2021

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In *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*,[1] the Federal District Court for the Northern District of California addressed whether the current National Collegiate Athletic Association ("NCAA") rules, which limit the compensation football and basketball student-athletes in Division I athletics receive in exchange for their athletic services, violate federal antitrust law.[2] These challenged NCAA rules were believed to be violating federal antitrust law by limiting compensation student-athletes would receive in exchange for their services in the absence of these limits.[3] The challenged NCAA rules at issue in this case were: 1) limiting the athletics-based grants-in-aid at the cost of attendance; 2) regulating compensation that relates to education, and 3) regulating compensation incidental to athletics participation and unrelated to education.[4] After applying the Rule-of-Reason analysis[5] to the NCAA's compensation limits, the

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1. 375 F. Supp. 3d 1058 (N.D. Cal. 2019).
2. *Id*.
3. *Id*. at 1058.
4. *Id*. at 1066.
5. The Rule-of-Reason Analysis analyzes to a restraint's harm to competition and procompetitive effects. If the restraint's harm to competition outweighs its procompetitive effects than the restraint violates the Rule-of-

Court held that the challenged rules unreasonably restrained trade in violation of Section One of the Sherman Act.[6] As such, the Court correctly held that the NCAA's rules in their current form violated Section One of the Sherman Act[7] by creating limits that are set by the NCAA's monopsony power over student-athletes who wish to compete in the high revenue raising industry of Division I college athletics, without another market to turn to.[8] However, this holding will only remain correct as long as there is continual enforcement of the distinction between college and professional sports in that students-athletes remain students in pursuit of education.[9] Under the less restrictive rules proposed by current and former collegiate football and basketball players bringing action in this case, the distinction between amateur student-athletes and professional athletes should pursue to take place in the NCAA since the alternative new rules accepted by the courts only expand education-related compensation benefits student-athletes receive.[10] Therefore, student-athletes will still only be receiving compensation in connection with their pursuit of an education.[11]

Student-athletes in Division I college sports deserve to be compensated more than the modest benefits the current NCAA rules allow them to receive.[12] The NCAA should increase education based compensation to student-athletes that keep this revenue-producing industry of college athletics growing.[13] The current rules do not allow for this due to the NCAA's horizontal price fixing, and therefore the Court held correctly that they should be changed as to no longer violate Section One of the Sherman Act.[14]

I. THE CASE

The plaintiffs of this case are current and former student-athletes, comprised of individuals who played either Division I Football Bowl Subdivision (FBS) Football or men's and women's Division I Basketball between March 5, 2014 and the

Reason, which then violates Section One of the Sherman Act. *See* O'Bannon v. Nat'l Collegiate Athletic Ass'n 7 F. Supp. 3d 955, 985 (N.D. Cal. 2014).

6. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1109. *See* Sherman Act § 1, 15 U.S.C.A. § 1 (2004).

7. *Id.*

8. In re Nat'l Collegiate Athletic Ass'n. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1066.

9. *Id*. at 1101.

10. *Id*. at 1105-06.

11. *Id*. at 1101.

12. *Id*. at 1110.

13. *Id*. at 1074.

14. Sherman Act § 1, 15 U.S.C.A. § 1 (2004).

present.[15] The Court granted the motion for Rule 23(b)(2) Class Certification, making the relief class for this action inclusive of student-athletes who would be offered, or have already received, a full grant-in-aid.[16] The defendants of this case are the NCAA and eleven of its conferences[17] that compete in FBS Football and Division I Basketball.[18]

The plaintiffs, the student-athletes themselves, first commenced these actions in 2014 and 2015, attacking the NCAA's cap on their grant-in-aid directly.[19] The defendants argued that this attack should be ruled on summary judgment based on the decisions of the Ninth Circuit.[20] The defendants point out the United States Court of Appeals, Ninth Circuit decision in *O'Bannon v. National Collegiate Athletic Association* (O'Bannon II)[21], which would hold the plaintiffs' complaint in this current action invalid if the plaintiffs were found in privity with the parties in *O'Bannon v. National Collegiate Athletic Association* (O'Bannon II).[22] However, the Court ruled that the plaintiffs in this current action were not part of the class of plaintiffs in *O'Bannon v. National Collegiate Athletic Association* (O'Bannon II) [23]. Therefore, it was not enough that both suits had essentially the same cause of action against the NCAA. The Court held that the defendants' motion for summary judgment was not appropriate because the plaintiffs in *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*[24] had raised new antitrust challenges to the NCAA conduct at a new time period, requiring a new Rule-of-Reason analysis under antitrust law.[25]

15. In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1065.

16. *Id*. at 1065.

