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# The Antitrust Implications of the Divisional Structure of the National Collegiate Athletic Association

Terrill L. Johnson

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# THE ANTITRUST IMPLICATIONS OF THE DIVISIONAL STRUCTURE OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

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I. INTRODUCTION	97
II. NATURE OF THE ANTITRUST ANALYSIS	101
III. THE RULE OF REASON	102
IV. HISTORY OF THE DIVISIONAL STRUCTURE OF THE NCAA	105
V. NATURE OF THE RESTRAINTS	106
VI. ANTI-COMPETITIVE EFFECTS	107
VII. POTENTIAL JUSTIFICATIONS	111
VIII. APPLYING THE RULE OF REASON	113
IX. CONCLUSION	118

## I. INTRODUCTION

The National Collegiate Athletic Association (NCAA), the most powerful organization in intercollegiate athletics, regulates the athletic programs of approximately 900 colleges and universities.<sup>1</sup> Each active member of the NCAA is assigned to Division I, II, or III for competitive and legislative purposes.<sup>2</sup> Division I is subdivided into Divisions I-A and I-AA for football.<sup>3</sup> Each division has designated criteria for admission, such as sponsorship of a specified number of sports, attendance requirements, and scheduling requirements.<sup>4</sup> Theoretically, any institution can petition to enter any of the three divisions by complying with the specified requirements for a period of two years.<sup>5</sup>

Each division has a particular philosophy which sets out the athletic priorities of member institutions. A major part of the Division I philosophy is sponsoring "at the highest feasible level of intercollegiate competition one or both of the traditional spectator-

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1. NCAA v. Board of Regents, 468 U.S. 85, 89 (1984).

2. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 1989-90 NCAA MANUAL 273 (1989) [hereinafter NCAA MANUAL].

3. *Id.*

4. *Id.* at 274.

5. *Id.* at 275.

oriented, *income-producing* sports of football and basketball.”<sup>6</sup> The criteria for admission to Division I are very strict, and Division I-A requirements eliminate more than eighty percent of all NCAA members.<sup>7</sup> This Article analyzes the divisional structure of the NCAA under the antitrust laws and discusses the potential for an antitrust challenge to the requirements for entry into NCAA Division I.

Nonprofit amateur athletic associations like the NCAA and other sports associations are subject to the prohibitions of section 1 of the Sherman Act.<sup>8</sup> Litigants challenging several of the restraints imposed on NCAA members under the antitrust laws, however, have met with little success.<sup>9</sup> While the NCAA was originally organized to promote amateur sports, the Sherman Act may be triggered if such conduct restrains competition in an unreasonable manner.<sup>10</sup> Although the NCAA and its members are nonprofit institutions, they both participate in commercial, profit-seeking activities in the area of intercollegiate sports.<sup>11</sup> Several authors have commented that application of the antitrust laws to athletic association policies is particularly justified when the policies at issue are motivated in large part by commercial concerns rather than educational goals.<sup>12</sup>

Although the NCAA is not the only entity which regulates collegiate athletics, a university seeking to operate a major athletic program will have no choice but to be governed by the NCAA.<sup>13</sup> The National Association for Intercollegiate Athletics (NAIA) is composed of smaller schools which do not seek to maintain “big-time” athletic programs.<sup>14</sup> It is much smaller in terms of members

6. *Id.* at 282 (emphasis added).

7. Koch, *The Economic Realities of Amateur Sports Organization*, 61 IND. L.J. 9, 20 (1985).

8. NCAA v. Board of Regents, 468 U.S. 85 (1984); Hennessey v. NCAA, 564 F.2d 1136 (5th Cir. 1977); Gunter Harz Sports, Inc. v. United States Tennis Ass’n, 511 F. Supp. 1103 (D. Neb.), *aff’d per curiam*, 665 F.2d 222 (8th Cir. 1981).

9. See, e.g., McCormack v. NCAA, 845 F.2d 1338 (5th Cir. 1988) (eligibility rules upheld); Hennessey v. NCAA, 564 F.2d 1136 (5th Cir. 1977) (bylaw limiting number of assistant coaches employable at any one time upheld); Jones v. NCAA, 392 F. Supp. 295 (D. Mass. 1975) (eligibility rules upheld).

10. Gunter Harz Sports, 511 F. Supp. at 1115.

11. Note, *Tackling Intercollegiate Athletics: An Antitrust Analysis*, 87 YALE L.J. 655, 657 (1978).

12. See Gulland, Byrne & Steinbach, *Intercollegiate Athletics and Television Contracts: Beyond Economic Justifications in Antitrust Analysis of Agreements Among Colleges*, 52 FORDHAM L. REV. 717, 725 (1984); Weistart, *Legal Accountability and the NCAA*, 10 J. C. & U. L. 167, 175 (1983).

13. See Weistart, *supra* note 12, at 171-73.

14. See Koch, *supra* note 7, at 12.

and economic power than the NCAA, and, therefore, poses no threat to the hegemony of the NCAA. Membership in NCAA Division I is necessary for universities to maintain "big-time" athletic programs. While the NCAA's stated basic purpose is "to maintain intercollegiate athletics as an integral part of the educational program" and to "retain a clear line of demarcation between intercollegiate athletics and professional sports,"<sup>15</sup> the organization has also assumed the role of economic regulator and promoter of the member institutions.<sup>16</sup>

The NCAA can also be viewed as a cartel, an organization of firms that agrees to pursue joint policies to regulate the environment in which they operate.<sup>17</sup> The policies of a cartel are designed to maximize profits and equalize competition among members.<sup>18</sup> A typical strategy of a cartel is to limit entry into the particular market in which the cartel operates. While the NCAA does not seek to exclude institutions that wish to join the NCAA, the divisions are structured to strictly limit entry into Division I to schools that emphasize high income-producing sports such as football and men's basketball.<sup>19</sup> The underlying justification of many of the Division I rules, such as the stadium size and attendance requirements, is economic. As Division I televised sporting events increase NCAA revenue, the economic regulatory activity of the NCAA demands increased external scrutiny.<sup>20</sup>

In 1984, the Supreme Court first considered the application of the antitrust laws to intercollegiate athletics in *NCAA v. Board of Regents*.<sup>21</sup> While recognizing that intercollegiate sports is "an industry in which horizontal restraints on competition are essential if the product is to be available at all,"<sup>22</sup> the Court held that the NCAA's football television plan unreasonably restricted the number of games televised and negated the ability of member institutions to respond to consumer preference.<sup>23</sup> In holding that the television plan violated section 1 of the Sherman Act,<sup>24</sup> the Court

15. NCAA MANUAL, *supra* note 2, at 1.

16. See *Justice v. NCAA*, 577 F. Supp. 356, 383 (D. Ariz. 1983); Weistart, *supra* note 12, at 175.

17. See Koch, *supra* note 7, at 15; Koch, *A Troubled Cartel: The NCAA*, 38 LAW & CONTEMP. PROBS. 135 (1973).

18. Koch, *supra* note 7, at 16.

19. *Id.* at 20.

