American Needle: A New Quick Look for Joint Ventures

BY JAMES A. KEYTE

In American Needle, Inc. v. National Football League, the Supreme Court held that the collective decisions of the thirty-two National Football League teams regarding the joint licensing of team intellectual property constituted concerted action subject to scrutiny under Section 1 of the Sherman Act. Some view the decision as an unremarkable reaffirmation of the Court’s prior precedent that the rule of reason applies to the operations of joint ventures. A more nuanced reading of the opinion, however, suggests not only some ambiguity with respect to “settled” antitrust law, but also the potential development of new joint venture principles.

While this article examines the American Needle decision primarily from the perspective of professional sports leagues, the insights are applicable to joint ventures generally. One thing we can say with some certainty is that conspiratorial capacity will be found where joint venture members retain the actual or potential ability to compete in the sale of the product subject to the alleged restraint—in the case of American Needle, the licensing of individual NFL member-team logos. Beyond that, the decision raises at least as many questions as it answers. For example, American Needle discussed Copperweld at length but did not address decisions that had extended Copperweld to entities under unitary “control” without common ownership or cases that addressed less than wholly-owned subsidiaries or affiliates. Nor, importantly, did the Court discuss how to assess what might still be the “unitary” or “independent” conduct of joint ventures not subject to Section 1 scrutiny.

American Needle also should open up a whole new role for the rule of reason—a “quick look” for defendants. While the Court offers little insight into what this defendant’s quick look might look like, some insights can be gleaned from the examples noted in the decision itself, as well as from the Court’s earlier discussions of “core” and “ancillary” restraints in Dagher. In the end, American Needle suggests yet further evolution of the analytical framework for assessing the restraints of legitimate joint ventures, which may be its most lasting legacy.

X’s and O’s

The background of American Needle is by now well known. In 1963 the NFL teams formed a separate corporate entity, NFL Properties Inc., to license and market league and team intellectual property and to advertise and promote the sport of football. For years NFLP granted nonexclusive headwear licenses to numerous vendors, including American Needle Inc., which held an NFL headwear license for more than twenty years. In 2001, however, NFLP did not renew American Needle’s license and instead granted an exclusive ten-year headwear license to Reebok International Ltd.

American Needle filed suit against the NFL, NFLP, the individual NFL teams, and Reebok, alleging violations of Sections 1 and 2 of the Sherman Act. The district court granted the NFL defendants’ motion for summary judgment, holding that the league and its member teams constituted a single economic enterprise not subject to Section 1, and the Seventh Circuit affirmed. In an opinion written by retiring Justice John Paul Stevens, the Supreme Court unanimously reversed and remanded.

The Court framed the issue as follows: “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.’” Emphasizing the distinction between concerted action among actual or potential competitors and the “independent” (or unilateral) action of a single firm, the Court focused on “a functional consideration of how the parties involved in the alleged anticompetitive conduct actually operate.” The Court then restated what it viewed as the guiding principle of Copperweld:

The key is whether the alleged ‘contract, combination . . . or conspiracy’ is concerted action—that is, whether it joins together separate decisionmakers. The relevant inquiry, therefore, is whether there is [an agreement] amongst ‘separate economic actors pursuing separate economic interests,’ such that the agreement ‘deprives the marketplace of independent centers of decisionmaking,’ and therefore of ‘diversity of entrepreneurial interests,’ and thus of actual or potential competition.

Applying this principle from the perspective of consumers (potential licensees of NFL-team logos), the Court found that the “NFL teams do not possess either the unitary decision-making quality or the single aggregation of economic power characteristic of independent action.” Rather, the “teams compete with one another, not only on the playing field, but to attract fans, for gate receipts and for contracts with managerial and playing personnel.” Indeed, from this perspective the Court easily found that NFL teams “compete in the market for intellectual property. To a firm making hats, the Saints

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and the Colts are two potentially competing suppliers of valuable trademarks.”