17. Conference Defendants: Pac-12 Conference (Pac-12), The Big Ten Conference, Inc. (Big Ten), The Big 12 Conference, Inc. (Big 12), Southeastern Conference (SEC), and The Atlantic Coast Conference (ACC) (collectively, the Power Five Conferences); American Athletic Conference (AAC), Conference USA, Inc., Mid-American Conference (MAC), Mountain West Conference, Sun Belt Conference, and Western Athletic Conference (WAC). *See* In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig. 375 F. Supp. 3d 1058, 1064 (N.D. Cal. 2019).

18. In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1061-62

19. In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig., Nos. 14-md-02541-CW, 14-cv-02758-CW, 2018 WL 1524005, at *1-2 (N.D. Cal. Mar. 28, 2018).

20. The Ninth Circuit of the United States Court of Appeals held that allowing NCAA member schools to award grant-in-aid up to their full cost of attendance would be a less restrictive alternative, therefore not violating antitrust laws. *See* O'Bannon v. Nat'l Collegiate Athletic Assoc., 802 F.3d 1049, 1074-76 (9th Cir. 2015).

21. 802 F.3d 1049 (9th Cir. 2015).

22. In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig., 2018 WL 1524005, at *5.

23. *Id.*

24. Nos. 14-md-02541-CW, 14-cv-02758-CW, 2018 WL 1524005 (N.D. Cal. Mar. 28, 2018).

25. *Id*. at *7-8.

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The NCAA conduct being challenged in *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*[26] was the NCAA's interconnected rules that limit the compensation student-athletes may receive for their services.[27] The plaintiffs strive to portray that the rules violate federal antitrust law as they restrain trade in the relevant market, affect interstate commerce, and produce anticompetitive effects.[28] The challenged rules include the NCAA's regulation of compensation that is related to education and the NCAA's regulation of compensation incidental to athletics participation but unrelated to education.[29] Although horizontal price-fixing among competitors is usually in direct violation of federal antitrust laws, the Court decided that there is a need for some regulation and cooperation to market athletics competition.[30] Therefore, the Rule-of-Reason analysis would be done by the Court during a bench trial to determine what regulations those shall be.[31]

During the cross motions for summary judgment, the Court decided the market definition from *O'Bannon v. National Collegiate Athletic Association* (O'Bannon I)[32], would apply for the Rule-of-Reason analysis.[33] This market definition looked to schools as buyers and student-athletes as sellers, with the plaintiffs' antitrust claims being analyzed as a monopsony.[34]

After the United States District Court for the Northern District of California ruled on the defendants' and plaintiffs' cross motions, the Court then scheduled a pretrial conference, followed by a bench trial, to determine if the NCAA rules limiting compensation to the student-athletes in Division I sports in the NCAA produced sufficient anticompetitive effects that unreasonably restrained trade, violating Section One of the Sherman Act[35].[36]

26. 375 F. Supp. 3d 1058 (N.D. Cal. 2019).

27. *Id.* at 1062.

28. *Id*.

29. *Id.* at 1066. The challenged rules are the NCAA's student athlete compensation-cap rules imposing a limit on the cost of attendance for the compensation student-athletes can receive.

30. *Id.*

31. *Id.*

32. 7 F. Supp. 3d 955 (N.D. Cal. 2014).

33. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058 (N.D. Cal. 2019). In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig., Nos. 14-md-02541-CW, 14-cv-02758-CW, 2018 WL 1524005, at *8 (N.D. Cal. Mar. 28, 2018).

34. *See* O'Bannon v. Nat'l Collegiate Athletic Assoc., 7 F. Supp. 3d 955, 986, 991 (N.D. Cal. 2014).

35. Sherman Act § 1, 15 U.S.C.A. § 1 (2004).

36. In re Nat'l Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig., 2018 WL 1524005, at *14-15.

II. LEGAL BACKGROUND

The Sherman Act[37] requires a plaintiff to show three things in order to establish a claim of a violation of antitrust law: (1) there was contract, combination, or conspiracy; (2) agreement unreasonably restrained trade under either per se rule of illegality or rule of reason analysis; and (3) restraint affected interstate commerce. The Courts have applied a Rule-of-Reason analysis when determining if the NCAA has violated antitrust law in their respected market and industry.[38]

A. The Court has usually condemned horizontal agreements among competitors to fix the price for an industry's good or service as unlawful per se.

