CHAPTER

3

Amateurism and the NCAA Cartel

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ECONOMICS OF THE CARTEL

The National Collegiate Athletic Association (NCAA) is the organizing body of a cartel comprising over 1,100 colleges and universities (NCAA, 2014a). Over the past 25 years, university presidents have largely taken over the administration of the NCAA (Igel & Boland, 2011).

KEY TERMS

- Amateur student athlete
- Collegiate athletics
- Cartel economics
- Monopsony/Monopoly
- Athletic scholarship

To understand the economics of college sports requires an analysis of the market power of the NCAA and its member schools. In essence, market power is the capacity to increase the market price over the marginal costs. In other words, firms with significant market power become "price makers," because they set the price. In contrast, firms in a competitive market act as "price takers," because they must take the price arrived at by the competitive market. In general, market power leads to socially undesirable results as price increases and quantity decreases. In economic terms, this would be called inefficiency or deadweight loss, resultant from excessive market power.

The NCAA member schools enjoy market power by controlling a large portion of the market. College sports, excluding junior colleges, are controlled by three distinct organizations: (1) the NCAA, (2) the National Association of Intercollegiate Athletics (NAIA), and (3) the United States Collegiate Athletic Association (USCAA). The NCAA claims 460,000 college athletes (NCAA, 2014a). The NAIA has 65,000 collegiate athletes ("About the NAIA," 2016). The USCAA probably has around 14,000 athletes. Thus, the NCAA controls 85 percent of the shares, with the NAIA and the USCAA controlling 12 percent and 3 percent,

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respectively. Because the NCAA doesn't control the entire market, it cannot be described as a monopoly, but since they control 85 percent of the market, the NCAA schools can be described as having monopoly power. As the NCAA sells the product of college sports entertainment to various buyers, especially television networks, it acts as a monopolist, from the Greek "single seller." In his memoir entitled *Unsportsmanlike Conduct*, Walter Byers, the famed, first, full-time executive director of the NCAA, proclaimed, "Amateurism is not a moral issue; it is an economic camouflage for monopoly practice" (Huma & Staurowsky, 2012, p. 8).

The NCAA also behaves as a monopsonist (Greek for "one" and "purchasing food"). In contrast to a monopoly, where there is only one seller, monopsony describes a situation where there is a single buyer of a particular good or service in a given market. As the NCAA member schools acquire college athletes through the recruitment and scholarship process, they are effectively a single buyer of athletes. Any attempt to monopolize or monopsonize is illegal in the United States, according to section 2 of the Sherman Antitrust Act of 1890.

How do the NCAA member schools gain monopoly and monopsony power? The NCAA serves as a catalyst to foster collusion. Put another way, the NCAA operates as a collusive monopsony when "purchasing" athletes and a collusive monopoly when selling college sports. From an economic perspective, the NCAA promotes explicit collusion, because its members openly cooperate to make mutually beneficial pricing and production decisions. In many ways, the NCAA functions like OPEC (Organization of Petroleum Exporting Countries), as both collude, price-fix, and manipulate production (Nocera, 2011).

Judge Richard A. Posner, of the US Court of Appeals for the Seventh Circuit in Chicago and a leading antitrust scholar, agrees that the NCAA behaves monopsonistically. He says, "Although cartels, including monopsonistic ones, are generally deemed to be illegal per se under American antitrust law, the NCAA's monopsonistic behavior has thus far not been successfully challenged" (Posner, 2011, p. 1). Posner posits that colleges and the NCAA have avoided legal sanctions for their monopsonistic behavior for two reasons: 1) collegiate athletes are students, and their educational mission would be corrupted by compensation; 2) colleges and the NCAA are nonprofit institutions. Ironically, if colleges paid athletes, the schools would be engaged in a business unrelated to their academic mission and no longer immune from taxation.

Typically, cartels make agreements concerning prices, outputs, market areas, the use/construction of productive capacity, and advertising expenditures (Koch, 1973). The enterprise of college sports differs significantly from other cartel-driven industries; therefore, the cartel of NCAA member colleges functions differently from typical cartels. The NCAA functions as the head of a cartel in the following ways: (1) it fixes the compensation of college athletes; (2) it controls the supply of athletes; (3) it distributes profits in a fashion that satisfies its members; (4) it protects cartel rents; and (5) it enforces rules on athletes and member colleges (Miller, 2013).

