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Limited T/A The Great American Pub*
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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

*Main Street America Ltd. T/A The
Great American Pub, for itself and
for all others similarly situated,*

Plaintiff,

vs.

National Football League, Inc.
345 Park Avenue, 7th Floor
New York, NY 10154

NFL Enterprises LLC
345 Park Avenue, 7th Floor
New York, NY 10154

DirecTV, LLC
2230 East Imperial Highway
El Segundo, California 90245-3504

and

DirecTV Holdings LLC
2230 East Imperial Highway
El Segundo, California 90245-3504,

Defendants.

) Case No.:

) **CLASS ACTION**

) **COMPLAINT FOR DAMAGES AND**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF PURSUANT TO SECTIONS 1**
) **AND 2 OF THE SHERMAN ACT**

COMPLAINT

1
2 **CLASS ACTION COMPLAINT FOR DAMAGES AND**
3 **DECLARATORY AND INJUNCTIVE RELIEF**

4 Plaintiff, by and through its attorneys, complain and allege as follows:

5 **INTRODUCTION**

6 1. This is a class action brought on behalf of a nationwide Class of bars and
7 restaurants that purchase DirecTV and the NFL Sunday Ticket—described hereafter as
8 “commercial subscribers”—that challenges an agreement by defendants DirecTV, LLC
9 and DirecTV Holdings LLC (collectively, “DirecTV”) and the National Football
10 League, Inc. and NFL Enterprises LLC (collectively, the “NFL”) to protect and
11 increase the monopoly profits earned by DirecTV and the NFL, on behalf of the 32
12 members of the league, from the live broadcast of Sunday afternoon “out of market”¹
13 NFL games. All allegations herein are based on information and belief except for
14 those relating to Plaintiff and their own actions.
15

16 2. Through an exclusive agreement with the NFL, DirecTV is the sole
17 distributor of the live game feeds for these games through DirecTV’s “NFL Sunday
18 Ticket” service. This exclusive deal allows DirecTV to charge supracompetitive prices
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22 _____
23 ¹ Out of market games means NFL games played on Sunday afternoon and not
24 otherwise broadcast on CBS, Fox, or formerly on NBC within the viewer’s television
25 market. The definition also excludes games within the home territory of one of the
26 NFL teams that is not aired on CBS, Fox, or formerly on NBC, due to the team’s
27 failure to sell all of the tickets to the game prior to the blackout deadline for that game.
28 This distinct product, called the NFL Sunday Ticket or Sunday Ticket, has been
trademarked by Defendants and is recognized by them as a separate product from NFL
games broadcast on Fox, CBS, NBC, ESPN, and NFL Network.

1 for NFL Sunday Ticket. As DirecTV says on its own website: “**Only DIRECTV**
2 **brings you every play of every out-of-market game, every Sunday.** Get the action
3 on your TV with NFL SUNDAY TICKET.” (Emphases added).
4

5 3. The NFL Sunday Ticket is an out-of-market sports package that carries all
6 NFL games produced by Fox and CBS. Therefore, a viewer can choose to watch any of
7 the out of market Sunday afternoon NFL games, instead of being restricted to the
8 games being telecast by the local Fox Broadcasting or CBS affiliates. Sunday Ticket
9 appeals to bars and restaurants catering to NFL fans with loyalties to teams located
10 throughout the United States. These businesses generate a substantial share of their
11 overall revenue by having the capability to televise multiple professional football
12 games simultaneously in order to attract a diverse range of fans to their establishments
13 on Sunday afternoons during the fall football season. Indeed, DirecTV specifically
14 markets the NFL Sunday Ticket to restaurants and bars, including, for example,
15 advertising such as: “Turn your business into the neighborhood’s go-to spot with the
16 undisputed leader in sports” and “[o]nly DIRECTV has the sports packages you need
17 to attract fans of every stripe with NFL SUNDAY TICKET 2015”
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22 4. DirecTV’s arrangement with the NFL allows the Defendants to restrict the
23 output of, and raise the prices for, the live broadcast of NFL Sunday afternoon out of
24 market games. Every NFL member team owns the initial rights to the broadcast of that
25 team’s games. However, the teams have chosen to collude with each other, and to
26 grant the NFL the exclusive right to market those games outside each team’s home
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1 market. But for the NFL teams' agreement in which DirecTV has joined, teams would
2 compete against each other in the market for NFL football programming, which would
3 likely induce more competitive pricing.
4

5 5. DirecTV's ability to offer Sunday Ticket on an exclusive basis is material
6 to its operations. Indeed, DirecTV's pending merger with AT&T depends, in
7 substantial part, on continued exclusivity of this service. As, DirecTV noted in a filing
8 with the Securities and Exchange Commission on December 3, 2014, "Pursuant to the
9 Merger Agreement, AT&T had the right to terminate the Merger Agreement or not
10 consummate the Merger if we failed to enter into a contract with the NFL providing for
11 exclusive distribution rights for the NFL Sunday Ticket service." The fact that NFL
12 Sunday Ticket is only available through DirecTV locks commercial subscribers into
13 the DirecTV service throughout the year. Other multi-channel video programming
14 distribution ("MVPD") competitors, such as Dish Network and Comcast are at a
15 competitive disadvantage, and as a result, DirecTV can extract monopoly rents for its
16 service. *See, e.g.*, Comments of Cox, FCC MB Docket Nos. 12-68, 07-18, 05-192, at 3
17 (June 22, 2012) ("the exclusivity deal causing the most significant market distortion
18 today is DirecTV's Sunday Ticket package"); Testimony of Roger Noll before the
19 Committee on the Judiciary, United States Senate (Nov. 14, 2006) ("From my
20 perspective, if one adopts the right counterfactual, the right but-for world in the
21 competitive environment, it is obvious that NFL Sunday Ticket is a palliative
22 compared to the output and prices that would exist in a competitive environment.").

1 6. As the Court in *Cablevision Sys. Corp. v. FCC*, 649 F.3d 695, 702 (D.C.
2 Cir. 2011) recently noted, for MVPDs, sports programming is “must have and non-
3 replicable.”
4

5 7. In Canada, the NFL Sunday Ticket is distributed on a non-exclusive basis
6 through the following MVPDs: Shaw Cable; Shaw Direct; TELUS; Optik TV; TELUS
7 Satellite TV; Bell TV; Access Communications; Cogeco Cable; EastLink Cable;
8 Rogers Cable; Vidéotron; Westman Communications; MTS; and SaskTel.
9

10 8. In the United States, Dish Network, a competing satellite MVPD,
11 concedes that “DirecTV’s flagship exclusive promotion is that they are the only TV
12 provider to offer the NFL Sunday Ticket If you want the NFL Sunday Ticket,
13 then DirecTV wins this battle every time.” However, Dish Network promotes itself as
14 having “more channels with a lower monthly bill” and that “Dish wins versus DirecTV
15 in the price category.” Dish Network and other MVPDs would compete with DirecTV
16 on price and service if they had access to distribution of the Sunday Ticket.
17
18

19 9. A bar or restaurant with a fire code occupancy between 51-100 will pay
20 \$2,314.00 for Sunday Ticket in 2015 (in addition to television package subscription
21 charges, high-definition access fees, and other charges). And the price for Sunday
22 Ticket is higher the larger the establishment’s EVO is. The largest establishments—
23 like Nevada hotels—are charged more than \$120,000 per year for Sunday Ticket.
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26 10. The NFL is the most popular professional sports league in the United
27 States. Because DirecTV and the NFL know that Plaintiff and the Class must exhibit
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1 these games to effectively run their businesses, DirecTV and the NFL have agreed to
2 set prices for NFL Sunday Ticket that are far higher than a competitive market would
3 allow; it has been estimated that prices are as much as 43% higher because of
4 DirecTV's exclusive deal with the NFL, yielding excess profits for DirecTV and the
5 NFL in the tens of millions of dollars. But for DirecTV's agreement to protect the
6 NFL through its exclusive Sunday Ticket contract, prices for the live broadcast of out
7 of market Sunday afternoon NFL games would be much lower, as would the cost of
8 DirecTV programming packages required to be purchased in conjunction with Sunday
9 Ticket.
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11
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13 11. Of the 4 major professional sports in this country—baseball, basketball,
14 hockey, and football—the only one with an exclusive out of market broadcasting
15 arrangement is the NFL/DirecTV Sunday Ticket. Major League Baseball (“MLB”),
16 the National Basketball Association (“NBA”), and the National Hockey League
17 (“NHL”) all distribute live out of market games through multiple MVPDs, including,
18 for example, DirecTV, Dish Network, Comcast, Cox Cable and Time Warner.
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21 12. As a result, DirecTV does not charge nearly as much for access to MLB
22 Extra Innings, NBA League Pass, and NHL Center Ice, which provide access to more
23 games per week over a longer season than the NFL. As the following pricing chart
24 from DirecTV reflects:
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	 NFL Sunday Ticket			 MLB Extra Innings	
EVO	1-PAY	3-PAY	5-PAY	1-PAY	3-PAY
1-50	1,458.00	486.00	291.60	595.00	198.33
51-100	2,314.00	771.33	462.80	805.00	268.33
101-150	4,630.00	1,543.33	926.00	1,120.00	373.33
151-200				1,600.00	533.33
201-350	6,479.00	2,159.67	1,295.80	2,080.00	693.33
351-500	9,258.00	3,086.00	1,851.60	2,400.00	800.00
501-750	10,419.00	3,473.00	2,083.80	2,800.00	933.33
751-1000	13,888.00	4,629.33	2,777.60		
1001-1500	20,832.00	6,944.00	4,166.40	3,600.00	1,200.00
1501-2000	27,774.00	9,258.00	5,554.80		
2001-5000	57,864.00	19,288.00	11,572.80	4,800.00	1,600.00
5001-10000	N/A	34,138.33	20,483.00	6,000.00	2,000.00
10000+	N/A	40,965.00	24,579.00	8,800.00	2,933.33

