

Posted: Thursday December 9, 2010 12:54PM ; Updated: Thursday December 9, 2010 12:54PM



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### BCS may be unpopular, but it's unlikely to be deemed illegal

#### Story Highlights

Justice Department, others looking into whether BCS violates antitrust laws

'Rules of Reason' interpretation in Sherman Antitrust Act likely will protect BCS

As much as fans want playoff, there's no guarantee one would replace BCS

The Bowl Championship Series may be the least popular postseason format in modern sports. Legions of college football fans, influential media, and politicians deride it as anti-competitive and ill-conceived. The complaints are well documented and only feed an underlying frustration that college football lacks a playoff system. The BCS' complicated ranking methodology, exclusionary system of automatic bowl bids and lack of guarantee that the two best teams compete for a national title are frequently cited. Related gripes center on the disproportionate share of BCS wealth received by BCS-affiliated conferences and the selective access to publicity generated by playing in BCS-sponsored bowls.

Rebuke of the BCS has given rise to allegations that it is illegal under antitrust law, which is designed to prevent competitors -- such as college football teams and their member conferences -- from colluding in ways that deny access to would-be competitors, and that harm consumers. The Justice Department is exploring that topic, Utah Attorney General Mark Shurtleff has warned of a lawsuit and assorted members of Congress have introduced bills that would effectively kill the BCS.

Despite its controversies, the BCS, which has never been challenged in court, is poised to withstand legal scrutiny. Here's why:

Section 1 of the Sherman Antitrust Act -- the most likely source of law in a case against the BCS -- prevents competitors from collaboratively increasing prices or limiting choices. In Section 1 claims involving joint ventures, such as the BCS and its member institutions, "Rule of Reason" analysis typically applies. Rule of Reason deems a joint venture illegal only if it produces anticompetitive injuries that outweigh pro-competitive advantages. Put more simply, a court scrutinizing the BCS would compare how the BCS improves and hurts competition.

The BCS enhances competition in a variety of ways. Most notably, it offers a national championship game and four popular bowl games, some of which may not otherwise exist. Keep in mind, in the 56 years prior to the BCS's creation in 1998, no system existed for the top two teams to play each other in the postseason. While a 16-team playoff, which is frequently suggested as an alternative to the BCS, may be preferable, colleges and conferences declined to use such a format for more than five decades -- what's to say that such a format would come into existence in the absence of the BCS?

Advocates of the BCS also emphasize its promotion of regular season games, and the accompanying improvements in

attendance at those games since adoption of the BCS. With the BCS, losing any regular-season game can prevent a shot at a national title, meaning every single regular game matters considerably; with a playoff system, in contrast, a team might underperform in one week but still know it can redeem itself in the playoffs. In addition, a 16-team playoff system might extend the number of weeks student-athletes play football, an outcome which could cause students to miss additional classes and to be further exposed to on-field injuries.

The BCS also arguably enhances competition through its use of empirically-influenced rankings.

Each team's BCS ranking is a composite of three equally-weighted components -- the *USA Today* Coaches Poll, Harris Interactive College Football Poll (which comprises 114 voters, including former coaches, players, and journalists) and an average of six computer-based rankings that incorporate largely objective measurements, such as won-loss record and strength of schedule. To be sure, this arrangement is complex and partially opaque -- private companies that run each computer rating can shield their formulas from public scrutiny. Nonetheless, the use of factual criteria to complement the subjective impressions of coaches and journalists can be viewed as a positive: they are designed to improve accuracy and fairness.

The BCS also does not appear to raise consumer prices. Although tickets to BCS-sponsored bowl games are expensive, their cost seems to reflect fan interest in attending those games and the limited number of seats at those games. If teams instead played in playoff games, tickets to those games would be expensive, too.

The BCS may be vulnerable to arguments that it reduces the number of postseason games for fans to enjoy. The logic: a 16-team playoff would involve more games and more teams. The challenge to that logic: The BCS did not replace a playoff system and there is no guarantee that such a playoff system would exist in the absence of the BCS. Moreover, the existence of the BCS neither precludes a playoff system nor the playing of another national championship game; other schools and conferences could devise their own playoff, with a national title game, and compete with the BCS for fans' interest and dollars. Of course, the BCS enjoys such dominance over college football that alternatives may not be practical.

The best antitrust argument against the BCS is its blatant limitation of automatic bowl bids to the six BCS-affiliated conferences (and Notre Dame, which is not a member of any conference). Champions from the five non-affiliated conferences can only earn bids in very limited conditions and lack guarantees of bowl appearances and accompanying revenue and publicity. The BCS, however, could respond that this arrangement is designed to most efficiently maximize overall fan interest, since the BCS-affiliated conferences tend to be larger and with wider fan bases.

*Michael McCann is a sports law professor at Vermont Law School. For more on this topic see McCann's forthcoming article in the Boston College Law Review titled, "[Antitrust, Governance, and Postseason College Football.](#)"*

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