is-subartikolu 21(14) tal-Kap. 330, li jagħti lok għal appell fuq punt ta' liġi biss –
'inside information' *li wasslet lill-appellant sabiex ibigħ l-ishma tiegħu*

MALTA

QORTI TAL-APPELL
(Kompetenza Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tal-21 ta' April, 2021

Appell Inferjuri Numru 75/2020 LM

James Blake (K.I. nru 68864M)
("l-appellant")

vs.

L-Awtorità għas-Servizzi Finanzjarji ta' Malta
("l-appellata")

Il-Qorti,

<u>Preliminari</u>

1. Dan huwa appell magħmul mir-rikorrenti **James Blake (K.I. nru 68864(M)** [minn issa 'l quddiem "l-appellant"] mid-deċiżjoni tat-Tribunal Dwar Servizzi Finanzjarji [minn issa 'l quddiem "it-Tribunal"] tal-21 ta' Ottubru, 2020, [minn issa 'l quddiem "id-deċiżjoni appellata"] fil-konfront tal-intimata l-

Awtorità għas-Servizzi Finanzjarji ta' Malta [minn issa 'l quddiem "l-Awtorità appellata"], li permezz tagħha ddeċieda billi ċaħad l-appell tiegħu u kkonferma d-deċiżjoni tal-Awtorità appellata tas-26 ta' Ottubru, 2009, kif ukoll is-sanzjoni hemm imposta, bl-ispejjeż a karigu tal-appellant.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw il-bejgħ ta' numru ta' ishma li eżegwixxa l-appellant fil-kumpannija GlobalCapital plc, liema bejgħ sar matul Novembru u Diċembru tas-sena 2007. Dan proprju fiż-żmien li huwa kien ukoll wieħed mid-diretturi tal-imsemmija kumpannija. Dan filwaqt li l-Awtorità appellata kienet ilha diversi snin twettaq skrutinju tat-trasferimenti tal-ishma ta' din il-kumpannija. Imbagħad wara t-trasferimenti li saru għall-aħħar kwart tas-sena 2007 anki minn azzjonisti oħra, l-Awtorità appellata wettqet *compliance visit* fl-uffiċini tal-kumpannija GlobalCapital plc, fejn talbet li tingħata l-minuti tal-laqgħat tal-Bord tad-Diretturi tal-aħħar nofs tas-sena. Fost id-dokumenti li ġew mgħoddija lilha, kien hemm dokument intestat *"GlobalCapital plc – Review of Q3 Results 2007 and budgetary proposals 2008-2010",* li kien ġie ppreżentat lill-Bord waqt il-laqgħa tas-7 ta' Diċembru, 2007. Minn dan id-dokument, u anki mill-*management accounts*, irriżulta lill-Awtorità appellata li l-kumpannija GlobalCapital plc kienet irreġistrat telf qabel it-taxxa fl-ammont ta' €1,844.934. Permezz tal-ittra tiegħu tas-26 ta' Ottubru, 2009, is-*Supervisory Council* tal-Awtorità appellata ddikjara li huwa kien sab li l-appellant kien kiser id-dispożizzjonijiet tal-artikolu 6 tal-Kap. 476 peress li huwa kien iddispona mill-ishma tiegħu fil-kumpannija msemmija, hekk kif kien

fil-pussess ta' *inside information* li kienet ġiet żvelata lill-Bord tad-Diretturi waqt laqgħa tas-7 ta' Diċembru, 2007, u liema informazzjoni ma kinitx disponibbli għall-pubbliku. B'hekk is-*Supervisory Council* impona piena amministrattiva fuq l-appellant ta' €6,600 *ai termini* tal-artikolu 22 tal-Kap. 476, rappreżentanti 3% tal-valur sħiħ tal-ishma li huwa kien biegħ fil-perijodu bejn l-10 ta' Diċembru, 2007 u 20 ta' Diċembru, 2007. L-appellant interpona appell minn dik id-deċiżjoni fil-25 ta' Novembru, 2009 quddiem it-Tribunal, fejn talab għar-revoka tagħha.

Id-deċiżjoni appellata

3. It-Tribunal ikkonstata u ddeċieda kif ġej:

> *"Ikkunsidra:*
>
> *Illi l-appellant, fl-appell tiegħu, jesponi diversi raġunijiet għaliex, skont hu, id-deċiżjoni mpunjata għandha tiġi revokata. Brevement, huwa jsostni li hu ma kellu ebda tagħrif li ma kienx disponibbli għall-pubbliku, li tagħrif rigwardanti l-budget tal-kumpannija qatt ma jista' jikkostitwixxi* insider information *għal finijiet tal-liġi, u li hu m'għamilx użu minn* insider information *fit-transazzjonijiet tal-azzjonijiet pubbliċi li wasslu għad-deċizjoni mpunjata. L-appellant għalhekk isostni li d-deċiżjoni mpunjata għandha tiġi revokata, billi hija vizzjata b'abbuż ta' diskrezzjoni u hija manifestament inġusta. Essenzjalment l-appellant isostni li huwa ma wettaq l-ebda* insider trading*, u jagħti raġunijiet estensivi għal dan.*
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> *Illi t-tribunal qabel xejn iqis li ma jkunx inopportun li jirreferi għall-Artikolu 21 (9) tal-Kapitlu 330 tal-Liġijiet ta' Malta. Din id-disposizzjoni hija dik li tirradika l-kompetenza tat-tribunal, u li tistabilixxi l-parametri tad-diskrezzjoni tiegħu. It-tribunal se jiċċita din id-disposizzjoni għall-faċilità ta' referenza.*
>
> (9) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant -

(a) the competent authority has, in its decision wrongly applied any of the provisions of this Act; or

(b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair

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

Illi t-tieni proviso ta' din id-disposizzjoni mhux rilevanti għall-każ odjern u għalhekk mhux qed tiġi riprodotta. Kwindi l-liġi taghti tlett raġunijiet għaliex deċiżjoni tal-Awtorità tista' tiġi mwarrba, u dawn huma:

(a) applikazzjoni ħażina tad-disposizzjonijiet tal-Kapitlu 330 tal-Liġijiet ta' Malta (u mhux taI-Att);

(b) li d-deċiżjoni tkun manifestament inġusta;

(c) li d-deċiżjoni tkun tikkostitwixxi abbuż ta' diskrezzjoni.

Illi għalhekk huwa ċar li il-liġi riedet tirrestringi d-diskrezzjoni tat-tribunal, b'mod li l-istess tribunal jigi preklużż milli jissostitwixxi d-diskrezzjoni tiegħu għal dik tal-Awtorità appellata, ħlief fejn tikkonkorri waħda mir-raġunijiet appena elenkati.

L-appellant qiegħed isostni li d-deċiżjoni tal-Awtoritä tikkostitwixxi abbuż ta' diskrezzjoni u/jew hija manifestament inġusta. M'huwiex qiegħed jallega applikazzjoni ħażina tad-dispożizzjonijiet tal-Kap. 330.

Illi dwar l-abbuż ta' diskrezzjoni, it-tribunal huwa tal-fehma li hawnhekk il-liġi qiegħda tirreferi għall-kunċett appartenenti għall-kamp tad-dritt amministrattiv. Filfatt l-abbuż ta' diskrezzjoni ilu minn żmien twil meqjus bħala raġuni u bażi tal-istħarriġ ġudizzjarju ta' għemil amministrattiv. Jinsab mgħallem illi "Judicial review of administrative action was founded upon the premise that an inferior tribunal or administrative public authority is entitled to decide wrongly, but is not entitled to exceed the jurisdiction it was given by statute. The statutory jurisdiction (later referred to also as *"vires"*) permitted the public authority to make errors of fact, or errors of law within its jurisdiction, provided that such an error of law was not "manifest on the face of the record". In this respect, judicial review is to be distinguished from an appeal. It was largely restricted to review for excess of jurisdiction, while an appeal would usually enable errors either of fact or of law to be rectified. *Ultra vires*, or excess of jurisdiction, in the narrow or strict sense, was thus the organising principle which both justified judicial review (by declaring all power to be derived power) and constrained it (by permitting a degree of autonomy to the reviewed public authority)" *(fn. 1 DeSmith's Judicial Review, 6th Edition, Sweet & Maxwell 2007, para. 4-002)* "In essence, the doctrine of *ultra vires* permits

the courts to strike down decisions made by bodies exercising public functions which they have no power to make" *(fn. 2 Ibid, para. 4-011). Minn dawn il-prinċipji, jitnissel ukoll il-prinċipju, illum paċifiku, li* "In requiring statutory powers to be exercised reasonably, in good faith, and on correct grounds, the courts are still working within the bounds of the familiar principle of *ultra vires*. The analysis involves no dificulty or mystique. Offending acts are condemned simply for the reason that they are unauthorised. 'The court assumes that Parliament cannot have intended to authorise unreasonable action, which is therefore *ultra vires* and void'" *(fn. 3 Wade & Forsyth, Administrative Law, Oxford University Press, 8th Edition, pg.346-347)*

Illi kif ġie ritenut mill-Qorti taI-Appell fil-kawża Frank Pace vs. Kummissarju tal-Pulizija et (fn. 4 18/11/1994) "Il-poter delegat mil-liġi lill-Kummissarju — bħal kull delegazzjoni u kull mandat — huwa strettament ċirkostrett mit-termini preċiżi li bihom dik id-delegazzjoni, dak il-mandat, huma espressi". *Ifisser dan illi wieħed irid iħares u jixtarr sew il-kliem li permezz tiegħu inħolqot dik is-setgħa sabiex jiddetermina il-portata, il-parametri u konsegwentement il-limiti ta' dik is-setgha. Kif jgħidu Wade & Forsythe [op cit, pg.219],* "Public administration is carried out to a large extent under statutory powers, conferred upon public authorities by innumerable Acts of Parliament. Statutory duties, imposed similarly, also play their part, but it is a minor one in comparison with powers. This is because powers confer discretion to act or not to act, and also, in many cases, what action to take, whereas duties are obligatory and allow no option. It is the element of discretion which raises the most numerous and most difficult problems in the law. When the question arises whether a public authority is acting lawfully or unlawfully, the nature and extent of its power or duty has to be found in most cases by seeking the intention of Parliament as expressed or implied in the relevant Act".