In 1927, the Supreme Court held a violation of the Sherman Antitrust law could be proven by horizontal agreements among competitors.[39] The Court stated that the power to fix prices was the power to fix unreasonable prices, and therefore agreements among competitors to fix a price or service in a market are usually deemed per se unlawful.[40] The Supreme Court defended this per se approach to the act of horizontal price fixing because the aim of every price fixing agreement between competitors was to eliminate one form of competition, which in effect would directly affect interstate commerce, violating the Sherman Act.[41]

The Supreme Court reiterated this analysis on horizontal price fixing in its decision in *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.* in 1979.[42] The Supreme Court held that the probability that the practices of horizontal price fixing being anti-competitive are so high that it is determined to be as a matter of law illegal per se.[43] Therefore, horizontal price fixing among competitors in an industry may be evidence of actors restricting competition, and consequently could be a violation of the Sherman Act.[44]

37. Sherman Act § 1. OR 15 U.S.C.A. § 1 (2004).

38. *See* Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85 (1984) (applying the rule of reason analysis to an antitrust suit challenging a college athletic association's plan for televising college football games).

39. *See* United States v. Trenton Potteries Co., 273 U.S. 392, 396 (1927) ("The law is clear that an agreement on the part of the members of a combination controlling a substantial part of an industry, upon the prices which the members are to charge for their commodity, is in itself an undue and unreasonable restraint of trade and commerce.")

40. *Id.* at 379.

41. *Id.* at 379.

42. 441 U.S. 1 (1979).

43. *Id*. at 19.

44. *Id.*

B. The Supreme Court has determined that horizontal price fixing in the NCAA's respected market is not an action per se of illegality under the Sherman Act, and therefore a Rule-of-Reason analysis must be applied.

In *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*[45], the Supreme Court found that it would be inappropriate to apply a per se rule of illegality to the NCAA's rules because the horizontal restraints on competition are an important element to the functionality of the industry of collegiate sports. However, emphasized in *O'Bannon v. National Collegiate Athletic Association*[46] (O'Bannon II), it was not that the NCAA rules were presumptively valid as a matter of law, rather the rules should be analyzed under a Rule-of-Reason analysis.[47] The Rule-of-Reason analysis became the test of the NCAA's rules because collegiate sports could not exist without some horizontal agreements, therefore horizontal price fixing agreements cannot automatically be determined to be illegal under the Section One of the Sherman Act[48] for the industry of collegiate sports.[49]

The industry of collegiate sports is an industry that can only be carried out jointly because what the NCAA and member institutions market to its customers is competition itself.[50] In order for competition between the institutions to be carried out and the product of amateur sports to be preserved, there must be rules jointly agreed upon by all institutions who are a part of the competition.[51] It is these mutual agreements the NCAA imposes on its member institutions that in turn have a procompetitive affect by protecting the product of amateur competition.[52] Therefore, the NCAA's horizontal price fixing agreements cannot automatically be determined to be illegal under Section One of the Sherman Act and a Rule-of-Reason analysis.[53]

The Rule-of-Reason analysis, like the *per se* of illegality standard, is designed to see if a NCAA rule has an impact on competition.[54] If the rule has an anti-competitive impact, then the restraint affects interstate commerce, and therefore is not valid under

45. 468 U.S. 85 (1984). *Id.* at 86.

46. 802 F.3d 1049.

47. *Id.* at 1063.

48. Sherman Act § 1, 15 U.S.C.A. § 1 (2004).

49. *See* Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 99-101 (1984) (finding it inappropriate to hold the NCAA's horizontal agreements unreasonable as a matter of law because the NCAA is an industry which horizontal restraints on competition are necessary.).

50. *Id.* at 101.

51. *Id.* at 101.

52. *Id.* at 101-102.

53. *Id.* at 99-101.

54. *Id*. at 103.

