



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

CASE NO. 1377/5/7/20

Pursuant to rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Tribunal Rules”), the Registrar gives notice of the receipt of a claim (“the Claim”) on 8 December 2020, under section 47A of the Competition Act 1998 (the “Act”), by Epic Games, Inc.; Epic Games International S.à r.l.; and Epic Games UK Limited (“Epic”) against Apple Inc. and Apple (UK) Limited (“Apple”). Epic is represented by Clifford Chance LLP of 10 Upper Bank Street, London, E14 5JJ (reference Elizabeth Morony and Ben Jasper).

Epic Games, Inc. is a company incorporated in Maryland in the United States of America (“USA”). Epic Games International S.à r.l. is a company registered in Luxembourg, acting through its Swiss branch office. Epic Games UK Limited is a company incorporated in England and Wales. Epic is in the business of developing video games and software for games consoles, personal computers and mobile devices. Epic is the developer of the computer game, “Fortnite”.

Apple Inc. is a company incorporated in California in the USA. Apple (UK) Limited is a company incorporated in England and Wales. Apple is in the business of designing, developing and selling consumer electronics and computer software, including iPhones and iPads.

According to the Claim, Epic and Apple are party to a Developer Program License Agreement (“DPLA”). The DPLA sets out the terms under which Epic can distribute its video game apps to consumers through Apple’s App Store (the “App Store”).

On 13 August 2020, Epic introduced a direct payment option into the Fortnite app on the App Store. This enabled consumers to pay Epic directly for in-app content instead of using Apple’s payment processor (the “Apple IAP”). On the same date, Apple removed Fortnite from the App Store. On 28 August 2020, Apple terminated the developer account used by Epic to submit the Fortnite app to the App Store.

Epic alleges that Apple is dominant in the iOS app distribution market, and the iOS in-app payment processing market. Epic alleges that by:

- (a) reserving to itself the sole channel for the distribution of apps to and/or the payment processing mechanism for purchases of in-app content for and by consumers who use iPhones and iPads;
- (b) using its position of dominance to charge unfair prices for the distribution of apps via the App Store and/or use of the Apple IAP;
- (c) its response to the introduction by Epic of price competition for purchases of in-app content in Fortnite;

Apple has abused its dominant position contrary to section 18 of the Act and/or Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) and engaged in anti-competitive agreements/concerted practices in the UK and EU contrary to section 2 of the Act and/or Article 101 TFEU.

Epic seeks the following relief from the Tribunal:

1. a declaration that certain terms of the DPLA are unlawful;
2. a declaration that the removal of the Fortnite app from the App Store in the UK and/or the threatened refusal to grant Epic access to Apple’s software was unlawful;

3. an order requiring Apple to restore the Fortnite app and the other apps submitted using the relevant Apple Developer Account to the App Store in the UK;
4. an order preventing Apple from restricting the download of the Epic Games Store on to any Apple device in the UK;
5. an order requiring Apple to remove the restriction on the use of alternative in-app payment processing solutions for apps distributed through the App Store in the UK;
6. an order preventing Apple from making access to the iOS software and/or any other Apple software conditional on the use of the App Store and/or the Apple IAP;
7. an order requiring Apple to reinstate the relevant Apple Developer Account;
8. an order restraining Apple from taking or threatening further action against Epic in relation to certain changes it made to the Fortnite iOS app; and
9. such further or other relief as the Tribunal may think 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, QC (Hon)
Registrar

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