

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



MALTA

OFFICE OF THE FINANCIAL
SERVICES TRIBUNAL
MALTA ARBITRATION CENTRE
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Appeal FST 06/19:

E&S Consultancy Limited

vs

Malta Financial Services Authority

Illum 26 ta' Gunju 2024

It- Tribunal

Ra l-appell interpost mill-Appellanti liema appell gie intavolat fis – sbatax (17) ta' Dicembru 2019 li fih l-Appellanti ssostni:

We write for and on behalf of E&S Consultancy Limited and we refer to the correspondence received from the MFSA dated the 18th November 2019, hereunder referred to as 'The Decision'.

In the said letter the Company was informed that further to the minded letter received dated the 16th May 2019 and notwithstanding that an appeal has been filed in front of the Financial Services Tribunal on the basis of the decision therein contained, the Authority has proceeded to take the decision abovementioned and in respect of which this appeal is being filed.

In this letter of the 18th November 2019 the Authority decided to cancel in terms of Article 6(1)(a)(b) and I of the CSP Act the Company's registration which was earlier granted under Article 5 of the CSP Act.

Our clients are hereby appealing from the said decision in terms of Article 16(8) of Chapter 330 of the Laws of Malta. The appellant company's grounds for appeal are as follows:

Breach of Article 5(7) of the CSP and Rule 13.04(e) of the CSP Rules

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The facts as known to the appellants are as follows:

In May 2018, appellants were informed that their application for a remote gaming license to one of the companies they serviced was not going to be accepted on account of the fact that Dr Christian Ellul, Mr Karl Schranz and E&S Consultancy Limited were no longer considered fit and proper.



Further to this decision being taken, various meetings were set up with the MGA and it was made clear to the Company and to its legal representatives that the problem stemmed from articles that appeared in various media. The Company also understood that the way forward in order to have this decision reversed was to address the negative press and the Authority would have been in a position to reconsider its position if these various local blogs were to be addressed. Thus, the Company concluded that the only issue the MGA had with appellants emanated solely and exclusively from these articles and blogs carried out after a Google search. Consequently, they could have never understood that blogs which were manifestly unfounded and which the MGA itself claimed were the sole reason why they had taken such a course of action, could even remotely amount to a material change in the information supplied to the MFSA or which could have a bearing upon its registered status as a registered person. Indeed, it would be rather strange and worrying if blogs, articles and tweets form the basis as to what is a material change upon the registered status of a registered person.

To this effect, the Company made representations with the local news portals. After explaining to the various journalists involved that the source of their articles, in so far as appellants are concerned are untrue, most journalists agreed to remove the references to appellants, while others made clarifications. On the basis of this development, on the 6th September 2018, appellants wrote a letter to the MGA requesting them to revoke their decision taken, precisely because the reason as to why such a decision was taken subsisted no longer.

In other words, appellants felt that it was made amply clear to them that the sole reason why the MGA had taken such a decision was based exclusively on account of the negative press and that if such negative press was addressed, the MGA was more than happy to reconsider this decision.

It was only when no tangible reply was forthcoming from the MGA, that the appellants set up a meeting with the CEO of the MFSA in order to inform the Authority of the then status with the MGA. The meeting was held on the 10th January 2019 so as to ensure that the status with MGA would not have an adverse effect on the Company as a registered person under the CSP Act. During this meeting the Company expressed its willingness to provide clarifications if so requested and undertake any actions that the Authority would have deemed necessary in the circumstances. Indeed, the appellant did inform the MFSA following the non-response of MGA. However, this was done verbally to the Authority in the meeting of the 10th January 2019. This delay in communicating this fact to MFSA was not done with the intention to withhold information from MFSA but it was a consequence of the endeavours it took in order to comply with MGA's suggestion to address the negative press following which, a reconsideration was expected. This notwithstanding, to date, MGA stands non-responsive. In its decision of the 18th November 2019, the MFSA deems that the breach is two-fold. First that the status was not communicated swiftly or in a timely manner and secondly that the communication was not in writing. In view of the above, the cancellation of the license is disproportionate and abusive.

It is therefore submitted that MFSA has wrongly applied the provisions of the Act and/or abused of its discretion and/or taken a decision that is manifestly unjust.

 2 

Breach of Rule 13.04(f) of the CSP Rules

This Breach relates to Court proceedings before the Court in Dublin initiated in 2014 and which were then concluded by virtue of an out of Court settlement on the 10th November 2015. The CPS registration was obtained on the 3rd November 2016, therefore subsequent to the out of Court settlement of the 10th November 2015. It is being reiterated that these proceedings do not amount to material issue as their sole intention was to exert pressure on the counter parties into agreeing to an out of Court settlement. E&S Consultancy Limited was part to these proceedings simply because it was a holder of 1 'B' share in Catharsis Technologies Limited and Activity Monitoring Solutions Limited without any voting rights and without the right to receive a dividend at the end of the year. Furthermore, Dr Ellul was acting under mandate and has never featured anywhere in the company structure of Maro Services Limited.

Reference is made to the warrant of prohibitory injunction which was issued by the First Hall Civil Court on 13th March 2014. The scope of this warrant was to exert pressure on the defendants in those proceedings before the Irish Courts into agreeing to an out of court settlement, which eventually took place in 2015, hence predating the granting of the license in 2016. MFSA deems the non-disclosure of these proceedings as a breach of rule 13.04 (f). It is an undisputed fact, that those First Hall, Civil Court proceedings were public. Similarly, the acts of those proceedings were and still are easily accessible to third parties including the appellate Authority. Consequently, the statement that the appellant Company withheld information from the appellate authority, does not hold.

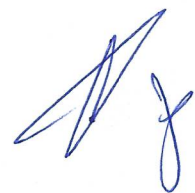

Secondly when the Authority was carrying out its checks prior to the granting of the licence, never was this issue brought to the fore, and neither does it seem to have resulted in the Authority not granting a CSP license. Furthermore, rule 13.04 applies to a registered person and refers to actual or intended legal proceedings. In the March 2014 when these proceedings were instituted appellants were not a registered person for the purposes of the legislation in question. Neither were they a registered person on the 10th of November 2015 when these Court proceedings were settled amicably. It is submitted that rule 13.04 (f) becomes applicable once a licence is issued and not before. Moreover as at the time when this license was issued, there were no actual or intended legal proceedings against the appellants.

It is therefore being submitted that the MFSA has, in this regard, wrongly applied the provisions of the Act and/or has abused of its discretion and/or taken a decision that is manifestly unjust.

Breach of Rule 16.06 of the CSP Rules

This breach refers to servicing of companies with links to Mr Marian Kocner. Mr Kocner is the former father-in-law of Dr Christian Ellul, whom he only met after meeting his former wife. The companies set up by Kocner in 2010 and 2011 were holding companies in respect of immovable property in Slovakia. Thorough due diligence in relation to the shareholders and UBOs was carried out upon engagement and retained in the appellant company's clients' files.

After Dr Ellul's divorce in 2013, Marian Kocner also acted as co-director of the companies simply for the purpose of putting them into liquidation. It is not amiss to point out again that our clients' acceptance and the setting up of the companies again predated the issue of the CSP license.

 3 

While the liquidation process admittedly took years, one of the companies, International Investment Holdings Limited had KSI as its auditors and was eventually liquidated. On the other hand, the other company, International Finance Group was in the process of filing audited accounts, again engaging the services of KSI as auditors.

It is not amiss to point out at this stage, that it is not deemed favourable by the Registry of Companies for Directors to abandon their posts throughout the process of the winding up of a Company. The directors had no control over the thrust with which the liquidation process was moving along.

When appellant company, was made aware in 2018 of Marian Kocner's possible involvement in serious crimes, the appellant company's directors took the immediate decision to resign from all posts held. Media reports mentioning Marian Kocner only escalated in 2018 following our clients' resignations. It is also pertinent to note that during the course of E&S's involvement with these companies, the appellant company was not aware of any arrests, investigations or criminal action against Marian Kocner. Indeed, moreover, none of this was considered an issue by MFSA in the numerous correspondence regarding the issue of the CSP licence back in 2014. Neither indeed was it an issue when the MFSA actually granted appellant company a CSP licence on 3rd November 2016.

The appellant company is aware of the charges filed against Marian Kocner, however these happened over a year after termination of all services to the said Companies and it is rather draconian that the appellant company should be held accountable and guilty by association for charges filed against Marian Kocner after termination of its services.



The appellant company confirms that sound due diligence processes are in place on all its clients. This is evident by the fact that appellant has not received any reprimands or fines following FIAU (28th March 2017) and MFSA inspections. These files have always been and are always available for inspection by the Authorities.

The information provided by the MFSA in the minded letter and in the final decision relates to a number of allegations contained in articles and blogs. However, none of the information provided refers to court judgements, or final decisions or arrests on the said allegations. Throughout the provision of services to the companies in question, there were no situations within the companies which would have triggered reporting to the MFSA or FIAU. Besides, a number of the links sent by the appellate authority refer to articles that were published after the date of resignation tendered by appellants.

In the minded letter and the cancellation letter the Authority refers to a transaction of 4M Euros that reportedly took place on the 7th December 2011 made from a Maltese Bank to a foreign account, which the Authority deems to be especially suspicious. Appellants contend that what is relevant to the point at issue are the following considerations:

Firstly, E&S, Christian Ellul and Karl Schranz had no connection to the transaction, and the transaction did not pass through any bank account over which E&S, Christian Ellul and Karl Schranz had any connections or were signatories.

Secondly, this transaction appellate authority refers to, predates the granting of a license by at least 5 years.

 4 

Thirdly, according to the authority the funds passed through Bank of Valletta, which seems to have had no problem therefore to take on Mr Kocner as a client at the time.

Fourthly appellants are not aware if the MFSA has or had any concern with BOV's connection with Mr Kocner.

It is therefore submitted that the MFSA has, in this regard, wrongly applied the provisions of the Act and/or has abused of its discretion and/or taken a decision that is manifestly unjust.

Breach of Article 5 (1) (a) of the CSP Act, Rule 5.0 of the CSP Rules and Article 6 (1) (a) of the CSP Act.

To this effect MFSA has claimed that the appellant company has lacked honesty and integrity and came to this conclusion, firstly on a perceived lack of transparency. The reasons given by the MFSA for this alleged lack of transparency stem from, inter alia, the failure to inform MFSA about the MGA issue and the legal proceedings instituted by Flannery and Lexington Services Limited. In this respect the appellant company once again makes reference to the submissions made when dealing with ground numbered (1) and (2) of this appeal.

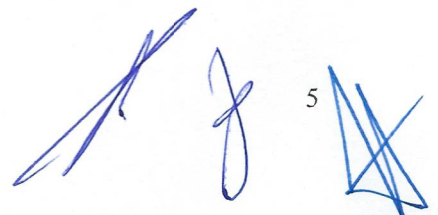
Similarly, the appellant company reiterates its position as above explained in so far as its 'perceived links' to Marian Kocner are concerned.

In so far as the "Links to Andreas Wolf" are concerned, appellant company cannot but express its disbelief at the position taken by the MFSA. This is because the said Andreas Wolf and his companies have worked with numerous Corporate Service providers, law firms and audit firms and even Banks in Malta over the years. Andreas Wolf was also instrumental in assisting in matters relating to the passing of the Securitisation Act. Meanwhile while the Listing Authority might have fined some of his companies with 'administrative penalties', no further action has been taken against him. If the appellant company is deemed to be dishonest by association to Andreas Wolf, then numerous other licence holders in Malta would have to also be deemed dishonest. Otherwise, the decision taken by the MFSA is not only non-sensical but an abuse of discretion and/or manifestly unfair. The MFSA has also mentioned appellant company's links to Vadim Blaustein as another reason to label it dishonest.

The facts are as follows:

The appellant company was involved with Blaustein Limited for the purpose of helping it apply for the granting of a CSP registration. Blaustein Limited obtained their CSP licence from the MFSA in 2016. It is understood that all checks were carried out by the appellate Authority itself.

Blaustein Limited did not take onboard any clients while the appellant company was involved. Once E&S realised that there was no business activity in sight and Blaustein Limited were not communicative enough, it was decided to terminate all services. This decision taken by appellant company was also communicated to the MFSA.

The image shows three handwritten signatures in blue ink. The first signature is a long, sweeping stroke. The second is a more complex, looped signature. The third is a signature that includes the number '5' written to its left. The page number '5' is also printed to the left of the third signature.

This notwithstanding years later, the MFSA has opted to mention Vadim Blaustein as another reason as to why it took the decision which is being appealed from. Furthermore, how can the appellate Authority justify its decision today when it would seem none of these issues were brought up when the MFSA itself approved the granting of a CSP license to Blaustein Limited. Moreover, how can such a decision not be considered as manifestly unfair when none of the claims made in the decision of the 16th of May 2019 were ever flagged or brought to the attention of appellant company during the MFSA compliance visit in May 2017?

One can't but point out that how the appellant company is being labelled dishonest by association to Vadim Blaustein, over a year after its directors resigned from all posts.

Besides, it would seem that no such action has been taken by the appellate Authority against Blaustein Limited as at the time of the filing of this appeal, and is to date operating without sanction.

In its decision it would seem that the Authority has completely disregarded the representations made by Appellants in their correspondence dated 16.05.2019 and have simply proceeded to revoke a license irrespective of the clarifications put forward by the appellant Company.