Section One of the Sherman Act.[55] However, if the rule is pro-competitive the Court must also determine whether the rule is more restrictive than necessary.[56]

If the rule is too restrictive, then an alternative one will replace it to be valid under Section One of the Sherman Act.[57] However, the Court has also determined that the alternate less restrictive rule must be "virtually as effective"[58] in serving the purpose and tradition of the NCAA's industry, as well as "without significantly increased cost".[59]

C. Collegiate sports under the NCAA are considered a distinct market with its own character and product.

The Supreme Court determined that the NCAA rules are meant to preserve a character and product that is entirely unique to the industry itself.[60] In *O'Bannon v. National Collegiate Athletic Association*[61] (O'Bannon I) the Court held that the qualitative differences between the opportunities in divisions of the NCAA, such as FBS Football and Division 1 Basketball, demonstrate that collegiate sports under NCAA rules is a distinct market itself.[62] This was upheld as the standard in O'Bannon II.[63] This distinct market created one that the Court found to be a type of interstate commerce which needed to be in compliance with the antitrust laws.[64] This market is made up of student-athletes as the sellers and collegiate institutions as the buyers, requiring the exchange between schools and student-athlete recruits to not be one that is anti-competitive.[65]

D. The NCAA rules serve the purpose of preserving the character and product of collegiate sports by keeping the amateur status of student-athletes.

The Supreme Court in *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma* determined that in order to uphold the character and quality of the NCAA, student-athletes must be required to be *students* in pursuit of higher education.[66] A key aspect of the character and product of the

55. *Id.* at 104. *See* Sherman Act § 1. OR 15 U.S.C.A. § 1 (2004).
56. *O'Bannon*, 802 F.3d at 1079.
57. *Id.* at 1075.
58. Cty. of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1159 (9th Cir. 2001).
59. *Id. O'Bannon*, 802 F.3d at 1074.
60. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 102 (1984).
61. O'Bannon v. Nat'l Collegiate Athletic Ass'n, 7 F. Supp. 3d 955 (N.D. Cal. 2014).
62. *Id.* at 987.
63. *O'Bannon*, 802 F.3d at 1056-1057.
64. *Id.* at 1070.
65. *Id.* at 1070. *O'Bannon*, 7 F. Supp. 3d at 991.
66. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 119 (1984).

NCAA, is the amateurism aspect of the student-athletes competing in the market.[67] The NCAA's goal to preserve this character in the market they have created comes with a motivation to appeal to consumers partaking in the markets and to attract students who want to earn a higher education while competing in their sport; an attraction that comes with collegiate athletics rather than professional sports.[68]

The NCAA rules, though wanting to preserve the character of amateurism of collegiate sports, have been determined by the Court to mean that student athletes are still allowed to receive compensation in addition to athletic scholarships.[69] However, the Court has been careful to say that the NCAA's compensation rules should continue to have two pro-competitive purposes to preserve the character in the market the NCAA has created.[70] These purposes include the continuance of combining academics with athletics and preserving an understanding of amateurism that the character and product of the NCAA is centered around.[71]

Though the NCAA is given much deference in its market to the construction of its rules, the Supreme Court has deemed that it does not make such rules presumptively lawful under antitrust law.[72] The NCAA rules that restrict the market to preserve the character of collegiate athletics are lawful, but not every rule is determined to do so.[73] Therefore, a Rule-of-Reason analysis is needed to determine where NCAA rules fall in illegality under section one of the Sherman Act.[74]

The Rule-of-Reason analysis is conducted when there is a claim that a NCAA rule violates antitrust law, however the Rule-of-Reason analysis only requires that the NCAA provide a student athlete compensation in the amount of his or her cost of attendance.[75] According to the NCAA's own rules, a student athlete remains an amateur if the compensation they receive goes to cover educational expenses, allowing compensation of student athletes to still continue the character of the NCAA itself.[76] However, the Court went on to say in O'Bannon II[77] that the difference between offering student athletes compensation for educational reasons is far different than compensation unrelated to educational expenses.[78] This set the Court's

67. *Id.*

68. *O'Bannon*, 802 F.3d at 1073. *O'Bannon*, 7 F. Supp. 3d at 986.

69. *O'Bannon*, 802 F.3d at 1073.

70. *Id.*

71. *Id.*

72. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85 (1984).

73. *Id*.

74. *Id.* at 104. *See* Sherman Act § 1, 15 U.S.C. § 1 (2004) ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.").

75. *O'Bannon*, 802 F.3d at 1079.

