



CRA Insights: Competition

CRA Charles River
Associates

September 2020

Friday Night Rights: The Sports Broadcasting Act's 75-Mile Football Rule

Under the Sports Broadcasting Act of 1961 (SBA), agreements among members of professional football, baseball, basketball, and hockey leagues to pool television rights for over-the-air game broadcasts were granted an exemption from federal antitrust laws.¹ However, the SBA's antitrust exemption specifically excludes any joint agreement that permits the telecasting of a professional football game on Friday evenings or Saturdays between mid-September and mid-December by any television station located within 75 miles of a high school or college football game.² Throughout this article, we refer to this exclusion as the SBA's 75-Mile Football Rule.

When Congress originally debated granting professional sports leagues an antitrust exemption for pooling broadcast rights to their games, there were concerns that "uncontrolled televising of professional football games could be ruinous" to ticket sales for college games.³ Because of these concerns, Congress included the 75-Mile Football Rule in the SBA with the traditional scheduling of football contests in mind, with high schools generally playing on Friday evenings, colleges on Saturday, and professional football played on Sunday. On its face, it may seem that the 75-Mile Football Rule reduces competition for fans' attention by dividing each fall weekend into separate days for professional and amateur football. However, by considering the incentives of amateur and professional sports leagues, there are potential pro-competitive impacts as well. Applying a rule of reason standard to the 75-Mile Football Rule requires a careful weighing of pro- and anti-competitive effects.

In this edition of *CRA Insights*, we summarize the potential competitive concerns of the SBA's 75-Mile Football Rule, while also considering the procompetitive rationale for the rule. We also evaluate how

¹ 15 U.S.C. §§ 1291-95 ("The antitrust laws ... shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs ... sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games ..."). See also U.S. Department of Justice Antitrust Division, Antitrust Division Manual (5th ed.), at p. II-16.

² 15 U.S.C. § 1293 (This section of the Sports Broadcasting Act excludes from the Act's antitrust exemption any joint agreement that "permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date.").

³ Emanuel Celler (NY). "Telecasting of Professional Sports Contests." *Congressional Record* 107 (1961) p. 20061.

many households are directly impacted by the 75-Mile Football Rule. Finally, with many high school and college football seasons canceled this fall because of the COVID-19 pandemic, some have wondered whether the NFL could telecast games on Fridays and Saturdays this year.⁴ Using the most recent available information on canceled college football seasons, we estimate the number of households located in areas that may be temporarily unaffected by the 75-Mile Football Rule this fall.⁵

Competitive effects of the 75-Mile Football Rule

Congress created the 75-Mile Football Rule with the intent of “protecting” amateur football from competing with telecasts of professional football games on Fridays and Saturdays.⁶ Arguably, this could raise competitive concerns. With professional football’s SBA protection conditioned on not offering telecasts in areas hosting high school or college football games, the likelihood of amateur football leagues facing additional competition for fans’ attention is reduced. With this reduced potential for competition, the incentives for amateur leagues to increase output or improve quality may be attenuated.

However, these competitive concerns must be measured against the potential pro-competitive rationale for the 75-Mile Football Rule. At the time of the SBA’s passage, there were only 22 professional football teams. Fourteen of these teams were members of the National Football League, while eight belonged to the newer American Football League.⁷ Many areas of the country that host NFL franchises today did not have any professional football teams in 1961. For example, there were no AFL or NFL teams located in Florida in 1961, but today the state hosts three NFL franchises. Similarly, Arizona, Georgia, Indiana, Louisiana, North Carolina, Tennessee, and Washington are each home to an NFL team today, but did not have a professional football team in 1961.

In areas of the country that were not home to a professional football team in 1961, investments made by local amateur leagues may have played a role in increasing the popularity of the sport. These investments may have included efforts to expand interest in football generally, such as by organizing seasons in order to cultivate rivalries among teams, with the expectation that ticket sales and ancillary revenues would increase as the sport’s popularity grew. If professional football games could be telecast on Fridays and Saturdays in the same general locality, this might have jeopardized the investments made by amateur football leagues in growing the sport’s fan base.

