All for One and One for All: The Historical Development and Current Implications of MLS's Single-Entity Structure

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Fresh off a scintillating performance at the 2014 FIFA World Cup that propelled his country beyond the infamously labeled "Group of Death," American midfielder Jermaine Jones decided to leave his previous European club in favor of playing within Major League Soccer ("MLS"). Two MLS clubs, the New England Revolution ("Revolution") and the Chicago Fire ("Fire"), were ardently pursuing his signature. The Revolution ultimately won the race to secure Jones's services. However, to decide for whom Jones would play in the following season, MLS commissioner Don Garber placed the names of both clubs into an envelope and selected the Revolution from a random drawing.[1] Strikingly, the Fire not only assented to such a bizarre medium of player transfer but publicly acknowledged their support of the system employed by MLS through which the commissioner was able to decide the fate of a World Cup veteran.[2]

This method of player acquisition is certainly unconventional amongst professional soccer leagues around the world. Nevertheless, it serves as an illustration of the governing structure under which MLS operates – the single-entity structure. This structure, through its historical development and its current application, has resulted in great controversy amidst the rise of antitrust arguments from parties seeking to restrict a league's unfettered authority to operate in whichever way they choose. Nevertheless, the application of the single-entity structure as a safeguard protecting against claims of antitrust infringement does not hold as significant weight as ultimately desired.

I. Meaning and Historical Foundation of the Single-Entity Structure

[1] *Jermaine Jones assigned to New England Revolution*, Yahoo!Sports (Aug. 24, 2014), https://sports.yahoo.com/blogs/soccer-dirty-tackle/jermaine-jones-assigned-to-new-england-revolution-by-blind-draw.
[2] *Id.*

In contrast to its fellow North American professional sports leagues, the single-entity structure under which MLS operates is rather unique. Rather than establishing itself as an unincorporated association, where each club operates independently of the parent league and employs its players and personnel, MLS works as a limited liability company ("LLC") whose 28 individual clubs form a singular legal entity – "Major League Soccer, LLC."[3] Such an operative structure ultimately results in MLS serving as the employer of all its players rather than the individual clubs for whom the players ply their trade.[4]

Importantly, the single-entity structure distinguishes MLS from the other professional leagues by the regulations under which players are acquired. Because this structure affords MLS the role of sole employer for all its players, the league itself is able to control player acquisitions through a set of rules designed to ensure that teams are not embedded in contentious competition trying to sign the same players.[5] Essentially, if an MLS club is interested in signing a certain player, they do not possess the ability to sign said player directly.[6] Rather, the player must first sign with the league and wait to be allocated to the team who, for that period of negotiation, is the beneficiary of the league's player acquisition policies.[7] Ultimately, the single-entity structure employed by MLS is intended to shield the league from the antitrust laws that pertain to the operation of other North American sports leagues – none more significant than the Sherman Antitrust Act ("Sherman Act").

[3] Christopher R. Deubert & Brandon Wurl, *Major League Soccer at Twenty-Five: Legal and Financial Considerations for the Next Quarter Century*, 12 Ariz. State Univ. Sports & Enter. L.J. 1, 14 (2022).
[4] *Id.*
[5] Ashwin Lonkar, *Single-entity structure in sports leagues – a complete guide*, Sportskeeda (Feb. 10, 2022), https://www.sportskeeda.com/bos/single-entity-structure-in-sports-leagues-a-complete-guide.
[6] *Id.*
[7] *Id.*

Section 1 of the Sherman Act states that every "contract, combination . . ., or conspiracy" that serves to restrain trade is "declared to be illegal."[8] Consequently, the Sherman Act serves to prohibit businesses from attempting to monopolize the labor markets to which they belong for the purpose of maximizing their profits. Indeed, the Supreme Court has reinforced the general legislative policy preference against limitations on competitive market conditions by holding that any acts that are "unreasonably restrictive on [such] conditions" are unlawful.[9] More importantly, however, the Court has interpreted Section 1 of the Sherman Act in a manner favorable to parent corporations and the relationship they maintain with wholly owned subsidiaries.[10]

