

EXAMINING THE GROWTH OF INTERNATIONAL BASKETBALL AND THE RESULTING IMPACT ON LEAGUE RELATIONS

In the 2021-22 season, all the National Basketball Association (NBA) MVP finalists were international players.¹ Since the 2018-19 season, international players won two of the four MVP awards, and there were at least five international players on All Star rosters each season.² This season, the opening night NBA rosters this season featured 120 international players across 40 different countries, with at least one international player on each of the 30 NBA rosters.³ International players now makeup roughly 26% of all NBA players (only 5% in 1992).⁴ While foreign-born players have had success in the NBA for many years, the growth and success of international players is currently at an all-time high and only continuing to grow.

In recent years, the NBA has seen tremendous growth in viewership and fandom largely in part to an increase in global basketball interest. According to Bill Shea of The Athletic, the NBA is the “most popular U.S.-based sport globally.”⁵ In 2021-22, subscriber growth for out-of-market NBA League Pass (the NBA’s streaming service) increased 43% and is currently up 60% this season as of February 2023.⁶ Additionally, NBA social media views are currently at 10.5 billion, which is a nearly a 60% jump from where viewership was this time last season.⁷ Shea

¹ *NBA rosters feature 120 international players from 40 countries*, NBA (October 18, 2022).

² *Id.*

³ *Id.*

⁴ Stuart Anderson, *Immigrant Players Steal Bases And Basketballs, Not Jobs*, Forbes (July 27, 2020).

⁵ Bill Shea, *NBA viewership grows despite RSN troubles as league banks on future deals*, The Athletic (February 6, 2023).

⁶ *Id.*

⁷ *Id.*

claims this increase is in large part a result of increased international consumption.⁸ It is likely basketball's international demand and popularity will continue to improve international talent and interest going forward.

The international dominance is something relatively new to basketball and will likely generate interesting shifts in in the business of the sport. This paper will explore the current "supplier-consumer" relationship between the NBA and foreign professional basketball leagues, and the impact that the emergence of international talent might have on this relationship. Part I of this paper highlights trends in basketball globalization. Part II outlines the current international buyout process in the NBA and the policy justifications associated. Part III addresses some of the complications that arise from countries having differing antitrust approaches when it comes to sports. Part IV examines "tampering" procedures and prevention methods in the NBA and FIBA-member leagues. Part V explores potential dispute resolution vehicles in the event the NBA's relationship with foreign leagues becomes competitive in nature. Part VI highlights some of the factors driving a potential relationship shift to a more competitive nature. And Part VII concludes with suggested approaches the NBA could take going forward to minimize risk and maintain control of the global basketball market.

I. FIBA & INTERNATIONAL BASKETBALL PLAYERS

So where outside the U.S. mold of player development are these international players coming from? The answer is everywhere. The 120 international basketball players this season are comprised of athletes from 40 different countries spanning 6 continents.⁹ Basketball did not fully grow to be an international sensation until 1992 when the U.S. Dream Team took stage in the

⁸ *Id.*

⁹ NBA, *supra* note 1.

Olympics.¹⁰ Just two years after the Dream Team sparked international interest, Hakeem Olajuwon became the first foreign-born NBA player to win MVP and led the Houston Rockets to the first of back-to-back championships.¹¹ National pride from international success in the NBA generated new interest in basketball, which led to increased player development systems and training opportunities overseas.

Since then, social networks and other technical advances have substantially improved foreign player development systems. The growth in variety of geographic regions is a result of improved player development across foreign nations and an increase in basketball interest globally. The NBA actively works to create youth player development systems overseas that foster globalization. In 2016, the NBA launched NBA Academy in over 75 countries with the goal of locating and developing youth talent.¹² These academies and other advanced development systems have expanded international interest in basketball and made it easier for international scouts to locate foreign talent in geographic regions that previously had minimal interest in the sport. For example, basketball popularity in India has skyrocketed since the launch of the Jr. NBA development program there, which has already reached over 11 million young players in India.¹³ These development vehicles will continue to boost the globalization of basketball, the amount of prominent foreign prospects, and youth popularity of the sport.

So why do NBA-caliber international players waste time playing international basketball if they intend to play in the NBA? The primary reason is the difference in age requirements in the NBA versus FIBA member leagues. International leagues have far more flexible age

¹⁰ Lindsay Krasnoff, *How the NBA Went Global*, Washington Post (December 26, 2017).

¹¹ *How the 1992 Dream Team sparked global NBA fandom*, ESPN (September 2, 2019).

¹² *WHAT IS NBA ACADEMY?*, NBA (April 2023).

¹³ Mirin Fader, *India's Newest NBA Hopeful Is a Window Into the Country's Basketball Future*, The Ringer (March 16, 2021).

eligibility rules than the NBA. Currently, the draft age outlined by the NBA Collective Bargaining Agreement (CBA) is 19.¹⁴ Most FIBA-member leagues allow skilled players to contract with professional teams as minors. Thus, talented international players often begin professional careers far earlier than they would in the U.S. system. For example, MVP-candidate Luka Dončić began his professional career at age 16 playing for EuroLeague team, Real Madrid.¹⁵ This age flexibility is a major contributor to the advanced professional development process overseas that has contributed to the influx of foreign talent in the NBA.

