IMG-Learfield: An antitrust reality check on two-sided market mergers
October 6, 2017
Eric Fruits and Geoffrey A. Manne

Yesterday Learfield and IMG College inked their recently announced merger. Since the negotiations were made public several weeks ago, the deal has garnered some wild speculation and potentially negative attention. Now that the merger has been announced, it's bound to attract even more attention and conjecture.

On the field of competition, however, the market realities that support the merger's approval are compelling. And, more importantly, the features of this merger provide critical lessons on market definition, barriers to entry, and other aspects of antitrust law related to two-sided and advertising markets that can be applied to numerous matters vexing competition commentators.

## First, some background

Learfield and IMG specialize in managing multimedia rights (MMRs) for intercollegiate sports. They are, in effect, classic advertising intermediaries, facilitating the monetization by colleges of radio broadcast advertising and billboard, program, and scoreboard space during games (among other things), and the purchase by advertisers of access to these valuable outlets.

Although these transactions can certainly be (and very often are) entered into by colleges and advertisers directly, firms like Learfield and IMG allow colleges to outsource the process — as one firm's tag line puts it, "We Work | You Play." Most important, by bringing multiple schools' MMRs under one roof, these firms can reduce the transaction costs borne by *advertisers* in accessing multiple outlets as part of a broad-based marketing plan.

Media rights and branding are a notable source of revenue for collegiate athletic departments: on average, they account for about 3% of these revenues. While they tend to pale in comparison to TV rights, ticket sales, and fundraising, for major programs, MMRs may be the next most important revenue source after these.

Many collegiate programs retain some or all of their multimedia rights and use in-house resources to market them. In some cases schools license MMRs through their athletic conference. In other cases, schools ink deals to outsource their MMRs to third parties, such as Learfield, IMG, JMI Sports, Outfront Media, and Fox Sports, among several others. A few schools even use professional sports teams to manage their MMRs (the owner of the Red Sox manages Boston College's MMRs, for example).

Schools switch among MMR managers with some regularity, and, in most cases apparently, *not* among the merging parties. Michigan State, for example, was well known for handling its MMRs in-house. But in 2016 the school entered into a 15-year deal with Fox Sports, estimated at minimum guaranteed $150 million. In 2014 Arizona State terminated its MMR deal with IMG and took it MMRs in-house. Then, in 2016, the Sun Devils entered into a first-of-its-kind arrangement with the Pac 12 in which the school manages and sells its own marketing and media rights while the conference handles core business functions for the sales and marketing team (like payroll, accounting, human resources, and employee benefits). The most successful new entrant on the block, JMI Sports, won Kentucky, Clemson, and the University of Pennsylvania from Learfield or IMG. Outfront Media was spun off from CBS in 2014 and has become one of the strongest MMR intermediary competitors, handling some of the biggest names in college sports, including LSU, Maryland, and Virginia. All told, eight recent national Division I champions are served by MMR managers *other* than IMG and Learfield.

## The supposed problem

As noted above, the most obvious pro-competitive benefit of the merger is in the reduction in transaction costs for firms looking to advertise in multiple markets. But, in order to confer that benefit (which, of course, also benefits the schools, whose marketing properties become easier to access), that also means a dreaded increase in size, measured by number of schools' MMRs managed. So is this cause for concern?

Jason Belzer, a professor at Rutgers University and founder of sports consulting firm, GAME, Inc., has said that the merger will create a juggernaut — yes, "a massive inexorable force… that crushes whatever is in its path" — that is likely to invite antitrust scrutiny. The New York Times opines that the deal will allow Learfield to "tighten its grip — for nearly total control — on this niche but robust market," "surely" attracting antitrust scrutiny. But these assessments seem dramatically overblown, and insufficiently grounded in the dynamics of the market.

Belzer's concerns seem to be merely the size of the merging parties — again, measured by the number of schools' rights they manage — and speculation that the merger would bring to an end "any" opportunity for entry by a "major" competitor. These are misguided concerns.

To begin, the focus on the potential entry of a "*major*" competitor is an odd standard that ignores the actual and potential entry of many smaller competitors that are able to win some of the most prestigious and biggest schools. In fact, many in the industry argue — rightly — that there are few economies of scale for colleges. Most of these firms' employees are dedicated to a particular school and those costs must be incurred for each school, no matter the number, and borne by new entrants and incumbents alike. That means a small firm can profitably compete in the same market as larger firms — even "juggernauts." Indeed, every college that brings MMR management in-house is, in fact, an entrant — and there are some big schools in big conferences that manage their MMRs in-house.

The demonstrated entry of new competitors and the transitions of schools from one provider to another or to in-house MMR management indicate that no competitor has any measurable market power that can disadvantage schools or advertisers.

