



**Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Criminal Inquiry No.: 177/2017

**The Police
(Inspector Maurice Curmi)**

-vs-

Vasileios Spanos, holder of Greek Identity Card Number AE 041623

Today, the 13th day of March, 2020

The Court,

Having seen the charges brought against the accused **Vasileios Spanos** for having:¹

On the 1st of April, 2017, and in the previous weeks and months, on these Islands, committed several acts at different times, which violated the same provision of the law, and which were committed in pursuance of the same design:

For having on the same date, time, place and circumstances, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain exceeding five thousand euro (€5,000), i.e., the sum of

¹ Charges amended as at fol.184-185

around €30,000 to the detriment of Vodafone Malta Limited and GO plc, in terms of articles 308 and 310 of Chapter 9, of the Laws of Malta.

For having on the same date, time, place and circumstances, made to the prejudice of any other person, any other fraudulent gain not specified in Article 308 of Chapter 9, exceeding five thousand euro (€5000), i.e. the sum of around €30,000 to the detriment of Vodafone Malta Limited and GO plc, in terms of articles 309 and 310 of Chapter 9, of the Laws of Malta.

For having on the same date, time, place and circumstances, constructed, altered, made, was in possession of, sold or purchased any device and unlawfully connected with a telecommunication to the detriment of Vodafone Malta Limited and GO plc., according to articles 298A and 299 of Chapter 9 of the Laws of Malta;

The Court was also requested, in pronouncing judgment or in any subsequent order, sentence the person convicted, to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, in terms of Articles 532A, 532B and 533 of Chapter 9, of the Laws of Malta.

Having seen the note by the Attorney General indicating the Articles of Law in terms of Article 370(3)(a) of Chapter IX of the Laws of Malta dated the 6th June, 2019, namely:²

- a) Articles 18, 31, 308 and 310 (1) (a) of Chapter 9 of the Laws of Malta;
- b) Articles 18, 31, 309 and 310 (1) (a) of Chapter 9 of the Laws of Malta;
- c) Articles 18, 31, 298A (a) (b) and 310 (1) (a) of Chapter 9 of the Laws of Malta;
- d) Articles 7, 8, 11, 14, 16, 17, 18, 19, 20, 22, 23 and 31 of Chapter 9 of the Laws of Malta;
- e) Articles 532A, 532B and 533 of Chapter 9 of the Laws of Malta;
- f) Articles 382A, 383, 384, 385 and 386 of Chapter 9 of the Laws of Malta.

Having heard the accused declare that he does not object to the case being tried summarily by this Court.

Having heard witnesses.

Having seen all the acts and documents exhibited.

Having heard the prosecution and defence counsel make their final submissions.

Considered-

² Fol. 607-608

Inspector Maurice Curmi explained how police were alerted to potential suspicious activity in Room 404 of the Soreda Hotel leading them to investigate the tip off. Upon entering the room, they found the accused and his friend with hundreds of Vodafone sim cards issued from Vodafone Greece. Some of these sim cards were used and thrown away in the dustbin whilst others were still unused. Several phones, sim cards and a laptop were seized. A magisterial inquiry was launched. Curmi adds that investigations revealed that telephone numbers, located usually in the UK, where being called thereby generating a substantial amount of calls that the local Vodafone company would be paying for and for which it would not be reimbursed. This activity was known as international revenue share fraud (hereafter referred to IRSF).

International revenue share fraud is the practice which sees individuals increase electronic communications traffic by generating a considerable number of calls towards a range of international numbers without intending to pay the relevant fees for such calls. Subsequently, the individual would receive monetary income from the call termination charges which are acquired by the network owner of the range of numbers towards which the calls were made due to the generated inbound traffic.

The accused had admitted that between January and April, 2017, he had visited Malta on three or four occasions, with his last visit having begun on the 30th March.³ Investigations revealed that during his stays in Malta there was a spike of telephone calls which were being made from the same mobile sets found in his room. Vodafone had discovered that they had made a loss of €30,000.⁴ A letter of complaint sent to the Police on behalf of Vodafone Malta Limited was exhibited by the prosecuting officer.⁵

Upon interrogation the accused had stated that the items found by the police, namely 30 phones, 17 chargers and 646 Vodafone Greece sim cards were, barring the LG phone, all his *“Yes all those items were mine”*⁶. He denied activating the 66 sim cards saying only that he had made use of them. These sim cards were bought from a Bangladesh national, Ainal Islam, who was a street vendor on Menandrou Street in Athens, since it was cheaper than purchasing them from a shop. He confirmed that when police entered, he had 28 phones making calls, *“Yes I can confirm that those mobile phone sets were*

³ Vide Statement **Dok.MC1** a fol.33-34

⁴ Fol.30-31

⁵ **Doc.MC2** a fol. 104-143. Defence exempted prosecution from producing Dr. Paul Gonzi as a witness to authenticate same a fol.277.