The Court rejected the NFL’s argument that, because some degree of cooperation is necessary to create the product, the member teams constitute a single entity: the teams may have common interests, but “they are still separate, profit-maximizing entities, and their interests in licensing team trademarks are not necessarily aligned.” More to the point, the Court found that the “justification for cooperation is not relevant to whether that cooperation is concerted or independent action”; the issue is whether the alleged agreement or activity “‘deprives the marketplace of independent centers of decision making.’” The Court, however, made clear that the rule of reason would apply to any such cooperation, observing that, “depending upon the concerted activity in question,” defendants may win early dismissal of meritless cases on a so-called quick look.

Like Dagher before it, American Needle provides a straightforward holding that can easily be applied on similar facts. This time, however, the Court’s apparently conscious decision not to explain the contours of antitrust joint venture principles for legitimate collaborations is likely to lead to more, not less, litigation.

**Tackling Ownership Issues Under Copperweld After American Needle**

In Copperweld, the Court had held that a parent corporation and its wholly-owned subsidiary could not conspire for purposes of Section 1. American Needle reaffirmed this rule of law, echoing that “[a]s Copperweld exemplifies, ‘substance, not form, should determine whether a[n] . . . entity is capable of conspiring under § 1.” Significantly, however, the Court’s analysis may lead some courts to question the applicability of Copperweld to less than wholly-owned intra-firm relationships.

As the Court observed, the Copperweld decision was based on certain presumptions about a parent and its wholly-owned subsidiary that rendered the entities incapable of conspiring as a matter of law. Specifically, “although a parent corporation and its wholly-owned subsidiary are ‘separate’ for the purposes of incorporation or formal title, they are controlled by a single center of decisionmaking and they control a single aggregation of economic power.” The Court thus appeared to suggest that the determinative “substance” of a single-entity relationship between a parent and its wholly-owned subsidiary depends on unitary control—through 100 percent ownership on the Copperweld facts—in contrast to actual or potential competition among distinct economic actors that control their own competitive assets (hence, the often-cited metaphor from Copperweld of a driver controlling a team of horses). Indeed, following Copperweld, several courts had extended Copperweld’s focus on unitary control to circumstances where common ownership was not even involved.

On closer inspection, however, American Needle in effect found that it is much more important to own the horses rather than merely to have the right (like the “driver”)—whether contractual or otherwise—to control them. Indeed, invoking Copperweld, the Court focused almost exclusively on the separate formal “ownership” of the intellectual property in question (even though any team-specific intellectual property would have no independent competitive significance or value outside of the NFL venture). Thus, for the American Needle Court, the actual ownership of competitive assets was the determinative factor in the single-entity analysis, and the application to the facts before it was fairly perfunctory—it was not disputed that the individual teams owned their respective intellectual property.

The Court’s somewhat abstruse discussion of Copperweld arguably limits Copperweld to its facts and certainly draws into question Copperweld’s presumed application to less than wholly-owned corporate relationships. After the Supreme Court’s decision in Copperweld, lower courts and commentators have generally agreed that, if a parent owned 51 percent or more of an entity, then the parent and subsidiary could not conspire for purposes of Section 1. Likewise, most antitrust practitioners have worked under the assumption that the Department of Justice and Federal Trade Commission generally treat a parent and its 51 percent owned subsidiary as a single entity. This general rule was based on the presumption that a parent owning 51 percent (or more) of an entity ultimately has the same ability to exercise unitary control over a subsidiary as it would with 100 percent ownership and, consequently, that the entities have a shared economic interest and cannot compete as a matter of law.

However, not all courts have adhered to this majority-ownership presumption. Some cases have found that a parent and its partially-owned subsidiary are incapable of conspiring only if the parent possesses actual or effective control over the subsidiary or if the entities share a “unity of purpose”—considering such factors as the legal relationship between the corporations, the makeup of the board of directors of the subsidiary, the corporate purposes of each of the corporations, the amount of autonomy exercised by the subsidiary, and whether the parent could force a merger of the subsidiary.

