

21-2088-cv

Relevant Sports v. U.S. Soccer Federation

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2
3 **UNITED STATES COURT OF APPEALS**
4 **FOR THE SECOND CIRCUIT**

5
6 August Term, 2021

7
8 (Argued: April 7, 2022 Decided: March 7, 2023)

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10 Docket No. 21-2088-cv

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13 RELEVANT SPORTS, LLC,

14
15 *Plaintiff-Appellant,*

16
17 v.

18
19 UNITED STATES SOCCER FEDERATION, INC.,
20 FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION,

21
22 *Defendants-Appellees.*
23 _____

24
25 Before:

26
27 LIVINGSTON, *Chief Judge*, LYNCH, and LOHIER, *Circuit Judges*.

28
29 Relevant Sports, LLC, a U.S.-based soccer promoter, alleges that the
30 Fédération Internationale de Football Association (popularly known as FIFA)
31 and the United States Soccer Federation, Inc. adopted and enforced a
32 geographic market division policy in 2018 that unlawfully prohibits soccer
33 leagues and teams from playing official season games outside of their home
34 territory. Relevant claims that the 2018 policy represents an agreement
35 among direct competitors to restrict competition in violation of federal
36 antitrust laws. The United States District Court for the Southern District of
37 New York (Caproni, L) concluded that Relevant failed to allege that the

1 challenged anticompetitive conduct stemmed from a prior agreement to enter
2 into the 2018 policy. But a plaintiff challenging an association policy or rule
3 that governs the conduct of the members' separate businesses need not allege
4 an antecedent "agreement to agree." Because Relevant challenges the
5 allegedly monopolistic 2018 Policy directly, it has adequately alleged
6 concerted action. The Sherman Antitrust Act and the Clayton Antitrust Act
7 require no further allegations of an agreement to engage in concerted action
8 for Relevant's complaint to survive a motion to dismiss. VACATED and
9 REMANDED.

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4

5 LOHIER, *Circuit Judge*:

6 Soccer, also known as “the beautiful game,” unites the world in shared
7 competition. This case, by contrast, concerns an allegedly anticompetitive
8 policy that restricts access to the game by prohibiting soccer leagues and
9 teams from playing official season games outside of their home territory.

10 Relevent Sports, LLC (“Relevent”), a U.S.-based soccer promoter, alleges that
11 the Fédération Internationale de Football Association (“FIFA”) and the United
12 States Soccer Federation, Inc. (“USSF”) adopted and enforced this geographic
13 market division policy (“2018 Policy”) in violation of Section 1 of the Sherman
14 Antitrust Act and Sections 4 and 16 of the Clayton Antitrust Act.

15 The United States District Court for the Southern District of New York
16 (Caproni, L.) determined that Section 1 required Relevent to present either
17 direct or circumstantial evidence of an “antecedent ‘agreement [among
18 horizontal competitors] to agree to vote a particular way’ to adopt such a
19 policy.” Special App’x 33 (alteration in original). After concluding that
20 Relevent failed to allege that the 2018 Policy itself stemmed from or

1 constituted direct evidence of such a prior agreement among the Defendants,
2 the District Court dismissed Relevant's complaint for failure to state a claim.

3 We disagree with the District Court's conclusion. Relevant plausibly
4 alleges that the 2018 Policy reflects a contractual commitment of head-to-head
5 competitors to restrict competition. Because Relevant's complaint challenges
6 the 2018 Policy itself "as violative of the antitrust laws," the "promulgation of
7 [the policy] . . . constitute[s] direct evidence of § 1 concerted action." N. Am.
8 Soccer League v. U.S. Soccer Fed'n, 883 F.3d 32, 41 (2d Cir. 2018) ("NASL");
9 see Associated Press v. United States, 326 U.S. 1, 12 (1945). No further
10 allegation of an agreement is necessary. In holding that no inference of
11 concerted activity can be drawn from the "promulgation" of the 2018 Policy,
12 the District Court's decision conflicts directly with this core principle. The
13 judgment of the District Court is thus **VACATED** and the matter is
14 **REMANDED** for further proceedings consistent with this opinion.

