

UFFIĊĊJU TAT-TRIBUNAL GĦAL
SERVIZZI FINANZJARJI
ĊENTRU MALTI TA' L-ARBITRAĠĠ
33, TRIQ NOFSINHAR,
VALLETTA VLT 11



OFFICE OF THE FINANCIAL
SERVICES TRIBUNAL
MALTA ARBITRATION CENTRE
33, SOUTH STREET,
VALLETTA VLT 11

Dr Ian Stafrace LL.D. Chairman

Dr. Nicholas Valenzia LL.D Membru

Mr. Joseph Azzopardi FCCA, FIA, CPA, MBA (Warwick) Membru

FST 03/16

St. Publius Corporate Services Ltd

vs.

MFSA

Today, the 16th day of June 2021

The Tribunal

Having seen the appeal application ¹ lodged by St. Publius Corporate Services Limited (the Appellant), wherein the Appellant;

1. Referred to the decision of the Malta Financial Services Authority (the Authority) of the 18th March 2016 (Doc A1); and
2. Referred to the warning issued by the Authority on the 21st March 2016 (Doc A2);
3. Listed the Facts which have given rise of this appeal;
4. Contested the said Decision of the Authority on the basis of three points namely:
 - (i) The Decision is a Wrong Application of the Act in that it is a decision for a Refusal of an Application for registration based on the requirements for Registration rather than an Objection to a Notification based on a recognition of a registration issued by a regulatory authority in an approved jurisdiction in terms of Article 3(5) of Chapter 529 of the Laws of Malta (the "CSP Act"); Reference was also made to the provisions of the Services Directive (2006/123/EC) transposed into Maltese law by way of the Services (Internal Market) Act, Chapter 500 of the Laws of Malta;
 - (ii) Without prejudice to the above, the Refusal constitutes an Abuse of Discretion as it is based on improper and irrelevant considerations and is manifestly unfair; and
 - (iii) Without prejudice to the above, the Warning issued as part of the Decision likewise constitutes a wrong application of the Law, is ultra vires and disproportionate.

Having seen the reply of the Authority ² wherein the Authority:

¹ Document 1

² Document 8

1. Referred to the provisions of Article 21 of Chapter 330 of the Laws of Malta which is applicable by virtue of Article 16(3) of Chapter 529 of the Laws of Malta;
2. In relation to the first ground of appeal stated that:
 - a. The Authority does have the discretion and also has a right to object to such person carrying out such activities;
 - b. In deciding what considerations to make, the Authority is given utmost liberty by the legislator since Article 3(5) of Chapter 529 makes it clear that the Authority may determine what information it requires "from time to time";
 - c. Thus the Authority was to use its discretion in the same way that it would exercise its discretion in assessing a new application for registration, and the process is not a just that the Authority should merely verify whether such a person is registered as a company service provider in a recognised jurisdiction;
 - d. The said aggravation must find comfort in the wording of article 21(9) of Chapter 330 of the Laws of Malta;
 - e. The registration process in Malta includes a full assessment of fitness and properness of individuals (in terms of Rule 5 of the CSP rules) and on the governance structures of the applicants. Thus for this section to be invoked, the registration the applicant has in another jurisdiction is one which has undergone an equivalent degree of scrutiny. In the case of the appellant this was definitely not the case;
 - f. The provisions of Chapter 500 of the Laws of Malta exclude financial services from its scope;
 - g. In any case the provisions of Chapter 500 of the Laws of Malta should not and cannot override the content of Article 3(5) of Chapter 529 which gives the Authority the right to object to a person registered as a company services provider in a recognised jurisdiction from providing such a service in Malta;
3. In relation to the second ground of appeal stated that:
 - a. The discretion of the Authority may not be queried by the Tribunal on the strength of the provision of Article 21(9) of Chapter 330 of the Laws of Malta;
 - b. In determining how the Authority exercised its discretion two important considerations must be made, namely (i) one must transpose oneself backwards in

time to the time when the Authority was exercising its discretion; and (ii) one must see how the discretion was exercised based upon the information that the Authority had at the time when it was exercising its discretion;

