



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1590/4/12/23

BETWEEN:

MICROSOFT CORPORATION

Applicant

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

- and -

ACTIVISION BLIZZARD, INC.

Intervener

ORDER

UPON Mr David Whannel (the “**Proposed Intervener**”) having made an application on 28 May 2023 pursuant to Rule 16 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”) to intervene in these proceedings (the “**Intervention Application**”)

AND UPON the Tribunal refusing permission to the Proposed Intervener on 4 July 2023 (the “**Decision**”)

AND UPON the Proposed Intervener applying for permission to appeal the Decision (the “**PTA Application**”)

AND UPON the Tribunal having considered the PTA Application

IT IS ORDERED THAT:

1. The Proposed Intervener is refused permission to appeal the Decision.

REASONS

1. I refused the Intervention Application on the basis that the Proposed Intervener did not have a sufficient interest in the outcome of these proceedings, as required by Rule 16(1) of the Tribunal Rules. I also based my Decision on concerns about the impact that the Proposed Intervener's inclusion would have on the just and proportionate management of these proceedings, which are highly complex and expedited, under Rule 4 of the Tribunal Rules.
2. The PTA Application states that the Proposed Intervener has an "intense" interest in these proceedings. An "intense" interest is a subjective term not known to law. The question is whether a Proposed Intervener has a sufficient interest for the purpose of Rule 16(1).
3. As evidence of his interest in these proceedings, the Proposed Intervener points to a number of posts on Twitter relating to Microsoft, Activision, and these proceedings. Combined with the information contained in the Intervention Application, it is plain that the threshold question of sufficient interest is not met.
4. The question of what constitutes a sufficient interest has been considered a number of times by this Tribunal – see, for example, *The Durham Company Limited v Durham County Council* [2023] CAT 13, *Sabre Corporation v CMA* [2020] CAT 16, *B&M European Value Retail S.A. v CMA* [2019] CAT 8, and *Flynn Pharma Limited and Others v CMA* [2017] CAT 7. These cases make clear that an interest of a general or indirect nature in proceedings, however intense, is not sufficient to meet the requirements of Rule 16(1).
5. The PTA Application also submits that the Proposed Intervener had, contrary to paragraph 7 of the Decision, communicated with this Tribunal following the Intervention Application. The Proposed Intervener states he communicated with the Tribunal via posts on Twitter between 2 and 12 June 2023.
6. Pursuant to Rule 6 of the Tribunal Rules, as amended by Notice dated 11 November 2019, the address for the filing or service of documents at or on the Tribunal is "The Registrar of the Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square House, London, EC4Y 8AP". Certain documents can be sent to the Tribunal via email (registry@catribunal.org.uk), as set out in section 9 of the Tribunal's Guide to Proceedings, and as provided for in Practice Direction 1/2020.
7. Twitter is not a route for service of documents on the Tribunal. The Tribunal does not conduct correspondence in ongoing proceedings before it via Twitter. The Tribunal Twitter account is merely used to publish notices of a routine and administrative nature, such as livestream access arrangements, website outages and notifications of job vacancies. The Tribunal Twitter account does not receive direct messages, nor are any mentions by other users monitored.

8. I am not satisfied that the Proposed Intervener's grounds of appeal have a real prospect of success, for the reasons given above. I have also concluded that there is not any other compelling reason why permission to appeal should be granted in this case.

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 5 July 2023

Drawn: 5 July 2023