in NFL teams.”).

\(^{154}\) This emphasis upon local monopoly profits, while benefiting the individual owner, may be detrimental to the league's best interest. See Piraino, 57 Ohio St L J at 1687 (cited in note 3) (“In order to fund players' salaries, owners are now trying to maximize their revenue from local sources . . . . A strong local revenue stream can give an owner the upper hand in attracting the most talented players, because such income is not subject to revenue sharing under the leagues' bylaws.”).

\(^{155}\) See id at 1689 (“Like the members of any other cartel, the owners of professional sports franchises can charge a higher price for their product if they limit its output. With a scarcity of franchises, owners can be ensured that they maintain their monopoly leverage.”).

\(^{156}\) Eliminating the current restriction on entry into protected markets would likely reduce or eliminate many of the competitive balance problems between large and small markets. Quirk and Fort, Hard Ball at 179 (cited in note 3). See also Lazaroff, 53 Fordham L Rev at 212 (cited in note 16) (“[T]eam owners themselves are prevented from seek-
Franchise relocation restrictions also damage cities that currently host a franchise because home franchises possess monopoly power.\textsuperscript{157} Such cities cannot act on competing bids from other franchises seeking to relocate, since the restrictions protect the local team from such competition.\textsuperscript{158} Franchise relocation restrictions thus combine with an artificial dearth of franchises to distort the franchise market, rendering it functionally unresponsive to consumer demand.\textsuperscript{159}

5. Effects upon the market for expansion teams.

Some critics argue that insufficient league expansion protects current owners from competition and that the leagues should therefore expand.\textsuperscript{160} Although relocation restrictions are distinct from the various rules restricting the expansion of sports leagues, the two types of restrictions interact in important ways.\textsuperscript{161}

\textsuperscript{157} See generally, Katherine C. Leone, \textit{No Team, No Peace: Franchise Free Agency in the National Football League}, 97 Colum L Rev 473, 478–96 (1997) (describing the harms flowing from team relocations and the disadvantage at which cities currently operate with respect to home franchises). See also Quirk and Fort, \textit{Pay Dirt} at 16 (cited in note 3) ("Through exclusive territorial franchises, leagues provide each member team with a local monopoly in the sport, giving it special bargaining power in its dealings with local radio and TV stations, with the municipally owned stadium or arena in its city, and even with the ticket-buying public.").

\textsuperscript{158} See Quirk and Fort, \textit{Hard Ball} at 179–81 (cited in note 3) (concluding that breaking up sports leagues into rival leagues would lead to multiple teams bidding to play in any one city, which would reduce the monopoly power that most teams currently have in demanding large stadium subsidies or exaggerated selling prices).

\textsuperscript{159} See id at 136 ("[T]he high ratio of fans to teams in the megalopolis cities is a main reason for the lack of competitive balance in sports leagues; on the other [hand], this provides evidence for the argument that leagues restrict the number of franchises in order to increase league-wide profits, as well as the franchise values of member teams."). A predictable consequence, for example, of breaking up the current sports leagues into rival leagues would be the presence of more teams in the presently protected big-city markets. Id at 178. While this Comment does not propose the break-up of current leagues, these observations bolster the conclusion that current league practice is unresponsive to purchasers' demand for franchises in big-city markets.

\textsuperscript{160} For a general discussion, see id at 171–86 (cited in note 3) (arguing that forcing the leagues to break up the existing monopoly leagues into several independent competing leagues would solve many of the problems in the sports industry); Piraino, 57 Ohio St L J 1677 (cited in note 3) (arguing for expansion of current sports leagues); and Ross, 73 Minn L Rev 643 (cited in note 3) (arguing for the break up of MLB and the NFL).

\textsuperscript{161} In a typical franchise relocation case, the §1 and § 2 analyses are not mutually exclusive and, instead, they inform each other. One commentator points out that most of the franchise relocation cases would never have been brought if there were competing leagues because "the prospect of rival league expansion or relocation would make it virtually impossible for a city or a maverick owner to prove that the defendant league harmed competition." Ross, 73 Minn L Rev at 738 (cited in note 3). See also Piraino, 57 Ohio St L J at 1677 (cited in note 3) (arguing that franchise owners have conspired to limit the output of
Expansion fees, which leagues charge new entrants, have been escalating rapidly. These fees accrue directly to the league and are shared among its teams. One recent example demonstrates how franchise relocation restrictions can be utilized to maximize the benefit of expansion fees to the league and also increase the prices the future buyer pays for the expansion team.

