

# The Economic Realities of Amateur Sports Organization

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## INTRODUCTION

Athletic competition at all levels has traditionally assumed a “larger than life” role in American society. Entire cities and even regions adopt and rabidly promote professional teams such as the Washington Redskins and the Chicago Cubs. On the college scene, the University of Notre Dame football team continues to benefit from a faithful group of “subway alumni” around the country—fans who root for the Irish even though they have no visible connection with the University. At the high school level, what can only be labeled a cultural phenomenon—“Hoosier Hysteria”—is now a fitting subject for lengthy discussion in national magazines.

Sporting competition does occupy a unique and sometimes almost over-riding position in the consciousness of Americans. The daily conversations of millions of Americans revolve around races for conference championships, rankings in polls, and the relative merits of particular athletes or teams. Amateur sporting competition (which for present purposes we will define to include big-time intercollegiate athletic programs such as those in the Big Ten Conference) is no exception to this rule. Consider that almost 35 million individuals attended National Collegiate Athletic Association (NCAA) football games in 1983<sup>1</sup> and that a single institution, the University of Michigan, has hosted over 100,000 fans at its home football games sixty times in succession. Yes, we do pay a lot of attention to sports in general and amateur sports in particular. As Beisser has put it, Americans have a “love affair

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1. *Attendance at NCAA Football Games*

<i>Season</i>	<i>Persons, in millions</i>
1955	17.3
1960	20.4
1966	25.3
1971	30.5
1975	31.7
1980	35.5
1983	34.8
Division I-A	25.38
Division I-AA	4.89
Division II	2.70
Division III	1.85

J. FALLA, NCAA: THE VOICE OF COLLEGE SPORTS ch. 6, app. A (1981); information supplied by the NCAA Central Office.

with sports."<sup>2</sup> This paper probes some of the economic realities that shape that love affair.

One of many ironies associated with amateur sports competition today is that the overall economic impact of amateur athletics in the United States is surprisingly small. While amateur athletic organization and competition do respond to, and do reflect, conventional economic pressures, it remains true that amateur athletics does not constitute an industry of overwhelming size or importance. It is likely that the direct expenditures upon amateur athletics in the United States are considerably less than one percent of each year's gross national product and that the total impact of amateur athletics is only about one percent of the gross national product when indirect expenditures—lodging, parking, food, and the like—are considered.<sup>3</sup>

Let me provide another perspective on this. The University of Michigan's athletic budget may be viewed by some individuals as constituting "big business"; however, it is the economic equivalent of a single prosperous Marsh supermarket in central Indiana. The annual intercollegiate athletic budgets of the entire Big Ten Conference, when combined, constitute less than twenty-five percent of the annual sales of the smallest firm on the list of *Fortune* magazine's largest 500 firms in the United States.<sup>4</sup> One has a tendency to lose sight of these facts when one reads of football coaches at universities earning more than the presidents for whom they ostensibly toil, or when one hears that Patrick Ewing, Georgetown University's former superb basketball center, was worth an incremental \$3 million annually to the University.

It is not the raw economic size of amateur athletics, then, that should garner our attention. Rather, it is the fact that amateur athletics constitutes an industry that can be analyzed much like any other industry that should be of interest to us. Far from being an exception to economic analysis, amateur athletics, especially big-time intercollegiate athletics, has exhibited surprisingly predictable behavior and development. The thesis of this paper is that economic conditions, not euphemistic statements, have been the controlling factors in the evolution of amateur athletics in the United States. This paper will focus upon big-time intercollegiate athletics as a means of demonstrating this.

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2. A. BEISSER, *THE MADNESS IN SPORTS* 227 (1967).

3. These data are taken from a study undertaken by the author for the Center of Science and Industry, Columbus, Ohio, in connection with the 1984 Summer Olympics.

4. The dollar value of the 1983 sales of the smallest firm on the "*Fortune* 500" list was over \$418 million. This is over four times as great as the reported intercollegiate athletic budgets of the members of the Big Ten Conference in 1982-1983. See *The Fortune Directory of the Largest U.S. Industrial Corporations*, *FORTUNE*, Apr. 30, 1984, at 274, 294.

## I. INTERCOLLEGIATE ATHLETICS AS AN INDUSTRY

A rough, but usable, definition of an industry is that it is a collection of firms, each of which is supplying products that have considerable substitutability to the same potential buyers. The firms in the intercollegiate athletic industry are the individual colleges and universities that field athletic teams. From an economic standpoint, these "university-firms" are primarily involved in the selling of athletic entertainment to potential fans and ticket purchasers. In addition, there exists the belief that the university-firms are supplying, via their athletic teams, intangibles such as pride and identification to alumni, legislators, and friends of the institution who might reward or support the institution.<sup>5</sup> In addition, the university-firms in recent years have also been actively engaged in selling to radio and television networks the rights to broadcast or televise the intercollegiate athletic contests in which their teams compete.

Some of the inputs to this multiproduct productive process involve capital: stadiums, equipment, and the like. But the most crucial inputs to the production of intercollegiate athletics are people: the coaches, athletic directors and especially the student-athletes who play on the teams that the university-firms field. The key to understanding the development of modern intercollegiate athletics is an understanding of the competition for, and use of, inputs such as student-athletes. The development of the NCAA as the largest regulatory body in intercollegiate athletics has primarily come about because most university-firms have desired to limit competition between themselves concerning how they may hire and utilize their student-athlete inputs. The NCAA has written hundreds of detailed rules and regulations that circumscribe the conditions under which an individual university-firm may contact, visit, compete for, hire, and eventually use student-athlete inputs. The genesis of these rules has nearly always been a desire on the part of the university-firms to restrict the competition for, and use of, student-athlete inputs. A review of the development of the NCAA demonstrates how and why this has taken place.