It is therefore submitted that, the MFSA has, in this regard, wrongly applied the provisions of the Act and/or has abused of its discretion and/or taken a decision that is manifestly unjust.

Breach of Rule 17.03 and 17.07 of the CSP Rules

It is not contested that the Company's Certificates of Compliance were filed with a slight delay. It is also not contested that the Annual Compliance Report was filed after a delay of 2 months. These matters were never deemed important enough for the MFSA to actually give the appellant company a fine for the late submissions. It would seem however that now, this fact is being used as a reason to cancel E&S's registration as a CSP.

Appellants contend that such issues ought not to result in a revocation of a license and that such issues are to be tackled by the imposition of an administrative penalty.



It is therefore submitted that the MFSA has, in this regard, wrongly applied the provisions of the Act and/or has abused of its discretion and/or taken a decision that is manifestly unjust.

Conclusions

The appellate Authority has decided to cancel the Company's licence in terms of Article 6 (1)(a)(b)(c) and (e) of the CSP Act.

Throughout all the years during which appellant company acted as a CSP, never has it been reprimanded or fined for any minor, let alone serious wrongdoing.

The decision is drastic, disproportionate and manifestly unfair. This decision precedes the minded later sent by MFSA dated 16.05.2019. From this decision an appeal has been filed to this Tribunal. Yet it would seem that notwithstanding such an appeal, the

 6 

Authority proceeded to revoke the license nonetheless, thereby going against and rendering useless the fact that our legislator has provided for a right of appeal. It is also strange how notwithstanding that provided in Chapter 330 of the Laws of Malta whereby a right of appeal is granted, the Authority deemed it fit to publish on its website the decision that it has taken.

Consequently, appellant company whilst referring to the submissions above and while it reserves the right to make further submissions and bring all the relevant evidence in support of this appeal, it hereby requests this Tribunal to overturn the decision taken by appellate Authority as outlined in its decision dated 18TH November 2019.

Ra r-risposta imressqa mill-Awtorita Appellata li fiha, rrispondiet ghall-appell interpost u sostniet:

1. This reply is being presented following an appeal filed on the 17th December 2019 by E&S Consultancy Limited ("**E&S**" or "**the Company**") in order to challenge the decision of the Malta Financial Services Authority ("**the Authority**") dated 18th November 2019 (the "**Decision**") (annexed to this appeal as '**DOC B**').
2. Firstly, it will be important to note that by means of a letter dated 16th May 2019 (the "Minded Letter") (annexed to this appeal as '**DOC A**') and on the basis of the concerns raised and the alleged breaches outlined in the said Minded Letter, the Company was informed that:
 - (i) the Authority is minded to cancel the Company's registration granted to it under the CSP Act in terms of article 6(1)(a), (b) and (e) of the CSP Act ("**proposed cancellation**"); and
 - (ii) the Company is directed, with immediate effect, to:
 - a) Refrain from accepting new clients;
 - b) Refrain from offering its existing clients any services which it is authorised to provide in terms of the CSP Act and which it was not already providing thereto prior to the date of the Minded Letter; and
 - c) Ensure that the Company's records (including client records, both current and past) in whatever form, be kept safe and not destroyed, erased or disposed of in any manner and be retained at the Company's registered office: Palace Court, Church Street, St Julians.
3. The Company was therein given a one-month period within which it was invited to submit its written representations to the Authority outlining the reasons as to why the Authority should not proceed with the proposed cancellation. The Company did eventually submit its written representations, and these were carefully considered by the Authority.



7

4. The Authority's decision on the proposed cancellation was communicated to the Company on the 18th November 2019. The Authority thereby informed the Company that it has decided to cancel, in terms of article 6(1)(a), (b) and (e) of the Company Service Providers Act ("**CSP Act**"), the Company's registration granted to it under article 5 of the CSP Act.
5. As will be explained in detail in this reply and elaborated further in the course of these proceedings, in reaching its Decision, the Authority neither abused of its discretion nor did it act in a manner that is manifestly unfair as is being alleged by the appellant Company. Neither did the Authority wrongly apply any provisions of the law.
6. The requests and allegations of the Company are therefore completely unfounded and should be rejected by this Tribunal with all legal costs to be borne by the appellant Company.

First Motive: Breach of Article 5(7) of the CSP Act and Rule 13.04(e) of the CSP Rules (Non- disclosure of the Malta Gaming Authority's decision)



7. By way of background the Authority begins by explaining that in 2017, a company - which was previously provided registered office services by the Company and for which Mr Karl Schranz and Dr Christian Ellul acted as director and company secretary respectively - submitted an application for a remote gaming license with the Malta Gaming Authority ("**MGA**"). The MGA eventually rejected this application on the ground that Mr Schranz, Dr Ellul and the Company were declared as not being fit and proper for the purposes of the MGA's assessment with regards to their involvement in potential MGA licensees.
8. The Company argues that the MGA's decision was unfounded at law and based itself solely on speculative and libelous reports made by journalists and bloggers. The Company claims that it immediately filed libel suits and carried out on-going discussions with the MGA in order to clarify the matter. When the MGA failed to tender a reply to the Company's numerous correspondence sent over to them, the Company alleges that it proceeded to inform the Authority of the MGA's decision verbally during a meeting held between the MFSA and the Company on the 10th January 2019.
9. The Authority hereby insists that no valid notification was in fact carried out informing the Authority of the MGA's decision as shall be explained in detail below.
10. Primarily and for ease of reference, the Authority shall list, ad verbatim, the relevant articles of the law and will then proceed to make its submissions:

Article 5(7) of the CSP Act: *"a company service provider shall notify the Authority of any change or circumstance which would have a bearing upon its registered status as a registered person."*

Rule 13.04(e) of the CSP Rules: *"a Registered Person shall notify the MFSA in writing of any material changes in the information supplied to the MFSA immediately upon becoming aware of the matter."*

11. In addition to the above quoted legislation, in its Decision the Authority also referenced section 4 of the application form submitted by the Company when applying for the necessary registration to act as a company services provider in terms of the CSP Act ("the Application Form") (annexed to this appeal as 'DOC C'). This section was signed by the Company's legal representative and stated black on white that the Company bound itself to notify the Authority *"immediately if the information provided [therein] changes in any material way either prior to or subsequent to licensing."*
12. A determination made by another regulatory authority, especially one that relates to the fitness and properness of the Company, its directors and shareholders, cannot but be considered a material change in circumstances. This was therefore an important piece of information which should have immediately been brought to the attention of the Authority as per the above-mentioned Company's obligations at law, namely the quoted legal provisions, and the declaration set out in the Application Form.
13. Furthermore, the Authority notes that to date, well over one year from the date of MGA's decision, no appeal has been timely lodged by the Company with regards to this decision issued by the MGA.
14. The Authority stresses that even if the Company's claim that it had notified the Authority verbally of the MGA's decision during a meeting held on the 10th January 2019 were true, the Company still failed to satisfy its obligations at law on two accounts. The proper method of communication would have been one which would have been carried out immediately and in writing following the MGA's decision. This is very clearly laid out under article 5(7) of the CSP Act, Rule 13.04(e) of the CSP Rules and the Application Form.
15. Therefore, the Authority continues to insist, as it has already done in its Decision, that irrespective of whatever spurred the MGA to reach its decision and whether this decision is a just one at law or not, the Company was under an obligation at law to inform the Authority of this matter in the manner prescribed by the same law. The Company has therefore blatantly breached the terms of article 5(7) of the CSP Act, Rule 13.04(e) of the CSP Rules and the terms of the declaration signed by the Company in the Application Form.

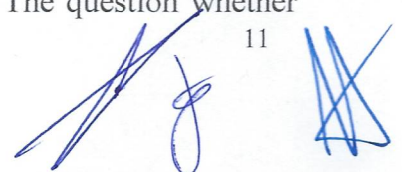
Second Motive: Breach of Rule 13.04(f) of the CSP Rules (Non-disclosure of legal proceedings).

 9 

1. This breach relates to court proceedings which were initiated before the Court of Dublin in March 2014. During the course of its supervision, the Authority discovered that the Company was involved in legal proceedings instituted by James Patrick Flannery and Lexington Services Limited against Activity Monitoring Solutions Limited, Catharsis Technology Limited, Walters and Karrer International SA, WKI Trust SA, Anthology SA, Maro Services Limited (represented by Dr Christian Ellul), and the Company. In these proceedings, the plaintiffs requested the issuance of a warrant of prohibitory injunction while simultaneously filing proceedings alleging fraud was carried out, inter alia, by the Company. On the 13th of March 2014, the First Hall of the Civil Court acceded to the plaintiff's request to issue the warrant of prohibitory injunction (vide warrant number 264/2014/1).
2. The Authority stated in its Decision that by failing to notify the Authority of the afore- mentioned legal proceedings, the Company acted in breach of Rule 13.04(f) of the CSP Rules wherein a Registered Person is required to notify the Authority in writing of any actual or intended legal proceedings of a material nature by or against the Registered Person immediately after the decision has been taken or on becoming aware of the matter.
3. The Company responded to all of this by simply stating
 - (i) That these proceedings were initiated in 2014 and concluded by an out-of-court settlement on the 10th November 2015, i.e. almost one year prior to the Company obtaining its CSP registration.
 - (ii) That the above-mentioned proceedings were of a frivolous nature and used merely to put pressure on the Company and the other defendants in order to reach an out of court settlement which was in fact finalized on the 10th November 2015.
 - (iii) That E&S Consultancy Limited was a party to these proceedings simply because it was a holder of 'B' share in Catharsis Technologies Limited and Activity Monitoring Solutions Limited without any voting rights and without the right to receive dividends at the end of the year.
 - (iv) That Dr Ellul was solely acting under a mandate and had never featured anywhere in the company structure of Maro Services Limited.
 - (v) That the above-mentioned court proceedings were available to the public and thus easily accessible to third parties, including the Authority.
4. The Authority was rather disappointed with these responses as the Company appears to forget that the obligation to submit the required information upon application stage or thereafter is imposed by law on the Company, and not on the Authority. The failure of the Company to disclose, at any point in time, information which was already known during the application stage cannot but be considered a violation of the above- mentioned provision.
5. The Company never contested the existence of said legal proceedings but on the contrary states that these are publicly available and therefore it was perfectly easy for the Authority to find out about this information itself. The Company

argues that the Authority if anything, failed to bring this issue to the fore when carrying out its checks before issuing the Company's CSP registration. The Authority, naturally, finds this line of reasoning completely inappropriate to say the least. Rule 13.04(f) of the CSP Rules makes it very clear that it is the Company, as a registered person, that shall notify the Authority in writing of any legal proceedings and not vice versa! This is therefore nothing more than a vexatious attempt being made by the Company in order to remove any attention from its own transgressions.

6. The Company also notes that Rule 13.04(f) of the CSP Rules talks about "registered persons". The Company argues that neither in March 2014, when the proceedings had commenced before the Irish Court, nor in November 2015, when the settlement was subsequently reached, was the Company officially registered to act as a company service provider. The Company argues that Rule 13.04(f) comes into place only once a registration to act as a company service provider has been issued and not before.
7. The above line of reasoning is completely unacceptable for the Authority because when the Company applied for registration under the CSP Act, it knew very well that it was subject to the disclosure obligations set out at law. Furthermore, and without prejudice to the foregoing, the Authority also notes that even upon being awarded its registration to act as a company service provider, the Company still failed to disclose this information and it was only through research carried out by the Authority that this information came to light.
8. In this respect, the Company also argues that at the time when it was awarded its registration under the CSP Act there were no ongoing proceedings and therefore there was nothing to disclose by then. Once again, the Authority cannot disagree enough with the Company on this line of reasoning. If this line of reasoning were to be applied across the board, it would mean that no information relating to events which predate an application is to be disclosed to the Authority which would defeat the whole purpose of the application process, in particular the fitness and properness assessments carried out by the Authority in relation to an applicant as part of the said process.
9. In all of its representations made before the Authority on this point, the Company seems to continuously find different excuses as to why it failed to disclose the existence of these proceedings to the Authority. Ultimately when a person or entity is dealing with the Authority, it is expected to act in complete transparency as required by law. It is then squarely the role of the Authority to deem whether certain information is material or not. This role definitely does not belong to the Company.
10. With regards to these particular proceedings, the Authority respectfully submits that legal proceedings related to fraud are undoubtedly of a serious nature and should have been brought to the attention of the Authority immediately. However, at no point during the application process, nor after being granted a registration under the CSP Act, did the Company bring these legal proceedings to the attention of the Authority. The question whether






these proceedings are material for the purposes of registration under the CSP Act or not is something that is to be determined by the Authority, but the disclosure of the proceedings is a duty that rests solely with the Company and failure to do is unacceptable in terms of the applicable provision.

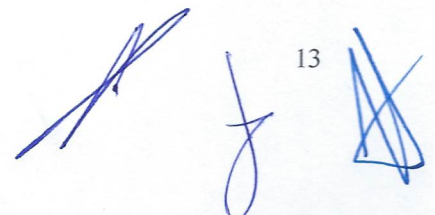
11. In view of all of the above the Authority stands by its decision that the Company carried out a breach of rule 13.04(f) of the CSP Rules.