- c. The facts taken into consideration by the Authority in exercising its discretion, at the time the decision was taken, namely in March 2016; were that Mr. Knappertsbusch did not deny his direct involvement with Eurokasse New Zealand Limited which company was the subject of the warnings issued by the Austrian Financial Markets Authority (FMA) for conducting licensable activities without a license and neither did he provide proof that he was not involved in Eurokasse New Zealand Limited at the time of the investigation;
 - d. In applying the provisions article 4A of Chapter 330 the Authority maintained that the onus of proof of showing this dissociation between Mr. Knappertsbusch and Eurokasse New Zealand Limited rested with the same Mr. Knappertsbusch;
 - e. The Authority expected that Mr. Knappertsbusch would have mentioned the warnings issued in his personal questionnaire (PQ) and the failure by Mr. Knappertsbusch to disclose same reflects negatively on his willingness to be transparent at all times with the Authority, and moreover such a non-disclosure was deemed as a material breach of the obligations of the person submitting the PQ;
 - f. The governance structures proposed were very weak; and
 - g. Warnings had already been issued by the Authority against Mr. Knappertsbusch and the Appellant in connection with licensable activities being carried out without any authorisation by the Authority; and although requested, Mr. Knappertsbusch failed to substantiate the fact that he was divesting his unlicensed activities with hard evidence;
4. In relation to the third ground of appeal stated that:
- a. The same arguments referable to the second ground of appeal apply; and
 - b. There is nothing untoward in having the Authority publish the fact that the Appellant was not licensed to carry out such an activity because the application was rejected, multo magis when the same persons were immediately prior to this decision conducting unlicensed activities;
 - c. The issue of warnings is an intrinsic and legal duty of the Authority;



d. Only the decision of the Authority can be appealed and not the issue of the Warning;

Having seen all other acts and documents of the proceedings;

Having see the preliminary decision of the Tribunal of the 8th May 2019;

Having noted that this appeal had on the 25th November 2020³ been deferred for a decision for the 17th February 2021.

Having noted that the decision could not be delivered on the due date because the composition of the Tribunal was not duly established;

Having noted that the composition of the Tribunal was re-established;

Having noted the decree issued by the Tribunal requesting the Parties whether they wanted to make fresh submissions to the Tribunal;

Having noted that both Parties (Appellant by means of an electronic communication of the 22nd March 2021 and the Authority by means of an electronic communication of the 24th March 2021) agreed that as long as the transcript of the oral submissions made by them is available to the Tribunal, the Tribunal may deliver its decision;

Having noted the transcript of the oral submissions of the Appellants⁴ and the Authority⁵;

Having noted that both Parties informed the Tribunal that the decision on this Appeal can be delivered in the English language;

Having seen that the case was scheduled for today for the Tribunal's decision;

Considers:

1. The Appellant is a Private Limited Company registered with the Registrar of Companies for England and Wales bearing registration number 8716671⁶.

³ Document 42

⁴ Document 41 and 43

⁵ Document 43

⁶ Document A3 submitted with the appeal

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2. By means of a letter of the 26th March 2014 ⁷, the Appellant, through its Managing Director Peter Knappertsbusch made reference to the fact that it was a “corporate service provider based in London offering Company Formation Services, Agency & Mailbox Services, Trust Services and other related services” and that it was granted to offer the mentioned services by the “HM Revenue & Customs Authority in the United Kingdom under Registration Number 12726749 ⁸”. The Appellant thus notified “it’s intention as required by the Maltese company services provider Act XX of 2013 to execute all services it’s licensed for to execute in Malta 45 days prior to the commencing this activities. The intended start is the 15th May 2014 in 22/12 Strait Street, Valletta VLT 1432, Malta. I appreciate your commfirmation”.
3. Mr. Knappertsbusch testified that the Appellant is still licensed (in 2017) and that the said license was renewed twice ⁹. According Mr. Knappertsbusch the said renewal involves the Appellant having to show that the companies it worked on are maintained in good condition. Mr. Knappertsbusch testified that his intention was to notify the Maltese Authorities and not to apply for a separate license.
4. The Authority, by means of a letter of the 3rd June 2014 ¹⁰ raised a number of issues with the request made by the Appellant. However, between the 26th March 2014 and the issue of this letter, a number of meetings and exchanges were held between the Authority and Mr. Knappertsbusch ¹¹. Ms Cynthia Debono Mizzi ¹² testified that the Authority had started requesting information from the Appellant. It is worth nothing that the Authority, through an email of the 16th May 2014 ¹³ requested specific information on the process adopted in the UK ¹⁴. The reply from the Appellant of the 18th May 2014 ¹⁵ attempted to address the queries raised by the Authority in its previous communication. Further exchanges of the 29th May 2014 ¹⁶ and 30th May 2014 ¹⁷ did not shed much more light on the requests made by the Authority. Ms. Cynthys Debono