## II. THE DEVELOPMENT OF THE NCAA

The NCAA is the most powerful organization concerned with intercollegiate athletics. The NCAA currently has almost 800 individual university-

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5. Detailed presentations of this analysis may be found in Koch, *A Troubled Cartel: The NCAA*, 38 *LAW & CONTEMP. PROBS.* 135 (1973), and Koch, *Intercollegiate Athletics: An Economic Explanation*, 64 *SOC. SCI. Q.* 360 (1983) [hereinafter cited as Koch, *Intercollegiate Athletics*]. For a more lengthy discussion of the nature of the production function in intercollegiate athletics, see Koch, *The Economics of "Big-Time" Intercollegiate Athletics*, 52 *SOC. SCI. Q.* 248 (1971).

firms as members in addition to almost 175 other organizations and conferences as institutional members.<sup>6</sup>

The NCAA has traditionally had two major rivals, the Amateur Athletic Union (AAU) and the National Association for Intercollegiate Athletics (NAIA). The AAU is a nonprofit, volunteer organization that is no longer as strong a rival to the NCAA as it once was. The AAU once sponsored a host of athletic meets that were competitive substitutes for NCAA-sponsored events. Both the NCAA and the AAU seemingly delighted in disqualifying each others' athletes from their meets. But the NCAA emerged victorious in most of these jousts for two reasons. First, the NCAA has effectively controlled the fountain source of post-high school athletic talent—the colleges and universities. Second, the NCAA has been far better heeled financially than the AAU and has been able to outspend the AAU in critical areas. Today, the AAU's major efforts are confined to its Junior Olympics and its Masters Sports and Fitness Programs.

The NCAA's only legitimate collegiate rival, the NAIA, is a much smaller and economically less significant entity that caters to institutions that are typically small in size and which do not seek to compete in "big-time" intercollegiate athletics. Since 1981 the NCAA has extended its dominance to include women's intercollegiate athletics, resulting in the demise of the one-time capstone organization in women's intercollegiate athletics, the Association of Intercollegiate Athletics for Women (AIAW).

The NCAA was founded in 1906 as a consequence of the efforts of President Theodore Roosevelt and others to reduce the unsavory violence and mayhem that characterized intercollegiate football contests at the time. An additional concern of Roosevelt and others was the preservation of amateurism. One means of doing that was to define athlete eligibility; another was to develop common rules for conducting games and competition. These rules were used by the NCAA when it began to sponsor regional and national championships in a growing number of sports.<sup>7</sup>

The post-World War I years were boom years for intercollegiate athletics.

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<i>Membership of the NCAA: 1905-1983</i>	
<i>Year</i>	<i>Number of Members</i>
1906	38
1909	67
1912	97
1924	135
1945	210
1949	302
1955	398
1968	609
1980	883
1983	971

6. J. FALLA, *supra* note 1, ch. 3, app. A; NCAA News, various issues.

7. The NCAA currently sponsors over 80 national championships for men and women athletes.

Rising consumer disposable incomes, along with increased public interest in intercollegiate athletic competition, spurred developments such as the designation of "All-American" teams by the media, the national ranking of teams by the press, and the desire of radio networks to broadcast key intercollegiate athletic contests.<sup>8</sup> This led many university-firms to utilize intercollegiate athletics both as a means to attract enrollment and in some cases as a means to augment their revenues.

Then, as now, most fans were not interested in paying to see losing teams compete. This led to increasingly fierce struggles between and among university-firms for the best student-athlete inputs. Already at this time some colleges and universities concluded that they would not compete and pay for student-athletes. Thus, the 1920's and 1930's saw the beginning of the membership dichotomy between smaller institutions (for example, Rhode Island College) that chose not to compete to purchase student-athletes and larger institutions (for example, the University of Notre Dame) that decided to operate "big-time" intercollegiate athletic programs and to compete both for student-athletes and ticket-purchasing fans.

The end of World War II in 1945 brought with it a flood of military veterans into colleges and universities across the United States. This threatened to upset the status quo in intercollegiate athletics, at least partially because some university-firms fielded teams composed of individuals who were superb athletes, but indifferent or totally uninvolved students. A series of scandals concerning unethical practices, payoffs to student-athletes, altered grades, and the like brought with it many cries for reform. The result was the NCAA-sponsored "Sanity Code,"<sup>9</sup> which sought to bring to a halt the many abuses occurring. However, compliance with the Sanity Code was voluntary, and the financial incentives to violate it were too great. The code was abandoned by the NCAA in 1951.

Simultaneously, a new technological innovation, television, threatened to alter the intercollegiate athletic landscape even further. Many colleges and universities became convinced that the televising of intercollegiate athletic football contests<sup>10</sup> reduced gate attendance at their own games. The combination of adverse public attention concerning the abuses noted above and the desire of most NCAA members to limit the effects of television upon their gate attendance led to dramatic increases in the power and control of the central NCAA organization. Within a few years, the NCAA was trans-

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8. The first All-American team was actually selected by Walter Camp in 1889. Grantland Rice subsequently assumed the leadership in this regard. In 1936, the Associated Press initiated its own national ranking of football teams.

9. The Sanity Code consisted of a series of idealistic standards that individual universities pledged to meet in intercollegiate athletics. For example, individual universities pledged to restrict intercollegiate athletic competition on their campuses to those individuals who were students first and athletes second. The Code failed because it was voluntary and there did not exist any means of enforcement.

10. The first televised contest was the Columbia-Princeton game in 1939.

formed from a coordinating organization that was largely confined to rule-making and sponsoring championships, to one that had considerable financial clout. This transformation occurred for two reasons: (1) the NCAA negotiated lucrative television contracts for its members; and, (2) the NCAA undertook punitive actions that often carried with them significant financial penalties in order to enforce its rules. It is generally conceded that individual NCAA members approved of these trends because the anticipated effect was to equalize competition and to harness what would have otherwise been a free market for televising intercollegiate football contests. The typical NCAA member institution exhibited a much greater interest in protecting its share of the intercollegiate athletic financial pie than it did in promoting either amateurism in general or the academic progress of student-athletes in particular.