13. DirecTV and the NFL recently discussed their joint objective of maximizing the supracompetitive prices charged to Plaintiff and similar businesses. The Plaintiff and the Class were targeted because they must purchase Sunday Ticket to attract customers to their bars and restaurants.

14. Plaintiff seeks to enjoin under the federal antitrust laws the ongoing, unreasonable restraint of trade that Defendants have implemented through DirecTV's exclusive deal to broadcast all Sunday afternoon out of market games. They also seek to recover damages for the Class for supracompetitive premiums that DirecTV has charged for NFL Sunday Ticket as a result of this unreasonable restraint of trade.

PARTIES

Plaintiff

19. Plaintiff Main Street America Ltd t/a The Great American Pub is a restaurant and bar located in Conshohocken, Pennsylvania. Plaintiff has purchased the Sunday Ticket from DirecTV in order to attract patrons to its establishment on Sunday afternoons during the NFL's professional football season.

Defendants

20. Defendant DirecTV Holdings LLC is a Delaware Limited Liability Company and has its principal place of business at 2230 East Imperial Highway, El Segundo, California. It is the U.S. operating arm of DirecTV, Inc. and describes itself as "a leading provider of digital television entertainment in the United States." It claims that "[a]s of December 31, 2014, [it] had approximately 20.4 million subscribers."

21. DirecTV, LLC is a California Limited Liability Company that has its principal place of business at 2230 East Imperial Highway, El Segundo, California. DirecTV, LLC issues bills to its commercial subscribers.

22. Until 2015, the NFL was an unincorporated association of 32 American professional football teams in the United States. Each of the 32 NFL member teams, headquartered in various cities across the country, is separately owned and operated, acting in its own economic self-interest and competing in most respects with one another. Those teams are as follows:

NFL Defendant Team Owner	State of Organization	Team Name (City)
Arizona Cardinals, Inc.	Arizona	Arizona Cardinals
Atlanta Falcons Football Club LLC	Georgia	Atlanta Falcons
Baltimore Ravens Limited Partnership	Maryland	Baltimore Ravens
Buffalo Bills, Inc.	New York	Buffalo Bills
Panthers Football LLC	North Carolina	Carolina Panthers
Chicago Bears Football Club, Inc.	Delaware	Chicago Bears
Cincinnati Bengals, Inc.	Ohio	Cincinnati Bengals
Cleveland Browns LLC	Delaware	Cleveland Browns
Dallas Cowboys Football Club, Ltd.	Texas	Dallas Cowboys
Denver Broncos Football Club	Colorado	Denver Broncos
Detroit Lions, Inc.	Michigan	Detroit Lions
Green Bay Packers, Inc.	Wisconsin	Green Bay Packers
Houston NFL Holdings LP	Delaware	Houston Texans
Indianapolis Colts, Inc.	Delaware	Indianapolis Colts
Jacksonville Jaguars Ltd.	Florida	Jacksonville Jaguars
Kansas City Chiefs Football Club, Inc.	Texas	Kansas City Chiefs
Miami Dolphins, Ltd.	Florida	Miami Dolphins
Minnesota Vikings Football Club LLC	Minnesota	Minnesota Vikings
New England Patriots, LP	Delaware	New England Patriots

New Orleans Louisiana Saints LLC	Texas	New Orleans Saints
New York Football Giants, Inc.	New York	New York Giants
New York Jets Football Club, Inc.	Delaware	New York Jets
Oakland Raiders LP	California	Oakland Raiders
Philadelphia Eagles Football Club, Inc.	Delaware	Philadelphia Eagles
Pittsburgh Steelers Sports, Inc.	Pennsylvania	Pittsburgh Steelers
San Diego Chargers Football Co.	California	San Diego Chargers
San Francisco Forty Niners Ltd.	California	San Francisco 49ers
Football Northwest LLC	Washington	Seattle Seahawks
The Rams Football Company LLC	Delaware	St. Louis Rams
Buccaneers Limited Partnership	Delaware	Tampa Bay Buccaneers
Tennessee Football, Inc.	Delaware	Tennessee Titans
Washington Football Inc.	Maryland	Washington Redskins

23. In or about 2015, the NFL incorporated as the National Football League, Inc., and has its headquarters at 345 Park Avenue, 7th Floor, New York, NY 10154. On information and belief, NFL Enterprises LLC was organized to hold the broadcast rights of the 32 NFL teams and license them to MVPDs and other broadcasters,

1 including DirecTV. NFL Enterprises LLC is also located at 345 Park Avenue, 7th
2 Floor, New York, NY 10154
3

4 24. Through the NFL, the 32 teams do cooperate in some respects, including
5 by setting game rules and a game schedule, and dividing their member teams into
6 geographic territories and assigning each team a home television territory for
7 broadcasting purposes. The teams have also agreed to allow the NFL to negotiate on
8 their behalf television contracts with national broadcasters, including for the broadcast
9 of each team's games outside its home territory. These include the Sunday Ticket
10 package sold only through DirecTV.
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13 25. In *American Needle, Inc. v. National Football League*, 560 U.S. 183
14 (2010), the United States Supreme Court unanimously rejected the NFL's claim that an
15 agreement regarding the joint marketing of club-owned intellectual property was the
16 decision of a "single entity" – the league – not subject to section 1 of the Sherman Act
17 (15 U.S.C. §1). The Court reaffirmed lower court decisions that sports leagues are
18 subject to the antitrust laws and that league owners must refrain from agreements that
19 unreasonably restrain trade. The Court also reaffirmed its own decision in *National*
20 *Collegiate Athletic Ass'n v. Board of Regents*, 468 U.S. 85 (1984), which held that the
21 hallmark of an unreasonable restraint is one that raises price, lowers output, or renders
22 output unresponsive to consumer preference.
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TRADE AND COMMERCE

26. The NFL is by far the most significant provider of professional football in the United States. This year's Super Bowl was the most-watched program ever, with 114.4 million viewers.

27. By one estimate, the NFL brings in about \$6 billion annually in total television revenue from all sources. In 2011, the NFL negotiated nine-year extensions of its existing broadcast deals with Fox Broadcasting, CBS and NBC that will run through the 2022 season. According to an August 27, 2014 Bloomberg report, ESPN, Fox Broadcasting, CBS and NBC pay a respectively \$1.9 billion, \$1.1 billion, \$1 billion and \$950 million per year for the right to broadcast NFL games. The *Wall Street Journal* reported in September of 2014 that CBS paid \$300 million for the right to telecast NFL "Thursday Night Football" for one year.

28. The commerce between the NFL and DirecTV is equally imposing. In October of 2014, it was announced that DirecTV and the NFL entered into a new telecasting deal reportedly worth \$1.5 billion annually for the next eight years, a deal that will bring \$8 billion more to the NFL (over four additional years) than its last deal with DirecTV. Through these and other contractual deals, the NFL, its member teams and DirecTV engage in interstate commerce and in activities substantially affecting interstate commerce, and the conduct alleged herein substantially affects interstate commerce.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of itself and as a class action under Fed. R. Civ. P. 23 on behalf of all persons (excluding Defendants; their present and former parents, subsidiaries, affiliates, and co-conspirators; and government entities) who fall within the following Class (the “Class”):

All DirecTV commercial subscribers that purchased the NFL Sunday Ticket from DirecTV, or its subsidiaries, at any time beginning four years prior to the filing of this complaint and until the effects of the anticompetitive conduct described herein end.