20. See Weistart, *supra* note 12, at 177.

21. *NCAA v. Board of Regents*, 468 U.S. 85 (1984).

22. *Id.* at 101.

23. *Id.* at 120.

24. The Sherman Act, § 1, 26 Stat. 209 (1890) (current version at 15 U.S.C. § 1 (1982))

rejected the noneconomic justifications for the plan put forward by the NCAA. Under the plan, the NCAA was to negotiate all contracts for the telecasting of college football games and limit the number of times a particular team could appear on television during each two-year period.<sup>25</sup> The Court's opinion demonstrates that the NCAA's economic regulatory power is a limited one and instructs that courts should ensure that the NCAA does not impose regulations which operate to restrict, rather than enhance, the ability of member institutions to compete in intercollegiate athletics.<sup>26</sup> Because the potential benefits of participation in NCAA Division I sports are expanding rapidly,<sup>27</sup> the potential burdens of antitrust violations should be examined.

The economic implications of the divisional structure of the NCAA are amplified by the significant role of television revenue.<sup>28</sup> Membership in Division I allows access to millions of dollars in revenue from television broadcasts of football and basketball games. The criteria for Division I membership create a horizontal restraint on competition among NCAA member institutions.<sup>29</sup> Division I institutions wish to limit entry into their division so they can develop rules and regulations to serve their interests.<sup>30</sup> This Article asserts that the Division I institutions have enacted regulations which erect significant barriers to the entry of schools from other divisions into Division I, most notably in the revenue-raising sports of football and men's basketball. The activities of Division I members may also be considered a boycott of competition with

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provides as follows: "Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, . . . is hereby declared to be illegal." *Id.*

25. *Board of Regents*, 468 U.S. at 91-94.

26. *Id.* at 120.

27. The revenues for NCAA championships are distributed among the participating teams and the NCAA. The Association receives 40% of the net tournament receipts (gross receipts less game expenses, an allowance to the host institution, and administrative expenses), while the participating teams split the remaining amount according to their tournament success. NCAA MANUAL, *supra* note 2, at 340-46. The Division I men's basketball tournament generates by far the largest revenues of any tournament. In 1989, the 64 participating colleges shared about \$35 million, with each Final Four team receiving almost \$1.4 million. *Sports Officials Ponder How to Share TV Bonanza*, Chron. of Higher Educ., Dec. 6, 1989, at A29, col. 3.

28. The NCAA and CBS signed an agreement in which CBS agreed to pay the NCAA \$1 billion for the exclusive right to present the NCAA basketball tournament for seven years, beginning in 1991. *CBS Pays \$1 Billion for NCAA Television Rights*, Greensboro News & Record, Nov. 22, 1989, at D2, col. 1.

29. *Board of Regents*, 468 U.S. at 99.

30. See Koch, *supra* note 7, at 20.

non-group members.<sup>31</sup> Although Division I membership is ostensibly open to any college or university that meets the specified standards, few Division II or III schools can become eligible for Division I membership.

## II. NATURE OF THE ANTITRUST ANALYSIS

To determine whether the NCAA Division I membership restrictions violate section 1 of the Sherman Act, it is necessary to determine whether the restraint "is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."<sup>32</sup> The competitive significance of the restraint is the ultimate focus of a reviewing court's inquiry under either the rule of reason or per se analysis.<sup>33</sup>

In determining the legality of the Division I restrictions, the threshold question is whether to judge the NCAA rules under the rule of reason or the per se analysis. The majority of cases involving challenges to rules of sport associations utilizes the rule of reason analysis,<sup>34</sup> and the Supreme Court confirmed this approach in *Board of Regents*.<sup>35</sup> A per se rule is applied only when the practice in question has no purpose other than the restraint of competition.<sup>36</sup> Because the NCAA would not be able to market competition between its member institutions or preserve amateurism without certain rules and regulations, the NCAA rules do not have the sole purpose of unreasonably restricting competition.<sup>37</sup>

The Supreme Court noted in *Board of Regents* that the majority of NCAA actions "widen consumer choice—not only the choices available to sports fans but also those available to athletes—and hence can be viewed as pro-competitive."<sup>38</sup> Rules are needed to ensure the integrity of the competition as well as "to define the nature of the sports competition being undertaken and to provide for

31. See generally *Smith v. Pro Football, Inc.*, 593 F.2d 1173, 1178 (D.C. Cir. 1978).

32. *Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918).

33. *Board of Regents*, 468 U.S. at 103; *National Soc'y of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978).

34. See, e.g., *United States Trotting Ass'n v. Chicago Downs Ass'n*, 665 F.2d 781 (7th Cir. 1981); *Hennessey v. NCAA*, 564 F.2d 1136 (5th Cir. 1977); *Hatley v. American Quarter Horse Ass'n*, 552 F.2d 646 (5th Cir. 1977); *Ashley Meadows Farm, Inc. v. American Horse Shows Ass'n*, 609 F. Supp. 677 (S.D.N.Y. 1985); *Gunter Harz Sports, Inc. v. United States Tennis Ass'n*, 511 F. Supp. 1103 (D. Neb.), *aff'd per curiam*, 665 F.2d 222 (8th Cir. 1981); *Cooney v. American Horse Shows Ass'n*, 495 F. Supp. 424 (S.D.N.Y. 1980).

35. *Board of Regents*, 468 U.S. at 100.

36. *Id.*

37. *Id.* at 101-02.

38. *Id.* at 102 (footnote omitted).

its orderly execution."<sup>39</sup> Because of the necessity for cooperation and rule-making, the rule of reason is the appropriate standard by which to judge restraints such as the divisional requirements.