⁶ Fol.34

making calls” and that he had entered the numbers that calls were being made to. He failed to reply as to why he made a number of calls to UK numbers and to whom those numbers pertained. Nor did he provide information as to why he was using 61 sim cards to make 246 calls which amounted to a duration of over 27 hours to the said UK numbers. Asked why he was found accessing **Global Billing website he stated he worked with them**. As for the starter pack bearing number 6951244205 he denied activating it but admitted to using same.⁷He also refused to answer questions as to whether he had actually spoken to anyone in any of the calls being made (using the phones found in his possession. Nor did he reply when asked as to whether Global Billing was related in any way to the calls being made.⁸

A letter of complaint sent to the Police on behalf of Vodafone Malta Limited was exhibited by the prosecuting officer.⁹ The suspicious activity complained of took place on the 29th January, 10th February, 2-4th, 17-18th, 31st March and 1st April, 2017, with the latter date being that when Police interrupted the said activity.¹⁰

From the acts of the proceedings, there is no evidence as to the specific dates when the accused was in Malta, with his statement merely confirming that since January, 2017 he had visited Malta on 3-4 occasions. His last visit commenced on the 30th March, the last weekend of March. This information coincides perfectly with the information given by Vodafone wherein it listed the 5 weekends wherein the suspicious activity took place.¹¹

The **Current Incident Report**¹² states that on the 1st April, 2017, police received anonymous information that suspicious activity was going on in room 404 at the Soreda Hotel; the caller had informed the police that *“on the inside there were a substantial number of mobile phones hooked up to a laptop”* as well as a substantial amount of Vodafone sim cards and credit cards. Police immediately went to the room accompanied by the receptionist. Upon entering, they witnessed the accused and a certain Panagiotis Vouros, sitting at a desk with a laptop switched on. Several mobile phones and a box full of Vodafone Sim Cards were found. This led to their arrest and a search of the room led to several credit cards registered in the accused’s name being discovered. **On the laptop they**

⁷ Ibid.

⁸ Fol.35

⁹ **Doc.MC2** a fol. 104-143. Defence exempted prosecution from producing Dr. Paul Gonzi as a witness to authenticate same a fol.277.

¹⁰ Fol.104

¹¹ **Doc. ESN2** a fol.44

¹² **Doc.GG1** a fol.158

noticed that the website www.globalbilling.com was open and in one of the browser tabs several numbers could be observed.

Lists of the items seized as a result of the said search were exhibited by **WPS264 Gabria Gatt**¹³ who also confirmed the current incident report as did **PC788 Keith Scerri**.¹⁴ **PS 343, Glen Carabott**¹⁵ confirmed the version recounted by Inspector Curmi adding that photographs were taken of every item seized. He also confirmed the list of items seized and for which receipts were issued.¹⁶

In the report compiled by **PC844 Carl Micallef** and presented in the Proces Verbal no.429/17,¹⁷ one notes *inter alia*, numerous photographs of the sim cards and mobile devices found in Room 404 of the Soreda Hotel. Amongst these photographs one notes the laptop clearly shown as giving access to the **Global Billing site with tabs named Statistics and Active Calls Statistics running**.¹⁸

Elaine Stagno Navarra, in representation of Vodafone Malta, explained how Inspector Curmi had enquired whether any abnormal activities were encountered by Vodafone given that police had found 30 mobile phones during the previous weekend. After Curmi provided the relative IMEI's¹⁹, Vodafone crossed checked their activity and found that those **IMEIs were generating a lot of usage using Vodafone Greece numbers which were generating a lot of minutes in voice calls to UK numbers**.²⁰ Moreover when compared to the normal activity Vodafone usually has coming from Vodafone Greece to Vodafone UK, it transpired that during a particular weekend an abnormal amount of minutes were being registered when compared to the normal amount of minutes generated from Vodafone Greece subscribers to UK numbers. Whereas normally only 2,000 minutes were accumulated on calls made by Vodafone Greece to UK numbers, on a particular weekend 43,000 minutes were generated.

Vodafone UK informed Vodafone Malta that the increase of the minutes coming from the Vodafone Greece numbers were all going to two UK ranges

¹³ Fol.156. Vide **Doc. GG2** a fol. 161-166

¹⁴ Fol.289-290

¹⁵ Testimony dated 11th January 2018

¹⁶ Fol.277A with reference to **Doc.GG2** a fol. 161-166

¹⁷ Fol.280

¹⁸ Fol.21 of **Doc.CM**

¹⁹ International Mobile Equipment Identity which allows for the identification of a mobile phone. Because the SIM card is associated with the user and can be swapped from phone to phone, a method is needed to keep track of the hardware itself, and that's why the **IMEI** was developed.

²⁰ Fol.36

which were not even part of OFCOM – the communications regulator in the UK. Thisw meant that that they were not valid ranges. Thus, enquiries were made with Vodafone Greece and it resulted that the calls were all overlapping calls and the activity was fraudulent from their end as well. Vodafone Malta also realised **that in each and every mobile phone there were more than one MSISDN;**²¹ **so one ended up with a mobile phone being connected with a hundred numbers.**²² *“So these IMEIs were being used by different numbers at the same time, coming in from the same location all at once when in reality we know that when the police confiscated these phones there weren’t all those people there doing all these calls physically. So the usage was being generated by a single person”.*²³

Stagno Navarra continued to describe how it was also noticed that a lot of the IMEIs that were confiscated, were used in each and every weekend between January to March 2017 coinciding with the increases in call generation described. Moreover, it transpired that the said IMEIs were being used from January, 2017, onwards in particular weekends just for those days, that is with no further usage being done in between. This was indicative that the phones were being **used solely for this type of activity**: *“This type of activity for telecommunication companies called IRSF fraud which means obviously having a lot of international calls being done by someone who is roaming on the network causing abnormal activity and also the reason being the fraud is that **the number that is being called would have a high cost compared to the normal numbers being called**”.*²⁴

The witness exhibited a list of the 27 IMEIs (corresponding to 27 mobile phones), the numbers, the calls and minutes generated which also indicates a loss, compared to revenue of €23,140.92.²⁵ Also exhibited was information relating to the dates on which each IMEI was used²⁶ and a list showing the ID numbers where the calls were terminated from together with the count for each number and the duration of the call.²⁷ A CD containing the usage done by each of the confiscated phones was also exhibited.²⁸ This CD contains information relating to each of the MSISDN found by the police as well as of the IMEIs used in the suspicious activity.