The NCAA has always controlled the television rights to its own annually sponsored championships such as men's basketball and, until 1984, also controlled the right to negotiate on behalf of its members the right to televise any intercollegiate football contest.<sup>11</sup> These television rights turned out to be a gold mine for the NCAA. In the 1984-1985 academic year, for example, the NCAA expected to earn over \$31 million solely from selling the rights to televise its Division I men's basketball championship.<sup>12</sup> Prior to 1984, the NCAA had in addition earned an average of over \$65 million per year for itself and its members from its football television contracts.<sup>13</sup> A 1984 United States Supreme Court decision forced the NCAA to allow the individual university-firms to negotiate their own football television contracts in the same fashion that they had always been able to do in other sports such as

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11. The NCAA's control over television rights for intercollegiate football games ended with the Supreme Court's decision in *NCAA v. Board of Regents of the University of Oklahoma*, 104 S. Ct. 2948 (1984) (*NCAA*).

12. *NCAA News*, Sept. 11, 1984, at 1.

13. *Dollar Value of NCAA Television Contracts*

<i>Season</i>	<i>Annual Mean Value of Contract, in millions</i>
1952	\$ 1.1
1953	1.7
1955	1.3
1959	2.2
1960, 1961	3.1
1964, 1965	6.5
1966-1969	7.8
1970, 1971	12.0
1972, 1973	13.5
1978-1981	30.0
1982-1985	65.9

(This contract invalidated by U.S. Supreme Court in 1984.)

J. FALLA, *supra* note 1, ch. 6, app. A; information supplied by the NCAA Central Office.

basketball.<sup>14</sup> This threatened the financial stability of the NCAA and at the same time accentuated the existing inequality among the various university-firms. Institutions like the University of Oklahoma had much greater ability to sell the television rights to their contests than did others like McNeese State University.

In sum, the history of intercollegiate athletics and its dominant organization, the NCAA, is one in which the financial bases for every decision and development have become increasingly obvious. The NCAA has consistently reacted to the commercialization of intercollegiate athletics in two ways. First, it has attempted to minimize costs of competition between and among its members by legislating rules that restrict competition, particularly for student-athlete inputs. Second, it has attempted to retain and control the most significant source of intercollegiate athletic revenue, the televising of contests between its members. Unfortunately for the NCAA, the basic structure of the intercollegiate athletic market has made these two goals exceedingly difficult to attain. A look at the actual operation of the NCAA will reveal why this is so.

### III. THE NCAA AS A CARTEL

The NCAA euphemistically talks about "the amateur student-athlete . . . who engages in a particular sport for the educational, physical, mental, and social benefits derived therefrom and to whom participation in that sport is an avocation."<sup>15</sup> This view of the intercollegiate athletic world would no doubt come as a surprise to the members of the men's basketball team at a prominent southwestern public university, for not one of the individuals who competed on this university's powerhouse teams between 1968 and 1982 ever received a baccalaureate degree from the university.<sup>16</sup>

It is an easy task to provide other glaring examples of the gross discrepancy between what is actually true in intercollegiate athletics and the innocent rhetoric that the NCAA says typifies its activities. In fact, the NCAA has in recent years operated primarily as an economic entity and has supported activities that have led to cartelization. This assertion requires further examination.

A cartel is an organization of firms that agrees to pursue joint policies with respect to key aspects of the environment in which the firms operate. The most common subjects of agreement are pricing policies, levels of output,

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14. *NCAA*, 104 S. Ct. 2948.

15. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 1983-1984 MANUAL OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 9 (1983).

16. For a recent commentary on the nature of this problem, see Klein, *Do College Jocks Graduate?*, Wall St. J., Nov. 11, 1984, at 26, col. 1.

market territories, sales quotas, use of inputs and advertising expenditures. The NCAA is a reasonably effective, though somewhat unstable, cartel because it: (1) sets the maximum price that can be paid for intercollegiate athletes; (2) regulates the quantity of athletes that can be purchased in a given time period; (3) regulates the duration and intensity of usage of those athletes; (4) occasionally fixes the price at which sports outputs can be sold; (5) periodically informs its members about transactions, costs, market conditions, and sales techniques; (6) occasionally pools and distributes portions of the organization's profits; and, (7) polices the behavior of its members and assesses penalties upon those deemed to have broken the organization's rules.<sup>17</sup>

#### A. *What Motivates the NCAA?*

Insofar as the university-firms are concerned, the NCAA exists to suppress and equalize competition between and among its members. Few, if any, NCAA members would admit openly to this motive. However, athletic competition works best and is most profitable when competition is relatively equal. It is worth noting that the major spurts of "reform" in the NCAA's history have typically occurred when there has been significant evidence of competitive imbalance between members.<sup>18</sup> The effect of these and other "reforms" has nearly always been to suppress and equalize competition. Indeed, there is little evidence that in the long-run the NCAA is truly interested in reforms that have the effect of enhancing academic standards. The NCAA and its members have seldom supported academic initiatives that would result in competitive imbalance or reduce the profitability of intercollegiate athletics. As one observer has put it, the NCAA and its members "recognize only two things—money and bad publicity."<sup>19</sup> As a consequence, "big-time college sports programs are notorious for shortchanging athletes who are supposed to be receiving educational opportunities."<sup>20</sup>

It is important to differentiate between the motivation of the university-firms and the NCAA central organization. Whereas the members typically are interested in some form of joint profit-maximization designed to wring maximum revenues out of intercollegiate athletics, the NCAA central organization, like a typical bureaucracy, gives strong evidence of being interested in its own power, size, and permanence. Concern for abstract ideals such as amateurism and academic standards has seldom been in evidence among

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17. See Koch, *Intercollegiate Athletics*, *supra* note 5.

18. For example, immediately after World War II.

19. Dan Stormer, as quoted in *New Day for Athletes?*, *THE SPORTING NEWS*, Aug. 8, 1984, at 6.

20. This is the view of *The Sporting News*. See *id.*



the NCAA leadership. *The Sporting News*, which is conventionally a strong spokesman for the sporting establishment, has in recent years frequently taken the NCAA central office and leadership severely to task for having over-commercialized intercollegiate athletics.<sup>21</sup> *The Sporting News* is correct in perceiving what has happened to the NCAA, but has exhibited a bit of naiveté relative to the causes of this behavior. Given the financial incentives that confront the NCAA's members, and given the structure of the intercollegiate athletics industry, different behavior on the part of the NCAA and its members could hardly be expected.