American Needle may breathe new life into the minority view of Copperweld’s limited application to less than wholly-owned subsidiaries or affiliates. Proponents of this view are now likely to argue that, under American Needle, the question of whether separate entities—other than a parent and its wholly-owned subsidiary—are capable of concerted action requires a “functional consideration of how the parties involved in the alleged anticompetitive conduct actually operate” and an inquiry into the “competitive reality.”

**Instant Replay for “Unitary” Behavior?**

Somewhat hidden in American Needle is the suggestion that at least some joint activities undertaken by related entities would be considered “unitary” behavior not subject to Section 1. As the Court stated, the “NFL respondents may be
similar in some sense to a single enterprise that owns several pieces of intellectual property and licenses them jointly.” While the Court thus appeared to allow for related entities acting “jointly” to function as a “single enterprise” in some circumstances, the question remains as to when this legal conclusion would be appropriate.

Based on the Court’s analysis, one such circumstance would arise if a product is created by the joint venture itself and no individual participant on its own could create or possess the joint product. American Needle in fact appears to identify its own example: intellectual property that relates to the league as a whole (rather than to individual teams), such as the NFL Shield and the naming rights for the “Super Bowl.” The NFL Shield would not exist but for the NFL joint venture and, most importantly, can in no sense be viewed as a competitive asset “owned” by any individual team. Accordingly, as the Court seems to have recognized, the NFL member teams function as a single enterprise when jointly licensing league intellectual property. Conversely, the Court held that NFLP is subject to Section 1 when jointly licensing team intellectual property, which the Court found to be independently owned by the respective member teams and which remains a (potentially) competitive asset separate from the joint venture’s league intellectual property. This logic concerning unitary behavior, of course, would apply to any legitimate joint venture with respect to products that individual members cannot “own” or make themselves.

How then might venture participants form a collaborative enterprise that can safely fall within American Needle’s “unitary” protection? The answer lies in Dagher. There, Texaco and Shell combined all of their petroleum refining, production, and marketing activities into two geographically-based joint ventures. All of their respective, previously independent assets were contributed to these joint ventures, and the two companies ceased competing with one another in the relevant markets. Indeed, they were incapable of such competition because all of their “competitive” assets had been contributed to the joint ventures. Texaco and Shell subsequently operated in the markets only through these joint ventures. The formation of these joint ventures was reviewed and approved by the antitrust Agencies essentially as a merger. While the Court did not have to reach the issue of whether Section 1 should apply at all to these ventures, a unanimous (8–0) decision held that the per se rule could not apply to the Equilon venture’s price setting of the venture products. The Court found that this was not “price fixing in the antitrust sense” and likened the functioning of the Equilon venture to that of a “single entity.”

When read in conjunction with Dagher, American Needle suggests a wide range of unitary behavior (and, hence, no Section 1 scrutiny for ongoing operations) for joint ventures structured like Equilon. Specifically, where the members contribute the ownership and control of all of their respective “competitive” assets to the venture—thereby operating in that market only through the joint venture—Section 1 should not apply to the functioning of that venture. (The contribution of assets from the members to the venture would of course be subject to review under Section 7 of the Clayton Act.) Theoretically, then, the NFL member teams could contribute their respective intellectual property to NFLP and, assuming that the integration itself raised no antitrust concerns, NFLP could operate as it chooses, including with whatever team involvement or restrictions the venture deems appropriate (much like the joint conduct in Dagher).

Further, Justice Stevens's nuts and bolts analogy provides another window into what may be viewed as “unitary” behavior. Justice Stevens quipped that a “nut and bolt can only operate together, but . . . . it [does not] mean that once a group of firms agree to produce a joint product, cooperation amongst those firms must be treated as independent conduct.” While catchy, the analogy worked for the case at hand because the “restraint” was directed at individual teams that each owned and controlled what the Court viewed as competitive intellectual property assets in their own right—i.e., “nut” and “bolt” makers in the Court’s analogy. Left unaddressed are agreements or restraints concerning only the new nut/bolt joint product (e.g., the NFL product itself or NFL intellectual property, such as the NFL Shield or the “Super Bowl”), which cannot be “owned” by any individual team. Indeed, under the principles of Dagher and consistent with American Needle, it would make perfect sense to allow member teams, without Section 1 scrutiny, to agree on the price and terms of a group license (absent, of course, restrictions on individual teams’ ability to grant separate licenses for their respective properties), much as it would have made sense for BMI to have been able to price its joint product without Section 1 inquiry. The blanket license at issue in BMI clearly was a new product that would not have existed but for the joint venture, and its members probably should have been free to price their joint product “as a single entity”—an issue likely to be revisited in some form as the law of what constitutes “unitary” conduct evolves.