1 **BACKGROUND¹**

2 We start with an overview of the governance structure of international
3 soccer. FIFA, a private membership-based association comprised of over 200
4 national associations, is the well-known international governing body for
5 soccer. Each national association is itself membership-based and comprised
6 of professional soccer leagues and teams. FIFA’s legislative body, the FIFA
7 Congress, includes representatives from every national association in the
8 world and adopts and amends the FIFA Statutes, which contain many of
9 FIFA’s rules and policies. A smaller entity within FIFA, the FIFA Council,
10 “has authority to interpret the FIFA Statutes and to adopt rules and policies
11 not specifically addressed in the FIFA Statutes.” App’x 502.

12 National associations represent their members in FIFA decision-making
13 and agree to “comply fully with the Statutes, regulations, directives and
14 decisions of FIFA bodies at any time.” App’x 500–01. In turn, the national
15 associations require their members to agree to comply with these same rules
16 and policies. USSF is the FIFA-authorized national association for the United

¹ These facts are drawn from the amended complaint and assumed to be true for purposes of our de novo review of the District Court’s judgment dismissing the complaint for failure to state a claim upon which relief can be granted. See Schlosser v. Kwak, 16 F.4th 1078, 1080 (2d Cir. 2021).

1 States. “[USSF] and its members are, to the extent permitted by governing
2 law, obliged to respect the statutes, regulations, directives and decisions of
3 FIFA . . . and to ensure that these are likewise respected by their members.”
4 App’x 502 n.12 (alterations in original) (quoting BYLAWS OF THE UNITED
5 STATES SOCCER FEDERATION, INC., Bylaw 103 § 1). Leagues and players that
6 fail to comply with FIFA rules and policies are subject to discipline and
7 sanction, including exclusion from the FIFA World Cup.

8 Relevent organizes, promotes, and hosts soccer matches in the United
9 States and globally. Because it is a violation of the FIFA Statutes for a soccer
10 club affiliated with a FIFA-sanctioned league to play in the United States
11 without USSF’s approval, Relevent had to obtain approval from USSF to
12 organize a match in the United States between teams from other countries.
13 And third-party promoters such as Relevent must also obtain approval from
14 each team's national association, each team's regional confederation, and, of
15 course, FIFA.

16 In the past, Relevent has tried to host official season games for
17 international professional soccer leagues in the United States—including for
18 La Liga (Spain), Liga MX (Mexico) and LigaPro Serie A (Ecuador)—without

1 success. Its efforts to host have been foiled by the FIFA Council each time.²
2 In 2018, for example, Relevent and La Liga, the Spanish professional soccer
3 league, agreed to host an official season game in Miami. Given La Liga's
4 worldwide popularity, the game would undoubtedly have drawn a large
5 audience. In response, the FIFA Council "issued a policy prohibiting FIFA's
6 National Association members, including USSF, from sanctioning any official
7 season games held outside of the participants' home territory." App'x 523. A
8 FIFA press release memorializing this policy stated:

9 Following a request for guidance . . . the FIFA Council discussed
10 La Liga's proposal to host an official 2018/19 regular season league
11 match outside Spain (in Miami).

12
13 Consistent with the opinion expressed by the Football
14 Stakeholders Committee, the Council emphasized the sporting
15 principle that official league matches must be played within the
16 territory of the respective member association.

17
18 App'x 601 (2018 Policy). "[B]ecause this was a formal policy announced by a
19 FIFA decision-making body, any leagues and teams who did not comply with
20 it would run the risk of FIFA penalties and all such leagues and teams were

² As fans know, there is a difference between "friendly" (or exhibition) games, which Relevent has organized, promoted, and hosted in the United States, and official season games. Official season games affect the standing of teams in their respective leagues or tournaments.

1 required to agree to adhere to this policy.” App’x 523. As a result, the game
2 in Miami never took place.

