The Use of Empirical Research to Understand Antitrust Cases Involving Sports Leagues

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In the community of academic scholarship, legal research has been a distinctive niche that has garnered much criticism and skepticism. Legal scholarship traditionally is based on normative research which requires the scholar to engage in methods of interpretation and rhetoric (Goldsmith & Vermeule, 2002). Empirical legal research seeks to use and apply quantitative analysis and social science techniques to legal problems and issues (George, 2006). Its roots can be traced back to the theory of legal realism (Tamanaha, 2009). While many legal scholars have viewed empirical research and legal research as two mutually exclusive categories, empirical research is a tool that legal scholars can use to uncover the external factors that influence judges’ decisions (Tamanaha, 2009). Empirical research can allow scholars to detect trends and patterns in judicial decisions and determine how politics, society and rulings influence one another.

For this study, a thorough review of literature was conducted to examine empirical studies on antitrust law. The results revealed that the number of empirical studies concerned with antitrust law is slim, but the inherent vagueness of antitrust law begs for empirical research to uncover the nuances and factual underpinnings of judicial decisions. Posner conducted a rather limited study of the characteristics of antitrust cases in 1970. His revealed a pattern of antitrust enforcement against private entities (Posner, 1970). A similar, more recent study conducted by Salop and White (1985) also empirically analyzed antitrust cases. Salop and White’s study was more extensive in that it examined the trends in antitrust cases regarding subject matter, the parties involved, monetary award, and other characteristics (Salop & White, 1985). While both studies provide some insight into the enforcement of antitrust law, they did not address the content of the judicial opinions of those cases. Specifically, these studies did not analyze how the courts applied antitrust law to reach their decisions. With the challenges courts have faced in interpreting the Sherman Act, a more detailed analysis of judicial opinions would seem quite beneficial in truly understanding how courts have interpreted and applied antitrust laws. Furthermore, the descriptive nature of these studies did not provide data that could be generalized so that legal scholars and practitioners could better understand how courts would handle future antitrust cases.

Carrier (2009) conducted an empirical antitrust study that went beyond descriptive analysis by evaluating the use of the rule of reason analysis for determining whether conduct was an unreasonable restraint of trade under Section One of the Sherman Act (Carrier, 2009). The study was innovative in its analysis of the content of judicial opinions and the application of the rule of reason. However, the study did not provide a detailed explanation of the methodology and data analysis. Thus, it lacked validity and reliability and was not replicable.

The nature of an industry can influence how law is applied, and an empirical analysis of the characteristics of a particular industry can provide further guidance in the role of antitrust law. The industry of professional sports has been somewhat of a quagmire for courts to deal with under antitrust law. Section One of the Sherman Act makes it illegal for economic competitors to join together to unreasonably restrain trade (Standard Oil, 1911). The unique nature of professional sports leagues requires member teams who would otherwise be economic competitors, to cooperate to some extent in order to produce a product (Board of Regents, 1984). Some commentators have strongly suggested that because of the necessary cooperation, sports league should not be subjected to challenges under Section One (Goldman, 1989). Despite that insistence, the Supreme Court ruled that the necessary cooperation of professional football teams does not exempt it from challenges under Section One (American Needle v. National Football League, 2010). This exposure raises a question: because of the uniqueness of sports leagues, how has their conduct been analyzed under Section One of the Sherman Act?

This study found that empirical research addressing the antitrust law in sports exists, but needs further development. Conversely, there is no dearth of traditional legal research regarding antitrust application in professional sports. The results found that there is a foundation upon which additional quantitative research can...
Grewe conducted a study on the application of the less restrictive alternative, a step in the rule of reason analysis, in professional sports leagues (Grewe, 2002). While her review encompassed all of the federal circuits, there was no empirical methodology to her analysis. Other legal research suggesting how antitrust should be applied to sports or whether it should apply at all, has consisted of persuasive arguments and rhetoric. Unfortunately, the study revealed that no existing research has included an empirical analysis of how courts analyze antitrust cases and what factors matter most in cases involving sports leagues. Specifically, an inquiry regarding antitrust cases involving sports leagues should include a study into what characteristics of a lawsuit are most influential and what step(s) in an antitrust are most important in the judicial analysis. An empirical methodology can uncover patterns and trends that exist in judicial decisions concerning Section One challenges against professional sports leagues. These patterns and trends would assist both legal scholars and practitioners in better understanding the complexities of how courts resolve antitrust disputes. Furthermore, such studies could result in the creation of a scale to measure the likelihood for antitrust rulings and this scale could be subjected to replication and modification.