### B. *The NCAA's Structure as a Source of Success and Problems*

Cartels succeed or fail primarily on the basis of the structure of the cartel and the environment in which the cartel operates. Generally, the most important facets of cartel structure and environment are: (1) the number of firms in the cartel; (2) the number of points of initiative in the cartel; (3) the knowledge that cartel members and outsiders have of the cartel's transactions; (4) the existence of barriers to entry; (5) the similarity of the interests of the cartel members, particularly where revenues and costs are concerned; and, (6) demand conditions in the cartel's markets. Each of these facets will be examined in turn.

#### 1. Number of Firms

Successful cartels seldom have large numbers of member firms. A small membership allows the cartel to police member behavior more easily and to impose effective discipline upon wayward cartel members. Since the NCAA now has almost 800 individual members, it has severe difficulties monitoring the behavior of its members. If the NCAA's enforcement division were to visit one NCAA member daily on each day of a five-day work week, and do so fifty-two weeks per year, it would take the enforcers over three years simply to visit each member. This helps explain why the NCAA's Walter Byers observed that "we are not keeping up" with cheaters even though in 1984 the NCAA deployed ten full-time and twenty-five part-time investigators. The NCAA planned to spend almost \$1.5 million on enforcement activities in 1985.<sup>22</sup>

No magic number can be deduced relative to whether or not a cartel has too many members to be effective. It has become evident recently that the Organization of Petroleum Exporting Countries (OPEC) has been unable to

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21. See, e.g., Marcin, *NCAA Postpones Improving Academic Standards*, *THE SPORTING NEWS*, Oct. 29, 1984, at 53.

22. Walter Byers, as quoted in Farrell, *NCAA Admits Difficulty in Catching Violators of Recruiting and Financial-Aid Regulations*, *CHRON. HIGHER EDUC.*, Sept. 5, 1984, at 29.

enforce price and output discipline upon its members despite having a reasonably small membership of about twenty countries. On the other hand, major league professional baseball, with twenty-six teams, and major league professional football, with twenty-eight teams, have been relatively more successful in maintaining member discipline. Hence, a small membership assists, but does not guarantee, the success of a cartel.

## 2. Number of Points of Initiative

A point of initiative, in cartel jargon, is a place where one can buy, sell, exchange, or otherwise utilize the property rights to a resource. Successful cartels seldom have large numbers of points of initiative. The probability of cartel success increases if the cartel can restrict its members to undertaking their economic actions only at certain times and places.

The number of points of initiative are almost unlimited insofar as the NCAA and its membership are concerned. Approximately 10,000 football players and 1,000 coaches exist in the NCAA's highest competitive division in football. In men's and women's basketball, the comparable numbers are approximately 45,000 players and 1,200 coaches. The number of alumni and camp followers of a team who might intrude are virtually infinite in number. Add to this the antics of professional agents who seek to represent highly skilled players in their negotiations with professional sports teams.

The large number of points of initiative militates against the NCAA's effectiveness; however, when the NCAA can determine that a rule has been violated, it can impose truly impressive penalties upon violators. For example, the President of the University of Southern California (USC), Dr. James Zumberge, estimated that an NCAA-imposed ban upon football television appearances by USC would cost USC several million dollars.<sup>23</sup>

The NCAA has in recent years changed its internal governance several times in order to reduce the disparity between and among members and at the same time reduce the number of points of initiative. In football, for example, the university-firms are now grouped in four divisions, with a particular institution's classification depending upon the level of its own financial commitment to intercollegiate football as well as fan interest as indicated by attendance at football games. This has had the effect of increasing homogeneity of university-firms inside a given division, but increasing the heterogeneity between the divisions. Division I-A football institutions, for example, now can legislate rules that apply only to them. This has allowed large university-firms such as Pennsylvania State University to go their own way without being heavily burdened by the wishes of smaller less athletically oriented institutions such as Messiah College.

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23. President Zumberge anticipated two to three television appearances at approximately one million dollars each.

### 3. Knowledge of Cartel Transactions

In effective cartels, members immediately learn of a transaction undertaken by a member, but noncartel members are kept in a state of ignorance about such transactions, as well as the operation of the cartel as a whole. Individual cartel members find it difficult to cheat when other cartel members are quickly apprised of the cheater's actions. Consider once again OPEC, the oil cartel. The world oil market is so large and diverse that it is relatively easy for the individual members, like Venezuela, to undercut the established cartel price without being observed.

Much the same situation exists in the case of the NCAA. Some of its members' actions, for example, the signing of a blue-chip athlete, are widely publicized. Other actions, for example, procuring a lush summer job for an athlete, are largely hidden from the view of other NCAA members as well as the public. Indeed, when Mike Rozier, the Heisman Trophy winning running back for the University of Nebraska, revealed in 1984 that he had received a steady series of cash payments from a professional agent while playing football for the Cornhuskers, this activity had not been detected by the NCAA, or by the University of Nebraska's competitors, or even, the University argued, by itself.<sup>24</sup>

Industries and markets that are characterized by competition are typically ones in which any given competitor finds it extremely difficult to hide its actions from its competitors. One gasoline station cannot long hide from other stations the price that it charges per gallon for its gasoline. One supplier of microcomputer software is hard put to disguise the features that it offers for sale in one of its floppy disks programs. Yet, quite the opposite circumstances often exist in intercollegiate athletics. How can the NCAA keep track of all of the perquisites and concessions that might be offered to the parents and girl or boy friends of athletes being courted in locations far removed from the campus? How can the NCAA monitor the actual prices that supporters of a university-firm's basketball team pay the members of that team for the complimentary tickets that each player typically receives for each game? The answer, of course, is that the NCAA cannot do so effectively, and that is one of the most important reasons why the NCAA receives a relatively low grade when this aspect of cartelization is considered. Even the NCAA's Walter Byers has joined those who admit that as many as thirty percent of institutions that operate big-time intercollegiate athletic programs cheat consistently without being penalized.<sup>25</sup>

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24. Mr. Rozier admitted that he received \$600 per month from his agent, and that he signed a professional contract with the Pittsburgh Maulers of the United States Football League prior to the end of the intercollegiate football season. Vecsey, *Colleges Go With a Winner*, N.Y. Times, Oct. 19, 1984, at A27, col. 1.