⁷ Document A5 submitted with the appeal

⁸ Document A4 submitted with the appeal

⁹ Deposition of the 14th June 2017 document 11

¹⁰ Document A6 submitted with the appeal

¹¹ Deposition of the 30th October 2017 document 14. In fact the Authority replied to the letter of the 26th March 2014 through an email of the 2nd April 2014 (Doc 2 exhibited on the 21st April 2021) through which the Authority listed a number of documents that the Applicant should submit.

¹² Deposition of the 23rd April 2018 document 21

¹³ Document 6 exhibited on the 21st April 2021

¹⁴ Refer to question 6 and 7 in the said document

¹⁵ Document 7 exhibited on the 21st April 2021

¹⁶ Documents 9 and 10 exhibited on the 21st April 2021

¹⁷ Document 11 exhibited on the 21st April 2021



Mizzi testified that the Authority carried out a due diligence assessment because from the checks that the Authority conducted the assessment from the HMRC was not equivalent that that requested from the Authority. This process also involved the ascertainment that the individuals proposed by the Appellant to be functioning from the Malta office were also competent people to carry out these functions. Further to the submission of PQ's the Authority carried out a due diligence assessment and also a competence assessment. Dr. Paula Bonnici ¹⁸ and Angele Galea St. John ¹⁹ confirmed the ongoing process embarked on with the Appellant further to the request made by the Appellant for recognition.

5. The Appellant, by means of a letter of the 16th March 2015 ²⁰ invoked the provisions of Article 49 of the "Traty (sic) of the Functioning of the European Act";
6. By means of a letter of the 1st April 2015 ²¹ the Authority maintained that before a company may operate as a Company Service Provider in Malta, in accordance with provisions of Article 3 of the CSP Act, it must first obtain "a no objection" from the Authority even if it is authorised to act as such in the UK. It also referred to an email of the 5th March 2015 in which the Authority maintained that EU passporting rules do not apply to the activity of company services providers. The Appellant was further reminded that it "cannot provide any company services in Malta prior to being authorised to do so by the MFSA".
7. By means of a letter of the 28th September 2015 ²², the Authority informed the Appellant that its Supervisory Council had reached a Preliminary Decision that it was not satisfied that the registration requirements necessary to approve the issue of a registration certificate to the Company to provide company services have been met. This decision was based on (A) Transparency; (B) Corporate Governance Structures; (C) Warnings issued by the MFSA; and (D) Competence;
8. By means of a reply issued by the Appellant on the 9th November 2015 ²³, the Appellant responded to the said Preliminary Decision and offered "any additional explanations or evidence of fact".

¹⁸ Deposition of the 9th October 2019 document 33

¹⁹ Deposition of the 27th November 2019 document 35 and 4th March 2020 document 38

²⁰ Document A7 submitted with the appeal

²¹ Document A8 submitted with the appeal

²² Document A9 submitted with the appeal

²³ Document A10 submitted with the appeal



9. On the 18th March 2016²⁴, the Authority issued its final decision on the matter and after giving “due consideration to the representations made by the Company in its letter of the 9th November 2015, ... has come to the conclusion that these representations do not justify a reconsideration of the position communicated in the Authority’s letter of the 28th September 2015. Accordingly, and in terms of Article 5 of the Act, the Supervisory Council resolved that the Company’s application for registration shall not be proceeded with as it does not have the necessary comfort that the registration requirements in terms of the Act would be satisfied. In reaching this decision, the Supervisory Council has taken into account in particular the following factors:” The same decision listed 5 factors²⁵ namely:

- a. The representations provided did not deny Mr. Knappertsbusch’s involvement in Eurokasse New Zealand Limited And neither did he provide proof that he was not involved in Eurokasse New Zealand Limited at the time of the investigation²⁶;
- b. Given that this information is of direct relevance to the MFSA’ due diligence assessment, the warnings issued by the Austrian FMA²⁷ should have been brought to the MFSA’s attention with the content of Mr. Knappertsbusch’s PQ²⁸;
- c. With respect to Corporate Governance structures, the information received by the MFSA with respect to training provided to proposed key officials was not sufficient to alleviate MFSA’s concerns that the suggested course of action with regards to improving the competence aspect would be enough to enhance the weak governance structure that was proposed;
- d. Warnings have already been issued by the MFSA against Mr. Knappertsbusch and St. Publius Malta Limited in connection with licensable activities being carried out without any authorisation from the Authority²⁹; and

²⁴ Document A1 submitted with the appeal

²⁵ According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the reasons must be seen to cumulatively rather than independently.

