No. 21-2088

United States Court of Appeals for the Second Circuit

RELEVENT SPORTS, LLC,
PLAINTIFF-APPELLANT

v.

UNITED STATES SOCCER FEDERATION, INC. AND
FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION,
DEFENDANT-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, NO. 1:19-CV-08359 (VEC)

BRIEF FOR 14 ANTITRUST, SPORTS LAW, AND ECONOMICS PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae*, by and through their undersigned attorney, hereby certify that they are unincorporated individuals, that they have no parent corporation, and thus that no publicly held corporation owns 10% or more of their stock.

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INTEREST OF *AMICI CURIAE*

Amici curiae are professors who teach and publish in the area of antitrust law, sports law, and economics. *Amici* are concerned that the district court's ruling not only is based on an unsupportable interpretation of the Sherman Act, as applied to associations, but that, if not reversed, the decision could effectively immunize associations or similar bodies from the regulation of antitrust law.[1]

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[1] All parties have consented to the filing of this brief. Pursuant to FRAP 29(a)(4)(e), amici state that no party or party's counsel authored this brief in whole or in part or contributed money intended to fund preparing or submitting the brief, and that no person other than amici and their counsel contributed money intended to fund preparing or submitting this brief.

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INTRODUCTION AND SUMMARY OF ARGUMENT

The district court held that association rules to which all members agree to be bound do not qualify as direct evidence of concerted activity under § 1 of the Sherman Act. But that unduly narrow construction of concerted action threatens to create a major loophole in the antitrust laws. If affirmed, it would allow competitors to use their membership in associations with substantial economic power as a means of immunizing severely anticompetitive conduct from § 1 scrutiny.

As courts have long recognized, agreements between business rivals arise in myriad ways. While an "agreement" for antitrust purposes may take the form of a written contract with detailed terms, anticompetitive collusion can be much more discreet. Accordingly, the Supreme Court has long held that, for purposes of § 1 of the Sherman Act, concerted activity can be found anywhere that competitors form a "conscious commitment to a common scheme." *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 768 (1984).

Evidence of such activity can be direct or circumstantial. *Id.* at 764. Direct evidence of concerted activity can be shown from the face of an agreement or by pointing to evidence of the actual interactions between parties. Such evidence might include, for example, "a recorded phone call" revealing an agreement between competitors (*Mayor & Council of Balt. v. Citigroup, Inc.*, 709 F.3d 129, 136 (2nd Cir. 2013)), testimony of cartel participants, emails, and especially—as here—written

commitments binding parties to the "rules of the game" of competition (*Monsanto*, 465 U.S. at 766). Circumstantial evidence, by contrast, might include plus factors demonstrating "a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of interfirm communications." *Citigroup,* 709 F. 3d at 136 (citation omitted).

In holding that no inference of concerted activity can be drawn from the written contractual commitments binding head-to-head competitors here—FIFA's rules—the decision below directly conflicts with these principles. Both to maintain consistency with *Associated Press v. United States*, 326 U.S. 1 (1945), the leading decision in this area, and its progeny, and to avoid allowing association members and sports competition organizers to enjoy a *de facto* antitrust immunity that conflicts with the Sherman Act, this Court should reverse.

I. Under the Supreme Court's venerable decision in *Associated Press*, evidence that rivals knowingly and jointly adopted a competitive restriction suffices to show concerted activity, whether implemented directly or through a third-party entity that the rivals control. This general rule has repeatedly been reaffirmed in later cases, including many where a § 1 "agreement" comprised a sports league association's competitive regulation adopted by rival controlling members.

The district court, however, explicitly rejected the notion that "the FIFA Policy itself constitutes direct evidence of Defendants' and their alleged conspirators' conscious commitment to [a] common scheme." Op. 13 (citation omitted). Worse, the court declared that the complaint failed "plausibly to allege circumstantial evidence of an agreement," and that the allegations were "devoid of *any factual allegations* to support the inference that the Defendants in this case agreed with anyone . . . to do anything, including to adhere to the [FIFA] Policy." Op. 19 (emphasis added). The court wrongly treated FIFA as a single actor independent of its controlling member National Associations and the rival soccer leagues that they govern. In support, the court relied on inapposite cases involving contexts where the association was acting as an independent actor in its own right, not regulating competition among its members. That was reversible error.

II. If allowed to stand, the district court's novel interpretation would essentially carve out a *de facto* antitrust immunity for association rules. Such immunity is fundamentally at odds with the Supreme Court's repeated rejection of efforts by sports leagues to shield themselves from Sherman Act scrutiny.