30. DirectTV has sold its Sunday Ticket service to Class members across the nation during the relevant period. Defendants have charged supracompetitive prices for that service.

31. Due to the nature of the trade and commerce involved, the Class consists of many thousands of members. The exact number and their identities are known to DirecTV.

32. The Class is so numerous that joinder of all members is impracticable.

33. There are questions of law and fact common to the Class, including:

a. Whether Defendants have engaged in and are continuing to engage in a contract, combination, or conspiracy among themselves to fix, raise, maintain or stabilize prices of video presentations of live Sunday NFL games by eliminating competition among presenters of out-of-market NFL games;

1 b. Whether Defendants have engaged in and are continuing to engage
2 in a contract, combination, or conspiracy among themselves to fix, raise,
3 maintain or stabilize prices of the Sunday Ticket by preventing any competitor
4 from offering competing products;

5
6 c. The identities of the participants in the conspiracy;

7
8 d. The duration of the conspiracy and the acts performed by
9 Defendants in furtherance of it;

10 e. Whether the alleged conspiracy violated Section 1 of the Sherman
11 Act, 15 U.S.C. § 1;

12
13 f. Whether the alleged conspiracy violated Section 2 of the Sherman
14 Act, 15 U.S.C. § 2;

15
16 g. Whether the conduct of Defendants caused injury to the Plaintiff
17 and the other members of the Class; and

18 h. The appropriate Class-wide measure of damages.

19
20 34. Plaintiff and the Class were, during the Class period, commercial
21 subscribers to DirecTV who also purchased the Sunday Ticket package. Their claims
22 are typical of the claims of the Class, and the named Plaintiff will fairly and adequately
23 protect the interests of that Class.

24
25 35. Plaintiff is represented by counsel who are competent and experienced in
26 the prosecution of antitrust and class action litigation.
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1 36. Given the high cost of establishing that Defendants' agreements violated
2 the antitrust laws (including, but not limited to, substantial expert witness costs and
3 attorneys' fees), a class action is the only economically feasible means for any Plaintiff
4 to enforce their statutory rights.
5

6 37. The prosecution of separate actions by individual members of the Class
7 would also create a risk of inconsistent or varying adjudications, establishing
8 incompatible standards of conduct for Defendants.
9

10 38. The questions of law and fact common to the members of the Class
11 predominate over any questions affecting only individual members, including legal and
12 factual issues relating to liability and damages.
13

14 39. A class action is superior to other available methods for the fair and
15 efficient adjudication of this controversy. The Class is readily ascertainable and is one
16 for which records exist. Prosecution as a class action will eliminate the possibility of
17 repetitious litigation. Treatment as a class action will permit a large number of
18 similarly situated persons to adjudicate their common claims in a single forum
19 simultaneously, efficiently, and without the duplication of effort and expense that
20 numerous individual actions would engender. This class action presents no difficulties
21 in management that would preclude maintenance as a class action.
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25 **FACTUAL ALLEGATIONS**

26 **A. Relevant Market**

27 40. The relevant geographic market is the United States. The relevant product
28

1 market is NFL Sunday afternoon out-of-market games. As described above, the
2 national broadcast rights to select packages of games are negotiated by the NFL with
3 networks CBS, NBC, ESPN and Fox Broadcasting. In addition to broadcasts of these
4 games, the market includes broadcast rights for out-of-market games, such as those
5 carried in the NFL Sunday Ticket package. Broadcasts of other sports or other content
6 do not compete with broadcasts of NFL games. Moreover, NFL games broadcast
7 locally on CBS and Fox Broadcasting on Sunday afternoons are not interchangeable
8 with the multi-game offering provided by Sunday Ticket specifically because the local
9 games are different from the multi-game offering provided by Sunday Ticket, which
10 caters to fans that are not located within the geographical confines of their favorite
11 teams' home territories.
12

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15 41. DirecTV distinguishes between residential and commercial subscribers. A
16 portion of its website is labeled "DirecTV For Business" and a further separate and
17 distinct tab for restaurants and bars is located on DirecTV's website, and thus it treats
18 these commercial subscribers as a distinct market.
19
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21 42. Although there is undoubtedly some substitution that might occur between
22 in-market broadcasts (broadcasts of games that include the local NFL team) and out-
23 of-market broadcasts, the availability of the in-market games does not compete away a
24 monopolist's ability to raise the price of out-of-market games above competitive
25 levels. This is particularly true in the case of commercial subscribers, where Plaintiff
26 and the Class need to attract customers with loyalty to a diverse range of NFL teams.
27
28

1 43. New entries that would dilute the market power over NFL video
2 broadcasts created by the collusive agreements at issue here are extremely unlikely.

3 44. New entries would require the creation of a new professional league
4 playing American football. Such an undertaking would be enormously expensive,
5 and—based on history—very unlikely to succeed. Even if a new entrant did appear,
6 and even if it were sufficiently successful to sustain itself, it is unlikely that the
7 resulting video product would compete sufficiently with the NFL’s broadcasts to
8 dissipate the NFL’s monopoly power.

9 45. In the 95 years since the NFL’s formation in 1920, there have only been a
10 few noteworthy attempts at entry into the market for American football games. Three
11 times, once each in the decades of the 1920s, 1930s, and 1940s, an entity calling itself
12 the American Football League (AFL) was formed, briefly operated and then failed. In
13 1960 another entry attempt, also under the name AFL, operated independently for nine
14 years before merging with the NFL in 1970.

15 46. The United States Football League (“USFL”) was founded in 1982 and
16 was disbanded in 1986. It sued the NFL for monopolization and won a jury verdict.
17 *USFL v. NFL*, 842 F.2d 1335 (2d Cir. 1988). There have also been failed attempts to
18 start and sustain a women’s football league and various minor leagues or talent
19 development leagues. The closest thing to a successful entry is the Arena Football
20 League, which plays a substantially different type of football—indoor football. The
21 Arena Football League (“AFL”) began play in 1987 and continued through the 2008

1 season. The league was reorganized in 2010 and continues today. However, the games
2 of the AFL are played in spring and summer to avoid competition with NFL football
3 broadcasts. In addition, AFL produces an altogether different sport that does not
4 compete substantially with the NFL for broadcast audience.
5

6 47. NFL teams are well established and popular, with 32 regionally diverse
7 teams in or near almost every major population center in the United States. There are
8 NFL teams within 18 of the 25 most populous metropolitan areas, dramatically limiting
9 the locations and audiences available to new teams or leagues. During the NFL's long
10 history not one of the few sporadic attempted entries has been successful at competing
11 for NFL football broadcast audiences. It is virtually impossible that a new league will
12 form to compete away the NFL's monopoly power.
13
14

15 48. That monopoly power will only be tempered if the underlying collusive
16 agreement that created the monopoly power is broken up through antitrust authority, or
17 if the exclusive deal that propagates that monopoly power is replaced by non-exclusive
18 licenses.
19
20

21 49. The value of the monopoly power that DirecTV exercises as a result of its
22 exclusive deal with the NFL is once again illustrated by the recent acquisition offer for
23 DirecTV from AT&T. As *Forbes* noted in an October 1, 2014 article:
24

25 DirecTV has renewed its agreement with the National Football League for
26 another 8 years. However, this time around, the price is increased by 50%
27 to around \$1.5 billion a year. This is very expensive and far more than \$1
28 billion that CBS, NBC and Fox pay for their respective NFL coverage.
The satellite company offers to its subscribers the popular *NFL Sunday*

1 *Ticket*, a sports package that broadcasts NFL regular season games that
2 are not available on local affiliates. Aided by the NFL, DirecTV has
3 managed to attract customers even at times when other pay-TV operators
4 were losing subscribers. The extended deal with the NFL will aid to the
5 overall subscriber growth for the company. Moreover, the agreement was
6 of key importance for DirecTV, as its proposed merger with AT&T to
7 some extent was dependent on this deal.

