
**RACING TOWARD REFORM:
LIMITING NASCAR'S MONOPSONY POWER THROUGH STRUCTURAL CHANGE**

❖ Note ❖

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I. INTRODUCTION

Since its inception in 1948, the France family has ruled NASCAR with an iron fist.¹ As other American professional sports leagues became increasingly democratic through athlete unionization and joint venture structures, NASCAR remained a dictatorship.² In 2016, NASCAR granted teams non-permanent charters, similar to franchises, to build equity and encourage investment.³ Theoretically, the charter agreement gave teams formal power in NASCAR governance by negotiating and bargaining for better terms every few years.⁴

However, during last fall's charter renewal negotiations, it became clear this was not true in practice.⁵ On September 6, 2024, NASCAR sent its teams a 105-page take-it-or-leave-it offer with a six-hour deadline.⁶ Teams could sign before midnight or risk losing their charters.⁷ Thirteen of fifteen teams signed.⁸

In October 2024, the two holdouts, 23XI Racing and Front Row Motorsports,

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¹ S. Joseph Modric, *The Good Ole' Boys: Antitrust Issues in America's Largest Spectator Sport*, 1 DEPAUL J. SPORTS L. CONTEMP. PROBS. 159, 161 (2003).

² *See id.*

³ Tyler M. Helsel, *Not Everyone Qualifies: A Comparative Look at Antitrust Law and Nascar's Charter System*, 28 MARQ. SPORTS L. REV. 235, 235 (2017).

⁴ Dustin Long, *NASCAR Announces Charter System for Sprint Cup Team Owners*, NBC SPORTS (Feb. 9, 2016), <https://www.nbcsports.com/nascar/news/nascar-announces-charter-system-for-sprint-cup-team-owners>

⁵ *See* Matt Weaver, *NASCAR Makes Bold Move To End Charter Negotiations But Two Teams Didn't Budge*, SPORTSNAUT (Sept. 10, 2024), <https://sportsnaut.com/nascar-charter-update-michael-jordan-denny-hamlin-no-deal/>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

sued NASCAR and its CEO, Jim France, in federal court for antitrust violations.⁹ The teams alleged that the France family used NASCAR to acquire and maintain monopsony power over the market for premier stock car racing teams.¹⁰

This Note argues that NASCAR's unique structure allowed it to monopsonize the market for stock car racing teams' services. Part II discusses NASCAR's past and present economic models and monopsony power under Section 2 of the Sherman Act. Part III analyzes NASCAR's economic model under Section 2 of the Sherman Act and argues its monopsony power is structurally derived. Part IV argues that structural remedies are the best solution to NASCAR's monopsony power.

II. BACKGROUND

A. NASCAR as a Sanctioning Body

NASCAR was founded in 1948 in Daytona Beach, Florida, by Bill France Sr., a veteran stock car driver, mechanic, and race promoter.¹¹ With no unifying sanctioning body, stock car racing had descended into chaos and corruption, and was viewed as illegitimate.¹² France started NASCAR to create uniform rules, guaranteed prize money, and a legitimate stock car racing national championship.¹³

France wanted NASCAR to be the dominant sanctioning body in American motorsports. To do so, NASCAR needed to expand beyond traditional dirt tracks. Thus, France created International Speedway Corporation ("ISC") and took it public in 1953 to fund the construction of the asphalt superspeedway Daytona International Speedway and, later, Talladega Superspeedway.¹⁴

Today, NASCAR is the sole sanctioning body for stock car racing in the United States.¹⁵ NASCAR owns and sanctions four professional stock-car racing series: The Cup Series, the Xfinity Series, the Truck Series, and the ARCA Menards Series.¹⁶ The

⁹ 23XI Racing is owned by NBA legend Michael Jordan; current NASCAR Cup Series driver and three-time Daytona 500 winner Denny Hamlin; and Jordan's longtime business partner, Curtis Polk. Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

¹⁰ *Id.*

¹¹ MARK D. HOWELL, FROM MOONSHINE TO MADISON AVENUE: A CULTURAL HISTORY OF THE NASCAR WINSTON CUP SERIES, 16–17 (Popular Press 1997).

¹² *Id.*

¹³ *Id.*

¹⁴ See International Speedway Corp., 2018 Annual Report 5 (Form 10-K) (Mar. 11, 2019), https://www.annualreports.com/HostedData/AnnualReports/PDF/NASDAQ_ISCA_2018.pdf [hereinafter 2018 Annual Report].

¹⁵ See HOWELL, *supra* note 11.

¹⁶ *NASCAR Cup Series Schedule 2025*, NASCAR, <https://www.nascar.com/nascar-cup-series/2025/schedule/> (last visited May 31, 2025).

NASCAR Cup Series is its premier series and is considered to be the top level of stock car racing.¹⁷

B. NASCAR's Unique Structure

Structurally, NASCAR is unique among American sports leagues.¹⁸ Traditional leagues like the NFL, NBA, NHL, and MLB are unincorporated joint ventures with strong players' unions.¹⁹ Teams govern and split league revenue evenly amongst themselves while the league itself plays an extremely limited role.²⁰ But in NASCAR, the series has power over everything.²¹ NASCAR is a private, for-profit corporation, while NASCAR teams and drivers are independent contractors.²² As such, unlike traditional joint venture leagues, NASCAR has no obligation to collectively bargain, share revenue, or include teams in governance decisions.²³

C. NASCAR's Pre-Charter Economic Model

Before 2016, NASCAR's economic model had been relatively the same since its inception.²⁴ Teams funded their operations through sponsorships and race prize purses, with no guaranteed revenue from NASCAR.²⁵ As NASCAR grew, broadcast rights fees constituted a large part of the prize purses.²⁶ Until 2000, each racetrack negotiated their own broadcast rights deals.²⁷ For each race, twenty-five percent of the broadcast rights fees went to the teams via the prize purse, sixty-five percent was retained by the track and NASCAR got the remaining ten percent.²⁸

At first, networks hesitated to air lengthy NASCAR races flag-to-flag, so broadcast rights fees and prize purses were low.²⁹ Purses grew when NASCAR pooled its race broadcast rights and quadrupled its rights fee for the 2001 season.³⁰ However, the

¹⁷ See HOWELL, *supra* note 11, at 13.