THE NCAA FIXES THE COMPENSATION OF COLLEGE ATHLETES

The NCAA requires that collegiate athletes must compete without salary to maintain their amateur status. Any compromise to this amateur status disqualifies the athlete from all future collegiate competition. According to the NCAA, "No student shall represent a college or university in any intercollegiate game or contest . . . who has at any time received, either directly or indirectly, money, or any other consideration" (NCAA, 2013a, p. 1).

Amateurism mandates that athletic scholarships represent the sole remuneration to college athletes (Zola, 2013). Colleges cannot award to a college athlete financial aid that exceeds the "cost of attendance" (the amount calculated by a campus financial aid office, using federal regulations that include transportation and other expenses in addition to tuition and fees, room and board, and books) or the full "grant-in-aid" limit (defined by the NCAA as tuition and fees, room and board, and required textbooks), whichever is lower (Murray & Burton, 2003). These athletes are strictly prohibited from receiving compensation for non-athletic services that might be understood to reflect on their athletic ability. In essence, this represents a twofold restriction on player remuneration: (1) it caps the total amount of compensation; and (2) it restricts the form of remuneration, because scholarships can only purchase academic units.

College athletes differ from other scholarship students, who can use their talents to earn extra money while in school. For example, music students can play concerts and get paid, and science students can work in laboratories for a salary (Wharton, 2013). No similar options are made available to college athletes.

The NCAA effectively creates a price ceiling (compensation ceiling) for student-athletes by the limitations of their scholarships and by limitations on other compensation that student- athletes could receive. Price ceilings typically result in economic inefficiency, including deadweight loss. In figure 3.1, notice the disparity between the college (consumer) surplus and college athlete (producer) surplus, suggesting a significant advantage for the colleges from the price ceiling.

Beyond setting a price ceiling on scholarship compensation, the NCAA further fixes the compensation of college athletes by fixing their commercial rights at zero (O'Bannon, 2009). The NCAA accomplishes this by completely controlling the exposure of athletes in perpetuity. In essence, the NCAA controls if and when these college athletes will be exposed and retains all profits related to this exposure.

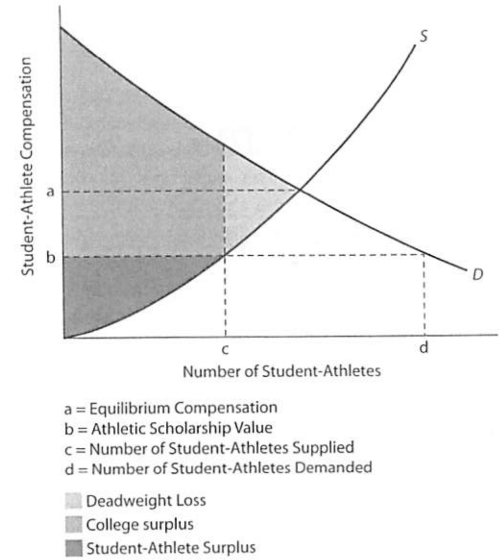

Figure 3.1. Comparison of College (Consumer) Surplus and College Athlete (Producer) Surplus

THE NCAA CONTROLS THE SUPPLY OF COLLEGE ATHLETES

Figure 3.1 also demonstrates that a price ceiling lowers the quantity of inputs, meaning fewer college students have the opportunity to participate in college sports. Thus, the price ceiling limits opportunities for potential college athletes, with too many talented/qualified athletes chasing too few athletic scholarships. If the NCAA allowed a progressively larger supply of athletes and events, the price of the events would decline. Therefore, the NCAA must control the quantity of athletes and competitions.

The NCAA limits the number of college athletes by limiting the number of scholarships per sport per college. In Division I basketball, each school is allowed just 13 scholarships. Football Bowl Subdivision (FBS) schools can award 85 football players with athletic scholarships.

The supply of college athletes is also controlled by the five-year eligibility rule, NCAA Bylaw 14.2.1 (NCAA, 2014b, p. 3). This rule mandates that college athletes only have five years of athletic eligibility to complete their four-year college athletic career. Simply put, they have just five years to play four seasons.

