

## **Is the National Basketball Association a Monopoly?**

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Unlike most other professional sports leagues, the National Basketball Association (NBA) is a monopoly in violation of the Sherman Antitrust Act. As the premier professional basketball league in the world, the NBA attracts players and fans worldwide, strengthening the United States and international economies through ticket, media, and apparel sales. However, as a monopoly, it can have a net negative effect on economies by discouraging innovation, charging high prices, and increasing inflation.<sup>1</sup> That is why, in 1890, the U.S. Congress and President Benjamin Harrison passed and signed the Sherman Antitrust Act,<sup>2</sup> where Section One outlaws restricting “trade or commerce,” and Section Two makes monopolies illegal.<sup>3</sup> According to the Federal Trade Commission (FTC), a business does not have to control the entire market to be a monopoly but rather must have “significant and durable market power,” which the FTC defines as “the long term ability to raise price or exclude competitors.”<sup>4</sup> These definitions raise the concern that professional sports leagues are monopolies. The Department of Justice (DOJ) is currently investigating the NBA because of this very concern due to allegations that it acted anti-competitively against a rival basketball league, Big3.<sup>5</sup>

Founded by O’Shea Jackson Sr. (also known as Ice Cube) and entertainment executive Jeff Kwatinetz, Big3 is an innovative basketball league that attempts to assemble the best

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<sup>1</sup> Sean Ross, *How Does a Monopoly Contribute to Market Failure?*, Investopedia (Jan. 2024), [investopedia.com/ask/answers/042215/how-does-monopoly-contribute-market-failure.asp](https://investopedia.com/ask/answers/042215/how-does-monopoly-contribute-market-failure.asp).

<sup>2</sup> Nat’l. Archives, *Milestone Documents: Sherman Anti-Trust Act (1890)* (Mar. 2022), [archives.gov/milestone-documents/sherman-anti-trust-act](https://archives.gov/milestone-documents/sherman-anti-trust-act).

<sup>3</sup> Sherman Antitrust Act, 15 U.S.C. §§ 1–2 (1890).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

three-on-three teams in the United States.<sup>6</sup> According to Big3, the NBA tried to restrict its competitors by discouraging its owners from investing in Big3,<sup>7</sup> violating Section One of the Sherman Act. If the courts find them in violation of this act, the NBA will have to pay a fine of up to \$100 million and reimburse Big3 for any losses it caused.<sup>8</sup>

Regardless of the outcome of the DOJ investigation, the NBA meets the FTC's definition of a monopoly, violating Section Two of the Sherman Act. First, it has "significant and durable market power."<sup>9</sup> Statista says that, for the 2022–23 season, worldwide basketball revenue was between \$10.95 and \$11.03 billion,<sup>10</sup> and the NBA's revenue was \$10.58 billion.<sup>11</sup> Thus, it controlled 96% of the international basketball market space. Second, it has "the long term ability to raise price,"<sup>12</sup> as it controls initial ticket sales. Third, it can "exclude competitors."<sup>13</sup> Although other basketball leagues form, they often go bankrupt because they cannot compete with the NBA. For example, the Continental Basketball Association (CBA) ceased to exist since it could not pay its employees,<sup>14</sup> and could not reach a big enough crowd, as it was not as big as the NBA, and it only had ten teams and a net worth of \$11 million.<sup>15</sup>

To avoid the same outcome as the CBA, Big3 is trying to avoid competition with the NBA. Instead, it is taking a different approach to distinguish itself by being a three-on-three

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<sup>6</sup> Hannah Palacios, *Big3 Returns to CBS for Sixth Consecutive Year with an Expanded 11 Week Season*, Big3 (Nov. 2024), [big3.com/news/big3-returns-to-cbs-for-sixth-consecutive-year-with-an-expanded-11-week-season](https://big3.com/news/big3-returns-to-cbs-for-sixth-consecutive-year-with-an-expanded-11-week-season).