¹⁸ Stephen F. Ross & Stefan Szymanski, *Antitrust and Inefficient Joint Ventures: Why Sports Leagues Should Look More Like McDonald's and Less Like the United Nations*, 16 MARQ. SPORTS L. REV. 213, 216 (2006).

¹⁹ See *id.*

²⁰ *Id.*

²¹ HOWELL, *supra* note 11, at 18.

²² Ross & Szymanski, *supra* note 18.

²³ See *id.*

²⁴ Helsel, *supra* note 3, at 240.

²⁵ *Id.*

²⁶ See MARK YOST, *THE 200-MPH BILLBOARD: THE INSIDE STORY OF HOW BIG MONEY CHANGED NASCAR* 309 (2007).

²⁷ *Id.* at 88.

²⁸ 2018 Annual Report, *supra* note 14, at 61.

²⁹ SCOTT BEEKMAN, *NASCAR NATION: A HISTORY OF STOCK CAR RACING IN THE UNITED STATES* 99 (2010)

³⁰ YOST, *supra* note 26, at 309.

distribution percentages per race remained the same.³¹ At the time, team costs skyrocketed thanks to technological advances, improved safety standards, and a geographically expanding schedule.³² Thus, even at the sport's peak, NASCAR teams heavily depended on sponsorship to keep racing.³³ Consequently, teams' finances rose and fell with television ratings and the broader economy.³⁴ When ratings and consumer spending were high, corporate marketing dollars flooded NASCAR and teams thrived.³⁵ But when ratings and consumer spending fell, corporations left and teams suffered.³⁶ Without guaranteed revenue or franchise rights, teams that failed to find sponsors folded, forcing owners to either merge with another team or sell their assets for pennies on the dollar.³⁷

D. NASCAR's Economic Model Under the Charter System

By 2008, NASCAR's economic model was already faltering as television ratings declined, but the global financial crisis delivered the final blow.³⁸ With consumer spending, ratings and marketing budgets declining, corporate sponsors fled NASCAR.³⁹ Making matters worse, the recession devastated NASCAR's backbone: the auto industry.⁴⁰ With costs higher than ever and less sponsor and manufacturer support than ever, teams collapsed.⁴¹ Eighteen of the twenty-three full-time 2006 Cup Series teams either cut cars, merged, sold assets, or closed by 2012.⁴²

The financial crisis made team owners push NASCAR for a franchise model.⁴³ In 2014, eighteen NASCAR Cup teams formed the Race Team Alliance (RTA) to discuss

³¹ 2018 Annual Report, *supra* note 14, at 61.

³² See BEEKMAN, *supra* note 29, at 134–35, 145.

³³ *Id.* at 145–46 (2010).

³⁴ *Id.*

³⁵ Jack Gage, *Nascar's Business Wreck*, FORBES (Feb. 20, 2009), https://www.forbes.com/global/2009/0302/050_pileup/.

³⁶ *Id.*

³⁷ Terry Blount, *A Farewell to the King?* ESPN (Dec. 4, 2008), https://www.espn.com/racing/nascar/cup/columns/story?columnist=blount_terry&id=3745914.

³⁸ Jerry Bonkowski, *Financial Crisis Hits NASCAR*, STATE J. REG. (Feb. 9, 2009), <https://www.sj-r.com/story/news/2009/02/10/financial-crisis-hits-nascar/42935633007/>.

³⁹ *Id.*

⁴⁰ In 2008, NASCAR had four manufacturers. By 2012 two manufacturers, General Motors and Dodge, a Chrysler subsidiary, had filed for bankruptcy. Dodge left the sport at the end of 2012, leaving General Motors, Ford, and Toyota. *Id.*

⁴¹ BEEKMAN, *supra* note 29, at 145–46.

⁴² See Ken Belson, *NASCAR and Its Race Teams Fight Over the Sport's Future*, N.Y. TIMES (May 1, 2024), <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>.

⁴³ Gage, *supra* note 35.

cost-cutting initiatives and new ways to market the sport.⁴⁴ In February 2016, NASCAR announced the Charter system, a compromise between the series and the RTA to give teams more financial stability and make the sport more appealing to sponsors and investors.⁴⁵ A charter is the NASCAR equivalent of a franchise.⁴⁶ The thirty six chartered cars are guaranteed entry and a share of the prize purse for every NASCAR Cup race.⁴⁷ Each team is limited to four chartered cars.⁴⁸ Unchartered cars compete for four “open team” spots in every race.⁴⁹ If an owner wants to leave the sport or downsize, they can sell or lease their charters, if approved by NASCAR.⁵⁰ However, unlike franchises, charters are not permanent.⁵¹ Teams must renegotiate the terms of their charter agreement with NASCAR every few years.⁵² If no agreement is reached, NASCAR can seize teams’ charters, discontinue the system, and return to its old economic model.⁵³

While the charter system improved the old economic model in some respects, it remained unchanged in others.⁵⁴ Even though the teams’ share of broadcast rights fees grew to between thirty and thirty-nine percent, rising costs wreaked havoc on budgets.⁵⁵ As a result, sponsors still funded sixty-five to eighty percent of teams’ annual budgets.⁵⁶ However, since the charter and its guaranteed entries were not permanent, teams could not promise exposure for their sponsors long-term.⁵⁷ Consequently, sponsors were often only willing to sign short-term contracts or provide support for part of the season, forcing many teams to secure multiple new sponsors each year.⁵⁸ While charters provided team owners with new marketable equity, it incentivized high

⁴⁴ David Scott, *Alliance Now at 18 Cup Teams*, CHARLOTTE OBSERVER (Aug. 14, 2014), <https://www.charlotteobserver.com/sports/nascar-auto-racing/thatsracin/article9150506.html>.