The NBA is undisputedly the most competitive professional basketball league in the world. Thus, International players are drawn to the league for the substantial financial benefits, the heightened competition, and the league's global reputation. For example, in the EuroLeague, considered second-best professional basketball league in the world, players make far less than NBA players because EuroLeague generates far less revenue. To illustrate, Nikola Mirotić has the highest average player salary making roughly \$5.4 million annually.¹⁶ In comparison, Steph Curry currently has the highest average player salary in the NBA making roughly \$53.8 million annually.¹⁷ Naturally, players follow the money and pursue NBA careers.

II. CURRENT INTERNATIONAL BUYOUT PROCESS

International basketball players pursuing an NBA career are generally faced with three options: play college basketball in the U.S., play for the NBA G League, or play professionally overseas. The Fédération Internationale de Basketball (FIBA) governs nearly all professional

¹⁴ NBA COLLECTIVE BARGAINING AGREEMENT, NBA (January 19, 2017).

¹⁵ *Luka Dončić*, NBA.com (March 2023).

¹⁶ Jose Colorado, *EuroLeague Basketball Salary [Average Player Salaries, Highest Paid, Team Budgets]*, Josecolorado (May 17, 2022).

¹⁷ *NBA Player Earnings*, Spotrac (March 2023).

basketball leagues in the world.¹⁸ FIBA functions as an international organization designed to “govern the relationships between the different members of the basketball community.”¹⁹ FIBA members currently consist of over 200 national federations across over 80 leagues.²⁰ These international basketball leagues operate as steppingstones to the NBA similar to NCAA basketball in the U.S. Rather than operating as a competitor in the market of professional basketball players, international leagues currently act as suppliers to of international talent. This relationship sparked the international buyout relationship between the NBA and FIBA member leagues, where the NBA pays the international team to release the player from his current contract to come to the NBA.

The international buyout system in the NBA is designed to account for difference in age requirements across leagues by creating special eligibility rules for international players. For example, the NBA CBA requires U.S. prospects to take one year out of high school before entering the NBA Draft. Prospects deemed international players are not subject to this requirement. After the international player becomes eligible and enters the NBA Draft, teams may draft the rights to the player while he is still under contract overseas. This process led to a concept called “stashing.”²¹ Stashing occurs when an NBA team drafts the rights to an international player with the intention of holding those rights while the player continues to develop overseas.²² One draft and stash example occurred when the Philadelphia 76ers drafted the rights to Croatian basketball prospect Dario Šarić in 2014 knowing he intended to remain in the EuroLeague for at least the following season.²³ In 2014, Šarić signed a “2+1” with Turkish

¹⁸ *FIBA Family: National Federations*, FIBA (March 2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Tom Ziller, *A complete primer on drafting international NBA prospects*, SB Nation (June 25, 2014).

²² *Id.*

²³ *Decision time: Should Dario Saric stay put or go to NBA?*, NBC Sports Philadelphia (May 12, 2016).

team Anadolu Efes, so both the 76ers and Šarić knew when he was drafted that he intended to stay in Europe to continue to develop.²⁴ Stashing provides players greater autonomy while mutually benefitting teams by creating a method for securing the rights to young, developing talent.

While the CBA outlines a plethora of draft rules, this paper will focus only on the draft rules for players that are stashed or bought out. In the event the drafted player is signed or expected to sign with a non-NBA team, the NBA team can still draft the rights to the player. Under Article VII of the CBA, when a team drafts a player in the first round, that team holds the player's draft rights at 120% of the players Rookie Scale Amount, which is outlined for each draft pick.²⁵ If the team intends to keep the rights to the player but wishes to forgo signing him for the current league year, the team can provide the NBA a written statement indicating it will not sign said player that season.²⁶ Article VII of the CBA provision provides:

In the event that a First Round Pick signs with a non-NBA team, the player's applicable Rookie Scale Cap Hold Amount shall be excluded from the Team Salary of the Team that holds his draft rights, beginning on the date he signs such non-NBA contract or the first day of the Regular Season, whichever is later, and shall be included again in his Team's Team Salary at the applicable Rookie Scale Cap Hold Amount on the following July 1 or the date the player's contract ends (or the player is released from his non-NBA contractual obligations), whichever is earlier, unless the Team renounces its exclusive rights to the player in accordance with Article X, Section 4(g).²⁷

This CBA provision allows NBA teams to retain the rights to the player without having his salary count toward the team's salary for that Salary Cap Year in the event the player signs with a non-NBA team by the start of the regular season.²⁸ Additionally, if he signs with the non-

²⁴ A 2+1 is a three-year contract with a player option on the third year that allows the player the right to terminate the contract following the second season of the agreement.