### III. THE RULE OF REASON

In 1978 the Supreme Court re-articulated the elements of the rule of reason analysis in antitrust framework. In *National Society of Professional Engineers v. United States*,<sup>40</sup> the competitive significance of the restraint at issue was the primary focus.<sup>41</sup> The Court, holding that the engineer's ban on competitive bidding violated section 1 of the Sherman Act, significantly narrowed the rule of reason inquiry to whether the agreement promotes or suppresses competition.<sup>42</sup> According to the Court, the rule of reason "does not open the field of antitrust inquiry to any argument in favor of a challenged restraint that may fall within the realm of reason. Instead, it focuses directly on the challenged restraint's impact on competitive conditions."<sup>43</sup>

The majority of the sports association cases decided since *Professional Engineers* evades the question of the pro- and anti-competitive effects of a challenged restraint.<sup>44</sup> This behavior reflects the lower courts' recognition that many sports association regulations, while necessary to the survival of the association and its product, would fail the *Professional Engineers* test.

Some flexibility may be found in the ancillary restraint doctrine discussed in *Professional Engineers*.<sup>45</sup> In that case, the Supreme Court cited to *Mitchel v. Reynolds*,<sup>46</sup> a classic covenant-not-to-compete case. The Court noted that while the covenant at issue in *Mitchel* had an anti-competitive effect, it also enhanced marketability of the business and promoted competition in the long run.<sup>47</sup> This willingness to sacrifice some competition for long term busi-

39. J. WEISTART & C. LOWELL, *THE LAW OF SPORTS* § 5.10 (Supp. 1985).

40. 435 U.S. 679 (1978).

41. See *id.* at 688. The Court in *Board of Regents* again articulated its reliance on the competitive effect analysis, but provided little guidance on how to accommodate the noneconomic justifications for many sports association restrictions under the *Professional Engineers* rule of reason formula.

42. *Id.* at 691.

43. *Id.* at 688.

44. See J. WEISTART & C. LOWELL, *supra* note 39, at § 5.10.

45. See Note, *Rethinking the Rule of Reason: From Professional Engineers to NCAA*, 1984 DUKE L.J. 1297, 1315-17 (discussing possibility of ancillary restraint approach to sports association antitrust cases).

46. 24 Eng. Rep. 347 (1711).

47. See *Professional Engineers*, 435 U.S. at 688-89; Note, *supra* note 45, at 1316.

ness and social goals conflicts with other parts of the *Professional Engineers* opinion which condemn any reduction in competition, but may provide the basis for the application of the ancillary restraint doctrine in unusual cases such as challenges to sports associations' rules.<sup>48</sup> The ancillary restraint doctrine accommodates the commercial and noncommercial objectives of a sports organization by assessing the reasonableness of the restraint in view of the goals of the organization.<sup>49</sup>

The test utilized by lower courts in cases where a sports organization has been subjected to an antitrust challenge provides an alternative to the strict balancing of pro- and anti-competitive effects. This approach considers:

- (1) whether the collective action is intended to accomplish an end consistent with the policy justifying self-regulation; (2) whether the action is reasonably related to that goal; (3) whether such action is no more extensive than necessary; and (4) whether the association provides procedural safeguards which assure that the restraint is not arbitrary and which furnish a basis for judicial review.<sup>50</sup>

This formulation serves not only the function of preserving the character of a particular sport, but also recognizes that a particular restraint may not enhance competition in an economic sense. In *Gunter Harz Sports v. United States Tennis Association*,<sup>51</sup> a manufacturer of double-strung tennis rackets challenged the International Tennis Federation's rule defining appropriate tennis rackets to exclude the double-strung tennis racket.<sup>52</sup> The rule survived the antitrust challenge by the manufacturer under the above analysis.<sup>53</sup> The purpose of the rule was to preserve the character of the game of tennis, and the court found that the rule was reasonably related to that goal.<sup>54</sup> Moreover, the rule was sufficiently narrowly drawn, and the procedural safeguards adequate.<sup>55</sup> Thus, while the prohibition on double-strung rackets may have had anti-competitive effects in the tennis racket market, it was up-

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48. *Id.*

49. *Professional Engineers*, 435 U.S. at 1316-17.

50. *Gunter Harz Sports, Inc. v. United States Tennis Ass'n*, 511 F. Supp. 1103, 1116 (D. Neb.), *aff'd per curiam*, 665 F.2d 222 (8th Cir. 1981). See also *United States Trotting Ass'n v. Chicago Downs Ass'n*, 665 F.2d 781, 790 (7th Cir. 1981).

51. 511 F. Supp. 1103 (D. Neb.), *aff'd per curiam*, 665 F.2d 222 (8th Cir. 1981).

52. *Id.* at 1103.

53. *Id.* at 1124.

54. *Id.* at 1117.

55. *Id.* at 1121-22.



held as a legitimate rule developed by the sports association to define and preserve the character of the game of tennis.

*NCAA v. Board of Regents*<sup>56</sup> represents the Supreme Court's first effort at applying the antitrust laws to amateur sports associations, and the Court purported to follow closely the standards developed in *Professional Engineers*.<sup>57</sup> The Court focused on whether the television plan was sufficiently tailored to meet the NCAA's economic, pro-competitive justifications.<sup>58</sup> While the opinion implies that virtually all the regulations promulgated by the NCAA could come under antitrust scrutiny, it notes that "most of the regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore procompetitive because they enhance public interest in intercollegiate athletics."<sup>59</sup> The Court failed to adequately explain the method of analysis appropriate for rules governing purely academic goals without regard to their commercial impact.<sup>60</sup> The Court "recognized the legitimacy of a concern for athletic balance and for regulations necessary to define a product requiring a cooperative undertaking,"<sup>61</sup> but provided little guidance about the relative importance of these concerns.<sup>62</sup>

The reported cases applying the rule of reason in the sports area are unclear as to the precise mode of analysis. While the antitrust analysis used by the Supreme Court in *Board of Regents* is the current formula for judging the legality of NCAA rules, the type of ancillary restraint analysis referred to in *Professional Engineers* and developed in *Gunter Harz Sports* may also prove helpful in deciding how an antitrust challenge to the NCAA divisional structure would be decided. The Court's opinion in *Professional Engineers* notes that its reformulated rule of reason analysis remains rooted in its statement in the seminal case of *Chicago Board of Trade v. United States*<sup>63</sup> that the true test of legality is whether the restraint promotes or suppresses competition.<sup>64</sup> The factors

56. 468 U.S. 85 (1984).

