CULINARY WORKERS
UNION, LOCAL 226

Affiliated with UNITE HERE INTERNATIONAL UNION

Aug. 31, 2011

Richard Feinstein
Director, Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington D.C. 20580

Dear Mr. Feinstein:

We write to respectfully request that the Federal Trade Commission launch a formal investigation into whether business practices by Zuffa LLC, the corporate owner of the Ultimate Fighting Championship (UFC), the world's largest promoter of professional mixed martial arts, violate U.S. antitrust laws.

Zuffa has achieved a dominant position in the market for professional mixed martial arts. Since purchasing the UFC in 2001, Zuffa has acquired four of its key rivals, including Pride Fighting Championship, World Extreme Cagefighting, the World Fighting Alliance and Strikeforce.[1] In 2008, an independent equities research firm estimated that the UFC controlled 80 to 90 percent of the mixed martial arts market.[2]

Zuffa has preserved and strengthened this dominant market position through exclusionary conduct by refusing to co-promote events, as well as anticompetitive contractual restraints that severely limit a professional athlete's freedom of movement. These contractual restraints include the following[3]:

a) "Automatic renewal" contract provisions such as the "champion's clause," which extends the contract of an athlete who becomes a champion. Such clauses effectively prevent some athletes who sign contracts with Zuffa from becoming free agents and negotiating for higher pay.

b) Exclusive negotiation and "right to match" clauses that lock athletes into negotiating with Zuffa for a period after their contracts have expired. These

[1] Skretta, Dave, AP Sports Writer, "UFC buys rival MMA promoter Strikeforce," March 12, 2011, *USA Today*, http://www.usatoday.com/sports/mma/2011-03-12-3733188133_x.htm.
[2] Noel, Joseph, "The Business of Mixed Martial Arts: Investing in the World's Fastest Growing Sport," Oct. 27, 2008, http://www.thefightzone.tv/pdfs/MMA_industry_report.pdf.
[3] Swift, Adam, "Inside the Standard Zuffa Contract," *Sherdog,* Oct. 31, 2007, http://www.sherdog.com/news/articles/Inside-the-Standard-Zuffa-Contract-9734.

clauses diminish the ability and incentive of smaller promoters to bid for top mixed martial arts athletes.

c) Merchandise and ancillary rights agreements that require athletes to forfeit their image and likeness rights "in perpetuity," or forever. These far-reaching agreements deprive athletes of the freedom to make money from their own success and further bind them to Zuffa indefinitely.

In addition, Zuffa has consistently refused to co-promote professional mixed martial arts events with smaller promoters, which may have enabled the firm to consolidate its already dominant market position.

Artificial Restraints on Athlete Movement Depress Pay and Stifle Competition

As a result of Zuffa's contractual restraints, athletes who compete in the UFC are denied the freedom of movement available to athletes in other professional sports. These restraints artificially prevent athletes from offering their services in a competitive market and from receiving a competitive market value for their services.

These contractual restraints can have the effect of forcing some athletes under contract with the UFC to negotiate with one buyer, depriving them of any real bargaining power and depressing pay below competitive levels. The Mixed Martial Arts Fighters Association estimates that professional mixed martial arts athletes received just 5.7 percent of total gate and pay-per-view revenues at five UFC events in 2009, while athletes who compete in other pro sports organizations receive 50 percent or more of revenues.[4]

In addition to impeding athlete mobility, these restraints have the potential to harm consumers by reducing the quality and supply of professional mixed-martial arts events. Indeed, Zuffa's practice of requiring athletes to sign contracts that may automatically renew, or that allow Zuffa to match offers made by competing promoters once they expire, diminishes the incentive for other firms to enter the market and bid for professional athletes. As a result, the market for mixed martial arts is artificially reduced, to the detriment of consumers and athletes.

Courts Deem Restraints on Athlete Movement as Anti-competitive

In some cases, courts have regarded collaboration and agreement on contest rules, such as scoring methods, as essential in order to play professional games. However, courts have "typically deemed off-field horizontal restraints on competition – such as player movement restrictions, entry drafts and analogous devices designed to maintain on-field competitive balance – as predominantly anticompetitive."[5]

---

[4] Maysey, Robert, "Mixed Martial Arts: Sport or Entertainment? The Uphill Battle for Fighters," http://www.fightopinion.com/WestVirginia.pdf.