THE NCAA DISTRIBUTES PROFITS IN A FASHION THAT SATISFIES ITS MEMBERS

As with any cartel, the NCAA members expect that the NCAA revenue will be distributed to the membership, with the most successful members receiving the most revenue. In the 2012–13 school year, the NCAA revenue totaled $484,046,000 (NCAA, 2013c). In reality, the bulk of this revenue comes from the men's basketball tournament. March Madness captures almost 140 million viewers, and, according to NCAA president Mark Emmert, "Ninety percent of the revenue that flows into the NCAA comes from the media rights and ticket sales for the NCAA men's basketball tournament" (Bergman, 2011, p. 1). After the NCAA covers its overhead, all the remaining revenue is distributed to the member schools. The NCAA claims that 96 percent of all revenue collected returns to member colleges. As figure 3.2 demonstrates, the NCAA's largest distribution (39 percent of total revenue distributed) goes into the "basketball fund" (NCAA, 2014a). This fund "provides moneys to be distributed to Division I Men's Basketball Championships over a six-year rolling period. Independent institutions receive a full unit share based on their tournament participation over the same rolling six-year period . . . In 2012–2013, each basketball unit will be approximately $245,500" (NCAA, 2014a, p. 1). What does that mean? As an example, consider the tournament revenue generated by the University of Connecticut Huskies, who played in five tournament games in 2011 and seven tournament games over the previous five years. This gave Connecticut 12 "game units." In 2011, each game unit was worth $239,664 (Smith, 2012). Therefore, from 2006 to 2011, the university generated $2,875,968 ($239,664 × 12) for its Big East Conference (Smith, 2012).

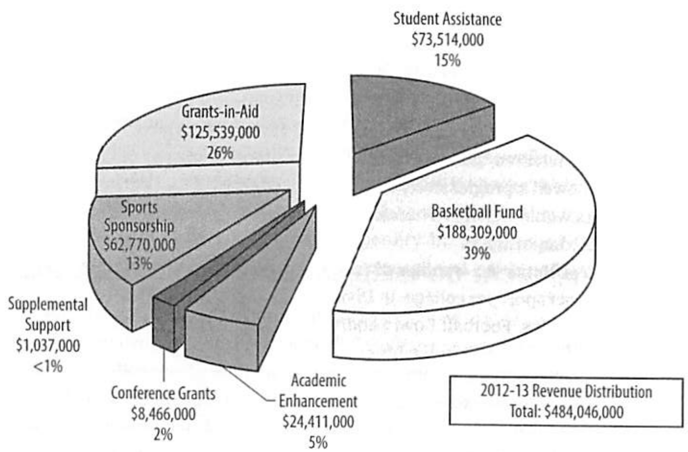

Figure 3.2. NCAA Revenue Distribution, 2012–13. *Source:* NCAA, 2013b

From the above, a couple of points become clear. First, it pays to be successful in college basketball, especially if the team qualifies for the NCAA tournament. Second, the revenue-distribution process seems complicated. Third, the member schools must be satisfied with the terms of the distribution process, as no schools have threatened to leave the NCAA cartel and no universities have filed public grievances against the NCAA's distribution process.

THE NCAA PROTECTS CARTEL RENTS

The actions taken by the NCAA to protect cartel rents represent another indicator that it functions as the head of a cartel. The NCAA has swallowed up any potential rivals. Consider how Walter Byers exploited the National Invitational Tournament (NIT) cheating scandal of 1951, elevating the NCAA basketball tournament into its premier position (Barra, 2012). Further consider how the NCAA eliminated the Association of Intercollegiate Athletics for Women (AIAW) in 1982 (Kahn, 2006). The NAIA may be the NCAA's next victim. Ever since the NCAA formed Division II and Division III levels of play in the mid-1970s, the NAIA's membership has steadily declined, with exiting members joining the NCAA ("The NAIA to NCAA," 2013, p. 2).

THE NCAA ENFORCES RULES ON ATHLETES AND MEMBER COLLEGES

Nobel laureate George Stigler described two challenges that successful cartels must overcome: (1) the cartel must be able to reach a consensus on its terms, and (2) the cartel must be able to police its collusive agents and punish those who have strayed from the agreed terms (Stigler, 1964). In the above section, the point was made that the NCAA member schools seem to have reached a consensus on arguably their most contentious term—revenue distribution.

Thus, the NCAA cartel seems to have overcome the first of Stigler's challenges.

Stigler claims that cheating represents the major threat to cartel stability. To understand how the NCAA overcomes Stigler's second challenge, it is important to understand how NCAA schools may stray from the cartel's rules. In a typical cartel, a firm may try to cheat the cartel by lowering the price to improve sales or lowering quality to decrease production costs. The NCAA members typically try to cheat the cartel in a different fashion: universities cheat to win football or men's basketball games. Winning conference titles, being invited to football bowl games, succeeding in March Madness, and being crowned national champion brings tremendous revenue, prestige, and media exposure. Therefore, the NCAA must police its collusive agents for trying to gain an unfair advantage over other cartel members.