57. See *id.* at 113.

58. See Kirby & Weymouth, *Antitrust and Amateur Sports: The Role of Noneconomic Values*, 61 IND. L.J. 31, 47 (1985).

59. *Board of Regents*, 468 U.S. at 117.

60. See Gulland, Byrne & Steinbach, *supra* note 12, at 730 (Supreme Court should adopt "finer analysis" that has governed application of the Sherman Act to educational entities before *Professional Engineers* and *Board of Regents*).

61. Note, *supra* note 45, at 1321-22.

62. *Id.*

63. 246 U.S. 231 (1918).

64. *National Soc'y of Professional Engineers v. United States*, 435 U.S. 679, 691-92

considered by the Court in *Chicago Board of Trade* provide some guidance in balancing the pro- and anti-competitive effects of the NCAA divisional restrictions. These factors include:

the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable[;] [t]he history of the restraint; the evil believed to exist; the reason for adopting the particular remedy; [and] the purpose or end sought to be attained.<sup>65</sup>

#### IV. HISTORY OF THE DIVISIONAL STRUCTURE OF THE NCAA

From its creation in 1906 until 1968, the NCAA was not formally organized by divisions. To reconcile the differences over rule-making between large and small institutions, the NCAA officially recognized the University and College Divisions in 1968. All members, however, were still subject to the same regulations. Due to the larger schools' desire for self-determination, the member institutions voted in 1973 to reorganize into the current divisional structure.<sup>66</sup> Each division votes on the criteria for membership in that division.<sup>67</sup> Today, more than 300 schools sponsor major athletic programs in Division I.<sup>68</sup> The remaining Division II and III teams have less extensive athletic programs.

The largest universities with Division I football programs are lobbying for another, more restrictive division. Members of the College Football Association (CFA) argue that Division I is much too large, and that smaller institutions are able to exert too much control over schools with larger, more competitive programs.<sup>69</sup> The CFA has proposed creating a new, separate Division IV for the biggest football institutions which would have extremely strict criteria for membership and provide members with complete autonomy over their programs.<sup>70</sup> The incentive for establishing more compet-

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(1978).

65. *Chicago Board of Trade*, 246 U.S. at 238.

66. J. FALLA, NCAA: THE VOICE OF COLLEGE SPORTS 230-31 (1981).

67. NCAA MANUAL, *supra* note 2, at 275. The members of Division I prefer the present structure because they can write their own rules and have only minimal obligations to schools in other divisions. See Koch, *A Troubled Cartel: The NCAA*, 38 LAW & CONTEMP. PROBS. 135, 146 (1973).

68. *Sports Officials Ponder How to Share TV Bonanza*, Chronicle of Higher Educ., Dec. 6, 1989, at A29, col. 1.

69. Lederman, *Big-Time Football Powers Seen Pressing for More Autonomy*, Chronicle of Higher Educ., June 15, 1988, at A36.

70. *Id.* at A33.

itive divisions is economically based and would generate increased revenue for the divisions.

## V. NATURE OF THE RESTRAINTS

To become a member of NCAA Division I, an institution must sponsor, at the highest feasible level, one or both of the traditional spectator-oriented, revenue-raising sports of basketball or football.<sup>71</sup> Division I football is further classified into Divisions I-A and I-AA.<sup>72</sup> Division I-A schools must sponsor a minimum of seven varsity intercollegiate sports for men and seven varsity intercollegiate sports for women.<sup>73</sup> Division I-AA football schools and Division I schools without football programs must sponsor at least six men's and six women's sports.<sup>74</sup> Divisions II and III are required to maintain at least four men's and four women's sports.<sup>75</sup> Acceptable sports are those in which the NCAA sponsors a championship.<sup>76</sup>

Division I schools must schedule athletic contests primarily with other Division I members, particularly in football and basketball.<sup>77</sup> A member of Division I cannot schedule more than four men's and four women's basketball games against non-Division I schools, and an applicant to Division I can schedule only two men's and two women's non-Division I basketball games in the years in which the school seeks to qualify for admission to Division I.<sup>78</sup> Division I-A football teams must play at least sixty percent of their games against Division I opponents, and schools in Division I-AA must play at least fifty percent of their games against Division I-A or I-AA schools.<sup>79</sup>

Institutions sponsoring Division I-A football teams must either have averaged more than 17,000 in paid attendance per home football game in the immediate past four-year period, or have a stadium which has at least 30,000 permanent seats and an average of more than 17,000 in paid attendance (or 20,000 average in all football games) in at least one year during the immediate past four-year period.<sup>80</sup> If the institution does not meet either of these

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71. NCAA MANUAL, *supra* note 2, at 2.

72. *Id.* at 273.

73. *Id.* at 285.

74. *Id.* at 283.

75. *Id.* at 288, 292.

76. *Id.* at 289, 292.

77. *Id.* at 285.

78. *Id.*

79. *Id.* at 285, 287.

80. *Id.* at 286.

requirements but is a member of a conference in which at least six conference members sponsor football and more than half of the football schools meet the above criteria, the school may qualify for Division I.<sup>81</sup> There are also strict requirements for computing paid attendance figures.<sup>82</sup>

To protect against lower divisional interference, the NCAA provides for multidivisional classification on a very limited scale. Division I members can be classified as Division II or III for football only.<sup>83</sup> Division II and III members can petition to be classified Division I in any one men's sport other than football or basketball, and in any one women's sport.<sup>84</sup> In other words, Division II and III schools cannot participate in Division I revenue-raising sports.

In Division I sports, there is a minimum number of contests required for four-year universities. For example, in Division I, a basketball team must play at least twenty-five games and a football team must play at least nine games.<sup>85</sup> If an institution fails to meet the minimum sponsorship criteria for its division, its entire sports program will be placed on probation for one year, and if the criteria are not met at the end of the probationary period, the school becomes ineligible for championship competition.<sup>86</sup> Failure to meet the divisional scheduling requirements results in restricted membership.<sup>87</sup>

## VI. ANTI-COMPETITIVE EFFECTS

The NCAA divisional requirements are not entirely motivated by academic concerns, but rather are mixed-motive restrictions created to allow member schools more direct control over the generation of sports revenues without interference from institutions that do not place the same emphasis on athletics.

Schools in Division I are those with the largest sports programs and at least one of the two money-making sports of men's

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81. *Id.*

82. *Id.*

83. *Id.* at 278.