Time Out! The Discussion of “Necessary” Cooperation Related to the Single-Entity Analysis and Not the Rule of Reason

One area that appears to be creating some confusion—but should not—is the American Needle Court’s discussion of “necessary” cooperation. The confusion lies in part in the Court’s observation that “even if leaguewide agreements are necessary to produce football, it does not follow that concerted activity in marketing intellectual property is necessary to produce football.” Some have read this language to suggest that the “necessity” of the restraint may become a threshold inquiry into the merits of the case under the rule of reason—precisely what the Court admonished courts not to do.

As the Court explained, its analysis went only to the capacity to conspire, and not to whether a particular type of restraint violates Section 1. Indeed, the whole discussion of “necessary” cooperation arose in the context of the NFL's
argument—accepted by the Seventh Circuit—that because the teams could only make NFL football by cooperating, it “follow[ed]” that Section 1 did not apply to collective decisions concerning how to exploit the valuable intellectual property they create.) The Court’s discussion of “necessary” cooperation arose only in the context of its observation that “[t]he justification for cooperation is not relevant to whether that cooperation is concerted or independent action,” and hence its finding that the necessity of joint activity to produce a joint venture product does not “transform concerted action into independent action.” While the Court did note that the necessity of cooperation is “a factor relevant to whether the agreement is subject to the Rule of Reason,” it was merely highlighting that per se treatment is not appropriate for assessing restraints among firms that must cooperate to produce the product of their venture. As for the rule of reason itself, the Court had much more interesting things to say, especially for sports leagues.

The Defendants’ “Quick Look”—An Open Field
Historically, the “quick look” has been an antitrust plaintiffs’ device to challenge restraints that do not fall within established per se categories but have questionable procompetitive justifications. The general framework is as follows: Plaintiffs allege (and may be required to demonstrate) what appears to be an inherently suspect restraint (without having to prove market definition or market power); defendants then have to come forward with plausible procompetitive justifications (again, with different views on how that is demonstrated); if accepted, the case is kicked into the full rule of reason, but if rejected the restraint is condemned much like a per se violation. While some have suggested that a defendants’ quick look would make sense—especially for sports leagues and similar joint ventures—the notion has had little traction in the courts.

The American Needle Court has now endorsed a “quick look” approach for defendants, and particularly for certain restraints of sports leagues. The Court explicitly noted that football teams need to cooperate and “are not trapped by antitrust law” because the “special characteristics of this industry may provide a justification for many kinds of agreements.” The Court made specific reference to agreements that may make the “entire league successful and profitable”; that involve the “production” and “scheduling” of games; that may promote the “legitimate and important” interest in “maintaining a competitive balance among . . . teams”; and a “host of other collective decisions.” As the Court concluded, “depending upon the concerted activity in question, the Rule of Reason may not require a detailed analysis; it can sometimes be applied in the twinkling of an eye.”

Thus, in context, it certainly appears that the Court was endorsing a quick look for defendants. And with the issue of conspiratorial capacity for the most part resolved, this is where sports leagues and other legitimate joint ventures will fight the next round of battles. Looking forward, the interesting questions are: (a) how and under what analytical principles will the defendants’ quick look take shape, and (b) in the end, will sports leagues (and other legitimate joint ventures) in fact avoid finding themselves “trapped” by the antitrust laws as Justice Stevens predicted?

Getting in the Game: The Legitimacy and Scope of the Venture
A logical threshold starting point for a defendants’ quick look is to assess, first, whether the venture is a legitimate collaboration, and second, the precise scope of the venture. Of course, as with the NFL and its creation of NFLP, there may be ventures within ventures that arguably must be assessed separately.

