

# Today's Top Story...Golf?

## From Monopolization to Sportswashing, How the PGA Tour and LIV Golf Have Flipped the Sport on its Head

Will Schlicht

### I. INTRODUCTION

Traditionally, when people think about sports in America, golf hardly comes to mind.<sup>1</sup> Golf has traditionally been a sport watched exclusively by golfers. A non-golfer may find it difficult to enjoy the skill and technique on display from a professional.<sup>2</sup> Additionally, major sports have a knack for controversy. Whether it be allegations of cheating or relational issues in an organization, American sports always give fans something to talk about apart from the game itself.<sup>3</sup> With the exception of Tiger Woods's off-course scandal in 2009,<sup>4</sup> golf usually stays in the background, until the summer of 2022, when the Saudi Arabian backed LIV Golf League ("LIV") formed, turning the eyes of the sports world to golf for the first time in years.<sup>5</sup>

---

<sup>1</sup> Zach Koons, *NFL Had 82 of Top 100 U.S. TV Broadcasts in 2022*, Sports Illustrated (Jan. 06, 2023), <https://www.si.com/extra-mustard/2023/01/06/nfl-82-top-100-american-television-broadcasts-2022-nielsen-ratings>.

<sup>2</sup> Warren Allen, *Why Do People Watch Golf on TV?*, Forbes (July 23, 2012, 12:52pm), <https://www.forbes.com/sites/quora/2012/07/23/why-do-people-watch-golf-on-tv/?sh=74e3d12c4c0c>.

<sup>3</sup> Amber Lee, *15 Most Divisive Issue in Sports Right Now*, Bleacher Report (Jan 24, 2015), <https://bleacherreport.com/articles/2339584-15-most-divisive-issues-in-sports-right-now>, (detailing how, at any given time, several big issues in sports dominate headlines and news cycles).

<sup>4</sup> Maureen Callahan, *The Night Tiger Woods Was Exposed As a Serial Cheater*, Fox Sports (Nov. 25, 2013, 12:32pm) <https://www.foxsports.com.au/golf/the-night-tiger-woods-was-exposed-as-a-serial-cheater/news-story/1e3bf72edb7da804d55b44933de13a8f>.

<sup>5</sup> Zephyr Melton, *What is LIV Golf? A simple primer on the controversial new golf league*, GOLF.com (June 7, 2022), <https://golf.com/news/what-is-liv-golf-primer/>.

**a. Unexpectedly, PGA Players started leaving to join the new league.**

Initially, most players who switched to the upstart league were older and did not realistically have chances of winning on the PGA Tour anymore.<sup>6</sup> The PGA Tour (“the Tour” or “the PGA”) realized the extent of their problem when younger, marquee players defected to LIV over the following year.<sup>7</sup> Tensions rose until June 2023, when the PGA Tour and the Saudi Arabian Public Investment Fund (“PIF”), the ownership group of LIV, announced their merger.<sup>8</sup> Numerous legal questions remain after the merger announcement, specifically what the two leagues will look like if the deal ever finalizes.<sup>9</sup> Similarly, allegations of antitrust by politicians and players alike have made the transaction less clear. Lastly, LIV Golf sheds light on sports washing around the world, and the realization that law to counter investment groups like the PIF from infiltrating American sports do not exist.

**II. ANTITRUST ISSUES SURROUND THE PGA TOUR WHETHER THE MERGER FINALIZES OR NOT**

Antitrust laws like the Sherman Act have been the driving force to execute change in sports.<sup>10</sup> With the potential merger between the PIF and the PGA, two alternative antitrust issues come to the surface. First, the PGA and its limitations on players competing in multiple leagues raises monopoly concerns. Former golfers dropped a lawsuit once the merger agreement arose, but if United States regulators stop the proposal, these arguments may resurface. Second, the

---

<sup>6</sup> Melton, *supra*.

<sup>7</sup> See *Players- Current Rosters*, LIV Golf (<https://www.livgolf.com/player>).

<sup>8</sup> Joel Beall, *PGA Tour, LIV Golf announce surprise merger, will form new 'commercial entity to unify golf'*, Golf Digest (June 6, 2023), <https://www.golfdigest.com/story/pga-tour-liv-golf-peace-merger-2023>.

<sup>9</sup> Mike Dojc, *All Golf Fans Want For Christmas Is A PGA Tour/LIV Golf Merger*, Forbes (Dec. 11, 2023, 6:49 pm), <https://www.forbes.com/sites/mikedojc/2023/12/11/all-golf-fans-want-for-christmas-is-a-pga-tourliv-golf-merger/?sh=4ae97c4f6a82>.