²⁵ NBA, *supra* note 14.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

NBA team starting after the start of the regular season, his salary is excluded from the team's salary starting when he signs the non-NBA contract.²⁹ The team then may issue the required tender to the player to continue to exclude the player from team salary the following season so long as the player remains on a non-NBA contract or signs a new non-NBA contract.³⁰ At any point, the team can renounce the rights to the player, then, depending on the circumstances that player can either re-enter the draft or become a rookie free agent.³¹ Thus, NBA teams can effectively stash developing players overseas to continue to improve under another team until the player is NBA-ready.

On the other side of this relationship, international teams often include "NBA-exclusive clauses" in their contracts that specify the financial amount required to release the player in the event he leaves for the NBA.³² As a result, the NBA team acquiring the player pays the international team a sum of money to release the contractually bound international player in what is called an international buyout.³³ The CBA lays out specific rules for buying out international players, including monetary limits called Excluded International Player Payment Amounts. Per the NBA CBA, any amount over the Excluded International Player Payment Amount listed for that NBA season essentially comes out of the player's pocket.³⁴ So, the player must bear the financial burden of the remaining buyout beyond Excluded International Player Payment Amounts. Article VII of the NBA CBA provides:

Any amount in excess of the amounts set forth below ("Excluded International Player Payment Amounts") paid or to be paid by or at the direction of any NBA Team to (i) any basketball team other than an NBA Team, or (ii) any other entity, organization, representative or person, for the purpose of inducing a player who is participating in the

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Ziller, *supra* note 21.

³³ *Id.*

³⁴ *Id.*

game of basketball as a professional outside of the United States to enter into a Player Contract or in connection with securing the right to enter into a Player Contract with such a player shall be deemed Salary (in the form of a signing bonus) to the player:

Payment Amount per cap year:

2017-18: \$675,000

2018-19: \$700,000

2019-20: \$725,000

2020-21: \$750,000

2021-22: \$775,000

2022-23: \$800,000

2023-24: \$825,000³⁵

The NBA implemented these rules to serve multiple purposes; one of which is competitive balance. The NBA is concerned with preventing teams with more financial capital from gaining competitive advantages at the expense of small market teams with less wealth. By limiting the amount that NBA teams are allowed to pay international teams to release talented players, larger market teams are effectively prevented from reaping the benefits of international players that smaller market teams would be unwilling or unable to pay.

For example, Team A is a small market team interested in player X who is currently under contract with a EuroLeague team. Player X 's contract includes a clause that requires any NBA team to pay the EuroLeague team \$10 million to release the player and allow him to enter the NBA draft. Team A would still need to pay Player X his Rookie Scale amount set by the NBA CBA. If Team A drafts Player X 10th in the 2022 draft, Player X will likely make \$4.4 million in year 1.³⁶ On top of that \$4.4 million, Team A pays \$10 million to the EuroLeague team for a total of 14.4 million to acquire Player X. Team A is now faced with deciding to take its first choice (Player X) or take the next player on its draft board for a third of the cost. Without limitations, large market teams would acquire the international players that small market teams pass on. The NBA's product of professional basketball relies on the authenticity of the game and

³⁵ NBA, *supra* note 14.

³⁶ *NBA 2022-23 Rookie Scale*, Spotrac (March 2023).

competitive balance. If large market teams can pay for substantial advantages to the disadvantage of teams with less financial capability, then the process effectively harms the NBA's product.

The other main function is to deter international clubs from implementing massive buyout clauses in player contracts. International clubs with an NBA-caliber player can expect said player will likely try to depart for the NBA. Thus, international clubs are incentivized to recoup the most they can for the work put in to develop the player before he departs, and the best avenue to do so is keeping the player contractually bound. Naturally, clubs started issuing long term contracts with enormous buyout clauses to lock in teenage prospects.

To illustrate, Darko Milicic, the 2nd overall pick in 2003 behind LeBron James, was drafted while under contract with Hemofarm Vrsac with an estimated 7 years remaining on his contract.³⁷ Milicic's contract, which paid less than \$100,000 in 2002, included a buyout of \$15 million to release him from the remaining obligation.³⁸ At the time, the NBA Excluded International Player Payment was limited to just \$350,000, and as the 2nd pick in the draft, Milicic would earn roughly \$3 million in his first NBA season.³⁹ Therefore, Milicic would have needed to allocate his entire salary over his first few seasons in the NBA to pay for his contractual release. Milicic's situation was a major steppingstone for young international player awareness of the risk of contracting with professional teams without contractual flexibility, and the NBA regulations for international player buyouts. It took time, but international players now are much more conscious of these clauses and the impact they might have on the player's path to the NBA.

³⁷ *Hemofarm threatens, but Pistons on Milicic track*, ESPN (June 20, 2003).

³⁸ *Buyouts in Europe Raise Alarm in the NBA*, RealGM (September 15, 2003).

³⁹ *Milicic's European team reduces demands*, TampaBay Times (September 1, 2005).