The question of a venture’s legitimacy would be a separate article in its own right and is beyond the scope here. And, in this respect, it was surprising to see Justice Stevens invoke Topco (albeit for different purposes) as if those cases would be treated as per se violations today (not likely). But there will be many collaborations or contractual joint ventures that (rightly or wrongly) will continue to struggle to proceed past this first step—e.g., certain collaborations in health care involving managed care contracting. Similarly, as was addressed in the Three Tenors case, antitrust plaintiffs are likely to seek scrutiny of what appear to be subventures that, while arguably within the scope of the initial collaboration, may need to be separately justified as legitimate. However, if the venture or related integration is a legitimate—one, non-sham—collaboration or integration at the outset and does not violate Section 7 of the Clayton Act, then the next phase of a defendants’ quick look would be appropriate.

Quick Look for “Core” Restraints. In searching for insights into what shape a defendants’ quick look may take, a good place to start is the discussion of “core” venture activities in Dagher. Indeed, if Dagher is to be read as holding only that a rule of reason applies to the restraints of an arguably fully-integrated joint venture, then the Court’s discussion of “core” activities in that case should be viewed as important guidance (albeit in dicta) about the nature of this rule of reason inquiry. The rule of reason discussion in Dagher arose in the context of the Ninth Circuit’s application of an ancillary restraints analysis to condemn the venture’s dual-brand, uniform pricing policy. The Supreme Court found that the ancillary restraints doctrine had nothing to do with the venture restraint at issue, explaining: “We agree . . . that the ancillary restraints doctrine has no application here, where the business practice being challenged involves the core activity of the joint venture itself—namely, the pricing of the very goods produced and sold by [the venture].” For such “core” venture activities, the Court found that although the activity may be price fixing in the literal sense, it cannot be “price fixing in the antitrust sense.”

While a pre-American Needle reaction to this language might have been that a challenge to “core” activities merely avoids per se treatment, American Needle arguably indicates that any such core restrictions could be approved on a “quick
look.” Looking back, several pre-American Needle sports cases that addressed both the single-entity question and the rule of reason provide examples of “venture” restraints that could be viewed as “core” and potentially valid on a quick look.

**Rules of the Game and Related Equipment Restrictions.** Perhaps the least controversial area for the potential application of a “core” quick look would be challenges to a sports league’s rules and regulations defining the “on field” product. Numerous courts have rejected third-party challenges to sports organizations’ equipment regulations, finding that the rules did not harm competition in a relevant market or were procompetitive and thus reasonable. Just recently, the Third Circuit—while acknowledging the Court’s decision in American Needle—recognized that sports organizations “deserve a bright-line rule to follow so they can avoid potential antitrust liability as well as time-consuming and expensive antitrust litigation.” The court adopted a deferential rule for sports organizations facing challenges to exclusive equipment regulations. Of course, application of a “core” quick look would be even more straightforward with respect to non-exclusive “on field” rules and regulations.

**Ownership restrictions.** Certainly, one of the most “core” aspects of any venture, especially sports leagues, is the decision concerning whom members want as their business partners. This is an area ripe for quick look approval without having to delve into the nuances of antitrust standing or injury to competition.

**Broadcast restrictions.** Judge Easterbrook said it best in Bull II when addressing the single-entity status of sports leagues for restraints relating to the “output” of the venture—in that case, restrictions on superstation broadcasts: “To say that participants in an organization may cooperate is to say that they may control what they make and how to sell it.” Not only does this appear to make sense for broadcast and cable rights, but it also may make sense for the intellectual property of teams that are only made by the collective efforts of the venture.

**Relocation restrictions.** With the long history of antitrust litigation over relocation restrictions, one might question the applicability of a defendants’ quick look. But team location also is core to sports league ventures. For example, the Raiders II case, National Basketball Association v. SDC Basketball Club, Inc., and St. Louis Convention & Visitors Commission v. NFL all recognize the “inherent” need and right of sports leagues to place their franchises and develop local followings and fan loyalty.

