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# From Enemies to Partners: LIV Golf and PGA Tour Resolve Antitrust Lawsuit Through Merger

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The recent surprise announcement that LIV Golf and the PGA Tour had agreed to settle their hotly contested antitrust lawsuit came as a shock to many, including the golfers who play on the tours. Since the announcement, much of the commentary has centered on the stunning (and, some say, hypocritical) reversal of the PGA Tour's position regarding the involvement of the Saudi Arabian Public Investment Fund and the implications for the players and tournaments in the future. But, from a legal perspective, the announcement raises some interesting antitrust questions. First, a little background.

The dispute between LIV and the PGA began in 2021, when LIV, a startup company funded by the PIF, announced plans to start a new professional golf tour designed to compete directly with the PGA Tour. LIV's plan was to be a "disruptor," creating a new format for elite professional golf events—featuring only 54 holes (LIV is 54 in Roman numerals), 48 golfers per tournament, a team format and, most importantly for players, guaranteed money. LIV then began wooing PGA Tour golfers with promises of nine-figure guarantees (Tiger Woods reportedly turned down $700-$800 million to join the LIV Tour) and fewer events to play.

After months of controversy, several players, including PGA superstars Phil Mickleson, Brooks Koepka, Bryson DeChambeau and others, announced that they would play for LIV. The PGA promptly suspended those players from the PGA Tour indefinitely, barring them from competing in any further PGA Tour events.

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In response, a group of eleven LIV players and the LIV Tour itself sued the PGA for antitrust violations. The plaintiffs alleged that the PGA Tour had an unlawful monopoly over professional golf and was using its monopoly power to stifle all competition in the market for professional golf. In a nutshell, the plaintiffs alleged two different types of misconduct. First, they alleged that the PGA's contracts with its players contained unlawful exclusivity provisions which improperly prevented the players from participating in LIV events (or any other non-PGA Tour events, for that matter). Second, they alleged that the PGA had unlawfully colluded with the DP World Tour (formerly known as the European Tour) to block players from participating in LIV events and to block LIV from scheduling and arranging for its events. The PGA denied these allegations and countersued, claiming that LIV had intentionally interfered with the PGA's contracts with its golfers.

The litigation was, of course, hotly contested. The players sought an injunction to force the PGA to allow them to play. They were unsuccessful. The PGA took discovery regarding the involvement of the PIF in LIV and eventually filed amended counterclaims adding the PIF and Saudi royal, Yasir Al-Rumayyan, to the lawsuit. The PIF and Al-Rumayyan filed motions to dismiss those claims, arguing that they are immune from suit in the United States because they are agents of a sovereign foreign government. LIV also lost their claims against the DP World Tour in arbitration in London.

In the meantime, the DOJ opened an antitrust investigation into the PGA Tour based on LIV's allegations and the

PGA Tour announced large increases in prize money and bonus pools, as well as new formats for some events. LIV, for its part, signed a television contract with the CW network and planned a full slate of events for 2023. For all the world, it appeared the parties were entrenched in their positions and would not budge. Until they did.

Although the announcement of the settlement and merger was short on details, the parties apparently intend to create a new unified golf entity which will combine the "business assets" of the PGA Tour, DP World Tour and LIV Tour—including, presumably, the very same exclusive contracts about which the lawsuit complained—into a single, worldwide professional golf tour. The new entity will be funded entirely by the PIF and will be run by Al-Rumayyan and PGA Chairman, Jay Monahan. So, the net effect of this deal is that, instead of three separate elite professional golf tours, the world will now have only one. Which raises the question: Can parties really resolve an antitrust lawsuit claiming an unlawful monopoly by agreeing to join forces and create an even larger monopoly?

The short answer is maybe, maybe not. The lawsuit between LIV and the PGA is a lawsuit between private parties. It is not a class action. So, the parties are free to resolve their case however they see fit. No court approval will be required.

However, the transaction contemplated by the settlement will be subject to antitrust review by the Department of Justice. Most merger transactions with an asset value greater than approximately $111 million must be reported to the DOJ and Federal Trade Commission for pre-merger review. Given that the PIF has reportedly invested more than $2 billion into LIV and the PGA reportedly maintains cash reserves in excess of $250 million, there is little doubt that this transaction will exceed that threshold. Indeed, the DOJ has recently confirmed it will be reviewing the transaction. After submitting the transaction for initial review, the parties typically must wait for at least thirty (30) days before closing the transaction. However, if the DOJ requests additional information or requires changes to the transaction, that period can be extended.

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The DOJ will examine the terms of the transaction to determine whether the intent or effect of the merger will be to stifle competition. If the DOJ has antitrust concerns about the transaction, it can request modifications to the deal to avoid any potentially anti-competitive effects, or it can sue to block the merger.

The fact that the PGA was already subject to a DOJ antitrust investigation makes it likely that the DOJ will closely examine the terms of proposed merger. In recent years, the DOJ has been more aggressive in seeking to block mergers that appear designed to stifle competition. For example, just a few months ago, the DOJ sued to block the proposed merger between Jet Blue and Spirit airlines because of concerns that the two budget airlines were attempting to eliminate competition for the lowest priced air travel. Here, there are similar concerns about the PGA's attempts to stifle competition. Those concerns will likely be magnified by Monahan's statements that one of the benefits of this deal is that it will remove competition between the golf tours. Indeed, the U.S. Senate's Permanent Subcommittee on Investigations has already announced that it has opened its own investigation of the merger, which could create additional complications for the parties.

So, for all the fanfare, it is by no means certain that the announced merger will ever actually occur. Even if the merger does happen, it may look very different than the unified global enterprise that has been described so far. One thing is for sure, though: Professional golf will never be the same.