

# United States Senate

WASHINGTON, DC 20510

June 13, 2023

The Honorable Merrick Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

The Honorable Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Attorney General Garland and Assistant Attorney General Kanter,

We are writing to express our serious concerns regarding the deal announced on June 6, 2023 between the PGA Tour and the Saudi Arabian Public Investment Fund (PIF) to consolidate global golf-related business, including LIV Golf (LIV).<sup>1</sup> The deal, which “enable[s] the Saudi government’s efforts to ‘sportswash’ its egregious human rights record,”<sup>2</sup> raises an array of potential legal and regulatory issues, including relating to the PGA Tour’s non-profit tax status<sup>3</sup> and antitrust law. Today, we write to urge the Antitrust Division of the Department of Justice (DOJ) to closely scrutinize this deal and oppose it if it would reduce competition in violation of the *Clayton Antitrust Act of 1914* (Clayton Act) or the *Sherman Antitrust Act of 1890* (Sherman Act).

On June 6, 2023, the U.S. PGA Tour, PGA European Tour, and Saudi government-controlled PIF announced a deal to “unify the game of golf, on a global basis.”<sup>4</sup> Under the broad terms of

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<sup>1</sup> PGA Tour, “PGA TOUR, DP World Tour and PIF Announce Newly Formed Commercial Entity to Unify Golf,” press release, June 6, 2023, <https://www.pgatour.com/article/news/latest/2023/06/06/pga-tour-dp-world-tour-and-pif-announce-newly-formed--commercial-entity-to-unify-golf>.

<sup>2</sup> Human Rights Watch, “Saudi Arabia: Pro Golf Merger ‘Sportswashes’ Abuses,” June 7, 2023, <https://www.hrw.org/news/2023/06/07/saudi-arabia-pro-golf-merger-sportswashes-abuses>.

<sup>3</sup> The PGA Tour currently does not pay income tax on its revenue as a result of filing under Section 501(c)(6) of the Internal Revenue Code. 26 U.S.C. 501(c)(6). This section requires qualifying organizations not to be organized for profit and its net earnings not to inure to the benefit of any private shareholder or individual, and its continued applicability to the PGA Tour merits further examination. See IRS, “Business Leagues,” <https://www.irs.gov/charities-non-profits/other-non-profits/business-leagues>.

<sup>4</sup> PGA Tour, “PGA TOUR, DP World Tour and PIF Announce Newly Formed Commercial Entity to Unify Golf,” press release, June 6, 2023, <https://www.pgatour.com/article/news/latest/2023/06/06/pga-tour-dp-world-tour-and-pif-announce-newly-formed--commercial-entity-to-unify-golf>.

the deal, the three entities' golf-related commercial businesses and rights would combine under the banner of a new entity – “name TBD.”<sup>5</sup> The sole entity's Board of Directors would be chaired by PIF Governor Yasir Al-Rumayyan, who also would be one of the members of the entity's four-person Executive Committee.<sup>6</sup> The finer points of the proposal remain murky, but, the red flags regarding antitrust concerns are clear.

We have previously been vocal about concerns with the Saudi regime.<sup>7</sup> Saudi Arabia's human rights record is atrocious:<sup>8</sup> the regime of Saudi Crown Prince Mohammed bin Salman Al Saud and his father, King Salman, routinely harasses and harshly prosecutes individuals for peaceful expression or association;<sup>9</sup> executes individuals (including children) for robbery and drug-related crimes after rigged trials, increasingly including through mass executions;<sup>10</sup> and directed the extrajudicial murder of U.S. resident Jamal Khashoggi.<sup>11</sup> The PGA-LIV deal would make a U.S. organization complicit – and force American golfers and their fans to join this complicity – in the Saudi regime's latest attempt to sanitize its abuses by pouring funds into major sports leagues.<sup>12</sup> In the 2022 words of the PGA Tour, in a lawsuit filed before the tour decided to join forces with PIF and LIV, “LIV is not a rational economic actor, competing fairly to start a golf tour. It is prepared to lose billions of dollars to leverage [U.S. golfers] and the sport of golf to ‘sportswash’ the Saudi government's deplorable reputation for human rights abuses.”<sup>13</sup>