The economic principle of “free riding” helps to explain how professional football telecasts on Fridays and Saturdays may have negatively affected the incentive for amateur football programs to make pro-competitive investments. Free riding occurs when “one firm benefits from the actions of another without paying for it.”⁸ For example, professional football telecasts in 1961 may have benefitted from investments made by local amateur football programs in growing the popularity of the sport, particularly when these telecasts were offered in areas of the country that were not yet home to a

⁴ See, for example, Mark Maske, “NFL would consider Saturday games if there’s no college football in the fall,” *The Washington Post*, August 12, 2020, <https://www.washingtonpost.com/sports/2020/08/12/nfl-would-consider-saturday-games-if-theres-no-college-football-fall/>.

⁵ The information in this article is current as of September 21, 2020. College football programs continue to re-evaluate their plans for playing this fall.

⁶ See, for example, William M. McCulloch (OH). “Telecasting of Professional Sports Contests.” *Congressional Record* 107 (1961) pp. 20061-2 (The Judiciary Committee “considered that the professional leagues should not be granted this authority without there being some restriction imposed for the protection of college football; even though, as a matter of actual practice, the professional football leagues have followed a practice of not telecasting games which conflict with major intercollegiate football contests.”).

⁷ The American Football League would later merge with the National Football League in 1970.

⁸ Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* (4th ed.), Boston, Addison-Wesley, 2005, p. 414.

professional football team. As a matter of economics, free riding may lead to investments like these being underprovided.⁹ A potential pro-competitive rationale for the 75-Mile Football Rule is that it may serve to encourage these pro-competitive investments by limiting the impact of free riding.

In the nearly 60 years since the passage of the SBA, sports broadcasting has evolved. Today, many games are carried on cable networks or streamed to fans over the internet rather than being broadcast on over-the-air television stations. Courts have found that the SBA's antitrust exemption is limited, however, to agreements related to over-the-air telecasts.¹⁰

Courts have analyzed allegations of antitrust violations involving sports broadcasts that are not covered by the SBA under the rule of reason.¹¹ The rule of reason “distinguishes between restraints with anticompetitive effect that are harmful to the consumer and those with procompetitive effect that are in the consumer's best interest.”¹² For an economist, this involves an analysis of market definition, and whether any participants in a properly defined antitrust market possess market or monopoly power. As described above, an economist will also consider the pro-competitive rationale for any disputed restraints.

DMAs affected by the 75-Mile Football Rule

NFL games are currently carried nationally by a mix of cable networks (including ESPN and the NFL Network) and traditional over-the-air networks. For the 2020 season, the NBC, CBS, and FOX networks will carry regular-season games on their affiliated over-the-air broadcast stations. Each of these network affiliates serves a geographic area known as a “DMA.”¹³

Using data from the Federal Communications Commission (FCC) on the location of over-the-air stations' transmitters, one can calculate how many DMAs have at least one NBC, CBS, or FOX affiliate within 75 miles “of the game site of any intercollegiate or interscholastic football contest.” While the 75-Mile Football Rule relates to any high school or college football game, here we only consider the distance to NCAA Division I college football stadiums for illustrative purposes.

Of the 210 DMAs in the United States, 170 have at least one network affiliate of NBC, CBS, or FOX that is located within 75 miles of a Division I college football stadium. Collectively, these 170 DMAs contain more than 94% of the television households in the United States. Table 1 summarizes the Division I college football conferences with at least one stadium within 75 miles of a network affiliate for the 50 largest DMAs. Of the top 50 DMAs, only one (St. Louis) does not have a Division I college football stadium within 75 miles of at least one NBC, CBS, or FOX affiliate.

⁹ *The MIT Dictionary of Modern Economics* (4th ed.), MIT Press, 1992, pp. 163-4.

¹⁰ *Kingray, Inc. v. NBA, Inc.*, 188 F.Supp.2d 1177, 1183 (S.D.Cal. 2002).

¹¹ *Laumann v. NHL*, 56 F. Supp. 3d 280, 297 (S.D.N.Y. 2014) citing *National Collegiate Athletic Ass'n v. Board of Regents of the University of Oklahoma*, 468 U.S. 85, 107 (1984) (“Our decision not to apply a per se rule to this case rests in large part on our recognition that a certain degree of cooperation is necessary if the type of competition that petitioner and its member institutions seek to market is to be preserved.”).

¹² *Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 877 (2007).