Illi għalhekk, biex tirriżulta fondata raġuni ta' appell lil dan it-tribunal u bażata fuq il-mottiv ta' abbuż ta' diskrezzjoni, irid jirriżulta li I-Awtorità, fid-deċiżjoni tagħha, tkun abbużat mis-setgħa tagħha billi tkun eċċediet il-limiti mposti fuqha mil-liġi għall-eżerċizzju ta' dik id-diskrezzjoni. Hija ġurisprudenza assodata li I-eċċess tal-limitu tas-setgħa ikun jissussisti anke fejn id-diskrezzjoni tkun ġiet eżerċitata b'mod irraġonevoli, u dan stante li I-ebda setgħa ma tista' titqies eżerċitata skont il-liġi meta tiġi eżerċitata b'mod irraġonevoli, jew fejn ma jkunux ġew osservati I-prinċipji ta' ġustizzja naturali (fn. 5 Mary Grech vs. Ministru tax-Xogħlijiet et (Appell, 29/1/1993).

Illi dwar il-mottiv ta' nġustizzja manifesta, it-tribunal iqis li dan jista' jkun sodisfatt biss jekk I-appellant juri għas-sodisfazzjoni tat-tribunal, sintendi, li d-deċiżjoni tkun

waħda li, fiċ-ċirkostanzi, it-teħid tagħha ma jistax ħlief isarraf f'inġustizzja ċara. B'referenza għall-fattispeċi tal-każ odjern, it-tribunal iqis li d-deċiżjoni mpunjata tkun manifestament inġusta jekk l-appellant juri li l-Awtorità ma kellhiex raġonevolment u legalment tasal għall-konklużjoni li waslet għaliha, u dan qed jingħad anke tenut kont tal-fatt illi dak addebitat lill-appellant ma huwa xejn għajr reat kriminali, ut sic*. Huwa biss f'każ li l-Awtorità tkun waslet għall-konklużjoni li tkun legalment u raġonevolment eskluża li tkun saret inġustizzja manifesta.*

Illi eżaminati l-parametri tad-diskrezzjoni ta' dan it-tribunal, se jiġi issa eżaminat l-aggravju proprju tal-appellant.

Ikkunsidra:

Illi permezz tad-deċiżjoni appellata, l-Awtorità sabet lill-appellant ħati ta' insider trading*, ai termini tal-Artikolu 6 tal-Att (fn. 6 L-Artikolu 6 tal-Att huwa mudellat fuq l-Artikolu 2 tad-Direttiva 2003/6/EC). L-ewwel subinċiż ta' din id-disposizzjoni tipprovdi li:*

> No person shall use inside information to trade in any financial instrument admitted to a regulated market or in any other way to acquire or dispose of, or attempt to acquire or dispose of such financial instrument, whether for his own account or for the account of a third party, either directly or indirectly, if he is in possession of information related to such financial instrument by virtue of:
>
> (a) his membership of the administrative, management or supervisory bodies of the issuer;
> (b) his holding in the capital of the issuer;
> (c) his having access to the information through the exercise of his employment, profession or duties; or
> (d) his criminal activities.

Illi l-liġi għalhekk tipprojbixxi persuna milli tagħmel użu minn inside information *biex jinnegozja fi strument finanzjarju jew biex jakkwista jew jiddisponi, jew jipprova jakkwista jew jiddisponi, minn tali strument finanzjarju, kemm għalih innifsu u kemm fl-interess ta' terz, kemm direttament jew indirettament, jekk huwa jkun fil-pussess ta' tagħrif relatat ma' dak l-istrument bis-saħħa ta' waħda miċ-ċirkostanzi elenkati fl-istess subinċiż.*

Illi huwa paċifiku li l-appellant kien persuna li nnegozja fi strumenti finanzjarji fl-interess tiegħu innifsu, u li l-appellant kien diriġent importanti fit-tmexxija tal-kumpannija GlobalCapital plc. L-appellant faċilment jikkwalifika bħala waħda mill-

persuni li rċeviet tagħrif minħabba I-fatti elenkati fil-paragrafi (a) u (ċ) taI-ewwel subinċiż taI-Artikolu 6 taI-Att. Dan kollu huwa paċifiku.

Illi dak li huwa kontestat huwa li I-appellant għamel użu minn inside information *sabiex innegozja fl-istrumenti finanzjarji in kwistjoni. M'hemmx dubju li dan I-element huwa wieħed indispensabbli sabiex ikun jista' jinstab ksur taI-Artikolu 6, u kien proprju fuq dan I-element li kkonċentraw il-partijiet matul is-smigħ ta' dan l-appell.*

Illi biex dan I-element ikun sodisfatt irid jintwera mhux biss li I-persuna mixlija kellha inside information*, imma anke li dik il-persuna tkun* ***<u>użat</u>*** *dik I-informazzjoni biex wettqet in-negozju projbit. Dan kuntrarjament għat-tieni subinċiż taI-Artikolu 6, li jipprojbixxi atti li persuna tista' tagħmel meta tkun fil-pussess biss ta'* inside information*. Però t-tieni subinċiż ma jiċċentra xejn mad-deċiżjoni mpunjata, billi l-appellant ġie mixli u kkundannat b'konsegwenza ta' transazzjonijiet li huwa għamel għalih innifsu, u mhux għall-atti elenkati fl-imsemmi tieni subinċiż.*

Illi huwa biss ovvju li trid tiġi eżaminata t-tifsira ta' inside information*. L-Att fil-fatt jipprovdi definizzjoni, li se tiġi hawn taħt kaptata għall-faċilità ta' referenza:*

> "inside information" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, including information regarding any takeover offer for a company, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions.
>
> For the purposes of this definition, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments; for persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuer or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those

> financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions

Illi I-ewwel paragrafu ta' din id-definizzjoni hija meħuda kelma b'kelma mid-definizzjoni ta' inside information *provduta fl-Artikolu 1(1) tad-Direttiva 2003/6/EC, b'dan li I-legislatur Malti żied il-frażi* "being information which a reasonable investor would be likely to use as part of the basis of his investment decisions", *liema frażi hija meħuda mill-Artikolu 1(2) tad-Direttiva 2003/124/EC.*

Illi I-proviso rigwardanti x'għandu jitqies bħala "preċiż", huwa mudellat fuq l-Artikolu 1(1) tad-Direttiva 2003/124/EC.

Illi fid-deċiżjoni appellata, I-Awtorità qieset illi I-appellant kien fil-pussess ta' inside information *meta fil-laqgħat tal-Bord tad-Diretturi tal-kumpannija GlobalCapital plc, huwa sar jaf, mill-*management accounts *tal-kumpannija, li kien sar telf ta' madwar 1.8 miljun Euro.*

*Illi huwa fatt li I-minuti tal-laqgħa tal-Bord tad-Diretturi in kwistjoni ma ġewx esebiti, kif lanqas ma ġew esebiti il-*management accounts *li gew preżentati lill-Bord fl-istess laqgħa. Dan in-nuqqas ta lok għall-kontroversja oħra bejn il-partijiet, li għandha neċessarjament tigi epurata minn dan it-tribunal.*

Illi I-appellant isostni li skont ir-regola taI-aħjar prova, kif espressa fl-Artikolu 560 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, dan it-tribunal ma jistax jieħu qies tax-xiehda orali prodotta waqt is-smigħ ta' dan I-appell bħala fonti probatorja għat-tagħrif li joriġina mill-imsemmija minuti u management accounts*. L-Awtorità appellata, sintendi, targumenta proprju I-kuntrarju.*

Illi fil-fehma ta' dan it-tribunal, il-konvinċiment tal-ġudikant dwar il-fatti mertu tal-vertenza tista' ssib il-fonti tagħha minn kull element probatorju preżenti fl-atti. Dan fis-sens li kull element ta' prova preżenti fil-proċess jista' jagħti lok għal tali konvinċiment. "Tajjeb f'dan l-istadju li jiġi preċiżat illi l-prinċipju tal-oneru tal-provi ma jfissirx illi d-dimostrazzjoni tal-fatti kostituttivi tad-dritt pretiż trid tiġi rikavata esklussivament minn provi offerti minn min huwa gravat b'dan l-oneru. Dan għaliex dejjem jistgħu jiġu utilizzati elementi probatorji oħrajn akkwiżiti fil-proċess, in kwantu fl-ordinament ġuridiku tagħna jviġi l-prinċipju li r-riżultanzi istruttorji jistgħu jiġu ottenuti bi kwalsiasi mod, anke indipendentement mill-inizjattiva tal-parti, basta jikkonkorru flimkien u indistintament għall-konvinċiment tal-ġudikant". *(fn. 7 Mario Mifsud vs. Carmelo Mifsud, Appell Inferjuri, 12/11/2003)*

Illi per konsegwenza, fl-apprezzament tal-provi prodotti, it-Tribunal jista' jieħu bħala bażi tal-konvinċiment tiegħu kwalsiasi prova prodotta purche' din tkun tali li twasslu għall-konvinċiment morali meħtieġ skont il-liġi. Hija regola bażilari tad-Dritt proċesswali illi min jallega jrid jipprova, u kwindi l-oneru tal-prova tinkombi fuq il-parti li qed tallega. L-applikazzjoni ta' din ir-regola għall-proċedura odjerna twassal lit-tribunal għall-konklużjoni li fl-aħħar mill-aħħar kien l-appellant li kellu l-oneru tal-prova li juri li d-deċiżjoni li dwarha qed jilmenta hija waħda żbaljata fit-termini tal-Artikolu 21 (9) tal-Kap. 330, għaliex din hija l-allegazzjoni tiegħu li neċessarjament trid tiġi eżaminata f'dan il-proċediment.

