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December 19, 2007

Mr. Roger Goodell  
Commissioner  
National Football League  
280 Park Avenue  
New York, NY 10017

Dear Commissioner Goodell:

We write today to express concern that the National Football League is exercising its substantial market power to the detriment of consumers. Specifically, we are concerned that the NFL member teams are using the NFL Network, to restrict the output of game programming. In an effort to obtain carriage of the NFL Network by all cable and satellite providers as part of their basic programming package, the NFL will air eight late-season games exclusively on the NFL Network. Forcing providers to carry the NFL Network as part of their basic programming packages would mean that all their customers, even ones not interested in the programming, would have to pay for it.

The NFL has reportedly sought to increase the pressure on satellite and cable providers by demanding that local broadcast network affiliates ensure that their distribution of these games is limited to narrowly defined local markets. This will mean that consumers in our home states will not have the choice of seeing these late season games. Residents of Vermont will not be able to see what may be an historic contest between the New England Patriots and the New York Giants. Likewise, residents of Allegheny, Armstrong, Beaver, Butler, Fayette, Forest, Greene, Indiana, Lawrence, Venango, Washington and Westmoreland counties in Pennsylvania will not be able to see the important match-up between the Pittsburgh Steelers and the St. Louis Rams.

This decision to limit the output of professional football game programming appears designed to sustain and strengthen the market power of the NFL and its member teams. In accordance with the decision of the Third Circuit Court of Appeals in *Shaw v. Dallas Cowboys*, 172 F.3d 299 (3d Cir. 1999), the sale of broadcast rights to satellite and cable providers is not covered by the NFL's antitrust immunity. As you know, we have previously expressed concern about the NFL member teams restricting the output of game programming. Almost exactly a year ago, we held a hearing focused on the NFL Network as well as the efforts of the NFL to restrict output through its exclusive sale of the Sunday Ticket. At that hearing, Stanford University Professor Roger Noll, one of the Nation's foremost experts in sports economics and regulatory policy, characterized the NFL Network as "a profit-enhancing reduction in output in the sense that the game that is on

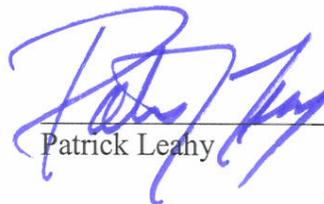
NFL Network, the eight games, will be available to fewer people than had those games been offered on broadcast television.”

The NFL appears to be moving incrementally closer to limiting distribution of its programming to subscription television. Businesses are generally free to set their own prices and to decide with whom to deal, but unlike most other businesses, the NFL and its member teams have long been beneficiaries of exemptions from some aspects of federal antitrust law relating to broadcast rights to their games. These exemptions may have made sense at one time, when leagues were far less commercialized and were committed to making their television rights available for free, over-the-air broadcast. Now that the NFL is adopting strategies to limit distribution of game programming to their own networks, Congress may need to reexamine the need and desirability of their continued exemption from the Nation’s antitrust laws.

We ask that you take prompt action to make games like the Patriots-Giants and Steelers-Rams games more broadly available than just on the NFL Channel. We also ask you to provide us with a justification for the decision by the NFL and its member teams to restrict distribution of game programming in light of the fact that such conduct is not immune from the antitrust laws.

Sincerely,

  
Arlen Specter

  
Patrick Leahy