[5] McCann, Michael A., "*American Needle v. NFL*: An Opportunity To Reshape Sports Law," 119 Yale Law Journal, (2010), http://online.wsj.com/public/resources/documents/1209mccannamericanneedle.pdf.

For instance, the United States District Court for the Northern District of California held that several National Football League rules, including the so-called "Rozelle rule," were unreasonable restraints of trade and violated U.S. antitrust law.[6] Under the Rozelle rule, a team signing a free agent had to compensate the player's previous team. The court held that this rule, by "imposing restraint virtually unlimited in time and extent," was a violation of the Sherman Antitrust Act.[7]

Professional sports leagues have sought to justify restraints on athlete mobility by arguing that such restraints are necessary to maintain a competitive balance among teams, and thereby maintain spectator interest. In some cases, courts have agreed. In *American Needle v. the National Football League,* the U.S. Supreme Court ruled that competitive balance is "unquestionably an interest that may well justify a variety of collective decisions made by the teams."[8]

However, Zuffa does not operate as a professional league, and thus cannot justify its restrictive behavior as being necessary to preserve a competitive balance in mixed martial arts. Zuffa is a private limited liability partnership that promotes and produces professional mixed martial arts events for the benefit of its owners. The anticompetitive restrictions it imposes on athlete mobility serve no legitimate business justification beyond stifling competition and increasing Zuffa's already dominant position in the market.

In addition to these contractual practices, Zuffa has refused to promote mixed martial arts events with rival promotional firms. After Zuffa acquired Strikeforce, UFC president Dana White said the two companies would continue operating as separate entities. "Even when we own them, we don't co-promote," White said.[9] In 2009, Zuffa's negotiations with Russian heavyweight Fedor Emelianenko collapsed, in part, because of Zuffa's refusal to co-promote an event with another firm, M-1 Global.[10]

Zuffa's refusal to co-promote events with smaller firms appears to have no justification except to stifle competition, and may amount to a violation of Section 2 of the Sherman Act, which prohibits monopolization or attempts to monopolize in restraint of trade.

FTC Has the Authority to Conduct an Investigation

The FTC has broad powers to protect consumers from harmfully anti-competitive business practices. The agency enforces antitrust laws under the Federal Trade

---

[6] See *Kapp v. National Football League*, United States District Court for the Northern District of California, Dec. 20, 1974.
[7] Ibid.
[8] See U.S. Supreme Court Opinion in *American Needle Inc. v. National Football League*, October, 2009, http://www.supremecourt.gov/opinions/09pdf/08-661.pdf.
[9] Meltzer, Dave, "Strikeforce sale changes MMA landscape," *Yahoo! Sports,* March 12, 2011, http://sports.yahoo.com/mma/news?slug=dm-ufcbuysstrikeforce031211.
[10] Pugmire, Lance, "No fighting chance," *Los Angeles Times,* Nov. 10, 2009, http://articles.latimes.com/2009/nov/10/sports/sp-fedor10.

Commission Act (FTC Act), which prohibits "unfair methods of competition in or affecting commerce."[11] The U.S. Supreme Court has also said that all violations of the federal Sherman Antitrust Act also violate the FTC Act.[12] Thus, the FTC can bring cases under the FTC Act under the same kinds of activities that violate the Sherman Antitrust Act, which prohibits "every contract, combination, or conspiracy in restraint of trade."[13]

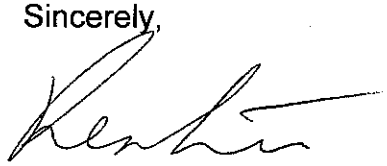
Under this authority, the FTC may "gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions, Federal trade unions and common carriers."[14]

We strongly encourage the FTC to use its statutory power to investigate the anticompetitive practices outlined above. The contracts between promoters and athletes are generally confidential, which means it may require a government investigation to determine whether the terms of these contracts unreasonably restrain trade and violate U.S. antitrust laws.

If we can provide further assistance, please do not hesitate to contact Chris Serres at 702-386-5231 or cserres@culinaryunion226.org.

We appreciate your interest in this matter.

Sincerely,



Ken Liu, Research Director

---

[12] FTC Guide to the Antitrust Laws, http://www.ftc.gov/bc/antitrust/antitrust_laws.shtm.
[13] Sherman Act, 15 U.S.C. § 2
[14] Federal Trade Commission Act, 15 U.S.C. § 46(a))