



Neutral Citation Number: [2022] EWHC 2139 (TCC)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND
WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Before the Honourable Mrs Justice O'Farrell DBE

BETWEEN:

CAMELOT UK LOTTERIES LIMITED

Claimant

- and -

THE GAMBLING COMMISSION

Defendant

- and -

(1) ALLWYN ENTERTAINMENT LTD
(2) SAZKA GROUP A.S.

Interested Parties

CLAIM NO: HT-2022-000113

BETWEEN:

(1) INTERNATIONAL GAME TECHNOLOGY PLC
(2) IGT GLOBAL SERVICES LIMITED
(3) IGT GLOBAL SOLUTIONS CORPORATION
(4) IGT (UK 3) LIMITED
(5) IGT UK INTERACTIVE LIMITED
(6) IGT UK LIMITED

Claimants

- and -

THE GAMBLING COMMISSION

Defendant

- and -

(1) ALLWYN ENTERTAINMENT LIMITED
(2) SAZKA GROUP A.S.

Interested Parties

JUDGMENT
Hearing date 27 July 2022

1. **MRS JUSTICE O'FARRELL:** This is an application by Allwyn, the interested party, for the court to order that it should be permitted to participate in the substantive proceedings to trial, including the filing of witness evidence and presumably calling those witnesses and then making written and oral submissions at trial.
2. The application is opposed by Camelot and IGT on the basis that Allwyn has no separate interest from the Commission in terms of the substantive matters to be considered by the court at trial, and that Allwyn's continuing involvement should be limited to issues of confidentiality and appropriate remedy, if we get that far, as to which it is accepted that Allwyn should have an opportunity to make submissions on those issues.
3. The starting point is that it is common ground that Allwyn, as an interested party, at least in the Camelot and IGT proceedings, is directly and significantly affected by the decision that the court will be invited to make.
4. It is also common ground that this is a very high value case and also that it is a significant case of public interest regarding the outcome, namely the award of the fourth licence for running the National Lottery.
5. The court has discretion as to whether or not to permit participation of an interested party in a procurement claim and the extent of such participation. The court is not required to follow the practice under CPR 54 for judicial review. It takes account of it but of course there are different factors that might be brought to bear in terms of a public law challenge.
6. This is a Part 7 challenge, subject to the procurement regulations regime, and the court considers this application in that context. The court must take into account the overriding objective, but also is concerned as to whether it is necessary for Allwyn to participate in the way that it seeks to do and whether it is appropriate in the overall circumstances of the case, having regard to any impact on the trial and the ability of the other parties to have a fair and proportionate hearing.

7. The allegation that is made at the heart of this claim, by the claimants in both sets of proceedings, is a challenge to the defendant's evaluation and marking of the respective bids. In particular it is alleged that the defendant should have applied a solution risk factor to the Allwyn application, having regard to cross over risks as between different aspects of the bid; and that Allwyn should have been awarded lower scores in respect of its bid. There is also a recent claim that there was an alleged conflict of interest, in that it is said that one of the defendant's financial advisers undertook some work for Allwyn, creating a conflict of interest.
8. The court is very well aware of the fact that it is not part of its role to independently assess the various competing bids and decide which one it thinks should be the winner. That is not the way in which a procurement challenge works. However, the court has regard to the submission made by Mr Barrett, on behalf of Allwyn, that there is some part to play in considering whether or not, if any breach were to be established, it would have made any difference to the outcome. There are two aspects to that submission.
9. The first is that the claimants are seeking to set aside the award of the licence to Allwyn and obtain declaratory relief, including an order that Camelot should be identified as the successful applicant for the licence. In my judgment, that would not require Allwyn to be permitted to participate substantively in the hearing; it goes to the issue of relief on which Allwyn could be heard as part of the consequential hearing following any trial if breach were to be established.
10. However, I consider there is some force in the second part of Mr Barrett's submission, namely, that the challenge, as currently framed by Camelot and IGT, goes further in that they both attack the viability of the Allwyn bid and identify it as being fundamentally flawed, containing unacceptable risks which give rise to the allegations of breach that are the subject of the challenge. That attack on the adequacy or acceptability of the Allwyn bid does, in my judgment, give Allwyn an interest to protect that is separate to the interest of the defendant.

11. The defendant is simply concerned with explaining the basis on which it approached the competition, evaluated the bids and carried out the marking. It is solely concerned with the competition process and compliance with the regulations.
12. Allwyn has a separate interest in defending the viability of its bid and the risk assessment that should have been made in respect of the same. In the circumstances of this high value case, which everyone is agreed is a significant contract of wide public interest, it seems to me it would be unfair to exclude Allwyn from having the opportunity to call limited evidence and address the court on those issues. Further, it seems to me that Allwyn should also have an opportunity to deal with the alleged conflict of interest because that is a direct attack on Allwyn as much as the defendant.
13. I emphasise that the court is not making any determination as to the ultimate materiality of any of Allwyn's evidence and/or submissions on breach, causation or indeed remedy. At this stage, the court is simply deciding that Allwyn has got over the threshold for establishing that it has a sufficient interest so as to be able to participate in the trial going beyond submissions on confidentiality and remedy.
14. For all those reasons, the court will permit Allwyn to participate in the trial by producing witness evidence, calling witnesses and making written and oral submissions at trial.
15. The court has already canvassed all of the parties on the estimate for trial and Mr Barrett has identified an additional two days that would be necessary. The other parties did not consider that any additional time would be required, but the additional two days has already been built into the trial estimate. Therefore there will be no practical difficulties caused by Allwyn's participation.
16. Both Mr Coppel QC and Mr Moser QC, counsel for Camelot and IGT respectively, submit that it would be appropriate for Allwyn to produce a statement of case so that they know precisely the basis on which Allwyn wishes to call evidence and make submissions to the court. That is a fair and reasonable request to make. It would also ensure that the issues are tightly defined. This is not an invitation to Allwyn, or indeed anyone else, to embark on a far ranging reconsideration of the competition. These

proceedings are already going to be subject to a tight timetable to an expedited trial and there is no time or capacity for the parties to get diverted on to issues that don't matter.

17. So the court will order Allwyn to file a statement of case, a short statement of case, so that its separate issues are identified and the court will, on that basis, permit Allwyn to file its witness evidence and participate in the trial.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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