25. *Rise in Cheating By Colleges Seen*, N.Y. Times, Aug. 1, 1984, at B11, col. 1. Mr. Byers' views have been recorded in McCallum, *Why Is This Man Saying the Things He's Saying?*, SPORTS ILLUSTRATED, Sept. 17, 1984, at 11.

#### 4. Barriers to Entry

A typical cartel strategy is to attempt to limit entry into its market in order to enhance the chances of cartel members to earn economic rents. The NCAA has done so, but only in a limited sense. In theory, the NCAA is a voluntary organization with only minimal barriers to entry. Any college or university that subscribes to the NCAA's stated purposes, and which agrees to abide by the NCAA's rules, may join the NCAA. Nonetheless, the NCAA has established strict requirements for admission into several of its divisions, for example, the "big-time" Division I-A in football. In order to be classified in Division I-A, a university-firm must sponsor a given number of intercollegiate sports, and then satisfy requirements that relate to the size of the university's football stadium and the attendance at the university's football games. For example, one possible means of qualifying for Division I-A status in football is for a university-firm that has a home stadium that seats 30,000 or more spectators to average more than 17,000 in attendance at its home football games at least once during a four-year period. This criterion immediately eliminates from consideration well over eighty percent of all university-firms in the NCAA.

The major reason why the Division I-A institutions wish to limit entry into their division is so that they may fashion rules and regulations more to their own tastes. This desire typically translates into rules and regulations that recognize the profound economic basis and competition involved in big-time intercollegiate athletics. When the university-firms in Division I-A recently passed legislation that would have established higher academic standards which individuals must meet in order to receive the typical "full ride" athletic scholarship offered by the institutions, the implementation of this proposal met with stiff opposition when it was discovered that the higher academic requirement would have eliminated a significant proportion of the high school athletes that the Division I-A institutions typically court and recruit.<sup>26</sup> It remains to be seen whether any significant minimum academic requirements will ever be adopted by Division I-A institutions.

Until 1984, one of the significant incentives for Division I-A institutions to limit membership in their division was the apparent correlation of Division I-A status with increased access to the millions of dollars of football television revenues connected to the NCAA's contract with the television networks. The United States Supreme Court decision on that subject ended the NCAA's practice of preventing Division I-A members from negotiating their own

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26. The effects of Rule 48 would have been differentially large upon black athletes because the rule contained a requirement that a freshman athlete receiving aid would have to have scored at the 700 level or above on the combined verbal and quantitative sections of the SAT examination. Fully 69% of black male athletes, and 59% of black female athletes, would have been disqualified if such a rule were in existence. *Research Forecasts Effects of "No. 48"*, NCAA News, Sept. 29, 1984, at 1.

football television contracts. Several different coalitions of NCAA members now negotiate their own football television contracts.<sup>27</sup>

The consequence of the United States Supreme Court decision has been a weakened NCAA and more financial disparity between and among NCAA members. But a free market for football television has also predictably increased the number of games seen by viewers and has resulted in more sports fans seeing the games of their choice. Under the regime of the NCAA television package, the networks were forced to accept a range of games that the NCAA agreed to supply. This approximated a form of "full line forcing," a not uncommon industrial practice that sees a seller forcing customers to accept less desirable products as a condition for receiving the high demand, desirable products that they wish. Thus, the NCAA would supply a low-demand game such as Appalachian State versus The Citadel along with an interest blockbuster such as the University of Oklahoma versus the University of Southern California (USC). The NCAA offered television stations this choice on the same Saturday in fall 1981. Four stations opted for the Appalachian State-Citadel game, while over 200 chose the Oklahoma-USC game.

It is apparent that the NCAA television package violated the prescriptions of consumer sovereignty, especially when it placed arbitrary limits on the number of times that a given university-firm might appear on television, or when it forced the networks to televise games of marginal attractiveness. But the NCAA also engaged in price-fixing in the process. The NCAA contract with the networks resulted in a single price being paid to any university-firm whose team appeared on a telecast, regardless of viewer interest or the number of stations presenting the telecast. Thus, in the 1982 example noted above, Oklahoma and USC received the same rights payment as did Appalachian State and The Citadel. This attempt by the NCAA to equalize the financial status of its members by means of price-fixing was specifically prohibited by the United States Supreme Court in its 1984 decision.<sup>28</sup> The Court did not accept the argument of the NCAA that its actions were an application of the famous Rule of Reason and thus were necessary in order to preserve an orderly market.<sup>29</sup> The Court ultimately decided that an orderly market was synonymous with a cartelized market that was not responsive to consumer tastes.<sup>30</sup>

It should be noted, however, that many of the university-firms which had fought for the right to televise their own intercollegiate football games found that the newly instituted free market for football games actually decreased

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27. For example, the College Football Association, an organization of over 60 Division I-A football powers, now negotiates its own football television contracts.

28. *NCAA*, 104 S. Ct. 2948.

29. *See id.*

30. *See id.*

the total television revenues they received. The NCAA television package had strictly rationed the number of games that could be shown; hence, the price that the networks had paid for each game was higher than it would have been in the case of a free market arrangement. The demand of networks for televising games was apparently price inelastic. Thus, when more games were televised, this drove down the average price paid by the networks for each game to such an extent that the total revenues collected by the university-firms because of football television declined by an estimated \$42 million.<sup>31</sup> That the average price paid by the networks for a typical game would fall in a free market was predictable because the university-firms were moving down the demand curve for televising their games. What the university-firms did not forecast was the extent to which free market competition between and among university-firms would drive television prices downward.