Illi l-fatt li l-appell sar b'konsegwenza ta' deċiżjoni li permezz tagħha l-Awtorità appellata għamlet allegazzjonijiet fil-konfront tal-appellant ma tbiddilx din il-konklużjoni, u dan billi l-iskop ta' dan il-proċediment m'huwiex li tiġi ippruvata l-allegazzjoni tal-Awtorità kontra l-appellant, imma li tiġi ippruvata l-allegazzjoni tal-appellant li d-deċiżjoni tal-Awtorità hija manifestament inġusta u/jew li dik id-deċiżjoni tikkostitwixxi abbuż ta' diskrezzjoni. Dan huwa hekk f'kull qasam tad-Dritt amministrattiv, fejn huwa ċ-ċittadin li jallega l-eċċess jew in-nuqqas ta' vires *ta' att amministrattiv li jrid jipprova l-istess, u mhux il-kuntrarju. Tant hu hekk li fil-proċedimenti quddiem dan it-Tribunal, huwa proprju l-appellant li jibda jressaq il-provi tiegħu.*

Illi hija wkoll il-fehma tat-tribunal li, fl-apprezzament tal-provi li jkunu prodotti lilu, huwa jista' joqgħod fuq dawk il-provi li fil-verità ma kienx hemm kontestazzjoni dwarhom. Fejn fatt ikun paċifiku bejn il-partijiet, ma hemmx htieġa ta' provi rigoruż fir-rigward. In subjecta materia *jinsab mgħallem li:*

> "Hu prinċipju kardinali ben affermat fid-duttrina proċedurali illi l-ġudikant hu fid-dmir li jiddeċiedi *iuxta alligata et probata*. Li jfisser, illi d-deċiżjoni tiegħu għandha tkun estratta unikament in bażi għall-allegazzjonijiet tal-partijiet u taċ-ċirkustanzi tal-fatti dedotti u provati abbażi tat-talba jew tal-eċċezzjoni. S'intendi, tali prinċipju hu maħsub biex ikun assikurat illi ħadd mill-partijiet ma jiġi sorpriż b'deċiżjoni bażata fuq fatti jew difiżi mhux dedotti jew provati, u li dwarhom il-partijiet ma kellhomx lanqas il-possibbilità li jirreagixxu bi prontezza u fil-mument opportun għalihom".

Dan qed jiġi rilevat, u sottolinejat ukoll, għaliex fil-ħsieb tal-Qorti, minn dak riskontrat mill-atti tal-każ preżenti, <u>l-atteġġjament difensiv tal-konvenut bir-risposta tiegħu għat-talba attriċi u dik tal-kondotta proċesswali minnu assunta almenu sal-mument tad-dibattitu orali ma setax ma inissilx il-konvinzjoni illi kellu ikun presuppost illi hu aċċetta li kien il-leġittimu kontraddittur, u allura li kienet paċifika</u>

s-sussistenza tan-ness konnettiv tiegħu mal-pubblikazzioni. F'liema każ, l-attur ma kellux ħtieġa li jġib prova dwarha, u, anzi, kien eżonerat mill-oneru li hekk jagħmel. Ir-raġuni il-għala dan hu hekk m'għandhiex għalfejn tiġi riċerkata fil-profond. Meta konvenut jimposta l-linja difensionali tiegħu b'mod li minnha jista' razzjonalment jittraxxendi li ċertu fatt huwa paċifiku għax mhux speċifikament kuntrastat, il-kontro-parti m'għandux għalfejn iġib prova ta' dak il-fatt għax l-eżistenza tiegħu hi inkontroversa u tali joħroġ dak l-istess fatt mill-ambitu tal-aċċertament dwaru (fn. 8 ***Perit Carmel Mifsud Borg v. Kurt Farrugia****, Qorti tal-Appell (Sede Inferjuri), 11/12/2009.) (sottolinear u enfażi* in calce *miżjud mit-tribunal)*

*Illi minn eżami taI-atti proċesswali ma jirriżultax illi I-appellant qatt ikkontesta l-asserzjoni fattwali tal-Awtorità illi "*This information *(ċioé I-informazzjoni provduta lill-Bord tad-Diretturi ta' GC fil-laqgħa li nżammet f'Diċembru 2007)* included specific information indicating an actual loss before tax for the period January to September 2007 of €1,844,934, compared to [i] a budgeted profit before tax for the same period of €2,253,252; and [ii] an actual figure of profit before tax over the same period in 2006 amounting to €4,913,378*" (ara I-ittra mibgħuta mill-Awtorità lill-appellant u datata 9 ta' Ġunju 2009, immarkata Dok JB5 u anness mar-rikors tal-appell). Fl-ittra li biha I-appellant wieġeb lill-Awtorità (datata 30 ta' Ġunju 2009 u eżebita bħala JB6 mar-rikors taI-appell), I-istess appellant illimita ruħhu li jikkontesta I-interpretazzjoni li I-Awtorità appellata tagħmel dwar dan il-fatt, imma ma kkontestax il-veraċità tiegħu. Fl-ebda mument I-appellant ma allega li t-tagħrif imsemmi mill-Awtorità bħala I-bażi tad-deċiżjoni tagħha kien fattwalment skorrett, u kwindi dan it-tribunal ma jistax jikkonsidra favorevolment is-sottomissjoni taI-appellant li m'hemmx prova adegwata dwar dan it-tagħrif.*

Illi fuq kollox, kif ġià osservat supra*, I-oneru tal-prova kien jinkombi fuq I-appellant, u b'hekk jekk huwa ma kienx qed jaqbel mal-premessi fattwali tad-deċiżjoni appellata, huwa kellu jressaq il-provi biex juri li tali premessi kienu żbaljati.*

Illi għalhekk u in vista ta' dawn il-konsiderazzjonijiet kollha, it-tribunal qed iqis li t-tagħrif mogħti lid-diretturi ta' GC waqt il-laqgħa ta' Diċembru 2007 kien jinkludi informazzjoni fis-sens illi GC għamlet telf qabel it-taxxa fl-ammont ta' €1,844,934.

Ikkunsidra.

Għalhekk I-ewwel kwistjoni li t-tribunal irid jeżamina hija jekk I-Awtorità setgħetx raġonevolment tasal għall-konklużjoni li dik I-informazzjoni kienet tikkostitwixxi inside information *kif imfissra fl-Att.*

Illi I-elementi identifikati mil-liġi sabiex informazzjoni titqies inside information *huma s-segwenti:*

(a) *li tkun preċiża min-natura tagħha;*
(b) *li ma tkunx saret pubblika;*
(c) *li tkun tirrigwarda, direttament jew indirettament, strument finanzjarju jew mittent ta' strument finanzjarju;*
(d) *li tkun tali li jekk tiġi reża pubblika, probabbilment ikollha effett sinjifikanti fuq il-prezz ta' dak l-istrument finanzjarju;*
(e) *li tkun tali li investitur raġonevoli probabbilment jagħmel użu minnha bħala bażi tad-deċiżjonijiet tiegħu dwar investiment.*

Illi l-informazzjoni rigwardanti t-telf magħmul minn GC sa Settembru tas-sena 2007 ċertament tirrigwarda strument finanzjarju kif ukoll il-mittent ta' strument finanzjarju.

Dwar dan m'hemmx kuntrast bejn il-partijiet.

Illi l-kwistjoni jekk din l-informazzjoni kienetx magħrufa lill-pubbliku jew le kienet punt ta' kontestazzjoni bejn il-partijiet. L-appellant jikkontendi li bl-avviżi maħruġin minn GC, diġà ċitati verbatim *fil-korp ta' din id-deċiżjoni, u bil-pubblikazzjoni tal-* interim financial statements *għall-ewwel sitt xhur tas-sena 2007, huwa nieqes l-element ta' indisponibilità għall-pubbliku li huwa ndispensabbli biex informazzjoni tigi ritenuta* inside information*. It-tribunal iħoss li huwa doveruż għalih li jeżamina bir-reqqa dawn is-sottomissjonijiet.*

Illi fl-24 t'Awwissu 2007, sar is-segwenti company announcement *meħtieġ ai termini tal-*Listing Rules *8.7.4 u 8.7.21:*

> "GlobalCapital p.l.c. ('the Company') registered a profit after tax for the six months ended 30 June 2007 of Lm388,919 compared to a corresponding result last year of Lm735,180. The main highlights of the reporting period's results were:
>
> - Increase in operating profit of 21.9%;
> - Continued healthy returns on the international investment property portfolio of the Company and its subsidiaries;
> - Significant fair value losses on securities held by the Company and its subsidiaries, including the life insurance company, attributable to negative market conditions which prevailed during the year to date.
>
> The Directors expect that the levels of trading activity experienced during the six months to June 2007, which show an overall improvement in turnover over

the corresponding period last year, should be sustained in the latter half of the current year. However, recent stock market volatility and global economic uncertainty may affect trading and investment performance.