Significantly, the deal appears to have a substantial adverse impact on competition, violating several provisions of U.S. antitrust law, regardless of whether the deal is structured as a merger or some sort of joint venture:

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See e.g.*, Letters from Senators Elizabeth Warren, Bernie Sanders, and Mike Lee to the Department of Defense and the Department of State regarding Saudi Arabia's transfer of American-made weapons to al Qaeda-linked fighters, May 14, 2023, <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DoD%20and%20DoS%20on%20Weapons%20Use%20Monitoring%20and%20Civilian%20Harm.pdf>; Letters from Senators Elizabeth Warren, Bernie Sanders, and Mike Lee to the Department of Defense and the Department of State regarding Saudi-led coalition's reckless strikes against civilians in Yemen, September 7, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.09.07%20Letter%20to%20DoD%20and%20State%20re%20Civilian%20Harm%20in%20Yemen.pdf>.

<sup>8</sup> Amnesty International, “Saudi Arabia,” <https://www.amnesty.org/en/location/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/>.

<sup>9</sup> *See e.g.*, The Guardian, “Saudi Woman Given 34-Year Prison Sentence for Using Twitter,” Stephanie Kirchgassner, August 16, 2022, <https://www.theguardian.com/world/2022/aug/16/saudi-woman-given-34-year-prison-sentence-for-using-twitter>.

<sup>10</sup> ABC News, “Saudi Death Penalty Use Has Almost Doubled under Rule of Mohammed bin Salman: Report,” Guy Davies, January 31, 2023, <https://abcnews.go.com/International/report-saudi-death-penalty-doubled-rule-mohammed-bin/story?id=96785686>.

<sup>11</sup> Washington Post, “CIA Concludes Saudi Crown Prince Ordered Jamal Khashoggi's Assassination,” Shane Harris, Greg Miller, and Josh Dawsey, November 16, 2018, [https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d\\_story.html](https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html).

<sup>12</sup> The Guardian, “Money Talks: How Saudi Arabia's Soft Power Project Is Shaking Up Sport,” Sean Ingle, June 7, 2023, <https://www.theguardian.com/sport/blog/2023/jun/07/saudi-arabia-deal-pga-major-step-sportswashing-golf>.

<sup>13</sup> Defendant PGA Tour, Inc.'s Opposition to TRO Plaintiffs' Motion for a Temporary Restraining Order, 2, August 9, 2022, Case No. 5:22-cv-04486.

- Section 1 of the Sherman Act criminalizes actions “in restraint of trade or commerce,” including collusive schemes like price fixing, wage fixing, and market allocation, carrying penalties of up to \$1 million and 10 years imprisonment for individuals, and \$100 million for corporations.<sup>14</sup> The PGA-LIV deal, as described in the June 6 announcement, would be a clear violation if it is a joint venture. It would give the PGA Tour and PIF control over all significant aspects of U.S. commercial golf operations, including contracts with U.S. golfers and their opportunities to compete, television rights, cost of attendance to elite golf events, and merchandise. This is no different from the joint venture between American Airlines and JetBlue that was recently found unlawful by Judge Sorokin in the District of Massachusetts.<sup>15</sup>
- Under Section 2 of the Sherman Act, it is also illegal “to monopolize any part of . . . trade or commerce.”<sup>16</sup> The point of the deal is, as the PGA Tour has stated, “the removal of rivalry,” “to take the competitor off the board,” and “to be able to control the direction going forward.”<sup>17</sup> These public statements unmistakably communicate the PGA Tour’s intentions, which are to monopolize professional golf operations in the U.S. and around the world. This would allow the PGA Tour-controlled entity to wield its monopoly power to further anticompetitive interests, as the PGA Tour has done in the past: as LIV asserted in the context of its antitrust claim against the Tour – which this deal is designed in part to resolve – the PGA Tour has previously taken actions “to crush nascent competition before it threatens the Tour’s monopoly.”<sup>18</sup> A merger also would give the newly formed entity monopsony power over golfers. When LIV was still a threat to the PGA Tour’s dominant position over golf tournaments in the United States, the two were in fierce competition for golfers and offered increasingly higher tournament prizes as a result.<sup>19</sup> This merger-to-monopoly intentionally eliminates LIV as a potential competitor and would likely cause the new entity to reverse the pattern of newly increased tournament prizes for its golfers.
- Section 7 of the Clayton Act prohibits mergers and acquisitions that may “substantially lessen competition” or “create a monopoly.”<sup>20</sup> The PGA Tour brazenly announced the deal as an agreement to “merge commercial operations under common ownership.”<sup>21</sup> While the PGA Tour apparently has attempted to backtrack from its initial statement by