<sup>7</sup> Shanique Yates, *The U.S. Department of Justice Launches An Official NBA Investigation For Antitrust Violations Against Ice Cube's Big3 League*, Yahoo! Finance (Oct. 2023), [finance.yahoo.com/news/u-department-justice-launches-official-181929756.html](https://finance.yahoo.com/news/u-department-justice-launches-official-181929756.html).

<sup>8</sup> Fed. Trade Comm'n, *The Antitrust Laws*, [ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws](https://ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws).

<sup>9</sup> *Id.*

<sup>10</sup> Jonah Trenker, *Sports: Market Data & Analysis* (2024).

<sup>11</sup> Statista Rsch. Dep't, *National Basketball Association Total League Revenue from 2001/02 to 2023/24* (Oct. 2024), [statista.com/statistics/193467/total-league-revenue-of-the-nba-since-2005](https://statista.com/statistics/193467/total-league-revenue-of-the-nba-since-2005).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Richard Sandomir, *Sports Business; Plans to Get Bigger Fed C.B.A.'s Demise*, N.Y. Times (Mar. 2001), [nytimes.com/2001/03/02/sports/sports-business-plans-to-get-bigger-fed-cba-s-demise.html](https://nytimes.com/2001/03/02/sports/sports-business-plans-to-get-bigger-fed-cba-s-demise.html).

<sup>15</sup> Gene Crowley, *Team and League History*, Birmingham Pro Sports (May 2008), [birminghamprosports.com/birminghambandits2history.html](https://birminghamprosports.com/birminghambandits2history.html).

league that operates in the summer, the NBA's offseason.<sup>16</sup> Sporting News explains that three-on-three basketball is shorter, faster-paced, and more action-packed than the NBA.<sup>17</sup> Therefore, Big3 might be appealing to people's shorter attention spans.<sup>18</sup> However, even in its offseason, the NBA can corner the market and exclude new leagues. The NBA's summer league, the G League, made over \$200 million in revenue,<sup>19</sup> compared to Big3's \$4 million.<sup>20</sup>

Under the same logic applied to the NBA, the National Football League (NFL) is also a monopoly. In 2023, its \$20.24 billion revenue<sup>21</sup> was 85% of the \$23.92 billion worldwide football revenue.<sup>22</sup> Thus, the fact that it is neither facing a DOJ investigation nor is alleged to be a monopoly raises the question, "Why the NBA?" Through various paths, courts have found that most other professional sports leagues do not violate the Sherman Act.

Major League Baseball (MLB) has what some call a "golden goose"<sup>23</sup> exemption when it comes to professional sports leagues and the Sherman Act: Over a century ago, the Supreme Court declared that baseball leagues were not involved in interstate trade or commerce.<sup>24</sup> Therefore, they did not meet the definition of a monopoly under Section Two and thus are not subject to the Sherman Act.<sup>25</sup>

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<sup>16</sup> Hannah Palacios, *Big3 Returns to CBS for Sixth Consecutive Year with an Expanded 11 Week Season*, Big3 (Nov. 2024), [big3.com/news/big3-returns-to-cbs-for-sixth-consecutive-year-with-an-expanded-11-week-season](https://big3.com/news/big3-returns-to-cbs-for-sixth-consecutive-year-with-an-expanded-11-week-season).

<sup>17</sup> Gilbert McGregor, *Olympic 3-on-3 Basketball, Explained: Teams, Rules and More to Know About 2024 Paris Games*, Sporting News (July 2024), [sportingnews.com/us/nba/news/olympic-3-3-basketball-explained-teams-rules-paris-games/7c2bd78d1acbc646bf864b5b](https://sportingnews.com/us/nba/news/olympic-3-3-basketball-explained-teams-rules-paris-games/7c2bd78d1acbc646bf864b5b).