### 5. Similarity of Interests

Successful cartels are characterized by general similarity of the interests of their members. The most important aspects of similarity relate to classic economic variables: revenues, costs, levels of production, and the like. It has been extremely difficult for the NCAA to reconcile the interests and needs of Clemson University of the Atlantic Coast Conference with those of a typical Prairie Conference member such as Illinois College. Clemson University takes in more revenue from a single one of its football games than all of the members of the Prairie Conference combined for all their sporting events in a decade or more. It is hardly surprising, therefore, that members of the Atlantic Coast Conference often do not see eye-to-eye with members of the Prairie Conference when the NCAA formulates rules and debates its future.

The amoeba-like division of the NCAA into more and more subdivisions has been a clear attempt to group together members who have similar revenues, costs, and output characteristics. Some view these actions as pre-saging the imminent dissolution of the NCAA as an organization. However, dissolution is not likely to occur. The NCAA, or some other organization of a different name but similar objectives, will almost surely continue to exist. There are two major reasons why this is so. First, even the NCAA's most vocal opponents admit to a need for some form of a national organization that undertakes the regulatory and primarily noneconomic functions of the NCAA like rule-making and the sponsoring of championships. Second, there are significant financial disincentives that are associated with any movement out of the NCAA by a single institution, or even a group of such

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31. *Colleges May Find TV's Golden Egg Is Tarnished*, N.Y. Times, Aug. 26, 1984, § 5, at 9, col. 1.

institutions, operating a big-time program. This latter point is worthy of additional discussion.

A successful secession movement from the NCAA would require a large number of homogeneous university-firms to leave the NCAA at the same time. Only then could this group negotiate its own television contracts, conduct its own championships, and provide the considerable services that the NCAA currently provides its members. The NCAA's only visible competitor, the NAIA, is simply not a viable option in this regard if the university-firm wishes to field nationally prominent teams that attract media attention and ticket-purchasing fans. Consider also that some 170 institutions in the NCAA now field Division I men's basketball teams, but are not classified Division I-A in football. If the University of Notre Dame (Division I-A in football) seceded from the NCAA, could it continue to schedule Marquette University (Division I men's basketball, but not a football competitor) in men's basketball?

What about women's competition? Would multiple championships arise?

Most likely, then, the NCAA or a similar organization will continue to exist, but even more segmentation of the NCAA's membership will take place. The degree of dissimilarity of members' interests will be the most important determinant of any new divisions that develop. Walter Byers, the Executive Director of the NCAA, has recently talked publicly about the possibility of an openly professional division within the NCAA that would pursue largely free-market intercollegiate athletic policies without reference to old norms such as amateurism or even academic standing on the part of the athletes involved.<sup>32</sup> This public discussion by the NCAA's powerful leader followed similar observations by academic leaders as diverse as Howard Swearer, President of Brown University of the Ivy League,<sup>33</sup> and Barbara Uehling, Chancellor of the University of Missouri—Columbia, a member of the Big Eight Conference.<sup>34</sup>

## 6. Demand Conditions

The economic success of a cartel is enhanced when the cartel purchases its inputs from sellers who are small and unorganized. This is quite evidently the case with respect to most intercollegiate athletes, whose ability to bargain is constrained by collusion between and among university-firms, and whose ability to unite and organize is severely damaged by their ages and geographic

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32. Byers, as quoted in McCallum, *supra* note 25.

33. Swearer, *An Ivy President Looks at College Sports*, N.Y. Times, Feb. 21, 1982, § 5, at 2, col. 1.

34. Uehling, *Athletics and Academe: Creative Divorce or Reconciliation?*, EDUC. REC., Summer 1983, at 13.

dispersion. The result is that the university-firms often earn rents because they possess an input that is relatively limited in supply, but which is unable to negotiate a price for itself that approximates its market value.

As noted above, a skilled basketball center such as Patrick Ewing had an incremental value of several million dollars to Georgetown University, the institution that controlled his services. The approximate marginal value of Herschel Walker, the All-American football running back for the University of Georgia Bulldogs, was estimated to be of the same magnitude. There are two options open to an athlete of this skill who wishes to realize some or all of his marginal revenue product. First, he can accept illicit, under-the-table benefits and payments, as discussed previously in the Rozier situation. Second, he can leave the university-firm and sign with a professional team for whatever financial rewards his skills will command. Akeem Olajuwon, the All-American basketball center of the University of Houston, pursued this strategy after he had completed his junior year of eligibility in 1983. Olajuwon signed for an estimated \$6.3 million spread over six years.<sup>35</sup>

Akeem Olajuwon departed from the University of Houston before he had exhausted all of his eligibility to play men's intercollegiate basketball. This imposed potentially severe financial losses upon the University of Houston. It is for this reason that traditionally the NCAA attempted to prevent any intercollegiate athlete from leaving an NCAA member and signing with a professional team prior to his intercollegiate eligibility having been exhausted. This was done under the guise of "protecting" the athlete by increasing the chance that the athlete would actually graduate from college. This self-serving rationale on the part of the NCAA and its members was transparent to most observers, who noted the tremendous financial interest that the NCAA had in propagating such a rule, and the apparent disinterest the NCAA had exhibited in whether or not any athlete ever obtained a baccalaureate degree. In any case, several different courts have determined that the NCAA violated antitrust law by preventing athletes from signing professional contracts, and this rule has effectively been gutted. Note that this development has significantly increased the financial incentives for individual university-firms to cheat, or to condone cheating by alumni and friends of the institution as a means to induce their exceptionally skilled athletes not to negotiate early contracts with professional teams.