84. *Id.*

85. *Id.* at 283.

86. *Id.* at 276.

87. *Id.* In 1989, the NCAA rejected Savannah State College's appeal of a penalty levied by the NCAA for failure to meet minimums on team size and schedules, thus rendering the football team ineligible for the Southern Intercollegiate Athletic Conference title and post-season playoffs. The sanctions were imposed because the women's track team was two members short, the women's tennis team one player short, and the baseball schedule one game short. U.S.A. Today, Nov. 21, 1989.

basketball and football. However, the Division I requirements may have evolved into unreasonable restrictions on the ability of the non-Division I teams to compete in the revenue-raising sports of football and basketball. Each division sets the rules for its members which have allowed members of Division I to erect substantial barriers to prevent entry into their division. These barriers include the promulgation of strict requirements for stadium size and scheduling, as well as a prohibition on movement by Division II and III teams into Division I football and basketball without moving into Division I across the board.

The NCAA divisional structure is ostensibly organized to allow each institution to set its own priorities and choose the appropriate division. Division I members agree to a philosophy of sports participation which differs significantly from that of Divisions II and III. Division I members strive for regional and national excellence and prominence in their athletics programs. They believe in scheduling their athletic contests "primarily with other members of Division I, especially in the emphasized, spectator-oriented sports, as a reflection of its goal of maintaining an appropriate competitive level" in their sports programs.<sup>88</sup>

Although the stated goal of the strict Division I membership requirements is to preserve competitive parity among its members,<sup>89</sup> the restrictions on membership are actually a means by which the members reduce the variety of competition available to the public. While the number of institutions in Division I is not small, the regulations promulgated by the members are such that most Division II and III schools are prevented from competing with Division I schools.

The Division I restrictions hamper both economic and athletic competition by preventing even those teams with sufficient resources from entering Division I. If the NCAA is committed to encouraging broad-based support for intercollegiate athletics, then it should not discourage entry into Division I. A school wanting to compete in Division I sports must make a substantial commitment of resources to increase its level of sports sponsorship. By moderating its divisional requirements, the NCAA would promote more expansive college athletic programs.

Instead, restrictions on Division I institutions have increased significantly in the last ten years. In 1981, the NCAA adopted a proposal requiring each Division I school to support at least six

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88. NCAA MANUAL, *supra* note 2, at 282.

89. *Id.* at 282. See *supra* text accompanying note 6.

varsity intercollegiate sports.<sup>90</sup> Division I members voted to increase that number to eight sports in 1982.<sup>91</sup> In 1984, the NCAA Division I members approved a resolution requiring sponsorship of eight men's and eight women's sports, thereby doubling the minimum number of sports that a school must sponsor.<sup>92</sup> Members had a grace period of several years to add sports if they did not sponsor the minimum number. However, before that rule was fully implemented, the Supreme Court in *NCAA v. Board of Regents*<sup>93</sup> held that the NCAA football television plan violated the antitrust laws.<sup>94</sup> As a result, Division I members experienced a sharp and unexpected decline in revenue from televised football games.

The decreases in revenue resulted in increased financial pressure on the divisional members. At the 1985 NCAA convention, Division I members voted to reduce the minimum sports requirement to six men's and six women's sports.<sup>95</sup> The members concluded that the change was necessary in order to help schools contain costs and prevent institutions from only nominally sponsoring sports in order to remain in Division I. The amendment passed despite the concern that Division I would be "diluted" by the less stringent requirements.<sup>96</sup>

Increased membership in Division I may result in the distribution of revenue from television events to more institutions. There have been several proposals over the years to share the revenues from the tournament among all the schools in Division I. However, the institutions with the biggest money-making programs are unlikely to agree to such a plan without cuts in the size of Division I.<sup>97</sup> The biggest football-playing universities in Division I-A believe that Division I encompasses many schools that do not sponsor the broad-based programs that are requisite for Division I

90. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 1981-82 NCAA MANUAL (1981).

91. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 1983-84 NCAA MANUAL (1983).

92. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 1984-85 NCAA MANUAL (1984). The resolution required sponsorship of eight men's and six women's sports, with an increase in women's sports to eight by September 1, 1986.

93. 468 U.S. 85 (1984).

94. See *supra* text accompanying note 23.

95. NCAA MANUAL, *supra* note 2, at 283 (the sports sponsorship requirement remains at six men's and six women's sports for Division I members).

96. See NCAA, *Proceedings of the 79th Annual Convention of the NCAA*, at 101 (1985) (comments of Roy Kramer, Vanderbilt University) (if minimum sports sponsorship requirement not reduced, some schools will end up with "token sports" which lack funding; reduction necessary despite the "dilution" of Division I which could occur).

97. *Sports Officials Ponder How to Share TV Bonanza*, Chron. of Higher Educ., Dec. 6, 1989, at A1, A29.

membership.<sup>98</sup>

A Division II school that wants to develop a football or basketball program that can compete in Division I may be prevented from doing so by the Division I entry barriers. Prohibiting entry into one or both of the revenue-raising sports prevents the Division II school from producing the funds necessary to support the required number of non-revenue-raising sports needed to qualify for Division I. Moreover, the limits on the number of non-Division I teams a Division I school can compete against unreasonably restricts the ability of a Division II institution to bring its program into compliance with Division I criteria.

The NCAA rules governing changes of division membership specify that a member institution may change from Division I or III to Division II or from Division II to Division I or III.<sup>99</sup> Before 1982, a school could go directly from Division III to Division I if it complied with all the Division I requirements. At the 1982 NCAA convention, Division I members voted to prevent teams from moving from Division III to Division I, or from Division I to Division III at one time.<sup>100</sup> Currently, an institution that wants to transfer into Division I from Division III must first become a Division II member for at least three years before changing divisions again.<sup>101</sup>

The difficulties in moving up to Division I are illustrated by the ongoing efforts of the University of North Carolina at Greensboro (UNCG) to move into Division I from Division III. The school implemented a five year plan to become eligible for NCAA Division I men's basketball tournament play by the 1991-92 season.<sup>102</sup> UNCG will begin its first season in Division I this winter.<sup>103</sup> Until January of 1989, teams changing division had to wait three years before qualifying for the NCAA basketball tournament.<sup>104</sup> However, the members of Division I promulgated a new rule, effective January 1, 1989, which requires that each Division I conference must be composed "entirely of institutions that have been mem-

98. *Id.*

99. NCAA MANUAL, *supra* note 2, at 279.

100. See NCAA, *Proceedings of the 76th Annual Convention of the NCAA*, at 121 (1982) (comments of Richard H. Perry, University of Southern California) (speaking in favor of proposal because of the "almost uncontrolled growth in Division I as a result of the lure of men's basketball championships").