The international buyout process serves a pivotal role in preserving the relationship between the NBA and international leagues. Ultimately, the NBA is essentially poaching star international players after they have reached basketball maturity. While there are processes to prevent NBA teams from actively pursuing international players currently under contract, many players that are good enough plan to depart the international team for the NBA anyways. The buyout system provides a way for teams that find, sign, and develop star players overseas to recoup some of that investment.

In recent practice, the international buyout process has worked effectively. Many teams are still actively stashing players overseas as they develop, and international players are continuing to grow their presence in the NBA at a high level. However, as the level of basketball continues to grow internationally, FIBA-member clubs may become less tolerant of NBA teams poaching their players.

III. ANTITRUST

The professional sports industry has been described as “a unique business, containing an unusual but necessary mixture of interparticipant competition and cooperation not found in any other kind of partnership or joint venture.”⁴⁰ In the NBA, the league and union collectively agree to restrain trade in certain ways to better the overall product that is the NBA. In the U.S., courts are generally deferential to league governance and trade restraints when the topic is one that was collectively bargained. This treatment is a result of a collective understanding that “sports are different.” The inherent business nature of sport results in both collusion and monopoly power

⁴⁰ Leah Farzin, *On the Antitrust Exemption for Professional Sports in the United States and Europe*, Jeffrey S. Moorad Sports Law Journal: Vol. 22: Iss. 1, Article 2 (January 1, 2015).

that would otherwise be illegal per the Sherman Antitrust Act.⁴¹ Despite the NBA lacking the infamous antitrust exemption granted to Major League Baseball, the collective bargaining agreement still grants the league immunity from certain antitrust violations that would otherwise be illegal, like maximum player salaries.

While the NBA has rarely had to deal with foreign antitrust issues as they relate to contract disputes because of the nature of the relationship between the NBA and international leagues, differing antitrust policies could be at issue if the relationship were to become competitive in nature. For example, the application of European competition law is less well-founded when it comes to sports than is the U.S.⁴² The European rule only looks to the object of rule, and not the effect.⁴³ This controversial approach means that agreements with an anticompetitive object are presumed to have anticompetitive effects even if there is no confirmation of negative impact on competition, which effectively eliminates any rule of reason analysis.

Based on the nature of the business side of sports, professional sports leagues are responsible for governing themselves without abusing the monopolistic character of their power. Naturally, countries will have vastly different approaches to antitrust, competition, and sport. These differences will cause controversy when international disputes arise that touch multiple jurisdictions. If the NBA became direct competitors with international leagues, there would need to be international restrictions put in place to govern team and player behavior, especially with

⁴¹ “Sherman Antitrust Act of 1890 is a federal statute which prohibits activities that restrict interstate commerce and competition in the marketplace. It outlaws any contract, conspiracy, or combination of business interests in restraint of foreign or interstate trade.” *Sherman Antitrust Act*, Cornell Law Legal Information Institute (April 2023).

⁴² Farzin, *supra* note 40.

⁴³ *Id.*

regard to players already under contract in another league. Not only will the leagues themselves have different rules, but the differing antitrust laws worldwide will add an additional layer of complexity to dispute resolution for such issues.

IV. TAMPERING

A prime example of a topic that would likely bring this conflict to fruition is the concept of “tampering.” “Tampering” in a sports context is the practice of attempting to persuade a person under contract to move without the knowledge or permission of the other contracting party.⁴⁴ Tampering is a global issue across nearly all professional sports leagues. The NBA Constitution defines internal tampering misconduct as “directly or indirectly, entic[ing], induc[ing], persuad[ing], or attempt[ing], to entice, induce, or persuade any Player, Coach, Trainer, General Manager or any other person who is under contract to any other Member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services.”⁴⁵

A. Tampering in the NBA

Tampering effectively limits bargaining power within the industry and is therefore a horizontal restraint of trade that could be subject to antitrust scrutiny.⁴⁶ Although U.S. courts have not yet evaluated tampering as a violation of the Sherman Act, it is likely that the NBA’s rule would withstand rule of reason analysis due to the nature of sports and the procompetitive benefits associated with it. Sports leagues operate under a different competitive nature than other

⁴⁴ *Tapping-Up (Tampering) Of Sports Players: How The NBA Rules Compare To The English Premier League*, LawInSport (October 3, 2017).

⁴⁵ NBA, *supra* note 14.

⁴⁶ Lewis Kurlantzick, *The Tampering Prohibition and Agreements Between American and Foreign Sports Leagues*, 32 Colum. J.L. & Arts 271 (2009).

industries. For example, the product of professional basketball requires a high-level of competition among teams within the league’s umbrella to survive. If teams were motivated to eliminate other teams entirely, the result would be collective loss across the league (fans would dissipate, there would be less games, less revenue, etc.).