In *Copperweld Corp. v. Independence Tube Corp.*, the Court held that the "coordinated activity of a parent and its wholly owned subsidiary" is properly viewed as the activity of a "single enterprise" for the purposes of Section 1 of the Sherman Act.[11] According to the Court, the coordination between a corporation and its divisions does not represent the sudden union of "two independent sources of economic power previously pursuing separate interests."[12] Rather, such coordination furthers the "complete unity of interest" that is shared by the parent corporation and its subsidiaries, guiding a common stream of corporate consciousness that determines their business actions.[13] Consequently, the Court provided that any actions committed by corporations under the aforementioned circumstances are not subject to scrutiny under Section 1, thereby giving rise to the single-entity defense frequently utilized by MLS against claims of antitrust violation.[14]

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[8] 15 U.S.C. § 1.
[9] *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 58 (1911).
[10] *Copperweld Corp. v. Indep. Tube Corp*., 467 U.S. 752, 771 (1984).
[11] *Id.*
[12] *Id.* at 770-71.
[13] *Id.* at 771.
[14] *Id*.

II. Historical Challenges to MLS's Single-Entity Structure

Throughout the latter half of the twentieth century, the application of antitrust laws to the sports industry has complicated the relationship between players and the leagues in which they offer their services.[15] For players belonging to clubs in major American sports leagues, the inability to seek alternative employment for greater compensation as a result of rules established without player input appeared to be an unreasonable restraint on the leagues' labor markets.[16] Accordingly, the players began to challenge such rules as violations of Section 1 of the Sherman Act.[17] Ultimately, the players succeeded in convincing courts to recognize their right to submit their services for competition amongst clubs belonging to their league's labor market.[18] Now, as a result of these challenges, any restraints upon player markets, including but not limited to salary caps and maximum salaries, must be agreed with the players' union of each respective league in order to survive the threat posed by antitrust law.[19]

After having observed the arduous bouts of litigation within which multiple sports leagues were entrenched concerning such issues, MLS sought to avoid the same. Indeed, MLS sought to retain primary control over its player market while also evading the prospect of litigation and work stoppages stemming from player hostility.[20] Consequently, MLS's desire to avoid the troubles faced by the other American leagues resulted in the establishment of the single-entity structure as its primary safeguard against antitrust arguments.[21] From MLS's perspective, the Court's decision in *Copperweld* was such that, should players sign their contracts with MLS as a

[15] Deubert & Wurl, *supra* note 3, at 16.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at 17.
[21] *Id.*

whole, the league and its member clubs would be considered a single-entity immune from punishment under Section 1 of the Sherman Act.[22] Nevertheless, MLS's attempts to protect itself from antitrust arguments through the single-entity defense were almost immediately put to the test.

In 1997, Iain Fraser and other MLS players filed a lawsuit in the United States District Court for the District of Massachusetts against MLS and other entities who operated clubs at the time.[23] The players alleged that the restraints imposed by MLS over player movement "effectively eliminat[ed] the competition" for the "players' services [around the league and] worldwide" and violated Sections 1 of the Sherman Act.[24] Additionally, the players alleged that the actions of MLS and the other listed defendants served as a joint exercise of monopoly power in violation of Section 2 of the Sherman Act.[25] Upon deliberation, the district court ruled in favor of MLS, holding that, as a single entity, the league "cannot conspire or combine with its investors in violation of § 1."[26] According to the court, MLS's policy of "contracting centrally for player services" was the unilateral activity of a single firm that did not apply to the provisions established in Section 1.[27] Consequently, the district court upheld MLS's establishment of the single-entity structure as a viable defense against antitrust claims lodged by its players seeking reform within the rigid framework of the league's labor market.[28] Unfortunately for MLS, this legal victory was short-lived.

[22] *Id.* at 17-18.
[23] *Fraser v. MLS, L.L.C.*, 97 F. Supp. 2d 130 (D. Mass. 2000).
[24] *Id.* at 131.
[25] *Id.*
[26] *Id.* at 139.
[27] *Id.*
[28] Deubert & Wurl, *supra* note 3, at 18.