⁴⁵ Long, *supra* note 4.

⁴⁶ However, NASCAR insists charters are not functionally equivalent to franchises in so-called stick and ball sports, despite their similarities. Matt Weaver, *NASCAR Steve Phelps Joined Kevin Harvick for Wide Ranging State of the Sport Conversation*, SPORTSNAUT (Aug. 22, 2024), <https://sportsnaut.com/nascar-steve-phelps-joined-kevin-harvick-for-wide-ranging-state-of-the-sport-conversation/>.

⁴⁷ Long, *supra* note 4.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Adam Stern, *NASCAR Teams Let Charter Negotiation Window Expire, As Talks Set to Run Into Season*, SPORTS BUS. J. (Feb. 1, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/02/01/nascar-charter-negotiations/>.

⁵³ *Id.*

⁵⁴ See Helsel, *supra* note 3 at 241–43.

⁵⁵ Belson, *supra* note 42.

⁵⁶ *Id.*

⁵⁷ Adam Stern, *NASCAR Teams Dig Deep for Sponsors*, SPORTS BUS. J. (July 17, 2023), <https://www.sportsbusinessjournal.com/Journal/Issues/2023/07/17/Upfront/motorsports/>.

⁵⁸ *Id.*

team turnover as costs rose and sponsorship became scarce.⁵⁹ Since 2016, more than half the original charter-owning teams left NASCAR, overwhelmingly citing financial difficulties.⁶⁰ Despite its benefits, the 2016 charter in combination with rising costs left teams in the same economically volatile position as before.⁶¹

E. The 2025 Charter Negotiations

In November 2023, NASCAR announced its landmark new broadcast rights deal beginning in 2025 that would bring in 1.1 billion U.S. dollars in rights fees per year over seven years.⁶² It represented a forty percent increase from NASCAR's previous deal.⁶³ With their ongoing financial strain, teams wanted a bigger share of the broadcast rights fees and other revenue streams under the 2025 charter agreement.⁶⁴ Seemingly, NASCAR and teams agreed on an increased rights fee share relatively early in negotiations.⁶⁵ However, the teams' acceptance was contingent on NASCAR making the charter system permanent.⁶⁶ NASCAR refused and negotiations stalled for almost two years.⁶⁷ NASCAR's subsequent offers included a cost cap, a provision that would allow the France family and private equity firms to purchase charters and a non-disparagement clause.⁶⁸ Throughout 2024, team owners expressed fears negotiations would end with a take it or leave it offer from NASCAR.⁶⁹ On September 6, 2024, that

⁵⁹ Belson, *supra* note 42.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Jordan Bianchi, *NASCAR's New TV Deal, Explained: Why Amazon, Who Gets What Races and More*, N.Y. TIMES (Nov. 30, 2023), <https://www.nytimes.com/athletic/5100901/2023/11/30/nascar-tv-deal-fox-nbc-amazon-warner-bros-explained/>.

⁶³ *Id.*

⁶⁴ Belson, *supra* note 42.

⁶⁵ Jenna Fryer, *Race Teams Ask NASCAR for 'Meaningful' Talks As Their Business Model Dispute Skids Toward Summer*, ASSOCIATED PRESS (May 12, 2023, 10:12 AM), <https://apnews.com/article/nascar-charters-team-owners-letter-43d1892380ecc257d7d550eaaeecd5a5>.

⁶⁶ *Id.*

⁶⁷ Jenna Fryer, *NASCAR Has Finalized a New Charter Agreement. Team Co-Owner Michael Jordan Won't Sign It*, ASSOCIATED PRESS (Sept. 9, 2024, 4:39 PM), <https://apnews.com/article/nascar-charters-michael-jordan-423f18857461af57fc7da7bd7f2dd130>.

⁶⁸ A cost cap would require teams to disclose their finances to NASCAR while the series kept theirs secret from the teams; NASCAR claimed the France family owning a charter was equivalent to Roger Penske, who owns the IndyCar Series and fields an IndyCar team, but Penske was a highly successful team owner for 50 years before he purchased the series in 2019, which is fundamentally different from the France family here. See Jeff Misenti, *NASCAR's Latest Revenue Sharing Offer to Teams Was One of the Worst Yet*, SPORTSNAUT (Jun. 12, 2024), <https://sportsnaut.com/nascars-latest-revenue-sharing-offer-to-teams-was-one-of-the-worst-yet/>.