<sup>10</sup> Walter T. Champion, Jr., *Fundamentals of Sports Law § 19:1. Antitrust and sports*, Fundamentals of Sports Law (2023); see also The Sherman Act, 15 U.S.C. §§ 1-38.

merger continues to draw allegations of output limitation, which entails competitors restricting the volume or type of goods available to consumers.

**a. Consequences when sports leagues function as a monopoly against their players.**

Former PGA players brought their lawsuit in the Summer of 2022.<sup>11</sup> Although the plaintiffs dropped this case, an analysis of the antitrust claims remains relevant if the merger is eventually blocked. In *Mickelson*, LIV golfers claimed that the PGA used its power with other tours and the Official World Golf Rankings (“OWGR”)<sup>12</sup> to exile LIV players from competing in any other major golf events.<sup>13</sup> After these players moved to LIV, the PGA suspended them from competing in Tour events and threatened them with lifetime bans.<sup>14</sup> The Plaintiffs asserted claims under sections 1 and 2 of the Sherman Act, alleging that the PGA Tour conspired with other leagues to boycott players and monopolized professional golf.<sup>15</sup>

The District Court of California denied the Temporary Restraining Order (“TRO”) sought by the LIV players.<sup>16</sup> According to PGA Regulations, the Tour’s media rights prohibit players from participating in golf programs not sponsored by the PGA without the prior written approval of the Commissioner.<sup>17</sup> The Plaintiffs in *Mickelson* needed to show irreparable harm by being

---

<sup>11</sup> *Mickelson v. PGA TOUR, INC.*, No. 22-cv-04486-BLF (N.D. Cal. filed Aug. 10, 2022).

<sup>12</sup> The OWGR is a system used to rank the top professional golfers in the world. Golf leagues that wish to have their scores count for the OWGR must comply with certain requirements. *See, OWGR*, Official World Golf Rankings, <https://www.owgr.com/>.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> PGA TOUR Regulations, ECF No. 1-1. The “Media Rights Regulation” – Section V.B.1.b.

excluded from events.<sup>18</sup> By not being able to play in Tour events, golfers lose out on the opportunity to qualify for Major Tournaments the next season.<sup>19</sup>

The Tour supported its position in *Mickelson* with a Texas District Court case.<sup>20</sup> In *Elite Rodeo Association*, members of a rodeo association sued the rodeo sanctioning organization, alleging that bylaws prohibiting members from possessing an ownership interest in a conflicting rodeo association violated sections 1 and 2 of the Sherman Act.<sup>21</sup> The Plaintiffs claimed irreparable harm because they chose between competing in the Professional Rodeo Cowboys Association (“PRCA”) and keeping their ownership interests in the Elite Rodeo Association (“ERA”).<sup>22</sup> The plaintiffs argued that giving up competing meant they would no longer be able to make a living as rodeo cowboys.<sup>23</sup> The Court concluded that the plaintiffs did not show sufficient evidence of irreparable harm because they earned more from their ownership in the ERA as they did competing in the PRCA.<sup>24</sup> The Court held that the plaintiffs could not prove they would be excluded from competing in “open rodeos”, meaning rodeos not run by a governing body.<sup>25</sup> Lastly, the Court reasoned, “In cases recognizing lost playing time as constituting irreparable harm, athletes were entirely locked out of their sports.”<sup>26</sup>

The golfers who moved to LIV, like the plaintiffs in *Elite Rodeo Association*, sued because they were forced to choose between playing for the PGA, and playing for LIV. Just as in *Elite Rodeo Association*, the PGA did not completely ban LIV golfers from playing their sport.

---

<sup>18</sup> *Mickelson* at 5.

<sup>19</sup> See, *What are The Four PGA Major Golf Tournaments*, Keiser University, <https://collegeofgolf.keiseruniversity.edu/what-are-the-four-pga-major-golf-tournaments/> (stating professional golf consists of four major tournaments: The Masters, The U.S. Open, the Open Championship and the PGA Championship; each major has its own governing body and makes decisions on who qualifies to play).

<sup>20</sup> See *Elite Rodeo Association v. Prof. Rodeo Cowboys Association, Inc.*, 159 F.Supp.3d 738, 745 (N.D. Tex. 2016).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 744.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 745.

<sup>26</sup> *Id.*

Every player switching to LIV made significantly more money than they did playing for the PGA. Additionally, LIV golfers can still compete on other tours as well. The Court in *Mickelson* noted that it is difficult for TRO plaintiffs to show irreparable harm when they still compete in their sport, but one league bars them.<sup>27</sup> Many LIV players still compete in major golf championships and other professional tours. They needed to show irreparable harm to the point that the PGA completely banned them from playing their sport professionally, but the plaintiffs could not.