*Indeed, from the perspective of the school, the true relevant market is no broader than each school's own rights*. Even after the merger there will be at least five significant firms competing for those rights, not to mention each school's conference, new entrants, and the school itself.

## The two-sided market that isn't really two-sided

Standard antitrust analysis, of course, focuses on consumer benefits: Will the merger make consumers better off (or no worse off)? But too often casual antitrust analysis of two-sided markets trips up on identifying just who the consumer is — and what the relevant market is. For a shopping mall, is the consumer the retailer or the shopper? For newspapers and search engines, is the customer the advertiser or the reader? For intercollegiate sports multimedia rights licensing, is the consumer the college or the advertiser?

Media coverage of the anticipated IMG/Learfield merger largely ignores advertisers as consumers and focuses almost exclusively on the the schools' relationship with intermediaries — as *purchasers* of marketing services, rather than *sellers* of advertising space.

Although it's difficult to identify the source of this odd bias, it seems to be based on the notion that, while corporations like Coca-Cola and General Motors have some sort of countervailing market power against marketing intermediaries, universities don't. With advertisers out of the picture, media coverage suggests that, somehow, schools may be worse off if the merger were to proceed. But missing from this assessment are two crucial facts that undermine the story: First, schools actually have *enormous* market power; and, second, schools compete in the business of MMR management.

This second factor suggests, in fact, that sometimes there may be nothing special about two-sided markets sufficient to give rise to a unique style of antitrust analysis.

Much of the antitrust confusion seems to be based on confusion over the behavior of two-sided markets. A two-sided market is one in which two sets of actors interact through an intermediary or platform, which, in turn, facilitates the transactions, often enabling transactions to take place that otherwise would be too expensive absent the platform. A shopping mall is a two-sided market where shoppers can find their preferred stores. Stores would operate without the platform, but perhaps not as many, and not as efficiently. Newspapers, search engines, and other online platforms are two-sided markets that bring together advertisers and eyeballs that might not otherwise find each other absent the platform. And a collegiate multimedia rights management firms is a two-sided market where colleges that want to sell advertising space get together with firms that want to advertise their goods and services.

Yet there is nothing particularly "transformative" about the outsourcing of MMR management. Credit cards, for example are qualitatively different than in-store credit operations. They are two-sided platforms that substitute for in-house operations — *but they also create an entirely new product and product market*. MMR marketing firms do lower some transaction costs and reduce risk for collegiate sports marketing, but the product is not substantially changed — in fact, schools must have the knowledge and personnel to assess and enter into the initial sale of MMRs to an intermediary and, because of ongoing revenue-sharing and coordination with the intermediary, must devote ongoing resources even after the initial sale.

But will a merged entity have "too much" power? Imagine if a single firm owned the MMRs for nearly *all* intercollegiate competitors. How would it be able to exercise its supposed market power? Because each deal is negotiated separately, and, other than some mundane, fixed back-office expenses, the costs of rights management must be incurred whether a firm negotiates one deal or 100, there are no substantial economies of scale in the purchasing of MMRs. As a result, the existence of deals with other schools won't automatically translate into better deals with subsequent schools.

Now, imagine if one school retained its own MMRs, but decided it might want to license them to an intermediary. Does it face anticompetitive market conditions if there is only a single provider of such services? To begin with, there is *never* only a single provider, as each school can provide the services in-house. This is not even the traditional monopoly constraint of simply "not buying," which makes up the textbook "deadweight loss" from monopoly: In this case "not buying" does not mean going without; it simply means providing for oneself.

More importantly, because the school has a monopoly on access to its own marketing rights (to say nothing of access to its own physical facilities) unless and until it licenses them, its own bargaining power is largely independent of an intermediary's access to other schools' rights. If it were otherwise, each school would face anticompetitive market conditions simply by virtue of *other schools' owning their own rights!*

It *is* possible that a larger, older firm will have more expertise and will be better able to negotiate deals with other schools — *i.e.*, it will reap the benefits of learning by doing. But the returns to learning by doing derive from the ability to offer higher-quality/lower-cost services over time — which are a source of economic benefit, not cost. At the same time, the bulk of the benefits of experience may be gained over time with even a single set of MMRs, given the ever-varying range of circumstances even a single school will create: There may be little additional benefit (and, to be sure, there is additional cost) from managing multiple schools' MMRs. And whatever benefits specialized firms offer, they also come with agency costs, and an intermediary's specialized knowledge about marketing MMRs may or may not outweigh a school's own specialized knowledge about the nuances of its particular circumstances. Moreover, because of knowledge spillovers and employee turnover this marketing expertise is actually widely distributed; not surprisingly, JMI Sports' MMR unit, one of the most recent and successful entrants into the business was started by a former employee of IMG. Several other firms started out the same way.

