

Industrial Organization in Context

American Needle

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American Needle

- The 32 teams that make up the U.S. National Football League formed a joint venture, National Football League Properties (NFLP), to market team-labeled apparel.
- NFLP signed an exclusive contract with Reebok International Ltd. to produce souvenir headgear bearing trademarked team logos.
- American Needle, Inc., which had had a nonexclusive license to produce such headgear, found itself excluded from the market.
- American Needle filed a private antitrust suit alleging (among other things) conspiracy in restraint of trade in violation of Section 1 of the Sherman Act.
- NFLP defended itself against the Section 1 complaint with the response that it was a single entity, hence incapable of collusion.
- The District Court accepted this reasoning and granted summary judgment in favor of NFLP.
- The Court of Appeals for the Seventh Circuit agreed with the District Court, and American Needle appealed to the Supreme Court.

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- When the case reached the Supreme Court, the question was (slip opinion, 4)

whether the NFL respondents are capable of engaging in a “contract, combination . . . or conspiracy” as defined by §1 of the Sherman Act . . . , or . . . whether the alleged activity by the NFL respondents “must be viewed as that of a single enterprise for purposes of §1.”

- In answering this question, the Court looked to substance rather than form (slip opinion, 6)

We have long held that concerted action under §1 does not turn simply on whether the parties involved are legally distinct entities. Instead, we have eschewed such formalistic distinctions in favor of a functional consideration of how the parties involved in the alleged anticompetitive conduct actually operate.

- The Court disavowed the single entity doctrine:

This inquiry is sometimes described as asking whether the alleged conspirators are a single entity. That is perhaps a misdescription, however, because the question is not whether the defendant is a legally single entity or has a single name; nor is the question whether the parties involved “seem” like one firm or multiple firms in any metaphysical sense. The key is whether the alleged “contract, combination . . . , or conspiracy” is concerted action—that is, whether it joins together separate decisionmakers.

- After considering the extent of integration among the teams' activities, the Court wrote

... decisions by the NFLP regarding the teams' separately owned intellectual property constitute concerted action. Thirty-two teams operating independently through the vehicle of the NFLP are not like the components of a single firm that act to maximize the firm's profits. The teams remain separately controlled, potential competitors with economic interests that are distinct from NFLP's financial well-being.

- The Court rejected the single entity doctrine as a focus of inquiry:

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- Citing Justice Brandeis (*Chicago Board of Trade*, 246 U. S. 231 at 238):

The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition,

- the Court returned the case to lower courts for evaluation of the concerted action under the rule of reason.
- The *Dagher* rule remains undisturbed; the Court wrote that there was “no need to pass upon” the argument that Section 1 did not apply to fully-integrated joint ventures, since, functionally, NFLP was not such a venture.
- Taking *Dagher* and *American Needle* together, the state of play calls for extreme caution in permitting the formation of joint ventures that, functionally, would accomplish collusive ends.