²¹ Mobile Station International Subscribers Directory Number - a unique number identifying a subscription in a mobile network.

²² Fol.36-37

²³ Fol.37-38

²⁴ Fol.36

²⁵ Doc.ESN1 a fol.43

²⁶ Doc.ESN2 a fol.44

²⁷ Doc.ESN3 a fol.45

²⁸ Doc.ESN4 a fol.46

Stagno Navarra explained that since they only became aware of the fraudulent activity in April, they had already paid the invoices pre-dating the March invoice.²⁹ The invoices for December-February showed a usage of approximately €50,000 and since this was the norm of the invoice total, it did not trigger any further investigations on Vodafone's part. The invoice for March however, showed usage of €73,000 and investigations showed that the increase in usage pertained under one section which was stacked under United Kingdom mobile. The ranges that were being used for these calls were all tagged by the carrier under United Kingdom, with the cost for the March invoice being that of €20,785 and the increase in that invoice coming solely from this tagging.³⁰ She went on to explain how **the increase in the usage was all coming from the usage that was done using the mobile phones which were confiscated**. The usage for January and February coming from the same phones had already started to increase. In fact from invoices sent to Vodafone by Ibasis, the carrier where the call terminated on,³¹ one notes that in January's invoice the usage for calls tagged under United Kingdom mobile was billed at €2,680.05,³² that for February was for €5,170.50³³ and for March €20,785.³⁴ The calls were being done to two particular ranges: **4474065xxx and 4475899xxx** which Vodafone UK confirmed were invalid ranges and were not listed with OFCOM (UK's communication regulator) meaning that these calls sound as though the call may have been short stopped.³⁵ By way of explanation she stated that an invalid range is a range which is known just to someone in particular and it is not being used in the correct manner. When Vodafone Greece was asked about the **1,500 numbers being used by the confiscated phones**, it identified **1,100 of them as being related to fraudulent behaviour**.³⁶ Moreover it transpired that the sims used were registered on non-Greek nationals, namely **49 customers registered with all those sims**.³⁷ Stagno Navarra exhibited documentation summarizing the details she testified on.³⁸ Regarding the loss suffered she states *"we have a twenty thousand seven hundred eighty five (20,785) Euro which is listed under this United Kingdom mobile which we are saying that these calls should not have been done because it is an invalid*

²⁹ Fol.41

³⁰ Fol.51a

³¹ Fol.40

³² Fol.62 tergo

³³ Fol.63 tergo

³⁴ Fol.51a and 59 tergo

³⁵ Fol.51b. Vide **Doc.ESN6** a fol.68

³⁶ Fol.51b

³⁷ Ibid.

³⁸ **Doc.ESN5 - ESN8** a fol. 52 et seq.

range by this carrier". To this loss for March, one had to add €6,000 for January and February.³⁹

The witness also described why a loss had been sustained namely, because for a call to pass on Vodafone, Vodafone would have to pay the carrier and this would entail getting revenue from Vodafone Greece. In this case, Greece decided that since this was fraudulent behaviour, they would not pay Vodafone Malta.⁴⁰ Also exhibited by the witness was a detailed invoice marked **Doc. ESN9** showing the numbers that were tagged under the United Kingdom. This shows heavy usage for the 16-18th March and 30th March to 1st April with calls reaching normal levels after the 2nd April, when no more calls were made using UK numbers starting with 004474065xxxx and 004475899xxxx.⁴¹ **When activity was being done using these mobiles there was a spike on the tagging United Kingdom mobile.** Whilst normally United Kingdom mobile tagging did not carry such a high number of minutes on it, it was noticed that **a series of numbers tagged under United Kingdom mobile from mid-March pertained to 2 numbers.** As from the 2nd April onwards they were not used.⁴² Documentation showing the usage for April and May was also exhibited;⁴³ this information shows that whilst the norm for United Kingdom tagging was 4,000 minutes, in April usage of 35,000 minutes was seen, with the usage going back to normal in May.⁴⁴ In fact a review of the documentation evidences that the usage for April (May invoice) was for 35,966 minutes costing €4,495.81; usage for May (June invoice) the cost was but €510.59.⁴⁵ It further resulted that the ranges for the numbers 004474065xxxx and 004475899xxxx were allocated to Telecom2 Ltd.⁴⁶

In a subsequent hearing the witness, after explaining a number of receipts and corresponding invoices⁴⁷ which were also presented together with a credit note for €12,548,⁴⁸ stated that **the loss ultimately sustained by Vodafone Malta was**

³⁹ Fol.51c

⁴⁰ Fol.51e

⁴¹ **Doc.ESN9** a fol.103

⁴² Fol.100

⁴³ **Doc.ESN9** to **ESN11**

⁴⁴ Fol.101

⁴⁵ **Doc.ESN11** a fol.103

⁴⁶ **Doc.ESN12** a fol.103

⁴⁷ **Doc.ESNZ-ESNZ4.**

⁴⁸ Fol.658. Stagno Navarra states *"we were disputing 19,000 of this invoice and then Vodafone roaming services actually aligned with us and also confirmed that there was abusive usage during the period of this invoice together with the other ones and they gave us a credit note to compensate for some of the losses"*.