101. NCAA MANUAL, *supra* note 2, at 279.

102. *UNCG Encounters Obstacles in Move*, Greensboro News & Record, Jan. 29, 1990, at B3, col. 5.

103. *Id.*

104. *Id.*

bers of Division I during the eight preceding academic years"<sup>105</sup> to qualify for tournament play. Division I members passed this new rule to discourage teams from entering Division I and increasing the possible field for the NCAA basketball tournament. An additional problem caused by the new eligibility rule is UNCG's ability to enter a Division I conference while in a transitional phase.<sup>106</sup> Conferences are reluctant to add new members and share revenues with more teams. Moreover, members of Division I conferences are limited in the number of contests they can schedule against non-Division I teams, thus hindering UNCG's ability to raise its level of play to the extent necessary to allow it to enter a Division I conference.

Although there is an abundance of intercollegiate basketball and football games, teams within Division I have been able to raise ticket prices because of the strict limitation in membership and the public's desire to attend Division I events. If the divisional requirements prevent the expansion of teams in Division I, the number of contests produced is restricted and ticket prices will remain unnecessarily high.

The NCAA's goal of preserving and protecting amateur athletics<sup>107</sup> is not accomplished by the current divisional structure. The teams in Division I seek to maintain the highest feasible level of intercollegiate competition in football and basketball. This contributes to the production of a power elite among schools, rather than maintaining "a clear line of demarcation between intercollegiate athletics and professional sports,"<sup>108</sup> and contributes to the decline of amateurism among large universities.

## VII. POTENTIAL JUSTIFICATIONS

The goal of the NCAA in establishing the three-divisional structure was to reduce heterogeneity which threatened the stability of the NCAA. Initially, larger schools with the most powerful athletic programs resented the amount of control over policy exerted by smaller schools that do not rely on intercollegiate athletic programs for revenue-raising purposes. The divisional structure now allows each division to set its own policies and entry require-

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105. See NCAA MANUAL, *supra* note 2, at 338. This means an eight year wait for UNCG rather than a three year wait unless the school obtains a waiver from the NCAA.

106. *UNCG Encounters Obstacles In Move*, Greensboro News & Record, Jan. 29, 1990, at B3, col. 5.

107. See NCAA MANUAL, *supra* note 2, at 1.

108. *Id.*



ments to obtain the optimal level of competition. If a Division II school with football and men's basketball teams asserts an anti-trust challenge to Division I membership requirements, the NCAA could argue that the divisional structure is a legitimate means of ensuring the quality of competition among the member schools. If there were less stringent qualifications for Division I and more schools were allowed to enter at that level of competition, the quality of the games could decrease significantly. Consumers prefer more balanced competition, and their interest might be harmed by a significant increase in the size of Division I.

The sports sponsorship requirements of Division I are pro-competitive in that institutions are required to support a significant number of sports for men and women. Each sport has a minimum required number of contests which produces a significant number of competitive events among schools.<sup>109</sup> Without strict requirements regarding sports sponsorship, schools could sponsor only those events which increase revenue, thereby denying the public and college athletes the benefit of contests in sports other than men's basketball and football, and of women's sports to the extent Title IX would allow.<sup>110</sup>

The NCAA could also assert that its divisional membership requirements operate to preserve the character and integrity of intercollegiate athletics. Because some rules are necessary for the survival of intercollegiate athletics, the NCAA is entitled to make rules encouraging competition among member institutions. The NCAA rules organize members according to size and number of sports sponsored in order to prevent a few schools with superior qualities and resources from eliminating competition, and to standardize the conditions under which competition occurs.<sup>111</sup> A

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109. See *supra* text accompanying notes 71-87.

110. See NCAA, *Proceedings of the 79th Annual Convention of the NCAA*, at 103 (1985) (comments of Richard M. Bay, Ohio State University) (deterioration of sports sponsorship requirements leads to "programs that are limited to men's football and basketball on the men's side, and perhaps two sports or whatever it takes to comply with Title IX on the women's side").

111. See *Gunter Harz Sports, Inc. v. United States Tennis Ass'n*, 511 F. Supp. 1103, 1117 (D. Neb.), *aff'd per curiam*, 665 F.2d 222 (8th Cir. 1981) (association rule barring double strung rackets was a reasonable means of preserving integrity of sport through standardization of playing conditions and equipment); *STP Corp. v. United States Auto Club, Inc.*, 286 F. Supp. 146, 151 (S.D. Ind. 1968) (change in engine specification to provide competitive equivalency between race cars was reasonable exercise of rule-making authority); *United States v. United States Trotting Ass'n*, 1960 Trade Cas. (CCH) para. 69,761, at 76,957 (S.D. Ohio 1960) (harness racing association membership requirements were not used as group boycott, but as rules designed to regularize and standardize harness racing and promote competition).

sports organization has the right to legislate competitiveness among its members, and courts should not interfere unless the rules are unlawful or arbitrary.<sup>112</sup> If the NCAA did not maintain strict divisional requirements, many schools would be tempted to limit the number of sports sponsored to concentrate on those which increase revenue. This phenomenon would defeat the stated purpose of the NCAA to promote athletics as an integral part of the educational system.

Another justification for the restrictive Division I requirements is the relatively large number of schools which are Division I members. The NCAA could argue that the divisional requirements serve to organize and equalize competition, and do not exclude a significant number of potential members. Moreover, any school can enter Division I by complying with the rules for the specified period of time.<sup>113</sup>

NCAA regulations that are motivated by a desire to protect academic standards and to contribute to the integration of athletics in education are much less vulnerable to antitrust challenges. The NCAA could argue that while many of its regulations have an impact on the economic interests of its members, the important goals of maintaining amateurism and preserving the role of athletics are still served.<sup>114</sup> The divisional structure recognizes the differing philosophies among NCAA member institutions concerning the role of athletics in academia. The division sections allow each group to set rules that accord with its members' philosophy. The divisional structure could thus be said to promote the goal of maintaining athletics as a "vital part of the educational system."<sup>115</sup>

### VIII. APPLYING THE RULE OF REASON

Determining the relevant "market" in which to analyze the NCAA Division I requirements is an important consideration in applying the rule of reason. A major goal of the NCAA is to pro-

112. See *Hatley v. American Quarter Horse Ass'n*, 552 F.2d 646, 653 (5th Cir. 1977) (rule prescribing markings for quarter horse a legitimate tool in the effort to improve the breed); *STP Corp. v. United States Auto Club, Inc.*, 286 F. Supp. 146, 151 (S.D. Ind. 1968); *United States v. United States Trotting Ass'n*, 1960 Trade Cas. (CCH) para. 69,761, at 76,957 (S.D. Ohio 1960).