Third Motive: Breach of Rule 16.06 of the CSP Rules (Due diligence checks on clients)

12. Under Rule 16.06 of the CSP Rules, "*a Registered Person shall ensure that a person is of sufficient good standing and repute prior to accepting to offer its services to that person,*" and therefore as per its obligations emanating from this provision, the Company should always ensure that any person to whom its services are offered is of sufficient good standing and repute.
13. This breach refers to the servicing of companies which carry links to Mr Marian Koener, former father in law of Dr Christian Ellul. International Investment Holdings Limited and International Finance Group Limited were both companies set up on 2010 and 2011 in respect of immovable property held by Mr Koener in Slovakia.
14. The former of these companies was struck off on the 27th September 2017 but until then (i) one of the company's shareholders was the Company, (ii) the directors were Dr Christian Ellul and Mr Koener himself, (iii) the company Secretary was Mr Schranz and (iv) the Company provided registered office services to International Investment Holdings Limited.

  12 

15. With regards to International Finance Group Limited, up until the date of 19th March 2018, the Company was a shareholder, Mr Koener was a director and Mr Schranz was the company secretary. The Company also provided registered office services thereto until the 21st May 2018 and Dr Ellul served as director of the company until the 20th of December 2017.
16. Before addressing any of the main arguments related to this contestation, the Authority wishes to clarify one particular point. The Company has repeatedly argued, both in its submissions before the Authority and before this Tribunal, that since both these companies were in the process of being liquidated, it was not considered an option for the directors to abandon their post throughout the winding up said companies. However, the Authority notes that, contrary to what the Company is stating in its appeal, International Finance Group Limited was never wound-up and put into liquidation and this information is easily available on the Malta Business Registry database.
17. With regards to the merits of this contestation the Authority begins by noting that Mr Koener is a well-known figure in Bratislava as he has found himself amidst a number of scandals dating back more than two decades.
18. In 2005 and 2011, lists were published with names (allegedly leaked by the Slovak police to the media) of people suspected of being tied to organized crimes. Mr Koener's name was present on both lists. One of the oldest scandals surrounding Mmr Koener relates to a company known as Technopol and dates back to 1992. More recently Mr Koener was also linked to (a) allegations of tax evasion, (b) the carrying out of fraudulent transactions worth millions of euros and involving businessmen connected to Slovakia's ruling party and (c) the murder of journalist Mr Jan Kuciak who was investigating the above-mentioned alleged tax fraud. All of these allegations are outlined in great detail in the Authority's Decision (see pages 6-7).
19. In view of all the public concerns raised and the seriousness of the allegations made against Mr Koener, dating all the way back to 1992, it came as a surprise to the Authority that the Company, after carrying out thorough due diligence, concluded that International Investment Holdings Limited and International Finance Group Limited (whose director is the very same Mr Koener) is of sufficient standing and good repute.
20. This raises serious doubts as to the due diligence processes being conducted and the standards being applied by the Company in relation to its clients.



13

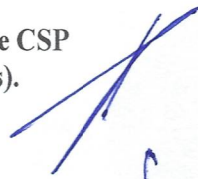
21. In its Decision, the Authority also makes reference to several reports which have linked Mr Koener to a number of financial transactions whereby millions of euros were deposited in one of his accounts from Belize via Malta including one specific transaction of four million euro that reportedly took place on the 7th December 2011. This transfer was carried out from a Maltese bank into Mr Keener's bank account and was deemed to be especially suspicious. Mr Kuciak was a Slovak journalist who was investigating the alleged tax fraud related to this transaction. In the course of his investigations Mr Kuciak had filed a report with the Slovak general prosecutor's office following a threatening phone call received from Mr Koener personally regarding these abovementioned investigations.
22. The Company responded to all this by simply stating that the abovementioned transaction did not pass through any of their bank accounts, whether theirs personally or the Company's. However, this is not the point being made by the Authority and the Company is well aware of this. The whole argument being made by the Authority is that the Company has a duty to carry out a thorough due diligence on its clients and should not keep them on board when such dubious transactions or serious allegations are being addressed publicly in connection with such clients.
23. The Company also claims that this incident pre-dates the granting of its registration under the CSP Act by five years. Once again, the Company is tackling every matter raised by the Authority in a silo. The whole argument made by the Authority is that the Company should not have taken on board and kept Mr Koener as a client if it carried out a proper due diligence and became aware of all the abovementioned serious accusations and transgressions which only kept increasing in frequency and severity with the passing of time. By offering services to such un reputable clients the Authority strongly holds that the Company has acted in breach of Rule 16.06 of the CSP Rules.
24. The Company has in return claimed that as soon as it become aware of Mr Keener's possible involvement in serious crimes, in 2018, it took the immediate steps to distance itself. So much so that the directors resigned from their post immediately. However, the Authority, is well aware that Mr Keener's potential involvement in serious crimes was well known to the general public - well before 2018, well before the Company obtained its registration as a company service provider and well before the Company took these companies on as clients.

Once again the Company also claims that it was the Authority who should have taken all of this into consideration before granting the Company its registration under the CSP Act, a very presumptuous line of reasoning which is being resorted to by the Company for

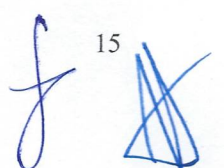
lack of any further defense on this point. In response to this claim, the Authority submits that it is the Company's duty to conduct due diligence on its clients, potential or otherwise, and if there are any matters of concerns in relation thereto, it is the Company's duty to act in a transparent manner and bring these concerns to the attention of the Authority, not vice versa.

25. The Company also contradicts itself when it states that it became aware of Mr Keener's possible involvement in serious crimes in 2018 but then just a paragraph later claims that it was aware of the charges filed against Mr Koener but cannot see any connection as these came to light over a year after termination of all services to the said companies. It is important to note that the most recent and serious criminal charges were made against Mr Koener on the 8th March 2018 (in connection with the double murder of Mr Kuciak and his fiancée Martina Kusnirova) yet the Company only terminated its relationship completely with International Finance Group Limited on the 21st May 2018 (notified Malta Business Registry that it no longer wanted to offer it registered address services).
26. The Company also states that all the situations mentioned in the Authority's Minded Letter and Decision refer to mere allegations or articles issued in the press and neither actually translated itself into court proceedings. The Authority cannot agree with the Company on this point either and notes instead a very lax attitude which is being manifested by the Company itself vis-a-vis its clients. The Authority reasonably expected the Company to have expressed significant doubts as to the reputation of their client following the various press releases' which were issued, and the many allegations made over a number of years. As a corporate service provider, the Company is responsible for the kind of business that it is presenting to Malta, however, the Company continuously fails to see the importance in all of this.
27. The fact that E&S had been offering its services to a company whose director, namely Mr Koener, is being linked with and/or accused of very serious and heinous crimes, some of which date back to the year 1992, raises serious concerns as to the due diligence being carried out by the Company with respect to its clients, as well as the kind of business that is being conducted by the Company and introduced to Malta. Moreover, the Authority concluded that by offering its services to such un reputable clients, the Company has acted in breach of Rule 16.06 of the CSP Rules.

Fourth Motive: Breach of Article 5(l)(a) of the CSP Act, Rule 5.0 of the CSP Rules and Article 6(l)(a) of the CSP Act (Fitness and properness status).



15



In terms of article S(1)(a) of the CSP Act, one of the underlying conditions which form the basis for the granting of a registration under the CSP Act, is that the person applying for the registration be a fit and proper person to provide the services concerned. As is clearly established in Section 5.0 of the CSP Rules, this fitness and properness requirement is an ongoing requirement and therefore should be fulfilled not only at registration stage, but also until such time as the registered person ceases to hold its registration. Article 6(1){a) of the CSP Act then grants the Authority with the right to, at any time, cancel a registration already granted where the registered person is no longer deemed to be a fit and proper person.

28. Section 5.0 of the CSP Rules outlines the criteria which are taken into consideration by the Authority when assessing this fitness and properness requirement. In brief the section provides that the fitness and properness requirement shall only be satisfied if a person, cumulatively, is of sufficient integrity, competence, solvency and honest.
29. The Authority has already stated in its Decision that it deems the Company to have demonstrated a lack of transparency, honesty and integrity on various occasions and therefore cannot be considered as a fit and proper person as is required under article 5(1){a) of the CSP Act and Rule 5.0 of the CSP Rules.
30. The Company has demonstrated a lack of transparency on the following occasions in particular:
 - (i) The Company failed to inform the Authority of the determination made by the MGA in relation to the fitness and properness of the Company, Dr Ellul and Mr Schranz.
 - (ii) The Company failed to inform the Authority of the legal proceedings instituted before the Irish courts in Dublin

The Company has in this respect merely referred the Tribunal to its submissions made earlier on this matter. The Authority, however, cannot but emphasize that both these instances involve sensitive information which should have been brought to the attention of the Authority if the Company wanted to act in an honest and transparent manner as is required under Rule 5.0 of the CSP Rules and Article S(1){a) of the CSP Act.

31. The Authority's concerns regarding the fitness and properness status of the Company also stem from the undesirable business connections which the Company has with a number of its clients and the individuals involved therewith. One such connection is the Company's link with Mr Marian Kocner, a relationship which is described in great detail in pages 9-10 of the Authority's Decision. The fact that the Company offered its services to companies linked

to such an unreputable individual as Mr Kocner raises serious concerns with respect to the Company's integrity. The Company once again, merely refers the Tribunal to its previous representations when addressing this point.

From the Authority's end, other than that already stated above, it cannot but point out that the Company's ties with Mr Kocner were also problematic for the country from a reputational point of view as Malta has been linked to Mr Kocner's wrongdoings through various media reports and this on several occasions.

32. The Authority is also concerned with the Company's business relations with Mr Andreas Wolfl as outlined in pages 10-12 of its Decision. The Authority is aware that Mr Wolfl, and a number of entities which he is involved in, including Argentarius ETI Management Ltd, are involved in claims being made relating to fraudulent activity which took place vis-a-vis Falcon Funds SICAV pie (the "Scheme"). The Scheme claims that fraudulent activity could have taken place through the use of Exchange Traded Instruments (ETI's) issued by the companies controlled by Mr Wolfl.
33. A court notice was in fact recently published in the Government Gazette (No 20,147 dated 8th of March 2019) effecting the formal notice of service upon Mr Wolfl of the judicial letter numbered 612/2019 between Falcon Funds Sicav pis vs Argentarius ETI management Limited. By means of this judicial letter the Scheme referred Mr Wolfl to the *"various investments which have failed or which appear to be about to fail and this because of acts and omissions on [Argentarius] part, both direct and/or indirect, in a negligent and/or raudulent manner, as well as lack of expertise and/or non-observance of the applicable laws and regulations and the violation of [Argentarius'] obligations."* Therein, the Scheme further stated that it is *"holding [Argentarius] responsible for all the damages suffered and which may be suffered as a consequence of [its] behaviour."*
34. The Authority is of the view that the Company's business relationship with Mr Wolfl and his respective companies raises serious concerns to the Company's integrity. This also in light of the fact that once again, the Company's connections with such non- reputable individuals who are involved in matters of a serious criminal nature, are likely to cause significant damage to the reputation of Malta as evidenced by the fact that Malta has already been linked to the losses suffered by the Scheme in numerous media reports.
35. In spite of all the above, the Company appears to commend Mr Wolfl, in its representations made before this Tribunal, for his

contributions on the passing of the Securitisation Act. The Company dictates instead how the Authority should exercise its powers and functions vis-a-vis other service providers, a number of which are not regulated or supervised by the MFSA, while still failing to address the serious allegations relating to its involvement with Mr Wolf and his respective companies.

36. The Company therefore has chosen to sling mud around instead of address the concerns being raised by the Authority in relation to Mr Wolf and those companies in which he is involved, and this surely cannot be deemed to be a justified form of defense. The Company has continued to service the companies in question connected to Mr Wolf notwithstanding the serious criminal allegations at stake. The maintenance of a second business relationship with an individual who is possibly linked to such rampant fraudulent activity thus raises serious concerns for the Authority as to the Company's integrity.
37. It should also be noted that while the Company states that the Listing Authority "might" have fined some of Mr Wolf's companies with administrative penalties, the Authority reiterates that the said Listing Authority has in fact fined two companies in which Mr Wolf is involved, namely ETI Securities and Delta 1, for breaches of the applicable law.
38. In addition to the above, the Company also has undesirable business connections with Mr Vadim Blaustein. This individual is the sole shareholder and sole director of Blaustein Limited, a company registered to act as a company service provider in terms of the CSP Act and which also happens to be a client belonging to the Company. In addition to this, Dr Ellul and Mr Schranz also acted as directors of Blaustein Limited until the 23rd of April 2018.
39. Mr Blaustein is also a director and ultimate beneficial owner of multiple related entities overseas, including Blaustein CS B.V. established in the Netherlands. According to information in the Dutch press, clients have been reporting malpractices and filing complaints with the Dutch National Bank ("DNB") since 2012. The complaints relate to alleged tax evasion committed by the entities in which Blaustein is involved, including Blaustein CS B.V. These allegations led to a raid of Blaustein's offices in 2016, carried out by the Dutch Fiscal Intelligence and Investigation Service. Blaustein was subsequently arrested for alleged tax evasion, extortion and human trafficking. Though Mr Blaustein was released shortly after, the DNB's investigation eventually led to the withdrawal of Blaustein CS B.V.'s licence as a corporate service provider.
40. Mr Blaustein is also the director and ultimate beneficial owner of another entity, Blaustein Corporate Services Limited, which is

licensed to provide administrative services under the Cypriot law regulating companies providing administrative services and related matters of 2012 (the "Cypriot law"). Following the news of Mr Blaustein's arrest in 2016, the Cyprus Securities and Exchange Commission ("CySEC") suspended the license of Blaustein Corporate Services Limited on the basis of its failure to satisfy the fitness and properness requirements set out in Articles 7(1) and 8(2) of the Cypriot Law.