8 50. Indeed, AT&T's \$48.5 billion offer to purchase DirecTV contains a clause
9 allowing AT&T to cancel the deal if DirecTV loses its exclusive, collusive contract for
10 Sunday Ticket. That clause provides: "[t]he parties also have agreed that in the event
11 that DirecTV's agreement for the 'NFL Sunday Ticket' service is not renewed
12 substantially on the terms discussed between the parties, the Company [AT&T] may
13 elect not to consummate the Merger."

14 **B. The NFL and the Broadcast Rights Agreements**

15 51. As noted above, the NFL's 32 member teams have given the league
16 authority to negotiate pooled rights television deals on their behalf, in exchange for an
17 equal share of the resulting revenues. The broadcast agreements with ESPN, Fox
18 Broadcasting, CBS and NBC were the result. NBC has the right to nationally broadcast
19 prime-time Sunday night games (NBC Sunday Night Football). ESPN has the right to
20 nationally broadcast prime-time Monday night games (Monday Night Football). In
21 addition, the NFL Network—a cable and satellite network owned by the NFL—
22 nationally broadcasts approximately eight regular season games, in partnership with
23 CBS. (These games are usually broadcast during prime-time on Thursday nights.)

24 52. Pursuant to their respective agreements with the NFL, CBS and Fox
25 26 27 28

1 Broadcasting, these entities televise between ten and fifteen weekly Sunday afternoon
2 games, which commence at either 1 p.m. or 4 p.m. Eastern time. For the first sixteen
3 weeks of the 17-week NFL season, on an alternating basis, one network is designated
4 to broadcast “doubleheader” games in both time slots and the other is designated to air
5 a single game in one of the slots. Both networks are permitted to show doubleheaders
6 the last week of the season. Subject to certain restrictions for games that do not sell
7 out, CBS’s or Fox’s local affiliate (as the case may be) generally must broadcast any
8 Sunday afternoon game being played by a team whose territory falls within the local
9 affiliate’s coverage area (*i.e.*, an “in market game”).
10
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13 53. As a result of this arrangement, during most weeks of the season, only
14 three of the Sunday afternoon games are broadcast by CBS or Fox, and the specific
15 games available to any given viewer depend on whether the viewer is located within a
16 team’s home territory and whether that team is playing on Sunday afternoon.
17

18 **C. DirecTV and NFL Sunday Ticket**

19
20 54. Beginning in 1994, pursuant to an exclusive agreement with the NFL,
21 DirecTV began to offer its subscribers access to the Sunday afternoon games that are
22 not otherwise available in their market via national broadcasts. These subscribers could
23 purchase NFL Sunday Ticket, a premium subscription-based package that provides
24 access to all Sunday afternoon games broadcast on Fox and CBS, or their predecessors.
25
26

27 55. Through its exclusive agreement with the NFL, DirecTV today takes the
28 live game telecast feeds produced by CBS and Fox and redistributes them without

1 alteration to NFL Sunday Ticket subscribers via DirecTV channels. NFL Sunday
2 Ticket subscribers can thus access all Fox or CBS games, except for the “in market”
3 games broadcast by the local Fox or CBS affiliate, which are available on the Fox or
4 CBS DirecTV channel.
5

6 56. Defendants have colluded to sell the out-of-market NFL Sunday afternoon
7 games *only* through DirecTV. Such an arrangement eliminates competition in the
8 distribution of out-of-market Sunday afternoon games and requires anyone wishing to
9 view these games to subscribe to DirecTV and purchase NFL Sunday Ticket at the
10 supracompetitive price dictated by DirecTV.
11
12

13 57. DirecTV’s exclusive arrangement with the NFL results in NFL Sunday
14 Ticket subscribers, including the commercial subscriber Plaintiff, paying a higher price
15 for NFL Sunday Ticket (and other access charges) than they otherwise would pay if the
16 agreements were negotiated competitively.
17

18 58. For example, in 2002, when the NFL's first contract with DirecTV for
19 NFL Sunday Ticket expired, several cable companies acting as a consortium offered
20 \$400 million to \$500 million annually for the nonexclusive rights to carry Sunday
21 Ticket. The NFL rejected their bid and instead chose to renew with DirecTV, giving it
22 a five-year exclusive rights deal to Sunday Ticket for about \$400 million per year.
23
24

25 59. As noted above, in October of 2014, DirecTV renewed its exclusive
26 agreement with the NFL. On information and belief, the renewal requires DirecTV to
27 pay the NFL an average of \$1,500,000,000 (\$1.5 billion) per year for eight years in
28

1 return for the exclusive right to rebroadcast NFL Sunday afternoon games on
2 Defendants' NFL Sunday Ticket service.

3
4 **D. Commercial Subscriptions to NFL Sunday Ticket**

5 60. DirecTV offers restaurants and bars "amazing exclusive sports content
6 like NFL SUNDAY TICKET."

7
8 61. The National Restaurant Association reports that NFL fans stay longer,
9 often 4 hours, and order 3 or more drinks.

10 62. Although residential DirecTV subscribers pay a fixed charge for DirecTV
11 service and NFL Sunday Ticket, DirecTV charges commercial subscribers fees based
12 on the maximum occupancy permitted by the local fire code.

13
14 63. In recent years, the price DirecTV charges to commercial subscribers,
15 such as Plaintiff, for Sunday Ticket has increased substantially.

16
17 64. DirecTV charges thousands of dollars to bars and restaurants each season
18 for the Sunday Ticket package. Its fees are based on fire code occupancy — not on
19 actual viewership — so bar and restaurant owners are paying for seats that often go
20 unfilled on a Sunday afternoon.

21
22 65. The least expensive package is \$1,458 per season, and the most expensive
23 runs in excess of \$120,000. The least expensive Sunday Ticket package price
24 increased roughly 11.5% this year and prices have increased substantially during the
25 Class period.
26
27
28

1 66. The agreement between the NFL and DirecTV granting DirecTV the
 2 exclusive right to distribute the Sunday afternoon out-of-market games is not necessary
 3 to ensure telecast of such NFL football games. In fact, CBS and Fox are contractually
 4 obligated to produce these games and provide over-the-air broadcast of them in local
 5 and/or regional markets.
 6

7
 8 67. As recently as 2014, representatives of DirecTV and the NFL met in
 9 person and discussed the fact that commercial users like Plaintiff should be targeted for
 10 double-digit price increases because Plaintiff and the Class would have little choice but
 11 to pay higher prices due to their need to attract customers.
 12

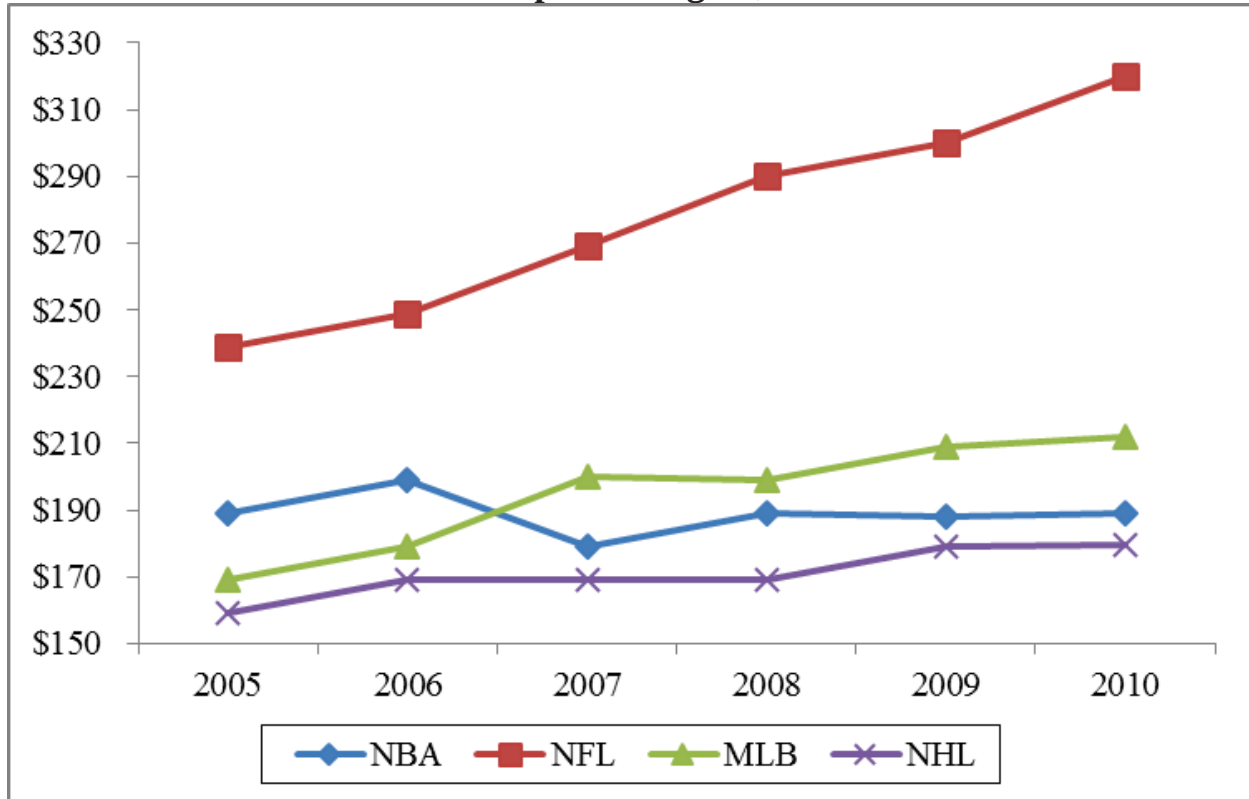
13 68. Sunday Ticket prices for the largest members of the Class have also
 14 increased substantially since 2011. For example, prices for certain large commercial
 15 subscribers increased in the following amounts:
 16