that of circa €10,000.⁴⁹ This loss had been calculated against revenue for the period between the January usage and the 1st April usage.⁵⁰ The credit was received after Vodafone roaming services confirmed Vodafone Malta's assertion that there had been abusive usage during the period of the invoice amounting to €73,919.⁵¹ The witness then summarizes how the abusive usage took place:

"...when this case started, we analysed the usage coming from this mobile numbers which were in Malta doing this extensive number of minutes to the UK. There were a lot of things which were seen as abnormal so basically we never had that amount of numbers coming from Greece at one go and it was in particular days, so it was during weekends and the usage was spiked and then when the usage of this mobile phones that were doing this usage stopped, the numbers came back to normal. so these mobile phones were doing a number of minutes in a small period of days of time and to the same network which were the UK numbers which also had a very high cost. What we know as well from the information that these number of mobile numbers that were confiscated in March were as well being used way back from January. And where we had seen as well from the normal numbers between January and the 1st of April even during those days were these mobile phones were being used there was a spike as well, so when we had given even our losses way back we had given all the usage between January and the 1st of May. After that there were no other spikes and the usage came back to normal as we expected to be".

Asked by the prosecution to refer to invoices exhibited by her in a previous sitting⁵² which are invoices sent to Vodafone from Ibasis for January to March 2017, she continues "... this is a summary and these are the details and I had highlighted exactly. We had highlighted that there were spikes in the ... one related to January⁵³ so there were spikes coming from certain destinations which either do not have that amount of usage or not having that at all. then we had to go to the the March usage,⁵⁴ the one of the 73k ... so in the very last page there is the high usage, if you see all the other charges and then you see these charges it's a 20k charge and it shows the same destination and if you had to compare it to the other evidence which I had provided, the numbers and the minutes almost tallying. And same thing for the other invoices related to the February ones so same destination⁵⁵, United Kingdom mobile showing very high charges comparing to the other one..... if you had to compare the rate as well, this destination is a highly costed destination. It is not a destination

⁴⁹ €10,452 (23,000-12,548)

⁵⁰ Fol.615

⁵¹ Fol.613. Vide invoice 4000155828 a fol. 56. Also vide **Doc.ESNZ4** a fol.660

⁵² Fol.53 et seq. **Doc.EZN5** a fol.52 et seq.

⁵³ Fol.52. Vide in particular highlighted extract at fol.55,

⁵⁴ Fol.56. Vide in particular highlighted extract at fol.59 tergo

⁵⁵ Fol.64

which is usually used by the norm. we had noticed that there was a pattern.....We had reported the same [recte] IMEIs that were confiscated were used for a similar activity on the 29th of January 2017, on the 10th of February that were mentioned that were like long weekends or public holidays and in March there were the second third and fourth of March which was a weekend and then there was the 17th, 18th and the 31st and the 1st of April. So basically all the usage from those mobile phones were coming in these particular days and then they did not continue and it started again for a few period and eventually it stopped after they were confiscated..... In the weekends exactly and it showed spikes and these spikes where can even be related to the invoices that we had presented.”⁵⁶

Stagno Navarro then exhibited a list of IMEIs which police had passed on to her *“those same mobile numbers are the same, where the numbers that were doing this usage high numbers of minutes... there is the list of IMEIs these are the dates, the weekends, where we had seen the high usage and with a cross there is marked when they were visible.”⁵⁷* In the same IMEI, i.e. the actual phone, one had used different sim cards *“and there were a lot”⁵⁸* The activity was checked by Vodafone Malta *“from the invoice you will just have the terminating number and then you will go back and continue to get to the same numbers basically.”*, that is the numbers which the police asked information upon.⁵⁹

Charmaine Galea Triganza, in representation of Go Plc., testified how the investigating officer showed her photographs depicting the activity encountered by police. A request with a list of IMEIs was received from the appointed court expert and checks were made to assess whether these IMEIs were used on their network. Results only showed sporadic activity and they had not been used since the end of January.⁶⁰ From the scenario of the calls she stated that this was a case of international revenue share fraud, where the loss incurred by her company was €50.⁶¹ *“We will contest them [the €50] but usually we’ll still end up paying...because the carrier would have done his job by forwarding that call...the carrier will ask for the money obviously...we are billed by the first carrier”⁶²*The witness presented documentation relating to the calls made using Go network⁶³ as well as a number of invoices wherein she circled the calls

⁵⁶ Fol.614-615

⁵⁷ Fol.622

⁵⁸ Fol.623

⁵⁹ Fol.624

⁶⁰ Fol.47

⁶¹ Fol. 48

⁶² Fol.49

⁶³ **Doc.CGT1** a fol.146-154

concerned.⁶⁴ Galea Triganza explained that since the calls passed from three different operators: IBasis, Stata and Orange France, she circled the relative charges related to the relevant calls. The circled numbers when added total €173.20⁶⁵ and not fifty Euro (€50.00) as claimed. In fact when reproduced, the witness explains that the **loss suffered by Go was €163**,⁶⁶ highlighting the difficulty to provide itemized billing (given that wholesale charges are not listed per every call but per amount of minutes that GO passes to their carrier, Tata Communications, to pass on the calls).⁶⁷ *“The losses are suffered by Go because the cost of the numbers that were terminated upon are premium rated numbers. These numbers are charged at a higher cost than what Go charges the international operator of the sim cards which were roaming in Malta (Vodafone Greece), that is, Go charges Vodafone Greece a certain amount but then has to pay the carrier a higher amount for these costs.”*⁶⁸