**Player-related restraints.** Clearly the most controversial area for the potential application of a “core” quick look would be in the player area. However, this concept already has had some traction following Dagher. For example, in Non-Commercial Partnership Hockey Club Lokomotiv Yaroslavl v. National Hockey League, the court observed that the NHL’s collective activities in the procurement of foreign players “seem to be included within the meaning of [Dagher] as core activities of a joint venture [that] would not constitute a combination in restraint of trade.” Similarly, in Independent Entertainment Group, Inc. v. National Basketball Association, the court held that as a matter of law it was reasonable for the NBA to prohibit players from working for “competitors” (in that case, promoters of a one-on-one pay television competition) in the off-season. And, of course, there are those single-entity employee restraint cases, such as Williams v. I.B. Fischer Nevada, that may now be better treated under a defendants’ quick look.

Of these, the most hotly contested would be player-restraint systems (e.g., player allocations and salary caps) that, absent the labor exemption, have often been presumed to be some form of “boycott” or price fixing. In fact, the NFL in American Needle had gone out of its way in briefing to point out that it was not seeking single-entity treatment in this case for player allocation systems. More, a fair amount of amici argument was aimed at preserving Section 1 applicability for these player-restraint cases.

Justice Stevens, however, may have invited a defendants’ quick look treatment for player-related restraints. The Court acknowledged that competitive balance among teams is a legitimate justification that may save certain challenged restraints. In player-restraint cases, antitrust plaintiffs have consistently argued that a justification for a player allocation system must be limited to the player “market” in which the alleged restraint occurs, an argument seemingly echoed in other sports-league, single-entity cases. And, no doubt, some courts have struggled with the issue of whether a sports-league restraint in an alleged “input” market can be justified for its beneficial effect in an “output” market, whether defined as major league football (as plaintiffs would have it) or some form of broader entertainment (as the league maintains).

The Court in American Needle made clear that the NFL’s interest in maintaining competitive balance can be a legitimate and important procompetitive justification for any restraint (although whether the justification is sufficient will depend, of course, on the nature of the restraint). Indeed, the Court’s discussion of competitive balance followed its reference (again, from a defendant’s perspective) to the use of a quick look to uphold collective decisions of sports leagues without having to litigate full rule of reason issues such as market definition and market power. Whether a player restraint case will survive attack under a defendants’ quick look is for a future case, but certainly NBA v. Williams, which recognized (albeit in dicta) the legitimacy of an NBA salary cap under the rule of reason, now seems less of an aberration.

While all of these examples of “core” restraints come from sports league cases, one can see how a similar analysis could develop clear “core” categories for all types of ventures and industries. The key inquiry is whether the restraint relates to what the venture itself creates, produces, or sells—again, to say that the members of a legitimate venture may cooperate is to say that they should be able to control inherent venture operations.
Quick Look for "Ancillary" Restraints. Dagher also provides insight into another area for potential quick look treatment—"ancillary restraints" (as opposed to "core" activities). After observing that the ancillary restraints doctrine "governs the validity of restrictions imposed by a legitimate business collaboration," the Dagher Court explained that the critical inquiry is "whether the nonventure restriction is a naked restraint on trade, and thus invalid, or one that is ancillary to the legitimate and competitive purposes of the business association, and thus valid."(9) Interestingly, the Court did not suggest that an ancillary restraint must then necessarily run the full rule of reason gauntlet. And on the Dagher facts, the Court agreed with the Ninth Circuit dissent that if the ancillary restraints doctrine were to apply, "[w]hat could be more integral to the running of a business than setting a price for its goods and services?"(10) Hence, in the context of a defendants' quick look, the Court apparently was strongly suggesting that the pricing behavior in Dagher would be found "valid" as a matter of law "in the twinkling of an eye."