17	2010	\$41,895
18	2011	\$43,990
19	2012	\$43,990
20	2013	\$61,680
21	2014	\$86,446

22
 23
 24 69. Professor Roger Noll charted the price increase for the NFL Sunday
 25 Ticket for residential consumers relative to price changes in the out-of-market
 26 broadcast packages offered by MLB, the NBA, and NHL. While residential customers
 27 pay a fee for the Sunday Ticket service that is lower than commercial subscribers pay,
 28

the chart is nonetheless illustrative of the pricing differential that exists between Sunday Ticket (which is distributed exclusively through DirecTV) and Extra Innings, League Pass, and Center Ice, which are distributed through competing MVPDs.

Pricing for Regular Season Out-of-Market Television Bundle for Major Professional Sports Leagues, 2005-2010



Source: DTV-SP0046512.

E. DirecTV's Wide-Ranging Role in the NFL's Scheme

70. DirecTV has done the league important and valuable favors to maintain the NFL's horizontal agreement, and DirecTV's exclusivity. As the 2011 NFL season approached, with the NFL's labor deal with the players' union expiring and a possible lockout looming, DirecTV agreed to pay the NFL \$1 billion *even if no games were*

1 *played* that season. No other outlet made such an offer; CBS, ESPN, Fox
2 Broadcasting, and NBC would have paid nothing if no games were played. DirecTV's
3 promise ensured that owners and league executives would make \$1 billion even if the
4 entire season were cancelled.

6 71. As NFL Commissioner Roger Goodell said in announcing the deal, "[w]e
7 are pleased to continue our partnership with DirecTV....DirecTV and Sunday Ticket
8 have served our fans well for 20 years and continue to complement our broadcast
9 television packages." DirecTV Chairman, President and CEO Mike White stated that
10 "[t]his new agreement is a testament to the terrific long-term relationship we have with
11 the NFL....NFL Sunday Ticket has always been the centerpiece of DirecTV's sports
12 leadership and we're please to continue our relationship with the NFL and be a part of
13 the league's future growth and success."

17 72. As noted above, DirecTV recently agreed to sell itself to AT&T in a
18 nearly \$50 billion transaction that has attracted federal antitrust scrutiny. As a
19 condition of the deal, AT&T insisted that DirecTV renew its exclusive deal with the
20 NFL, which DirecTV did in October 2014. If the AT&T-DirecTV deal closes, AT&T
21 will acquire something that CBS, Comcast, ESPN, Fox, NBC, and Verizon do not
22 have—the sole means to distribute out of market Sunday afternoon NFL games.

25 **F. Exclusivity Is Not Warranted**

26 73. The exclusive deal between DirecTV and the NFL for the broadcast rights
27 of NFL Sunday Ticket is necessary to preserve the exercise of market power created by
28

1 the teams' anticompetitive agreement to monopolize the sales of broadcast rights.
2 Without the exclusive deal, some of the monopoly power created by the collusion
3 among NFL teams would be dissipated by price competition between DirecTV and one
4 or more distributors of broadcasts to customers.
5

6 74. There is no evidence to show that agreement was created to assure a
7 quality broadcast of the games offered on Sunday Ticket or to allow the NFL sufficient
8 oversight of games offered on Sunday Ticket or any other reasonable objective.
9 Instead, it seems as if the agreement was created to artificially raise the price of
10 Sunday Ticket.
11
12

13 75. Indeed, the exclusive content enjoyed by DirecTV is rare. Rob Stecklow,
14 general manager of sports products and marketing for DirecTV, admitted as much:
15 "[i]n this time and era where there's less and less content that's exclusive, the NFL still
16 reigns as some of the best content out there." The only way Plaintiff and other Class
17 members can view Sunday afternoon out-of-market NFL football games is by
18 purchasing NFL Sunday Ticket from DirecTV.
19
20

21 76. A case study involving Major League Baseball's ("MLB") negotiation
22 with DirecTV for an exclusive contract to carry baseball's Extra Innings package from
23 2007 to 2013 can be used to estimate the price premium that DirecTV pays for NFL
24 Sunday Ticket exclusivity, over the price of the right to carry Sunday Ticket that would
25 prevail under non-exclusive terms. Under the proposed exclusive baseball contract,
26 DirecTV agreed to pay MLB \$700 million over seven years (2007–13) for exclusive
27
28

1 rights to carry the Extra Innings package. At that time, a provider called InDemand
2 had made a \$70 million per year (\$490 million over seven years) bid for non-exclusive
3 rights to carry Extra Innings, but this offer was declined by MLB. While MLB and
4 DirecTV were finalizing their exclusive contract, public outcry and Congressional
5 pressure forced cancellation of the deal before the season began. With the prospect of
6 exclusivity eliminated, Extra Innings was carried by both DirecTV and InDemand,
7 thereby offering greater consumer choice in broadcasting than would have been
8 possible under an exclusive contract. In the MLB case study, DirecTV's \$700 million
9 offer can be interpreted as the price of an exclusive Extra Innings contract, and
10 InDemand's \$490 million as the price of Extra Innings under a non-exclusive contract.
11 Therefore, the estimated overcharge arising from an exclusive contract with DirecTV
12 rather than the non-exclusive, multi-carrier contract proposed by InDemand is 43%.

13
14 77. Subscribers to DirecTV have been concerned about the market leverage it
15 has been able to obtain as a result of its deal with the NFL for Sunday Ticket. The
16 following interchange between a subscriber and business columnist Steven Pearlstein
17 was reported in a *Washington Post* article:

18
19 What do you make of the current exclusivity arrangement the NFL has
20 with DirecTV to broadcast games? I find that DirecTV will not sell its
21 'Sunday Ticket' package unless one also purchases a base programming
22 package. I don't feel receiving NFL games on cable is a God-given right,
23 but do feel the NFL is employing monopolistic practices by not opening
24 up the Sunday Ticket to other cable/satellite carriers. When might that
25 arrangement end? Thanks.
26
27
28

1 **Steven Pearlstein:** Right now they are using DirecTV as the instrument
2 for extending their football monopoly to the distribution of games on
3 video. They have made it clear, however, that they want to own the
4 distribution channel themselves and now share their monopoly profits
5 with DirecTV. That is their ultimate game plan, which by the way won't
6 include a free, over-the-air broadcast of local team games on local
7 television, unless they are forced to do so.

8 78. Another columnist made a similar point in a May 2014 article on the
9 website of the *Atlantic Monthly*:

10 AT&T's bid to acquire DirecTV includes acquisition of the Sunday Ticket
11 exclusive. The *Los Angeles Times* reports that snapping up Sunday Ticket
12 is a key goal of AT&T's. Professional football is among the most valuable
13 brands on the entertainment landscape. What communications corporation
14 wouldn't want a monopoly over a major NFL product?

15 But the Sunday Ticket cartel arrangement assures that only a small share
16 of the American population can enjoy viewer choice on Sunday
17 afternoons. The same voters who are taxed to subsidize the NFL, to the
18 tune around \$1 billion annually, are denied a choice about what games to
19 watch.

20 Adding insult to injury, anyone in Canada and Mexico can sign up for
21 NFL Sunday Ticket, without cable-carrier restrictions. In those nations,
22 telecommunication law forbids sole-carrier contracts. Inside the United
23 States, the NFL's antitrust waiver allows it to screw consumers with
24 impunity. And screwing consumers with impunity is a prerogative AT&T
25 wants too!