¹³ The United States is divided into 210 designated market areas (DMAs) by the A.C. Nielsen Company. In matters involving television, antitrust authorities often define the relevant geographic markets on the basis of DMAs. See, for example, Complaint, *United States v. Nexstar Broadcasting Group, Inc., and Media General, Inc.*, September 2, 2016 (“A DMA is a geographical unit designated by the A.C. Nielsen Company, a company that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating television audiences. DMAs are widely accepted by television stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition. A television station's advertising rates typically are based on the station's ability, relative to competing television stations, to attract viewing audiences that have certain demographic characteristics that advertisers are seeking to reach.”).

Many DMAs have network affiliates located within 75 miles of multiple Division I college football stadiums. For example, network affiliates in the New York, NY DMA are located within 75 miles of Rutgers University, a member of the Big Ten conference in the Football Bowl Subdivision (FBS). There are also network affiliates located within 75 miles of the football stadiums used by the University of Connecticut and the US Military Academy at West Point, both of which are independent FBS members (i.e., these institutions do not belong to a football conference). There are an additional 13 institutions that belong to the Football Championship Subdivision (FCS) with stadiums within 75 miles of a network affiliate in the New York, NY DMA.

Table 1: Large DMAs with at least one Division I college football stadium within 75 Miles of an NBC, CBS, or FOX affiliate

Rank	DMA	Football Bowl Subdivision								Football Championship Subdivision																
		ACC	American	Big 12	Big Ten	C-USA	MAC	Mtn. West	Pac-12	SEC	Sun Belt	Indep.	Big Sky	Big South	CAA	Ivy	MEAC	MO Valley	Northeast	OH Valley	Patriot	Pioneer	Southern	Southland	SWAC	Indep.
1	New York, NY				X								X	X	X	X		X		X	X					
2	Los Angeles, CA							X																		
3	Chicago, IL				X		X						X										X			
4	Philadelphia, PA		X		X									X	X	X	X		X							
5	Dallas-Ft. Worth, TX		X	X		X														X						
6	San Francisco-Oakland-San Jose, CA							X	X				X													
7	Washington, DC (Hagerstown, MD)		X		X									X		X				X						
8	Houston, TX		X			X																	X	X		
9	Boston (Manchester), MA-NH	X											X		X		X		X							
10	Atlanta, GA	X								X	X			X												
11	Phoenix (Prescott), AZ								X				X													
12	Tampa-St.Petersburg (Sarasota), FL		X							X											X					
13	Seattle-Tacoma, WA							X																		
14	Detroit, MI				X		X																			
15	Minneapolis-St. Paul, MN				X																					
16	Miami-Ft. Lauderdale, FL	X				X																				
17	Denver, CO							X	X				X													
18	Orlando-Daytona Beach-Melbourne, FL		X							X						X					X					
19	Cleveland-Akron (Canton), OH	X					X									X	X								X	
20	Sacramento-Stockton-Modesto, CA							X	X				X													
21	Charlotte, NC	X				X					X			X							X	X				X
22	Portland, OR								X				X													
24	Pittsburgh, PA	X	X				X									X	X									X
25	Indianapolis, IN				X		X									X					X					
26	Baltimore, MD		X		X										X					X						
27	Raleigh-Durham (Fayetteville), NC	X	X												X											
28	Nashville, TN					X				X									X							
29	San Diego, CA							X													X					
30	Salt Lake City, UT								X			X		X												
31	San Antonio, TX						X				X													X		
32	Kansas City, MO-KS				X																					
33	Hartford & New Haven, CT										X				X	X		X	X	X	X					
34	Columbus, OH				X		X															X				
35	Milwaukee, WI				X																					
36	West Palm Beach-Ft. Pierce, FL	X				X																				
37	Cincinnati, OH		X				X															X				
38	Greenville-Spartanburg-Asheville-Anderson, SC-NC	X												X									X			X
39	Las Vegas, NV							X																		
40	Austin, TX			X	X					X														X		
41	Jacksonville, FL									X																
42	Norfolk-Portsmouth-Newport News, VA					X							X	X		X										
43	Oklahoma City, OK			X																						
44	Birmingham (Anniston and Tuscaloosa), AL					X			X										X			X				
45	Grand Rapids-Kalamazoo-Battle Creek, MI				X		X				X									X						
46	Albuquerque-Santa Fe, NM							X																		
47	Harrisburg-Lancaster-Lebanon-York, PA		X		X										X	X	X		X							
48	Louisville, KY	X			X																					
49	Greensboro-High Point-Winston Salem, NC	X				X					X											X				
50	New Orleans, LA		X																					X		