According to the district court, adopting competitive restrictions that are jointly created and enforced does not constitute "agreement" absent *further* evidence of an "agreement to agree" to the restrictions. Op. 13-14 n.12. But under that view, head-to-head rivals can lawfully avoid antitrust scrutiny simply by delegating

decision-making power to a body created and controlled by their joint vote. So long as these competitors avoid directly coordinating how they will vote, they can vote to abide by grossly anticompetitive restrictions—including price-fixing, bid-rigging, and geographic market allocation—while maintaining that each member is "unilaterally" adhering to the rule. Such a result not only is at odds with settled precedent concerning the meaning of "concerted activity," but conflicts with the underlying purpose of the Sherman Act—and common sense.

This Court should reverse.

ARGUMENT

I. The District Court Legally Erred in Failing to Recognize Allegations of Direct Evidence of Concerted Activity.

The district court committed reversible error in failing to recognize the sufficiency of Relevent's allegations of concerted activity. Relevent alleges that the National Associations, acting through an entity they jointly control (FIFA), knowingly adopted and enforced rules explicitly limiting competition between them for hosting official top-tier men's soccer league games. In treating FIFA solely as an independent actor, the district court flouted settled Supreme Court and Second Circuit precedent governing rules adopted by organizations jointly controlled by rivals.

A. Under a Long Line of Supreme Court Decisions, Entities with Distinct Economic Interests Engage in Concerted Activity When They Adopt and Enforce Competitive Restrictions Through an Organization that the Entities Jointly Control.

For three quarters of a century, it has been settled law that when entities with distinct economic interests adopt rules to govern competition among themselves, enforced by an organization that they control, such rules constitute agreements for purposes of § 1 of the Sherman Act. *See Associated Press v. United States*, 326 U.S. 1, 19 (1945). Time and again, the Supreme Court has reaffirmed that rule. *See*, *e.g.*, *United States v. Sealy, Inc.*, 388 U.S. 350, 354 (1967); *United States v. Topco Associates, Inc.*, 405 U.S. 596, 608 (1972); *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 683 (1978); *Nat'l Collegiate Athletic Ass'n v. Board of Regents of Univ. of Okla.*, 468 U.S. 85, 99 (1984); *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 457-58 (1986); *American Needle, Inc. v. NFL*, 560 U.S. 183, 198 (2010); *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2149-50 (2021).

The leading case is *Associated Press*, where the government challenged a news association's bylaws that restricted membership and prohibited members from distributing news to non-members. 326 U.S. at 3-5. In ruling for the government, the Supreme Court endorsed the district court's conclusion that "[t]he by-laws of AP are in effect agreements between the members"—they are "contracts in restraint of commerce." *Id*. at 11 n.6 (citation omitted).

Similarly, in *Sealy*, the Court rejected the claim that territorial restrictions imposed by a joint venture of retail competitors were unilateral. 388 U.S. at 354. As the Court recognized, "[t]he territorial arrangements must be regarded as the creature of horizontal action by the [competitors]. It would violate reality to treat them as equivalent to territorial limitations imposed by a manufacturer upon *independent* dealers." *Id*. (emphasis added); *accord Topco*, 405 U.S. at 608 (competitor-controlled entity's bylaws allocating market territory held to be an anticompetitive horizontal restraint).

This position remained unchanged in *Nat'l Soc'y of Prof'l Eng'rs*, where the Court endorsed the lower court's decision that an engineer association's "canon of ethics prohibiting competitive bidding by its members" was an agreement deserving of § 1 scrutiny. 435 U.S. at 681. Evidence of agreement there comprised not only a provision of the association's Code of Ethics, but also the association's policy statements, which gave interpretive guidance on the provision. *See id*. at 683 nn. 3-4. Likewise, in *Indiana Fed'n of Dentists*, a federation's promulgated "work rule" constituted a collective refusal to deal with insurers and "t[ook] the form of a horizontal agreement among the participating dentists." 476 U.S. at 459.

The Supreme Court has repeatedly applied this line of authority outside the context of garden-variety corporations, including to sports leagues and associations, where such entities' rules have policed how members compete with each other. In

Board of Regents, for example, the Court treated NCAA rules as "a horizontal restraint—an agreement among competitors on the way in which they will compete with one another." 468 U.S. at 99. In *American Needle*, the Court recognized that where association member NFL teams "voted to authorize [a subsidiary] to grant exclusive licenses," this amounted to concerted action. 560 U.S. at 187. Indeed, the Court there endorsed then-First Circuit Chief Judge Boudin's decision for the court in *Fraser v. Major League Soccer, L.L.C.*, 284 F.3d 47, 57 (1st Cir. 2002), that, although formally constructed as a single entity, Major League Soccer was likely subject to § 1 because it was controlled by member clubs with distinct and competing "entrepreneurial interests." *See* 560 U.S. at 195 (citing *Fraser*, 284 F.3d at 57).