When the NCAA sells its outputs, it confronts some customers who are unorganized (fans who purchase tickets to contests) and some who definitely possess some oligopsony power (television networks). In the latter case, the NCAA has exhibited considerable skill in getting the television networks to bid against each other for the privilege of televising events such as the Division I men's national basketball championship, which brings over \$30 million per year to the NCAA's coffers. The emergence of additional net-

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35. N.Y. Times, Aug. 9, 1984, at B18, col. 1.



works such as the all-sports network, ESPN, and the Atlanta Superstation cable network associated with Ted Turner has strengthened the NCAA's bargaining position by diluting the negotiating power of the three major networks: ABC, CBS, and NBC.

#### IV. CURRENT INDUSTRY ISSUES

Currently, two issues continue to accelerate economic change in the intercollegiate athletics industry. These issues are the role and development of women's intercollegiate athletics and the perennially divisive problem of football television.

##### A. *Women's Intercollegiate Athletics*

Until the 1970's, the NCAA exhibited no interest in women's intercollegiate athletics. Indeed, in 1964, the NCAA specifically excluded women athletes from competition in the men's NCAA championship events. In 1972, however, legislation popularly known as Title IX became law.<sup>36</sup> Title IX prohibited discrimination in educational programs on the basis of sex. While the implications of Title IX for intercollegiate athletics were ill-defined, the NCAA and its members soon sensed that individual university-firms might be required to expend funds in women's intercollegiate athletics roughly equivalent to those being expended in men's intercollegiate athletics. This scenario sent shivers of fear down the spines of the almost solely male directors of intercollegiate athletics at the big-time football schools.

Acting on the advice of its legal counsel, the NCAA eliminated its ban on women championship participants in 1973. Throughout the 1970's, the NCAA central office attempted to parry Title IX in two ways. First, the NCAA supported legislative moves, none of which was successful, to remove intercollegiate athletics from the purview of Title IX. Second, beginning in 1975, a series of NCAA conventions was asked to approve the notion that the NCAA should regulate women's intercollegiate athletics as well as men's.

The NCAA's interest in women's intercollegiate athletics was strongly opposed by the Association of Intercollegiate Athletics for Women (AIAW), which had become the clearly dominant organization for women's intercollegiate athletics. The AIAW argued that the NCAA's attentions were unwanted and that the NCAA's real interest in women's intercollegiate athletics was in controlling and capping the rising expenditures being made there. Expenditures on women's intercollegiate athletics rose from one percent of total intercollegiate athletic expenditures in 1972 to over fifteen percent in 1978.<sup>37</sup> When, in addition, the AIAW negotiated its own television contract,

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36. 20 U.S.C.A. § 1135 (West 1978).

37. Data obtained from the NCAA and AIAW.

many NCAA members sensed a growing threat to the financial security of their men's intercollegiate programs.

One financial argument levied by the NCAA at that time was that the growing expenditures made upon women's intercollegiate athletics required subsidization by the major men's "revenue" sports—football and basketball at most institutions. Why, a typical male athletic director would ask, should a women's field hockey team benefit from the ticket and television revenues raised by the men's football team?

The NCAA entered women's intercollegiate athletics with its own set of women's championships in the 1981-1982 academic year. The NCAA held its championship events on the same dates as the AIAW championships. Hence, each member was forced to choose between the NCAA and the AIAW. The AIAW lost this battle, at least partially because it was NCAA policy to reimburse athletes and teams nearly all of their travel expenses to NCAA championship events. The AIAW, lacking the lucrative football television contract that the NCAA possessed, could not pay such expenses.

The AIAW eventually halted operations in 1983, but only after it had filed suit and charged the NCAA with monopolization and predatory conduct. The AIAW noted that the NCAA would spend some \$3 million on women's intercollegiate athletics, but would generate only about \$500,000 from the same programs. The AIAW charged that the NCAA was exercising what industrial organization economists usually label "the power of the long purse." This hypothesis, for which there is only sparse empirical evidence, suggests that a large firm will utilize its superior resources to enter a market, drive out smaller and less well-heeled competitors by predatory actions, and then exploit the new market by raising prices.

A United States district court ultimately rejected the AIAW's monopolization argument, despite the fact that this case covered some of the same economic ground as the football television case, which the NCAA lost.<sup>38</sup> Despite the district court's decision, strong surface similarities exist between the behavior of the NCAA and the behavior of a multiproduct monopolist who engages in cross-subsidization and price discrimination in order to: (1) deter entry; and, (2) protect profits. The United States Postal Service and American Telephone and Telegraph often have been accused of this type of behavior in the past. Those who subscribe to this view see the NCAA as having taken preventive action in women's intercollegiate athletics in order to minimize the drain on its members' profits that might occur if women's intercollegiate athletics were to go its own way. As one observer has put it: "It is hardly blasphemy to suggest that the NCAA would have no more interest in women's intercollegiate athletics than it does in random pick-up basketball games on urban asphalt if it were not for the increasingly im-

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38. *Association of Intercollegiate Athletics for Women v. National Collegiate Athletic Ass'n*, 558 F. Supp. 487 (D.D.C. 1983), *aff'd*, 735 F.2d 577 (D.C. Cir. 1984).

portant financial considerations involved."<sup>39</sup> In recent years, the NCAA has rarely undertaken any important action in which financial considerations have not buttressed or even determined the final outcome.

### B. Football Television

On June 7, 1984, the United States Supreme Court ended the NCAA's three decade reign over the televising of intercollegiate football games. By a vote of 7-2, the Court agreed with two lower courts that the NCAA's activities in football television constituted output restriction and price-fixing and thus violated the Sherman Antitrust Act.<sup>40</sup> The district court labeled the NCAA "a classic cartel"<sup>41</sup> and, in agreeing, clearly the Supreme Court established that the rights to the televising of intercollegiate football games belong to the individual university-firms, and not to the NCAA.<sup>42</sup> The Court's decision voided multi-million dollar football television contacts that the NCAA had negotiated for its members.<sup>43</sup>

A major consequence of the Supreme Court decision on football television was a period of frantic negotiations by individual university-firms and select groups of these firms with various local television stations and with national networks. The most lucrative contract was negotiated with ABC-TV by the College Football Association (CFA), an organization of sixty-three Division I-A football superpowers. Another contract was negotiated with CBS-TV by university-firms that are members of the Pacific Ten and Big Ten conferences.<sup>44</sup> Still other less significant contracts were negotiated by individual institutions and athletic conferences.