In 1997, Seattle Seahawks owner Ken Behring moved his team offices from Seattle to Anaheim, California, in preparation for a team move to Los Angeles. Even though Behring had not yet sought NFL approval of his proposed move, the NFL allegedly told him bluntly to move back to Seattle. The NFL claimed that it acted on principle, not for money, although it stood to gain a hefty expansion fee for the currently unoccupied LA market. Indeed, "[t]he last thing the league wants is for some existing team to move in to claim the LA market and rob the other NFL teams of their share of the coming expansion fee." Insofar as franchise relocation restrictions allow the leagues to preserve for

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162 See Quirk and Fort, *Pay Dirt* at 64–67 (cited in note 3) (graphing and explaining rising expansion fees). Data on expansion fees up to 1990 indicate that in the major sports leagues they have increased rapidly since the mid-1970's, with current expansion fees over $100 million. Id. See also Piraino, 57 Ohio St L J at 1729 n 96 (cited in note 3) (noting that the owners of the Carolina Panthers and Jacksonville Jaguars each paid $140 million to the NFL in 1995 and the owners of the Toronto Raptors and Vancouver Grizzlies each paid $125 million to the NBA in 1995).

163 Quirk and Fort, *Hard Ball* at 125 (cited in note 3).

164 See id.

165 See id. The NFL could expect an expansion fee of "maybe upward of $750 million" for the Los Angeles area from an entity such as Disney, Time Warner, or Fox. Id.

166 Id. The NFL's stand was dubious, given that it had just approved Art Modell's decision to move the Cleveland Browns to Baltimore. Id at 124. Art Modell moved the Browns to Baltimore in 1997 in exchange for a new $200 million stadium with nominal rent and extra revenue from luxury boxes and personal seat licenses. Id. Not surprisingly, Modell had to hand over some of his gains from the Baltimore move to the rest of the league. Id. See also notes 6–7 and accompanying text.
themselves valuable expansion opportunities, the restrictions also drive up prices in the expansion market.¹⁶⁷

B. Consumer Interests Are at Stake in the Market for Sports Franchises

Two of the Supreme Court's primary antitrust concerns, increased prices and restrictions upon output, are at stake in the franchise relocation restriction debate.¹⁶⁸ Despite these concerns, courts' and commentators' overwhelming focus on fans as "consumers" of league products prevents them from viewing league franchises as an entirely distinct league product.¹⁶⁹ Relocation restrictions may not harm consumers of professional sports, in that they may not always detract from the quality of the game. Nonetheless, the purchasers of league franchises feel the effects of the franchise relocation restrictions, and consumer welfare analysis indicates that these purchasers should have a remedy in the antitrust laws.¹⁷⁰

¹⁶⁷ For example, the Ninth Circuit recognized the importance to the NFL of the expansion opportunity that the Raiders took when they moved to Los Angeles and limited the damages allowable for the Raiders' successful antitrust claim. In Los Angeles Memorial Coliseum Commission v National Football League, 791 F 2d 1356, 1371 (9th Cir 1986) ("Raiders"), the court explained that:

[T]he ['expansion opportunity' in Los Angeles] represented an extremely valuable expansion possibility for the league. . . . If and when the NFL placed an expansion team in the Los Angeles area, the accumulated value of the Los Angeles opportunity would have been realized by the NFL through charging the new expansion team owner for the expansion opportunity.

See also Weistart, 1984 Duke L J at 1014 (cited in note 44) (arguing that "an exquisite corporate opportunity—an excellent NFL franchise location" should not be claimable at no cost by an existing league member since it could be sold for a considerable amount to someone outside the league).

¹⁶⁸ See NCAA, 468 US 85, 107 (finding NCAA television restrictions unlawful because "[p]rice is higher and output lower than they would otherwise be, and both are unresponsive to consumer preference"); Broadcast Music, Inc v Columbia Broadcasting System Inc, 441 US 1, 19-20 (1979) ("[O]ur inquiry must focus on whether . . . the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output").

¹⁶⁹ See, for example, Roberts, 60 Tul L Rev at 565 n 8 (cited in note 90) ("Even if a league's product faces no significant competition from other forms of entertainment, the fans of that league will be better off if the quality of the league's product (i.e., the games and pennant races) is enhanced and the prices charged lowered.") (emphasis added); Jacobs, 67 Ind L J at 28 n 12 (cited in note 24) ("If league games are the output of a professional sports league, then it is only collective decisions designed to reduce the number of such games that threaten to diminish consumer welfare.").

