



Yes, No Yanks

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By Thomas Hazlett

THE dog days of summer bring a last championship dream for die-hard Cubs fans, a desperate World Series fantasy for Red Sox boosters - and a familiar test pattern for Yankee partisans subscribing to Cablevision. The YES Network-Cablevision brawl has emptied both dugouts, spilling over to a federal bench with the Sherman Antitrust suit filed by the Bronx Bombers' off-season power-hitting acquisition, David Boies. The fight will not end, however, until government policies allow new media onto the field of play.

Last season, most Yankee games were televised on the MSG Network, available to every basic cable or satellite subscriber. Yankee ownership did not renew the MSG contract this year, but created its own channel for Yankee games - the YES Network. YES cut a deal with every New York area cable operator except one, placing the new channel on basic cable for \$2 per (every) subscriber per month.

The lone holdout is Cablevision, the single largest N.Y. metro video provider, serving nearly 3 million households, and the owner of MSG. Cablevision offered to make YES available as a premium service, like HBO. Those who want the programming pay an extra \$10 a month. Those terms are a "no sale" to the Yankees; Cablevision subscribers have already missed well over half of the 2002 season.

Some fans will be rooting for YES in its anti-monopoly suit, but - as team loyalists learned the hard way last October - even dramatic ninth-inning rallies don't guarantee ultimate victory. Antitrust law has a difficult task in umpiring a tug of war between two parties with significant market power. Moreover, the jury will be spun by each side, getting dizzy before finally tossing a dart.

The Yankees will argue that padding the Cablevision subscriber's bill by two bucks won't reduce demand when additional Yankee games are factored in. They'll note that Time Warner, Comcast and DirecTV have all gone along and that Cablevision, owner of MSG, is a sore loser whose aim is to stifle a rival's programs.

Cablevision will counter that it protects customers by refusing to foist Yankee games (and fees) on subscribers. The fact that EchoStar, the second largest satellite TV firm, declined to carry the Yankee net could be a prime exhibit. Boies' complaint alleges that it was for "purely anticompetitive reasons" that Cablevision said "no" to YES, but EchoStar, without any power to hold New York TV viewers hostage, did the same thing.

Even if a court were to order that YES be carried on Cablevision's basic service, some consumers would object - the underlying conflict would remain. The long-term solution is to subject both of the disputatious parties to enhanced market discipline. Policymakers could do at least three things right now to promote competitive rivalry.

First, the federal government could rev up cable's leading rival by approving the EchoStar takeover of DirecTV. By combining channel capacity, the merged satellite firm could offer cable customers scores of additional reasons to switch, turning up the pressure on cable systems to pack line-ups with better programs (including local sports).

And EchoStar could provide YES at DirecTV's price, which it says it would do. Today it refuses to pay

the higher rates demanded of its smaller system. With more subscribers to bargain with, the new operator could counter Yankee pricing power.

Second, the FCC could expedite fresh competition from satellite, fixed broadband and "third generation" wireless. For instance, low-power TV licensees (with virtually zero audience share) are barred from offering high-speed Internet service in lieu of television.

Granting flexible use of assigned airwaves could revitalize the broadband market, challenging DSL and cable-modem providers, igniting development of streaming video. That would be a competition-policy home run. When ballgames are available to Palm Pilots, notebooks and desktop PCs, cable TV holdouts are best seen on The History Channel.

Third, local governments could actively court competition between cable providers. In New York City, where AOL/TimeWarner faces direct competition from rival cable carrier RCN, both firms jumped on the Yankee TV deal. Suburban authorities ought to reduce cable franchise burdens and eliminate bureaucratic delays to help launch more cable rivalry.

Are the benefits of competition speculative? Not if the experience in deregulating cable TV is a guide. In 1984, the average U.S. household received fewer than 15 TV channels; today, it receives more than 58. Deregulation of cable - blocked in the 1960s and 1970s to protect the old broadcasting triopoly from rivalry - opened the spigots to viewer choice and so ushered in a Golden Age for programmers.

ESPN, CNN, A&E, MTV, C-SPAN, Fox News and - yes - YES are just some of what you get when you get more channels. Policies promoting more broadband competition today pave the way to yet stubbier program niches, including those bringing Yankee lovers all their baseball, all the time.

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