3 Relevent filed this action against USSF in 2019. The District Court
4 dismissed Relevent’s first complaint without prejudice for failing to allege an
5 unlawful vertical agreement between USSF and FIFA or an unlawful
6 horizontal agreement between USSF and other national associations, leagues,
7 and teams sufficient to support an antitrust violation. The court added that
8 even if Relevent “had adequately alleged an agreement between USSF and
9 FIFA,” its “claim for injunctive relief would be dismissed for failure to join”
10 FIFA as “an indispensable party.” Special App’x 15 n.12. Relevent then filed
11 an amended complaint adding FIFA as a defendant. In the amended
12 complaint, Relevent claimed that the Defendants violated Section 1 of the
13 Sherman Act and Sections 4 and 16 of the Clayton Act, and were liable under
14 New York law for tortious interference with business relationships.³ Relevent
15 principally alleged that “FIFA and USSF, in combination with numerous
16 FIFA-affiliated men’s top-tier professional soccer leagues and teams,
17 including Major League Soccer (“MLS”)⁴ and its teams, have entered into an

³ On appeal, Relevent pursues only its antitrust claims.

⁴ MLS is the top-tier FIFA-affiliated professional soccer league in the United States.

1 agreement to divide geographic markets, including the United States market,
2 which stifles competition in the U.S.” App’x 493.

3 The District Court granted the Defendants’ motion to dismiss
4 Relevent’s amended complaint for failure to state a claim. It again held that
5 Relevent failed to allege that USSF and other national associations in FIFA
6 entered into an unlawful vertical agreement with FIFA to apply the 2018
7 Policy against their member leagues and teams. The District Court likewise
8 again held that Relevent failed to allege a horizontal conspiracy between
9 USSF and FIFA’s other top-tier men’s professional soccer leagues and their
10 teams outside the United States. The 2018 Policy, the District Court
11 explained, did not constitute direct evidence of a horizontal conspiracy
12 because there was neither an antecedent “agreement to agree” among the
13 Defendants to adopt the policy, Special App’x 32 n.12, nor any circumstantial
14 evidence of an agreement among the members of the FIFA Council to adopt
15 the 2018 Policy. Finally, the District Court determined that universal
16 adherence to the 2018 Policy was insufficient to support a claim that the
17 Defendants engaged in a horizontal conspiracy.

18 This appeal followed.

1 On the record before us, FIFA is subject to personal jurisdiction in New
2 York under New York’s long-arm statute. According to Relevant’s amended
3 complaint, FIFA “authorizes USSF . . . to act on its behalf to sanction
4 professional soccer leagues in the U.S. and this District.” App’x 513. USSF,
5 which is incorporated as a New York not-for-profit, is FIFA’s agent and
6 transacts substantial business on behalf of FIFA in New York. For example,
7 FIFA authorized USSF’s “refusal to sanction the official season games sought
8 to be promoted by Relevant from its headquarters in [New York].” App’x
9 513–14; see also App’x 506–07 (“As FIFA’s National Association in the U.S.,
10 USSF is vested with the exclusive authority to sanction, on behalf of FIFA, all
11 men’s professional soccer leagues and games played in this country.”). These
12 allegations establish, at the pleading stage, that USSF “acted in New York for
13 the benefit of, with the knowledge and consent of, and under some control
14 by” FIFA. Charles Schwab, 883 F.3d at 85. No party disputes that USSF’s
15 actions subject it to personal jurisdiction in New York on Relevant’s claims.
16 That USSF undertook those actions as FIFA’s agent is thus sufficient to subject
17 FIFA to personal jurisdiction in New York as well. See id. at 85–86 (“[A]n
18 agency relationship between a parent corporation and a subsidiary that sells

1 securities on the parent's behalf could establish personal jurisdiction over the
2 parent in a state in which the parent 'indirectly' sells the securities.").

3 FIFA also has the minimum contacts with New York necessary to
4 satisfy constitutional due process principles.

5 Although the long-arm statute and the Due Process Clause are
6 not technically coextensive, the New York requirements (benefit,
7 knowledge, some control) are consonant with the due process
8 principle that a defendant must have purposefully availed itself
9 of the privilege of doing business in the forum. And where we
10 have found personal jurisdiction based on an agent's contacts, we
11 have never suggested that due process requires something more
12 than New York law.

13
14 Id. at 85 (cleaned up). Here, the same alleged contacts that subject FIFA to
15 New York's long-arm statute—including vesting USSF with the exclusive
16 authority to sanction all men's professional soccer leagues and games played
17 in the United States—satisfy the Constitution's due process requirement of
18 minimum contacts with New York such that the suit "does not offend
19 traditional notions of fair play and substantial justice." Ford Motor Co. v.
20 Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024 (2021) (quoting Int'l Shoe Co.
21 v. Washington, 326 U.S. 310, 316 (1945)).