In its representations tabled before this Tribunal, the Company points its fingers once again and claims that the Authority should have noted all this at the time when it was considering whether to grant the Company registration under the CSP Act and furthermore, before granting registration unto Blaustein Limited under the very same Act. The Company this time also goes as far as to say that these concerns should have been flagged or brought to the attention of the Company during the MFSA compliance inspection in May 2017.

41. For yet another time, the Company has completely disregarded its obligation to act in a transparent manner with the Authority and disclose all information at its disposal at the time when it submitted its application to obtain its registration as a corporate services provider and thereafter. Had the Company acted in an honest and transparent manner with the Authority, as is required by law, the Authority would have been in a position to raise its concerns on the Company's business links at a much earlier stage.
42. The Company also claims that the Authority had an obligation of some sort to notify the Company of its findings in relation to Blaustein. While noting that this obligation does not exist neither in fact nor at law, the Authority respectfully submits that it is the Company's duty to conduct ongoing due diligence on its clients, and if anything, it was the Company that should have brought these findings on its very own clients to the attention of the Authority and not vice versa.
43. The Authority continuously notes that the Company avoids providing concrete answers to any of the concerns raised by the Authority. It resorts to defensive mechanisms instead and deflects the matter back to what the Authority should and should not do. However, none of the arguments brought forward by the Company negate the concerns raised by the Authority in both the Minded Letter and the Decision.
44. Since the Company failed to provide the Authority with any concrete answers as to why it sustained such a relationship with Mr Blaustein up until February 2019, notwithstanding the several allegations and regulatory action taken against Mr Blaustein and his respective companies, the Authority deems this a failure on the

part of the Company to carry out proper due diligence procedures and questions the integrity of the Company yet again.

As a person registered to act as a company service provider, the Company is expected to act as a gatekeeper with respect to the business that it introduces to Malta. When a registered person, such as E&S, introduces undesirable business not just on one but several occasions, the Authority cannot be expected to turn a blind eye while such registered person resigns from all its posts and effectively cleans its hands of such undesirable business. As a registered person, it is the Company's duty to ensure that it conducts ongoing due diligence on its clients and to act in a transparent manner with the Authority in relation thereto, and if it fails in doing so, it is then the MFSA's duty, as the competent authority, to take any action it deems necessary in accordance with its powers and functions at law.

45. The Authority concludes here by remarking that the as an entity entrusted with the protection of consumers' interests, it is duty bound to address the abovementioned findings and concerns. Having a look at this full picture, rather than the piecemeal approach which the Company conveniently adopts in its appeal, these concerns are more than sufficient to justify the re-evaluation of the Company's fitness and properness as espoused under article S(1)(a) of the CSP Act and Rule 5.0 of the CSP Rules.

Fifth Motive: Breach of Rule 17.03 and 17.07 of the CSP Rules (Delay in and failure to submit documentation).

46. Rule 17.03 of the CSP Rules provides that *"Audited annual financial statements prepared in accordance with appropriate accounting standards, together with a copy of the auditor's management letter and the auditor's report, shall be submitted to the MFSA within four months of the Accounting Reference Date."*
47. Rule 17.07 of the CSP Rules provides that *"a Registered Person shall submit to the MFSA, on an annual basis, a Certificate of Compliance, in the style recommended in Annex 2 to these Rules."*
48. On numerous occasions, the Company has failed to submit or submitted belatedly the documentation mentioned in the afore-cited provisions of the law and this notwithstanding the numerous reminders sent by the Authority to the Company. This was not contested by the Company in its submissions made before this Tribunal.
49. The Certificates of Compliance for the years 2016, 2017 and 2018, which were to be submitted within the timeframe stipulated by law, were only received on the 8th of March 2017, 22nd March

2018 and 21st March 2019 respectively and this following a reminder sent by the Authority after the submission deadline or each Certificate of Compliance. Therefore, for every Certificate of Compliance, there was a delay in submission of almost two months. In this respect, the Company simply stated *"It is not contested that the Company's Certificate of Compliance were filed with a slight delay."*

In addition to the delays in submission, the Company has also failed to submit the audited annual financial statements, together with the auditors' management letter and auditors' reports, for the years ending 31st December 2016 and 2017. When making its representations to the Authority, while the appellant did not deny its failure to submit the said documentation for the year ending 31st December 2016, it claimed that it *"did in fact submit its audited accounts for 2017...on 4th January 2018"*. However, the Authority categorically refuted this claim and referred to the letter dated 20th June

2018 whereby the Company was reminded that it had yet to submit the audited annual financial statements, together with the auditor's management letter and auditor's reports, for the years ending 31st December 2016 and 2017. In fact, the said documentation for the year ending 31st December 2017 was only received by the Authority on the 29th June 2019, i.e. over one year from the submission deadline and after the issuance of the Minded Letter.

50. The Rules stated above clearly set out the reporting obligations of the Company and leave no doubt as to the submission deadline of the documentation in question. Therefore, by failing to submit the documentation mentioned in Rule 17.03 of the CSP Rules and belatedly submitting, on several occasions, the Certificate of Compliance mentioned in Rule 17.07 of the CSP Rules, the Company has undeniably acted in breach of its reporting obligations as set out in the said Rules.
51. It is most certainly not the role of the Authority, as the Company seems to expect, to continuously remind the same Company of such deadlines.
52. The Company goes a step further and contends that the abovementioned breaches ought to be tackled by the imposition of an administrative penalty rather than result in the cancellation of the Company's registration. In this respect, while clarifying that the breach of Rules 17.03 and 17.07 of the CSP Rules is just one of several grounds for the MFSA's Decision, the Authority submits that the law in fact provides the Authority with various powers which it may exercise for such breaches and that it is the Authority,

and not any other person, that has the discretion to determine how and when to exercises these powers at law.

Conclusion

53. The Authority therefore respectfully submits that despite the numerous allegations contained in its appeal, all these allegations remain completely unsubstantiated by the Company till this very day and are unfounded in both fact and law.

In its concluding submissions made before this Tribunal, the Company claims that the Authority erroneously proceeded to issue its Decision in spite of a separate appeal which is also pending before this Tribunal (see acts of appeal FST 03/19). In this respect the Authority refers the Tribunal to its preliminary plea raised in the acts of appeal FST 03/19 wherein it claimed that this Tribunal does not have jurisdiction at law to consider the appellant's claims in relation to the proposed cancellation mentioned in the Minded Letter since no decision, from which there is a right of appeal before the Financial Services Tribunal, had been made by the Authority in relation thereto at the time. This matter shall be addressed in greater detail throughout the pendency of these proceedings.

54. The Authority concludes by remarking that before reaching its Decision it has taken into consideration the serious concerns relating to and the breaches by the Company, each of which have been amply laid out in its Decision dated 18th November 2019, as well as the Company's representations and it is upon taking all this into consideration collectively that the Authority has decided to cancel, in terms of Article 6(1){a}{b) and (e) of the CSP Act, the Company's registration granted to it under article 5 of the CSP Act.

55. In doing so the Authority neither abused of its discretion nor did it act in a manner that is manifestly unfair as is being alleged by the appellant Company.

56. Accordingly, for all the reasons mentioned above, and as shall continue to be explained in due course throughout the proceedings, the Authority respectfully requests this Tribunal to reject the appellant's appeal and all its requests, thereby confirming the Authority's Decision issued on the 18th of November 2019, with all legal costs to be borne by the appellant Company.

Ra id-dokumenti u l-provi sottomessi mill-partijiet;

Sema it-trattazzjoni tal-partijiet u ra li l-appell gie differit ghall-lum sabiex jigi deciz;

Ra' l-atti kollha tal-kaz

Kunsiderazzjonijiet tat-Tribunal:

1. Illi l-Awtorita Appellata hadet id-Decizjoni ¹ taghha fil-konfront ta' l-Appellanti skond dak li jipprovdi il- Kap. 529 tal- Ligijiet ta' Malta, u dan stante li l- Appellanti kienet registrata bhala Corporate Service Provider (CSP).

2. Illi tramite ta' l-istess Decizjoni, il- licenzja ta' l-istess Appellanata giet ikkancellata.

3. Illi precedentement ghad-Decizjoni, l-istess Awtorita kienet harget Minded Letter ² fejn infurmat lill- Appellanti b' dawk in-nuqqasijiet li kienu qeghdin iwasslu lill-Awtorita sabiex tagixxi.

4. Illi l-Appellanti wiegbet ghall-istess Minded Letter u sussegwentement l-Awtorita harget id-Decizjoni taghha li minnha l- Appellanti qedghda tressaq l-Appell odjern.

5. Illi pero, anke in segwitu tal- Minded Letter, l-Appellanti interponiet appell separat ³ quddiem dan it-Tribunal, u liema appell ser jigi deciz illum ukoll. Dan ghaliex, tramite il- Minded Letter, l-Appellanti giet ordnata illi pendenti l-investigazzjonijiet u pendenti il- hrug tad-Decizjoni, l-Appellanti giet ordnata tieqaf milli taccetta klijenti godda, tiddezisti milli toffri servizz ta' CSP illi mhux diga kienet qed toffri lill-klijenti ezistenti taghha u tassigura ruhha li zzomm id-dokumentazzjoni relatata mal- klijenti taghha kollha intatti. Illi fl-istess appell mill-Minded Letter, l-Appellanti tressaq ukoll aggravji li huma relatati mal- motivazzjoni kif espressi mill- Awtorita rigward id-Decizjoni li kienet behsiebha tiehu, u liema aggravji, tista tghid, huma identici ghall- aggravji fil- mertu tal- appell odjern.

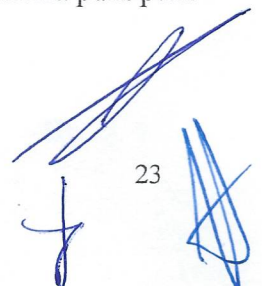
6. Illi l-Appellanti tibbaza l-aggravji taghha f' dan l-appell billi tindirizza punt punt

¹ 18 ta' Novembru 2019

² 16 ta' Mejju 2019

³ Appell numru 3/19

23



il- partijiet tad-Decizjoni li wasslu ghall-istess Decizjoni.

7. Izda, fil- parti “conclusions” ta’ l-istess rikors ta’ l-appell, l-Appellanti tilmenta illi l- Awtorita ma kienx messha hadet id-Decizjoni meta kien hemm appell pendenti mill- Minded Letter. Tilmenta ukoll illi l-istess Decizjoni ma kelliex tigi ppublikata mill- Awtorita pendenti l-appell odjern stante li b’ hekk l-istess Appell ikun gie rez inutili. Illi hawn it-Tribunal qieghed jenfasizza illi huwa marbut li jimxi ma dak kontenut fir-rikors promotur u mhux ma dak li tressaq bhala argumenti fin- nota ta’ sottomissjonijiet ta’ l-Appellanti.

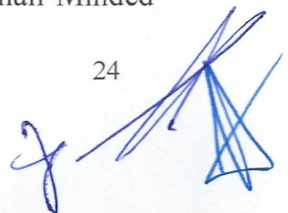
8. Illi it-Tribunal ser jindirizza dawn iz-zewg punti imqajma fil- konkluzjoni tar-rikors ta’ l-Appell qabel ma jitratta l-Appell fil- mertu.

A. *Decizjoni minkejja li kien hemm appell mill- Minded Letter u Publikazzjoni tad-Decizjoni:*

9. Illi l-Awtorita, in segwitu ghall- hrug tal- Minded Letter, giet notifikata b’ appell interpost mill-Appellanti mill-istess Minded Letter. Illi dak l-appell kien jikkoncerna il- mertu ta’ dak li kien hemm fil- Minded Letter, kif ukoll dak li l-Awtorita ordnat, u cioe illi pendenti it-tehid tad-Decizjoni, l- Appellanti ma kelliex, fis-sustanza, tiehu xoghol gdid ta’ CSP.

10. Illi rigward l-ahhar parti tal- Minded Letter, u cioe dik li tista tissejjah bhala *interim measure* li kienet torbot lill- Appellanti li tiddezisti milli tiehu xoghol gdid ta’ CSP u materji ohra, it-Tribunal ser ikun qieghed jesprimi ruhhu fid-decizjoni tieghu mill- Appell 3/19.