⁶⁹ Jenna Fryer, *Analysis: Race teams Unhappier Than Ever with NASCAR's Latest Offer on Charter Agreement*, ASSOCIATED PRESS (Jun. 10, 2024, 6:58 PM), <https://apnews.com/article/nascar-kyle-larson-20522ecfeedfafca9b68750e585bbce4>.

became a reality.⁷⁰ At 5:00 PM, NASCAR sent teams a final offer with a six-hour deadline.⁷¹ Despite later expressing they felt coerced, most teams signed.⁷²

The two holdouts were 23XI Racing and Front Row Motorsports (FRM).⁷³ In October 2024, they sued NASCAR and CEO Jim France alleging violations of Sections 1 and 2 of the Sherman Act.⁷⁴ In their Complaint, the teams allege they get thirteen percent of NASCAR's total revenue each year.⁷⁵ In March 2025, NASCAR countersued 23XI, FRM, and 23XI co-owner, Curtis Polk for allegedly violating Section 1 of the Sherman Act.⁷⁶

F. Monopsony Power Under the Sherman Act

Section 2 of the Sherman Antitrust Act prohibits monopolizing, attempting to monopolize, or conspiring to monopolize a market.⁷⁷ Courts have interpreted the Sherman Act to also apply to monopsonies.⁷⁸ While a monopoly possesses market power on the selling side and traditionally harms consumers, a monopsony possesses market power on the buying side and traditionally harms sellers.⁷⁹ In a monopsony a single dominant firm uses its market power to purchase goods or services from sellers at below competitive market prices.⁸⁰ Because there are few or no alternative buyers, sellers must accept the monopsony price or leave the market entirely.⁸¹ Market power is measured by a firm's ability to raise prices (monopolies) above or lower prices (monopsonies) below what they would be in a competitive market.⁸² Section 2 does not outright ban all monopolies.⁸³ A section 2 claim requires that the defendant (1) "possessed monopsony power in the relevant markets," (2) "willfully acquired or maintained its monopsony power through exclusionary conduct," and (3) "caused antitrust injury" through such conduct.⁸⁴

⁷⁰ Weaver, *supra* note 5.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

⁷⁵ *Id.*

⁷⁶ Counterclaim, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Mar. 25, 2025).

⁷⁷ 15 U.S.C. § 2.

⁷⁸ See *NCAA v. Alston*, 594 U.S. 69, 86 (2021).

⁷⁹ *Le v. Zuffa, LLC*, No. 215CV01045RFBBNW, 2023 WL 5085064, at *39 (D. Nev. Aug. 9, 2023).

⁸⁰ PHILLIP E. AREEDA & HERBERT HOVENKAMP, *ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION*, § 574 (2024).

⁸¹ See *id.*

⁸² See *Le*, 2023 WL 5085064, at *40.

⁸³ *Id.* at **39–40.

⁸⁴ *Id.* at *40.

G. Monopsony Power in Professional Sports

Professional sports labor markets are “unique and highly specialized” and, therefore, especially vulnerable to anticompetitive monopsonistic practices.⁸⁵ Athletes typically have specialized skill sets focused on a single sport.⁸⁶ They invest significant time and money and sacrifice alternative career opportunities to develop them.⁸⁷ Because of these sunk costs and with no equivalent substitute buyers, athletes are more likely to accept lower prices for their labor.⁸⁸ Thus, leagues can buy athlete labor at monopsony prices.⁸⁹

III. ANALYSIS

In their lawsuit, the teams allege NASCAR’s economic model is a price-suppression scheme in which NASCAR leverages its dominant market position to buy teams’ services at below competitive market prices so it can reap monopsony profits.⁹⁰ This section analyzes this claim under antitrust law and argues NASCAR’s structure is to blame.

A. Defining the Relevant Market

NASCAR possesses monopsony power in the relevant input market for the of services top-level stock car racing teams in the United States.⁹¹ Monopsony power is demonstrated by defining a relevant market and showing the alleged monopsonist’s percentage share of that market.⁹² A relevant market under the Sherman Act encompasses both a product and a geographic market.⁹³ To define the relevant product market the inquiry is: whether there is a reasonably good substitute buyer to which teams could sell their services if NASCAR began buying them at a lower price.⁹⁴

⁸⁵ Grimes, Warren S., *Buyer Power and Retail Gatekeeper Power: Protecting Competition and the Atomistic Seller*, 72 ANTITRUST L.J. 563 (2005)

⁸⁶ *Brown v. Pro Football*, 50 F.3d 1041, 1061 (1995) (Wald, J., dissenting).

⁸⁷ *Id.*

⁸⁸ Grimes, *supra* note 85.

⁸⁹ *See Brown*, 50 F.3d at 1061.

⁹⁰ Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

⁹¹ *See Le v. Zuffa, LLC*, No. 215CV01045RFBBNW, 2023 WL 5085064, at **39–40 (D. Nev. Aug. 9, 2023).

⁹² *Todd v. Exxon Corp.*, 275 F.3d 191, 199 (2d Cir. 2001).

⁹³ *Le*, 2023 WL 5085064 at **41–42.

⁹⁴ *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 66 (2d Cir. 2019) (“[A] single brand of a product or service may ‘be a relevant market under the Sherman Act’ if no substitute exists for that brand’s products or services”) (citing *Eastman Kodak Co. v. Image Technical Services*, 504 U.S. 451, 482 (1992)).

