



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1640/7/7/24

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 5 June 2024 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Vicki Shotbolt Class Representative Limited (the “Proposed Class Representative/PCR”) against Valve Corporation (the “Respondent/Proposed Defendant/Valve”). The Proposed Class Representative is represented by Milberg London LLP, Third Floor, Sutton Yard, 65 Goswell Road, London, EC1V 7EN.

The claims which the PCR seeks to combine in these proceedings (the “Claims”) are standalone claims under section 47A of the Act on behalf of around 14 million UK-based consumers who purchased video games designed to be played on personal computers (“PC Games”, or “Games”) and/or additional content (including subscriptions) for such Games such as extra storylines, characters, features or in-game currency (“Add-on Content”), (collectively the “Products”) during the Relevant Period (the period from the Start of the Class Period to date of final judgment or earlier settlement of the Claims). The Class Period is defined in the Collective Proceedings Claim Form (“CPCF”) as the period up to the date of the Collective Proceedings Order in these proceedings: (i) from 4 June 2018, in relation to members of the Class domiciled in England, Wales and Northern Ireland; and (ii) from 1 January 2010 in relation to members of the Class domiciled in Scotland.

According to the CPCF, Valve, which operates Steam, the leading PC Game distribution platform, has committed, and continues to commit, an abuse of a dominant position in breach of s. 18 of the Act (the “Chapter II Prohibition”) and (for the period prior to 31 December 2020) Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) (“Article 102”).

Specifically, the PCR contends that Valve has abused its dominant position by:

- (a) imposing Platform Parity Obligations (“PPOs”) that prohibit publishers, which market PC Games, from selling Products through other distribution channels on better terms than the same Products are available on Steam;
- (b) restricting the ability of users to purchase Add-on Content for games purchased on Steam through other distribution channels (a ‘tying’ or ‘anti-steering’ infringement); and/or
- (c) charging publishers unfair and excessive commission rates for distributing the Products (collectively the “Infringing Conduct”).

The PCR contends that the three abuses constitute a single and continuous infringement, including because Valve’s PPOs and tying/anti-steering restrictions are designed to reduce the competitive pressure to which Steam is subject, so as to enable it to continue charging high commission charges. Absent (i) the PPOs and/or (ii) Valve’s excessive commission rates, the PCR alleges that both commission rates and Product prices would have been lower across the relevant markets, including because publishers would have been free to sell Products through other distribution channels more cheaply than on Steam, and reductions in commission rates would have been passed-on to consumers

through lower prices. It is said that the tying/anti-steering restrictions have exacerbated the effects of those two abuses.

The PCR contends that the Infringing Conduct has increased the prices paid by class members for the Products over the Relevant Period by an aggregate total of £656 million, including interest. The CCPF therefore seeks to recover damages to compensate the proposed class for the loss suffered as a result of such price increases, together with interest.

The Proposed Class comprises:

“All Persons who, during the Class Period, made one or more payments for the purpose of purchasing: (a) PC Games, and/or (b) Add-on Content for PC Games, including subscription payments for PC Games and/or Add-on Content (collectively “Relevant Purchases”).”

The PCR provisionally estimates that there are approximately 9.3 to 14.2 million Class Members falling within the Proposed Class, and that each Proposed Class Member (“PCM”) will recover between £8 and £23 in respect of the purchase of Games, between £14 and £29 in respect of the purchase of Add-on Content, and between £22 and £44 in total.

The PCR submits that it would be just and reasonable for it to act as class representative. In summary, the PCR contends it would act fairly and adequately in the interests the class member (Rule 78(2)(a) for the following reasons:

- (a) Ms Shotbolt has a longstanding interest in and experience of advocating for the interests of consumers who play video games, including minors.
- (b) Ms Shotbolt’s experience will be complemented by an Advisory Panel which consists of individuals with specific expertise in technology, gaming and children and vulnerable consumer’s rights.
- (c) The PCR is supported by a legal team with extensive experience in competition litigation and specifically collective actions.
- (d) The PCR has prepared a comprehensive Litigation Plan which is intended to ensure that the proposed collective proceedings will be effectively and efficiently pursued in the interests of the Proposed Class. The Litigation Plan has been developed with the assistance of the PCR’s legal advisors and a specialist notice and claims management provider. Pursuant to Rule 78(3)(c), the Litigation Plan includes, *inter alia*, the way in which the PCR intends to communicate effectively with the Proposed Class, as well as how it will administer an aggregate award of damages. To this end, the Litigation Plan incorporates a Notice and Administration Plan (“NAP”).
- (e) The PCR will ensure that communications with PCMs will be appropriately tailored to be received/viewed by minors within the Proposed Class – e.g. using language that can be understood by individuals with all education levels.
- (f) Neither the PCR nor Ms Shotbolt are members of the Proposed Class.
- (g) The PCR has entered into a Litigation Funding Agreement to enable it to pay all necessary costs, fees or disbursements, as well as an ATE insurance policy which provides adverse costs cover.
- (h) Ms Shotbolt is not aware of any conflict of interest which prevents her from acting as the sole director of the PCR (Rule 78(2)(b), nor is she aware of any other person seeking to act as the class representative in respect of the same claims (Rule 78(2)(b)).

The CPCF states that the claims are brought on behalf of an identifiable class of persons on the basis that individuals will be able to identify whether they made Relevant Purchases by checking email receipts and/or accounts used for the purposes of PC Gaming (e.g. their Steam or Epic Games Store Account). The PCR contends that it will be straightforward for Valve itself to determine and/or verify whether individuals fall within the Proposed Class with reference to Steam account data it holds.

The CPCF also states that the claims raise the following common issues (the “Common Issues”):

- (a) The definition of the relevant product and geographic markets.
- (b) Whether the Proposed Defendant has at all relevant times held, and continues to hold, a dominant position on the relevant markets.
- (c) Whether the Proposed Defendant abused its dominant position on the relevant markets.
- (d) Whether any abuse[s] of dominance by the Proposed Defendant has caused loss or damage to the Proposed Class Members during the Claim Period.
- (e) If the Proposed Defendant’s abuse of dominance has caused actionable loss, the aggregate quantum of the losses for which the Proposed Class Members should be compensated.
- (f) The rate at which, and the period over which, the Proposed Class Members are entitled to pre-judgment interest.

The PCR submits that the collective proceedings are an appropriate means for the fair and efficient resolution of the Common Issues (Rule 79(2)(a)). In particular:

- (a) All of the main issues in the Claims are Common Issues.
- (b) Collective proceedings are a more suitable way of determining the Claims in contrast to a host of individual claims. It is also the only economically viable and practical means for individual PCMs to obtain redress for the losses they have suffered. The average PCM’s claim value is estimated to be as low as £8 in respect of the purchase of Games, £14 in respect of the purchase of Add-on Content, and £22 in total. In the light of this and given the complex and costly nature of the litigation, it is inconceivable that any, or any material number of, PCMs (including a large number of minors) would bring individual claims. Nor would a traditional book-building exercise to assemble a group claim be practical or proportionate.
- (c) When considered in aggregate, damages are likely to be substantial. The PCR’s expert provisionally estimates that the claim may be worth £656m including interest. The claims are therefore very good examples of the type of claims that the collective proceedings regime is designed to facilitate, as they offer the only practical means of securing compensation for millions of consumers, who would otherwise be left without effective redress.

Although the costs of the proposed collective proceedings are substantial, the PCR submits that they are proportionate to the aggregate value of the claims, the size of the Proposed Class and the fact that it would be a practical impossibility for claims to be brought on an individual basis.

Further, the collective proceedings should proceed on an opt-out basis as it would not be practicable for the Proposed Proceedings to be brought on an opt-in basis in light of the size of the Proposed Class, the average amounts that each PCM is likely to recover and the fact that a substantial number of PCMs are likely to be minors and therefore unlikely to take the steps necessary to opt-in to legal proceedings at the outset.

The relief sought in the Proposed Proceedings is:

- (1) Damages on behalf of the Proposed Class, to be assessed on an aggregate basis pursuant to section 47C(2) of the Act;
- (2) Interest at a rate of 8% per annum (or such other rate as the Tribunal may consider appropriate);
- (3) The PCR's costs; and
- (4) Such further and other relief as the Tribunal may see fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)

Registrar

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