11. Rigward il- punt imqajjem illi l- Awtorita ma kelliex tipprocedi ghad-Decizjoni pendenti l-appell mill- Minded Letter it-Tribunal ihoss illi l-Appellanti m’ ghandiex ragun. Dan ghaliex il- Minded Letter hija komunikazzjoni dwar intenzjoni, u li a bazi taghha l-Appellanti inghatat l- opportunita li twiegeb lill- istess Awtorita’, xi haga li fil-fatt l-Appellanti ghamlet. Izda kontemporanjament, l-Appellanti interponiet appell mill-istess mertu tal- Minded Letter. Illi dwar jekk kienx hemm tali dritt ta’ Appell, it-Tribunal ser ikun qieghed jesprimi ruhhu fid-decizjoni tieghu fl- Appell 3/19. Izda certament illi minkejja li kien hemm tali appell, l- Awtorita ma kienetx prekluzza milli tkompli bil- process li tkun bdiet u li minnu kellha tasal ghal-Decizjoni. Dan ghaliex il- process tal- Minded Letter huwa parti minn process li jwassal ghall-Decizjoni, liema Decizjoni, ovvjament, mhux necessarjament tkun identika ghall-Minded



Letter. Illi ma hemm l-ebda ostakolu, la procedurali u lanqas legali, li kellu jwassal lill- Awtorita sabiex twaqqaf il- process li kellu jwassal ghad-Decizjoni, u dan sempliciment ghaliex l-Appellanti ghazlet li tressaq appell minn parti mill- process li kellu jwassal ghad-Decizjoni. Illi ghaldaqstant, it-Tribunal qieghed jichad dan l- argument ta' l-Appellanti u jqis illi l-Awtorita' kienet korretta meta ghaddiet sabiex tiehu id-Decizjoni taghha f' dan il- kaz.

12. Illi lanqas m' ghandha ragun l-Appellanti rigward l-ilment taghha dwar il-pubblikazzjoni tad-Decizjoni. Illi l-Awtorita hija marbuta li tippublika id-decizjonijiet taghha ⁴. Illi f' dan il- kaz l-Awtorita agixxiet bhal ma ghamlet fil- kazijiet l-ohra u certament illi tali publikazzjoni kienet korretta u skond il- Ligi. Illi ghaldaqstant, anke hawn, it-Tribunal qieghed jichad dan l- argument ta' l-Appellanti u jqis illi l-Awtorita kienet korretta meta pprocediet sabiex tippublika d-Decizjoni taghha f' dan il- kaz.

13. Illi issa it-Tribunal ser jghaddi sabiex jitratta l- Aggravji fil- mertu imressqa mill-Appellanti. Illi hawnhekk it-Tribunal ifakkar ukoll illi skond dak li jipprovdi l-Artikolu 21(9) tal- Kap. 330, il-gurisdizzjoni tieghu hija hekk deskritta:

(9) It-talba għad-deċiżjoni tat-Tribunal għandha tkun, għar-ragunijiet migjuba mill-appellant –

(a) jekk l-awtorità kompetenti tkunx, fid-deċiżjoni tagħha, applikat hazin xi waħda mid-dispożizzjonijiet ta' dan l-Att, jew ta' xi regolamenti mahruġin taħtu;

(b) jekk id-deċiżjoni tal-awtorità kompetenti tikkostitwixabbuż ta' diskrezzjoni jew tkunx ingusta manifestament:

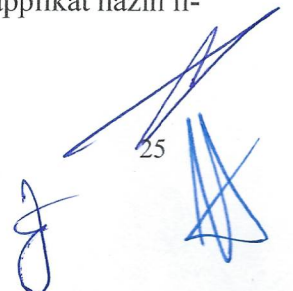
Iżda d-diskrezzjoni tal-awtorità kompetenti ma tistax, sakemm tkun giet eżerċitata b'mod xieraq, tkun mistoqsija mit-Tribunal.

B. L-Ewwel Aggravju:

14. Illi l-Appellanti targumenta illi d-Decizjoni tal- l-Awtorita Appellata illi din agixxiet bi ksur tal- artikolu 5(7) tal- Kap. 529 u r-regola 13.04(e) tas- CSP Rules hija wahda abbusiva u disproporzjonata, u konsegwentement l- Awtorita Appellata kienet applikat hazin il-

⁴ Ara Art. 16(8) tal- Kap. 330

25



Ligi u/jew abbuzat mid-diskrezzjoni taghha u/jew hadet decizjoni illi hija manifestament ingusta.

15. Illi l-Awtorita, fir-risposta taghha, filwaqt illi tiggustifika id-decizjoni taghha f' dan ir-rigward, targumenta illi dan it-Tribunal ghandu jistharreg jekk fattwalment id-Decizjoni kienetx wahda gusta u ekwa skond ic-cirkostanzi tal- kaz.

16. It-Tribunal iqis illi l-Awtorita iddecidiet illi kien hemm ksur tal- Artikolu 5(7) tal- Kap. 529 u tar-regola 13.04(e) tas- CSP Rules minhabba l-episodju li kien jinvolvi il- Malta Gaming Authority (MGA).

17. Illi jirrizulta illi li fil- 5 ta' Gunju 2018, l- MGA sabet u iddikjarat illi Karl Schranz, Christian Ellul, E&S Consultancy Limited, RES Malta Limited ⁵, SOLV International Limited ⁶, E&S Back Office Services Limited u E&S Group Limited ma jissodisfawx il- htigijiet ta' *fitness and propriety* stabbiliti mill- istess MGA.

18. Illi l-Awtorita tghid illi hija saret taf b' dan minghand l-istess MGA, filwaqt li l- Appellanti targumenta illi d-Diretturi taghha infurmaw b' dan lill- Awtorita f' laqgha li huma kellhom mac- CEO ta' l-Awtorita fl- 10 ta' Jannar 2019.

19. Illi skond ma jipprovdi l-artikolu 5(7) tal- Kap. 529:

(7) Provditur ta' servizz lil kumpanniji għandu javża lill-Awtorità b'kull tibdil jew cirkostanza li tkun tinfluwixxi l-istatustagħha bhala persuna awtorizzata u, fil-każ ta' xi bidla fil-karta,statut, memorandum jew statut ta' assoċjazzjoni jew strument ieħorli bih titwaqqaf il-persuna ġuridika, jew b'kull tibdil fid-diretturi,amministraturi jew membri tagħha, kif jista' jkun il-każ, dak it-tibdilma jkollu ebda effett qabel ma dan jiġi notifikat u approvat mill-Awtorità.

20. Illi l-istess obbligu huwa kontenut fir-rule 13.04(e) tas-CSP Rules applikabbli dak iz- zmien:

⁵ Karl Schranz u Christian Ellul kienu sa 18 ta' Mejju 2020 u 8 ta' Jannar 2020 UBO's u Diretturi

⁶ Kumpannija licenzjata bhala Trustee mill- Awtorita Appellata. Karl Schranz huwa wiehed mill- UBO u Direttur. Christian Ellul huwa UBO u kien Direttur sat- 8 ta' Jannar 2020.

The Registered Person shall notify the MFSA in writing of:

(e) any material changes in the information supplied to the MFSA immediately upon becoming aware of the matter.

21. Illi l- Appellanti targumenta wkoll illi d-decizjoni tal- MGA kienet rizultat ta' negative media li kien hemm fuq Christian Ellul, illi huwa pprova jattakka tali negative media tramite libell li kien ghamel, u li del resto l- Appellanti, tramite d-Diretturi taghha, kellhom laqgħa mac-CEO ta' l-Awtorita ta' dak iz-zmien u li kienu infurmawh b' din id-decizjoni tal- MGA.

22. Illi l-Awtorita Appellata targumenta illi x' wassal għad-decizjoni tal- MGA m' huwiex daqshekk materjali għaliex l- Appellanti kellha l-obbligu li tinformaha b' dik id-decizjoni u li f' kull kaz, jekk tali informazzjoni waslet għand l-Awtorita tramite tali laqgħa ta' Jannar 2019, dan xorta kien sebgha (7) xhur wara id-decizjoni.

23. Illi fil- fehma tat-Tribunal, l-Appellanti m' għandiex ragun fl-argument taghha minn dan l-aggravju.

24. Illi it-Tribunal mhux se joqghod jidhol fl-argument ta' minn kellu jressaq il- prova ta' l- allegat laqgħa li sehhet bejn Schranz u Ellul u c-CEO ta' l-Awtorita. It-Tribunal jinnota illi l- istess CEO kien għadu fil- kariga fil- mument illi l-Awtorita harget kemm il- Minded Letter kif ukoll id-Decizjoni. Ic-CEO huwa parti integrali mill- organi ta' l-Awtorita li fuq ordni taghhom harget kemm il- Minded Letter kif ukoll id-Decizjoni. Illi jekk l-Awtorita kienet tqis illi il- laqgħa li allegatament saret f' Jannar 2019, u li fiha l-Appellanti qdiet l-obbligi taghha skond il- Ligi u infurmat lill- Awtorita skond dak li jipprovdi l-artikolu 5(7) tal- Kap. 529, certament illi tali kwistjoni kienet tqum kemm fil- Minded Letter kif ukoll fid-Decizjoni. Illi huwa car illi minkejja li l- Appellanti tirreferi għal tali laqgħa fir-risposta taghha għall- Minded Letter, certament illi dan il- fatt ma kellu l- ebda rilevanza għal kaz stante li l- gist ta' din il- parti tad- Decizjoni kien illi l- Appellanti kellha obbligi cari skond il- Ligi u r-Rules li tghaddi tal- informazzjoni b' mod korett u malajr.

25. It-Tribunal mhux ser jidhol lanqas fil- kwistjoni jekk tali laqgħa sehhitx. Dan għaliex fl- opinjoni tat-Tribunal, tali laqgħa, anke jekk sehhet, certament ma kienetx laqgħa li kellha sservi sabiex l-obbligi tal- Kap. 529 jigu esegwiti. Illi certament, entita' regolata bhala ma kienet l-

Appellanti, ghandha jkollha proceduri dwar kif materji daqstant importanti, ghandhom ikunu rapportati lill- Awtoritajiet regolatorji, u certament li wiehed jaghmel laqgħa mac-CEO ta' entita regolatorja, qatt ma kellha tkun minflok process stabbilit u formali li bih tali informazzjoni daqstant importanti u sensitiv, tigi a konjizzjoni ta' awtorita regolatorja. Tant illi skond ir-Rule 13.02 tas- CSP Rules:

Where a Rules demands that a Registered Person notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of any event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

26. Illi fl- ahhar ghandu wkoll jinghad illi d-decizjoni tal- MGA ittiehdet f' Mejju 2018 u din id-decizjoni kellha tkun ikkominikata immedjatament lill- Awtorita appellata, u certament, mhux sebgha (7) xhur wara ⁷.

27. Illi rigward x' wassal ghad-decizjoni tal- MGA, it-Tribunal jinnota illi l-Appellanti ittentat tikkontesta tali decizjoni quddiem it-Tribunal ta' Revizjoni Amministrattiva (Rikors Numru 67/19 GV) li permezz ta' decizjoni tal- 14 ta' Frar 2023 iddikjara illi l-istess appell kien null stante li kien gie prezentat fuori termine. Illi certament li dan it-Tribunal mhux se jidhol fil-kwistjoni ta' x' wassal lill- MGA sabiex tiehu id-decizjoni tagħha, u dan ghaliex certament dan imur oltre l- gurdizzjoni ta' l-istess. Jibqa għalhekk bhala fatt illi d-decizjoni ittiehdet u li tali decizjoni kienet ta' natura daqstant serja u mportanti li kellha tigi notifikata b' mod immedjat lill- Awtorita. Mhux ukoll ikkontestat illi id-decizjoni tal- MGA hija ormai res iudicata u definittiva.

28. Illi għaldaqstant kienet korretta l-Awtorita illi tqis li s-socjeta Appellanti kienet kisret l-obbligi tagħha taht l-Artikolu 5(7) tal- Kap. 529 u Rule 13.04(e) tas-CSP Rules, u għaldaqstant it-Tribunal qieghed jichad l-ewwel aggravju ta' l-Appellanti.

C. It-Tieni Aggravju:

29. Illi hawn l-Appellanti tilmenta mid-Decizjoni ta' l-Awtorita fejn din iddecidiet illi kien hemm ksur tar-Regola 13.04(f) tas-CSP Rules u allegat illi l- Awtorita applikat hazin il-Ligi

⁷ Ara ukoll Rule 13.09

u/jew abbużat mid-diskrezzjoni tagħha u/jew hadet decizjoni illi hija manifestament ingusta. Tgħid ukoll illi ir-Regola 13.04(f) tapplika għal proceduri legali minn jew kontra Persuna Registrata, liema proceduri iridu ikunu *“actual or intended”*. Fil- kaz in kwistjoni, stante li tali proceduri legali gew transatti fis-sena 2015, u l- Appellanti applikat u ottjeniet licenzja fis-sena 2016, l-istess regola ma kienetx tapplika.

30. Illi l-Awtorita irribattiet dan billi qalet illi waqt li kienet qed tagħmel ricerka approfondita dwar l-operat tas-socjeta Appellanti, sabet illi certu James Patrick Flannery u Lexington Services Limited kienu fethu proceduri kontra numru ta' persuni, fosthom Maro Services Limited (rappresentata minn Christian Ellul) kif ukoll kontra l-istess E&S Consultancy Services Limited. Illi dawn il- proceduri kienu mnedija fil- Qrati Irlandizi fejn kien hemm allegazzjoni ta' frodi u kienu jinkludu mandat ta' inibizzjoni quddiem il- Qrati Maltin li kien gie milqugh f' Marzu 2014. Illi skond l-Awtorita, meta l-Appellanti applikat għal-licenzja tagħha sabiex topera bhala CSP, ma kienux issemmev tali proceduri. Illi tali proceduri lanqas issemmev f' xi stadju ulterjuri.