Sources: SNL Kagan, FCC CDBS Data, and CRA analysis

Impact of potentially canceled seasons

Because of concerns related to the COVID-19 pandemic, many Division I institutions have canceled or postponed their football seasons. As of this writing, all 127 FCS schools have canceled or postponed the bulk of their fall seasons.¹⁴ Two of the “Power Five” FBS conferences, the Big Ten and the Pac-12, originally canceled their fall football seasons, but the Big Ten has recently announced plans to begin a delayed season during the weekend of October 24. Other FBS cancellations include the MAC and Mountain West Conferences, Old Dominion University, New Mexico State University, the University of Connecticut, and the University of Massachusetts. In total 54 of the 130 FBS institutions have canceled or delayed their fall football seasons.

With the cancellation or delay of the football seasons for these 181 Division I football programs, the number of DMAs where at least one affiliate of NBC, CBS, or FOX is within 75 miles of an actively used Division I football stadium will be reduced from 170 DMAs to 98 DMAs, at least through mid-October. However, these 98 DMAs still serve a majority of television households, with nearly 60% of television households in the United States located in these areas.

Of the 49 largest DMAs listed in Figure 1, 33 remain when the 181 Division I programs with canceled or delayed seasons are removed. The 16 DMAs that will not have an active Division I football stadium within 75 miles of a network affiliate are listed in Table 2.

Table 2: Large DMAs where all Division I college teams with football stadiums within 75 Miles of an NBC, CBS, or FOX affiliate have canceled or postponed their 2020 seasons

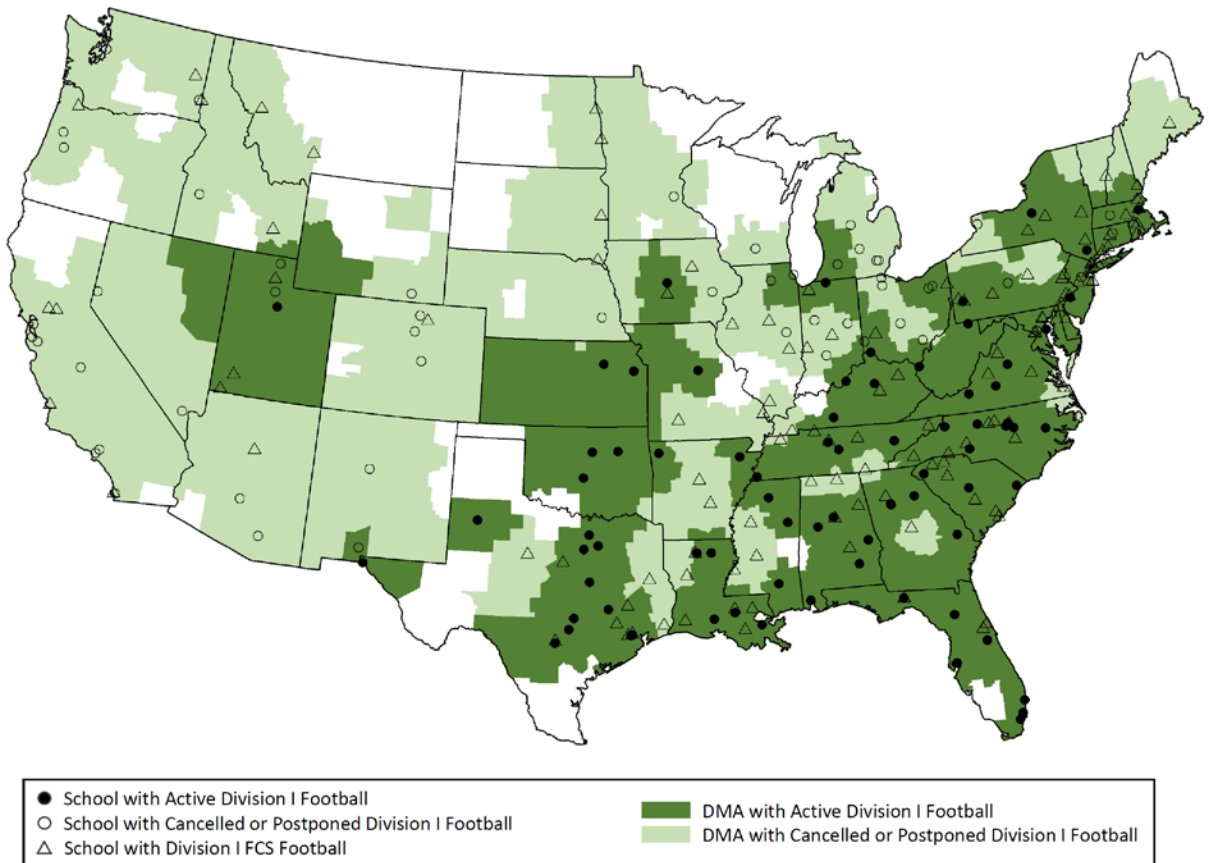
2	Los Angeles, CA	22	Portland, OR
6	San Francisco-Oakland-San Jose, CA	25	Indianapolis, IN
11	Phoenix (Prescott), AZ	29	San Diego, CA
13	Seattle-Tacoma, WA	34	Columbus, OH
14	Detroit, MI	35	Milwaukee, WI
15	Minneapolis-St. Paul, MN	39	Las Vegas, NV
17	Denver, CO	42	Norfolk-Portsmouth-Newport News, VA
20	Sacramento-Stockton-Modesto, CA	46	Albuquerque-Santa Fe, NM