Here, there is no reasonably good substitute buyer to which NASCAR teams could sell their services.⁹⁵ While other motorsports such as Formula 1 and IndyCar exist, they are not reasonable substitutes because they are neither functionally nor economically interchangeable with NASCAR from the perspective of stock car teams.⁹⁶

First, each series operates within its own distinct technological universe, making teams highly specialized to each series.⁹⁷ NASCAR uses closed-wheel stock cars following NASCAR's Gen-7 specifications.⁹⁸ In contrast, IndyCar and F1 both use open-wheel, open-cockpit cars, but follow completely different technical specifications.⁹⁹ Such stark differences mean teams cannot switch between series without investing significantly in new equipment, infrastructure and personnel retraining to meet the unique demands of the new series.¹⁰⁰ Thus, these steep switching costs and industry-specific skills possessed by teams in each series indicates these series are not substitutes but rather narrowly defined individual markets.¹⁰¹

In addition, there are significant structural barriers that make it nearly impossible for NASCAR teams to sell their services to IndyCar or Formula One ("F1").¹⁰² First, IndyCar's charter system caps entries at twenty-seven cars, with only two slots for unchartered cars.¹⁰³ Any NASCAR team wanting to compete in IndyCar would have to buy an existing team's charter or compete for the two unchartered entry slots every race.¹⁰⁴ Additionally, a team would need to obtain a Honda or Chevrolet engine lease to even try to qualify as an unchartered entry.¹⁰⁵ However, each manufacturer issues a

⁹⁵ See *Todd*, 275 F.3d at 202.

⁹⁶ See *id.*

⁹⁷ See Bob Pockrass, *'Wrestling A Bear': Differences Between INDYCAR, NASCAR, and Formula 1 Cars*, FOX SPORTS (Mar. 2, 2025), <https://www.foxsports.com/stories/motor/indycar-nascar-formula-1-different-cars>.

⁹⁸ See *id.*

⁹⁹ F1 teams individually design, build, and test almost every component of their cars in-house to meet the current FIA technical regulations. Meanwhile, IndyCar is a "spec" series where teams use the same base chassis, a Honda or Chevrolet engine, and technological creativity is limited to suspension dampers. See *id.*

¹⁰⁰ While there are some crossover teams that compete across multiple series (Team Penske, McLaren, Andretti Global), they are rare, typically maintain separate infrastructure and personnel for each series, and are directly funded by auto manufacturers (McLaren and Andretti Global) and or billionaire investors (Team Penske and Andretti Global). See Pockrass, *supra* note 97.

¹⁰¹ See *Todd v. Exxon Corp.*, 275 F.3d 191, 202 (2d Cir. 2001).

¹⁰² Marshall Pruett, *IndyCar Charter Program Launches After Final Team Owners Sign*, RACER (Sept. 24, 2024), <https://racer.com/2024/09/23/indycar-charter-program-launches-after-final-team-owners-sign/>.

¹⁰³ *Id.*

¹⁰⁴ See *id.*

¹⁰⁵ See *Curt and Kevin Talk About Jay Frye to RLL, Grade Teams, and Talk to Jim Michaelian on 50 Years of Long Beach!*, 107.5 THE FAN, at 28:40 (April 1, 2025), <https://open.spotify.com/episode/7ADyCNq5lO8M9FqCtdk8OM?si=adde968fe7d748c5>.

limited number of leases per year and chartered teams have priority.¹⁰⁶ Thus, entry barriers limit IndyCar's feasibility as a reasonable substitute buyer for NASCAR teams.¹⁰⁷

F1 is even more unrealistic.¹⁰⁸ The grid is capped at twenty-four cars, but the sport has stayed at twenty cars for over a decade.¹⁰⁹ Prospective F1 teams face a lengthy dual-approval process and if approved and must pay a 450 million-dollar anti-dilution fee to join the grid.¹¹⁰ F1's approval standards are notoriously subjective.¹¹¹ Andretti Cadillac's recent bid underscores this.¹¹² Despite decades of success in IndyCar and other motorsports, F1 initially denied Andretti Cadillac's bid because the team would not bring competitiveness and brand value to F1.¹¹³ After three years and a U.S. Department of Justice Antitrust Division investigation into F1's initial denial of the team's bid, F1 approved Andretti Cadillac to join the grid as an eleventh team.¹¹⁴ Thus, with these significant financial and structural barriers, IndyCar and F1 are not reasonable substitute buyers of stock car racing teams' services.¹¹⁵

B. Structural Sources of NASCAR's Monopsony Power

With no reasonable substitutes, NASCAR effectively controls the entire market for team participation.¹¹⁶ NASCAR's dominance allows it to suppress team compensation without fear because teams have no higher-paying rival series to defect to even if they are unhappy.¹¹⁷ Moreover, this power is not temporary.¹¹⁸ NASCAR has entrenched its monopsony power through high structural entry barriers so it can

¹⁰⁶ *See id.*

¹⁰⁷ AREEDA & HOVENKAMP, *supra* note 80, at §§ 506(a), 539(b)(4).

¹⁰⁸ Steven Cole Smith, *Michael Andretti Says He Has Money, Reveals Backup Plan to Get into F1*, AUTOWEEK (Feb. 27, 2022), <https://www.autoweek.com/racing/formula-1/a39252785/micheal-andretti-money-reveals-backup-plan-f1/>.

¹⁰⁹ *Id.*

¹¹⁰ Phillip Horton, *Cadillac Will Pay \$450 Million Anti-Dilution Fee to Join Formula 1*, AUTOWEEK (Mar. 18, 2025), <https://www.autoweek.com/racing/formula-1/a64218356/cadillac-will-pay-450-million-anti-dilution-fee-join-formula-1/>.

¹¹¹ *See* Mike Pryson, *Official Text of F1 Decision Against Michael Andretti's Bid for Entry into Formula 1*, AUTOWEEK (Jan. 31, 2024), <https://www.autoweek.com/racing/formula-1/a46596038/complete-text-of-f1-decision-against-andretti/>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Nathan Brown, *FOM, FIA Give Cadillac F1 OK to Join Formula 1 Grid in 2026 as Series' 11th Team*, INDIANAPOLIS STAR (Mar. 7, 2025), <https://www.indystar.com/story/sports/motor/2025/03/07/cadillac-f1-gains-formal-approval-join-formula-1-grid-2026-twg-motorsports-general-motors/81945288007/>.