31. Illi skond ir-Regola 13.04(f), persuna registrata għandha tinnotifika bil- miktub lill-Awtorita *“any actual or intended legal proceedings of a material nature by or against the Registered Person, immediately after the decision has been taken or becoming aware of the matter”*.

32. Illi l-Appellanti issostni illi tali kaz kien diga gie cedut sena qabel ma' s-socjeta Appellanti ottjeniet il- licenzja ta' CSP u il- kaz kien jinvolvi share wiehed *“non-voting”* f' zewg kumpanniji. Illi in kontro-ezami, Karl Schranz ikkonferma illi huma kienu jafu bil- kaz izda meta kienu qegħdin japplikaw għall-licenzja, huma hassew illi dan il- kaz ma kienx materjali u allura hassew li ma kellux jigi indikat lill- Awtorita. Oltre il- fatt, kif diga ingħad illi l- proceduri kienu ilhom li ingħalqu minn sena qabel. Tajjeb ukoll illi jingħad illi meta hija giet rinfaccjata f' din l-akkuza fil- Minded Letter, l-Appellanti tgħid ukoll illi hija kienet taf bl-obbligati tagħha tant illi irriferiet għall kaz li Ellul u Schranz kellhom rigward kawza ta' danni fuq xi kuntratt ta' kera⁸. Huma qalu li dan il-kaz semmewh minkejja li ma kellu l-ebda rabta max-xogħol tas-CSP, izda il- kaz Irlanda ma hassewx li kellhom isemmuh għax ma kienx materjali.

33. Illi fil- fehma tat-Tribunal, l- Awtorita kienet korretta fl- analizi tagħha illi semmai, l-

⁸ Rikors Numru 150/2016 RGM

Appellanti kellha issemmi tali proceduri fl-applikazzjoni taghha, izjed u izjed meta hawn si tratta ta' proceduri fejn huwa car illi l- Appellanti kif ukoll Christian Ellul, kienu involuti fi proceduri legali proprju minhabba is-servizz ta' CSP li huma kienu jaghtu anke qabel ma dahal ir-regime regolatorju il- gdid li a bazi tieghu l- Appellanti inghatat il- licenzja.

34. Izda it-Tribunal huwa kemmxejn perpless kif l- Awtorita ghazlet li tinvoka ir-Regola 13.04(f) f' dan ir-rigward, ghaliex il- kaz jew kazijiet Irlanda certament ma kienux "actual". Minn naha l-ohra, xorta ma jreggix l-argument ta' l-Appellanti illi tali kaz ma kellux jigi notifikat lill- Awtorita, izda wiehed ghandu jahseb illi minhabba it-tempistika ta' kif graw l-affarijiet, tali kaz semmai kellu jissemma fil- Personal Questionnaire tad-Diretturi ta' l-Appellanti jew fl- applikazzjoni tal- licenzja ta' l-Appellanti ⁹. Illi huwa ghaldaqstant skorrett l-argument ta' l-Appellanti illi hawn, l-Awtorita, applikat regolament b' mod hazin, ghaliex fir-realta, in-nuqqas in kwistjoni, kellu jitqies taht ir-regoli li japplikaw dwar il-korrettezza ta' dak li jinghad fl-applikazzjoni.

35. Illi in vista ta' dan, it-Tribunal jilqa in parti dan l-aggravju billi l-Awtorita ma kelliex tapplika ir-Regola 13.04(f), izda tichad il- kumplament ta' l-aggravju stante illi l- kaz li ghalih issir referenza, u cioe il- kaz Irlanda, xorta kellu jissemma u jigi dikjarat mill- Appellanti fil-process ta' l-Applikazzjoni taghha stante li tali kaz kien materjali.

D. It-Tielet Aggravju:

36. Illi hawn l-Appellanti tilmenta mid-Decizjoni ta' l-Awtorita fejn din iddecidiet illi kien hemm ksur tar-Regola 16.06 tas-CSP Rules u allegat illi l- Awtorita applikat hazin il-Ligi u/jew abbuzat mid-diskrezzjoni taghha u/jew hadet decizjoni illi hija manifestament ingusta.

37. Illi l-Awtorita issostni id-Decizjoni taghha f' dan ir-rigward ghaliex l-Appellanti offriet u baqghet toffri servizzi lil Marian Kocner, inkluz servizzi ta' CSP lill numru ta' kumpanniji tieghu. Tissemma kumpannija International Investment Holdings Limited (IIHL) li kienet tircievi servizzi minnhand l-Appellanti sa mis-sena 2010. Christian Ellul kien direttur ta' l-istess filwaqt li Karl Schranz kien segretarju. L- ismha kienu f' isem l- Appellanti li kienet ukoll toffri registered address. IIHL giet struck off f' Settembru 2017. Socjeta ohra bl-isem ta' International Finance Group Limited (IFGL) kellha lill Christian Ellul fost id-Diretturi

⁹ Arar Rule 5.0(f)

(irrezenja f' Dicembru 2017) u Karl Schranz kien segretarju. Illi anke hawn l-ismha kienu f' isem l-Appellanti li kienet ukoll toffri registered address. Illi skond l-Awtorita l-istess Kocner kien persuna rinomata fl-Islovakia minhabba il- konnessjoni mal- kriminalita organizzata u b' involviment f' tixhim, hasil ta' flus u frodi. Ricentement kien gie nvestigat fuq il- qtil ta gurnalist Slovak kif ukoll ta' persuna ohra. Jissem mew numru ta' kazijiet ohra inkluz li fil- passat l-istess Kocner kien inghata mahfra mill- Awtoritajiet Slovacki, kif ukoll illi fis-sena 2019 huwa gie ikkundannat 19 – il sena habs fuq akkuzi ta' korruzzjoni u falsifikazzjoni ta' dokumenti.

38. L- Appellanti taghmel referenza ghall- fatt illi Christian Ellul kien mizzewweg lit-tifla ta' Kocner, u l-Appellanti kienet toffri is-servizzi taghha lill Kocner anke f' dan il- perjodu. Huma iddivorzzaw fis-sena 2013 u l-involvement taghhom fil- kumpanniji fuq imsemmija baqa biss ghaliex dawn kienu bdew process ta' stralc. Tghid ukoll l-Appellanti illi malli qam il- kaz tal- arrest minhabba il- qtil tal- gurnalist u persuna ohra, huma irrezenjaw minn kull kariga li kellhom. L-Appellanti tghid ukoll illi fl-ispezzjonijiet li saru anke mill- FIAU dejjem sabu li kollox kien in order u kull informazzjoni mitluba dwar il- klijent inghatat. L-engagement mal- klijent beda ferm qabel ma' l-Appellanti kienet licenzjata oltre il- fatt illi l- Awtorita irriferiet biss ghal numru ta' artikoli u allegazzjonijiet li kienu qeghdin isiru u xejn konkret. Rigward transazzjoni li saret tramite wahda mill-kumpanniji fl- ammont ta' € 4,000,000, l-Appellanti tghid illi huma ma kellhom l-ebda involviment f' din it-transazzjoni oltre il- fatt li il- Bank of Valletta kien ipprocessa tali transazzjoni u ma jidher li ma kien hemm l-ebda problema dwar dan. Tajjeb illi jigi osservat illi b' reazzjoni ghall- Minded Letter, l-Appellanti wiegbet illi l- konnessjonijiet ma Kocner gew "*blown out of proportion*".

39. It-Tribunal ihoss li hawn wiehed irid iqis numru ta' materji f' kuntest. Illi jibda sabiex jigi precizat illi it-Tribunal ma jaqbel xejn ma' l-argument ta' l- Appellanti illi l- ingagg ta' Kocner bhala klijent sehh qabel ma inharget il- licenzja taghha, u li bhal donnu ir-regime regolatorju ma kienx daqstant rilevanti. Lanqas ma jreggi l-argument illi l- Awtorita Appellata ma sabet xejn hazin waqt il- process ta' l-applikazzjoni ta' l-Appellanti sabiex tottjeni il- licenzja. Illi tajjeb illi wiehed josserva illi l- process ta' l-applikazzjoni huwa process regolatorju, izda certament m' huwiex process investigattiv. Illi l- oneru tas-sottomissjonijiet korretti u intieri fl- applikazzjoni jispetta lill- Applikant, u minkejja li certament li l-Awtorita taghmel certu verifiki, wiehed lanqas ma jista jippretendi illi b' daqshekk wiehed ikun qieghed jinghata "a clean bill of health" sempliciment ghaliex tkun giet approvata applikazzjoni ghall- licenzja.

40. Illi pero it-Tribunal ihoss illi ghandu jirrimarka fuq certu posizzjonijiet mehuda mill-Awtorita kemm fid-Decizjoni kif ukoll fit-trattazzjoni tal- kaz quddiem it-Tribunal, senjatament ghall-mod li bih hija tirreferi ghall dak li kien qieghed jirrizulta fil- mezzi tax-xandir. Illi certament li taghmel sew l-Awtorita illi tirreferi ghas-Sentenza ta' l-Onor. Qorti ta' l-Appell fl-ismijiet E&S Consultancy Limited vs. Matthew Caruana Galizia ¹⁰, li fiha hemm espressjoni cara dwar ir-rwol tal- mezzi tax-xandir u t-tixrid ta' informazzjoni li tkun fl-interess pubbliku. Izda, kien ikun izjed opportun illi l-Awtorita, filwaqt li tuza dak li jkun gie ippublikat tramite il-varji mezzi li bihom jixxerdu ahbarijiet, taghmel investigazzjonijiet taghha ukoll bhala regolatur. Ma tistax l- Awtorita sempliciment tistrieħ fuq dak li jigi ippublikat, ghaliex kif ben tajjeb qalet l- Onor. Qorti ta' l-Appell fil- kaz fuq imsemmi, ir-rwol tal-mezzi tax-xandir huwa li jgibu l-informazzjoni ghad-dominju pubbliku ¹¹, speċjalment meta si tratta ta' materja daqstant importanti u li certament kienet ta' interess pubbliku. Izda l- Awtorita ghandha tkompli b' dawk l-investigazzjonijiet li thoss li ghandha taghmel bhala regolatur u tiehu dawk id-decizjonijiet li hi thoss opportuni a bazi ta' l-investigazzjonijiet li hija taghmel. Jekk ma jsirx hekk facilment iqum id-dubju jekk l-Awtorita tkunx qeghda tabdika mir-responsabilita taghha ta' regolatur u indirettament u b' mod zbaljat timponi u tesponi lill- mezzi tax-xandir ghal obbligi u rwol li dawn m' ghandhomx. Dan qieghed jinghad anke b' reazzjoni ghal dak li qalet l-Appellanti fit-twegiba taghha ghall- Minded Letter meta hija sostniet illi l- konnessjoni taghha ma Kocner kienet giet "blown out of proportion" u li l- media reports dwar Kocner eskalaw fis-sena 2018.

41. Illi fil- kaz odjern, l-investigazzjonijiet dwar il- konnessjoni bejn l-Appellanti u l-istess Kocner jidher li kienu bdew qabel ma sehh il-kaz tal- qtil tal- gurnalist Jan Kuciak u s-sieħba tieghu. Kien hemm numru ta' rapporti fil- media li jindikaw numru ta' red flags fuq l-istess Kocner. Numru ta' episodji li certament kellhom iwasslu lis-socjeta Appellanti sabieħ tqis illi hija kienet qeghda toffri servizzi lill persuna li certament seta, u li kellu jitqies bhala *high risk*. L- ghazla ta' l-Appellanti li tkompli bis-servizzi taghha, ghalkemm legittima, certament wasslet sabieħ hija esponiet ruhha ghal riskji marbuta ma klijent li jkun *high risk*. U fil- fatt dak huwa li gara. U certament illi meta hareg fil- pubbliku illi l-istess Kocner kien qieghed jigi investigat bhala il- mandant tal- qtil tal- gurnalist Kuciak u s-sieħba tieghu, oltre il- varji rapporti dwar l-involviment ta' l-istess Kocner f' reati ohra serji, marbut mal-livell ta' servizz illi l-Appellanti kienet offriet u sa certu punt ghada toffri lill-istess Kocner jew kumpanniji relatati mieghu,

¹⁰ 62/2019 deciza 3 ta' Mejju 2023.

¹¹ Ara Para 34 ta' l-istess Sentenza

kellhom iwasslu ghal xi forma ta' azzjoni da parti ta' l-Awtorita. Oltre li kellhom ukol iwasslu ghal obbligi ta' rapportar da parti ta' l-Appellanti. Illi l-Awtorita elenkat numru ta' cirkostanzi (red flags) illi kellhom iwasslu lill- Appellanti li tqis ir-rwol taghha fil- konfront ta' Kocner. Il-fatti kienu fid-dominju pubbliku u jekk l- Appellanti ghamlet id-due diligence li kellha taghmel, kif fil- fatt hi iddikjarat li ghamlet, allura kienet taf b' dak li kien hemm fid-dominju pubbliku dwar Kocner. Hawnhekk it-Tribunal ihoss illi ghandu jippreciza is-segwenti:

- i. Illi dawn ir-red flags fuq Kocner ma kienux marbuta mal- fatt li huwa kien persuna kontroversjali u li kien suggett ghall- skrutinju fil- media, izda marbuta ma akkuzi serji ta' reati;
- ii. Il- kwistjoni ma kienetx dwar id-due diligence li l- Appellanti ghamlet fil-mument tal- ingagg, li certament seta, anke tenut kont li hawn si tratta ta' regime regolatorju differenti, kien wiehed proceduralment korrett;
- iii. Illi il-kwistjoni lanqas ma kienet xi wahda oggettiva marbuta mas-semplici fatt li Kocner kien klijent.