1 II. Antitrust Liability

2 A. Legal Standard

3 Section 1 of the Sherman Act prohibits “[e]very contract, combination
4 . . . or conspiracy[] in restraint of trade or commerce.” 15 U.S.C. § 1. The first
5 question is “whether the challenged conduct stems from independent
6 decision or from an agreement, tacit or express.” United States v. Apple, Inc.,
7 791 F.3d 290, 314–15 (2d Cir. 2015) (cleaned up). Distinguishing between
8 concerted action and independent individual behavior is important because
9 “concerted activity inherently is fraught with anticompetitive risk insofar as it
10 deprives the marketplace of independent centers of decisionmaking that
11 competition assumes and demands.” Am. Needle, Inc. v. NFL, 560 U.S. 183,
12 190 (2010) (cleaned up). If the challenged conduct reflects concerted action,
13 then we consider whether that action unreasonably restrains trade. Id. at
14 186.⁵

⁵ The antecedent question of whether the inference of concerted action could be drawn from the 2018 Policy itself is distinct from the subsequent question of whether any concerted action was “unlawful.” Cf. Special App’x 34 (Dist. Ct. Op.) (“Plaintiff’s Amended Complaint lacks any non-conclusory factual allegations [that] . . . the FIFA Council unlawfully agreed to adopt the Policy.” (emphasis added)). We express no view on the latter question. See Am. Needle, 560 U.S. at 202–03 (“The fact that NFL teams share an interest in making the entire league successful and

1 At the pleading stage, a plaintiff need only allege “enough factual
2 matter (taken as true) to suggest that an agreement was made.” Bell Atl.
3 Corp. v. Twombly, 550 U.S. 544, 556 (2007). In other words, a plaintiff must
4 allege facts that “reasonably tend[] to prove that the defendant and others
5 had a conscious commitment to a common scheme designed to achieve an
6 unlawful objective.” Apple, 791 F.3d at 315 (cleaned up). Those facts can
7 constitute either “direct evidence that the defendants entered into an
8 agreement” or “circumstantial facts supporting the inference that a
9 conspiracy existed.” Id. (quotation marks omitted).

10 Competitors do not avoid antitrust liability by hiding behind or acting
11 through third-party intermediaries. See Amici Br. of Antitrust, Sports Law,
12 and Economics Professors at 3–4. Business, professional, trade, and sports
13 organizations and associations, for instance, are all subject to federal antitrust
14 laws if their members demonstrate “a conscious commitment to a common
15 scheme designed to achieve an unlawful objective.” Apple, 791 F.3d at 315
16 (quotation marks omitted); see also Am. Needle, 560 U.S. at 190. When an

profitable . . . provides a perfectly sensible justification for making a host of
collective decisions” that qualify as “concerted activity under the Sherman Act that
is subject to § 1 analysis.”).

1 association member “surrender[s] himself completely to the control of the
2 association” in a “contractual restraint of interstate trade, designed in the
3 interest of preventing competition,” then a rule that imposes “duties and
4 restrictions in the conduct of [the members’] separate businesses”
5 demonstrates an agreement for purposes of Section 1 of the Sherman Act.
6 Associated Press, 326 U.S. at 8, 19 (quotation marks omitted).

7 It follows from this precedent that the adoption of a binding association
8 rule designed to prevent competition is direct evidence of concerted action.
9 No further proof is necessary. See, e.g., Nat’l Collegiate Athletic Ass’n v. Bd.
10 of Regents of Univ. of Oklahoma, 468 U.S. 85, 99 (1984) (“[T]he policies of the
11 NCAA with respect to television rights” give rise to “a horizontal restraint—
12 an agreement among competitors on the way in which they will compete with
13 one another.”); Nat’l Collegiate Athletic Ass’n v. Alston, 141 S. Ct. 2141, 2154
14 (2021) (“[T]he NCAA [does not] dispute that its member schools . . . remain
15 subject to NCAA-issued-and-enforced limits on what compensation they can
16 offer. . . . [Accordingly,] this suit involves admitted horizontal price fixing in a
17 market where the defendants exercise monopoly control.”); Nat’l Soc’y of Pro.
18 Eng’rs v. United States, 435 U.S. 679, 683 (1978) (finding “[e]vidence of” an