76. *Id*. at 1075.

77. 802 F.3d 1049 (9th Cir. 2015).

78. *O'Bannon*, 802 F.3d at 1078.

precedent for viewing NCAA's grant of compensation into a binary concept of compensation for educational and non-educational reasons, in order to keep the character of amateurism in the NCAA consistent.

III. THE COURT'S REASONING

The Federal District Court for the Northern District of California was presented with the task to decide if the NCAA violated federal antitrust law by limiting the compensation student-athletes could receive in exchange for their athletic services in *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation.*[79] After the bench trial, Justice Claudia Wilken held that the current NCAA rules that limited non-cash education related benefits on top of grant-in-aid had anticompetitive effects and unreasonably retrained trade, violating Section One of the Sherman Act.[80]

The Court found that the restriction of non-cash education related benefits was not necessary to preserve the consumer demand for college athletics as a distinct entity from professional sports.[81] The Court used the Rule-of-Reason analysis to determine the competitive significance of the NCAA rules that limited compensation student-athletes could receive.[82] Under the Rule-of-Reason analysis, the Court analyzed the anticompetitive effects of the current rules and whether the plaintiffs were able to demonstrate less restrictive viable alternative rules to them. In doing so, the Court found that that the NCAA has monopsony power over the market of college athletics, and that the challenged rules suppress competition and fix the price of student-athletes' services, creating an abundant amount of anticompetitive effects.[83]

The Court then held that the NCAA was unable to show that the challenged rules' purpose was to bring about any pro-competitive effects because the rules neither promoted amateurism, enhancing consumer demand for college athletics; nor promoted integration of student-athletes with their academic communities, improving the quality of the education the student-athletes received.[84] The NCAA was unable to point to any bylaw that defined amateurism, and already some of the permissible compensation student-athletes received that was related to education was above the cost of attendance.[85] The NCAA presented no explanation for why limits

79. 375 F. Supp. 3d 1058 (N.D. Cal. 2019).

80. *Id*. *See* Sherman Act § 1, 15 U.S.C. § 1 (2004) ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.").

81. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1110 (N.D. Cal. 2019).

82. *Id.* at 1096.

83. *Id.* at 1097.

84. *Id.* at 1098.

85. *Id.* at 1099.

on education-related benefits are necessary to preserve consumer demand of college athletics, with witness testimony confirming that no study of consumer demand had ever been considered when the NCAA made rules about compensation.[86]

Furthermore, the Court held that the NCAA's evidence of the rules promoting integration and improving student-athletes' education was weak, with compensation increasing for student-athletes since 2015 and no separation between student-athletes and other students resulting from it.[87] It was determined that divides amongst students a inevitable and unrelated to the challenged rules of compensation for student-athletes.[88]

The Court held that the alternative rules, allowing the NCAA to continue to limit compensation that is unrelated to education and no longer allowing it to restrict non-cash education related benefits provided on top of grant-in-aid, were as effective as the challenged rules and did not require increased cost to achieve its implementation.[89] Therefore, the alternative rules would continue consumer demand for college athletics by preserving the amateurism of the sports by having the compensation continue to go towards legitimate education related benefits.[90] The Court reasoned that it came to its conclusion separate from O'Bannon II[91] because O'Bannon II was not meant to be read so broadly as to forbid any Rule-of-Reason challenge to any NCCA rule that restricts or prohibits student-athlete compensation.[92] Therefore, every challenged NCAA rule's validity under the Rule-of-Reason analysis must be proved, not presumed.[93]

IV. ANALYSIS

In *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*[94] the Federal District Court for the Northern District of California held that the NCAA's rules limiting non-cash education related compensation to student-athletes, in exchange for their athletic services, resulted in anti-competitive effects in the specified market and therefore was in violation of Section One of the

86. *Id.* at 1101.

87. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1103 (N.D. Cal. 2019).

88. *Id*.

89. *Id.* at 1104.

90. *Id.* at 1105.

91. 802 F.3d 1049 (9th Cir. 2015).

92. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1106.

93. *Id.* at 1106.

94. 375 F. Supp. 3d 1058 (N.D. Cal. 2019).

