

DraftKings and FanDuel Call Off Merger Following FTC Intervention

Article By:

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On July 13, 2017, daily fantasy sports providers DraftKings and FanDuel announced their decision to call off their proposed merger. Last month, the United States District Court for the District of Columbia issued a temporary restraining order, blocking the proposed merger until a decision can be reached regarding the complaint filed by the Federal Trade Commission (FTC). The FTC's complaint alleges that the merger would [create a monopoly in the market for paid daily fantasy sports contests](#) in violation of Section 7 of the Clayton Act.

The primary point of contention for the FTC's [complaint](#) is the definition of the daily fantasy sports market. The FTC's complaint argues that daily fantasy sports (DFS) is a distinct market from that of traditional fantasy sports, and that the DraftKings/FanDuel merged entity would constitute 95% of that market. However, if the DFS and traditional fantasy markets were characterized as a single market, the market share of DraftKings and FanDuel combined would be less than 5%. While attempting to delineate the relevant market, the FTC's complaint highlighted numerous distinctions between paid DFS and traditional season-long fantasy sports, such as the duration of the contests, the money involved, and how athletes are allocated to participants' lineups.

In a [statement](#) following the announcement by the two DFS providers, FTC Bureau of Competition Acting Director Markus H. Meier stated: "The parties' decision to abandon this transaction is a clear win for American consumers. For years, the vigorous competition between DraftKings and FanDuel has spurred innovation and favorable pricing. In brief, consumers benefitted from the intense rivalry between the two leading players in this space. If this merger had been allowed to go through, those benefits would likely have been lost."

The termination of the proposed merger marks another significant development in what has been a busy summer for the DFS industry. At the end of the month of June, state legislatures in both Delaware and New Jersey approved bills to legalize and regulate the DFS industry within their respective states. Both states now join New Hampshire as states with DFS-specific bills awaiting a governor's signature. [Earlier this year](#), both Arkansas and Vermont passed DFS-specific legislation, bringing the total number of states to do so to at least eleven.

Meanwhile, the sports betting industry is awaiting a challenge to the federal law prohibiting individual states from permitting professional or amateur sports betting, [which the Supreme Court recently](#)

[agreed to hear](#). Connecticut recently became the third state—joining Mississippi and New Jersey—to enact a law that would repeal the prohibition on sports betting within the state, should the federal challenge be successful.

**This blog post was produced with the help of Samuel Swoyer, a summer associate in Sheppard Mullin's Washington D.C. office and a law student at Georgetown University Law Center.*

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