1 unlawful “agreement” in an engineering society’s “Code of Ethics”); Allied
2 Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 500 (1988)
3 (“Agreement on a product standard is, after all, implicitly an agreement not
4 to manufacture, distribute, or purchase certain types of products.”). Contrary
5 to the District Court’s conclusion, there is no need for Relevant to allege a
6 prior “agreement to agree” or conspiracy to adopt the policy; the adoption of
7 the policy, combined with the member leagues’ prior agreement, by joining
8 FIFA, to adhere to its policies, constitutes an agreement on the part of all—
9 whether they voted in favor of the policy or not—to adhere to the announced
10 restriction on competition.

11 Of course, not every decision by an association violates federal antitrust
12 laws. As we have said, although a “trade association by its nature involves
13 collective action by competitors, a trade association is not by its nature a
14 walking conspiracy.” NASL, 883 F.3d at 40 (cleaned up). Take sports
15 associations, for example. “Without some agreement among rivals—on
16 things like how many players may be on the field or the time allotted for
17 play—the very competitions that consumers value would not be possible.”
18 Alston, 141 S. Ct. at 2156. For this reason, “we focus on those improprieties

1 reducing competition among the members or with their competitors,” not the
2 “day-to-day operations of the organization” including “buying, selling,
3 hiring, renting, or investing decisions.” AD/SAT, Div. of Skylight, Inc. v.
4 Associated Press, 181 F.3d 216, 234 (2d Cir. 1999) (quoting 7 Phillip E. Areeda
5 et al., Antitrust Law ¶ 1477, at 347 (1999)).

6 We recently applied these principles in NASL, where the NASL (a
7 second-tier soccer league in the United States)⁶ brought an antitrust challenge
8 to USSF’s application of its Professional League Standards, which establish
9 requirements for sanctioning professional soccer leagues in the United States.
10 See NASL, 883 F.3d at 35–36. We recognized that “[i]f NASL were
11 challenging the [Professional League] Standards themselves—in totality—as
12 violative of the antitrust laws, then the USSF Board’s promulgation of them
13 would constitute direct evidence of § 1 concerted action in that undertaking.”
14 Id. at 41. But the NASL, we explained, had opted to allege an “overarching
15 conspiracy to restrain competition in markets for top- and second-tier men’s

⁶ As we observed in NASL, “[t]he three most prominent men’s professional soccer leagues have historically occupied their respective divisions in isolation. [MLS] has been the only Division I men’s soccer league since MLS’s start in 1995. NASL has existed since 2009 and has operated as a Division II league since 2011. The United Soccer Leagues, LLC . . . ordinarily has filled the Division III slot.” NASL, 883 F.3d at 35.

1 professional soccer leagues in North America,” so that “the promulgation of
2 the Standards” constituted only “circumstantial evidence of that conspiracy,”
3 not direct evidence. Id. So how the plaintiff frames a challenge affects how
4 we analyze the adequacy of its pleadings. If the plaintiff alleges that a policy
5 or rule is in service of a plan to restrain competition, then it must allege
6 enough additional facts to show that agreement to such a plan exists. If, on
7 the other hand, the plaintiff adequately alleges that the policy or rule is the
8 agreement itself, then it need not allege any further agreement.

9 In dismissing Relevant’s complaint, the District Court misapplied the
10 lesson of NASL.

11 **B. Application**

12 Relevant attacks the 2018 Policy directly as anticompetitive. It alleges
13 that “this anticompetitive agreement was expressly formulated in 2018,”
14 App’x 494, and more specifically that “[o]n October 26, 2018, the FIFA
15 Council adopted a policy embodying the anticompetitive market division
16 agreement at issue in this case,” App’x 502, and “issued a policy prohibiting
17 FIFA’s National Association members, including USSF, from sanctioning any
18 official season games held outside of the participants’ home territory,” App’x

1 523. “The FIFA geographic market division policy was, and is,” Relevant
2 alleges, “a horizontal division of geographic markets agreement.” App’x 523;
3 see App’x 503 (alleging that the USSF president “participated in the FIFA
4 Council’s consideration and adoption of the geographic market division
5 agreement in October 2018”).