²⁶ According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the PQ did not even refer to the directorship held in this company.

²⁷ Document A14 submitted with the appeal

²⁸ The Appellant communicated with the Austrian Financial Markets Authority. Doc C and Doc D attached to Document 26

²⁹ Documents A11 submitted with the appeal



- e. Although Mr. Knappertsbusch claims that he has been working in the area of corporate services since 2010, he did not demonstrate a good track records on which the Authority could rely.
10. The said decision also noted that “this letter precludes the Company and Mr. Knappertsbusch from offering CSP activities in Malta with immediate effect. In addition the Authority will include a notification on its website that the Company cannot conduct CSP activities”.
11. On the 21st March 2016, the Authority issued a “Warning”³⁰ stating that St. Publius Corporate Services Limited and Mr. Knappertsbusch are not registered by the MFSA to provide any corporate services in or from Malta in terms of the Company Services Providers Act, Chapter 529 of the Laws of Malta. Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual”. Mr. Knappertsbusch interpreted this Warning as meaning that the Appellant could not conduct any business “worldwide”³¹.
12. Mr. Knappertsbusch had another company already registered in Malta by the name of St. Publius Corporate Services Limited. This company eventually changed its name to St. Publius Malta Limited at the request of the Authority³². The Maltese company was issued with a warning by the Authority on the 25th October 2013³³. A subsequent Notice was published by the Authority on the 13th January 2014³⁴ through which the Authority notified the general public that the Maltese company and Mr. Knappertsbusch were making the necessary arrangements to transfer its business to duly authorised fiduciaries and financial services providers.
13. Cynthia Debono Mizzi³⁵ explained that for the Authority an application for “registration” would be submitted by an individual or a company who will be applying for the fully-fledged application. Whereas a “notification”, would be applied for by a company situated in an approved jurisdiction, who would be availing of its registration or license or the authorisation it has in that approved jurisdiction to act as a corporate services provider, and the Authority would be recognising that authorisation. This

³⁰ Document A2 submitted with the appeal

³¹ Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14

³² Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14

³³ Document A11 submitted with the appeal

³⁴ Document A11 submitted with the appeal

³⁵ Deposition of the 23rd April 2018 document 21

recognition process is governed by Article 3(5)(a) of the CSP Act. It was confirmed that in the Appellant's case, the Authority was assessing a recognition (or notification) process. It was further explained that whereas the Authority did recognise the UK as an approved jurisdiction, it felt that the assessment in relation to the fitness and properness carried out in the UK did not match the one expected or followed by the Authority. So whereas the Authority did recognise the fact that the Appellant was registered with the HMRC ³⁶, and that such a certificate was in line with the provisions of Article 3(5)(a) of the CSP Act, the Authority deemed it necessary to request more information from the Appellant to "bridge the gaps" ³⁷. Angele Galea St. John ³⁸ stated that the Authority was not even sure whether the activities that the Appellant was registered to carry out in the UK were similar to what they wanted to do in Malta. It is also clear that in this case, the Authority adopted the whole process as if the Appellant was actually applying for a registration rather than for a recognition. Cynthia Debono Mizzi stated that in her opinion, the Authority was authorised or had the discretion to ask for any or more documents when it was not comfortable with what was already submitted, and this in accordance with the provisions of Article 3(5)(b) of the CSP Act.

