Antitrust: Liability Assessment Case Study

Objectives. Determine whether NASCAR and International Speedway Corp. (ISC) were acting as monopolists and illegally restricting the awarding of Nextel Cup races. Kentucky Speedway (KYS) and its investors filed an antitrust suit against NASCAR and ISC alleging that they were harming competition by denying KYS, which was granted both NASCAR Busch and Craftsman Truck series races, a Cup race. The Speedway requested that the court create a competitive bidding process for the right to host a Cup race and also sought $400 million in damages, an amount that could be tripled under antitrust laws should the track be victorious in its claims.

Challenges & Methodologies. One of the main challenges in the case was defining the market for racing, who competes in that market, and the amount of "control" NASCAR or ISC has in that market. Although ISC is not controlled by NASCAR, and is instead a publicly-traded company that controls many of the tracks on which Cup races occur, KYS owners alleged that ISC's ownership by the France family (who own NASCAR) led to its being given preferential treatment in the granting of Cup races. A major difficulty is that leagues and sanctioning bodies make many decisions that are in the best interest of the league/sanctioning body, but are also in the best interest of the franchises and fans (e.g., revenue-sharing, national television contracts, etc). Thus, determining whether an action is anticompetitive or procompetitive requires in-depth analysis.

The initial task was to determine how the opposing experts had defined the relevant market for racing and what analysis they used to draw their conclusions, and how NASCAR and ISC would be considered to exercise monopolistic control over this market. Specifically, what entities (racing and other sports) compete with NASCAR for fans, attendance, viewership, and sponsors, and in what geographic locations are these entities? The economic markets in which sanctioning bodies, sports venues, sponsors, media, and fans operate is complex with many entities acting as both buyers and sellers.

The part of the analysis involved an examination of the economic claims posited in the expert reports, and what science was used to determine that KYS should have been granted a Cup race. Some of the key issues to resolve were if NASCAR decided to expand beyond its 36-race schedule, what geographic markets were optimal for expansion, and which were over- or under-served. Essentially, even though NASCAR has the discretion to determine the number and location of its races, based on the claims of the suit we had to show how KYS (located in Sparta, Kentucky) objectively ranked relative to existing or proposed Cup race locations in its ability to support a Cup race and to attract fans, sponsors, and viewers. Different scenarios were created based on different definitions of market geographies, and spatial analysis was used to show the size of the market for a Cup race.

Outcomes. Our analysis showed that, using science and objective criteria, NASCAR was not a monopolist, nor had it illegally worked in concert with ISC, and did not illegally restrict KYS from obtaining a Cup race. Moreover, should NASCAR ever alter its race schedule, other markets had greater potential for supporting a Cup race than KYS's market.

Our analysis of opposing experts' reports provided the court with important information in the proceedings. The expert reports and testimony of the two primary opposing experts were thrown-out and one expert was Dauberted as a direct result of our assessment of those experts' findings. As a result, the Plaintiff was left without proof of any relevant product or geographic market and its claims based on both sections of the Sherman Act failed. The Defendants' motions for Summary Judgment on all claims were granted and the matter was dismissed. KYS was denied a Cup race and any damages, and was held responsible for the legal costs incurred by NASCAR and ISC as a result of its suit.