The NCAA was initially prohibited from participating in the football television market. However, in November 1984, the district court judge who had rendered the original decision in the case, Judge Juan G. Burciaga, ruled that the NCAA could participate in future football television negotiations provided two conditions were met: (1) participation by NCAA members was voluntary; and, (2) the NCAA did not once again attempt to "restrict output or stifle competition."<sup>45</sup> Lacking any strong move on the part of its members to push it in the direction of football television partic-

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39. Koch, *Intercollegiate Athletics*, *supra* note 5, at 372.

40. *NCAA*, 104 S. Ct. 2948.

41. *Board of Regents v. National Collegiate Athletic Ass'n*, 546 F. Supp. 1276, 1300-01 (W.D. Okla. 1982).

42. 104 S. Ct. at 2960.

43. Greenhouse, *High Court Ends NCAA Control of TV Football: Restraint of Trade Cited*, N.Y. Times, June 28, 1984, at A1, col. 1.

44. None of the institutions in the CFA is a member of the Pacific Ten or the Big Ten conferences.

45. White, *NCAA to Pass Up TV Role for Now*, N.Y. Times, Nov. 2, 1984, at D19, col. 3.

ipation, the NCAA will no longer be a party that will negotiate football television contracts.

But Judge Burciaga did allow the NCAA to reimpose television bans upon university-firms that violate NCAA rules.<sup>46</sup> The television ban is an extremely powerful tool in the hands of the NCAA because a single football television appearance might be worth up to \$1 million. Thus, the NCAA can once again deny such revenues to members who violate its rules, even though it has not been the NCAA that has negotiated the television contract. It is this little noticed stipulation on the part of Judge Burciaga that has effectively rehabilitated the NCAA's power as it deals with the university-firms that operate big-time intercollegiate athletic programs. As William B. Hunt, the NCAA's assistant director of enforcement, understated it, the "decision will assist in the effort to implement an effective enforcement program."<sup>47</sup> Indeed, no cartel can succeed if it is unable to discipline its members. The effective power of discipline now once again resides with the NCAA. While the operation of the NCAA as a cartel will never be smooth because of the structure of the intercollegiate athletic market, the revived ability of the NCAA to impose significant financial penalties upon selected members will enable it to survive and even prosper.

It is worth noting that even the football television contracts negotiated by the CFA and by the Pacific Ten-Big Ten conference coalition have been challenged by legal suits sponsored by television cable companies and independent television stations. These suits charge that the new contracts violate antitrust law by restricting competition, at least partially because the new contracts prevent the cable networks and independent stations from televising football games during certain time periods on Saturdays. Further, the new contracts are designed to discourage "cross-televising," in which a CFA member would televise a home game against an opponent from the Big Ten Conference, a non-CFA member. Such interferences in the market, the plaintiffs argue, are precisely what Judge Burciaga sought to prevent in his original television decision.<sup>48</sup>

If the newest round of suits is successful, then it is likely that no football television agreement of a national nature will exist in the future. In such a world, individual university-firms and specific intercollegiate athletic conferences would freely and independently negotiate their own individual contracts. This would hardly introduce anarchy, however, since this is precisely

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46. See *NCAA*, 546 F. Supp. 1276 (W.D. Okla. 1982), *aff'd in part, remanded in part*, 707 F.2d 1147 (10th Cir. 1983), *aff'd*, 104 S. Ct. 2948 (1984).

47. *Judge Clears Way for NCAA to Play Role in TV Pacts*, CHRON. HIGHER EDUC., Nov. 7, 1984, at 1, 34.

48. Judge Burciaga will have ample opportunity to make clear what he did mean because the case involving the CFA will be heard in his courtroom. *Burciaga to Hear Suit Against CFA*, NCAA News, Nov. 12, 1984, at 1.

the situation that has existed in men's basketball and all other sports for many years. While the NCAA has often salivated at the lucrative prospect of controlling all television for men's basketball, it has never claimed to control the property rights to the televising. Hence, individual university-firms have proceeded independently in men's basketball.

### CONCLUSION

The National Collegiate Athletic Association is the dominant organization in modern big-time intercollegiate athletics. Unbeknownst to most of its members, the NCAA has in recent decades acted as an economic cartel. Prices have been fixed, outputs controlled, and extensive rules and regulations have been promulgated concerning the use of the primary input to intercollegiate athletics, the student-athletes.

The cartelized behavior of the NCAA was never a matter of great import either to its own members or to the public until the dollar magnitude of the NCAA's actions became large. But the NCAA's budget now approaches \$40 million annually and, until thwarted by the United States Supreme Court, the NCAA controlled television contracts worth well over \$250,000,000. Further, the annual revenues realized by Division I-A university-firms from all phases of their football operations approached \$500,000,000 in 1983-1984. Hence, whereas the economic impact of big-time intercollegiate athletics was a *de minimus* consideration in 1950, the same conclusion is less easily reached in 1985.

In 1950, big-time intercollegiate athletics was substantially non-cartelized, and the plethora of rules and regulations that now exist in the industry was unknown. Many of the most important actions and decisions of the day were made in a nonmarket context. There was much less reference to purchasing inputs and selling outputs. Rather, intercollegiate athletics was often sponsored by a university without reference to market acceptance, or lack thereof.

The three-plus decades since 1950 have seen the obvious emergence of economic motives in intercollegiate athletes. An identifiable industry now exists in big-time intercollegiate athletics in which approximately 100 university-firms compete in football and approximately 200 in men's basketball. Women's intercollegiate athletics, particularly women's basketball, increasingly evidences the same evolution. The NCAA has accelerated the emergence of these developments by cartelizing the industry and consistently advocating policies that have increased economic incentives. The NCAA, then, is both a cause and a reflection of powerful forces that have resulted in the emergence of big-time intercollegiate athletics as an industry.