Considerations on the First Ground of Appeal:

14. It must be noted that even though Mr. Knappertsbusch had bound himself to provide the documentation that lead to the authorisation issued by the HMRC in favour of the Appellant ³⁹, no such documents were ever presented. It must also be noted that the Authority exhibited a letter that it sent to the HMRC and the reply that it got from the HMRC. At no stage did any of the parties to this appeal exhibit any documents and/or material that could shed some light on the licensing process adopted by the HMRC and also the "gaps" that exist between the due diligence and competence assessment carried out by the HMRC and the one demanded by the Authority. The Letter sent by the MFSA to the HMRC, and most importantly the reply the MFSA received from the HMRC does not shed any light on this issue, since the HMRC, on the 20th May 2014, merely replied

³⁶ The Authority communicated with the HMRC as per Doc A and Doc B attached to Document 26

³⁷ Deposition of the 23rd April 2018 document 21

³⁸ Deposition of the 4th March 2020 document 38

³⁹ Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14



that Mr. Knappertsbusch and the Appellant "is currently registered with HMRC under the Money Laundering Regulations."

15. Article 3(5) of the CSP Act:

3. (5) (a) Any person having a licence or registration to provide company service, issued by the relevant regulatory authority in an approved jurisdiction, shall not be subject to registration under this Act, provided that such person notifies the Authority, in writing, of its intention to provide company service in Malta at least forty-five days prior to commencing such activities in Malta and that such person receives from the Authority a confirmation in writing that it does not object thereto.

(b) A notification under this sub-article shall outline the proposed activities and shall be accompanied by such information as may be required by the Authority from time to time.

(c) To the extent that the Authority lays down any restrictions or conditions for such activities, on initial response to a notification or at any other time, such restrictions and conditions shall come into effect as stated in the response or by subsequent notice of the Authority.

16. In Article 2(1) of the CSP Act,

"approved jurisdiction" means an EEA State or an EU Member State or any other jurisdiction which has an equal or comparable level of regulation regarding company service providers to that in Malta; and

"overseas regulatory authority" means an authority in any country or territory outside Malta which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the Authority as defined in the Malta Financial Services Authority Act;

17. In Article 2(1) the Maltese version of the CSP Act:



"awtorità regolatorja barranija" tfisser awtorità f'xi pajjiż jwerritorju barra minn Malta li tkun teżerċita xi funzjoni regolatorjajew superviżorja dwar servizzi finanzjarji li jkunu jikkorrispondugħal xi funzjoni tal-Awtorità kif imfissra fl-Att dwar l-Awtoritàghas-Servizzi Finanzjarji ta' Malta; and

"ġurisdizzjoni approvata" tfisser Stat ŻEE jew Stat Membru tal-UE jew kull ġurisdizzjoni oħra li jkollha livell ugwali jew paragonabbli ta' regolament dwar provdituri ta' servizz lil kumpanniji ma' dak li jkun jeżisti f'Malta;

18. Hence, the issue is not whether the Authority, in a recognition procedure, has the power to demand such documentation that it may deem necessary, but what type of documentation may the Authority request, and whether the provisions of Article 3(5) enable the Authority to subjectively determine such a recognition request even on the basis of the documentation that it requested. Hence, the question being asked is whether the Authority, in a notification procedure of a CSP registered in an EU member state can carry out the competence assessments such as the one carried out in this case.
19. There is no doubt that the fact that Mr. Knappertsbusch was already involved in a Maltese company bearing the same name as that of the Appellant, the fact that Mr. Knappertsbusch opted to request the recognition of the Appellant, rather than applying for a registration for the Maltese company which was already conducting similar activities, and the fact that the Maltese company was already warned by the same Authority that it was not operating according to law, justifies, in principle, the requests made by the Authority for the further documentation.
20. The Appellant maintains that the Authority is only empowered to seek such additional information in relation to the registration that the Appellant had obtained in the UK. The Authority, on the other hand argues that since Article 3(5) enables it to request information and eventually issue a no-objection, intrinsically empowers it to carry out such assessments that it deems necessary for it to reach such a decision.
21. The provisions of Article 3 of the CSP Act impose a registration requirement for anyone wanting to carry out CSP activities in Malta. The proviso to Article 3(1) lists two exemptions from this registration requirement with however an obligation on the persons therein listed to "notify the Financial Intelligence Analysis Unit established under the Prevention of Money Laundering Act, that they are acting as company service

providers by way of business and that they are not required to register with the Authority under this Act.”

22. Article 3(2) states:

(2) A person in possession of another licence, authorisation or recognition in terms of the Investment Services Act who intends providing company services by way of business shall apply for registration and, in such case, the Authority shall consider any due diligence process already carried out by it.