Cartel behavior remains economically attractive as long as the expected cost of violating the agreement (rules violations) remains greater than the expected benefits from remaining in the cartel (additional revenue) (DeSchriver & Stotlar, 1996). With the establishment of the Committee on Infractions in 1951, the NCAA had a means of policing and punishing noncompliant members. Understand that this committee has no legal authority to either police or punish any university, yet the NCAA member schools voluntarily abide by NCAA rules, even when the punishment seems excessive. As a stark example consider the so-called death penalty imposed on Southern Methodist University in 1987 (Stahl, 2012).

Attorney Ian Ayres has argued that cartels can be identified by the pattern by which they punish alleged cartel members (Ayres, 1987). With that in mind, let's examine how the NCAA punishes its members. In other words, let's evaluate the rationale of the major infractions cited by the NCAA.

As table 3.1 demonstrates, the NCAA penalizes member schools most often for violations involving amateurism. Amateurism violations include outside compensation, inappropriate employment, improper accommodations, impermissible inducements and entertainment, travel expenses, and so on. Even though the NCAA owes its creation to safety concerns in college football a century ago, it now fails to police safety issues. Safety issues may include length/intensity of practice, equipment maintenance, water breaks, avoidance of hyperthermia, return-to-play guidelines after injury, and so on.

TABLE 3.1.

NCAA Major Infraction Cases (March 5, 1990–July 21, 2012)

Safety	Academic	Recruiting	Amateurism
0	11	21	24

Source: NCAA (2013b).

WHY DO UNIVERSITIES OBEY NCAA REGULATIONS?

Earlier in this chapter, it was brought out that the NCAA has no legal authority to regulate college sports. So why do universities capitulate to NCAA regulations? As already mentioned, the colleges benefit in multiple ways by the authority vested in the NCAA. It appears that there are five reasonable answers: (1) the NCAA organizes the cartel of college sports; (2) the NCAA obscures the school's academic mission with its athletic enterprises; (3) the NCAA employs a sophisticated and manipulative strategy that results in naïve, young athletes surrendering their financial rights in perpetuity for the benefit of universities; (4) the NCAA protects its member colleges from the medical consequences inherent to sports competition; and (5) the NCAA shields the universities from the absurdity of amateurism.

THE ACADEMIC EXPERIENCE OF THE COLLEGE ATHLETE

For students who would have attended college even without an athletic scholarship, the athletic scholarship offers no added value, except if the athlete gained acceptance to a higher-tiered college because of his or her athletic talents (Taha, 2011). For students who would not have attended college without an athletic scholarship, the indirect scholarship value represents the difference between the present value of their lifetime earnings as college graduates and the present value of their lifetime earnings if they had not graduated from college (Taha, 2011). This value should be considered in the range of hundreds of thousands of dollars (Taha, 2011). For college athletes who do not graduate, there is a modest, at best, increase in lifetime earnings capacity (Taha, 2011).

This brings up the overwhelmingly important issue of graduation rates for athletes. In 2003, Division I FBS football programs had a graduation rate of 69.2 percent, where Division I-A basketball programs graduated 66.4 percent of their athletes (Taha, 2011). At the Big 12 school Oklahoma, the football graduation rate was calculated at 38 percent by the federal calculation and 47 percent by the NCAA calculation. (For transfer-out players and those who leave school for the pros, the federal calculation assesses them as nongraduates, where the NCAA does not) (Gregory, 2013).

These athletic scholarships do not come without costs to the students. College athletes typically have a lower grade point average and class rank than other college students. Football and men's basketball players have a history of academic underperformance compared with nonrevenue athletes and the student body (Taha, 2011). As would be expected, these revenue-sports athletes probably face greater time pressures and other distractions than the rest of the student body.

With widespread academic failure and fraud involving college athletes, for those who actually graduate, what does that diploma represent? If that parchment represents little or no real education, what happens to the NCAA position that an athletic scholarship is sufficient compensation (Knight Commission on Intercollegiate Athletics, 2012)? As Billy Hawkins, an associate professor and athlete mentor at the University of Georgia, puts it, "To get a degree is one thing, to be functional with that degree is totally different" (Ganim, 2014, p. 5).