Lastly, LIV Golfers also made antitrust claims because they no longer competed against other top players in the world, most of whom compete on the Tour.<sup>28</sup> This claim is baseless because as of the time of the *Mickelson* claim, half of the top ten players in the world, according to OWGR rankings, played for LIV Golf, and more followed.<sup>29</sup>

**b. The Potential PGA Merger with the PIF and its effect on output of golf for consumers.**

The most influential antitrust case for determining a fan's experience in sports came in 1984. In *Board of Regents v. National Collegiate Athletic Association* ("NCAA"), a study performed in the 1950s indicated that television broadcasts showing college football games adversely affected attendance at games.<sup>30</sup> To combat this decrease, the NCAA planned to allow just one televised game a week in any given geographic area, while limiting each member institution to two televised games per season.<sup>31</sup> In the Supreme Court's decision, Justice Stevens

---

<sup>27</sup> *Mickelson* at 5.

<sup>28</sup> *Id.*

<sup>29</sup> Most notably (and recently), PGA superstar Jon Rahm accepted an alleged \$600 million to make the jump to LIV, see Kyle Porter, *Jon Rahm joins LIV Golf: What the shocking move means for the PGA Tour and the future of the sport*, CBS Sports (Dec. 7, 2023, 7:24pm), <https://www.cbssports.com/golf/news/jon-rahm-joins-liv-golf-what-the-shocking-move-means-for-the-pga-tour-and-the-future-of-the-sport/>.

<sup>30</sup> *Board of Regents v. National Collegiate Athletic Association* ("NCAA"), 468 U.S. 85 (1984).

<sup>31</sup> *Id.*

noted that this constituted an obvious restraint of trade by limiting member universities from freely negotiating their own television contracts.<sup>32</sup> By limiting the quantity of the product, the NCAA therefore limited the output, a major red flag in antitrust law.<sup>33</sup>

While two competing entities merging can constitute an antitrust violation, especially when the entities are the only two major players in an industry, no harm to competing businesses or leagues necessarily results. “Some activities can only be carried out jointly. Perhaps the leading example is league sports. When a league of professional lacrosse teams is formed, it would be pointless to declare their cooperation illegal on the ground that there are no other professional lacrosse teams.”<sup>34</sup> If another major golf league existed that was not a part of this deal, allegations of anti-competitive practices could suffice.<sup>35</sup> The PGA operated as a monopoly in the game of golf long before the Saudi Arabian government became involved. Just as every other major sports league in America, the PGA serves as the predominant league for its sport. While other professional golf leagues exist, eligibility in the PGA rests on talent alone. Only the best golfers play on Tour, and smaller tours do not suffer when the biggest leagues merge. For the same reason, Major League Baseball (“MLB”) does not violate antitrust regulations even though other baseball leagues suffer financially due to the MLB’s popularity.

Additionally, there may be claims of output limitation by scrutinizers of the potential merger. However, unlike in *Board of Regents*, the agreement between the PGA and the PIF will increase the output of golf for fans to experience. Although the merger has been delayed, the

---

<sup>32</sup> *Id* at 2958.

<sup>33</sup> *Id.*

<sup>34</sup> R. Bork, *The Antitrust Paradox* 278 (1978).

<sup>35</sup> *See, DP World Tour, The European Tour*, <https://www.europeantour.com/dpworld-tour/> (discussing the DP World Tour, also known as the European Tour, which is another golf league that holds tournaments around the world and is also a part of the merger and new entity that would control the PGA Tour and LIV Golf).

prevailing theory is that both LIV and the PGA will continue to operate and host tournaments.<sup>36</sup> This means more output for consumers. Both leagues will gain the other's advantages if the merger goes through, giving the PGA access to PIF's investment fund while LIV will gain the PGA's television broadcast rights. On the other hand, the merger between the PIF and the PGA carries the possibility of LIV Golf being discontinued. This outcome opens the door for antitrust liability. By merging and getting rid of one of the products fans have become accustomed to, the PGA would certainly be engaging in output limitation.

### **c. Allegations of Conspiracy between the PGA and other big golf organizations**

Further, a merger investigation by the Department of Justice ("DOJ") includes other big organizations in golf, namely the OWGR, the United States Golf Association<sup>37</sup> ("USGA") and Augusta National Golf Club ("Augusta").<sup>38</sup> While the investigation includes monopolization allegations, it concurrently probes into the Tour's relations with these institutions and possible conspiracy between them.<sup>39</sup> Conspiracy is when two entities join together to suppress competition from a third party.<sup>40</sup> Specifically, the DOJ would like to know whether Augusta or the USGA had anything to do with the LIV Golf boycott.<sup>41</sup> Proving conspiracy between these golf institutions could be easier than proving monopolization against the Tour because it can be established by circumstantial evidence.<sup>42</sup> Nonetheless, LIV faces another hurdle—sports washing.