23. Article 3(4) however states that:

(4) In the event of reasonable doubt as to whether the carrying out of a particular activity would be subject to registration in terms of this Act, the matter shall be conclusively determined by the Authority

24. The reading of the provisions of Article 3 of the CSP Act clearly impose an obligation of registration with the Authority on any person wanting to carry our CSP activities in Malta. Yet certain categories of people (such as warranted lawyers) are exempted from this requirement to register with the Authority, albeit having an obligation to notify the FIAU. People licensed under the Investment Services Act are not exempted from the registration requirement with the Authority, with the only “concession” being that the Authority, in considering the registration, shall use the same Due Diligence it had already carried out.

25. The position of someone who is already registered abroad is somewhat less clear. The CSP Act introduces the concept of “notification” which has to be however followed by a “no-objection” by the Authority. This is contrary to the position of the exempted persons mentioned beforehand (such as a warranted lawyer) who are obliged to notify the FIAU, without however the obligation to await some form of no-objection from the same FIAU.

26. The interpretation of “approved jurisdiction”, especially when comparing same to the Maltese version of the CSP Act, leaves little doubt that the qualification “which has an

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- equal or comparable level of regulation regarding company service providers to that in Malta” applies to “other jurisdictions” and not to EU Member States or EEA States.
27. Hence it is doubtful whether the Authority can argue that it had the right to consider this particular notification more as a registration because the procedure of registration in the UK is less onerous and is not accompanied by a due diligence or a competence assessment procedure.
 28. As already stated, the Authority did consult with the HMRC, which consultation did include specific questions related to the applicant. Yet the reply of the HMRC simply confirmed the fact that the same applicant was indeed registered.
 29. The Tribunal also notes the exchanges between the Authority and the Applicant during which the Authority made it clear that it was seeking more information.
 30. It is quite clear that the Authority was faced with a request under Article 3(5) by an Applicant who had a regulatory history in Malta. The Authority had already taken measures against the Maltese company for regulatory breaches in Malta. The same Maltese company had its bank accounts closed by Maltese Banks. To compound matters even further, the applicant opted to register as a CSP in another jurisdiction through a company bearing the same name of the company that the same applicant operated in Malta and which was subject to regulatory sanctions in Malta. In an email of the 9th June 2014 ⁴⁰, the Appellant justified this process because the Maltese company had been blacklisted by the Maltese Banks.
 31. It is also unclear as to why the Appellant did not provide any documentation submitted by him to the HMRC to enable its registration with the HMRC. This documentation was never submitted to the Authority, and neither did Mr. Knappertsbusch submit anything of this sort to the Tribunal as he had bound himself to do during his deposition.
 32. It is also clear that the set up proposed for the CSP activity in Malta by the Appellant involved personnel and procedures which were different from the ones adopted by the appellant in England, and with the information made available the Authority, the Appellant failed to show that the proposed set up was actually the set up that was authorised in England.
 33. On the basis of these facts, the Authority was, in the opinion of the Tribunal, vested with the right, if not also the duty, to request clarifications and eventually, carry out such assessments that it may deem necessary.

⁴⁰ Document 14 exhibited with the note of the 21st April 2021

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34. Finally, the Tribunal cannot determine and decide whether the same CSP Act is compliant with the Services Directive (2006/123/EC) transposed into Maltese law by way of the Services (Internal Market) Act, Chapter 500 of the Laws of Malta. The CSP Act enables the Authority to request documentation, and the Authority acted within the parameters of the said CSP Act.

35. On the basis of the above, the Tribunal is rejecting the First Ground of Appeal.

The Second Ground of Appeal:

36. The Appellant maintains that the Refusal constitutes an Abuse of Discretion as it is based on improper and irrelevant considerations and is manifestly unfair.

37. The Tribunal analysed the documentation submitted by the Appellant and the reasoning and conclusions of the Authority. The said conclusions were initially notified to the Appellant on the 28th September 2015 with the final decision communicated through the decision of the 18th March 2016.

38. The same decision listed 5 factors ⁴¹ namely:

- a. The representations provided did not deny Mr. Knappertsbusch's involvement in Eurokasse New Zealand Limited And neither did he provide proof that he was not involved in Eurokasse New Zealand Limited at the time of the investigation ⁴²;
- b. Given that this information is of direct relevance to the MFSA's due diligence assessment, the warnings issued by the Austrian FMA ⁴³ should have been brought to the MFSA's attention with the content of Mr. Knappertsbusch's PQ ⁴⁴,
- c. With respect to Corporate Governance structures, the information received by the MFSA with respect to training provided to proposed key officials was not

⁴¹ According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the reasons must be seen to cumulatively rather than independently.