Most recently, in *Alston*, the existence of an agreement among NCAA members was uncontested where members adopted a policy restricting student-athlete compensation, including rules promulgated via association sub-committees over the course of decades. *See* 141 S. Ct. at 2149-50. The fact that some of those rules were adopted by a sub-division elected by members, and not explicitly by all members themselves, was irrelevant to whether the rules constituted agreements among the membership.

In *all* of these cases, associational rules that restricted head-to-head competition among entities who controlled the association amounted to concerted activity for purposes of § 1 of the Sherman Act. In *none* of these cases did the Supreme

Court even hint that the result would have been different if the association had restructured its governance, such that the alleged anticompetitive conduct was adopted by an officer or committee. As the Court put it in *American Needle*, where an alleged combination "joins together . . . 'separate economic actors pursuing separate economic interests' such that the agreement 'deprives the marketplace of independent centers of decisionmaking,'" there is concerted action. 560 U.S. at 195 (quoting *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769 (1984)). The complaint here alleges that, absent adherence to FIFA's restriction of foreign-hosted official league matches, National Associations and the leagues they govern, such as the Spanish National Association's La Liga, would compete with the U.S. Soccer Federation and Major League Soccer (MLS) for the patronage of American fans. This warrants scrutiny under § 1.

The foregoing cases illustrate the myriad ways to manifest knowing adoption of an association rule—for example, by including the rule in the association's bylaws (*Associated Press*), directly voting on it (*Am. Needle*), or even agreeing to abide by rules created by a sub-division of the association (*Nat'l Soc'y of Prof'l Eng'rs, Alston*). When entities with distinct economic interests jointly subject themselves to rules, adopted and enforced by their own delegates, regulating head-to-head competition among them, that constitutes direct evidence of concerted activity. There is

no additional requirement of an underlying "agreement to agree" or intent to destroy competition.

Here, the district court acknowledged that FIFA is the "world governing body of soccer," and that the FIFA Council is an association sub-division which "has the authority to interpret the FIFA statutes . . . and to adopt other rules and policies." Op. at 1, 3-4. The court also acknowledged that "the FIFA Council announced a 'policy' that prohibits staging Official Games outside the participants' home territory," that "all National Associations . . . must comply with FIFA directives," and that "[f]ollowing the announcement of the FIFA Policy, FC Barcelona withdrew its commitment to participate in the match in Miami that Plaintiff wanted to host." Op. 4. The activities alleged in Relevent's complaint easily qualify as evidence of actual adoption of an association rule—as would other actions. *See Monsanto*, 465 U.S. at 766 (direct evidence including a newsletter describing a distributor's intention to follow the "rules of the game" of competition established by a manufacturer). Direct evidence of concerted activity exists where, as alleged here, head-to-head rivals create and jointly control an association (*e.g.*, FIFA), delegate enforcement and decision-making power (*e.g.*, to the FIFA Council) regarding business competition (*e.g.*, games in foreign locales), and knowingly adhere to the organization's later-promulgated rule restricting business output, which is enforced among all members. The complaint here alleges that the challenged restrictions are buttressed by the threat of

severe sanctions—namely, preventing members' players from participating in the highest level of competition in the sport, the World Cup. *See* Op. 3. In the world of professional soccer, that is the ball game.

B. The District Court Misinterpreted Supreme Court and Second Circuit Precedent in Treating FIFA as an Independent Economic Actor.

1. In a break from the foregoing authorities, the district court mistakenly treated the agreements of member National Associations to adhere to FIFA rules as "unilateral" decisions. Op. 12 n.10. But FIFA is best understood as a *they,* not an *it.* Agreeing to abide by FIFA's rules means agreeing to conditions established jointly by FIFA's members, which for antitrust purposes is no different than agreeing *with the members*. *See* Op. 3-4 (the FIFA Council comprises individuals from the National Associations and "has the authority to interpret the FIFA statutes adopted by the FIFA Congress and to adopt other rules and policies.").