The directors do not recommend the payment of an interim dividend."

*Illi t-tribunal huwa tal-fehma li dan I-*announcement *bl-ebda mod ma jista' jinftiehem jew jiġi nterpretat bħala I-ekwivalenti tal-pubblikazzjoni taI-informazzjoni li l-kumpannija għamlet telf ta' €1.8 miljun. Qabel xejn, jiġi nnutat li dan I-avviż jiftaħ b'dikjarazzjoni fis-sens li I-kumpannija għamlet profitt, purche' huwa ndikat espressament li dan il-profitt huwa inqas minn dak reġistrat fil-perijodu korrispondenti tas-sena preċedenti. Dikjarazzjoni li sar profitt ma tistax tinftiehem li hija ammissjoni li sar telf,* multo magis *telf f'ammont sinjifikanti.*

Illi anke d-dikjarazzjonijiet li I-kumpannija soffriet fair value losses *jew li mhux rakkommandat li jitħallas* interim dividend *ma jistgħux jitqiesu bħala ekwivalenti għall-informazzjoni li I-kumpannija soffriet telf sostanzjali. Dan għaliex dawn id-dikjarazzjonijiet ma humiex biżżejjed ċari biex jagħtu I-istampa ċara li titnissel mill-informazzjoni li kien hemm telf fl-ammont ta' €1.8 miljun. F'din il-konklużjoni, it-tribunal huwa ulterjorment fortifikat mill-fatt li meta wieħed iqis dawn id-dikjarazzjonijiet flimkien mad-dikjarazzjoni li I-kumpannija għamlet profitt (anke jekk inqas mis-sena preċedenti), qarrej ta' intelliġenza ordinarja ma jistax jasal għall-konklużjoni li I-kumpannija għamlet it-telf sostanzjali in kwistjoni.*

Illi fil-15 ta' Novembru 2007, il-Bord tad-Diretturi ta' GC wettqet Company Announcement *oħra, din id-darba* ai termini *tar-Regola 9.51 tal-*Listing Rules*. Dan I-*Announcement *kien jgħid kif ġej:*

Quote

Interim Directors' Statement

GlobalCapital p.l.c. (the 'Group') hereby announces that during the period between 1 July 2007 and the date of this announcement, no material events and transactions have taken place that would have an impact on the financial position of the Group, such that would require specific mention, disclosure or announcement pursuant to the applicable Listing Rules.

During the first nine months of the year the Group registered increased turnover levels, over the corresponding period last year, predominately on its life insurance business and property portfolio, whilst investment fee income has experienced a decrease compared to the corresponding first nine months of 2006. The Group's Health Insurance division has also registered positive

results which, barring any unforeseen circumstances, are expected to be sustained throughout the remaining months. The downturn in the local and international capital markets persisted during the third quarter of the current financial year and this has invariably had an adverse effect on the Group's portfolio of financial investments. This factor has led to a negative impact on the Group's profitability for the period under consideration and if the downturn in the financial markets persists it is expected to impact on this year's results.

GlobalCapital Investments Limited, one of the Group's subsidiaries, has recently acquired a financial institutions licence in terms of the Financial Institutions Act, 1994. It is anticipated that this new licence will help further diversify GlobalCapital's revenue streams and is expected to start contributing to the Group's results during 2008.

Unquote

Illi dan it-tieni avviż jibda billi jiddeskrivi li I-kumpannija kellha dħul aħjar minn dak tas-sena preċedenti fil-kamp tal-proprjetà u tal-assikurazzjoni fuq il-ħajja u fuq is-saħħa, filwaqt li kellha tnaqqis fir-rigward ta' dħul minn investment fees*. L-istess avviż ikompli jgħid li I-profitabilità tal-kumpannija ġiet affettwata mill-kundizzjonijiet negattivi tas-suq, u jingħad li dan il-fattur hu mistenni li jaffettwa r-riżultati għal dik is-sena. Jingħad ukoll li waħda mis-sussidjarji tal-kumpannija akkwistat liċenzja ġdida li kienet mistennija li tikkontribwixxi għad-dħul tal-Grupp matul is-sena ta' wara. Dan hu, fil-qosor, dak li qed jingħad f'dan I-avviż.*

Illi t-tribunal hu tal-fehma li dan it-tagħrif huwa wisq ambigwu u ambivalenti sabiex jiġi nterpretat bħala ekwivalenti għat-tagħrif mogħti lill-appellant waqt il-laqgħat tal-Bord tad-Diretturi matul l-ewwel jiem tax-xahar ta' Diċembru 2007. Minn qari ta' dan I-avviż biss, anke jekk moqri fid-dawl tal-avviż pubblikat preċedentement u eżaminat supra, qarrej ta' intelligenza ordinarja ma jistax jasal biex jifhem I-entità tat-telf li għamlet il-kumpannija f'dik is-sena, b'liema entità ġie mgħarraf I-appellant qabel għamel it-transazzjonijiet in kwistjoni.

*Illi I-*interim financial statements *tal-ewwel sitt xhur tas-sena 2007 kienu disponibbli għall-pubbliku qabel il-laqgħa tal-Bord tad-Diretturi ta' Diċembru. Minn dawn l-*istatements *jirriżulta li I-profitt qabel it-taxxa ta' GC għal dak il-perijodu kien jammonta għal Lm143,880, filwaqt li I-istess profitt għall-perjodu korrispondenti ta' l-2006 juri li I-profitt ta' qabel it-taxxa kien jammonta għal Lm1,074,667. Wara t-taxxa, il-profitt għall-ewwel sitt xhur tas-sena 2007 kien Lm388,919, filwaqt li għall-istess perijodu tas-sena 2006, I-profitt kien Lm735,180. Jidher li I-akbar differenza*

bejn iż-żewġ perijodi kienet li fis-sena 2007, GC soffriet telf f'dak li huwa net investment (expenses)/income*, kif ukoll telf riferibbli għal* balance on the long term business of insurance technical account before tax*.*

*Illi l-appellant qed jissottometti li dawn il-*financial statements *kienu jagħtu stampa ċara lill-pubbliku dwar il-qagħda finanzjarja ta' GC, b'mod li t-tagħrif mogħti lilu fil-laqgħa tal-Bord tad-Diretturi ta' Diċembru 2007 ma kienx jikkostitwixxi tagħrif li ma kienx disponibbli għall-pubbliku.*

*Illi t-tribunal qabel xejn jirrileva li mid-definizzjoni tat-terminu "*inside information*", għandu jirriżulta li l-liġi hija diretta lejn tagħrif partikolari, u mhux taghrif ġeneriku, kif donnu qed jippretendi l-appellant. L-appellant isostni illi għax il-pubbliku kien jaf li GC kellha profitti inqas mis-sena preċedenti, it-tagħrif li skont il-*management accounts *il-kumpannija soffriet telf issa, u mhux profitt ridott, ta' aktar minn €1,800,000 għandu jitqies li kien tagħrif pubbliku. Dan it-tribunal ma jaqbilx. Ibda biex tgħid li hemm distinzjoni netta bejn profitabilità (purche' ridotta) u telf, liema distinzjoni hija tant evidenti li dan it-tribunal lanqas għandu għalfejn jidħol fiha.*

Jirriżulta ippruvat illi l-appellant, bħala direttur ta' GC, kien jaf — kif del resto *kien jaf il-pubbliku tramite l-pubblikazzjoni tal-imsemmija* interim financial statements *illi GC kellha profitti li kienu inqas minn dawk perċepiti matul is-sena preċedenti. Minkejja dan it-tnaqqis ta' profitt, xorta waħda kien hemm profitt, li jfisser li fl-aħħar mill-aħħar l-assi tal-kumpannija żdiedu, u mhux ittieklu minn ġewwa. Madanakollu f'Diċembru 2007 l-istess appellant sar jaf li sa Settembru 2007, is-sitwazzjoni marret għall-agħar b'mod drastiku tant illi l-kumpannija kienet qed tirreġistra telf enormi. B'dan it-telf u bl-estensjoni ta' dan it-telf, il-pubbliku ma kienx jaf għax ma ġiex mgħarraf.*

*Illi huwa evidenti li kwalsiasi tagħrif mogħti lill-appellant permezz tal-*management accounts *u tal-laqgħat tal-Bord tad-Diretturi huwa* inside information *(naturalment previa li jkunu sodisfatti r-rekwiżiti kollha tat-tifsira ta'* inside information*), sakemm dak it-tagħrif ma jkunx ġie fis-sostanza tiegħu reż pubbliku. Huwa ċar li t-telf enormi li bih ġie nformat il-Bord tad-Diretturi f'Diċembru 2007 ma giex reż pubbliku qabel April 2008, u għalhekk fiż-żmien meta seħħew it-trasferimenti tal-azzjonijiet tal-appellant, dak it-tagħrif ma kienx pubbliku.*

*Illi l-appellant jargumenta li tant il-pubbliku kien konxju u konsapevoli dwar is-sitwazzjoni finanzjarja ta' GC li in segwitu għall-*interim directors' statement *tal-15 ta' Novembru 2007 seħħew trasferimenti ta' azzjonijiet ta' GC f'volumi li ma kellhom ebda preċedent fl-istorja tagħha, salv fl-epoka li fiha hija amalgamat ruhha ma' soċjetà oħra estera.*

*Illi tassew li l-volum ta' trasferiment ta' azzjonijiet ta' GC kien wieħed għoli ferm, u ferm aktar għoli mil-livelli ordinarji. Però b'daqshekk ma jfissirx li l-pubbliku kien jaf bil-kontenut tal-*management accounts *dwar il-perijodu Jannar-Settembru 2007. It-tribunal huwa tal-fehma, u dan fuq bazi ta' probabbilità, illi il-likwidità sorprendenti taI-azzjonijiet ta' GC f'dik l-epoka kienet dovuta għall-fatt li l-*interim financial statements *għall-ewwel sitt xhur tas-sena 2007 kienu qed juru li s-sena finanzjarja korrenti ma kienetx se tkun tajba daqs dik preċedenti għal GC. Però kif diġà osserva dan it-tribunal, hemm differenza bejn* "inqas profitt" *u* "telf", *u proprju għalhekk — la hu stabbilit li f'Diċembru 2007 l-appellant kien jaf bit-telf - allura l-appellant kien ir-reċipjent ta'* inside information.