⁴² According to the deposition of Cynthia Debono Mizzi of the 23rd April 2018 (document 14), the PQ did not even refer to the directorship held in this company.

⁴³ Document A14 submitted with the appeal

⁴⁴ The Appellant communicated with the Austrian Financial Markets Authority. Doc C and Doc D attached to Document 26



sufficient to alleviate MFSA's concerns that the suggested course of action with regards to improving the competence aspect would be enough to enhance the weak governance structure that was proposed;

- d. Warnings have already been issued by the MFSA against Mr. Knappertsbusch and St. Publius Malta Limited in connection with licensable activities being carried out without any authorisation from the Authority⁴⁵; and
- e. Although Mr. Knappertsbusch claims that he has been working in the area of corporate services since 2010, he did not demonstrate a good track records on which the Authority could rely.

39. The Authority, in its reply maintains that the discretion of the Authority may not be queried by the Tribunal on the strength of the provision of Article 21(9) of Chapter 330 of the Laws of Malta and that in determining how the Authority exercised its discretion two important considerations must be made, namely (i) one must transpose oneself backwards in time to the time when the Authority was exercising its discretion; and (ii) one must see how the discretion was exercised based upon the information that the Authority had at the time when it was exercising its discretion;

40. Article 16(3) of the CSP Act states:

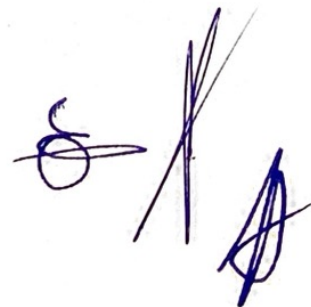
The provisions of article 21 of the Malta Financial Services Authority Act shall apply mutatis mutandis to appeals that may be brought before the Financial Services Tribunal in terms of this article.

41. Article 21(9), invoked by the Authority, states:

The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –

- (a) the competent authority has, in its decision wrongly applied any of the provisions of this Act, or any regulations issued thereunder;
- (b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:

⁴⁵ Documents A11 submitted with the appeal



Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:

42. On the basis of the fact that the Tribunal feels that the Authority was correct in the procedure adopted, and hence the authority had the right to carry out the a due diligence assessment and also a competence assessment, the Tribunal must now assess whether the conclusions reached by the Authority ought to be confirmed.
43. Having seen the documents submitted by the Appellant, and certain arguments made by the Appellant during the application stage ⁴⁶, the Authority was correct in the conclusions reached by it.
44. The first two reasons refer to the fact that the representations provided by the Appellant did not deny Mr. Knappertsbusch's involvement in Eurokasse New Zealand Limited. Furthermore, the explanations given by Mr. Knappertsbusch did not prove that he was not involved in Eurokasse New Zealand Limited at the time of the investigation in question. The Authority was correct to perceive such information as having direct relevance to the due diligence assessment, and was thus correct in assuming that the warnings issued by the Austrian FMA should have been brought to the Authority's attention with the content of Mr. Knappertsbusch's PQ. Ultimately, the Tribunal understands that the scope of the PQ is to provide the Authority will ALL the information, and the Authority must then assess such information. If the compiler of the said PQ unilaterally determines the relevance of the information that he ought to provide, even though this is clearly requested in the same PQ, the whole scope of the said PQ becomes irrelevant. The fact that such information was not provided correctly lead the Authority to consider this as a material consideration in its decision.
45. The same reasoning applies to the Authority' s assessment on the Corporate Governance structures proposed by the Appellant. Once again the information provided was sporadic and never much in line with clear directions that the Authority was giving to the Appellant in this regard.
46. The final two reasons may also be considered together. The Authority rightly felt that the warnings that had already been issued against Mr. Knappertsbusch and St. Publius Malta Limited in connection with licensable activities being carried out without any

⁴⁶ Most of which were confirmed by the Appellant in the submissions before this Tribunal.



authorisation, were another material consideration in its decision. The said warnings related to activities similar to the ones subject matter of the notification process in question and the replies given by the Appellant as to how and why it carried out such activities without a license were not conducive to alleviate the concern of the Authority that the Appellant does not understand the necessity of regulation in such a service. The fact that the Appellant also started advertising services through Malta when the Authority had not yet issued its decision or no-objection, as required at Law, further confirms that the Authority was correct in this regard.