¹¹⁵ *Todd v. Exxon Corp.*, 275 F.3d 191, 199 (2d Cir. 2001).

¹¹⁶ *See* *NCAA v. Alston*, 594 U.S. 69, 90 (2021).

¹¹⁷ *Id.*

¹¹⁸ *See* *Le v. Zuffa, LLC*, No. 215CV01045RFBBNW, 2023 WL 5085064, at **52–56 (D. Nev. Aug. 9, 2023).

continue suppressing team compensation while deterring any rival series from entering the market.¹¹⁹ For example, NASCAR controls or restricts access to the key inputs like tracks,¹²⁰ teams,¹²¹ drivers,¹²² and cars,¹²³ which a prospective competitor would need to establish a series.¹²⁴ Through acquisitions, exclusive dealing clauses, and rules NASCAR imposes high fixed and sunk costs on prospective competitors which deters them from entering the market.¹²⁵

First, NASCAR maintains significant cost advantages over potential rivals by owning racetracks which deters new entry and allows it to impose monopsony prices.¹²⁶ NASCAR owns eighteen racetracks through various subsidiaries, such as ISC.¹²⁷ Every time a NASCAR-owned series races at a NASCAR-owned track, NASCAR minimizes costs and maximizes revenue by retaining most of the broadcast rights fees for each race.¹²⁸ Consequently, compared to prospective rivals, NASCAR can stage races at much lower cost.¹²⁹ Even though this structure creates efficiencies

¹¹⁹ *See id.*

¹²⁰ NASCAR owns various tracks though ISC. For tracks it competes at but does not own, it imposes a covenant not to compete in the sanctioning agreement that for the duration of the contract that bars the track or any third-party promoter from promoting or hosting an event for any series that attempts to “duplicate, emulate, imitate, copy, simulate and/or mimic the NASCAR Cup Series; or uses the same or similar race vehicles, rules, competitors, trademarks, trade dress, and/or “look and feel” of the NASCAR Cup Series.” Sanction Agreement between Nashville Speedway, USA, Inc. and NASCAR Event Mgmt., Inc. for 2021 to 2024 National Association for Stock Car Auto Racing, Inc. NASCAR Cup Series Events, Ex. 10.2 (delivered Jun. 2, 2020), <https://contracts.justia.com/companies/dover-motorsports-inc-1598/contract/120075/>.

¹²¹ The Charter agreement imposes a covenant not to compete and requires teams to compete in every race, which amounts to thirty-seven Cup Series races over thirty-seven weekends per year. *See* Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

¹²² The 2025 playoff waiver rule penalizes NASCAR Cup Series drivers who miss Cup Series races for non-permissible reasons including, racing in other series. If NASCAR grants a playoff waiver to a driver who misses a race for non-permissible reasons, the driver forfeits all past and future playoff points for the regular season. *See 2025 Rule Changes*, NASCAR, <https://nascar101.nascar.com/2025/01/16/nascar-announces-competition-updates-for-2025-nascar-season/> (last visited May 31, 2025).

¹²³ Teams allege that all Gen-7 car parts are property of NASCAR and while teams are required to “purchase” the parts from NASCAR for approximately \$3 million NASCAR retains ownership and teams cannot use them in other series. Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

¹²⁴ *See* *Le v. Zuffa, LLC*, No. 215CV01045RFBBNW, 2023 WL 5085064, at **52–56 (D. Nev. Aug. 9, 2023).

¹²⁵ AREEDA & HOVENKAMP, *supra* note 80, at § 768(e) (arguing raising rivals costs results in some level of market foreclosure and amounts to exclusionary conduct).

¹²⁶ *Id.*

¹²⁷ *See List of NASCAR Tracks*, NASCAR, <https://www.nascar.com/tracks/> (last visited May 31, 2025).

¹²⁸ *See* 2018 Annual Report, *supra* note 14, at 61.

¹²⁹ *See* AREEDA & HOVENKAMP, *supra* note 80, at § 420(c).

for NASCAR, it raises costs for prospective rivals.¹³⁰ Unlike NASCAR, a rival series would have to invest significant capital to buy their own tracks, split revenue with independent track promoters, or pay NASCAR to race at one of their tracks.¹³¹ Thus, high fixed and sunk costs deter rival series from entering the market at all because it would be economically irrational.¹³² Since it does not fear a new rival will enter the market and compensate teams competitively, NASCAR can impose monopsony prices.¹³³

NASCAR's ability to impose monopsony prices, in turn, reinforces teams' economic dependency.¹³⁴ Because NASCAR's below-market revenue share does not cover team operating costs, teams rely on sponsors for most of their funding.¹³⁵ Sponsors want the national exposure guaranteed by a charter.¹³⁶ Thus, a team's survival is directly linked to charter ownership.¹³⁷ NASCAR retains unilateral power to revoke the charters and discontinue the system at will.¹³⁸ Without charters, teams have no guaranteed entry, no accrued equity value, and limited sponsorship opportunities.¹³⁹ NASCAR uses this as leverage to force teams to accept one-sided charter terms including covenants not to compete.¹⁴⁰ Over time, this structure traps teams in a cycle of dependency that entrenches NASCAR's monopsony power and keeps team compensation permanently suppressed.¹⁴¹

The 2025 charter negotiations exemplified NASCAR's leverage.¹⁴² In September 2024, NASCAR sent teams a 105-page final offer and gave teams six hours to sign or risk losing their charters.¹⁴³ Ultimately, thirteen of fifteen teams signed.¹⁴⁴ In the agreement, NASCAR imposed several terms that reinforce its monopsony power, including a covenant not to compete, a reciprocal waiver of antitrust claims and a non-

¹³⁰ *Id.* at § 768(e).