<sup>18</sup> Kim I. Mills, *Speaking of Psychology: Why Our Attention Spans Are Shrinking*, with Gloria Mark, PhD, American Psychological Association, at 1:39 (Feb. 2023), [apa.org/news/podcasts/speaking-of-psychology/attention-spans](https://apa.org/news/podcasts/speaking-of-psychology/attention-spans).

<sup>19</sup> Growjo, *NBA G League Revenue and Competitors*, [growjo.com/company/NBA\\_G\\_League](https://growjo.com/company/NBA_G_League).

<sup>20</sup> Growjo, *BIG3 Revenue and Competitors*, [growjo.com/company/BIG3](https://growjo.com/company/BIG3).

<sup>21</sup> Christina Gough, *Total Revenue of All National Football League (NFL) Teams from 2001 to 2023*, Statista (Oct. 2024), [statista.com/statistics/193457/total-league-revenue-of-the-nfl-since-2005](https://statista.com/statistics/193457/total-league-revenue-of-the-nfl-since-2005).

<sup>22</sup> Statista, *American Football—Worldwide* (2024), [statista.com/outlook/amo/sports/american-football/worldwide](https://statista.com/outlook/amo/sports/american-football/worldwide).

<sup>23</sup> Gabe Lacques, *What is MLB's Antitrust Exemption? Ted Cruz, Josh Hawley Using Baseball's Century-Old Golden Goose as Political Cudgel*, USA Today (Apr. 2021), [usatoday.com/story/sports/mlb/2021/04/13/mlb-antitrust-exemption-immunity-ted-cruz-josh-hawley-baseball-all-star-game/7211552002](https://usatoday.com/story/sports/mlb/2021/04/13/mlb-antitrust-exemption-immunity-ted-cruz-josh-hawley-baseball-all-star-game/7211552002).

<sup>24</sup> *Fed. Baseball Club Balt., Inc. v. Nat'l League Profes. Baseball Clubs*, 259 U.S. 200, 209 (1922).

<sup>25</sup> *Id.* at 208.

In 1957, the NFL faced an antitrust lawsuit in which they argued that the courts should dismiss the case under the precedent of the MLB's exemption.<sup>26</sup> The Supreme Court disagreed, ruling that "The volume of interstate business involved in organized professional football places it within the provisions of the Antitrust Acts."<sup>27</sup> The Court elaborated, writing that the MLB's exemption only applied to baseball and thus "could not be relied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise."<sup>28</sup>

Fifty-three years later, in 2010, American Needle Inc. sued the NFL, alleging that its licensing deal with Reebok violated the Sherman Act.<sup>29</sup> Lower courts ruled that the NFL is categorically a single entity, not thirty-two separate teams, meaning it could not violate the Act.<sup>30</sup> However, the Supreme Court reversed that ruling.<sup>31</sup> Nevertheless, the Court still ruled in favor of the NFL, concluding that NFL teams are a single entity with regards to licensing,<sup>32</sup> and did not violate the Sherman Act in this specific scenario.

The National Hockey League (NHL) also faces antitrust lawsuits. Sports Litigation Alert reports that unions representing junior hockey players in North America are currently suing the NHL for restricting the labor market of junior hockey leagues.<sup>33</sup> Specifically, the plaintiffs allege that the NHL engaged in "allocating geographic territory (and the players within that territory) among themselves, conducting involuntary drafts of the players within their territories, and restricting the movement of players from league to league via protected lists."<sup>34</sup> The NHL's

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<sup>26</sup> *Radovich v. Nat'l Football League*, 352 U.S. 445 (1957).

<sup>27</sup> *Id.* at 452.

<sup>28</sup> *Id.* at 449–52.

<sup>29</sup> *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 1, 2 (2010).

<sup>30</sup> *Id.* at 1.

