COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1527/7/7/22

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 22 August 2022 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Alex Neill Class Representative Limited ("Ms Neill" or the "Applicant/Proposed Class Representative/PCR") against (1) Sony Interactive Entertainment Europe Limited; (2) Sony Interactive Entertainment Network Europe Limited; and (3) Sony Interactive Entertainment UK Limited (together, "the Respondents/Proposed Defendants/PDs"). The PCR is represented by Milberg London LLP, 7th Floor, 75 Farringdon Road, London EC1M 3JY (Reference: Natasha Pearman and Hadley Zielonka).

The PCR makes an application for a collective proceedings order to commence opt out collective proceedings under section 47B of the Act and Rule 75 of the Rules (the "Application"). The PCR is a special purpose vehicle, incorporated on 30 June 2022, for the specific purpose of pursuing the proposed collective proceedings pursuant to section 47B of the Act against the PDs.

The claims which the PCR seeks to combine (the "Claims") are for loss and damage caused by Sony's breach of statutory duty as a result of its infringements of Article 102 of the Treaty on the Functioning of the European Union ("TFEU") (prior to 31 December 2020), and section 18 of the Act.

According to the Application, the PDs are members of the Sony corporate group ("Sony"). Sony is one of the largest electronics manufacturers, distributors and technology platform operators in the world. In particular, Sony supplies a number of electronic gaming products and services, including the following:

a. it is the exclusive designer and manufacturer of a proprietary range of game consoles, sold under the brand "PlayStation" (or "PS"), the computer hardware that, along with the "PlayStation System Software" (the operating system supplied with the hardware), enables users to play games as well having other functionality;

b. it operates the online gaming platform, the PlayStation Network (or "PSN"), allowing inter alia PlayStation users to play multiplayer games with other players online; and

c. it operates the electronic storefront within the PSN known as the "PlayStation Store" which is pre-installed on all PlayStations (since the launch of the PlayStation 4) and allows users to purchase: (i) digital copies of games to play on their console without the need to own any physical media; and (ii) add-on content for particular games.

The Claims concern the operation of Sony's ecosystem for the PlayStation and, in particular, the system that it has created for the selling of games and add-on content for use on those consoles.

By way of summary, the PCR submits that due to restrictive terms and conditions and/or technical restraints imposed by Sony:

1. Sony does not permit other third-party operating systems to be used on PlayStations or other third-party applications to be used to enable consumers to play games;

2. digital games for use on the PlayStation can only be sold and purchased through the PlayStation Store;

3. associated add-on content can likewise only be sold and purchased through the PlayStation Store; and

4. Sony charges a commission on all purchases of games and add-on content made through the PlayStation Store which has largely been set at 30%.

As a result, game developers and publishers wishing to sell digital games to PlayStation users are compelled to sell via the PlayStation Store; and PlayStation users wishing to purchase digital games have no alternative but to purchase them on the PlayStation Store. Similarly, add-on content must be sold and purchased via the PlayStation Store.

In the premises, the PCR contends that the PDs (collectively or individually):

a. Occupy a position of dominance in each of:

    i. the gaming console market, comprising PlayStation and Microsoft's Xbox (the "Console Market");
    ii. the market for PlayStation System Software (the "PlayStation System Software Market"), in respect of which Sony holds a monopoly;
    iii. the market for the distribution of digital PlayStation games (the "PS Games Distribution Market", in respect of which Sony holds a monopoly);
    iv. the market for the distribution of add-on content for PlayStation games (the "PS Add-on Games Distribution Market", in respect of which Sony holds a near monopoly).

b. Have abused their dominant position by:

    i. imposing an exclusive dealing obligation in the form of digital distribution restrictions which deprive or restrict Sony's customers from accessing alternative sources of digital games and in-game content and which foreclose actual and/or potential competition from other distributors;
    ii. tying Sony's own electronic store for digital games and in-game content to the sale of PlayStation consoles and/or the PlayStation System Software, foreclosing competition; and
    iii. imposing excessive and unfair prices for the distribution of third party published digital games and in-game content and for the supply of self-published digital games and in-game content.

The PCR submits that, by virtue of the abuses of their dominance, Sony has rendered PlayStation digital game users in the UK (and elsewhere) an entirely captive class, reliant on it as the sole source of all PlayStation digital games and the sole source of the vast majority of add-on content. In other words, Sony is the PlayStation digital game user's single essential trading partner for all digital game purchases and the vast majority of add-on content purchases. It has then exploited that market, by setting excessive and unfair commissions and selling prices which bear no relationship to the costs of providing the services in question. That conduct is unlawful pursuant to section 18 of the Act and Article 102 TFEU.