47. These reasons taken together, and analysed in the light of the scope of the CSP Act ⁴⁷, lead the Tribunal to confirm the conclusions reached by the Authority.

48. On the basis of the above, the Tribunal is rejecting the Second Ground of Appeal.

The Third Ground of Appeal:

49. The Appellant maintains that the Warning issued as part of the Decision likewise constitutes a wrong application of the Law, is ultra vires and disproportionate.

50. On the 21st March 2016, the Authority issued a “Warning” ⁴⁸ stating that “St. Publius Corporate Services Limited and Mr. Knappertsbusch are not registered by the MFSA to provide any corporate services in or from Malta in terms of the Company Services Providers Act, Chapter 529 of the Laws of Malta. Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual”.

51. Mr. Knappertsbusch interpreted this Warning as meaning that the Appellant could not conduct any business “worldwide” ⁴⁹.

52. It must be noted that the said notice applies to the Appellant, i.e. the Company registered in England, and also Mr. Knappertsbusch.

53. The Tribunal finds that the first part of the notice is factually and legally correct.

⁴⁷ Refer to Article 1(2) and Article 5(2)

⁴⁸ Document A2 submitted with the appeal

⁴⁹ Deposition of Mr. Knappertsbusch of the 30th October 2017 Document 14



54. Yet, the wording used in the second part of the notice, namely “Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual” may or should have been written better.
55. The Authority should appreciate that such notices are read universally and not just by the general public of Malta⁵⁰. Such notices show up in simple internet searches and are hence available to any member of the general public worldwide, or any person carrying out a search on the Appellant and/or Mr. Knappertsbusch. The use of the phrase “warns the public against entering into any transactions or otherwise dealing” is somewhat too generic and may give the wrong impression on the otherwise possible good standing, commercial or otherwise, of the Appellant and/or Mr. Knappertsbusch. The scope of the notice is to notify the public of the Appellant’s failure in relation to the CSP activity that he applied for.
56. The Authority should endeavour to be more precise and accurate in its notices to the public and ensure that such notices are faithful to the official decision taken by the Authority.
57. The Tribunal feels that in this case, the Authority may not have been so accurate and hence, is minded to **uphold in part the third ground of appeal**

Decision:

On the basis of the Above, the Tribunal:

1. Rejects the First and Second Ground of Appeal;
2. Upholds in part the Third Ground of Appeal and orders the Authority to amend the second sentence of the notice in question to read as follows:

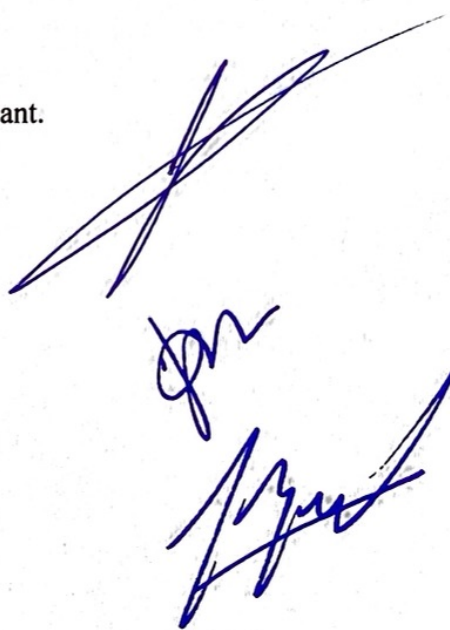
“Accordingly the MFSA warns the public against entering into any transactions or otherwise dealing with the above-mentioned company or individual on any matters falling within the parameters of the Company Services Providers Act, Chapter 529 of the Laws of Malta.”

⁵⁰ The Authority itself uses similar notices issued in other jurisdictions in its due diligence and/or competence assessments.



3. Upholds the Reply of the Authority to the said appeal in so far as such a reply is in line with what has been decided.

Costs of this appeal are to be borne by the Appellant.

A handwritten signature in blue ink, consisting of several overlapping, fluid strokes that form an illegible name.