<sup>31</sup> *Id.* at 2–3.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> Christopher R. Deubert, *Lawsuit Against NHL Brings Rare Test Of Critical Sports Law Concept*, Sports Litigation Alert (Nov. 2024), [sportslitigationalert.com/lawsuit-against-nhl-brings-rare-test-of-critical-sports-law-concept](https://sportslitigationalert.com/lawsuit-against-nhl-brings-rare-test-of-critical-sports-law-concept).

<sup>34</sup> *Id.*

defense is the non-statutory labor exemption,<sup>35</sup> which arose from *Brown v. Pro Football, Inc.*, and established that antitrust laws do not extend to union agreements.<sup>36</sup> Therefore, the NHL argues that this protection should apply to prospective players, meaning that antitrust laws should not extend to agreements between employers and future members of a union.

None of these examples or exemptions fully help the NBA, though. It likely cannot convince the courts to create a special exemption for it, as they have not done so in over one hundred years.<sup>37</sup> The NFL won in 2010 because its lawsuit surrounded licensing,<sup>38</sup> which does not apply to Big3's allegations. The NBA could use the NHL's argument, but it also might not apply. Because there is currently no NBA owner's union, the owners could quickly unionize, allowing the NBA to argue that it made an agreement with future members of a union when it discouraged their owners from investing in Big3. However, the courts might require proof that the owners were already going to unionize and are not doing so to simply win a lawsuit. Furthermore, the NHL's lawsuit is ongoing, meaning the courts could disagree with its argument, invalidating the NBA's potential argument.

Although professional sports leagues have dodged lawsuits under the Sherman Antitrust Act via special exemptions,<sup>39</sup> specific fact patterns,<sup>40</sup> and loopholes,<sup>41</sup> the legal playing field is changing, as leagues have started losing antitrust lawsuits.<sup>42</sup> Thus, if the NBA loses its case, the ruling might result in an increase in similar lawsuits against other leagues using the NBA's case as precedent. Since the DOJ investigation into the NBA is ongoing, the facts are not publicly

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<sup>35</sup> *Id.*

<sup>36</sup> *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996).

<sup>37</sup> *Fed. Baseball Club Balt., Inc. v. Nat'l League Profes. Baseball Clubs*, 259 U.S. 200, 209 (1922).

<sup>38</sup> *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 1, 2 (2010).

<sup>39</sup> *Fed. Baseball Club of Baltimore*, 259 U.S. at 209.

<sup>40</sup> *Radovich*, 352 U.S. at 452.

<sup>41</sup> *Brown*, 518 U.S. at 231.

<sup>42</sup> Cohen Milstein, *UFC Fighters Get Final Approval for \$375M Settlement* (Feb. 2025), [cohenmilstein.com/ufc-fighters-get-final-approval-for-375m-settlement](https://cohenmilstein.com/ufc-fighters-get-final-approval-for-375m-settlement).

available, meaning it is impossible to know if Big3's allegations have merit. If they do, the courts will likely find that the NBA violated Section One for trying to restrict the growth of Big3.

According to the NBA's spokesperson, Mike Bass, "[these] claims are not true."<sup>43</sup> Even if these allegations are meritless, the NBA is nonetheless susceptible to future lawsuits, as it has "significant and durable market power."<sup>44</sup> It does not have the MLB's exemption, is fighting different facts than the NFL was, and the NHL's argument might not apply. Therefore, the NBA is a monopoly and will likely lose its case against Big3, drastically changing how professional sports leagues interact with the Sherman Antitrust Act.

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<sup>43</sup> TMZ Sports, *U.S. Dept. Of Justice Investigating NBA Over Alleged Antitrust Violations Targeting Big3* (Oct. 2023), [tmz.com/2023/10/24/departments-of-justice-investigate-antitrust-nba-stymie-big-3-ice-cube](https://www.t TMZ.com/2023/10/24/departments-of-justice-investigate-antitrust-nba-stymie-big-3-ice-cube).

<sup>44</sup> Fed. Trade Comm'n, *Monopolization Defined*, [ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/monopolization-defined](https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/monopolization-defined).