6 These allegations provide “enough factual matter (taken as true) to
7 suggest that an agreement was made,” Twombly, 550 U.S. at 556, and the
8 District Court erred in concluding that the 2018 Policy was not itself direct
9 evidence of an agreement under Section 1. The District Court held that “[i]n
10 order for an organizational decision or policy to constitute concerted action
11 and, therefore, to serve as direct evidence of an unlawful agreement, Plaintiff
12 must plausibly allege an antecedent ‘agreement [among horizontal
13 competitors] to agree to vote a particular way’ to adopt such a policy.”
14 Special App’x 33 (alteration in original); see also id. at 34 n.15 (“Plaintiff also
15 fails to . . . include allegations that those unidentified [remaining members of
16 the FIFA Council] agreed with USSF (or with anyone else) to vote in favor of
17 the Policy.”). Applying this mistaken premise, the District Court concluded

1 that Relevant “fails entirely to allege any facts suggesting that there was an
2 ‘agreement to agree.’” Special App’x 34.

3 A plaintiff challenging an association rule that governs the conduct of
4 members’ separate businesses need not allege an antecedent agreement to
5 agree. The promulgation of the rule, in conjunction with the members’
6 “surrender[] . . . to the control of the association,” sufficiently demonstrates
7 concerted action. Associated Press, 326 U.S. at 19; see also Anderson v.
8 Shipowners’ Ass’n of Pac. Coast, 272 U.S. 359, 363 (1926) (“The absence of an
9 allegation that such was the specific intent is not important, since that is the
10 necessary and direct consequence of the combination and the acts of the
11 associations under it . . .”). Here, Relevant alleges that the national
12 associations, leagues, and teams have “surrendered [their] freedom of action
13 . . . and agreed to abide by the will of the association[.]” Anderson, 272 U.S. at
14 364–65. That is enough. See Board of Regents, 468 U.S. at 99 (“By
15 participating in an association which prevents member institutions from
16 competing against each other . . . the NCAA member institutions have created
17 a horizontal restraint . . .”); Amicus Br. of the United States at 11–12
18 (“Because the member has already agreed to abide by all association rules,

1 there would be no need for the member to agree to any particular rule to be
2 bound by it.”).

3 This conclusion comports with our decisions in NASL and AD/SAT. In
4 NASL, plaintiffs alleged an “overarching conspiracy” instead of challenging
5 “the Standards themselves.” 883 F.3d at 41. And in AD/SAT, plaintiffs
6 challenged an inferred policy as opposed to any specific written or
7 promulgated policy. See 181 F.3d at 233. Here, by contrast, Relevant
8 challenges a specific policy—the “policy embodying the anticompetitive
9 market division agreement” adopted by “the FIFA Council” on “October 26,
10 2018.” App’x 502. In this circumstance, the “promulgation of [the policy]
11 constitute[s] direct evidence of § 1 concerted action.” NASL, 883 F.3d at 41.⁷

12 FIFA and USSF defend the District Court’s decision against Relevant’s
13 attacks by urging that the 2018 Policy is not direct evidence of concerted
14 action. First, they contend that Relevant forfeited or waived its direct

⁷ The District Court also observed that “Plaintiff in this case is not challenging FIFA’s standards as a whole, but merely the impact of a single FIFA Policy.” Special App’x 32 n.12. That distinction, presumably based on the words “in totality” in NASL, is immaterial. Neither NASL nor any other precedent of which we are aware requires a plaintiff to challenge an association’s entire set of by-laws. Cf., e.g., Associated Press, 326 U.S. at 9 (determining whether particular by-laws of the AP violated antitrust laws).

