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The PGA Tour v. LIV Golf: The Antitrust Case

BY ALEXANDRIA CIARDULLO / ON NOVEMBER 9, 2022



Picture by Lo Sarno on Unsplash

There has been controversy in the world of professional golf over recent months with the emergence of LIV Golf. Funded by Saudi Arabia’s Sovereign Wealth Fund, LIV has undergone criticism for being a tool used to “sportswash” Saudi Arabia’s terrible human rights record and improve the image of the Kingdom.¹ Despite these critiques, LIV has managed to entice ten of the world’s top-fifty golfers by offering hundreds of millions of dollars in guaranteed money.²

In response, the PGA Tour has banned players who sign with LIV Golf from participating in its events and renewing their memberships for the 2022-2023 season.³ As PGA Tour events are highly prestigious and of great significance to the legacy of all golfers, the PGA enacted this ban to prevent more golfers from leaving.⁴ As a result of the ban, LIV and 10 of the 24 suspended players have filed a lawsuit in the U.S. District Court for the Northern District of California.⁵ They allege the PGA Tour is using anti-competitive practices to lock up its members and protect its monopoly position.⁶

Prior to the establishment of LIV Golf, if golfers wanted to compete at the highest level, the PGA Tour was their only option.⁷ As a consequence, the tour gained immense power over players and was able to impose restrictions on them, such as their “Conflicting Events Rule” and “Media Rights Rule.”⁸ Under the Conflicting Events Rule, PGA Tour members are prohibited from competing in another golf event on any date where a regular PGA Tour event takes place without formal consent.⁹ The Media Rights Rule

requires players to grant the PGA their sole media rights, limiting their appearance on other live or recorded television programs without approval.¹⁰

The PGA Tour credits the Conflicting Events Rule and Media Rights Rule as key contributors to the growth of professional golf. As a not-for-profit organization, the PGA Tour claims the sale of media rights to sponsors is essential to drive sponsorship and funding into the sport.¹¹ The PGA asserts its relationship with sponsors would deteriorate if it permitted players to golf on more than one tour, as sponsors pay substantial fees to secure players' media rights.¹² These sponsors have independently decided not to associate with LIV and its backers.¹³ If players participated in both tours, the exclusive media rights the PGA promised its sponsors would be broken as LIV has sponsors of its own.¹⁴ This could cause the tour to lose backers essential to its continued success.¹⁵ However, the question remains, do these provisions violate antitrust laws?

Under the Sherman Act, activities that restrict competition are prohibited by federal law. Section One prohibits agreements or conspiracies that restrain trade.¹⁶ Since any contract binding parties to an agreed-upon course of conduct can constitute a restraint on trade, the Supreme Court has limited this restriction to unreasonable restraints that have a restrictive effect on competition.¹⁷ Section Two prohibits "monopolization, attempts to monopolize and conspiracies to monopolize, any trade or commerce."¹⁸ This section is not a complete ban on monopolies but a ban on monopolies acquired through unfairly excluding competitors.¹⁹

LIV Golf's success depends in part on whether they can demonstrate the PGA Tour uses anti-competitive practices to unreasonably maintain control over professional golf. In determining whether the PGA's conduct is reasonable, the court will examine the PGA's actions under the "rule of reason" analysis.²⁰ Under this analysis, the court considers the reasonableness of the restraint on trade in the context of the industry.²¹ This involves considering factors such as the nature of the industry, the history of the restraint on trade, and the reason for its imposition.²² If the restraint has a legitimate purpose, it is justified.²³ If the court finds it impairs competition substantially, they are likely to conclude the restraint is unreasonable.²⁴

Applying federal antitrust laws to professional sports can be challenging as some degree of restrictions are required for the sports to operate successfully.²⁵ This is particularly true for golf, where viewers tune in to see the world's best golfers compete head-to-head in prestigious tournaments. For these tournaments to be successful, rules are put in place to help ensure regular competition among elite players.²⁶ These rules governing players have often come under fire for restraining competition. In *Heldman v. USLTA*, the U.S. Lawn Tennis Association was sued by a competing tour after it barred players who competed in Heldman's tournament from USLTA events. The court upheld the USLTA's decision to ban the players, asserting that "the need for uniform rules governing player rankings and tournament scheduling" was a sufficient justification for the ban.²⁷

This ruling weighs heavily against LIV Golf as the PGA Tour can argue that if competitors were split among leagues, it would be challenging to organize competition among the world's elite players. For example, a debate is currently circulating as to whether LIV golfers will be eligible to compete in the Masters, one of the four major

professional golf championships that invites and showcases the world's top-fifty golfers.²⁸ These fifty golfers are determined by the "Official World Golf Ranking," which awards points that contribute to a golfer's ranking based on their scores in eligible tournaments.²⁹ However, as LIV Golf tournaments are not currently recognized by the Official World Golf Ranking, players on the LIV tour may be ineligible to play in the Masters, irrespective of their level of skill.³⁰ This situation is complicated by the fact that LIV's format is different than other tours. For example, its events are 54 vs. 72 holes, and its field sizes are smaller.³¹ With LIV golfers dropping in the rankings and the Masters now a mere six months away, the situation is becoming urgent.³² Professional golf's four "major tournaments" risk losing their prestige if the world's best golfers aren't there competing. However, without uniform rules for eligibility and consistent play, these tournaments will also not be sure to have the strongest fields.

The most significant hurdle LIV golf and its members are likely to face is establishing that the PGA Tour has irreparably harmed them.³³ The court has already denied the request of certain LIV golfers to grant them entry into the PGA Tour's FedEx Cup Playoffs for failure to demonstrate irreparable harm.³⁴ In coming to this decision, the court noted that those who left the PGA Tour to join LIV Golf are earning significantly more money than they were on the PGA Tour.³⁵ An argument that such players are losing outside sponsorship opportunities is also likely undermined by evidence LIV will have an improved broadcast output with younger fans.³⁶ Further, LIV Golf faces difficulties demonstrating the PGA Tour has a monopoly over competition, given they managed to poach ten of the top-fifty golfers in their first year.³⁷ All these factors struggle to constitute evidence of a league and players that have been harmed, let alone irreparably. Rather, LIV appears to have made a quick and fairly successful entrance into the sport of golf.

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