Illi waqt il-kors tal-kawża saru sottomissjonijiet mill-appellant fis-sens li bl-interpretazzjoni taI-Awtorità, direttur ma jista' qatt ibiegħ jew jixtri azzjonijiet fil-kumpannija li mit-tmexxija tagħha jifforma parti, u dan għaliex direttur kważi dejjem ikun fil-pussess ta' tagħrif mhux disponibbli għall-pubbliku. It-tribunal jirrileva li mhux kull tagħrif iġib il-projbizzjoni in diżamina, imma biss dak it-tagħrif li "would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; being information which a reasonable investor would be likely to use as part of the basis of his investment decisions". *F'każ li t-tagħrif ikollu dik il-kwalità, mela allura iva, id-direttur ma jistax ibiegħ jew jixtri azzjonijiet qabel ma jagħmel pubblika dik l-informazzjoni. Jekk jagħżel li ma jagħmilx dik l-informazzjoni pubblika, mela allura huwa jrid isoffri il-projbizzjoni dwar* insider trading.

Illi għalhekk din il-projbizzjoni hija tali li tipprova ssib bilanċ bejn id-dmirijiet tad-direttur lejn il-pubbliku investitur, u d-dmirijiet tad-direttur lejn il-kumpannija li hu qed imexxi.

Illi t-tribunal lanqas ma huwa qed jaċċetta s-sottomissjonijiet dedotti mill-appellant fis-sens li ma kien hemm ebda inside information *minħabba l-pubblikazzjonijiet li saru f'ċertu gazzetti lokali dwar l-andament ta' GC. It-tribunal iqis li biex tagħrif ma jibqax ikkunsidrat bħala* inside information*, dak it-tagħrif irid jiġi reż pubbliku mid-diretturi tal-kumpannija jew mill-kumpannija innifisha, u minn ħadd iktar, speċjalment minn persuni li m'għandhom ebda konnessjoni konkreta mal-kumpannija.*

Illi għalhekk it-tribunal qed jikkonkludi li f'Diċembru tal-2007, l-appellant kien fil-pussess ta' inside information.

Illi t-tribunal iqis ukoll li dan it-tagħrif huwa tali li kieku ġie reż pubbliku, probabbilment ikollu effett sinjifikanti fuq il-prezz ta' dak l-istrument finanzjarju, u

huwa wkoll tali li investitur raġonevoli probabbilment jagħmel użu minnu bħala bażi tad-deċizjonijiet tiegħu dwar investiment. Din il-konklużjoni qed tiġi raġġunta għaliex il-profitabilità o meno ta' istituzzjoni finanzjarja hija, fil-fehma tat-tribunal, fattur li ċertament jiġi kkunsidrat minn persuna raġonevoli qabel tagħmel deċizjoni dwar l-investiment tagħha. BI-istess mod, dik il-profitabilità - anke għax tinfluwenza d-deċizjoni ta' investituri prospettivi - tagħmel effett fuq il-prezz tal-istrumenti finanzjarji immessi minn dik l-istituzzjoni, b'mod li strument immess minn istituzzjoni li qed tagħmel it-telf ma jistax ikollu prezz ekwivalenti għal dak immess minn istituzzjoni li qed tagħmel profitti.

Illi t-tribunal wasal għal din il-konklużjoni wara li qies li l-liġi trid li l-possibbilità ta' dawn l-effetti, appena menzjonati, ma tkunx waħda assoluta, imma biss probabbli, b'mod għalhekk li informazzjoni tista' titqies bħala inside information *jekk* "probabbilment" *ikollha dawk l-effetti, u mhux jekk* "ċertament" *ikun hemm dawk l-effetti. F'dan is-sens, is-sottomissjonijiet kollha tal-appellant dwar it-tnaqqis fil-prezz fis-suq rilevanti matul il-perijodu in kwistjoni huma kollha rrilevanti, għaliex huwa possibbli li informazzjoni tibqa'* inside information *anke fejn din effettivament jirriżulta li ma kellha l-ebda impatt fuq il-prezz, jew fejn din effettivament jirriżulta li ma tiġix ikkunsidrata minn investitur raġonevoli. Il-mera probabbilità li jkun hemm dawn il-konsegwenzi hija suffiċjenti sabiex dik I-informazzjoni żżomm il-karattru tagħha ta'* inside information ai termini *taI-Att.*

Illi jonqos biss I-element li dik I-informazzjoni tkun waħda "preċiża". Biex informazzjoni titqies li hija preċiża, trid tkun tali li "... it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments*...". Dwar din it-tifsira, huwa nteressanti dak innutat mill-Qorti Ewropea tal-Gustizzja fis-segwenti bran:*

> In the light of the foregoing considerations, the answer to the second question is that Article 1(1) of Directive 2003/124 must be interpreted as meaning that the notion of *'a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so'* refers to future circumstances or events from which it appears, on the basis of an overall assessment of the factors existing at the relevant time, that there is a realistic prospect that they will come into existence or occur. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of

> circumstances or that event on the prices of the financial instruments concerned must be taken into consideration (fn. 9 Markus Geltl vs. Daimler AG, C-19/2011, 28/6/2012)

Illi għalhekk biex informazzjoni titqies preċiżia, trid tkun tirreferi għal ċirkostanzi eżistenti jew li raġonevolment għandhom jitqiesu li se jiġu fis-seħħ. Meta l-appellant sar jaf bit-telf tal-kumpannija f'Diċembru 2007, huwa kien qed jiġi nfurmat b'ċirkostanza eżistenti, u li f'dak il-perijodu tas-sena, kellha taffettwa mhux bi ftit il-figuri finanzjarji tal-kumpannija. Din l-informazzjoni kellha l-karattru ta' ċertezza li l-liġi, fit-tifsira tagħha, tekwipara mal-kelma "preċiża", u għalhekk it-tribunal ma jistax ħlief jikkonkorri maI-Awtorità appellata li l-informazzjoni li kellu l-appellant kellha titqies bħala inside information*. Kif ingħad fid-deċiżjoni ċitata, mhux neċessarju, għal fini li informazzjoni titqies preċiża, li jiġi kkunsidrat l-effett li dawk iċ-ċirkostanzi jistgħu ikollhom fuq il-prezz taI-istrumenti finanzjarji konċernati.*

Illi stabbilit allura li l-appellant, fil-mument li wettaq it-transazzjoni fl-azzjonijiet tal-kumpannija GlobalCapital plc, kellu inside information*, imiss issa li jiġi eżaminat jekk dak li għamel hu jinkwadrax ruħu fit-tifsira ta'* insider dealing*, kif spjegata fl-Artikolu 6(1) taI-Att.*

Illi l-Artikolu 6(1) taI-Att jipprojbixxi persuna milli tuża inside information *biex tinnegozja f'istrument finanzjarju, jew biex takkwista jew tiddisponi minn strument finanzjarju, kemm fl-interess tiegħu jew ta' terz.*

Illi diġà rajna li fil-fatt l-appellant kellu f'idejh inside information*, u li huwa ddispona u nnegozja fi strument finanzjarju fl-interess tiegħu personali. Huwa stabbilit ukoll li linformazzjoni nkriminanti ġiet ottenuta mill-appellant minħabba ċ-ċirkostanzi identifikati fl-Artikoli 6(1)(a) u 6(1)(ċ).*

Illi kif diġà rrileva t-tribunal, biex ikun hemm ksur taI-Artikolu 6(1) mhux biżżejjed li jintwera li persuna fil-pussess ta' inside information *wettqet transazzjoni fi strumenti finanzjarji. Irid jintwera wkoll li dik il-persuna tkun, fit-transazzjoni nkriminanti, għamlet użu minn dik l-*inside information*. Fir-rigward ta' dan l-element taI-użu, it-tribunal isib li huwa siewi ħafna l-insenjament tal-Qorti Ewropea tal-Ġustizzja fir-rigward, u għalhekk se jiċċita estensivament mill-istess:*

> *30* By its second and third questions, which need to be examined together and prior to the others, the referring court requests the Court of Justice to interpret the expression *'use of inside information'* in Article 2(1) of Directive 2003/6. That provision provides that the Member States are to prohibit any person referred to in the second subparagraph thereof (a

'primary insider') who *'possesses inside information from using that information by acquiring or disposing of, for his own account or for the account of a third party, either directly or indirectly, the financial instruments to which that information relates'* or from trying to enter into such a transaction on the market. More precisely, the referring court seeks to determine whether it is sufficient, for a transaction to be classed as prohibited insider dealing, that a primary insider in possession of inside information trades on the market in financial instruments to which that information relates or whether it is necessary, in addition, to establish that that person has 'used' that information *'with full knowledge'.*

31 Article 2(1) of Directive 2003/6 does not stipulate that prohibited transactions must be carried out *'with full knowledge of the facts'* but merely prohibits primary insiders from using inside information when entering into market transactions. That article defines the constituent elements of such prohibited transactions by referring expressly to two such elements, namely, the persons likely to fall within its scope and the material actions which constitute that transaction.