Illi s-socjeta Appellanti ghazlet triq, li certament setghat taghzel. Izda dik it-triq li ghazlet wasslet li l-livell ta' *risk exposure* taghha kiber. Kien diga evidenti illi dan kien il-kaz meta entita pubblika ohra, u cioe l- MGA, irrifjutat applikazzjoni ghall- licenzja proprju minhabba, fost l-ohrajn, il- fatti li kienu qeghdin jigu rapportati fil- mezzi tax-xandir dwar il- konnessjoni ma' Kocner.

42. Illi tajjeb illi jerga jigi ribadit illi s-servizzi ta' CSP offruti lill-kumpanniji relatati ma Kocner kienu ta' livell gholi, li jinkludu kemm registered address u company secretary (li forsi jistghu jitqiesu bhala low key) ghal servizz ta' direttur kif ukoll iz-zamma ta' ismha (li zgur huma ta' livell aktar oneruz). Illi anke il- livell ta' attivita tal- kumpanniji in kwistjoni ma kienx ta' xi semplici holding company jew xi kumpannija dormant. Illi tajjeb illi jinghad illi hawn si tratta ta' persuna li jissemma, u f' certu kazijiet, b' involviment ppruvat, f' kazijiet serjissimi, li kif diga inghad izjed qabel, certament ma kienux marbuta mal- fatt li hawn si tratta ta' karattru kontroversjali. Hawn si tratta ta' kazijiet serjissimi u li kellhom dimensjoni internazzjonali.

43. Illi f' dan il- kuntest, certament illi l-Appellanti ma kienetx korretta tressaq l- argument tal- "blown out of proportion" u l-Awtorita keinet korretta li tiehu azzjoni a bazi tar- Rules applikabbli ghas-CSP's u t-Tribunal iqis illi dan l-aggravju ta' l-Appellanti ghandu jigi michud.

E. Ir-Raba Aggravju:

44. Illi hawn l-Appellanti tilmenta mid-Decizjoni ta' l-Awtorita fejn din iddecidiet illi kien hemm ksur tar-Regola 5.0 tas-CSP Rules u l-Artikoli 5(1)(a) u 6(1)(a) tal- Kap. 529 u allegat illi l- Awtorita applikat hazin il-Ligi u/jew abbużat mid-diskrezzjoni taghha u/jew hadet decizjoni illi hija manifestament ingusta.

45. Illi l- Awtorita ibbazat id-Decizjoni taghha f' dan ir-rigward fuq il- fatt illi l- Appellanti ma infurmatx lill- Awtorita dwar il- kaz MGA u lanqas dwar il- kaz tal- kawza li kienet tinvolvi l-ismha f' kumpannija u l- kaz l-Irlanda (ara l- ewwel u t-tieni aggravju). Pero l-Awtorita ziedet ukoll illi tali ksur kien ukoll marbut mar-relazzjoni ta' l-Appellanti ma' Marian Kocner (ara t-tielet aggravju). Izda oltre billi irriferiet ukoll ghall-involviment tal-istess ma' Andreas Wolf u ma Blaustein Investments Limited.

46. L- Appellanti targumenta billi terga ittenni il- posizzjoni taghha kemm fuq il- kaz MGA, il- kaz Irlanda u il- kaz Kocner.

47. Illi it-Tribunal diga analizza il- mertu ta' dawn it- tlett kazijiet meta huwa tratta l- ewwel tlett aggravji u ghaldaqstant it-Tribunal jaghmel referenza ghall-istess kunsiderazzjonijiet. Rigward ir-rilevanza ta' dawn it-tlett kazijiet u l- ksur ta' l-Artikolu 5(1)(a) u 6(1)(a) tal- Kap. 529 u ir-Regola 5.0 tas-CSP Rules, it-Tribunal ser jindirizza tali lanjanza f' dan l-aggravju.

48. Illi dwar il kaz Wolf, l-Appellanti issostni illi l-istess Wolf huwa persuna rinomata fil-qasam ts-servizzi finanzjarji ta' Malta u hadem ma numru ta' Service Providers ohra, kif ukoll ditti legali u ditti ta' awdituri u banek. L- azzjonijiet li ttiehdu fil- konfront tieghu mir-regolatur kienu dwar breaches amministrattivi. F' kull kaz l- Awtorita kien messa tiehu azzjoni kontra numru ta' entitajiet u kumpanniji ohra li kellhom konnessjoni jew hadmu ma Wolf.

49. Illi dwar dan, l-Awtorita tirrileva illi l-istess Wolf kien qieghed jiffacca akkużi serji u li l- Appellanti baqghat toffri servizzi lill- istess Wolf u kumpanniji tieghu. Tghid ukoll illi l- Appellanti ma tistax tiddefendi ruhha billi tghid li anke entitajiet jw kumpanniji ohra ghandhom jigu sanzjonati.

50. Illi dwar il kaz Balustein, l-Appellanti tghid illi l-involvement taghha kien wiehed minimu intiz sabiex tassisti lill Blaustein Limited sabiex tottjeni licenza ta' CSP fis-sena 2016. Tghid ukoll illi kienet l-Awtorita stess li approvat il- hrug ta' licenza lill Blaustein Limited u li Schraz u Ellul ma baqghux diretturi tal- kumpannija mis-sena 2018. Isemmi illi hija qatt ma kienet mgharfa b' xi problema relatata mal- kumpannija Blaustein Limited anke meta saret l-ispezzjoni fl-ufficini taghha fis-sena 2017.

51. Illi l-Awtorita tipprezenta verzjoni kemmxejn differenti. Taghmel referenza ghall-proceduri fl- Olanda li kienu wasslu ghall-irtirar ta' licenza lill kumpannija ta' Blaustein fis-sena 2016. Taghmel ukoll referenza ghal dak li gara f' Cipru fejn kumpannija bl-isem ta' Blaustein Corporate Services Limited kellha il-licenza taghha ta' CSP sospiza minhabba dak li gara fl- Olanda. F' dan il- perjodu Schranz u Ellul kienu diretturi ta' Blaustein Limited li kienet licenzjata bhala CSP taht il-Kap 529, u kull ma ghamlu Schranz u Ellul kien illi riizenjaw mill-Bord f' April tas-sena 2018 oltre li baqghu joffru xi servizzi sa' Frar tas-sena 2019.

52. Illi l- artikolu 5(1)(a) tal- Kap. 529 jipprovdi illi:

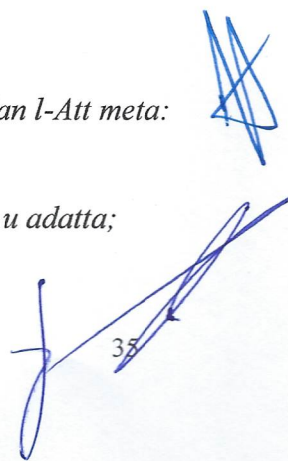
(1) L-Awtorità tista' tikkonċedi jew tirtirar l-awtorizzazzjoni li dwarha tkun saret applikazzjoni taht dan l-Att. Taliawtorizzazzjoni tista' tkun waħda generali jew inkella tista' tkun ristretta għal xi attivitajiet speċifiċi partikolari. L-Awtorità m'għandhiex, mingħajr preġudizzju għall-artikolu 3, tagħti awtorizzazzjoni li tkun saret applikazzjoni għaliha taht dan l-Att kemm il-darba ma tkunx sodisfatta li:

(a) l-applikant ikun persuna idonea u adatta biex tipprovdi s-servizzi involuti u li l-applikant ikun ser iħares u josserva l-ħtiġiet ta' dan l-Att u kull regola magħmula tahtu u li jkunu japplikaw fil-kaz tiegħu;

53. Illi l-Artikolu 6(1)(a) tal- Kap. 529 jipprovdi:

L-Awtorità tista', f'kull waqt, tħassar awtorizzazzjoni mogħtija skont dan l-Att meta:

(a) il-persuna awtorizzata ma tibqax titqies bhala persuna idonea u adatta;



35

54. Ir-regola 5.0 tas- CSP rules tipprovdi:

Fit and proper requirements are a key element for the effective supervision of CSPs. In general terms, the fit and proper test includes the following criteria: integrity, competence (including experience and qualifications) and the requirement to be financially sound (solvency). All criteria must be met in satisfaction of the fit and proper test. It shall not be the duty of the Authority to prove the converse before it refuses to grant registration, or before it intends to suspend or withdraw a registration granted to, or held by, a company.

When arriving at its decision as to whether a person concerned has met the fitness and properness criteria, the Authority will take account of all material facts, whether such facts are disclosed or otherwise.

The Authority shall not grant registration to an applicant to provide company services, if it appears to it that the criteria of fitness and properness are not, and will not, be met by a person concerned.

The Criteria of Fitness and Properness in the case of individuals are as follows:

- a) A fit and proper person is a person who is competent, honest and experienced.*
- b) Such person is a person of integrity, has a good record of business and the requisite knowledge and ability for the position the person holds or proposes to hold.*
- c) Conversely, a person who is incompetent, dishonest and inexperienced is an unfit and improper person.*
- d) The Authority must be satisfied that there is nothing in a person's present state or past record that would make the person unfit for the position such person holds or proposes to hold.*
- e) Testing for unfitness is carried out by examining a person's integrity in response to a range of standardised requirements set out in the Personal Questionnaire that are highly relevant to fitness.*
- f) Requirements set out in the Personal Questionnaire are about a person's experience and qualifications; about a person's own business interests; about events which may cast doubts on a person's reputation and character including convictions, bankruptcy proceedings and regulatory actions against the person.*

The Personal Questionnaire form is to be submitted in writing and signed by the person concerned.

In order for the Authority to carry out its due diligence exercise to establish the "fit and proper" status of an applicant, the latter would be required to submit a duly completed Personal Questionnaire form to these Rules. The Personal Questionnaire should also be accompanied with any authenticated copies of any qualifications which the applicant may have.

Where the proposed shareholders of an applicant are corporate entities, these shall be required to complete the “questionnaire for qualifying shareholders other than individuals”.

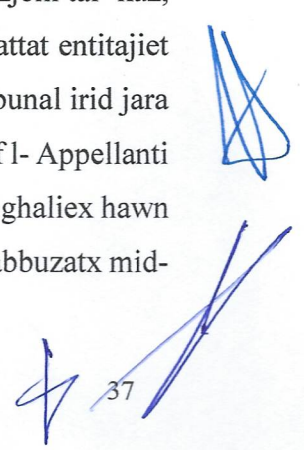
*The “fit and proper” test must be satisfied by an applicant and a registered company service provider on a continuing basis. Accordingly, in this section any reference to a company applying for registration to provide company services includes a reference to a company which has obtained such registration.*¹²

55. Illi l-Awtorita targumenta illi l-obbligu li persuna tkun idonea u adatta huwa obbligu li ma jibdux u jintemm mal- moment ta' l-applikazzjoni u l- hrug tal- licenza. Huwa obbligu illi persuna licenzjata ghandha issostnu u ddakkar tul l- operat kollu bhala entita regolata. It-Tribunal iqis illi l- Awtorita hija korretta fil- valutazzjoni taghha illi tali kriterji huma ongoing u ghandhom jippersistu tul l- attivita regolata kollha, u dan mhux mill- qari ta' l-artikoli 5 u 6 sopra-citati, u izjed u izjed mill- ahhar paragrafu tar- Rule 5.0, izda ukoll ghax dawn huma kriterji ovvjji u li ghandhom ikunu il- bazi ta' attivita ta' CSP.

56. Illi fil- kunsiderazzjoni tieghu ta' l- ewwel tlett aggravji, it-Tribunal diga tratta il- kazijiet MGA, Irlanda u Kocner. Illi kienet ukoll korretta l- Awtorita illi qieset illi dawn it-tlett kazijiet kellhom ukoll jigu ikkunsidrati li wasslu ghall- ksur ta' l-artikolu 5(1)(a) u 6(1)(a) tal- Kap. 529 u tar-Rule 5.0. It-Tribunal ma jhossx illi ghandu jiccensura lill- Awtorita meta qieset illi l-mod li bih agixxiet l- Appellanti f' dawn it-tlett kazijiet mehudin flimkien, necessarjament iwassal ghall-konkluzjoni illi hija ma titqiesx idonea u adatta sabiex izomm il- licenzja ta' CSP.