This structure led to heightened standards for illegality on restraints of trade for sports leagues.⁴⁷ For the NBA, the non-statutory labor exemption gives the players union and the league the power to collectively bargain without concern of antitrust scrutiny.⁴⁸ Traditionally, U.S. courts are extremely deferential to the agreement between the league and the union.⁴⁹ Additionally, rule of reason analysis operates as another foundation of antitrust law heightening the threshold for restraints in sports leagues.⁵⁰ Under the rule of reason, courts look to the procompetitive and anticompetitive effects of the agreement before determining its legality.⁵¹ This analysis is founded on the concept that the regulation in question must go beyond restraining trade, and instead must “suppress” or “destroy” it to be illegal.⁵²

While it is uncertain what a court would ultimately rule on the tampering policy, one can speculate the procompetitive justifications of the rule would outweigh the anti-competitive effects of the rule. Some of the main procompetitive justifications include competitive balance, league disruption, and league authenticity.⁵³

First, procompetitive justification of competitive balance is rooted in the concept that teams invest substantial capital in their players, and if large market teams can continuously

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Colin Rizzo, *Temptation to Tamper: The Ineffectiveness of the NBA's Anti-Tampering Policy and Why the League May Be Forced to Take Drastic Measures to Fix It*, 26 Jeffrey S. Moorad Sports L.J. 403 (2019).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

induce the best players to depart their teams, eventually those teams will poach the best players on the small market teams. For example, if large market teams could frequently contact players already under contract, those teams will induce players to move teams. This would inevitably result in super teams being formed at the expense of smaller market teams. Ultimately, the league requires good competition to be able to market its product to fans.

Second, the league disruption justification comes from the result of players constantly moving mid-season and harming team cohesiveness across the league. Trust in the league would likely diminish substantially, which would result in shorter contracts and more movement. One could imagine it would be quite frustrating to the team's goals if the team's coach and general manager constantly have to fight off other teams trying to steal their players. Even if the player did not depart for the new team, the effort required to keep players would result in team disruption. Additionally, as players move more frequently teams will have increased difficulty building and maintaining cohesive units to compete effectively.

Third, the league would lose authenticity and integrity in its product. This procompetitive justification may be the strongest argument. The product of professional sports requires active fans. Fans would be significantly harmed because they would be unable to rely on their favorite players staying with their teams, and competition would diminish. The league has substantial interest in protecting its consumers, so allowing teams and players to constantly negotiate with competitors would crush competition, viewership, and ultimately, game integrity.

B. Tampering in FIBA

Unlike the internal NBA rules, the NBA and FIBA do not have an agreement limiting tampering. However, while it is not nearly as strict as the NBA tampering agreement, the NBA agreed to abide by FIBA's international policy. This policy provides that each league commit to

honoring existing player contracts among players in other leagues on a permission-based structure.⁵⁴ It requires players in FIBA member leagues to obtain a letter of clearance from FIBA, and FIBA may only decline the letter if the player is subject to an existing binding contract.⁵⁵ In the event the player does not obtain the letter of clearance, the NBA must disapprove any contract with an NBA team, and the player must play out his existing contract before he may play in the NBA.⁵⁶ FIBA has similar rules preventing inter-league interactions with respect to exporting and importing players.⁵⁷ These rules determine when a team can approach a player while abroad and when that player can be signed.

Although the agreement between the NBA and FIBA allows for communication between NBA teams and international players under contract, these communications are limited strictly to future employment.⁵⁸ In 1982, the Foreign Trade Antitrust Improvements Act amended the Sherman Act to include trade or commerce with other nations.⁵⁹ Similar to the NBA's anti-tampering provisions, this agreement restricts players' ability to explore free market opportunities under contract. Therefore, this agreement may also be subject to antitrust scrutiny. It is likely that the foreign agreement would similarly have the procompetitive effects to justify the restraint, but there is no collectively bargained relationship between FIBA and the NBA that outlines rules and regulations for such issues.

International basketball is on the rise, and the demand for professional basketball is increasing. While tampering is not currently a substantial international issue, it could be going forward. There will need to be an international governing system in place to outline procedures

⁵⁴ Kurlantzick, *supra* note 46.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

in the event international disputes arise regarding tampering. However, any system put in place would effectively be an illegal restraint on trade by most countries antitrust standards. For these reasons, there will likely need to be an independent governance system with reasonable procedures in place to address such conflicts in a way that does not agitate the varying legal standards of different countries.

V. DISPUTE RESOLUTION

Despite the NBA's efforts to limit conflict with its international suppliers of professional basketball talent and the lack of competitive nature between the NBA and said suppliers, disputes still arise. One could infer that international clubs are not particularly fond of the NBA poaching their best players. In the case of Darko Milicic, his international club, Hemofarm publicly announced it would file a grievance against any NBA team that tried to sign Milicic without paying the buyout clause in his contract.⁶⁰ Many began to think getting Milicic to the NBA was a lost cause. Eventually, the Detroit Pistons were able to come to an agreement with Hemofarm to lower the cost of the buyout.⁶¹ Regardless, the situation highlighted the tensions associated with the international buyout process, especially with high caliber talent like Milicic.