32 By contrast, that provision does not expressly set out the subjective conditions in relation to the intention behind those material actions. Article 2(1) of Directive 2003/6 does not state whether the primary insider must have been driven by a speculative intention, must have had a fraudulent intention or must have acted either deliberately or negligently. That article does not expressly state whether it is necessary to establish that the inside information was decisive in the decision to enter into the market transaction at issue, or whether the primary insider had to be aware that the information in his possession was inside information.

33. In that regard, it should be noted that, in drafting Directive 2003/6, the Community legislature sought to fill in some of the gaps identified in Directive 89/592. Article 2(1) of Directive 89/592 sought to prohibit *'any person who possesses inside information'* from entering into a market transaction in relation to the transferable securities concerned *'by taking advantage of that information with full knowledge of the facts'.* The transposition of that provision into national law gave rise to variances in the interpretation by the Member States of the expression

'with full knowledge of the facts', which in certain national legal systems was assimilated to a requirement of a mental element.

34 In that regard, the Proposal for a Directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) (2001/0118 (COD)), submitted by the Commission of the European Communities on 30 May 2001, was based on the wording of Article 2(1) of Directive 89/592 while removing the expression *'with full knowledge of the facts',* on the ground that *'by nature [primary insiders] may have access to inside information on a daily basis and are aware of the confidential nature of the information that they receive'.* In addition, the subsequent preparatory work referred to in point 58 of the Advocate General's Opinion shows that the Parliament, in accordance with the objective approach of the notion of insider dealing favoured by the Commission, sought to replace the verb *'to take advantage of'* with the verb *'to use'* in order to remove any element of purpose or intention from the definition of insider dealing.

35 The above shows that Article 2(1) of Directive 2003/6 defines insider dealing objectively without the intention behind such dealing being referred to explicitly in its definition. This was done with a view to achieving uniform harmonisation of the law of the Member States.

36 The fact that Article 2(1) of Directive 2003/6 does not expressly provide for a mental element can be explained, first, by the specific nature of insider dealing, which enables a presumption of that mental element once the constituent elements referred to in that provision are present. To begin with, the relationship of confidence which links the primary insiders referred to in Article 2(1)(a) to (c) to the issuer of the financial instruments to which the inside information relates implies, on their part, a specific responsibility in that regard. Next, entering into a market transaction is necessarily the result of a series of decisions forming part of a complex context which, in principle, makes it possible to exclude the possibility that the author of that transaction could have acted without being aware of his actions. Finally, where such a market transaction is entered into while the author of that transaction is in possession of inside information, that information must, in principle, be deemed to have played a role in his decisionmaking.

37 The fact that Article 2(1) of Directive 2003/6 does not expressly provide for a mental element among the constituent elements of insider dealing

can be explained, second, by the purpose of Directive 2003/6, which, as is pointed out, *inter alia,* in the second and twelfth recitals in the preamble thereto, is to ensure the integrity of Community financial markets and to enhance investor confidence in those markets. The Community legislature opted for a preventative mechanism and for administrative sanctions for insider dealing, the effectiveness of which would be weakened if made subject to a systematic analysis of the existence of a mental element. As pointed out by the Advocate General in point 55 of her Opinion, only if the prohibition on insider dealing allows infringements to be effectively sanctioned does it prove to be powerful and encourage compliance with the rules by all market actors on a lasting basis. The effective implementation of the prohibition on market transactions is thus based on a simple structure in which subjective grounds of defence are limited, not only to enable sanctions to be imposed but also to prevent effectively infringements of that prohibition.

38. Once the constituent elements of insider dealing laid down in Article 2(1) of Directive 2003/6 are satisfied, it is thus possible to assume an intention on the part of the author of that transaction.

Omissis

45 The establishment of an effective and uniform system to prevent and sanction insider dealing with the legitimate aim of protecting the integrity of financial markets has thus led the Community legislature to adopt an objective definition of the constituent elements of prohibited insider dealing. The fact that Article 2(1) of Directive 2003/6 does not expressly provide for a mental element does not, however, mean that that provision needs to be interpreted in such a way that any primary insider in possession of inside information who enters into a market transaction, automatically falls within the prohibition on insider dealing.

46 As pointed out by the Italian and United Kingdom Governments, such an extensive interpretation of Article 2(1) of Directive 2003/6 would entail the risk of extending the scope of that prohibition beyond what is appropriate and necessary to attain the goals pursued by that directive. Such an interpretation could, in practice, lead to the prohibition of certain market transactions which do not necessarily infringe the interests protected by that directive. It is therefore necessary to

distinguish *'uses of inside information'* which are capable of infringing those interests from those which are not.

47 To that end, reference needs to be made to the purpose of Directive 2003/6. As is apparent from its title, that directive seeks to tackle market abuse. The second and twelfth recitals in the preamble thereto state that, following the example of Directive 89/592, it prohibits insider dealing with the aim of protecting the integrity of financial markets and enhancing investor confidence, a confidence which depends, *inter alia*, on investors being placed on an equal footing and protected against the improper use of inside information (see, by analogy, Case C-384/02 Grøngaard and Bang [2005] ECR 1-9939, paragraphs 22 and 33).

48 Thus, the purpose of the prohibition laid down by Article 2(1) of Directive 2003/6 is to ensure equality between the contracting parties in stock-market transactions by preventing one of them who possesses inside information and who is, therefore, in an advantageous position vis-à-vis other investors, from profiting from that information, to the detriment of those who are unaware of it (see, by analogy, Case C-391/04 Georgakis [2007] ECR 1-3741, paragraph 38).

49 In its explanatory memorandum accompanying the proposal which led to the adoption of Directive 2003/6, the Commission thus stated that *'market abuse may arise in circumstances where investors have been unreasonably disadvantaged, directly or indirectly, by others who have used information which is not publicly available to their own advantage or the advantage of others ... This type of conduct can create a misleading appearance of trading in financial instruments and undermine the general principle that all investors must be placed on an equal footing ... in terms of access to information. Insiders are in possession of confidential information. Trades based on such information lead to unjustified economic advantages at the expense of "outsiders"'.* Thus, the proposal for a directive was based on the will to prohibit insiders from drawing an advantage from inside information by entering into market transactions to the detriment of the other actors on the market who do not have access to such information.

50 Consequently, there is a close link between the prohibition on insider dealing and the concept of inside information, the latter being defined by Article 1 of Directive 2003/6 as *'information of a precise nature which has not been made public',* relating to issuers of financial instruments or

to financial instruments and which, *'if it were made public, would be likely to have a significant effect on the prices of [the] financial instruments [concerned] or on the price of related derivative financial instruments'*.

51 In order to strengthen legal certainty for market participants, Directive 2003/124 specified the definition of two key elements of inside information, namely the precise nature of that information and the extent of its potential impact on prices. Article 1(1) of that directive thus provides that information *'[is to] be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments'.* Article 1(2) of that directive defines information likely to have a significant effect on the price of financial instruments as information which *'a reasonable investor would be likely to use as part of the basis of his investment decisions'*.

52 Owing to its non-public and precise nature and its ability to influence the prices of financial instruments significantly, inside information grants the insider in possession of such information an advantage in relation to all the other actors on the market who are unaware of it. It enables that insider, when he acts in accordance with that information in entering into a transaction on the market, to expect to derive an economic advantage from it without exposing himself to the same risks as the other investors on the market. The essential characteristic of insider dealing thus consists in an unfair advantage being obtained from information to the detriment of third parties who are unaware of it and, consequently, the undermining of the integrity of financial markets and investor confidence.

53 Consequently, the prohibition on insider dealing applies where a primary insider who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into a market transaction in accordance with that information.

54 It follows that the fact that a primary insider who holds inside information trades on the market in financial instruments to which that

information relates implies that that person *'used that information'* within the meaning of Article 2(1) of Directive 2003/6, but without prejudice to the rights of the defence and, in particular, the right to be able to rebut that presumption.

55 However, in order not to extend the scope of the prohibition laid down in Article 2(1) of Directive 2003/6 beyond what is appropriate and necessary to attain the goals pursued by that directive, certain situations may require a thorough examination of the factual circumstances enabling it to be ensured that the use of the inside information is actually unfair so as to be prohibited by the directive in the name of the integrity of financial markets and investor confidence.

56 It should be noted, in that regard, that the preamble to Directive 2003/6 provides several examples of situations in which the fact that a primary insider in possession of inside information enters into a transaction on the market should not in itself constitute *'use of inside information'* for the purposes of Article 2(1) of that directive.

57 Thus, the 18th recital in the preamble to Directive 2003/6 states that use of inside information *'can consist in the acquisition or disposal of financial instruments by a person who knows, or ought to have known, that the information possessed is inside information'.* That hypothesis is expressly provided for in Article 4 of that directive, which extends the prohibition on insider dealing to persons who know, or ought to have known, that the information in their possession is inside information. Nonetheless, the automatic application of those criteria to certain professionals in the financial markets, who are required to hold inside information relating to transactions carried out on the market by third parties, risks leading to a situation in which such persons are prohibited from carrying out their activity, an activity which is both legitimate and useful for the efficient functioning of the financial markets. The 18th recital in the preamble to that directive states, in that regard, that the assessment of what a reasonable person knows or should have known *'in the circumstances'* is to be carried out by the competent authorities.

58 In addition, that recital states that the mere fact that marketmakers, bodies authorised to act as counterparties, or persons authorised to execute orders on behalf of third parties with inside information confine themselves to entering into market transactions legitimately and

dutifully *'should not in itself be deemed to constitute use of such inside information'*.