57. Illi tali decizjoni kienet ukoll supportata bil-kaz Wolf u il- kaz Blaustein. Illi fil- kaz Wolf l- Appellanti izjed tiddefendi ruhha a bazi tal- fatt illi Wolf kien hadem ma numru ta' entitajiet ohra u li allura, bhal donnu, kull wahda minn dawn kellha tigi penalizzata. Illi hawn tajjeb illi wiehed josserva illi it-Tribunal irid iqis id-decizjoni ta' l-Awtorita fil- konfront ta' l- Appellanti u mhux xi azzjoni jew nuqqas ta' azzjoni li seta kien hemm fil- konfront ta' ohrajn. Illi it-Tribunal qieghed jaghmel din l-osservazzjoni anke peress illi waqt it-trattazzjoni tal- kaz, l-Appellanti tirreferi wkoll ghal xi kazijiet ohra li skond hi juru illi l-Awtorita trattat entitajiet regolati ohra b' mod differenti minn kif giet trattata hi. Illi kif diga inghad, it-Tribunal irid jara d-Decizjoni ta' l-Awtorita f' dan il- kaz fuq il- fatti marbuta ma dan il- kaz u fuq kif l- Appellanti iddefendiet l- operat taghha, u mhux billi jsir paragon ma kazijiet ohra. Dan ukoll ghaliex hawn si tratta ta' analizi dwar jekk l-Awtorita agixxietx in konformita mal- Ligi u jekk abbuzatx mid-

¹² Emfazi Mizjuda



diskrezzjoni taghha fil- kaz odjern, u mhux x' ghamlet jew kellha taghmel f' kazijiet ohrajn ¹³. Illi l-istess jinghad ghall- paraguni dwar il- pieni dew direttivi mahruga fil- konfront ta' entitajiet ohra. Minkejja li wiehed jista jaghmel tali paraguni sabiex wiehed jikkunsidra l- proporzjonalita tad-Decizjoni ahharija ta' l-Awtorita, certament li it-Trbunal, anke tenut tal- gurdizzjoni tieghu a tenur ta' l-Artikolu 21(9) tal- Kap. 330, ihoss illi tali paraguni ma jistghux isiru. Dan ovvjament minnghajr pregudizzju ghal drittijiet ohra li l- Appellanti ghandha sabiex tissalvagwardja id-drittijiet taghha f' dan ir-rigward.

58. Illi fil- kaz Blaustein l- Appellanti tiddefendi ruhha billi kwazi titfa tort fuq l- Awtorita li kienet hija li licenzjat lill Blaustein Limited. Illi tali difiza pero m' hijiex sostenibbli. L-obbligi fuqha bhala socjeta regolata ma jigux annullati semplicement ghaliex entita li hija tkun qeghda isservi tkun giet licenzjata. Li kieku kien hekk, allura ir-regime regolatorju jispicca fix-xejn ghaliex bl- argument ta' l-Appellanti, entita regolata tieqaf milli tosserva l-obbligi taghha jekk minn qieghed jircievi is-servizz min ghandha huwa entita regolata. Illi dan certament mhux il-kaz proprju ghaliex ir-regime regolatorju jiddependi fuq l-operat ta' bosta operatori, uhud minnhom regolati per se u uhud mhux regolati. Kullhadd irid igor il- parti tieghu u is-success ta' gurdizzjoni li tambixxi li tkun ta' eccellenza fis-servizzi finanzjarji jibda minn kif joperaw l-operatori individwali. Illi fil- kaz Blaustein hija kemmxejn surreali kif persuna li kellha licenzja revokata fl- Olanda u licenza sospiza f' Cipru, tibqa ghaddejja f' Malta qisu xejn m'hu xejn. Certament li l-Appellanti kellha obbligu baziku li tirreferi il- materja lir-regolatur u tara li ma tkunx hi li qeghda tiffacilita l-operat ta' entita regolata li kellha problemi regolatorji serjissimi f' gurdizzjonijiet ohra.

59. Illi it-Tribunal ihoss ukoll illi l-Appellanti qieset dawn il- materji hekk kif ikkomunikata lilha tramite il- Minded Letter b' mod kemmxejn legger. Tibda u tispicca l-argument kollu illi ma kien hemm l-ebda nuqqas da parti taghha u li kollox kien korrett u legittimu. Illi kwazi kwazi wiehed jiddubita kemm kienet a konoxxenza bl-ezatt ta' u dwar l-obbligi taghha u l- portatat tal- licenzja li hija kellha. Illi zgur li l- Appellanti kellha l-obbligu li tkun ferm izjed *forthcoming* bl-informazzjoni anke wara il- hrug tal- Minded Letter.

60. U anke hawn wiehed irid janalizza dawn il- kazijiet flimkien mal- kazijiet l-ohra sopracitati. Filwaqt illi l-Appellanti ghandha kull dritt li tispjega l-operat taghha f' kull kaz b' mod individwali, l- Awtorita kienet cara illi hija qieset illi l- Appellanti ma issodisfatx it- test li

¹³ Uhud mill- kazijiet indikati huma mertu ta' Appelli li ghandhom pendenti quddiem dan it-Tribunal

persuna tkun adatta u idonea meta wiehed iqis il- kazijiet kollha indikati fl- assjem taghhom. U anke hawn it-Tribunal iqis illi l- posizzjoni ta' l-Awtorita kienet wahda korretta.

61. Illi f' dan il- kuntest, certament illi l-Awtorita kienet korretta li tiehu azzjoni a bazi tal-Artikoli 5(1)(a) u 6(1)(a) tal- Kap. 529 u tar- Rule 5.0 applikabbli ghas-CSP's u it-Tribunal iqis illi dan l-aggravju ta' l-Appellanti ghandu jigi michud.

F. Il- Hames Aggravju:

62. Illi hawn l-Appellanti tilmenta mid-Decizjoni ta' l-Awtorita fejn din iddecidiet illi kien hemm ksur tar-Regola 17.03 and 17.07 tas-CSP Rules u allegat illi l- Awtorita applikat hazin il-Ligi u/jew abbuzat mid-diskrezzjoni taghha u/jew hadet decizjoni illi hija manifestament ingusta. Illi dak li wassal lill- Awtorita li tinvoka ksur ta' tali regoli kien is-sottomissjoni tard ta' annual audited Financial Statements u tac-Certificates of Compliance. L-Appellanti targumenta illi vera dawn kienu sottomessi tard pero l- Awtorita qatt ma hadet azzjoni kontriha minhabba f' hekk.

63. Illi l- Awtorita tghid illi l- Compliance Certificates tas-snin 2016, 2017 u 2018 dejjem gew sottomessi tard, u dan wara li tkun inharget *reminder*. L- *annual audited financial statement* tas-sena 2016 qatt ma gie prezentata filwaqt li dak tas-sena 2017 gie prezentat sena tard.

64. Illi Rule 17.03 tas-CSP Rules tghid "*Audited annual financial statements prepared in accordance with appropriate accounting standards, together with a copy of the auditor's management letter and the auditor's report, shall be submitted to the MFSA within four months of the Accounting Reference Date.*"

65. Illi Rule 17.07 tas-CSP Rules tghid "*a Registered Person shall submit to the MFSA, on an annual basis, a Certificate of Compliance, in the style recommended in Annex 2 to these Rules.*"

66. Illi anke hawn certamemnt illi t-Trubunal ma jistax jiccensura lill- Awtorita li qieset tali nuqqasijiet fid-Decizjoni ahharija taghha. Illi anke hawn jerga jigi ribadit illi l-Awtorita ma haditx id-Decizjoni taghha unikament u biss minhabba tali nuqqas. Anke hawn dan in-nuqqas, li del resto ma jikkoncernax xi materja frivola, irid jinqara fil-kuntest tal- kumplament ta' dak li

gie konstatat bhala nuqqas fid-Decizjoni. Hija skorretta l- Appellanti li tghid illi il- licenzja taghha giet revokata minhabba tali nuqqas. Huwa car li ma kienx il- kaz li l- Awtorita hadet id-decizjoni taghha unikament fuq dan in-nuqqas. Pero, kif diga inghad, meta wiehed iqis dan in-nuqqas fl- assjem ta' kollox isib illi l- azzjoni ta' l-Awtorita hija gusta.

67. Illi f' dan il- kument, certament illi l-Awtorita kienet korretta li tiehu azzjoni a bazi tar-Rule 17.03 u 17.07 applikabbli ghas-CSP's u it-Tribunal iqis illi dan l-aggravju ta' l-Appellanti ghandu jigi michud.

G. Konkluzjoni:

68. Illi fik diga inghad il- gurdizzjoni ta' dan it-Tribunal hija stabbilita b' dak li jipprovdi l-artikolu 21(9) tal- Kap. 330.

69. Fil- konkluzjoni taghha, l-Appellanti targumenta illi kemm kienet ilha topera hija qatt ma kienet suggetta ghal xi azzjoni regolatorja u qatt ma wehlet xi multa jew sofriet xi azzjoni regolatorja. Illi fattwalment, anke jekk dan huwa korrett, ma jfissirx illi l- Awtorita ghandha tkun impeduta milli tagixxi skond il- Ligi kontra entita regolata.

Dan l-argument ma jreggix. Huwa minnhu illi fl-isfond ta' rapport fil-medja dwar il kaz ta' Kocner in partikolari, wiehed jista' inizzjalment jiddezzumi li d decizjoni ta' Awtorita kienet xi forma ta' 'knee jerk reaction'. Wiehed pero' ma jistax jikkritika l Awtorita' li rinfaccjata b'tali kaz iddeciedet tistharreg iktar fil fond fl-operat ta' l-Appellanti. Huwa fl isfond ta' dan l-istharrig illi dawn il-fatti hargu fil-berah. Wara kollox fl-isfond regolatorju Malti, entitajiet bhal ma hi l-appellanti, jitqiesu li huma 'gatekeepers', u hu proprja ghalhekk illi l -presunzjoni hi li l - 'gatekeeper' ikun qed jaghmel dmiru u jassigura li jottempra ruhu ma' l-obligi kollha taghha skond il-ligi. Jidher fic-car li l-appellanti ma' kenitx qed twettaq dawn l-obligi kif mistennija, u ghaldaqstant, filwaqt li wiehed jista' jkun kritiku kultant tal-'modus operandi' ta' l-Awtorita' dan ma' jfissirx illi dak li ghamlet kien inkorret u li l-konkluzjonijiet taghha hzienu.

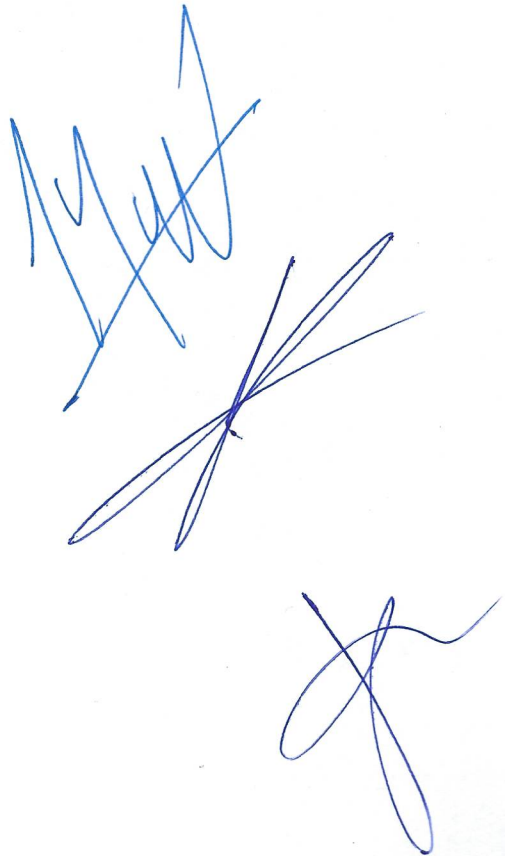
70. Tenut kont tac-cirkostanzi kollha tal- kaz it-Tribunal iqis illi l- Awtorita hadet id-Decizjoni a bazi tal- assjem tal- fatti kollha imputabbli lill- Appellanti. Huwa minnu li id-Decizjoni tista titqies bhala decizjoni iebssa, u kwazi kwazi, il- massimu minn aspekk regolatorju, ghaliex certament li il- kancellament ta' licenzja hija decizjoni importanti. U zgur illi it-tip ta' decizjoni li tittiehed ghandha tkun f' bilanc man-nuqqasijiet riskontrati fl- operat ta' l-

Appellanti.

71. It-Tribunal iqis illi dan il- bilanc irid jitqies f' kuntest, u il-kuntest tal kaz odjern, u l- mod li bih agixxiet l-Appellanti, kien fattur importanti li a bazi tieghu l- Awtorita hadet tali Decizjoni. Decizjoni li fl- ahhar mill- ahhar l- Awtorita kellha il-poter li tiehu. Dan ma jfissirx illi l-Awtorita tista tiehu decizjoni bhal din minnghajr l-ebda kunsiderazzjoni stante li kif diga inghad wiehed irid jirrispetta ukoll il- principju tal- proporzjonalita.

72. Illi pero, tenut kont tac-cirkostanzi kollha, u tenut ukoll kont tal- fatt kemm dan is-settur huwa dipendenti mhux biss fuq is-sahha tar-regolatur, izda fuq l-integrita u it-trasparenza tal- varji operatori, it-Tribunal ihoss illi d-decizjoni ta' l-Awtorita tehtieg li tigi kkonfermata.

Illi in vista tal- premiss, it-Tribunal qiegħed jichad l-appell ta' l-Appellanti u jikkonferma id- Decizjoni ta' l- Awtorita tat- tmintax (18) ta' Novembru 2019 bl- ispejjez kontra l- Appellant.

Three handwritten signatures in blue ink are present on the page. The top signature is a complex, multi-stroke scribble. The middle signature is a large, sweeping loop with several smaller strokes extending from it. The bottom signature is a smaller, more compact scribble.