In concluding that members' adherence to FIFA's rules does not itself support an inference of concerted activity, the district court relied on *United States v. Colgate & Co.*, 250 U.S. 300 (1919). Op. 11. But the *Colgate* doctrine concerns rivals' adherence to rules established by an *independent* actor. The Court there held that it is not concerted action for a manufacturer to announce terms under which it is willing to deal with economically independent retailers; there was "no charge that the retailers themselves entered into any combination or agreement with each other, or

that the defendant acted other than with his customers individually." 250 U.S. at 306; *see also Monsanto*, 465 U.S. at 766 (where a manufacturer and its economically independent distributors were alleged to have agreed to "the rules of the game" of competition).

This case raises fundamentally different issues than those that might arise if a sporting rule were created by a single economic actor with a single economic interest and—as in the *Colgate/Monsanto* line—others followed the rule based on an independent desire to work with this single actor. Such independent actors do exist in the world of professional sports. Take, for example, the National Association for Stock Car Auto Racing—better known as NASCAR—a private corporation that organizes stock car racing and independently sets rules for drivers and racetracks. Here, by contrast, FIFA is controlled by its member National Associations. The FIFA Congress is the association's self-described "supreme and legislative body," responsible for adopting and amending the FIFA Statutes. Op. 4 n.3. Each National Association gets one vote in the FIFA Congress. *Id*. Likewise, the FIFA Council is "comprised of 37 individuals from the various National Associations," and it "has the authority to interpret the FIFA statutes adopted by the FIFA Congress and to adopt other rules and policies." *Id*. at 3-4.

The district court nevertheless failed to recognize that, by virtue of FIFA's constitution, both the content of, and adherence to, FIFA's rules reflect an agreement

among the members. Mistakenly treating the adoption of FIFA rules as unilateral action, the court concluded that, under *Monsanto*, "a National Association's unilateral compliance with the FIFA policy, without more, is insufficient evidence from which the Court can infer the existence of an unlawful agreement." *Id*. at 12 n.10. But when economically distinct entities combine to delegate decision-making power regarding competition among themselves to an organization they control, that delegation constitutes "conscious commitment to a common scheme" under *Monsanto* and *Matsushita*. *Monsanto*, 465 U.S. at 768; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, at 588 (1986).

The district court distinguished *Board of Regents* and *Alston* on the basis that the defendants there did not dispute the existence of concerted activity, implying that the outcomes might have differed had counsel for the NCAA (seasoned antitrust lawyers) only raised this critical, outcome-determinative defense. Op. 14 n.13. But the fact that the NCAA did not dispute that adopting association rules was sufficient to show concerted activity simply confirms that any such dispute would have been futile. To side with the defendants on that basis, the Court would have had to overrule a host of its prior decisions. *See supra* at 7–11.

2. As to Second Circuit precedent, the district court relied on *AD/SAT Div. of Skylight, Inc. v. Associated Press*, 181 F.3d 216 (2d Cir. 1999), and *North Am. Soccer League v. U.S. Soccer Fed'n*, 883 F.3d 32 (2d Cir. 2018) (*NASL v. USSF*).

But those decisions in fact reinforce the basic distinction between the legal standard for showing concerted action in the form of an express agreement versus an inferred conspiracy. The district court grossly over-extended a narrow exception in trade association / joint venture law for association decisions that do not regulate competition *between members*, but may result in competitive harm to those *outside the association* from the association's choices as a single economic actor.

AD/SAT, for example, involved a dissimilar claim that Associated Press (AP), an association of newspapers, conspired with twelve separate defendants to engage in a group boycott of a news ad delivery service. 181 F.3d at 220-22. The plaintiff there, however, did not allege an association boycott "policy" or "rule" with accompanying consequences, or upon which association membership was conditioned. The court rejected "a finding of concerted action based on the defendants' status as members of the AP" alone, distinguishing the Supreme Court's *Associated Press* decision as one where the concerted action took the form of actual bylaws. 181 F.3d at 234. That distinction holds equally true for the FIFA policy here.

The Court in *AD/SAT* noted that "every action by a trade association is not concerted action by the association's members." *Id.* In support, the Court cited the leading antitrust treatise of Professors Areeda and Hovenkamp, who—as if anticipating this case—wrote:

> [T]here seems no conceptual difficulty in treating organizations created to serve their member-competitors or to regulate their market behavior as continuing conspiracies of the members. Nor is there any practical problem when we focus on those improprieties reducing competition among the members or with their competitors.