---

<sup>36</sup> Kyle Porter, *LIV Golf releases 2024 schedule as potential merger between PGA Tour, Saudi Arabia PIF remains in limbo*, CBS Sports (Nov. 22, 2023, 11:04am), <https://www.cbssports.com/golf/news/liv-golf-releases-2024-schedule-as-potential-merger-between-pga-tour-saudi-arabia-pif-remains-in-limbo/>.

<sup>37</sup> See, *USGA*, The United States Golf Association, <https://www.usga.org/>.

<sup>38</sup> See, *The Masters*, Augusta National Golf Club, [https://www.masters.com/en\\_US/course/index.html](https://www.masters.com/en_US/course/index.html).

<sup>39</sup> See Josh Sens, *Why is Augusta National under investigation by the feds? A lawyer explains*, GOLF.com (Oct. 28, 2022), <https://golf.com/news/augusta-national-under-investigation-feds/>. (explaining why Augusta National may be in trouble for antitrust violations).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

### III. AN INTRODUCTION TO SPORTS WASHING

The goal of sports washing is to improve the reputation of the offending entity, by using the popularity of sport to ‘wash’ away poor publicity. Authoritarian states committing human rights abuses most commonly practice sports washing.<sup>43</sup> Countries practiced sports washing long before the term originated. One of the earliest examples involves the 1936 Summer and Winter Olympic Games, where Nazi Germany hosted the events to shape the world’s image of Nazism and boast the “Aryan ideal”.<sup>44</sup> Recent examples include the International Olympic Committee awarding the 2022 Winter games to China, as well as the 2022 FIFA World Cup in Qatar.<sup>45</sup>

#### a. The Saudi Arabian Takeover

Along with the purchase of Newcastle United<sup>46</sup>, LIV Golf, and other sport ventures, the PIF gave soccer star Cristiano Ronaldo \$200 million per year to play for Al Nassr, a new soccer club started by the Saudis.<sup>47</sup> Similarly, tennis superstar Raphael Nadal came under media scrutiny for his business ventures with Saudi Arabia.<sup>48</sup> The Saudis claim their sports investments will help their master plan called “Vision 2030”, a program to diversify Saudi Arabia’s economy beyond

---

<sup>43</sup> Austin Irwin, *EXPLAINER: What is sportswashing and why should we care about it?*, UNSW Australian Human Rights Institute, <https://www.humanrights.unsw.edu.au/students/blogs/what-is-sportswashing>.

<sup>44</sup> Howard Berkes, *Nazi Olympics Tangled Politics and Sport*, NPR (June 7, 2008, 12:01 am), <https://www.npr.org/2008/06/07/91246674/nazi-olympics-tangled-politics-and-sport>.

<sup>45</sup> See Ariella Buckley, *Sportswashing, human rights and the role of sponsors during the Olympic Games*, UNSW Australian Human Rights Institute, <https://www.humanrights.unsw.edu.au/students/blogs/sportswashing-human-rights-sponsors-olympic-games.>; see also Jonathan Calvert, *Plot to buy the World Cup*, The Times (June 1, 2014, 1:01am), <https://www.thetimes.co.uk/article/plot-to-buy-the-world-cup-lvxdg2v717w>.

<sup>46</sup> Rick Kelsey, *Newcastle United takeover: What is PIF, the main owner of the club?*, BBC (Oct. 9, 2021, 6:20am) (explaining that The PIF purchased an 80% controlling interest in Newcastle United, an English Premier League team in 2021).

<sup>47</sup> Joe Prince-Wright, *Cristiano Ronaldo signs \$200 million-per-year deal with Al Nassr; report says Newcastle loan possible*, NBC Sports (May 7, 2023, 9:15am), <https://www.nbcsports.com/soccer/news/cristiano-ronaldo-signs-200-million-per-year-deal-with-al-nassr-report>.

