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Moving Forward: NFL's "Sunday Ticket" Antitrust Litigation Heads to Trial

As the Justice Department continues to widen its antitrust crackdown, significant cases like the ongoing NFL "Sunday Ticket" Antitrust Litigation are reshaping the landscape of the entertainment world.¹ In a class-action lawsuit dating back to December 2015, the plaintiffs representing millions of residential and commercial subscribers to the NFL "Sunday Ticket" package, then available exclusively through DIRECTV, argue the league's 32 teams joined forces to agree to a multibillion-dollar package that eliminated competition and drove up prices for football fans.²

Originally filed in 2015, *In Re: NFL's "Sunday Ticket" Antitrust Litigation* features two certified classes that represent at least 2.4 million residential subscribers who purchased the Sunday Ticket after June 17, 2011, and at least 48,000 commercial establishments that have subscribed during the same period. Projected damages are in the ballpark of \$6.1 billion. In January of this year, U.S. District Judge Philip Gutierrez denied the NFL's motion for summary judgment on the matter, meaning that there are genuine disputes about the material facts in the case. This ruling put the case on track for trial, and jury selection will begin this month with opening arguments to follow in the coming days.

The structure of the NFL as a business and how it is viewed in the eyes of the law could be outcome determinative to the case. Although the NFL itself is a single league, it is also made up of 32 independently owned and operated "businesses" or teams who come together to produce games that are broadcasted. The NFL has long insisted that the league should be viewed as a single entity in the eyes of the law. The league argues that although its teams compete against each other, they necessarily collude to produce NFL teams and as a result function as a single entity. The legal significance of this argument is that Section 1 of the Sherman Act regulates competing businesses, not departments within a company³ meaning that it would not be enforceable against the NFL and the teams that are in it.

In 2009, however, the United States Supreme Court struck down the NFL's single entity argument in *American Needle, Inc. v. NFL*, a case that dealt with the NFL's exclusive licensing deals and highlighted the importance of competitive practices in the league.⁴ And in another similar case, *Laumann v. NHL*⁵, the NHL settled with plaintiffs resulting in an agreement to make significant changes to its broadcasting

¹In re NFL's "Sunday Ticket" Antitrust Litig., No. ML1502668PSGSXK, 2024 WL 2075095 (C.D. Cal. Apr. 26, 2024)

²<https://mynews13.com/fl/orlando/sports/2024/06/05/nfl-sunday-ticket-antitrust-lawsuit-trial>

³<https://www.sportico.com/law/analysis/2024/nfl-sunday-ticket-antitrust-class-action-1234762679/>

⁴*Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 130 S. Ct. 2201, 176 L. Ed. 2d 947 (2010)

⁵*Laumann v. Nat'l Hockey League*, 117 F. Supp. 3d 299 (S.D.N.Y. 2015)

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practices. As part of the settlement agreement, the NHL agreed to offer more flexible and consumer-friendly options, such as single team packages. Additionally, the MLB has made similar moves by allowing fans to pick and choose which teams they want to pay to watch instead of the all or nothing approach. A ruling against the NFL in the “Sunday Ticket” case could have a big impact on broadcasting agreements and the way consumers view the games across the country.

Key Allegations:

Monopolistic Practices: The lawsuit alleges that the NFL’s exclusive agreement with DIRECTV and now Google-YouTube TV suppresses competition by restricting alternative packages from being made available to the consumers. Consider fans who live on the opposite end of the country from their favorite team. While a New York Giants fan in the New York area can watch their team play for free on local broadcasts on a Sunday afternoon, a Giants fan in Arkansas will have to buy the entire NFL “Sunday Ticket” bundle, which started at roughly \$250⁶ in 2015 when the lawsuit was filed, even if they are not interested in watching any of the other teams in the league.

Consumer Harm: Consumers are forced to pay for the entire season package that is NFL’s “Sunday Ticket,” even if they are just interested in one team or a specific game.

Potential Impacts:

Revenue Diversification and a Shift in Market Dynamics⁷: if the Court rules against the NFL, teams may gain the ability to negotiate their own broadcasting deals, leading to diverse and potentially increased revenue streams. Further, a ruling against the NFL could completely alter the current distribution model, leading to increased competition and potentially decreasing consumers out-of-pocket expenses to watch their favorite teams.

It is important to update current antitrust compliance programs to avoid similar allegations and to speak with an attorney if you have any concerns. For more information, please contact your Kutak Rock attorney or a member of Kutak Rock’s antitrust team.

⁶<https://www.courthousenews.com/nfl-goes-on-trial-in-21-billion-antitrust-class-action-over-sunday-ticket-package/#:~:text=Residential%20and%20commercial%20subscribers%20seek,out%20of%20market%20games>
⁷<https://en.as.com/nfl/nfls-sunday-ticket-antitrust-trial-what-happens-if-the-nfl-loses-n/>