Another notorious dispute arose when professional basketball player, Brian Shaw signed an agreement with an NBA team that included a provision requiring he terminate his previous contract with a professional team overseas. After playing one year for the Celtics upon graduating from college, Shaw signed a two-year, \$1.7 million deal with the Italian club, Messaggero Roma (Messaggero) in 1989.⁶² The agreement included a provision that allowed

⁶⁰ ESPN, *supra* note 25.

⁶¹ *Id.*

⁶² *Boston Celtics LP v. Shaw*, 908 F.2d 1041 (1st Cir. 1990).

Shaw to opt out of his second year with Messaggero in the event he returns to play in the NBA.⁶³ In 1990, Shaw signed a deal with the Celtics that required he terminate his contract with Messaggero, but he later decided he wanted to remain with Messaggero.⁶⁴ The Celtics opted to utilize expedited arbitration allowed by the NBA CBA that resulted in a ruling that Shaw must rescind his contract with the Italian club and play only for the Celtics for the agreed upon contract term.⁶⁵

Upon losing in arbitration, Shaw chose to challenge the ruling in federal district court where he lost and appealed to the first circuit. Shaw argued that the district court erred in granting an injunction to enforce the arbitrator's award because it was unlawful.⁶⁶ He contended that, per the NBA CBA, the agreement's clause requiring he rescind his contractual arrangement with Messaggero is null and void because the CBA only permits contract amendments relating to compensation.⁶⁷ While his argument was logical, the Court sided with the Celtics holding that so long as an arbitrator's decision "draws its essence" from the contract, and the arbitrator acts within his scope of authority in interpreting the CBA, then the Court will defer to the decision.⁶⁸

The Shaw case showcases potential issues surrounding the jurisdiction and outcomes of international disputes. The decision to side with the law of the land demonstrates the deferential treatment of U.S. courts to the CBA, despite legitimate concerns regarding the legality of contract terms. Generally speaking, specific performance of a contractual term requiring one party to terminate a contract with a 3rd party comes across somewhat unsettling. Regardless, *Shaw* highlights an adherence to the arbitration process and decisions outlined in the CBA.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

Naturally, one can inquire whether the outcome would have been different in a jurisdiction outside the U.S. An increase in conflicts would have a resulting demand for a resolution system that eliminates these jurisdictional issues.

These conflicts bode the question: who is authorized to handle such disputes? In 2007, FIBA established the Basketball Arbitral Tribunal (BAT) to act as an independent court of arbitration in Geneva, Switzerland.⁶⁹ The purpose of the BAT is to “provide a quick, inexpensive and efficient means of resolving disputes in the world of basketball.”⁷⁰ Although FIBA established the BAT, it is intended to operate independently from FIBA. As evidenced by the name change from FIBA Arbitral Tribunal to Basketball Arbitral Tribunal in 2011.⁷¹ Disputes are decided by a single Arbitrator appointed by the BAT president from the handful of BAT arbitrators on the closed list.⁷² The BAT registered over 1,600 cases from its establishment in 2007 to the end of 2020.⁷³ These cases are primarily comprised of disputes between agents, clubs, and players.⁷⁴ The BAT would be a terrific neutral source to govern disputes of this nature.

Currently, the BAT only has jurisdiction if the parties include a valid arbitration clause in the contractual arrangement, or if the respondent fails to promptly object to lack of jurisdiction.⁷⁵ Therefore, the tribunal is limited to contractual disputes and is not at the time competent to hear cases on regulatory issues like transfer disputes or disciplinary issues. For this reason, most cases that involve grievances by agents for outstanding fees. However, it is entirely possible the BAT

⁶⁹ Kahlert Heiner, *The Basketball Arbitral Tribunal (BAT)*, Jus Mundi (December 24, 2021).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

could play a much more substantial role in disputes between NBA Teams and foreign teams going forward if international leagues become competitors to the NBA.

Another dispute resolution vehicle that could address potential international contractual disputes is the Court of Arbitration for Sport (CAS). The CAS was originally founded in 1984 by 60 members of various Olympic entities to address issues like player contracts, broadcast rights, sponsorships, licensing, and doping.⁷⁶ Like the BAT, the CAS is headquartered in Switzerland, however, it has courts in New York, Sydney, and Lausanne.⁷⁷ Also like the BAT, the CAS generally only has jurisdiction if the parties specify the CAS as the recourse method in the agreement, with the exception of Olympic disputes which are required to go through the CAS.⁷⁸ The CAS offers a more rigid and established structure than the BAT, but lacks the specific ties to basketball-related disputes that the BAT has. Either dispute resolution vehicle would be well-equipped to handle international contract disputes between professional basketball players.

VI. INTERNATIONAL GROWTH & RELATIONSHIP SHIFT

The final sections of this paper will explore the factors propelling a potential shift in the supplier-consumer relationship between FIBA-member leagues and the NBA and suggested approaches the NBA could take to capitalize on basketball's international expansion. With the NBA currently at an all-time high in viewership, skill, and revenue, it is difficult to imagine a world where it is not the dominant force in professional basketball. However, the basketball is globalizing in grandiose fashion and shows no signs of slowing.