Id. (quoting 7 Phillip Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 1477, at 347) (2nd ed. 1999) (citations omitted)). To be sure, where, as in *AD/SAT*, associations "are buying and selling [products or services] in their own right, they can fairly be regarded as single entities whose selling decisions are not 'price-fixing conspiracies.'" *Id*. (quoting Areeda & Hovenkamp, ¶ 1477, at 348). But the complaint here alleges that FIFA's members engage in *group* behavior, not independent activity. Extending *AD/SAT* to those facts not only conflicts with the Court's reasoning in that case, but puts *AD/SAT* on a collision course with the Supreme Court's decision in *Associated Press*. In contrast, Areeda and Hovenkamp's approach—under which an AP rule protecting members from competition is subject to § 1, but an AP initiative selling a new product in the market is not—is consistent with Supreme Court authority and compels reversing the district court's erroneous characterization of FIFA as an "it" rather than a "they."

The district court's reliance on *NASL v. USSF* was likewise misplaced. The plaintiff there did not challenge an expressly identified association rule, but rather alleged an overarching conspiracy among association members to restrain competition. 883 F.3d at 41. As the Court explained: "If NASL were challenging the

Standards themselves . . . then the USSF Board's promulgation of them would constitute direct evidence of § 1 concerted action in that undertaking," not simply "circumstantial evidence of th[e] conspiracy." *Id*. The Court readily acknowledged that "[o]rganizational decisions sometimes are § 1 concerted action," citing this "example": "when there is direct evidence of an alleged conspiracy via an association's express regulation of its members' market." *Id*. at 40. That example precisely describes the FIFA Policy, which *expressly* regulates rival leagues' ability to compete in each other's territory.

In sum, the district court's decision rests on two legal errors—its treatment of FIFA as an independent economic actor, and its (related) treatment of FIFA members' adoption of rules as unilateral decisions. Since the FIFA Council is controlled by FIFA's member National Associations, and membership is conditioned upon adhering to the Council's rules, no underlying "agreement to agree" to the rules is required. That result follows both from a long line of Supreme Court decisions and from *AD/SAT* and *NASL*—which involve the mere day-to-day business operations of the association itself (*AD/SAT*) or inferring an agreement to non-expressly identified terms of a broader conspiracy (*NASL*), and should not be extended to express rules governing competition among members, the facts alleged here.

II. The District Court's Holding Creates a Dangerous Antitrust Immunity Carve-Out.

That the district court legally erred warrants reversal, but *amici* file this brief to stress that the decision below was not only erroneous, but highly consequential. According to the district court, "for an organizational decision or policy to constitute concerted action and, therefore, to serve as direct evidence of an unlawful agreement, Plaintiff must plausibly allege an antecedent 'agreement [among horizontal competitors] to agree to vote a particular way' to adopt such a policy." Op. 14 (quoting *NASL v. USSF,* 883 F.3d at 39). By holding that no inference of concerted activity can be drawn on these facts, the court effectively created a *de facto* antitrust immunity for association rules—one that enables associations to operate under the guise of independent activity simply by avoiding an explicit "agreement to agree" between themselves (Op. 14) to such rules.

Ever since *Radovich v. NFL,* 352 U.S. 445, 451 (1957), confirmed that the Sherman Act applies to every sport except baseball, antitrust jurisprudence is replete with decisions scrutinizing sports league rules, under § 1, as agreements among league members. *See Alston*, 141 S. Ct. at 2149-50 (NCAA rules restricting compensation to student-athletes); *Bd. of Regents*, 468 U.S. at 99 (NCAA rules on television licensing); *North Am. Soccer League v. NFL,* 670 F.2d 1249, 1257 (2d Cir. 1982) (§ 1 scrutiny applied to NFL cross-ownership rule); *Mackey v. NFL,* 543 F.2d 606, 609 (8th Cir. 1976) (considering whether the NFL's "Rozelle rule" was an

anticompetitive agreement under § 1); *L.A. Memorial Coliseum Comm'n v. NFL*, 726 F.2d 1381, 1387 (9th Cir. 1984) (§ 1 scrutiny applied to NFL relocation rule where "the NFL Constitution and Bylaws contain the agreement"). If the reasoning below had governed those cases, the conduct challenged therein would either have been immune from § 1 scrutiny, absent evidence of an underlying "agreement to agree" among members to adopt the rule (Op. 14), or the clubs easily could have evaded such scrutiny simply by delegating the challenged restriction to the league's commissioner or other elected officials under the clubs' control.