MEDICAL CONSEQUENCES FOR COLLEGE ATHLETES

In a variety of ways, the NCAA has limited the collegiate athletes' rights by way of the label "student-athlete." This became painfully obvious in the 1950s, when Ray Dennison died from a traumatic brain injury from college football. Ray's widow filed for worker's compensation death benefits (Branch, 2011). The case reached the Colorado Supreme Court, which ruled that colleges are "not in the football business" (Branch, 2011, p. 88). Since the college was not in the business of football, the college did not need to cover Mr. Dennison's death through worker's compensation. Walter Byers, former NCAA president, takes credit for coining the deliberately ambiguous term "student-athlete." When injured, the player is a student. When underperforming in the classroom, the player is an athlete.

Many college athletes suffer injuries from college sports, and many of these injuries linger after their college career ends. The NCAA requires universities to provide healthcare insurance during college participation but has not made clear standards for that coverage (O'Bannon, 2009). Each university can choose its own level of health insurance. Once the athlete leaves the college, the college has no responsibilities toward the athlete's ongoing healthcare.

CONCLUSION

The NCAA would do well to consider how the Olympics abolished the exploitative concept of amateurism. In 1978, President Jimmy Carter signed the bipartisan Amateur Sports Act, which ended Olympic amateurism (Branch, 2011). By 1986, the International Olympic Committee (IOC) had expunged the word "amateur" from its charter (Branch, 2011). The IOC simply lifted restrictions on Olympic competitors' commercial opportunities. In essence, the current Olympic model represents a restricted market model and has enjoyed tremendous success. The Olympics do not pay athletes; the IOC simply allows athletes to get paid (Hruby, 2012). Olympians can receive compensation from anyone, except the IOC, including corporations, personal donations, sponsorships, prize money, and even their home country. Despite much initial anguish about Olympic athletes being paid, the current IOC model represents a successful precedent for the professionalization of an amateur sports system (Branch, 2011). With the Olympic model translated into college sports, the universities would not pay their athletes; they would just let them pursue their commercial opportunities, such as endorsements, autograph signings, prize money, and so on (Nance-Nash, 2011).

Further, college athletes need a bill of rights. Stanley Eitzen (2000) proposed a bill of rights that included the following: (1) the right to transfer schools without penalty; (2) the right to a four-year scholarship guarantee; (3) the right to an open-ended scholarship until graduation if an athlete competes for a college for three or more years; (4) the right of athletes to be treated like other students—freedom of speech, privacy rights, fair redress of grievances, protection from physical/mental abuse; (5) the right to consult with agents; and (6) the right to endorsement revenue. I would add: (7) adequate health care; and (8) compensation for injuries with no statute of limitations.

QUESTIONS FOR DISCUSSION

1. What is the legal definition of amateurism? Could amateurism in college sports exist without the NCAA?
2. Assume that the NCAA adopts the IOC's compensation rules. Explore any residual shortcomings regarding college athlete welfare.
3. Assume that college athletes formed unions and negotiated contracts with universities. Explain potential negative consequences. Consider Title IX and tax consequences.

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CHAPTER 4

Title IX's Gender-Separate Allowance in the Context of College Athlete Rights and Intercollegiate Athletics Reform

Jennifer Lee Hoffman

KEY TERMS

- Title IX
- Gendered discourses
- Women's sport
- Amateurism
- Commercialization

In higher education, American colleges and universities survive despite limited federal oversight or aid, but they prosper because of their ability to sell themselves to the public (Smith, 2001). The limited federal intervention in higher education is a unique feature of US institutions. Independence from governmental coordination that makes US higher education institutions unique also contributes to the challenges in providing equity in educational settings.

Title IX introduces a federal policy to promote gender equity in higher education. Passed in 1972, this law has had an enormous impact across all of education, giving girls and women equal access to every educational opportunity from admissions to access to math and science. In every aspect of education, it is against the law to discriminate or treat women students differently based on their gender. Where this policy applies to athletics, it allows for gender-separate athletic opportunities, so long as several criteria are met. This differentiation based on gender requires that whatever the men's athletics teams have, the women's teams are entitled to as well. Under this gender-separate context of college sports opportunities, there has been varying success. Some institutions have gone beyond compliance with the law and offer elite-level athletic opportunities to women athletes on par with the most sophisticated football programs. Other institutions have resisted compliance or struggled to provide equitable resources and opportunities for all women (National Women's Law Center, n.d., Check it out).

While there is still work to be done to bring participation opportunities and financial aid in proportion with the overall women's student population, in the context of college athletics reforms, much of the dialogue on Title IX highlights