After receiving the district court's decision, the plaintiffs appealed to the United States Court of Appeals for the First Circuit, who disagreed with the previous decision.[29] In their opinion, the court likened the relationship between MLS and its operators/investors as a "hybrid arrangement" – somewhere between a "single company . . . and a cooperative arrangement between existing competitors."[30] The court expanded upon their classification of the relationship between MLS and its operators/investors by explaining its fundamental difference from a single-entity relationship as defined in *Copperweld*.[31]

First, the court noted that MLS and its operator/investors have separate contractual relationships giving rights to such investors that "take them part way along the path to ordinary sports team owners."[32] The court highlighted other actions conducted by the owner/investors that would appear outside the interest of the common enterprise of MLS, such as independent hirings, retention of team-generated revenue, and limited sale rights in their own teams.[33] Such a lack of complete interconnectedness, according to the court, ran in contrast with the Court's observation in *Copperweld* that the components to a single entity – a "parent and its wholly owned subsidiary" – must share a "complete unity of interests."[34]

Moreover, the court emphasized the weakness of MLS's attempt to characterize their relationship with the operator/investors as a single entity by noting the power held by the operator/investors within the league's governance.[35] Rather than operating as "mere servants of MLS," the owner/investors effectively control it by possessing the majority of votes on the

[29] *Fraser v. MLS L.L.C.*, 284 F.3d 47, 58 (1st Cir. 2002).
[30] *Id.*
[31] *Id.* at 57.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*

managing board.[36] Consequently, the aforementioned differences between the relationship of MLS with its operator/investors and a parent corporation with its wholly owned subsidiaries allowed the court to question MLS's use of the single-entity defense against the antitrust claims of the original plaintiffs.[37] Nonetheless, this question formed the extent of the court's inquiry, as they declared that the "single entity problem need not be answered definitively" to resolve the case.[38] Doing so would compel the court to expand the reach of the *Copperweld* decision to determine whether MLS could viably claim to operate under a single-entity structure.[39] Unfortunately for MLS, it was something the court was unwilling to do.[40] As such, the ultimate decision of the First Circuit in *Fraser* drastically lessened the significance of the single-entity structure as a pertinent legal defense against claims of antitrust violation.

III. The Implications of Invoking the Single-Entity Defense Amid Current MLS Operations and the Potential for a Stronger Legal Alternative against Section 1 Arguments

Given the nature of the league's current operations, MLS's classification as a single entity has begun to appear increasingly inaccurate. As opposed to its operative structure during the *Fraser* suit in 1997, during which the league itself owned three separate clubs and multiple owners owned multiple clubs, the current operative structure of MLS has experienced a significant transformation.[41] While players continue to sign their employment contracts with MLS, the individual clubs hold control over their rosters and salary budgets.[42] Indeed, clubs are

[36] *Id.*
[37] *Id.* at 59.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] Deubert & Wurl, *supra* note 3, at 19.
[42] *Id.*

able to scout and negotiate terms with players through the international soccer labor market.[43] Further, the current extent of the league's involvement in the acquisition of a particular player begins only after the club and player have agreed to terms for a potential contract, at which point MLS is provided the details to finalize the paperwork and sign the player officially.[44] Though MLS technically retains the authority to sign all league players to their employment contracts, their practical role within the player acquisition process is to ensure that such contracts comply with the league's collective bargaining agreement and other league rules.[45] Accordingly, the manner in which MLS currently operates supports the notion that the single-entity defense against future antitrust arguments would likely be rejected by courts across the country.

Additionally, the opportunity to establish the single-entity defense as a viable legal safeguard against antitrust arguments post-*Fraser* has been threatened by a recent decision inflicted against another professional soccer league. In June 2021, the United States District Court for the District of Oregon rejected the single-entity defense of the National Women's Soccer League ("NWSL") in response to a lawsuit filed by promising young talent, Olivia Moultrie, who was barred from playing in the league due to a rule that requires players to be at least 18 years of age.[46] According to Moultrie, NWSL's age eligibility rule violated Section 1 by unreasonably restraining her from playing.[47] Nevertheless, the league countered by contending that it could not restrain the player labor market in violation of Section 1 because it was a single entity.[48] While NWSL's legal classification resembled that of MLS in the *Fraser* era, the district court rejected NWSL's contentions by noting numerous provisions within its primary Operating Agreement that suggest