Sources: SNL Kagan, FCC CDBS Data, and CRA analysis

While the Pac-12 canceled its season and the Big Ten does not plan to begin play until late-October, the other major FBS conferences are proceeding with their fall seasons. With the ACC, SEC, and Big 12 playing this fall, DMAs throughout the eastern and southern United States, as well as parts of the Midwest, will have at least one actively used Division I football stadium within 75 miles of a network affiliate. DMAs where all nearby Division I football stadiums will be inactive for at least a portion of the traditional fall season are generally located in the western half of the country, as summarized in Figure 1.

¹⁴ David Cobb, Ben Kercheval, Barrett Sallee, “College football news: Big Ten mulling new schedule options, SWAC unveils plan for spring slate,” *CBSSports.com*, September 8, 2020, <https://www.cbssports.com/college-football/news/college-football-news-big-ten-mulling-new-schedule-options-sqac-unveils-plan-for-spring-slate/live/>.

Figure 1: DMAs with Division I football stadiums within 75 miles of an NBC, CBS, or FOX affiliate



Sources: SNL Kagan, FCC CDBS Data, and CRA analysis

Conclusion

The Sports Broadcasting Act of 1961 allowed members of professional football, basketball, hockey, and baseball leagues “to pool television rights in certain or all of their games and then to sell packages of such pooled rights without violating the antitrust laws.” While the SBA conditions its antitrust exemption for professional football on certain protections for high school and college football games, this does not imply that there is not a pro-competitive rationale for the SBA’s 75-Mile Football Rule.

Today, nearly all television households are served by over-the-air broadcast network affiliates that are implicated by the SBA’s 75-Mile Football Rule based on proximity to Division I college football stadiums. Even if all high school and college football games were canceled, with the exception of some Division I FBS games, most television households in the United States would still be in DMAs impacted by the 75-Mile Football Rule.

Contacts

Matthew List

Vice President
+1-617-425-3527
mlist@crai.com

Gordon Denis

Associate
+1-617-425-3509
gdenis@crai.com



The views expressed herein are the views and opinions of the authors and do not reflect or represent the views of Charles River Associates or any of the organizations with which the authors are affiliated. Any opinion expressed herein shall not amount to any form of guarantee that the authors or Charles River Associates has determined or predicted future events or circumstances, and no such reliance may be inferred or implied. The authors and Charles River Associates accept no duty of care or liability of any kind whatsoever to any party, and no responsibility for damages, if any, suffered by any party as a result of decisions made, or not made, or actions taken, or not taken, based on this paper. If you have questions or require further information regarding this issue of *CRA Insights: Competition*, please contact the contributor or editor at Charles River Associates. This material may be considered advertising. Detailed information about Charles River Associates, a registered trade name of CRA International, Inc., is available at www.crai.com.

Copyright 2020 Charles River Associates