¹³¹ *See id.*

¹³² *Id.* at § 420(a) (“[E]ntry will not occur at all when the entrant’s short-run marginal costs exceed the incumbent’s short-run profit maximizing price.”).

¹³³ *See Le v. Zuffa, LLC*, No. 215CV01045RFBBNW, 2023 WL 5085064, at **52–56 (D. Nev. Aug. 9, 2023).

¹³⁴ *See Belson, supra* note 42.

¹³⁵ *Id.*

¹³⁶ *See YOST, supra* note 26, at 134.

¹³⁷ *See Order Granting Motion for Preliminary Injunction*, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Dec. 18, 2024).

¹³⁸ Stern, *supra* note 52.

¹³⁹ *See Le*, 2023 WL 5085064 at **61–69 (discussing Zuffa’s use of comparable leveraging tactics to reinforce its monopsony power over MMA fighters).

¹⁴⁰ *See Complaint*, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Fryer, *supra* note 67.

¹⁴⁴ *Id.*

disparagement clause.¹⁴⁵ While these provisions may be typical and unproblematic in competitive markets, they have a fundamentally different effect in a nonopsonized market with a single dominant buyer.¹⁴⁶ In a competitive market, such terms serve legitimate business purposes such as protecting trade secrets and investments.¹⁴⁷ However, in NASCAR's single-buyer market, these provisions serve no legitimate business interest.¹⁴⁸ Instead, they operate solely to entrench NASCAR's monopsony power by foreclosing exit options, insulating the series from legal scrutiny, and suppressing public criticism.¹⁴⁹ Thus, NASCAR uses to charter provisions to preserve its structural dominance over the teams.¹⁵⁰

IV. RECOMMENDATIONS

A. A Remedy Should Go Beyond Enjoining the Anticompetitive Charter Terms

While striking down the anticompetitive charter provisions would provide some relief to teams, it would have little effect on the structure of economic dependency that fuels NASCAR's monopsony power.¹⁵¹ Unlike recent NCAA cases, where enjoining specific rules effectively eliminated monopsony pricing, NASCAR's monopsony power is more structural than contractual.¹⁵² The backbone of the NCAA's monopsony were rules that horizontally restrained competition between schools for athletes' services.¹⁵³ Every enjoined restraint or rule change opened a new dimension of competition among schools for athletes' services, and athlete compensation rose quickly.¹⁵⁴ In contrast, NASCAR is a single dominant buyer with no competitors, and the restraints imposed by the charter are vertical.¹⁵⁵ Thus, unlike the NCAA cases, eliminating the anticompetitive charter provisions will not immediately unlock an existing highly competitive market and raise compensation

¹⁴⁵ Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

¹⁴⁶ See *Le*, 2023 WL 5085064 at **57–62.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ NCAA v. Alston, 594 U.S. 69, 86 (2021); Ohio v. NCAA, 706 F. Supp. 3d 583 (N.D.W. Va. 2023); Pavia v. NCAA, 760 F. Supp. 3d 527 (M.D. Tenn. 2024).

¹⁵² *Alston*, 594 U.S. at 92–93.

¹⁵³ *Id.*

¹⁵⁴ Jake Fischer, 'It's the Wild, Wild West': NIL Turning College Hoops Business Upside Down, BLEACHER REPORT (July 26, 2022), <https://bleacherreport.com/articles/10030809-its-the-wild-wild-west-nil-turning-college-hoops-business-upside-down>.

¹⁵⁵ Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

quickly.¹⁵⁶ Even if it reduces some entry and exit barriers, NASCAR's scale, cost advantages and brand entrenchment disincentivize new entrants.¹⁵⁷ Investors have little incentive to spend significant capital to start a series that would almost certainly fail.¹⁵⁸

Moreover, even the most passionate potential new entrants, NASCAR team owners, are deterred from competing against NASCAR by historical failure.¹⁵⁹ At one time, IndyCar rivaled F1 as the most popular motorsport in the world.¹⁶⁰ However, in 1996, disgruntled team owners and Tony George, then the sport's most powerful figure at the time, split IndyCar into two competing series.¹⁶¹ Consequently, American open-wheel racing's mainstream popularity nosedived and has never recovered.¹⁶² In light of this, NASCAR teams see splitting off not merely as a financial risk but as an existential threat to stock car racing.¹⁶³ Thus, even if teams were unhappy with NASCAR's monopsony prices and free to leave without the charter restraints, structural market realities trap teams in NASCAR.¹⁶⁴

B. *Teams Should Be Considered Legitimate Franchisees*

Given the structural nature of NASCAR's monopsony, traditional antitrust remedies targeting contractual restraints are insufficient.¹⁶⁵ While traditional remedies might temporarily reduce specific abuses of monopsony power, they cannot change the underlying economic structure that causes them.¹⁶⁶ Real reform should address the economic dependency built into NASCAR's economic model.¹⁶⁷ Accordingly, a structural remedy is necessary to reduce NASCAR's monopsony power.¹⁶⁸

¹⁵⁶ See Roger D. Blair & Jeffrey L. Harrison, *Antitrust Policy and Monopsony*, 76 CORNELL L. REV. 297, 308 (1991).

¹⁵⁷ AREEDA & HOVENKAMP, *supra* note 80, at §§ 420(a), 420(b).