[43] *Id.* at 19-20.
[44] *Id.* at 20.
[45] *Id.*
[46] *O.M. v. Nat'l Women's Soccer League, LLC*, 544 F. Supp. 3d 1063, 1070-71 (D. Or. 2021).
[47] *Id.* at 1066.
[48] *Id.* at 1068.

the league and its member teams function as "separate economic entities competing for player rights."[49] Among the named provisions was the ability for each member team to negotiate agreements with players – a characteristic of NWSL in stark comparison with the current operative structure of MLS.[50] As such, the district court ultimately held that the NWSL and its member teams are not a single entity for the purposes of Section 1.[51]

This decision is particularly problematic for MLS in its attempts to preserve the single-entity defense as a protective barrier against antitrust arguments. Any attempted invocation of the single-entity defense would likely result in the same outcome, especially given that MLS's current operative structure is more decentralized than that of the NWSL during the case.[52] Consequently, given the MLS's current operative structure and the recent establishment of adverse precedent, the single-entity defense does not appear to be a feasible legal defense for MLS in response to claims of antitrust violation. Nevertheless, there potentially exists another avenue of defense that MLS could explore to defeat future antitrust arguments – a proper definition of "the relevant market" in applying the "rule of reason."

In 2010, the Supreme Court held that the "rule of reason" is the proper standard to apply when determining whether a sports league has unreasonably restrained competition in violation of the Sherman Act.[53] In order to determine whether the "rule of reason" has been violated, a three-step, burden-shifting framework is applied.[54] Under this framework, the plaintiff must first prove that the challenged restraint has a "substantial anticompetitive effect that harms consumers in the relevant market."[55] This step may offer MLS an enticing legal defense against future

[49] *Id.* at 1070.
[50] *Id.*
[51] *Id.* at 1070-71.
[52] Deubert & Wurl, *supra* note 3, at 24.
[53] *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 202-03 (2010).
[54] *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018).
[55] *Id.*

claims by its players alleging that the league's control over player acquisitions is an unreasonable restraint upon the labor market for players. While players may attempt to argue that the "relevant market" as outlined under "rule of reason" analysis is the North American player market, MLS may very well argue that the true "relevant market" is the highly competitive global player market. Currently, MLS is recruiting high-quality players from around the world at an unprecedented rate.[56] Within this market of players, MLS clubs have demonstrated the ability to negotiate freely with foreign clubs to sign players apart from the influence of the league. [57] Indeed, MLS's involvement in such transfers is primarily limited to signing the players to their respective employment contracts. This relatively miniscule involvement following the extensive negotiation process between clubs may be deemed by courts as insufficient to create a substantially anticompetitive effect on clubs within the global player market. Accordingly, if the league is confronted with a lawsuit claiming Section 1 violations with respect to its player acquisition policies, it may be able to refute such a claim's merits by establishing the global player market as the proper market in which players' services are offered.

Ultimately, the current operative relationship between MLS and its clubs renders it unlikely that the single-entity structure could serve as a viable legal defense against modern-day antitrust arguments. Nevertheless, MLS should not fear the potential repercussions of such arguments. In the alternative, MLS would have a viable defense in utilizing the global player market to their advantage under a "rule of reason" analysis. Under such analysis, any challenger would first have to prove that MLS's activity holds an anticompetitive effect within the proper player market. By establishing the global player market – one in which MLS clubs are free to negotiate

[56] Larry Henry, Jr., *MLS 2023: Klich, Copetti and the Newcomers to Watch*, SBI Soccer (Feb. 24, 2023), https://sbisoccer.com/2023/02/mls-2023-klich-copetti-and-the-newcomers-to-watch.
[57] Kristian Dyer, *Red Bulls complete $5 million transfer for Belgium striker Vanzeir*, Pro Soccer Wire (Feb. 3, 2023), https://prosoccerwire.usatoday.com/2023/02/03/red-bulls-vanzier-transfer-5-million.

with foreign clubs – as proper, the league would be able to refute any claim that their involvement at the end of the transfer process substantially restrains the ability of its clubs to compete for players' signatures. In this vein, one of the primary reasons for which the single-entity defense appears moot will actually serve to assist MLS against potential claims of antitrust infringement.

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