ILLUSTRATION: TANIA CHOU

Golf tour merger raises more legal questions than ethical ones

Players who stayed loyal to the PGA Tour could make trouble if they wanted; so could antitrust authorities

BY **STEPHEN CARTER**
BLOOMBERG OPINION

The lawyer in me has two questions about this week's stunning announcement that the PGA Tour and LIV Golf are merging. The ethicist in me has one.

I wonder, first, what is going to happen to the players who rejected the Saudi-backed LIV tour and stayed loyal to the PGA. After all, many of them left millions — in some cases tens of millions — on the table. Now they are being told that the rivals are creating what the parties themselves call "a new, collectively owned, for-profit entity."

Maybe the umbrella organization that is now going to govern the sport should prioritize making up for some of the largesse the players missed because of their loyalty. Otherwise, the new entity might face lawsuits by golfers who believe they were hoodwinked by the PGA and left millions of dollars on the table. Maybe the merger deal would turn out to include a clause setting aside a big pot of money — that formerly tainted and untouchable Saudi cash — for distribution to those who refused to switch.

I know, I know: Typically the economic cost of bad predictions about the future lie quite properly on those who made them. Here, however, the players who rebuffed LIV's advances have a reasonable case that they were misled.

Second lawyerly thought: Remember that pesky antitrust lawsuit filed in September last year by Phil Mickelson and other pros who had defected to LIV? The complaint alleged that the PGA Tour's restrictions on play in unsanctioned events was an illegal use of monopsony power, and that its punishment of players who signed with LIV was forbidden "anticompetitive conduct."

At the time, I wrote that the lawsuit, together with scrutiny by federal regulators, would force the PGA to cave on the effort to ban players who had signed with LIV. However, like everyone else, I never imagined that we would get the O. Henry ending of a merger.

Why not?

Because the merger, too, raises antitrust questions. For instance, would LIV and PGA remain competitors? Or might they come up with some rule that spells out how many tournaments players may (must?) compete in for each? Because if they do not bid against each other, player incomes might actually tumble. After all, the only reason LIV has had to offer so much money is that it is trying to pry pros away from the PGA.

Small wonder that federal authorities reportedly plan to scrutinize the merger. Until about five minutes ago, the feds were investigating the PGA for — well, pretty much the same stuff that Mickelson and his fellow plaintiffs alleged in their suit. Now that the PGA has waved the white flag and agreed to create an umbrella group alongside LIV, authorities are going to look into that too.

True, professional golf has survived antitrust examination before, going all the way back to the 1930s. The last serious threat — an investigation by the Federal Trade Commission during the administration of then-US president Bill Clinton that led to a staff recommendation to take action — died in 1995 under intense pressure from Capitol Hill.

Things are different now. As one observer has said, should Pepsi and Coke undertake a joint venture, we would expect the antitrust folks to be interested. If that sentence makes you wonder how the National Football League and the American Football League got away with their 1966 merger, Congress passed a special antitrust exemption. That is not likely to happen this time around, and not only because we are a long way from the Clinton era. The other reason is the Saudi money in the picture, which is the cause of this week's outraged commentary suggesting that the PGA has sold whatever is left of its soul.

Which leads to my ethical question: Why is anybody surprised that the PGA decided to go for the money? It is a business, and the televised events are marketed to a small but, ahem, rather exclusive clientele. It is no accident that two of the three companies with the greatest number of sponsorship deals with individual golfers are Rolex and NetJets.

The PGA wants to maximize profit, and it is betting that the outrage will fade and the fans will stay.

Do not get me wrong. I am not saying a company cannot draw any ethical lines. Moreover, I have long taken the view that those in the public eye — including professional athletes — carry a special responsibility to comport themselves in ways we would want others to emulate.

However, the PGA is not irrational to bet that golf fans would keep watching. After all, on the very day the merger was announced, the US Department of State was busy trumpeting "eight decades of partnership" with Saudi Arabia and billions in technology, energy and defense deals.

So when the *Los Angeles Times* denounced the deal as "a stunning act of hypocrisy unmatched even in the mercenary world of professional sports," I find myself constrained to disagree. Admitting that they are in it for the money is not hypocrisy. It is the truth.

Stephen Carter, a professor of law at Yale University, is a Bloomberg Opinion columnist. This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

THE **NEW WORLD** ECONOMY

BY **JEFFREY D. SACHS**

How JFK would pursue peace in Ukraine

Former US president John F. Kennedy was one of the world's great peacemakers. He led a peaceful solution to the Cuban missile crisis and then successfully negotiated the Partial Nuclear Test Ban Treaty with the Soviet Union at the very height of the Cold War. At the time of his assassination, he was taking steps to end US involvement in Vietnam.