¹⁷⁰ See Sullivan v Tagliabue, 25 F3d 43, 49 (1st Cir 1994) (acknowledging, in a case challenging the NFL's rule prohibiting sale of shares of franchise team to any company
That fans, as consumers of league games, may or may not feel the effects through changes in ticket prices and output of games is relevant but not dispositive.\textsuperscript{171} The First Circuit recognized this distinction in \textit{Sullivan v National Football League}.\textsuperscript{172} That case involved the NFL's unwritten policy prohibiting the sale of team ownership interests to the public through offerings of publicly traded stock.\textsuperscript{173} The court concluded that the policy's effect upon fans was not relevant to a determination of its effects on output and prices in the relevant market for ownership interests.\textsuperscript{174}

The relevant market at issue in \textit{Sullivan}—the market for ownership interests in NFL franchises—is similar to the market for sports franchises. The consumers in both markets are those who would like to have an interest in owning and/or controlling a sports franchise. \textit{Sullivan} thus illuminates the importance of consumer welfare analysis in a franchise relocation restriction case. Like the plaintiffs in \textit{Sullivan}, purchasers in the market for sports franchises suffer from league-imposed market distortion. In accordance with the Sherman Act's "consumer welfare prescription,"\textsuperscript{175} these consumers should have a remedy in the antitrust laws.

C. The Advantages of the Sports Franchise Market Definition

Few commentators have addressed the propriety of the sports franchise market definition, perhaps because it rarely appears in the case law.\textsuperscript{176} One can surmise from the principles underlying other market definition proposals whether their adherents would support or oppose the sports franchise market definition.

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\textsuperscript{171} See \textit{Piazza v Major League Baseball}, 831 F Supp at 439–40 (recognizing that the consumers in the product market for the business of baseball are fans and, perhaps, the broadcast industry, while the consumers in the product market for existing professional sports teams are "those who would like to become team owners").

\textsuperscript{172} 34 F3d 1091, 1100–01 (1st Cir 1994).

\textsuperscript{173} Id at 1095.

\textsuperscript{174} Id at 1101 n 3 ("Just because consumers of 'NFL football' are not affected by output controls and price increases does not mean that consumers of a product in the relevant market are not so affected. In this case, NFL policy denied products to two types of consumers: consumers who want to buy stock of the Patriots or other teams, and consumers like [plaintiff] who want to 'purchase' investment capital in the market for public financing.").

\textsuperscript{175} \textit{Reiter v Sonotone Corp}, 442 US 330, 343 (1979). See also notes 20–24 and accompanying text.

\textsuperscript{176} But see Roberts, 32 UCLA L Rev at 301 n 249 (cited in note 47) (referring to the market definition in \textit{North American Soccer League} as "a contrived sports capital market that did not truly reflect the market in which consumer interests were at stake").
1. The entertainment market proponents.

Ardent league supporters tend to advocate the entertainment market definition over narrower market definitions, such as the sports franchise market. According to league supporters, the broad entertainment definition is the next best thing to sports leagues’ complete exemption from the antitrust laws. Under the broader market definition, more league practices will be upheld because the defendant league’s market power will be small. The leagues, therefore, will be able to make more efficiency-enhancing decisions without the interference of judges and juries inexperienced in the business of operating a sports league.

However appealing the broad entertainment market definition may be, it results in a de facto antitrust exemption for professional sports leagues. One court has specifically rejected the broad entertainment market for the precise reason that it makes the rule of reason virtually useless as a means of identifying unreasonable restraints. In Coniglio v Highwood Services, Inc, the Second Circuit rejected the defendant’s argument that the “general entertainment market in Buffalo” was the relevant market because that market was “so broadly defined as to render [the market] concept all but meaningless as an analytical tool for assessing the anti-competitive effect requisite to a Sherman Act violation.” Although removing sports leagues from per se scr-
tiny makes good sense, there does not appear to be a principled reason for emasculating the rule-of-reason analysis, as the entertainment market definition does.

Absent congressional legislation exempting sports leagues from antitrust regulation, sports leagues remain subject to the Sherman Act. If the leagues are in fact sufficiently unique that antitrust scrutiny is inherently improper, then congressional exemption is warranted. Short of an exemption, sports leagues should have to answer for any anticompetitive conduct that harms consumer interests in the sports franchise market.

2. The single-sport market proponents.

Proponents of the single-sport market definition would likely be more receptive to the sports franchise market definition than would proponents of the entertainment market definition. Single-sport market proponents are generally critical of broad men's clothing market or that snack foods are simply one part of a general food market.