26 When the NFL made its first deal with DirecTV, satellite-relayed signals
27 were exotic and broadband cable did not exist: Initially, Sunday Ticket
28 was seen as a niche product for technophiles. A ratings calculation was at
work as well. Sunday Ticket is an annualized pay-per-view, and pay-
channel viewership does not count in Nielsen ratings. If large numbers of
viewers switched from NFL games aired on local affiliates to football
shown on Sunday Ticket, the NFL's Nielsen numbers would decline, even
if actual viewership was rising.

1 But as football has surged in popularity in the last two decades and
2 broadband has become available to nearly all the country, observers have
3 repeatedly expected that Sunday Ticket would become available to
4 everyone. After all, no one now could think the NFL is losing popularity,
5 while Nielsen's scoring of new-viewership habits such as next-day DVR
6 of drama and comedy shows is taken into account in their advertising
7 rates. Today the NBA and MLB both market their extra-price watch-any-
8 game services via cable.

9 But DirecTV has repeatedly offered the NFL a king's ransom to renew its
10 monopoly. For the 2014 season, DirecTV will pay the league \$1 billion
11 for about two million Sunday Ticket subscribers: more than to be paid by
12 NBC, whose NFL games average 10 times as many viewers. DirecTV
13 offers the king's ransom because Sunday Ticket is the loss leader that put
14 the company on the map. And the NFL loves a customer that pays too
15 much!

16 DirecTV has done the league important favors to sustain its sweetheart
17 relationship. As the 2011 season approached, with the NFL's labor deal
18 expiring and a lockout possible, DirecTV agreed to pay \$1 billion even if
19 no games were played that season. CBS, ESPN, Fox, and NBC would
20 have owed nothing for no games. The \$1 billion promise from DirecTV
21 afforded the NFL a plush strike fund, ensuring owners and league
22 executives could live in luxury that year even if the season were
23 cancelled.

24 AT&T badly wants the same sweetheart relationship with the NFL, and
25 has insisted DirecTV renew its monopoly deal before the takeover closes.
26 If so AT&T will acquire something CBS, Comcast, ESPN, Fox, NBC, and
27 Verizon don't have—the sole means to watch the NFL game of your
28 choice.

29 The Justice Department should insist, as part of any approval it may offer
30 for the AT&T merger bid, that DirecTV divest itself of the Sunday Ticket
31 exclusive. Such a requirement may cause AT&T to back out of the deal,
32 or demand that DirecTV accept a lower price: but that's why there is
33 antitrust law, to provide a cross-check against behavior that harms
34 consumers. The NFL's viewer-choice service should be offered by all
35 cable carriers, as nearly all other entertainment products are available
36 across the cable universe.

1 Not only is it absurd that Americans subsidize a sports league so Canadian
2 and Mexican viewers can have more choice than Americans do. If Sunday
3 Ticket were available on all cable carriers, more buyers would allow for a
4 lower price, as happened with cell phones. Rather than a tiny number who
5 have good luck with geography paying \$200 a year to pick their own NFL
6 game, many millions could pay, say, \$50 a year for the same freedom.

7 Allowing AT&T to acquire DirecTV's Sunday Ticket monopoly would be
8 strongly anti-consumer. Using this moment to divest the monopoly and
9 bring Sunday Ticket to all telecommunications platforms would be
10 strongly pro-consumer. Please don't tell us the Justice Department and the
11 White House will mess this opportunity up.

12 79. For years DirecTV has hypocritically fought with its cable industry
13 competitors to ensure that vital access to sports programming on so-called
14 "regional sports networks" or "RSNs" is available to it on a non-exclusive basis.
15 For example, on August 31, 2012, DirecTV wrote to the Federal
16 Communications Commission in support of a proposed rule extending a ban on
17 vertically integrated cable companies from withholding access to RSNs from
18 other MVPDs, including DirecTV:

19 Six years ago, the Commission used a regression analysis to evaluate and
20 quantify the potential harm to competition that results when a cable-
21 affiliated programmer withholds content from rival MVPDs. Among other
22 things, the Commission found that, as a result of the decision by the Cox-
23 affiliated regional sports network ("RSN") in San Diego to deny its
24 programming (including games of the San Diego Padres) to MVPD rivals,
25 DBS penetration in the San Diego market was 40.5% lower than it would
26 have been if that programming had not been withheld. The attached
27 economic analysis of San Diego subscribership is qualitatively consistent
28 with the Commission's finding about the damage done when cable-affiliated
29 programmers withhold content from competitors.

30 This updated analysis takes advantage of the fact that the Cox RSN recently
31 lost the rights to telecast Padres games. This season, those games are
32 available to all MVPDs through Fox Sports San Diego ("FSSD").
33 DIRECTV carries FSSD, as does Cox. These recent developments in San

1 Diego offer a natural experiment through which to evaluate the effects of
2 gaining access to valuable content. Accordingly, DIRECTV asked
3 Professor Kevin Murphy to augment his prior economic analysis in this
4 proceeding with an analysis of subscribership in San Diego in light of this
5 new RSN arrangement.

6 As more fully detailed in Professor Murphy's attached report, the data from
7 2012 are consistent with the Commission's finding in 2006. In order to
8 evaluate the effect on DIRECTV's subscribership from gaining access to
9 Padres games, Professor Murphy first calculated the difference in the
10 growth rate in the number of DIRECTV subscribers in San Diego before
11 and after these RSN changes. He then calculated this difference for a set of
12 control markets, and compared the before-and-after difference in
13 DIRECTV's growth rates in San Diego to the before-and-after difference in
14 DIRECTV's growth rates in the control markets. The results of this analysis
15 indicate that DIRECTV has gained substantially more subscribers in San
16 Diego since it gained access to Padres games through FSSD than would
17 have been expected based on its subscribership trends in comparable
18 markets. These gains were achieved in only the first five months of
19 DIRECTV's FSSD carriage; the long run effects likely will be larger, as
20 additional San Diego households revisit their MVPD choice. These
21 conclusions are further supported by customer surveys, which evidence an
22 increase in the number of new subscribers citing "access to sports channels"
23 as the reason for subscribing to DIRECTV since it began carriage of FSSD.

24 80. Thus, as DirecTV's own data demonstrates, consumers benefit from
25 the non-exclusive distribution of live sports content by way of enhanced
26 competition amongst MVPDs.

27 **G. DirecTV's Most Recent Agreement with NFL for the 2014 Regular Season**

28 81. Prior to October of 2014, representatives of DirecTV were making public
statements that it would only pay so much for that exclusivity.

82. DirecTV CFO Pat Doyle ("Doyle") said at a 2013 investors conference
that, if the price goes up too high when the current NFL Sunday Ticket deal expires

1 after the 2014 season, DirecTV would consider “striking a non-exclusive deal with the
2 NFL or possibly even dropping the popular package,” according to the *Hollywood*
3 *Reporter*.
4

5 83. In 2014, Doyle reiterated that he would rather share Sunday Ticket with
6 cable or even drop it all together to prevent paying double the asking price.
7

8 84. These statements were efforts at misdirection. As noted above, in October
9 of 2014, DirecTV renewed the deal on terms even more lucrative for the NFL and its
10 member teams.
11

12 85. The out-of-market Sunday afternoon NFL games constitute a distinct
13 product market and are not interchangeable with the over-the-air telecasts of local NFL
14 games. This is particularly true for commercial subscribers. As a result, commercial
15 subscribers to Sunday Ticket are willing to pay a substantial amount to offer their
16 customers the opportunity to view multiple NFL out-of-market games.
17

18 86. In contrast to the NFL’s exclusive deal with DirecTV, the NBA, the NHL,
19 and MLB offer their live out-of-market game packages through both DirecTV *and*
20 cable sports networks, including, for example, various sports networks owned by
21 Comcast. In the “but for” world, these other providers would compete for viewers of
22 Sunday afternoon out-of-market NFL football games, which would result in lower
23 prices, as teams and providers competed for viewership.
24

25 87. Defendants could achieve any legitimate, pro-competitive goals without
26 an exclusive arrangement. As noted in the *Atlantic Monthly* article cited above,
27
28

1 Sunday Ticket is offered in Canada on a non-exclusive basis through more than a
2 dozen satellite and cable providers. And in the United States, other pro football
3 products such as the NFL's "Red Zone" package (which offers views of selected in-
4 game highlights) are offered on a non-exclusive basis as well.