¹⁵⁸ See *id.*

¹⁵⁹ Jordan Bianchi & Jeff Gluck, *Inside NASCAR's Unsettled Charter Negotiations: We're All Not Aligned, and That's Not Good*, NY TIMES (Apr. 30, 2024), <https://www.nytimes.com/athletic/5444573/2024/04/30/nascar-charter-negotiations/>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ AREEDA & HOVENKAMP, *supra* note 80, at § 653(b)(2) ("Where the prohibited conduct is discrete and well defined, a prohibitory injunction may be sufficient to remedy the problem, particularly where it is clear that the defendant is unlikely to exercise its market power in other ways.").

¹⁶⁶ See *id.*

¹⁶⁷ Ford Motor Co. v. United States, 405 U.S. 562, 573 (1972) ("The relief in an antitrust case must be 'effective to redress the violations' and 'to restore competition.'") (quoting United States v. E. I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961)).

¹⁶⁸ *Id.* (noting that district courts have broad discretion to impose remedies that fit the special needs of individual cases).

Here, the appropriate structural remedy is for a court to force NASCAR to treat the charters more like traditional franchises.¹⁶⁹ Structurally, NASCAR already functions like a franchised league.¹⁷⁰ Like franchises in the NFL and other leagues, NASCAR teams are economically locked into the series and heavily depend on collective revenue streams like broadcast rights fees.¹⁷¹ NASCAR enforces similarly extensive competition rules, dictates the schedule, and limits market entry and team growth by imposing charter caps.¹⁷² Despite their shared characteristics, NASCAR classifies teams as independent contractors rather than franchisees.¹⁷³ Thus, NASCAR teams lack the long-term stability, governance rights, and bargaining power enjoyed by franchisees even though they occupy structurally equivalent positions.¹⁷⁴ Consequently, NASCAR can maintain and expand its monopsony power over teams.¹⁷⁵

An effective remedy for NASCAR has two components. First, Charters must be permanent, transferable, and only revocable in extreme circumstances. Permanent charters give teams long-term equity and prevent NASCAR from leveraging revocation to impose monopsony prices and other anticompetitive terms. Second, revenue share percentages must keep pace with rising operating costs and broadcast rights fees. Teams became dependent on sponsors because operating costs rose faster than revenue share. If revenue share kept pace with operating costs, teams would be less vulnerable during economic downturns when sponsorship is scarce. While teams would remain economically dependent on NASCAR, it would be more stable and predictable than sponsorship reliance. Overall, these reforms would enhance team financial stability, reduce turnover, and strengthen fan loyalty by preserving continuity and giving more teams resources to compete.

C. *NASCAR Should Not Be Forced to Divest From ISC*

Treating teams more like franchisees aligns traditional structural antitrust remedies like divestiture but fits the specific needs of the series.¹⁷⁶ Here, an individualized structural remedy is necessary because divestiture is inappropriate.¹⁷⁷ Even if forcing NASCAR to divest from ISC would reduce NASCAR's market power, it is an

¹⁶⁹ *Id.*

¹⁷⁰ Helsel, *supra* note 3, at 241–42.

¹⁷¹ Belson, *supra* note 42.

¹⁷² *See* Complaint, 2311 Racing LLC v. NASCAR, LLC, No. 3:24-CV-00886-KDB-SCR, (W.D.N.C. filed Oct. 2, 2024).

¹⁷³ *Id.*

¹⁷⁴ *See* Helsel, *supra* note 3, at 241–42.

¹⁷⁵ *See* Le v. Zuffa, LLC, No. 215CV01045RFBBNW, 2023 WL 5085064, at **57–62 (D. Nev. Aug. 9, 2023).

¹⁷⁶ Ford Motor Co. v. United States, 405 U.S. 562, 573 (1972).

¹⁷⁷ *Id.*

inappropriate remedy because it would harm the sport overall.¹⁷⁸ First, few investors outside of racing series are interested in owning large speedways as they sit empty most of the year since they financially depend on being scheduled by a series like NASCAR and IndyCar.¹⁷⁹ Without ISC's ownership and support, many tracks would likely close.¹⁸⁰ Thus, despite its risks, ISC ownership likely maximizes the number of available tracks.¹⁸¹ Moreover, if NASCAR were forced to divest from ISC, it would lose its cost advantage and likely pass its increased costs onto the teams, exacerbating their economic dependency.¹⁸² Thus, a structural remedy that preserves NASCAR's vertically integrated efficiencies but corrects its economic leverage over teams is a more appropriate and effective remedy than divestiture.¹⁸³

V. CONCLUSION

As NASCAR's case moves toward trial in December 2025, it is unclear what courts will decide. *NCAA v. Alston* and *Cung Le v. Zuffa* indicate that courts are concerned about excessive buyer power in sports labor markets, but neither provides definitive solutions.¹⁸⁴ However, the courts should rule in favor of the teams and impose unique structural remedies to ensure the long-term stability of the sport.

¹⁷⁸ See *United States v. Microsoft Corp.*, 253 F.3d 34, 106 (2001).

¹⁷⁹ AREEDA & HOVENKAMP, *supra* note 80, at § 420(a).

¹⁸⁰ See *id.*

¹⁸¹ See *id.* at § 420(c)

¹⁸² *Id.*

¹⁸³ *Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972).

¹⁸⁴ *NCAA v. Alston*, 594 U.S. 69, 86 (2021); *Le v. Zuffa, LLC*, No. 215CV01045RFBBNW, 2023 WL 5085064, at *39 (D. Nev. Aug. 9, 2023).