113. See *supra* text accompanying notes 71-87.

114. *Hennessey v. NCAA*, 564 F.2d 1136, 1152-53 (5th Cir. 1977); *Marjorie Webster Junior College, Inc. v. Middle States Ass'n of Colleges and Secondary Schools*, 432 F.2d 650, 654-55 (D.C. Cir.), *cert. denied*, 400 U.S. 965 (1970) (absent purely commercial motives, activity that goes to the heart of the concept of education accreditation should not be subjected to antitrust scrutiny).

115. NCAA MANUAL, *supra* note 2, at 1.

mote intercollegiate athletics in general, not just men's basketball or football. If the relevant market is intercollegiate athletic competition, then the Division I restrictions will likely withstand scrutiny under the rule of reason.<sup>116</sup> The NCAA could argue that regulation of sports sponsorship and scheduling promotes intercollegiate athletics by enlarging the number of sports, contests, and students who can participate. The fact that a great number of sports is required under NCAA rules reduces the possibility of a concentration on the revenue-raising sports to the exclusion of all others.

If, however, the relevant market is men's basketball or football, the restrictive Division I requirements would be harder to justify because of the economic significance of Division I status. While the sports sponsorship requirements are reasonable because they encourage other sports, the scheduling, stadium size, and attendance requirements are unreasonable because they operate to exclude a significant number of schools from Division I. This is especially true in the Division I football market. Because football television revenues have decreased since the *Board of Regents* decision, the schools with significant football programs would seek more control over the environment in which they compete, ostensibly to avoid sharing the television revenues with other institutions. Proposals for an extremely restrictive Division IV for the big football schools is evidence of exclusionary intent.<sup>117</sup> The more restrictive their proposals become, the more likely a court is to find that the rules unreasonably restrict competition.

The basic question is whether the Division I entry requirements are unreasonable because they function as a group boycott of those institutions that fail to qualify for Division I status. If membership in Division I is essential to a school's ability to compete economically and athletically, then the exclusion of an institution may create unjustified harm.<sup>118</sup>

Under the rule of reason analysis, the challenged rules must be reasonably related to the legitimate goals of the NCAA.<sup>119</sup> The goals of the NCAA with reference to the divisional structure are maintaining competitive parity among institutions, encouraging broad-based athletic competition, and preserving the character and

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116. See *supra* notes 40-65 and accompanying text for a discussion of the rule of reason analysis.

117. See *supra* note 69 and accompanying text.

118. See *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351, 1370 (5th Cir. 1980) (restrictions on membership in real estate multiple listing service found to be facially unreasonable).

119. See *supra* text accompanying note 50.

integrity of college sports. While these goals are legitimate,<sup>120</sup> the rules promulgated by Division I may not be reasonably related to or sufficiently narrowly tailored to accomplish those goals.

The NCAA asserts that it is committed to the maintenance of the athlete as an integral part of the educational process and justifies many of its rules as necessary to accomplish this goal. However, there is a serious risk that academic justifications mask economically-motivated intent.<sup>121</sup> For that reason, the Division I requirements should be carefully reviewed. The history of the divisions<sup>122</sup> demonstrates no educational motives for the restructuring in 1973. The three-division system was a compromise agreement among members to allow the larger schools with major revenue-producing sports programs to develop rules more in accord with their economic objectives without interference from smaller schools.

It may be necessary to accept the three-division structure as a prerequisite to harmonious existence among the huge number of NCAA member institutions. If so, certain guidelines are necessary to determine which division is the appropriate one for each school. Originally, the schools selected their division themselves, with only the major football universities assigned to Division I because of the strength of their schedules.<sup>123</sup> Since 1973, a number of increasingly restrictive membership criteria have been adopted by Division I members. However, a reviewing court is likely to find that the current structure is a reasonable means of promoting intercollegiate athletic competition and allowing schools to set their own academic and athletic priorities.

Accepting the practical importance of the divisional structure as a whole does not lead to the conclusion that every requirement is reasonable or sufficiently narrowly tailored. Because of the significant economic advantages of Division I membership, a reviewing court should not be as deferential to its membership criteria as a court might be with rules designed to preserve academic standards.<sup>124</sup> "Conduct which has an unnecessarily severe effect upon

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120. See *NCAA v. Board of Regents*, 468 U.S. 85 (1984). The Court in *Board of Regents* did note the finding of the district court that "the NCAA imposes a variety of other restrictions designed to preserve amateurism which are much better tailored to the goal of competitive balance than is the television plan, and which are 'clearly sufficient' to preserve competitive balance to the extent it is within the NCAA's power to do so." *Id.* at 119.

121. See Weistart, *supra* note 12, at 178.

122. See *supra* text accompanying notes 66-70.

123. See Koch, *A Troubled Cartel: The NCAA*, 38 LAW & CONTEMP. PROBS. 135, 146 (1973).

124. See Weistart, *supra* note 12, at 177.

competition irrespective of justification" may not survive rule of reason analysis.<sup>125</sup>

Unlike many professional sports leagues, there are no finite limitations on the size of Division I to justify the strict entry requirements.<sup>126</sup> Limiting the number of schools in Division I is not reasonably related to the goal of competitive parity because there is no evidence of competitive balance among NCAA teams. Nor is that necessarily the purpose of the NCAA, unlike professional leagues which require competitive balance to maintain interest in the competition. "Even within the most restrictive of the NCAA's divisions, it is not necessary that all the teams be equal competitors."<sup>127</sup> Moreover, rivalries are not necessarily dictated by the competitive equality of the participating teams. Division I restrictions do serve to restrict participation to schools with major athletic programs, but do little to achieve competitive balance among the member schools. If the goal of the NCAA is widespread participation in intercollegiate athletics, there is no reason to exclude institutions that decide to commit to a broad-based athletic program and enter Division I.