A. Growth of International Talent Quantity and Quality

⁷⁶ *History of the CAS*, Tribunal Arbitral Du Sport (April 2023).

⁷⁷ *Id.*

⁷⁸ *Id.*

One factor spearheading this potential shift is the emergence of top-tier international talent. Foreign players have a firm grasp on the league and are only going to continue to dominate. This season, foreign players Joel Embiid, Nikola Jokic, and Giannis Antetokounmpo hold all one hundred 1st place MVP votes, so the reign of international MVP winners will continue.⁷⁹ The NBA is also expecting French prospect and future 1st overall pick Victor Wembanyama to soon be competing with those three for MVP. Standing 7'5" and playing like a guard, Victor has been deemed a generational talent and the most anticipated prospect since LeBron James.⁸⁰ It is likely safe to say that international players are here to stay and will continue to be among the best in the world for years to come.

B. Increase in Foreign Basketball Fandom

So, what then could induce a coveted international player to elect to play for a league other than the NBA? At this point, no professional basketball league has the financial wherewithal to compete with the NBA. However, the influx of global basketball fandom could impact foreign league revenues going forward. A recent study projects basketball as the third most popular sport in the world with an estimated 2.2 billion fans worldwide.⁸¹ FIBA also estimates roughly 450 million total basketball players globally, making it one of the most played sports in the world.⁸² As the sport continues to grow in global popularity, there will naturally be more international prospects, better international competition, and more international viewership.

Moreover, there is likely a resulting increase in FIBA league fandom. The EuroLeague has already showcased significant growth in recent years. A 2021 study showed a 22% increase

⁷⁹ Tim Bontemps, *NBA MVP Straw Poll 3.0: Why margin between Joel Embiid, Nikola Jokic has become razor-thin*, ESPN (March 2023).

⁸⁰ Sanjesh Singh, *How tall is Victor Wembanyama? NBA prospect's height grows again*, NBC Sports (February 2023).

⁸¹ Sourav Das, *Top 10 Most Popular Sports in the World 2023*, Sports Browser (June 21, 2022).

⁸² *International Basketball Migration Report 2020*, FIBA (December 2020).

in EuroLeague popularity in just 3 years.⁸³ Additionally, there were substantial popularity increases in France (60%), Israel (47%), Germany (44%) and Italy (36%).⁸⁴ EuroLeague is also currently exploring significant expansion to Dubai, London, and Paris that could boost league revenues and popularity.⁸⁵ The growth potential has even lead NBA players, like Toronto Raptors star OG Anunoby, to invest in European basketball clubs.⁸⁶ This continued growth will likely propel international leagues to unprecedented popularity and revenue generation in the near future, which could help nudge revenue closer to a level competitive with the NBA.

C. Free Market System Overseas

Perhaps the most crucial factor that could induce a competitor relationship, however, is the financial benefit of a free-market system. FIBA-member leagues operate under a system that gives far greater contractual flexibility than NBA jurisdiction offers. The NBA CBA contains strict rules and restraints relating to player salaries, contract terms, team salaries, and free agency. On the other hand, FIBA-member leagues operate under a system comparable to international soccer's system that recently led to Cristiano Ronaldo's annual compensation of \$213 million.⁸⁷ Being able to contract for longer salaries that ensure greater job security without limitations on compensation would be a major inducement for professional basketball players if the teams could afford such high-caliber talent.

This system is even more appealing due to the NBA's approach to player salary maximums. In the NBA, players are compensated based on their years of service in the league. Players that have been in the league longer have higher salary maximums than players who have

⁸³ *New research shows growing interest in EuroLeague*, EuroLeague News (July 27, 2021).

⁸⁴ *Id.*

⁸⁵ *EuroLeague to decide on April about the 2024-25 expansion*, EuroHoops (March 16, 2023).

⁸⁶ Owen Poindexter, *British NBA Star Invests in Rising London Team*, Front Office Sports (April 18, 2023).

⁸⁷ Feargal Brennan, *Highest-paid soccer players: Ronaldo overtakes Messi*, The Sporting News (January 22, 2023).

recently entered the league. When a player is drafted, he generally plays his first four seasons in the league under a “Rookie Scale Contract”, which is a specified amount determined by the specific pick used to select the player. Teams may only negotiate a maximum 20% increase or decrease of the specified amount.⁸⁸ For example, the 15th pick in the draft this season had a Rookie Scale amount set at roughly \$3.1 million for his first year in the league and could make at most roughly \$3.7 million with the 20% increase.⁸⁹ Moreover, Rookie Scale Contracts include non-negotiable team option clauses on each of the final two years of the contract, so players are effectively only guaranteed the amount outlined under the first two years of the agreement. Thus, many foreign players can start professional careers sooner, potentially make more money, and experience greater job security overseas than they could in taking the risk in going to the NBA.