59 The 29th recital in the preamble to Directive 2003/6 states that having access to inside information relating to another company and using it in the context of a public take-over bid or a merger proposal *'should not in itself be deemed to constitute insider dealing'*. The operation whereby an undertaking, after obtaining inside information concerning a specific company, subsequently launches a public take-over bid for the capital of that company at a rate higher than the market rate cannot, in principle, be regarded as prohibited insider dealing since it does not infringe the interests protected by that directive.

60 The 30th recital in the preamble to Directive 2003/6 states that, since the carrying out of a market transaction necessarily involves a prior decision on the part of its author, the carrying out of that transaction *'should not be deemed in itself to constitute the use of inside information'*. If that were not the case, Article 2(1) of that directive could, *inter alia,* lead to a situation in which a person who decided to launch a public take-over bid would be prohibited from executing that decision since it would constitute inside information. Such a result would not only go beyond what may be regarded as appropriate and necessary to achieve the goals of that directive, but could even adversely affect the efficient functioning of the financial markets by preventing public take-over bids.

61 It follows from the above that the question whether a primary insider in possession of inside information *'uses that information'* within the meaning of Article 2(1) of Directive 2003/6 must be determined in the light of the purpose of that directive, which is to protect the integrity of the financial markets and to enhance investor confidence. That confidence is based, in particular, on the assurance that they will be placed on an equal footing and protected from the misuse of inside information. Only usage which goes against that purpose constitutes prohibited insider dealing.

62 Therefore, the answer to the second and third questions must be that, on a proper interpretation of Article 2(1) of Directive 2003/6, the fact that a person as referred to in the second subparagraph of that provision, is in possession of inside information, acquires or disposes of, or tries to acquire or dispose of, for his own account or for the account

> of a third party, either directly or indirectly, the financial instruments to which that information relates implies that that person has *'used that information'* within the meaning of that provision, but without prejudice to the rights of the defence and, in particular, to the right to be able to rebut that presumption. The question whether that person has infringed the prohibition on insider dealing must be analysed in the light of the purpose of that directive, which is to protect the integrity of the financial markets and to enhance investor confidence, which is based, in particular, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information. (fn. 10 Spector Photo Group NV, Chris Van Raemdonck vs Commissie voor het Bank-, Financie-, en Assurantiewezen (CBFA), 23/12/2009, C-45/2008.)

Illi għalhekk, skont il-Qorti Ewropea tal-Ġustizzja, il-fatt li persuna tinnegozja fi strumenti finanzjarji fil-mument li tkun fil-pussess ta' inside information*, joħloq preżunzjoni li dik il-persuna <u>użat</u> dik l-informazzjoni, b'dan però li l-mixli għandu jkollu kull opportunità sabiex jirribatti dik il-preżunzjoni permezz ta' provi. Huwa ċar għalhekk li l-oneru tal-prova jinsab proprju fuq il-mixli. L-imsemmija Qorti waslet għal din il-konklużjoni billi qieset li l-iskop tal-projbizzjoni kontra* insider dealing *huwa li persuni li jkollhom vantaġġ fis-suq minħabba l-pożizzjoni tagħhom fi ħdan istituzzjoni finanzjarja ma jieħdux vantaġġ minn dik il-pożizzjoni meta jiġu biex jinnegozjaw ma' persuna karenti minn vantaġġ bħal dak jew vantaġġ ieħor konsimili. Dan bl-iskop li tiġi mantenuta l-fiduċja fis-swieqi finanzjarji, liema fiduċja tista' tiġi nieqsa fejn persuna f'pożizzjoni vantaġġjuża, kif spjegat, titħalla tinnegozja liberament meta tkun munita b'dik l-informazzjoni.*

Illi t-tribunal jifhem illi l-iskop tal-Artikolu 6 tal-Att, kif interpretat mill-Qorti Ewropea tal-Ġustizzja, huwa l-manutenzjoni tal-bilanċ bejn il-persuni kkunsidrati bħala insiders *(u ċioe' l-persuni elenkati fis-subparagrafi (a) sa (d) tal-ewwel subinċiż tal-Artikolu 6) u l-persuni li m'humiex* insiders*. Bilanċ li jista' jiġi miżmum liberament billi l-persuni kkunsidrati bħala* insiders *jassikuraw ruħhom li jipprovdu lill-pubbliku dik l-informazzjoni li tikkwalifika bħala* inside information*, liema informazzjoni proprju titlef dak il-karattru hekk kif tiġi esposta għall-pubbliku. Dan ma jfissirx li istituzzjoni finanzjarja għandha l-obbligu li tesponi lill-pubbliku kollox - però jekk tagħżel li ma tagħmilx tali espożizzjoni, l-uffiċjali tagħha jkunu prekluži milli jinnegozjaw fl-istrumenti finanzjarji taghha - sakemm ma jurux illi f'tali negozjati huma ma għamlux użu minn* inside information*.*

Illi l-appellant odjern issottometta li d-deċizjoni tiegħu li jbiegħ numru ta' azzjonijiet li kellu f'GC ma kellha x'taqsam xejn mat-tagħrif li huwa rċieva fil-laqgħa tal-Bord

tad-Diretturi f'Diċembru 2007. Huwa jsostni li l-bejgh t'azzjonijiet li hu għamel f'Diċembru 2007 kien parti minn eżerċizzju ikbar li permezz tiegħu huwa kien qed ibiegħ numru t'azzjonijiet li kellu f'diversi kumpanniji pubbliċi. Huwa jsostni li dan l-ezerċizzju kien qed jagħmlu sabiex jiffinanzja l-akkwist ta' proprjetà fi Sliema u sabiex jiffinanzja wkoll il-finituri ta' dik il-proprjetà. It-tribunal sejjer issa jeżamina dawn is-sottomissjonijiet taI-appellant.

Mill-provi prodotti jirriiultaw is-segwenti fatti:

- *B'konvenju datat 24 ta' Marzu 2004, I-appellant intrabat li jixtri mingħand il-kumpannija Strandfort Limited appartament u żewg* car spaces *- li fl-epoka kienu għadhom mhux kostruwiti - fi blokk bini f'The Strand, Sliema, u dan versu I-prezz ta' Lm198,000. Ġie stipulat, fost ħwejjeġ oħra, li I-appartament kellu jinbiegħ fi stat ta'* advanced shell state *skont I-ispeċifikazzjonijiet elenkati fid-dokument anness mal-ftehim u msejjaħ "document number 1. " Il-*car spaces *kellhom jinbiegħu fi stat* finished*. Dan il-konvenju kellu jibqa' validu sal-31 ta' Diċembru 2006, salv il-proroga "awtomatika" kontemplata hemmhekk.*
- *Il-kuntratt finali sar fis-16 ta' Lulju 2008 (Dok ND9). Hemmhekk ġie dikjarat illi I-appartament u I-*car spaces *kienu qed jiġu konsenjati lill-appellant fl-istat stipulat fil-konvenju. Il-prezz finali mħallas fuq il-kuntratt kien ta' €60,563.71. Il-parti rimanenti tal-prezz tħallas qabel.*

*Illi I-appellant, waqt id-depożizzjoni tiegħu tat-13 ta' Lulju 2010, spjega hekk: "*So what you can see is a correlation between the upcoming liabilities I had to pay for my property and the sales I made on the Stock Exchange. What I did basically was cleared my overdraft. I came to a position that once I transacted those 46,000 shares I cleared my overdraft with the bank*" (paġna 10 tad-depożizzjoni).*

Illi I-appellant esebixxa wkoll dokument intitolat "Summary of Payments" *(Doc "SPI"), li permezz tiegħu huwa elenka I-pagamenti magħmula minnu b'rabta mal-proprjetà akkwistata minnu, u meta saru I-istess pagamenti. Minn dan id-dokument jirriżulta li, fl-epoka mertu tal-kawża, I-appellant għamel pagament ta' Lm40,000 lil Strandfort Limited fit-18 t'Ottubru 2007. L-ewwel pagamenti li saru wara dik id-data kienu ta' Lm26,000 lil Strandfort Limited, u ta' Lm7,922 lil Kummissarju tat-Taxxa għall-boll dovut fuq il-kuntratt t'akkwist. Entrambi pagamenti saru fit-30 ta' Lulju 2008.*

Huwa evidenti minn dan I-elenku, eżebit mill-appellant stess, illi meta huwa biegħ l-azzjonijiet in kwistjoni, f'Diċembru 2007, ma kellu ebda ħtieġa li jagħmel pagamenti qabel diversi xhur wara. Huwa jispjega però, kif jirriżulta mill-bran

tax-xiehda kaptat hawn fuq, li kellu jagħmel pagamenti biex issalda l-faċilità ta' overdraft *konċessa lilu mill-Bank. L-appellant jispjega illi, meta ġie biex jieħu deċiżjoni dwar kif se jiffinanzja l-akkwist tal-proprjetà mmobbli,* "And what I started to do rather than get finance from the Bank I tried to support my purchase through systematically selling all my holdings with the exception of Global Capital. So I disposed of the majority of my Government stocks, I kept a few holdings which I believed were too good to sell and a couple of holdings in equities" *(pagna 9 tad-depożizzjoni tat-13 ta' Lulju 2010). Ikompli jispjega li,* "So I did seek a facility from the bank. I got it. I pledged Global Capital shares in that regard but when further payments came due and a big payment came due at the time of my trades rather than going back to the bank because the overdraft facility was limited to a certain amount, I decided to utilise my shares and liquidate some of my shares on the Stock Exchange" *(paġna 9-10 tal-istess depożizzjoni).*