But the Supreme Court has repeatedly rejected the notion that a combination of competitors can avoid § 1 scrutiny by virtue of the combination's organizational structure alone. In *Associated Press*, the Court held that "arrangements or combinations designed to stifle competition cannot be immunized by adopting a membership device accomplishing that purpose." 326 U.S. at 19. Likewise, in *Timken Roller Bearing Co. v. United States*, the Court found no "support in reason or authority for the proposition that agreements between legally separate persons and companies to suppress competition among themselves and others can be justified by labeling the project a 'joint venture.' Perhaps every agreement and combination to restrain trade could be so labeled." 341 U.S. 593, 598 (1951), *overruled in part by Copperweld*, 467 U.S. at 765. And in *Copperweld*, the Court warned that the line between unilateral and concerted activity should not turn on "an artificial distinction at the expense

of substance." 467 U.S. at 763. In short, to ensure that "substance, not form," is what "determine[s] whether a[n] . . . entity is capable of conspiring under § 1" (*id.* at 773 n.21), this Court should reject the district court's approach.

Sports league officials have long sought to avoid § 1 rule-of-reason scrutiny by claiming that sports leagues were single entities rather than agreements among member clubs. The Supreme Court unanimously rejected that view in *American Needle*, holding that agreements that reflect decisions of "separate economic actors pursuing separate economic interests" are subject to § 1 because they "deprive[] the marketplace of independent centers of decisionmaking." 560 U.S. at 195 (quoting *Copperweld*, 467 U.S. at 769). Yet the district court's holding threatens to resurrect the position rejected in *American Needle,* and thus to shield sports league rules from § 1 rule-of-reason analysis.

Section 1 scrutiny is critical for dominant sports associations such as FIFA. As Judge Mansfield, writing for this Court in *North Am. Soccer League v. NFL*, explained: only by applying the rule of reason can courts determine whether a rule "might be one adopted more for the protection of individual league members from competition than to help the league." 670 F.2d 1249, 1257 (2d Cir. 1982). Section 1 is sufficiently flexible to allow rules that help the league maximize output responsive to consumer preferences, while forbidding parochial self-interested output

reduction—one of the "hallmarks of anticompetitive behavior." *Bd. of Regents*, 468 U.S. at 113.

FIFA's member National Associations are economically intertwined with the top-tier men's soccer leagues they govern. Much as the leagues compete for fans around the world, the National Associations compete for the opportunity to host official league matches within their home territory. In adopting and enforcing territorial restrictions, the National Associations act on behalf of both themselves and the leagues they govern. The U.S. Soccer Federation and its member MLS teams would be delighted for their U.S. ticket sales to be free from competition with existing or innovative new foreign leagues—such as the English Premier League, Spanish La Liga, or new short-form competitions among leading global clubs. Whether or not the challenged rule could be competitively justified under an "enquiry meet for the case" (*Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 781 (1999)), FIFA's threatened sanction for rule violations—being barred from the World Cup—deprives the market of "independent centers of decision-making," and thus warrants § 1 scrutiny. *Am. Needle*, 560 U.S. at 184.

That § 1 scrutiny applies to the conduct challenged in Relevent's complaint does not mean that the outcome of this case is foreordained, and *amici* take no position on the merits of those allegations. *Amici* are in agreement, however, that § 1 scrutiny applies, and that the stakes of this case are high. If FIFA believes it "should

be exempt from the usual operation of the antitrust laws," that argument "is 'properly addressed to Congress' … But until Congress says otherwise, the only law it has asked [the courts] to enforce is the Sherman Act, and that law is predicated on one assumption alone—'competition is the best method of allocating resources.'" *Alston*, 141 S.Ct. at 2160 (quoting *Prof'l Eng'rs*, 435 U.S. at 689, 695). To shield FIFA rules from an "enquiry meet for the case" deprives consumers of critical protection in an economically important industry characterized by market dominance. 526 U.S. at 781 (1999). This Court should prevent that result.

CONCLUSION

For the foregoing reasons, this district court's judgment should be reversed.

Respectfully submitted,

/s/ Steffen N. Johnson

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OCTOBER 14, 2021

CERTIFICATE OF COMPLIANCE

I hereby certify that:

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/s/ Steffen N. Johnson
STEFFEN N. JOHNSON

CERTIFICATE OF SERVICE

I, Steffen Johnson, hereby certify under penalty of perjury that a true and correct copy of this Amicus Curiae Brief will be filed electronically on October 14, 2021 and will, therefore, be served electronically upon all counsel.

/s/ Steffen N. Johnson
STEFFEN N. JOHNSON