Sherman Act.[95] However, the District Court also held that the NCAA could continue to limit compensation, paid in addition to the cost of attendance, that is unrelated to education.[96] This case created a binary of compensation for student-athletes in an attempt to put an end to anticompetitive effects of the NCAA's monopsony power while still preserving the procompetitive effect of amateurism the NCAA relies on.[97] This binary concept created is key to preserving amateurism of the student-athletes, a factor that is key to the specific market college athletics is versus its professional sports counterpart.[98]

The Court correctly applied the Rule-of-Reason analysis instead of the *per se* rule of illegality when determining if the NCAA's horizontal price fixing in its market was in violation of Section One of the Sherman Act[99] because the NCAA has always been in its own specified market, requiring horizontal restraints to keep up consumer demand of collegiate athletics.[100] By applying the Rule-of-Reason analysis, the NCAA is given notice that just because they are in a specific market, does not mean they are able to get away with rules that have an anticompetitive impact or rules that are too restrictive in their means to preserve the pro-competitive effects of collegiate athletics.[101]

A. Limiting compensation related to education of student-athletes to be at the maximum of grant-in-aid is not required to preserve the amateur status of student-athletes.

The amateur status of student-athletes is a major part of the consumer demand of the collegiate athletics.[102] However, the definition of amateurism that is offered by the defendants as not "pay to play" in *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation* is not one that is specified in the NCAA Division 1 Manual.[103] Furthermore, student-athletes under the rules of the NCAA are compensated with various forms of payment, these various forms found

95. *Id.* at 1058. *See* Sherman Act § 1, 15 U.S.C. § 1 (2004) ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.").

96. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1104.

97. *Id.*

98. *Id.* at 1103-1104.

99. Sherman Act § 1, 15 U.S.C. § 1 (2004).

100. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 85 (1984).

101. *See* O'Bannon v. Nat'l Collegiate Athletic Ass'n, 7 F. Supp. 3d 955, 984-85 (N.D. Cal. 2014) (explaining that NCAA would have the burden of bringing forth evidence of the restraint's procompetitive efforts).

102. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1070.

103. *Id*. at 1071.

and allowed in the NCAA bylaws as "not pay".[104] By the NCAA bylaws listing different forms of compensation that would be considered as "pay" and providing exceptions to that list, it leads to the conclusion that amateurism does not simply mean the disallowance of compensation.[105]

The statement the defendants had made in *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, that preserving the amateurism aspect of collegiate athletics was an important pro-competitive effect of the market created by the NCAA to continue consumer demand, was not an erroneous statement.[106] The Supreme Court had ruled on the character and quality of the NCAA being one that stemmed from the amateurism of the players, differentiating it from professional sports.[107] However, another part of the attraction of amateurism for collegiate athletics is that student-athletes are pursuing a higher education in return for their athletic services.[108] This aspect of amateurism logically concludes that there should be different limits for compensation related to education and compensation unrelated to education, a concept the court found *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation.*[109]

The NCAA rules in effect before this case had anti-competitive effects as they constituted as horizontal price fixing enacted with the NCAA's monopsony power, which harmed student-athletes by depriving them of compensation for their service they would have otherwise received for their athletic services.[110] The NCAA rules as they stood before horizontally price fixed by putting a cap on athletics-based grant-in-aid at the cost of attendance and limiting the noncash education related compensation of student-athletes.[111] The new alternative rules *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation* will keep the distinction between student and professional athletes while also allowing price competition to exist as a key aspect of recruiting student-athletes in NCAA Division I sports, therefore no longer violating Section One of the Sherman Act[112]

104. *Id.*

105. *Id.* at 1071-1075.

106. *Id.* at 1070.

107. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 101-02 (1984).

108. O'Bannon v. Nat'l Collegiate Athletic Assoc., 802 F.3d 1049, 1073 (9th Cir. 2015).

109. *See* In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1103-1104 (describing procompetitive effects of the compensation scheme as including limits on compensation and benefits unrelated to education and limits on cash or cash-equivalent educationed-related awards and incentives for academic achievement or graduation).

110. *Id*. at 1109.

111. *Id*. at 1066.