Although not yet competitive with the NBA, foreign teams are starting to pay players larger salaries as the leagues have seen increased revenues. The Chinese Basketball Association pays the highest average salary, but does not operate on a free market system, capping foreign player salaries at roughly \$7 million.⁹⁰ European team budgets have a massive spend range from around \$6 million to roughly \$50 million annually, which is far below a typical NBA team spend that can get up to hundreds of millions annually.⁹¹ The highest paid professional basketball players outside of the NBA currently make no more than roughly \$5 million a year, which is less than 10% of the maximum salary a player can make in the NBA.⁹² While the Rookie Scale amounts pose significant limitations on compensation, players that are able to stay in the league past their initial Rookie Scale contract can make far more money than is offered overseas.

⁸⁸ NBA, *supra* note 14.

⁸⁹ Spotrac, *supra* note 36.

⁹⁰ Kenneth Mwenda, *How much do overseas basketball players make? The average salary of hoopsters in Europe, Asia and Africa*, Sports Brief (January 31, 2023).

⁹¹ *Id.*

⁹² *Id.*

To actually induce a player to choose a league other than the NBA, this gap will need to diminish substantially. Regardless, the system could provide a substantial benefit to international prospects if international league revenues ever climb to somewhat competitive levels. To induce players to refuse the NBA, there will need to be heightened competition, compensation, and popularity. While all trends seem to be pointing in this direction, there is still too much ground to cover to assume a shift could occur in the near future. It will be interesting to monitor the growth of international basketball going forward and the impact said growth will have on the relationship between the NBA and FIBA-member leagues.

VII. SUGGESTED APPROACHES FOR THE NBA

Despite the tremendous gap the FIBA-member leagues would need to overcome to truly become competitors, the NBA should still be conscious of this growth and the potential for a relationship shift. To address these threats, I recommend that the NBA explore business opportunities with FIBA-member leagues, work with FIBA to establish reasonable policies governing international competition, outline a preferred dispute resolution system with FIBA, and continue to grow player development and popularity overseas.

A. Business Opportunities with FIBA-member Leagues

The NBA should explore investment and partnership opportunities with the more popular foreign leagues. The financial wherewithal, viewership, and overall reach of the NBA remains far outside of any other professional league. Thus, the NBA should jump on growth opportunities overseas and get ahead of international expansion. FIBA and international leagues often do not see eye to eye with how best to approach basketball growth systems. If the NBA can bridge the gap in these scenarios with its extensive business

expertise, working with FIBA and European leagues would be a great way to develop an ongoing business relationship. A rise in global fandom of basketball will increase the demand for basketball consumption going forward. This growth will pave the way for an array of potential investment opportunities overseas, and the NBA should be prepared to capitalize on them.

B. Work with FIBA on Rules & Dispute Procedures

Additionally, the NBA should work with FIBA to determine a system for addressing potential conflicts that might arise from increased international competition. As this paper highlights, there is risk that other professional leagues could begin to compete with the NBA in the market of foreign talent, and there should be mechanisms in place to handle any potential conflicts. Getting ahead of the curve will be crucial here. Conflicts could implicate varying laws, league rules, and jurisdictions that would complicate dispute resolution. A lack of a standardized structure could result in bad precedent that negatively shapes the legal landscape. For example, when the U.S. Supreme Court decided *Federal Baseball* in 1922, it permanently altered the legal environment surrounding the business of baseball with the antitrust exemption, and to this day the exemption stands primarily due to a fear of retroactive liability.⁹³ To avoid any unwanted legal precedent, I suggest the NBA and FIBA explore ways to approach potential competitive disputes in the near future.

C. Continue Developing Programs Overseas

⁹³ *Federal Baseball Club v. National League*, 259 U.S. 200 (1922).

The NBA has done a great job with growth and expansion initiatives in other countries. In 2001, the NBA launched a global development and community outreach program called Basketball Without Borders (BWB). BWB now has 66 camps in 43 cities across 31 countries. It will be crucial to continue expanding programs like BWB and NBA Academy in countries that have not yet adopted basketball and in countries where basketball is on the rise. I recommend the NBA expand and capitalize its social media presence of foreign players in their home countries. A great way to help secure a growing sports market in a new country is by creating a platform for young fans to watch people of their own nationality excel in said sport. For example, baseball's large following in Japan is attributed to Babe Ruth getting struck out by a Japanese pitcher in 1934 on a tour of Japan.⁹⁴ The NBA should utilize its reach on social media to continue promoting to these audiences in a way that encourages the young fans to adopt the sport.

VIII. CONCLUSION

Despite international basketball growth, it is still uncertain whether these factors could propel a shift to a more competitive relationship between international leagues and the NBA. Regardless, the NBA should be conscious of the trends and growth of the sport to be able to fully assess threats and opportunities associated with international expansion. One thing is certain, international basketball is at an all-time high and only continuing to grow. Outside of the business side of basketball, the future of the game is bright. Fans of the game should be excited to see continued globalization of the sport and the resulting impact on communities around the world.

⁹⁴ Mike Gavin, *When did baseball start in Japan and how did it become so popular?* (March 23, 2023).