The right way to begin thinking about the issue is this: Imagine if MMR intermediaries didn't exist — what would happen? In this case, the answer is readily apparent because, for a significant number of schools (about 37% of Division I schools, in fact) MMR licensing is handled in-house, without the use of intermediaries. These schools do, in fact, attract advertisers, and there is little indication that they earn less net profit for going it alone. Schools with larger audiences, better targeted to certain advertisers' products, command higher prices. Each school enjoys an effective monopoly over advertising channels around its own games, and each has bargaining power derived from its particular attractiveness to particular advertisers.

In effect, each school faces a number of possible options for MMR monetization — most notably a) up-front contracting to an intermediary, which then absorbs the risk, expense, and possible up-side of ongoing licensing to advertisers, or b) direct, ongoing licensing to advertisers. The presence of the intermediary doesn't appreciably change the market, nor the relative bargaining power of sellers (schools) and buyers (advertisers) of advertising space any more than the presence of temp firms transforms the fundamental relationship between employers and potential part-time employees.

In making their decisions, schools always have the option of taking their MMR management in-house. In facing competing bids from firms such as IMG or Learfield, from their own conferences, or from professional sports teams, the opening bid, in a sense, comes from the school itself. Even the biggest intermediary in the industry must offer the school a deal that is at least as good as managing the MMRs in-house.

## The true relevant market: Advertising

According to economist Andy Schwarz, if the relevant market is "college-based marketing services to Power 5 schools, the antitrust authorities may have more concerns than if it's marketing services in sports." But this entirely misses the real market exchange here. Sure, marketing services are purchased by schools, but their value to the schools is independent of the number of *other* schools an intermediary also markets.

Advertisers always have the option of deploying their ad dollars elsewhere. If Coca-Cola wants to advertise on Auburn's stadium video board, it's because Auburn's video board is a profitable outlet for advertising, not because the Auburn ads are bundled with advertising at dozens of other schools (although that bundling may reduce the total cost of advertising on Auburn's scoreboard as well as other outlets). Similarly, Auburn is seeking the highest bidder for space on its video board. It does not matter to Auburn that the University of Georgia is using the same intermediary to sell ads on its stadium video board.

The willingness of purchasers — say, Coca-Cola or Toyota — to pay for collegiate multimedia advertising is a function of the school that licenses it (net transaction costs) — and MMR agents like IMG and Learfield commit substantial guaranteed sums and a share of any additional profits for the rights to sell that advertising: For example, IMG recently agreed to pay $150 million over 10 years to renew its MMR contract at UCLA. But this is the value of a particular, niche form of advertising, determined within the context of the broader advertising market. How much pricing power over scoreboard advertising does any university, or even any group of universities under the umbrella of an intermediary have, in a world in which Coke and Toyota can advertise virtually anywhere — including during commercial breaks in televised intercollegiate games, which are licensed separately from the MMRs licensed by companies like IMG and Learfield?

There is, in other words, a hard ceiling on what intermediaries can charge schools for MMR marketing services: The schools' own cost of operating a comparable program in-house.

To be sure, for advertisers, large MMR marketing firms lower the transaction costs of buying advertising space across a range of schools, presumably increasing demand for intercollegiate sports advertising and sponsorship. But sponsors and advertisers have a wide range of options for spending their marketing dollars. Intercollegiate sports MMRs are a small slice of the sports advertising market, which, in turn, is a small slice of the total advertising market. Even if one were to incorrectly describe the combined entity as a "juggernaut" in intercollegiate sports, the MMR rights it sells would still be a flyspeck in the broader market of multimedia advertising.

According to one calculation (by MoffettNathanson), total ad spending in the U.S. was about $191 billion in 2016 (Pew Research Center estimates total ad revenue at $240 billion) and the global advertising market was estimated to be worth about $493 billion. The intercollegiate MMR segment represents a minuscule fraction of that. According to Jason Belzer, "[a]t the time of its sale to WME in 2013, IMG College's yearly revenue was nearly $500 million…." Another source puts it at $375 million. Either way, it's a fraction of one percent of the total market, and even combined with Learfield it will remain a minuscule fraction. Even if one were to define a far narrower sports *sponsorship* market, which a Price Waterhouse estimateputs at around $16 billion, the combined companies would *still* have a tiny market share.

As sellers of MMRs, colleges are competing with each other, professional sports such as the NFL and NBA, and with non-sports marketing opportunities. And it's a huge and competitive market.

## Barriers to entry

While capital requirements and the presence of long-term contracts may present challenges to potential entrants into the business of marketing MMRs, these potential entrants face virtually no barriers that are not, or have not been, faced by incumbent providers. In this context, one should keep in mind two factors. First, barriers to entry are properly defined as costs incurred by new entrants *that are not incurred by incumbents* (no matter what Joe Bain says; Stigler always wins this dispute…). Every firm must bear the cost of negotiating and managing each schools' MMRs, and, as noted, these costs don't vary significantly with the number of schools being managed. And every entrant needs approximately the same capital and human resources per similarly sized school as every incumbent. Thus, in this context, neither the need for capital nor dedicated employees is properly construed as a barrier to entry.