This type of "quick look" ancillary restraints analysis has a long history, running all the way back to United States v. Addyston Pipe & Steel Co.71 There, the Court explained that restrictions of business partners' activities were "to be encouraged" because they helped secure the "entire effort in the common enterprise" and hence were "ancillary to the main end of the union."(11) While Rothery Storage(12) can be read as an attempt by Judge Bork to revamp ancillary restraints as a doctrine of lawfulness per se, the case most often is read as merely moving analysis of the given restraint into the full rule of reason. Moreover, with the rise of the full rule of reason under the impenetrable Standard Oil(13) factors, the subject of ancillary restraints was swept into the full rule of reason, either as a vehicle for avoiding per se condemnation or as a mere factor in the overall full rule of reason analysis, becoming trapped in the morass of competitive effects, less restrictive alternatives, and business justifications.

American Needle and Dagher have the real potential to bring the ancillary restraints doctrine back to its original roots and relatively simple application. Indeed, for legitimate joint ventures, it would seem to make perfect sense for courts to assess, as a matter of law, whether the restraint in question is merely one that precludes a venture member from competing against the venture and securing the "entire effort" of that member in the common enterprise. This is not only the teaching of Addyston Pipe, Penn-Olin,(5) and the oft-cited dissent from the denial of certiorari in NASL,(6) but it also appears to be the directive of Dagher. In fact, one could easily see a court—in any number of contexts—involving the ancillary restraints doctrine on a quick look to uphold the right of a legitimate venture to require venture members to commit their entire competitive efforts to the ventures they choose to join.

Other Areas: Is There a Restraint? Is There "Competition"? Is It "Justified"? Assuming lower courts latch onto the concept of a defendants' quick look for the core activities of legitimate ventures, one can envision the extension of that concept to other elements and issues without full rule of reason treatment. For example, there is no reason that a quick look could not be applied to see if there is even a "restraint" at issue, as in Buffalo Broadcasting Co. v. ASCAP.(7) Likewise, there is no reason courts cannot take a quick look to see if there is even meaningful "competition" at issue without delving into complex market definition issues. Indeed, some have observed that in American Needle there may not have even been any potential competition between the NFL teams and NFLP (i.e., the collective licensor) because prospective licensees arguably were only interested in a single, league-wide license.(8) Finally, there is every prospect that any number of business justifications could be subject to quick look treatment, for example, justifications based on intellectual property protection or free-riding concerns as in Trans Sport, Inc. v. Starter Sportswear, Inc.(9) or Rothery Storage.(10)

New Rules of the Game May Develop

A final word on procedure: For many alleged restraints of legitimate joint ventures, an inquiry into what remains of a single entity or quick look assessment may be possible on the face of the complaint. Where that is not possible, however, courts may need to entertain early, targeted summary judgment motions coupled, if necessary, with pertinent but very limited discovery. Absent this flexibility, a defendants' "quick look" would merely devolve into the full rule of reason, and sports leagues and other legitimate joint ventures would indeed continue to find themselves "trapped" by the antitrust laws.

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1 130 S. Ct. 2201 (2010), rev’d 538 F.3d 766 (7th Cir. 2008), aff’d 533 F. Supp. 2d 7901 (N.D. Ill.), and 496 F. Supp. 2d 943 (N.D. Ill. 2007).
5 130 S. Ct. at 2208 (first alteration in original) (emphasis added) (citations omitted).
6 Id. at 2209.
7 Id. at 2212 (citations omitted).
8 Id. at 2212–13.
9 Id. at 2213.
10 Id.
11 Id. at 2214 (quoting Copperweld, 467 U.S. at 768–69).
12 See id. at 2216–17.
14 Id. at 777.
15 130 S. Ct. at 2211 (second and third alterations in original) (citation omitted).
16 Id. at 2211 (emphasis added).
17 467 U.S. at 771.
The text appears to be a legal document discussing antitrust law. It includes references to various cases and statutes, and discusses the application of antitrust principles in different contexts. The document seems to be part of a larger body of work, possibly a legal text or a collection of case studies. The specific references and citations suggest a focus on antitrust regulations and their implications in sports contexts, such as the National Football League (NFL) and other professional sports organizations. The document appears to be a detailed analysis of antitrust law as it relates to the sports industry, including discussions on exclusive deals, licensing agreements, and the implications of such agreements on competitive markets.