Illi digà rajna kif, skont l-elenku tal-pagamenti imħejji mill-appellant stess, f'dik l-epoka l-appellant kellu pagament kbir x'jagħmel f'Ottubru 2007, ċioe' xahrejn qabel il-bejgħ tal-azzjonijiet tiegħu, u kellu pagament kbir x'jagħmel f'Lulju 2008, u ċioe' seba' xhur wara l-bejgħ tal-azzjonijiet in kwistjoni. L-appellant xehed ukoll li mir-rikavat tal-bejgħ tal-azzjonijiet tiegħu, huwa ħallas il-faċilità ta' overdraft *għas-saldu, però ma preżenta ebda dokument biex jissostanzja din l-affermazzjoni tiegħu. Lanqas ma pproduċa bħala xhud lir-rappreżentanti bankarji biex jikkonfermaw li f'dik l-epoka huwa għamel pagamenti mdaqqsa.*

*Illi l-appellant issottometta li l-fatt illi huwa biegħ ammont żgħir mill-azzjonijiet li huwa kellu f'GC jimmilita favur it-teżi tiegħu li huwa biegħ biss biex jiffinanzja l-akkwist tal-proprjetà tiegħu. It-tribunal josserva li, għalkemm huwa minnu li l-appellant biegħ biss ċertu ammont mill-azzjonijiet tiegħu, fil-verità l-ammont ta' azzjonijiet mibjugħa huwa irrilevanti għaliex il-liġi ma teskludiex mill-applikazzjoni tagħha trasferimenti skont l-ammont ta' azzjonijiet involuti. Dak li huwa rilevanti huwa għaliex l-appellant biegħ meta biegħ, u t-tribunal mhux sodisfatt li d-deċiżjoni tal-appellant li jbiegħ f'dik l-epoka kienet indipendenti mill-*inside information *li huwa kellu. Wieħed irid jirrileva wkoll li l-appellant lanqas kieku ried ma seta' jbiegħ l-azzjonijiet kollha tiegħu, għaliex numru indeterminat minnhom kienu miżmumin b'rahan bħala garanzija għall-faċilità ta'* overdraft *konċessa lilu mill-Bank. Għax l-appellant għażel li ma jressaqx provi dwar din il-faċilità, it-tribunal huwa sprovvist minn riżultanzi probatorji suffiċjenti biex jasal għall-konklużjonijiet tiegħu fir-rigward, meta l-produzzjoni ta' tali riżultanzi probatorji kienu fl-interess u l-oneru tal-appellant.*

Illi huwa importanti hawnhekk li t-tribunal josserva li biex jiġi determinat jekk direttur għamilx użu minn insider information *biex biegħ strumenti finanzjarji, huwa neċessarju li jiġu eżaminati l-mottivi tad-direttur meta huwa fforma d-deċiżjoni tiegħu li jbiegħ, biex min huwa mgħobbi bil-piż tad-deċiżjoni jqis jekk dak l-element jirriżultax. Hija l-fehma tat-tribunal illi wieħed jitqies li għamel użu minn* inside information *biex ibiegħ strumenti finanzjarji meta dik l-informazzjoni tkun b'xi mod ikkontribwiet - anke jekk minimament - fil-formazzjoni tad-deċiżjoni tiegħu li jbiegħ.*

Illi t-tribunal m'huwiex sodisfatt illi l-appellant odjern biegħ meta biegħ - u ċioe' ftit tal-jiem biss wara l-laqgħa tal-Bord tad-Diretturi ta' Diċembru 2007, mingħajr ma għamel użu minn inside information *li huwa ċertament kellu f'Diċembru 2007. Għalkemm huwa probabbli illi l-appellant verament iddeċieda li jbiegħ azzjonijiet tiegħu f'GC sabiex jiffinanzja l-pagamenti li kellu jagħmel, it-tribunal huwa tal-fehma li l-appellant għażel li jbiegħ f'Diċembru għax kien jaf li dik kienet l-epoka li seta' jgib l-aħjar prezz għal dawk l-azzjonijiet, u ċioè qabel il-pubblikazzjoni tal-* consolidated audited accounts *ta' GC għas-sena 2007 li wisq probabbli kien se jkollhom l-effett li jwaqqgħu il-prezz tal-azzjonijiet. Lanqas ma ressaq prova l-appellant illi huwa ddeċieda li jbiegħ I-azzjonijiet tiegħu f'GC f'mument meta ma kienx ir-reċipjent ta'* inside information*, liema prova kienet tikkontribwixxi mhux ftit biex tingħeleb il-preżunzjoni taI-użu ta'* inside information*.*

Isegwi minn hekk illi d-deċiżjoni taI-Awtorità appellata ma tistax titqies li ingħatat b'abbuż tad-diskrezzjoni taghha, jew li hija manifestament inġusta."

L-Appell

4. L-appellant intavola appell minn din id-deċiżjoni quddiem il-Qorti, permezz ta' rikors ippreżentat fl-10 ta' Novembru, 2020, fejn qed jitlob li titħassar l-imsemmija deċiżjoni appellata, bl-ispejjeż kollha a karigu tas-soċjetà appellanta. L-aggravji tiegħu huma dawn: (i) it-Tribunal applika b'mod inkonsistenti l-prinċipji dwar l-evidenza; (ii) il-mod li t-Tribunal ikklassifika tagħrif taħt il-kappa ta' *inside information.*

5. L-Awtorità appellata wieġbet fit-2 ta' Diċembru, 2020 fejn filwaqt li tiddikjara li d-deċiżjoni appellata hija waħda ġusta u għalhekk timmerita konferma, tissottometti preliminarjament li l-appell huwa irritu u null għaliex l-aggravji tal-appellant mhumiex dwar punt ta' liġi imma dwar interpretazzjoni ta' fatti u għalhekk l-appell tiegħu ma jirrispettax is-subartikolu 21(14) tal-Kap. 330. Minn hawn l-Awtorità appellata tgħaddi sabiex tagħmel is-sottomissjonijiet tagħha fir-rigward tal-aggravji mressqa mill-appellant.

<u>Konsiderazzjonijiet ta' din il-Qorti</u>

6. Din il-Qorti qabelxejn ser tikkonsidra jekk l-appell interpost mill-appellant isegwix id-dettami tas-subartikolu 21(14) tal-Kap. 330, li jagħti lok għal appell fuq punt ta' liġi biss. L-Awtorità appellata tikkontendi li l-aggravji kollha li jressaq l-appellant għall-konsiderazzjoni ta' din il-Qorti, ma jirrigwardawx punt ta' dritt iżda jittrattaw l-interpretazzjoni ta' fatti u l-apprezzament tagħhom kif magħmul mit-Tribunal.

7. Il-Qorti tikkondividi l-fehma tal-Awtorità appellata. L-ewwel aggravju tal-appellant fis-suċċint huwa li, applikati l-istess prinċipji tal-evidenza li għażel it-Tribunal stess, it-tagħrif akkwistat minnu waqt il-laqgħa ta' Diċembru tas-sena 2007 li l-kumpannija għamlet telf qabel it-taxxa fl-ammont ta' €1,844,934 għall-perjodu minn Jannar sa Settembru 2007, kellu jitqies mhux waħdu iżda flimkien ma' tagħrif ieħor li l-appellant irnexxielu juri li ġie mogħti fl-istess laqgħa. Il-Qorti tirrileva li hawn l-appellant mhux qed iqajjem l-ebda punt ta' liġi sabiex jiġi deċiż minn din il-Qorti, u l-aggravju tiegħu huwa proprju dwar l-

apprezzament tal-provi li sar mit-Tribunal sabiex dan wasal għad-deċiżjoni appellata.

8. L-istess jingħad fir-rigward tat-tieni aggravju tal-appellant fejn huwa pjuttost jirrevedi fil-parti l-kbira l-ewwel aggravju. L-appellant jispjega li dan it-tieni aggravju jirrigwarda l-klassifikazzjoni li għamel it-Tribunal ta' tagħrif partikolari negattiv dwar is-sitwazzjoni finanzjarja tal-kumpannija taħt il-kappa ta' *inside information,* mingħajr ma ħa inkonsiderazzjoni tagħrif ieħor miegħu. Hawnhekk l-appellant qed jitlob lill-Qorti sabiex tikkonsidra li t-Tribunal ma kienx korrett meta allegatament ta preponderanza lil fattur partikolari, u għalhekk huwa qed jistieden lil din il-Qorti sabiex tindaga u jekk ukoll ikun hemm bżonn, tiddisturba l-apprezzament tal-provi li għamel it-Tribunal, sabiex tasal għal konklużjoni diversa minn dik li wasal għaliha t-Tribunal. L-aggravju tal-appellant essenzjalment mhux dwar l-interpretazzjoni li għandha tingħata *"inside information",* fejn allura l-informazzjoni l-oħra li huwa qed jindika għandha wkoll tiġi kkonsidrata tali, iżda l-ilment tiegħu huwa dwar dik l-informazzjoni li għażel it-Tribunal li jqis li mhux biss li hija *inside information,* iżda anki li wasslet lill-appellant sabiex ibigħ l-ishma tiegħu.

<u>Decide</u>

Għar-raġunijiet premessi, il-Qorti tiddeċiedi dwar l-appell tal-appellant billi tiċħdu, filwaqt li tikkonferma d-deċiżjoni appellata fl-intier tagħha.

L-ispejjeż tal-proċedura quddiem it-Tribunal jibqgħu kif deċiżi fid-deċiżjoni appellata, filwaqt li l-appellant għandu jħallas ukoll l-ispejjeż ta' dan l-appell.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Reġistratur