5
6 88. Defendants and their co-conspirators' exclusive agreement has a clear
7 negative impact on competition, and serves no pro-competitive purpose. There is no
8 evidence that this agreement was created to assure the quality of Sunday Ticket or to
9 allow the NFL sufficient oversight, or any other permissible objective. Instead,
10 DirecTV and the NFL entered into the agreement with the intent of maintaining a
11 monopoly price for Sunday Ticket. And, because all the NFL teams have colluded to
12 offer the package, they have also prevented individual competition by teams selling
13 their own games to broadcasters.
14
15
16

17 89. There are several less restrictive alternatives which would achieve any
18 legitimate, procompetitive goals. Those include letting teams contract individually with
19 DirecTV and allowing other distributors to purchase and exhibit the Sunday Ticket
20 package.
21

22 90. Plaintiff seek to restore competition by ending the collusive agreement by
23 Defendants that eliminate competition in the distribution of the live out-of-market NFL
24 games over television, while monopolizing or attempting to monopolize the broadcast
25 market for out of market Sunday afternoon NFL games.
26
27
28

H. Plaintiff And The Class Have Suffered Antitrust Injury

91. Plaintiff and the Class were, and continue to be, harmed by Defendants' anti-competitive agreement with NFL. Plaintiff and the Class are direct purchasers of NFL Sunday Ticket and the territorial restrictions enforced by the exclusive arrangement between DirecTV and the NFL causes Plaintiff and the Class to pay a higher, supracompetitive price for the package of out-of-market NFL games than they otherwise would have paid if the agreement were negotiated competitively.

92. The agreements described above have restrained horizontal competition between and among the distributors of NFL games, including competition in the commercial exploitation of televised presentations of live games. In particular, without the exclusive licenses and other competitive restraints, DirecTV, the television networks, and other MVPDs would compete with each other in the distribution of NFL games to a much greater extent than the limited opportunities now available.

93. The agreements described above have adversely affected and substantially lessened competition in the relevant markets. As a result, prices are higher than they would be in the absence of the agreements to restrict competition.

94. The agreements described above do not concern matters of NFL structure and do not concern any unique characteristic or need of football exhibitions. These anticompetitive restraints are not necessary to the exhibition of football and are not integral to the sport itself.

1 95. There are no legitimate, pro-competitive justifications for these exclusive
2 license agreements and other competitive restraints, which would justify the anti-
3 competitive harms they create.
4

5 96. A similar issue was dealt with in the case of *Laumann v. National Hockey*
6 *League*, Nos. 12-cv-1817 (SAS), 12-cv-3704 (SAS), 2014 WL 3900566 (S.D.N.Y.
7 Aug. 8, 2014). There Judge Shira Schiendlin was dealing with agreements by MLB
8 and the NHL with DirecTV that involved the telecasting of games outside of a member
9 team's home territory. Judge Schiendlin denied summary judgment, finding triable
10 issues as to antitrust injury:
11
12

13 Plaintiff have carried their initial burden of showing an actual impact on
14 competition. The clubs in each League have entered an express agreement
15 to limit competition between the clubs—and their broadcaster affiliates—
16 based on geographic territories. There is also evidence of a negative
17 impact on the output, price, and perhaps even quality of sports
18 programming. Plaintiff expert, Dr. Roger G. Noll ["Noll"], attests that
19 consumers pay higher prices for live game telecasts, and have less choice
20 among the telecasts available to them, than they would in the absence of
the territorial restrictions. Similarly, Dr. Noll estimates that the price of
OOM [out-of-market] packages would decrease by about fifty percent in a
world without the restrictions.

21 *Id.* at *8. She went on to rule that there were jury issues as to whether telecasters like
22 DirecTV were participants in the conspiracy between MLB, the NHL and their
23 member clubs. *Id.* at *12-13.
24

25 97. The expert evidence by Noll provided in that case and cited by Judge
26 Schiendlin was as follows:
27
28

1 The ability to extract more revenues from an exclusive contract arises
2 because out-of market telecasts are a subscription driver for MVPDs
3 [multichannel video programming distributors like DirecTV]. The benefits
4 of exclusivity to the licensee then can be captured by MLB through higher
5 rights fees by auctioning the exclusive rights to the highest bidder. If live
6 telecasts of other sports, or other types of programming, were close
7 competitive substitutes for MLB Extra Innings, DirecTV would not be
8 able to obtain greater revenue from subscribers by obtaining exclusive
9 rights, and so MLB would not be able to extract additional revenue by
10 selling Extra Innings on an exclusive basis.

11 “Declaration of Roger G. Noll,” p. 89 (Feb. 14, 2014), filed in *Laumann v. National*
12 *Hockey League*, Nos. 12–cv–1817 (SAS), 12–cv–3704 (SAS) (S.D.N.Y.). During the
13 course of this analysis, Noll presented a chart showing the drastic price increases in
14 NFL Sunday Ticket regular season packages, which climbed by 34% from 2005 to
15 2010. *Id.*, Exh. 4.

16 98. Noll made a similar point in testimony before the United States Senate
17 Judiciary Committee at a November 14, 2006 hearing on “Competition In Sports
18 Programming And Distribution: Are Consumers Winning?”:

19 The relevant benchmark for whether an action is pro- or anti-competitive
20 is the circumstance that would prevail in a competitive world. The
21 argument that NFL Sunday Ticket increased output is correct, but it
22 increased output in a monopolized market. The issue is what is the
23 alternative in the absence of monopolization, and in the absence of
24 monopolization, the market for televised NFL games would be like other
25 pro sports were or like college sports are today. For example, if all
26 broadcasting of college football games were put together into a single
27 package priced at \$150 a month and shown exclusively through DirecTV,
28 the effort would be a profit-enhancing reduction in output. From my
perspective, if one adopts the right counterfactual, the right but-for world
in the competitive environment, it is obvious that NFL Sunday Ticket is a
palliative compared to the output and prices that would exist in a
competitive environment.”

I. The Sports Broadcasting Act Does Not Shield Defendants' Anticompetitive Acts

99. Congress enacted the Sports Broadcasting Act of 1961 ("SBA") to facilitate the sale of packaged broadcast rights for pro sports leagues. It states:

The antitrust laws, as defined in section I of the Act of October 15, 1914 [Section One of the Sherman Act] ... 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 participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.

15 U.S.C. §1291.

100. In essence, the SBA granted all the major sports leagues an exemption from antitrust liability when entering into pooled-rights contracts.

101. The SBA is expressly limited to "sponsored telecasting," which courts have construed to mean that the SBA only applies to broadcast television and not to cable or satellite. In fact, when the SBA was being passed through Congress, former NFL Commissioner Pete Rozelle ("Rozelle") was asked by the House of Representatives, "[y]ou understand . . . that this Bill covers only the free telecasting of professional sports contests, and does not cover pay T.V.?" to which Rozelle responded under oath, "[a]bsolutely." Another former NFL commissioner, Paul Tagliabue, has conceded before a Senate Committee that the term "sponsored

1 telecasts” does not include “pay and cable This is clear from the legislative history
2 and from the committee reports.”

3
4 102. Thus, the SBA offers Defendants and their co-conspirators no protection
5 for their anti-competitive acts.

6 103. In *Shaw v. Dallas Cowboys Football Club, Ltd.*, No. Civ. A. 97-5184,
7 1998 WL 419765 (E.D. Pa. June 23, 1998), *aff’d*, 172 F.3d 299 (3d Cir. 1999), plaintiff
8 Charles Shaw brought a consumer Class action suit against several NFL teams and the
9 NFL itself, alleging that the NFL’s agreement for Sunday Ticket with DirecTV
10 violated the Sherman Act.
11
12

13 104. The NFL argued, in moving to dismiss, that Sunday Ticket was exempt
14 from antitrust scrutiny under the SBA because Sunday Ticket “is simply a sale of the
15 [teams’] residual rights in the games which were broadcast on ‘sponsored telecasts,’
16 and, so, the package is a sale of ‘part of the rights’ to the ‘sponsored telecasts.’” 1998
17 WL 419765, at *2.
18

19 105. The court in *Shaw* rejected the NFL’s argument, finding that the NFL’s
20 sale of Sunday Ticket fell outside the SBA’s protections, and holding instead that
21 “sponsored telecasts” refers only to the “more traditional corporate-sponsored
22 commercial context, rather than the pre-paid, commercial-free package context.” *Id.* at
23 *3.
24
25

26 106. Likewise, in *Laumann v. NHL*, 907 F.Supp.2d 465 (S.D.N. Y. 2012),
27 Judge Scheindlin also held that the term “[s]ponsored telecasting’ under the SBA
28

1 pertains only to network broadcast television and does not apply to non-exempt
 2 channels of distribution such as cable television, pay-per-view, and satellite television
 3 networks.’ ” *Id.* at 489 n. 141 (quoting *Kingray v. NBA, Inc.*, 188 F.Supp.2d 1177,
 4 1183 (S.D. Cal. 2002)).