In his dazzling and unsurpassed "Peace Speech," delivered 60 years ago today at a commencement ceremony at American University, Kennedy laid out his formula for peace with the Soviet Union. Kennedy's speech highlights how US President Joe Biden's approach to Russia and the Ukraine War needs a dramatic reorientation. Until now, Biden has not followed the precepts that Kennedy recommended to find peace. By heeding Kennedy's advice, Biden, too, could become a peacemaker.

A mathematician would call JFK's speech a "constructive proof" of how to make peace, since the speech itself contributed directly to the Partial Nuclear Test Ban Treaty signed by the US and Soviet Union in July 1963. Upon receipt of the speech, Soviet leader Nikita Khrushchev told Kennedy's envoy to Russia, Averell Harriman, that the speech was the greatest by a US president since Franklin D. Roosevelt, and that he wanted to pursue peace with Kennedy.

In the speech, Kennedy describes peace "as the necessary rational end [goal] of rational men."

Yet he acknowledges that peacemaking is not easy: "I realize that the pursuit of peace is not as dramatic as the pursuit of war — and frequently the words of the pursuer fall on deaf ears. But we have no more urgent task."

The deepest key to peace, in Kennedy's view, is the fact that both sides want peace. It is easy to fall into the trap of blaming a conflict only on the other side, and insisting that only the adversary should change their attitudes and behavior, he said.

Kennedy is very clear: "We must re-examine our own attitude — as individuals and as a nation — for our attitude is as essential as theirs."

Kennedy attacked the prevailing pessimism at the height of the Cold War that peace with the Soviet Union was impossible, "that war is inevitable — that mankind is doomed — that we are gripped by forces we cannot control. We need not accept that view. Our problems are man-made — therefore, they can be solved by man."

Crucially, we must not "see only a distorted and desperate view of the other side," he said.

We must not "see conflict as inevitable, accommodation as impossible and communication as nothing more than an exchange of threats," he said.

Indeed, we should "hail the Russian people for their many achievements — in science and space, in economic and industrial growth, in culture and in acts of courage," he said.

Kennedy warned against putting a nuclear adversary into a corner that could lead the adversary to desperate actions.

> **"Let both sides explore what problems unite us instead of belaboring those problems which divide us.**
>
> — former US president John F. Kennedy

"Above all, while defending our own vital interests, nuclear powers must avert those confrontations which bring an adversary to a choice of either a humiliating retreat or a nuclear war. To adopt that kind of course in the nuclear age would be evidence only of the bankruptcy of our policy — or of a collective death-wish for the world," he said.

Kennedy knew that since peace was in the mutual interest of the US and the Soviet Union, a peace treaty could be reached. To those who said that the Soviet Union would not abide by a peace treaty, Kennedy said that "both the United States and its allies, and the Soviet Union and its allies, have a mutually deep interest in a just and genuine peace and in halting the arms race. Agreements to this end are in the interests of the Soviet Union as well as ours — and even the most hostile nations can be relied upon to accept and keep those treaty obligations, and only those treaty obligations, which are in their own interest."

Kennedy emphasized the importance of direct communications between the two adversaries.

Peace "will require increased understanding between the Soviets and ourselves. And increased understanding will require increased contact and communication," he said. "One step in this direction is the proposed arrangement for a direct line between Moscow and Washington, to avoid on each side the dangerous delays, misunderstandings, and misreadings of the other's actions which might occur at a time of crisis."

In the context of the Ukraine War, Biden has behaved almost the opposite of JFK. He has personally and repeatedly denigrated Russian President Vladimir Putin. His administration has defined the US war aim as the weakening of Russia. Biden has avoided all communications with Putin. They have apparently not spoken once since February last year, and Biden rebuffed a bilateral meeting with Putin at last year's G20 Summit in Bali, Indonesia.

Biden has refused to even acknowledge, much less to address, Russia's deep security concerns. Putin repeatedly expressed Moscow's ardent opposition to NATO enlargement to Ukraine, a country with a 2,000km border with Russia.

The US would never tolerate a Mexican-Russian or Mexican-Chinese military alliance in view of the 3,200km Mexico-US border. It is time for Biden to negotiate with Russia on NATO enlargement, as part of broader negotiations to end the Ukraine war.

When Kennedy came into office in January 1961, he stated clearly his position on negotiations: "Let us never negotiate out of fear. But let us never fear to negotiate. Let both sides explore what problems unite us instead of belaboring those problems which divide us."

In his "Peace Speech," Kennedy reminded us that what unites the US and Russia is that "we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal."

Jeffrey D. Sachs is a university professor and director of the Center for Sustainable Development at Columbia University, and president of the UN Sustainable Development Solutions Network. The views expressed in this column are his own.

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