Reproduced she describes how GO suffered the loss mentioned due to international revenue share fraud and summarizes how this fraudulent activity works. *“...you have a shared fraud number that **the person gaining money from the fraud, from the scheme whatever, would have subscribed to a revenue shared fraud number which means that the person owning that numbers would receive money for every call received.** even though sim cards pertained to Vodafone Greece it does not mean that they were not roaming on GO's network as well. The preferential network would be Vodafone cause every operator has the preferential, preferred network. So when they were roaming on our network because we had Vodafone Greece sim cards roaming on GO's network, we were receiving money for every call, which was cents, few cents, less than a cent actually per minute these carriers, in this case is Tata for example sends a list of the charges to GO, like saying this range costs at 2c per minute, these calls eventually, for example these calls were terminating in the UK. It does not mean [Tata] started and terminated themselves these calls. Tata would have sent them to another carrier and another carrier and so on and so on. What happens is that these charges change almost everyday. This is something like the stock exchange financially, charges change and the fraudsters would actually would be on the look out for these changes this is called arbitrage. The technical term is arbitrage.”*⁶⁹ Under cross-examination she explains that they had no discretion to block the calls since GO was offering a service and once Tata carried the call Go had to pay Tata once it had contracted it to forward GO's calls.⁷⁰

⁶⁴ Doc.CGT2-CGT5 a fol. 155 et seq.

⁶⁵ Fol 145

⁶⁶ Vide minutes of 2nd July, 2019 wherein defence exempted witness from need of exhibiting a receipt or invoice; fol.610

⁶⁷ Fol.588

⁶⁸ Fol.589

⁶⁹ Fol.589-590

⁷⁰ Fol.591

Dr. Martin Bajada, whilst presenting his report,⁷¹ testified that he had gone to the hotel room where he witnessed *“29 phones which were all making calls at the same time and some 400 sim-cards. These phones were [recte] seized.”*⁷² He had ordered that all communications be stopped before undertaking further investigations.⁷³ The main service provider affected was Vodafone whilst the sim cards pertained to Vodafone Greece. In his report we find *“L-uzu ta’ cellulari u s-SIM cards li nstabu fil-kamra numru 404 gewwa s-Sorreda Hotel...hija skema maghrufa bhala International Revenue Share Fraud.”*⁷⁴, going on to annex various articles which highlight how this fraud works.⁷⁵

Dr. Bajada was further tasked with the examination of a CD⁷⁶ containing data relating to the subscribers of the 2,818 sim cards pertaining to Vodafone-Panafon Greek which was presented before the Greek judicial authorities by Konstantinos Panagos; this was in furtherance of a request for legal assistance sent upon a decree by this Court.⁷⁷ As had been stated by Panagos, the data contained information relating to subscriber information. An analysis of the information therein contained, showed that **the 2,818 pre-paid card mobile numbers were listed on 86 individuals.** The accused was not amongst the names listed.

Konstantinos Panagos, head of Department of Company Security and Compliance of Vodafone - Panafon Greek Public Limited Telecommunications Company, testified that out of the 2,821 pre-paid card mobile numbers – indicated by the Maltese authorities in their request for mutual legal assistance⁷⁸ - **2,818 of these resulted in pre-paid card mobile numbers in Vodafone-Panafon network.** He exhibited a CD containing the data of the 2,818 subscribers.⁷⁹ Of these, **2,111 numbers had been detected as being used to commit the fraud during March and April, 2017.** Panagos continued that during the period from 02/03/2017 to 01/04/2017, the said 2,111 numbers whilst located in Malta, “effected calls to the international series of numbers 4474065* and 4475899* by abuse of the call-waiting service (on hold) and by doing so created “fictitious” traffic resulting in the causation of pecuniary damage to our company by means of this false traffic. Specifically, the call waiting service (on hold)

⁷¹ **Doc.MB1** a fol. 296 et seq

⁷² Fol.294

⁷³ Fol.295

⁷⁴ Fol.300

⁷⁵ **Dok.IRSF** a fol.330 et seq

⁷⁶ Dok.AG1 a fol.495

⁷⁷ Fol.523.

⁷⁸ Vide Doc.A (IMSI) and Doc.B (MSISDN)a fol. 233-258

⁷⁹ Fol.523.

*allows to the subscriber to initially call one number, to put that number on hold and to call a second number. The purpose of this service is for the subscriber to be able, during the conversation with the first phone number, to call a second phone number in order to communicate to a second person. The call-waiting service does not permit the subscriber to call more than two numbers in parallel. In the event of that fictitious traffic, though, as it also happened in the present case, the prepaid card mobile telephony subscriber would call an international phone number, intentionally put that call on hold and effect a new, second call to the same international phone number of the same series of numbers. Subsequently, he or she would call again the same international phone number or an international phone number of the same series of numbers. And this would continue in the same way until the speaking time of the prepaid card mobile has been used up. By this method they were able to effect as many calls as possible in as short a period of time as possible so that they would not be immediately detected by the systems for the detection of telecommunication fraud used by the mobile telephony networks. Said calls are classified as "fictitious" the caller does not actually wish to communicate with different persons at the same time via the call-waiting service, but their only intention is an increase in the volume of calls that will be put through to the international operators and subsequently to the final destination and thus the amount of money charged by the international operators or the final recipient of the calls."*⁸⁰

The witness went on to state that when they detected this behaviour, they called the dialled international numbers from a Greek phone number and received an answer via an automated service in English, "Test message 2, if you are hearing this message, that means that your call is successful." He continued to underline the fact that "the interconnection cost for the calls effected to the above dialled international series of numbers is higher compared to other series of numbers of the same country. But the specific prepaid card mobile telephony subscribers, knowing the above as it results, used to deliberately effect "fictitious traffic", and namely exclusively to the above international series of numbers and not to other series of numbers of the same country with a normal or low charge."⁸¹

Panagos stated that his company suffered a loss of revenue amounting to €12,548 because of the fictitious traffic carried out on the Maltese network using the said 2,111 pre-paid card mobile phone numbers. This loss of revenue represented the amount paid to the Maltese network which, in turn, would have paid that sum to the international operator given that the said fictitious calls had been invoiced by each international operator as real calls. He added that given the infrastructure developed by the specific perpetrator with the intention to repeatedly commit the deed, the purpose was to derive income.