6 CLAIMS FOR RELIEF

7 COUNT ONE

8 Violation of Section 1 of the Sherman Act

9 (Per Se Violation)

10 107. Beginning at a time presently unknown to Plaintiff, and continuing
 11 through the present, the exact dates being unknown to Plaintiff, Defendants, including
 12 the 32 teams that comprise the NFL, entered into a continuing agreement, combination
 13 or conspiracy in restraint of trade with the purpose, intent, and effect of restraining
 14 horizontal competition in the live game distribution market with the purpose, intent,
 15 and effect of restraining trade and commerce in the distribution of live NFL games, in
 16 violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
 17

18 108. This contract, combination or conspiracy has resulted in an agreement
 19 understanding, or concerted action between and among the Defendants that the Sunday
 20 Ticket will exclusively be provided by DirecTV. The agreement forbids any other
 21 MVPD from offering the same product.
 22

23 109. The contract, combination or conspiracy alleged above has substantial
 24 horizontal elements, including agreements between the 32 NFL teams, to limit
 25 competition between and among the member teams, who would otherwise be
 26

1 competitors in the live game distribution market, such that application of the per se rule
2 is justified under the facts and circumstances set forth herein.

3
4 110. This contract, combination, or conspiracy has also restrained competition
5 between and among the DirecTV and potential competitors in violation of Section 1 of
6 the Sherman Act. It has led to anticompetitive effects, including increased prices and
7 reduced output, and otherwise caused injury to consumers and competition in those
8 relevant markets and elsewhere.

9
10 111. The Defendants' contract, combination, agreement, understanding or
11 concerted action occurred in or affected interstate commerce. The Defendants'
12 unlawful conduct was through mutual understandings, combinations or agreements by,
13 between and among Defendants.

14
15 112. Defendants' anticompetitive conduct has directly and proximately caused
16 antitrust injury, in the form of higher prices and reduced choice, as set forth
17 above. Plaintiff and other commercial subscribers will continue to suffer antitrust
18 injury and other damage unless Defendants are enjoined from continuing to engage in
19 the foregoing violations of law.

20
21
22 **COUNT TWO**

23 **Violation of Section 1 of the Sherman Act**
24 **(Rule of Reason)**

25 113. Plaintiff, on behalf of itself and the Class, incorporate and re-allege the
26 preceding paragraphs of the complaint.
27

1 114. Beginning at a time presently unknown to Plaintiff, and continuing
2 through the present, the exact dates being unknown to Plaintiff, Defendants entered
3 into a continuing agreement, combination or conspiracy in restraint of trade with the
4 purpose, intent, and effect of restraining horizontal competition in the live game
5 distribution market with the purpose, intent, and effect of restraining trade and
6 commerce in the distribution and broadcasting of live NFL games, in violation of
7 Section 1 of the Sherman Act (15 U.S.C. § 1).
8

9
10 115. This contract, combination or conspiracy has resulted in an agreement
11 understanding, or concerted action between and among the Defendants that the Sunday
12 Ticket will exclusively be provided by DirecTV. The agreement forbids any other
13 competitor from offering the same product.
14

15
16 116. This contract, combination, or conspiracy has also restrained competition
17 between and among the DirecTV and potential competitors in violation of Section 1 of
18 the Sherman Act. It has led to anticompetitive effects in the relevant markets, as
19 alleged herein, and caused injury to consumers and competition in those relevant
20 markets and elsewhere.
21

22 117. The relevant geographic market is the United States. The relevant product
23 market is the market for live distribution of NFL games through the Sunday Ticket
24 service to commercial subscribers. The Defendants explicitly recognize this product
25 market and have, in fact, trademarked the Sunday Ticket name. The Defendants direct
26
27
28

1 advertising and marketing dollars towards this market and to commercial subscribers,
2 specifically.

3
4 118. The NFL, and its 32 teams, have monopoly power with respect to the
5 creation, licensing, and distribution of NFL games. DirecTV has market power in the
6 MVPD market, generally, and specifically in the market for commercial
7 subscribers. DirecTV's exclusive arrangement with the NFL for the distribution of
8 Sunday Ticket enhances DirecTV's market power in the MVPD market, generally, and
9 provides it with a monopoly in the market for the live distribution of NFL games
10 through the Sunday Ticket service.
11
12

13 119. The Defendants' contract, combination, agreement, understanding or
14 concerted action occurred in or affected interstate commerce. The Defendants'
15 unlawful conduct was through mutual understandings, combinations or agreements by,
16 between and among Defendants.
17

18 120. Defendants' anticompetitive conduct has directly and proximately caused
19 antitrust injury, in the form of higher prices and reduced output, as set forth
20 above. Plaintiff and other commercial subscribers will continue to suffer antitrust
21 injury and other damage unless Defendants are enjoined from continuing to engage in
22 the foregoing violations of law.
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COUNT THREE

VIOLATION OF SECTION 2 OF THE SHERMAN ACT

121. Plaintiff, on behalf of itself and the Class, incorporate and re-allege the preceding paragraphs of the complaint.

122. Defendants, by the above-mentioned conduct, possess monopoly power over the creation, licensing, and distribution of live NFL football broadcasts and have used that power for the purposes of unreasonably excluding and/or limiting competition, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2), by limiting the distribution of the Sunday Ticket service to only one MVPD, DirecTV. These activities have gone beyond those which could be considered as “legitimate business activities,” and are an abuse of Defendants’ market position.

123. The relevant geographic market is the United States. The relevant product market is the market for live distribution of NFL games through the Sunday Ticket service to commercial subscribers. The Defendants explicitly recognize this product market and have, in fact, trademarked the Sunday Ticket name. The Defendants direct advertising and marketing dollars towards this market and to commercial subscribers, specifically.

124. Through the anti-competitive conduct described herein, DirecTV has willfully acquired and maintained monopoly power, and unless restrained by the Court, will continue to willfully maintain, that monopoly power in the relevant market by anti-competitive and unreasonably exclusionary conduct. The NFL, by and on behalf

1 of its 32 member teams, have acted with an intent to allow DirecTV to illegally acquire
2 and maintain that monopoly power in the relevant product market, and Defendants'
3 illegal conduct has enabled DirecTV to do so, in violation of Section 2 of the Sherman
4 Act.
5

6 125. Defendants' anticompetitive conduct has directly and proximately caused
7 antitrust injury, as set forth above. Plaintiff and other commercial subscribers will
8 continue to suffer antitrust injury and other damage unless Defendants and their co-
9 conspirators are enjoined from continuing to engage in the foregoing violations of law.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff pray as follows:
13

14 1. That the Court determines that this action may be maintained as a Class
15 action under Fed. R. Civ. P. 23, and that Plaintiff be named representatives of the
16 Class.
17

18 2. That the contract, combination or conspiracy, and the acts done in
19 furtherance thereof by Defendants and their co-conspirators as alleged in this
20 complaint, be adjudged to have been a violation of Section 1 of the Sherman Act.
21

22 3. That Defendants and their co-conspirators' actions to illegally acquire and
23 maintain monopoly power in the relevant product market, be adjudged to have been in
24 violation of Section 2 of the Sherman Act.
25

26 4. That judgment be entered for Plaintiff and members of the Class against
27 Defendants for three times the amount of damages sustained by Plaintiff and the
28

1 members of the Class as allowed by law, together with the costs of this action,
2 including reasonable attorneys' fees, pursuant to Sections 4 and 16 of the Clayton Act
3 (15 U.S.C. §§ 15 and 26).
4

5 5. That Plaintiff and the Class be awarded pre-judgment and post-judgment
6 interest at the highest legal rate from and after the date of service of this Complaint to
7 the extent provided by law;
8

9 6. That Defendants and their co-conspirators be enjoined from further
10 violations of the antitrust laws; and,
11

12 7. That Plaintiff and members of the Class have such other, further or
13 different relief, as the case may require and the Court may deem just and proper under
14 the circumstances.
15

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff requests a jury trial on all matters so triable.

18 Dated: August 21, 2015

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