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184 See notes 43-48 and accompanying text.
185 See Lazaroff, 20 Ariz St L J at 987 (cited in note 78) ("Well-established antitrust doctrine should not be distorted or ignored to achieve preferred status for a particular industry."); John Scura, The Time Has Come: Ending The Antitrust Non-Enforcement Policy In Professional Sports, 2 Seton Hall J Sport L 151, 151 (1992) ("In the area of federal antitrust regulation professional sports have been granted special allowances unheard of in other industries. . . . The industry of professional sports is financially strong, and should not be permitted to engage in unfair trade practices.").
186 See Cotrupe, 9 DePaul-LCA J Art & Enter L at 174-85 (cited in note 69) (discussing the various attempts at removing sports leagues from antitrust scrutiny in the sports franchise relocation context, all of which have been unsuccessful).
187 See Jacobs, 67 Ind L J at 30 (cited in note 24) ("While professional sports leagues might initially appear to be significantly different from other joint ventures, the difference is functionally superficial and does not justify a fundamental departure from the antitrust rules applicable to other joint ventures."); Rosenbaum, 41 U Miami L Rev at 779 (cited in note 14) ("[D]eclaring the industry unique does not insulate sports leagues from the antitrust laws.").
188 See Lazaroff, 20 Ariz St L J at 987 (cited in note 78) ("Much of the criticism of sports antitrust cases really seems to argue that unbridled competition does not work well for sports leagues. This argument is better addressed to Congress, which can provide a statutory immunity of some kind if it so chooses.").
189 In fact, the market for existing franchises might be a submarket of the single-sport market if investors were to invest in only one particular league's franchises. See Brown Shoe Co v United States, 370 US 294, 325 (1962) (stating that within the relevant product market "well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes."). See also Roberts, 32 UCLA L Rev at 257, n 135 (cited in note 47) ("While each league does operate in the larger market for entertainment products . . . that does not necessarily exclude other relevant submarkets.").
ket definitions, such as the entertainment market, and often offer the more narrow single-sport market as an alternative.\textsuperscript{190}

The single-sport market definition avoids some of the problems of the entertainment market definition, but both emphasize that fans are the relevant consumers of sports leagues' products.\textsuperscript{191} The market for sports franchises is preferable to both the single-sport market and the entertainment market definitions because it recognizes that relocation restrictions injure purchasers in the sports franchise market.\textsuperscript{192} Thus, the best way to serve the purpose of the antitrust laws is to define the relevant product market in sports franchise relocation cases as the market for sports franchises.

\textbf{CONCLUSION}

Selfish motivations, scarcity of sports franchises, and franchise relocation restrictions all combine to distort the franchise market in professional sports leagues. Indeed, defendant leagues have thwarted some relocations presenting arguable benefits to both fans and the league overall, while allowing other moves that appeared to be driven solely by economic self-interest.\textsuperscript{193}

Sports fans who lose a beloved home team suffer harm, especially emotional harm. The economic effects of franchise relocation restrictions, however, manifest themselves primarily in the market for sports franchises. Courts should adopt the market for

\textsuperscript{190} For example, Professors Lazaroff and Roberts engaged in a back-and-forth debate over the proper market definition, with Professor Lazaroff advocating the single-sport market and Professor Roberts advocating the entertainment market. See Lazaroff, 20 Ariz St L J 953 (cited in note 78) (responding to Professor Roberts's article).

\textsuperscript{191} See, for example, Roberts, 61 S Cal L Rev at 984 (cited in note 42) ("It is of no relevance that challenged conduct may adversely affect an individual team, a stadium, a community, or the players, unless that effect can be translated into an overall injury to consumer interests."); Lazaroff, 20 Ariz St L J at 985 (cited in note 78) (arguing that if relocation restraints are permitted, "Prices will exceed the social optimum and output will be lower than that optimum. Consumer choice will be eliminated if teams collectively insulate themselves from rivalry for fans within well-defined geographic markets.").

\textsuperscript{192} See Sashe Dimanin Dimitroff, \textit{Whose Field of Dreams: Antitrust Relief Against Restrictions on the Sale or Relocation of Major League Baseball Teams}, 42 Antitrust Bull 521, 522 (1997) ("Member teams may find it economically advantageous to vote against having another team sold or relocated, especially into their territories. Potential buyers and sellers of major league baseball teams, however, have historically been left without a federal antitrust remedy for such actions, no matter how arbitrary, capricious, or mean-spirited.").

\textsuperscript{193} See Wunderli, 5 Marq Sports L J at 83–86 (cited in note 4) (discussing various relocations and proposed relocations); Quirk and Fort, \textit{Hard Ball} at 118–29 (cited in note 3) (same).
sports franchises as the relevant product market in sports franchise relocation cases, because of its superior focus on the objects of antitrust laws' concern.