NOTE

Boxing was extraordinarily popular in the United States in the late 19th century and during much of the 20th century. "Fight films"—movies showing high-stake fights (mostly championships)—were very popular. The emergence of commercial television broadcasting in the late 1940s created business opportunities to turn boxing into home entertainment. Two boxing promoters—James Norris and Arthur Wirtz—built a business empire as facilitators of high-stake boxing fights through the commercialization of the fights, their cinematic exhibition, and their broadcasting. Simply stated, Norris and Wirtz created a powerful boxing intermediary.

IBC v. United States (1959) does not address the characteristics of market intermediation. However, it presents four important antitrust themes: (1) market definition, (2) vertical arrangements, (3) structural remedies (corporate breakups and corporate dissolutions), and (4) behavioral remedies (restrictions on certain types of vertical agreements, caps on the scope of business activities, and a duty to deal with rivals on fair and reasonable terms). The Court's discussion of the relevant market and exclusionary effects of vertical arrangements is pragmatic and useful. As the dissent correctly points out, the Court's discussion of structural remedy is devoid of logic. The Court did not analyze the likely effectiveness of behavioral remedies.

In this matter, the behavioral remedies arguably eliminated the ability of the defendants to exclude competition. The district court determined that the defendants did not engage in "malicious intentional and moral wrongdoing." The Supreme Court did not question this determination. Neither the district court nor Justice Clark, who wrote the majority's opinion, explains what the structural remedies would accomplish or considers the costs of structural remedies.

* * *

International Boxing Club of New York, Inc. v. United States

358 U.S. 242 (1959)

Mr. Justice CLARK delivered the opinion of the Court.

This civil Sherman Act case was here four years ago on direct appeal from a dismissal by the District Court, which had held that the Act did not apply to the business of professional boxing. We reversed. . . .

The complaint charged the appellants with a combination and conspiracy in unreasonable restraint of trade and commerce among the States in the promotion, broadcasting, and televising of professional world championship boxing contests, as well as a conspiracy to monopolize and monopolization of the same. After a trial, the District Court . . . found that the allegations of the complaint had been sustained. After further

hearings . . ., the court entered its final judgment dissolving two of the corporate appellants . . . and granting injunctive relief designed to open up the market in the business of promoting professional world championship boxing matches.

The appellants, while not attacking any specific finding as clearly erroneous, claim that the proof did not show that they violated Section 1 or 2 of the Act. [They] level their strongest blows at the District Court's definition of the relevant market. Out of the entire field of professional boxing, the District Court carved a market in championship contests alone, holding it to be the relevant market at which the conspiracy was aimed. In the alternative, appellants insist that the relief granted the Government was 'unnecessarily punitive, even if liability is assumed. . . . We have concluded that the findings of the District Court are not clearly erroneous. . . . As to the relief granted we find that the court did not exceed the limits of allowable discretion in framing a decree that will, so far as practicable, cure the ill effects of the illegal conduct, and assure the public freedom from its continuance. . . .

The Findings.

The conspiracy began in January 1949, when appellants [James] Norris and [Arthur] Wirtz, who owned and controlled the Chicago Stadium, the Detroit Olympia Arena, and the St. Louis Arena, made an agreement with Joe Louis, then the heavyweight boxing champion of the world. Wishing to retire, Louis agreed to give up his title after obtaining from each of the four leading contenders [Ezzard Charles, Joe Walcott, Lee Savold, and Gus Lesnevich] exclusive promotion rights including rights to radio, television and movie revenues. Upon securing these exclusive contracts Louis assigned them to the appellant International Boxing Club, Illinois, which was organized by Norris and Wirtz for the purpose of promoting boxing for the combination in Illinois. They paid Louis $150,000 cash plus an employment contract and a 20% stock interest in IBC., Illinois.

In March 1949 Norris and Wirtz approached appellant Madison Square Garden, in which they had for many years owned 50,000 shares of stock. It was the 'foremost sports arena in New York City and is the best-known arena of its kind in the United States, if not the world.' [They formed a joint venture, International Boxing Club of New York. In a series of transactions, the partners gained] exclusive control of the promotion of boxing matches in three championship divisions, *i.e.*, heavyweight, middleweight, and welterweight. [They also required] each contender for the title to grant them an exclusive promotion contract to his championship fights, including film and broadcasting, for a period of from three to five years. Over the facilities for the staging of contests appellants exercised like control, owning or managing the 'key' arenas and stadia in the Nation.

Tightening the ropes around the ring thus built, Norris and Wirtz increased their stockholdings in Madison Square Garden to where they controlled it and were able to 'dictate its policies and boxing activities.' [Through additional transactions, Madison Square Garden became the sole owner of IBC New York].

[Norris and Wirtz are also] the sole stockholders of Chicago Stadium Corporation which in turn is the sole stockholder of IBC Illinois. Their control over this boxing empire is

revealed by the fact that Norris is president of each of the four top corporations, *i.e.*, Madison Square Garden, IBC New York, Chicago Stadium Corporation, and IBC Illinois. He and Wirtz are directors in all four, while IBC Illinois and IBC New York, which have owned all of the promotion contracts with the contenders, have a joint board of directors.

