

Antitrust laws do not provide answer to reforming BCS



GORDON SCHNELL



DAVID SCUPP

Disgruntled colleges and sports fans have been complaining about the Bowl Championship Series for years. It dictates the only path to a national championship and the spoils that go with it. And a very narrow path it is, heavily favoring the traditional football powers of the Big Ten, Big East, Pac-10, SEC, ACC and Big 12 as well as Notre Dame.

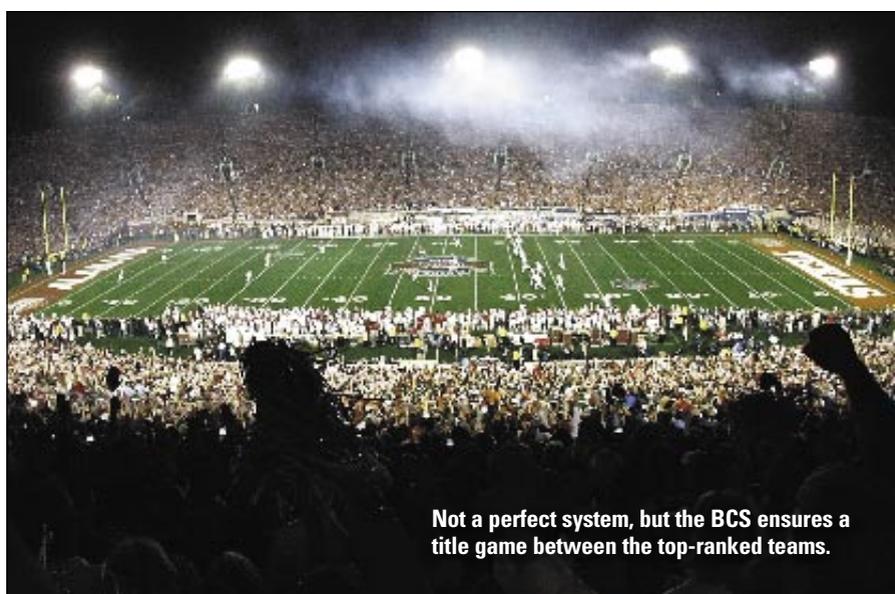
For everyone else, it provides, at best,

a long shot at one of the premier BCS bowls, and far more likely, a spot in one of the countless secondary bowls that continue to sprout up across the country.

The call for change has gotten even stronger since President Obama weighed in. Congressional hearings have been held. Bills have been introduced. Even the Department of Justice has vowed to take action.

The U.S. antitrust laws are at the center of this storm. Surely, the Football Bowl Subdivision elite cannot continue to perpetuate their football dominance through such an exclusionary arrangement. At least, that is the reasoning of those arguing for reform. Unfortunately, the antitrust laws do not provide the necessary fix so many are seeking — not without ignoring how the BCS originated and where college football would be without it.

Unlike most college sports, there has never been a playoff system for Division I-A football. The postseason has always been a jumble of stand-alone bowl contests. Originally, these matchups were predetermined by specific bowl/conference affiliations that rarely pitted the nation's top teams against each other. The BCS was formed to end this scattershot system of postseason play. It brought within its fold the six FBS power conferences and their historically affiliated bowls: Rose, Orange, Sugar and Fiesta. The champion of each of these conferences, and Notre Dame (if ranked high enough), qualifies auto-



Not a perfect system, but the BCS ensures a title game between the top-ranked teams.

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matically for one of these choice bowls. The two top-ranked teams play for the national championship.

The BCS accomplished its goal. It guarantees a championship matchup between the top two teams and ensures marquee matchups in the four BCS bowls.

For the disfavored FBS conferences, however, the BCS is not so rosy. Only one team among them may automatically qualify for a BCS bowl, and it has to achieve a No. 12 or higher ranking in the final BCS standings to do so. A second or third team might also qualify by invitation, but not likely. It is even less likely that they will ever get the right to the title fight. It has never happened.

The BCS revenue share is equally misapportioned, with the favored conferences getting most of the considerable BCS kitty.

Clearly, not all conferences are created equal in the BCS. To BCS opponents, the current system is destined to keep it that way by fostering a self-perpetuating cycle of presumed mediocrity. As Utah and Boise State can attest, even an undefeated season cannot overcome this manifest destiny. To BCS proponents, it is not about excluding the secondary conferences; it is about giving them the opportunity they never had before: a chance at a top bowl and even the national championship.

The problem with this back-and-forth

is that it has been usurped by a very different dialogue: not whether the BCS system is inherently fair, but whether a March Madness-style playoff system would be better. That is the question dominating the antitrust debate in Washington. It is a valid question, but from an antitrust perspective, it entirely misses the point.

That is because this all centers on a sports league where there is an inherent need for coordination and cooperation among the competing conferences and teams. Without it, there could be no postseason play at all. The antitrust laws are applied much more loosely in this context. In fact, they are not applied at all where the challenged arrangement is essential to the very existence of the offering. Arguably, that is the situation here. The BCS is necessary for facilitating a true national championship and other top postseason matchups. History shows where college football would be without it: a disconnected assortment of preordained bowl games.

To be sure, a formal playoff system would provide a more equitable and competitive postseason path, but the antitrust laws do not measure a practice by how it compares to something else that might be better. Instead, they look to how the practice has changed the competitive landscape. If it has allowed for a higher-quality product, the antitrust laws do not kick in. By most accounts,

that is exactly what the BCS has done. It has ensured a championship matchup between the top-ranked teams. It has enhanced the quality of the leading bowls. And it has opened the door for the less brawny conferences and teams to make a run at some measure of postseason prominence. It is by no means a perfect system, but love it or hate it, it is a lot better than it was.

In addition, there is no real consumer harm at play. Sure, the subsidiary BCS teams and non-BCS teams are subject to unequal (and possibly unfair) treatment. But that is not the constituency of primary antitrust concern. That party, rather, is the ultimate consumer — here, the college football fan (and perhaps the TV networks and sponsoring bowls). They have fared much better under the BCS. Whether they could do even better under a playoff system is simply not part of the analysis.

So let's be honest. The current BCS system could be better, a lot better in providing a more open, just and compelling postseason contest. A March Madness-type playoff system would definitely do the trick. But the antitrust laws are not going to get us there given the vast improvements the BCS has brought over the indiscriminate bowl assemblage that preceded it. The sooner everyone recognizes this, the better we will fare in reaching some common ground on improving the BCS.

Gordon Schnell (gschnell@constantinecannon.com) is a partner and David Scupp (dscupp@constantinecannon.com) is an associate with New York City-based Constantine Cannon LLP, an internationally recognized law firm specializing in antitrust litigation and counseling.

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