⁸⁰ Fol.523-524

⁸¹ Fol.525

Finally, he mentioned that on the 12th September, 2012, his company had instituted criminal proceedings against the accused for computer fraud perpetrated during the period of November 2011 to February 2012.⁸²

Thus, for the accused to be found guilty of this fraud, a link must be established between the accused and the owner of the numbers the multitude of calls was terminating upon - namely those pertaining to the series/range of 4474065XXXXXX and 4475899XXXXXX - which information was requested from the United Kingdom authorities through a requests for legal assistance which listed the large amount of numbers pertaining to those ranges..⁸³ The reply forthcoming from the United Kingdom authorities shows that the range of numbers 4475899XXXXXX, is allocated to Moonshado Inc., based in the United States. The range of 4474065XXXXXX were allocated to Telecom2.

Robert Johnson, director of Telecom 2 released a police statement wherein he stated that these numbers had an out-payment rate of 10c per minute. Numbers from these ranges were allocated to a number of clients for re-sale. **The numbers in the ranges of 4474065XXXXXX and 4475899XXXXXX, had been supplied to a single customer "Global Billing Limited who are contracted with Telecom2...Vasileios Spanos is not a client of Telecom 2 Ltd and is not known to Telecom 2"**.⁸⁴ Global Billing Limited is based in London, at 48 Chancery Lane.

Notwithstanding that these statements were not confirmed on oath by the person making the enquiries or providing the statement, defence counsel raised no issue as to their admissibility in evidence.

The First and Second Charges: Fraud

The person charged had admitted in his statement that he had personally made the various calls "*Yes I can confirm that those mobile phone sets were making calls*",⁸⁵ which were intercepted as ongoing when Police descended on his hotel room. He also confirmed that the mobiles and sim cards found were his, "*Yes all those items were mine*"⁸⁶. His computer was clearly accessing the Global Billing site (a prompt for his login and password can be seen on screen⁸⁷), whilst he also admitted that "*It's a site that I work together with Global Billing from Greece*".⁸⁸ Information provided by the United Kingdom authorities to the

⁸² Fol.539

⁸³ Fol.292A et seq and in particular vide list at fol.292G and 292H.

⁸⁴ Fol.505

⁸⁵ Fol.34

⁸⁶ Ibid.

⁸⁷ **Doc.CM** a fol.21

⁸⁸ Fol.35

Attorney General and subsequently presented in these acts, shows that these calls resulted as having been made to premium numbers pertaining to Global Billing.

Thus for the crime of fraud to result, it becomes imperative for the prosecution to show beyond reasonable doubt that (i) revenue in connection with these fraudulent calls was generated in favour of Global Billing - clearly presumed given the evidence from Vodafone Malta, Vodafone Greece and Go representatives and (ii) Spanos was in some way **partaking of the revenue generated from the said fraudulent calls.**

In **Il-Pulizija vs Carmela German** the Court of Criminal Appeal provided:⁸⁹

In tema legali gie ritenut minn din il-Qorti fis-sentenza taghha tat-12 ta' Frar, 1999 fl-ismijiet Il-Pulizija v. Anthony Francis Willoughby li:

*“Fil-Ligi taghna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat mill-agent xi forma ta' ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent (Il-Pulizija v. Emmanuele Ellul, App. Krim., 20/6/97; ara wkoll Il-Pulizija v. Daniel Frendo, App. Krim., 25/3/94). Dan it-telf hafna drabi jkun jikkonsisti filli l-vittma, proprju ghax tkun giet ingannata, volontarjament taghti xi haga lill-agent (Il-Pulizija v. Carmel Cassar Parnis, App. Krim., 12/12/59, Vol. XLIII.iv.1140). Jekk l-ingann jew qerq ikun jikkonsisti f' “raggiri o artifizi” – dak li fid-dottrina jissejjah ukoll *mise en scene* – ikun hemm it-truffa; jekk le, ikun hemm ir-reat minuri ta' frodi innominata (jew lukru frawdolent innominat) (ara, fost ohrajn, Il-Pulizija v. Carmelo Cassar Parnis, App. Krim., 31/10/59, Vol. XLIII.iv.1137; Il-Pulizija v. Francesca Caruana, App. Krim., 25/7/53, Vol. XXXVII.iv.1127; ara wkoll Il-Pulizija v. Giuseppe Schrainer, App. Krim., 3/3/56).”*

Kwantu ghall-kwistjoni mqajjma mill-appellanti u cioe` jekk il-“gidba semplici” – a differenza tal-artifizji u raggiri – tistax tammonta ossia twassal ghar-reat ta' frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta ghal “qerq”, cioe` tkun intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti arrikkiment ghal min jghid dik il-gidba, u basta, s'intendi, li tkun effettivament waslet ghal dan it-telf minn naha u arrikkiment min-naha l-ohra. [sottolinejar tal-Qorti]

