

Case T-201/04

Microsoft Corp.

v

Commission of the European Communities

(Intervention — Representative association — Article 116(6) of the Rules of Procedure of the Court of First Instance — Application to participate in the written procedure — Unforeseeable circumstances or force majeure — Exceptional circumstances)

Order of the President of the Fourth Chamber of the Court of First Instance,
28 April 2005 II - 1495

Summary of the Order

- 1. Procedure — Intervention — Interested persons — Application to intervene submitted by a representative association in a case raising questions of principle liable to affect its members — Whether permissible
(Statute of the Court of Justice, Arts 40, second para., and 53, first para.)*

2. *Procedure — Intervention — Scope of the procedural rights of the intervener linked to the date of submission of the application to intervene*
(*Rules of Procedure of the Court of First Instance, Arts 115(1) and 116(2), (4) and (6)*)
3. *Procedure — Intervention — Limitation of the procedural rights conferred on an intervener who submitted his application more than six weeks after publication in the Official Journal of the notice of initiation of the action — Exceptions — Unforeseeable circumstances or force majeure — Definition — Withdrawal of another intervener — Not included*
(*Statute of the Court of Justice, Art. 45, second para., Rules of Procedure of the Court of First Instance, Arts 99 and 115(1)*)

1. The second paragraph of Article 40 of the Statute of the Court of Justice, which, pursuant to the first paragraph of Article 53 thereof, is applicable to the procedure before the Court of First Instance, provides that any person establishing an interest in the result of a case other than a case between Member States, between institutions of the Communities or between Member States and institutions of the Communities is entitled to intervene in that case.

the effectiveness and proper course of the procedure.

(see paras 25-26)

Such an interest is established by a representative association whose object is to protect its members and which applies to intervene in a case raising questions of principle liable to affect those members. That broad interpretation of the right to intervene is intended to facilitate assessment of the context of cases while avoiding multiple individual interventions which would compromise

2. It is apparent upon reading Article 115 (1) together with Article 116(2), (4) and (6) of the Rules of Procedure of the Court of First Instance that the procedural rights of the intervener differ according to whether he submitted his application to intervene before the expiry of the six-week period beginning with the publication in the *Official Journal of the European Union* of the notice of initiation of the action, or after the expiry of that period but before the decision to open the oral procedure.

Where the intervener submitted his application before the expiry of that period, he is entitled to participate in both the written procedure and the oral procedure. In that capacity, he must receive a copy of the documents and may submit a statement in intervention containing the form of order which he seeks in support of or opposing, in whole or in part, the form of order sought by one of the main parties, his pleas in law and arguments and also, where appropriate, the nature of any evidence offered. On the other hand, where the intervener submitted his application after the expiry of that period, he is only entitled to participate in the oral procedure, provided he submitted his application to the Court of First Instance before the opening of that procedure. In that capacity, he must receive a copy of the Report for the Hearing and may submit his observations on the basis of that report during the oral procedure.

As those provisions are mandatory they are not within the discretion of either the parties or even the Court.

(see paras 35-42)

3. The second paragraph of Article 45 of the Statute of the Court of Justice provides that no right is to be prejudiced in consequence of the expiry of a time-

limit if the party concerned proves the existence of unforeseeable circumstances or of force majeure. The provisions on procedural time-limits are of strict application, which serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice. That article, which derogates from that principle and must therefore be interpreted strictly, applies to the mandatory procedural time-limits the expiry of which entails the loss of the right previously open to a natural or legal person to initiate an action or to submit an application to intervene. In so far as it also applies to the six-week period provided for in Article 115(1) of the Rules of Procedure, the expiry of which entails not the loss of the right to submit an application to intervene but the limitation of the procedural rights conferred on the intervener, it is therefore only in wholly exceptional circumstances, of unforeseeable circumstances or of force majeure, that that article permits any derogation from the provisions on procedural time-limits.

The concepts of unforeseeable circumstances and force majeure contain an objective element relating to abnormal circumstances unconnected with the person concerned and a subjective element involving the obligation, on his part, to guard against the consequences of the abnormal event by taking appropriate steps and, in particular, by paying close attention to the course of the

procedure and demonstrating diligence. While the withdrawal of a representative association, although including members in common with the applicant to intervene, may perhaps constitute an event unconnected with the applicant to intervene, it is not an abnormal event. Any intervener is always entitled to withdraw his intervention, just as any

applicant is always entitled to discontinue his action, in accordance with Article 99 of the Rules of Procedure.

(see paras 46-52)