



Neutral Citation [2023] CAT 13

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1577/12/13/23

BETWEEN:

THE DURHAM COMPANY LIMITED
(TRADING AS MAX RECYCLE)

Appellant

- v -

DURHAM COUNTY COUNCIL

Respondent

REASONED ORDER (PERMISSION TO INTERVENE)

UPON The Binn Group (“**TBG**”) having made an application on 21 February 2023 pursuant to Rule 16 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”) to intervene in these proceedings (the “**Application**”)

AND UPON the Tribunal considering the submissions from the Appellant and the Respondent regarding the Application

IT IS ORDERED THAT:

1. The Application be refused.

REASONS

1. The Application sets out that TBG is a company which provides trade waste collection, recycling and waste disposal services for commercial customers throughout Tayside, Central and the North of Scotland. To date, according to the Application, TBG has not seen it as commercially viable to invest in competing in the North of England because of the prices that some councils charge for their trade waste collections. The

Application states TBG is aware that councils in the North of England offer trade waste collection services at less than what it considers the market price and at a level with which any commercial company would find it difficult to compete. TBG submits it has an interest in the outcome of these proceedings as a potential competitor of both the Appellant and Respondent.

2. The Appellant broadly supports the Application, on the grounds that TBG has a sufficient interest in the outcome of proceedings.
3. Although the Respondent is content to assume that TBG has a sufficient interest in the outcome of proceedings, it opposes the Application. The Respondent submits that TBG will not provide any, or any material, added value to the issues in this case. It submits that TBG appears to be taking the same stance in proceedings as the Appellant, and has not explained why its interests are not adequately protected by the position taken by the Appellant.
4. In order to be granted permission to intervene, an applicant must show a “sufficient interest in the outcome” of the proceedings. This has been described as the “threshold question” which must be satisfied before the Tribunal may exercise its discretion to permit an intervention: see, for example, *Sabre Corporation v CMA* [2020] CAT 16 (“**Sabre**”) at [8], citing *B&M European Value Retail S.A. v CMA* [2019] CAT 8 (“**B&M**”) at [9], which itself cited *Flynn Pharma Limited and Others v CMA* [2017] CAT 7.
5. The exercise of this discretion will be carried out in accordance with Rule 4 of the Tribunal Rules, by which the Tribunal shall seek to ensure that each case is dealt with “justly and at proportionate cost”. The Tribunal will also ask itself whether the proposed intervener will provide “added value”: *Sabre* at [14], citing *B&M* at [18] and *Phenytoin (Costs)* [2019] CAT 2 at [11].
6. So far as concerns the threshold question of whether TBG has a sufficient interest in the outcome of the proceedings pursuant to Rule 16 of the Tribunal Rules, I am not satisfied that TBG has such an interest. It is not enough for a person requesting permission to intervene to simply have a general interest in the subject matter of the proceedings.
7. Sufficient reasons must be advanced to allow the Tribunal properly to determine whether a proposed intervener has a sufficient interest and whether allowing the intervention would be consistent with the governing principles set out in Rule 4 of the Tribunal Rules, in particular to ensure that the case is dealt with “justly and at proportionate cost”. The Application does not do that.

8. Even if TBG has a sufficient interest in these proceedings, I do not consider that its presence would add any value to the issues in the Appellant's case or assist the Tribunal in resolving those issues. The Application does not set out how the matters on which TBG intends to offer support are beyond the scope of the material and pleadings filed (or to be filed) by the main parties. The points which the Application indicates TBG wishes to raise could be and are being made by the Appellant. I agree with the Respondent's submissions that the Application does not identify issues of law, statutory construction, or any other legal or factual questions on which it is likely to offer different or additional perspectives to the Appellant.
9. I further note that TBG's participation, even if on a limited basis, would add complexity and cost to the proceedings, which is undesirable particularly in the context of a section 70 review proceeding on a tight timetable. The subsidy control jurisdiction needs to be fast, cheap, and simple, which includes avoiding expanding the scope of such applications unduly.

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 16 March 2023

Drawn: 16 March 2023