In **Il-Pulizija vs Marjanu Zahra**⁹⁰ the Court of Magistrates (Malta) examined in great detail the elements of the offence of fraud:

Biex jissussti ir-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-qrati taghna illi iridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u is-suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti ir-reat u il-vittma. Hemm imbaghad l-element materjali ta' dana ir-reat u cioe' l'uzu ta' ingann jew raggieri li iwasslu lil

⁸⁹ Per Hon. Mr. Justice Vincent Degaetano; Dec. 30th December, 2004

⁹⁰ Per Magistrate Dr. Edwina Grima; Dec. 2nd March, 2011

vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li ikun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax jisussisti. Illi f'sentenza moghtija mill-Qorti ta' l-Appelli Kriminali (per Imhallef Carmel. A. Agius) deciza fit-22 ta' Frar 1993, fl-ismijiet **Il-Pulizija vs Charles Zarb**, il-Qorti ghamlet esposizzjoni ferm preciza studjata u dettaljata ghar-rigward ta' l-elementi ta' dana ir-reat. Il-Qorti bdiet sabiex esprimiet ruhha b'dan ilmod ghar-rigward ta' dana ir-reat:

“Id-delitt tat-truffa huwa l-iprem fost il-kwalitajiet ta' serq inpropriji u hu dak li fl-iskola u fil-legislazzjoni Rumana kien maghruf bhala steljolat u li jikkorrispondi ezattament ghat-truffa tal-Codice Sardo, ghal frodi tal-Kodici Toskan, ghal Engano jew Estafa fil-kodici Spanjol, ghal Bulra f'dak Portugiz, u ghal Esroquerie fil-Kodici Francis ... Id-disposizzjonijiet tal-Kodici taghna li jikkontemplaw ir-reat ta' truffa kienu gew mehuda minn Sir Adriano Dingli mill-paragrafu 5 ta' l-artikolu 430 tal-Kodici delle Due Sicilie li hu identiku hlief ghal xi kelmiet insinjifikanti ghal Kodici Franciz (artikolu 405) avolja dan, il-Kodici delle Due Sicile, it-truffa kien sejhilha Frodi”. Skond guriprudenza kostanti, lingredjenti ta' l-element materjali ta' dan id-delitt ta' truffa, huma dawn li gejjin.

Fl-ewwel lok bhala suggett attiv ta' dan id-delitt jista' ikun kulhadd.

Fit-tieni lok il-Legislatur, aktar mill-interess socjali tal-fiducja reciproka firrapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uzu ta' l-ingann u tar-raggieri li jinducu bniedem jiddisponi minn gid li fil-kors normali tan-negozju ma kienx jaghmel.

Fit-tielet lok hemm l-element materjali tat-truffa u jikkometti d-delitt tat-truffa kull min:

- a. b'mezzi kontra l-ligi, jew
- b. billi jaghmel uzu minn ismijiet foloz jew
- c. ta' kwalifiki foloz jew
- d. billi jinqeda b'qerq iehor u
- e. ingann jew
- f. billi juri haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz,
- g. jew ta' hila
- h. setgha fuq haddiehor jew
- i. ta' krediti immaginarji jew
- j. sabiex iqanqal tama jew biza dwar xi grajja kimerika, jaghamel qliegh bi hsara ta' haddiehor.

.... Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpressionaw bniedem ta' prudenza u sagacija ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat filligi.”

Dwar l-artifizji intqal mill-Qorti illi “hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem jkun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti ta' l-iffrodat. Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke kollegjalment komposta fil-kawza **“Reg vs Francesco Cachia e Charles Bech** (03.01.1896 – Kollez.XV.350) li fiha intqal illi “quell” articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impjegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia accompagnata da qualche atto diretto a darla fede.”

Ghar-reati ta' truffa komtemplat fl-artikolu 308 tal-Kodici kriminali, il-Qorti iccitata lill-Imhalled Guze Flores fejn qal illi "kif jidher mid-dicitura partikolari deskrittiva adoperata, hemm bżonn li tirrizulta materjalita' specifika li sservi ta' supstrat għall-verosimiljanza tal-falsità prospettata bħala vera u b'hekk bħala mezz ta' qerq. Ma huwiex bizzżej għal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, mingħajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l-affermazzjonijiet menzjonjieri tal-frodatur. Il-ligi tagħti protezzjoni speċjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi teatrali, li tissupera il-kawtela ordinarja kontra s-sempliċi u luzingi, u li tagħti li dawk l-esterjorita ta' verita kif tirrendi l-idea l-espressjoni felici fid-dritt Franciz mise-en-scene."

"...Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jingħad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tiegħu. L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il-kliem "bi hsara ta' haddiehor" ma jhallux dubbju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bżonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tiegħu ikun konxju ta' l-ingustizzja tal-profitt u b'dan il-mod il-legittima produttività tal-profitt hija bizzżej biex teskludi d-dolo."

Since no evidence was forthcoming that the accused made any gain from the fraudulent calls, the court cannot find the accused guilty of the crime of fraud in terms of Article 308 or 309 of the Criminal Code. Admittedly it is highly probable that Spanos embarked on this enterprise together with, or at the behest of, Moonshado Inc and Global Billing Limited, with the sole purpose of making gain through the irregular use of the calls he was making. However, the Court cannot rely on assumptions or probabilities and thus, the element of gain being made by Spanos and the said firms needed to be proven. Given that numerous were the bank cards found in his possession, inquiries into Sponos's finances, could have gone a long way in satisfying this requisite element.