PlayStation users have lost out due to this unlawful anticompetitive conduct. They have paid higher prices, including more commission and, in respect of Sony's own self- published games and add-on content, higher margins, for purchases of digital PlayStation games and add-on content than they would have done under circumstances of normal and effective competition. On a preliminary estimate, aggregate losses suffered by the approximately 8.9 million proposed class members are between £0.6 billion and £5 billion (excluding interest).

According to the Application, the claim is brought on behalf of a readily identifiable class of users of PlayStation, domiciled in the UK or having a UK domiciled personal representative, who have made purchases of digital PlayStation games and add-on content through the PlayStation Store. Those Claims are eligible for inclusion in collective proceedings. Further, those Claims are brought on an opt-out basis for UK domiciled members of the class and on an opt-in basis for non-UK domiciled members of the class.

The "Proposed Class" (and therefore the "Proposed Class Members") for the purposes of the claim consists of: *"All PlayStation users domiciled in the United Kingdom, or their UK domiciled personal representative who, during the Relevant Period, made one or more Relevant Purchases."*

For the purposes of this class definition and as utilised in this Claim Form: "Relevant Period" means the period between 19 August 2016 and the date of final judgment or earlier settlement of the proposed collective proceedings; and "Relevant Purchase" means any purchase of digital games or add-on content from the PlayStation Store for which a PlayStation user pays a charge to access or download in the UK.

All persons who fall within the definition of the Proposed Class and who are domiciled in the UK on the date of domicile to be determined by the Tribunal are proposed to be included in the Proposed Class.

All persons who fall within the definition of the Proposed Class and who are not domiciled in the UK on the date of domicile to be determined by the Tribunal are proposed to be permitted to opt into the proceedings.

The Application states that it would be just and reasonable for the PCR to act as the class representative in the proposed collective proceedings. In summary:

a. The PCR is not a member of the Proposed Class nor is Ms Neill.

b. The PCR's sole director, Ms Neill, has extensive professional experience of consumer welfare issues from her senior role at Which? to more latterly, her role as Chief Executive at The Resolver Group (a consumer technology organisation operating in the complaints and dispute resolution markets). Ms Neill has specific direct experience of running mass consumer awareness and engagement campaigns. In light of her experience, capacity and commitment, Ms Neill would act through the PCR fairly and adequately in the interests of the Proposed Class Members.

c. The PCR has no material interest that is in conflict with the interests of the Proposed Class Members.

d. The PCR is not aware of any other applicant proposed to be the representative in the same claims.

e. The PCR has adequate funding for the claim and will be able to pay the PDs' recoverable costs if ordered to do so. The PCR has entered into a Litigation Funding Agreement with a third-party funder to enable it to pay the costs of the proceedings. The PCR also has in place conditional fee agreements with Milberg and the counsel team.

f. Further:

i. The PCR is not a member of the Proposed Class and so Rule 78(3)(b) applies. The PCR is a pre-existing body, being a company limited by guarantee, that was specifically incorporated on 30 June 2022 for the purposes of commencing and engaging in these collective proceedings in the Tribunal pursuant to section 47B of the Act against the PDs.

ii. The PCR has prepared a Litigation Plan for the proceedings.

iii. Alongside her experienced legal team, the PCR has assistance from:

1. Angeion Group, a company with experience in class action notice and claims administration;

2. Kendal Advisory, a PR firm specialising in Litigation PR; and

3. 89up, who create content and campaigns that engage hard to reach audiences.

iv. The PCR's Litigation Plan and the detailed Notice and Administration Plan prepared by Angeion Group include as required by Rule 78(3)(c):

1. a method for bringing the proceedings on behalf of the Proposed Class Members and for notifying Proposed Class Members of the progress of the proceedings;

2. a procedure for governance and consultation which takes into account the size and nature of the Proposed Class; and

3. estimates of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the PCR shall provide.

v. The PCR has engaged a very experienced consultative group of advisers with specific expertise and experience in gaming industry, consumer policy and vulnerable consumer rights and related matters which impact children and parents/guardians, in order to seek guidance and opinion from subject matter experts to ensure that the Proposed Class Members' interests are considered in the round and represented as fairly and effectively as possible.

The relief sought in these 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. Simple interest thereon, at the rate of 8% per annum (or such other rate as the Tribunal may consider appropriate).

3. The PCR's costs.

4. Such further or 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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