<sup>48</sup> Adam Zagoria, *Rafael Nadal Becomes Ambassador For Saudi Tennis Amid Criticism*, Forbes (Jan. 16, 2024, 11:35am), <https://www.forbes.com/sites/adamzagoria/2024/01/16/rafael-nadal-becomes-ambassador-for-saudi-tennis-amid-criticism/?sh=6e8e529e17ca>, (highlighting the criticism Nadal received for taking on a role promoting tennis in Saudi Arabia and opening a tennis academy there).



oil.<sup>49</sup> Behind the scenes, purported actions by Saudi Arabian Crown Prince Mohammed bin Salman and his officials give the country a terrible reputation. The most alarming of these came in a 2018 CIA report, where the Prince allegedly approved the killing of journalist, Jamal Khashoggi.<sup>50</sup> Following worldwide criticism of these events, Saudi Arabia ramped up its investment into sports.<sup>51</sup>

The Saudi Arabian human rights reputation make it difficult to believe that “Vision 2030” is merely a diversification attempt. Moreover, it comes as no surprise that Saudi officials have aggressively denounced allegations of sports washing.<sup>52</sup> Taking the timeline of events into account, it is not a coincidence that their investments in sports have only increased as scrutiny of their human rights violations heightened. As lucrative sports deals and tourism ventures have made Saudi Arabia attractive for visitors, Saudi Arabia ironically draws more attention to its human rights violations. Sports washing, though intended to divert attention away from a country’s misdeeds, can draw attention to the very violations a country seeks to downplay.<sup>53</sup> The Saudis and the PIF have become synonymous with sports washing, making it even harder for them to achieve their real goal—take people’s focus away from corruption. For this reason, the Saudis and LIV Golf continue to lose money, but they do not care if they profit. With sports

---

<sup>49</sup> See *VISION 2030: THE LYNCHPIN OF SAUDI ARABIA’S UNPRECEDENTED ECONOMIC TRANSFORMATION*, International Banker (Jan. 16, 2024), <https://internationalbanker.com/finance/vision-2030-the-lynchpin-of-saudi-arabias-unprecedented-economic-transformation/>.

<sup>50</sup> Grace Segers and Kathryn Watson, *Intelligence report finds Crown Prince Mohammed bin Salman approved operation “to capture or kill” Jamal Khashoggi*, CBS News (Feb. 26, 2021, 6:59pm), <https://www.cbsnews.com/news/jamal-khashoggi-killing-mohammed-bin-salman-intelligence-report/>.

<sup>51</sup> Noah Berman, *Saudi Arabia’s Investments Raise Questions of ‘Sportswashing’*, The Council on Foreign Relations (July 13, 2023, 4:58pm), <https://www.cfr.org/in-brief/saudi-arabias-investments-raise-questions-sportswashing>.

<sup>52</sup> See Jon Wertheim, *Saudi Arabia shelling out on sports, athletes amid accusations of sportswashing*, 60 Minutes (June 25, 2023, 7:00pm), <https://www.cbsnews.com/news/saudi-arabia-sportswashing-accusations-60-minutes-transcript-2023-06-25/>.

<sup>53</sup> Michael Rosenberg, *Sportswashing Is Everywhere, but It’s Not New*, Sports Illustrated (Dec. 29, 2022), <https://www.si.com/olympics/2022/12/29/sportswashing-olympics-world-cup-daily-cover>.

washing being their goal, they are fine losing money if they can divert attention from their transgressions.<sup>54</sup>

Lastly, how far the PIF will delve into American sports is unclear, and no current legislation would stop them from investing in more.<sup>55</sup> The approval of foreign investment in the United States requires review by the Committee on Foreign Investment in the United States (“CFIUS”).<sup>56</sup> While the CFIUS could potentially block the PIF from future investment into American sport, they would not have much ground to. The PIF is set up well to comply with American investment regulations.<sup>57</sup> Barring any future legislation that could block the PIF, golf is just the beginning for the Saudi investment in American sports.

---

<sup>54</sup> Paul MacInnes, *‘It’s not a fad’: the truth behind Saudi Arabia’s dizzying investment in sport*, The Guardian (Aug. 12, 2023), <https://www.theguardian.com/football/2023/aug/12/its-not-a-fad-the-truth-behind-saudi-arabias-dizzying-investment-in-sport>.

<sup>55</sup> Davis VanOpdorp, *Sportswashing in 2023: Can it be stopped*, DW (June 13, 2023), <https://www.dw.com/en/sportswashing-in-2023-can-it-be-stopped/a-65897900>.

<sup>56</sup> *The Committee on Foreign Investment in the United States (CFIUS)*, U.S. Department of Treasury.

<sup>57</sup> George Hay and Karen Kwok, *Saudi’s \$700 billion PIF is an odd sort of sovereign fund*, Reuters (Sep 21, 2023, 1:24am), <https://www.reuters.com/breakingviews/saudis-700-bln-pif-is-odd-sort-sovereign-fund-2023-09-21/>.