The Third Charge: Fraudulent access to telecommunications systems.

Reference is made to the Second Reading of the Broadcasting Bill (Bill No 153), which later came to be known as the **Broadcasting Act, 1991, (Act XII of 1991)**. It was through this Act that article 298A was added to the Criminal Code.⁹¹

ONOR. MICHAEL FRENDU: Mr Speaker, naħseb li din il-Liġi għandha titniżżel bħala waħda mill-milestones ta' l-iżvilupp fil-pajjiż għaliex hija ntiza li tibdel radikalment il-mod kif naħsbu fuq ix-xandir f'pajjiżna. Hemm bżonn li f'dan ir-rigward naġġornaw il-ħsieb tagħna b'mod illi nlaħħqu ma' dak li qed jiġri f'pajjiżi oħrajn. Dan l-Abbozz ta' Liġi qed nipprezentawh din is-sena meta qed insegwu dak li ġara f'pajjiżi oħrajn, bħall-Italja, li fl-1990 ukoll għamlet l-Att dwar ix-Xandir b'mod illi tat struttura legali għal dak li fil-fatt kien diġa' realta', cioe l-pluraliżmu fix-xandir. Il-pluraliżmu fl-Italja rajnih jiżviluppa fuq il-livell ta' l-istazzjonijiet privati fit-telewiżjoni u fir-radju, u kien hemm anke min kien jilmenta li żviluppa b'mod li ma kienx regolat. Wara li ġara dak l-iżvilupp fittxew illi jkun hemm regolamentazzjoni bil-liġi ta' dak l-iżvilupp reali u attwali. Wara diversi diskussjonijiet din ir-regolamentazzjoni għaddiet mill-Parlament Taljan u llum f'dak il-pajjiż hija liġi.

L-istess ġara fl-Ingilterra fejn dan l-aħħar ukoll kellhom regolamentazzjoni ġdida dwar ix-xandir, li kienet aktar aġġornata minn dik ta' l-Italja. Kienet qed iġġedded ir-regolamenti li diġa' kien hemm, li kienu wkoll jagħtu lok għall-pluraliżmu fix-xandir. Illum il-pluraliżmu fix-xandir huwa realta', nistgħu ngħidu, fil-pajjiżi kollha Ewropej fejn illum il-konsumatur, ic-cittadin, għandu d-dritt li jagħżel l-istazzjon tar-radju jew televiżiv li jidherli. Din hija xi haġa li hija accettata bħala principju f'dawn il-pajjiżi. Hija xi haġa accettata mill-partiti politici ta' dawk il-pajjiżi nnifishom.....

Irrid ngħid ukoll, Mr Speaker, li hija l-ewwel darba fil-Parlament Malti, minn mindu dan il-pajjiż sar indipendenti li tressqet liġi komprensiva dwar ix-xandir.....

L-għan principali ta' din il-Liġi hu li jkun hemm żieda f'dak li tista' tagħżel, u li jkun hemm għażla veru fir-rigward ta' l-istazzjonijiet li huma ġenerati lokalment.

Subsequently, in the Committee Stage, Parliamentary Sitting No.517 of the 7th May, 1991, the Hon. Parliamentary Secretary Michael Frendo succinctly explained the reason for the new article finding its way into the Criminal Code:

ONOR. MICHAEL FRENDU:..... Mr Chairman, din hija klawnsola li tinkludi fiha tliet affarijiet specifici. L-ewwel punt li tinkludi huwa li:

"Kull min jibni, jibdel, jagħmel, jippossjedi, ibiegħ jew jixtri xi apparat li bih ikun jista' jikkonnetti kontra l-liġi ma' sistema ta' telekomunikazzjoni għandu, meta jinsab hati, jeħel -.....

Fil-fatt din hija intiża biex tkopri d-decoders użata minn kwalunkwe cable operator - sew jekk ikun qed jopera by cable or by some other means - biex ikun jista' jara li fil-fatt il-messaġġ jasal għand min qiegħed iħallas għalih biss u intiża wkoll biex tkopri l-possibilita' li jkun hemm xi ħadd li jikkonnetti kontra l-liġi.

⁹¹ Sitting No. 494 of the 18th March, 1991

Thus, although the *raison d'être* for this legal provision was the unlawful connection to a *broadcasting network*, in this case cable television, the fact that the legislator chose a much wider term “telecommunication system”, does not exclude the application of this article to any telecommunication network such as the telephony field.

However, from the evidence produced before this Court, there is nothing to suggest that the person charged unlawfully connected with any telecommunication system. Panagos stated that the sim cards found by the local police resulted in pre-paid card mobile numbers in the Vodafone-Panafon network providing the data of the 2,818 subscribers.⁹² There is nothing to suggest that the mobiles found were anything but normal mobile phones and communications made over Go plc. and Vodafone Malta’s networks were lawfully made.

Hence this charge does not result. The unlawfulness resulted not in the connection itself but in the use made by Spanos of that connection!

Consequently, on the basis of the evidence found in the acts of the proceedings, the Court cannot but acquit the accused of all the charges brought against him.

The Court orders that a copy of this judgement be notified to the Commissioner of Police in order to investigate the role, if any, of Global Billing Limited and Moonshado Inc., in this illicit activity.

The Malta Communications Authority is also being notified of this judgement given the involvement of OFCOM in the execution of the request for mutual legal assistance.

Finally, orders that a copy of this judgement be transmitted to Europol and Eurojust.

**Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law).
Magistrate**

⁹² Fol.523.