1 evidence theory by raising it for the first time on appeal. Not so. The
2 amended complaint alleges that “[t]he FIFA geographic market division
3 policy was, and is, a horizontal division of geographic markets agreement.”
4 App’x 523. Relevent also advanced this argument in response to the
5 Defendants’ motion to dismiss. See Relevent Sports, LLC’s Mem. of Law in
6 Opp’n to Mots. to Dismiss 34 n.9, Dist. Ct. ECF No. 77 (“Relevent . . . alleges,
7 among numerous other specific allegations, that the market division policy
8 itself is direct evidence of such an unlawful conspiracy.”); Tr. of Oral Arg. on
9 Mots. to Dismiss 35, Dist. Ct. ECF No. 94 (“[The] main factual allegation” “is
10 that FIFA has a rule that says you can’t play out of your own geographic
11 territory.”). And the District Court also specifically considered and rejected
12 this argument. See Special App’x 32 (“Plaintiff argues that the FIFA Policy
13 itself constitutes direct evidence of . . . [a] common scheme. The Court
14 disagrees.” (alteration in original) (quotation marks omitted)); Jacques v.
15 DiMarzio, Inc., 386 F.3d 192, 201 (2d Cir. 2004) (holding that where “the
16 district court was made fully aware of [a] position . . . and the trial judge
17 discussed and explicitly rejected [the] position in its written opinion on the
18 motion,” “the issue is not waived on appeal”).

1 Next, the Defendants argue that leagues and teams are not members of
2 FIFA, and that the national associations that are members of FIFA are not
3 competitors. But this argument runs headlong into Relevent's allegations,
4 which we must accept as true, that the FIFA Council's decisions bind the
5 various national associations, which in turn bind their respective leagues and
6 teams; that those leagues and teams would otherwise compete with each
7 other for fans and sponsors but dodge competition because FIFA and the
8 national associations enforce the 2018 Policy;⁸ and that, as a result, "[t]he FIFA
9 geographic market division policy has created a barrier to entry which has
10 prevented leagues and teams that do not want to adhere to this policy from
11 competing in the relevant market," App'x 516. Taken together, these
12 allegations clearly depict a rule governing how an association's separate
13 members' separate businesses compete. As Relevent puts it, "[e]ffectively, the
14 National Associations and their respective leagues agreed to stay home, so
15 that each league will be free from competition within its own territory."
16 Relevent Br. 2.

⁸ See App'x 498 (Alleging that "an official season game between La Liga teams in the U.S. would directly compete for fans and sponsors with the official season games of USSF-member MLS, which currently benefits from a monopoly position in the U.S. market").

1 Finally, the Defendants argue that the 2018 Policy was merely a non-
2 binding “sporting principle.” Once again, we consider the allegations in the
3 amended complaint. According to Relevant, “the FIFA Council—one of
4 FIFA’s decision-making bodies with authority to issue policies that each
5 National Association and their member leagues and teams have agreed to
6 follow—adopted a geographic market division policy.” App’x 523; see also
7 App’x 502 (“On October 26, 2018, the FIFA Council adopted a policy
8 embodying the anticompetitive market division agreement at issue in this
9 case . . .”). And “because this was a formal policy announced by a FIFA
10 decision-making body, any leagues and teams who did not comply with it
11 would run the risk of FIFA penalties and all such leagues and teams were
12 required to agree to adhere to this policy.” App’x 523. These allegations,
13 corroborated by the fact that the 2018 Policy does not on its face relate to
14 “things like how many players may be on the field or the time allotted for
15 play,” *Alston*, 141 S. Ct. at 2156, but rather relates to a geographic limitation
16 on where various leagues can compete for ticket sales, plausibly allege that in
17 adopting the 2018 Policy, FIFA and its member associations adopted an
18 anticompetitive geographic market division.

1 * * *

2 The District Court correctly observed that “the FIFA Council
3 announced a ‘policy’ that prohibits staging Official Games outside the
4 participants’ home territory,” and that “all National Associations, leagues,
5 clubs, and players must comply with FIFA directives.” Special App’x 23.
6 Relevent directly challenges the 2018 Policy as anticompetitive. Under these
7 circumstances, the very promulgation of the 2018 Policy is direct evidence of
8 an agreement for purposes of Section 1 of the Sherman Act.

9 **CONCLUSION**

10 For the foregoing reasons, we **VACATE** the judgment of the District
11 Court and **REMAND** for further proceedings consistent with this opinion.