Insight

Golf's LIV and PGA Merger May Not Violate the Clayton Act

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Executive Summary

- The PGA Tour, European Tour, and LIV Golf agreed to a merger in early June, sparking significant concerns about potential monopolization of the market.
- While this merger should draw scrutiny from regulators, the evidence may suggest that it would not substantially lessen competition because the relevant market is broader than just golf tours—including other live entertainment options—and the procompetitive effects of the merger outweigh the competitive harms.
- As regulators examine the transaction, they should carefully consider the competitive restraints on the merged entity rather than targeting the merger simply due to the resulting size of the combined firms.

Background

The PGA Tour, European Tour, and LIV Golf agreed to a merger in early June, sparking significant concern about potential monopolization. LIV Golf, a Saudi-backed upstart golf brand, made headlines in 2022 debuting a new tournament with several high-profile golfers lured away from the established PGA Tour. As more players departed for LIV, the PGA Tour began to invest more into their product. After months of competition, the two tours, along with the European Tour, recently agreed to merge into a single entity to combine resources and create a singular product for fans.

On its face, this merger appears to create a monopoly: Where once there were two or three major tours for U.S. golf fans to follow, there would now be but one. And indeed, the competitive pressures from a rival golf firm drove changes to the PGA that many would argue improved the product.

The American Action Forum's (AAF) Fred Ashton published an insight arguing just that, laying out the case that the merger would violate Section 7 of the Clayton Act. While courts may ultimately agree, regulators should carefully consider the actual competitive pressures in the market, as this agreement may not, in fact, violate federal law: the market is much broader than professional golf tours, and the merger allows the firms to compete with other live entertainment options.

This insight presents an alternative case for regulators to consider as they evaluate the transaction. Most important, regulators and Congress should view this transaction through an economic lens, focusing on actual competitive effects rather than simply targeting the merger due to the resulting size of the combined entity.

Section 7 of the Clayton Act

Section 7 of the Clayton Act prohibits mergers and acquisitions that substantially lessen competition or tend to create a monopoly. As a baseline, antitrust regulators traditionally seek to identify and challenge competitively harmful mergers while avoiding unnecessary interference with those that are competitively beneficial or neutral. While the Biden Administration has departed from this view, reviewing courts still consider competitive effects when evaluating potential mergers. That said, if the merger would create a monopoly in a relevant market, courts would likely find it violates the Clayton Act.

If the relevant market were simply professional golf tours, this merger would almost undoubtedly violate the Clayton Act, as the merged firm would control 100 percent of the market. The relevant market, however, may be broader than professional golf tours, and perhaps include options such as live alternative sports and entertainment more broadly.

When examining a relevant market, regulators examine the substitutability of differing products. If the only firm that produces Widget A can extract monopoly rents on Widget A, then Widget A is the relevant market, as no other widgets exist for consumers to substitute for Widget A. If the firm cannot extract monopoly rents, it suggests Widget A may be a subset of a larger market for which alternatives exist: Even though only one firm produces Widget A, it isn't a monopoly because consumers can choose Widget B.

While some golf fans may be unlikely to switch to alternatives, other golf fans and advertisers may choose to replace golf with sports such as baseball, Formula 1 racing, or professional wrestling. As these alternatives allow for substitutability, the ability for a combined golf tour to extract monopoly rents is diminished. Further, a tour represents only a portion of the interest in professional golf, and many of the most watched tournaments have no affiliation with a tour, again indicating that professional golf tours may not be the relevant market a court would consider.

There may be a significant captured group of advertisers and consumers that cannot reasonably switch to alternatives options, and in that case a relevant market could be narrowed to professional golf tours. But that question must be carefully examined by regulators before determining whether to bring a case, as there are many reasons to believe a larger relevant market exists.

Competitive Effects

Assuming the relevant market is larger than professional golf tours and the subsequent concentration in the broader market is relatively low, regulators may also look to the competitive effects of a merger.

A key argument against this merger is that LIV Golf acts as a maverick firm, radically changing the behavior of the PGA Tour. Regulators often worry that the loss of a maverick firm will harm competition because of the disruptive role it plays in the market, which in turn benefits consumers. If the firms merge, this competitive pressure will be lost.

Yet the PGA Tour made these changes in response to a firm with significant funding. If the firms merge, the resulting single firm could sustain the PGA Tour's changes to the benefit of consumers and advertisers. While a broader theory of "failing firm" wouldn't apply because the PGA Tour can continue to operate absent the deal, the PGA Tour will probably not sustain these changes without the merger, suggesting there are procompetitive benefits to the transaction that could be lost if the merger is blocked.

For example, the merged tours could keep similar structures that appeal to fans *and* include all the world's best golfers. Courts may find that fans would be able to tune into a single tour, rather flipping between two or three, making for a more complete and enriching viewing experience, and advertisers could reach a larger audience through one firm, rather than having to pick and choose between the two tours, or paying for both. This, in turn, allows the combined entity to better compete with alternative forms of sports and live entertainment, driving behavioral changes in those alternatives as well. If the benefits produced by the merger persuade more fans to tune into golf, players could make more money as advertisers reach a larger audience and fans get a superior product. Ultimately, the courts could find that competition as a whole would be improved and consumers would be better off.

Importance of Robust Merger Review

This analysis presents one case courts could consider, highlighting that the merger can generate efficiencies and large competitive trends. AAF's Fred Ashton laid out another case in the alternative, arguing that the merger will likely be found to violate Section 7 because it is a merger to monopoly and the significant procompetitive benefits of LIV's entry into the market would be lost.

Such disagreement highlights the importance of robust antitrust enforcement based on economic analysis and a careful examination of the competitive effects of the transaction. The FTC and Department of Justice have the resources and expertise to examine a transaction, fully fleshing out whether alternative products can restrict behavior, as well as the actual competitive effects of the transaction. This is a vital role in markets to ensure that fair competition can continue to drive innovation and growth for consumers.

Yet recent Biden Administration actions suggest that regulators care less about the economic effects of a transaction and more on the inherent size of the created firms. In this view of antitrust enforcement, industry concentration inherently creates a parade of horribles such as inequality, wage stagnation, and even threats to democracy. These claims, however, ignore the significant benefits that come with size and integration of different products and services, and often rest on shaky empirical evidence.

Ultimately, the merger between the major golf tours may harm competition, and regulators may block the deal. The facts of the case merit a careful examination of the transaction. But there are reasons to think that this merger will benefit competition, and regulators must examine the transaction through a competitive lens rather than simply looking at concentration in isolation.