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<sup>14</sup> 15 U.S.C. 1.

<sup>15</sup> *United States v. Am. Airlines Grp. Inc.*, No. 21-cv-11558, 2023 U.S. Dist. LEXIS 87867, \*126-27 (D. Mass. May 19, 2023) (finding the joint venture “immediately and substantially upsets the competitive balance in a highly concentrated industry . . . [and] plainly violates Section 1 of the Sherman Act”).

<sup>16</sup> 15 U.S.C. 2.

<sup>17</sup> PGA Tour, “PGA TOUR Will Experience ‘Meaningful Growth’ from Partnership with DP World Tour, PIF,” press release, June 6, 2023, <https://www.pgatour.com/article/news/latest/2023/06/06/pga-tour-will-experience-meaningful-growth-from-partnership-with-dp-world-tour-pif>.

<sup>18</sup> Amended Complaint, 1, August 26, 2022, Case No. 5:22-cv-04486 (also listing, at pp. 5-6, seven “exclusionary, anticompetitive and unlawful” practices in which the PGA Tour has allegedly engaged).

<sup>19</sup> Axios, “PGA Tour’s ‘Elevated’ Era Begins with More Prize Money,” Jeff Tracy, January 5, 2023, <https://www.axios.com/2023/01/05/pga-tour-elevated-era-start>.

<sup>20</sup> 15 U.S.C. 18.


<sup>21</sup> USA Today, “PGA Tour Says Deal with LIV Golf is Not a Merger. So What Is it? Here’s What We Know,” Brent Schrottenboer, June 9, 2023, <https://www.usatoday.com/story/sports/golf/2023/06/09/pga-tour-liv-golf-merger-definition-antitrust/70304195007/>.

removing the word “merge” from the press release announcing the deal, its impacts cannot be erased:<sup>22</sup> it would result in a monopoly over professional golf operations in the U.S. and potentially beyond.

This deal deserves serious and urgent attention by U.S. antitrust agencies. We urge the DOJ and the Antitrust Division to allocate sufficient resources to closely scrutinize the proposed deal including a careful review of the overt monopolistic goals of the parties and the potential consequences of the PGA Tour and LIV’s complete control over professional golf in the United States.

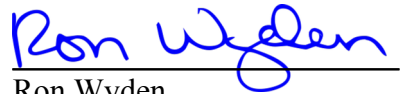
Thank you for your attention to this matter.

Sincerely,



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Elizabeth Warren  
United States Senator



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Ron Wyden  
United States Senator

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<sup>22</sup> PGA Tour, “PGA TOUR, DP World Tour and PIF Announce Newly Formed Commercial Entity to Unify Golf,” press release, June 6, 2023, <https://www.pgatour.com/article/news/latest/2023/06/06/pga-tour-dp-world-tour-and-pif-announce-newly-formed--commercial-entity-to-unify-golf>.