On the other hand, the Division I requirements are objective criteria for membership. If a school decides to move into Division I by bringing its program into compliance with applicable rules, there is no obvious reason for preventing the school from participating. The membership criteria are not subjective and do not necessarily prohibit entry into Division I.<sup>128</sup> However, there is some evidence that Division I members have developed rules that make it difficult to become a fully participating member, as is illustrated by UNCG's move from Division III to Division I.<sup>129</sup>

The discussion among member institutions over the sports sponsorship requirements demonstrates a concern to prevent token sports—sports that are maintained to satisfy membership requirements.<sup>130</sup> The minimum sports sponsorship requirement, set at six

125. Note, *Trade Association Exclusionary Practices: An Affirmative Role for the Rule of Reason*, 66 COLUM. L. REV. 1486, 1506 (1966).

126. See *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351, 1376 (5th Cir. 1980); *Deesen v. Professional Golfers' Ass'n of America*, 358 F.2d 165, 172 (9th Cir. 1966) (PGA entitled to adopt reasonable measures to hold tournaments to manageable number); *Weser v. Professional Golfers' Ass'n of America*, 1979-2 Trade Cas. (CCH) para. 62,740 (N.D. Ill. 1979) (eligibility requirements for limited spaces in PGA tournament reasonable if intended to foster competition at the highest level).

127. Weistart, *supra* note 12, at 179.

128. *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351, 1381-82 (5th Cir. 1980).

129. See *supra* text accompanying notes 102-106.

130. See *supra* text accompanying note 73.

men's and six women's sports, could be said to advance the goal of increased participation in college sports. However, the minimum number does nothing to prevent a school interested only in football or men's basketball from having ten or eleven token sports. The fact that many large Division I schools with revenue-raising sports as their highest priority also maintain significantly more than the minimum number of additional sports may signal that the minimum sports sponsorship requirement is narrowly tailored to reduce the danger of token sports sponsorship, thereby allowing a significant number of institutions to participate.

Individually, the Division I criteria may not seem unreasonable. However, the cumulative effect of the restrictions makes it extremely costly, difficult, and time-consuming for a school to enter Division I. The restrictions on scheduling games with teams from other divisions makes it difficult for non-Division I institutions to develop schedules for their athletic teams that will enable them to fulfill entry requirements. This is particularly true because schedules are made years in advance.

The stadium size and attendance requirements for Division I football can be prohibitive for a small institution. Many schools would never be able to build or maintain a stadium which seats 30,000 fans, and therefore would be unable to maintain a Division I football team, even if they committed the other necessary resources to building a powerful football program. A school could, however, maintain a Division II or III football team and enter Division I with twelve other sports, one of which must be men's basketball. Unfortunately, the basketball team could not participate in the NCAA tournament for eight years after entering Division I.

The prohibition on movement from Division III to Division I without first becoming a member of Division II for three years and the recent increase in the waiting period for the Division I men's basketball tournament are not reasonably related to the NCAA's legitimate goals. The rule disallowing multidivision classification with only football or basketball in Division I is arguably reasonable because it prevents concentration on the revenue-raising sports while maintaining a smaller number of additional sports. It prevents a team from deriving revenue from those two sports to finance the minimum number of sports to become a Division I member.

Because the lure of financial reward from participation in the NCAA tournament and revenue from television coverage of football and men's basketball is great, it is natural that schools would seek to share in the profits. The strict limits and qualifications on

actually participating in Division I revenue-raising activities are nothing more than barriers to entry which prevent forced distribution of the wealth among more and more schools.<sup>131</sup>

The NCAA does provide some procedural safeguards for the application of its membership criteria. An institution may submit a written request for a waiver of division membership criteria. The division membership considers the request at the next convention, and by a majority of members can vote to accept or reject the request.<sup>132</sup> The waiver is valid for three years, but the institution may not participate in championships unless it qualifies in that particular sport.<sup>133</sup> Similarly, there are waiver provisions for the individual membership criteria such as insufficient student interest for the women's sports sponsorship criterion, injury or illness for minimum contest and participants criteria, or contractual problems for the scheduling requirements.<sup>134</sup> There is also a conference exception to home-attendance requirements for football, so that if at least half of the football playing members of a conference meet the attendance criterion, a school that does not is not precluded from Division I status, if it can get into a conference.<sup>135</sup>

The bases upon which a waiver may be granted are fairly narrow, and there would seem to be little incentive to vote for a waiver if that would mean a "dilution" of Division I. However, it is likely that a reviewing court would consider the procedural safeguards adequate.<sup>136</sup>

## IX. CONCLUSION

The evolution of college football and men's basketball as major entertainment products has resulted in NCAA policies and rules which have a decidedly economic flavor. If there is nothing, other than commercial concerns, to justify a particular regulation, a reviewing court should invalidate the rule as unreasonably restrictive of competition among NCAA member institutions. Membership in Division I is the primary means by which a school can

131. See *supra* text accompanying notes 96-101.

132. See NCAA MANUAL, *supra* note 2, at 277.

133. *Id.* at 278.

134. *Id.* at 283-85.

135. *Id.* at 286.

136. See *Gunter Harz Sports, Inc. v. United States Tennis Ass'n*, 511 F. Supp. 1103, 1121 (D. Neb.), *aff'd per curiam*, 665 F.2d 222 (8th Cir. 1981) (while not a model of procedural due process, the USTA's notice and comment rule-making procedure which did not inform the manufacturer of double-strung rackets of proceedings to exclude its racket was adequate to avoid antitrust liability).

derive revenue from its intercollegiate athletics program. Whether that in itself is a worthy goal is beyond the scope of this Article. The reality is that Division I membership has significant economic advantages.

It is probable that a court would find that most of the rules are reasonable means of differentiating between institutions with differing academic and athletic priorities. The sports sponsorship requirement should be reasonably related to the goal of encouraging broad-based participation in intercollegiate athletics and narrowly tailored to prevent token sports and overemphasis on football and basketball. Other rules like stadium size and attendance may or may not be reasonable or narrowly tailored.

If one accepts the necessity of the three division structure, then it is logical to conclude that a court should defer to the NCAA. The only other alternative would be total restructure of the NCAA. While many Division I schools would prefer restructuring the NCAA to gain autonomy over their revenue sports, a movement in that direction would be unjustified by the legitimate objectives of the NCAA and might be successfully challenged under the antitrust laws.