112. Sherman Act § 1, 15 U.S.C.A. § 1 (2004).

by doing away with the NCAA's horizontal price fixing under its monopsony power.[113]

The NCAA rules in effect before this case were ones that had anticompetitive effects and too restrictively furthered the procompetitive justification of preserving amateurism in collegiate athletics.[114] By limiting the noncash education related compensation of student-athletes, the NCAA was creating an unnecessary structure of horizontal price-fixing that did not impact the amateur status of student-athletes since this type of compensation received by student- athletes was for pursuit of their higher education, the very aspect that attracted consumer demand in the first place.[115] Therefore, the alternative rules adopted were not considered to effect the amateurism of student-athletes, preserving the very aspect of collegiate athletics that resulted in higher consumer demand.[116]

B. The Rule of Reason Analysis is an important function of section one of the Sherman Act to prevent the NCAA from having unnecessary monopsony power in a market that calls for some horizontal restraints of competition to further the very industry of collegiate sports itself.

The Supreme Court correctly had held that Division 1 collegiate athletics controlled by the NCAA is in itself a type of interstate commerce.[117] Though collegiate athletics is its own type of market with a certain need for a degree of monopsony power to keep the integrity of the industry itself, the Court still found that the market of collegiate athletics needs to be kept compliant with antitrust laws.[118] By turning to the Rule-of-Reason analysis for NCAA rules, the NCAA was not able to make rules that were presumptively valid as a matter of law, but instead had to prove that it neither had an anticompetitive impact nor was more restrictive than necessary to satisfy its procompetitive justifications.[119] This analysis allows for the NCAA's rules and regulations to stay in check of antitrust laws, investigating the impact of competition, while still allowing the functionality of the market of collegiate athletics to continue.[120]

113. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1109.

114. *Id*. at 1097-98.

115. *Id*. at 1099-1100.

116. *Id.* at 1099-1100.

117. In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d at 1109.

118. O'Bannon v. Nat'l Collegiate Athletic Assoc., 802 F.3d 1049, 1070 (9th Cir. 2015) (finding that the NCAA compensation rules have a significant anticompetitive effect on college education market because it fixes an aspect of the price that recruits pay to attend school).

119. *Id.* at 1079.

120. *Id*.

A major component of the NCAA's procompetitive justifications is amateurism.[121] The horizontal restraints on competition are an important function of the NCAA rules and regulations in terms of compensation to keep student-athletes and universities in Division I collegiate athletics from participating in types of agreements that would inevitably result in student-athletes accepting money beyond an amateur status.[122] However, Division I collegiate athletics are a market made up of interstate commerce, so it is important to ensure that anti-competitive effects do not occur.[123] This is why the Rule-of-Reason analysis the court applied in *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*[124] resulted in a balancing act of preserving amateurism of collegiate athletics, while also creating rules that allow student-athletes to be compensated adequately for the services they provide to such a huge industry created by the NCAA.

V. CONCLUSION

In *In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*[125], the Federal District Court for the Northern District of California held that the restriction of noncash education related compensation on top of grant-in-aid was in violation of Section One of the Sherman Act.[126] The Court correctly held that amateurism in an important aspect of the consumer demand of collegiate athletics, and should be preserved as a pro-competitive justifications to keep the integrity and functionality of the industry.[127] However, the key to amateurism is not that student-athletes are forbidden from receiving compensation, but instead that the compensation received was in furtherance of the pursuit of higher education.[128] The noncash education related compensation the NCAA's rules limited, prior to the outcome of this case, clearly were not necessary to keep the pro-competitive justification of amateurism continued in collegiate athletics.[129] After applying the Rule-of-Reason analysis, it was clear to the Court that such a restriction was in violation of Section One of the Sherman Act[130] and that the alternative rules

121. *See supra* Part IV Section A.

122. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 85 (1984).

123. *Id*.

124. 375 F. Supp. 3d 1058 (N.D. Cal. 2019).

125. *Id*. at 1058.

126. *Id*. *See* Sherman Act § 1, 15 U.S.C. § 1 (2004) ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.").

127. O'Bannon v. Nat'l Collegiate Athletic Ass'n, 7 F. Supp. 3d 955, 987 (N.D. Cal. 2014).

128. *Id*. at 986.

129. *See supra* Part IV.

130. Sherman Act § 1, 15 U.S.C. § 1 (2004).

to no longer allow such restriction was necessary for the market of NCAA to fall within compliance of antitrust laws.[131]

131. *See* In re Nat'l Collegiate Athletic Assoc. Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1110 (N.D. Cal. 2019). ("Restricting non-cash education-related benefits and academic awards that can be provided on top of a grant-in-aid has not been proven to be necessary to preserving consumer demand for Division I basketball and FBS football as a product distinct from professional sports")