Second, as the DOJ and FTC acknowledge in the Horizontal Merger Guidelines, *any* merger can be lawful under the antitrust laws, no matter its market share, where there are no significant barriers to entry:

> The prospect of entry into the relevant market will alleviate concerns about adverse competitive effects… if entry into the market is so easy that the merged firm and its remaining rivals in the market, either unilaterally or collectively, could not profitably raise price or otherwise reduce competition compared to the level that would prevail in the absence of the merger.

As noted, there are low economies of scale in the business, with most of the economies occurring in the relatively small "back office" work of payroll, accounting, human resources, and employee benefits. Since the 2000s, the entry of several significant competitors — many entering with only one or two schools or specializing in smaller or niche markets — strongly suggests that there are no economically important barriers to entry. And these firms have entered and succeeded with a wide range of business models and firm sizes:

- JMI Sports — a "rising boutique firm" — hired Tom Stultz, the former senior vice president and managing director of IMG's MMR business, in 2012. JMI won its first (and thus, at the time, only) MMR bid in 2014 at the University of Kentucky, besting IMG to win the deal.
- Peak Sports MGMT, founded in 2012, is a small-scale MMR firm that focuses on lesser Division I and II schools in Texas and the Midwest. It manages just seven small properties, including Southland Conference schools like the University of Central Arkansas and Southeastern Louisiana University.
- Fox Sports entered the business in 2008 with a deal with the University of Florida. It now handles MMRs for schools like Georgetown, Auburn, and Villanova. Fox's entry suggests that other media companies — like ESPN — that may already own TV broadcast rights are also potential entrants.
- In 2014 the sports advertising firm, Van Wagner, hired three former Nelligan employees to make a play for the college sports space. In 2015 the company won its first MMR bid at Florida International University, reportedly against seven other participants. It now handles more than a dozen schools including Georgia State (which it won from IMG), Loyola Marymount, Pepperdine, Stony Brook, and Santa Clara.
- In 2001 Fenway Sports Group, parent company of the Boston Red Sox and Liverpool Football Club, entered into an MMR agreement with Boston College. And earlier this year the Tampa Bay Lightning hockey team began handling multimedia marketing for the University of South Florida.

Potential new entrants abound. Most obviously, sports networks like ESPN could readily follow Fox Sports' lead and advertising firms could follow Van Wagner's. These companies have existing relationships and expertise that position them for easy entry into the MMR business. Moreover, there are already several companies that handle the trademark licensing for schools, any of which could move into the MMR management business, as well; both IMG and Learfield already handle licensing for a number of schools. Most notably, Fermata Partners, founded in 2012 by former IMG employees and acquired in 2015 by CAA Sports (a division of Creative Artists Agency), has trademark licensing agreements with Georgia, Kentucky, Miami, Notre Dame, Oregon, Virginia, and Wisconsin. It could easily expand into selling MMR rights for these and other schools. Other licensing firms like Exemplar (which handles licensing at Columbia) and 289c (which handles licensing at Texas and Ohio State) could also easily expand into MMR.

Given the relatively trivial economies of scale, the minimum viable scale for a new entrant appears to be approximately one school — a size that each school's in-house operations, of course, automatically meets. Moreover, the Peak Sports, Fenway, and Tampa Bay Lightning examples suggest that there may be particular benefits to local, regional, or category specialization, suggesting that innovative, new entry is not only possible, but even likely, as the business continues to evolve.

## Conclusion

A merger between IMG and Learfield should not raise any antitrust issues. College sports is a small slice of the total advertising market. Even a so-called "juggernaut" in college sports multimedia rights is a small bit in the broader market of multimedia marketing.

The demonstrated entry of new competitors and the transitions of schools from one provider to another or to bringing MMR management in-house, indicates that no competitor has any measurable market power that can disadvantage schools or advertisers.

The term "juggernaut" entered the English language because of misinterpretation and exaggeration of actual events. Fears of the IMG/Learfield merger crushing competition is similarly based on a misinterpretation of two-sided markets and misunderstanding of the reality of the of the market for college multimedia rights management. Importantly, the case is also a cautionary tale for those who would identify narrow, contract-, channel-, or platform-specific relevant markets in circumstances where a range of intermediaries and direct relationships can compete to offer the same service as those being scrutinized. Antitrust advocates have a long and inglorious history of defining markets by channels of distribution or other convenient, yet often economically inappropriate, combinations of firms or products. Yet the presence of marketing or other intermediaries does not automatically transform a basic, commercial relationship into a novel, two-sided market necessitating narrow market definitions and creative economics.

View Article