The effect of the conspiracy is obvious. Using the facilities of IBC Illinois and IBC New York, appellants entered into exclusive promotion contracts with title aspirants, requiring exclusive handling agreements in the event the contender became champion. In amassing their empire, appellants obtained control of champions in three divisions. The choice given a contender thereafter was clear, *i.e.*, to sign with appellants or not to fight. With appellants in control of the key arenas and stadia of the country through Madison Square Garden, Chicago Stadium Corporation, and others, [a high-profile championship could not be held] without their consent.

The exercise of this power brought immediate results. From June 1949, when appellants staged their first championship fight, until May 15, 1953, the date of the amended complaint, they staged or controlled the promotion of 36 of the 44 championship battles held in this country, giving them approximately 81% of that field. In two of the classifications, heavyweight and middleweight, the combine staged all of the contests. . . . This power extended to the sale of film and broadcasting rights—most valuable adjuncts to successful promotion in the business.

Appellants launch a vigorous attack on the finding that the relevant market was the promotion of championship boxing contests in contrast to all professional boxing events. They rely primarily on *United States v. E. I. du Pont De Nemours & Co.*, 351 U.S. 377 (1956). That case, involving an alleged monopoly of the market in cellophane, held that the relevant market was not cellophane alone but the entire field of flexible packaging materials. In testing for the relevant market in Sherman Act cases, the Court said that "commodities reasonably interchangeable by consumers for the same purposes make up that 'part of the trade or commerce.'"

The appellants argue that the 'physical identity of the products here would seem necessary to put them in one and the same market.' They say that any boxing contest, whether championship or not, always includes one ring, two boxers and one referee, fighting under the same rules before a greater or lesser number of spectators either present at ringside or through the facilities of television, radio, or moving pictures.

We do not feel that this conclusion follows. As was also said in *du Pont*, [the relevant market] "is composed of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered."

With this in mind, the lower court in the instant case found that there exists a 'separate, identifiable market' for championship boxing contests. This general finding is supported by detailed findings to the effect that the average revenue from all sources for appellants' championship bouts was $154,000 [per bout], compared to $40,000 for their non-championship programs. [Likewise, the generated considerable revenues from movie

rights for championship bouts, while] no full-length motion picture rights were sold for a non-championship contest. [And, of course], spectators pay 'substantially more' for tickets to championship fights than for non-title fights. . . .

In view of these findings, we cannot say that the lower court was 'clearly erroneous' in concluding that non-championship fights are not 'reasonably interchangeable for the same purpose' as championship contests. . . . [C]hampionship boxing is the 'cream' of the boxing business, and . . . is a sufficiently separate part of the trade or commerce to constitute the relevant market for Sherman Act purposes.

. . . It follows that the decree entered on the merits adjudging the appellants to have violated both §§ 1 and 2 of the Sherman Act must be affirmed.

The Relief.

. . . At the time of the final decree, the Joe Louis agreements had elapsed; the exclusive-contract practice had been at least temporarily abandoned; the leases on Yankee Stadium, the Polo Grounds and St. Nicholas Arena in New York had been given up and the appellants had no control over the new heavyweight champion, Floyd Patterson.

Nevertheless, the additional evidence taken by the District Court showed that [the defendants] still possessed all of the power of monopoly and restraint. In this we agree. The [defendants] had exercised a stranglehold on the industry for a long period. It was evident at the time of the decree that, statistically, they still dominated the staging of championship bouts and completely controlled the filming and broadcasting of those contests. They had gained this leadership through the elimination by purchase of all of their major competitors in the field; by the control of contending boxers through exclusive agreements; and by the staging of events through the ownership or lease of key stadia and arenas. This illegal activity gave [Norris and Wirtz] an odorous monopoly background which was known and still feared in the boxing world.

In addition, Norris and Wirtz still possessed the major tools, so well used previously, necessary to continue their control. They owned or controlled the key arena and stadium in New York and Chicago, the most lucrative communities in boxing; they continued to control all of the championship bouts staged there; they commanded the filming and broadcasting of all championship fights—the cream of the business—wherever staged; and though on the surface they owned no stock directly in the two IBC corporations, each was the wholly owned subsidiary of corporations which Norris and Wirtz did control and manage.

In this setting, the District Court ordered Norris and Wirtz to divest themselves, within a give-year period, of all stock which they owned 'directly or indirectly' in Madison Square Garden. In addition, both of the International Boxing Clubs, Illinois and New York, were ordered dissolved. The Chicago Stadium and Madison Square Garden were each enjoined from staging more than two championship bouts annually. All exclusive agreements for the promotion of boxing events, including non-championship, were banned. Madison Square Garden was ordered for a period of five years to lease its

premises when available at a 'fair and reasonable' rental to any duly qualified promoter applying in writing therefor. Failure to agree on terms would require submission to the courts for determination. Like requirement was imposed on Chicago Stadium Corporation, provided Norris-and-Wirtz control continued.

The District Court Judge concluded that it was necessary to include each of these provisions in the decree in order to put an end to the combination, deprive [Norris and Wirtz] of the benefit of their conspiracy and break up their monopoly power. . . .

We have considered the other objections of [Norris and Wirtz] to the decree and find them unsubstantial as presently posed. . . . It is so ordered. Judgment affirmed.